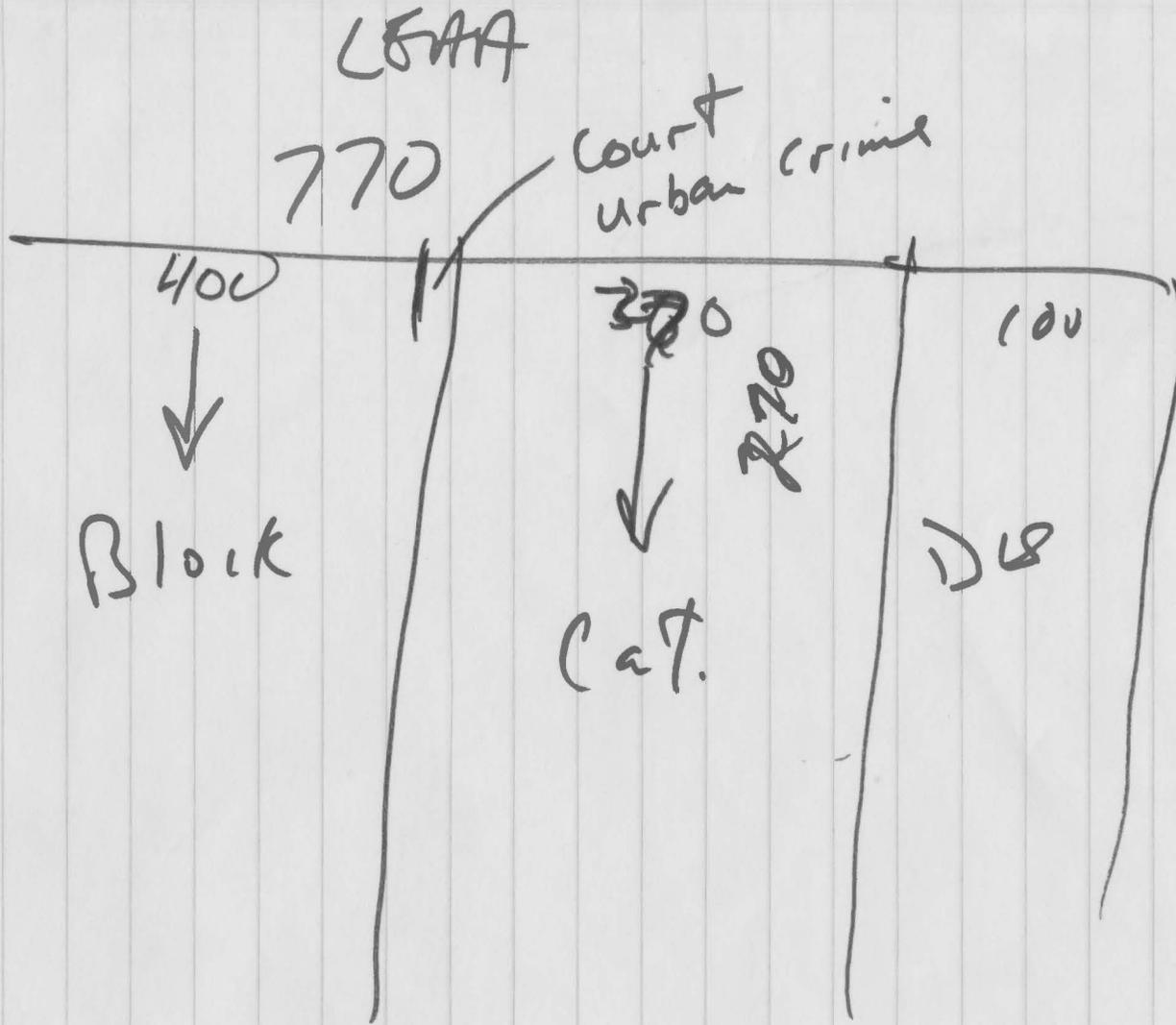


The original documents are located in Box 9, folder “Crime Message (1)” of the James M. Cannon Files at the Gerald R. Ford Presidential Library.

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[1975]



THE WHITE HOUSE

WASHINGTON

April 29, 1975

MEMORANDUM FOR:

JIM CANNON

FROM:

JERRY H. JONES

In the President's speech at Yale last Friday, he stated that he has now laid out a direction for his policy with respect to crime. In order to implement these statements, we should make certain that we have a quick and effective follow-up on the speech and that a comprehensive package of proposals consistent with the policies outlines in the speech, including programmatic options, budgetary implications, and any required legislative be prepared for the President's review by May 15, 1975.

Thank you.

THE WHITE HOUSE
WASHINGTON

INFORMATION

JMC Cannon
[May 1975]



MEMORANDUM FOR THE PRESIDENT

FROM: Jim Cannon

SUBJECT: Reauthorization of the Law Enforcement Assistance
Administration

Attached are the OMB memorandum and supporting documents on the reauthorization of the Law Enforcement Assistance Administration (LEAA), which will be discussed at a meeting scheduled for 2:15 today.

The following issues are presented for your consideration:

1. Suitability of the Present LEAA Program Structure

The Attorney General has recommended that the present LEAA program structure, providing block, categorical and discretionary financial assistance to State and local governments, be continued through 1981.

The Domestic Council, the Counsel to the President, OMB, Jack Marsh and Bob Hartmann concur in this recommendation.

2. Desirability of Additional Special Emphasis Programs for Courts and High Crime Areas

a) Increased emphasis on courts. The Attorney General has recommended that the LEAA reauthorization legislation require that States allocate an "adequate share" of LEAA block grant funds for courts. Current law requires LEAA to approve State plans for expenditure of block grant funds, based on the general criteria that such plans are responsive to the overall criminal justice needs of the States. Therefore, the Attorney General's recommendation that an "adequate share" of block grant funds go for court purposes does not represent an operational deviation from current law.

The Domestic Council, the Counsel to the President and Jack Marsh recommend that you concur in the Attorney General's approach. OMB recommends that you require this special emphasis for courts to be funded out of LEAA's

discretionary funds. Bob Hartmann recommends that you encourage, but not require, States to allocate block grant funds for court purposes.

- b) High crime program. The Attorney General has recommended a supplemental block grant program to provide additional assistance to cities and counties with high crime rates. The effect of the Attorney General's recommendation would be to create a categorical program for localities with high crime rates, which, in all probability, would require additional funding in the coming fiscal year.

The Domestic Council, the Counsel to the President, OMB, Jack Marsh and Bob Hartmann recommend, instead, that you direct that this special emphasis program be funded from LEAA discretionary funds. Further, the Domestic Council and the Counsel to the President suggest that up to 50 per cent of discretionary funds be available for this purpose. This would give added vitality to your expressed interest in reducing "street crime" and would not require the expenditure of new monies.

3. Juvenile Justice and Delinquency Prevention Act (JJDP)

The Attorney General has recommended that the categorical juvenile delinquency program established by the JJDP (which is independent of the LEAA program) be left intact, with funding levels to be determined in the annual budget review process.

The Domestic Council, the Counsel to the President and Bob Hartmann concur in the Attorney General's recommendation. OMB recommends merging the program into the regular LEAA program and requiring that it be funded from LEAA's discretionary funds. Jack Marsh recommends merging the program into the regular LEAA program and requiring States to devote an "adequate share" of block grant funds to it.

4. Funding Levels

The Attorney General has recommended increasing the 1976 funding authorization of \$1.25 billion by \$250 million annually for the next five years, resulting in a funding authorization of \$2.5 billion by 1981.

Auth (1.25/0.5)



OMB recommends maintaining the funding authorization at the current level (\$1.25 billion) through 1981. The Domestic Council, the Counsel to the President, Jack Marsh and Bob Hartmann recommend modest graduations in the funding authorization of \$50 million annually, resulting in an annual authorization of \$1.5 billion in 1981.





Office of the Attorney General
Washington, D.C.

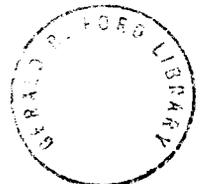
May 1, 1975

TO: Mr. James M. Cannon
Executive Director
Domestic Council

FROM: Edward H. Levi
Attorney General

Here is a draft of the Department of Justice's suggestion for the President's Crime Message to Congress. I am sending a copy to Mr. Buchen.

Enclosure



It is disheartening that circumstances compel yet another Presidential message on crime in America. For years strenuous efforts have been undertaken to reduce the incidence of crime in the United States. Yet crime has increased. It touches the lives of all Americans. Recent statistics provide little hope that the magnitude of the crime problem will soon decline.

Indeed, the Federal Bureau of Investigation's latest figures indicate that the rate of serious crime -- murder, forcible rape, robbery, aggravated assault, burglary, larceny, and auto theft -- was 17 percent higher in 1974 than in 1973. That is the largest increase in the 42 years the Bureau has been collecting statistics. Since 1960, the rate has increased about 200 percent. Moreover, these figures reflect only the reported crimes. A study sponsored by the Law Enforcement Assistance Administration indicates that the level of reported crime understates the level of actual crime in some cities by as much as 300 to 500 percent.

