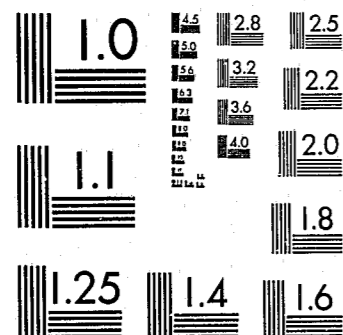


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ATTORNEY GENERAL'S TASK FORCE ON VIOLENT CRIME

GEORGIA WORLD CONGRESS CENTER

ATLANTA, GEORGIA

May 20, 1981

TASK FORCE MEMBERS PRESENT

Jeffrey Harris, Executive Director

Griffin Bell, Co-Chairman

Frank G. Carrington

Robert L. Edwards

David L. Armstrong

William L. Hart

Wilbur F. Littlefield

TASK FORCE MEMBERS ABSENT

Governor James R. Thompson

Professor James O. Wilson

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P R O C E E D I N G S

EXECUTIVE DIRECTOR HARRIS: Gentlemen, if we can come to order.

First I should say welcome to all the people in the audience, we're delighted to be in Atlanta to discuss a number of important law enforcement issues, and before we begin, let me just note that Governor Thompson will be here later today, he was detained in Washington and will be here later today, as will Professor Wilson, and we expect Chief Hart momentarily, but we want to start on time and we are going to begin.

Today we're presenting testimony -- public testimony on several important issues, one is Federal, State and local cooperation, and as a sub-center to that we are specifically interested in the question of Federal Disaster Assistance in law enforcement disasters. We're particularly interested in that in Atlanta since, unfortunately this city is going through such a crisis at this time, and we're interested in learning about how the process of cooperation is working.

We will also have testimony today on the insanity defense, and lastly testimony on the more general subject of cooperation between States, Localities and the Federal Government.

Without further adieu then let me begin today's

1 first witness, Public Safety Commissioner Brown.

2 TESTIMONY BY LEE P. BROWN

3 PUBLIC SAFETY COMMISSIONER FOR THE CITY OF ATLANTA

4 COMMISSIONER BROWN: Thank you. Let me begin by  
5 saying on behalf of our Mayor, the Honorable Maynard Jack-  
6 son, I want to say to the Task Force, welcome to Atlanta.

7 We express our appreciation for having the  
8 opportunity to present testimony before you this morning  
9 on the very important issue dealing with violent crime  
10 in America.

11 I want to personally applaud the initiative  
12 of the Attorney General in forming this Task Force, as  
13 we see it, its formation signals a clear recognition,  
14 particularly violent crime, is a indeed a significant  
15 problem in this country.

16 The remarks I will present to you this morning  
17 will be based on some 25 years of my experience, either  
18 direct or indirect, in the area of crime control, the  
19 administration of justice, that including being a municipal  
20 officer working in the university setting as an administrator  
21 and researcher, serving as the county sheriff, the adminis-  
22 trator of a criminal justice agency, consultant, and indeed,  
23 in my present capacity as the Commissioner of Public Safety  
24 here for the City of Atlanta.

25 As you know, you're holding your hearing here

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1 at an extremely difficult time for our city, yet we feel  
2 it's appropriate for you to be here because we believe  
3 that the current tragedy we're all experiencing transcends  
4 Atlanta, and thereby has significance for the entire nation.

5 We feel that even though the specifics of the  
6 problem that we are experiencing here may be unique to  
7 the Atlanta Metropolitan area, it must be looked at in  
8 the broader context of how a nation responds to violence.

9 We also feel that a lesson can be learned from  
10 Atlanta about the responsiveness of the Federal Government  
11 with both financial and technical assistance such as in  
12 the cases of our missing and murdered young people, and  
13 indeed what implications that responsiveness has for on-  
14 going crime and criminal investigation on the national  
15 basis.

16 And, it's for those reasons that I appear before  
17 you today.

18 And, also, I believe it is imparative that  
19 we isolate the best and most effective means of controll-  
20 ing the problem of crime. And, to that end, I submit  
21 to you that a singular contribution that you can make  
22 as a Task Force, is to develop a clear delineation of  
23 responsibilities to begin the full and efficient coordina-  
24 tion of efforts between the Federal, State, local, and  
25 most important, the American public, in order insure that

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1 crime will not dominate our lives.

2 Your being here, the formation of the Task  
3 Force is certainly is indicative of your recognition that  
4 the American public is greatly concerned about the problem  
5 of violent crime, and this is evident by many public opinion  
6 polls which have been taken that consistently reveal that  
7 crime is ranked by our citizens as a top domestic problem,  
8 often only exceeded by double diget inflation.

9 I recall just a few weeks ago watching the  
10 news account of the assassination attempt of our President;  
11 I think the reporter in concluding his remarks, captured--  
12 highlighted what indeed is a real problem for this country  
13 when he said that "America the beautiful is also America  
14 the violent". But, probably the best summary of why the  
15 public is rightly concerned about crime was summed up  
16 by a conclusion that was reached recently in an edition  
17 of Time magazine which said there is something knew about  
18 the way Americans are killing, robbing, raping, and assault-  
19 ing one another, that violent crime is rampant in areas  
20 other than the inter-city, and that the crimes are becoming  
21 more brutal, or irrational, more random, and therefore,  
22 all the more frightening.

23 I think the problem, as I see it, can be summed  
24 up without citing for you a great deal of statistical  
25 evidence. Let me make a few points I think would put the

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1 matter in perspective as I see it.

2 The FBI has released this preliminary statistics  
3 for the year of 1980, and it revealed that crime increased,  
4 nation-wide, by 10 percent. I might point out that Atlanta  
5 experienced a one percent increase. Those preliminary  
6 statistics show that 1980, over 1979, violent crimes in  
7 America increased 13 percent; Atlanta's violent crime  
8 rate increased by three percent.

9 We know that in most major cities in this country,  
10 homicides have increased tremendously. For the year,  
11 1980, Atlanta had a 13 percent decrease in its homicide  
12 rate; we know that stranger to stranger violent crime  
13 is on the increase, as contrary to what was the case five--  
14 10--15 years ago.

15 We know that violent crime is not just a phenomena  
16 of the cities, that violent crime is on the increase in  
17 the suburbs as well as our cities.

18 We know that youth are disportionly involved  
19 in violent crime; we know that non-whites and the poor,  
20 are more likely to be the victims of violent crime; we  
21 know that those arrested for violent crime are likely  
22 to come from a background of deprivation; we know that  
23 a substantial amount of violent crime is committed by  
24 the repeat offender; we know that narcotic and alcohol  
25 play a significant role in the crime problem. And, equally

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1 important, we know that the country does not have a strategy  
2 to deal with the problem of crime.

3         Rather, traditionally what we've seen happen  
4 is governments at all levels have responded to the crime  
5 problem by the infusion of increasing large sums of money  
6 into what we call the system for the administration of  
7 justice. The response from local jurisdictions have been  
8 to add more police agencies; this results in the ripple  
9 effect of needing more prosecutors, more public defenders,  
10 more courts.

11         And, the same time the States have enlarged  
12 their prison capacity, and we find ourselves today, your  
13 existence is illustrative of the problem that despite  
14 the annual expenditure of billions of dollars, crime--  
15 violent crime, remains a major problem concern for the  
16 American public.

17         If effect, the official historical reponse  
18 to crime has been almost a total reliance on the criminal  
19 justice system.

20         The Law Assistance Administration is a classical  
21 example of that. The Agency represented the Federal Govern-  
22 ment's major effort to assist State and local governments  
23 in dealing with the problem of crime. It saw legislatively  
24 as its mandate to improve--to address the problem of crime  
25 by improving the criminal justice system.

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1         Presently, unfortunately, we find that that  
2 program, along with the office of juvenile justice assis-  
3 tance, the only two major programs in the Federal Govern-  
4 ment that's established for the express purpose of assist-  
5 ing State and local governments in dealing with the problems  
6 of crime and delinquency, are scheduled to receive no  
7 funds in the Administration's revised fiscal year 1982,  
8 budget.

9         Although it's no my intent to suggest in anyway  
10 that the LEA program should remain as historically directed,  
11 I strongly believe it would be a drastic mistake--a serious  
12 mistake, not to have a Federal agency with the sole purpose  
13 of assisting State and local governments deal with the  
14 problem of crime.

15         Let me just for a moment localize my concern,  
16 and point out how the Federal Government has been able  
17 to assist us in Atlanta during our current crises.

18         As I'm sure you all know, we're experiencing  
19 a problem in Atlanta--the Atlanta metropolitan area whereby  
20 we have 28 unsolved cases involving missing and murdered  
21 children.

22         As a matter of background, Atlanta's problem  
23 began in July of 1979; it was at that time we found two  
24 youths in southwest Atlanta--they were dead.

25         Since that time, we now have 28 unsolved cases

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1 involving youth; of that number, 27 are homicide victims,  
2 and one youth is still missing.

3 There are certain similarities in all of the  
4 28 cases; all are black; all but four are between the  
5 ages of seven and 16; there are four that are between  
6 the ages of 20 and 23; all come from relatively income  
7 areas of the city, and all except two are males; and,  
8 that's about where we find the similarities stop.

9 There have been differences in the way they've  
10 been killed. There's been gunshot wounds, stabbing, blunt  
11 instrument to the head, asphyxiation, strangulation, and  
12 in seven cases, we do not know the cause of death.

13 Some 16 of the cases -- 16 of the cases are  
14 outside the legal jurisdiction of the City of Atlanta, and  
15 we have created a special task force to investigate the  
16 cases. That task force is composed of State, county,  
17 city, and law enforcement agencies.

18 I think when it's all over, we'll find that  
19 what we have done here, through the task force, represents  
20 a model for cooperative law enforcement effort. That  
21 does not include the fact that we have a much appreciated  
22 and a great presence of the Federal Bureau of Investigation,  
23 again, working cooperatively with State, county, and city,  
24 law enforcement agencies. And, collectively with the  
25 Federal, State, county, city and county, agencies, we do

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1 have a cooperative model for law enforcement efforts in a  
2 criminal investigation.

3 The nature and seriousness of our problems  
4 is of such a nature that we asked for, and we received  
5 Federal assistance. The response of the Federal Govern-  
6 ment to the City has been in several areas. As I've indi-  
7 cated, we have, what I believe, is an unprecedented involve-  
8 ment of the FBI in an investigation of this nature.

9 We received a grant award of \$974,000 from  
10 the Office of Juvenile Justice and Delinquency Prevention  
11 for our prevention programs.

12 We received a grant award of \$1.5 million from  
13 HUD to assist in covering the extraordinary costs of the  
14 investigation.

15 We've had the loans of vehicle and equipment  
16 from the Federal Government.

17 We received a \$38,000 technical award from  
18 the Law Enforcement Assistance Administration, and other  
19 awards to the school district as well as the County's  
20 health department.

21 I believe that the personal interest of the  
22 President, his assigning the Vice President to represent  
23 him in assisting Atlanta, and the establishment of a Federal  
24 Task Force with the assignment of Mr. Charles Rinkevich  
25 as our local task force contact person, is a system that

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1 has worked extremely well in this instance, and want to  
 2 express, publicly, our sincere appreciation to the Adminis-  
 3 tration for the assistance rendered -- express our apprecia-  
 4 tion to Mr. Rinkevich for his availability, and expediting  
 5 all of our requests and delivering as indicated above.

6 I'm sure when Mr. Rinkevich talks, he'll talk  
 7 more about the process that he has utilized in being of  
 8 assistance to us.

9 It also be of interest to you know how another  
 10 agency established for the purpose of helping local govern-  
 11 ments respond to our requests for help; and, to that end,  
 12 I think the office of Juvenile Justice and Delinquency  
 13 Prevention is a good case and example.

14 The OJJDP not only provided us with technical  
 15 assistance within a few days after the request was made,  
 16 but also a grant award was made a few days after that.

17 The grant award of almost \$1 million allowed  
 18 us to address our prevention in mental health programs  
 19 for our young people; and this, I submit, is a clear example  
 20 of how the Office of Juvenile Justice and Delinquency  
 21 Prevention has benefited the City as coping with the serious  
 22 situation involving youth.

23 Doctor Price Foster, with that office, has  
 24 been extremely helpful to us and deserves, certainly public  
 25 recognition for doing that.

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1 And, not to have a program such as the Office  
 2 of Juvenile Justice and Delinquency Prevention, in my  
 3 estimation, and this is shared by many of my colleagues,  
 4 would not be in the best interests of this nation.

5 But, beyond Atlanta, there's a broader need  
 6 for maintaining a substantial Federal involvement in the  
 7 crime problem; even though crime is basically recognized,  
 8 and should be considered a local problem, the nature and  
 9 extent of the problem is such that it demands a Federal  
 10 role.

11 The question as I see it, is not whether there  
 12 should b a Federal role--Federal involvement, but what  
 13 should that role be.

14 We know that in 1967, the President's crime  
 15 commission on law enforcement and the administration of  
 16 justice released its report; we know that here in 1981,  
 17 crime is still a major problem; and, subsequent to the  
 18 crime commission report in 1967, we've seen other reports,  
 19 the Kerner Commission, the Violence Report, the Standards  
 20 and Goals Report, plus others and crime is still a major  
 21 problem.

22 Let us be mindful of this fact and hopefully  
 23 your Task Force will set a precedent by recommending poli-  
 24 cies that will serve as a road map for this county to  
 25 address its problem of crime, including a clearly defined

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1 role for the Federal Government.

2 I believe that a concerted attack on crime  
3 must involve every level of government. Operation respon-  
4 sibility should remain with the State and local govern-  
5 ments, but the Federal Government does have an important  
6 role to play. To that end, I would submit for your con-  
7 sideration, the following recommendations:

8 Number One: Research and Development. As  
9 an administrator of a criminal justice agency at the local  
10 level, the day to day problems of agency operations receive  
11 top priority, this is my case, even though I have an apprecia-  
12 tion of the value of research and have worked in a research  
13 instituted. To the extent that empirical, to the extent  
14 that practical research, will represent the basis by which  
15 national policy and direction with respect to violent  
16 crime is established, research then is a responsibility  
17 best directed and underwritten by the Federal Government  
18 with obviously, in-put in terms of priorities by those  
19 who are dealing with the problem locally on a day to day  
20 basis.

21 Number Two: I recommend that the Federal Govern-  
22 ment be involved in direct financial assistance. There  
23 should be an agency of the Federal Government that has as  
24 its role, the responsibility of assisting State and local  
25 governments deal with the problem of crime by providing

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1 direct financial assistance.

2 Third: I recommend that there be a program  
3 of emergency assistance to local agencies. To that extent,  
4 there should be an agency of the Federal Government that  
5 exists to provide as a normal course of its existence,  
6 emergency assistance, whether that be financial or techni-  
7 cal, to local law enforcement agencies; and, I cite our  
8 emergency here in Atlanta as an example of the need for  
9 such assistance.

10 I strongly believe just as we have Federal  
11 response to natural disasters such as floods and tornados,  
12 we also should have a response to assist local governments  
13 on disasters of a criminal nature.

14 That point is very important, because just  
15 as cities do not budget for natural disasters, we do not  
16 budget for massive investigations such as we've under-  
17 taken here. To that extent, there should be Federal assis-  
18 tance made available for cases such as our experience  
19 here in Atlanta.

20 Fourth: I believe there should be technical  
21 assistance. There should be in some Federal agency, the  
22 capacity of providing technical assistance in the area  
23 of crime control to State and local governments when needed.

24 And, finally: There should be investigative  
25 assistance. And, here, I refer to the necessity of having

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1 legislation enacted that would enable the Federal law  
2 enforcement agencies such as the FBI, to lend investigative  
3 assistance to local agencies when requested by local agencies.

4 In summary, I strongly believe that the Federal  
5 Government has a major role to play in the fight against  
6 crime by providing assistance to States and localities;  
7 by supporting research and demonstration projects, and  
8 by all means, providing leadership in the nation's fight  
9 against crime.

10 Let me end my remarks by saying, I would like  
11 to again suggest that crime cannot, and crime will not  
12 be controlled by a total reliance on the system for the  
13 administration of justice--the criminal justice system;  
14 and thus, I submit to you and ask that you take into con-  
15 sideration in your deliberations that if this nation is  
16 serious about controlling the problem of crime, we should  
17 note that many social scientists, many practitioners,  
18 and many other national commissions all share the belief  
19 that there exists a link between crime and the many socio-  
20 economic problems of this country.

21 At this point, I submit it's significant for  
22 this Task Force to recognize as it develops a strategy  
23 to respond to crime.

24 The analysis of the correlates of crime must  
25 be used in designing a national posture on crime and policies

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1 for its control. And that, I think is something that  
2 must be recognized. In that area, I believe that there  
3 are other roles that the Federal Government should play  
4 that are not necessarily the responsibilities of the Depart-  
5 ment of Justice. And, what I'm suggesting is that if  
6 we want to address the problem of crime, we must look at  
7 the problems that many of us believe are the causative  
8 problems of crime.

9 I have not attempted to address the police  
10 role here because that is not the Federal Government's  
11 role; but, what I want to do is just close my remarks  
12 by suggesting some areas in which the Federal Government,  
13 by virtue of the public policy initiatives can assist  
14 in addressing violent crime.

15 First of all, there's Federal leadership. I  
16 believe the Federal Government can do much to assist the  
17 public to understand the complexities of the crime problem,  
18 and that there are no easy solutions to the problem.

19 I think there should be leadership in pointing  
20 out that crime has a natural consequence in the socio,  
21 the economic, and the political systems of this country.

22 It should be pointed out that as long as there  
23 exists unequal means of achievement, there will always  
24 be crime.

25 It should be articulated that crime in itself,

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1 even though there's a disproportionate involvement of  
 2 minorities arrested for crime, that crime in itself, is  
 3 not racially motivated, rather the high incidence of crime  
 4 in the minority communities must be viewed in context  
 5 of the relative degree of deprivation of minorities in  
 6 this country.

7 Equally imporant, this Task Force should indi-  
 8 cate that Federal policies, and this is not generally  
 9 acknowledged, have a significant bearing on the issues  
 10 that are believed to be causative factors of criminal  
 11 behavior.

12 And, thus, I would submit it is essential that  
 13 Federal policies in all relevant departments of the Federal  
 14 Government, be examined for their impact on the crime  
 15 problem.

16 I would suggest that we look at the issue of  
 17 employment. All available information tells us that there  
 18 is some correlation between crime and unemployment.

19 I would submit to you that if we implemented  
 20 one policy and carried it out, designed to reduce crime  
 21 in the millions, that would be a policy--a Federal policy  
 22 of full employment where every American, willing, able,  
 23 and seeking employment would be mandated a job.

24 I would suggest that we look at the issue of  
 25 adequate and decent housing, and we know that from research

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1 that areas of transition, low income areas, serve as resi-  
 2 dence of those who become involved in law violations.

3 This becomes a public policy issue.

4 I would suggest that we look at drug treatment  
 5 and enforcement, because it's fairly known that there  
 6 is a strong relationship between narcotics and alcohol  
 7 in the crime problem.

8 I would suggest that we take cognizance of  
 9 the fact that many of the crimes of violence are committed  
 10 by the use of handguns and indeed, there should be a Federal  
 11 policy--Federal legislation dealing with curtailing the  
 12 proliferation of handguns in our society.

13 We've also looked at the medical profession  
 14 and their research that have indicated that there is a  
 15 strong corrolation between violence on television and  
 16 aggressive behavior in children; indeed, we should look  
 17 at reduction of violence on television.

18 We all know that education is the key to success  
 19 in our society, but unfortunately, we have thousands of  
 20 children leaving school each year, unemployed--unemployable.  
 21 Education must be addressed if we want to talk about the  
 22 issue of crime.

23 And, finally, I believe that we must look at  
 24 crime in its totality. As the Federal Government has  
 25 established this posture on crime, we must recognize the

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1 fact that crime is not one dimensional, to that extent  
2 we must also look at white collar crime and all the ramifi-  
3 cations, economically and otherwise to go with that.

4 In conclusion, the Federal Government can and  
5 should play a significant role in the fight against crime.  
6 And, hopefully, your efforts through this Task Force will  
7 provide a national crime control plan that will enable  
8 us to collectively address the problem with articulated  
9 roles for Federal, State, and local governments.

10 Mr. Chairman, that would end my formal remarks.

11 EXECUTIVE DIRECTOR HARRIS: Thank you, Commissioner  
12 Brown.

13 We'll now, if you have time, we'd like to open  
14 up the floor for some questions.

15 Judge Bell?

16 CO-CHAIRMAN BELL: Mr. Commissioner, I'm going to  
17 take your remarks and work backwards, I've got several  
18 questions I want to ask you.

19 I start out by saying that this Commission--  
20 you laid out what we've been hearing for probably 20 years  
21 about what we ought to do about crime, and I want to disabuse  
22 your mind of the objective of this Commission.

23 We're dealing only with violent crime--what to  
24 do about violent crime, not crime generally. So, these  
25 recommendations you make, some of them go directly to

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1 violent crime, and I want to get into that.

2 (Questions of Commissioner Brown by Co-Chairman  
3 Bell.)

4 Q You say--you think the Federal Government ought  
5 to continue to have a role in research and development;  
6 I think that's a very good point, and I completely agree  
7 with that, and I think that role is being carried out  
8 now, and I haven't heard anyone suggesting that the Federal  
9 Government, we get out of research and development.

10 It's carried out, as you know, through the  
11 FBI's Quantico Program, which impacts heavily on State  
12 law enforcement, fingerprint bureau, the drug training  
13 program, Federal Law enforcement at Glenco, and a lot  
14 of other ways, besides the -- one part of the LEAA now  
15 is set up to do that--the National Institute of Justice.

16 I think one thing that you've touched on is  
17 very important, and I want to go into that with you, and  
18 that is emergency assistance. I thought for sometime  
19 that it's unusual for our country to respond to local  
20 communities whenever there's a storm--hurricane, or a  
21 toranado, or a flood, but, we don't respond when there's  
22 some unusual criminal occurrence such as is going on in  
23 Atlanta. And, I think that we ought to have some sort  
24 of emergency program, what -- how to trigger the need  
25 for relief would be a difficult question to answer, but

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1 that's something the Commission will have to get into.

2 I don't know that what Atlanta has got that  
3 would be a model, and I want to ask you about that. It's  
4 just happened that the Federal Government has had to make  
5 money available from whatever source they could, and as  
6 you say, 16 of the 28 murdered or missing children are  
7 not in Atlanta, they happened in other jurisdictions around  
8 Atlanta.

9 Has any of this Federal money gone to the other  
10 jurisdictions, or has it all gone to Atlanta?

11 A. The funding we received has all gone to Atlanta,  
12 and the reason for that is even though all of the children  
13 did not live in Atlanta, and therefore, we do not have  
14 legal jurisdiction, we assume a moral responsibility.

15 We are involved in the investigation of all  
16 the cases. The vast majority of the resources are being  
17 devoted to the investigations come from the City of Atlanta.

18 We were expending, as an example, nearly \$300,000  
19 per month, and when we made the request to the Federal  
20 Government, \$150,000 of that amount was not budgeted which  
21 has obvious implications for the fiscal stability of the  
22 City. Our resolve was not to not do anything because  
23 of a shortage of resources, and therefore, we made the  
24 request.

25 The \$1.5 million was predicated upon 10 month

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1 support based on \$150,000 per month. That's the City  
2 of Atlanta's resources.

3 The other agencies that are involved, excluding  
4 the Georgia Bureau of Investigation, the maximum number  
5 they would have assigned to the Special Task Force, the  
6 Special Task Force, as you know, involve 11 different  
7 agencies working collectively together; but, of the other  
8 agencies involved, the maximum number of resources assigned  
9 would be two from other agencies, and well over 90 percent  
10 of the resources come from the City of Atlanta, and that's  
11 the reason the funds were requested by the City of Atlanta.

12 Q. Are you saying to this Commission that DeKalb  
13 County has perhaps two people working on the investigation  
14 of these murders?

15 A. That's assigned to the Task Force.

16 Q. Well, aren't they doing some other work besides  
17 that?

18 A. Yes, sir. They have other work that's going  
19 on in their jurisdiction.

20 Q. Well, has DeKalb County been given any money?

21 A. To my knowledge, they have not been given any  
22 money.

23 Q. All the money has gone to Atlanta?

24 A. That is correct.

25 Q. All right. And, now this \$1 million you got

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1 from the Office of Juvenile Justice --

2 Is that office still in existence now?

3 EXECUTIVE DIRECTOR HARRIS: It's still in existence,  
4 although it has not received any funding for the future.

5 BY CO-CHAIRMAN BELL: (Resuming)

6 Q Will that have anything to do with investigating  
7 these crimes?

8 A No, sir. Our concern in respect to the problem  
9 we're having here is three-fold. One, being the investi-  
10 gation.

11 As I've indicated, we've undertaken an investi-  
12 gation that involves Federal, State, County, and city  
13 law enforcement agencies.

14 A second major concern is the obvious one that  
15 we're certainly desirous that no other child become a  
16 victim, and as a result we initiated a massive prevention  
17 program.

18 The third problem emerges from the prolonged  
19 problem that we're experiencing and the coverage of same  
20 through the media in our efforts to initiate prevention  
21 programs, that would be the mental health issues, so the  
22 money that we received from the Office of Juvenile Justice  
23 and Delinquency Prevention, went to the latter two, that  
24 is, prevention programs as well as concerns about mental  
25 health.

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1 Q Now, on technical assistance, my knowledge  
2 is that there is a good technical assistance program already  
3 in place in the Federal Government--the same things I  
4 was talking about, the fingerprint bureau, and those sort  
5 of things. Do you know something that ought to be done  
6 in the form of technical assistance for local law enforce-  
7 ment that's not now being done by the Federal Government.  
8 We'd like to have some help in that regard?

9 A We receive, and we have received assistance  
10 from the FBI through its resources; that includes their  
11 crime lab, as well as their behavior science unit, and  
12 other technical assistance.

13 The reference I made was to the fact that the  
14 Law Enforcement Assistance Administration has been provid-  
15 ing technical assistance to local law enforcement agencies  
16 that tap resources that may not be available in the Federal  
17 Government.

18 Our grant of \$38,000, for example, allow us  
19 to hire, as a consultant, people who have certain degrees  
20 of expertise to be of assistance to us in our carrying  
21 on our programs through the investigation.

22 My recommendation is that that should be a  
23 formal program whereby local governments can tap technical  
24 assistance in the areas of crime control dealing with  
25 violent crime.

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1 Q I see. It's not the -- what we refer to as  
2 the normal technical assistance -- normal Federal technical  
3 assistance. You're referring to certain types of LEAA  
4 programs?

5 A Yes, sir.

6 Q Now, the last thing I think you mentioned was  
7 the investigative assistance that the Federal Government  
8 ought to be allowed to supply investigative assistance  
9 on some basis. Would you be satisfied that -- for example,  
10 if there was bombing that the investigative assistance  
11 would come from the Bureau of Firearms Agents?

12 A My recommendation is based upon our experience  
13 locally. Initially, as you know, we attempted to receive  
14 assistance from the FBI; we received technical assistance  
15 in many areas. The FBI has certain areas of expertise,  
16 and we wanted investigative assistance, but, there is  
17 a legal issue of whether or not they had jurisdiction  
18 to involve themselves.

19 Q Well, sometime -- that's the point I'm making;  
20 sometimes they do not--the Federal Government is a govern-  
21 ment of limited authority, and the Congress has seen fit  
22 to fragment Federal law enforcement, and if there's a  
23 bombing, the firearms agents are in charge; if there's  
24 a bank robbery, we'll say, the FBI can handle it; if it's  
25 drugs, the DEA works on it. And, what you want -- your

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1 suggestion is that if you need help, you need help, and  
2 you ought to get the best people available?

3 A That is the basis of my recommendation. Legis-  
4 latively, it's difficult at this time.

5 CO-CHAIRMAN BELL: I'm going to reserve some ques-  
6 tions. I don't want to take all the time.

7 EXECUTIVE DIRECTOR HARRIS: Mr. Carrington?

8 (Questions of Commissioner Brown by Task Force Member  
9 Carrington.)

10 Q Commissioner, I agree totally with what you  
11 say that there should be a Federal law in emergency assis-  
12 tance. We've used terms like emergency crime, unusual  
13 crime, catastrophic crime; perhaps a starting place for  
14 us would be, is it possible to define what we mean by  
15 emergency crime--catastrophic crime, could you give us  
16 your expertise on that.

17 Where do you first make the decision that you  
18 are in an emergency situation?

19 A I don't know if you can define with any specifi-  
20 city at this point; I can use only as an example, we have  
21 mounted a massive investigation here based upon our tragedy.  
22 In doing so, as I've indicated previously, a city would  
23 not be budgeted to handle that massive investigation in  
24 terms of resources. Keep in mind that in addition to  
25 the investigation, we still have to police a city. The

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1 allocation of resources becomes a major problem.

2 As I indicated, we're spending in excess of  
3 \$150,000 per month above and beyond what we were budgeted.  
4 When you reach the point where you have to exceed and  
5 substantially exceed what you're budgeted for in terms  
6 of policing a city by virtue of a major crime, I think  
7 that will be one criteria that would be looked at in terms  
8 of defining what would be considered to be a major crime  
9 in terms of the amount of resources, the amount of involve-  
10 ment, the fiscal impact of this having upon the city.

11 I would begin there as a basis for making a  
12 determination.

13 Q Would other factors enter into it such as if  
14 you had, say, three killings that you could show were  
15 definitely racially motivated because of various factors;  
16 would that, in your opinion, trigger an emergency situation  
17 -- or, let me phrase it this way.

18 At what point in the Atlanta investigations  
19 that we're up to 27 dead and one missing, at what point  
20 did you all make a decision that this was a catastrophic  
21 situation, racially motivated killings, how -- how many  
22 -- I know it's a difficult question, but, I'm still trying  
23 to get some kind of definition that we can use as a starting  
24 point?

25 A. Keep in mind that at this point we do not know

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1 the persons that are responsible for the killings, and there-  
2 fore, we cannot determine the motive, and to suggest that  
3 it's racially motivated, we're not able to say that at  
4 this point. We know that all the victims are black, that's  
5 a matter that's undisputable.

6 We began the problem, as I indicated, in July  
7 of 1979, and we ended the year of 1979, with four unsolved  
8 homicides. At that point we conducted an analysis because  
9 more than one jurisdiction is involved, determined the  
10 commonalities, and we had -- we were unsuccessful in deter-  
11 mining commonalities in the case except they were all  
12 black and young.

13 That continued, and it was a few months later  
14 before we had another killing. It was in July of 1980,  
15 that we established a task force--a special task force  
16 for the purpose of coordinating all the multi-jurisdiction  
17 involvement, centralizing all of the information that  
18 was coming in.

19 If you are talking about racially motivated  
20 crime, I think you have a totally different consideration  
21 because of the ramifications that would come--stem from  
22 racially motivated killings, and I think as soon as you  
23 determine that you have a racially motivated series of  
24 killings that that becomes an extraordinary event for  
25 any jurisdiction in this country which requires extra-

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1 ordinary efforts on the part of all levels of government  
2 to address.

3 I think anytime you reach that point, the nature  
4 of where we are in the country at this time, and the sensi-  
5 tivity in reference to violence, and particularly violence  
6 against a minority community suggests that anytime you  
7 make that determination, you have an extraordinary problem  
8 that you need to deal with in an extraordinary manner.

9 MR. CARRIGAN: Thank you sir.

10 EXECUTIVE DIRECTOR HARRIS: Mr. Edwards?

11 (Questions of Commissioner Brown by Task Force Member  
12 Edwards.)

13 Q Commissioner, your remarks, I feel very much  
14 on target relative to the need for cooperation and coordina-  
15 tion between all entities of the criminal just process  
16 at all levels, Federal, State and local.

17 You referenced the Atlanta situation as being  
18 one in which it could serve in a bi-product mode as a  
19 model of what can be done from a cooperative effort at  
20 Federal, State and local; could the information--the evalua-  
21 tion process of the situation that you face here in Atlanta  
22 be made available, not the details, specific, but, the  
23 coordination aspects, could that information be made avail-  
24 able to the Task Force?

25 A Yes, sir. We are reduced to writing the guide-

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1 line under which we all operate, where everyone -- all  
2 of the entitites involved, have agreed to follow certain  
3 guidelines, and that certainly can, and I will make avail-  
4 able to the Task Force.

5 Q Thank you, sir. The other question, as relates  
6 to the role of LEAA, and the need for Federal assistance  
7 at the local level, could you specifically identify areas  
8 that need to be addressed in terms of the role as we think  
9 of LEAA relative to violent crime, please?

10 A I believe that whether it's called LEAA, or  
11 some other name, that the entitiy of the Federal Government  
12 that's established to be of assistance to State and local  
13 governments should have a two prong approach. One being  
14 the development of research. There's a lot we don't know  
15 about why people commit violent crimes; there's a lot  
16 we don't know about what to do about violent crime in  
17 terms of its control; there's a lot we don't know about  
18 what to do about people who are arrested for violent crime.

19 There's a need to develop a body of knowledge.  
20 What we have now is a fragmented -- fragmented pieces  
21 of information; to develop a body of knowledge, you need  
22 a Federal -- in my estimation, a Federal presence that  
23 would provide that leadership.

24 So, I think research should be one of the beginn-  
25 ing components. And, then the demonstration components

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1 should be following the research, that the local govern-  
2 ments should be funded to enact what has proven to be  
3 successful.

4 Local governments should not be funded to enact  
5 those programs that have proven not to be successful;  
6 I think that should be the role of the Federal Government.  
7 As it exists right now, local governments just by the  
8 very nature--by the -- of having to carry out the respon-  
9 sibility on a day to day basis, do not have the ability  
10 to advance the state of the art--advance the knowledge  
11 about what is good.

12 Rather, we're mainly reactive, reacting to  
13 what the local conditions dictate that we react to.

14 The leadership can be provided, as I suggest,  
15 by the Federal Government by a program of research and  
16 development where local governments are funded to initiate  
17 programs that would add to our knowledge about crime and  
18 its control, and the correction of offenders.

19 MR. CARRINGTON: Thank you.

20 EXECUTIVE DIRECTOR HARRIS: Mr. Armstrong?

21 (Questions of Commissioner Brown by Task Force Member  
22 Armstrong.)

23 Q Mr. Commissioner, in your explanation of what  
24 Atlanta has received as a result of the emergency fundings  
25 from the Federal Government, do your people--the local law

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1 enforcement people, in anyway, feel threatened, or encum-  
2 bered by a Federal prsence working on this Task Force,  
3 I know Mr. Rinkevich is here, and he's going to testify,  
4 but, from your perspective, do you feel there's been any  
5 encumberences on local police agencies and this Task Force  
6 from --

7 A. The Task Force is comprised of various agencies,  
8 there's the Georgia Bureau of Investigation, it's our  
9 State equivalent to the FBI; then we have the Atlanta  
10 Police--the Task Force is commended by a deputy chief  
11 from the Atlanta Police Bureau who was, up until that  
12 time, our chief of detectives.

13 In addition to that, we have involvement from  
14 the Fulton County Police, the DeKalb County Police, the  
15 Clayton County Police, the Cobb County, Douglas County,  
16 the City of East Point, Rockdale County Sheriff's Office,  
17 as well as the district attorney's office. That comprises  
18 the Task Force, and the Task Force, by mutual agreement  
19 reports through the chain of command to me as Commissioner  
20 of Public Safety for the City of Atlanta.

21 The Federal investigators are not part of the  
22 Task Force. The FBI, they have no assigned their agents  
23 to the Task Force, rather, they have their own organizational  
24 structure--their own command.

25 What we've been able to work out, however, are

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1 guidelines whereby we can avoid duplication, and insure  
 2 coordination with the FBI even though they are not part  
 3 of the Task Force, for example, if the FBI is planning  
 4 to do an investigative activity, say, interview someone,  
 5 we've all agreed that the Task Force will maintain the  
 6 master case files. They, prior to conducting their inter-  
 7 view, will call the Task Force and determine if that inter-  
 8 view has already been conducted. If it has, then we,  
 9 being that we being the Task Force would give them a copy  
 10 of the report. If the interview has not been conducted,  
 11 they will proceed, after notifying us that they are going  
 12 to conduct that activity, and once they complete it they  
 13 will give us a copy of the report, and therefore, we are  
 14 able to avoid any duplication.

15 On a daily basis the investigators assigned  
 16 by the FBI, meet with the investigators assigned to the  
 17 Task Force to coordinate activities. Almost on a daily  
 18 basis, I talk with Mr. John Glubber, the special agent  
 19 in charge of the Atlanta Office of the FBI, and coordinate  
 20 policy directions that we take.

21 The process -- let me say -- let me just say  
 22 that the FBI and local cooperation has not always been  
 23 viewed as the world's best; I think in this instance,  
 24 we have an unprecedented level of coordination and coopera-  
 25 tion from the FBI working with local governments.

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1 I have nothing that I could complaint about,  
 2 about the level of coordination and cooperation we've  
 3 received from the FBI, even though they are not part of  
 4 the Task Force.

5 Q One final question.

6 How much of the funds that have been designated  
 7 for crime prevention programs in Atlanta, are the funding  
 8 that you've talked about--any -- any of those funds have  
 9 been designated for crime prevention programs?

10 A The funds I mentioned--the one category from  
 11 the Office of Juvenile Justice and Delinquency Prevention,  
 12 amounted to \$974,000. What we did in terms of determin-  
 13 ing how the funds should be expended was to receive techni-  
 14 cal assistance from that office. They sent their staffs  
 15 down and we looked at the problem.

16 The problems came out in several areas, after  
 17 school programs, because keep in mind that the funds were  
 18 geared toward the existing emergency that we're experienc-  
 19 ing. The problems of after-school care, youth involvement  
 20 in different programs, a hot line--a place for youth counsel-  
 21 ing, if they were run-away youth, etc., and thus the --  
 22 all of those funds have gone in those areas that are designed  
 23 to prevent young people from getting into difficulty.

24 MR. ARMSTRONG: Thank you, Commissioner.

25 EXECUTIVE DIRECTOR HARRIS: Mr. Littlefield?

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1 (Questions of Commissioner Brown by Task Force Member  
2 Littlefield.)

3 Q Commissioner Brown, the figures you cited when  
4 you first spoke indicate that violent crime in Atlanta  
5 has increased less than the national average; is that  
6 correct, sir?

7 A That is correct. For the year, 1980, as I  
8 indicated, the national average based on the preliminary  
9 statistics of the FBI, show that violent crime increased  
10 by 13 percent; in Atlanta, our increase was three percent,  
11 unacceptable, but, better than the national average.

12 Q What are you doing in Atlanta that they are  
13 not doing in other places, Commissioner Brown, because  
14 you're certainly to be congratulated that it's increased  
15 such a small percentage here. Are you doing anything  
16 different, or are you just doing things better?

17 A I think we're doing things that are different  
18 than is the case in many other cities. In 1979, we received  
19 a great deal of attention, not only here but nation-wide  
20 about crime in Atlanta even though in the final analysis,  
21 our crime was no better, nor no worse than the national  
22 average.

23 For 1979, crime increased in the nation 10  
24 percent, and it increased in Atlanta 10 percent, but,  
25 we received a little more attention than most cities in

1 the nation did for some reason.

2 But, that being the case, we developed a crime  
3 control plan--a strategy to deal with crime, and that  
4 was premised on a philosophy by which we police this city,  
5 and that is that crime is not just a police problem, but  
6 crime is a community problem, thus it logically follows  
7 that if you're going to be successful in dealing with  
8 crime, you have to involve all segments of the community--  
9 that, we did.

10 Our crime control plan did not just indicate  
11 that we're going to go out and control crime, rather we  
12 understand that there's a difference in how you enforce  
13 crimes of homicide as contrasted to how you enforce the  
14 law against larceny. So, we took each of the crime cate-  
15 gories--the index crimes, and added also, arson, and a  
16 local problem of prostitution, and narcotics, and developed  
17 a strategy for each crime category.

18 So, our stragegy for how we go about the problem  
19 of homicide differed from our strategy of how we went  
20 about approaching the problem of robbery, and we had a  
21 well-defined plan, we followed the plan, we had a great  
22 deal of in-put from our citizens, the religious community,  
23 the civic community, the neighborhood groups, etc., and  
24 I think that made the difference in terms of how we were  
25 able to control crime in Atlanta in that we had a defined

1 plan with strategies for each crime category, we followed  
 2 that, and in the end we saw contrary to what was the case  
 3 in the first part of 1979, a decline--and a rather drastic  
 4 decline in the latter part of 1979, and I believe not  
 5 by just accident, but by design.

6 Q Would you be able to furnish with a copy of --

7 A Yes. It will be prepared and I will see that  
 8 you get a copy of our crime control plan.

9 Q And from what you say, the citizen participation  
 10 had a lot to do with it too; is that correct, Commissioner?

11 A Yes, sir. Let me just cite as an example--  
 12 probably the best example has been written up, nationally,  
 13 is over capital homes, one of our public housing authority  
 14 projects; they had a serious problem there. We were called  
 15 over to the housing authority projects and not for a social  
 16 event, but because they were concerned about crime in  
 17 their community.

18 We brought out top police commanders; we asked  
 19 to define the problems with specifics. That was done;  
 20 we went back and returned with a plan to address crime  
 21 in that community, and there were certain things that  
 22 we indicated we were going to do, and there were certain  
 23 things that we asked them to do.

24 We requested to be invited back later so we  
 25 could hold each other accountable for what we're doing. I

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1 think you'll find, right now, that that area is satisfied  
 2 with what has been accomplished.

3 If fact, we were invited back at a later date  
 4 for a social event because it was successful.

5 I think that model of involvement by virtue  
 6 of, if you would, a contractual arrangement, if we're  
 7 going to do something, hold us accountable, but, by the  
 8 same token there are things that the community can do,  
 9 but, outline it in terms of the specifics of a community.

10 That has worked for us, and I think it's some-  
 11 thing that is a model that could work for any other com-  
 12 munity in the nation.

13 MR. LITTLEFIELD: Thank you very much. That's all  
 14 I have.

15 EXECUTIVE DIRECTOR HARRIS: Judge Bell?

16 (Further questions of Commissioner Brown by Co-  
 17 Chairman Bell.)

18 Q You did add some policemen in 1980, Commissioner?

19 A Yes, sir.

20 Q Do you think that might have had something  
 21 to do with keeping the crime rate down?

22 A We, for sometime as you know, have not been  
 23 able to get to our authorized strength because of litigation.  
 24 Having the policemen enabled us, obviously, to do some  
 25 of the things that we're talking about here, so, it's

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1 very important.

2 Q To reassure us about the childrens cases, tell  
3 us how many people are working on the Task Force, not  
4 to the FBI, not -- and, not the GBI, unless the GBI is  
5 on the Task Force, how many --

6 A The GBI, they do have people assigned to the  
7 Task Force, and today, we probably have about 105 people  
8 assigned to the Task Force, that's both sworn and support  
9 services.

10 Q Are they broken up into three shifts, or do  
11 they largely work in the day-time?

12 A No, we have a 24-hour, seven day a week investi-  
13 gation--we're going 24-hours a day, seven days a week.

14 That, however, Judge Bell, does not even take  
15 into consideration the fact that we have literally every  
16 other unit in the police bureau in one way or another  
17 involved in the investigation.

18 Those are the ones that are assigned to the  
19 Task Force. We know from history, as an example, that --

20 Q Well, you cut down -- how many did you say  
21 you have--a total?

22 A About 105 sworn and support people assigned  
23 there at this time.

24 Q Well, by support, you mean secretaries?

25 A Clerical, data entry clerks.

1 Q Yeah, how many police officers--sworn officers  
2 do you have?

3 A The majority of those would be sworn officers.

4 Q Give us a number, if you can.

5 A The total personnel assigned to the Task Force  
6 at this point would be 103, and other number 82 are from --  
7 comes from Atlanta, and I'm talking here about both sworn  
8 and non-sworn, I'll break it down for you; 12 are from  
9 the GBI; two from Fulton County; one from the Fulton County  
10 District Attorney's Office; one from the City of East  
11 Point; two from DeKalb County; one each from Clayton,  
12 Rockdale, and Cobb Counties.

13 I can provide you with a copy of that number,  
14 probably about 50 or 60 percent would be sworn personnel.  
15 I'll provide you with the breakdown.

16 Q Tell us -- give us that figure -- you can give  
17 it to us later.

18 A Yes, sir.

19 Q How many sworn officers are on the Task Force,  
20 not secretaries.

21 A Right, I'll have to add it up.

22 Q How many FBI agents are cooperating -- assigned  
23 to cooperate with the -- that's not stated right.

24 Are assigned to the Task Force?

25 A I would estimate, and they have not indicated

1 publicly, they probably have in the neighborhood of 40  
2 that are assigned full-time, with flexibility of bringing  
3 in more if needed.

4 Q Yeah. My understanding is some 40 to 50.

5 A Yes, sir.

6 Q So, they may have as many sworn people as you  
7 do?

8 A No, they would not have as many sworn people  
9 as we have as indicated --

10 Q Well, we don't know how many you have yet.

11 A Well -- I'll add them up here.

12 Q Well, anyway, you'd have to say that the Federal  
13 presence is substantial?

14 A Oh, yes, sir. I think they have an unprecedented  
15 commitment here.

16 Q Yeah. How -- what about the DEA--are there  
17 any DEA's working on it?

18 A No, sir. We do not have any DEA people assigned  
19 to the task force.

20 Q We'll get to Mr. Rinkevich on that I guess  
21 then.

22 All right. Now, I'm going to ask you two ques-  
23 tions--hard questions.

24 Now, you spoke of Federal leadership, and there's  
25 been some laws introduced--some bills introduced into

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1 Congress in recent days by a group of Senators on what  
2 to do about violent crime, and one is what what we call  
3 a recidivist law--a repeater law, if you commit three  
4 felonies, you get a life sentence after the third felony,  
5 they have that in some States.

6 Do you favor a law of that type?

7 A I think you have to give very serious considera-  
8 tion to the ramifications of that decision. There --

9 Q We can assume Congress is going to give serious  
10 consideration to the ramifications of it.

11 What I want to know is, do you favor it, and  
12 you don't have to answer?

13 A Well, I don't mind answering you.

14 In giving the answer, I didn't want to give  
15 you just --

16 Q Some States have it as four felonies, for example.

17 A I don't want to give you just a yes, or no,  
18 answer, because a decision like that has a systemic impli-  
19 cations. Number one, if we just look at our situation,  
20 locally, we find that our local jails are overcrowded  
21 because the State institutions are overcrowded.

22 Q But, that's not your business--you don't build  
23 jails--the mayor is supposed to worry about that.

24 A We, being all of us who are involved, have  
25 to look at this from a systems approach, and my concern, I

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1 think the answer to your question would be that I think  
 2 that it depends on -- one of the problems that I have  
 3 in terms of looking at crime and all the ramifications  
 4 that go along with it is that our institutions have not  
 5 provided, I think what I think is necessary to return  
 6 to society a productive individual, and to say that a  
 7 person is convicted three times and therefore spend life  
 8 in prison, that, I do not favor, that's a a specific answer  
 9 to your question.

10 I think the reason being that we have not addressed  
 11 the problem of what do we do with people who commit crimes,  
 12 and that is the problem that led to the commission of  
 13 a crime to begin with. I think that first of all, that  
 14 is what we have to address.

15 Q Well, that's the chicken or the egg. We might  
 16 all be destroyed while we're addressing that problem.

17 A Well, it's not an easy -- there's no easy solu-  
 18 tions, I don't think one precludes us not addressing the  
 19 other --

20 Q All right. One last question.

21 Would you favor some minimum mandatory sentence  
 22 for a person convicted of committing an offense with a  
 23 firearm?

24 A Yes, sir, I do. I'd even go beyond that, I --

25 Q Well, don't you think that might come from

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1 poverty, or some underlying cause too just like the first?

2 A I think the nature of our society and the polifera-  
 3 tion of firearms is such that there should be strong legis-  
 4 lation, and if a crime is committed by the use of a fire-  
 5 arm, there should be a defined amount of time that person  
 6 serves.

7 That's one instance, because of the seriousness  
 8 of the number of deaths and violent crimes that are com-  
 9 mitted by firearms, that I would --

10 Q You would favor that?

11 A Yes, sir.

12 CO-CHAIRMAN BELL: All right. Thank you, sir.

13 EXECUTIVE DIRECTOR HARRIS: Mr. Carrington, you  
 14 had one more question?

15 MR. CARRINGTON: Yes, sir.

16 (Further questions of Commissioner Brown by Task  
 17 Force Member Carrington.)

18 Q Commissioner, any homicide case, of course,  
 19 has a double victimization, the initial victim, the deceased,  
 20 and then the survivors who have lost a loved one; have  
 21 the victims of the families--the survivors of the 27 known  
 22 dead and one missing people, have they been singled out  
 23 either on a State, county, or a private sector level for  
 24 any kind of special counseling, or learning to cope with  
 25 the situation, and if they have or have not, is there any

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1 Federal role that could be played of either direct, or  
2 indirect assistance to victims of catastrophic crimes?

3 A. Well, I adhere and believe in victim assistance  
4 which should be a major program; and to specifically answer  
5 your question, the families--particularly the mothers  
6 of the victims of the cases here, formed a support group  
7 sometime ago, called Committee to Stop the Murder of Child-  
8 ren, and they have made available to them--they have had  
9 made available to them, counseling services as needed.

10 MR. CARRINGTON: Thank you.

11 EXECUTIVE DIRECTOR HARRIS: Do we have any further  
12 questions?

13 (Negative response.)

14 Just before you go, I have two quick matters.  
15 In New York, we're going to be dealing with the question  
16 of Federal funding assistance and which programs have  
17 been law enforcement effective and cost effective.

18 (Questions of Commissioner Brown by Mr. Harris,  
19 Executive Director.)

20 Q. Are there any specific programs that LEAA has  
21 administered that you would like to identify as ones that  
22 you think have been cost effective, and law enforcement  
23 effective?

24 A. If you keep in mind what our philosophy is  
25 that crime is not just a police problem, it's a community

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1 problem, I think the community anti-crime program has  
2 been an effective one in involving the community and the  
3 police in addressing the problem of crime.

4 If we adhere to the philosophy, and I do, that  
5 improvement in law enforcement can assist in improving  
6 our crime control capabilities, I think the law enforce-  
7 ment education program, was, prior to not being funded,  
8 a very important program of improving the -- the profes-  
9 sionalism of law enforcement agencies.

10 And there are many other specific programs,  
11 but, I think the philosophy of the community being respon-  
12 sible for crime as well as anyone else, I would cite those  
13 two as very important.

14 Q. Lastly, and I know this is in large measure,  
15 the \$64 question, you stated that right now the relationship  
16 between your department and the Task Force and the Bureau  
17 is excellent, and that you've known other times and other  
18 places, where it has not always been that way.

19 Are there any common denominators--are there  
20 anythings that make it work that we ought to know in this  
21 area of Federal, State, and local cooperation, are there  
22 any factors that you can identify that seem to be present  
23 when it works well, and not present when it doesn't?

24 A. In this instance, I think the goal is shared  
25 by everybody, and the goal has put an end to the tragedy

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1 we're experiencing by finding the person(s) responsible  
2 for the killing of the children.

3 All agree that any professional consideration,  
4 any personal consideration, all have to come secondary  
5 to achieving the goal, and I think that's what makes it  
6 work here; there's a commitment from everybody involved  
7 that there's nothing more important than the solution  
8 to these cases.

9 EXECUTIVE DIRECTOR HARRIS: Thank you very much,  
10 Commissioner for your time. We appreciate your coming  
11 here today.

12 COMMISSIONER BROWN: Judge Bell, 75 of the people  
13 are sworn law enforcement.

14 CO-CHAIRMAN BELL: Seventy-five?

15 COMMISSIONER BROWN: Yes, sir.

16 CO-CHAIRMAN BELL: Thank you.

17 EXECUTIVE DIRECTOR HARRIS: Our next witness is  
18 Charles Rinkevich, who is heading up the Atlanta Federal  
19 Task Force.

20 TESTIMONY BY CHARLES F. RINKEVICH

21 DIRECTOR, ATLANTA FEDERAL TASK FORCE

22 MR. RINKEVICH: Thank you, Mr. Harris, Mr. Chairman.

23 I am pleased to have the--what I consider very  
24 special privilege of appearing before this Attorney General's  
25 Task Force on Violent Crime.

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1 The question of Federal assistance to State  
2 and local enforcement is one in which I, like Commissioner  
3 Brown, have a particular interest, having spent approximately  
4 20 years in the field as a local police officer, a consultant  
5 to State and local law enforcement officials, the Director  
6 of the Pennsylvania Crime Commission, the Regional Adminis-  
7 trator of LEAA's Atlanta and Philadelphia offices, and  
8 now as director of the Atlanta office of Audit and Investi-  
9 gation, which is part of the Department of Justice's Justice  
10 Management Division.

11 These positions have all involved Federal assis-  
12 tance to law enforcement, including my being on both the  
13 receiving end as well as the providing end of the chain  
14 of Federal assistance, and it also has included managing  
15 the audit and investigative over-sight of such funds.

16 Although my remarks will be influenced by this  
17 prior experience, it is in my current role as Director  
18 of the Atlanta Federal Task Force that I appear before  
19 you today.

20 The Task Force was created by Vice President  
21 George Bush on February 20th, 1981. Two days earlier,  
22 Mayor Maynard Jackson of Atlanta, had requested that a  
23 Task Force consisting of all relevant Federal agencies  
24 be established and be given the mandate to assist Atlanta  
25 in addressing the tragedy of its murdered and missing

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1 children.

2           The Federal agencies originally appointed to  
3 the Task Force included the Departments of Justice, Educa-  
4 tion, and Health and Human Services, and just this week  
5 we added the Departments of Labor, Interior, and the Community  
6 Services Administration.

7           The Task Force is charged to serve as the Federal  
8 Government's single contact point for providing assistance  
9 to the City except that our mandate does not include coor-  
10 dinating the FBI's direct investigative assistance.

11           Mayor Jackson originall requested Federal  
12 assistance in three very specific areas resulting from  
13 the murders and disappearances. First, he asked for finan-  
14 cial assistance to underwrite the extraordinary costs  
15 of the on-going police investigation. Secondly, he asked  
16 for financial assistance to establish a prevention to  
17 reduce the vulnerability of children to attack. And,  
18 thirdly, he asked for financial assistance to address  
19 the mental health problems resulting from the fears of  
20 children and their parents.

21           Recently, he and the commission chairman of  
22 Fulton and DeKalb Counties, jointly requested additional  
23 financial assistance to underwrite the costs of an expanded  
24 summer recreation program on a metropolitan basis. The  
25 purpose of the recreation program is to provide structured

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1 and supervised activities to reduce the childrens vulner-  
2 ability to attack during the summer months when school  
3 is out.

4           With the on-going support of both President  
5 Reagan and Vice President Bush, the Task Force has created  
6 -- coordinated Federal financial awards totalling more  
7 than \$2.9 million to address each of the three original  
8 areas identified by Mayor Jackson. These include the  
9 following grants:

10           First, to assist in the investigation, a \$1.5  
11 million grant was awarded by the Department of Housing  
12 and Urban Development to underwrite the costs of the police  
13 investigation; and, a \$38,000 grant was awarded by the  
14 Department of Justice's Law Enforcement Assistance Adminis-  
15 tration, to provide technical assistance to the police  
16 investigation.

17           Secondly, to assist in crime prevention, a  
18 \$979,000 grant was awarded by the Department of Justice's  
19 Office of Juvenile Justice and Delinquency Prevention  
20 to provide community programs to reduce childrens vulner-  
21 ability attack, including after school supervision and  
22 recreation, crisis hot-line, counseling, and safe residential  
23 shelters.

24           And, thirdly, to assist in mental health needs,  
25 \$304,586 in total grants were awarded by the Department of

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1 Health and Human Service's Public Health Service, to increase  
 2 the availability of community mental health services in  
 3 the areas of the City most affected by the murders and  
 4 disappearances; and, a \$100,000 grant was awarded by the  
 5 Department of Education to increase the availability of  
 6 mental health services to students in the City's public  
 7 school system, and to their families.

8 It's significant to note that the great bulk  
 9 of these funds--85 percent, were awarded within three  
 10 weeks of the creation of the Atlanta Federal Task Force.  
 11 Presently, we are responding to the City and Counties'  
 12 request for assistance for their summer recreation programs.

13 It's also important to note that several significant --  
 14 or that significant Federal assistance other than direct  
 15 grants has been made available to respond to the Mayor's  
 16 request for aid. This includes:

17 Unprecedented involvement of the FBI, including  
 18 investigative manpower, and technical assistance; on-  
 19 going Department of Justice Community Relations Service  
 20 assistance to anticipate and reduce community tensions.

21 U.S. Centers for Disease Control Epidemiological  
 22 Assistance to define risk factors associated with the  
 23 children's homicides in Atlanta to use in designing prevention  
 24 programs.

25 And, investigative, communications and office

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1 equipment loaned to the police task force from a variety  
 2 of Federal agencies and grantees of Federal agencies.

3 In conceptualizing the efforts of the Atlanta  
 4 Federal Task Force, I am struck by some significant distinc-  
 5 tions between my prior experiences with Federal assistance  
 6 to law enforcement and my current activities with the  
 7 Task Force.

8 First, although crime rates were escalating,  
 9 my prior experience occurred under generally constant  
 10 conditions. Wide-ranging and diverse programs were developed  
 11 and implemented within established time-frames to address  
 12 broad criminal justice system problems and needs. The  
 13 Task Force experience, however, has occurred in a crisis-  
 14 lie atmosphere with highly compressed time-frames and  
 15 with an emphasis on reducing and responding to the effects  
 16 of a specific series of tragic and violent crimes.

17 Additionally, my prior experiences were during  
 18 a period when Federal assistance was more readily available,  
 19 while the Task Force experience is occurring as LEAA crime  
 20 control assistance is being phased out and other sources  
 21 of Federal assistance are also being eliminated or signi-  
 22 ficantly reduced.

23 Although these distinctions exist, I believe  
 24 there are important lessons to be learned from both sets  
 25 of experience which relate to the mission of this Task

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1 Force as it examines Federal aid to crime related crises.

2 First, the effects of violent crime go beyond  
3 the criminal justice system into all aspects of our social  
4 fabric. I think the Commissioner spoke to that quite  
5 eloquently. This has been particularly evident in Atlanta  
6 during the current crisis where we have seen children  
7 who are afraid to go outside to play with their friends  
8 and who are suspicious and fearful of all strangers.

9 The effect upon the classroom has been noted  
10 by teachers who find some normally out-going and communicative  
11 children to be withdrawn and unresponsive, and others  
12 who are ordinarily well behaved, showing signs of anger  
13 and frustration. Decreases have been noted in truancy  
14 rates, presumably as a result of children and parents  
15 being more fearful of the unsupervised environment outside  
16 the school. Increases in caseloads of social service  
17 agencies, including mental health centers, have also been  
18 noted in response to community fears and tensions.

19 Most of Atlanta's children and their families  
20 are coping with the crisis and going about their daily  
21 lives in a normal way. In fact, contrary to the per-  
22 ception held in some quarters, I believe this community  
23 is responding in a superb fashion to the many ramifica-  
24 tions of this tragedy and its residence and leadership  
25 are to be highly commended for this. I am deeply impressed

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1 with the dedication and skill which thousands of citizens  
2 and local, State, and Federal officials have brought together  
3 in an unprecedented cooperative spirit to react to this  
4 series of senseless crimes.

5 This cooperation transcends local political  
6 jurisdictions as well as local law enforcement jurisdictions.  
7 However, the impact upon the community has been serious  
8 and pervasive.

9 The diversity of the effects of violent crime  
10 on communities and individuals, in my opinion, requires  
11 and equally diverse response. Our experience in Atlanta  
12 has underscored the importance for such a response, however  
13 diverse, to be well formed and coordinated to be most  
14 effective. Planning and coordination are necessary both  
15 at the local and Federal level to insure that programs  
16 are appropriate and viable and that funds are available  
17 for their implementation.

18 Secondly, we have learned that a crisis situation,  
19 such as that being faced in Atlanta demands an immediate  
20 response and an early resolution. Any delay in response  
21 and resolution further compounds the frustration and ten-  
22 sions felt by the community and by its law enforcement  
23 and elected officials.

24 Although the Federal, State and local response  
25 to Atlanta's crisis has been extremely timely, the resolu-

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1 tion continues to elude us. Thus, while both response  
2 and resolution are difficult, the immediacy of the response  
3 is more directly controllable than the immediacy of the  
4 resolution. Both, however, require the ready availability  
5 of knowledge and skills regarding what has worked in other  
6 areas which have faced similar crises.

7 I believe that there are several ways to pro-  
8 vide the knowledge and skills necessary to responde to  
9 a crime crisis. One, is through on-going training and  
10 education of law enforcement officials, and other profes-  
11 sionals who are responsible for addressing crime conditions  
12 so that they can better respond, not only to routine crime  
13 problems, but also to crisis situations.

14 Another approach is to promote research and  
15 demonstration efforts to expand the knowledge level regard-  
16 ing causes, prevention and resolution of violent crimes,  
17 including those which generate a crisis-like atmosphere.  
18 That knowledge then needs to be widely disseminated. Related  
19 to this is the need to provide technical assistance from  
20 other areas and disciplines to strengthen and better utilize  
21 available resources.

22 Quite frankly, there is still a lot we do not  
23 know about crime, particularly the effects of a crime  
24 related crisis. One mental health practitioner in Atlanta  
25 commented with regard to treating the mental health effects

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1 on Atlanta's children that "not only don't we have the  
2 answers, we don't even have the questions".

