The original documents are located in Box 8, folder "Crime - General (2)" of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

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MEMORANDUM

THE WHITE HOUSE

WASHINGTON

Crime

Send to Ken Lazarus

TO: RICHARD CHENEY
ROBERT HARTMANN
PHILIP BUCHEN ✓
JERRY JONES
JAMES CONNOR
JAMES CANNON
JAMES CAVANAUGH
RICHARD PARSONS

FROM: ROBERT GOLDWIN RG

The President's crime speeches and crime message hit hard on every one of the themes in this Reston column. Crime continues to be the #1 noneconomic domestic issue. Shouldn't we be repeating and repeating the President's stand on crime?

Attachment

11/25/75

N Y Times
11/21/75

The Politics Of Anarchy

By James Reston

You can hardly pick up the papers these days without reading about the element of madness and even of anarchy in our national life. The latest

his cap pistol demonstrating against Ronald Reagan, or Patty Hearst, Squeaky Fromme, or Sara Jane Moore who lost confidence in the legal and political integrity of the nation, but also some of the most respectable persons and institutions in the nation, including the F.B.I. and the C.I.A.

On the same day that this silly, young man, Michael Carvin, pulled his cap pistol on Ronald Reagan, Senator Frank Church's intelligence committee was announcing that it had "solid evidence" that past Governments of the United States—from Eisenhower, Kennedy and Johnson to Nixon, had connived at the murder of Castro in Cuba, Diem in Vietnam, Trujillo in the Dominican Republic, Sukarno in Indonesia and Lumumba in the Congo. Senator Church testified that no President of the United States had planned these monstrosities, but they were apparently planned anyway by their underlings.

Meanwhile, the Ford Administration has released the official records on

Department of Justice

For filing under "Crime, Prevention or whatever is simplest."

FOR RELEASE AT 7:30 P.M., E.S.T.
MONDAY, FEBRUARY 2, 1976

ADDRESS

BY

THE HONORABLE EDWARD H. LEVI
ATTORNEY GENERAL OF THE UNITED STATES

BEFORE

THE GOVERNOR'S CONFERENCE
ON
EMPLOYMENT AND THE PREVENTION OF CRIME

6:30 P.M.
CRYSTAL BALLROOM
MARC PLAZA HOTEL
MONDAY, FEBRUARY 2, 1976
MILWAUKEE, WISCONSIN

I am glad to be with you at this symposium on employment and the prevention of crime. As you know, President Ford believes the intolerable level of crime in America can most effectively be reduced if all segments of society join in the effort. I bring you President Ford's warm greetings and his appreciation for the concern you are showing and the responsibility you are accepting in this important area.

As the title of your symposium suggests, the problem of crime is inseparable from the problem of reuniting ex-offenders with society. I want to explore that theme with you tonight and to indicate some implications it may have for government policy and for the responsibility of society.

It is a mistake to think of reunification as the last step in the criminal justice system. The process of reunification begins as soon as an individual is brought into the system. The whole criminal justice system must be viewed in light of its effect on the offender after he is released from prison.

Rehabilitation as a goal of criminal punishment has been called into question recently, in part because recidivism rates are high. We really do not have statistics good enough to measure the rehabilitative effect of imprisonment.

But the data we do have are taken to support the conclusion that persons who have spent time in prison are not less likely to commit crime again. Perhaps, indeed, they are more likely to do so. Studies such as the one published in 1964 by Daniel Glaser indicate that the two most important factors in the success of an ex-offender in avoiding criminal conduct after he is released from prison are his ability to return to a stable family situation and his ability to get a job. These are taken as proof that the offender's experience after imprisonment rather than his experience in prison is determinative. The rehabilitative ideal, proclaimed in the 19th Century as a great reform in the theory of punishment, has been proclaimed a failure by contemporary prison reformers. But there is a narrowness in this view. It looks only to the prison itself as the medium of rehabilitation.

If the whole criminal justice system is analyzed with respect to its role in rehabilitation and reunification, the perceived failure of the rehabilitative ideal is a failure of the entire process. The imposition of imprisonment is an extraordinary assertion of government authority over the individual. If the imposition of punishment appears to be fickle--a matter of chance--or if it appears to be unequal with respect to socio-economic groups, offenders who do suffer punishment for crimes may be left with an emotional scar that itself makes reunification very difficult.

The need for decency and fairness in the criminal justice system does not derive solely from the instrumental effect indecency and unfairness have upon their victims. But the bitterness a sense of unfairness breeds must be taken into account. Today there is an accidental quality to the imposition of punishment. Some 400,000 men, women and young people are in some form of corrections institution. Nevertheless, inefficiency in the criminal justice system has meant that a very small percentage of persons who commit crimes ever spend time in jail. The inefficiency shows itself at every step. Police, overcome by the high level of crime, cannot actively investigate every report of criminal conduct. People become cynical about the likelihood that criminals will be punished, so they often do not bother to report crime. Even after an offender is arrested, overworked prosecutors' offices may be forced to strike deals in which a defendant agrees to plead guilty in exchange for a sentence that does not include incarceration.

These problems build upon themselves. The inefficiency of the criminal justice system makes it less likely to serve a deterrent effect. The result is more crime and more burden on police, prosecutors and courts.