It is not only the absolute increase in crime which merits national concern; the changes in the types of crimes committed are equally significant. The number of crimes involving threats of violence or actual violence has increased. Moreover, the percentage of violent crimes in which the perpetrator and the victim are strangers is alarm-

ing. Indeed, a recent study indicated approximately 65 percent of all violent crime is committed against strangers.

The personal and social toll which crime exacts from our citizens is enormous. All can recognize the direct damage done to the victims of crime. The social costs of crime must also include the pervasive fear it creates.

In many areas of the country, this justifiable fear has caused people to rearrange their daily lives. They plan shopping and recreation around hours when the chances of violent attacks are low. They avoid commercial areas. Frightened shopowners keep loaded handguns to defend against robbers and view customers with suspicion.

Equally important, fear of crime threatens our political and social liberty. Fearful citizens may support attacks on our fundamental constitutional principles designed to protect the individual from an oppressive government. The prevalence of crime creates unwarranted suspicion among our people, turning what were formerly friendly and social business transactions into cold and wary exchanges. Individuals limit the circle of their travels out of fear that an unknown environment may be threatening.

The individual, political, and social costs of crime cannot be ignored. All levels of government -- federal, state and local -- with the firm support of the American people, must commit themselves to the goal of reducing crime.

In order to turn this commitment into practical success, we must try to understand the nature of the crime problem. Although crime has plagued all civilized societies, we still do not understand all the forces and conditions which cause it. We do know, however, some of the important contributing factors.

One factor is certainly economic deprivation. As inflation is brought under control and unemployment declines this will materially contribute to the fight against crime. But the problem of crime is more than a matter of economics.

A second factor is dissatisfaction with the quality of life and the deterioration of social institutions which promote respect for the law. These factors fundamentally affect the attitudes of our people toward the law.

A third factor, often unrecognized, is the increasing crime rate itself. Law enforcement in a democratic society depends largely upon public respect for the laws and voluntary compliance with them. This respect and compliance is undermined if individuals conclude that law enforcement efforts are ineffective and that crimes may be committed with impunity -- conclusions which are buttressed by rapidly rising crime rates and statistics showing only 19 arrests for every 100 serious crimes committed.

A decline in respect for the law leads to the commission of more crimes. Investigating these additional crimes, prose-

cuting those accused, and punishing the convicted strain the already overburdened capacities of police and prosecutors' offices, courts, penal institutions, and correctional authorities. As a consequence, the percentage of offenders apprehended, prosecuted, and appropriately sentenced is further reduced. This reduction leads to a further decline in respect for the law leading to the commission of even more crimes. Breaking into this circle is crucial to any successful fight against crime.

There are two direct ways to attack the circle of crime. One is through improvements in the law itself. The other is through reform of the existing criminal justice system so that potential offenders will know that swift and certain punishment will follow the commission of any crime.

Part of the problem of crime has been a problem of the federal criminal laws. They have been developed over decades. They have been revised here and there in response to changing judicial interpretation. The federal laws are complicated, sometimes conflicting, and they leave gaps through which criminal activity can slip unpunished. Because of their complexity, they invite technical argument that wastes court time without ever going to the heart of the question of guilt or innocence. The federal criminal law must be revised into a uniform, coherent code.

For several years, the federal government has been engaged in a massive effort to reform the federal criminal laws. The product of this effort was recently introduced in Congress with wide bipartisan support as S.1, the Criminal Justice Reform Act of 1975.

Of course, in legislation of this scope, covering every aspect of the criminal laws, not everyone will agree with every provision. Some aspects of S.1 are highly controversial and will undoubtedly precipitate great debate. The debate over S.1 itself will be very useful, framing important issues in a way that they become clear and can be decided. I think everyone can agree that comprehensive reform of the federal criminal code is needed. Accordingly, as a legislative priority in the federal fight on crime, I urge the 94th Congress to pass the type of comprehensive code reform embodied in the Criminal Justice Reform Act.

Let me suggest some specific reforms I believe are essential.

To begin with we must realize what sort of conduct violates federal law. By and large it is not violent conduct that goes under the name of street crime. Except in limited circumstances, street crime is a state and local law enforcement problem. Federal law strikes at those who have made crime a business. It attacks organized crime, consumer frauds, official corruption, economic crimes such as price-fixing. So-called "white collar crime," or "crime in the suites"

is a matter of primary concern for the federal law.

The leaders of organized crime can be prosecuted under current law only when they can be shown to have participated in a specific offense such as gambling, loansharking or narcotics. A reformed criminal code should strike directly at organized criminal activity by making it a federal crime to operate or control a racketeering syndicate. This would make the criminal law apply to organized crime figures who are sophisticated enough to try to cover up their part in the syndicate's dirty work.

Current federal laws restrict the government's ability to attack consumer frauds. In order to make the federal effort more effective, the statutes punishing fraud and theft should be revised to facilitate prosecution of blatant frauds. Pyramid sales schemes -- clever confidence games -- should be specifically prohibited. Jurisdiction over these frauds should be extended so that the federal government can act against them in all their national aspects.

The protection of constitutionally guaranteed civil rights is a primary duty of the federal government. Yet, a private citizen can only be punished for violating constitutional rights if he acted in concert with others. A state official can be punished under the criminal code for violating constitutional rights only if he acted with a specific, and difficult to prove, intent to do so. We should eliminate these restrictions on our civil rights statutes by abolishing the

conspirary requirement and the need to prove specific intent.

The only federal criminal statutes which cover environmental pollution are either obsolete or were designed for another purpose. We should provide broad and modern prohibitions against those who pollute our air and water.

Elimination of antiquated provisions in the criminal code is another needed reform. Under current law, for example, the capture of carrier pigeons is made the subject of federal criminal jurisdiction. We should abolish such unnecessary laws.

Sentencing provisions are another problem area of the current code. The sentencing provisions of current federal law are often erratic and inconsistent. Defendants who committed similar offenses often face widely varying sentences and this lack of uniformity breeds disrespect for the law. The revision of the criminal code should restore a sense of consistency in sentencing, so that the fine or term of imprisonment imposed by the law relates directly to the gravity of the offense. For example, criminal fines are woefully inadequate and provide little deterrence to offenders whose business is crime, a business profitable enough to support criminal fines as an ordinary business expense. Serious violators generally can be fined a maximum of \$10,000. That amount is often not commensurate with the crime. We should raise the level to \$100,000 if the defendant is an individual and \$500,000 if the defendant is an organization.

Another deficiency in the sentencing provisions is their failure to give judges any standards by which to sentence defendants. Persons convicted of predatory violent crime ought to be sent to prison. There should be a message broadcast by our law and our enforcement of it that punishment for violent crime -- especially crime involving a gun -- will be imposed with certainty. I propose that incarceration be made mandatory for certain offenders who commit violent predatory offenses using a dangerous weapon. Prison sentences should be imposed unless the judge specifically finds that the defendant has never before been convicted of a violent offense and was under 18 when the offense was committed, or was mentally impaired, or was acting under substantial physical duress, or was only implicated in a crime actually committed by others and participated in the actual crime in a very minor way. The judge could keep convicted violent criminals out of jail if he could show that the protection of society would be best served by punishment short of incarceration. The states should be encouraged to set up similar mandatory sentencing systems because it is in the state and local criminal courts that most violent offenders are tried.

Another area in which the federal criminal law must be strengthened concerns the regulation of handguns. It is simply indisputable that handguns play a key role in crime in America. They are involved in one-fourth of aggravated assaults and one-third of the robberies. And hundreds of policemen suffered death through the use of handguns in the past decade. These cold, undeniable statistics unmistakably portray the handgun as an important cause in the rise of violent crime.

Legislation that would fairly and effectively regulate handguns, therefore, holds the promise of contributing to crime reduction. Any such legislation, of course, must adequately protect the interests of legitimate gun owners.

I believe that the new approach to handgun control recently discussed by the Attorney General has served as a constructive basis for dialogue in developing effective handgun control legislation. The Attorney General has suggested legislation that would provide strict federal controls on handguns in those heavily populated geographic areas where the problem is most acute. I am hopeful that the Attorney General's proposal will continue to stimulate thoughtful and fruitful nationwide debate on handgun controls, leading to much-needed legislation essential to stemming violence in our cities.

Finally, the law should be revised to take into

greater account the needs of victims of crime, their tragic personal and economic injuries. They, as well as the general public, must be shown that the government will not neglect the law-abiding citizens whose efforts are crucial to the effectiveness of law enforcement. For too long law has centered its attention on the criminal defendant. It is time for law to concern itself more with the people it exists to protect. Making the punishment of offenders more swift and certain should be part of this new concern. That would ease the burden on victims as witnesses and prove to them that they can trust the system to exact a penalty for the wrong they have been done. Several states have adopted novel programs to compensate the victims of violent crime. I support those efforts. In addition, I urge Congress to pass legislation to compensate the victims of federal crimes who suffer personal injury. This proposal would not require additional federal appropriations. The monetary benefits would come from a fund consisting of fines paid by convicted offenders.