3 Similar concerns have been voiced by Federal  
4 and local educational specialists, recreational planners,  
5 and law enforcement officials. For example, public health  
6 officials cannot compare the mental distress resulting  
7 from the fear of parents and children in Atlanta to any  
8 other experience except the present fear in Northern Ireland,  
9 or the London blitz during World War II, or that distress  
10 which results from a natural disaster.

11 In the latter case, the level of distress peaks,  
12 then ebbs when the natural disaster subsides. In the  
13 Atlanta case, the peaking and ebbing are a continuous  
14 process, adding an unknown dimension to the problem and  
15 the mental health reaction to it.

16 Thirdly, we have learned from the Atlanta  
17 experience that financial assistance is sometimes necessary  
18 to meet State and local budget shortfalls in addressing  
19 crime crisis situations. From my prior experiences, I  
20 have also found that additional financial assistance is  
21 a necessary incentive for development of research and  
22 demonstration programs during other than crisis situations.

23 I believe that financial assistance is needed  
24 on two levels. First, it is needed to respond to short-  
25 term crisis situations; and second, it is needed to encourage

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1 the continued development of knowledge, skills and programs  
2 in the areas of crime prevention and control.

3 To create a capability react to crime related  
4 crises without also addressing the on-going, severe crime  
5 problem, in my judgment, would be both short-sighted and  
6 ineffective.

7 In each of these three areas that I briefly  
8 discussed, the pervasive nature of violent crime and its  
9 effects, the demand for immediate response and resolution  
10 of crisis situations related to violent crime, and the  
11 need for financial assistance to support programs to address  
12 violent crime, there is a common thread. That is, the  
13 need for an on-going mechanism at the Federal and local  
14 levels to concentrate on these aspects of crime control.

15 This mechanism should be in addition to the  
16 operational agencies at the various levels of government  
17 which are charged with law enforcement, prosecution, adjudi-  
18 cation, and incarceration of offenders.

19 It needs to be a mechanism that can undertake  
20 research and analysis and provide on-going and appropriate  
21 support to State and local efforts to deal with violent  
22 crime, generally, as well as assist in determining when  
23 a crisis actually, or potentially exists and activate pro-  
24 cedures to prevent, or otherwise handle the crisis.

25 An analogy to a crime related crisis such as

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1 that faced by the City of Atlanta is a natural disaster,  
2 such as a tornado or hurricane. Plans and procedures  
3 are available at the Federal, State and local levels which  
4 can be activated under predetermined conditions with a  
5 minimum of delay to address the full range of effects  
6 of such disasters, including medical, transportation,  
7 food, utilities, communications, public safety, and housing  
8 needs.

9 Questions concerning coordination between concerned  
10 agencies and jurisdictions, financial assistance from  
11 Federal, State and local levels, provision of technical  
12 assistance, and precise steps to be followed in implementing  
13 natural disaster plans are detailed, well-communicated  
14 through instructions and drills, and up-dated as necessary.

15 In my opinion, such an on-going mechanism does  
16 not now exist at the Federal, State or local level, to  
17 address a crime related crisis.

18 Further, I believe that the establishment of  
19 such a mechanism is as valid a role for the Federal Govern-  
20 ment as is the establishment of the mechanism to respond  
21 to a natural disaster.

22 In the past few years there have been a number  
23 of arguments made which suggest that it is not a proper  
24 role for the Federal government to provide financial assis-  
25 tance to local law enforcement. Some of these arguments

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1 include the following:

2 Previous programs did not eliminate crime,  
3 therefore, we should discontinue Federal financial assis-  
4 tance.

5 Previous programs were designed to be short-  
6 term demonstration or seed efforts. Therefore, although  
7 some were successful, we should discontinue Federal assis-  
8 tance since it is too costly to continue the programs  
9 over an extended period of time.

10 And, crime is a local problem which should  
11 be handled at the local level.

12 Making a judgment to discontinue Federal assis-  
13 tance to crime control efforts because crime has continued  
14 to rise is similar to make a decision to discontinue financial  
15 support for research and treatment of cancer because prior  
16 efforts have not eliminated the disease.

17 Eliminating Federal financial support for suc-  
18 cessful programs because of continuing cost, or because  
19 the effectiveness of the programs has been proven, would  
20 be similar to removing a street-light at a dangerous inter-  
21 section, because it was expensive to maintain, or because  
22 accidents had been reduced after the light was installed.

23 Finally, virtually any human condition, or  
24 problem, could be classified as a local problem, including  
25 inadequate housing, substandard education, unemployment,

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1 medical and welfare needs, and many others. Yet, few  
2 question the Federal responsibility in these areas, although  
3 some argue over the specific course that responsibility  
4 should follow.

5 The prevention and control of violent crime  
6 are certainly local responsibilities; however, I believe  
7 that the complexity of the problem and the consistently  
8 high level of concern and fear which the American public  
9 continues to express over crime and its effects, elevate  
10 the problem to one of national dimensions.

11 This requires, in my judgment, a national response  
12 as appropriate, under our system of Federalism. There  
13 is no need for me to detail statistics to document the  
14 nature and extent of crime; to quote studies which cite  
15 probabilities of citizens becoming victims of crime; to  
16 detail the economic costs of crime which we all bear;  
17 to relate horror stories of older citizens imprisoned  
18 in their homes by their fear of being victimized; or to  
19 describe the increased mobility of criminals.

20 You know that from your own experience, or  
21 have heard it from others; however, I will cite each of  
22 these as a basis for suggesting the appropriateness of  
23 some form of Federal assistance to State and local law  
24 enforcement to deal with violent crime generally, and  
25 violent crime crisis situations specifically.

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1 I would add several caveats to this suggestion.  
 2 First, any mechanism which might be developed, should  
 3 have the requisite guthority of the Administration with  
 4 clear-cut policies for delivering the assistance. We  
 5 have been fortunate in Atlanta in responding to requests  
 6 for assistance to have the complete support of both the  
 7 President and the Vice President; this has, without doubt,  
 8 made the Federal response to this tragedy as rapid and  
 9 effective as it has been.

10 Secondly, experience has shown that continuity  
 11 of direction is vital to the effective management of any  
 12 crime control assistance program, and that the assistance  
 13 should be specifically targeted with clear, concise priori-  
 14 ties and objective rather than applied in a scatter-gun  
 15 manner.

16 Thirdly, any Federal program must be fully  
 17 cognizant of the State and local nature of violent crime  
 18 and its control. While I believe that Federal assistance  
 19 is needed and appropriate, it must be provided in a way  
 20 and spirit consistent with Americal Federalism. In other  
 21 words, there must be a delicate balance between the finan-  
 22 cial and technical assistance flowing from the banks of  
 23 the Potomac, and the knowledge, needs, and priorities  
 24 of the recipients at the State and local levels.

25 For example, the Atlanta Federal Task Force has

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1 found that our field presence and knowledge of Georgia  
 2 and Atlanta agencies, people and issues, are a significant  
 3 advantage to our efforts to react to the City's needs.

4 Therefore, I would suggest that any Federal  
 5 program designed to deal with violent crime, include the  
 6 capability to understand the various State and local crime  
 7 control programs and agencies and be able to related to  
 8 them on a first-hand basis.

9 In concluding my prepared remarks, I respectfully  
 10 urge that this Attorney Genera's Task Force recommend  
 11 that Federal assistance be provided to State and local  
 12 governments to deal with the severe problem of violent  
 13 crime; that such assistance include a mechanism that allows  
 14 for a rapid and appropriate Federal response to a crime-  
 15 related crisis, as properly identified by Federal, State,  
 16 and local authorities; that such a response be in addition  
 17 to operational assistance which is now available from  
 18 Federal law enforcement agencies; and, that the response  
 19 be diverse enough to address the fall-out effects of  
 20 a crime crisis, such as those experienced in Atlanta.

21 I further urge that the Federal assistance  
 22 program provide and on-going mechanism to encourage, and  
 23 where appropriate, fund research and demonstration programs  
 24 to increase our level of knowledge regarding which violent  
 25 crime efforts work, and which don't, and to market and

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1 promote those that work.

2 Such a mechanism should have the capability  
3 of making technical assistance resources at the Federal,  
4 State and local levels available to communities which  
5 experience a violent crime problem beyond their capacity  
6 to address it, whether or not the problem has reached  
7 the crisis dimension I mentioned earlier.

8 Finally, any mechanism created to provide a  
9 Federal focus on violent crime should have the authority  
10 to manage a criminal justice statistics program, and to  
11 promote specifically targeted training and education pro-  
12 grams.

13 I believe that these components would provide  
14 a response from the Federal Government which is consistent  
15 with its role in addressing problems of significant concern.

16 I sincerely hope that the heart-breaking tragedy  
17 which the world has shared with Atlanta will, at its con-  
18 clusion, have taught us something which can be applied  
19 to other situations, and that there will be some means  
20 of communicating these lessons.

21 I very much appreciate the opportunity to share  
22 my thoughts with you, and, I'll be pleased to try to respond  
23 to any questions you may have.

24 EXECUTIVE DIRECTOR HARRIS: Thank you, Mr. Rinkevich.

25 Judge Bell?

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1 (Questions of Mr. Rinkevich by Co-Chairman Bell.)

2 Q We are very interested in how a disaster relief  
3 program would be triggered, and so I want to ask you some  
4 questions to see if what you've done in Atlanta will be  
5 helpful to the Commission in that regard.

6 Did you know that there are two million people  
7 in the greater Atlanta area? Do you know that?

8 A Yes, sir.

9 Q Could you tell me the population of Atlanta?

10 A I think the last population was something less  
11 than 500,000.

12 Q Well, it's about 400,000.

13 Now, there are 27 murdered children, and 15  
14 of these, I believe, were murdered outside the City of  
15 Atlanta; did you know that before today?

16 A I'm not sure that that's been established,  
17 Judge, but --

18 Q Well, the Police Commissioner testified to  
19 that just a few minutes ago, I don't know if it's right  
20 or wrong. He said there was 16 children of the 28, who  
21 were outside the jurisdiction of Atlanta--I don't know  
22 if they were murdered outside, or if they lived outside.

23 A I'm not sure if they know where they were murdered.

24 Q Well, that's really not that important, because  
25 we can find that out from the Task Force.

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1           What I would like to know is why it is that  
2 you didn't give any money to anybody except the City of  
3 Atlanta?

4           A.    No one else asked for it, Judge.

5           Q.    Oh, it's based on that?

6           A.    It was one of the criteria -- the creation  
7 of the Task Force --

8           Q.    You've got to ask for it?

9           A.    Pardon?

10          Q.    You have to ask for the money?

11          A.    Well, I think that the question that you're  
12 grappling with is a very important one, and that is how  
13 do you activate this Federal assistance.

14          Q.    I'm not grappling, I'm just trying to get some  
15 facts on how you proceeded to give this money to Atlanta,  
16 and not give any to East Point, or DeKalb County, where  
17 murders occurred; this whole thing impacts on black children,  
18 and a lot of them living in South DeKalb and East Point,  
19 we'll say, for example, and they've got children there  
20 that need to have some relief from anxiety--the juvenile  
21 money, every reason you gave it to Atlanta. They've got  
22 the same reasons in those places, why is it that you did  
23 not give some to those places, is it up the children to  
24 ask, or should the Federal Government worry about the  
25 children?

1           A.    There's two answers to your question, Judge.  
2 First, I think that we have to remember that the reason  
3 for the existence of the Task Force was to respond to  
4 specific requests.

5           There is no on-going mechanism now to respond  
6 to the kind of problem that the City's experiencing, so  
7 the experience that we've had is a result of a specific  
8 set of requests from a locally elected official, and our  
9 response has been directed to that official's specific  
10 needs.

11          Now, secondly, other assistance has been made  
12 available, and will be made available to other parts of  
13 the community. For example, the summer recreation program  
14 which I identified, is a joint request from both Chairman  
15 Lomax, and Chairman Maloof from Fulton and DeKalb Counties,  
16 and the Mayor; whatever assistance the Federal Government  
17 is able to provide will go in an proportionate share to  
18 those communities for their recreation as well.

19          Q.    How about the little cities, are you going  
20 to cut them out?

21          A.    It's not a question of cutting them out as  
22 much as it is targeting limited Federal resources to the  
23 areas of most severe need.

24          Q.    I do not think--I sharply disagree with any  
25 view that you give money to whoever asks for it. The

1 equal protection clause of the Constitution, seems to  
2 me, commands that you treat people equally.

3 A. Surely.

4 Q. I've devoted a large part of my life to enforc-  
5 ing the equal protection of the laws, and I don't understand  
6 any system like this. But, I can understand, politically,  
7 if just one group asks, give them the money.

8 A. Well, going back to your original --

9 Q. But, it doesn't help the children any, is who  
10 you're say you're doing this for and the families.

11 A. Going back to your original question of how  
12 to activate a mechanism for financial assistance, I don't  
13 think that you'll find that the Federal Government will  
14 respond to a natural disaster on its own initiative. I  
15 think that it's a requirement within the law that bona  
16 fide local officials, including State officials, make  
17 a determination that there's a need for Federal assistance  
18 before they request it.

19 Well, a similar situation pertained here, that  
20 is, local officials, the Commissioner of Public Safety,  
21 and the Mayor of a jurisdiction, determined in their council  
22 that they needed financial assistance--Federal financial  
23 assistance, and they asked for it.

24 Equally, could have the other jurisdictions  
25 had they requested it, their requests would have been

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1 considered. The other part of that is that those other  
2 jurisdictions do participate on the Task Force that the  
3 Commissioner referred to--the investigative Task Force,  
4 and the, you know, the solution of the crime is a con-  
5 centration of that Task Force, and so whatever help we're  
6 giving to that Task Force is helping those other juris-  
7 dictions as well.

8 Q. Yeah, but, most of this money is going for  
9 other things like helping the families, helping the children,  
10 helping the community to suffer what's been going on and  
11 not be overcome by it, that's the money I'm talking about?

12 A. Of the \$2.9 million, over \$1.5 of it has gone  
13 directly to underwrite the cost of the investigation,  
14 that is to support the cops that are out there asking  
15 the questions and conducting the investigation.

16 Q. Well, is that money has gone to the Task Force  
17 then it benefits everyone--if it goes straight to the  
18 Task Force, you're right, but if it's just to hire more  
19 policemen to substitute for the ones that are there--  
20 but, in some way that would benefit the community, too.

21 All right. One other question.

22 As a Federal official in charge of this tragedy  
23 in Atlanta, could you tell us what missing children, or  
24 murdered children there might be in other cities in the  
25 nation?

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1 A. I don't think I could give you a intelligent  
2 response to that Judge, no.

3 Q. Has anyone in the Federal Government tried  
4 to find out if this is a national problem?

5 A. Quite frankly, our efforts have been so con-  
6 centrated with dealing with the local issue that we haven't  
7 gone beyond in examining those kinds of broad questions  
8 at the national level.

9 Q. Well, it would --

10 A. I've read some newspaper accounts recently,  
11 that reflects it's a serious national problem, but, I'm  
12 just not your best source on that question.

13 Q. Yeah. I didn't know if it's a national problem,  
14 or just a phenomenon that's taken place here in Atlanta.  
15 It's bad enough here, but if it's a national problem,  
16 of course, it would be far more -- it would be multiplied  
17 in seriousness.

18 A. I would agree.

19 Q. And, I thought maybe the Federal Government  
20 might -- since they've taken such an active role in Atlanta,  
21 you might want to find out what's going on in the rest  
22 of the nation.

23 CO-CHAIRMAN BELL: That's all. Thank you.

24 EXECUTIVE DIRECTOR HARRIS: Mr. Carrington?

25 (Questions of Mr. Rinkevich by Task Force Member

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1 Carrington.)

2 Q. Mr. Rinkevich, you were talking about emergency  
3 crisis type crime situations and you said that procedures  
4 should be set up; I don't think anybody here disagrees  
5 with that, but, you used specifically the terms, to be  
6 activated under predetermined conditions.

7 Could you, perhaps, give us a few examples  
8 of what predetermined conditions might go into the formula  
9 of determining a crisis situation?

10 A. I think that it would be essential for whatever  
11 assistance that would be put in place, or whatever kind  
12 of mechanism would be put in place, to respond to a crime  
13 crisis, to have these predetermined plans and predetermined  
14 conditions. The one that Commissioner Brown mentioned,  
15 I think, is one that ought to be considered, and that  
16 is the -- he put it in context of money, but, it's the  
17 capability, I think, of the local government, or the State  
18 government to respond. I don't think that local govern-  
19 ment ought to go to the Federal Government without first  
20 exhausting its resources and capabilities not only at  
21 the local level, but also at the State level.

22 In the Atlanta case they did, Governor Busbee  
23 and the State general assembly provided their own assis-  
24 tance to the City, and it was only at the point where  
25 those funds and that assistance was -- and, there's judg-

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1 ment, not adequate, that they came to the Federal Govern-  
2 ment.

3 So, I think that there ought to be that kind  
4 of predetermined set of trigger mechanisms, and I think  
5 it ought to depend on the capability of the State and  
6 local government to respond.

7 It seems to be, as a personal observation,  
8 that what could be a crisis situation in Atlanta, might  
9 not be a crisis situation in New York City, or Chicago--  
10 a larger population, a larger police jurisdiction and  
11 whatever. Those are just questions that I think that  
12 the predetermined mechanism would have to address.

13 Q I'm -- we're -- we're dealing with a relatively  
14 new concept here. Federal response to a law enforcement  
15 crisis situation, and so far I'm just not sure that, for  
16 the benefit of the Task Force, we have defined what is  
17 a crisis situation that would trigger the mechanism, I  
18 think that's got to be our starting point.

19 A I agree with you and the -- what I, in perhaps  
20 my inarticulate way, was trying to suggest that those  
21 predetermined conditions, I think, would vary depending  
22 on the capability of the local jurisdictions to respond.

23 Were a crisis of this sort to occur in a smaller  
24 jurisdiction, smaller than Atlanta, for example, I think  
25 that a mechanism would need to be triggered perhaps more

1 quickly than it was in Atlanta to respond, and were this  
2 crisis to develop, or were this sort of circumstances  
3 develop in a larger jurisdiction which had, you know,  
4 more resources and more capability than I think perhaps  
5 it would be delayed.

6 So, I think that -- I think that that's an  
7 issue. I'm sorry I can't give you anymore definitive  
8 answer than that, but, I think that's a very legitimate  
9 and important concern in this whole mechanism. If it's  
10 not addressed, the--you know, the pandora's box of what  
11 is a crisis is going to cause problems forever after.

12 Q I think we need to resolve this, and I wasn't  
13 trying to put you on the spot with definitions, but for  
14 example, would two bombings of very sensitive buildings  
15 like a school house or something, create a crisis situa-  
16 tion, would, for example, a vicious motorcycle gang moving  
17 into a relative small town and terrorizing it, what is  
18 a crisis situation, I don't -- I think we're going to  
19 have to come up with the answer, but any help you could  
20 give us on that would be very much appreciated.

21 That's all.

22 EXECUTIVE DIRECTOR HARRIS: Mr. Edwards?

23 (Questions of Mr. Rinkevich by Task Force Member  
24 Edwards.)

25 Q A couple of specific questions if I may.

1 The responsiveness and the statistics that  
 2 you gave us relative to the funding and 85 percent within  
 3 three weeks is just outstanding. Do you have any specific  
 4 areas that you can identify at this point that might be  
 5 accelerated as Director of the Task Force in this area  
 6 that need to be addressed, and need to be accelerated  
 7 at this point in time, or do you feel that the effort  
 8 that is being put forth is maximum at present--are there  
 9 some specific areas, for instance, drawing on local exper-  
 10 tise, and I know that has been one of the things that  
 11 the Task Force has done from time to time in this parti-  
 12 cular tragedy, but, has there been a need for a specific  
 13 expertise, whether it be from the State level, local level,  
 14 and other jurisdictions, or the Federal level, are there  
 15 programs there that need further attention?

16 A. To my knowledge, Mr. Edwards, no. As a matter  
 17 of fact, I have been very much personally impressed with  
 18 the willingness of people, not only from the Federal Govern-  
 19 ment, but, certainly from other jurisdictions who know  
 20 of the effort here, to offer assistance, and to my know-  
 21 ledge, the kind of assistance that has been offered, that  
 22 some of it has been accepted and the need that both the  
 23 investigators have as well as the community at large for  
 24 some of the social programs that we've been trying to  
 25 deal with, has been responded to in a very complete fashion.

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1 There, of course, is still the issue hanging  
 2 now of additional assistance for summer recreation programs,  
 3 and it's probably going to be whatever response the Federal  
 4 Government can provide is probably going to be less than  
 5 what the City will need, and there may, therefore, need  
 6 to be, you know, other resources from other sources brought  
 7 to bear on that, but, a short answer to your question  
 8 is, I think that everything that the various officials,  
 9 Federal, State, and local, have determined would be a  
 10 benefit in this matter, has been surfaced, and we have  
 11 either been able to provide it, or the capability to provide  
 12 it simply does not exist.

13 Q. The next question. In reference to Judge Bell's  
 14 comments earlier relative to a response to Federal assis-  
 15 tance, can your Task Force identify and make recommenda-  
 16 tions as far as response at the Federal assistance level,  
 17 do you have that authority under the Task Force structure,  
 18 or are you in a posture that obviously you can identify  
 19 areas that can -- you can be proactive in, rather than  
 20 reactive, has your Task Force, or can your Task Force  
 21 make recommendations for Federal assistance independent  
 22 of a request from a local entity coming in?

23 A. In the case of the Atlanta situation?

24 Q. Yes, sir.

25 A. I would judge that to be within our capability;

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1 our mission is broadly defined by the Vice President,  
 2 and as requested by the Mayor, is to provide whatever  
 3 Federal assistance can be brought to bear, and there have  
 4 been requests that have not dealt with money where we  
 5 have mutually agreed upon the need with the Commissioner  
 6 and others, and provided that; so, I would -- in the instant  
 7 crisis, I would see that our mandate would include, if  
 8 we were to see something that we think the Federal Govern-  
 9 ment, or another State or local government that we can  
 10 bring in through Federal resources could bring to bear  
 11 on the problem, I would certainly not be hesitant to iden-  
 12 tify that to Commissioner Brown, or the Mayor, or whomever,  
 13 and offer that if it were available.

14 Q I asked that in terms of if you look at your  
 15 situation as a kind of microcosm of the recommendations  
 16 that both Commissioner Brown had made, and as well as  
 17 the ones you have made, it seems appropriate that within  
 18 your structure and within your responsibility, that it  
 19 would seem, you would have your research and development  
 20 capability, and your ability to look to areas of concern  
 21 for the future in dealing with a specific tragedy and  
 22 that's why I'm asking?

23 A Keep in mind that this mechanism again, is  
 24 an ad hoc mechanism three months old, this Federal --  
 25 Atlanta Federal Task Force, and as a matter of fact, the

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1 Federal Task Force consists of myself, a principal assis-  
 2 tant, and some clerical assistance from my existing office.  
 3 What we have done is brought to bear the expertise and  
 4 the resources of a variety of other Federal agencies and  
 5 linked those up with the needs of the local folks as they  
 6 have identified them, and allowed them to work; so, when  
 7 you talk about our research and capability, why it --  
 8 it was a research capability extreme to prepare my comments  
 9 this morning for the Task Force; we're operational, and  
 10 have been in the business of unblocking blockages that  
 11 occur as opposed to some of these other things.

12 That's why I think that such a mechanism ought  
 13 to exist, because I think that there are issues that have  
 14 been raised here that need some on-going attention, and  
 15 I think that that's going to call for an on-going mechanism.

16 MR. EDWARDS: Thank you.

17 EXECUTIVE DIRECTOR HARRIS: Mr. Armstrong?

18 (Questions of Mr. Rinkevich by Task Force Member  
 19 Armstrong.)

20 Q Mr. Rinkevich, if you could call upon your  
 21 expertise and experience with LEA in assisting State and  
 22 local law enforcement agencies with crime control programs,  
 23 could you prioritize those programs that, in your opinion--  
 24 from your experience, have been of major impact on controll-  
 25 ing crime in America?

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1 A. I think I would agree in the broad sense with  
2 what Commissioner Brown outline for you, but, I think that  
3 there are some specific activities that have been funded  
4 through the LEAA program that he did not identify, and  
5 I don't think his answer went to that level.

6 For example, one that I would identify that  
7 I believe will strike a receptive cord in Judge Bell's  
8 mind, is the neighborhood justice center concept, which  
9 is an attempt to try to syphon off minor legal matters  
10 from the court system to allow them to concentrate on  
11 the more serious matters; he was instrumental in seeing  
12 LEAA funds were invested in a larger basis than they were  
13 before that when he was the Attorney General.

14 The career criminal program, which I know you've  
15 got an experience in, I happen to believe is a very, very  
16 important program that was started with LEAA funding,  
17 and LEAA ideas, and ought to be continued. Its received  
18 a lot of publicity, but the LEAA hasn't received credit  
19 for it, but the light-weight bullet-proof vest that are  
20 now being used by scores and scores of police agencies  
21 around the country is an LEAA sponsored idea that has  
22 taken hold with linkage with the Du Pont Corporation,  
23 or other -- I think it was the Du Pont Corporation.

24 The TASC program--Treatment Alternatives to  
25 Street Crime, which is an attempt to try to deal with the

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1 narcotic, primarily, and alcohol abuser, and try to keep  
2 them from becoming the repeat offender. We know pretty  
3 conclusively at this point that narcotics is at the root  
4 of the significant part of our crime problem, and I think  
5 that the TASC program is an attempt, and a very good attempt,  
6 that was developed under the LEAA umbrella to try to deal  
7 with that.

8 I would look to the -- while it may not be  
9 popular in some quarters, I would look to the sting efforts,  
10 that is the undercover buying of stolen property, as a  
11 LEAA sponsored idea and mechanism that also is very effec-  
12 tive, that mechanism has been used effectively in this  
13 State as well as quite recently in other parts of the  
14 country.

15 Those are some that I would, off the top of  
16 my head, identify, Mr. Armstrong.

17 Q. From what I've read of the Atlanta situation,  
18 it appears that many of these victims were exploited children;  
19 is this an area that you think law enforcement ought to  
20 intensify its efforts to try and protect, or to directly  
21 intervene in the lives of children that may or may not  
22 be exploited?

23 A. I think that that is a question that ought  
24 to be examined, but, I would suggest there's another ques-  
25 tion related to that that ought to be examined, and that

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1 is that this perhaps, though, would tie into some of the  
 2 one of the other recommendations, that is, the need for  
 3 research.

4 It's our impression, at this point, that the  
 5 kids who need to be provided opportunities for so that  
 6 they aren't on the streets, and aren't available for acts  
 7 of violence by unknown assailants, are probably not the  
 8 kinds of kids that would, on their own, get involved in  
 9 the typical, for example, summer recreation program.

10 We're pretty much convinced, at this point,  
 11 that there are some gaps in our knowledge of how to deal  
 12 with, in the case of what we're talking about her, the  
 13 target population for our efforts, of the kids who are  
 14 likely to become victims; and, we think that perhaps that  
 15 they fall into an area that's not being addressed by any  
 16 State, or Federal, or local program--recreation program,  
 17 educational program, or whatever, and I would suggest  
 18 that in addition to law enforcement concern about that,  
 19 that's a legitimate concern for our educational folks,  
 20 for our recreational folks at the State and the local  
 21 level, and that's also -- is probably, while our mission  
 22 doesn't go to getting into research as it relates to the  
 23 Atlanta problem, I think that's probably an issue that  
 24 ought to be examined as a potential for some further research,  
 25 in other words, there are a whole body of, in this case,

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1 kids, who are not being reached by the typical government  
 2 or private program, that -- one of the results of which  
 3 they become victims of crime that we ought to know about,  
 4 and we ought to structure some programs to reach them,  
 5 or deal with them.

6 Q One final question, and perhaps a brief reply  
 7 would be -- in the area of replicating the Task Force  
 8 work so that in case we have another emergency situation,  
 9 God forbid, in another city, would there be a substantial  
 10 blueprint from your experience to direct to that city?

11 A. The Commissioner responded to that, and we've  
 12 talked about that privately, and he is very interested  
 13 in documenting from the perspective of the City--the experi-  
 14 ence that they've had, and we intend to do that from the  
 15 Federal level, and that ties directly into this question  
 16 of technical assistance, because as you say, God forbid  
 17 this situation should develop in another part of the country,  
 18 what Atlanta, and what we've learned in Atlanta, ought  
 19 to be transferred as quickly as possible to that community  
 20 so that they don't have to reinvent the wheels that have  
 21 been invented here, as was the circumstance is some of  
 22 the other parts of the country that dealt with task force  
 23 creations to deal with specific violent crimes, brought  
 24 to Atlanta to help them in establishing their Task Force  
 25 and trying to understand how to deal with it.

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1 MR. ARMSTRONG: Thank you.

2 EXECUTIVE DIRECTOR HARRIS: Mr. Littlefield?

3 (Questions of Mr. Rinkevich by Task Force Member  
4 Littlefield.)

5 Q Mr. Rinkevich, besides the local law enforcement  
6 disaster, do you believe there should be some on-going  
7 program for Federal assistance to local law enforcement  
8 agencies?

9 A. Yes, sir, I do.

10 Q I have a couple of problems with that, Mr.  
11 Rinkevich, one of them is, what guarantee can anyone have  
12 that Congress will appropriate any money the following  
13 year for such programs?

14 A. I think that's a legitimate concern, and I  
15 think that's been one of the problems with the LEAA program  
16 is that uncertainty of ability to fund continuation.

17 However, I don't think that any Federal assis-  
18 tance program--future program, ought to be a replication  
19 of LEAA. I think that there were good parts of the LEA  
20 program, and there were some parts that ought not to have  
21 been there. And, I think we've learned that lesson, and  
22 I think that one of those is that I'm not sure that Federal  
23 assistance, at this point, ought to be made available  
24 for the kinds of routine criminal justice needs where  
25 your continuation issue becomes a problem.

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1 I think that if a program is going to be created  
2 at the Federal level, I think the recognition that it's  
3 going to deal with limited Federal resources--limited  
4 dollars, is up front. I think that the notion that the  
5 Congress can change that every period of time that it  
6 wants, and it did the LEA program six or seven times in  
7 its 10 year history, and I think that those resources  
8 have to be targeted, and that's why I suggest that it  
9 ought to be in the area of research, and it ought to be  
10 in the area of training and education, and it ought to  
11 be in the area of statistics, although there's an on-  
12 going statistics program that really just needs to be  
13 continued.

14 And, then it ought to be in this area of testing  
15 what works, and those that do work, put them in place,  
16 not forever, ever, and ever; but, to show State and local  
17 governments that, yes, here's an idea that will help in  
18 dealing with the problem of violent crime, and if you're  
19 convinced that it will help, we've shown it to you through  
20 the demonstration of it here in your community, pick it  
21 up if it's worthwhile to you, if it's not then don't pick  
22 it up.

23 Q How about the problem of local control; certain  
24 agencies that I'm aware of, had their Federal funding  
25 cut off because they didn't conform to certain Federal

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1 guidelines; what about that? Do you think that would  
2 be a problem?

3 A. I think it would be a problem if it were not  
4 handled, I think, over the course of time in the LEA pro-  
5 gram, looking back on that as something we can learn from,  
6 that guidelines and regulations became overburdensom to  
7 folks that dealt with the dollars.

8 I think it's important to remember why those  
9 guidelines and regulations became overburdensom, and that's  
10 directly related to the tinkering nature of the Congress  
11 once the program was established and the constant revision  
12 of it through legislation, and the constant insistence  
13 that further things be done, and further bureaucracy be  
14 created to see that those further things be done, so that  
15 ultimately what was a direct program became a very confused,  
16 complex program. And, I think that needs to be addressed.

17 I think, however, we're talking here, in my  
18 recommendations, about any kind of future program of some-  
19 thing less than that massive assistance that was made  
20 available before, so therefore, folks that would buy into  
21 any Federal program would do so with the full knowledge  
22 of what they are buying into, and the full expectation  
23 that they would have to deal with the accountability.

24 Above all, and we're cognizant of that in this  
25 present situation in Atlanta, these are tax payer dollars,

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1 whether they come from the Federal coffers, or whether  
2 they come from the State coffers, they come from our pockets,  
3 and we're concerned--the City is concerned, that we're  
4 dealing with the issue of control of those dollars--over-  
5 sight of those dollars, and that's where guidelines and  
6 regulations sometimes seem unbearable to local officials,  
7 but after all, I don't think anybody would want to be  
8 in the position of freely and willy-nilly spending money  
9 without being able to establish for an audit later, or  
10 an evaluation later, the accountability of how those funds  
11 were spent.

12 MR.. LITTLEFIELD: Thank you.

13 EXECUTIVE DIRECTOR HARRIS: Chief Hart?

14 (Questions of Mr. Rinkevich by Task Force Member  
15 Hart.)

16 Q I have a couple of questions.

17 Prior to your crisis, or emergency, did Atlanta  
18 accept Federal aid for youth--to set up youth programs?

19 A. Yes, sir.

20 Q I wondered, I had a problem with some of your  
21 answers, you were worried about guidelines and that kind  
22 of thing. People do get in trouble when they don't want  
23 to follow -- sometimes they turn the Federal money down,  
24 as a matter of fact.

25 A. That's correct.

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1 Q When you have a police problem, crimes begin  
2 to start happening, at what point do you decide that you  
3 should establish a case coordinator, or criteria, for  
4 establishing such before it becomes a crisis?

5 A From my perspective, Chief Hart, the establish-  
6 ment, or the identification of the circumstance in Atlanta,  
7 and therefore, I would think, as we talked about a few  
8 minutes ago, as a good stepping stone for the future,  
9 ought to be through some sort of predetermined set of  
10 conditions having been met, and that principally, that  
11 has to be a -- would have to include a request from the  
12 appropriately elected, or appointed State and local officials,  
13 and at that point then, I think the Federal Government  
14 would have a responsibility under such an on-going mechanism  
15 as we're projecting, to assess whether or not such a crisis  
16 exists under the Federal capability, or Federal authority  
17 to respond, and then make that determination.

18 I'm not sure I've answered your question --

19 Q Yeah, you have in-part.

20 In a major case, who determines at what point  
21 you're going to establish a Task Force, the chief of police,  
22 the commissioner, or the mayor?

23 A Well, I think that's a question that goes beyond  
24 my capability to respond to, inasmuch as I, you know,  
25 the charge that our Task Force--the Federal Task Force has,

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1 does not go to the actual management of the criminal investi-  
2 gation here in Atlanta.

3 I would, as a person experienced in local law  
4 enforcement, would suggest that that decision, as a per-  
5 sonal observation, that that decision needs to be one  
6 of, you know, mutual deliberation between the chief of  
7 police and his chain of command, including either the  
8 mayor, or the city managers as the case may be.

9 Q Okay. In your position, do you have the coopera-  
10 tion, or the inclusion of the other jurisdiction around  
11 Atlanta that's involved in the problem, do you have total  
12 control over the Task Force beyond city and county lines?

13 A Are you talking now, Chief, of the investigative  
14 Task Force?

15 Q Right.

16 A Once again, my role does not go to the coordinat-  
17 ing of that group. It is my understanding from the per-  
18 spective that I have that they do have the complete coopera-  
19 tion of all the jurisdictions in the metropolitan area,  
20 and as a matter of fact, I made an observation on that,  
21 and I think the Commissioner did, and I'd like to under-  
22 score that.

23 In my experience in dealing with efforts that  
24 involved the kind of multi-jurisdictional agencies that  
25 are involved, both at the local level, the State level, and

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1 at the Federal level, I have not seen the kind of coopera-  
 2 tion, ever before, that exists here. Surely, there have  
 3 been issues, some of which have been aired publicly, but,  
 4 you're going to have those anytime you have human beings  
 5 working toward a common objective.

6 But, in this case, this has been, in my judg-  
 7 ment, an unprecedented cooperative arrangement that ought  
 8 to deserve, and does deserve some special recognition,  
 9 and I think that someone asked the question, why did that  
 10 happen here, and I think that the Commissioner put his  
 11 finger on it, and that is that there is a common objective  
 12 that everybody from the Federal, right on down to the  
 13 locals and upward again, identified as being something  
 14 that had to be attained.

15 I'm continually -- I continue to be impressed  
 16 in my dealing with Federal officials at the regional level,  
 17 and State and local officials about their willingness to  
 18 help, not because the President of the United States said  
 19 so, necessarily, but, because they are concerned as human  
 20 beings, and residents of the community, about the problem  
 21 and want to resolve it.

22 That's a keystone, I think, to the effort here.

23 Q Okay. I've been in law enforcement for 29  
 24 years; jurisdictions usually cooperate, but, I wondered  
 25 if the case coordinator had complete control of all the

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1 information and facts that was coming into --

2 A I can't answer that question, I'm sorry, Chief.

3 Q All right. Well, back to the proactive approach,  
 4 rather than, now you're reacting, you have no choice;  
 5 how much cooperation do you get from the citizens when  
 6 you ask them for help, is it kind of a mutual thing, or  
 7 is them, versus us--what's the situation there?

8 A From my perspective, that cooperation has been  
 9 just as effective as has been the institutional coopera-  
 10 tion, although, quite frankly, in our mission of providing  
 11 Federal financial and technical assistance to the local  
 12 folks, we have not interfaced as much with citizens groups  
 13 as has the Commissioner in his dealings with the actual  
 14 investigation.

15 Our's has been to provide the kind of financial  
 16 assistance that the Government has, and technical assistance;  
 17 so, the extent to which we've been involved in citizens  
 18 groups, and our community relations service has been--  
 19 has indicated -- or, we have -- you know, our belief is  
 20 that's a very high level amount of cooperation.

21 MR. HART: Thank you.

22 EXECUTIVE DIRECTOR HARRIS: I think we have just  
 23 one or two more questions by Judge Bell.

24 (Further questions of Mr. Rinkevich by Co-Chairman  
 25 Bell.)

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1 Q Mr. Rinkevich, I want to ask you a question,  
2 but, I don't want you to answer it now, I want you to  
3 think about it and answer it in writing.

4 Assume that the availability of Federal funds  
5 for use in a law enforcement disaster, give us the best  
6 answer you can to defining a disaster, and then would  
7 it not be -- this is the question; would it not be better  
8 in such a case for the State to seek the disaster relief  
9 rather than one of several local governmental entitites  
10 so as to assure a proper investigative task force, and  
11 to assure equal division of the funds among the people  
12 involved in the disaster area.

13 CO-CHAIRMAN BELL: Thank you.

14 EXECUTIVE DIRECTOR HARRIS: Thank you, Mr. Rinkevich.

15 At this time, we'll take a five minute break,  
16 and then we will switch gears and begin our examination  
17 of the insanity defense.

18 Please be back here in five minutes.

19 (Short recess.)

20 The meeting will come to order, please.

21 We're now going to shift gears and consider  
22 the question of the insanity defense, and specifically,  
23 should it be retained, should it be modified, or should  
24 it be done away with.

25 We have several witnesses; our first witness

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1 is Abraham S. Goldsein, Sterling Professor of Law at Yale,  
2 and former Dean of the Yale Law School.

3 Professor Goldstein, welcome.

4 TESTIMONY BY ABRAHAM S. GOLDSTEIN

5 STERLING PROFESSOR OF LAW, YALE LAW SCHOOL

6 PROFESSOR GOLDSTEN: Thank you.

7 The subject of insanity in criminal cases has  
8 a seductive appeal that often leads people to ignore the  
9 fact that it is really a small part of the problem of  
10 the mentally disordered offender, it's often confused  
11 with the whole of the problem.

12 What I'd like to do before speaking directly  
13 to the insanity defense is to be contextual if I may,  
14 to surround the subject for a few brief moments so that  
15 we have some sense of where it fits in the whole range  
16 of administrative and technical problems relating to the  
17 mentally disordered offender.

18 First, and most important, the insanity defense  
19 deals with the mental competence of the offender at the  
20 time of the crime, not at trial, and not any other times;  
21 so it tries to recapture the time of trial what the mental  
22 state of the offender was at some earlier time.

23 Second, it competes with many of the processes  
24 for the mentally disordered offender, and so any concern  
25 with the mentally disordered offender that is comprehensive

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1 would be mistaken if it addressed itself only to the insanity  
2 defense.

3         There is, as I've indicated, the question of  
4 the competency of the individual to stand trial. There's  
5 the whole question of police and prosecutorial discretion  
6 and the guilty play which often removes the process mentally  
7 disordered offenders who never have a occasion to raise  
8 the insanity defense and often sends them off to prison  
9 mentally disordered, perhaps having been able to assert  
10 an insanity defense, but never having occasion to do so.

11         Now, another important factor about the insanity  
12 defense is that it's not asserted very often, and when  
13 it is, it's rarely successful.

14         Now, that's an interesting puzzlement, why  
15 is it so rarely successful? First, because it's very  
16 difficult for a defendant who is now competent to stand  
17 trial, now asserting that he, at an earlier time, was  
18 lacking in mental competence to commit a crime, it's quite  
19 difficult for such a person to persuade a jury that at  
20 that earlier time he was incompetent.

21         Second, because the contested case usually  
22 involves a heinous and sensational crime of the sorts  
23 we read about in our newspapers all the time for which  
24 a jury is disposed to convict. There is not a ready dis-  
25 position to acquit those who remain to assert the insanity

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1 defense.

2         Third, because the clear cases of insanity,  
3 both then and now, are often dealt with consensually  
4 by the prosecution and the defense, ways are found through  
5 other processes, whether they be civil commitment processes,  
6 whether they be guilty pleas which have running with them  
7 procedures for dealing with the problem of the mentally  
8 disordered, which removes them from the contested criminal  
9 process--from the criminal trial, the occasion to address  
10 the insanity defense.

11         And, then really very, very important, because  
12 the insanity defense, if it is successful, does not produce  
13 a complete acquittal. There is nothing more likely to  
14 deter the assertion of an insanity defense by a mentally  
15 competent defendant than the awareness that if he is acquitted  
16 by reason of insanity, what follows is not acquittal in  
17 the usual sense, but a process of detention for examina-  
18 tion, and then commitment for an indeterminate period  
19 until he is no longer dangerous.

20         In short, insanity defense is not a ticket  
21 to freedom. It is a gross misunderstanding of the issue;  
22 to assume that when the insanity defense is asserted and  
23 prevails, it means acquittal--the word, acquittal, is  
24 confusing. An insanity defense is a species of -- it's a  
25 process which combines adjudication of responsibility at

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1 the time of the crime with an additional process of pre-  
2 ventive detention of the dangerous.

3 Now, for all the reasons that I've mentioned  
4 that I classify as basic considerations, contextural con-  
5 cerns, it's not likely that very much of the problem of  
6 violent crime which is the central concern of this Task  
7 Force is addressed by a discussion of the insanity defense.

8 I don't mean, having said that, to minimize  
9 the significance of my weighty remarks which will follow,  
10 but, to simply make it clear that having walked up and  
11 down the avenues and the by-ways of this subject, I've  
12 come to the conclusion that the insanity defense, meaning  
13 the words by which the jury is instructed to determine  
14 whether at the time of the crime an individual was, or  
15 was not insane, and we'll into that further, is really  
16 a very small part of the problem. There are more important  
17 issues that are the concern of this Commission.

18 Now, to some fundamentals. The insanity defense  
19 is simply a part of a more general concept of mental competence  
20 which characterizes our whole body of law. Our body of  
21 law is deeply rooted in notions of rationality, and account-  
22 ability, and free will. It assumes rational actors, for  
23 wills--there's a concept of competence to make a will,  
24 there's a concept of mental competence to contract; there's  
25 also a concept of mental competence to commit crime.

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# CONTINUED

1 of 5

1 Now, the very fundamental proposition that  
 2 the insanity defense addresses is the question whether  
 3 there are circumstances under which an individual is so  
 4 lacking in the equipment--the mental equipment, to parti-  
 5 cipate in a system of criminal law like ours, that he  
 6 ought to be found no guilty by reason of insanity.

7 In order to understand what that means, we've  
 8 got to see the criminal law as what I think it has tradi-  
 9 tionally been, and I would be surprised if this group  
 10 concluded it should be otherwise.

11 The criminal law is a set of warnings set forth  
 12 by legislative bodies to persons who are capable of respond-  
 13 ing to those warnings. It sends a set of signals, it  
 14 promises pains to those who commit the offensive conduct;  
 15 and it treats crime as deserving condemnation; it counts  
 16 very importantly, the notion of condemnation, because  
 17 it assumes that the individuals involved can respond to  
 18 the law's requirements.

19 It condemns not only to punish; not only to  
 20 incarcerate, but also to teach moral lessons. Now, in  
 21 a time when we're very concerned with moral lessons, it  
 22 is very important that we recognize the role of the criminal  
 23 law in reinforcing society's processes of self-control.  
 24 Anterior to all of the things we talk about, these problems  
 25 of administration, and efficiency, and so on, there's

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1 simply no way that we will have a more law abiding society  
 2 unless we find a way of building law abiding characters--  
 3 building law abiding people, having people who take seriously  
 4 the notion of accountability.

5 Now, we can't assume, however, moral actors  
 6 who have the capacity to respond to the laws warnings,  
 7 and expect that assumption to be credible if we take the  
 8 view that there are none who cannot chose.

9 The insanity defense is the other side of the  
 10 paradime of rationality and free will.

11 If condemnation in the criminal law is to retain  
 12 its educator force, it must be tied to outrage, and offen-  
 13 sive conduct, and moral accountability, and offenders  
 14 who are seriously ill evoke not outrage, perhaps initially  
 15 so, but, ultimately sadness and regret.

16 We should not be blind, however, to the fact that  
 17 the person who we chose not to condemn by virtue of an  
 18 insanity defense may, at the same time, be dangerous,  
 19 that is the twin delemma. and the twin policy issue--twin  
 20 set of policy issues posed by the insanity defense.

21 Now, having set that kind of back-drop, what  
 22 I'd like to do is draw you for a few moments into the  
 23 complex net-work of rules that the criminal law has deve-  
 24 loped over centuries to deal with this notion of criminal  
 25 liability.

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1 Now, it's taken us a given that in order to  
 2 be criminally liable except for certain specified categories  
 3 of strict liability, limited areas, for major crimes of  
 4 the sort which is the central concern of this task force,  
 5 there has to be an offensive act, and there has to be  
 6 a mental state that makes the individual culpable, that  
 7 makes him blame-worthy, that makes him deserving of being  
 8 condemned.

9 Now, the criminal law uses very subjective  
 10 sounding words for the most part, to describe in the statutes  
 11 that prohibit crime, who it is that is a criminal.

12 It refers to intentional conduct, it refers  
 13 to negligent conduct--excuse me, usually reckless conduct,  
 14 sometimes, negligent conduct. It refers to malice, it  
 15 refers to concepts of that sort.

16 But, behind that is a general presumption,  
 17 and that is, the law presumes all people, above a certain  
 18 age, to be sane. It assumes all individuals are competent  
 19 to commit crime, in short; they are competent to make  
 20 the choices, the rational calculations that the criminal  
 21 law sends out at them, the sets of warnings not to engage  
 22 in the offensive conduct.

23 Now, in order to minimize the avoidance of  
 24 criminal liability, the law through the centuries has  
 25 generally held to a relatively objective theory of criminal

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1 liability.

2 Now, I juxtaposed deliberately, the words objective  
 3 theory of criminal liability to the subjective sounding  
 4 words which appear in the statutes. The way in which  
 5 the law, in its wisdom, the common law and confirmed by  
 6 statutes in various places, has dealt with these matters,  
 7 is by and large, to recognize that acts are presumed to  
 8 have been intended. People intend the natural and probably  
 9 consequences of their acts.

10 In a wide variety of circumstances, particularly  
 11 in the context of the violent crimes that is your special  
 12 concern, people are held to standards of reasonableness,  
 13 even including the standard which is generally applied  
 14 across the country which reduces the grade of the offense  
 15 from murder to manslaughter when provocation is an issue.

16 The exceptions to this general view that there  
 17 is an objective theory of criminal liability, and that  
 18 relates to the instructions which you use to juries, and  
 19 the evidence which is admitted, is, under certain statutes  
 20 which are interpreted to require a very specific intent.

21 Now, the best know of these, and they are often  
 22 confusing to those who are not familiar with the general  
 23 area, is the reduction in the grey of an offense from  
 24 murder in the first degree to murder in the second degree  
 25 why way of intoxication evidence, the so-called doctrine

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1 of partial responsibility.

2 That doctrine has been widely accepted in the  
3 United States; it reduces the grade of an offense which  
4 had, historically, been a capital punishment offense,  
5 to a lesser grade, but it does not exonerate. The rule  
6 of partial responsibility, which allows in evidence short  
7 of insanity to reduce the grade of an offense is not widely  
8 accepted outside the homicide area; it is not widely accepted  
9 in the criminal law, generally.

10 With the exception of California, which has  
11 followed a rather interesting history in experimenting  
12 with the rule known as the Wells--Gorshen Rule, this notion  
13 of partial responsibility has not been extended beyond  
14 the homicide area.

15 Now, the main motivation of the partial respon-  
16 sibility rule which admitted evidence short of insanity,  
17 to capsulize it, was really in the days before the capital  
18 punishment controversy surfaced as dramatically as it  
19 has in recent years, to give the jury a sentence mitigating  
20 option; it was a way to let the jury decide that the person  
21 charged with murder one, should perhaps not be put to  
22 death.

23 Now, it's by and large, given the fact that  
24 we operate with what Justice Holmes referred to in his  
25 book on the common law, the chapter on criminal law, with

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1 an objective theory of criminal liability, tucked behind  
2 subjective sounding words in statutes, the courts tend  
3 to limit the degree to which the defendant can show what  
4 was going on in the mind of the accused at the time of  
5 the crime.

6 They do not readily allow mental condition  
7 history in, in the generality of criminal cases; they  
8 do not allow in evidence, they had a history of mental  
9 disorder, that he had a history of psychopathy, that he  
10 fell on his head when he was a youngerster, that he acted  
11 out in school; all of the kind of evidence that we asso-  
12 ciate with the dramatic trials of the insanity defense  
13 is ordinarily a part of the trial of a major criminal  
14 case.

15 It's only through the insanity defense, that  
16 there's a general license to the defendant to offer evidence  
17 of mental condition, evidence of the history of mental  
18 disorder, of undue suggestibilities, undue irritabilities,  
19 and so on, that the individual suffered from a mental  
20 disease that somehow kept him from being able to confront  
21 the messages of the criminal law, these deterrent messages  
22 which a capability of responding to them.

23 Now, a corollary of the admission of that kind  
24 of evidence that the individual involved has lacked the  
25 capacity to comply with the criminal law by virtue of a

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1 condition that predated, for the most part, the commission  
 2 of the crime, had been a demonstration that there is at  
 3 least serious reason to believe that that individual deserves  
 4 special scrutiny as to whether he may be released; hanced  
 5 by virtue of the very fact that the individual may be  
 6 able to demonstrate that he is not guilty by reason of  
 7 insanity, he may be the occasion for special concern about  
 8 his dangerousness.

9 Now, the words of the insanity defense them-  
 10 selves; that has been a subject of controversy since the  
 11 17th Century, going well back into the history of English  
 12 law, there was a test to determine whether or not an indi-  
 13 vidual was so incapacitated by mental disorder that he ought  
 14 not to be held up to the standards of most people. In  
 15 short, this objective theory of criminal liability, which  
 16 inevitably creeps in as we assume people intend to do  
 17 what they do, has been with us for a very long time.

18 The McNaghten Rule was the test--the so-called  
 19 right/wrong test which prevailed in this country and in  
 20 England--still prevails in England, since the middle of  
 21 the 19th Century.

22 It gave way in the '30's, to -- not gave way,  
 23 it was supplemented in about a third of the States by  
 24 something called an "irrestistible impulse" test, which  
 25 emphasized self-control. The McNaghten test was a test

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1 which asked the question, simply, was the mental disease  
 2 of a sort that kept the individual from knowing the dif-  
 3 ference between right and wrong. It was what was described  
 4 as a cognitive test, it emphasized the intellectual faculti-  
 5 ties, it did not ask the further question, well, he may  
 6 know what he was doing, but could he control himself.

7 And, under the McNaghten Rule, there were instances,  
 8 quite common, of unquestionably seriously mental ill people,  
 9 the paranoid schizophrenic is a classic illustration of  
 10 people who are often very intelligent, very articulate  
 11 who have the clear capacity to identify what their moral  
 12 obligations are, but are so incapacitated by an underlying  
 13 and pervasive mental disorder, that they cannot keep them-  
 14 selves from doing what they know to be wrong.

15 There are other instances that we all know  
 16 of. The people in the acute depression who decide live  
 17 is so grim that they decide to kill not only their wives,  
 18 and their children, but themselves, life is too hard to  
 19 bear. The nuclear disaster is about to befall us, the  
 20 holocaust is already with us; as happens often in these  
 21 cases, the wife and children die and the husband survives,  
 22 he then is charged with a crime, and then the question  
 23 is, is he guilty of a crime, should he be acquitted by  
 24 reason of insanity.

25 Under McNaghten Rules, many persons of that

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1 sort were susceptible to jury verdicts that they were  
2 guilty rather than not guilty by reason of insanity.

3 So, there emerged another rule by way of supple-  
4 ment, which really asks the question having to do with  
5 the capacity of self-control. Now, there is no subject  
6 in the history of criminal law scholarship, and in the  
7 history of psychiatric flirtation with the criminal law  
8 that has occasioned more discussion, more controversy.

9 The literature proceeds ad nauseum, and that  
10 gave me pause when I embarked on my own book on the insanity  
11 defense, which culminated in 1967, I had hoped that the  
12 writing of that book would end all further writings on  
13 the insanity defense, but, it was not to be. The conclu-  
14 sion I came to in that book, and the conclusion I hold  
15 now, is that the words of the test really are less important,  
16 I introduce my remarks by saying that other problems --  
17 than other problems of detention, commitment, and release.

18 But, while we're on the insanity defense, if  
19 one is to have an insanity defense, and I think one should,  
20 because it is very fundamental to the concept of criminal  
21 law that we hold dear, I think the test that is most appro-  
22 priate, is the test that was recommended by the American  
23 Law Institute in its model penal code in the mid '59's;  
24 that test essentially combines the McNaghten and "irresisti-  
25 ble impulse" rules in modernized language. It says, simply,

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1 that a criminal -- a person charged with criminal conduct  
2 is not responsible if at the time of such conduct, as  
3 a result of mental disorder, or defect, -- mental disease  
4 or defect, he lacks substantial capacity to appreciate  
5 the criminality of his conduct, or to conform his conduct  
6 to the requirements of law.

7 Now, the American Law Institute rule has been  
8 adopted by, I believe, every Federal circuit now, perhaps  
9 but one, an increasing number of States have adopted  
10 it. It looked very much as if it was going to eliminate,  
11 at least, discussion about the words of the insanity rule,  
12 a broad concensus has been emerging that this formula  
13 states the test of insanity about as well as it sensibly  
14 should be stated.

15 It has been adopted through a process of common  
16 law development in most places, including in the Federal  
17 courts, and that, I think is a consummately satisfactory  
18 way for it to proceed, because it lends itself to evolution.

19 There are serious questions remaining to be  
20 resolved under the rule of the American Law Institute.  
21 There is, most importantly, the question of what qualifies  
22 for submission to the jury of an insanity defense; are  
23 there some conditions which are barred as a matter of law,  
24 for example, psychopathy, the A.L.I. rule says that a  
25 mental condition characterized only by repeated criminal

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1 behavior, does not qualify as a mental disease within  
2 its rule.

3 There is some cases that have emerged that  
4 asks the question whether narcotics addition, or alcoholic  
5 addiction qualifies. So far, the courts have said, no,  
6 they do not qualify for the insanity defense.

7 There are other questions; how much evidence  
8 is needed to raise the issue; so that instruction on insanity  
9 has to be given to the jury. Those are important technical  
10 questions for the administration of the insanity defense.

11 Should the jury be told about the consequences of the  
12 defense; about the detention and commitment processes  
13 which may follow, because if they are not told, then there  
14 is the risk that they will believe that it is a ticket  
15 to freedom when, indeed, as I've indicated, it is not.

16 Should the insanity defense be the exclusive  
17 vehicle for the sort of inquiry into defendants' mental  
18 condition which demonstrates that the defendant suffers  
19 from -- demonstrates, excuse me, from a condition which  
20 may indicate that he's not guilty, but that he may need  
21 detention. And, here, you have illustrations emerging  
22 all over the country of people, defense counsel being  
23 very acute, and very astute, seeing that there are ways  
24 to by-pass the insanity defense. The concept of automatism  
25 for example. The unconscious act; the involuntary act.

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1 In my own State of Connecticut recently, there's  
2 been a tremendous amount of publicity about somebody who  
3 has been inhabited by a demon, and his lawyer is claiming  
4 that he's not raising an insanity defense at all, it's  
5 an involuntary act, because when the demon occupied his  
6 mind, it was as if the demon was taking his hand and making  
7 him press the trigger.

8 Well, it's interesting. In the old days one  
9 use to think that the people possessed by demons might  
10 well have a mental illness. Well, this lawyer is asserting  
11 it as an involuntary act.

12 When that issue arises, should it be channeled  
13 into a process which will at one of the same time, give  
14 full consideration to this unusual assertion, but, bring  
15 with it the corollary of a hearing on detention if it  
16 turns out that he has a pension for being possessed by  
17 demons.

18 Now, the English dealt with that problem, and  
19 have tended to channel these kinds of defenses into the  
20 insanity defense, because they say, that though they many  
21 not be mental in their origin, they certainly may be physio-  
22 logical in their origin, the affect mental functioning,  
23 and that is the key to what an insanity defense is about.

24 Now, above all, I think there is an important  
25 need for a Federal commitment statute. Strange to say,

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1 the Federal Courts still--and the Federal system, does  
 2 not have a commitment statute for persons acquitted by  
 3 reasons of insanity, except in the District of Columbia,  
 4 which developed it on analogy from the States; and, so  
 5 when a person is acquitted by reason of insanity in the  
 6 Federal courts--Federal personnel have to, in effect,  
 7 find State procedures, and personnel through whom to accom-  
 8 plish the commitment.

9 When that Federal commitment statute is adopted,  
 10 as I hope it will be, the issues of the criteria for  
 11 a detention for examination; the issues of the criteria  
 12 for commitment; the issues of the criteria for release;  
 13 become critical.

14 And, here the issue of dangerousness figures  
 15 in. We use the word, dangerousness, very loosely. We  
 16 use commitment very loosely. The fact of the matter is,  
 17 that when the insanity defense channels persons to a com-  
 18 mitment process, it channels them to a process which has  
 19 relatively primitively notions of the procedures appropriate  
 20 to commitment, burdens of proof appropriate, and above  
 21 all, what kind of conduct, committed how often, warrants  
 22 us in determining that that individual will commit that  
 23 kind of conduct, or other conduct defined as dangerous  
 24 in the future.

25 The word, dangerous, is itself, simply very,

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1 very broad. And, the question of proof processes relevant  
 2 to the notion of dangerousness, is it a dangerous to person,  
 3 is it dangerous to property, what kind of dangerousness  
 4 will have to be faced, and I think those are the central  
 5 issues of this body of law.

6 Now, briefly, I'd like to say a few words about  
 7 the abolition controversy, because I know that that has  
 8 surfaced frequently in -- over the past dozen years or  
 9 so, and it's likely to surface again.

10 There is some who urge abolition of the insanity  
 11 defense. They say that it wastes a lot of time and effort.  
 12 I'm strongly opposed to abolition for the reasons that  
 13 I've mentioned. I think it's critically important to  
 14 retain the concept as a part of our guilty adjudicating  
 15 function.

16 But, when one talks abolition of the insanity  
 17 defense, the abolition proposals have a way of dividing  
 18 in to diametrically opposed directions. Those who urge  
 19 it because they think it will be more effective in prevent-  
 20 ing the dangerous offender from being at large, tend to  
 21 propose it by urging that evidence of mental disease be  
 22 barred entirely in criminal cases.

23 All of this mental condition evidence which  
 24 comes in vis-a-vis insanity defense, and enables in a  
 25 limited fashion, an individual to show what it truly was

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1 like, and it doesn't hold them up to an objective standard  
2 of criminal liability; they would bar admission of that  
3 evidence entirely.

4 I feel I must point out to you that if that  
5 construction of the insanity defense is adopted into law,  
6 it will loose on us constitutional problems of unimaginable  
7 complexity. For a task force that I'm sure will be very  
8 concerned with concentrating on getting the job done,  
9 on concentrating on the do-able, on not leading us into  
10 the scholastic or Jesuitical, or Tom Whitic exercises--  
11 chose your religious persuasion, and pick your -- which  
12 to follow, if you want to avoid spending the generation  
13 on issues of complex constitutional law, do not bar the  
14 insanity defense entirely.

15 The whole issue of Mens Rea in constitutional  
16 law--in Federal Constitutional Law has never fully been  
17 explored. The Supreme Court has meticulously avoided dealing,  
18 as a Constitutional matter, with the requirement of Mens  
19 Rea. They've said a lot of moving things, Mourisittle  
20 versus United States, is a leading case about how important  
21 the concept of a culpible state of mind is, but, that  
22 was statutory construction. Its played a tremendous part  
23 in statutory construction of Federal law, but, it didn't  
24 move over into the Constitutional arena.

25 In the strict liability cases where the Supreme

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1 Court has upheld certain kinds of regulatory offenses  
2 without showing a culpable state of mind. They always  
3 did so by referring to that as an exceptional category,  
4 not casually to be extended to classic crimes of the sort  
5 which you are most concerned with.