Even when an offender is brought to trial, there is a great element of chance in whether he will ever serve time in prison. A study in Pittsburgh in 1966 indicated

that nearly half of all persons convicted of a second offense of aggravated assault and more than one-fourth of all second offenders convicted of robbery were not sent to prison but were rather placed on probation. Research in Wisconsin showed that 63 per cent of all second-time felony offenders and 41 per cent of all persons with two or more felony convictions received no prison term upon their last conviction. James Q. Wilson of Harvard concluded that this evidence "suggests that the judges did not believe that jail had a deterrent effect. . ." At least one reason for this perception is that judges themselves have not imposed prison sentences with enough consistency to make the deterrent effect work. Deterrence requires considerable certainty, and we do not have that certainty.

The offenders who are sent to jail recognize the degree to which they have been losers in a game of chance. Such a recognition is bound to make their reunification with society more difficult. Not only may it appear to an offender that his imprisonment was just bad luck rather than the inevitable consequence of wrongdoing, the unfairness bred of inefficiency and unwillingness to impose uniform punishment may make the society outside the prison wall seem mean and hostile, a society that itself does not follow the rules of conduct it expects the ex-offender to follow.

The problem of inefficiency must be solved by new devices and methods that will facilitate rational decisions about prosecution. It also will require a greater degree of citizen cooperation in the detection and investigation of crime. The problem of unwillingness of judges to impose sentences is a separate and complicated matter for which special approaches are required.

The President has proposed a system of mandatory minimum sentences for various sorts of particularly serious crime. Mandatory minimums would apply to extraordinarily heinous crimes such as aircraft hijacking, to all offenses committed with a dangerous weapon, and to offenses involving the risk of personal injury to others when those offenses are committed by repeat offenders. The President's mandatory minimum sentence proposal also includes provisions to ensure fairness by allowing a judge to find, in certain narrow categories of circumstances, that an offender need not go to prison even though he has been convicted of a crime normally carrying a mandatory minimum sentence. A mandatory minimum sentence must not be imposed if the offender was less than 18 years old when the offense was committed, or was acting under substantial duress, or was implicated in a crime actually committed by others and participated in the crime only in a very minor way. Under proposals now before Congress, the trial judge's sentencing decision would be reviewable by appellate courts.

The President's proposal does not require long prison terms for persons sentenced under the mandatory minimum provisions. The need for mandatory minimum sentences is based upon the concept of deterrence and the need for swift and certain punishment following an offense. It is also based on the recognition that the fairness of punishment depends upon a degree of uniformity in sentencing decisions.

It may be time to consider an even more sweeping restructuring of the sentencing system, which United States District Court Judge Marvin E. Frankel calls the most critical part of the criminal justice system. There have been proposals to abolish the federal parole system as it now exists and to allow trial judges to determine the precise sentence an offender would be required to serve. The trial judge would operate within a set of sentencing guidelines fashioned by a permanent Federal Sentencing Commission.

This idea is consistent with the President's mandatory minimum sentence proposal. Indeed, it is an extension of the same concept. Sentences would be required to meet the mandatory minimums set forth by statutes for certain crimes. Sentences for all other crimes would generally be expected to fall within the range set forth by the guidelines. If a judge decided to impose a sentence inconsistent with the guidelines, he would have to accompany

the decision with specific reasons for the exception, and the decision would be subject to appellate review. The offender would be required to serve the sentence imposed by the judge, with a specific amount of time off for good behavior.

Currently very few offenders are required to serve anything close to the time imposed as a sentence by the trial judge. Parole eligibility after serving one-third or less of the sentence may create a lack of credibility in sentencing which undermines the deterrent effect of criminal law and adds to the sense of unfairness.

Many prisoner groups and others point out that uncertainty about parole and good time allowances creates enormous tension among prisoners. A prisoner may well not know what he must do to please the prison and parole authorities. Uncertainty may actually hinder rehabilitation in that prisoners may volunteer for institutional self-improvement programs without any real commitment to the goal of the programs but instead with a feeling that to volunteer might please the parole authorities.

It may be too early to decide whether to adopt vast reforms in sentencing along these lines. Corrections has been an area in which great new ideas emerge with regularity--ideas full of promise--only to lead to failure and despair. We do not know enough about the effect of

the criminal justice system and corrections upon crime. But even without conclusive data--which may never be obtainable in this area--reason suggests that the failure of the criminal law to deter crime sufficiently and the perceived unfairness of accidental justice requires considerable reform. In my view the President's mandatory minimum proposal and consideration of a Federal Sentencing Commission is an important and necessary first setp.

I do not agree that the ideal of rehabilitation--which was an earlier medium of reform--should be abandoned although it is fashionable in some quarters to say so. But it is also nonsense to say that the purpose of prison is only to rehabilitate. Imprisonment also has deterrence and protection of society as goals. It is also nonsense to say that rehabilitation never occurs. As Attorney General I review all applications by federal prisoners for pardons. Many of those applications attest to the possibility that offenders can change for the better in prison. Decent treatment of prisoners is itself a kind of rehabilitation, and decency should most certainly remain as one of our ideals. Decency can reinforce decency in return just as much as substandard, inhumane conditions of confinement can reinforce a negative effect. Especially with respect to the young, we simply cannot give up on the effort to bring those who have broken the law back into harmony with the society. We can hold out the opportunity to inmates to improve themselves and their chances of success outside

the walls, and this is itself a form of rehabilitation.

Job training within prison is important. It prepares for an offender's reunification with society. Society also has a great responsibility in this regard--and a great opportunity as well. As your symposium recognizes, employment after release from prison is extraordinarily important in the process of reunification. The composition of our prison population today makes it essential that, both inside prison and outside, steps are taken to facilitate the transition.