I am confident that if Congress reforms the criminal law in the ways I have mentioned, the seeds of an effective attack on crime will have been planted.

The second way to combat crime is through increasing the deterrent effect of the criminal law by reforming the criminal justice system. Effective deterrence currently is

lacking because defects in the criminal justice system prevent it from bringing speedy and appropriate punishment to all offenders. These defects, at both the federal and state levels, run throughout the continuum of the law enforcement process.

The reporting of crime to law enforcement officials is discouraged by the widespread public impression that often no effective action can or will be taken. Moreover, there is a disturbingly prevalent tendency of otherwise responsible citizens to refuse to "get involved" in law enforcement matters.

Pretrial proceedings, which could serve to make the system operate more efficiently, frequently permit protracted delays for the purpose of contesting a myriad of procedural issues -- issues having little or nothing to do with the guilt or innocence of the defendant. Congested court calendars, inadequate judicial resources, and numerous opportunities for employment of dilatory tactics cause further delays. The repeated postponements of trials caused by such delays discourage the citizen cooperation essential to the criminal justice system. Witnesses and jurors, exasperated by long waits, often arrive at the court room only to learn that the case in which they are involved has once again been postponed. Their memories inevitably fade with the passage of still more time, and they become increasingly subject to intimidation by defendants and their associates. Trial delays thus decrease likelihood that justice

will in fact be done. Delays also increase pressure upon prosecutors to drop prosecution of some of the charged offenses, or to substitute charges of lesser offenses, in return for pleas of guilty.

After trial and sentencing, the routine and protracted process of appellate litigation usually results in a long delay before the defendant's sentence commences. Such delays often last several years so that whatever deterrent effect the imposition of sentence might have carried is largely lost through the passage of time.

When a defendant is convicted, judges are often unwilling to sentence defendants to incarceration, in part because prison conditions are sometimes inhumane. This is one reason why our prisons must be improved. Also, a cruel and dehumanizing penal institution can actually be a breeding ground for criminality. And in any case, a civilized society cannot condone prisons where murder, vicious assault and homosexual rapes are common occurrences.

I know that there have been grave questions raised about the ability of the corrections system to rehabilitate offenders so that they may re-enter society as useful, law-abiding individuals. The questions about rehabilitation are serious. They go to the very heart of the corrections system. While the problem of rehabilitation is difficult, we should not give up our efforts to find ways it can be accomplished.

This is especially true in dealing with youthful offenders. Crime by youth represents a large part of crime in general. The 1973 FBI crime statistics indicate that 45 percent of persons arrested for violent crime are under 18 years of age. Whatever the difficulty we have in our efforts, we must commit ourselves to trying to rehabilitate offenders, especially youthful offenders. To do less would be to write off great numbers of young people as unsalvageable before they have even come of age. So many of them, after all, could be saved.

Several measures can be taken to cure or overcome these deficiencies in the criminal justice system.

One important improvement relates to the prosecutor's office. It is there that important decisions are made as to which offenders should be prosecuted, what cases should be brought to trial, when plea bargains should be struck, and how scarce judicial resources should be allocated. Many prosecutors' offices currently lack the manpower or management devices to make those decisions well. Prosecutors often are unaware of a defendant's criminal history and thus cannot identify career criminals who should be tried by experienced prosecutors and incarcerated. They lack efficient systems to monitor the status of the numerous cases they handle. If prosecutors could efficiently manage their resources, the likelihood that punishment for crime will be swift and sure would be substantially increased.

The Law Enforcement Assistance Administration has a program to achieve this goal. It assists prosecutors' offices in the development of data retrieval systems so that at the touch of a finger a defendant's true identity and criminal history and the status of any case will be provided. These systems make possible intelligent decisions concerning the management of a prosecutor's office so that its efforts will have the maximum deterrent effect. With the assistance of LEAA, data retrieval systems are currently operational in the United States Attorney's Office in Washington, D.C., and in local prosecutors' offices in Marietta, Georgia, and Los Angeles County. LEAA expects twelve additional offices shortly to commence the use of such systems. I am encouraging the expansion of this LEAA program and urge the use of data retrieval systems in all prosecutors' offices.

As noted earlier, one of the significant benefits of a data retrieval system is that a prosecutor can focus his efforts on the career criminal. That focus holds the promise of substantially reducing crime because repeat offenders account for a substantial amount of all criminal activity. In 1973, for example, 56 percent of inmates in federal institutions had previously been sentenced to prison.

At the federal level, I have directed the Department of Justice to develop and implement a Career Criminal Program with the objectives of: (1) providing quick identification of career criminals, (2) according priority to their prosecution

by experienced prosecutors, and (3) assuring that they receive appropriate sentences and are not quickly released to victimize the community.

Career criminal programs will be encouraged at the state and local levels through the use of Law Enforcement Assistance Administration model programs and discretionary grants.

The results of a career criminal project recently launched in the Bronx County District Attorney's Office are hopeful. The first year's experience showed a 97 percent felony conviction rate and a reduction of time in case disposition from an average of 24 months to an average of three months. In addition, jail sentences were secured in 95 percent of the career criminal cases prosecuted.

A second improvement in the criminal justice system may be obtained by diverting certain first offenders into rehabilitation programs before proceeding to trial. The Department of Justice has begun a pilot program of this kind which will achieve two important goals. First, it will reduce the caseloads of federal courts and prosecutors through expeditious treatment of offenders who are good prospects for rehabilitation. Second, it will enable the offenders who successfully satisfy the requirements of the diversion programs to avoid a criminal record and thus increase the likelihood that they will return to productive lives.

Experimentation with pretrial diversion programs should continue and expand. However, careful efforts must be taken to prevent them from either treating serious offenders too leniently or, on the other hand, violating defendants' constitutional rights. By coupling this pretrial diversion program with a mandatory term of imprisonment, we will ensure that offenders who deserve to go to jail will go to jail, while those who need not be imprisoned will be dealt with quickly in a way that minimizes the burden on the criminal justice system.

A seemingly technical but important reform in the federal criminal justice system can be achieved by expanding the criminal jurisdiction of United States Magistrates. This reform would enable the relatively small number of federal judges to focus their efforts on the most significant criminal cases. The Criminal Justice Reform Act contains a provision which would achieve that result and I am giving it my specific support.

I believe that the proposals I have made for improving the criminal laws and the criminal justice system will substantially reduce crime. I am also optimistic that new approaches to fighting crime which focus upon crime prevention through planning and citizen action may assist these efforts.

In conclusion, I wish to emphasize that the problem of crime is largely a state and local responsibility. Only a small proportion of crimes committed involve violations of federal statutes.

But the federal government can help state and local law enforcement agencies shoulder this responsibility. I have sent to Congress a bill that will continue the work of the Law Enforcement Assistance Administration. This agency provides millions of dollars of support to state and local law enforcement officials as well as serving as a place where new ideas about how to fight crime can grow and new research into the nature and causes of crime can be undertaken. Re-authorization of LEAA is the best way to renew the federal government's strong commitment to help the states and municipalities fight crime.

Despite the grim crime statistics, I think some optimism is called for. We all recognize that the fight against crime is imperative. The crime problem has vast social implications and its very importance may lead us to hope for sweeping solutions. This, however, would be a false hope. The crime problem results from both social and economic conditions and a myriad of often small and technical difficulties within the laws themselves and within the criminal justice system. The cumulative effect of persistent federal and state efforts to eliminate the difficulties that encumber the nation's criminal justice system offers the best hope of achieving a permanent reduction in crime and restoring security in our law-abiding citizens.

I am optimistic that small improvements which increase

the deterrence of the criminal law will have a multiplier effect in reducing crime. That is, increased deterrence will reduce the number of criminals and thus the demands on the resources of police, prosecutors, and courts. Consequently, the criminal justice system will be more able to apprehend swiftly and prosecute successfully a greater percentage of offenders. This will further enhance the deterrent effect of the criminal law and lead to a further reduction in crime. Thus, we must work to make every improvement in our criminal justice system we know how to, no matter how seemingly minor, because every improvement builds upon itself. Our serious efforts, I am confident, will bring us closer to the day when we can all rest free from the fear and anxieties which accompany crime.



May 6, 1975

MEMORANDUM FOR THE PRESIDENT

THROUGH: DONALD RUMSFELD
FROM: JAMES E. CONNOR
SUBJECT: SCHEDULE FOR DEVELOPMENT OF CRIME MESSAGE

I understand that the Crime Message is now scheduled for completion by May 15th. After talking with people on the Domestic Council staff, I would like to suggest that we alter this schedule slightly. The Domestic Council people contend that there are issues in several areas which merit Presidential involvement and decision. These issues include scope of the mandatory sentencing program, specifics in the area of gun control, and issues involving OMB and the Bureau of Prisons.