6 The only experience we have, historically,  
7 with trying to completely eliminate the mental condition  
8 from the guilt-adjudicating part of the trial was there  
9 were two statutes inacted, one in the State of Washington,  
10 and one in the State of Mississippi, in early 1900's,  
11 both declared unconstitutional by their State courts,  
12 because it was held that the concept of a culpable state  
13 of mind is so intrinsic to our criminal law, historically,  
14 and practically, that to abolish it entirely would be  
15 a gross error.

16 There would reemerge issues that seem to have  
17 been put aside in the well-known Supreme Court decision  
18 of Powell versus Texas, and I won't belabor that point,  
19 but, I simply call to your attention that there fields  
20 beyond fields that would be explored and that alert defense  
21 counsel would have a field day with that proposal.

22 There is another aspect of the abolition contro-  
23 versy, and that is a proposal that was made to an earlier  
24 Commission that reads this way: It is a defense that  
25 the Defendant as a result of mental disease or defect,

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1 lacked the state of mind required as an element of the  
2 offense charged.

3 Mental disease, or defect, does not otherwise  
4 constitute a defense.

5 Now, I submit to you that that proposal--let  
6 me say it again: The defendant as a result of mental  
7 disease, lacked the state of mind required as an element  
8 of the offense charged.

9 That proposal closely read, honestly interpret-  
10 ing its text, seems to me no more than a revival of the  
11 Durham Rule.

12 It would invite -- the Durham Rule was a rule  
13 adopted in the District of Columbia that set in motion  
14 its own generation of litigation, and then was gradually  
15 abandoned by the District of Columbia Circuit.

16 That Rule would invite the jury to decide whether  
17 the crime was the result of mental disease, just as the  
18 Durham Rule invited the jury to ask whether the crime  
19 was the product of mental disease.

20 Now, it would, in short, abolish the insanity  
21 defense by making evidence of mental disease so freely  
22 admissible that it would call into question some of these  
23 objective notions of criminal liability that I suggested  
24 were bed-rock for the way in which we administer our con-  
25 cept of Mens Rea, and further, it would lead to infinitely

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1 greater use of civil commitment with its undeveloped cri-  
2 teria, and its undeveloped procedures.

3 So, I urge that abolition be put aside; that  
4 you do not divert yourselves from your central task by  
5 allowing the words of the insanity test, or the abolition  
6 thereof, to become a central concern, that you allow the  
7 ALI Rule to continue its common law evolution; and its  
8 dominance, at the moment, in Federal law; that you adopt  
9 the Federal Commitment Statute, and address directly the  
10 issues of commitment and release, clarifying the defini-  
11 tion of dangerousness and procedures, appropriate thereto;  
12 and that most fundamentally, that you address issues of  
13 violent offenders directly by providing the resources  
14 to make prosecution more swift, convictions more accurately  
15 related to the crimes committed; and sentencing not longer,  
16 but more certain; and, finally, that you address a problem  
17 that's already begun to surface in your earlier discussion  
18 today, the problem of undue fragmentation of criminal  
19 justice agencies in the localities and in the States that  
20 to my mind really is an inevitable constraint on anything  
21 that you propose. That the States and the localities  
22 simply do not follow the Federal Department of Justice  
23 model, and that without some due, but, without that model  
24 what you have is systems which do not have the effective  
25 capacity to meet the crime problems, crisis, or otherwise

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1 that confront us in the communities.

2 Thank you.

3 EXECUTIVE DIRECTOR HARRIS: Thank you, Professor  
4 Goldstein.

5 Judge Bell?

6 (Questions of Professor Goldstein by Co-Chairman  
7 Bell.)

8 Q Professor Goldstein, at one time I looked this  
9 up, its been several years and I'm not certain it's the  
10 law now, but, just a few years ago you could not -- a  
11 jury was not allowed to find a Federal defendant not guilty  
12 by reason of insanity--there's no such plea in the Federal  
13 Rules; is that still the case?

14 A The new Federal Rules have the plea.

15 Q They do?

16 A Yes.

17 Q All right. Now, can a Federal Judge charge  
18 a jury with respect to the disposition of a defendant  
19 who is found not guilty by reason of insanity, and the  
20 reason I asked the question, there is no Federal mental  
21 institutions, so, I don't know what the Judge would say,  
22 if he did, you'd never have a defense of insanity sustained,  
23 because the Judge would have to say, if you find this  
24 man not guilty by reason of insanity, he'll go free?

25 A There's a conflict in the circuits at the

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1 moment as to -- and, in the States, as to whether the  
2 jury should be explicitly told as to the consequences  
3 of a finding of not guilty by reason of insanity; in the  
4 Federal system, of course, Saint Elizabeth's receives  
5 many offenders --

6 Q From outside the District?

7 A There can be, but, usually they are committed  
8 to the Attorney General for the purpose of the Attorney  
9 General making an effective disposition thereof, and that  
10 is part of the administrative problem that I think is  
11 very important to address.

12 Q All right. Now, in these cases, as in any  
13 other case of a retrial, the years go by and the evidence  
14 disappears, so it's not quite right to say that these  
15 people do not go free of the charge that when they recover  
16 their health they can be tried again, because in all the  
17 fugative cases, for example, at the Department, you're  
18 always faced with the problem, the witnesses are no longer  
19 available.

20 I think that's one thing that may tend to cause  
21 jurys to be careful about sustaining the defense of insanity,  
22 but, that's just a fact of life.

23 One other thing that you could help us on is  
24 what experience have you had, or writing there are on  
25 the problem which I understand from talking to prosecutors,

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1 exist between State mental institutions, and prosecutors,  
 2 for example, here in Georgia there have been cases where  
 3 people were found not guilty by reason of insanity, and  
 4 within a week they'd be released from the mental institu-  
 5 tion, and no one would know about it, the prosecutor wouldn't  
 6 know about it--the person would just be released and --  
 7 that's an extreme example, of course; but, is anything  
 8 written on this?

9 A. Yes. The problem of commitment and release  
 10 is, I think, that critical an issue, and there are enough  
 11 instances of the sort you've described to discredit, in  
 12 a sense, the whole issue, the preferred approach, I think,  
 13 and the statutes that have been proposed in recent years,  
 14 and have been adopted in a number of places, call for  
 15 a proceeding, after acquittal by reason of insanity, to  
 16 determine the present dangerousness of the individual,  
 17 and then a commitment until such time as the person is  
 18 no longer dangerous to himself, or seriously dangerous  
 19 to others.

20 Now, the question of who makes that decision,  
 21 which you've pinpointed, has, I think, in the preferred  
 22 approach, by and large, been taken away entirely from  
 23 the hospital authorities, because the analogy is suddenly  
 24 treating them as if they are just like civil committed  
 25 patients, is a mistake.

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1 The question, really -- the focus is shifted  
 2 to reporting back to the court when that person is safe  
 3 to be released, and then there are these issues of what  
 4 the burden of proof should be, and on whom, as to whether  
 5 the individual should be retained in custody.

6 So, there are a whole series of technical questions  
 7 at each stage. I think what has to be done for the post-  
 8 adjudication process--the post-guilt adjudication process,  
 9 is one has to parcel out these decisions that are critical  
 10 as to whether they should be retained, retained for how  
 11 long, released--released, retained in custody longer than  
 12 one would ordinarily have though. All of these are ques-  
 13 tions that have to be defined procedurally, and they have  
 14 to be marked out, and there are a number of model statutes  
 15 that have --

16 Q. That's the next question I had.

17 Are there model statutes that we could see?

18 A. Yes. There was a rather good statute that  
 19 was proposed in conjunction with some of the recent Federal  
 20 Criminal Code provisions, yes.

21 Q. Which State?

22 A. No, the Federal Criminal Code revisions, you  
 23 know, that's been a career --

24 Q. I've spent part of my time on it --

25 A. Well, tucked away in many of those volumes are

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1 some model statutes on these questions of commitment and  
2 release, some of which are very good.

3 CO-CHAIRMAN BELL: That's good. Thank you. That's  
4 it.

5 EXECUTIVE DIRECTOR HARRIS: Mr. Carrington?

6 (Questions of Mr. Rinkevich by Task Force Member  
7 Carrington.)

8 Q Just one question, Professor, perhaps one way  
9 to attack the problem of release is to put into the law  
10 a doctrine of accountability so that if, at lease, in  
11 case of gross negligence where reasonable minds would  
12 not differ, that this person was dangerous, for example,  
13 if the weight of the entire psychiatric testimony was  
14 that this was a dangerous individual, would harm again,  
15 and the person is nevertheless released, its happened  
16 in the Peyton Case that just came out of the Fifth Circuit,  
17 which found the Government would be liable to the husband  
18 of a woman murdered by the releasee.

19 With this kind of accountability transcending  
20 the soverign immunity doctrine, for case of gross negligence,  
21 and I emphasize, gross negligence, because we don't want  
22 to go about second guessing the good faith decisions of  
23 these people; do you think that is a useful addition to  
24 the entire spectrum of the insanity defense and commitment  
25 release?

1 A. Well, I think the question of who has the burden  
2 of proof as to whether an individual should be retained  
3 in custody, is one of the critical questions.

4 Should the burden of proof be on the Government  
5 to retain the individual in custody; should it be by a  
6 preponderance of the evidence--clear and convincing evi-  
7 dence, or, should it be on those who would seek freedom  
8 on the individual who is seeking freedom.

9 Now, there have been cases from the States  
10 which have upheld the Constitutionality of placing the  
11 burden on the person who is retained in custody to show  
12 that he is entitled to release, that he has to satisfy  
13 by a preponderance of the evidence, that he is safe to  
14 be at large.

15 There's even a case which has upheld the notion  
16 that he has to prove beyond a reasonable doubt that he's  
17 safe to be released.

18 So, this whole spectrum of burdens of proof,  
19 and allocation of responsibility on that issue, are cri-  
20 tically important to be faced in any legislation.

21 Q The accountability concept that I'm raising  
22 here, would deal primarily though, with those cases in  
23 which the guy wants to get out and the releasing authority  
24 wants to let him out, in other words, it would not be  
25 an adversary process, and that's where I really believe

1 perhaps an amendment to the Federal Tort Claims Act that  
 2 if a person is released under situation of gross negligence  
 3 and then commits a subsequent crime of violence violation,  
 4 that the Government should be liable, assuming all the  
 5 other elements of negligence can be met.

6 A. Yes.

7 MR. CARRINGTON: Thank you.

8 EXECUTIVE DIRECTOR HARRIS: Mr. Edwards?

9 MR. EDWARDS: No questions.

10 EXECUTIVE DIRECTOR HARRIS: Mr. Armstrong?

11 (Questions of Mr. Rinkevich by Task Force Member  
 12 Armstrong.)

13 Q. Professor, I'm a prosecutor and in the real  
 14 world, this is a very serious problem to prosecutors through-  
 15 out America.

16 I'd like to address a couple of questions to  
 17 you. First, I'd like to give you an example of what pro-  
 18 secutors deal with daily as a Catch-22 system.

19 We're on one hand, dealing with a system of  
 20 civil commitments that constrain law enforcement from  
 21 venturing in, because there is, in many States, a minimum  
 22 day, say, like a 90-day commitment order in a civil proceed-  
 23 ing where someone has been determined to be not competent  
 24 to stand trial. At the conclusion of that 90 days, that  
 25 person, essentially, unless there can be some rehabilitation

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1 treatment offered at the institution, is released, and  
 2 the release problems that we are all aware of and discussed  
 3 here.

4 We then have to bring back into the criminal  
 5 justice system that individual who will again be adjudged  
 6 non-competent to stand trial. This goes on for so long  
 7 a time that victim and witness of crime become frustrated  
 8 with the system and give up and our evidence becomes stale.

9 So, from an accountability standpoint, are  
 10 you familiar with what Michigan and Indiana have done  
 11 in the degrees of competency, and degrees of accountability,  
 12 and particularly the one in the new innovation of today  
 13 is that guilty by virtue of insanity, and in those two  
 14 States, I know it's a limited experience at this time,  
 15 but, can you comment on that concept of guilty by reason  
 16 of insanity, and that -- how that can be applicable to  
 17 this Task Force?

18 A. Well, I think the first question you raised--  
 19 or, the comment you made, had to do with incompetency  
 20 to stand trial, and really, persons who may never have  
 21 occasion to raise an insanity defense. These are persons  
 22 who are, were ill, are still ill, and they are committed  
 23 until such time as they are restored to competency.

24 There, I deliberately, after noting that, I  
 25 walked away from it, I did not deal with that problem;

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1 that's a major issue of its own, because the Supreme Court,  
 2 in one of its major forays into this area, has concluded  
 3 that a person who is incompetent to stand trial, should  
 4 not be retained in custody unless he can be demonstrated  
 5 either that he will shortly be restored to competency,  
 6 or he can be demonstrated to be dangerous.

7 And, there, that poses a genuine problem for  
 8 the prosecutor who has this crime he's alleged, but not  
 9 yet proved, and has moved -- is moved to another forum  
 10 to address the question of dangerousness but, not in the  
 11 conventional criminal mode, and that's part of the unoccu-  
 12 pied territory in the sense I was talking about, why I  
 13 think the main focus should be on that kind of issue.

14 How do you establish dangerousness. Most pro-  
 15 secutors really are not focused on the civil commitment  
 16 processes of proving dangerousness, if they can't move  
 17 it back into the criminal process then it tends to get  
 18 lost, and there are no ready resources available to move  
 19 it -- to proceed with this hearing demonstrating danger-  
 20 ousness, which is a future oriented concept.

21 The insanity defense is a retrospective concept--  
 22 it's trying to look back.

23 I think the law of dangerousness has to be  
 24 addressed, I think it's important. I think the Supreme  
 25 Court in the various decisions, both in Jackson versus

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1 Indiana, and O'Connor versus Donaldson, and others, really  
 2 has left a lot of open space that could be occupied by  
 3 you all in recommendations.

4 The guilty, but insane, or, not guilty by reason  
 5 of insanity, I'm not familiar with the experience you  
 6 mentioned in those two States, but that formulation has  
 7 flip-flopped in English law. The English' stated with  
 8 not guilty by reason of insanity, and then for a long  
 9 time they had, guilty but insane, and recently, they went  
 10 back to not guilty by reason of insanity; but, in each  
 11 instance, they have not altered the question of adjudicating  
 12 whether it's guilt at the time of the crime, or not guilty  
 13 by reason of insanity; so, the same kinds of issued recur.

14 Now, there is another major exercise in the  
 15 States with this issue, and that's in California early  
 16 one, they tried to separate out the act and the insanity  
 17 defense, and the hearing on the death penalty or not,  
 18 and it's out of that experience that came the confusion  
 19 that I referred to earlier that I've characterized as  
 20 the Wells-Gorshen Rule because what happened then was  
 21 when California tried to say, we're going to have an adjudi-  
 22 cation, only as to whether the act was committed. The  
 23 courts spent a dozen years reading back into the cause  
 24 of the act, a whole series of mental elements, really  
 25 having to do with whether or not it was a voluntary act

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1 or not; or, they read into the concept of malice of fore-  
 2 thought, they said, how can you have committed the act  
 3 of murder if you didn't have malice of forethought, and  
 4 suddenly the insanity defense was reintroduced in adjudicat-  
 5 ing the act. It's that history in California which I  
 6 prophesy, will recur again if one goes the abolition route  
 7 in Federal law.

8 MR. ARMSTRONG: I wish we had time to go into some  
 9 other areas and perhaps we will at lunch, but, I'll pass  
 10 at this time.

11 EXECUTIVE DIRECTOR HARRIS: Mr. Littlefield?

12 (Questions of Mr. Rinkevich by Task Force Member  
 13 Littlefield.)

14 MR. LITTLEFIELD: Thank you very much, Mr. Goldstein,  
 15 it was really very interesting. I wish the public could  
 16 realize what you and I realize that it's a man biting  
 17 his dog issue; and, it's really not too much of an issue  
 18 so far as criminal.

19 I'm from California, so, I'm quite familiar  
 20 with those cases. I might say that there--about the only  
 21 worse thing for a defense lawyer than an insanity defense  
 22 is the defense that your client is an orphan when he's  
 23 charged with murdering his parents.

24 Q With respect to the guilty but insane, so far  
 25 as the English are concerned, actually, their procedures

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1 and rules were just the same, they just changed the name  
 2 between not guilty, and guilty, but, insane?

3 A Yes. As far as the insanity defense is concerned.  
 4 The English have had an elaborate history though, of experi-  
 5 mentation with a whole series of mental hospital orders,  
 6 and that's a field of its own, but, I should tell you  
 7 that right now, the English are considering abandoning  
 8 the McNaghten Rule, and they want to -- they are consider-  
 9 ing adopting the ALI Rule. We had a visit, recently,  
 10 from the Assistant Undersecretary for the Home Office  
 11 on criminal justice who has been touring the United States,  
 12 exploring the issue of whether at long last they should  
 13 adopt the ALI Rule.

14 Q I might say that our experience in California,  
 15 we recently adopted the ALI Rule, and it really hasn't  
 16 changed things--it hasn't changed things, the juries really  
 17 decide in a serious case, was he crazy, or wasn't he,  
 18 and that's really the issue, not what they get instructed  
 19 by the court.

20 A Right.

21 MR. LITTLEFIELD: Thank you, Mr. Goldstein.

22 EXECUTIVE DIRECTOR HARRIS: Chief Hart?

23 (Questions of Mr. Rinkevich by Task Force Member  
 24 Hart.)

25 MR. HART: Thank you Doctor Goldstein, that was a

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1 great presentation. You certainly know your field and earned  
2 your reputation.

3 You and Judge Bell gave a great presentation;  
4 he sat on the bench and watched this problem, and also  
5 as Attorney General.

6 The question I had to ask of you, you've answered,  
7 that is of commitment, that's what law enforcement is  
8 concerned about, people getting off because of some insanity  
9 claim and walked out of the court and turn around and  
10 commit the same offense later, and the public is concerned  
11 about that.

12 Also, in the area of repeat offenders, and  
13 a large number of the repeat offenders have been identified  
14 as having some kind of mental problem.

15 Q I wonder if you have any answers as far as  
16 in that area?

17 A Well, I share some of your law enforcement  
18 experience, not only because I was a military policeman,  
19 but, because I served on the Connecticut Parole Board  
20 for a number of years, and so this whole question of the  
21 dangerous offender and we administered our recidivist  
22 statute like the one that was asked about earlier.

23 I think those problems are incredibly dif-  
24 ficult. I think they ought to be dealt with directly  
25 through the sentencing process. I don't think this is the

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1 vehicle for dealing with them.

2 The police again and again, as you know, are  
3 familiar with mentall ill offenders who are nuisance offen-  
4 ders, and they often decide to simply ignore their offenses,  
5 or they will move them to the emergency room of a hospital,  
6 or whatever.

7 When one is concerned with violent crime, how-  
8 ever, I think the dangerous offender is somebody that  
9 has to be dealt with through the procedures for commitment  
10 and release, and those need a lot of cleaning up, because  
11 they have not been addressed, they've been a hope in the  
12 past, and a part of the history of this field of insanity  
13 was the illusion that if you move people over into a mental  
14 hospital track that was going to fix them and make them  
15 better.

16 I think the experience of the past generation  
17 has been not quite, so, we still are left with the problem  
18 of what to do with them; perhaps we ought to understand  
19 them, we ought to forgive them, we ought to be compassionate,  
20 we ought to do the best we can, but, if they are dangerous,  
21 then we've got to face the question of procedures and  
22 criteria appropriate to that issue.

23 Q I agree with you. In the area of commitment,  
24 also, I believe, as you do, that the Federal Government  
25 tighten up the parameters of the dangerousness, and then

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1 people would be retained that should be retained.

2 Some of our mental institutions, it's almost  
3 criminal to send anyone there to be helped, they are that  
4 bad.

5 And, the other problem of lack of communication  
6 between the judge who sent the person to the institution,  
7 when they release, as Judge Bell pointed out, that even  
8 more criminal--dangerous people walk away and they don't  
9 notify anyone, and the first thing we know, a crime has  
10 been committed.

11 A. Well, there really should be a reporting back  
12 to the prosecutor, and the court, on the occasion of the  
13 release decision so that issue should be considered at  
14 that time.

15 You see, again, this is a continuing situation.  
16 We focus so much as the time of the crime because that's  
17 when all the excitement is running, that we forget what  
18 happens, the 12 years later when the issue is resurrected,  
19 and everybody has forgotten and nobody cares, it's at  
20 that point that the decision has to be focused on again,  
21 and some of the same processes that we lavish so much  
22 attention to, ought perhaps to be returned to.

23 Now, when I say that, any busy prosecutor has  
24 to say, oh, my God, do I have to take on that one too,  
25 I can't handle what I've got at the front end, can I handle

1 it at the back end. That's a resources problem, and of  
2 course, that is something that's very hard for an academic  
3 to tackle.

4 MR. HART: Thank you.

5 EXECUTIVE DIRECTOR HARRIS: Thank you, Professor  
6 Goldstein.

7 We'll take our luncheon recess now and reconvene  
8 at 1:45.

9 (Whereupon, at 12:35 p.m., the hearing was recessed  
10 to reconvene at 1:45 p.m.)

11 -o0o-

1 LUNCHEON SPEAKER

2 1:30 P.M.

3 DANIEL N. ROBINSON

4 GEORGETOWN UNIVERSITY

5 (Introduction by Executive Director Harris.)

6 Thank you very much, Mr. Harris, and I'd like to  
7 thank this distinguished Task Force for the privilege  
8 of addressing an important issue.

9 In 1915, in the case of Schmidt versus New  
10 York, the defendant appeared before Benjamin Cardozo,  
11 the judge of the State's Court of Appeals. Schmidt had  
12 performed an illegal abortion resulting in a young woman's  
13 death.

14 He knew that if caught he would certainly be  
15 convicted at least of manslaughter, and to protect himself  
16 against this, he proceeded to dismember the dead body  
17 thereby laying the foundation for an insanity plea.

18 Schmidt was caught and convicted, his insanity  
19 defense failing to persuade the lower court. On appeal,  
20 however, Schmidt promised to provide new evidence not  
21 available at the time of his first conviction; and the  
22 new evidence, as it happens, was that he had lied about  
23 his insanity.

24 This is the sort of case that rallies the citizenry  
25 around those now well-known arguments eager to be heard

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1 everytime the insanity defense attracts the public atten-  
2 tion. Some will stoutly contend that a sman such as Schmidt,  
3 who would go to such lengths, must have been insane in  
4 the first place, after all, violence in any form must  
5 originate in a diseased mind.

6 Still other, devoted to what I might call the  
7 mere craft of lawyering, will judge Schmidt's counsel  
8 as having taken the right steps, exhausting every possi-  
9 bility that might save his client from the penalties of  
10 law. They will not be quited by Cardozo's admonition  
11 in this case that a legal appeal is not a kind of lotter  
12 in which the defense picks one card after another until  
13 it stumbles on a winning ticket.

14 And, still others will find Schmidt is the  
15 archetype of all who would seek to avoid punishment for  
16 their crimes by hiding under those thick veils of immunity  
17 woven by hired experts.

18 ~~The~~ Under these circumstances, it is often useful  
19 to step back and view the issue historically, not because  
20 the past is likely to solve our problems for us, but because  
21 some issues are of so evolutionary in nature that they  
22 become clear only historically.

23 We discover forms of an insanity defense as  
24 early in judicial history as the archonates of ancient  
25 Greece and Draco was not Draconian, and in move developed

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1 form in the reasoned criminal statutes of ancient Rome.  
 2 There is, of course, no time here to review these older  
 3 standards in any detail, but, we can come close to an  
 4 understand of them by examining the phrase, Non compos  
 5 mentis--no power of mind.

6 The Romas, like the Athenians before them,  
 7 recognized an unbreakable bond of principle between inten-  
 8 tion and criminal responsibility. For a person to be  
 9 held accountable for his actions, the actions themselves  
 10 had to proceed from an act of will, a plan or goal, or  
 11 motive, or desire, authored by the actor himself.

12 Under the broad light of their overarching  
 13 Stoic philosophy, the Romas saw the events of the world  
 14 as governed by ubiquitous causal principles. The entire  
 15 natural world was governed by the laws of nature which  
 16 expressed themselves in rational beings in the form of  
 17 moral reasoning.

18 As nature has its obvious designs, so too do  
 19 men have theirs, and we see this in the connection between  
 20 their thoughts and their actions. It is only to the extent  
 21 that they can thus reason that they can be held accountable  
 22 for what they do. Accordingly, where there is no mental  
 23 power, there can be no intention, and where there is no  
 24 intention, there can be no responsibility.

25 A man cannot be said to be guilty for obeying

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1 the laws of gravity, for these are laws over which he  
 2 has no control. In the face of such external laws, man  
 3 is merely a material entity, like a stone, and cannot  
 4 be blameworthy. The severely enfeebled, the chronically  
 5 diseased savage, the stuporously intoxicated, are all  
 6 classes of beings judged to be less than human; beings  
 7 so devoid of mental power as to be incapable of designs  
 8 of any kind.

9 Let us now leap the centuries, and arrive in  
 10 the Elizabethan court of Sir Edward Coke, the Queen's  
 11 Attorney General.

12 Writing on the insanity defense, Coke reminded  
 13 the judges of lower courts of the enduring Roman standard:  
 14 The successful defense must establish that the accused  
 15 was non compos mentis, furiosus, fanaticus. In these  
 16 three Latin terms, Coke found the only legitimate grounds  
 17 for exoneration.

18 The terms cover what today, we would describe  
 19 either as hopelessly feeble-minded, or as uncontrollably  
 20 and irreversibly savage conduct. This, a quarter of a  
 21 century later, in the trial of Edward Arnold--this is  
 22 in 1723, Arnold, a commoner, who had wounded one Lord  
 23 Onslow, we find Justice Tracy instructing the jury in  
 24 the law of insanity.

25 I quote now from Justice Tracy:

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1 "Punishment is intended for example  
2 and to deter other persons from wicked  
3 designs; but, the punishment of a mad-  
4 man, a person that hath no design, can  
5 have no example. This is on the one  
6 side. On the other side, we must be  
7 very cautious; it is not every idle  
8 humor of a man, that will exempt him  
9 from justice. It must be a man that  
10 is totally deprived of his understand-  
11 ing and memory, and that doth not know  
12 what he is doing, no more than an  
13 infant, than a brute, or a wild beast."

14 Here we have the wild beast standard, a standard  
15 fully indebted to the Roman concepts of non compos mentis,  
16 furiosus, fanaticus. For all practical purposes then,  
17 the insanity defense could succeed in Tracy's court only  
18 when the defendant was shown to be something less than  
19 a human being. And, thus for all judicial purposes, Arnold's  
20 defense collapsed the day he purchased the gunpowder.

21 The most significant departure from this 2,000  
22 year old reckoning, occurred in the trial of James Hadfield  
23 in 1800. Hadfield was charged with high treason for attempt-  
24 int to assassinate George the III.

25 It should be recalled that by 1800, such attempts

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1 had nearly attained the status of a national sport, and  
2 that George the III's own bouts with insanity had fostered  
3 a certain liberalization in public attitudes toward mental  
4 illness.

5 The therapy for George the III, included the  
6 delivery of a stream of invectives, lashings, and certain  
7 broths.

8 Poor Hadfield, an aimless and impressionable  
9 fellow, had come under the influence of one Bannister  
10 Truelock, a chap who subsequently lived out his years  
11 in bedlam.

12 Truelock cornered Hadfield and told him of  
13 the imminent arrival in England of Jesus. He reported  
14 how disappointed Jesus was the the state of the realm,  
15 and how Christian conscience obliged very true believe  
16 to take steps to rid the realm of this depraved monarch.  
17 Awe-struck, Hadfield made of the the theater at Drury  
18 Lane and shot wildly, and widely, as the King made his  
19 appearance.

20 Hadfield's attorney was England's finest trial  
21 lawyer, the future Lord Erskine, wo would become Lord  
22 Chancellor.

23 It was in this trial that the most sustained  
24 attack was mounted against the traditional, wild beast,  
25 standard. Erskine argued that by such a standard there

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1 in fact, could be no insanity defense, since such a being  
2 would be unable to perform any act at all. What really  
3 matters, said Erskine, was the presence of a delusion  
4 and in a term that comes rolling down the ages, and of  
5 "motives irresistible".

6 Suppose a man believes his neighbor to be a  
7 potters vessel, and thus deluded, kills him. Here we  
8 have an instance of an act whose aim is not murder, for  
9 the actor does not think of the victim as a person. On  
10 Erskine's account, Hadfield suffered from just such a  
11 delusion, believing that the king's death was in keeping  
12 with the wishes of Jesus Christ.

13 Erskine also noted the head wounds that Hadfield  
14 had sustained during military service and presented medical  
15 opinions to the effect that such wounds were a sign o  
16 sever brain damage. Justice Kenyon thereupon halted the  
17 proceedings and Hadfield was acquitted.

18 Forty-three years later, in 1943, the famous  
19 M'Naghten case rekindled the public's seasonal attraction  
20 to this issue. Daniel M'Naghten had shot and killed Edward  
21 Drummond, secretary to the prime minister, Sir Robert  
22 Peel. It was Peel, apparently, whom M'Naghten had intended  
23 to murder, believing that the prime minister had spread  
24 lies about him, and was otherwise interferring with his  
25 life.

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1 When M'Naughten was acquitted on grounds of  
2 insanity, Queen Victoria herself, publicized her disapproval.  
3 The House of Lords summoned the justices to explain the  
4 law in such cases.

5 Only two of the 21 justices agreed to testify  
6 before the House of Lords, and from their answers to a  
7 set of five questions, the now famous M'Naghten Rule was  
8 fashioned.

9 So much has been made of this rule that I hesitate  
10 to note how little in it was at all new, and how little  
11 that was new, was at all clear.

12 Not only were the two justices somewhat at  
13 odds with each other, but, both of them offered interpreta-  
14 tions that were rather at odds with the decision itself.

15 What the ruling did clarify, however, was the  
16 connection between delusion and ultimate criminal liability.  
17 A man deluded into believing that a neighbor was going  
18 to kill him would, on the proof of this delusion, be relieved  
19 of the burden of his crime should he kill his neighbor;  
20 but a man deluded into the belief that his neighbor was  
21 merely angry with him, or was stealing his property, would  
22 not be thus exonerated in the event that he killed the  
23 neighbor.

24 In other words, the defense of insanity could  
25 not protect actions beyond those that would be taken as

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1 legitimate were the contents of the delusion true. What  
 2 the justices also indicated was that the relationship  
 3 between a specific delusion and the actions flowing from  
 4 it was, "not a matter of law, but of physiology". In  
 5 these few words, offered more as an aside than an argument,  
 6 the M'Naghten court virtually installed medical experts  
 7 as de facto arbiters in such cases.

8 Well, while all this was going on, the American  
 9 courts were quite active in their own right. Justice  
 10 Shaw in Massachusetts was, one might say, the David Baselon  
 11 of the 19th century. In his instructions to the jury  
 12 in the trial of Abner Rogers, 1944, he brushed aside all  
 13 the traditional distinctions, and simply announced that  
 14 the presence of mental disease was sufficient to establish  
 15 a successful defense.

16 Actually, there was a certain consistency in  
 17 Shaw's position, generally lacking in earlier 19th century  
 18 cases, including M'Naghten. If, for example, the jury  
 19 is satisfied that a defendant labors under morbin delusions,  
 20 or is overcome by motives irresistible, why should they  
 21 expect the defendant somehow to adjust his behavior to  
 22 the boundaries of legitimate conduct. To say that homicide  
 23 is permissible in cases of self-defense, but not in cases  
 24 of fraud, is to speak in the language of reason. It is  
 25 to speak a language simply inapplicable to cases of mental

1 disease. And so, by 1891, in *Bolling v. State*, we find  
 2 a conviction being overturned because in the words of  
 3 the justices:

4 That ruling....may have led the jury  
 5 to believe that if the defendant was  
 6 sane generally, he could be held respon-  
 7 sible, although ewas absolutely insane  
 8 on that subject."

9 And, in 1915, in that same *Schmidt v. New York* cited earlier,  
 10 we hear Cardozo saying that:

11 "...there are times and circumstances  
 12 in which the word, wrong, as used in  
 13 the statutory test of responsibility  
 14 ought not to be limited to legal wrong."

15 What was becoming clear to a number of influential  
 16 jurists was that any clear sign of mental disease, a delu-  
 17 sion, an irresistible impulse, and odd moral code, words  
 18 from a higher authority, was a firm ground for exculpation.  
 19 The wild beast had given place to the Psycho-social point  
 20 of view, that utterly modern invention born of misplaced  
 21 sentimentality, and a provably false psychological deter-  
 22 minism.

23 What never seems to have troubled the courts,  
 24 even as they have moved away from principle and toward  
 25 a kind of ideology, is the nature and the quality of evidence

1 that might be adduced in support of claimed insanity.  
 2 The earliest experts were 19th century physicians with  
 3 a more compelling theory than the one that prevailed through-  
 4 out the 18th, that being the, lunar, theory which connected  
 5 violent behavior to the phases of the moon.

6 But, in abandoning the moon as a causal agent,  
 7 the 19th century fixed on something no more substantial,  
 8 the brain. There was by now, ample clinical and experi-  
 9 mental evidence to suggest a functional relationship between  
 10 certain perceptual, motor, and intellectual processes  
 11 on the one hand, and brain pathology on the other.

12 But, all this evidence could possibly show  
 13 is that certain outcomes could be produced by experimental  
 14 surgery on animals, and by tumors of various kinds in  
 15 certain human patients.

16 There was then, and there is now, no scientific  
 17 basis for the claim that criminality, or insanity invari-  
 18 ably results from neurological disease. The implicit  
 19 assumption seems to have been that if the mind is but  
 20 a secretion of the brain, as Tendall insisted in the 19th  
 21 century, and if the mind is diseased, then there must  
 22 be a diseased brain.

23 Of course, the question of the relationship  
 24 between brain processes and mental events, is one of the  
 25 most vexed in science, and in that speciality known as

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1 philosophy of mind. I will not settle it here and now.  
 2 All I would point out is that we are still at the level  
 3 of theory in this matter, and that in any case, psychiatrists  
 4 scarcely qualify as experts even at the theoretical level,  
 5 let alone the clinical one. Thus, if there is to be expert  
 6 testimony in this area, it can only come from qualified  
 7 neurologists, neurosurgeons, neurochemists, neuropsycho-  
 8 logists, from those uniquely qualified to address the  
 9 functional relationship between brain physiology and psy-  
 10 chological processes.

11 Note, however, the rather accidental manner  
 12 in which psychiatrists first entered the courtroom. The  
 13 door was initially opened to doctors, with what was  
 14 erroneously believe to be a knowledge of the neurological  
 15 causes of mental illness. But, with the Freudian revolu-  
 16 tion, there came a general abandonment of explanation  
 17 at the neurological level, and the installation of explana-  
 18 tion at the psychological level. Of course, neither explana-  
 19 tion ever succeeded, or ever will succeed, but, only the  
 20 scientists gracefully bowed out.

21 The psychiatrists remained, filling the judicial  
 22 air with winds of hypothesis and learned mumbling. Disagree-  
 23 ments between the experts were dismissed simply as signs  
 24 of a professional difference of opinion, not unlike what  
 25 we might find between two surgeons debating the merits

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1 of an operation.

2 What judges failed to recognize is that not  
3 every difference of opinion between professionals is a  
4 professional difference. Quite simply, where there is  
5 no settled body of knowledge, no accepted methods of investi-  
6 gation, no established validity and reliability of relevant  
7 measures, no predictive efficiency, no widely adopted  
8 and testible theoretical foundation, there can be no exper-  
9 tise. And, where there is no expertise, there are no  
10 experts, and therefore no expert testimony.

11 What then, do we do? We all agree, after all,  
12 that some defendants cannot in justice, be held respon-  
13 sible for their actions. We surely seek to spare the  
14 feeble-minded the burdens of criminal prosecution, and  
15 we are all aware of some unfortunate persons whose mental  
16 states simply remove them from criminal liability.

17 But in such cases we need look for assistance  
18 no further than the ancient standard on on compos mentis.  
19 The ordinary jury, given access to the defendant in his  
20 present state, and to relevant biographical information,  
21 can decide if this person, doth not know what he is doing,  
22 no more than an infant, than a brute, or a wild beast.

23 In the clear cases, the only expertise is what  
24 men and women of normal understanding bring to the jury  
25 box. They can be no worse in their judgments than the

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1 psychiatrists, psychologists, and psychiatric social workers  
2 so completely gulled by Professor David Rosenhan and his  
3 Stanford graduate students who go themselves placed in  
4 mental hospitals, and easily go themselves classified  
5 as schizophrenics, all the while behaving quite normally.  
6 Their major difficulty was in getting out.

7 The point here is that one need not abandon  
8 the insanity defense in order to abandon the experts.  
9 The defense itself, has a long, useful, and morally worthy  
10 history; a history now corrupted and defamed by the quasi-  
11 professional antics of bogus experts and their admirers  
12 on the bench.

13 I need not defend the proposition that civilization  
14 and justice are the brightest and the twin stars in reason's  
15 firmament. The civilized state is one that has vored  
16 a covenant with its people, a promise to secure their  
17 lives and property, and to defend their freedoms for so  
18 long as they conform their behavior to the dictates of  
19 law.

20 The state that does not prosecute offenders,  
21 is a state that has broken a promise, violaged a covenant.  
22 Implicit in the promise is the state's commitment to justice,  
23 to a disinterested weighing of facts for the purpose of  
24 discovering the truth.

25 Note that the state does not threaten, but

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1 promises. It promises fairness and impartiality. It  
 2 promises, in a word, to do its duty. Whatever imperils  
 3 this most fundamental mission of every just state is,  
 4 in fact, what threatens the polity. It threatens to weaken  
 5 the only bond capable of preserving those necessary loyal-  
 6 ties by which mere herds might rise to the level of a  
 7 civilization.

8 Our judiciary has become psychologized by those  
 9 ruling fictions that no pass for science or, as the say,  
 10 behavioral science, or even more oxi-moronically, social  
 11 science.

12 There is, alas, no such science, scarcely,  
 13 the dream of one, but only a congeries of hal-truth, opinion,  
 14 arrant speculation, conceptual incoherence. The judiciary's  
 15 responsibility is to the law; and the only questions it  
 16 must considere are these:

17 Is the defendant, in fact, the person who com-  
 18 mitted the offense with which he has been charged. And,  
 19 in the circumstance, was it possible for him to have done  
 20 otherwise.

21 This is the voice of justice which must always  
 22 be heard above the din of special pleading, even when  
 23 the special plea is for undeserved and mislabeled mercy.

24 There will, we must expect, always be hard  
 25 cases, and even the easier ones cannot be settled by a

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1 formula. When Justice Cardozo reasoned that the right/  
 2 wrong test could not be taken merely as a test of the defen-  
 3 dant's knowledge of legal wrongs, he was alerting us to  
 4 a difficult case.

5 What is to be done, for example, with a Hadfield  
 6 who thinks he is fulfilling nothing less than the will  
 7 of God; or with a Sirhan Sirhan, so convinced of America's  
 8 immorality, as to murder one who might intensify America's  
 9 support of Sirhan's sworn enemy; or with the Maryland  
 10 teenager, already in possession of a criminal record,  
 11 who shoots one police officer, allegedly in self-defense,  
 12 and then another, because of a temporary insanity trig-  
 13 gered by the first homicide.

14 I will not, of course, recommend what the law  
 15 should be in each and every case. Let me not only that  
 16 what we can provide ourselves with is no more than human  
 17 justice.

18 The man who breaks the law out of religious  
 19 conviction may hope to be treated with far greater mercy  
 20 by his God than he has any right to expect from ordinary  
 21 mortals.

22 The political zealot, the martyr, and the saint,  
 23 are all deeply moved by motives that are intense and often  
 24 lofty. But, the law has neither the means, nor the duty  
 25 to weigh the moral or spiritual worth of any and every

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1 motive that impels human action. It can only weigh the  
2 action itself, and determine whether it proceeded from  
3 intention.

4           Regarding the latter, the law is richly informed  
5 by human history, and thus unsurprised to learn of the  
6 variety of reasons giving rise to illegal conduct. These  
7 include but surely are not limited to greed, lust, anger,  
8 vengefulness, riciousness, intolerance, irreverence,  
9 contempt, melancholy, self-hate, deep depression, imprudence,  
10 and blind ambition.

11           Not only is the law aware of these motives,  
12 but, was invented primarily to restrain those impelled  
13 by them.

14           It is an uncontested fact of human and animal  
15 nature that many otherwise irresistible impulses become  
16 resistible through the promise of punishment. It is nearly  
17 as uncontested that generations raised under the tutelage  
18 of law are more vigilant lest their mere hopes and dreams  
19 degenerate into delusions.

20           We know all too well that unhappy childhoods,  
21 or long periods of neglect and abuse, conditions of poverty,  
22 hateful associates, the seductions of affluence, in short,  
23 the temptations and impositions of life, can give rise  
24 to bitter enmity and destructive behavior.

25           This was all known before psychiatry and

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1 psychology. It was surely known by those who framed and  
2 refined the laws of Western civilization, but who also  
3 knew that a merely biographical account of the sources  
4 of human inclinations did not constitute grounds for for-  
5 giveness. It still doesn't.

6           Note in this connection that no relief would  
7 be forthcoming even if a radically deterministic psychology  
8 were true. All that such a psychology could provide would  
9 be a causal account of the environmental or biological  
10 events inevitably and inexorably resulting in the act  
11 under judicial scrutiny.

12           But, this account, in itself, could not dis-  
13 criminate between those criminal actions qualifying as  
14 insane, and those that are simply criminal. The point  
15 here is that even if the devotee of determinism cannot  
16 offer us anything of jural consequence.

17           According to determinisms maxims, the murderer,  
18 the robber, the rapist, the extortionist, the members  
19 of the jury itself, are all acting out the prescriptions  
20 of an utterly determinate chain of events, no one of them  
21 more or less morally responsible than the rest.

22           Thus, to embrace this theory is not to discover  
23 a new justification for the insanity defense, but to jettison  
24 the very idea of adjudication. Ineed, the same theory  
25 might sanctionn a reversion to precivilized modes of

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1 redress where each aggrieved party avenges himself on  
 2 anyone he strongly suspects of having wronged him. Such  
 3 revenge, too, is entirely determined according to this  
 4 theory, and the victim of the vendetta, should he survive  
 5 to press charges, would discover that his assailant was  
 6 not responsible, since on one is responsible for anything.

7 Now, let us think of this brand of determinism,  
 8 which also has ancient roots, as one of those interesting  
 9 hypotheses we require sophomores to wrestle with in order  
 10 to enhance the agility of their faculties. But the time  
 11 comes when a person closes his books, as it were, and  
 12 takes up his station in the world of directly consequen-  
 13 tial actions. To the extent that this world is a civilized  
 14 one, it will take for granted, unless there is weighty  
 15 evidence to the contrary, that a person who fires six  
 16 shots and strikes four warm bodies has a certain personal  
 17 investment in the outcome; that is, that the results are  
 18 not accidental, or the consequence of a muscular palsy,  
 19 or tremor.

20 Indeed, this same world, in noting such behavior,  
 21 will also take a deterministic position. It will declare  
 22 that the assailant's behavior was determined by his motives,  
 23 and that these motives were determined by an act of his  
 24 will. And, this same world again, will be determined  
 25 to react to this behavior in such a way as to eliminate

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1 the probability of its recurrence.

2 But, let us suppose that the assailant, at  
 3 trial, unfolds a lamentable sheath of life-long frustrations,  
 4 not to mention an unhealthy attachment to bad literature,  
 5 bad company, and bad manners. Are the engines of justice  
 6 thereupon choked off? Are we to understand that a back-  
 7 ground of this type so reliably conduces to murderous  
 8 felonies that what is at work here is nothing less than  
 9 a law of nature, a law as sure in its operations as that  
 10 of gravity.

11 We might press on in our biographical efforts  
 12 and discover that the assailant had siblings whose achieve-  
 13 ments earned a greater share of parental esteem than he  
 14 enjoyed, but his assault on the group was a form of sub-  
 15 stitute gratification of an edible sort where each of  
 16 his victims stood in place of a member of his own family;  
 17 that he thought his girlfriend would no look up to him,  
 18 that he had seen the entire episode enacted on television.  
 19 This is all very interesting.

20 But, now, another case is brought before justice.  
 21 In this one, too, four citizens have been shot by a single  
 22 assailant whose life-history now comes under intense psycho-  
 23 logical examination.

24 Here, however, the story turns out to be shorter.  
 25 He was simply paid a large sum of money to kill four persons.

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1 He is, as the expression goes, a hired gun. Yet, he too,  
2 has needs; needs for all the things money will bring,  
3 including the respect and attention of an otherwise indif-  
4 ferent world.

5 I submit that from a jural point of view these,  
6 and every other set of biographical or psychological  
7 details can and should be entirely ignored. We can grant  
8 at the outset that criminal acts are engaged by a variety  
9 of motives, and that none of these motives is justifica-  
10 tory, for if it were the act, by definition, would not  
11 be criminal.

12 Statutes are written, after all, to cover the  
13 sorts of things persons might be tempted to do under the  
14 press of strong motives. We do not legislate against  
15 palsied, or tremorous behavior, or against the damage  
16 one does in accidentally falling from, or being pushed  
17 out a window.

18 So, in these few minutes I have been able to  
19 do no more than touch one part of this extremely portentous  
20 matter, a matter that remains portentous no matter how  
21 infrequently the defense is invoked. What is at issue  
22 here is a matter of judicial principle, and the fact that  
23 the defense is not invoked often is irrelevant to the  
24 question of principle.

25 We should not forget in this context the effect

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1 this psycho-social thinking, and that is the issue, this  
2 psycho-social thinking has had in tests of testamentary  
3 capacity, an effect that has already begun to erode the  
4 very concepts of property and ownership; and, nor can  
5 we remain indifferent to the large number of citizens  
6 whose periods of confinement for allegedly therapeutic  
7 purposes, far exceeds the terms of imprisonment they would  
8 serve were their cases brought under criminal statute;  
9 or the equally numerous patients who are discharged from  
10 the hospital in far less time than those same statutes  
11 would require.

12 And, in yet other domains, those falling beyond  
13 the realm of statute, it is this same psycho-social pers-  
14 pective that warps judicial sensibilities, and permits  
15 principle to take a back seat to mere social policy.

16 I need only mention the odd and reckless deci-  
17 sions that have been made in causes involving defenseless  
18 being, whether comatose such as Karen Quinlan, or simply  
19 without political influence, such as fetuses.

20 The Supreme Court of New Jersey ruled in favor  
21 of the Quinlan family because their daughter had no chance  
22 of returning to what that court chose to call, cognitive  
23 and sapient life.

24 These, you will notice, are psycho-social,  
25 not medical, or physiological attributes. And, how might

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1 that same court rule, should a Mongoloid child require  
 2 gastric feeding, or a respirator? Then, of course, in  
 3 Roe v. Wade, and Doe v. Bolton, the justices of the Supreme  
 4 Court found themselves in sympathy with unnamed women  
 5 whose pregnancies, if brought to term, might lead to  
 6 an interruption of careers, the cessation of night school,  
 7 and the social embarrassment of illegitimate motherhood.  
 8 This too, whatever your position on abortion is the argot  
 9 of the psycho-social non-sciences.

10 In these and unrelated issues, one might fear  
 11 as much for the English language as for the fate of defense-  
 12 less parties. And, let us not forget that the debasement  
 13 of language is necessarily the debasement of thought,  
 14 the first stage in the debasement of principle.

15 Those who would concern themselves with crime  
 16 and violence in a society must finally come to grips with  
 17 the manner in which the institutions of justice--the institutions  
 18 of civility, are discharging their fundamental responsi-  
 19 bility, which is the instruction of the human race.

20 The law does not only protect, it teaches,  
 21 and it does it through its words, its principles, its  
 22 arguments, its steady progress under what is finally a  
 23 moral light.

24 Thank you.

25 EXECUTIVE DIRECTOR HARRIS: Thank you very much.

1 We have just a few minutes for questions if  
 2 there are any, we're running a little late, but we'll  
 3 entertain some questions?

4 (Negative response.)

5 Thank you, Doctor Robinson. It's about eight  
 6 minutes after. We will reconvene at a quarter after.

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A F T E R N O O N S E S S I O N

1:30 P.M.

EXECUTIVE DIRECTOR HARRIS: We will come to order now.

Our Chairman, Judge Bell, was called back to his office for a few minutes and asked that we proceed in his absence, which we will do.

Our next witness is Professor David Robinson, Junior, Professor of Law at George Washington University.

Professor Robinson?

TESTIMONY BY DAVID ROBINSON

PROFESSOR OF LAW, GEORGE WASHINGTON UNIVERSITY

PROFESSOR ROBINSON: Thank you.

I thought I would attempt to outline the effort of -- to enact new legislation in the Federal system dealing with the insanity defense, because it's a process with which I am quite familiar, having worked on it, more-or-less for perhaps 15 years.

To reconsider the insanity defense is to continue a process which has been going on for sometime.

With your indulgence, I would like to outline its course in Federal Criminal Law.

In March, 1966, President Johnson sent Congress a message entitled, A National Strategy Against Crime, proposing among other things, a Commission to comprehensively

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review the Federal Criminal Law, and recommend revision of them by 1968.

An Administration bill was introduced a few days later in the House of Representatives, and in the Senate. Subsequent to hearings on this Bill, Representative Richard Poff introduced a broader proposal calling for reform of Federal Criminal Law, not simply a restatement, or minor revision in the Federal Criminal Statutes, increasing the life of the Commission to three years, and insuring membership in the Commission by Senators, Congressmen, and Judges, and finally creating an additional advisory committee.

The national commission on reform of Federal Criminal Laws was headed by former Governor Brown of California--that was Brown, one, not the present Brown, two.

It included a number of distinguished people such as Senator McCellan, Senator Irvin, Representative Castenmeyer, Judge Higginbottom, and many, many others.

The advisory committee was headed by former Supreme Court Justice Tom Clark, and included persons of various backgrounds such as Patricia Harris, Elliot Richardson, Milton Rector, James Forenberg, and Marvin Wolfgang, and a permanent staff headed by Professor Lewis B. Schwartz of the Pennsylvania Law School, who asked that I serve as a consultant on the insanity defense.

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1 Of course a model insanity defense statute  
2 had already been drafted as a result of the work of the  
3 American Law Institute's model penal code. The modernized  
4 version of the old right/wrong test, added to the old  
5 irresistible impulse test.

6 This proposal was a central edifice of the  
7 model penal code effort, and it had already been accepted  
8 by most of the United States' Courts of Appeals, albeit,  
9 sometimes without careful thought.

10 At the same time, it seemed that much of the  
11 enormous judicial and professional literature on this  
12 subject was misconceived. Persistently, there was a con-  
13 fusion of a legal standard of criminal responsibility,  
14 and a medical nosology adopted for different purposes;  
15 nevertheless, it was apparent that a tide was running  
16 strongly against the old rules, and that any effort to  
17 reembrace them would be likely regarded as quacksodid,  
18 prescientific, and in general, unacceptable.

19 The American Law Institute Standard, while  
20 phrased in non-Victorian language centering on the accused  
21 capacity to conform to the legal prescriptions also pre-  
22 sented difficulties. Most fundamentally, the key to the  
23 American Law Institute's standards were undefined and  
24 without operational meaning.

25 There was no definition of what was meant by

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1 mental disease, or mental defect, or a capacity to conform  
2 to the requirements of law. No test was available to  
3 distinguish between those who could not, and those who  
4 would not conform to legal requirements.

5 The result was an invitation to semantic jostling,  
6 metaphysical speculation, and intuitive moral judgment  
7 masked as factual determination.

8 Two cases from the Federal Courts illustrate  
9 the problem of vagueness which I am attempting to address.  
10 The first might be called the case of the, black rage,  
11 in a case called, United States against Banks, the defen-  
12 dant robbed a Federally insured bank with a handgun; after  
13 disarming the guard, Banks proceeded to the vault teller  
14 and obtained \$15,500, he was subsequently apprehended;  
15 at his trial he claimed insanity under the model penal  
16 code standard which had previously been adopted by the  
17 Court of Appeals for the Ninth Circuit.

18 The defense presented testimony from a psychiatrist  
19 that Banks suffered -- "a severe situational transcient  
20 disturbance", attributable to his having been raised in  
21 a deprived negro neighborhood in racist America, a highly  
22 criminalgenic environment; consequently, he had reduced  
23 power to conform his behavior to the requirement of law  
24 during the bank episode.

25 The psychiatrist classified the defendant's:

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1 disturbance as a "black rage syndrome". The defendant  
2 was acquitted and released.

3 Finally, consider what I call the case of the  
4 American dream. The accused was charged with embezzlement  
5 from a Federally insured bank of which he was a loan officer.  
6 Defendant's background was one of ambition and hard work,  
7 despite his middle-class income, he sought to share the  
8 American dream of an upper-class level of expenditure.  
9 In support of his insanity defense, his psychiatrist testi-  
10 fied that his drive for affluence and limited resources  
11 created tension which constituted a mental defect result-  
12 ing in his loss of capacity to keep his hand from the  
13 till; this time, however, the jury convicted.

14 It was clear that the potential of the control  
15 test for expansion so sweeping as to vishiate the rule  
16 of law was only beginning to be explored by resourceful  
17 defense counsel and psychiatrists.

18 Other problems presented themselves as well,  
19 especially illustrated by the experience of the District  
20 of Columbia -- the experience in the District of Columbia  
21 while the insanity defense was largely played-out in the  
22 Federal Courts before the Superior Court was given juris-  
23 diction over most local felonies was of an enormous flood-  
24 ing of the criminal courts with psychiatrists.

25 The supply of psychiatrists and psychologists,

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1 already critically short, was being called upon to devote  
2 itself to the battle of the experts in court, rather than  
3 to use his skill in a more productive fashion.

4 Furthermore, a fair litigation of the insanity  
5 defense required evaluation of defendants by experts who  
6 might be asked to testify on behalf of the prosecution  
7 as well as by experts employed for the defense. This  
8 presented potentially severe problems under the privilege  
9 against self-incrimination, the dimensions of which are  
10 still being explored by the United States Supreme Court,  
11 and I noticed that just this week, the Supreme Court has  
12 sent out signals in a case which I have not yet obtained  
13 the text of, which should be troubling for advocates of  
14 a broad insanity defense, because it may indicate that  
15 it will be difficult to compel a defendant to submit  
16 to bilateral expert evaluation.

17 More fundamentally, it appeared that there  
18 was no ethically supportable basis in distinguishing the  
19 mentally ill from other behavioral deviants, such as the  
20 stupid, the intoxicated, or the environmentally deprived.  
21 Furthermore, neither the American Law Institute Standard,  
22 nor any other existing test was aimed at the important  
23 functional issues of what should be done with mentally  
24 abnormal deviants, whether they should be confined, and  
25 if so, to what kind of facility, under what conditions,

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1 and with what sort of temperal limits.

2           It should be observed that outside the Federal  
3 system, a finding of not guilty by reason of insanity  
4 commonly triggers a commitment of indefinite duration  
5 to a mental health facility. This presents issues which  
6 are troubling not only to those of libertarianeth, and  
7 my point here is that at lease with the criminal justice  
8 process, there is some relationship between the serious-  
9 ness of the offense and the length of confinement, to  
10 channel people out of the criminal justice process, into  
11 the mental health process, may mean an indefinite confine-  
12 ment of people whose behavioral problems are less signifi-  
13 cant such as alcoholics, peeping toms, etc.

14           I, and others, thought that these and other  
15 related considerations should be faced directly; first,  
16 guilt should be considered under conventional Mens Rea  
17 criteria; the trier of fact would be asked if the accused  
18 committed the charged crime with the required intent.  
19 Evidence of mental abnormality would be admissible under  
20 these issues; but, crutially, the jury would be asked  
21 such questions as whether the defendant intended to kill  
22 a human being, rather, rather than, did he have capacity  
23 to conform.

24           I don't mean to suggest that concepts such  
25 as intent are themselves clear, only that they are more

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1 clear than the concept central to the conventional insanity  
2 test.

3           And, I suppose it's at this point that I part  
4 from Professor Goldstein who assumed that under the normal  
5 elements of the crime, all the old quandries about respon-  
6 sibility would reappear. It is true, they have reappeared  
7 in California, but, I think that is largely attributable  
8 to a particularly light spirited supreme court.

9           I would hope that Federal judges guided by  
10 a careful statute and an extensive legislative history,  
11 would be more careful.

12           If convicted, the question of disposition would  
13 be faced directly. The court would be given authority  
14 upon appropriate findings, to order a convicted person  
15 committed to a mental health facility, rather than to  
16 a prison.

17           So, essentially, the switching function would  
18 be performed not retrospectively in terms of a jury decid-  
19 ing responsibility at a prior time, but rather by a judge  
20 following either conviction or acquittal by reason of  
21 insanity, more specifically, by mental disease inconsistent  
22 with the crime charged, the judge would say whether at  
23 that time a defendant was more appropriately placed in  
24 a prison, or in a mental health facility--there would  
25 not be a prison possibility if you were acquitted, or,

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1 simply released, but, it would be faced directly rather  
2 than through the mechanism of the insanity defense.

3 While the proposal to abolish a separate insanity  
4 defense receive support from some members of the Brown  
5 Commission, including Governor Brown himself, it seemed  
6 radical, controversial, and perhaps even immoral to others,  
7 and a decision was made to recommend the American Law  
8 Institute Standards, and to refer the abolition proposal  
9 to the commentary where it appeared.

10 Now, after the Brown Commission reported to  
11 the President and Congress, early in 1971, the Department  
12 of Justice was asked to evaluate its proposal; again,  
13 I was invited to appear as a consultant.

14 I dusted off my previous recommendations for  
15 which I had not yet developed complete despair, and sug-  
16 gested the abolition of the separate insanity defense;  
17 and, I should emphasize that what we're talking about,  
18 is a separate insanity defense. This was not a proposal  
19 to take Mens Rea, or intent out of the criminal law.

20 After some hesitation, the proposal to abolish  
21 the separate insanity defense was approved. President  
22 Nixon, delivering a public address upon the introduction  
23 of the Department of Justice Bill, said he regarded the  
24 insanity provisions as essential to the elimination of  
25 what he regarded as an unconscionable abuse of the defense.

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1 As it turned out, that endorsement did not help.

2 Actually, I thought that the proposal was rather  
3 libertarian, only relatively few defendants were being  
4 found not guilty by reason of insanity under traditional  
5 standards in the Federal system. Outside the District  
6 of Columbia, Federally, they averaged about 50 cases per  
7 year.

8 If the judges, rather than juries made the  
9 decision to channel people to hospitals rather than to  
10 prisons, it seemed likely that many more would be diverted  
11 out of the criminal justice process.

12 Well, the Administration Bill was merged into  
13 a Senate Judiciary Committee staff bill, and bills followed  
14 bills in subsequent years.

15 In 1975, a decision was made to remove all  
16 defenses from the criminal law reform proposal. Many  
17 of the draft offenses as regarded as too controversial,  
18 and among them was the proposal to abolish the separate  
19 insanity defense.

20 It was thought that these issues would be best  
21 left to case law development, with the possibility of  
22 later legislation after inactment of a new criminal code.  
23 The reform effort became further involved in controversy.  
24 Initially, of course, Watergate rapidly destroyed the  
25 Nixon Administration's congressional influence, and produced

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1 a musical chair situation in the Department of Justice.  
 2 It also strengthened groups who were interested in a very  
 3 different type of criminal law reform; for example, a  
 4 substantial reduction in Federal Prison population; a  
 5 repeal of the Smith Act; legalization of marijuana pos-  
 6 session; less restrictive limits on use of classified  
 7 information; reform of grand jury proceedings, and on.

8 At the same time, conservatives weren't willing  
 9 to accept what they regarded as too substantial a dis-  
 10 manteling of the Federal Criminal Justice system just  
 11 in order to get a new code passed.

12 Each side had enough power to block, but insuf-  
 13 ficient power to enact. While Senator Edward Kennedy  
 14 led the more libertarian -- who led some of the more liber-  
 15 tarian senators, himself expressed support of the abolition  
 16 proposal, critics continued to charge that it was an endeavor  
 17 to imprison the mentally ill.

18 The controversy and conflict has continued,  
 19 but, comprehensive Federal Criminal Law reform has not  
 20 been achieved.

21 Yesterday, a Department of Justice official  
 22 told me that there was again hope of passage of comprehen-  
 23 sive Federal Criminal Law reform, and if so, a subsequent  
 24 effort would be made to introduce a bill dealing with  
 25 the defenses. Among the provisions would be a proposal to

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1 abolish a separate a separate insanity defense.

2 Thank you.

3 EXECUTIVE DIRECTOR HARRIS: Thank you.

4 We'll have questions now--Mr. Carrington?

5 (Questions of Mr. Robinson by Task Force Member  
 6 Carrington.)

7 Q You were here when I asked Professor Goldstein  
 8 about the accountability provision?

9 A Yes.

10 Q To save time, I didn't want to repeat the question,  
 11 if you heard it the first time; what are your views on  
 12 this, putting -- putting a cork in the end of the bottle,  
 13 more-or-less, at least to try to so that some of these  
 14 grossly negligent releases might be deterred because of  
 15 a threat of liability?

16 A Well, I think it's an interesting proposal,  
 17 but, it's one that I haven't thought through, and I've  
 18 developed a habit of not talking about things before my  
 19 mind is in gear.

20 I'd be a little bit concerned if it resulted  
 21 in an intense level of over-prediction of dangerousness,  
 22 just out of defensiveness on the part of hospital adminis-  
 23 trators and staffs. I think it's something that -- my  
 24 general reaction is, I think it's something that's interest-  
 25 ing, but, requires very careful study.