Most serious crimes are committed by young people. Those most likely to commit crime are between the ages of 20 and 30. This group will reach its maximum in numbers in about 1985, when it will be about 50 per cent greater than in 1970. The economic and educational characteristics of today's prison population are consistently below those of inmates' counterparts outside the walls. It is against their counterparts that ex-offenders must compete if they are to have productive employment after their release. The average male prisoner more than 25 years old today has 2.1 fewer years of education than the average of all U.S. males in the same age group. Only 44.2 per cent of all male prisoners are skilled or semi-skilled as compared with 80.7 per cent of the total male population. These figures indicate the challenge ex-offenders present to the American labor market. But it is a challenge that can be met.

The American labor market has always had a need to retrain individuals for employment. This has never been an easy task but it is one with which the free market must be concerned. There are of course special considerations when ex-offenders are involved. These special considerations do not diminish the importance of the task. Rather, they emphasize the importance of the goal.

Federal prisons themselves have programs to help train inmates for productive work. The Federal Prison Industries, an agency of the Department of Justice which was established in 1934 to employ and train federal inmates, has 51 industrial operations in 23 correctional institutions. About 25 per cent of all federal prisoners volunteer to participate in Federal Prison Industries programs. Many of these programs do not train inmates for jobs in segments of industry that are thriving today. More than a quarter of all Federal Prison Industries workers today, for example, are employed in the shoe and textile industries. But new programs to train inmates in skills that are more in demand are under way and expanding. Three federal corrections institutions now have training programs in computer technology. Two institutions have auto mechanic training programs, and another institution will open one soon. Better training programs in federal prisons must be initiated, but they alone will not guarantee that an ex-offender's reunification with society will be a success.

There is a problem of acceptance of the ex-offender both by his employer and by his co-workers. Deep prejudices are directed toward an ex-offender, and they stand as a

barrier to his success in society. President Ford has directed the U.S. Civil Service Commission to review a program it administers, a program designed to prevent federal employers from unjustly discriminating against ex-offenders. The President has also asked the National Governors Conference to study steps the states can take to eliminate discrimination in their hiring of ex-offenders.

The private sector must take similar steps. Some 100,000 offenders are being discharged by federal and state prisons and local jails each year. The unemployment rate for ex-offenders is three times what it is for the regular work force. Groups such as the National Alliance of Businessmen have recognized that high unemployment among ex-offenders bodes ill for the recidivism rate. The Alliance is one of the sponsors of your forum, so permit me to dwell a moment on its important program. The Alliance does not do job placement work. It goes to businessmen and solicits from them job openings for ex-offenders. These openings are then turned over to other agencies that actually place individuals in jobs. The Alliance's ex-offender program in a little more than two years has resulted in the placement of 20,000 ex-offenders in jobs.

This program and others seem to be working, but more like them are needed. As I indicated at the outset, the entire criminal justice system needs to be viewed in light of its impact upon the final reunification of the offender with society. Society bears a great burden. Through the

system of criminal justice it imposes upon individuals the dramatic loss of liberty that is involved in imprisonment. Society must insist that the system operate with fairness and decency. But its responsibility is much greater. Society must itself be prepared to reunite with the ex-offender if he is to have a chance of succeeding outside the walls.

I have often said that high crime rates will exist so long as society stands for it. I mean by this more than simply that citizens must cooperate with law enforcement officials in reporting crime and doing their part in the criminal justice process. I mean also that crime rates will continue to be high so long as society does not realize that it cannot treat as outcasts the persons whose liberty it has once curtailed in the name of the law.

The glory of the American system, despite all the skepticism and self doubts which are at times to be expected, is that we have an open society in which many institutions, public and private, and individual citizens, public and private, can voluntarily work together for the common good. The open society relies heavily on the individual decisions and commitments of each one of us. It is based on the leadership which each one of us in our own way can give. In the complex order of the modern day it is often difficult to recapture the sense of community upon which so much depends. A realization of our common

purpose and necessity, and the importance of the values of human dignity, must bring us together. The problem of crime cannot be solved if we do not see the eventual reunification of the offender into the fruitful walks of our society as an imperative. In this endeavor there will be successes and failure. But each instance of success is a reason for celebration -- a reaffirmation of the ideals which give meaning to our own lives.

I congratulate you upon the work in which you are engaged. It is among the important items in the agenda for our times.

Crime

THE WHITE HOUSE

WASHINGTON

June 9, 1976

Dear Mr. Wanger:

Thank you for taking the time to express your views to me in writing on the death penalty.

As you are aware, the President supports the imposition of the death penalty under certain limited circumstances. As you also note, the issue is presently before the Supreme Court which has heard extensive arguments on the subject. The decision of the Court will, in all likelihood, occasion a general reexamination of the issue. Let me assure you that when that time comes your views, and the views of many others who have expressed them to the President, will be considered anew.

Thank you again for your time and your thoughtful counsel.

Sincerely,

Philip W. Buchen

Philip W. Buchen
Counsel to the President

Mr. Eugene C. Wanger
1202 Michigan National Tower
Lansing, Michigan 48933

THE WHITE HOUSE

WASHINGTON

May 12, 1976

MEMORANDUM FOR: KEN LAZARUS

FROM: PHIL BUCHEN P.

Attached is correspondence from a man who was referred to me by Rogers Morton dealing with the subject of death penalty.

I would appreciate your framing an answer for me.

Attachment

EUGENE G. WANGER
ATTORNEY AT LAW
1200 MICHIGAN NATIONAL TOWER
LANSING, MICHIGAN 48933
TELEPHONE 517 484-9497

May 7, 1976

Mr. Philip W. Buchen
The White House
Washington, D. C.