I would suggest an alternative schedule which would be as follows:

- May 15 - draft option paper covering all open issues for your review
- May 22 - discussion of remaining issues and decision by you on such issues
- May 23 - June 3 - completion of the crime message draft and draft of legislative proposals
- June 4 - your review upon return from Europe
- June 5 - transmittal of message

I think that such a time table will permit the development of a better message and one that we can follow-up on more effectively.

Approve suggested time table _____

Retain May 15th date _____



MEMORANDUM

THE WHITE HOUSE

WASHINGTON

May 19, 1975

MEMORANDUM FOR: Jim Cannon
FROM: Dick Parsons *D.*
SUBJECT: Crime Message -- Report of
State of Development

*P -
Where is
revised
schedule?*

This is to bring you up to date on the state of development of the President's Crime Message.

As you know, the May 15 deadline was merged into the May 22 deadline because the Attorney General had to be out of the country during the week of May 12-18. His people have been working on the draft option papers covering all open issues, and he is supposed to send us something by c. o. b. today. I will staff the option papers around the White House for comments and recommendations and, hopefully, be able to go forward to the President with a decision memorandum by c. o. b. Wednesday.

The President may wish to meet with the Attorney General and others to discuss the options on Thursday, Friday or Saturday. This will give us plenty of time to draft the Message and such legislation as may be necessary to implement it.



THE WHITE HOUSE

WASHINGTON

May 6, 1975

MEMORANDUM FOR THE PRESIDENT

THROUGH: DONALD RUMSFELD
FROM: JAMES E. CONNOR *JEC*
SUBJECT: SCHEDULE FOR DEVELOPMENT OF CRIME MESSAGE

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I think that such a time table will permit the development of a better message and one that we can follow-up on more effectively.

Approve suggested time table *BR*

Retain May 15th date _____



THE WHITE HOUSE

WASHINGTON

May 20, 1975

MEMORANDUM FOR:

JIM LYNN

FROM:

JIM CANNON *Ji*

SUBJECT:

Crime Message--LEAA Reauthorization

The President has asked that all open issues respecting the proposed Crime Message be presented to him for review by Thursday, May 22nd.

Included in the "open issues" category is the question of reauthorization and continuation of the LEAA program, on which you have the lead.

We would very much appreciate it if you will help us meet this critical deadline.



CRIME MESSAGE

Presidency: Comment

31

COMMENT

Thank You, Mr. President
Editorial

(Excerpted from the N.Y. News)

At Yale Law School recently, President Gerald Ford did much to clear away the woolly thinking about the soaring problem of street crime. The President asked not "vindictive punishment" but protection of the "innocent victim." We agree. Victims have become the battered children of society, all too often overlooked by judges with hemorrhaging hearts and mushy heads. It's time we cried over them and not the criminal. (5/5/75)



The Yale Speech:

The Dayton (Ohio) Daily News said the violence in American life that President Ford inveighed against won't be ended by the remedy he proposed -- throwing the bums in jail, no matter what. Not that Mr. Ford wasn't right to a degree. Some judges are too casual in their treatment of persons convicted of violent crimes and of crimes in which guns were brandished.

But Mr. Ford's high-horse position showed no awareness that the persons who prey violently on us are themselves often the first victims of society's indulgence of violence-producing conditions. American society not only condones violence but admires it -- as in the popularity of violent TV. It commits violence regularly through racism and the overlapping but by no means exclusively racial economic unfairness.

If ours were a fairer Society, it could more fairly ask its members to behave accordingly. Our half-admiring attitude toward violence, our massive commerce in guns and our refusal to deal seriously with ingrained inequities in income, education and employment would guarantee us a new generation of hoodlums, even if all the present generation were jailed for life. (4/29/75)

The Youngstown (Ohio) Vindicator said the President was on safe ground when he called for mandatory prison sentence for second convictions of violent crime. The speech appeared to be aimed more at the general public than his audience of law students and professors who, for one thing, realize that mandatory imprisonment would require an expansion of the prison system. Judges cannot be expected to give such sentences, or prosecutors to be firm in asking for them, if there is no way to carry them out. If the taxpayers insist on it, they must be prepared to bear the expense.

The public has more to fear from criminals awaiting trial than it does from those who have already been convicted, and more to fear from the Saturday Night Special than it does from the professional criminal's gun.

These are some of the areas the President should consider in his message on crime. Wallace-type slogans are not enough. (4/29/75)

The Providence (Rhode Island) Evening Bulletin said President Ford seemed to be setting Administration policy on crime when he spoke at Yale and his remarks left little doubt where he stands on the issue. Several of his suggestions merit strong support. Plea bargaining has long been due for a change. White House leadership toward limiting the practice is a welcome development.

And the President rightly talks of the need to "foster a law-abiding spirit among ordinary citizens." But a greater respect for the law can neither be achieved by a lock-up philosophy that proscribes judicial flexibility, nor by courts that treat casually the most serious non-violent crimes. Respect for the law can only be won on a basis of general public recognition that justice in this country is evenly dispensed, regardless of the wrongdoer's station in life. (4/30/75)

The Cleveland Plain Dealer said President Ford, in a tough speech on crime, said what most Americans wanted to hear. He left no doubt that the law should punish severely those criminals who cause substantial injury to others or who create substantial danger to the public. Without mentioning Watergate by name, he acknowledged that crime in high places also has made law enforcement more difficult. His critics, while agreeing with that, can point out that Mr. Ford's hasty pardon of former President Nixon unfortunately had the effect of establishing a separate code for the "establishment." In its way, it was illustrative of the very leniency which the President scored in his speech.

But in calling for better guarantees for the safety of citizens, for insuring the domestic tranquility and respect for law, the President was on solid and popular ground. (4/27/75)

The Des Moines Register said mandatory imprisonment policy would prohibit judges from granting probation and would require a huge expenditure for maximum security prisons to house swelling numbers. The existing prison system has failed dismally to prevent recidivism. The President has no basis for believing that his program would accomplish anything except the waste of hundreds of millions of dollars on custodial facilities and guards.

In calling for mandatory imprisonment, President Ford is ignoring the advice of such tough law-and-order types as Chief Justice Warren Burger, who has stated that mandatory sentences for crimes do not best serve the ends of the criminal justice system.

The President said he wants to put gun-users in prison, but nowhere in his address about crime did he suggest the need for government action to curb access to guns. This omission, together with his appeal to the emotions for mandatory imprisonment, suggests that the President may be more interested in playing politics with the crime issue than in dealing realistically with the needs of the criminal justice system. (5/2/75)



THE WHITE HOUSE
WASHINGTON

DECISION

May 22, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: Jim Cannon

SUBJECT: Crime Message

*AC MR - for
state + local
penal 2 to index 7*

This memorandum seeks your guidance with respect to several matters to be addressed in your special message to Congress on crime.

OVERVIEW

The Attorney General recently submitted a draft Crime Message for your consideration. A working outline of the Message (at Tab A) identifies as the major themes (1) an emphasis on the plight of the innocent victim of crime, and (2) the need to insure that punishment of criminal offenders is certain, swift and just. The Message builds upon your remarks at Yale Law School and outlines specific proposals to meet the stated goals.

The Message recognizes that the principal vehicle for any timely reform of criminal law on the Federal level is S. 1, a bill to revise, reform and recodify the totality of Federal criminal law. Thus, your efforts in this regard are designed to shape the development of this measure as it is considered by the 94th Congress (see Tab B for general background of S. 1).

Finally, while recognizing that law enforcement is primarily the responsibility of State and local governments, the Message points out that the Federal government can and must provide leadership in this area through the use of LEAA funds and through enactment of model penal statutes.



OPEN ISSUES

The draft Message raises several key issues with respect to which your guidance is required. These include: *

1. Gun control -- What, if any, additional steps should the Administration recommend to further enhance our capacity to prevent and control handgun misuse?
2. Mandatory sentences -- What type of mandatory sentencing structure should the Administration advocate, and for whom?
3. Restriction on employment of ex-offenders -- Should the Administration encourage the removal of Federal- and State-enacted restrictions on the employment of ex-offenders and, if so, by what means?
4. Corrections reform -- What steps should the Administration recommend to help alleviate the problem of decrepit, over-crowded and unsafe correctional facilities?
5. Victims' compensation -- Should the Administration endorse the provisions of S. 1 providing compensation for victims of Federal crimes?
6. National defense sanctions -- Should the Administration indicate its dissatisfaction with the provisions of S. 1 dealing with offenses involving national security?

Attached, at Tabs C through H, are a series of memoranda which address each of these open issues in more detail and set forth options, where appropriate. Resolution of these issues will allow us to proceed toward our target date of June 5 for transmittal of the Message to Congress.

You may wish to meet with the Attorney General and staff to discuss these items prior to final determination.

*

In addition to those listed, the question of what should the Administration recommend with respect to extension of the LEAA program and the Juvenile Justice and Delinquency Prevention Act must be decided. Jim Lynn is preparing a memo on this point for your consideration.