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1 Q Senator Lacsalt has been working on a bill,  
2 in fact, he introduced one last session, but, it didn't  
3 get to committee--he introduced it late in the session,  
4 but, -- I worked with him on it, and what we were trying  
5 to do is cover this area of concern for second guessing,  
6 which I share, by putting the potential liability in terms  
7 of gross negligence, where reasonable minds would not  
8 differ.

9 A Well, certainly, I think that would reduce  
10 the danger. It seems to me, though underlying the conceptual  
11 problems--and the ideological problems, is a very practical  
12 problem, commonly, and that's a problem of space, until  
13 there are enough prisons, and until there are enough  
14 mental health facilities to put people; putting additional  
15 people in, will require taking other people out, and I  
16 don't think -- it seems to me that's the heart -- the  
17 heart of any effort to rapidly produce an effect upon  
18 America's crime rate is going to require an effort to  
19 put more bad guys in prison or in hospitals, and I don't  
20 think there's anyway around that, and I think that's a  
21 problem that can't be solved cheaply, and has to be addressed  
22 more-or-less separately.

23 Q I completely agree with you; but, we're not  
24 basically talking about putting them in, we're talking  
25 about keeping them in --

1 A Putting them there, and keeping them there.

2 Q -- that very narrow spectrum of predicably  
3 dangerous people.

4 A Right.

5 MR. CARRINGTON: Thank you very much, sir.

6 EXECUTIVE DIRECTOR HARRIS: Mr. Edwards?

7 (Questions of Mr. Robinson by Task Force Member  
8 Edwards.)

9 Q Professor, one concern that we have in the  
10 law enforcement community is the rate of recidivism that  
11 we face when we're dealing with the mentally deranged  
12 defendant where the individual is tried, and he's adjudicated  
13 insane.

14 One of the concerns that we have, and I don't  
15 know that there is a ready answer, and I don't know if  
16 there will be one down the road, is that when the individual  
17 exists via the mental institution, and -- the criminal  
18 justice system, he exits and goes into the institution,  
19 and then subsequently is released from the institution.  
20 In many cases law enforcement faces that individual in  
21 the enforcement environment, time and time again; do you  
22 have any suggestions to how we, as a committee, deal with  
23 that particular problem and try to not only build in a  
24 safe-guard for the citizenry, as well as to try to build  
25 in a mechanism for law enforcement in the criminal justice

1 system?

2 A. Are you referring to people who are coming  
3 out of mental hospitals, or people who are coming out  
4 of prisons?

5 Q. Out of a mental hospital.

6 A. Well, of course, as far as the Federal Govern-  
7 ment is concerned, the impact upon the mental health system  
8 is rather limited, and there are -- there's a Federal  
9 facility for the District of Columbia, and there are a  
10 few facilities available for veterans, there's a small  
11 prison in Springfield, and a modified one in North Carolina--  
12 Butner, but, in general, there is no substantial Federal  
13 capacity to deal with mentally ill people.

14 I think here that the Federal Government can  
15 provide an example, and conceivably even some funding,  
16 but, I don't think that the Federal role will be dramatic.

17 Q. I was looking more from an example standpoint  
18 than -- I -- I agree with you, that from a practitioner's  
19 standpoint, it would not be, but, at least establishing  
20 a guideline for how you deal with this type of individual,  
21 and then how the criminal justice system deals with him  
22 as a recidivist, raises some real interesting questions,  
23 because in talking with Chief Hart at lunch, one of the  
24 problems that we face is that subsequent release, and  
25 facing that individual in the law enforcement environment,

1 the question is raised, why didn't you know about the  
2 individual, why didn't you have something on that indivi-  
3 dual, and in many cases the answer is, there's nothing  
4 available; and, that was why I look more as a guideline--  
5 as an example, as opposed to an operational impact.

6 A. I thought that the suggestion of Professor  
7 Goldstein this morning was a useful one, rather than having  
8 people, as is the case in some jurisdictions, unilaterally  
9 released by the staff at the hospital, that it ought to  
10 come back to the court for further proceeding; that's  
11 one thing that could be done.

12 An underlying problem is the state of the art  
13 problem; namely, we're not very good at predicting who  
14 is going to behave badly in the future, even among mentally  
15 ill persons. It's maybe easy to say, well -- to say after  
16 a new offense has been committed that you could predict  
17 it on the basis of what you knew before, and perhaps in  
18 some cases that's the case.

19 But, by and large, in terms of predicting future  
20 deviant behavior, there is nobody of expertise that has  
21 a high degree of reliability for most persons, now, there  
22 is some categories of people such as heroin addicts, etc.,  
23 where a prediction can be made with greater confidence;  
24 but, across the spectrum of people who are behavioral  
25 deviants, the level of expertise is rather low, and then

1 you have to make a policy choice whether you want to lock  
2 up a large number of people who will not get into serious  
3 trouble in the future in order to prevent some people  
4 who would get in trouble in the future, and I think the  
5 answer is, yes, but, where you draw the line, how many  
6 people you're willing to lock up in order to achieve that  
7 degree of additional protection, is a very difficult ques-  
8 tion of social policy.

9 Q Well, I think one concern, maily, because of  
10 the interest of the Task Force is in the area of the vio-  
11 lent offender, primarily. I think that is the obvious  
12 starting point.

13 But, there are some questions there--some pri-  
14 vacy questions that have to be raised too, that are unbe-  
15 lievable.

16 A Well, while it doesn't have much to do with  
17 the topic that I was asked to speak on, my own thought  
18 is that the greatest thing the Federal Government could  
19 do, would be to make facilities such abandoned Army camps  
20 available to those States which are under Court orders,  
21 or otherwise, critically short of prison space.

22 It seems to me there is a solution, and a solu-  
23 tion is to be more serious about locking up people who  
24 commit crimes, and we're not very serious about it in  
25 this country. We're, I think, in many communities,

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1 approaching the level of anarchy, because there's no addi-  
2 tional place to put additional prisoners.

3 MR. EDWARDS: Thank you, sir.

4 EXECUTIVE DIRECTOR HARRIS: Mr. Armstrong?

5 MR. ARMSTRONG: I don't have any questions.

6 EXECUTIVE DIRECTOR HARRIS: Mr. Littlefield?

7 (Questions of Mr. Robinson by Task Force Member  
8 Littlefield.)

9 Q Yes. I was impressed, first, Professor Robin-  
10 son by this American dream defense to embezzlement; that's  
11 very intriguing to a defense lawyer. Usually, slow horses  
12 and fast women is the reason for it.

13 Your proposed legislation abolishing the insanity  
14 defense; now, as I understand it, you'd consider it guilt  
15 under the Mens Rea Doctrine; is that correct, sir?

16 A That's correct.

17 Q And, then suppose that a defendant didn't have  
18 the Mens Rea to commit the offense; he would be found  
19 not guilty?

20 A He would be found not guilty; but, there would  
21 be a special type of plea analogous to the NGI, which would  
22 be not guilty by reason of mental defect inconsistent  
23 with the crime charged. So, for example, if a person  
24 thought he was squeezing a grapefruit, but instead was  
25 squeezing the neck of his wife, he would not be guilty of

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1 murder because he didn't think he was intending to kill a  
2 human being.

3 Q And, would there be any special procedures,  
4 or would the judge then immediately commit such a person  
5 to a mental hospital or some sort?

6 A Well, not immediately, but shortly thereafter.  
7 That would trigger a commitment hearing which would require  
8 a finding of present mental illness and dangerousness.

9 Q And, would that be beyond a reasonable doubt,  
10 or by a preponderance?

11 A Well, I suspect it would be by a preponderance.  
12 The Supreme Court, as you perhaps know, has addressed  
13 that problem a couple of years ago and said that in civil  
14 commitment cases, clear and convincing evidence -- no,  
15 it wouldn't be preponderance, it would probably have to  
16 be, clear and convincing evidence right now, because the  
17 Supreme Court indicated that was the standard in civil  
18 commitment cases. I would think that this would be ana-  
19 logous to a civil commitment case, although you could make  
20 an argument to the contrary.

21 But, something, I think, in between preponderance,  
22 and beyond a reasonable doubt; I don't think, by and large,  
23 for many people we can establish their future dangerous-  
24 ness beyond a reasonable doubt.

25 At the same time, it's rather hard to lock

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1 people up on a rather slender standard of proof.

2 MR. LITTLEFIELD: Thank you, Professor Robinson.

3 EXECUTIVE DIRECTOR HARRIS: Chief Hart?

4 MR. HART: I have no questions; they were all answered,  
5 thank you.

6 EXECUTIVE DIRECTOR HARRIS: Professor Robinson,  
7 thank you very much.

8 Our next witness, and last witness on the sub-  
9 ject of the insanity defense, is an imminent defense lawyer  
10 from Washington, D.C., R. Kenneth Mundy.

11 Mr. Munday was obliquely referred to during  
12 the luncheon speech; Professor Daniel Robinson made reference  
13 to a case in Maryland in which a young man was accused  
14 of shooting two police officers, and if memory serves  
15 me correct, the defense lawyer in that case was our witness,  
16 Mr. Mundy -- welcome.

17 TESTIMONY OF R. KENNETH MUNDY

18 WASHINGTON, D. C., ATTORNEY

19 MR. MUNDY: Thank you very much, Mr. Chairman.

20 I've prepared an outline and the outline is  
21 very broad and rambling. It covers both the questions  
22 of incompetency as a pretrial determination and also the  
23 substantive question of productivity in terms of the insanity  
24 issue.

25 I understand, however, that I was asked--or, I

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1 was invited to direct most of my remarks to the practical  
2 experiences that I've had as an attorney, and my own view  
3 as a defense attorney with respect to the issue of pro-  
4 ductivity, and the trial procedures--evidentiary and trial  
5 procedures for determining productivity.

6 In the outline, I set forth several areas or  
7 problems that one confronts, primarily, in structuring  
8 a defense built upon insanity, and also in approaching  
9 the question of incompetency.

10 There are several problems, I find, and I've  
11 found in my experience, that insanity is one of the most  
12 improbably defenses of all. The case that was probably  
13 alluded to during the luncheon recess, which I missed,  
14 and I apologize, I just got off the airplane, virtually,  
15 was the case of a young, 14 year old black youth in Prince  
16 Georges County, which surrounds the District of Columbia,  
17 having shot and killed two white police officers during  
18 the course of their interrogation of him.

19 There had not been an acquittal in Prince Georges  
20 County for a homicide case, although it had been raised  
21 many, many times for over 60 years.

22 In that case, the killing of one police officer  
23 was defended on self-defense; as a result of having to  
24 kill the first police officer, because he was being roughed  
25 up, we claimed temporary insanity--transient situational

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1 disturbance, produced the killing of the second police  
2 officer. Without insanity, the killing of the second  
3 police officer, would have been virtually indefensible,  
4 primarily because he was shot twice in the back, he was  
5 pursued and shot to death in the precinct.

6 We never thought, given the history of insanity  
7 defenses in Prince Georges County, and given the facts  
8 of that particular case, that the insanity defense had  
9 much chance--it had the proverbial chance of a "snow ball"  
10 of succeeding. Strangely enough, the jury acquitted and  
11 found him not guilty by reason of insanity for the slaying  
12 of the police officer where we thought the evidence was  
13 more formidable, and convicted him only of involuntary  
14 manslaughter for the slaying of the first police officer.

15 Now, that suggests to me that insanity is a  
16 defense; psychiatric testimony is a mode of evidence that  
17 jurors really don't understand, and that is something  
18 that caused me to wonder about a procedure that might  
19 be superior, or better, in terms of the trial and evidentiary  
20 presentation on the insanity question.

21 I thought in my mind, or I conceptualized the  
22 procedure where very much like now, we have a pretrial  
23 determination to ascertain whether or not there is probable  
24 cause for an insanity defense, or whether there's a prima  
25 facie case for interjecting an insanity defense.

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1 We would have a similar pretrial proceeding  
2 where the judge, sitting and taking evidence, very much  
3 as he does now, would determine whether the defense has  
4 made a sufficient showing, based upon psychiatric evidence  
5 that would be submitted to the court as a threshold show-  
6 ing, to interpose an insanity defense.

7 If the court were so inclined and so satisfied  
8 to do this, then there would be a separate trial just  
9 on the question of guilt versus innocence. That trial  
10 would be the standard trial that we have to a jury of  
11 one's peers; and then, in the event there is a determina-  
12 tion of guilty, there would be a completely biforcated,  
13 or second trial, not by one's peers, but, rather, by a  
14 panel of psychiatrists, psychologists, and attorneys.

15 Now, the reason I say this is, since the ques-  
16 tion of sanity, or insanity, can be established only by  
17 expert evidence, then the experts should be the ones to  
18 decide the question--the ultimate issue of sanity, or  
19 insanity, and I conceive the idea that perhaps we would  
20 have a situation that there would be certified, by the  
21 courts--by the superior, or hierachy of the courts in  
22 the particular jurisdiction, a panel, a psychiatrist,  
23 forensic specialist, psychologist, who have earned their  
24 certification by virtue of training, by virtue of particular  
25 experiences, by virtue, perhaps, of working just with, or

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1 substantially with the criminally insane.

2 The second point that I have in mind is brought  
3 up by this--or suggested to me by this, that I don't believe  
4 that every psychiatrist should be permitted to pass an  
5 opinion, or render an opinion, concerning the question  
6 of insanity--that's a secondary question.

7 But, in any event, there would be a certified  
8 standing panel. Of course, they would not get the normal  
9 jury fee, they would get a fee based upon a per diem,  
10 or however the system would work. And, from that panel,  
11 the defense--the defendant having been convicted on the  
12 guilt question, would select three, an attorney, a psy-  
13 chologist, and a psychiatrist; the government would select  
14 three--the same ratio, an attorney, a psychologist, and  
15 a psychiatrist, and the court would select, or name three;  
16 and just the question of insanity would be tried.

17 Of course, this would involve some retrying  
18 of the factual issues that entered into the guilt versus  
19 innocence determination; but, then the determination could  
20 be made and if the panel thought that further independent  
21 psychiatric evaluation was necessary, they wouldn't be  
22 the stayed jurors that we know that just sit there and  
23 they are a sounding board for evidence, they can't take  
24 notes, they can't ask questions, but, this would be a  
25 panel that would participate in the bringing about, or the

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1 involvement of evidence, they could question, they could inter-  
 2 pose their own questions, and it's not necessary that  
 3 there be unanimity in their vote of guilt or innocence  
 4 on the question of insanity. It could be by a preponder-  
 5 ance, it could be by whatever number, six out of two-  
 6 thirds, or however.

7 But, this would allow the question of insanity  
 8 to be tried completely separate from the emotional state  
 9 that a jury is often in, in the guilt or innocence version  
 10 of the case, and primarily because the very -- the most  
 11 serious type of offenses, homicides, robberies, rape,  
 12 kidnap, and arson, are -- those are the ones that are  
 13 most violent, those types of offenses cause emotion in  
 14 the normal person and certainly in jurors, and it's very  
 15 difficult to see how jurors could separate the question  
 16 of guilty or innocence from the question of insanity.  
 17 Even given the situation of sanitization of it that we  
 18 have attempted to do by the bifurcated trial, by even  
 19 the trial before a separate jury of the question of insanity,  
 20 secondary to the question of guilty or innocence.

21 And, the question could be resolved by a panel,  
 22 passed upon and decided, and then the person could be  
 23 committed, if found guilty in the guilty or innocence  
 24 phase of the case, then he would move to the second stage.

25 If found not guilty, of course, that would be

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1 the end of it--that would be the terminus.

2 If the court setting pretrial, ruled that there  
 3 had been an insufficient predicate made to invoke the  
 4 insanity defense, allow an interlocutory appeal on that  
 5 question. Simply to avoid -- allow an appeal by both  
 6 the government, or the prosecuting authority, and by the  
 7 defendant, simply to avoid the costly procedure of really,  
 8 three hearings, for the resolution of one trial, or one  
 9 issue. Allow interlocutory appeals just on the question  
 10 of whether there has been a prima facie case made for  
 11 the interposition of the insanity defense.

12 And, then insanity would never be a subject  
 13 broached to the jury; it would never be a matter of con-  
 14 cern about voir dire questions; it would never be a matter  
 15 of long extensive proceedings in the court trial to guard  
 16 carefully and jealously against the insertion of insanity  
 17 on the guilty question and so forth.

18 Another problem that I find is, who should  
 19 control the determination of whether an insanity defense  
 20 is interposed. Frankly, I believe in misdemeanor cases,  
 21 the defendant should strictly -- should strictly control  
 22 that; primarily because in many, many instances if he's  
 23 found, not guilty, by reason of insanity, he can spend  
 24 more time in a State hospital recovering from something  
 25 he didn't do, under the technical laws, than if he went

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1 ahead, stood the question of guilt or innocence, was con-  
 2 victed, and then later was committed to a point, or a  
 3 place of incarceration.

4 He could later, there, avail himself of the  
 5 same psychiatric facilities, and the same type of psychia-  
 6 tric rehabilitation, and help that he could have received  
 7 in a hospital if he were found not guilty by reason of  
 8 insanity.

9 But, surely, the defendant should control the  
 10 determination of whether to interpose an insanity defense  
 11 in a misdemeanor case.

12 Now, the problem we have, and that we face,  
 13 is supposing the defendant is incompetent, or insane,  
 14 of course, you will have bridged, by the time you reached  
 15 that point, the question of competency; but, on the question  
 16 of competency, that should not be something left so much  
 17 to the vagaries, or the decision of the defendant. The  
 18 court has a real role in that to see that incompetent  
 19 persons don't go to trial, and to see that a farce of  
 20 justice isn't made by trying somebody who is obviously  
 21 mentally ill.

22 But, with respect to the more serious offenses  
 23 where a person faces a substantial period of incarceration,  
 24 the matter of whether to invoke an insanity defense is  
 25 not so much one that I think could be left, or should be

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1 left to the dictates and the preferences of the defendant.

2 Now, there's a question in the jurisdictions,  
 3 and this is also -- for example, in the District of Columbia,  
 4 the defendant interjecting insanity question, has the  
 5 burden of proof by a preponderance of the evidence. In  
 6 Maryland, the State must disprove insanity once it is  
 7 raised, but they do it in the rebuttal case, and to me  
 8 this is the preferable arrangement, primarily in the more  
 9 serious crimes where insanity--state of mind, enters into  
 10 the same quintet of types, homicides, robbery, rape, kid-  
 11 napping, and arson.

12 The government has the burden of proof of estab-  
 13 lishing in any event, state of mind, or frame of mind,  
 14 when we talk about intent--specific intent, deliberation,  
 15 premeditation, malice, those are all forms of the state  
 16 of mind that the subject has, at the time he commits a  
 17 particular offence. So, having the burden of establishing  
 18 that, it is but a short step--a half step, to require  
 19 the government to go further and disprove an insanity  
 20 defense once it is raised, and it would not be, perhaps,  
 21 -- it might even be a compromise type situation, not to  
 22 require the State to disprove it beyond a reasonable doubt,  
 23 perhaps by preponderance, but at least to put the burden  
 24 on the prosecuting arm to disprove that, since they must  
 25 prove that the defendant had a state of mind, intent,

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1 premeditation, deliberation, or whatever, that would make  
2 him culpable, and would make him have a guilty conscience  
3 about the act.

4 The other situation that comes to mind is the  
5 fact that a defendant, many, many times would rather be  
6 found guilty and sane, rather than not guilty and insane.  
7 Now, it's not necessary a macho image, it's just the fact  
8 that our society, and our civilization, seems to have,  
9 by virtue of history, looked down, since time in memorial,  
10 on the insanes, the mentall afflicted, or the mentally  
11 diseased, and consequently many defendants, and I defended  
12 a man recently charged with very, very serious rapes that  
13 had not a breath of a chance of straight defense, but  
14 refused to interpose an insanity defense.

15 I could not point to anything so obvious in  
16 his decorum, or in his demeanor, that would make the court  
17 feel that he was out of his mind and that the defense  
18 had to be inserted for him; he was convicted. I think  
19 he had a very substantial defense on insanity, but, because  
20 he had a history, or had a sister who was mentally ill,  
21 and had watched how society treated her, or how she was  
22 treated when she was brought among others, he would have  
23 rather, I believe, even taken a death sentence than to  
24 have been found insane.

25 And, there's something about insanity, or

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1 determination that a person is once insane, even though  
2 he is later pronounced cured, it follows him and stigmatizes  
3 him, and it makes many, many people rather run the land-  
4 mine field of guilty or innocence, than to possibly be  
5 impressed with the label of having been insane.

6 I've listed several of the problem areas, or  
7 not problem area, but, just general concepts or ideas  
8 concerning thoughts about possibilities about the incom-  
9 petency side of the question.

10 But, I'd like to stop now, if I may, and ask  
11 if there are any questions on anything that I have said,  
12 if I may, Mr. Chairman.

13 EXECUTIVE DIRECTOR HARRIS: Yes. Mr. Carrington?

14 (Questions of Mr. Mundy by Task Force Member  
15 Carrington.)

16 Q. Mr. Mundy, on your plan for the panel, obviously,  
17 you've given it an awful lot of thought, and I'm impressed  
18 by the balance you're taking. I think you are as concerned  
19 for the rights and safety of society as you are for the  
20 individual defendant.

21 I wasn't completely clear on one thing; once  
22 you get past a guilty/not guilty verdict of the regular  
23 jury, the petite jury, and then go to the panel, would  
24 you characterize that more as a penalty phase, or would  
25 that be a second, almost de novo guilty/not guilty trial?

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1 A. It would be like a de novo guilty, or not guilty  
2 trial on the sole question or issue of insanity; it would  
3 be collagerial estoppel on the factual questions that  
4 were determined or resolved by the jury.

5 Q. Do you see any problem of a defendant who went  
6 into it taking his chances and lost in the petite jury  
7 trial, and then went to the panel, and the panel finds  
8 against him, he is not pleased with that, so then he raises  
9 a double jeopardy claim?

10 A. No. Because the penalty--there will only be  
11 one penalty, and there will only be one trial on the  
12 question of guilt or innocence. That same claim could  
13 be available to a defendant now in a biforcated two jury  
14 trial, and it has not been successfully challenged.

15 But, this would be an extension of that. The  
16 only Constitutional privilege I envision a defendant losing  
17 is the right to perhaps be tried, totally, by his peers,  
18 and a trial by one's peers on a question that is so techni-  
19 cal -- psychiatrists, with due respect, psychiatrists  
20 sometimes don't understand one another, and jurors, who  
21 have to sit their and hear it once through, that are not  
22 provided with transcripts of the psychiatric testimony,  
23 sometimes when they request them, are constantly reminded  
24 by the judge, your recollection controls--recollection  
25 of what, I mean, it takes a person four years of medical

1 school, and some post-graduate work to become a psychia-  
2 trist, and a jury is expected to become a psychiatrist  
3 in perhaps 20 minutes or a half hour of psychiatric testi-  
4 mony.

5 I don't feel that there would be a double-  
6 jeopardy challenge that would imperil that type of a pro-  
7 cedure.

8 Q. Assuming that this was implemented in a juris-  
9 diction, say, Maryland, and it worked. Would you then  
10 think about applying it to pleas, since the finding of  
11 guilty, or not guilty by the jury is what triggers --  
12 I mean a finding of guilty by the jury is what triggers  
13 the panel set-up; would there be any reason why the plea  
14 of guilty, which is, in essence, the same as the finding  
15 of guilty, and then he goes to the panel?

16 A. Well, there's a difference; for example, what  
17 you're saying is he plea bargains and he pleads guilty  
18 on the innocent versus guilty question, but then he wants  
19 to submit the question --

20 Q. Right. I did it, but, I'm crazy.

21 A. You see, in shorter time than I, you thought  
22 of a very good innovation that I hadn't thought of. I  
23 hadn't thought that out, but that sounds like a good pos-  
24 sibility. I did it, but, I'm, in fact, -- I was mentally  
25 deranged, or I was suffering a mental illness, or mental

1 defect.

2 Q The proposal that you have stated here, briefly,  
3 is that in your written presentation?

4 A No, sir. I was trying to outline several problem  
5 areas, but, I would -- I was hoping that I would have  
6 had more time, I didn't, I came straight from court to  
7 the plane. To write out something that would formalize,  
8 or put into syntext better, the type of arrangement, or  
9 thought that I had on that subject.

10 EXECUTIVE DIRECTOR HARRIS: Mr. Carrington, we will  
11 have a verbatim transcript so, to the extent we have those  
12 remarks.

13 MR. CARRINGTON: Thank you, sir.

14 EXECUTIVE DIRECTOR HARRIS: Mr. Edwards?

15 MR. EDWARDS: No questions.

16 EXECUTIVE DIRECTOR HARRIS: Mr. Armstrong?

17 MR. ARMSTRONG: Yes.

18 (Questions of Mr. Mundy by Task Force Member  
19 Armstrong.)

20 Q Mr. Mundy, in how many cases that you handle,  
21 have you applied, or offered up the insanity defense?

22 A Major cases?

23 Q Yes, major cases.

24 A Approximately, 10. I don't think you find  
25 it in too many non-major cases. It's primarily in the

1 major cases, and approximately, 10.

2 Q I'm curious as to how you would propose to  
3 qualify your panel of psychiatrists?

4 A All right. There are, in all jurisdictions,  
5 and in my large urban centers, hospitals for the mentally  
6 ill, patients who have been committed by court order follow-  
7 ing a finding of not guilty by reason of insanity, or  
8 persons who have been found guilty and then later became  
9 ill, or became -- while they were serving their incarcera-  
10 tion period. There would be certain service performed  
11 by psychiatrists as residents, or background work performed  
12 by psychiatrists that would give them a close in-sight--  
13 first-hand in-sight to the criminally ill.

14 Then, by virtue of past experiences, or testi-  
15 mony in the areas; perhaps the psychiatric association,  
16 or what ever the professional organization is, could itself,  
17 certify, or certify to the court, or recommend to the  
18 Court, individuals by virtue of past experiences, or by  
19 virtue of their esteem among other psychiatrists, being  
20 selected or considered by this panel.

21 Another possibility would be --

22 Q If I can interrupt you, would you have the  
23 opportunity to voir dire the panel--or, the panel of panel  
24 that you're going to select from the --

25 A Yes, sir, strikes and preparatory challenges,

1 and challenges. You wouldn't hardly get -- well, you'd  
 2 get a challenge for cause if they have some particular  
 3 acquaintanceship with the party or the case; but, yes,  
 4 I would suggest that you'd have a panel large enough,  
 5 and I'm not talking about a 12 member panel that ultimately  
 6 hears the case, I'm talking about either six or nine,  
 7 something like that, and that there would be strikes,  
 8 and it should go virtually through the same -- it's like  
 9 the military.

10 In the military system--the system of military  
 11 justice, you challenge, but it's not at all as convaluded,  
 12 and as involved, and as lengthy as in our civilian criminal  
 13 courts, the voir diring of a jury; but, you would challege,  
 14 preemptorily, certain individuals, or for cause.

15 Q. Would you also have an opportunity as an advocate,  
 16 to argue before this panel?

17 A. Oh, yes, sir. It would have all of the trappings  
 18 of an opening statement, a motion for a judgment at the  
 19 close of the -- whoever has the burden in the evidence,  
 20 at the end of his evidence, a motion for a judgment of  
 21 acquittal, or -- in the event that the government has the  
 22 defendant moves, and you would also have the closing argu-  
 23 ments, or the summation, but, the summation could be in  
 24 written form since you're dealing with professional people  
 25 that hear over, and over, and over, and over again, by

1 virtue of their panel service, this issue, you could do it  
 2 by proposed findings, proposed conclusions, you could  
 3 do it in written form, rather than oral argument.

4 Q. How do you get around the self-imposed standards  
 5 of a psychiatrist who generally wants to have an opportunity  
 6 to observe an individual for a period of time; how do  
 7 you get around that?

8 A. He would have to be reacting, or responding  
 9 based upon the testimony of other psychiatrists who have  
 10 had the opportunity to observe and who testify themselves,  
 11 and to form, based upon their testimony, how reasonable,  
 12 unreasonable, logical, or illogical, their conclusions,  
 13 or their determinations, their testing was, and so forth.

14 But, as I said, the panel itself, could --  
 15 would not be just sitting back as a sounding board like  
 16 our standard juries, but, the panel itself could possibly  
 17 order, or request independent psychiatric evaluation of  
 18 the defendant as independent evidence--evidence of the  
 19 court, or evidence of the panel.

20 Q. One final question. In your community, would  
 21 you say that you handle a significant number of criminal  
 22 cases?

23 A. Trial work is primarily -- criminal cases,  
 24 yes, sir. I've handled hundreds and hundreds of major  
 25 criminal trials--many death penalty cases, not in the



1 District of Columbia, but outside the District of Columbia.

2 Q And, in the last few years is that about 10--  
3 in 10 of those cases you've had --

4 A I've interjected about eight or 10, yes, sir,  
5 insanity defenses -- have played a part.

6 Q Are we making much to do about nothing with  
7 the concern over the insanity defense, in your opinion?

8 A No. I think the insanity defense has a proper  
9 place -- is that the question you're asking?

10 Q Yes.

11 A No, I -- we're traditionally guided by--since  
12 time in memorial, or a for a long time, that we don't  
13 try, we don't convict, and we don't punish the mentally  
14 insane, and I don't think we should depart from that tradi-  
15 tion.

16 I just think that in order to give it more  
17 professionalism, more efficiency, and more credibility  
18 with respect to the verdict that's ultimately reached  
19 on the question, that we should have professionals make  
20 the determination rather than lay-persons.

21 MR. ARMSTRONG: Thank you, Mr. Mundy.

22 EXECUTIVE DIRECTOR HARRIS: Mr. Littlefield?

23 (Questions of Mr. Mundy by Task Force Member  
24 Littlefield.)

25 Q Mr. Mundy, with respect to your, either be a

1 6/3, or a 5/4, is that what your idea was with respect to  
2 the panel's verdict?

3 A Yes, sir. And, you might even--if you wanted  
4 to have an even number let the court, in the event of  
5 a tie, vote.

6 Q I was feeling there might be a problem if you  
7 tried to get unanimity among psychiatrists, or lawyers,  
8 that you could have a problem.

9 A They might be the only ones that would come  
10 up with three sides to the question.

11 Q Just as one defense lawyer to another, what  
12 do you think in a serious case, let's say in a capital  
13 case, who should decide whether the defendant should testify,  
14 should it be the defendant, or should it be the lawyer?

15 A Who should make the decision of testimony?

16 Q Yeah, as to whether or not the defendant should  
17 testify?

18 A The lawyer.

19 MR. LITTLEFIELD: Thank you very much, I agree,  
20 I wish our Supreme Court agrees with this.

21 That's all I have.

22 EXECUTIVE DIRECTOR HARRIS: Chief Hart?

23 (Questions of Mr. Mundy by Task Force Member Hart.)

24 Q Thank you very much, Mr. Mundy, I thought you  
25 had a good presentation. I was baffled by the last state-

**CONTINUED**

**2 OF 5**

1 ment, I thought that you advised your client as to whether  
2 he should testify or not. I didn' know you could order  
3 him one way or the other.

4 A. Well, you can't order him, and I'm saying as  
5 a practical matter, in my opinion, which way it should  
6 be, now, if the defendant, he has the ultimate veto, if  
7 you tell him to testify and he says he doesn't want to,  
8 he fires you as his lawyer, so, he's going to ultimately  
9 get a lawyer who will make the determination. The only  
10 problem is that he's probably mid-way through a trial,  
11 and it's going to be a little cumbersome, it's going to  
12 be a little unusual for that step to be taken.

13 But, I believe that the lawyer has a better  
14 over-view, is less emotionally involved, and so forth.  
15 Now, many times our courts have commented on the fact  
16 that a lawyer who is retained has more independent judg-  
17 ment, and more freedom of judgment from his client than  
18 a lawyer who is appointed; I don't think that should be,  
19 I don't think there should be a different standard; but,  
20 if the lawyer is an experienced lawyer, and if the lawyer  
21 has the confidence of his client, then I think the lawyer  
22 should make the determination.

23 And, it's not -- it's not -- it's for no other  
24 reason, then I believe that he probably has a better over-  
25 view, and that he probably knows his client pretty well

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1 and that his client can undo a lot of good that's been  
2 done in the evidentiary process, or could perhaps only  
3 involve himself more in culpability.

4 Q. And, of course, if he insists on testifying,  
5 there's nothing you can do about it?

6 A. There's nothing you could do about it, but  
7 put him up there and ask him the questions, and then every-  
8 body usually asks the questions, if you know he's lying,  
9 you still ask him the questions. That's a completely  
10 different kettle of fish, but, if he insists on testifying,  
11 I believe you -- I would notify the court out of the hear-  
12 ing of the jury that I've advised him against testifying,  
13 but the defendant insists on his right to testify, and  
14 I would make a little bit of a record of it, and I would  
15 do the same in the event my advice was that he testify  
16 and he chose not to, I try to make a record of it.

17 Q. Rather than just to abandon him.

18 A. I'd never abandon him, I'd withdraw first.

19 Q. Okay. About the only question I had -- not  
20 question, really, maybe you can enlighten me. You said  
21 the panel in the case of a petite case, the defendant  
22 could be ruled insane and yet not be convicted of the  
23 crime; so, they are courting some danger when they submit  
24 to this test.

25 A. You're talking about the two-tier system I have

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1 described?

2 A. Right.

3 Q. Yes. You don't find insanity defenses raised  
4 very much in misdemeanor cases for the obvious reason,  
5 and that makes me question the whole issue of insanity,  
6 I mean, it depends on the gravity of the offense, and  
7 the possibility of the penalty as to whether the man  
8 says he's sane, or insane; but, apart from that, yes,  
9 in the instances where you have insanity raised as a defense  
10 to a misdemeanor charge, I would say the same route could  
11 be followed in defining out and making the ultimate resolu-  
12 tion on the question of insanity, and if he is found not  
13 guilty by reason of insanity, almost throughout the entire  
14 length and breadth of our country, there is a procedure  
15 for commitment by the court to some institution, until  
16 psychiatrists ultimately--and, psychologists, and social  
17 workers, ultimately decide that he's no longer a harm  
18 to society, to himself, and that he is not likely to repeat  
19 the offense--that he's not likely to go into recidivism.

20 And, in those instances, a person can serve  
21 more time being not guilty than he could have served being  
22 guilty.

23 Q. But, if we'd look at it as not serving time,  
24 but, taking the cure because it has been pointed out by  
25 social scientists, one of our problems with most of the

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1 criminals, especially repeat offenders, is that they have  
2 some kind of mental problem, so --

3 A. Well, avarous and greed, those are forms of  
4 mental problems, but, those are character trait mental --  
5 those are character trait problems, as opposed to true  
6 mental illness; so, -- I mean, you could say that anybody  
7 who commits a crime suffers some character trait, or mental  
8 disease, if you graduate the character flaw to a mental  
9 disease.

10 But, the point that I make is that if a person  
11 takes the cure, or takes the treatment, most psychiatrists  
12 will tell you that no treatment is final; I, also, in  
13 my suggestion, would have a system where if he's found,  
14 not guilty by reason of insanity, that he would be required  
15 to be monitored annually, or twice a year by reporting--  
16 by court order, reporting to some psychiatric hospital,  
17 or to some psychiatric institution, and there being examined,  
18 or there being checked on an out-patient basis, to make  
19 sure that he is still well, and that his illness was not  
20 simply in a state of remission when the psychiatrist saw  
21 him and pronounced him able to return and join society.

22 Q. Well, I'm sure all of us agrees with you, but  
23 there lies our problem, once their committed they are  
24 not -- it's not maintained, they either walk away and  
25 nobody care, or they let them out and they don't even

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1 notify the judge what they have done.

2 A. Yes, sir. That's why I suggest a monitoring  
3 process for everybody, even for the misdemeanant, because  
4 today's felon might have been yesterday's midemenant,  
5 and I would say that there be a monitoring process that  
6 follows him once he is released from the hospital to again,  
7 guarantee that when he was released his illness was not  
8 merely in a state of remission, but, that he is indeed  
9 cured.

10 And, this could be a process supervised by  
11 the court, and -- that compells a person to, you know,  
12 satisfy the authorities that he's still able and fit to  
13 be among the rest of society.

14 Although I'm a defense attorney, I take sort  
15 of the middle of the road view of it, and I do follow  
16 a middle of the road view on it. Of course, I speak here,  
17 and not advocating a particular client's cause, but, speak-  
18 ing here as I do, I feel that the procedure is not suf-  
19 ficient to protect society once a person has been found  
20 not guilty by reason of insanity, and I feel that there  
21 are flaws in this system, the judicial, trial, and eviden-  
22 tuary procedures, that are not sufficient to make a verdict  
23 one that we'd be proud of on the question of guilty or  
24 innocence in terms of insanity.

25 MR. HART: Very good. Thank you. You're going to

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1 make those recommendation to the panel, then?

2 MR. MUNDY: Yes, sir. I'm sorry I didn't put them  
3 in writing, Mr. Chair-person, I will try to formally formu-  
4 late those if the transcript is insufficient.

5 EXECUTIVE DIRECTOR HARRIS: Thank you very much,  
6 Mr. Munday, for coming. We appreciate your taking time  
7 to come down here today.

8 CO-CHAIRMAN BELL: I want to apologize to Professor  
9 Robinson and Mr. Mundy for having to leave. I'm in my  
10 home town, and we're not to be able to stay all day and  
11 be near your office.

12 MR. MUNDY: Yes, sir, I understand.

13 CO-CHAIRMAN BELL: But, I'll read each one of your  
14 testimony. We have a court reporter taking it down, you'll  
15 notice.

16 MR. MUNDY: Yes, sir. Thank you.

17 EXECUTIVE DIRECTOR HARRIS: We once again are going  
18 to shift topics and we're going back to the question of  
19 State, Federal, and local cooperation, and that will be  
20 the topic for the remainder of the afternoon.

21 The subject--the focus will be more general  
22 than it was this morning, in terms of not specifically  
23 focusing on disaster assistance.

24 Our next witness is the Honorable Rufus Edmisten,  
25 the Attorney of North Carolina, and one attorney general

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1 who is particularly interested in violent crime and narco-  
2 tics trafficking, and we're very pleased to have you with  
3 us today.

4 TESTIMONY OF RUFUS L. EDMISTEN

5 ATTORNEY GENERAL OF NORTH CAROLINA

6 MR. EDMISTEN: Judge Bell, members of the Committee,  
7 after hearing the past four witnesses, I think I'm about  
8 to question my sanity, and I decided that when you question  
9 me, I might plead it in some cases.

10 I thank you for inviting me. I'm delighted  
11 you had me come down here; I think I come from a perspective  
12 that you might be interested in. At one time I was in  
13 Washington for 10 years, around all sorts of Federal people;  
14 my uncle was a sheriff; I have two brothers who are Federal  
15 law enforcement officials; and, I'm not the State's chief  
16 law enforcement officer in North Carolina.

17 I think all of you know what crime is all about.  
18 I think you know that people are terrified now, I know  
19 they are in my State, and I know this, that we in this  
20 country, have never placed fighting crime on a very high  
21 priority. If we would just one time place the priority  
22 on fighting violent crime as we do, say, on going to the  
23 moon, or fighting cancer, we might get somewhere.

24 Now, what I have to tell you today is not very  
25 sexy; I don't think it's very news-worthy, but, I think

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1 it makes sense. I think that when it comes to law enforce-  
2 ment, there's always been one thing that's lacking, that  
3 is a lack of cooperation between the various components  
4 in law enforcement.

5 Now, I need not tell you that even in the Federal  
6 area there are various Federal agencies involved in law  
7 enforcement, and there is turf-protecting among those  
8 agencies; I've heard it personally, I've witnessed it,  
9 and I've seen it. Now, there's turf-protecting, certainly  
10 on the State level, and on the local level, and there's  
11 not much you can do about that; but, I do, honestly believe  
12 that the Federal Government could do something about Federal,  
13 State, local cooperation.

14 Now, very frankly, I think there has been several  
15 crimes that have never been solved, and I mean serious  
16 crimes--violent crimes like you're concerned with, because  
17 of that very thing, and I think the Chief can tell you  
18 [Chief Hart], it breaks my heart, and I can give you examples  
19 in North Carolina, because of a lack of coordination,  
20 the lack of sharing information, and simple turf-protecting  
21 where there have been crimes that have not been solved.  
22 In a country that boasts of being civilized, that is simply  
23 not acceptable.

24 I think that brings about a climate of mistrust.  
25 I hear so often the State and local officials say, well,

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1 let the "Feds" do it; I sometimes hear the "Feds" say,  
2 let the State and local boys do it. Well, that again,  
3 is very unacceptable in my opinion.

4 Now, I think there's something that we can  
5 do, and I want to congratulate the Assistant Attorney  
6 General for Criminal Division, Mr. Lowell Jensen, and  
7 others for working on it; Judge Bell, you worked on it,  
8 because I sat on the executive working group when you  
9 were Attorney General, and that is to establish in every  
10 single State, and in every Federal jurisdiction in this  
11 country, an effective Federal, State, local law enforce-  
12 ment committee.

13 Now, I think it has to be mandated. I know  
14 that we don't like to tell people to do things, but, I'm  
15 willing to give you some examples of how these things  
16 do work if we make them happen.

17 Now, what I propose today is not going to cost  
18 one penny more than we're doing right now, and as I under-  
19 stand Phase I, that is what you want to hear, what can  
20 we do right now that will not cost us anymore money, or  
21 cause us to ask for new legislation that will help solve  
22 serious violent crime.

23 Well, I think we first have to face facts.  
24 Jurisdictionally, there is not too much the Federal Govern-  
25 ment can do. I've heard a lot of testimony, and I -- you

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1 would think that the Federal Government can do everything  
2 in the world about violent crime; now, we know that's  
3 not so. The Federal Government simply doesn't have that  
4 jurisdiction and probably shouldn't have that jurisdiction  
5 in our Federal system, in fact, I would not advocate it.

6 But, I do know this, I know that when reasonable  
7 people sit down and get together, and at least get to  
8 know one another, things can happen. Now, this is not  
9 a new idea with me, its been going on for quite sometime.  
10 I have a survey here that the National Association of  
11 the Attorneys General did; Mr. Jensen is working very  
12 hard on this right now, and I know it can be done if we  
13 just simply make it happen.

14 I can show you in my jurisdiction that we  
15 solve violent crimes through cooperation between Federal,  
16 State, and local officials.

17 Now, may I say how we do that. The only way  
18 that it can be done is for the Federal Government to almost  
19 demand that every U.S. Attorney in this country form a  
20 Federal, State law enforcement committee.

21 As it currently stands, we have 21 that are  
22 operating--well, now that may not be so, I think in operat-  
23 ing, that -- that means that many of them get together  
24 and they have a nice luncheon, or a dinner. Now, that,  
25 to me, is not operating, that may be very nice, and you

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1 may get to know who the U.S. Attorney is, or who the ATF  
2 agent in charge is, or, DEA, but, that's not a working  
3 Federal, State law enforcement committee.

4 I think the key to these committees is the  
5 U.S. Attorney; I'll be very frank with you, I'll tell  
6 you why.

7 I can say we'll have a meeting in Raliegh,  
8 North Carolina, of our very goog committee, and sure,  
9 they will come; but, there is no assurance whatsoever  
10 that a thing will be done.

11 When the U.S. Attorney and I both say there  
12 will be a meeting, and the U.S. Attorney hints very strongly  
13 that all components of the Federal Law Enforcement component  
14 in that State will be there, they will be there because  
15 they know that he handles their cases.

16 So, I say to you, it must have the complete  
17 cooperation of the U.S. Attorney. Now, in forming these  
18 committees, there's no set example, you don't have to  
19 have all of them exactly alike, you must go to each dis-  
20 trict, each State, see what fits there, but, the main  
21 thing is this, that you have regular meetings, that you  
22 agree that you will not hold back things from one another;  
23 that you agree that you will stick with the case when  
24 you decide to do something.

25 In our State, let me tell you some of the things

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1 we've done. The U.S. Attorney and I got together shortly --  
2 when you were Attorney General, Judge Bell, and we decided  
3 we would do something about the fragmentation of law enforce-  
4 ment.

5 We called all our components together, we did  
6 things like this. We targeted individuals who are known  
7 violent criminals in that State, and we sat around that  
8 room, and we said, all right, you, in the Secret Service,  
9 what can you do; you, in HEF, what can you do; you, with  
10 the State Bureau of Investigation under me, what can you  
11 do; we put out on the table all of the things that we  
12 could all lawfully do, and we walked out of that room  
13 after a few hours and we did them.

14 We have put a fire under some people's feet  
15 down there, and it's simply because we have not wasted  
16 time with jealousy, turf-protecting, and other asinine  
17 things that hinder law enforcement.

18 I don't think this Committee needs to recommend  
19 any massive amounts of money. I think it can be done  
20 with what we have if people act reasonably and sensibly.

21 We have conducted seminars. The Justice Depart-  
22 ment sent down a hostage expert; we had over 500 law enforce-  
23 ment officials who gathered in Raleigh who had never heard  
24 one iota about what you do in a hostage situation until  
25 that day. We've conducted arson seminars; we had the

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1 Justice Department bring in a person on RECO; it has been  
2 amazing now when we get together, what someone comes up  
3 with.

4 So, I -- I ask you in a very respectful way  
5 that you give very, very strong consideration to asking  
6 that the Attorney General mandate in some way, that in  
7 every judicial district, that a Federal/State committee  
8 be set up, and that there be direct orders out of Washington  
9 that there be cooperation.

10 Now, this does not, of course, include all  
11 Federal agencies. That's one reason why I'm very strongly  
12 in favor of some sort of a mechanism wherein when a national  
13 tragedy occurs, and they occur everyday, and I think Atlanta  
14 is a perfect example, but, in my short time as Attorney  
15 General, in fact, in my adult life, I've never heard the  
16 President of the United States, and Vice President, get  
17 up and say something about crime the way they did in Atlanta.

18 I think it ought to be that way in so many  
19 of the matters we have now that are plaguing this country.  
20 There should be some national small group -- we have a  
21 National Security Council that's concerned about national  
22 security. I happen to believe that the crime wave is  
23 a definite threat to our national security.

24 That small group should be able to come into  
25 being immediately, and could trigger a response which could

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1 bring into play every single Federal agency in America,  
2 because they are not -- all not under the Justice Depart-  
3 ment, and say, hey, look, we've got a real problem in  
4 North Carolina with 20 buildings burning, they need help,  
5 whatever you can do under the law, get it to them.

6 And, what we must not forget to do, if we form  
7 such a committee, ever, is don't forget to include State  
8 and local people on it. Because that's where the crimes  
9 occur--that's where the insanity defenses are brought  
10 up.

11 The Federal Government can be an excellent  
12 assistance--I'll give you a good example: The ATF in  
13 North Carolina, they have been excellent in working with  
14 local and State authorities. I don't think that we've  
15 ever opened an arson case in the State of North Carolina,  
16 unless the ATF was right there with us, and it's vice-  
17 versa.

18 We had a huge fire in Shelby, North Carolina,  
19 a year ago; five people's lives were taken because of  
20 a criminal act. The ATF sent into North Carolina, a team;  
21 we, together, solved that horrible crime in about four  
22 days. And, all of us in law enforcement can tell you,  
23 you don't solve crimes unless you're able to concentrate  
24 on that particular case, at that particular time.

25 I don't think that since I've been Attorney

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1 General, that we've had a major drug case where the DEA  
2 has not been with us. Just yesterday, in one of our towns,  
3 we had a case of where we found over 200,000 qualudes  
4 in a particular city. That was jointly done by the State  
5 Bureau of Investigation, and the DEA.

6 Now, I honestly believe that these things will  
7 work, and they will work if people just use good common  
8 sense.

9 I do believe that the greatest problem facing  
10 us today, on the national scene, is the illegal trafficking  
11 in narcotics. I think you will hear that many times,  
12 but, all you have to do is talk to those of us who are  
13 out there with it.

14 The Attorney General of Florida, Mr. Jim Smith,  
15 related shocking things to me the other day in Alabama;  
16 he said that illegal drug traffic in Florida accounted  
17 for about the second highest amount of income in the State  
18 of Florida next to tourism.

19 That to me, is just incredible. I think we're  
20 right on their heels in North Carolina with all of our  
21 coastline. Well, what better place for the Federal Govern-  
22 ment to fight something that is of an epidemic nature  
23 than to fight the drug problem.

24 You already have the jurisdiction, it is there;  
25 let's get these things working with all of the Federal

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1 components, and the Federal, and State people, and you  
2 can see some results.

3 We're not going to clear up anything; this  
4 Task Force won't diminish crime overnight, but, we can  
5 make significant dents in it.

6 I also believe that -- I'm straying a little  
7 bit, but, I have to say this. I think that the most import-  
8 ant thing that the Federal Government can do in another  
9 field, is to encourage victim assistance, and victim's  
10 compensation.

11 I testified before the House--I think Mr. Carrington  
12 will be interested in this, about the Victim's Assistance  
13 Bill. If you want to be a fourth class citizen in America  
14 today, be a victim of crime. It's that way almost every-  
15 where I know of. I think the Congress should take the  
16 lead in providing victim's assistance.

17 I know that I had a bill introduced in our  
18 General Assembly that says, if and when the Congress passes  
19 it, we will have one on line too.

20 These are matters, I believe we can handle,  
21 not cost a lot of money, and if you'll let me say one  
22 other thing, I noticed a witness did this morning, you  
23 wanted to know what had worked in Federal Government.  
24 Well, take it from a cop on a State level who has been  
25 through all of them, that there have been some things

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1 that work, and they work very well.

2 LEAA has had some problems, we all know that,  
3 but, I can promise you that in North Carolina there are  
4 many things that are on line right now that never would  
5 have been started had it not been for LEAA.

6 One of them is the career criminal program.  
7 Our biggest problem, I think, in the country today is  
8 not pinpointing those who do most of the crimes--who commit  
9 most of the crimes. That's a simple fact and we all know  
10 it. A handful of people do all the damage--or, most  
11 of it.

12 Career criminal programs were started in North  
13 Carolina. We targeted individuals, and we got them off  
14 the street. That has worked in so many jurisdictions,  
15 and all of my colleagues in the Attorney General's Associa-  
16 tion, have also voiced great support for career criminal  
17 programs.

18 The arson programs have done a great deal of  
19 good in giving assistance in training to arson agents.  
20 I can't say enough good about the drug squads that have  
21 been formed in my State because of seed money from LEAA.  
22 We have a computerized criminal history mechanism in North  
23 Carolina that was started with LEAA money, it never would  
24 have been started, I don't think.

25 We have one of the best justice academies for

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1 training police officers in America, because of LEAA.

2 So, that is my little spiel about your next  
3 phase, but, I thought I'd better get that in.

4 But, I thank you very much for what may seem  
5 to you a very simplistic approach, but, I know it's one  
6 that can work.

7 Thank you.

8 EXECUTIVE DIRECTOR HARRIS: Thank you. Judge Bell?  
9 (Questions of Mr. Edmisten by Co-Chairman Bell.)

10 JUDGE BELL: I want to congratulate you, Mr. Edmisten,  
11 on your simplistic approach; you know you're in danger  
12 because you'll be ridiculed for saying it's too simple,  
13 if it's not complicated today in this country, it's not  
14 supposed to be any good. So, you're right in the approach  
15 you're taking, and you're making progress by doing it.

16 I want to ask you two or three questions, and  
17 one is about the Federal, State, and local law enforcement  
18 committees.

19 Q You said you thought they ought to be mandated;  
20 what did you mean by that?

21 A Well, by that I mean that I would hope that  
22 the Attorney General of the United States of America,  
23 would, in whatever way he can, mandate that each U.S.  
24 Attorney for such a committee.

25 Now, that can't take care of my people on the

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1 local level, but if the U.S. Attorney takes the lead,  
2 more than likely it can be done.

3 Q Yeah. Well, that can be done. I thought you  
4 might have in mind having some statute--statutory base  
5 like the Judicial Conference of the Judicial Council;  
6 I don't think it would be necessary to go that far.

7 A No, sir, I don't either.

8 Q Well, I think the Attorney General could do  
9 that. What you're talking about is leadership on the  
10 part of the Attorney General of the United States, and  
11 on the part of the State Attorneys General --

12 A That's correct.

13 Q -- and, I think what's going on in your State  
14 is a good mark of leadership.

15 Now, what are you doing about the fact that  
16 you have three districts in North Carolina? That's rather  
17 cumbersome when you have three U.S. Attorneys you're deal-  
18 ing with?

19 A Correct. Well, Judge, what we have done on  
20 all of the seminars, each judicial district has been there.  
21 We have another --

22 Q Who do you contact if you want to contact any-  
23 body?

24 A The U.S. Attorney in each judicial district.

25 Q Yeah. So, you have to deal with three, actually?

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1 A That's correct; but, I don't find it too burden-  
2 some, because the same Federal authorities will come to  
3 every single meeting, and you can be assured that my people  
4 would be there.

5 Q Yeah. I don't think there's a State that has  
6 more than four, and some, as you know--many have just  
7 one, so, I guess that's not a real problem.

8 A No it really isn't. I haven't found it to  
9 be a problem at all, Judge.

10 Q Now, I was interested in the hostage program  
11 you put on, and what else was it, drugs?

12 A We had a program on hostage situations, on  
13 drug enforcement, on bank robberies, on arson --

14 Q How about SWAT teams, have you had --

15 A Our SWAT team was there for the hostage situation.

16 Q Have you heard anything amongst law enforcement  
17 people all over the country about having a domestic security  
18 council?

19 A Yes, sir, I certainly have. I think that's  
20 sort of what I'm advocating; you've put a better word  
21 to it.

22 Q Well, it's -- the President himself, is charged  
23 with taking care that the laws be faithfully executed,  
24 and there's something else in the Constitution about domestic  
25 tranquility, so, I don't think it would be out of line to

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1 have a -- that would be a form of leadership, to have a  
2 domestic security council of some kind --

3 A. And, Judge, I think it ought to report to the  
4 President to show that we --

5 Q. To show that we're serious about it.

6 A. Yes, sir.

7 Q. All right. Now, on victim assistance, I've  
8 been keeping up with that to some extent for some years.

9 How do you think that would serve to reduce  
10 violent crime?

11 A. Well, --

12 Q. I understand the concept off by itself, but,  
13 we're to deal with reducing violent crime.

14 A. I think, Judge, that it would cause certain  
15 people who do not testify and come forward with evidence,  
16 now to do so, if they knew that they were going to be  
17 taken care of in some way, paid attention to, and treated  
18 like a human being.

19 Right now, in my State, we can't even pay a  
20 rape victim for the hospitalization that she's had to  
21 undergo to get an examination for court.

22 Q. So, you think it would improve law enforcement  
23 in that it would improve prosecution?

24 A. It certainly would. I have no doubt about  
25 it.

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1 Q. All right. Now, the last question.

2 I'm struck with the idea that the whole law  
3 enforcement process is reacting to the fact that we have  
4 an insufficient number of prison cells. I heard the Comis-  
5 sioner of Public Safety here this morning start out on  
6 that line--Atlanta, and recently they released a lot of  
7 people from the Georgia prisons and announced that they  
8 would be raping and robbing soon, but, they had to have  
9 the cells so they could put a new group in.

10 Now, in your State, do you have a shortage  
11 of prison cells?

12 A. Of course we do. I'm sure every State in the  
13 world does; however, I -- I take a hard line on that,  
14 Judge. If you have to build more prisons to protect society,  
15 I think you ought to do it.

16 Q. Well, have you see -- I agree with you; but,  
17 have you seen a study to see if we built prisons in ratio  
18 to the population increase since World War II?

19 A. No, I haven't.

20 Q. You know, in this State we've not built many  
21 prisons, but, we've got a lot more people--we've got five  
22 and a half million people in Georgia now, and in 1940,  
23 I think, we had three million, and so far as I know, we  
24 have just one new prison.

25 A. Well, I have to confess, Judge, I think the

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1 problem is that we put some people in jail for things  
2 that they shouldn't be put in there for. I'm one of those  
3 who believes in public service work for kids who have  
4 done something for the first time --

5 Q. That's the next question I was going to ask  
6 you.

7 Given the shortage of cells, and the reluctance  
8 of public officials to build prisons, and that's because  
9 the public hadn't told the public officials they want  
10 prisons--they will get the message to them eventually,  
11 would it not be a good thing to categorize offenders,  
12 and lock up the violent people first?

13 A. Absolutely.

14 Q. Well, do you know of anyone who has done that  
15 on a systematic basis?

16 A. I know that -- in our State, we try to segregate  
17 people according to their offenses. But, I can show you  
18 cases where we'd take a young kid and we put him in with  
19 a rapist, murders, and robbers, and what is he going to  
20 do, turn out to be one.

21 Q. Oh, sure, sure. But, there's probably some  
22 modified forms of punishment that could be used if the  
23 American people have decided they do not want to build  
24 any more prisons--if they decide that, which they have  
25 not decided yet, it's just -- it's the sort of thing that

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1 the Federal Government can put off on the States, and  
2 the States can say we don't have the money and they hope  
3 lightening will strike and the Federal Government will  
4 send them some money.

5 And, under the Public Works Program that Congress  
6 passed in 1977, there was only one State that used the  
7 money to build prisons--Georgia used all of it--Governor  
8 Busbee, but, the other States used it for other reasons.  
9 It could have been earmarked for prisons, but, it was  
10 not.

11 All right. Thank you very much.

12 EXECUTIVE DIRECTOR HARRIS: Mr. Carrington?

13 (Questions of Mr. Edmisten by Task Force Member  
14 Carrington.)

15 Q. Generally, Mr. Edmisten, I think everybody  
16 here is in absolute agreement on a need for cooperation.

17 During the transition, President-elect Reagan  
18 set up a number of advisory task forces, one on law enforce-  
19 ment, one on victims, and on the administration of justice,  
20 and the composition of this, as far as the law enforcement  
21 people over State and local law enforcement people; and,  
22 from them we heard that one of the major stumbling blocks  
23 in this kind of cooperation, particularly in areas such  
24 as narcotics where you're dealing with informants, terrorism,  
25 was the Freedom of Information Act.

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1 A State officer, naturally, felt leary of fronting  
2 out even the existence of an informant to a Federal officer  
3 because he was running the risk that this could show up  
4 two years later in a Freedom of Information Act require-  
5 ment, if the Federal agent made a memo.

6 Do you see this as a problem, and if so, what  
7 suggestions would you have -- I know that an initiative  
8 has been taken already to look into this, and certain  
9 modifications; but, would you address that particular  
10 question?

11 A. Well, I think there's a definite problem. I  
12 have that fear myself. I think the Freedom of Information  
13 Act needs modification; I was with Senator Irvin when  
14 that Bill was drawn, I have to confess, I helped draw  
15 it.

16 CO-CHAIRMAN BELL: What do you think we ought to  
17 do to you for doing that?

18 MR. EDMISTEN: I think you could probably hang me  
19 for helping do it, and most judges now want to hang me  
20 for my part in the speedy trial act, too --

21 CO-CHAIRMAN BELL: Speedy Trial Act, too, while  
22 we're going --

23 MR. EDMISTEN: That's correct, Judge.

24 But, we have that problem. Now, we do have  
25 some separate agreements with DEA, with ATF, that do not

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1 contravene the Freedom of Information Act, where we are  
2 able to protect our sources.

3 But, I think another problem of that is, though,  
4 that the information doesn't flow as readily from the  
5 Federal level, my friends on the Task Force, as it does  
6 from the State level, up to the Federal level. I think  
7 that's a great problem. Anytime that some of the Federal  
8 agencies don't want to give us something, they talk about  
9 the Freedom of Information Act, or the Privacy Act.

10 And, I think another ridiculous thing, too,  
11 is the ham-stringing of the IRS, right now, that I think  
12 is totally ridiculous, that they can't tell me that so  
13 and so, down the road is the biggest dope pusher in North  
14 Carolina. That to me, is absurd.

15 CO-CHAIRMAN BELL: We've got that on the list.

16 MR. EDMISTEN: Thank you.

17 MR. CARRINGTON: I have no other questions. Thank  
18 you, sir.

19 EXECUTIVE DIRECTOR HARRIS: Mr. Edwards?

20 (Questions of Mr. Edmisten by Task Force Member  
21 Edwards.)

22 Q We have -- being from Florida, I can appreciate  
23 very much what you're saying relative to the drug problem.  
24 I would like to clarify a couple of matters, and it had  
25 to do with the definition of, mandate, as you have reflected

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1 it.

2 We have established within our State, a mechanism  
3 known as the Florida Narcotics Intelligence Center, which  
4 serves as a focal point for information exchanged; it  
5 also serves as a base-line for the establishment of joint  
6 force operations where we pull in Federal, State, and  
7 local entities in order to target and track, and address  
8 a crime specific. In this particular instance, it's drug  
9 smuggling at this particular point.

10 We have a little problem down there as you  
11 well know.

12 When you mention, mandate, by the Department,  
13 or the Federal powers to be, I'd like some clarification  
14 there.

15 You're not interpreting, and I'm not putting  
16 words in your mouth, but, I think I understand what you're  
17 saying; you're not saying that the Federal Government  
18 should come in and head up a particular crime--specific  
19 issue, but, simply be a part of a joint force operation,  
20 and be a participant in, along with State and local; is  
21 that correct?

22 A. Absolutely--absolutely. I say, by mandate,  
23 that the U.S. Attorney General, will in a nice sort of  
24 way, mandate that the U.S. Attorney will get together  
25 with us State and local boys.

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1 Q I submit to you also, at this particular point,  
2 because of timing, because of violent crime issue, because  
3 of the drug issue that is being faced throughout the Country,  
4 I submit to you the level of cooperation is going to be  
5 there greater than it has ever been.