Dear Mr. Buchen:

Pursuant to our conversation yesterday, this letter is to summarize why the President should reconsider his position on the death penalty, and to briefly explain the enclosed supporting material.

The guts of the matter is that capital punishment is useless in fighting crime and damages law enforcement.

It is useless for two reasons: First because the death penalty is unnecessary to prevent paroled first-degree murderers from killing again. Contrary to popular belief, the facts show that there is almost no recidivism of any kind by this group of convicts. Second, because it fails to deter capital crime better than life imprisonment. Whether you are a policeman, prison guard or other citizen, the evidence clearly shows that you are no safer from being a victim of homicide where they have capital punishment.

It damages law enforcement in several ways. I think these three are the most significant: First, it severely impairs that certainty and swiftness of conviction and punishment, which is society's best deterrent to crime. Juries often refuse to convict where the penalty is death; where the penalty is life imprisonment, more convictions are possible with less delays. Second, it incites additional killings by the mentally disturbed, the weak-minded and the growing group of fanatical extremists who actually seek martyrdom in furtherance of their cause. Third, it occasionally executes the innocent by mistake. These horrors are immensly destructive to public confidence in government and to the morale of the officials who must administer our criminal laws.

Because the press so consistently treats capital punishment as a political rather than a factual issue, I emphasize that none of the above reasons are based on speculation. They are based on known facts, and the same kind of analysis successful businessmen and public officials use every day. This is shown by the following enclosures:

First is the 1971 pamphlet by the Washington Research Project entitled THE CASE AGAINST CAPITAL PUNISHMENT. It is the best pamphlet treatment I have seen in the more than fifteen years that I have been a student of the subject.

Second is the 1975 booklet LETTERS ON THE PENALTY OF DEATH, by the Michigan Committee Against Capital Punishment. It includes more Michigan information pertaining to the subject than is elsewhere available. This has special national significance because Michigan has been without the death penalty longer than any other state.

Third is my recent article on CAPITAL PUNISHMENT AND LAW ENFORCEMENT, published last September. It draws together almost all of the law enforcement aspects of the question, which I have not seen done in any other place.

Because of the approaching Supreme Court decision, I believe that a reconsideration of the President's position on capital punishment is urgent, and I stand ready to get you any further information or documentation on the subject that you desire.

With good wishes,

Sincerely,

Eugene G. Wanger

Eugene G. Wanger

EGW:m
Enclosures

THE WHITE HOUSE
WASHINGTON

Date 7/6/76

TO: PHIL BUCHEN

FROM: KEN LAZARUS

ACTION:

XX Approval/Signature

_____ Comments/Recommendations

_____ Prepare Response

_____ Please Handle

_____ For Your Information

_____ File

REMARKS:

I am advised that the President this morning requested a memorandum of this sort. I spoke with the AG's Office and Dick Parsons, neither of whom had any recommendations to make with regard to the options presented here.
The AG would like to see a copy of the memo before it goes in.
cc: Ed Schmults

HOLD FILE

THE WHITE HOUSE

WASHINGTON

July 6, 1976

Original returned to Ken to be redone.

MEMORANDUM FOR

THE HONORABLE EDWARD H. LEVI
ATTORNEY GENERAL

SUBJECT: Memorandum for the President on Capital Punishment

Attached is draft of a memorandum prepared for my signature and submission to the President. I would very much appreciate having your comments and suggestions before it is put into final form.

P.W.B.

Philip W. Buchen
Counsel to the President

Attachment

THE WHITE HOUSE

WASHINGTON

DRAFT
7/6/76

MEMORANDUM FOR THE PRESIDENT

FROM: PHILIP W. BUCHEN

SUBJECT: Capital Punishment

As you know, the Supreme Court on July 2 decided five cases involving the imposition of the death penalty. This is to present a brief background and analysis of these cases in the context of current Federal statutory law and to offer two options relative to the issue of capital punishment which are available to you at this time.

Present Federal Statutes

The death penalty is presently specified as an authorized sentence upon conviction under at least ten sections of Federal law, including offenses proscribing murder, treason, rape, air piracy, and delivery of defense information to aid a foreign government: 18 U.S.C. 34 (destruction of motor vehicles or motor vehicle facilities where death results); 18 U.S.C. 351 (assassination or kidnapping of a Member of Congress); 18 U.S.C. 794 (gathering or delivering defense information to aid a foreign government); 18 U.S.C. 1111 (murder in the first degree within the special maritime and territorial jurisdiction of the United States); 18 U.S.C. 1716 (causing the death of another by mailing injurious articles); 18 U.S.C. 1751 (Presidential and Vice Presidential murder and kidnapping); 18 U.S.C. 2031 (rape within the special maritime or territorial jurisdiction of the United States); 18 U.S.C. 2381 (treason); and 49 U.S.C. 1472(i) (aircraft piracy).

As drafted, however, the death penalty provisions in these sections, except for the recently revised provision relating to aircraft piracy which is discussed below, are unconstitutional under the U. S. Supreme Court's decision in the case of Furman v. Georgia [408 U.S. 238 (1972)].

The Furman Case

In Furman, a five-justice majority of the Supreme Court held that the imposition and carrying out of the death penalty in the cases in question would constitute "cruel and unusual punishment" in violation of the

Eighth and Fourteenth Amendments. The Court did not hold that capital punishment per se is unconstitutional. Rather, they concluded that the application of statutes leaving the imposition of the death penalty to the unfettered discretion of a judge or jury was constitutionally infirm.