*Refer to
Page 3
consult
form!*

OUTLINE: DRAFT CRIME MESSAGE

I. Themes of the Message

- A. Emphasis on Victims -- It is time we direct our attention to the victims of crime. For too long we have dwelled on the plight of the defendant, often losing sight of the plight of the victim.
- B. Swift and just punishment -- The criminal justice system needs to be improved to ensure that it functions in a swift and just manner. The effectiveness of our system is often diminished because of the long delay between apprehension and sentencing.

II. Costs of Crime

Anybody know why?

What is murder?

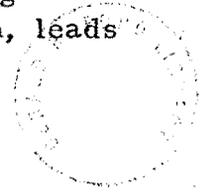
- A. Rate of serious crime reported -- Murder, forcible rape, robbery, aggravated assault, burglary, larceny and auto theft -- 17 per cent higher in 1974 than in 1973. (Largest increase in 42 years.)
- B. Level of actual crime -- 300 to 500 per cent higher than reported crime level.
- C. Violent crime increase -- 11 per cent in 1974.
- D. Crime committed against strangers -- 65 per cent of all violent crime.
- E. Social toll is inestimable -- pervasive fear that causes people to rearrange their lives to be suspicious of their fellows.

Changes for the worse, the whole nature of American life.

III. Factors Contributing to Crime

- A. Economic deprivation.
- B. Deterioration of social institutions which promote respect for law. *1 mth as - - -*
- C. Increasing crime rate itself. Respect for the law declines as the people believe that lawbreakers are not being punished. A decline in respect for the law, in turn, leads to the commission of more crimes.

Very high →



IV. Proposals to Attack Crime

A. Improvements in the law itself.

1. Reform of the Federal Criminal Code -- necessary to revise current laws to make them more effective and to create new offenses to deal with such matters as organized crime, white collar crime, consumer fraud. ? *defendant crimes*
2. Principles of sentencing -- "just punishment" and "incapacitation", as well as "deterrence" and "rehabilitation" should guide sentencing judges.
3. Require mandatory incarceration for offenders who commit violent offenses or use a dangerous weapon. Cures current deficiency since offenders often not sent to jail.
4. Appellate review of sentences -- provide for two-way review. - ?
5. Focus on victims also includes victim's compensation -- no federal appropriations necessary; funds derived from fines (levels of which are increased) and profits from prison industry sales.
6. National security -- balance public's right to know with legitimate interests of intelligence community.
7. Handgun control.

Keep them out better!

B. Reforming the Federal Criminal Justice System.

1. Improve the management of prosecutors' offices -- urge the use of data retrieval systems so that prosecutors can make informed judgments as to which offenders deserve trial and incarceration.
2. Career criminal program -- 56 percent of inmates are recidivists. Objectives of program:
 - a. Provide quick identification of career criminals.
 - b. Accord priority to their prosecution.

On what basis previous recidivism? Psychological patterns?

- ✓ c. Assure that they receive appropriate sentences so that they are not quickly released to victimize the community.

- 3. Pretrial diversion -- objective is to divert certain first offenders who do not deserve incarceration from the criminal justice system at the outset.

Then who can first offenders? Mandatory?

VoCetant training? or what?

- a. Reduce caseloads.
- b. Enable offenders to avoid criminal record and thus increase likelihood for productive lives.
- c. Insure maximization of prison resources to house the more dangerous offenders.

- 4. Expand criminal jurisdiction of U. S. Magistrates

- 5. Corrections reform -- prisons must be secure and provide humane conditions.

Defuse

- 6. Drug abuse -- announce Administration initiative to review overall Federal effort to prevent and treat drug abuse.

Is this the study going on now?

C. State Assistance

- 1. Law Enforcement Assistance Administration -- while crime is largely a State and local responsibility, the Federal government can help shoulder this responsibility through work of LEAA. Emphasis on high crime areas.

How work Fed. grants now? for principal areas.

- 2. Other assistance programs -- prevention and vocational rehabilitation efforts of HEW and Labor.

- 3. Juvenile delinquency -- categorical grant program under the auspices of LEAA. Contrary to trend toward revenue-sharing and block grants.

B



S. 1: GENERAL BACKGROUND

Although there have been several consolidations and technical revisions of federal criminal law (Title 18, United States Code) over the years, the United States, unlike many of the states and most of the other countries in the world, has never enacted a true "criminal code."

The failure to codify a rational formulation of our federal criminal laws has posed a number of acute problems.

First, there is uncertainty in the law -- courts of appeal are often divided and impose a different "federal" law depending on the circuit.

Second, inconsistencies, loopholes and unnecessary technicalities result from the present hodge-podge of laws. For example, we now have about 80 federal statutes dealing with theft -- the definition of the offense depends upon the jurisdictional basis, whether it is theft of government property, theft of the mails or theft of interstate commerce.

Third, problems arise due to the fact that our laws define an offense in terms of the jurisdiction. For example, under some interpretations a person does not commit theft of property moving in interstate commerce under present federal statutes unless he knew it was traveling interstate.

Fourth, never-used statutes clutter up our law, e.g., operating a pirate ship on behalf of a foreign prince; detaining a United States carrier pigeon, and seducing a female steamship passenger, all statutes still on the books.

Finally, the sentencing scheme of current law is erratic. Robbery of a bank carries a 20-year sentence while robbery of a post office carries 10 years.

In 1966, then Congressman Richard Poff spearheaded the enactment of a law creating a National Commission on Reform of Federal Criminal Laws, which was charged with the duty of reviewing current statutes and case law of the United States and recommending to the President and Congress legislation to improve the federal system of criminal justice.

In 1971, the Commission submitted its recommendations to the Congress and the President in the form of a Final Report. This was intended to serve as a "work basis" to facilitate Congressional choices. In February 1971, the Senate Subcommittee on Criminal Laws and Procedures (McClellan - Chairman; Hruska - Ranking) began hearings on the recommendations of the Commission.

After extensive hearings during the remainder of the 92nd Congress, Senators McClellan and Hruska introduced S. 1 early in the 93rd session. This bill was largely the work-product of Congressional staffers. Later in the same session, Senators Hruska and McClellan also introduced S. 1400, the Administration's draft on the same subject.

In the current session of Congress, Senators McClellan and Hruska (joined by Senators Mansfield, Scott, Bayh, Moss, Thurmond, and others) introduced a compromise version bill, hopefully embodying some worthwhile new provisions and the best features of both S. 1 and S. 1400 as introduced in the 93rd Congress. This bill (approximately 800 pages in length -- the longest in history) and Committee Report (approximately 2,000 pages in three volumes) will serve as the basis for anticipated Senate action sometime later this year.

The Judiciary Subcommittee on Criminal Justice (Hungate - Chairman; Wiggins - Ranking) has committed itself to begin its hearings on S. 1 in June with a view toward final House floor action on the measure next year.

During Congressional consideration of S. 1, you will have the opportunity to shape its development in many areas. Although it raises many highly controversial political issues, the measure is generally supported by conservatives and liberals alike. Strong Presidential support for enactment with any reservations you may care to make, is essential to passage of this important legislation in the 94th Congress.

What, if any, additional steps should the Administration recommend to further enhance our capacity to prevent and control handgun misuse?

BACKGROUND

A. The Problem

Violent crime is on the rise. The Federal Bureau of Investigation's latest figures show that the rate of serious crime increased faster in 1974 than in any year since the FBI started keeping statistics. More than half the murders, one-third of the robberies and one-fourth of the aggravated assaults are committed by persons using handguns.

The stock of handguns in the United States has been estimated at more than 40 million, and that number increases each year by about 2.5 million. The most virulent handguns are the cheap, small, low-quality handguns that have been given the name "Saturday Night Specials." A study of 4,537 handguns used in crimes in four major cities recently found that 70 per cent of them were "Saturday Night Specials."

The problem of handgun violence is at its worst in crowded metropolitan areas. In 1973, the FBI's violent crime rate for cities with populations of 250,000 or more was 762.9 crimes per 100,000 population, while in rural areas the rate is 134 crimes per 100,000 population. The contrast between the simple numbers of violent crimes in urban and rural areas is even more stark. In 1973, 537,432 violent crimes were reported in the nation's cities of 250,000 or more population, while in rural areas 27,019 violent crimes were reported.

B. The Current Law and Its Limitations

Current Federal gun control laws ban importation of so-called "Saturday Night Specials" under a set of defining standards. Manufacturers must place a serial number on each weapon. Manufacturers, wholesalers and dealers must keep a journal of the identities of buyers of their weapons. Retailers are prohibited from knowingly selling firearms to youths, non-residents of the dealer's State and



other proscribed categories of purchasers -- convicted felons, persons under indictment, mental defectives, drug users, certain aliens, and persons who have renounced their citizenship. It is illegal for any dealer or private individual knowingly to sell a handgun to someone who resides in another State. A person who uses a firearm to commit any Federal felony is guilty of a separate offense carrying an additional 1- to 10-year sentence. A second conviction under this provision carries a mandatory minimum sentence of 2 years and prohibits the judge from suspending sentence or placing the defendant on probation.