6 I asked the question, when we were putting  
7 together the narcotics intelligence center in Florida,  
8 how do we overcome the traditional problem of the close  
9 to the chest syndrom which seems to be an inherent problem  
10 that we face in law enforcement, and everyone said, well,  
11 that's going to be the issue, and you won't make an effec-  
12 tive move in the area of coordination and focalization,  
13 because of that issue.

14 Well, in fact, the opposite happened, we got  
15 cooperation, and we were able to put together some things  
16 that allowed us to do what you're talking about there,  
17 and I'm convinced that it's not a matter that all of a  
18 sudden everyone was waking up and saying, we need to do  
19 it, it was just a matter that we all got more than we  
20 could say Grace over, and that has been, probably the  
21 biggest catalyst in our State, the fact that we are --  
22 but, it totally agree with you, that we are at a point  
23 where the timing is such that that cooperation, by bring-  
24 ing in the prosecutors as part of it, the U.S. Attorney  
25 General's Office, all of it, right at this particular point,

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1 makes it a very straight-forward, down to earth, common  
2 sense approach to a problem that we're facing on a day  
3 to day basis.

4 A. I agree.

5 MR. EDWARDS: Thank you.

6 EXECUTIVE DIRECTOR HARRIS: Mr. Armstrong?

7 (Questions of Mr. Edmisten by Task Force Member  
8 Armstrong.)

9 Q. Mr. Edmisten, I know you've -- to follow up  
10 on this drug problem, are you aware of the more current  
11 problem with the trafficking in placebo drugs, and parti-  
12 cularly, the mail order drugs --

13 A. Oh, yes.

14 Q. Would you like to address that question before  
15 the Task Force?

16 A. Well, I think you'd better let me slide on  
17 that one, because I -- we're trying to do something at  
18 home right now, and it -- and, I don't know enough about  
19 it to be senseable.

20 Q. I noticed coming down here, an early morning  
21 television show indicated that you can buy phony cocain  
22 through the mails for \$30 in a little jar, and that in  
23 contacting the FDA, they said it's perfectly legal to  
24 do that because there is the prescribed warning on there,  
25 that this is not to be taken internally; but, the announcer

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1 indicated that you can pay \$30 for something that purports  
2 to be concain. Obviously, the temptation is there to  
3 want to snort it, which is the same as taking it internally.

4 As you probably are aware that that poses as  
5 great of threat as the actual illegal drug --

6 A. Oh, absolutely.

7 Q. And, here again, this State and Federal coordina-  
8 tion, we need to be talking to the FDA people --

9 A. And, the Postal authorities.

10 Q. And, the Postal Service authorities as well--  
11 the inspectors office.

12 I'd like to applaud what you've done along  
13 with the Department of Justice, and the National District  
14 Attorneys Association, coming together and forming the  
15 executive working group, because this is a hands-on group  
16 that can tackle these problems and make recommendations  
17 to the highest levels of government.

18 If you were to prioritize, in your State, the  
19 kinds of crimes--the class crimes that are presenting  
20 the greatest fear to your constituents, would you give  
21 those in an order of, no longer than five?

22 A. Well, of course, I think we all agree that  
23 murder is the most serious crime; I would come on illegal  
24 drugs next, because I happen to think that that causes  
25 more violent crimes than any other one crime that I know

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1 of. We can almost trace it back to drugs or alcohol in  
2 a good 75 percent of the cases; I would come next with  
3 arson, that seems to be growing everywhere, we're no excep-  
4 tion, and none of your States are either.

5 I would come next and classify bank robberies.  
6 We had a double increase last year, in North Carolina,  
7 and I don't know what the national trend was, but, bank  
8 robberies.

9 And, then the most frightening, I think, of  
10 all of them, short of murder, is the breaking and enterings.  
11 It is absolutely incredible. I think the Chief [Chief  
12 Hart] can tell you, probably in his jurisdiction, breaking  
13 and entering, which is not a Federal crime except under  
14 very limited circumstances, is a very, very prominent  
15 crime, but, I have found that when our Task Force meets  
16 in North Carolina, that we can solve all kinds of other  
17 crimes; someone might say, well the Federal Government  
18 has no jurisdiction over breaking and enterings, well,  
19 sometimes we're sitting around that table, and when we're  
20 talking about a particular individual, and we go to work  
21 on him, we get car theft, bank robberies, breaking and  
22 enterings, drugs, gambling, you name it, that's the value.

23 Did I give my five?

24 Q. You went over that.

25 A. Okay.

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1 MR. EDWARDS: Thank you.

2 EXECUTIVE DIRECTOR HARRIS: Mr. Littlefield.

3 MR. LITTLEFIELD: I have no questions.

4 EXECUTIVE DIRECTOR HARRIS: Chief Hart?

5 MR. HART: I have no questions to speak of.

6 I admire the way you made that presentation;  
7 you spoke for most of law enforcement in the country,  
8 and I suspect the key men in your State as yourself, as  
9 energetic as you are, we need about 49 more people to  
10 put in the other States so that they can inspire the rest  
11 of law enforcement in that State.

12 So, I admire the way that you gave the presenta-  
13 tion, and the service you have been to the country, and  
14 I know something about your background, you've done an  
15 outstanding job.

16 Thank you.

17 EXECUTIVE DIRECTOR HARRIS: Thank you for coming  
18 today.

19 CO-CHAIRMAN BELL: Thank you. We appreciate you  
20 coming.

21 PREPARED TEXT OF ADDRESS BY  
22 ATTORNEY GENERAL RUFUS L. EDMISTEN  
23 ATTORNEY GENERAL OF NORTH CAROLINA

24 Judge Bell, Governor Thompson, other distinguished  
25 members of the Attorney General's Task Force on Violent

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1 Crime, ladies and gentlemen.

2 First of all, let me say that it is a great  
3 pleasure for me to appear before you this afternoon.

4 This task force is charged with an important  
5 mission. As I perceive it, your quest is to identify  
6 problem areas and to suggest specific improvements in  
7 our criminal justice system to meet the rising tide of  
8 crime in our country. A tide which has shown no signs  
9 of ebbing. A tide which has spread over suburban and  
10 once tranquil rural areas. A tide which has become more  
11 brutal, random and irrational. A tide which threatens  
12 to engulf our society and has created a climate of fear  
13 that affects virtually every citizen.

14 While I can propose no panaceas, I offer for  
15 discussion with you today, a concrete proposal which I  
16 feel has made and can continue to make a significant impact  
17 on this rising tide.

18 First of all, it is not relevation that his-  
19 torically adequate resources have not been made available  
20 to law enforcement, prosecutorial and correctional authorities  
21 in order for them to respond adequately to the increased  
22 incidence of crime. However, the resources that have  
23 been made available often have not been utilized in a  
24 wise or coordinated fashion.

25 It is a sad, but undeniable, fact that often

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1 agencies which are charged with enforcing the law and  
2 prosecutors who are charged with prosecuting violations  
3 fail to cooperate and coordinate their activities.

4 There is simply too much turf protecting and  
5 jealousies that hinder effective cooperation. This is  
6 unfortunately true at all levels of law enforcement. It  
7 has been my observation over a number of years, that there  
8 is little coordinating effort between federal agencies  
9 in the discharge of their respective responsibilities.

10 That problem is not confined to the federal  
11 level only. There is often a lack of coordination between  
12 state agencies as well. This is also the case at the  
13 local level, in many instances.

14 While there are certainly exceptions to this  
15 general rule, the record reveals frankly far too little  
16 cooperation between federal agencies and state and local  
17 agencies. There exists, in many jurisdictions, a climate  
18 of mistrust. One of the contributing factors for this  
19 lack of coordination is often an ignorance by the respective  
20 agencies of the other's mission, jurisdiction, and function.

21 Often agencies are unaware of resources that  
22 another agency has that can be brought to bear on a speci-  
23 fic problem. The attitude has been, let the feds worry  
24 about it, or, conversely, let the state and locals worry  
25 about it. Only the criminal profits from this lack of

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1 coordination. It is a simple fact that there are resources  
2 out ther which just are not being properly tapped and  
3 utilized to the fullest capacity.

4 In an effort to assist in correcting this situa-  
5 tion, I propose that the task force strongly recommend  
6 and that the Attorney General mandate the establishment  
7 of effective federal, state and local law enforcement  
8 comittees in every state and, if practical, in every federal  
9 judicial district.

10 This is certainly not a new idea. As early  
11 as November of 1972, the United States Department of Jus-  
12 tice urged the United States Attorneys to consider estab-  
13 lishing permanent federal state law enforcement committees  
14 in their districts. This concept has been endorsed and  
15 urged by subsequent Attorneys General.

16 The key to this proposal is "effective". I  
17 believe to be effective, these committees must have the  
18 strong commitment of the United States Department of Justice  
19 and the participation of every United States Attorney.  
20 This is necessary to insure the participation of all rele-  
21 vant federal agencies in the operation of the committees.

22 Likewise, there must be a strong commitment  
23 on behalf of relevant state and local agencies to be repre-  
24 sented on this committee. The National Association of  
25 Attorneys General as well as the National District Attorneys

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1 Association has strongly endoresed this concept. To insure  
2 the effectiveness of established committees, a permanet  
3 office should be created within the United States Department  
4 of Justice to consult with the United States Attorneys  
5 in connection with the establishment of the committees  
6 and to continue to monitor, support, and coordinate the  
7 activities of established committees.

8 The establishment of these committees in each  
9 state, or in each federal judicial district can be accomp-  
10 lished with little or not cost. What little additional  
11 cost may be involved is insignificant when compared to  
12 the potential benefits which can be reaped fromthe effec-  
13 tive operation of such a committee.

14 An effective committee can be extremely useful  
15 to all participating agencies. There is an increased  
16 awareness of the resources, role, and jurisdiction of  
17 each agency. This is particularly helpful in areas of  
18 mutual interest and concurrent jurisdiction. Needless  
19 duplication of effort can be avoided.

20 Specific criminals, or groups of criminals  
21 can be targeted for a coordinated law enforcement effort  
22 at the local, state and federal levels. This is particularly  
23 true with respect to most serious offenders who rarely  
24 specialize in violating the crimes of one particular juris-  
25 diction. This mechanism affords an ability for agencies

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1 to use investigative tools not available to other agencies.

2 Likewise, in areas like narcotics trafficking  
3 where the conduct of the defendant often violates both  
4 federal and state law, a decision can be made to try that  
5 particular case in the best forum available. That ties  
6 very closely with the discussion of cross-designation.  
7 For example, at my urging, the North Carolina General  
8 Assembly, last year, enacted a tough mandatory sentence  
9 drug trafficking law which is considerably stiffer than  
10 the federal counterpart. Where appropriate, federal agen-  
11 cies might choose to have a particular drug trafficking  
12 case tried in the courts of our State rather than in federal  
13 court because of the enhanced sentence possibilities.

14 On the other hand, in our State certain weapons violations  
15 can be more adequately prosecuted in federal court.

16 Another substantial benefit which arises from  
17 an effective federal-state-local law enforcement committee  
18 is the ability to obtain and share criminal intelligence  
19 information with other agencies. It is not unusual for  
20 agencies to be simultaneously involved in the investigation  
21 of a particular suspect without knowing that another agency  
22 may also have an investigation underway.

23 In the absence of such a forum, it would be  
24 unlikely that these agencies would learn that fact until  
25 after one or the other of them had brought formal charges

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1 against that particular individual. An effective committee  
2 also provides a mechanism to target, in addition to offenders  
3 or groups of offenders, a specific geographical area.  
4 Another substantial advantage of an effective committee  
5 is the ability to utilize each agency's capacity to develop  
6 information. Often, a local agency has a great deal of  
7 information available from "the street" which may prove  
8 extremely useful to another agency working a particular  
9 investigation from a different level. Another advantage  
10 of such a committee could be to sponsor educational programs  
11 for the benefit of all law enforcement agencies on a specific  
12 topic or topics of interest.

13 These are only a few of the many benefits that  
14 can be derived through the establishment and operation  
15 of an effective federal-state-local law enforcement committee.

16 The composition of the committees conforms  
17 to no particular model. Composition, obviously, needs  
18 to be suited to the situation that exists in each state  
19 or judicial district. However, I cannot see that such  
20 a committee will be effective unless the United States  
21 Attorney actively participates in the functions of the  
22 committee.

23 Likewise, strong leadership and participation  
24 in an effective committee must come from the Attorney  
25 General of the state and/or local prosecutors. While the

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1 composition of the agencies may vary depending on the cir-  
 2 cumstances of each particular state or district, a policy  
 3 of inclusion rather than exclusion should be followed.

4 Most existing committees include representatives,  
 5 on the federal level, the FBI, ATF, Secret Service, Postal  
 6 Inspectors, DEA, Customs, and IRS. On the state level,  
 7 representatives often come from the state police, highway  
 8 patrol, state bureaus of investigation, state departments  
 9 of revenue, and often alcohol beverage control officers.  
 10 Local officials are often represented by the chiefs, or  
 11 sheriffs of the major metropolitan departments, and pro-  
 12 secutors from the largest and most populous counties.

13 Regardless of the composition of the standing  
 14 committee, provisions should be made to invite other agen-  
 15 cies or prosecutors not represented on the standing com-  
 16 mittee as the need arises or as specific investigations  
 17 are targeted in a particular area.

18 Currently, there are committees operating in  
 19 several states and judicial districts throughout the country.  
 20 Many have achieved notable success. Time does not permit  
 21 me to recap all of the accomplishments of several of these  
 22 committees. However, I will take a few moments to outline  
 23 my participation in a committee in the Eastern District  
 24 of North Carolina which I feel has been particularly useful  
 25 to law enforcement in our State.

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1 In October of 1977, the United States Attorney  
 2 for the Eastern District of North Carolina and I, conducted  
 3 an organizational meeting to form the first federal/state  
 4 committee in our State. The activities of this committee  
 5 have been many and varied. They have ranged from fully  
 6 briefing each member agency on the resources, jurisdic-  
 7 tion, capabilities and current activities of each member  
 8 agency to specific targeting of criminals and geographical  
 9 regions. As well, the committee has sponsored several  
 10 state-wide educational training sessions for law enforce-  
 11 ment officers on specific subject matter areas.

12 For example, a daylong meeting attended by  
 13 over 500 law enforcement officers throughout the State  
 14 was conducted on the topic of hostage and terrorist acti-  
 15 vities. Other day-long conferences, with excellent parti-  
 16 cipation, were held on arson, bank robberies, and white  
 17 collar crime. The exchange of criminal intelligence  
 18 information between federal, state and local agencies,  
 19 has been greatly facilitated by the activities of this  
 20 committee. The success of this committee, I believe,  
 21 prompted the establishment of a second federa-state-local  
 22 law enforcement committee in the western federal district.

23 As I noted earlier, this is not a new or novel  
 24 concept. If such committees can be established in every  
 25 state and, if practical, in every federal district across

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1 the nation, I believe a significant impact could be made  
 2 on the problem of crime and particularly, violent crime.  
 3 The areas for consideration by the committees are many.  
 4 Robberies, corruption, control substance violations, counter-  
 5 feiting, white collar crime, firearms violations, appre-  
 6 hensionn of fugitives from justice, organized crime, motor  
 7 vehicle thefts, and many, many others. Criminals do not  
 8 respect either substantive or geographical jurisdictional  
 9 lines. Cooperation that results from an effective committee  
 10 expands our ability to deal with that reality.

11 In summary, an effective federal-state-local  
 12 law enforcement committee can help overcome limitations  
 13 in manpower and jurisdiction. The cooperating agencies  
 14 should be able to realize a higher percentage of arrests  
 15 and convictions without increased costs. It would allow  
 16 these agencies to identify criminal trends in the state,  
 17 or the district and bring the necessary resources and  
 18 attention to bear on those developing areas. It provides  
 19 a perfect forum to organize joint efforts to attack specific  
 20 criminal elements.

21 Most of all, an effective committee creates  
 22 and maintains a good working relationship between agencies  
 23 at all levels based on communication, trust, and mutual  
 24 respect. I would strongly urge that this task force highly  
 25 recommend to the Attorney General that strong and effective

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1 federal, state and local law enforcement committees be  
 2 created, together with an effective mechanism in the United  
 3 States Department of Justice to provide a coordinating  
 4 body for these established committees.

5 -o0o-

6 EXECUTIVE DIRECTOR HARRIS: The next presentation,  
 7 we're going to have a panel, Ed Miller who is the district  
 8 attorney in San Diego, and Jim Lorenz, who is the U.S.  
 9 Attorney, and we're going to be discussing a very interest-  
 10 ing concept that they've employed, a cross-designation  
 11 of their assistance, their prosecutors, and I will welcome  
 12 you both and leave it to you to tell us what you are all  
 13 doing in San Diego.

14 TESTIMONY OF

15 M. JAMES LORENZ, UNITED STATES ATTORNEY, SAN DIEGO

16 AND

17 EDWIN MILLER, JR., DISTRICT ATTORNEY OF SAN DIEGO COUNTY

18 MR. MILLER: Thank you for the opportunity to appear  
 19 before you today, and I am speaking as District Attorney  
 20 from the County of San Diego, California, but also as  
 21 chairman of the concurrent jurisdiction committee of the  
 22 executive working group; and, to my right, Jim Lorenz,  
 23 a U.S. Attorney, we'll be speaking in tandum, on what  
 24 I think, a very important subject.

25 We've been asked to discuss with you the cross-

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1 designation program, which has served my office, and the  
2 U.S. Attorney of San Diego, for the last several years.

3 You have been provided with copies of a law  
4 review article describing the program, as well as a sum-  
5 mary of our activity under that program. Both of those  
6 documents are somewhat out of date, but, they should prove  
7 useful for background purposes.

8 Now, the cross-designation program involves  
9 appointing deputy district attorneys from office as special  
10 assistant U.S. Attorneys, who, under the direction of  
11 the U.S. Attorney, handle criminal cases in Federal Court,  
12 and the appointing of Assistant U.S. Attorneys, as Special  
13 Deputy District Attorneys, who, under my direction, handle  
14 criminal cases in State court.

15 The concept is simple and workable, and has  
16 been of mutual benefit to our respective offices, and  
17 to the criminal justice system.

18 Before describing the program, I must point  
19 out that our experience has been predicated on two factors:  
20 first, the program depends for its very life, on an open  
21 and trusting relationship between the U.S. Attorney, and  
22 the District Attorney. Without that relationship, the  
23 program would be still-born.

24 Second, the program stems primarily from dis-  
25 tinctions between California law and procedure, and Federal

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1 law and procedure, which distinctions may, or may not  
2 or may not exist in other jurisdictions.

3 California is view by some of us as a judicial  
4 wonderland. Our State courts have devised rules and stan-  
5 dards at substantial variance with those extant Federally,  
6 and many other jurisdictions, the result being that many  
7 cases and types of cases are far more difficult to prosecute  
8 in California than under federal law, or in the courts  
9 of many other states. To date, for the most part, our  
10 state legislature has not kept pace in correcting those  
11 deficiencies.

12 So, I caution from the outset, that while I  
13 firmly believe the Cross-Designation Program is an extra-  
14 ordinarily valuable tool for law enforcement and prosecu-  
15 tion, it may have limited utility in some jurisdictions  
16 where the variance between state and federal law is not  
17 as great as it is in California.

18 As you all know, the nation's prosecutorial  
19 system functions within a dual jurisdiction, state and  
20 federal.

21 Many of these cases have concurrent jurisdiction  
22 status; that is, they can be prosecuted in state court  
23 as a violation of state law, or in federal court as a  
24 violation of federal law. Bank robbery is one crime which  
25 immediately comes to mind in this regard. Other examples

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1 would include various kinds of fraud, activities of organized  
2 crime, public corruption, narcotics trafficking, and wea-  
3 pons offenses.

4           Although the potential for either state or  
5 local prosecution often exists, a prosecutor, as a practi-  
6 cal matter, does not usually make the determination as  
7 to the forum in which the case will be heard. Most often,  
8 it is the investigating agency which makes that determina-  
9 tion. Normally, investigators take their cases to the  
10 prosecutor in their jurisdiction when they believe the  
11 case is ready for presentation, or prosecution. Federal  
12 agencies, by virtue of training and habit, refer their  
13 cases to the United States Attorney, and State law enforce-  
14 ment agencies refer their cases to the District Attorney.  
15 The prosecutor's evaluation of the case, and the policy  
16 set forth by the state, or federal prosecutorial agency,  
17 then determines the fate of that case. Absent the Cross-  
18 Designation Program, the only exceptions to this general  
19 rule are found in instances in which the investigating  
20 agency experiences a conflict with the prosecutor, or  
21 believes that prosecutorial policy dictates that the case  
22 be prosecuted in the alternative forum.

23           I should add that for the most part, in the  
24 federal system the investigative agencies are independent,  
25 and are not under the direct direction and control of the

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1 U.S. Attorney, whereas the local prosecutors have their own  
2 investigators who work directly for the District Attorney,  
3 and are under their control and direction, which is an  
4 important distinction.

5           Now, while in general, the system works very  
6 well, a serious problem develops when an investigation  
7 reveals facts which may make the prosecution in the alterna-  
8 tive forum more desirable.

9           Now, I want to give you an example--a recent  
10 example, because it's something that occurred in our juris-  
11 diction only a short while ago. Investigators from my  
12 office worked for a long period of time on a case involving  
13 a San Diego businessman who was employing one variety  
14 of a Ponzi scheme in which money taken in from today's  
15 investors was used not merely to further the business  
16 itself, but to afford the operator a high flying life  
17 style, and to make interest payments to yesterday's investors.  
18 In essence, he was building a house of cards atop a founda-  
19 tion of new money. Without an expanding infusion of cash  
20 from new investors, the business would collapse.

21           That is a violation of both state and federal  
22 law. Initially, we planned to prosecute the businessman  
23 under state law, and in fact, we arrested him and filed  
24 a criminal case. As the investigation progressed, however,  
25 it appeared evident that the most substantive violations

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1 were federal, and that to adequately probe the operation,  
 2 we must make use of a meaningful grand jury investigation,  
 3 something California for all intents and purposes, is  
 4 now without. So, in mid-stream, we abandoned the state  
 5 prosecution in favor of federal action.

6 Now, under ordinary circumstances, this would  
 7 have meant that we would close out our books on the case,  
 8 refer our material to the U.S. Attorney, who would then  
 9 assign an assistant U.S. Attorney, who initially would  
 10 know nothing about the case, whatsoever, and with any  
 11 kind of luck, the case would then wind its way through  
 12 the federal system.

13 However, having created the cross-designation  
 14 concept, we simply assigned, with the concurrence and  
 15 the active support of U.S. Attorney Jim Lorenz, the deputy  
 16 district attorney in charge of the case, to handle it  
 17 federally; it was a case in which he had been actively  
 18 working the case for some lengthy period of time.

19 As a result, no time was lost, no familiarity  
 20 was lost, no investigative effort was lost. My deputies,  
 21 working as special assistant U.S. Attorneys at Mr. Lorenz'  
 22 direction, presented the case to a federal grand jury.  
 23 An indictment was handed down recently, and the case pre-  
 24 sently awaits trial in federal court.

25 It is a case which, but for the Cross-Designation

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1 Program, could easily have slipped through a jurisdictional  
 2 crack, notwithstanding the fact that the alleged fraud  
 3 totals some \$3.8 million.

4 Other cases we have handled, have similarly  
 5 been rerouted from the state system to the federal system.  
 6 In California, we lack any ability whatsoever to obtain  
 7 court sanctioned wiretaps. Other investigative tools  
 8 available, federally, are not available under state law;  
 9 therefore, in the conduct of investigations in which such  
 10 tools are an absolute necessity, our alternative is to  
 11 go federally if there is a substantial violation of federal  
 12 law.

13 Other considerations which have come into play,  
 14 in determining the appropriate forum for a case involve  
 15 procedural or evidentiary rules which may be more advan-  
 16 tageous to one side or the other, and the available sanc-  
 17 tions under state and federal law. We have the opportunity  
 18 to consider these factors because of the existence of  
 19 the Cross-Designation Program.

20 We do not believe in the blanket -- and, I  
 21 want to emphasize this, in the blanket cross-deputization  
 22 of attorneys, or in the indiscriminate bringing of cases  
 23 to the other forum. Each participating lawyer is selected  
 24 by his office, and agreed to by the agency in which he  
 25 will be cross-commissioned. Each prosecutor so designated,

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1 then, is fully empowered to conduct business in both state  
2 and federal courts, and no particular prosecutorial forum  
3 is mandated at the commencement of an investigation.

4 Now, this program was put together without  
5 any benefit of legislative authority specifically dealing  
6 with cross-designation. Assistant U.S. Attorneys are  
7 appointed Special Deputy District Attorneys under my statu-  
8 tory authority to appoint deputies, such authority being  
9 found in California, in California Government Code Section  
10 24101. My deputies are appointed Special Assistant U.S.  
11 Attorneys under the authority of Title 28, Section 543,  
12 U.S. Code, which requires approval of the U.S. Attorney  
13 General.

14 I cannot stress enough that successful opera-  
15 tion of the Cross-Designation Program depends upon the  
16 relationship between the District Attorney and the U.S.  
17 Attorney. In San Diego, unlike other areas of the nation,  
18 this has not proved to be a problem. The relationship  
19 between our two offices has usually been very close and  
20 largely free of the petty bickerings which seem to afflict  
21 many agencies. The establishment of that relationship,  
22 I must concede, has stemmed in part, from my experience  
23 as the first U.S. Attorney in our judicial district; and  
24 from the appointment of two of the deputies from the District  
25 Attorneys Office, including Jim Lorenz, who formerly headed

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1 the fraud division in the District Attorneys office.

2 But, because of the experience of many of us  
3 in the prosecution community in San Diego, we are familiar  
4 with one another's system and staff. That experience  
5 is also crucial to the success of any such program. Judg-  
6 ment in the handling of important investigations must  
7 be left to attorneys experienced in both state and federal  
8 systems. In addition, the most crucial decision to be  
9 made in any case is whether to use the program at all.  
10 Overuse of the program in inappropriate cases, destroys  
11 the credibility of the program, and would subject it to  
12 substantial legal challenge.

13 Legal challenges will come, especially in close  
14 cases. In San Diego, we successfully beat back one challenge  
15 to the program and now have a published Ninth Circuit  
16 opinion, People versus Hawthorne, 626 Fed 2d, 87, approving  
17 the concept and operation of the program.

18 The advantages of the Cross-Designation Program  
19 are many and inure to both state and federal prosecutors.

20 From the State side, it allows us to overcome  
21 difficulties in procedure, law, or sanctions, and allows  
22 fuller use of vital investigative techniques. It also  
23 insures that cases involving substantial investigative  
24 effort, will not be left on the back burner of an already  
25 overworked federal prosecutor if it is determined that

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1 the case is, at its roots, a federal matter.

2 On the federal side, the program provides needed  
3 flexibility in major cases. An example cited in the material  
4 provided to you, describes how an important witness in  
5 a federal case, was chargeable with a nonreducible felony  
6 under federal law, but, if prosecuted under state law,  
7 would be afforded the opportunity to have that felony  
8 conviction reduced to a misdemeanor upon application  
9 by the prosecutor. Such application, of course, would  
10 follow his truthful testimony in the federal prosecution  
11 in which he was a witness.

12 To our mutual advantage, we have seen the program  
13 result in a closer cooperation between state and federal  
14 agencies, and a lessing of the hidebound tradition which  
15 precluded information sharing and the sharing of valuable  
16 investigative resources. We have seen both federal and  
17 state cases, important to the agency involved in the ori-  
18 ginal investigation, successfully prosecuted under this  
19 program, when without the program, they might well have  
20 fallen to the wayside.

21 For a good overview of the cases we have handled  
22 under the Cross-Designation, the update presented to the  
23 Executive Working Group, a copy of which you have, should  
24 be helpful.

25 Now, on a final note, whether the San Diego

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1 program model can be utilized as an approach to violent  
2 crime, is a question not easily answered. The program  
3 was not originally designed primarily for that purpose,  
4 although I will say that many of the people who were convicted  
5 of crimes not defined as violent, were violent people.

6 Certainly, in jurisdictions where resources  
7 are lacking, cross-designation could be used to fill the  
8 void where there is consent and cooperation between prose-  
9 cutors. It would seem to me that areas to be explored,  
10 would include expanding a joint effort in the prosecution  
11 of federal firearm laws, as well as considering more exten-  
12 sive use of the RICO statute. In this way, the federal  
13 government could assume an immediate role with respect  
14 to violent crime, and do so in harmony with local prosecutors.

15 Thank you.

16 PREPARED TEXT OF ADDRESS BY

17 EDWIN MILLER, JUNIOR

18 DISTRICT ATTORNEY OF SAN DIEGO COUNTY

19 Thank you for the opportunity to appear before you  
20 today. I am speaking as District Attorney for the County  
21 of San Diego, California, and as chairman of the concurrent  
22 jurisdiction committee of the Executive Working Group.

23 I have been asked to discuss with you the Cross-  
24 Designation Program which has served by office and the  
25 U.S. Attorney in San Diego for the last several years.

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1 You have been provided copies of a law review  
2 article describing the program as well as a summary of  
3 our activity under that program. Both documents are somewhat  
4 out of date, but should prove useful for background purposes.

5 The Cross-Designation Program involves appointing  
6 deputy district attorneys from my office as Special Assistant  
7 U.S. Attorneys who, under the direction of the U.S. Attorney,  
8 handle criminal cases in federal court, and the appointing  
9 of assistant U.S. Attorneys as Special Deputy District  
10 Attorneys who, under my direction, handle criminal matters  
11 in state court. The concept is simple and workable and  
12 has been of mutual benefit to our respective offices and  
13 to the criminal justice system.

14 Before describing the program, I must point  
15 out that in our experience it has been predicated on two  
16 factors. First, the program depends for its very life  
17 on an open and trusting relationship between the U.S.  
18 Attorney and the District Attorney. Without that relation-  
19 ship, the program will be stillborn. Second, the program  
20 stems primarily from distinctions between California law  
21 and procedure and federal law and procedure, which distinc-  
22 tions may or may not exist in other jurisdictions.

23 California is viewed by some of us as a judicial  
24 wonderland. Our state courts have devised rules and stan-  
25 dards at substantial variance with those extant federally.

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1 and in many other jurisdictions, the result being that  
2 many cases and types of cases are far more difficult to  
3 prosecute in California than under federal law, or in  
4 the courts of many other states. To date, for the most  
5 part, our state legislature has not kept pace in correcting  
6 those deficiencies.

7 So, I caution you from the outset that while  
8 I firmly believe the Cross-Designation Program is an extra-  
9 ordinarily valuable tool for law enforcement and prosecu-  
10 tion, it may have limited utility in some jurisdictions  
11 where the variance between state and federal law is not  
12 as great as it is in California.

13 As you know, the nation's prosecutorial system  
14 functions within a dual jurisdiction, state and federal.

15 Many cases have concurrent jurisdiction status;  
16 that is, they can be prosecuted in state court as a violation  
17 of state law, or in federal court as a violation of federal  
18 law. Bank robbery is one crime which immediately comes  
19 to mind in this regard. Other examples would include  
20 various kinds of fraud, activities of organized crime,  
21 public corruption, narcotics trafficking, and weapons  
22 offenses.

23 Although the potential for either state or  
24 local prosecution often exists, a prosecutor does not  
25 usually make the determination as to the forum in which

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1 the case will be heard. Most often it is the investigating  
 2 agency which makes that determination. Normally, investi-  
 3 gators take their cases to the prosecutor in their juris-  
 4 diction when they believe the case is ready for prosecu-  
 5 tion. Federal agencies, by virtue of training and habit,  
 6 refer their cases to the United States Attorney. State  
 7 law enforcement agencies refer their cases to the District  
 8 Attorney. The prosecutor's evaluation of the case and  
 9 the policy set forth by the state or federal prosecutorial  
 10 agency then determines the fate of that case. Absent  
 11 the Cross-Designation Program, the only exceptions to  
 12 this general rule are found in instances in which the  
 13 investigating agency experiences a conflict with the pro-  
 14 secutor or believes that prosecutorial policy dictates  
 15 that the case be prosecuted in the alternative forum.

16 While in general, the system works very well,  
 17 a serious problem develops when an investigation reveals  
 18 facts which make prosecution in the alternative forum  
 19 more desirable.

20 As an instance, investigators from my office  
 21 worked for a long period of time on a case involving a  
 22 San Diego businessman who was employing one variety of  
 23 a Ponzi scheme in which money taken in from today's investors  
 24 was used not merely to further the business itself, but  
 25 to afford the operator a high flying life style and to

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1 make interest payments to yesterday's investors. In  
 2 essence, he was building a house of cards atop a founda-  
 3 tion of new money. Without an expanding infusion of cash  
 4 from new investors, the business would collapse.

5 That is a violation of both state and federal  
 6 law. Initially, we planned to prosecute the businessman  
 7 under state law. In fact, we arrested him and filed a  
 8 criminal case. As the investigation progressed, however,  
 9 it appeared evident that the most substantive violations  
 10 were federal, and to that adequately probe the operation  
 11 we must make use of a meaningful grand jury investigation,  
 12 something California for all intents and purposes is now  
 13 without. So, in mid-stream, we abandoned the state pro-  
 14 secution in favor of federal action.

15 Under ordinary circumstances, this would have  
 16 meant that we would close out our books on the case, refer  
 17 our material to the U.S. Attorney who would then assign  
 18 an assistant U.S. Attorney who initially would know nothing  
 19 about the case, and with luck, the case would then wind  
 20 its way through the federal system.

21 However, having created the cross-designation  
 22 concept, we simply assigned, with the concurrence and  
 23 active support of U.S. Attorney Jim Lorenz, the deputy  
 24 district attorney in charge of the case, to handle it  
 25 federally.

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1 No time was lost, no familiarity was lost, no  
 2 investigative effort was lost. My deputies, working as  
 3 Special Assistant U.S. Attorneys at Mr. Lorenz' direction,  
 4 presented the case to a federal grand jury. An indict-  
 5 ment was handed down recently, and the case awaits trial  
 6 in federal court.

7 It is a case which, but for the Cross-Designation  
 8 Program, could easily have slipped through a jurisdictional  
 9 crack, notwithstanding the fact that the alleged fraud  
 10 totals some \$3.8 million.

11 Other cases we have handled have similarly  
 12 been rerouted from the state system to the federal system.  
 13 In California, we lack any ability whatsoever to obtain  
 14 court sanctioned wiretaps. Other investigative tools  
 15 available federally were not available under state law.  
 16 Therefore, in the conduct of investigations in which such  
 17 tools are an absolute necessity, our alternative is to  
 18 go federally if there is a substantial violation of federal  
 19 law.

20 Other considerations which come into play in  
 21 determining the appropriate forum for a case involve pro-  
 22 cedural or evidentiary rules which may be more advantageous  
 23 on one side or the other, and the available sanctions  
 24 under state and federal law. We have the opportunity  
 25 to consider these factors because of the existence of

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1 the Cross-Designation Program.

2 We do not believe in the blanket cross-deputiza-  
 3 tion of attorneys or in the indiscriminate bringing of  
 4 cases to the other forum. Each participating lawyer is  
 5 selected by his office and agreed to by the agency in  
 6 which he will be cross-commissioned. Each prosecutor  
 7 so designated, then, is fully empowered to conduct business  
 8 in both state and federal courts, and no particular prose-  
 9 cutorial forum is mandated at the commencement of an investi-  
 10 gation.

11 This program was put together without benefit  
 12 of any legislative authority specifically dealing with  
 13 cross-designation. Assistant U.S. Attorneys are appointed  
 14 Special Deputy District Attorneys under my statutory auth-  
 15 ority to appoint deputies, such authority being found  
 16 in California, in California Government Code Section 24101.  
 17 My deputies are appointed Special Assistant U.S. Attorneys  
 18 under the authority of Title 28, Section 543, U.S. Code,  
 19 which requires approval of the U.S. Attorney General.

20 I cannot stress enough that successful opera-  
 21 tion of the Cross-Designation Program depends upon the  
 22 relationship between the District Attorney and the U.S.  
 23 Attorney. In San Diego, unlike other areas of the nation,  
 24 this has not proved to be a problem. The relationship  
 25 between our two offices has usually been very close and

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1 largely free of the petty bickerings which seem to afflict  
 2 many agencies. The establishment of that relationship  
 3 has stemmed, in part, from my experience as the first  
 4 U.S. Attorney in our judicial district; and from the appoint-  
 5 ment of two of my deputies as United States Attorneys,  
 6 including the present U.S. Attorney, Jim Lorenz, who has  
 7 been chief of my Fraud Division.

8 Because of the experience of many of us in  
 9 the prosecution community in San Diego, we are familiar  
 10 with one another's system and staff. That experience  
 11 is also crucial to the success of any such program. Judg-  
 12 ment in the handling of important investigations must  
 13 be left to attorneys experienced in both state and federal  
 14 systems. In addition, the most crucial decision to be  
 15 made in any case is whether to use the program at all.  
 16 Overuse of the program in inappropriate cases destroys  
 17 the credibility of the program, and would subject it to  
 18 substantial legal challenge.

19 Legal challenges will come, especially in close  
 20 cases. In San Diego, we successfully beat back one chal-  
 21 lenge to the program, and now have a published Ninth Circuit  
 22 opinion, *People v. Hawthorne*, at 626 F.2d 87, approving  
 23 the concept and operation of the program.

24 The advantages of the Cross-Designation Program  
 25 are many and inure to both state and federal prosecutors.

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1 From the state side, it allows us to overcome  
 2 difficulties in procedure, law or sanctions, and allows  
 3 fuller use of vital investigative techniques. It also  
 4 ensures that cases involving substantial investigative  
 5 effort will not be left on the back burner of an already  
 6 overworked federal prosecutor if it is determined that  
 7 the case is, at its roots, a federal matter.

8 On the federal side, the program provides needed  
 9 flexibility in major cases. An example cited in the material  
 10 provided to you describes how an important witness in  
 11 a federal case was chargeable with a nonreducible felony  
 12 under federal law, but, if prosecuted under state law,  
 13 would be afforded an opportunity to have the felony convic-  
 14 tion reduced to a misdemeanor upon application by the  
 15 prosecutor. Such application, of course, would follow  
 16 his truthful testimony in the federal prosecution in which  
 17 he was a witness.

18 The program also allows federal authorities  
 19 to seek maximum terms under state law if federal sanctions  
 20 are deemed inadequate. An instance which comes to mind  
 21 would be a defendant who claims insanity at the time of  
 22 the offense, but is competent to stand trial. If that  
 23 mental condition is so found, the defendant is released  
 24 forthwith under federal law. Under state law, incarceration  
 25 in a mental facility is possible and the defendant will

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1 not escape accounting for his act.

2 To our mutual advantage, we have seen the program  
3 result in a closer cooperation between state and federal  
4 agencies, and a lessening of the hidebound tradition which  
5 precluded information sharing and the sharing of valuable  
6 investigative resources. We have seen both federal and  
7 state cases, important to the agency involved in the ori-  
8 ginal investigation, successfully prosecuted under his  
9 program when, without the program, they might well have  
10 fallen by the wayside.

11 For a good overview of the cases we have handled  
12 under the Cross-Designation Program, the update presented  
13 to the Executive Working Group should be helpful.

14 There is one aspect to the program which, in  
15 my view, requires legislation in order to make the program  
16 more manageable. The area which could profit from legis-  
17 lation affects not the attorneys on the Cross-Designation  
18 Program, but the investigators who make the cases.

19 Under current federal law, as interpreted by  
20 the federal courts, state law enforcement officers, even  
21 those who put together a case in the first place, may  
22 not be privy to the presentation of evidence to a federal  
23 grand jury. This results in state investigators, such  
24 as the peace officers in my office, being removed from  
25 a case when the determination is made to go federal. Out

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1 go the investigators most familiar with the case, and  
2 in come federal investigators who must be brought up to  
3 speed. Needless delay results. I recommend that legis-  
4 lation be enacted by the Contress in order to provide  
5 for the cross-designation of investigators who are working  
6 on cases being handled under the Cross-Designation Program.

7 On a final note, whether the San Diego program  
8 model can be utilized as an approach to violent crime,  
9 is a question not easily answered. The program was not  
10 originally designed primarily for that purpose. Certainly,  
11 in jurisdictions where resources are lacking, cross-  
12 designation could be used to fill the void where there  
13 is consent and cooperation between prosecutors. It would  
14 seem to me that areas to be explored would include expanding  
15 a joint effort in the prosecution of federal firearm laws  
16 as well as considering more extensive use of the RICO  
17 statute. In this way, the federal government could assume  
18 an immediate role with respect to violent crime and do  
19 so in harmony with local prosecutors.

20 -oOo-

21 MR. LORENZ: Thank you, it's indicated, my name  
22 is Jim Lorenz, and I'm the United States Attorney for  
23 the Southern District of California.

24 I do appreciate the opportunity to appear before  
25 this Task Force.

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1 Now, for the purpose of conserving time, I  
2 have a prepared statement that is fairly long. I would  
3 request that that statement be made a part of the record,  
4 and I don't intend to read it at this time.

5 What I would like to do is just hit the high  
6 points that I have contained within the statement, and  
7 then throw it open for questions, if any.

8 First, the reason that the program is effective  
9 in California and in our district is for approximately,  
10 three reasons.

11 One, the emasculation of the state grand jury  
12 system where there is, for all intensive purposes, the  
13 inability of the state prosecutor to pursue investigations,  
14 because they do not have an effective subpoena power;  
15 there is a requirement of a preliminary hearing--a post-  
16 indictment, if requested by the defense, and in California,  
17 preliminary hearings which do not allow for hearsay, can  
18 go from anywhere from one day to six months.

19 So, from a standpoint of complex cases, it  
20 only makes good sense that cases of this nature be brought  
21 to the federal side, if there is a federal violation involved.  
22 And, this can, of course, utilize the sources of the federal  
23 grand jury for the subpoena power and the investigative  
24 aspect of the case.

25 Secondly, in serious cases, matters where there

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1 is no corroboration of a co-conspirator who plans to testify  
2 in the case, it could be a serious crime of violence,  
3 or whatever. In those types of cases where the State  
4 of California requires corroboration, the matters can  
5 be brought to the federal side and prosecuted, and in  
6 one particular case, it was done so, where you were dealing  
7 with a violent individual, and the case would have been  
8 declined if it would not have been brought to the federal  
9 side, the only evidence was the uncorroborated testimony  
10 of a co-conspirator, it was decided that this was a serious  
11 matter that needed to be redressed, so we did bring it  
12 to the federal side, and prosecuted it successfully.

13 The third area is in the area of guns. The  
14 State of California has a hybrid type of case where most  
15 felons in possessions of guns are adjudicated as misdemeanors  
16 in the state system --

17 CO-CHAIRMAN BELL: Misdemeanors?

18 MR. LORENZ: That's right.

19 -- and, as a result where you're dealing with  
20 a motorcycle gang, or a serious violent offender, who  
21 has been found with a weapon, and it may be the only charge  
22 that you can bring, those types of cases are brought to  
23 the federal side; a series of those cases have been, and  
24 have been successfully prosecuted, and this is a very  
25 balid basis for bringing it to the federal side.

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1 Now, again, in order to save resources, it  
2 makes sense to have the deputy district attorney, who  
3 has handled this case, bring the case over in a cross-  
4 designation status, because it conserves our resources,  
5 and allows for the immediate pursuit of the matter, rather  
6 than being placed on a back burner with some assistant  
7 who has a heavy caseload.

8 No, con-commently, the basis for the federal  
9 government bring cases to the state system does have a  
10 viability. Initially, it was a one-way street, but, it  
11 was determined that in the cases of bank robbers, where  
12 there was an insanity defense, that it made only good  
13 sense to take these cases to the state system.

14 I heard a lot of this testimony earlier about  
15 the possibility of placing individuals individuals who  
16 were found insane at the time of the act, but, my experience  
17 in the federal system is that if they, in fact, are found  
18 insane at the time of the act, or they have the diminished  
19 capacity, they walk --

20 CO-CHAIRMAN BELL: Walk out.

21 MR. LORENZ: -- clear and simple.

22 And, the state system has a remedy, it may  
23 not be the best, but they can be sent to the department  
24 of mental health of the State of California, where a deter-  
25 mination will be made whether they are violent in nature,

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1 or have the propensity to continue their acts, and they  
2 can act accordingly in those circumstances.

3 At least there's a second review, and a deter-  
4 mination, and the person is incarcerated for a period  
5 of time while this review is made; so, it only makes good  
6 sense.

7 Again, in order to conserve resources, our  
8 assistant United States Attorney, takes that case, per-  
9 sonally, across the street, and handles it in state court;  
10 again, it can be moved expeditiously.

11 The last type of case that is brought by the  
12 federal side to the state side, and it happened just recently  
13 where after a six month investigation involving a municipal  
14 union, it was determined that there was no federal juris-  
15 diction in the matter, and that all that existed was a  
16 state embezzlement. Again, it made good sense for the  
17 Assistant United States Attorney, to take that case across  
18 the street, and that case is presently pending in state  
19 court under the program.

20 Now, the one thing that I -- that was not planned  
21 in this way, but the outfall of the program has demonstrated  
22 a lot of beneficial purposes; one, is that it created  
23 a closer working relationship between the Assistant U.S.  
24 Attorneys, and Deputy DA's, on a working basis; in addition,  
25 it tended to diminish the turf problem of guarding your

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1 own turf, it broke down the problems that exist in many  
2 jurisdictions of a supercilious attitude on one side or  
3 the other, that we are the only jurisdiction that can  
4 prosecute crimes.

5 And, what I believe it has done, it has created  
6 a joint effort against crime, rather than a parallel approach.  
7 And, this joint effort, I think, has out-fall not only  
8 to benefit the community as a whole, but, it creates a  
9 closer working relationship between the federal and the  
10 state, where you just do not have the problems that exist,  
11 as I say, in other areas.

12 Now, how this program can be replicated for  
13 violent crime, again, as District Attorney Ed Miller indi-  
14 cated, I don't really know; but, I can foresee, at least  
15 in limited circumstances, where in jurisdictions where  
16 the local prosecutor--county prosecutor, or district attorney  
17 does not have the resources, and possibly you had episodic  
18 --the problems of riots, or some problem where it was  
19 necessary to process a lot of people relatively quickly  
20 to comply with local speedy trial, or arraignment provisions.

21 I can see where cross-designated assistant  
22 United States Attorneys could aid the local prosecutor  
23 under those circumstances, and I can also see it, vice-  
24 versa, if there is a problem on a federal jurisdiction,  
25 a riot aboard a military base where you're processing

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1 people being held in detention there for one reason or  
2 another.

3 So, I do see some possibility of replication,  
4 but, I think it would have to be further studied, and  
5 determined that at least one, there is a remedy that one  
6 side can help the other, going both ways on a two-way  
7 street; and I certainly think it deserves the attention  
8 of the Commission for that purpose.

9 Thank you very much.

10 PREPARED TEXT OF ADDRESS BY

11 M. JAMES LORENZ

12 UNITED STATES ATTORNEY, SAN DIEGO

13 I appreciate the opportunity to appear before  
14 this Task Force and present my views on the enhancement  
15 of federal and state cooperation through the use of the  
16 Cross-Designation Program. The Cross-Designation Program,  
17 can be of aid to both federal and state prosecutors for  
18 effective prosecution of all crimes, including violent  
19 crime.

20 This program involves the cross-designation  
21 of a Deputy District or County Attorney as a Special Assis-  
22 tant U.S. Attorney and the concomitant deputization of  
23 an AUSA in the state system, enabling each to handle cases  
24 in the other's court system. A Deputy District Attorney,  
25 or County Attorney, obtains his status by applying to the

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1 Executive Officer for U.S. Attorneys with the approval  
 2 of the United States Attorney. Upon approval, the state  
 3 attorney becomes a Special Assistant U.S. Attorney pursuant  
 4 to 28 USC Section 543, and is designated for a period  
 5 of six months; and the designation is renewable at the  
 6 request of the U.S. Attorney. The Special Assistant status  
 7 has been upheld by the 9th Circuit Court of Appeals in  
 8 U.S. v. Hawthorne, 626 F. 2nd 87, 9th Cir. (July 16, 1980)  
 9 that discusses the legality of such designation.

10 The deputization of an AUSA as a state prosecutor  
 11 appears to be, at least in California, somewhat simpler.  
 12 The District Attorney swears in the AUSA as a Deputy D.A.,  
 13 and the person is qualified, assuming he is a member of  
 14 the State Bar of California, to practice as a Deputy D.A.

15 I was a state prosecutor in the San Diego County  
 16 District Attorney's Office when the Cross-Designation  
 17 Program was initially instituted. I was in charge of  
 18 the Fraud Division of the Office, which was responsible  
 19 for the first fraud case prosecuted under the Cross-Designation  
 20 Program in federal court by a Special Assistant (Deputy  
 21 District Attorney). Subsequently, as United States Attor-  
 22 ney, I have worked closely with District Attorney Ed Miller,  
 23 which has resulted in cases not only being prosecuted  
 24 by cross-designated Deputy D.A.'s, in federal court, but  
 25 by Assistant U.S. Attorneys cross-designated as Deputy

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1 District Attorneys in state court.

2 There are definite advantages to both the state  
 3 and federal prosecutors who participate in the program.  
 4 In addition, there are always concomitant problems to  
 5 overcome. I want to take the next few minutes to point  
 6 out the advantages of this program and the potential problems  
 7 that do result whenever a new program is initiated.

8 First, as we all know, any innovated program  
 9 developed by the heads of agencies does not always meet  
 10 with uniform approval with those working within the system.  
 11 There is always resistance to overcome, and it must be  
 12 demonstrated that the Cross-Designation Program is benefi-  
 13 cial to all involved, and is not used to replace someone  
 14 because of a lack of confidence in members of your staff.  
 15 The initial question that must be overcome is "Why is  
 16 someone from another office handling a case in our court?"  
 17 This resistance can be overcome quickly by laying the  
 18 groundwork for the program and explaining that the reason  
 19 and benefit of the program lies in the more useful alloca-  
 20 tion of resources in allowing, as an example, the Deputy  
 21 District Attorney who has been living with the case, to  
 22 prosecute it in a cross-designation capacity in federal  
 23 court, rather than assigning it to an Assistant United  
 24 States Attorney unfamiliar with the facts and often result-  
 25 ing in the Assistant placing the case on the "back burner"

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1 because of his already heavy work-load. This is especially  
2 true of complex fraud and conspiracy matters.

3           The program in San Diego was initially on-  
4 sided, with only state cases being brought into state  
5 court. The California legislature emasculated the state  
6 grand jury system by requiring a post-indictment pre-  
7 liminary hearing if the defense so requests. As a prac-  
8 tical matter, this precludes grand jury investigations  
9 of complex matters because of the subsequent preliminary  
10 hearing, which could take anywhere from one day to six  
11 months, based on the California experience. California,  
12 therefore, has no effective investigatory subpoena power,  
13 and this precludes investigations into complex matters.  
14 As a result, the federal system, through the inherent  
15 powers of the grand jury, is a viable alternative to pro-  
16 secuting complex matters in the state system in California.  
17 The first cases brought to the federal side by cross-  
18 designated Deputy District Attorneys were matters of a  
19 complex nature that used the subpoena power of the federal  
20 grand jury to develop the case.

21           Only in the last year has it become apparent  
22 that utilization of the California State court system  
23 by federal attorneys can be a viable alternative to matters  
24 originally brought to the United States Attorney's Office,  
25 as federal cases. As a result, the Cross-Designation

1 Program has now been proven to be effective as a two-  
2 way street. The following cases are examples where Assistant  
3 United State Attorneys have taken matters to the state  
4 court system and prosecuted them as cross-designated,  
5 Deputy District Attorneys.

6           Bank robberies, where the defendant is mentally  
7 capable of standing trial but claims the defense of insanity  
8 at the time of the act are taken to the state courts because  
9 of the difference in the systems. Prosecuting the bank  
10 robberies in the California state court system allows  
11 for remand to the custody of the Department of Mental  
12 Health for further study if found to be incapable at the  
13 time of the act. On the federal side, if the defendant  
14 is found capable of standing trial, but not guilty by  
15 reason of insanity at the time of the act, he is immediately  
16 released. As a result, a number of bank robbery matters,  
17 including one presently pending, are being prosecuted  
18 in the state court system by an Assistant United States  
19 Attorney cross-designated a Deputy District Attorney.

20           There are other examples where the cross-designa-  
21 tion of an Assistant United States Attorney has been viable.  
22 In the case of an FBI investigation involving the alleged  
23 embezzlement of a municipal union's trust funds by the  
24 president of the municipal union, it was determined after  
25 an eight-month investigation that the municipal union was

1 exempted from the federal law covering union activity.  
 2 The only violation was that of embezzlement, which was  
 3 a state crime. Rather than refer the case, which involved  
 4 a considerable number of records, to the District Attorney's  
 5 Office, it appeared reasonable that the Assistant U.S.  
 6 Attorney familiar with the case should take it to the  
 7 state court and prosecute it in that system. With the  
 8 concurrence of the District Attorney, the case is now  
 9 pending trial in the state court system.

10 Although there are additional examples, these  
 11 have been cited to demonstrate the viability of the program.

12 The close cooperation between District Attorney's  
 13 Office and the United States Attorney's Office, has addi-  
 14 tional side benefits. The interaction has, as a natural  
 15 outflow, created closer communication and coordination  
 16 between the two offices and the concomitant closer rela-  
 17 tions between the working AUSA's, and Deputy D.A.'s.  
 18 Because of the close cooperation, the individuals get  
 19 to know each other and develop stronger ties between the  
 20 offices. This tends to build a mutual respect and goes  
 21 a long way in alleviating the petty jealousies and concern  
 22 that one is treading on someone else's turf. It tends  
 23 to bond a joint effort against crime, rather than a parallel  
 24 approach.

25 Although the program is effective, it did not

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1 become effective without growing pains, which is natural  
 2 when any new program is undertaken. There are two ways  
 3 in which a state case can be brought to the federal system.  
 4 The first way is for the state agency to fully investigate  
 5 the case with their own investigative agents and to bring  
 6 the matter in a completed package for presentation before  
 7 the federal grand jury. Examples of this type would be  
 8 where the state, after a thorough investigation, deter-  
 9 mined that there was no state violation, but, a federal  
 10 violation, and therefore presented the case in its com-  
 11 pleted form to the federal grand jury for indictment.  
 12 There may be reasons other than the failure of a state  
 13 violation to transfer a state case. As an example, if  
 14 it were determined that the state penalty for the offense  
 15 was a misdemeanor or some lesser charge than that in the  
 16 federal system where a federal violation existed under  
 17 the same facts, then there would be a sufficient basis  
 18 for bringing the case to the federal side. Possession  
 19 of a gun by a convicted felon is an example where the  
 20 violation is a felony under federal law, but a misdemeanor  
 21 under state law. Numerous state cases involving guns  
 22 have been prosecuted in federal court for this reason.  
 23 Also, California state law requires corroboration of con-  
 24 spirator testimony--federal law does not. Major differences  
 25 in rules of evidence can be a valid reason for changing

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1 jurisdiction. But, the majority of the matters are trans-  
 2 ferred after the investigation is only partially complete,  
 3 and it is necessary to use the federal grand jury through  
 4 its subpoena power to continue the investigation in order  
 5 for the case to result in an indictment. This is the second  
 6 type of matter brought to the federal side. It usually  
 7 involves the federal investigative agencies, most frequently,  
 8 the FBI, DEA, or Postal Inspectors. The utilization of  
 9 federal investigators on an original state case brings  
 10 into play another equation that is necessary to solve  
 11 for a successful prosecution. Because of the secrecy  
 12 requirements of the federal grand jury, state investigators  
 13 cannot be privy to grand jury material. It is therefore,  
 14 necessary to involve a federal investigative agency to  
 15 participate in the investigation. Representatives of  
 16 both the United States Attorney's Office and the District  
 17 Attorney's Office must therefore discuss with the investi-  
 18 gative agency the need for their services and demonstrate  
 19 that the case fits within the priorities of the federal  
 20 agency in order to obtain their cooperation. It is also  
 21 necessary that the United States Attorney assure the investi-  
 22 gative agency that the cross-designated Special Assistant  
 23 is knowledgeable of the ground rules and federal court  
 24 procedures and assure that he will be properly supervised  
 25 in the federal system so that confidence in the case is

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1 assured.

2 It is also necessary to assure the federal  
 3 investigative agencies, unfamiliar with the program, that  
 4 the cross-designated Special Assistant is handling the  
 5 case not because an Assistant U.S. Attorney is unable,  
 6 but because it is a more effective utilization of resources.

7 Experience has demonstrated that after the  
 8 cross-designation has become routine, the agencies have  
 9 confidence in the program, and treat the case in the same  
 10 manner as that of any other case they have under investi-  
 11 gation.

12 An understanding also has to be developed with  
 13 the state investigative agency originally looking into  
 14 the matter regarding grand jury secrecy. There is a split  
 15 in the 7th Circuit and the 1st Circuit as to whether state  
 16 investigators can gain exposure to grand jury information  
 17 under Rule 6(e). U.S. V. Stanford, 589 F. 2d 295, (7th  
 18 Cir., 1978) upholds disclosure to state law enforcement  
 19 personnel, pursuant to court order. Several other cases,  
 20 however, have reached a contrary result. The court in  
 21 In Re Grand Jury Proceedings, 445 F. Supp. 349, C.D.R.I.,  
 22 appeal dismissed, 580 F. 2d 13 (1st Cir., 1978), concluded  
 23 that disclosure under Rule 6(e)(3)(C)(i), to a state police  
 24 detective who was assisting the grand jury in the investi-  
 25 gation of federal crimes was not authorized.

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1           Although the 9th Circuit has not specifically  
2 held whether disclosure is appropriate to state law enforce-  
3 ment officers, the 10th Circuit recently held that the  
4 Rule did not permit court-ordere disclosure to a private  
5 investigator (who had initially referred the case to federal  
6 investigators) so that he could continue to assist the  
7 investigation. U.S. v. Tager, 638 F. 2d 167 (10th Cir.,  
8 1980).

9           Because of this conflict, our office has taken  
10 the position that in this District, state police officers  
11 should not be given disclosure of grand jury material  
12 once the case has become federal. This position has been  
13 reinforced because of the comments of a local district  
14 court judge in a local case on motions for dismissal due  
15 to disclosure to state narcotics officers pursuant to  
16 court order. Although he upheld the disclosure locally,  
17 he commented he might not be inclined to do so again.

18           After it has become understood by all parties,  
19 including the investigative agencies, of the legal founda-  
20 tion and requirements to pursue a matter under federal  
21 law, then the case can go forward. It is imperative  
22 that these details be worked out ahead of time, as experience  
23 has unfortunately demonstrated that failure to inform  
24 the investigators of all of the details and legal require-  
25 ments can create hard feelings. There may be a basis for

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1 seeking legislation to include state investigators within  
2 the authorized parties that can become privy to grand  
3 jury information under a cross-designation program if  
4 the program is to be expanded. The same prohibition does  
5 not appear to exist when an Assistant United State Attorney  
6 takes a matter to the state system. If the case was ori-  
7 ginally investigated by the Federal Grand Jury, a dis-  
8 closure order under Rule 6(e), can be obtained for the  
9 purpose of prosecuting the case in the state court system.  
10 In California, because the grand jury is for all intense  
11 and purposes abrogated, it does not play a part in the  
12 investigative process. In those jurisdictions that do  
13 have grand juries, I am unaware of any secrecy provisions  
14 that would bar federal investigators similar to the federal  
15 provisions that exclude state investigators from grand  
16 jury information.

17           Because cross-designation has been proven success-  
18 ful in the Southern District of California, there is no  
19 reason that replication cannot be feasible in other dis-  
20 tricts. With the concurrence of the local prosecuting  
21 attorney, Assistant U.S. Attorneys be cross-designated  
22 to aid in the prosecution of state crimes, where the state  
23 has inadequate resources to handle the volume. I could  
24 envision that if the Department of Justice were asked  
25 by a beleaguered local prosecutor in serious need of help,

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1 government lawyers could be assigned, then cross-designated  
 2 to help the local state prosecutor. Once, however, an  
 3 Assistant became a cross-designated state prosecutor,  
 4 he would come under the supervision of the county District  
 5 Attorney or prosecuting attorney, depending on the agency  
 6 that had responsibility for pursuing the case. Because  
 7 the United States Attorneys' Offices throughout the country  
 8 are already relative short of manpower, this alternative  
 9 would have to be on a limited basis, and only during an  
 10 emergency situation.

11 In closing, I believe, from my experience,  
 12 that state and federal prosecuting agencies can work together;  
 13 and in doing so, not only present a united front in combatt-  
 14 ing crime, but alleviate the petty jealousies and misunder-  
 15 standings that in some cases have resulted in a total  
 16 breakdown in relations in some communities. I would recom-  
 17 mend that the program be expanded to all districts where  
 18 a mutual trust and confidence can be developed.

19 -o0o-

20 EXECUTIVE DIRECTOR HARRIS: Judge Bell, questions?

21 (Questions of Mr. Miller and Mr. Lorenz by Co-Chair-  
 22 man Bell.)

23 CO-CHAIRMAN BELL: My first question is to Mr. Miller.

24 Did you say that in California there cannot  
 25 be a wire tap in law enforcement?

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1 MR. MILLER: Yes. State law prohibits the use of  
 2 wire taps; as a matter of fact, we have a unique appellat  
 3 opinion in California which prevents the use of a federal  
 4 wire tap to bring state prosecutions.

5 CO-CHAIRMAN BELL: So, you have to -- if you use  
 6 a wire tap, you have to go get the federals to do it,  
 7 and prosecute in the federal court?