Referring to the "wanton and freakish imposition" of the death penalty, which was noted with disfavor in the pivotal concurring opinions of Justices Stewart and White, the Chief Justice in his dissent noted:

* * *

> "Since the Court's decision turns on the assumption that the punishment of death is now meted out in a random and unpredictable manner, legislative bodies may seek to bring their laws into compliance with the Court's ruling by providing standards for juries and judges to follow in determining the sentence in capital cases or by more narrowly defining the crimes for which the penalty is to be imposed. If such standards can be devised or the crimes more meticulously defined, the result cannot be detrimental." (Emphasis added.) (at 396-401)

* * *

As articulated in the Furman decision, then, it appeared clear that the objection of the Supreme Court to the death penalty as a punishment for certain crimes went not to its nature but to the manner of its imposition.

Post-Furman Legislative Initiatives

In the wake of the Furman decision, there developed three different approaches to the reinstatement of the death penalty: (1) mandatory imposition of the death penalty upon conviction of certain offenses; (2) establishment of exclusive and determinative criteria to be applied by the sentencing authority to determine whether the penalty is to be imposed; and (3) establishment of designated criteria to serve as a guideline for the discretionary imposition of the penalty.

By a literal reading of Furman, some argued that mandatory death would be able to withstand the test of constitutionality by precluding

the exercise of any discretion on the part of the sentencing authority and thereby eliminating the danger of "wanton and freakish" application. Such penalties would attach to the conviction of specified offenses, e.g., murder, and would preclude the consideration of any mitigating circumstances that might justify a lesser punishment in a particular case. This concept was embraced in legislation enacted in a number of states.

The second approach would allow for the imposition of the death penalty upon conviction of certain classes of heinous offenses, but only when one or more of certain designated aggravating circumstances is found to exist (e.g., if the defendant were shown to be a hired killer) and none of certain specified mitigating circumstances is found to exist (e.g., immaturity, duress, etc.). This concept was advanced by the Department of Justice and incorporated into Pub. L. 93-366, enacted on August 5, 1974, which relates, however, only to murder incident to aircraft piracy [49 U.S.C. 1472(i)(n)(Supp. IV)]. Additionally, the Department supported the same concept in the context of a general capital punishment measure which passed the Senate in 1974 (S. 1401, 93d Cong.) by a margin of over 3 to 2, but received no attention in the House. The same approach is included in the bill to recodify the totality of Federal criminal law (S. 1, 94th Cong.), but has not been introduced as a separate measure in the current Congress.

The third approach to reinstatement of the death penalty involved the establishment of criteria to serve as a guide in the discretionary imposition of the penalty. This was the course originally adopted before the Furman opinion by the American Law Institute (ALI) in its Model Penal Code. Under this scheme even if several aggravating and no mitigating circumstances are found to exist, the death penalty need not be imposed. This discretionary element distinguishes the ALI approach from the Justice Department concept.

In your speech before the Federal Bar Association in Miami, Florida, on February 14, 1976, you stated:

* * *

> "I favor the use of the death penalty in the Federal criminal system in accordance with proper Constitutional standards. The death penalty should be imposed upon the conviction of sabotage, murder, espionage and treason. Of course, the maximum penalty should not be applied if there is duress or impaired mental capacity or similar

> extenuating circumstances. But in murders involving substantial danger to the national security, or when the defendant is a coldblooded hired killer, the use of capital punishment is fully justified."

* * *

Thus, you are on record in support of a limited reinstatement of the death penalty in accordance with the Supreme Court's teachings in Furman. More specifically, your statement is supportive of both the ALI and Justice approaches.

The Gregg Case

In the lead case decided last week [Gregg v. Georgia, 44 LW 5230], the Supreme Court held that a statutory scheme similar to that advanced by the ALI and applied to the offense of first-degree murder was consistent with the constitutional requirements announced in Furman. *

The Gregg case established the jury as the sentencing authority, but in a companion case the Court also sustained a statute allowing for imposition by a judge under the same standards [Profitt v. Florida, 44 LW 5256].

A third case involved a state statutory scheme which made reference to a series of aggravating circumstances but did not explicitly speak of mitigating circumstances. However, since the statute had been judicially construed to embrace the jury's consideration of such circumstances, its validity was also sustained [Jurek v. Texas, 44 LW 5262].

Two state capital punishment statutes were struck down by the Court. These required a mandatory death penalty upon conviction of first-degree murder and a range of other homicidal offenses without reference to any aggravating or mitigating circumstances. The Court concluded that both were inconsistent with the requirements established by Furman. [Woodson v. North Carolina, 44 LW 5267 and Roberts v. Louisiana, 44 LW 5281]

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* The Georgia statute contained provision for the automatic appellate review of death penalty cases. Although this does not appear to be a constitutional necessity, it should be noted that the Justice Department model contains a similar provision. Additionally, both the Georgia statute and the Justice Department bill required a bifurcated trial and a criminal evidentiary standard, i.e., "beyond a reasonable doubt" at the sentencing proceeding.

Options

The Supreme Court's ruling is entirely consistent with your expressed views on the matter of capital punishment. It also logically invites enactment of legislation (incorporating either the ALI or Justice Department model) to reinstate the death penalty as an available sanction on the Federal level. The question now posed is to what extent do you personally wish to become involved in an attempt to expedite Congressional consideration of an appropriate legislative proposal? Two options arise:

1. Merely have the Press Office issue a statement supporting the Court's decision and calling for the enactment of appropriate legislation restoring the death penalty on the Federal level.