Current Federal laws have a number of loopholes. First, Federal dealer licenses can be obtained by persons who are not bona-fide dealers in weapons. Second, it is difficult to prove that a dealer knowingly sold a weapon to a member of one of the prohibited classes of persons. The dealer need only ask for some identification from the buyer and have the buyer sign a form stating that he is not a member of the prohibited classes. He need not go behind the buyer's statements to check their accuracy. Third, there is little control on sales of weapons after the first sale by a dealer. Because no record of subsequent sales is required, persons bent on illegal interstate transactions simply make the first purchase through a "straw man" -- one who either is a legal purchaser or who uses false identification. Fourth, while current law prohibits the importation of assembled "Saturday Night Specials," it does not prohibit the importation of their parts for assembly domestically.

DISCUSSION

A number of approaches to the problem of more effective handgun control are available. Set forth below are a range of approaches which warrant your consideration. Although set forth as alternatives, a preferable approach would be to employ two or more in combination.

A. Endorse no new handgun laws.

The argument is made that no new handgun laws are needed because current law would suffice if only it were enforced. While enforcement efforts are less than adequate, this fails to take into account the fact that current law does not facilitate proof of its violation. It also assumes that the criminal justice system is operating efficiently so that proven violators face swift and certain punishment.

B. Improve current law.

Some modest changes in current law would prompt little opposition even from those who generally oppose new laws in this area. Amendments would increase the effectiveness of the enforcement effort. Standards could be imposed so that only bona fide dealers could obtain Federal dealers' licenses. Special license categories could be created for dealers who specialize in selling ammunition or long guns or who are gunsmiths. Dealers' licenses could be withheld from persons who are barred by State law from dealing in weapons. A system of administrative fines and compromise authority could be set up to augment the penalties now in effect for violations of dealers' regulations -- license revocation and criminal punishment. A waiting period of three to five days between purchase of a handgun and its receipt could be imposed. The dealer could be required during that period to obtain an FBI name-check of the buyer from local police to determine whether he is a convicted felon. The language of the prohibition on possession by convicted felons could be amended to overcome a court decision that construed the current statute to require that purchase or transportation of the weapon in interstate commerce be proven as an element of the offense.

C. "Saturday Night Special" ban.

Cheap, low-quality, highly concealable handguns currently cannot be imported legally. But their parts can be imported, and they can be assembled or manufactured and sold within the United States. Domestic manufacture, assembly and sale of these weapons could be stopped in one of two ways: (1) by simply prohibiting manufacture, assembly and sale of weapons fitting a definition similar to the one currently used by the Treasury Department in prohibiting import; and (2) by imposing a tax on a sliding scale so that no handgun would be sold at less than a specific amount -- \$100, for example. The first approach has the virtue of taking into account concealability of a weapon as well as its price. The second approach falls prey to the claim that it discriminates against poor people.

D. Illegal Transportation Approach.

Many big cities have tough gun control laws, but police officials complain that, without some control of the supply of weapons coming into the cities, local controls have been ineffective.

Current law prohibits the knowing sale of a handgun by a dealer or private individual to someone residing in another State. It also prohibits sale of a weapon where possession would be prohibited at the point of sale or delivery.

A Federal gun control approach could be fashioned that would essentially tighten the provisions of the 1968 Act to strike at this commerce in handguns.

- (1) Require the seller of a handgun to take reasonable steps to ensure that the buyer is not a resident of, nor intends to transport the handgun to, another state. This would require both licensed dealers and private sellers of handguns to take reasonable steps to determine the identity and residency of the buyer. In this regard, it merely changes the standard of care under the current law. In the case of a private seller, this would be accomplished by receipt of a written statement or affidavit from the buyer; in certain cases, personal knowledge would suffice. Alternatively, a private seller could discharge this burden by consummating the sale at a dealer's place of business where the dealer would take reasonable steps to identify and determine the residency of the buyer. In the case of dealer sales, particularly multiple sales, the standard of care required would be higher. Both civil and criminal penalties would be available as sanctions, depending on the culpability and status of the offender.
- (2) Require the seller of a handgun to take reasonable steps to ensure that the buyer is not a resident of, nor intends to transport the handgun to, a locality where the buyer's possession of a handgun would be illegal. This would revise current law to strike at intrastate as well as interstate sales, where the purchaser resides in a locality which makes his possession of a handgun illegal. The standard of care, method of discharging such standard and sanctions for failure to do so would be the same as in (1) above.
- (3) Assign to ATF Strike Forces the job of investigating violations of the Federal gun laws in certain selected areas, such as the ten largest cities in the United States. If commerce in handguns prevents local laws from being effective, and if that commerce were made clearly a violation of Federal law, a concentrated effort by the Bureau of Alcohol, Tobacco and Firearms, together with specifically assigned Federal prosecutors could help cities fight gun violence. ATF's project ID, pursuant to which it attempts to trace all handguns apprehended in connection with criminal use, could also be undertaken in such cities.

E. Metropolitan Area Approach.

Rather than keying the Federal law to State and local gun control provisions, a Federal regulatory scheme could go into effect in Standard Metropolitan Statistical Areas with a population of more than one million. The controls could include:

- (1) Prohibition of transfer or sale within the metropolitan area and prohibition of transportation of a handgun into a metropolitan area. This approach strikes most directly at commerce in handguns. It should be coupled with a presumption that possession of more than five handguns is possession with intent to sell.
- (2) Prohibition on possession of handguns outside the individual's home or place of business. This approach would provide an easily provable Federal charge against persons who deal in guns illegally. It would also augment local law enforcement efforts against carrying concealed weapons. It is vulnerable to two arguments: that it would be unenforceable because violations would be rife and that it would make virtually all street crime a Federal offense.

F. Federal Safety Certification Card.

A handgun purchaser could be required to obtain either from the Treasury Department or from certified private organizations such as the National Rifle Association a handgun safety certification card bearing his correct address and his photograph. The issuing organization could be required to determine whether the applicant lives at the address he has given and whether he has been convicted of a felony. The applicant could also be required to pass a simple handgun safety course before purchasing a handgun. This certification system would make enforcing a regional ban on sale or possession much easier and would help to prevent convicted criminals from purchasing handguns. (The cost of this is undetermined.)

G. Transfer Notice

Handgun owners who wish to transfer possession of a handgun to another could be required to consummate the transaction at a dealer's office. The dealer could be required to keep a record of the transaction in the same manner he keeps records of initial sales. This provision would facilitate the tracing of handguns used in crime or found in metropolitan areas subject to Federal controls. Any failure to record the transfer of -- or to report theft or loss of -- a handgun could be punished if the handgun later turned up in the illegal possession of another.

ASSESSMENT OF ALTERNATIVES

A handgun control bill incorporating features of all the alternatives described above would be the most effective in minimizing handgun violence in the United States. However, some of the alternatives would likely meet with strong opposition from gun enthusiasts.

The transfer notice provision in Alternative G, pursuant to which all handgun sales must be made through a licensed dealer, would be seen as a nationwide handgun registration system in disguise. The Federal safety certification card system would be seen as a nationwide licensing system. Federal licensing does not meet with nearly as much opposition as other approaches, but if it were coupled with a regional ban on possession or sale, gun enthusiasts would probably be outraged.

The metropolitan area approach has political strengths, since it would apply in areas where acceptance of the need for Federal controls is the greatest and would not apply where opposition to Federal controls is the greatest. It would suffer from enforcement problems if it were not coupled with some sort of licensing or registration system. Moreover, many view this as simply a scheme to disarm "inner city" areas.

Amending the current law in the ways described above in Alternative B, and attacking the "Saturday Night Special" problem would meet with little opposition. Placing a higher standard of care on handgun sellers and beefing up enforcement efforts in major urban areas, as suggested in Alternative D, likewise, would not be tremendously controversial.

Doing nothing in the way of new Federal gun control legislation could itself have serious political liabilities in a time of rising violent crime and rising sentiment against handguns.

OPTIONS

- A. No new Federal law.

Agree _____

Disagree _____

- B. Improve current law.

[The Attorney General, the Counsel to the President, the Domestic Council, Bob Goldwin and Max Friedersdorf favor this.]

Agree _____

Disagree _____

C. "Saturday Night Special" ban.

- 1) By quality and concealability definition.

[The Attorney General, the Counsel for the President, the Domestic Council and Bob Goldwin favor this.]

Agree ✓ Disagree _____

- 2) By Federal tax on sliding scale.

Agree _____ Disagree ✓

D. Illegal transportation approach.

- 1) Prohibit sale to resident of another State.

[The Attorney General, the Counsel to the President, the Domestic Council and Bob Goldwin favor this.]

Agree _____ Disagree _____

- 2) Prohibit sale to resident of an area covered by local law.

[The Attorney General favors this.]

Agree _____ Disagree _____

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3) Assign ATF to investigate gun commerce in key cities.

[The Attorney General, the Counsel to the President, the Domestic Council and Bob Goldwin favor this.]