8 MR. MILLER: Right.

9 CO-CHAIRMAN BELL: Is there any other state in the  
 10 Union that does not allow wire taps in law enforcement?

11 MR. MILLER: Oh, I think there are probably several  
 12 jurisdictions which prohibits the use of wire tap.

13 CO-CHAIRMAN BELL: The Supreme Court has upheld  
 14 it in law enforcement more than once.

15 MR. MILLER: You see, one of the areas where --  
 16 well, wire taps are used in many cases, but especially  
 17 in things such as a large gambling case in which local  
 18 investigators may have worked on the case for six months --

19 CO-CHAIRMAN BELL: Well, you might have a terrorism  
 20 case, kidnaping, and a few other things that may offend  
 21 society, who might think you ought to use some of your  
 22 best effort to catch them, but, you can't do it anyway.

23 MR. MILLER: That's right.

24 CO-CHAIRMAN BELL: All right. Are there other dis-  
 25 tricts in California using the Cross-Designation Program?

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1 MR. LORENZ: I know Los Angeles has used it; I can't  
2 speak for San Francisco, or the Sacramento Districts.

3 CO-CHAIRMAN BELL: Are there other districts in  
4 the United States using it?

5 MR. LORENZ: Not to my knowledge. Possibly one  
6 district in the Milwaukee area, I know that I've had inquiry  
7 from that particular area.

8 MR. MILLER: Perhaps Buffalo, too.

9 CO-CHAIRMAN BELL: Buffalo. If you only used it  
10 for -- in bank robbery cases where the FBI goes over and  
11 testifies in the state court, and in firearms cases where  
12 the state won't prosecute, or either it's a misdemeanor,  
13 or in the insanity cases, that would be reason enough  
14 to use the system; I commend the San Diego system, I think  
15 you've done a fine job getting it started.

16 In the idea of replicating this, we really  
17 like to know more about how find the cases, what mechanism  
18 do you have set up in each of your offices to locate the  
19 case, for example, in the state prosecutors office you'd  
20 almost have to have someone there who knows the federal  
21 criminal code.

22 MR. MILLER: We do. We have many experienced pro-  
23 secutors, some of whom were former assistant U.S. Attorneys;  
24 so, we do have an experience factor there that permits  
25 analysis, and when an investigation reaches the point where

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1 there is a serious consideration about the possibility of  
2 prosecuting federally, then that matter is reviewed and  
3 brought to the attention of the U.S. Attorney, and we  
4 analyze it step by step.

5 CO-CHAIRMAN BELL: And, I suppose the same thing --  
6 is it true in your office, Mr. Lorenz, you have prosecu-  
7 tors who know the State criminal code?

8 MR. LORENZ: Yes, we do. In fact, one of the course  
9 criterias is that to practice in California State Court,  
10 you must be a Member of the California Bar, and we do  
11 have as a requirement that all Assistant U.S. Attorneys  
12 ultimately take the California Bar and pass that Bar.

13 CO-CHAIRMAN BELL: Yeah. Well, is not this something  
14 that would address itself to these Federa-State-local  
15 law enforcement committees--this sort of an approach,  
16 it seems to be it ought to be.

17 MR. MILLER: I think it would be a subject matter  
18 that would be of very important concern, and --

19 CO-CHAIRMAN BELL: And, it ought to be almost the  
20 first item on their agendas.

21 MR. MILLER: It's certainly the kind of model that  
22 could be examined and explored by the various committees  
23 to see whether it makes practical sense in the particular  
24 jurisdiction.

25 CO-CHAIRMAN BELL: Well, I thank both of you for what

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1 your doing and also for your testimony.

2 MR. LORENZ: I have one additional comment--I have it  
3 in the prepared statement, and that is possible legisla-  
4 tion that might aid in the area of grand jury disclosure  
5 under 6(e); I just direct your attention to that portion  
6 in the statement as that can present a problem.

7 CO-CHAIRMAN BELL: Yeah, it could, but, you'd have  
8 to get a special order--it wouldn't be a problem if you'd  
9 get a special order from the court.

10 MR. LORENZ: Well, there is a problem in California;  
11 there's the first district and the seventh district that  
12 one of the districts, I don't recall which, allows for  
13 disclosure of grand jury material to state investigative  
14 officers; the other district has explicitly prohibited  
15 disclosure of grand jury material to state investigative  
16 officers. In California, there's no ninth circuit decision  
17 on the matter.

18 CO-CHAIRMAN BELL: Yeah -- well, you'll have to  
19 get a case up to the Ninth Circuit.

20 Thank you.

21 EXECUTIVE DIRECTOR HARRIS: Mr. Carrington?

22 (Questions of Mr. Lorenz by Task Force Member  
23 Carrington.)

24 Q Just one brief question--follow-up to what  
25 I asked General Edmisten. Mr. Lorenz, have you had, or

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1 do you anticipate any FOIA problems with the set-up that  
2 you're using?

3 MR. LORENZ: I don't anticipate a problem, particularly  
4 with the changing procedures and rules. We haven't had  
5 any problem in the past. We've been very sensitive to  
6 that, and the Federal side has been very sensitive to  
7 that, and it has not, at least, presented a problem in  
8 our district.

9 MR. CARRINGTON: Thank you.

10 EXECUTIVE DIRECTOR HARRIS: Mr. Edwards?

11 MR. EDWARDS: No questions.

12 EXECUTIVE DIRECTOR HARRIS: Mr. Armstrong?

13 (Questions of Mr. Lorenz and Mr. Miller by Task  
14 Force Member Armstrong.)

15 Q On the Title 28 of the U.S. Code, and the Section  
16 granting you the authority to designate, Mr. Lorenz, do  
17 you do that in every case, file a petition or something  
18 with the Attorney General to designate one of Mr. Miller's  
19 assistance.

20 MR. LORENZ: Yes. Each deputy District Attorney  
21 must be especially commissioned a Special Assistant.  
22 Mechanically, the paperwork is forwarded to the Executive  
23 Office of U.S. Attorney's, it is then forwarded to the  
24 Attorney General designate, who authorizes the assignment,  
25 and then it is conveyed to us, and it's usually for a six

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1 month period, but is renewable just on request.

2 Q And, Mr. Miller, under your arrangement, it's at  
3 your discretion?

4 MR. MILLER: At my discretion, yes.

5 MR. ARMSTRONG: That's all I have.

6 EXECUTIVE DIRECTOR HARRIS: Mr. Littlefield?

7 (Questions of Mr. Miller by Task Force Member Littlefield.)

8 Q Mr. Miller, do you always have a case before  
9 you cross-designate someone, or do you have some sort  
10 of exchange program where someone would go over to the  
11 U.S. Attorney's office for six months, or something like  
12 that?

13 A We usually have at least two attorneys cross-  
14 designated in the fraud division, and we have two attorney's  
15 cross-designated in the special operations division which  
16 handles a wide variety of cases, including organized crime,  
17 corruption, and matters of that sort. So, we always have  
18 at least four individuals who have been cross-designated.

19 I think currently, we have five; but, usually  
20 it's either four or five individuals.

21 MR. LITTLEFIELD: Thank you.

22 EXECUTIVE DIRECTOR HARRIS: Chief Hart?

23 (Questions of Mr. Miller by Task Force Member Hart.)

24 MR. HART: I think you have a great program, and  
25 it was a good presentation. I have one question concerning

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1 law enforcement in the criminal justice system.

2 Q One of the problems I've found over the years  
3 is local police agencies conduct an investigation, espe-  
4 cially on continuing offenses, they won't come, or not  
5 invited, or some personality problem, with seeking out  
6 the prosecutor at the beginning of the investigation on  
7 a continuing offense, to get advice and consent along  
8 the way; do you find, and I know the two gentlemen in  
9 San Diego, the Sheriff and the Chief, are good law enforce-  
10 ment officers. Do you and the police cooperate as well  
11 as you do with the Attorney General on those continuing  
12 type offenses?

13 A I have a senior experienced attorney from my  
14 office who works in the police station--at the police  
15 headquarters, and is there on a permanent basis to advise  
16 the police on matters involving investigations. If that  
17 attorney runs into any problems from the questions that  
18 are posed to him by the investigators, then he seeks advice  
19 from other areas in the office.

20 MR. HART: Very good. That's the only question  
21 I had.

22 Thank you.

23 EXECUTIVE DIRECTOR HARRIS: Gentlemen, thank you  
24 very much for a very interesting presentation. Se appreciate  
25 your coming all the way from San Diego to be with us today.

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1 Our final witness for today, Lee M. Thomas,  
2 who is the Director of South Carolina Division of Safety  
3 Programs, and Chairman of the National Criminal Justice  
4 Association.

5 Before Mr. Thomas proceeds, we'll take about  
6 a five minute recess.

7 (Short recess.)

8 Welcome again, Mr. Thomas, and we'd be pleased  
9 to hear your remarks.

10 TESTIMONY OF

11 LEE M. THOMAS

12 DIRECTOR OF THE DIVISION OF PUBLIC SAFETY PROGRAMS,

13 OFFICE OF THE GOVERNOR, SOUTH CAROLINA

14 MR. THOMAS: Thank you, Jeff.

15 I have a written statement that you have a  
16 copy of--it's in the record, and I'm not going to read  
17 that, and I know I'm last on the agenda, and my remarks  
18 will be somewhat brief, and I'll be glad to answer any  
19 questions you have.

20 I'm, as stated, Lee Thomas, I'm Director of  
21 Public Safety Programs, and work for Governor Riley in  
22 South Carolina, and am also Chairman of the National Criminal  
23 Justice Association.

24 I'm not going to talk about statistics about  
25 crime and violent crime; I think you've heard a lot of

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1 that. I read some of the testimony from your last hearing,  
2 and you've got an awful lot of background information  
3 about crime.

4 I will tell you this, I've worked for three  
5 Governors, two Democrats and a Republican, and in each  
6 of those administrations as the aide in that administration  
7 for criminal justice and crime matters; it has been a  
8 major issue that each of those Governors has had to come  
9 to grips with.

10 Somethings we've done successfully, others  
11 we haven't, but, it's a major problem, it's a problem  
12 that has continued, we've dealt with in our State, I think  
13 it's a problem that is increasing.

14 I note that the current President, the Chief  
15 Justice, and the Attorney General, they've all given it  
16 a high priority in this Administration, and a priority  
17 that I think it deserves.

18 It certainly is reaching crisis proportions  
19 in the United States and deserves the attention this Task  
20 Force is giving it.

21 I think when we hear about crime, and we hear  
22 about crime statistics, sometimes we tend to forget about  
23 what the real impact of crime is.

24 Several years ago, after a number of years  
25 of being involved in policy issues relating to how we're

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1 going to control crime, I guess I had become somewhat  
 2 callosed to just what it was all about. I live in a small  
 3 town out from Columbia, population of about 400, and I  
 4 was born and raised there, and my family lives there,  
 5 and I still live there, and I can tell you that that's  
 6 a very safe and secure place to be born and raised.

7 My father runs a general store in that town,  
 8 and most of my family works in that store with him, and  
 9 one day when he came back from lunch with my sister, he  
 10 saw three men in a car speeding away from that store,  
 11 and upon going inside, he found my brother, my aunt, one  
 12 of the other employees, tied up on the floor, my brother  
 13 having been struck when he resisted. Well, the in pact  
 14 that that crime had on my family, on all of the residents  
 15 of that community was tremendous. I can't tell you what  
 16 impact violent crime will have on an individual, and you  
 17 won't know until you see it, either yourself, your family,  
 18 or somebody you know very closely. It had an impact on  
 19 their lives then, and has had since then.

20 So, violent crime is definitely something,  
 21 I think, that we have to come to grips with, not just  
 22 the crime itself, but the fear of violent crime, it is  
 23 pervasive; as we hear more about it, people become more  
 24 and more afraid of it. But, it's a problem that we're  
 25 not going to solve easily, there's no quick fixes to crime.

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1 and what we do about it.

2 It's one that I think is going to require a con-  
 3 centrated effort by all levels of government.

4 I was very pleased to hear the testimony of  
 5 the gentleman from North Carolina, and I certainly, like  
 6 you, Mr. Edwards, am ready to sign on with him in his  
 7 program.

8 A Federal, State, local, cooperative effort  
 9 is needed, but, not one that's here today and gone tomor-  
 10 row; one that's going to be a long-term effort, one that  
 11 will receive a high priority, and a concentrated effort.

12 I come to you to talk about some of the complexi-  
 13 ties, not only of violent crime, but the complexities  
 14 of the criminal justice system that tries to deal with  
 15 it.

16 I heard some of the comments concerning cor-  
 17 rections. I think the problems we have in corrections  
 18 in this country today contributes to the problems we have  
 19 with violent crime. In my State, for instance, we're  
 20 in the middle of a massive building program--new prisons;  
 21 we have been in the middle of that program for the las  
 22 three administrations that I've served in. Right now,  
 23 we've got \$70 million in capital construction underway  
 24 for new prison construction, and are in the process of  
 25 approving another \$30 million. Prison bed spaces, the

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1 latest prison we're building, at \$52,000 per bed to build  
2 that prison.

3 At the same time, just yesterday, I completed  
4 lobbying for the Governor, a major prison reform package  
5 through our State Legislature. I can tell you that cor-  
6 rections has -- problems of corrections have got to be  
7 dealt with--have got to be dealt with nationally, it's  
8 almost at a crisis stage, and it takes not only prison  
9 construction, and there's major building going on through-  
10 out the country as far as new prisons are concerned. But,  
11 it also takes a balanced approach, a strong community  
12 corrections program.

13 We've got to sort out those individuals who  
14 need to be restrained, that society needs to be protected  
15 from, that need to be in prison, and those individuals  
16 who can be dealt with more effectively in the community,  
17 whether it be through restitution programs, community  
18 service programs, intensive supervision programs, or whatever,  
19 but, we've got to have that sorting out process, and it  
20 can't start once they get to corrections, its got to start  
21 earlier in that judicial process. Its got to start back  
22 there when we begin our prosecution stage.

23 So, the problems of crime--the problems of  
24 violent crime are not something we can just deal with  
25 on the street, they are something we've got to deal with

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1 throughout that criminal justice system, and the complex  
2 problems.

3 Now, I've got some proposed solutions--some  
4 proposed solutions as far as how we move forward with  
5 this inter-governmental effort I talked about, and that  
6 the Attorney General from North Carolina talked about.

7 One is, I think that we do need something,  
8 and whether we call it a domestic security council, or  
9 whether we call it a national advisory council on crime,  
10 we need, at a national level, an inter-governmental council,  
11 strongly representative of state and local officials,  
12 and federal officials, that are not just advisory in nature,  
13 but that have the responsibility to deal with major policy  
14 issues that impact on crime throughout this country.

15 Now, to come to grips with those policy issues  
16 and sort out what each level of government is going to  
17 do, as an example, our drug enforcement policies in the  
18 country, our enforcement of immigration laws, our policies  
19 relating to corrections and correction standards in the  
20 country. These are all things that need to be dealt with,  
21 and need to be dealt with by officials from each level  
22 of government, and I think are things that could be dealt  
23 with, and should be dealt with at a national level by  
24 a council as has been suggested.

25 Now, I can't stress to you how much I think the

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1 kind of cooperativeness we've been talking about, can  
 2 impact on the problems we've got. We see it at a state  
 3 level; as an example, last year we established a coopera-  
 4 tive effort to deal with the crime of arson in our state  
 5 and set up, at a state level, an inter-governmental council  
 6 with the Federal agencies, State agencies, local agencies,  
 7 that had jurisdiction to deal with the problem of arson.

8 We got together and we decided who could do  
 9 what, what legislation--new laws we needed, what agency  
 10 resources were needed. We defined who was going to do  
 11 what, and we got on with it. And, we've already enacted  
 12 some of those laws that were needed, and we've begun to  
 13 identify what the federal agencies are going to do in  
 14 cooperation with state and local, and I think we're having  
 15 an impact.

16 But, that kind of cooperation in sitting down  
 17 at a table and sorting out just who is going to do what,  
 18 is, I think, can have far reaching impact.

19 Secondly, I think -- something I heard in a  
 20 speech a couple of years ago in South Carolina, and I  
 21 think Judge Bell was given that speech, about R & D, Research  
 22 and Development; I think that's a very important component  
 23 of criminal justice that often has been lacking.

24 Just like in any business, or any corporation,  
 25 you have a research and development effort. We've got to

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1 have that as far as criminal justice--crime problems are  
 2 concerned, and I think that's an appropriate and proper  
 3 Federal role, to participate with State and local government  
 4 in a research and development effort--the development  
 5 of new techniques, the development of new ideas, trying  
 6 those new techniques, and trying those new ideas.

7 Particularly in trying those techniques and  
 8 ideas, I think, then is where that State and local govern-  
 9 ment can come into play. One of the things we find so  
 10 often at the State and local level is as we deal with  
 11 tight resources, and we have those at every level of govern-  
 12 ment, but, there is no flexibility for development in  
 13 criminal justice.

14 Law enforcement agencies are strapped just  
 15 to keep men on the street--keep basic manpower there to  
 16 keep basic services being provided, and the resources  
 17 available to try to develop new techniques, try new approaches  
 18 is often not there.

19 That's one of the real benefits that I saw  
 20 come out of the LEAA program in my State, and that is,  
 21 it gave us a little bit of money to be used for develop-  
 22 mental purposes. We learned a lot from what was being  
 23 done in other States at a national level, it was then  
 24 transferred to us; as an example, Sting Operations--under-  
 25 cover operations that had a significant effect when we

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1 took those and put them in place in our State; a career  
2 criminal program, which we've now got operating almost  
3 State-wide; a pretrial intervention program that operates  
4 State-wide. Those are all things that came about as a  
5 result of Federal research, Federal demonstration, and  
6 then a developmental phase at our State level using some  
7 of that LEAA money along with our State and local money  
8 to implement it.

9 So, I think that an R&D effort is very important  
10 if we're going to deal with violent crime, and I think  
11 that, as I said, again, and I can't overemphasize they  
12 are not quick-fixes to that problem, they are solutions,  
13 but they are solutions that take follow-through, solutions  
14 that often are right out there and have already been found  
15 by other people that need to be transferred.

16 Finally, I would say along with the thoughts  
17 that I just had on LEAA, is that it does need to be a  
18 Federal initiative in the form of some kind of assistance  
19 in addition to the technical assistance and the leader-  
20 ship for State and local government; and, I would propose,  
21 and support, some limited financial assistance to help  
22 State and local government deal with violent crime, and  
23 serious crime, and by that, I think if we're going to  
24 have that kind of assistance, we definitely need to learn  
25 from the experiences we've had in other Federal assistance

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1 programs.

2 I think the kind of assistance that's most  
3 effective is that that's tied in with the research and  
4 development effort I mentioned, and that is that we take  
5 targeted programs, we take proven effective programs,  
6 we take programs where State and locals are willing to  
7 buy in just as much as the Feds are willing to provide,  
8 and we implement those programs at a State level, and  
9 at a local level--a limited financial assistance role  
10 that's largely a developmental role, provide the resources  
11 that they need to implement those new programs, and pull  
12 them into their own operating budget.

13 In conclusion, I might make a few remarks about  
14 immediate or emergency response in the area of crime con-  
15 trol, or criminal justice.

16 Often times I think that a State and local  
17 level, we find ourselves in a situation that's almost  
18 beyond our resources, or is beyond our resources to deal  
19 with, as far as crime or criminal justice. I think back  
20 on a situation we had when Jim Edwards was Governor in  
21 South Carolina, we had a series of murders that created  
22 a tremendous amount of apprehension in our State. It  
23 was a situation that was volatile in nature.

24 We brought to bear all the resources we had  
25 at a State level, and from the local units of government

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**CONTINUED**

**3 OF 5**

1 that were involved to try and deal with that situation,  
2 and eventually did.

3 I think back on that, and I think about the  
4 assistance that could have been provided by Federal Govern-  
5 ment. I think we have to be very careful when we think  
6 about assistance in those times; there's a proper role  
7 for Federal Agencies, as there is for State and local  
8 agencies. Obviously, the primary responsibility for law  
9 enforcement efforts, I think, rest with local and State  
10 government, where it most properly should rest.

11 I do feel, though, that a role of technical  
12 assistance definitely is helpful. I do think direct sup-  
13 port from Federal agencies such as provided under current  
14 law by the FBI and other agencies, is also proper.

15 The one thing that I feel is most important,  
16 is that the Federal agencies have a plan of action as  
17 to how they could come in and provide assistance. A coor-  
18 dinated plan of those Federal agencies. As an example,  
19 one of my responsibilities in the Governor's office is  
20 emergency management. In that regard, I handle responses  
21 to emergencies surrounding fix-nuclear facilities in our  
22 State, and we happen to have three of them, such as the  
23 Three Mile Island plan.

24 The Federal Government has a plan for how the  
25 Federal agencies will respond, and what each of those

1 agencies will do if there is an emergency at a fixed-  
2 nuclear facility; it also defines what triggers that mechanism,  
3 in other words, who requests--that request comes through  
4 the Governor, which I feel is appropriate. It goes to  
5 a Federal agency that precedent is involved in triggering  
6 then, the Federal response, there is a lead Federal agency,  
7 and the other Federal agencies roles are defined as to  
8 how the--what they do, and how they work off that lead  
9 Federal agency. Also, the relationship then to the State  
10 and local agencies involved is defined.

11 So, I feel if we're going to have a Federal  
12 response in an emergency situation as it relates to criminal  
13 justice, or crime, it's most important that we have a  
14 coordinated plan at a Federal level as to how that would  
15 be done, and that it recognize the proper role of State  
16 and local government as the primary units of government  
17 that are going to deal with that situation.

18 So, I'd conclude my remarks then, with those  
19 thoughts, and with the overall emphasis I gave in the  
20 beginning, that the problem of crime is with us, and  
21 has been with us a long time. It's a serious problem,  
22 that in my State is certainly increasing; it's a problem  
23 that I feel the Federal Government has a major role to  
24 play, leadership, direct assistance, technical assistance,  
25 and I would suggest limited financial assistance in helping

1 us at a State and local government level to deal with  
2 those problems.

3 Thank you.

4 EXECUTIVE DIRECTOR HARRIS: Thank you, Mr. Thomas.

5 Judge Bell?

6 (Questions of Mr. Thomas by Co-Chairman Bell.)

7 CO-CHAIRMAN BELL: The -- I think your limited  
8 financial assistance is a reasonable approach, and it's  
9 justified by something in your statement, and that is  
10 that the Federal prison population has been decreased  
11 by 25 percent, roughly, 8,000 prisoners, in the last  
12 four years. And, all those cases has gone to the States,  
13 bank robberies, those sort of things--I caused that, so,  
14 I'm very familiar with it.

15 That would entail probably \$80 million right  
16 there, that could be -- it would be a good case for the  
17 States to make on using that money for research and develop-  
18 ment.

19 Q Now, on your emergency response you just referred  
20 to, what is a Federal model where the States ask for relief;  
21 what do you call that?

22 A Well, there's a Federal model under the Disaster  
23 Relief and Recovery Act, under the Federal Emergency Manage-  
24 ment Agency, FEMA; now, that Act is primarily directed  
25 toward natural disasters, and is directed more to a response

1 and recovery phase than it is to come in and provide direct  
2 assistance during the time of the emergency.

3 Q But, we might use that as a model?

4 A You could use that as a model; you could also  
5 use the model that's developed that I mentioned in support  
6 of fixed-nuclear facilities. Now, that model, FEMA also  
7 took the lead responsibility in developing that model.  
8 It's currently in a draft stage--final draft stage, as  
9 a matter of fact.

10 Q Yeah. All right. Now, are you aware of any  
11 study that's been made on the number of prisons that have  
12 been built--a number of cells, say since 1940, or 1950?

13 A There was a study that was recently completed  
14 for the Justice Department, and I think the firm that  
15 did it was -- it was a long-range study under contract,  
16 was ABT, or APT Associates; it was a national study of  
17 prisons, and prison population. I'm sure your staff has  
18 access to it --

19 Q Yeah -- we have it -- they say we have it.

20 A Right. One of the findings, for instance,  
21 was a conclusion that prison population in a State was  
22 often related to the number of beds that were available  
23 in prisons, the more beds you have, the more people you  
24 have in prisons.

25 Q Yeah. At one time the prison population was

1 going up faster than the general population was increasing,  
2 and somebody made a study in Georgia of that, and concluded  
3 that in the year of 2011, everybody in Georgia would be  
4 in prison.

5 That's not the kind of study I'm looking for.

6 Now, one last question. This is not intended  
7 to be funny, or ludicrous, I've had an idea that we ought  
8 to turn prison building over to the free enterprise system.  
9 We've built hundreds of Post Offices since World War II  
10 by letting free enterprise build them, lease them to the  
11 Post Office Department for 10 years, and then title passes  
12 to the Post Office Department. You could use tax-free  
13 bonds, free enterprise would build these prisons, and  
14 the State would not have to make a capital out-lay in  
15 any one year, you'd simply do it by over a 10 year--15,  
16 20 year period, whatever time you wanted to take.

17 Have you heard of that being done?

18 A. No, sir, but, I think if you could get the  
19 free enterprise system to take a bond that would insure  
20 the security of that prison once they built it, that may  
21 be a good approach. I think that one of the immediate  
22 issues that you'd get into, and that is the level of security  
23 that your prison would provide once it was turned over  
24 to State and local government to operate.

25 Q. Well, they'd have to have -- follow some standard.

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1 A. Absolutely.

2 Q. Yeah. They'd have -- and we have these standards  
3 now, the American Correctional Institute has got standards;  
4 the Department of Justice has got standards --

5 A. They certainly have.

6 Q. So, it seems to me that would be a good approach.  
7 Everywhere I go, people say, well, we don't have enough  
8 money to built prisons; but, at the same time, we can't  
9 walk the streets because of violent crime. So, we're  
10 going to have to build more prisons, there's no question  
11 about that, and perhaps jails.

12 In a lot of places jails are a problem, you  
13 crowd the jails, and they say well, we can't lock anyone  
14 else up.

15 A. And, it's not just building prisons because  
16 of an increase in prison population, it is building prisons  
17 because of the standards you talked about.

18 Q. Yeah. I heard -- a businessman asked me why  
19 we didn't consider a free enterprise approach to building  
20 prisons, and he knew about the Post Office building.

21 Thank you--thank you for your testimony, that's  
22 all I have.

23 EXECUTIVE DIRECTOR HARRIS: Mr. Carrington?

24 MR. CARRINGTON: I have no questions except to thank  
25 Mr. Thomas for appearing here.

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1 EXECUTIVE DIRECTOR HARRIS: Mr. Edwards?

2 MR. EDWARDS: No questions.

3 EXECUTIVE DIRECTOR HARRIS: Mr. Armstrong?

4 MR. ARMSTRONG: You're in a good position, you happen  
5 to be the last witness and everybody else is worn out.

6 I have no questions.

7 EXECUTIVE DIRECTOR HARRIS: Mr. Littlefield?

8 MR. LITTLEFIELD: I'm worn out too; thank you very  
9 much, Mr. Thomas.

10 EXECUTIVE DIRECTOR HARRIS: Chief Hart?

11 MR. HART: I won't be different. Thank you very  
12 much.

13 EXECUTIVE DIRECTOR HARRIS: Mr. Thomas, thank you  
14 very much for coming, we appreciate your remarks, and  
15 we your taking a trip down to see us.

16 The Task Force will stand in recess until 9:30  
17 tomorrow morning, at which time we will consider in round-  
18 table discussion, although the shape of the table may  
19 not be round, Phase I issues, and work toward developing  
20 recommendations for the Attorney General.

21 The meeting is to be in this room, at 9:30.

22 (Whereupon, at 5:05 p.m., the hearing was recessed  
23 to reconvene at 9:30 a.m., on May 21, 1981.)

24 -000-

25  
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1 PREPARED TEXT OF ADDRESS BY

2 LEE M. THOMAS

3 DIRECTOR OF THE SOUTH CAROLINA

4 DIVISION OF PUBLIC SAFETY PROGRAMS

5 AND

6 CHAIRMAN OF THE NATIONAL CRININAL JUSTICE ASSOCIATION

7 Messrs. Chairmen and distinguished members of the Task  
8 Force:

9 My name is Lee M. Thomas, and I am Director  
10 of the Division of Public Safety Programs for the State  
11 of South Carolina and Chairman of the National Criminal  
12 Justice Association.\* I am pleased to be able to testify  
13 before you today on the necessary federal, state and local  
14 partnership, coordination and cooperation that is necessary  
15 if we jointly are to have a significant impact in the  
16 fight against serious crime.

17 Prior to my appearance before you, the National  
18 Criminal Justice Association provided background papers  
19 to the Task Force's staff on the ncesssity for a significant  
20 Federal criminal justice research and statistics role.  
21 I will not go into those areas here.

22 Dr. Carr, Director Webster, Mr. Bensinger,  
23 Dr. Durco, and other federal officials provided a good  
24 set of descriptions of the nature of the violent crime  
25 problem we face in the United States.. You have also heard

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1 references to the priority placed by the American public  
 2 on reducing violent crime. The Chief Justice of the United  
 3 States, the President, and the Attorney General, properly  
 4 gave high importance to this issue early this year. These  
 5 high officials and the people of this country expect the  
 6 federal government to play a significant role in attacking  
 7 the problem directly with actions consistent with federal  
 8 responsibilities and in assisting state and local units  
 9 of government.

10 \* The National Criminal Justice Association represents  
 11 the full-time senior level employees of the 57 states,  
 12 whose responsibilities include the direction of systemic  
 13 criminal and juvenile justice planning and/or coordination.  
 14 These individuals are most often the directors of the  
 15 State and territorial criminal justice planning agencies  
 16 (SPAs) created by the States and territories to plan for  
 17 and encourage improvements in the administration of adult  
 18 and juvenile justice systems. The SPAs have been designated  
 19 by their respective jurisdictions to administer federal  
 20 financial assistance programs created by the Juvenile  
 21 Justice and Delinquency Prevention Act of 1974, as amended,  
 22 and the Omnibus Crime Control and Safe Streets Act of  
 23 1968, as amended. In essence, the States, through the  
 24 SPAs, are assigned the central role under the two acts.

19 State and local units of government have the  
 20 primary governmental responsibility for dealing with the  
 21 violent crime problem. Some of these units of government  
 22 do not even have sufficient resources to maintain their  
 23 current level of operations. Others cannot meet the new  
 24 demands being placed upon them by apparently escalating  
 25 violent crime rates. Few localities have the discretionary

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1 funds on their own to make the up-front investments neces-  
 2 sary to improve operations of criminal justice agencies  
 3 even if long-term efficiencies will result, or to experiment  
 4 with innovative programming. Unfortunately, the increas-  
 5 ing demands placed on State and local criminal justice  
 6 agencies is coincident with a resource shortfall that  
 7 can be projected for FY 1982 and FY 1983 by State and  
 8 local governments. The combination of the recession  
 9 of 1980-1981, and State and local tax limitation initia-  
 10 tives makes it imperative that federal financial criminal  
 11 justice assistance be available in FY 1982.

12 Unfortunately, a large number of States and  
 13 localities have not been able to find alternatives to  
 14 incarceration for a growing number of convicted criminal  
 15 offenders nor have they the resources to make available  
 16 sufficient beds in correctional facilities to house these  
 17 offenders within constitutional bounds. As a result,  
 18 criminals must be released from incarceration prematurely,  
 19 and they are free to commit further violent acts against  
 20 society. These parolees that commit additional offenses  
 21 do not limit their criminal activity to one geographical  
 22 jurisdiction. A person released in the District of Columbia  
 23 will have free rein to commit crimes in Maryland, Virginia,  
 24 or Illinois. Premature release from a correctional institu-  
 25 tion is a national problem as well as an individual State

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1 problem.

2 It is not just coincidental that while federal  
3 prison populations have gone down, State and local prison  
4 populations have been rising. The federal government  
5 is partly responsible, and should bear part of the burden  
6 for paying for the necessary additional local prison space.  
7 Federal prosecution policies which have shifted federal  
8 resources to white collar crime, organized crime, fraud,  
9 and public corruption as well as the focus on "quality"  
10 cases, means that many criminal offenders subject to process-  
11 ing under concurrent jurisdiction must now be prosecuted,  
12 adjudicated, and incarcerated by State and local authori-  
13 ties. Thus, large numbers of bank robbers, interstate  
14 auto thieves and drug offenders, who once would have been  
15 incarcerated in federal facilities are now maintained  
16 in State correctional institutions.

17 The federal government through the federal  
18 courts and the Department of Justice under the authority  
19 of the Civil Rights of the Institutionalized Persons Act,  
20 have intervened and will intervene to mandate that States  
21 and localities upgrade their correctional facilities. If  
22 the federal government is going to mandate local correctional  
23 improvements, it should contribute resources to meet the  
24 costs of the mandates.

25 The current experience of federal attempts to

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1 help end the tragic series of child murders here in Atlanta  
2 demonstrates that the most sophisticated and useful forms  
3 of aid, such as technical consulting, training of special-  
4 lists, case management surveys and the like, may sometimes  
5 be acceptable to hard-pressed local authorities only when  
6 linked with financial support.

7 When linked to a national program of research,  
8 evaluation and technology transfer, a financial assistance  
9 program becomes an effective vehicle for the exercise  
10 of federal leadership. By identifying new and successful  
11 methods and organizational approaches, and providing incen-  
12 tives for the replication, that leadership role helps  
13 to offset the professional isolation that is often a dis-  
14 advantage in a decentralized justice system. Similarly,  
15 an assistance program linked to a national effort to monitor  
16 and analyze criminal justice statistics improves the ability  
17 of the federal government to help State and local officials.

18 I fully recognize that there are budget limita-  
19 tions not only at the State and local levels, but at the  
20 federal level as well. Yet, if the fight against crime  
21 is the highest domestic priority and is comparable to  
22 our duty to maintain our national defense and upgrade  
23 our armed forces, then federal resources must be found  
24 to provide federal financial assistance to hard pressed  
25 State and local governments. To make the most effective

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1 use of the scarce resources at both the federal and local  
 2 levels, the federal government's initiative against serious  
 3 crime should concentrate on programs in justice agencies  
 4 that have the most direct impact on crime. Thus, a federal  
 5 financial assistance program should concentrate in th  
 6 near term on a limited number of already proven programs  
 7 that are replicative. By stressing activities already  
 8 proven to be effective, the program will build on the  
 9 investments that were the soundest aspects of the LEAA  
 10 experience, while at the same time providing opportunity  
 11 for developing and testing other program models. By using  
 12 models that have been well documented, proven, and for  
 13 which there is a general professional acceptance, the  
 14 program would have the advantages of a national scale,  
 15 rapid implementation and early reports on program impact  
 16 to the public and Congress. A selected range of program  
 17 models would permit for a simpler administrative apparatus.  
 18 Tested program models will also attract the investment  
 19 of State and local appropriated funds.

20 Any federal financial assistance program should  
 21 be provided as a block grant to the States. This would  
 22 be consistent with the Administration's basic federalism  
 23 principles. This would facilitate greater integration  
 24 of federal funds with State appropriations, utilization of  
 25 the federal funds in the highest priority areas, and greater

1 coordination in the use of federal and State resources.

2 Federal assistance may also take the form of  
 3 support services, training and technical assistance. The  
 4 services of the FBI, ATF and DEA, in the provision of  
 5 laboratory services have been invaluable, of high quality  
 6 and economical. The training provided by the FBI, the  
 7 Fire Administration, Redstone Arsenal, the National Institute  
 8 of Corrections, has been eagerly sought and fully enrolled.  
 9 The services of the National Crime Information Center  
 10 have been indispensable. As important as these support  
 11 services have been to State and local governments, these  
 12 services have been the first to be proposed for reductions  
 13 by the Administration. Technical assistance is an efficient  
 14 way of transferring knowledge without each recipient having  
 15 to reinvent the wheel. With the loss of LEAA funding,  
 16 technical assistance at the local, State and federal levels  
 17 has been greatly reduced.

18 The federal government has a strong leadership  
 19 role to play. Federal representatives can capture public  
 20 attention and bring to light new facts, new models, and  
 21 new attitudes. The federal government can also operate  
 22 its own criminal justice system as a model to be evaluated  
 23 by the 50 sovereign State, the District of Columbia, the  
 24 Commonwealth of Puerto Rico, the Commonwealth of the Northern  
 25 Mariana Islands, and the U.S. territories and possessions.

1 The federal government must coordinate its  
2 policies and activities, both among its constituent agencies  
3 and levels of government. I recommend that there be created  
4 a national commission, two-thirds of whose members should  
5 be State and local government representatives, and on-  
6 third of whom should be federal government representatives.

7 The Commission would serve as a forum for antici-  
8 pating and recognizing issues related to the impact of  
9 federal policies and decisions on State and local crime  
10 justice systems. Such issues arise, for example, when  
11 there are changes in FBI or DEA priorities, refugee poli-  
12 cies, or border control measures. Such impact may also  
13 derive from patterns of federal court actions involving  
14 prison or jails, or from legislation, such as "Rights  
15 of the Institutionalized" statutes. In response, the  
16 Commission could identify and propose appropriate off-  
17 setting measures. For example, federal prisons might  
18 house persons convicted in State courts of crimes for  
19 which there is concurrent jurisdiction, or prisoner exchange  
20 treaty processes might be made available to remove appro-  
21 priate non-citizens from State prisons. Another possibility  
22 would be the offering of presently unneeded military,  
23 Forest Service, or other federal properties for use as  
24 minimum-security correctional facilities. Some measures  
25 might involve funding, such as the earmarking of some oil

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1 windfall profit tax money to compensate for law enforce-  
2 ment costs traceable to fuel price decontrol, or energy  
3 "boom town" developments.

4 The Commission could serve as a vehicle for  
5 coordinating the efforts of existing separate programs,  
6 such as the National Institute of Corrections, and proposed  
7 forums, such as the State Justice Institute. The Com-  
8 mission could provide for an intensive interagency coordinating  
9 function involving key federal officials. The Commission,  
10 through direct participation by representative State and  
11 local justice executives, could also ensure that local  
12 needs will be fairly considered in the development of  
13 new or additional criminal justice assistance programs.

14 The Commission should operate as a resource  
15 both (a), to provide advice to federal officials, and  
16 (b), to require federal officials to undertake, impact  
17 studies on the effect of changing federal policies on  
18 crime and local criminal justice systems before such new  
19 federal policies are implemented.

20 A commission or some other appropriate mechanism  
21 is necessary if the intergovernmental conflicts are to  
22 be reduced and the criminal justice fragmentation is to  
23 be minimized. While some criminal justice fragmentation  
24 and conflict is inherent in our constitutional structure,  
25 intergovernmental conflict is not. We must understand

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1 where our policies are supportive and where they are in  
 2 opposition. We must be able to measure the impact of  
 3 our actions. We must operate as one in our fight against  
 4 violent crime. Anything less than joint and concentrated  
 5 actions by all levels of government means that we have  
 6 all failed the American people, in terms of victims and  
 7 dollars. I believe this Task Force will recommend the  
 8 appropriate mechanisms for all levels of government to  
 9 work together.

10 I thank you for the opportunity to appear before  
 11 you.

12 I am prepared to attempt to answer any questions  
 13 you may have.

-o0o-

C E R T I F I C A T E

1  
 2  
 3 I certify that the foregoing is a true,  
 4 Complete, and correct transcript of the pro-  
 5 ceedings taken by me in the hearing afore-  
 6 said.

7 This, the 25th day of May, 1981.  
 8

9  
 10 FLOYD D. SALAS  
 11 Certified Court Reporter

Set 1

ATTORNEY GENERAL'S TASK FORCE ON VIOLENT CRIME

GEORGIA WORLD CONGRESS CENTER

ATLANTA, GEORGIA

May 21, 1981

TASK FORCE MEMBERS PRESENT

Jeffrey Harris, Executive Director

Griffin Bell, Co-Chairman

Frank G. Carrington

Robert L. Edwards

David L. Armstrong

William L. Hart

Wilbur F. Littlefield

Governor James R. Thompson

Professor James Q. Wilson

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P R O C E E D I N G S

EXECUTIVE DIRECTOR HARRIS: We will come to order, please.

Gentlemen, the subject that we have to deal with today is, in a sense, in Phase I, which are areas that we would like to make recommendations to the Attorney General in, and what those recommendations should be, and we begin our discussion today -- what -- what I've provided each of your with is a briefing book in which the staff has assembled, approximately, 20 papers on various subjects which -- they are not identical in format, and they reflect some differences in the staff's approach to each of these issues; but, what they do do, is give a synopsis of some of the problem areas and we also set out what might be some alternatives for action, and what I think makes sense, if you concur, is that we go through them one at a time.

I'll give you just a very brief summary of what it is the staff has done and then throw it open to discussion among yourselves, and try and work toward deciding, number one, whether the issue is an area that we want to make recommendations in, and if so, to try and work toward dissecting the various alternatives with the goal of coming up with some recommendations.

So, Judge, does that sound --

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1 CO-CHAIRMAN BELL: That sounds fine.

2 EXECUTIVE DIRECTOR HARRIS: The first area for con-  
3 sideration is the question of fugitives, and very briefly,  
4 as you recall, in Washington, we heard testimony from  
5 the director of the FBI that there are currently 100,900  
6 fugitives on the FBI's role. The Federal Bureau of Investi-  
7 gation is looking for less than one percent of those fugi-  
8 tives.

9 We also know that the search for fugitives  
10 is somewhat fragmented, for example, the Bureau is looking  
11 for fugitives who are fugitives from State process and  
12 have crossed interState lines to avoid prosecution or  
13 detection; the DEA is looking for their own fugitives,  
14 and their number is about 3,000 fugitives in DEA; I should  
15 say that's about 1,000 more fugitives than they have agents.  
16 The Marshal Service was given responsibility for all fugitives  
17 who jumped bail, or fled after conviction, or have escaped  
18 from fail. So, it's a rather fragmented effort.

19 The question that comes up here is, should  
20 we be doing more to find the fugitives. from justice we  
21 already have, should there be changes in the way we look  
22 for fugitives, and which segments of the Federal establish-  
23 ment look for fugitives.

24 And, with that sort of brief synopsis of what  
25 the briefing book has, let me throw it open and see if

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1 there is any discussion.

2 CO-CHAIRMAN BELL: Well, I'll lead off by saying  
3 that the fugitive approach seems to violate the maximum  
4 that everybodys business is nobodys business. We've got  
5 the State people looking for fugitives, we've got the  
6 FBI, we've got the DEA, we've got the Marshal's, and we  
7 learned in the testimony in Washington, as I recall, there's  
8 a very large number, and I forget the number, of drug traf-  
9 fickers who have jumped bail and have not been prosecuted,  
10 and there's so much money in drugs that it seems to be  
11 just a standard operating procedure for a -- when you  
12 catch a high person, that they put up the bond--whatever  
13 the bail is, the amount of it--amount of the bond, and  
14 leave, and there were 2,100 people who have -- drug offenders  
15 who have jumped bail. Now these are top people, you know,  
16 high bail in most instances.

17 So, I think that the FBI ought to be put in  
18 charge of the whole fugitive problem, and then then can  
19 allocate the responsibility to someone else if there are  
20 other resources available, and the Marshal's for example,  
21 have resources available, but, someone has to be in charge  
22 of it within the Department of Justice.

23 And, this gets back to something that I recom-  
24 mended when I was Attorney General, and was never able  
25 to get it done, and that is to have all Federal law enforce-

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1 ment under one head, just as you have a Director of Central  
2 Intelligence, you ought to have a Director of Federal  
3 Law Enforcement, and then that person allocates out these  
4 responsibilities, and no where is it more apparent that  
5 that's needed than in the fugitive problem.

6 EXECUTIVE DIRECTOR HARRIS: Anyone else have anything  
7 else -- Professor Wilson?

8 PROFESSOR WILSON: I want to support what the Judge  
9 said; it seems to me that the mandate of this Task Force  
10 to address violent crime is a difficult mandate to dis-  
11 charge partly because most violent crime is the respon-  
12 sibility of State and local authorities. Federal resources  
13 in any event, are limited. But, where we have persons  
14 known to be offenders, often having been convicted of  
15 an offense, and have -- or, believed to have been involved  
16 in crossing a State line, there, it seems to me, is a  
17 clear Federal responsibility.

18 It is difficult for States and localities to  
19 bring persons back from other jurisdictions; it is dif-  
20 ficult for them to investigate cases that cross State  
21 lines. We are directly attacking a serious source of  
22 crime. Ninety percent of the persons who are fugitives,  
23 are fugitives from State and local justice which is where  
24 most of the violent crime can be found.

25 Now, the question I have, Mr. Chairman, is this:

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1 Given our requirement that in this Phase, our  
2 recommendations be limited to those matters which require  
3 no new legislation, and no new appropriations, can we  
4 ask the FBI to take on an enlarged responsibility without,  
5 at the same time, asking them, implicatedly, to give up  
6 something else they are now doing, and if that latter  
7 is the case, do we wish to supply them any instructions  
8 as to what to deemphasize in order to reemphasize fugitives.

9 MR. ARMSTRONG: Jeff, can I comment on that --

10 EXECUTIVE DIRECTOR HARRIS: Why don't you all just  
11 jump in instead of -- if that's all right, I think we  
12 have a manageable size group, instead of having me --

13 MR. ARMSTRONG: I concur with that, but, this problem  
14 appears to be of a major priority. The resources within  
15 the Bureau with the NCIC administration, and the unlawful  
16 flight process that they serve for State prosecutors,  
17 seems to make a good argument to centralize the whole  
18 responsibility for the apprehension of fugitives, if for  
19 nothing else, that they have the resources available to  
20 them. I think we heard, in testimony from the Marshal's  
21 Office, when this responsibility was given, they do not  
22 have a network similar to the network that's set up by  
23 the Bureau to be able to accomplish this.

24 So, I would support, if it is a motion, Judge  
25 Bell.

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1 EXECUTIVE DIRECTOR HARRIS: There's one other ques-  
 2 tion here that was raised when we were in Washington,  
 3 and that is, very often the case officer in a Federal  
 4 case, who makes the case, has the most interest in insuring  
 5 that his defendant is caught, should be become a fugitive,  
 6 by centralizing it there's a risk that that may not happen.

7 I just point that out since that was pointed  
 8 out in Washington.

9 MR. EDWARDS: Jeff, do you see the Task Force react-  
 10 ing in terms of a recommendation on these specifics today,  
 11 or do you want it into kind of a discussion mode as to  
 12 whether we maintain it as an item that will be addressed  
 13 by the Task Force; how do we --

14 EXECUTIVE DIRECTOR HARRIS: What I would like to  
 15 leave here with, from you, is tentative proposals, and  
 16 what I propose to do is between now and when we next meet  
 17 in Los Angeles, i would have them written up and in a  
 18 draft form, and we could then see how it comes out--see  
 19 how it reads; you'd have a chance to think about it, and  
 20 to the extent that you like what you've agreed to today,  
 21 or my sense of what I think you've agreed to, you'll have  
 22 a chance to review them, further discuss it, refine them,  
 23 accept them, reject them, in Los Angeles.

24 MR. EDWARDS: Okay. This was -- my interpretation  
 25 of that was that if we look at this, and we look at the

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1 idea of the fugitive area as being a priority within the  
 2 FBI, it may, at sometime, have an impact on some of the  
 3 support services, let's say, that's furnished by the FBI,  
 4 and I think that rather than react to it point by point,  
 5 what I would like to recommend is that we keep this as  
 6 an item of concern as a Task Force, and then look at the  
 7 overall picture of how it fits into the whole priority  
 8 system within the Department of Justice.

9 CO-CHAIRMAN BELL: I was -- let me add something  
 10 else, and that is when I'm thinking about the FBI being  
 11 in charge of this, I mean, violent crime and related crime  
 12 such as drug trafficking, I have no interest--did not  
 13 intend for the FBI to be in charge of finding fathers  
 14 who have abandoned their children at the instance of the  
 15 welfare department and that sort of thing. That's a State  
 16 and local problem, and has nothing to do with Federal  
 17 Law Enforcement, although there is some Federal law on  
 18 that.

19 You'd have to be careful what the FBI is assigned  
 20 to do. At the very least, we need to rescind the order,  
 21 or directive that was promulgated in October of 1979,  
 22 transferring this function to the Marshal's. The Marshal  
 23 is not set up for this, they didn't get any additional  
 24 resources themselves, and I don't know what the purpose  
 25 of that transfer was, but that's part of my general approach.

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1 EXECUTIVE DIRECTOR HARRIS: Does anyone else have  
2 comments?

3 MR. HART: Yeah. I didn't understand Judge Bell  
4 to say that he wanted to dump this responsibility on the  
5 FBI, he wanted them to coordinate all the Federal agencies  
6 into a constructive and cohesive organization in looking  
7 for fugitive; is that right, Judge?

8 CO-CHAIRMAN BELL: That's it exactly. One of the  
9 Assistant Directors of the FBI would be charged with coordina-  
10 ting all of this and seeing that something is done about  
11 it.

12 MR. CARRINGTON: Do we have any search and seizure  
13 problems, for example, you're going to search the fugitive  
14 incident to the arrest--his person, when whoever arrests  
15 him, arrests him; you have a limited wing-span approach  
16 under the Chimmel Doctrine (sp); is search and seizure  
17 authority of all Federal agencies the same so you don't  
18 run into the problem of an officer making an arrest of  
19 the fugitive and then not having the authority to make  
20 a wing-span search, or a sweep search for other fugitives  
21 or something like that.

22 The Supreme Court just addressed this in a  
23 negative manner toward law enforcement in the Stegal (sp)  
24 Case, and I think it's a sensitive area that ought to  
25 be taken into consideration. What is going to transpire

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1 after the arrest with regard to search for weapons, evi-  
2 dence, contraband and so on.

3 EXECUTIVE DIRECTOR HARRIS: The agencies that we're  
4 talking about here, I think, all do have that same generali-  
5 zed authority; if we were talking about more limited kind  
6 of law enforcement agents such as an officer of the Food  
7 and Drug Administration, or Social Security, or an HEW  
8 investigator, we'd have a problem, but, I don't think  
9 we will, Mr. Carrington.

10 MR. CARRINGTON: Thank you.

11 EXECUTIVE DIRECTOR HARRIS: Does anyone else want  
12 to say anything?

13 MR. LITTLEFIELD: I believe that it should be coor-  
14 dinated. I certainly concur with Judge Bell's suggestion;  
15 however, I don't think we should go into the business  
16 of suggesting changing the priority of fugitives as far  
17 as the FBI. I think they have much more information as  
18 to what priorities should be assigned to fugitives than  
19 we have.

20 PROFESSOR WILSON: Could I make a somewhat related  
21 suggestion that we indicate to the Bureau that it is per-  
22 haps our intention to urge that a higher priority be assigned  
23 to it, because they do have a priority system in the Bureau  
24 now, and they take it very seriously, and given the con-  
25 straint of limited resources under which we now operate,

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1 ask them for their views as to the implications of that  
 2 in terms of how much resources they could devote to appre-  
 3 hending fugitives under this more centralized approach,  
 4 and what, if anything, would be the organizational cost  
 5 in terms of objectives foregone, because of this shift.  
 6 I think we ought to have their views before we put this  
 7 recommendation in final form.

8 We ought to indicate, I think, very clearly  
 9 that we wish this to be taken more seriously.

10 If I may add one other collateral point, one  
 11 of the pages of your briefing book, there is a tentative  
 12 suggestion that perhaps research resources be directed  
 13 at developing more sophisticated instruments for predict-  
 14 ing which individuals would be likely to flee and engage  
 15 in violent crime.

16 As a social scientist, I hope you won't put  
 17 much weight on that, because I don't it's likely that any  
 18 technology on the horizon will permit us to make sub-  
 19 stantial improvements in that regard, in fact, to even  
 20 suggest it, may create false hopes among those.

21 CO-CHAIRMAN BELL: Two and three of the recommendations,  
 22 are probably something we ought not get into; the first  
 23 one was enough.

24 And, in line with what Professor Wilson said,  
 25 we must remember that we're making recommendations to the

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1 Attorney General, that the FBI is under the Attorney General.  
 2 Now, we need to, at some point, have a discussion with  
 3 the Attorney General and his staff which might, or might  
 4 not include the Director of the FBI, as to what they think  
 5 of the feasibility of what we have in mind.

6 What we're recommending now is purely tentative.

7 EXECUTIVE DIRECTOR HARRIS: Absolutely tentative.

8 CO-CHAIRMAN BELL: We're making these recommendations  
 9 without, in a sense, hearing from the other side, and  
 10 the other side, being the Attorney General who has got  
 11 to carry out these recommendations, and it wouldn't do  
 12 any good to mislead the public by making some recommenda-  
 13 tions that are not feasible.

14 EXECUTIVE DIRECTOR HARRIS: Well, let me see if  
 15 I can summarize what I think I've heard so that we can  
 16 get a tentative draft up, and then circulate it.

17 That, one, as a general matter, we want to  
 18 explore the possibility of recommending to the Attorney  
 19 General the apprehension of fugitives and the class of  
 20 fugitive we're talking about are those who have violent  
 21 backgrounds, or are violent criminals, or narcotic related,  
 22 receive a higher priority in the overall scheme of things;  
 23 that there be centralized--more centralized authority,  
 24 or responsibility for looking for fugitives, and we tentatively  
 25 talked about placing that with the FBI, and rescinding the

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1 order that placed it with the Marshal Service in 1979,  
2 and, lastly, that what we want to do is discuss this pro-  
3 posal with both the Attorney General and the Director  
4 of the FBI, and receive some in-put from them.

5 Does that fairly summarize --

6 CO-CHAIRMAN BELL: That's it.

7 We don't need a -- now, we wouldn't proceed  
8 with a motion, I wouldn't think, it's just more of a concen-  
9 sus.

10 EXECUTIVE DIRECTOR HARRIS: That's right. And,  
11 we will -- the staff will do some work based upon what  
12 we hear tentatively, and then we'll proceed with this  
13 further in L.A.

14 CO-CHAIRMAN BELL: All right.

15 EXECUTIVE DIRECTOR HARRIS: The next issue in the  
16 briefing book is the area of criminal intelligence, and  
17 the question here is, should there be more a criminal  
18 intelligence capability, or more of a criminal intelligence  
19 capability within the Federal law enforcement community  
20 which would be available to States and localities.

21 And, as you all know, the argument over this  
22 question has been going on for years, and the two sides  
23 of the argument, to oversimplify and state it in 25 words  
24 or less, is that basically there's a fear that law enforce-  
25 ment with a criminal intelligence capability becomes a

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1 secret police kind of operation which is historically  
2 associated with forms of government that none of us admire,  
3 or would want to live under.

4 On the other hand there -- the other side of  
5 the coin is that often, and we heard from States and local  
6 people, that they very often do not have all the intel-  
7 ligence information about crime and criminals available  
8 to them, they very often do not know who they are dealing  
9 with with the apprehend someone, and having access to  
10 more criminal intelligence would be helpful.

11 The recommendations in this area would generally  
12 take the form of recommending that police departments  
13 set up criminal intelligence units, that the Federal law  
14 enforcement expand their criminal intelligence capability.

15 And, I think in a word, that sort of summarizes  
16 the area we're in, and let me just throw it open to dis-  
17 cussion.

18 CO-CHAIRMAN BELL: Well, I would like to suggest  
19 that we combine B, and I, the interstate exchange of --

20 EXECUTIVE DIRECTOR HARRIS: Criminal history?

21 CO-CHAIRMAN BELL: Yeah, because it won't do any  
22 good to expand criminal intelligence if we can't tell  
23 anyone about it.

24 Now, I spent a good portion of my time as Attor-  
25 ney General ranging with the Congress over whether we

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1 could give out information, and the States, through some --  
 2 I believe, an LEAA grant, have a center in, maybe, Phoenix,  
 3 where they are gathering information and they can give  
 4 it to the States; but, the Federal Government can't give  
 5 much, they call that around Washington, "message switching".

6 So, I think those two ought to be combined.

7 Now, the DEA with some other law enforcement groups, including  
 8 some foreign law enforcement agencies, have something  
 9 in El Paso, called, EPIC, which is a drug intelligence;  
 10 all of that needs to be sort of drawn together, and then  
 11 considered in light of whether the Federal, if they did  
 12 such a thing, could tell anybody about it.

13 EXECUTIVE DIRECTOR HARRIS: Well, in the question  
 14 of information sharing, and I guess one of the kinds of  
 15 information you could share is intelligence, there is  
 16 a proposal from the Bureau to test a--what they call their  
 17 III [triple i] plan, and I think it might be helpful if  
 18 ask one of our staff members to briefly tell you what  
 19 the Bureau has in mind in this test, and it is a new con-  
 20 cept, or a way to up-date their information sharing.

21 The issues here, before we go into the specifics  
 22 are that a number of States and localities do not want  
 23 to give all their criminal information to the Bureau;  
 24 a number of people in the -- so that you would not get  
 25 uniform cooperation and in-put, a number of civil libertarians

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1 are concerned that there would be a national information  
 2 system under the FBI, and that concerns people who we  
 3 could loosely call, "civil liberties perspective on it";  
 4 so there -- and these are issues that have been recurring  
 5 for many years.

6 With that sort of little background, let me  
 7 as Sue Lingren to basically tell us what the Bureau's  
 8 idea is, and plan -- Sue?

9 MS. LINGREN: Actually, Bob Edwards is much more  
 10 knowledgeable on this than I am.

11 What the FBI is proposing right now, is some-  
 12 thing called the Interstate Identification Index, and  
 13 under the proposal, the FBI would maintain an index of  
 14 the criminal history -- where the criminal history record  
 15 information is; so, if a State went into the index, the  
 16 FBI would say, "State A", has that record information;  
 17 then, using the in-let system which is the one that goes  
 18 through Phoenix, "State A", would contact "State B", the  
 19 information would never go through the FBI.

20 There's a great deal of support for this --

21 CO-CHAIRMAN BELL: The FBI would make their informa-  
 22 tion available to Phoenix?

23 MS. LINGREN: They would tell the States where the  
 24 information was. Then it would be up to the States to  
 25 get together and exchange the information. The information

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1 itself, would not go through the FBI--the criminal history  
2 information itself, which was one of the main objections  
3 to message switching.

4 CO-CHAIRMAN BELL: In other words, it's all right  
5 to do this in Phoenix, but, we can't do it in Washington--  
6 I mean, the FBI seems to have given up. I guess they  
7 fought as long as they could fight, and so they'll just  
8 say, well, we'll let the States run this out of Phoenix.

9 EXECUTIVE DIRECTOR HARRIS: And, I guess what the  
10 FBI would do is if you called up and said, look, we have  
11 "John Doe" here, and we'd like to know what's available,  
12 they would have an index on "John Doe", which would say,  
13 there's information on "John Doe" in the files of Indiana,  
14 Arizona, and New Mexico, and you, from New York, if you  
15 want to find out about "John Doe", you, through this Phoenix  
16 operation, contact the States of Indiana, Arizona, and  
17 New Mexico, and they will tell it to you.

18 CO-CHAIRMAN BELL: Who finances the Phoenix operation?

19 MS. LINGREN: The States themselves.

20 CO-CHAIRMAN BELL: The States all pay it?

21 MS. LINGEN: Yes, it's solely State supported.

22 MR. EDWARDS: May I address that issue. Judge,  
23 I'm Chairman of the Interstate Identification Index Com-  
24 mittee that serves -- I'm also vice chairman of the Advisory  
25 Policy Board for NCIC, and on the board of directors for

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1 National Lits, which is the other system that you're talk-  
2 ing about now.

3 The result of how the III concept came about  
4 was that -- you're absolutely right, there was a feeling  
5 that there should not be a central repository for criminal  
6 record information maintained at the FBI, that's how this  
7 all started.

8 The idea of message switching was not an accept-  
9 able term, as you stated, within the Congress. The alter-  
10 native approach was that the States, working in concert  
11 with the FBI, work out a plan whereby a central repository  
12 for criminal record information--an index for criminal  
13 record information could be maintained within the FBI.

14 Now, this would allow a focal point where people  
15 could access whether or not a record on an individual  
16 was available or not. Then, once it was established that  
17 there was a record within a particular State, then that  
18 individual State would go to the State of record, and  
19 obtain the specific information relative to the criminal  
20 record on file within the State.

21 The prototype that's being discussed was the  
22 joint recommendation by practitioners in the area of cri-  
23 minal history record information, and it was jointly accept-  
24 able to the advisory policy board of the NCIC, FBI; it  
25 was acceptable to the Board of Directors of the National

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1 Law Enforcement Telecommunications System, which is noth-  
2 ing more than a message switcher which is housed in Phoenix  
3 that allows one State to talk to another State.

4 If that prototype is successful, what we anti-  
5 cipate is the ability to expand so that States, at their  
6 expense, and at the time that is acceptable and their  
7 development of systems, can come on in the easiest manner  
8 possible.

9 So, that's kind of a quick review of the evolu-  
10 tion of the process.

11 I think that the practitioners feel, in general,  
12 that the most expeditious way to handle an access to a  
13 criminal record, is to have a central repository; but,  
14 that approach is just not palatable to Congress; it's  
15 not palatable to a lot of entities, and that's what allowed  
16 us to go forward with this alternative approach.

17 But, it just really came down to saying this  
18 is the most practical common sense approach to making  
19 this information available to the criminal justice com-  
20 munity.

21 CO-CHAIRMAN BELL: Well, this is, of course, a Water-  
22 gate reaction when the FBI was under heavy attack, and  
23 this sort of atmosphere--environment, that's in Washington  
24 is dying away to some extent.

25 But, how would the FBI get informationn from

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1 Phoenix; could they ask for information there?

2 MR. EDWARDS: There's no information maintained  
3 in Phoenix. There's nothing more in Phoenix than a com-  
4 puter that allows the FBI and the States to communicate--  
5 it's just a communications vehicle. They are not maintain-  
6 ing a data base of any kind in Phoenix.