2. Schedule a meeting with the Attorney General and Counsel's Office to review specific legislative proposals and to explore further your role in enacting an appropriate measure.

Approve: Option 1 _____

Option 2 _____

THE WHITE HOUSE

WASHINGTON

7/9 - Copy sent atty. Gen'l

July 8, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: PHILIP W. BUCHEN P.

SUBJECT: Capital Punishment

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Referring to the "wanton and freakish imposition" of the death penalty, which was noted with disfavor in the pivotal concurring opinions of Justices Stewart and White, the Chief Justice in his dissent noted:

* * *

> "Since the Court's decision turns on the assumption that the punishment of death is now meted out in a random and unpredictable manner, legislative bodies may seek to bring their laws into compliance with the Court's ruling by providing standards for juries and judges to follow in determining the sentence in capital cases or by more narrowly defining the crimes for which the penalty is to be imposed. If such standards can be devised or the crimes more meticulously defined, the result cannot be detrimental." (Emphasis added.) (at 396-401)

* * *

As articulated in the Furman decision then, it appeared clear that the objection of the Supreme Court to the death penalty as a punishment for certain crimes went not to its nature but to the manner of its imposition.

Post-Furman Legislative Initiatives

In the wake of the Furman decision, there developed three different approaches to the reinstatement of the death penalty: (1) mandatory imposition of the death penalty upon conviction of certain offenses; (2) establishment of exclusive and determinative criteria to be applied by the sentencing authority to determine whether the penalty is to be imposed; and (3) establishment of designated criteria to serve as a guideline for the discretionary imposition of the penalty.

By a literal reading of Furman, some argued that mandatory death would be able to withstand the test of constitutionality by precluding

the exercise of any discretion on the part of the sentencing authority and thereby eliminating the danger of "wanton and freakish" application. Such penalties would attach to the conviction of specified offenses, e.g., murder, and would preclude the consideration of any mitigating circumstances that might justify a lesser punishment in a particular case. This concept was embraced in legislation enacted in a number of states.

The second approach would allow for the imposition of the death penalty upon conviction of certain classes of heinous offenses, but only when one or more of certain designated aggravating circumstances is found to exist (e.g., if the defendant were shown to be a hired killer) and none of certain specified mitigating circumstances is found to exist (e.g., immaturity, duress, etc.). This concept was advanced by the Department of Justice and incorporated into Pub. L. 93-366, enacted on August 5, 1974, which relates, however, only to murder incident to aircraft piracy [49 U.S.C. 1472(i)(n)(Supp. IV)]. Additionally, the Department supported the same concept in the context of a general capital punishment measure which passed the Senate in 1974 (S. 1401, 93d Cong.) by a margin of over 3 to 2, but received no attention in the House. The same approach is included in the bill to recodify the totality of Federal criminal law (S. 1, 94th Cong.), but has not been introduced as a separate measure in the current Congress.

The third approach to reinstatement of the death penalty involved the establishment of criteria to serve as a guide in the discretionary imposition of the penalty. This was the course originally adopted before the Furman opinion by the American Law Institute (ALI) in its Model Penal Code. Under this scheme even if several aggravating and no mitigating circumstances are found to exist, the death penalty need not be imposed. This discretionary element distinguishes the ALI approach from the Justice Department concept.

In your speech before the Federal Bar Association in Miami, Florida, on February 14, 1976, you stated:

* * *

> "I favor the use of the death penalty in the Federal criminal system in accordance with proper Constitutional standards. The death penalty should be imposed upon the conviction of sabotage, murder, espionage and treason. Of course, the maximum penalty should not be applied if there is duress or impaired mental capacity or similar

extenuating circumstances. But in murders involving substantial danger to the national security, or when the defendant is a coldblooded hired killer, the use of capital punishment is fully justified."

* * *

Thus, you are on record in support of a limited reinstatement of the death penalty in accordance with the Supreme Court's teachings in Furman. More specifically, your statement is supportive of both the ALI and Justice approaches.

The Gregg Case

In the lead case decided last week [Gregg v. Georgia, 44 LW 5230], the Supreme Court held that a statutory scheme similar to that advanced by the ALI and applied to the offense of first-degree murder was consistent with the constitutional requirements announced in Furman.* The Court expressly reserved judgment with respect to possible application of the sanction to other crimes, e.g., rape and kidnapping.

The Gregg case established the jury as the sentencing authority, but in a companion case the Court also sustained a statute allowing for imposition by a judge under the same standards [Profitt v. Florida, 44 LW 5256].

A third case involved a state statutory scheme which made reference to a series of aggravating circumstances but did not explicitly speak of mitigating circumstances. However, since the statute had been judicially construed to embrace the jury's consideration of such circumstances, its validity was also sustained [Jurek v. Texas, 44 LW 5262].

Two state capital punishment statutes were struck down by the Court. These required a mandatory death penalty upon conviction of first-degree murder and a range of other homicidal offenses without reference to any aggravating or mitigating circumstances. The Court concluded that both were inconsistent with the requirements established by Furman. [Woodson v. North Carolina, 44 LW 5267 and Roberts v. Louisiana, 44 LW 5281]

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* The Georgia statute contained provision for the automatic appellate review of death penalty cases. Although this does not appear to be a constitutional necessity, it should be noted that the Justice Department model contains a similar provision. Additionally, both the Georgia statute and the Justice Department bill required a bifurcated trial and a criminal evidentiary standard, i.e., "beyond a reasonable doubt", at the sentencing proceeding.