Agree _____ Disagree _____

E. Metropolitan approach.

1) Ban on sale and transfer.

Agree _____ Disagree

2) Ban on possession outside home or business.

Agree _____ Disagree _____

F. Federal safety certification card.

Agree _____ Disagree _____

G. Transfer notice system.

Agree _____ Disagree _____

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D

What type of mandatory sentencing structure should the Administration advocate, and for whom?

BACKGROUND

Mandatory minimum sentences under current Federal law are imposed only upon those who carry or use a firearm during the commission of a Federal felony. A minimum 1-year sentence is imposed for the first such offense. But the judge may suspend the sentence or grant probation. A minimum 2-year sentence is required for any additional offense, and the judge is precluded from suspending sentence or granting probation.

Mandatory minimum sentences could be applied to other offenses and could be tightened in various ways so that a convicted offender would with certainty be placed in prison for a given amount of time without parole.

DISCUSSION

In your speech at Yale Law School, you indicated your intention to seek modification of the Federal Code to impose mandatory prison sentences for those convicted of violent crimes.

A. Mandatory Sentencing Structure

The initial question is what type of mandatory sentencing is most appropriate. Several approaches suggest themselves:

1. Require mandatory minimum sentences with no possibility of parole.

This approach assures that the convicted offender for whom a mandatory minimum sentence is imposable will, in fact, be incarcerated for a period of time. The advantages of this approach may be illusory, however. Because prosecutors would be less likely to be able to exact a guilty plea from defendants because they have no leeway as to the recommended sentence, the prosecutors would probably not often prosecute on charges carrying a mandatory minimum. Judges, deprived of discretion, could, in some cases, simply acquit defendants rather than impose the mandatory term. Finally, this sort of mandatory sentence would fail to take into account circumstances that should reasonably affect the sentencing decision -- such as the age of the offender and his prior criminal history. They would treat one who commits a one-time crime of passion the same way they would treat a cold-blooded, willful offender.

2. Require mandatory sentence with immediate possibility of parole.

This approach assures that the convicted offender will either be incarcerated or subject to Federal supervision for a period of time. For this reason, it has sometimes been referred to as a "fake" mandatory sentencing scheme. By including the possibility of parole, some of the inflexible aspects of a "true" mandatory sentencing scheme would be avoided; however, prosecutors and judges could still be expected to attempt to avoid proceeding under laws imposing the "fake" minimum. (This is the approach taken by S. 1 with respect to crimes committed with a firearm and certain drug-trafficking offenses.)

3. Require mandatory minimum sentences with no possibility of parole, but authorize judges to avoid imposition of the minimum sentence if certain statutorily defined mitigating circumstances are present.

This approach is similar to Alternative 1, but allows a bit more flexibility in application. The mitigating circumstances under this approach could be very narrowly drawn to give judges some discretion, but not enough to destroy the value of a mandatory minimum. For example, they could include: 1) that the offender has never been convicted of a violent offense, 2) that he was younger than 18 at the time of the offense, 3) that he was mentally impaired, 4) that he was acting under substantial duress, and 5) that he was only implicated in a crime actually committed by others and participated in the actual crime in a very limited way. Such an approach would deter the career criminal, who would find it impossible to fit himself into one of the categories. But it would not force judges to acquit defendants whom they believe to be guilty but who ought not be incarcerated. The discretion of prosecutors would still be diminished, but, since the range of offenders to whom the mandatory minimum would apply would be narrowed, the burden on prosecutors of not being able to plea bargain would not lead them as often to fail to charge the offense carrying the mandatory minimum.



B. Included Offenses

Once the type of mandatory sentencing structure is selected, the question becomes: to what class or category of offender will mandatory minimum apply? Again, several alternatives deserve consideration.

1. Apply mandatory minimum sentences to all offenses.

The advantage of this approach is that it recognizes that there are many serious offenses warranting certainty of punishment that do not involve physical violence directed against the victim. War-time treason, serious drug crimes, and crimes involving political corruption may warrant a fixed sentence fully as much as crimes of violence. To impose mandatory minimum sentences for all such offenses, however, would entail a radical restructuring of the whole Federal sentencing system. Such a restructuring would have to be preceded by considerable analysis and care in order to avoid criticism based upon harshness, inflexibility and overbreadth.

2. Apply mandatory minimum sentences for all offenses involving the potential of physical injury to the victim.

This approach would have the advantage of concentrating on the kinds of crimes that are of most immediate concern to American citizens. Such offenses would include those in which the victim is actually injured and those within certain categories of offenses that are commonly apt to result in physical injury to the victim. The former kinds of offenses would include homicide offenses, assault offenses, and nonconsensual sex offenses; the latter kinds of offenses would include kidnapping and aircraft hijacking offenses, arson and other property destruction offenses, burglary offenses, and robbery offenses. While applying mandatory sentences to such broad categories of offenses would be contrary to recommendations by such groups as the American Bar Association, it would, particularly if applied in the form suggested under Alternative A 3 above, accord with recommendations recently made by some respected sociologists and economists.

3. Apply mandatory minimum sentences for all offenses involving actual physical injury to the victim.

This approach would be similar to that suggested immediately above, but would apply only to those offenders who did, in fact, cause injury to their victims. This would remove from the application of such sentences those offenders who were willing to threaten a victim with injury but who may not actually have intended to cause the threatened injury. It should be noted that this approach, as well as the one immediately above, would apply to the most common crimes of passion, for which no form of penalty is apt to provide effective deterrence.

4. Apply mandatory minimum sentences for all offenses involving use of a dangerous weapon, aircraft hijacking and trafficking in opiates.

This approach would subject to mandatory penalties only those offenders who committed a crime with a dangerous weapon or who committed such other serious offenses as aircraft hijacking and trafficking in opiates. A dangerous weapon could be defined to include not only the commonly known destructive device, such as firearms or explosive devices, but also any other instrument that, as used or as intended to be used, is capable of producing death or serious bodily injury. This approach would reach the most serious forms of street crime, but would not reach those kinds of physical assaults that may not warrant being singled out as deserving of a mandatory penalty. A prime practical advantage of this approach is that it has the potential for receiving support from both conservatives and liberals. It has been advocated by the National Rifle Association; the Criminal Justice Section of the American Bar Association has recommended that the ABA Standards be modified to permit such an approach; and Senator Mansfield has been a principal supporter of such a provision. It could be effected simply by a minor modification of section 924 (c) of the existing title 18. This is the approach that is included in S. 1.

5. Alternatives 1, 2, 3 or 4 for repeat offenders only.

This approach would limit the applicability of mandatory minimum sentences to repeat offenders. It could be tailored to cover all repeat offenders or a more narrowly defined class of repeat offenders (e. g., those convicted of violent crimes). This would be the least objectionable alternative to judges and prosecutors, since it is aimed only at the recidivist -- the so-called hardened criminal.

In assessing these alternatives, two factors should be kept in mind: (1) the mandatory minimum sentence need not be long to be effective, and (2) the alternative structures and categories of offenses can be "mixed and matched" (e. g. , providing "true" mandatories for all weapons offenders and "fake" mandatories for other violent offenders not using a weapon).

Finally, it should be noted that the impact of expanded mandatory sentencing on existing Federal prosecutorial resources and prison facilities has not been incorporated into these options. As a general proposition, however, one can assume that a significantly expanded mandatory sentencing requirement would place additional burdens, fiscal and otherwise, on the Federal criminal justice system.

OPTIONS

1. Require mandatory minimum sentences with no possibility of parole for:

- a) All offenses. _____
- b) Offenses involving potential for physical injury. _____
- c) Offenses involving physical injury. ✓ _____
- d) Offenses involving a dangerous weapon, etc. ✓ _____
- e) Repeat offenses. ✓ _____

2. Require mandatory minimum sentences with possibility of parole for:

- a) All offenses. _____
- b) Offenses involving potential for physical injury. _____
- c) Offenses involving physical injury. ✓ _____
- [The Counsel to the President favors this.]
- d) Offenses involving a dangerous weapon, etc. ✓ _____
- e) Repeat offenses. _____

3. Require mandatory minimum sentences without parole, but allow judges to fail to incarcerate offenders who fall into narrowly drawn categories, for:

- a) All offenses.
- b) Offenses involving potential for physical injury.

[Bob Goldwin favors this.]

- c) Offenses involving ^{serious} physical injury.

mandatory
~~on 1st offense~~

7. first offense

- d) Offenses involving a dangerous weapon, etc.

[The Attorney General, the Counsel to the President, the Domestic Council and Max Friedersdorf favor this.]

- e) Repeat offenses, ~~not~~ *1 less severe nature.*

Levi - cut class from 23,000 by 1500

Should the Crime Message emphasize the removal of
Federal and State restrictions on the employment of
ex-offenders?

BACKGROUND

Substantial evidence supports the proposition that an ex-offender who obtains employment is less likely to commit another crime than an unemployed ex-offender.