7 CO-CHAIRMAN BELL: If the FBI asks the computer  
8 in Phoenix about a terrorist, because they had an inquiry  
9 from Scotland Yard, the computer would tell them --

10 MR. EDWARDS: It wouldn't tell them anything, no,  
11 sir; because the computer doesn't maintain anything; that  
12 computer does not maintain any data base; all that computer  
13 does is allow the FBI to go to a specific State to inquire  
14 into their file about, as you say, a terrorist.

15 CO-CHAIRMAN BELL: So, they go to 50 States?

16 MR. EDWARDS: Yes, sir.

17 CO-CHAIRMAN BELL: That's what they'd have to do --

18 MR. EDWARDS: Yes, sir.

19 CO-CHAIRMAN BELL: I see. Well, that's been the  
20 complaint right along, that they can't deal with foreign  
21 law enforcement agencies under this system, but if they've  
22 given up -- I don't want to fight it, but, I would like  
23 to end my comment on this by saying that I do not wish  
24 to be a party to misleading the American people, and with  
25 the law on the books that the IRS can't help in law

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1 enforcement--they can't give you any information about the  
2 biggest drug trafficker in the country, I don't think  
3 we ought to say that we got a Federal criminal intelligence  
4 system.

5 EXECUTIVE DIRECTOR HARRIS: One of the very next  
6 issues we're going to get to is the IRS--or, a few issues  
7 away.

8 Bob, let me ask you, is there -- if it were  
9 palatable to Congress, I guess the most basic question  
10 is, what are the pros and cons of having the Bureau main-  
11 tain the data versus having the data base remain in the  
12 States with some system to access to it--from your point  
13 of view as a State law enforcement officer --

14 MR. EDWARDS: I terms of the approach of having  
15 an index in Washington, and then going to the State,  
16 or maintaining a data base in Washington?

17 EXECUTIVE DIRECTOR HARRIS: Maintaining the data  
18 base in Washington so that the State of Florida would simply  
19 query the FBI, what do you have on "John Jones", and it  
20 would come back that -- all the information provided by  
21 all the States would come back?

22 MR. EDWARDS: That present system is in effect today  
23 in sort of a quasi-form, in that you have only -- I think  
24 there's only eight participating States in that system  
25 today, where if you inquire on an individual, and you get

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1 back that he has a record, you can make a request from  
2 the FBI, and they can give you that information.

3 The problem has been that in order to expand  
4 the system, it required, as Judge Bell said, message switch-  
5 ing capability in order to do it an efficient manner.

6 EXECUTIVE DIRECTOR HARRIS: Well, what I'm suggesting,  
7 is there anyone who would care to comment on the subject  
8 of whether instead of having the States maintain the records,  
9 and have some system of access to those records through  
10 a Federal coordination -- one of the possibilities is,  
11 we could simply recommend that we make another try at  
12 recommending that everytime a State picks up anyone, that  
13 the information they collect, the fingerprints, the cri-  
14 minal record, get sent to the FBI, and that data be main-  
15 tained in computers at the Bureau to be accessed by local  
16 systems.

17 Anyone want to comment on that?

18 MR. EDWARDS: Well, the index--the question Judge  
19 Bell had was, what would be the attitude of the States  
20 towards the FBI maintaining an index, and then having  
21 the records maintain the record--having the States maintain  
22 the record. That is exactly what my Committee, which  
23 is the III Committee, is proposing, that that approach  
24 be maintained, that the index be maintained within the  
25 FBI, and that the States have the records, and then you

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1 have a central point to come to establish there is a record  
2 on the individual, and then you obtain the information  
3 from the States.

4 EXECUTIVE DIRECTOR HARRIS: Let me ask you this,  
5 did you Committee consider, and if so, why did they reject  
6 the notion instead of having the FBI maintain an index,  
7 have the FBI maintain the data?

8 MR. EDWARDS: It was just a matter of in order to  
9 maintain a very voluminous data base, you had to have  
10 an expanded capability, and in order to have an expanded  
11 capability, it required approval by Congress for message  
12 switching, and that has not been maintained, so the States  
13 look at that as being a need within the States for the  
14 whole criminal justice community, so we went to the alternate  
15 route of an index, and then maintaining the record at  
16 the States.

17 PROFESSOR WILSON: Bob, in your judgment, is there  
18 any value to be obtained to raising the fundamental issue  
19 once again, via a recommendation to the Attorney General,  
20 perhaps the mood of the country and of Congress has changed,  
21 if they understand that we're speaking not about surveil-  
22 lance of individuals, but, simply the career records of  
23 persons who have been arrested for the clear violations  
24 of criminal laws; or, do you think that one more -- going  
25 to the well one more time, you'd come back just as empty

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1 as you did the last time?

2 MR. EDWARDS: I feel pretty strongly that the best  
3 approach is the III approach, and, I'll tell you, it's  
4 basically a matter of economics from the States' stand-  
5 point. When a State participates in a national data base,  
6 it requires that you have your computers meet certain  
7 technical requirements placed on you by a central computer  
8 system which means that you've got to allocate resources  
9 to build that system.

10 There has been a hesitancy, there's been a  
11 lot of States who have been in a posture that they want  
12 to come up with a system, but, they've been hesitant of  
13 joining because of the vasillation of not knowing; so,  
14 I think from the financial standpoint, and from a practical  
15 -- just a day to day working environment, the III approach  
16 is the most viable.

17 I would recommend that we stay with that program,  
18 let's run the prototype, the prototype will start up in  
19 the latter part of June; we will then have an evaluation  
20 period; we have additional States that want to be a part  
21 of it, and at that point we can tell whether that is the  
22 most viable approach.

23 CO-CHAIRMAN BELL: Could the computer, under this  
24 program, be organized to list separately, firearms violators,  
25 in other words, most of the computers on direct selling,

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1 for example, will have a list of everyone that might want  
 2 to buy a pipe--the name--people that might buy a pipe,  
 3 might by a tire, we'll say; it seems to me you could have  
 4 two lists, if you're going to have an index, one could  
 5 be firearms violators, that would be a form of approach  
 6 to violent crime; could you do that? I'm worried that  
 7 you get too many things on the computer, and we don't  
 8 flag things that we're really interested in as a Commission.

9 MR. EDWARDS: I think that we're kind of talking  
 10 two different things. To answer your question, yes, sir,  
 11 you can establish a separate file.

12 But, I think the -- the thing you got to be  
 13 careful of, when you start talking criminal record informa-  
 14 tion, that's just information that tracks an offender  
 15 through the criminal justice process. It serves as a  
 16 base line for career criminal programs, presentence investi-  
 17 gation, a lot of non-law enforcement applications, but,  
 18 are criminal justice applications.

19 The intelligence side is strictly a law enforce-  
 20 ment function. So, I think that there's a need for a  
 21 partition or at least an ability to compartmentalize these  
 22 different functions, and not put a connotation that a  
 23 criminal record is a piece of intelligence. It is a piece  
 24 of information that can be applied to an intelligence  
 25 application; but, it's a separate -- it's like mixing --

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1 it's just two different things.

2 CO-CHAIRMAN BELL: Do you think it's a scare-word  
 3 to say anything about intelligence?

4 MR. EDWARDS: Well, I know we've had a lot of good  
 5 experience with the El Paso Intelligence Center, in Florida,  
 6 we're probably the world's -- we are the world's largest  
 7 user of the El Paso Intelligence Center. We've developed  
 8 a complementary system in Florida, not a duplicative system,  
 9 but, a tailored complementary intelligence system in Florida  
 10 that ties with the El Paso Intelligence Center.

11 I think intelligence information is a necessary  
 12 tool for law enforcement, and I think the staff's comment  
 13 about the need for credibility and integrity in building  
 14 that file is something that will allow us to go forward  
 15 with a good intelligence system.

16 But, yeah, that's a need we'd have, and it's  
 17 something we have immediately within the law enforcement  
 18 community.

19 MR. HART: I think credibility is a big issue because  
 20 in some jurisdictions, criminal intelligence gathering  
 21 raises a red flag. As a matter of fact, the State of  
 22 Michigan, and the City of Detroit, are being sued for  
 23 so-called gathering of information on non-criminal type  
 24 activities, and the credibility is certainly very important  
 25 that we gather criminal files rather than something else.

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1 And, that has been a problem in the past that we're trying  
2 to overcome.

3 EXECUTIVE DIRECTOR HARRIS: Well, just before we  
4 go off into the intelligence area, which I do think we  
5 ought to get some separate comments, especially, the kinds  
6 of concerns that Chief Hart is talking about.

7 Let me just ask if there's anyone else who  
8 wants to talk about information so I can sort of see if  
9 I have an understanding of what I think we've discussed.

10 What I think I've heard is that the proposed  
11 experiment, or prototype that the Bureau is going to try,  
12 this triple III, system, which would have the Bureau main-  
13 taining an index, and the States being able to go to the  
14 index to find out what other States have information that  
15 they desire, is a prototype which is going to be tested,  
16 and let me ask if it's the concensus that we ought to  
17 recommend that this testing go forward with all deliberate  
18 speed, and -- or, if there is anything else we want to  
19 do. Does that sound about right?

20 CO-CHAIRMAN BELL: Well, I don't know that I want  
21 to vote for that. I don't think that's adequate.

22 EXECUTIVE DIRECTOR HARRIS: Well, another thing  
23 we can consider is going --

24 CO-CHAIRMAN BELL: I don't think we ought to start  
25 out compromising away the safety of the people.

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1 EXECUTIVE DIRECTOR HARRIS: Then, what I take it  
2 you're saying, Judge, is that, this question of should  
3 we go to the well one more time and see if we can come  
4 up with Congressional approval necessary for a national --  
5 the Bureau to maintain a national data base, is that --  
6 that would --

7 CO-CHAIRMAN BELL: That's my position, it has been  
8 all along.

9 EXECUTIVE DIRECTOR HARRIS: Can we -- can I get  
10 some idea of what others think of that?

11 MR. WILSON: Well, I -- I am philosophy in tune  
12 with the Judge; I think that ultimately effective law  
13 enforcement is best served by having a centralized career  
14 criminal file; but, I am persuaded by what Bob Edwards  
15 says, that if we've gone this far in developing the inter-  
16 State relationship necessary for the Phoenix system, that  
17 we ought not to untrack that.

18 I'm not even sure that the two procedures are  
19 fundamentally incompatible in the long run, but, if we  
20 can make some gains in the short run, in the way he recom-  
21 mends, that my short term recommendation would be that  
22 we not untrack what is happening in Phoenix.

23 MR. LITTLEFIELD: I'd concur with Professor Wilson.

24 EXECUTIVE DIRECTOR HARRIS: Frank?

25 MR. CARRINGTON: I think perhaps we're getting --

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1 trying to reach out for a solution before we know the  
2 real parameters of the problem.

3 I would suggest this, the United States Senate  
4 Judiciary Committee two years ago, held hearings and pro-  
5 duced considerable devastating testimony under the title,  
6 The Erosion of the Law Enforcement Intelligence Capability,  
7 and basically, what they are saying is the post-Watergate  
8 mentality capability.

9 The proceedings of this are extensive, but,  
10 they do have a single volume that encapsulates it, and  
11 the basis conclusion that the Senate Investigators reached,  
12 after hearing testimony for months, was that we are literally  
13 at the mercy of the terrorists, and secretative criminals,  
14 and I think it would be very helpful if the staff could  
15 be directed to get at least the compilation--the summary  
16 volume of Erosion of Intelligence, and delineate the pro-  
17 blem a little bit more before we start talking about solu-  
18 tions.

19 It's very scary reading, quite frankly, and  
20 I think it would give us a starting point.

21 EXECUTIVE DIRECTOR HARRIS: Let me -- we, obviously,  
22 can get that volume, and will do so.

23 Let me suggest that perhaps we could sort of  
24 take a dual track approach, which would be to recommend  
25 in Phase I, that the Bureau continue with this prototype

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1 which they have set up to be run in the Summer or Fall,  
2 and that we hold off for Phase II, since it would need  
3 legislation, any decision about whether we want to recom-  
4 mend a national data base concept, and we'd consider it  
5 again in Phase II; I'm not sure that the two are neces-  
6 sarily mutually exclusive.

7 CO-CHAIRMAN BELL: That's fine with me.

8 I think all of these things ought to be grouped  
9 together, criminal intelligence, the role of the IRS in  
10 criminal law enforcement, centralized data base on career  
11 criminals, firearms offenders, a separate list, and it  
12 suits me to put it all off until the second phase, I don't  
13 think we've probably ever going to get an agreement on  
14 it.

15 I was a Judge, and there's nothing wrong with  
16 the office of a dissenting opinion. I think we ought  
17 to draw the issue for the American people. That's one  
18 thing we can do. You know, we've been arguing about this  
19 with the Congress for several years, and it's time to  
20 bring it to an end.

21 EXECUTIVE DIRECTOR HARRIS: Well, let's -- I think  
22 the staff has enough of a concensus about what we should  
23 prepare for further consideration. So, if anyone doesn't  
24 have anything else to say on it, we can move on.

25 PROFESSOR WILSON: Could I say something about Tab B,

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1 Criminal Intelligence, where we started?

2 EXECUTIVE DIRECTOR HARRIS: Yes.

3 PROFESSOR WILSON: First of all, for the benefit of  
4 our audience, let me make clear that what we're speaking  
5 about here is the development of strategic intelligence  
6 for the solution of crimes, and we're not talking about  
7 domestic security, or other things which sometimes are  
8 also covered by the word, intelligence; so, we're using  
9 the word, intelligence, in a law enforcement sense.

10 Even in that limited sense, however, I'm very  
11 skeptical about the proposal in Tab B. I've been associated  
12 with two or three Federal law enforcement agencies which  
13 have been urged internally, and externally, to do more  
14 in the intelligence area. As you pointed out, this is  
15 a consistent recommendation going back 20 years, and with  
16 the exception of the El Paso Intelligence Center, which  
17 is a remarkable development, and people responsible for  
18 it deserve a lot of credit, not much has happened.

19 And, when I see people not changing much, after  
20 having been urged to change for 15 or 20 years, I begin  
21 to suspect that there is some important reasons why they  
22 don't change. And, I think the reason is simply stated,  
23 though hard to document, in the internal operations of  
24 most law enforcement agencies, people who have the case  
25 tacket--the street agent, have responsibility for the case,

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1 and for the information about that case, and they do not  
2 like to share that information with, take guidance from,  
3 or participate in things which strike them as somewhat  
4 academic, the development or use of intelligence.

5 Now, the El Paso Center may be successful because  
6 it's organized around a particular targeted, specific,  
7 problem, namely, interdicting major drug traffickers.  
8 Even that was difficult to achieve; but, the language  
9 of TAB B, at at a level of generality, and piety, which  
10 however commendable in abstract form, it seems to me will  
11 make no impression whatsoever on law enforcement personnel.

12 I've tried for a long time to push that parti-  
13 cular rock up a hill, and I've had no success, and I think  
14 we should not spend a lot of time trying to do what other  
15 people have found it impossible to do.

16 And, I'm not sure that we have made a case  
17 in TAB B, of gains would occur, the gains to be found  
18 from the development of criminal intelligence capabilities  
19 are all speculative as stated here, they are all theoretical,  
20 and they will not be persuasive to the street agent--  
21 the man who has the ticket on the case.

22 EXECUTIVE DIRECTOR HARRIS: Anybody else -- Bob?

23 MR. EDWARDS: I would just like to say that the  
24 experience -- the definition of intelligence gathering  
25 is sometimes difficult to get a handle on, and I think

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1 that's been probably one of our biggest problems.

2 I think the need for the sharing of information,  
3 maybe the connotation of intelligence, Professor, is the  
4 problem with the whole concept, but, I can tell you that  
5 we've had a lot of success with an ability to put agencies  
6 together in the drug area--in the drug smuggling area,  
7 where we've been able to take a focal point to whether  
8 we have submissions on -- that would be considered of  
9 an intelligence nature, and we're able to put those agencies  
10 together, not from the standpoint of us maintaining the  
11 specifics of their intelligence, but, for establishing  
12 that the dialog does go on, so that we try to minimize  
13 fragmentation, atonomy, and those other things that's  
14 been killing law enforcement for a number of years.

15 So, I think the need for intelligence definition,  
16 probably needs to looked at, and we probably need to take  
17 a very simplistic approach as to how we go about sharing  
18 that information.

19 PROFESSOR WILSON: Well, I agree. If the purpose  
20 of the recommendation is to call people's attention to  
21 the need to share information among separate agencies  
22 which share a common mission, then I'm all in favor of  
23 it, but, that then, is what the recommendation should  
24 say, it should say, in the following areas, substantial  
25 gains in law enforcement can arise if related, but separate

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1 agencies develop the following kinds of mechanisms for  
2 sharing information of which perhaps the El Paso Center  
3 may be an exemplar.

4 I would certainly support that; but, that's  
5 not what this TAB B, says. TAB B, is a quotation from  
6 various textbooks on the abstract virtues of intelligence  
7 and information, and that's really like saying to people,  
8 be smart. It's not very helpful advice.

9 CO-CHAIRMAN BELL: Well, suppose -- if it means  
10 what you just said, then why say anything about it at  
11 all--what good would it do to make such a recommendation  
12 because you're already doing this.

13 PROFESSOR WILSON: Well, there may be other areas  
14 where -- whereas Bob says, we could duplicate those gains  
15 made in certain areas such as narcotics law enforcement;  
16 but, we should be very specific and operational about  
17 what those areas are.

18 CO-CHAIRMAN BELL: Well, it might be worth saying  
19 that.

20 EXECUTIVE DIRECTOR HARRIS: If no one has anything  
21 further, we can move on to the next one.

22 TAB C, deals with something known as Posse  
23 Comitatus as the concept, and what we're really talking  
24 about is the use of the military to assist with law enforce-  
25 ment.

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1 Briefly, the military in Title 18, U.S. Code,  
 2 Section 1385, is prohibited, and it reads: "Whoever,  
 3 except in cases and under circumstances, expressly authorized  
 4 by the Constitution or by act of Congress, willfully uses  
 5 any part of the Army, or the Air Force, as a Posse Comitatus,  
 6 or otherwise, to execute the laws shall be fined not more  
 7 than \$10,000, and imprisoned for more than two years,  
 8 or both."

9 Now, if you will notice that prohibition prohibits  
 10 the Army and the Air Force. The Secretary of the Navy  
 11 has drafted an instruction much along the same lines.

12 To further understand this, in Title 21, of  
 13 the United States Code, which is the drug--where the nar-  
 14 cotics laws are found, there's a section that says, "when  
 15 requested by the Attorney General, it shall be the duty  
 16 of any agency or instrumentality of the Federal Government  
 17 to furnish assistance including technical advice to him,  
 18 the Attorney General, for carrying out his functions under  
 19 this sub-chapter, enforcement of the narcotics laws."

20 Well, the courts have interpreted the Posse  
 21 Comitatus statute, which prohibits the use of the Army  
 22 and the Air Force as taking precedence over the section  
 23 which gives the Attorney General the authority to ask  
 24 for assistance and to get it.

25 However, you will note that absent from the

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1 Posse Comitatus prohibition is the United States Navy;  
 2 and, the courts have interpreted the Secretary of the  
 3 Navy's instruction that they will not do this as not being  
 4 superior to the section of the drug laws.

5 The next result is that it seems to us, if  
 6 the Task Force was so inclined that the Attorney General  
 7 could request assistance from the Navy, for example, to  
 8 provide radar platforms, which come in -- or ships, or  
 9 military aircraft to fly patrols off the coast of Florida,  
 10 for example, to aid in the identification and interdiction  
 11 of aircraft and ships with narcotics.

12 The down-side is that the Navy, although we  
 13 have not spoken to the Navy, is probably not anxious to  
 14 do this.

15 However, this is an area which we wanted to  
 16 bring to your attention, and see if any of you have any  
 17 views on, whether we should pursue such a recommendation  
 18 with the Attorney General.

19 CO-CHAIRMAN BELL: How did President Eisenhower send  
 20 the troops to Little Rock?

21 EXECUTIVE DIRECTOR HARRIS: Judge, you got me there.

22 CO-CHAIRMAN BELL: Or, President sent troops to  
 23 Birmingham.

24 EXECUTIVE DIRECTOR HARRIS: Well -- David, do you  
 25 know the answer?

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1 STAFF MEMBER (David): In exceptional cases, and  
2 under circumstances, the President -- by the Constitution,  
3 that was the exception to the Posse Comitatus Act, in  
4 times of emergencies.

5 EXECUTIVE DIRECTOR HARRIS: The National Guard,  
6 the statutes --

7 STAFF MEMBER (David): The National Guard is excluded  
8 from the Posse Comitatus Act.

9 CO-CHAIRMAN BELL: Oh, so -- that's because they  
10 are not named?

11 STAFF MEMBER (David): The National Guard is considered  
12 part of the militia and separate from the Armed Forces.

13 CO-CHAIRMAN BELL: All right.

14 EXECUTIVE DIRECTOR HARRIS: Now, we are informed  
15 by the Coast Guard that when they routinely ask the Navy  
16 to supplement their patrols, the Navy routinely declines;  
17 but, they are not required to respond to the Coast Guard;  
18 the -- Title 21 requires them to respond to a request  
19 by the Attorney General, not the Coast Guard.

20 CO-CHAIRMAN BELL: Well, if the President of the  
21 United States asks the Attorney General for a legal opin-  
22 ion, and the opinion will be rendered, and it will be  
23 binding on all departments of the Government, and that  
24 will resolve this matter. So, one of your recommendations  
25 is to get together with the Office of Legal Counsel, well,

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1 they won't ever get together unless someone asks for an  
2 opinion. The President can ask for an opinion on what  
3 all these nuances are about the Posse Comitatus.

4 I'll tell you now that the Defense Department  
5 takes the position that they can't even loan you a con-  
6 cussion handgrenade, because I had that very experience  
7 in the Mafia-Muslim seizure. I went all day trying to  
8 get some concussion grenades, because we thought we were  
9 going to have to go up this stairwell in an attack, and  
10 I finally got the matter resolved and got the man to give  
11 up, and I never did get the grenades. And, I reported  
12 it to the President after that about what -- people could  
13 have lost their lives while they were arguing that the  
14 Posse Comitatus prevented the Defense Department from  
15 loaning the FBI some concussion handgrenades. Under that  
16 ruling, you couldn't borrow a helicopter to surveil and  
17 area where there was some sort of a tragedy going on,  
18 you couldn't borrow anything from the Defense Department,  
19 this needs to be resolved, because the Posse Comitatus  
20 Law never meant anything like that.

21 EXECUTIVE DIRECTOR HARRIS: Well, one way that I  
22 guess we could resolve it is to say that our reading of  
23 it seems to indicate to us that the Attorney General could  
24 request such assistance from the Navy, and I assume that  
25 the first thing that a prudent Attorney General would want

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1 to to do upon receiving such a recommendation is to ask  
 2 his legal counsel for an opinion as to whether that, in  
 3 fact, is right.

4 CO-CHAIRMAN BELL: Yeah, but, the Defense Department  
 5 won't ask for the opinion. You've got to get somebody  
 6 above the Defense Department.

7 EXECUTIVE DIRECTOR HARRIS: Well, you know, I guess  
 8 if we're looking above the Attorney General and the Secre-  
 9 tary of Defense, we're talking about the President --

10 CO-CHAIRMAN BELL: That's what I just said. I've  
 11 been down this trail before.

12 EXECUTIVE DIRECTOR HARRIS: Well, you know, it seems  
 13 to me with this President -- you know, the office is the  
 14 same, the personalities are different, that it might be  
 15 worth pursuing.

16 Anyone else, Dave?

17 MR. ARMSTRONG: I think it's important that all  
 18 the witnesses that have testified before this Task Force  
 19 have indicated the threat to our domestic stability as  
 20 a result of the great influx of illegal drugs into this  
 21 country. So, I think it's of importance that we recommend  
 22 to the Attorney General both items in recommendations  
 23 two and three, and taken a step further, to follow the  
 24 course that Judge Bell just recommended.

25 We had just yesterday, the Attorney General from

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1 North Carolina indicating that he felt that the presence  
 2 and influx of drugs along the eastern coast of his area--  
 3 his State, presented probably the greatest threat to the  
 4 peace and security of his constituents.

5 I think we cannot say enough about the need  
 6 for military assistance in guarding the coastlines of  
 7 this country, and I would make a strong recommendation  
 8 that the Attorney General move as quickly as he can to  
 9 convene this meeting as recommended in item two, and to  
 10 follow through with it on the recommendations pointed  
 11 out in recommendation three.

12 EXECUTIVE DIRECTOR HARRIS: Anybody else have any-  
 13 thing?

14 GOVERNOR THOMPSON: Could I ask a couple of questions.  
 15 On page 7, of this TAB, it says a Bill introduced in the  
 16 Senate, S 441, is designed to clarify many of the issues  
 17 detailed above.

18 Do we know what provisions that contains, and  
 19 what form the clarification takes?

20 STAFF MEMBER (David): It doesn't really go beyond  
 21 the legal opinions adopted in legal counsel opinions to  
 22 clarify just what's in the statute, which says that the  
 23 Army and the Air Force cannot be engaged in direct assistance  
 24 -- to assist in that regard; it doesn't really go beyond  
 25 that.

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1 MR. ARMSTRONG: How about the Navy Reserve?

2 STAFF MEMBER (David): It doesn't mention the Navy  
3 Reserve.

4 GOVERNOR THOMPSON: Are we overlooking the possibility  
5 of amending the Statute to set forth categories of assis-  
6 tance that wouldn't really get anybody really upset and  
7 constitute direct enforcement of the criminal laws by  
8 the military, which I don't think any of us desire, but,  
9 would authorize the loan concept that Judge Bell was talking  
10 about. I mean, it seems sort of silly if you've a situa-  
11 tion involving a take-over of a building or a facility,  
12 or something like that, or the possible threatening of  
13 the loss of lives of large numbers of people in a hostage  
14 situation, if local law enforcement can't borrow, readily,  
15 a piece of Army equipment, or an Air Force helicopter,  
16 or a concussion grenade.

17 Can't those kinds of assistance be designated,  
18 generically, and made an exception to the Statute of some  
19 named official, without disturbing the essential intent  
20 of the Posse Comitatus Statute?

21 EXECUTIVE DIRECTOR HARRIS: I think that's one thing  
22 we very well may want, and out to consider, based on your  
23 suggestion, Governor, in Phase II.

24 CO-CHAIRMAN BELL: But, what the Governor is saying  
25 is, is it worthwhile to try to do this by legal opinion,

1 or should we just go do it the cleanest possible way,  
2 which is by Statute. You see, this involves something  
3 else I just thought about, too, Governor. We had two--  
4 three helicopters in the Border Patrol, and we couldn't  
5 get money from Congress to get anymore helicopters, but  
6 the military had literally 10's of thousands of helicopters  
7 in moth balls which we could not use. This is the same  
8 country--same government which owns all the helicopters.  
9 And, I think we had two or three in the Border Patrol.

10 EXECUTIVE DIRECTOR HARRIS: Well, you know, the  
11 same is true, I mean, we have a moth ball fleet of destroyers,  
12 and what you're talking about are radar platforms--you  
13 don't need sophisticated weapons systems, you just need  
14 something sitting out there--floating out there with a  
15 radar set; so, the same thing applies in the waterborne  
16 craft, as the airborne craft.

17 PROFESSOR WILSON: Could I suggest again the two  
18 track approach, that first we recommend, in Phase I, the  
19 Attorney General proceed as you've recommended, and that  
20 in Phase II we seriously consider--I'm disposed to recom-  
21 mend a revision of the basic Act so there will be no future  
22 doubt about this in the minds of Administrations yet to  
23 be born; and, I think the reason why, Phase I, approach,  
24 though it's not the cleanest legal solution--has a chance  
25 of succeeding, is that my belief that the American public

1 would be outraged to know that what they've long believed  
2 to be true, is not true.

3 I'm sure if you asked the average citizen the  
4 following question, if the Coast Guard is tracking a sus-  
5 pected smuggler, and gets out of range of the cutter,  
6 and we only have a handful of cutters for the whole State  
7 of Florida, and ask the Navy to fly by, or to pick them  
8 up on their radar, the average citizen expects, of course,  
9 the Navy would do that, I mean, it's the same government,  
10 we're all working against the bad guy, and if they are  
11 going to be told now that the Navy won't do this, that  
12 to say nothing of concussion handgrenades, I think the  
13 public concern about such an absurd division of authority  
14 would give the Attorney General and the President, a good  
15 hand in revising the relationships with the Defense Depart-  
16 ment on these matters.

17 EXECUTIVE DIRECTOR HARRIS: You know, on cold nights  
18 when I've exhausted all television possibilities, I occa-  
19 sionally pull out James' catalog of fighting ships of  
20 the world, and you will find in there that virtually every --  
21 many countries in the world are -- their navies are com-  
22 posed of destroyers which we have given them, and the  
23 idea that the Navy is very often willing to give, at no  
24 cost, destroyers to various countries for their purposes,  
25 and the fact that we can't get any such assistance domestically

1 really is -- it is sort of a hard concept to swallow.

2 PROFESSOR WILSON: As a former naval officer who  
3 used to steer ships around in the Carribbean, I can tell  
4 you that we have a lot of free times on our hands down  
5 there. We're not exactly overworked, and indeed, I think  
6 many of us would welcome the opportunity to at least watch  
7 the radar for awhile and get on their radio to relieve  
8 the --

9 EXECUTIVE DIRECTOR HARRIS: All right. Mr. Edwards?

10 MR. EDWARDS: Isn't there presently legislation  
11 that has been introduced that would modify the present  
12 interpretation of Posse Comitatus to allow for military  
13 involvement from a technical standpoint--isn't that presently  
14 on -- in --

15 [Answer provided by Staff Member (David), however,  
16 not audible to this court reporter.]

17 There's presently some of the training flights  
18 being utilized by customs at the present time where they  
19 can utilize some of those resources.

20 I can tell you though, that from Florida's  
21 standpoint, we'd appreciate it because of the problem  
22 that we're facing. The choke-point approach is a valid  
23 approach, and the interdiction approach there would have  
24 a tremendous impact, it would divert, but, it would have  
25 a tremendous impact.

1 CO-CHAIRMAN BELL: I want to see who introduced  
2 that Bill, I'll tell you if it's for, or against.

3 MR. EDWARDS: Who is the sponsor of that legislation?

4 STAFF MEMBER (unknown): Warner -- Bob Warner of  
5 California.

6 CO-CHAIRMAN BELL: And, this is supposed to help  
7 law enforcement.

8 PROFESSOR WILSON: This is S 441, you're talking  
9 about?

10 STAFF MEMBER (unknown): I know that Bob Warner  
11 put it before the Congress.

12 CO-CHAIRMAN BELL: This is, S.

13 PROFESSOR WILSON: Who sponsored S 441?

14 STAFF MEMBER (unknown); Nunn.

15 CO-CHAIRMAN BELL: It's entitled, Military Coopera-  
16 tion with Drug Enforcement Officials; sponsored by Senator  
17 Nunn. This is one of the group of 13 bills he introduced  
18 to help law enforcement.

19 EXECUTIVE DIRECTOR HARRIS: Well, in Phase II, we'll  
20 have more of an analysis of this.

21 If there isn't any strong objection, why don't  
22 we follow the two track approach and make some Phase I,  
23 recommendations recognizing that what Governor Thompson  
24 says, it's probably cleaner to do it legislatively, and  
25 we'll present that to you in Phase II.

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1 CO-CHAIRMAN BELL: This would not take care of borrow-  
2 ing things like the concussion grenades, or a helicopter  
3 in regular law enforcement. This all relates to drugs  
4 here; but, I imagine we could get a little change made  
5 in it if we need.

6 EXECUTIVE DIRECTOR HARRIS: The next TAB deals with  
7 Career Criminal Programs.

8 And, here, basically, the question is three-  
9 fold. Number one, should we make a recommendation to  
10 the Attorney General that U.S. Attorneys Offices, to some  
11 degree, rather, each have career criminal programs, in  
12 other words, fast track known recidivists; should we recom-  
13 mend that the Attorney General in his leadership role  
14 try and encourage States and localities to do so; and  
15 lastly, should we commend the question of career criminals  
16 for further research by the National Institute of Justice.

17 The concept of the program, as most everyone  
18 knows, is to try and identify those offenders who commit  
19 disproportionately -- disproportionate to their numbers,  
20 large numbers of crimes to make sure that they get a full  
21 measure of the prompt services of the criminal justice  
22 system, and to sort of keep them on a fast track, or a  
23 special process so that they receive the first available  
24 trial, and the first available sentence.

25 CO-CHAIRMAN BELL: I recommend, One, Two, and Three;

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1 I do not recommend the research, and only for the reason  
2 that I wouldn't want, One, Two, and Three to be delayed  
3 while the research--I've got no objection to the research,  
4 but not as a recommendation.

5 PROFESSOR WILSON: Could I indicate that the reason  
6 for leaving the research in, is not because I'm a profes-  
7 sor and love reach, though I am, and I do, it is the follow-  
8 ing: The Career Criminal Program is not operational in  
9 most States, is directed at adult offenders, and it has  
10 generally been applauded, though objective, independent  
11 evaluations of its success are still lacking, and it has  
12 come under criticism in some quarters, but, I am certainly  
13 inclined to go forward with it and expand it to the Federal  
14 level, I can't believe it would make matters worse, and  
15 it may well make matters better.

16 The reason for including research is not to  
17 delay this; we know now how to run such a program, we've  
18 been in operation around the country now for over five  
19 years. The reason for research is that very few, if any  
20 of these programs is directed to juveniles. Juveniles  
21 commit a disproportionate share of predatory street crime.  
22 In many jurisdictions--in most jurisdictions, we do not  
23 have the capability to assemble a comprehensive criminal  
24 record of a given juvenile to know whether that person  
25 should be given fast track treatment, or whether he should

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1 be handled in the normal course of events.

2 The purpose of the -- the limited purpose of  
3 the research, Judge, as I understand it from the recommenda-  
4 tion, would be to encourage the States, primarily, with  
5 NIJ money to experiment with developing career criminal  
6 histories for juveniles so that this category of offender,  
7 where the offender is a serious repeat offender and has  
8 committed a violent crime, can be given fast track treat-  
9 ment. This requires a good deal of reorganization of  
10 data, it requires, in some cases, changes in State law;  
11 it certainly requires the cooperation of family, courts,  
12 prosecutors and the like, which has not been often forth-  
13 coming in the past, and it is not an impediment to immediate  
14 action with respect to the adult component of the program.

15 CO-CHAIRMAN BELL: I am persuaded Professor.

16 PROFESSOR WILSON: Thank you, I didn't realize I  
17 was that eloquent, I appreciate that, Judge.

18 EXECUTIVE DIRECTOR HARRIS: Does anyone else care  
19 to comment on this one?

20 MR. ARMSTRONG: Just one brief comment. I was fortu-  
21 nate to have one of the first criminal -- career criminal  
22 programs, and it's important that the Federal Government  
23 place a considerable more emphasis in the response time,  
24 particularly from the Bureau, in getting certifications  
25 of convictions where--and, certifications of arrest records,

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1 back to the local and State district attorneys. That's  
 2 been an on-going problem that's been addressed with Judge  
 3 Webster, but, I would like to urge this Task Force to  
 4 reemphasize that to the Attorney General that the concept  
 5 of career criminal is a speedy trial concept as well as  
 6 the targeting aspects, and we need a greater response  
 7 from the records division of the Bureau.

8 MR. HART: I'd like to make one comment. Certainly  
 9 the State law would have to be changed in most States,  
 10 certainly Michigan in the area of juveniles. Nothing  
 11 much happen to people under 17; nothing happens to those  
 12 under 14, even in murder. So, distinct change in law  
 13 would have to be made to effectively approach that problem  
 14 in the State of Michigan, and I suppose in most States.

15 MR. LITTLEFIELD: I hate to speak against mother  
 16 love, and it's about like that when you say something  
 17 not completely in agreement with the complete career criminal  
 18 program, but, not infrequently in my jurisdiction, persons  
 19 who were prosecuted under the career criminal program,  
 20 are unsuccessful criminals. A person who gets arrested  
 21 the first time they commit an offense, as soon as they  
 22 get out, they commit another, and they're not really career  
 23 criminals, they're just unsuccessful criminals; and  
 24 another thing is that really should be examined, when  
 25 You remember that if local law enforcement, and local

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1 prosecution agencies, and local government, have to pick  
 2 up the tab for this type of prosecution, and it's more  
 3 expensive, because you're putting more resources in a  
 4 small limited area, I think an examination should be made  
 5 if it's really cost effective, when you consider that  
 6 when you prioritize, you're going to let some other people  
 7 fall through the cracks.

8 I think it's an excellent program, but, I don't  
 9 think it's as -- just as great as everyone really seems  
 10 to think that it is.

11 PROFESSOR WILSON: That is exactly what I had in  
 12 mind when I earlier alluded to the fact that there is  
 13 some question in my people's minds of how successful this  
 14 Program is, and before we put our recommendation in final  
 15 form, I would urge the staff, if they have not already  
 16 done so, to read and prepare for this panel, a digest  
 17 of the evaluations done by the Rand Corporation and others  
 18 of career criminal programs, which point to precisely  
 19 that Bill Littlefield has indicated.

20 EXECUTIVE DIRECTOR HARRIS: Well, we will do that.

21 If there is no further comment, we can move  
 22 on to the next one.

23 This is labeled, The Attorney General Is The  
 24 Coordinator of Federal Criminal Law Enforcement. And,  
 25 really, it has two separate concepts; one, which is an

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1 approach I've heard Judge Bell talk about on several occa-  
2 sions, and that is the need for a central coordinator  
3 of law enforcement.

4 Now, Judge Bell has talked about something  
5 which I would say is an alternative to this, and that  
6 is, having a director of central law enforcement much  
7 as we have a director of central intelligence, who also  
8 happens to be, at this time, the head of the CIA.

9 This proposal, in either form, whether it be  
10 the Attorney General, or whether it be, for example, Judge  
11 Webster taking on this role in addition to his role as  
12 the head of the FBI, speaks to the question of is there  
13 a need to have the Federal law enforcement effort more  
14 strongly and firmly coordinate, and if so, who should  
15 do it.

16 Now, there is an extant executive order which,  
17 I am told, one member of the Task Force has some familiarity  
18 with, EO 11396, which designates the Attorney General  
19 as the coordinator. I assume that one of the reasons  
20 it was necessary to put this in an executive order, because  
21 not all of the law enforcement that takes place, federally,  
22 is under the Department of Justice.

23 So, that's the question. Is there a need for  
24 a strong Federal coordination role, is there a need for  
25 a law enforcement boss if we want to put it in the vernacular,

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1 who should it be, if there is such a need.

2 PROFESSOR WILSON: Well, Judge, I have to confess, I  
3 am a recidivist on this matter, a two time loser.

4 I wrote Executive Order 11396, or supervised  
5 its writing for President Lyndon Johnson, when I was chair-  
6 man of the White House Task Force on Crime, and our first  
7 recommendation was that we needed to coordinate the Federal  
8 effort.

9 As the staff has correctly point out, absolutely  
10 nothing happened other than the fact that the Executive  
11 Order was signed and duly promulgated. As Judge Bell  
12 knows, far better than anybody else on this panel, Cabinet  
13 Officers do not think that they are appointed in order  
14 to take orders from other Cabinet Officers, and it takes  
15 some resources devoted to the project of getting them  
16 to come together in a room.

17 Now, if we are going to revive this idea, and  
18 give the Attorney General a lead role in this, we're going  
19 to have to make a very strong case for it. We are going  
20 to have to show what problems now arise because of the  
21 lack of this; what gains may be forthcoming from its pre-  
22 sence, because to achieve it, and I watched this not happen  
23 now, for 15 years, requires the substantial resources,  
24 rather substantial Presidential attention. It is not  
25 something the Attorney General can do unaided. It is

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1 really -- this recommendation really can't even be a recom-  
 2 mendation; the Attorney General alone out there, he is --  
 3 alone. It's really a recommendation to the President.

4 Now, if we want to call this to the attention  
 5 of the President, we have to make a strong case in certain  
 6 policy areas, such as economic policy, there have been  
 7 gains in achieving cabinet coordination, often by placing  
 8 the coordinating mechanism directly in the White House,  
 9 and having the cabinet officer participate in it with  
 10 White House staff.

11 We perhaps might want to look at what's been  
 12 involved in such things as the economic policy board under  
 13 President Ford, and other examples of where this has been  
 14 done with some success.

15 But, please let us -- let me not be placed  
 16 in the position whether I have to decide, once again,  
 17 whether or not to vote for motherhood, virtue, and coordina-  
 18 tion. I did it once before, and I don't feel good about  
 19 it.

20 CO-CHAIRMAN BELL: Well, the fact is, of all these  
 21 Federal law enforcement agencies, there's very few that  
 22 you'd want in law enforcement, and we examined all of  
 23 those agencies in 1978, and came up with a reorganization  
 24 plan, which we never got off the ground because we found  
 25 that the Chairman of the Appropriations Sub-Committee in

1 the House was opposed to it--he's no longer in the Congress;  
 2 he would have been opposed to moving the Alcohol, Tobacco  
 3 and Firearms agents into the Justice Department. We had  
 4 a good plan, I thought, and the Task Force has a copy  
 5 of the plan.

6 I think that approach, really, is better than  
 7 just saying, you'll coordinate. You don't really coordinate  
 8 anything in the Federal Government unless you control  
 9 it--you have to be in control, and we just got through  
 10 talking about the handgrenade problem.

11 So, I think it would be well for the Attorney  
 12 General to take another look at reorganization. That  
 13 would be the approach, and then, I think, you'd end up  
 14 with a director of federal law enforcement, you put all  
 15 the training together, and we'd make progress.

16 EXECUTIVE DIRECTOR HARRIS: So, that would suggest  
 17 holding off on this until Phase II?

18 CO-CHAIRMAN BELL: Yeah.

19 PROFESSOR WILSON: I agree.

20 EXECUTIVE DIRECTOR HARRIS: Anyone -- any dissenting  
 21 views on that? Frank?

22 MR. CARRINGTON: This is not a dissenting view,  
 23 it's a comment.

24 I had the privilege of serving on the transition  
 25 team as assistant director for policy--for criminal justice,

1 and, I would say during the entire transition we probably  
2 had 50 percent of our total effort dealing with the problem  
3 of coordination.

4 One thing that we came up with that is a poten-  
5 tial innovative solution, and I would like the staff to  
6 work it over, I discussed it with Alex Williams last night,  
7 when we got to looking at why there was a lack of coopera-  
8 tion, there was several factors, one, just human nature,  
9 I'm better than you, in Agency A, to Agency B; second,  
10 professional rivalry; but, it seemed that the biggest incen-  
11 tive not to cooperate, was purely appropriations.

12 When you're going to the Congress to get your  
13 appropriations, you want to make your agency look like  
14 it is the only agency that is doing anything in the field.

15 I'd like to suggest the possibility for a referral  
16 to the staff of a provision whereby when appropriation  
17 documents are being submitted to the Congress, it be man-  
18 dated that the submitting agency list the assist that  
19 were given by other law enforcement agencies, in other  
20 words, -- and, I'm not singling out DEA, but, just for  
21 example, DEA may put down a narcotics seizure, when actually  
22 it was a border search that developed the narcotics when  
23 then DEA got jurisdiction of.

24 If you could put the appropriations procedure  
25 into a point where a premium was put on cooperation, on

1 assistance, and that this should be reported to Congress  
2 when an agency is reporting its successes, then some of  
3 the incentive not to cooperate might be taken away.

4 It's purely put out for consideration.

5 CO-CHAIRMAN BELL: While the staff is doing that,  
6 you might look at the way the Director of Central Intelli-  
7 gence submits a budge; it's submitted for all of the people  
8 in -- every element of the Intelligence apparatus, four  
9 or five different agencies, and the DCI, puts those in  
10 and even recommends the counter-intelligence budget for  
11 the FBI.

12 MR. HART: Even more tragic than that, Judge, comment-  
13 ing on his statement, a foreign government wanted to notify  
14 Customs of the possibility of a large seizure, they couldn't,  
15 by the time they notified DEA, it was too late to notify  
16 Customs and the load got through. Just a matter, you  
17 know, changing that where they can talk directly to Customs  
18 or Immigration, or people like that.

19 CO-CHAIRMAN BELL: Yeah.

20 EXECUTIVE DIRECTOR HARRIS: Lastly, I had a former  
21 assistant Secretary of the Treasury for Enforcement, who  
22 was responsible for the "law enforcement army of the Treasury",  
23 in discussing the job with me after he left, told me,  
24 that one of the problems, having been in the Justice Depart-  
25 ment, and then going to do "law enforcement over Treasury"



1 was that the Secretary of the Treasury is really interested  
 2 in the inflation rate and things of that nature, and it's  
 3 very hard to get any high level support within that Depart-  
 4 ment to do law enforcement work, because that's not what  
 5 Secretaries of the Treasury view their job as.

6 CO-CHAIRMAN BELL: Yeah. If you want to have good  
 7 law enforcement, you have to put it under the chief of  
 8 the law enforcement, and that's just elemental.

9 EXECUTIVE DIRECTOR HARRIS: Next, is something that  
 10 Judge Bell has raised several times before, and we're  
 11 finally at it and this is the IRS role in criminal law  
 12 enforcement, and basically here under Commissioner of  
 13 the IRS Alexander, the IRS backed away from what had been  
 14 previously a very productive role they had played in assist-  
 15 ing law enforcement.

16 Then in 1976, there was passage of the Tax  
 17 Reform Act, which also sharply curtailed what the IRS  
 18 could do to assist. A lot of people labeled the Tax Reform  
 19 Act as the "white collar criminal protection act". In  
 20 any event, the message here, or the issue here is that  
 21 based upon -- based upon this Act, and starting with Com-  
 22 missioner Alexander's retreat, the IRS presently is restrained  
 23 from providing assistance in criminal investigations which  
 24 it clearly has the capability of doing if it were permitted  
 25 to by law, and if, in fact, it was willing to.

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1 In Phase I, we have a rather limited possibilities  
 2 for action because the IRS is not a Justice Department  
 3 function, it's of the Treasury Department, but, the ques-  
 4 tion is, should we make an attempt in Phase I, to persuade,  
 5 cajole, impress, the Secretary of the Treasury, and the  
 6 Commissioner of IRS, with the need to, within the scope of  
 7 present law, cooperate as fully as possible?

8 CO-CHAIRMAN BELL: Well, I had fought this battle,  
 9 and didn't get anywhere. It's a statute that the Congress  
 10 passed, puts the IRS people in fright. They are very  
 11 worried about being sued. They can be prosecuted for giving  
 12 out information, and I don't think we're going to get any-  
 13 where with any more negotiating. I think the law has  
 14 to be changed, and one of the Bills, Senator Nunn intro-  
 15 duced, would change the law, I think--it's in that same  
 16 package of bills. That came out of those hearings he  
 17 had on certain forms of organized crime.

18 So, that's my view. I think this is one you  
 19 have to go to the mat on, and it's better to let the  
 20 American people know what the law has done to them--its  
 21 about done them in.

22 PROFESSOR WILSON: If the tax reform act of 1976,  
 23 had been in effect in the early 1920's Al Capone would  
 24 still be free.

25 CO-CHAIRMAN BELL: He's still be operating.

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EXECUTIVE DIRECTOR HARRIS: Frank?

MR. CARRINGTON: I can comment on this with personal experience, because I served seven years as a criminal investigator with IRS from '60 to '67, and at that time, and I'm speaking from the street level, because that's all I was, was a street agent; but, we worked organized crime, in the most complete cooperation with all of the other Federal agencies, particularly the other Treasury agencies, but, even the Bureau worked with us, and we put away an awful lot of organized crime people that would not have been put away otherwise, because we had the expertise, the capability, and at that time, the desire to go after the money.

Your average organized crime figure, for example, never touches a shipment of narcotics, personally, you're not going to get him in a possession, but, you can trace the money to him.

And, the level of cooperation then was really magnificent, and effective, and so, I would just like to go on record, too, as completely supporting every recommendation on this.

EXECUTIVE DIRECTOR HARRIS: As I hear it, what -- what I've heard is that we ought to put this off to Phase II, and not knock our heads against the wall in trying to do something by the art of friendly persuasion, or our

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wonderful personalities.

MR. EDWARDS: Jeff, I think it would be good if we could maintain up-date on what's happening with that Bill.

EXECUTIVE DIRECTOR HARRIS: Yeah, we will -- we are currently doing an analysis of every criminal justice bill in either the House or the Senate.

The next area is one that I don't have to spend much time on.

It is basically, the proposal that the you heard the Attorney General of North Carolina suggest to you yesterday, and it is that the Attorney General direct the U.S. Attorney in every district to attempt to convene a law enforcement coordinating committee.

The idea would be for the -- the committee would attempt to define and work out a local criminal justice plan to see which -- what resources were available from each entity, what each was capable of doing, and try and work together in a more cooperative effort.

The idea being that the Attorney General would make this part of the job description of a U.S. Attorney, and his performance would be judged on how successfully he did this as well as, obviously, other parameters.

That is the recommendation; you heard it yesterday from the Attorney General of North Carolina, and I don't need to say more about it, since he explained to

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1 you how it well it worked in his district, and the pos-  
2 sibilities he thinks this has.

3 CO-CHAIRMAN BELL: Well, I think everyone favors  
4 this. The only thing, the way it's written, it doesn't  
5 really call on the Attorney General of the United States  
6 to coordinate with the the Attorney General of the State.

7 EXECUTIVE DIRECTOR HARRIS: I think the proposal  
8 is that the Attorney General would direct his U.S. Attorney  
9 in the various districts to coordinate such a committee.

10 CO-CHAIRMAN BELL: But, that doesn't bring in, neces-  
11 sarily the State Attorney General, who is the highest  
12 law enforcement person; it's important, just as we saw  
13 the Attorney General of North Carolina here yesterday--  
14 it's important to get him into it too.

15 MR. ARMSTRONG: That's not true in every case. In  
16 Kentucky, he's not the chief law enforcement officer.

17 The proposal that you created, quite frankly,  
18 brings in the district attorney's encompassing the respec-  
19 tive Federal district. I think this one word out to be  
20 changed, instead of, cooperative, it ought to be a mandatory  
21 responsibility of the U.S. Attorneys to attend and to  
22 see that these committees begin working. The blueprint  
23 is already there, and its been in place for about four  
24 years, and it just calls for a directive from the Attorney  
25 General.

1 CO-CHAIRMAN BELL: That's what the Attorney General  
2 recommended yesterday, that it be mandatory.

3 EXECUTIVE DIRECTOR HARRIS: Yeah. I'm advised that  
4 23 State's Attorneys General, do not have criminal respon-  
5 sibility, so it's about half of them that do.

6 CO-CHAIRMAN BELL: Yeah. All right.

7 PROFESSOR WILSON: Jeff, in thinking about Phase  
8 II, I think we should keep this proposal alive in that  
9 part of our work as well, for the following reason. I'm  
10 completely in favor of this being done by the Attorney  
11 General now, but, in my experience, coordinating committees,  
12 when they work at all, and they don't usually work, let's  
13 be candid about it, as well as we would like, tend to  
14 work best when there is some staff person who has respon-  
15 sibility for preparing agendas, following up, gathering  
16 information, keeping the work going, so it's not just  
17 a luncheon meeting.

18 And, for a staff person to be assigned to each  
19 one of the 93 or so, Federal Districts, is an expensive  
20 matter, even if it's a part-time responsibility of somebody  
21 now doing other things, and to the extent that's the case,  
22 I hope we would keep this in mind in Phase II, and consider,  
23 at least, whether we should put some resources into this,  
24 if we want to give it the best chance for success.

25 CO-CHAIRMAN BELL: Well, that would not be too difficult

1 to do. You could have one staff person in the executive  
2 office for U.S. Attorneys who coordinated with all of  
3 these committees and got them to give monthly reports--  
4 made the U.S Attorneys file something, maybe monthly,  
5 or quarterly.

6 PROFESSOR WILSON: Right. I was just thinking in  
7 the Districts if there was somebody who had, at least  
8 part-time responsibility, the day to day work --

9 CO-CHAIRMAN BELL: Well, you'll find they have plenty  
10 of staff people.

11 PROFESSOR WILSON: Good; I suspect they do, yeah.

12 CO-CHAIRMAN BELL: And, this person in the executive  
13 office of for U.S. Attorney's could have somebody in each  
14 U.S. Attorney's office to work with.

15 That's a very good point though, if you don't  
16 have some reporting back, you won't get anything done.

17 MR. ARMSTRONG: I might add that the Executive Working  
18 Group now, is documenting all of its activities, and report-  
19 ing to the National District Attorneys Association, as  
20 well as the National Association of Attorneys General,  
21 so, that information and feed back from the working group  
22 is getting out into the field.

23 EXECUTIVE DIRECTOR HARRIS: The next issue is the  
24 Cross-Designation Program that you heard discussed yesterday  
25 by the District Attorney, and U.S. Attorney from San Diego,

1 and the recommendation here is, more of a leadership role  
2 that the Attorney General task each U.S. Attorney to con-  
3 sider whether in his or her district, this would be a  
4 productive program to pursue, and where it is to pursue  
5 it.

6 CO-CHAIRMAN BELL: Well, I'm sure everyone favors  
7 that. It's just exploratory.

8 The -- if there's nothing further.

9 And, the next one, I think we've discussed  
10 already, and that's the exchange of criminal history informa-  
11 tion.

12 CO-CHAIRMAN BELL: Yeah.

13 EXECUTIVE DIRECTOR HARRIS: Then we go to the --  
14 three topics we've grouped together, Allocation of Present  
15 Assistance Between Training, Technical Assistance, Capital  
16 Investment; Availability of Technical Assistance and Avail-  
17 ability of Training.

18 And, here the recommendations in the technical  
19 assistance, we note that the response time to get finger-  
20 prints from the FBI is 25 days, and it's our view on the  
21 Staff, that this is absolutely unacceptable.

22 We would recommend that the Task Force recommend  
23 to the Attorney General that this time has to be cut.  
24 And there are ways that it can be done; for example,  
25 if the Bureau were to prioritize their requests for finger-

1 print records so that certain ones were -- the ones where  
 2 they have an active criminal suspect are placed at the  
 3 head of the file. This would help. There could be user  
 4 charges for non-law enforcement requests for fingerprint  
 5 checks, such as background checks and things of this nature.

6 But, we would like to see in the area of techni-  
 7 cal assistance, we think that this 25 day turn-around  
 8 for fingerprints is just too long.

9 MR. EDWARDS: Jeff, that's 25 working days.

10 EXECUTIVE DIRECTOR HARRIS: Yeah, I mean, it probably  
 11 comes out to at least over a month.

12 CO-CHAIRMAN BELL: Well, the -- what do they call  
 13 that at the Bureau--the technical division -- Identifica-  
 14 tion Division. When I was there, I was worried about  
 15 this some, because it seems not to get the priority that  
 16 Special Agents Operations get, and I once had a thought  
 17 that they probably ought to build a new Center, and they  
 18 ought to do it down at Quantico; they got land there,  
 19 and you could get the whole thing together and up-grade  
 20 it; and, this is just a manifestation of the problem right  
 21 now, this slow turn-around.

22 Those people that work in that Department are  
 23 paid low salaries, and it's just a -- it's not a forgotten  
 24 part of the Bureau, but it's just -- it saves money there.

25 EXECUTIVE DIRECTOR HARRIS: Well, when you juxtapose

1 the Speedy Trial Act requirements with the 25 day turn-  
 2 around time requirements, you might have to go to trial  
 3 just about the same time your getting the fingerprint  
 4 records back.

5 CO-CHAIRMAN BELL: Yeah. About all we could do  
 6 about this though, is recommend that it be improved, that  
 7 it's a law enforcement problem--the delay.

8 EXECUTIVE DIRECTOR HARRIS: The other area that  
 9 comes up here is the question of whether the Federal train-  
 10 ing assistance that is given, ought to be regionalized --  
 11 now, the FBI is going the other way, they're opening up  
 12 a grand new facility in Quantico; the question that comes  
 13 up, and the State and local people tell us that the travel,  
 14 and per diem funds to send people back to Washington,  
 15 or the Washington area, or to send people to Glenco, Georgia,  
 16 from around the country is prohibitive.

17 A lot of state and local people tell us from  
 18 their point of view, it would be far more preferable if  
 19 the services were delivered on a regional concept, rather  
 20 than these National training centers.

21 The other side of the coin is, the Federal  
 22 system--the Federal agencies like, and feel they can deliver  
 23 the best and most sophisticated services without duplica-  
 24 tion if they do it one facility.

25 The question is, do we want to make any recommenda-

1 tions in regard to how these kinds of services are delivered.

2 CO-CHAIRMAN BELL: I don't. I think we ought to  
3 keep it on a national basis; it's very good, there's no  
4 better training than at Quantico, and at Glenco. They  
5 can teach you how to speak Spanish down there--a Border  
6 Patrollman, in six weeks, for example; and if you regionalize,  
7 you're going to lower the training.

8 The Federal government is cutting back on spend-  
9 ing money -- where are you going to get the money to do  
10 all this with. If we recommend something that costs a  
11 lot of money, we know it's not going to get done.

12 Anyway, I don't think there's been a case made  
13 for doing it. There's always a long waiting list of local  
14 law enforcement people who want to go to Quantico, and  
15 anyone whose been there is proud of it. I'm very familiar  
16 with the program, in fact, I've got a tie clasp they gave  
17 me, and I wear it often as if I was a graduate.

18 MR. HART: I agree with you, Judge, that's the finest  
19 training center for local law enforcement in the world,  
20 and anybody that's ever been there, outside of the country,  
21 or inside of the country, will tell you that.

22 So, if you do fragement it, you're going to  
23 lose something in the translation, there's no doubt about  
24 it.

25 EXECUTIVE DIRECTOR HARRIS: Well, I hear not dissent

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1 that --

2 CO-CHAIRMAN BELL: Well, I don't mean to be taking  
3 over the Commission here with all of my views; Professor  
4 Wilson knows more about law enforcement than I do, pro-  
5 bably, and some of the others, so --

6 PROFESSOR WILSON: Well, I have not heard the case  
7 made strongly enough to lead me to support a regional  
8 concept in place of the present facility; I know travel  
9 costs are expensive, but the cost of having a regional  
10 facility are also substantial, and I'm not sure there  
11 would be any real savings.

12 CO-CHAIRMAN BELL: I'd agree with that.

13 EXECUTIVE DIRECTOR HARRIS: Well, I think we can  
14 make a little progress here. I hear the message, and  
15 we'll act accordingly.

16 Now, the last matter in this area is, we have  
17 a center at Glenco, we have one at Quantico; there are  
18 a number of different training programs offered by dif-  
19 ferent segments of the Federal Government; do we want  
20 to consider, or is there a need for overall coordination  
21 of the delivery of training and technical assistance to  
22 avoid duplication, or does the present system--is that  
23 sort of something with diminishing returns?

24 MR. LITTLEFIELD: They seem to be doing a pretty  
25 good job now.

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1 EXECUTIVE DIRECTOR HARRIS: Anyone from a State  
2 or local level feel that there is a need for a centralized  
3 training coordinator?

4 MR. ARMSTRONG: Yeah, there are a couple of areas  
5 where the Federal training programs can be of great assist-  
6 ance to State police, and local police, as well as district  
7 attorneys, particular in the area we're just venturing  
8 in with the Justice Department and their training program  
9 of advocacy, but there are a limited number of seats avail-  
10 able in that program, and I think if at all possible,  
11 if they could expand -- I think it adds to the coordination  
12 concept, if they would try and bring in, where possible,  
13 State and local officials, and include them in their train-  
14 ing program.

15 This would help in this future cross-designation  
16 concept; it also sets the tone for future cooperation  
17 between State and Federal governments; and, I would urge  
18 that we include that in our recommendation, to make avail-  
19 able access to these training programs to State and local  
20 officials.

21 CO-CHAIRMAN BELL: Well, I've got a great deal of  
22 pride in that, having something to do with starting the  
23 school, and we'd have to check, Jeff, to see if they can  
24 take on more people. It may be that we'll have to --  
25 if there's such a need for training prosecutors, State and

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1 Federal, it may be that they will have to drop the civil  
2 school--civil side of it. I don't know, but, we ought  
3 to look into that. I had understood that it had gotten  
4 to be a -- there's a demand to send State prosecutors  
5 there to this school.

6 MR. LITTLEFIELD: Well, I think we have the experience  
7 of four people, to date, having gone through that and  
8 the response from those attending is, it's an outstanding  
9 program and only wish that it could be shared among other  
10 prosecutors throughout the nation.

11 CO-CHAIRMAN BELL: It's very much in the national  
12 interest to train prosecutors just as much as it is to  
13 train law enforcement people. The prosecutor is a part  
14 of the law enforcement; so, I agree with that view.

15 MR. LITTLEFIELD: Is this a responsibility of the  
16 Federal Government to train State prosecutors--you got  
17 Your National District Attorneys College; what about that,  
18 Dave?

19 MR. ARMSTRONG: Well, that particularly, is a basic  
20 foundation of training, and I would say that that does  
21 provide a very good resource for training; but, I know  
22 that where there is availabilities of Federal workshops  
23 and training programs, not only through the Academy, but  
24 through the Attorney General's Advocacy Course, where  
25 possible, if they would make those available to State and

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1 local prosecutors, it certainly would do the things that  
 2 I mentioned earlier, set the tone for future cooperation,  
 3 and also bring a new added dimension to training that  
 4 the National College isn't able to provide.