Options

The Supreme Court's ruling is entirely consistent with your expressed views on the matter of capital punishment. It also logically invites enactment of legislation (incorporating either the ALI or Justice Department model, both of which are constitutional under Gregg) to reinstate the death penalty as an available sanction on the Federal level. The question now posed is to what extent do you personally wish to become involved in an attempt to expedite Congressional consideration of an appropriate legislative proposal? Two options arise:

1. Direct the Attorney General to forward a bill to Congress incorporating the features of S. 1401 as passed by the Senate during the 93d Congress and to work with the key committees of Congress on a priority basis toward enactment. [Supported by the Attorney General and Counsel's Office.]

2. Schedule a meeting with the Attorney General and Counsel's Office to review specific legislative proposals and to explore further your role in enacting an appropriate measure.

Approve: Option 1 _____

Option 2 _____

THE WHITE HOUSE

WASHINGTON

July 31, 1976

MEMORANDUM FOR

THE ATTORNEY GENERAL

I have reviewed the attached 1970 memorandum by former Solicitor General Erwin Griswold on the death penalty cases which Doug Marvin sent to me. In Griswold's memorandum, he indicated that in 1976 there were over 600 persons under sentence of death within the United States and that he was very concerned about the spectre of several hundred executions taking place within a short period of time.

While Justice Powell's ruling stays executions pending a decision on rehearing, it is possible that we eventually may be faced with a large number of executions taking place within a short time frame. However, I disagree with Griswold's conclusion that the Attorney General should emphasize the "responsibility of the chief executives of the states to take account of the special situation which is presented in the exercise of executive clemency." It is my opinion that if and when all avenues of appeal to the Supreme Court have been finally concluded and rejected, the governors of the individual states should make decisions on executive clemency without public or private advice from the Federal government. Doug indicated to me in his memorandum that you did not believe that Griswold's proposal was desirable. I thought you would want to know that I agree with your assessment.

Philip W. Buchen
Counsel to the President

THE WHITE HOUSE
WASHINGTON

September 1, 1976

FOR: PHIL BUCHEN
JACK MARSH
JIM CANNON
RON NESSEN
DICK PARSONS

FROM: KEN LAZARUS

FYI

Crime
Bob Feling

Gun Control in the District of Columbia

Some confusion has arisen regarding a series of events relating to a gun control law recently enacted by the Council of the District of Columbia and approved by the Mayor. Hopefully, this will serve to clarify the series of events which may be outlined as follows:

- Act.1-142, approved by Mayor Washington on July 23, 1976, would prohibit the possession of a handgun by any person within the District of Columbia on and after its effective date, except for police officers, special officers, or persons owning handguns which had been properly registered under the old law.

- Act.1-142 was grounded upon the authority of the District ". . . to make and modify . . . and enforce /certain/ usual and reasonable police regulations . . ." /D. C. Code, Sec. 1-224/. Congress amplified this grant of authority in D. C. Code, Sec. 1-227 which provides that ". . . the District . . . is authorized and empowered to make . . . reasonable police regulations . . . as the /D. C./ Council may deem necessary for the regulation of firearms, projectiles, explosives, or weapons of any kind". (Emphasis added)

- On August 27, Congress forwarded to the President, H.R. 12261 which would postpone for two years more the authority to be delegated to the D. C. government by Section 602 (a)(9) of Pub. L. 93-198 /the so-called "Home Rule Act"/. Section 602 (a)(9) authorizes the D. C. government to enact amendments to title 22 or 24 of the D. C. Code /relating to crimes and treatment of prisoners/ after January 3, 1977.

- H.R. 12261 also contains the so-called "Dent Amendment" /after Rep. John Dent (D.-Pa.)/ which purports to disapprove of Act.1-142 and thus make the local gun control law a nullity. However, under Section 602 (e)(1) of the "Home Rule Act", the exclusive method of disapproving an enactment of the D. C. government is by "concurrent resolution" within a period of 30 legislative days after final D. C. action. Therefore, the so-called "Dent Amendment" itself would appear to be a nullity.

- On September 1, the House is scheduled to take up H. Con. Res. 694 to disapprove of Act. 1-142. Under the "Home Rule Act", this concurrent resolution would also require the approval of the Senate but would not come to the President for his signature.

- The President has not, to date, expressed himself on any of the particulars discussed herein.

Since H. Con. Res. would not require Presidential approval, there is simply no gun control issue currently under review at the White House. September 7 is the last day for action on H.R. 12261.

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: December 7, 1976 Time:

FOR ACTION: cc (for information):

Phil Buchen
Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date: Tuesday, December 7, 1976 Time: 2:00 P.M.

SUBJECT: Jim Cannon memo, 12/6/76 re
60 Minutes on the Victims of Crime

ACTION REQUESTED:

____ For Necessary Action

____ Prepare Agenda and Brief

__X__ For Your Comments

__X__ For Your Recommendations

____ Draft Reply

____ Draft Remarks

REMARKS:

Suggest Attorney General be asked to contact
60 Minutes, since the erroneous remark relates
to the Department of Justice.

P.W.B.

Philip W. Buchen
Counsel to the President

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Jim Connor
For the President

THE WHITE HOUSE

WASHINGTON

INFORMATION

December 6, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: 60 Minutes on the Victims of Crime

As you requested, I looked into the report on the 60 Minutes television show on the victims of crime. Morley Scafer's quote at the very end of the show was: "The chief opposition came from the Justice Department on financial grounds" (script at Tab A).

In your proposal to the Congress, you advocated a Federal Victims Compensation Program for the victims of federal crimes. The first year cost was estimated at about $7.5 million.