Notwithstanding that evidence, convicted ex-offenders are severely discriminated against in the job market. Repeated surveys show that a heavy majority of employers will not hire anyone with an arrest record, much less a conviction record. In 13 States, offenders are legally deemed civilly dead, prohibiting them from entering into contracts, from suing and from being sued. Various States disqualify offenders from the ability to marry and to exercise the authority of a parent over their children.

An American Bar Association survey has found that State legislative codes contain nearly 2,000 separate statutory prohibitions which inhibit the licensing of persons having arrest or conviction records. About 350 different occupations are completely closed or severely restricted to ex-offenders. They cannot become accountants, architects, barbers, beauticians, butchers, bartenders, taxi drivers, dental hygienists, electricians, junk dealers, nurses, pharmacists, social workers, teachers, or watchmakers. If the job requires a State license, it is generally closed to ex-offenders.

DISCUSSION

Clearly, legitimate work opportunities ought to be available for ex-offenders who want to "go straight." Job market discrimination against ex-offenders seems to be counterproductive with respect to your goal of reducing violent crime. Some of the discrimination is private and may be regulated by Federal statute; some is Federal and may be regulated by Executive Order; and probably the most significant discrimination is sanctioned by State statutes and can be changed only by amendments to those statutes.

Steps the Administration could recommend include:

- (1) Appealing to all employers, public and private, not to discriminate against ex-offenders, except as commission of a particular offense is related to performance in a specific job.

- (2) Directing the Justice Department to draw up ex-offender civil rights legislation which would make it illegal for an employer or a union to deny a job or membership based upon an applicant's criminal record. Denial of a job or of union membership based upon an arrest, police detention (without charge), investigation, or conviction record should be barred.
- (3) Directing the Civil Service Commission to submit to you an Executive Order to prohibit Federal discrimination against ex-offenders as a class.
- (4) Directing LEAA, the Department of Labor, and the Department of Health, Education, and Welfare to encourage States to eliminate licensing and other statutory restrictions against the employment of ex-offenders as a class, and to cut off Federal manpower training funds (including LEAA and HEW vocational education and rehabilitation monies) after FY 1977 from all States which at that point retain statutory discrimination against ex-offenders as a class.

OPTIONS

1. Take the opportunity of your special message to encourage all employers not to discriminate against ex-offenders as a class.

[The Attorney General, the Counsel to the President, the Domestic Council and Bob Goldwin favor this.]

Agree _____ Disagree _____

2. Direct the Justice Department to draw up ex-offender civil rights legislation.

P - Show a copy, show a file

Agree _____ Disagree _____

Direct the Civil Service Commission to submit to you an Executive Order to prohibit Federal employment discrimination against ex-offenders as a class.

That's when I can down too - in process. can take into consideration input

Agree _____ Disagree _____

look at CMC

4. a) Direct LEAA, the Department of Labor, and the Department of Health, Education, and Welfare to encourage States to eliminate statutory restrictions against employment of ex-offenders as a class.

[The Counsel to the President, the Domestic Council and Max Friedersdorf favor this.]

Agree _____ Disagree _____

Review in Press
Public News
relates to jobs for person wants
Common sense & equity.

P - Recommendation to Governor's conference
National from Federal agencies

b) Direct a cut-off of Federal manpower training funds after FY 1977 from all States which at that point retain such statutory discrimination.

Agree _____ Disagree _____

F



What steps should the Crime Message recommend
in the area of corrections reform?

BACKGROUND

The problem of decrepit prisons is at its worst at the State and local levels. Many State prisons were built before the turn of the century. They are run down, overcrowded in many places, and unsafe. Not only are they unsafe in that prisoners can find ways to break out of them, they are also unsafe for the prisoners themselves. The run-down conditions make it difficult for prison personnel to protect prisoners against violent attack and homosexual rape by other prisoners.

The Federal government subsidizes many of these State and local adult and juvenile facilities by billions of dollars of grants and contracts. Grants come from a plethora of programs, including Elementary and Secondary Education Act Title I funds for juvenile institutions, vocational education and vocational rehabilitation funds for prisons and jails, adult education funds, manpower training funds under a variety of legislative authorizations, and LEAA monies. The Bureau of Prisons and the Department of Defense, moreover, contract with State and local facilities to temporarily detain Federal prisoners and, in some cases, to incarcerate them for long sentences.

The Federal corrections system has an ongoing program to upgrade its facilities. Currently, it is building or planning to build new detention centers in several cities where Federal prisoners have been housed in substandard and overcrowded local jails while awaiting trial.

DISCUSSION

The effort to get judges to send more convicted violent offenders to jail will fail so long as judges believe the conditions in jails are inhumane and that incarceration breeds criminality rather than nurturing rehabilitation.

On the State level, the Law Enforcement Assistance Administration could play an important role in a program to modernize prisons. Its FY 1976 budget earmarks more than \$97 million for corrections programs, and half of that can be spent by LEAA at its discretion. LEAA could be directed to place special emphasis on encouraging States to upgrade their prison facilities so that they are decent and secure. LEAA's effort in this regard could be most helpful if it encouraged States and localities to experiment with smaller, community-based institutions and move away from huge, unmanageable penitentiaries.

Additionally, because various Federal grant programs heavily subsidize State and local correctional systems, and because the Bureau of Prisons and (less so) the Defense Department fund State and local systems through contracts, the Federal government has financial leverage over State and local prisons.

In order to alleviate unnecessary cruelty to which prisoners and detainees are subjected, you may want to direct all Federal agencies that minimum Federal standards must be met by any prison, juvenile institution, jail, or other detention facility as a prerequisite to the receipt of any Federal money under grant or contract. As a first step, you may want simply to direct Justice and HEW to draft minimum Federal standards by a date certain.

In assessing the available options, two factors should be noted:

1. The ultimate cost to State and local governments of providing facilities which meet minimum Federal standards will obviously depend upon the nature of the standards imposed. Even a "bare bones" approach would have a significant fiscal impact, however.
2. Because of the high cost of prison construction, the \$97 million budgeted for the LEAA corrections program in 1976 would serve only to "prime the pump" in terms of encouraging State and local governments to undertake a major initiative in this area.

P OPTIONS *Quality of Federal Prisons?*

1. Direct LEAA to encourage States to upgrade existing prison facilities so that they are decent and secure and to move in the direction of smaller, community-based institutions which are cheaper and more manageable.

[The Attorney General, The Counsel to the President, the Domestic Council and Bob Goldwin favor this.]

Agree _____ Disagree _____

Levi - 8/2 to \$20 Billion for all states



- 2. Direct the Departments of Justice and Health, Education, and Welfare to draft new standards for submission to you by September 1, 1975.

[The Counsel to the President, the Domestic Council, Bob Goldwin and Max Friedersdorf favor this.]

Agree _____ Disagree _____

- 3. Direct all Federal agencies that no Federal funding is to go, under grant or contract, to any State or local prison, juvenile institution, jail, or other detention facility which is not in compliance with Federal standards after July 1, 1977.

Agree _____ Disagree _____

*Let our friends
 set our standards up
 to ~~standards~~
 example for others*

*How is our
 program doing
 when done*



G

Should the Crime Message endorse the concept of compensation to victims of crime?

As a result of careful compromise among Senators Mansfield, McClellan, and Hruska, provisions have been included in S. 1 to provide a program for the compensation of certain needy victims of Federal offenses which result in personal injury.

S. 1 provides for compensation of up to \$50,000 for uncompensated (by insurance, tort, etc.) out-of-pocket loss resulting from a Federal personal injury crime plus lost earnings or support resulting from injury or death of the victim in instances where there is a finding of "financial stress." The standard is cast so as to include the so-called economic middle-class.

Compensation would be paid from a Criminal Victim Compensation Fund consisting of all criminal fines paid for Federal offenses, funds derived from suits by the Attorney General against the perpetrators of personal injury crimes, and dividends from Federal Prison Industries.

Preliminary studies by the Department of Justice indicate that the fund would be self-supporting. Indeed, there is ~~no~~ appropriation authorization in the bill. This is not to say, of course, that the program lacks a budgetary impact. For example, dividends from Federal Prison Industries fund vocational and educational training programs. If these dividends were diverted to the Victim Compensation Fund, additional resources would be needed for vocational and educational programs. Approximately \$10-\$15 million per year would be lost from general Treasury funds. Previous Administrations have resisted similar proposals for this reason.

S. 1 would cover all Federal offenses against the person. It would leave to separate legislation for the District of Columbia compensation for those offenses applicable exclusively in the District of Columbia. A Federal offense resulting in personal injury would be covered even if no person was charged with the offense or if the person charged was turned over to a State or local government for prosecution.

The Crime Message would specifically endorse this concept.

[The Attorney General and the Counsel to the President recommend that you specifically endorse this concept.]

The Domestic Council, Bob Goldwyn and Max Friedersdorf recommend that you reserve judgment on this.]

Specifically Endorse _____ Reserve Judgment _____

How Bodily or will it work Justice

What would be lost

How would it work

How would it work