5 EXECUTIVE DIRECTOR HARRIS: There is one other question,  
 6 and that is -- I don't know how you all feel about it,  
 7 but, I want to raise it. As you know, the Bureau and  
 8 DEA, provide training -- an awful lot of training for  
 9 foreign law enforcement officials. Now to the extent  
 10 that resources are limited, do we want to look into the  
 11 question, or address the question, of whether, if there  
 12 are limited resources, whether State and local officers  
 13 ought to get first priority at these spaces before we  
 14 start training foreign law enforcement officials.

15 MR. ARMSTRONG: Absolutely.

16 CO-CHAIRMAN BELL: Well, I'd have to take the other  
 17 side of that. The FBI has to deal with INTERPOL, and  
 18 has close coordination with some of the European countries,  
 19 including the United Kingdom, and I think it's important  
 20 to keep that relationship going. More important even  
 21 with the DEA, because they are dealing all over the world,  
 22 and the only way to interdict these drug shipments is  
 23 to have coordination with these foreign police officers.

24 I think the answer is, we have to do both.

25 I don't think we ought to assume that we have such limited

1 resources that we can't do both. Both are important,  
 2 and we're not talking about any large sums of money to  
 3 do this.

4 I'd hate to see us take a position that we're  
 5 going to give priority to -- because the first thing you  
 6 know, we cut out all the foreign officer training--it  
 7 wouldn't be good.

8 MR. CARRINGTON: I'd agree with Judge Bell.

9 EXECUTIVE DIRECTOR HARRIS: The -- we can, I think,  
 10 go on to the next three issues I'd like to consider together;  
 11 there are three issues which deal with victims, but, before  
 12 we do, let me turn the microphone to Frank Carrington.

13 MR. CARRINGTON: Well, I was just going to suggest,  
 14 to save time, that we consider the next three issues together.

15 Let me briefly explain why. Victims, is probably  
 16 one of the areas that the Administration is most concerned  
 17 with. A special advisory task force on victims was set  
 18 up even before the election by, then, Governor Reagan,  
 19 and Ed Mice, and what is developing on the victims issue,  
 20 and something I think this Task Force should address is,  
 21 there is being mounted a very coordinated effort, which  
 22 will probably culminate in a legislative package, a national  
 23 victims bill of rights on a Federal level. Senator Lacsalt's  
 24 office is working on it in the Senate; Congressman Fisher's  
 25 office is working on it in the House of Representatives;



1 the Attorney General is interested in this; the White  
2 House is interested. All of the recommendations contained  
3 herein, are excellent, but, they all are part of the general  
4 package of a victims bill of rights, and I think it might  
5 save time for the Task Force, and the audience, if we  
6 considered it in that particular context.

7 CO-CHAIRMAN BELL: Could you give us a summary of  
8 the rights in the bill of rights?

9 MR. CARRINGTON: Yes, sir. It covers everything  
10 but compensation, because compensation costs money, and  
11 that's going to be deferred. The bill of rights, in essence,  
12 recognizes the duty on the part of the government to protect  
13 the innocent from the predators out there.

14 It does things like victim impact statements;  
15 when the probation officer is making a presentence report,  
16 he must put in both the impact of the particular crime  
17 on the victim, and the potential impact of the perpetrator  
18 on society, and I agree with Professor Wilson, that predict-  
19 ability is a very tricky field, but, at least they can take  
20 it into consideration.

21 Minor things such as having separate witness  
22 rooms for victims, so a rape victim doesn't have to con-  
23 front the rapist while they are waiting to go in and testify.  
24 The accountability provision that we talked about yester-  
25 day, to a certain extent, giving a right of action to some-

1 body who has been victimized through the gross negligence  
2 of Federal Correctional Authorities.

3 Setting up, in the United States Attorneys'  
4 Offices, victim service units--support, not necessarily  
5 financial, but technical, and research support for private  
6 sector victims groups.

7 Anything, basically, to smooth the path of  
8 the victim through the criminal justice system, using  
9 the in-take offices of the law enforcement agencies first,  
10 and second, the prosecutors offices.

11 It has been very comprehensively researched--  
12 it's been introduced in the State of New York by the New  
13 York Crime Victims Compensation Board, and I will have  
14 copies of all of the recommendations for the members of  
15 the Task Force and the staff, but, this is one area where  
16 it's being attacked from every aspect, Senate, House,  
17 Department of Justice, the White House, and I think that  
18 this one of the really key important areas that this Task  
19 Force can address itself to.

20 But, I do think we need to coordinate with  
21 the activities that are going on, concurrently, by other  
22 elements interested in criminal justice.

23 CO-CHAIRMAN BELL: Chairman Rodino has been pushing  
24 something like this for years; but, I -- as I understand  
25 his is, you're paid money; is that --

1 MR. CARRINGTON: Yes, sir. That's the Victim Com-  
2 pensation Bill --

3 CO-CHAIRMAN BELL: That's a different thing altogether.

4 MR. CARRINGTON: And, it has failed to get through  
5 Congress for the past eight sessions; it's almost invariably  
6 passed one House or the other, but not both at any parti-  
7 cular session, and the thinking, during the transition,  
8 in which victims was considered very seriously, and even  
9 prior to the election, is take the victim's rights where  
10 the system can assist the victim without paying them money,  
11 and that is one package of legislation, and then go back  
12 and and consider the compensation issue, whether victims  
13 of Federal crime should be compensated by the Federal  
14 Government, whether there should be any suvention of State  
15 victim programs by the Federal Government.

16 The one--the prior package, the victim bill  
17 of rights, doesn't cost money; it's very substative, and  
18 I don't think that will be difficult at passage. I think  
19 we're still going to have a hassle, because of the economic  
20 conditions over the compensation bill.

21 CO-CHAIRMAN BELL: I'd like to ask one question  
22 about what you just said, because I'm not certain I favor  
23 this.

24 This is, to set up a new tort for negligence  
25 of public officials; public officials are sued all over the

1 lot now, and everytime you prosecute somebody, nearly,  
2 you're apt to get sued.

3 Now, what do you mean by accountability for  
4 negligence of public officials?

5 MR. CARRINGTON: Basically, Judge, the rationale  
6 that was delivered by the Fifth Circuit in the Peyton  
7 Case, first of all, you qualify it with gross negligence,  
8 where reasonal minds could not differ.

9 In the Peyton Case, and I'll try to be very  
10 brief on this, but, the basic factual situation is, they  
11 had an individual in the Federal penitentiary for assaulting  
12 a woman, and every psychiatrist whoever talked to him,  
13 said, this man is a very dangerous homicidal psycopath,  
14 and he's going to kill a woman just as soon as he hits  
15 the ground, there was unanimity of this.

16 Nevertheless, the Federal Parole Board, for  
17 reasons known to itself, cut his sentence in half, and  
18 then, I believe, they gave him time served, and he was  
19 let out after three years of a 20 year sentence, and he  
20 immediately murdered and mulitated three women in Alabama.

21 The Fifth Circuit -- the case went to the Fifth  
22 Circuit, and the Fifth Circuit said, the negligence in  
23 releasing this individual was so gross that reasonable  
24 minds could not differ, and therefore, the Government  
25 should be liable to responding damages.

1 I think if we limit the area of liability to  
2 gross negligence, and then we weed out the area of second  
3 guessing everytime a parole board makes a good faith decision.  
4 For example, if they let out a fifth offense check forger,  
5 who has never had a record of violent crimes, it would  
6 be very much second guessing if that check forger then  
7 raped and murdered somebody because it wasn't predictable.

8 CO-CHAIRMAN BELL: But, suppose a merchant for the  
9 bad check--he got a \$20 bad check, we're going to have  
10 a Federal suit, because the parole board let a bad check  
11 artist out. Now, what sort of business is that?

12 MR. CARRINGTON: Now, the bill that Senator Lacksalt  
13 introduced last session, limited to crimes of violence,  
14 crimes against a person.

15 I agree with you completely. We can't -- we  
16 can't open up the door to suing the Federal Government  
17 everytime a disposition in the correctional field goes  
18 wrong, but, I really feel --

19 CO-CHAIRMAN BELL: But, it's violent crime, usually?

20 MR. CARRINGTON: Violent crime. And, then the second  
21 safe-guard against multiple litigation is the gross negli-  
22 gence standard, rather than ordinary negligence.

23 I think it would have a preventive effect on  
24 victimization. I believe that if the parole boards were  
25 put on notice that they could be sued--at least the Government

1 could be sued, for a release that was as grossly negligent  
2 as the release of Wiseman, in the Peyton Case, that they  
3 would think twice before doing so, we would prevent some  
4 victimization, and I think we'd prevent some law suits.

5 CO-CHAIRMAN BELL: All right. That brings on two  
6 more questions.

7 One is, -- I don't know if the new Attorney  
8 General knows it or not, but, he hasn't got any control  
9 over the Parole Board. No one has control over the Parole  
10 Board, except the Parole Board; that was a so-called Water-  
11 gate Reform, so, you couldn't -- the Attorney General  
12 can't do anything about it, but the -- of course, this  
13 is a Statute. The Bill would -- it would not be stricted  
14 to the Parole Board, I understand that.

15 MR. CARRINGTON: It would cover any gross negligence  
16 in the corrections process. For example, negligent failure  
17 to supervise somebody who had been released, perhaps under  
18 conditions where the release was proper, but, then they  
19 just forgot about him, and didn't carry forth their duty  
20 to supervise --

21 EXECUTIVE DIRECTOR HARRIS: Would this be personal  
22 liability

23 MR. CARRINGTON: No. At least Alan Breed suggested  
24 it be personal liability; I wouldn't go that far, unless  
25 you can show a corrupt motive.

**CONTINUED**

**4 OF 5**

1 EXECUTIVE DIRECTOR HARRIS: Well, if -- the only  
2 thing that I don't understand about this is, it seems  
3 to me if I remember the Parole Board, and knew that if  
4 I made a wrong decision it might cost the Government a  
5 few bucks; would that be likely to change my conduct?

6 MR. CARRINGTON: Yeah, I think so, because first  
7 of all, the --

8 CO-CHAIRMAN BELL: You might get fired.

9 CO-CHAIRMAN BELL: Might get fired; and, no bureaucrat  
10 likes to have this on his record whether it comes out  
11 of his pocket or not. And, third, the parole officials  
12 in all of the cases where liability has been found, you  
13 can never say that they did it willfully, that they wanted  
14 the three women in Alabama to be murdered. They were  
15 just more willing than they should have been, to take  
16 a chance with the safety of society.

17 CO-CHAIRMAN BELL: Through callous.

18 MR. CARRINGTON: Yes. And, if you can -- if you  
19 can put a break on this through the threat of civil liability,  
20 I don't think it would lead to an explosion of law suits  
21 against the Government, but, I think it would highlight  
22 the fact that the Government owes a duty to protect victims,  
23 and particularly when you have foreknowledge, that it's  
24 a dangerous individual that you're releasing. You have the  
25 benefit of expert psychiatric testimony. I think it could

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1 be one of the more substantive recommendations this Task  
2 Force could make without costing an awful lot of money,  
3 and without letting loose the floodgates of litigation.

4 MR. LITTLEFIELD: Frank, do you think it would cost  
5 the Government a little more money in keeping more people  
6 in prison, there would be fewer persons paroled, if there  
7 were this danger?

8 MR. CARRINGTON: This is true, but, remember we're  
9 dealing only with the predictably violent to the extent  
10 that it's possible to predict. So, we're not -- we're  
11 not just saying, we won't parole anybody because we could  
12 get sued. We're dealing with -- by definition, if you  
13 establish the gross negligence standard, you're only dealing  
14 with those people that reasonable minds could not differ  
15 that he would be dangerous--I mean, very dangerous, if  
16 released, that the chances are perhaps more that he would,  
17 than he would not victimize again in a crime of violence.

18 So, we're talking about a very narrow spectrum  
19 of cases, but the cases are terribly important to the  
20 victims, and I think to the fabric of how or criminal  
21 justice system is perceived.

22 CO-CHAIRMAN BELL: Does it include Federal Mental  
23 Institutions?

24 MR. CARRINGTON: Yes. I think it would -- the bill  
25 as Senator Lacksalt introduced it last time, I believe,

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1 focused more on the fact of a crime committed, as opposed  
2 to the place of incarceration, if the Government has taken  
3 charge of a dangerous individual, it has a duty to exercise  
4 that charge so that the reasonable probability of future  
5 injury to the community will be mitigated.

6 EXECUTIVE DIRECTOR HARRIS: This proposal would  
7 require legislation, and we ought to consider it in Phase  
8 II, and we do have three victim proposals in Phase I,  
9 that I'd like to get some reaction from you on.

10 PROFESSOR WILSON: Excuse me, Jeff, before you drop --  
11 I don't want to prolong the discussion, but, when you  
12 take, as you should, this particular proposal into Phase  
13 II, I don't think it should be examined in isolation from  
14 what views this Task Force might take on the general revi-  
15 sion of the criminal code which in one form now before  
16 the Senate, calls for the abolition of the parole function,  
17 that changes the relationship very dramaticly; if we focus --  
18 force the sentencing decision back on the judge on a pre-  
19 sumptive, or guideline basis, then it seems to me this  
20 question of negligence in a parole board for the Federal  
21 system becomes changed; so, the two should be looked at  
22 together.

23 I'm not yet sure how I come out on this. I  
24 regard it as a very complicated question; but, the two  
25 should be looked at in conjunction.

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1 EXECUTIVE DIRECTOR HARRIS: We will take that sug-  
2 gestion to do it.

3 The three suggestions in Phase I, are as follows:  
4 One, that the -- is a concept of providing victim witnesses  
5 with services, that the Attorney General take a leadership  
6 role in supporting this notion, and as well, direct U.S.  
7 Attorneys, were appropriate, to have programs to provide  
8 such services.

9 Now, we do recognize that the need for victim  
10 witness services is generally greater on the State and  
11 local level since most of the common law crimes will be  
12 prosecuted there; but, we do think there's a leadership  
13 role, and we do think that there are occasions in which  
14 this is an extremely useful to have such services available  
15 on the Federal level.

16 The second proposal deals with the questionn  
17 of getting the victim's input prior to a plea agreement,  
18 and here, it seems to us, for this proposal, and the one  
19 to follow, that the victim is a real party and interest  
20 to this law suit between the Government and the defendant,  
21 and when the law suit is to be settled, that there ought  
22 to be a mechanism for finding out the victim's views.

23 The staff has come to the conclusion that it  
24 should not be binding, the victim's opinion as to whether  
25 the plea agreement ought to be accepted, should not be

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1 binding, but there ought to be -- his views ought to be  
2 solicited--or, her views, and on the record for what they  
3 are worth.

4 We also further recommend in this that obviously,  
5 there are some victims who really do not care to express  
6 their input. There are some crimes in which the victims  
7 are less personally connected, and that this should not  
8 be made a mandatory regularized responsibility to get  
9 the victim's input in every case, but that there ought  
10 to be a recognition that this is important in a number  
11 of cases.

12 The third one that we want to put on the table  
13 is the question of victim impact statements. And, here,  
14 on the same theory that if the Federal Government were  
15 to build a highway near your house, or put a garbage dump  
16 near your house, you would have some rights in being heard  
17 before that were done. Well, the question comes up, when  
18 a judge is about to sentence someone who has committed  
19 a crime, the judge, generally, has a rather sympathetic  
20 report about the defendant, if from no other source than  
21 from the defendant, or his own lawyer, and the question  
22 is, in fairness, should not the judge have a report which  
23 explains to him the impact that the defendant's acts have  
24 had on other human beings before he makes his sentencing  
25 decision. And, it's the staff's view that this would be

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1 a useful thing for a judge to have in arriving at a just  
2 determination about what to do with a convicted defendant,  
3 and we would recommend that the Attorney General encourage  
4 U.S. Attorneys, in appropriate cases, to provide such  
5 input, or to cause such input to be provided to the Court.

6 CO-CHAIRMAN BELL: Well, now, this is just a --  
7 doing something that's already done. What's the point  
8 of all this -- every judge in America gets a probation  
9 report that's got all this information in it.

10 EXECUTIVE DIRECTOR HARRIS: Well, the probation  
11 report generally does not have a report from the victim.  
12 The probation department is so taxed that they usually  
13 interview the defendant, and you do not find the kind  
14 of diversified views. At most, what generally happens  
15 is the probation officer will call up the Assistant U.S.  
16 Attorney, if it's a Federal case, and say, is there any-  
17 thing you want to tell me about this guy, and you'll say,  
18 yes, or no; generally, what happens, and I can tell you  
19 from having been there myself, is you're now on to your  
20 next case, and you really don't have a lot of time to  
21 ask your agents, or yourself, to explore the background  
22 of this defendant. You're already on the next one by  
23 the time the probation officer calls you.

24 And, the answer is that the victim generally --  
25 the assistant doesn't call the victim, the probation officer

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1 generally doesn't call the victim, and what we're suggest-  
 2 ing here is that there be that this Task Force recommend  
 3 that through some vehicle, the Attorney General, through  
 4 his -- in his leadership role, recognize that a victim  
 5 ought to be heard on such a subject.

6 To the extent it's being done, you're right,  
 7 it would be superfluous. I don't believe --

8 CO-CHAIRMAN BELL: You mean before the judge could  
 9 take a plea of guilty, the U.S. Attorney has got to bring  
 10 the victim in to testify?

11 CO-CHAIRMAN BELL: No, no, before a judge would  
 12 sentence anyone, the U.S. Attorney, or the Assistant U.S.  
 13 Attorney, would be the person responsible for attempting  
 14 to speak to the victim, and to see if the impact that  
 15 the crime has had on the victim to make sure that those facts  
 16 get before the court.

17 MR. LITTLEFIELD: Jeff, in our jurisdiction -- or,  
 18 in Los Angeles County, anyway, number one, I was concerned  
 19 in reading this report that everything is defense oriented  
 20 because the first thing the probation officer gets is  
 21 the District Attorney's file with all the police reports,  
 22 the transcript of the preliminary examination; if there's  
 23 been a transcript under trial, the probation officer gets  
 24 that.

25 There's a specific section in the probation

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1 report called, Victim's Statement, where it says, the  
 2 Victim said he was hospitalized for five days, it cost  
 3 so much, he lost four weeks work--so much wages; that  
 4 is just an automatic part of every single probation report.  
 5 Of course, that would be up to the courts rather than  
 6 the Attorney General if they mandated it there, but, I  
 7 think the U.S. Attorneys could certainly cooperate much  
 8 better with the probation officer and give them -- just  
 9 give them the file and they could look at the file, if  
 10 that would be permitted, I don't know, but, it certainly  
 11 seems to me to be a reasonable thing, rather than getting--  
 12 not getting any information at all.

13 PROFESSOR WILSON: Jeff, is there an argument for  
 14 doing, at the Federal level, something different from  
 15 what is apparently done in California that victim statements  
 16 are routinely made a part of the presentence report; is  
 17 there some reason why the prosecutor personally should  
 18 be involved in this?

19 EXECUTIVE DIRECTOR HARRIS: Well, the reason I turned  
 20 to the prosecutor, is because the prosecutor is the fellow  
 21 under the direction of the Attorney General, and he's  
 22 the person we're making the recommendations to. The reason  
 23 I do it, it seems to be it is more appropriate a probation  
 24 function, but, my most recent knowledge of the probation --  
 25 the delivery of probation services is that they are over-

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1 worked, or lacked the resources to, on a regularized basis,  
2 do this, and it is better delivered through the probation  
3 department and made a part of the probation officer's  
4 investigation before he prepares his report.

5 All I'm suggesting is that --

6 CO-CHAIRMAN BELL: Let me say this. If there's  
7 a U.S. Attorney, or an Assistant U.S. Attorney that would  
8 not go through the trouble to make the probation officer  
9 familiar with what happened to the victim, he ought to  
10 be fired. We ought not have to be recommending anything  
11 like this. I don't object to it if it's just general  
12 advice; but, if we're going to end up where the judge  
13 has got to hear all these witnesses, we'd never get any-  
14 thing like this done, the judges will all fight it.

15 EXECUTIVE DIRECTOR HARRIS: We're not talking about  
16 that. Alex Williams, who is the chief assistant U.S.  
17 Attorney in Los Angeles perhaps can enlighten you as to --

18 MR. WILLIAMS: I remember when an Assistant U.S.  
19 Attorney appeared before Sam Nunn and he was testifying,  
20 and his first sentence ended as mine just did with Your Honor,  
21 and Assistant U.S. Attorney Bob Perry tried to apologize,  
22 and Sam said -- Senator Nunn said, well, that's quite  
23 all right, that sounds just fine to me.

24 Judge, what happens, as you may know, is the  
25 United States Attorney's file--case file, does go to the

1 probation department, we have a big basket in our office,  
2 it says, Probation, someone from probation picks it up  
3 and it comes back about six or seven days later.

4 What is missing, I think, -- I have two thoughts,  
5 I have seen a lot of sentencings take place on the basis  
6 of what I thought were under-informed probation reports  
7 which really build the -- the nucleus of the report is,  
8 defendant oriented, and I'm not quarreling with that,  
9 that story has to be told. What is missing, I believe,  
10 in the Federal system, is a uniform sense of sentencing  
11 advocacy.

12 I know that practices vary according to at  
13 least three schools; there is the school of thought, and  
14 Jeff can enlighten as to the practice in the Southern  
15 District of New York, to the effect that it is somehow  
16 seen, at least in the ABA and other communities, somehow  
17 seen as undignified for the prosecutor to take much of  
18 a role at all in sentencing, that that is uniquely the  
19 function of the court, and that there's not a prosecutorial  
20 function there.

21 Certainly in the abstract that is grounded in  
22 a very sound principal of law. The problem is, is that  
23 what I'm concerned about is, informed sentencing. There  
24 is the alternative school that somehow the -- and, some  
25 Federal judges, quite frankly, encourage this, that the

1 prosecutor is seen as having some obligation to come down  
2 like the right hand of God in court, so the judge can  
3 be balanced and neutral, and still impose a severe sentence.

4 The third school is a middle road that I  
5 like to advocate in our office, but, again, it varies,  
6 because some judges will not honor the requirement in  
7 the Federal Rules of criminal procedure that the Government  
8 has a right of allocution at the time of sentencing, and  
9 two of my judges will simply not hear from us in any form;  
10 several others will not receive any written document in  
11 the form of a sentencing memorandum, which is, I think,  
12 the preferred vehicle--to submit a document in writing,  
13 giving the defendant service and notice, and then a chance  
14 to respond, and then to submit at the time. But, certain  
15 of our judges want to hear from us, on stage, if you will,  
16 at the time of sentencing, but, want nothing in writing,  
17 which I think is foolish.

18 My own experience as a military judge in the  
19 military, is that anyone who takes the bench without some  
20 sense of the case, and and a sense of the sentencing,  
21 is performing a very limited sentencing function.

22 My recommended neutral -- middle course, that  
23 we like to encourage in our office, subject to the appetites  
24 and invitations of the 17 Federal judges who sit in the  
25 Central District of California, is to encourage informed

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1 sentencing, and informed sentencing does have a prosecutorial  
2 role under the present Federal system.

3 Now, you may want to vest more of that informa-  
4 tion--balanced information process in the probation service,  
5 but, I think there's room for prosecutorial oversight  
6 and supervision, and quite frankly, an Attorney General  
7 guidance as to what he expects prosecutors to do in Federal  
8 Court with regard to sentencing. Even in our own office  
9 there are those who feel that that's really not their  
10 role, they get their conviction, and then they are off  
11 to the next case, and in fact, most sentencing in our  
12 District, are not handled by the prosecutor who handled  
13 the case, they all come up on Monday on the arraignment  
14 and sentencing calendar, and we have one calendar assistant  
15 for that court.

16 CO-CHAIRMAN BELL: Well, I don't have any objection  
17 at all, to having the judge know what happened to the  
18 victim.

19 MR. WILLIAMS: Informed sentencing, yes.

20 CO-CHAIRMAN BELL: Yeah. I have no objection to  
21 that. I just don't want to set up a new procedure--formal  
22 procedure.

23 MR. WILLIAMS: Speaking as a manager of a United  
24 States Attorney's office, I welcome any resistance to  
25 impose new formal procedures on us, we're trying to do our

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1 job.

2 Thank you.

3 EXECUTIVE DIRECTOR HARRIS: I should say that we do  
4 not intend any of these suggestions to require new pro-  
5 cedures, but, it is goal oriented, and the goal is that  
6 the judge have the complete picture of the consequences  
7 this crime has had in the community and on the persons.

8 Chief Hart?

9 MR. HART: Yes, before we kick out victim compensa-  
10 tion altogether, there are a few States that have good  
11 laws enacted by their legislature. In Michigan, its put  
12 in the office of the Governor, and he appoints a person  
13 to screen victims of crime, and the persons that receive  
14 some compensation are usually the elderly folks who lose  
15 their earthly goods, and can't replace it, or lose money  
16 that they will never be able to get again.

17 I know we're not trying to spend the Government's  
18 money, however, wouldn't it be prudent to look at some  
19 of the States that have good victim compensation programs  
20 and perhaps make a suggestion, or a recommendation to  
21 the several States that it is useful, especially in the  
22 area of victims such as elderly people who lose their  
23 earthly goods and can't recover it.

24 EXECUTIVE DIRECTOR HARRIS: That sounds perfectly  
25 fine, and I think that's something that we will want to

1 look at and consider as we move into formulating our Phase  
2 II position on this issue.

3 MR. CARRINGTON: Just briefly, I didn't mean to  
4 suggest, Chief, that victim compensation was going to  
5 be thrown out. It's just put in a separate category because  
6 it's more controversial because it does require out-lays  
7 of money; but, definitely, victim compensation should  
8 be considered, it is being considered at the levels I've  
9 mentioned, and should be by this Task Force, but, I think  
10 it should be treated in a separate category from the Victims  
11 Bill of Rights.

12 MR. HART: Okay.

13 EXECUTIVE DIRECTOR HARRIS: The next issue is one  
14 that we've already touched on, and that has to do with  
15 the information that the probation department has before  
16 sentence; and, this doesn't have to do from the victim's  
17 point, but, generally, from the point of view of who is  
18 the court dealing with.

19 I have anecdotal evidence; I once had a fellow  
20 come before the Federal Court for sentencing on some sort  
21 of extortion and bombing scheme that he was involved in,  
22 and only because the police officers in the New York City  
23 Police Department were so interested in making sure that  
24 all the facts were before the court, they found out that  
25 he had been a two-time loser, having been convicted twice

1 for rape in Puerto Rico.

2 Well, the court did not know that on the day  
3 of sentence until I so informed the Court, having found  
4 out myself, the day before; the question here is, if there  
5 are people who come up for any variety of crime, whether  
6 it be violent or not violent, it seems to me that it is  
7 essential for the court to have the kind of background  
8 information that might be available on such a person.

9 We see a problem here in that usually, except  
10 in the most major cases where the police officers and  
11 the assistants have a real personal interest in pursuing  
12 every avenue, very often the prosecutor, or the investi-  
13 gators, do not have the time, or the initiative to track  
14 down the history and make sure that the information is  
15 before the court.

16 Very often, rap sheets, as they are known,  
17 do not have dispositions about prior arrests, and we are  
18 concerned that a lot of people with violent backgrounds,  
19 are not being picked up at the sentencing stage where  
20 they are convicted of other crimes, for lack of this informa-  
21 tion.

22 We think the Attorney General can play a leader-  
23 ship role here in terms of encouraging Federal agents  
24 and prosecutors to take the time to make sure that the  
25 court has this information.

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1 CO-CHAIRMAN BELL: That's a good point.

2 MR. ARMSTRONG: I might add, Jeff, that it's also  
3 an important factor on the setting of bail.

4 EXECUTIVE DIRECTOR HARRIS: That's very true, and  
5 we're going to consider bail separately.

6 But, the question -- it seems to us here, that  
7 it is extremely important that any judge have the facts,  
8 and there are a number of areas in which the facts are  
9 either incomplete, and they ought to be more complete.

10 That's -- that's the basis of that one.

11 Now, we move to the question of prisons, and  
12 the allocation of prison space between violent and non-  
13 violent offenders.

14 And, here we are talking about, basically, a  
15 leadership role for the Attorney General. We are concerned  
16 with the reports that we have heard from every witness  
17 who has testified on prison construction, that it costs  
18 \$50,000 to bring one bed on to line. And, I think Allen  
19 Breed told us that, not only does it cost \$50,000, but  
20 that bed won't be available for five years.

21 So, the idea of, let's just build more prisons  
22 has its limitations, and we are trying to look at the  
23 question of availability of housing for violent offenders,  
24 being mindful of the cost and time factors; and, one thing  
25 that occurs to us is that perhaps we ought to recommend

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1 that corrections people look to see whether there are  
2 punishment alternatives for non-violent offenders that  
3 will serve a deterrent purpose short of incarceration  
4 in maximum facilities so that we free up more space for  
5 violent offenders.

6 And, that is the nub of the proposal that we  
7 make here, that we ought to encourage the exploration  
8 of alternatives for people that are not dangerous, per  
9 se, but at the same time continue to deter them and make  
10 it unpleasant for them to have to face the consequences  
11 of committing such non-violent crimes.

12 PROFESSOR WILSON: I have some reservations about  
13 this approach; in the first place, every State in the  
14 Union is now faced with this problem, and a great deal  
15 of thought has been given, and will be given in the future  
16 of the question of allocating offenders among differing  
17 correctional alternatives. And, the Attorney General  
18 doesn't need to tell any State that this is something  
19 we're thinking about.

20 The opinion is deeply divided on this question.  
21 The Apt Associates firm in Cambridge has issued a report  
22 that asserts that investing in new prison space is some-  
23 thing that is unaffordable, and that all prisons that  
24 are built, no matter how many are built, will immediately  
25 be filled.

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1 I believe they are wrong in this. I'm a member  
2 of a panel of the National Academy of Sciences which is  
3 investigating that report, among others, and I may change  
4 my mind and be persuaded that they are correct. But,  
5 their conclusions, it seemed to me, reflect a philosophical  
6 orientation that go well beyond what the data suggest,  
7 for example, if this were the problem of education or  
8 health, and this were the 1960's when the baby boom was  
9 being -- to take off, would we seriously suggest that  
10 the Secretary of HEW tell the several States that building  
11 new schools is unaffordable, and that as fast as we build  
12 new schools they will be filled up?

13 And, you may say, well, schools and prisons,  
14 or schools and hospitals are different; well, they clearly  
15 are different, although some school systems are becoming  
16 more prison like, and some prisons are becoming more school-  
17 like, but, they all have to do with the welfare of society  
18 We are attempting to provide resources to deal with a  
19 phenomena which we, in certain areas of our lives, decided  
20 to overlook, namely, that beginning in the early '60's,  
21 we were going to have a much younger, larger population  
22 that was going to commit more crime.

23 We invested in schools and hospitals, we did  
24 not invest in corrections, and now we are paying the price  
25 for 20 years of neglect. To say that we should seal our

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1 fate by saying, we made a mistake in the first instance,  
2 and we should do little or nothing to correct it now,  
3 I think is to begin to deal with the program in the wrong  
4 way.

5 The second point I want to make. With respect  
6 to correctional assignments, it is a mistake, in my view,  
7 to draw a sharp distinction between violent and non-violent  
8 offenders. There are some persons in prisons who can  
9 be shown are never violent, they are there for white collar  
10 crimes, they are there for embezzlement, they are there  
11 because they are professional auto thieves, for example;  
12 but, everything we know about criminal careers, suggest  
13 that criminals do not specialize; the offense for which  
14 they may have been sentenced--that led them to prison  
15 at time "A", may be simply a random selection of the offenses  
16 that they could have been sentenced for, indeed they may  
17 have pled down from a violent offense, let us say, armed  
18 robbery to a non-violent offence, larceny from the person.

19 You cannot simply say, we got to move the non-  
20 violent offenders out of prison in order to make room  
21 for the violent offenders, because you cannot divide offenders  
22 except in a small percentage of the cases, into these  
23 two neat categories. The key issue is recidivism, how  
24 frequently do people commit offenses; we clearly want  
25 to reserve our most restrictive prison environments for

1 those persons who are high rate recidivists, whatever  
2 kind of crime they commit.

3 The length of time may depend on the kind of  
4 crime they commit, but, the security probably would be  
5 the same for most. We want to reserve our least intrusive  
6 least restrictive facilities for first offenders, or for  
7 persons who are not high rate recidivists.

8 I really think that we have not thought this  
9 through sufficiently to come to any recommendations in  
10 this area, and I would strongly urge the staff to do a  
11 little bit more digging before we make any even tentative  
12 suggestions in this area.

13 CO-CHAIRMAN BELL: Well, I would certainly agree  
14 that we need to build more prisons. I think it's folly  
15 for -- did the Federal Government pay for that study,  
16 I suppose it did, where they recommended that we not build  
17 any more prisons because it costs too much?

18 PROFESSOR WILSON: Yes.

19 CO-CHAIRMAN BELL: Well, the public wouldn't agree  
20 with that, and neither will the Representatives of the  
21 public who were elected. We need to build more prisons;  
22 we need to close some of the antiquated prisons that we  
23 have; we need to incarcerate the recidivists. In 1977,  
24 85 percent of all Federal prisoners had committed three,  
25 or more felonies, which is a good showing of incarcerating

1 recidivists.

2 I think the problem is, Professor Wilson, that  
3 we're facing, is that State officials with overcrowded  
4 prisons, are letting out people who are in prison for  
5 having committed violent crimes, ahead of time, just to  
6 make room, that's what's causing the problem, so, this  
7 message, as I get it, from this recommendation is saying,  
8 please let out non-violent offenders, before you let out  
9 the violent offenders, and don't make any more announcements  
10 to us that you hate to let these people out, you regret  
11 it very much, and you know they are going to begin, immediately  
12 to commit more violent offenses, that happened in Georgia  
13 not long ago.

14 The parole board made an announcement that  
15 they expected these people to commit more violent offenses,  
16 but, they didn't have anymore space. So, I think that's  
17 all this addresses--this is an emergency measure, as I  
18 understand it.

19 EXECUTIVE DIRECTOR HARRIS: There's nothing that  
20 Professor Wilson said that I think the staff, or at least  
21 myself, as the Director, would disagree with.

22 What we are confronted is, if it takes five  
23 years to get beds on-line, what are we going to do in  
24 the next five years?

25 PROFESSOR WILSON: Well, beds are coming on-line every

1 month of the year; it's not as if nobody has noticed the  
2 shortage of prison space, and no State is doing anything  
3 about it. Most States are. We're not talking about a  
4 program -- starting a program now that will have no pay-  
5 off for five years. Every year--every month for the next  
6 five years, capacity will increase.

7 I don't think we've really gathered, as I read  
8 what's been presented to me, we have gathered material  
9 adequate to make a judgment as to how -- what the emergency  
10 is, with respect to the early release of persons who com-  
11 mit violent offenses, that is lamentable, but, I don't  
12 think it's very helpful to prison authorities to say,  
13 don't release your violent offenders. That requires the  
14 prison authorities to have the ability to predict future  
15 behavior, which they do not have, and we cannot supply  
16 it to them by telling them that they ought to act as if  
17 they have it.

18 CO-CHAIRMAN BELL: What would you suggest we do  
19 where we don't have anymore cells, and --

20 PROFESSOR WILSON: I think that what we should do,  
21 if this were Phase II, I would say it would be our highest  
22 priority concern, is to ask Congress for legislation,  
23 substantially increasing Federal technical assistance,  
24 and Federal financial assistance to enlarging prison capacity,  
25 Perhaps on a regional basis, perhaps with a larger participa-

1 tion of the Bureau of Prisons.

2 I think anything short of that is simply blow-  
3 ing smoke at the problem, and the sooner we get to Phase  
4 II, on this issue, the better off we'll all be.

5 CO-CHAIRMAN BELL: Well, would you believe that  
6 in a western State they had not one cell left, and they  
7 had to suspend prosecutions?

8 PROFESSOR WILSON: I understand that; but, what  
9 do we do about that fact? I haven't heard any advice  
10 we can give that western State that --

11 CO-CHAIRMAN BELL: Well, we could tell them to build  
12 a prison.

13 PROFESSOR WILSON: Well, I'm sure that's occurred  
14 to them. What can we tell them that hasn't occurred to  
15 them. The States out there want money, and we're proposing  
16 to give them words, and I think they are going to see  
17 through that.

18 EXECUTIVE DIRECTOR HARRIS: Well, what we're talking  
19 about here is, I mean, I think that you're absolutely  
20 right, in Phase II, that's something that's going to get  
21 a lot of our attention. But, the question is, is there  
22 anything we can do short of that, and this is one sugges-  
23 tion; for example, in local jails, if you take a slice  
24 in time--at any one time, 25 percent of the cells are  
25 occupied by drunks. Do we really --

1 CO-CHAIRMAN BELL: Send them somewhere else.

2 EXECUTIVE DIRECTOR HARRIS: That's right. That's  
3 the thrust --

4 PROFESSOR WILSON: If we're willing to gather informa-  
5 tion sufficiently detailed so that suggestions of that  
6 sort, make sense, I'm certainly willing to consider it;  
7 but, it seems to me we have too weak a grasp of this problem.

8 Many of the persons who are in jail now on  
9 drunk charges, are there on drunk charges, not because  
10 they were arrested for drunkenness, but because public  
11 intoxication was the only charge which -- the charge in  
12 which the police officer found it easiest to take off  
13 the street, somebody who was creating a serious problem  
14 for neighbors. I can assure you that not all, or even  
15 most drunks in public jails are simply harmless inebriants.  
16 That is not the case; indeed, most States have developed  
17 public detoxification programs which are medically oriented  
18 for those persons who are mere inebriants.

19 Now, if we want to get into this problem, suf-  
20 ficiently, to make some serious recommendations that will  
21 not be greeted with amusement by the State authorities  
22 who know a great deal about this, I do think we have to  
23 do a bit more digging.

24 MR. CARRINGTON: It's possible we're premature on  
25 any recommendations on this particular issue, because the



1 Supreme Court of the United States, currently has before  
2 it, and will decide before this term is out, which will  
3 be mid-June, the issue of whether double-celling, under  
4 any circumstances is Constitutional.

5 The Prison lobby has finally got their case  
6 there, and their argument is that each prisoner deserves  
7 a private room.

8 Now, if the Court comes down with this, it's  
9 going to be unbelievably complex, how to respond; I hope  
10 they won't go that far. I think they may come up with  
11 some kind of calculation of amount of cubic space, or  
12 something like that. But, since we know -- or, at least  
13 it's highly likely we're going to get guidance from the  
14 Supreme Court on how much space a prisoner can have, maybe  
15 we ought to defer recommendation on this, because that  
16 will be the law of the land, and anything we recommend,  
17 would be bound by what the Supreme Court is going to  
18 rule.

19 EXECUTIVE DIRECTOR HARRIS: Let me do this, let  
20 me move on to the next one, which is related, and see  
21 if this strikes anyone differently, or --

22 And, that is, a lot of State people say to  
23 us, listen, why can't we use abandoned military bases,  
24 and use that space for minimum, or medium security facilities,  
25 thereby freeing up more maximum security facilities.

1 The recommendation that you have an option  
2 of proposing here would be to have the Attorney General  
3 Pursue this matter with the GSA, and the Defense Depart-  
4 ment people to see if, in fact, some of this abandoned  
5 land can be made available on a very rental basis where  
6 the existing barracks could, at a very low cost, be modi-  
7 fied to house minimum security needs.

8 That is a possibility. A lot of State people  
9 have asked us about that, and the question is, do we want  
10 to recommend something like that.

11 GOVERNOR THOMPSON: Is this separate and apart from  
12 the issue of regionalism, so that what you're talking about  
13 now is bases within the borders of Illinois, would pos-  
14 sibly be available for the State of Illinois to convert  
15 to a facility rather than carrying this concept into the  
16 regional penitentiary concept that we talked about before  
17 so that several States could share a facility.

18 The difficulty I see is that those States which  
19 have abandoned military facilities might benefit from  
20 this proposal. Most States fight awful hard to prevent  
21 military facilities from being abandoned; in fact, one  
22 of the reasons I wasn't here yesterday was because I was  
23 in Washington spending some time with the Secretary of  
24 Defense, and one of the items on my list was that he not  
25 abandon any military facilities within the State of Illinois.

1 EXECUTIVE DIRECTOR HARRIS: Maybe you'll want to  
2 change that.

3 GOVERNOR THOMPSON: No, I don't.

4 The other difficulty is one that we constantly  
5 encounter in the related issue of conversation of State  
6 facilities that were constructed originally for other  
7 purposes like mental health, mental health hospitals are  
8 tolerated in residential neighborhoods, and indeed resi-  
9 dential neighborhoods often spring up around the mental  
10 health hospitals, which were usually constructed first--  
11 they were put out in the country, and then urbanization  
12 has brought ranch houses right across the street.

13 It is a very, very difficult proposition, almost  
14 a waste of time, to persuade people living in the community  
15 to go from one utilization that they regard as non-threaten-  
16 ing, like a military base, or even a juvenile facility,  
17 to even a minimum security penitentiary; we have an example,  
18 right now in Illinois in a town called, Normal, Illinois--  
19 the Normal--Bloomington area, where we have an extraordinarily  
20 fine youth facility that we have abandoned because we've  
21 contracted all of the services out to the community--  
22 community based treatment, and in the end we only had  
23 about 50--60 youngsters in there.

24 That would make a marvelous minimum security  
25 prison--500 beds, it's just fantastic, it's a great facility,

1 except it's surrounded entirely by a residential neighbor-  
2 hood, and there's just no way in the world that we're  
3 to persuade those people to accept a prison, and it's  
4 not worth the delay and the community anger and hostility,  
5 so, you move on and look for something else.

6 I suspect military bases fall in that same  
7 category, that they are welcome in a neighborhood, whereas  
8 a prison would not be.

9 Now, out in some of the western, and southern  
10 States, maybe these military installations are still out  
11 in the woods where you wouldn't have that problem, but  
12 for many urban States--urban oriented States, I don't  
13 know how many facilities that we have that would fit into  
14 this area, and if we couldn't take advantage of an abandoned  
15 facility that's in a non-urban State--a neighbor State,  
16 for example, only a few States would benefit from this.

17 I just raised that concern.

18 EXECUTIVE DIRECTOR HARRIS: Well, to answer your  
19 question about whether we'd consider this on a State by  
20 State basis, or regional, I don't think we thought of  
21 that particular problem, to tell you the truth. I guess  
22 our concern was a more generalized one, and that is, should  
23 we encourage the Attorney General to pursue this.

24 Now, all of the problems you raised are real  
25 ones, and might cut short that pursuit, but, is it worth,

1 at least, looking at?

2 GOVERNOR THOMPSON: I think definitely it's worth  
3 looking at.

4 CO-CHAIRMAN BELL: We can look into it, but there's  
5 no way to get away from the fact that we're going to have  
6 to build some prisons.

7 Now, the Federal Government is going to have  
8 to build them, and States are going to have to build them,  
9 and we're just temporizing by looking for these little  
10 stop gap measures.

11 EXECUTIVE DIRECTOR HARRIS: Well, I guess to some  
12 extent, the temporizing is useful in that if we have thought  
13 of all the things we can do short of biting the bullet  
14 and say, look, you know, we've brain-stormed this, and  
15 we've come up with about, you know, one half of one per-  
16 cent of what we need, then you've built the case when  
17 our next Phase, I think, to say, we have considered all  
18 of the alternatives, and here we are and we've got to  
19 bite the bullet on the hard question.

20 CO-CHAIRMAN BELL: Yeah, I'll agree with that.

21 EXECUTIVE DIRECTOR HARRIS: The next TAB is Narcotics  
22 and Dangerous Drugs, which I'd like to pass over, for  
23 a minute, and go to the next TAB, which is the question  
24 of the use of narcotics and crimes in the high schools;  
25 and, while it is clear that this primarily a State and

1 local problem, there is always an adverse reaction when  
2 it becomes clear that the police have been engaging in  
3 criminal investigations in the school yard. The parents  
4 of the defendants are usually outraged, as is a section  
5 of the community.

6 The question is, if schools are safe havens  
7 for extortion, sexual offenses, narcotics, and is there  
8 a role for the Attorney General in attempting to point  
9 out the need to make sure that the schools are free from  
10 crime so that education can go on.

11 I think that this is an area that Governor  
12 Thompson knows something about in his State, and may have  
13 some thoughts on.

14 GOVERNOR THOMPSON: Well, I understand that there  
15 are feelings in the community, in some quarters, probably  
16 among families of students--most often among families  
17 of students accused of the crime. I certainly don't think  
18 you'd find this fear among the families of victims of  
19 the crime, and among educators, except, of course, when  
20 they may have become a victim of a violent assault, of  
21 the spector, or the shadow of police, uniformed, or ununi-  
22 formed, in or around schools, it's just something that's  
23 hanging in the air that's not quite right.

24 In that respect, it's a little bit like the  
25 shadow that hangs over the attempt to centralize computer

1 data on criminals in one repository, we have a vague feel-  
 2 ing of unease about the mixture of police and schools,  
 3 or computers and files in the FBI.

4 But, I think this Commission, in either Phase  
 5 I, or Phase II, or both, really has an obligation to try  
 6 and pierce through that fear, or unease, or disspell it,  
 7 or to confront it head-on.

8 If you look at the statistics that are set  
 9 forth on the first page after the TAB, about 68 percent  
 10 of the robberies, and 50 percent of the assaults on youths,  
 11 ages 12 to 15, occur at school, you've got a significant  
 12 population, and you've got more over a vulnerable popula-  
 13 tion.

14 And, when you move from the issue of just plain  
 15 crime to the connection between crime and narcotics, in  
 16 this regard, no so much crime that is generated by the  
 17 youth use of narcotics, because I note in the materials  
 18 in a previous section, there are some question about whether  
 19 or not the indulgence by a student in narcotics leads  
 20 him to commit crime as a result of the habit question,  
 21 rather is, I think, does he engage in violent crime to  
 22 procure the funds to buy the narcotics, regardless of  
 23 the effect that the narcotics produce in terms of a causal  
 24 effect on further crime, which is what led me to raise  
 25 the issue originally.

1 After we met last time, I went back to Illinois,  
 2 and had a Bill introduced into the State Senate, which  
 3 extended our State's child abuse and neglect reporting  
 4 requirements from educators obligations to report suspected  
 5 cases of child abuse, to educators obligations to report  
 6 suspected cases of drug use and sale, and that Bill is  
 7 pending on the floor of the Senate. We had to change  
 8 it from a compulsory to a voluntary program to get it  
 9 out of committee since it was a new concept and teachers  
 10 got scared right away, in fact it was called the "school  
 11 snitch bill", by those who opposed it.

12 But, we have as part of the Bill, provided  
 13 for civil and criminal immunity for educators who report  
 14 suspected cases of drug abuse, or suspected cases of narcotic  
 15 trafficking, if they act in good faith, in confidentiality  
 16 except when a judge orders otherwise, and the Bill is  
 17 currently sitting there awaiting assurances that we can,  
 18 within our educational establishment, provide training  
 19 programs for teachers to learn how to recognize cases  
 20 of drug abuse among students. So, I think we're making  
 21 some progress in Illinois on at least part of this concept.  
 22 But, the more I talk to teachers, especially  
 23 those who are employed inner-city schools in large metro-  
 24 politan areas, and the more stories I hear and read about  
 25 assaults on children, and teachers alike--and, on parents

1 who visit, or are near schools, the more I'm convinced  
 2 that this is something that we really ought to take head-  
 3 on, and see if we can't dispell that fear, or that unease,  
 4 or that suspicion about a closer relationship between  
 5 law enforcement mechanisms, and the school yard, because  
 6 I think it's clear in the metropolitan areas, they have  
 7 become breeding grounds for quite violent--quite serious  
 8 crime, and I don't know who else is going to protect these  
 9 kids, and in some instances protect these teachers, and  
 10 if you can't give education in a society, or an atmosphere  
 11 free from the threat of violence we're wasting our time  
 12 in believing that our educational institutions in those  
 13 areas are going to accomplish even the fundamentals.

14 EXECUTIVE DIRECTOR HARRIS: Well, the notion here  
 15 is that we recommend that the Attorney General take a  
 16 leadership role in getting that message across.

17 CO-CHAIRMAN BELL: Well, it also goes further, accord-  
 18 ing to this paper. It says you make DEA and the FBI avail-  
 19 able. I would not favor making the FBI available; we'll  
 20 soon have the FBI as a local police department, which  
 21 we can't do that; but, the drug--DEA is available. They'd  
 22 have to add some more people. They've got a southeastern  
 23 office here in Atlanta; they've got three local offices  
 24 in Georgia. But, you're talking about -- I don't know  
 25 how many schools are in a State, but a lot of them, in

1 most States.

2 So, I don't know -- but, they could work with  
 3 the local police, maybe. I think the Attorney General  
 4 ought to give leadership, then perhaps make the DEA avail-  
 5 able, those two things.

6 GOVERNOR THOMPSON: I think this is probably, parti-  
 7 ally a Phase II issue on resources, for DEA, and that  
 8 we ought pursue it into Phase II.

9 EXECUTIVE DIRECTOR HARRIS: Then why don't we pursue  
 10 the leadership aspect in Phase I.

11 CO-CHAIRMAN BELL: Yeah.

12 EXECUTIVE DIRECTOR HARRIS: The next, and almost  
 13 last issue is the question of research into violent crime  
 14 by the National Institute of Justice.

15 Here -- it's a rather simple thing, that to  
 16 the extent that the NIJ is going to pursue research into  
 17 justice areas that the violent crime area not be ignored,  
 18 and that that is an area that should get some of the resources  
 19 in the National Institute. That is basically the thrust  
 20 of that recommendation. We provide just a sample of the  
 21 research we might want to do, those are meant to be illus-  
 22 trative, and not anything other than examples.

23 GOVERNOR THOMPSON: Can I ask a question; I'm not  
 24 clear. By adopting this recommendation for FY-82, NIJ  
 25 research into this long category of areas, some 21 on that

1 last page of the book.

2 Are we precluding ourselves from directly address-  
3 ing these issues as part of our Phase II report to the  
4 Attorney General?

5 EXECUTIVE DIRECTOR HARRIS: No, absolutely not.  
6 We are going to address a number of those issues, and  
7 I would say that if we adopted a recommendation here,  
8 it ought to be far more general that a number of violent --  
9 a number of areas that impact on violent crime ought to  
10 be considered for research; I don't think we want to suggest  
11 the menue.

12 GOVERNOR THOMPSON: Yeah, the one concern I have,  
13 in adopting a proposal like this is that it not be misinter-  
14 preted. The reception among the press and the community  
15 that this Task Force has received, has been a very strong,  
16 positive one. We have even, only into our second meeting  
17 in two communities, raised expectations about the end pro-  
18 duct, especially about the Phase II end product, far beyond  
19 those which I think normally attach to task forces, and  
20 committees, and commissions, and things of that sort,  
21 and if we, by our actions on this recommendation, imply,  
22 even though we don't mean it, that we're going to take  
23 21 topics, some of which are controversial and may well  
24 have an impact on violent crime and dump them on NIJ for  
25 further research, we're going to dash some of those expecta-

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1 tions, I'm afraid, so it seems to me we've got to be very  
2 careful how we go about this one, and make it very clear  
3 that we're not precluding the possibility of this Task  
4 Force making specific recommendations, for example, for  
5 statutory reform, Constitutional amendment, additionn  
6 of resources, expanded jurisdiction of the Federal role  
7 in relationship to local violent crime, or things of that  
8 nature, or however we come out, and I don't know how we're  
9 going to come out, but, it would be, I think, at cross-  
10 purposes with the thing that the Attorney General has  
11 asked us to do, if there came out of this, a perception  
12 that we were going to dump these things on NIJ.

13 CO-CHAIRMAN BELL: Let me ask you a question. It  
14 seems to me this is just put in here to help the NIJ to  
15 get their appropriations, I mean, after all, the Attorney  
16 General is in charge of the NIJ, and he just says to them,  
17 do some research.

18 EXECUTIVE DIRECTOR HARRIS: Well, no, the difference  
19 being that we would like -- we would like to see the resources  
20 that NIJ has, targeted more precisely in areas that the  
21 Attorney General would like to see research done, rather  
22 than an area in which some Ph.D., desires to do research  
23 and wants to use Government funds for, or where research  
24 is placed with people who have unsuccessfully completed  
25 grants in the past.

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1 CO-CHAIRMAN BELL: Well, now, either he can get  
2 that done or -- under the law that was passed--some out-  
3 side board runs NIJ, in which event it's like the Parole  
4 Board, he hasn't got any control over them, which is it?

5 EXECUTIVE DIRECTOR HARRIS: Well, it is run by an  
6 outside board --

7 CO-CHAIRMAN BELL: Then I'm not in favor of -- that's  
8 diverting our attention to help them get an appropriation.

9 EXECUTIVE DIRECTOR HARRIS: The question, though,  
10 is if the Attorney General were to announce that there  
11 are kinds of research which would be helpful, it seems  
12 to me that outside board would probably be fairly responsive.

13 PROFESSOR WILSON: Could I suggest that there --  
14 that I don't think there's a conflict between what the  
15 staff has suggested, and the Judge's quite legitimate  
16 concerns about the role of peer review. It seems to me  
17 the function of the Board, and the peer review process  
18 is to--is to certify as to the quality of the persons  
19 proposing to do the work, and the scientific adequacy  
20 of their design.

21 The purposes of the work, however, it seems  
22 to me, ought to reflect national priorities. Indeed,  
23 I would refrain, in the whole, from using the word, research,  
24 because what's involved here is not research in the same  
25 sense that scholars ordinarily do research, although there

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1 is an overlap. What we're trying to propose is this,  
2 that the Federal Government has a special and indeed unique  
3 responsibility that no one else really can share, because  
4 there's only one national government, for testing the  
5 efficacy of alternative ways of reducing violent crime.

6 It is the testing and demonstration aspect  
7 of this work that is of so much importance. Now, the  
8 things that we've already recommended, the career criminal  
9 program, that is the strategy that evolved out of what  
10 some call, research, it revolved out of doing longitudinal  
11 studies to find out what proportion of the population  
12 committed what proportion of the crimes, it evolved, in  
13 large measure, out of the work of Marvin Wolfgang at the  
14 University of Pennsylvania, if that work hadn't been done  
15 the intellectual under-pinnings for a career criminal  
16 program would have been gone.

17 The changes that are being made in how the  
18 police patrol our streets, moving away from a random patrol  
19 in marked patrol cars is a direct result of testing the  
20 efficacy of random preventive patrol in Kansas City.

21 The concern about reducing spouse abuse, and  
22 child abuse, which animates many State and local agencies,  
23 I think is going to be informed by results of efforts  
24 to discover the efficacy of alternative ways of handling  
25 persons who are engaged in violent domestic altercations,

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1 and so on.

2 So, I think that the tone of this section,  
3 the substance of which I do not disagree with at all,  
4 should begin with the notion that the Attorney General  
5 wishes to make it a high priority, that the Federal Govern-  
6 ment assist in the reduction of violent crime, that as  
7 one intergal component of that effort, we must have a  
8 systematic attempt to test the efficacy of alternative  
9 ways of doing that, that that is one of the special respon-  
10 sibilities, though perhaps not the only one, of the National  
11 Institute of Justice, and that its grant solicitation  
12 and contract awarding procedure, ought to, to a large  
13 measure, reflect that even though in the selection of  
14 grantees, this kind of peer review process necessarily  
15 will have to be involved.

16 Does that help at all?

17 CO-CHAIRMAN BELL: It doesn't help me. I'll tell  
18 you, I do not wish to get into a report where we're going  
19 to have the Attorney General of the United States recom-  
20 mend that we study these matters--that he study, I mean,  
21 he's going -- we know you're going to have studies, but,  
22 it weakens -- I agree with the Governor, it weakens what  
23 we're trying to do, to say that we are now going to study  
24 these problems.

25 PROFESSOR WILSON: Well, suppose the program we

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1 are working on now is the task force on getting to the  
2 moon, or the task force for curing cancer; clearly, we  
3 would have a lot of operational programs, but, surely  
4 you wouldn't say, would you, that a part of that program--  
5 that no part of that program should be devoted to the  
6 question of whether -- which form of interial guidance  
7 system will get us to the moon, or whether chemotherapy,  
8 or radiotherapy is best suited to deal with certain kinds  
9 of malignancies.

10 Research in this sense, is an effort to answer  
11 exactly the same questions, not what is the cause of crime,  
12 but, what works.

13 CO-CHAIRMAN BELL: I'm not against research, and  
14 I'm not against studying; but, I don't perceive in our  
15 mission, is to say to the Attorney General, see if you  
16 can get an appropriation so that some of these matters  
17 can be studies. I think the American people would think  
18 that was a joke. That's the only thing I'm saying.

19 PROFESSOR WILSON: Well, I think -- the Attorney  
20 General has a responsibility to educate the American people,  
21 that they are deceiving themselves if they think we know,  
22 or anyone now knows, all of the ways to reduce violent  
23 crime, we don't.

24 CO-CHAIRMAN BELL: But, the Attorney General is  
25 going to see that that's done, that's all I'm saying. This

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1 weakens what we're trying to do. I move that we put this over  
 2 over 'til the next meeting so I can know more about it--  
 3 I don't know enough about -- I don't know why this was  
 4 in here to begin with. It's like a red flag to me.

5 MR. ARMSTRONG: I'd like to second that. I know  
 6 of two studies that have already been reported on the  
 7 effectiveness of capital punishment as a deterrent to  
 8 crime, so, it seems like we're just going to rehash that  
 9 old argument again. Those studies are available, I'm  
 10 sure, to this Task Force.

11 PROFESSOR WILSON: What does capital punishment  
 12 have to do with it?

13 MR. ARMSTRONG: It's one of the areas --

14 PROFESSOR WILSON: Oh, I'm not talking about the  
 15 list of 21 things. I don't want to see the list of 21  
 16 things in there either. I simply want to have the philosophy  
 17 expressed that the Attorney General has a major leadership  
 18 responsibility to tell the American public what works,  
 19 and he cannot now discharge that responsibility because  
 20 he doesn't know.

21 CO-CHAIRMAN BELL: Well, if you'll write that out,  
 22 we might adopt that.

23 PROFESSOR WILSON: Okay. I just did. This man  
 24 is just repeating it into his funny little machine over  
 25 here.

1 EXECUTIVE DIRECTOR HARRIS: Well, the reporter will  
 2 be happy to know we're just about at the end of the road.

3 There is just one more TAB left, and let me  
 4 tell you that it deals with narcotics, and the major recom-  
 5 mendation is that the Task Force urge the Attorney General,  
 6 and the President, to play an active leadership role in  
 7 demonstrating the Government's commitment to narcotics  
 8 control.

9 I think we can see that the White House is  
 10 already doing that on its own initiative.

11 The other recommendation is to have the Attorney  
 12 General review the structure of Federal narcotics enforce-  
 13 ment, and consider options such as combining--doing away  
 14 with DEA, or combining the FBI, and DEA, or any of these  
 15 combinations, and I can report to you that exactly such  
 16 an effort is already underway, so to the extent that we  
 17 make such a recommendation -- the Associate Attorney General  
 18 announced at a news conference not but a week ago, that  
 19 he was dissatisfied with the narcotics enforcement efforts,  
 20 and the whole area is under study..

21 PROFESSOR WILSON: Will we have an opportunity at  
 22 some time, to tell him that we think -- that some of may  
 23 think he's making a big mistake?

24 EXECUTIVE DIRECTOR HARRIS: Yes. The only recommenda-  
 25 tion for Phase I, is to recommend that they study that.

1 Our substantive proposal, should we care to  
2 adopt one, would be in Phase II.

3 CO-CHAIRMAN BELL: Well, he's got the American people  
4 now, thinking that they are going to abolish the DEA with  
5 some of the statements that were made. I'm certainly not  
6 in favor of anything like that.

7 PROFESSOR WILSON: Anything we say that makes the  
8 professional agents in the FBI, and DEA, and State and  
9 local authorities, think that once again, they are going  
10 to go through the revolving door of reorganizations and  
11 changes, and alterations, which we've gone through three  
12 times in the last 10 years, and no one is convinced that  
13 these reorganizations have made a large difference, that  
14 we're going to go through that one more time, I think  
15 we are going to dishearten and demoralize professional  
16 agents, and I think we're going to create false hopes,  
17 and if we can't say that in Phase I, I can tell you I  
18 plan to say it in Phase I, sub (a), as soon as I can get  
19 the floor.

20 EXECUTIVE DIRECTOR HARRIS: Well, I think you've  
21 just said it.

22 CO-CHAIRMAN BELL: No, I think -- I feel very strongly  
23 about it myself, that the DEA has made vast progress in  
24 the last four years. I don't understand this dissatisfac-  
25 tion.

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1 EXECUTIVE DIRECTOR HARRIS: Well, all I can do in  
2 that regard is to report to you what was said. I can't  
3 attempt to speak for --

4 CO-CHAIRMAN BELL: Yeah, you're not called on to  
5 defend a position.

6 EXECUTIVE DIRECTOR HARRIS: We have managed to get  
7 through all the issues that I presented. If there is  
8 further business we ought to consider, if not, we can  
9 adjourn and reconvene on the 2nd of June in Los Angeles.

10 Does anyone --

11 [Negative response.]

12 Well, hearing no objection, we will adjourn  
13 now, and reconvene in Los Angeles on June 2nd.

14 (Whereupon, at 12:30 P.M., the hearing was adjourned  
15 to reconvene in Los Angeles, California, on June 2, 1981.)

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C E R T I F I C A T E

I certify that the foregoing is a true,  
complete, and correct transcript of the pro-  
ceedings taken by me in the hearing affore-  
said.

This, the 25th day of May, 1981.

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FLOYD D. SALAS,  
Certified Court Reporter.

**END**

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