However, the Senate passed a bill which:

(a) established a Federal Victims Crime Program, such as you advocated; and

(b) authorized states to utilize LEAA bloc grant monies to fund state victims compensation programs on a 90% (federal)/10% (state) basis.

LEAA Administrator Velde testified in favor of your program. However, he testified against federal funding of state and local victims compensation programs, the beginning cost of which would have been about $20 million annually.

I recommend that someone on your behalf make the point to 60 Minutes that you supported the principle of compensating victims and proposed specific federal funds for it.

We could ask Attorney General Levi to do this or I could do it for you.

Ask Attorney General Levi to contact 60 Minutes _____

Cannon to contact 60 Minutes _____

Discuss _____

"VICTIMS"

OPEN

SAFER: We don't have to remind you that this country is in the middle of a wave of violent crime -- all the statistics do is reconfirm what we know, only too well.

With this nightly news of muggings, hold-ups, rapes and murders, more and more attention has been focused on reforming prisons...on rehabilitation of violent offenders. In a sense, criminals have been cast as a deprived and underprivileged minority.

All this attention has tended to cast into the shadows another group of Americans who are closely related to criminals and crime. The victims. They make very few demands -- very little noise. Often they are too hurt -- emotionally and physically to speak out for their rights.

It's something worth thinking about...because one thing all of us share is...the chance to become the victim of a crime, any time, any place.

For example, a shopping center in the suburbs of Minneapolis.

60 MINUTES

"VICTIMS"

VOL. IX, No. 11
FINAL CUT
12/5/76

SAFER:

IN NOVEMBER, 1974, THIS WAS A BASEMENT RECORD SHOP, THE KIND OF PLACE THAT YOUNG PEOPLE HANG OUT IN. ONE SATURDAY NIGHT THERE WERE FOUR PEOPLE DOWN HERE, A YOUNG WOMAN, A CLERK, AND THREE YOUNG MEN.

ONE OF THE MEN AFTER BROWSING AROUND LEFT, WENT ACROSS THE STREET, BOUGHT HIMSELF A HAMB BROUGHT IT BACK HERE, SAT DOWN ON THE TOP STEP AND ATE IT. WHEN HE WAS FINISHED HE PULLED OUT A GUN AND A MACHETE. WALKED BACK DOWN HERE SHOT ONE OF THE YOUNG MEN, KILLED HIM INSTANTLY; SHOT THE OTHER FOUR TIM AND CRIPPLED HIM FOR LIFE, AND THEN HE CHASED THE CLERK, THE YOUNG WOMAN, BACK HERE, BACK INTO THIS BACK ROOM....HE SHOT HER FOUR TIMES

WHAT WERE THE PERMANENT INJURIES?

JENNY RANDELL:

WELL, MY ARM'S PARALYZED.

SAFER:

IT'S YOUR LEFT ARM?

JENNY RANDELL:

YEAH. AND MY VOICE, IT USED TO BE A LOT WORSE THAN IT IS NOW.

SAFER:

WHAT HAPPENED?

JENNY RANDELL:

HIT ONE OF THE VOCAL CORDS, GOT SEVERED. AND I DON'T KNOW ALL THE SCARS I GOT. YOU KNOW,....

KEVIN FINNEMAN:

HE COME BACK AFTER ME BECAUSE HE'D SEEN ME UP AND HE STUCK THE GUN UP TOWARDS MY HEAD AND I DUCKED A SHOT. LANDED ON MY STOMACH. AND HE STUCK ONE --STUCK THE GUN UP TO MY BAC AND SHOT ME SQUARE IN THE SPINAL CORD, WHICH PARALYZED ME.

SAFER:

TWO PEOPLE SCARRED HORRIBLY FOR LIFE, ONE YOUNG MAN DEAD, AND AS IN MOST CASES LIKE THIS ONE, A KILLER STILL ON THE LOOSE.

SAFER: (CONTINUED)

IN THE UNLIKELY EVENT THAT HE IS CAUGHT, THE STATE WILL BEND EVERY EFFORT TO CURE HIM, TO MAKE HIM A BETTER MAN. BUT WHAT ABOUT THE VICTIMS?

KEVIN FINNEMAN, FOR EXAMPLE, HE WILL NEVER WALK AGAIN.....

KEVIN IS A STRONG,DETERMINED TO BE INDEPENDENT YOUNG MAN. HIS NEIGHBORS HELD A DANCE TO RAISE MONEY FOR THIS ESPECIALLY EQUIPPED VAN. HE'S STUDYING MECHANICAL DRAFTING. AND IF YOU CAN BELIEVE IT, KEVIN IS LUCKY. HE LIVES IN MINNESOTA, ONE OF SIXTEEN STATES THAT PROVIDES SOME COMPENSATION TO VICTIMS OF CRIMES. THE COMPENSATION BOARD GAVE HIM THE MAXIMUM, TEN THOUSAND DOLLARS TO COVER MEDICAL BILLS, REHABILITATION AND THE LOSS OF HIS LEGS FOREVER. IT IS PAID IN MONTHLY INSTALLMENTS. LAST MONTH IT RAN OUT. KEVIN FINNEMAN, AGE TWENTY-ONE, IS PAID IN FULL.

SAFER:

NEW YORK STATE TOO, HAS A VICTIM COMPENSATION BOARD. IT HEARS APPEALS. AND LIKE MOST BO IT AMOUNTS TO A VICTIM'S COURT. IN ORDER TO COLLECT REPARATIONS, THE VICTIM MUST PROVE HIS INNOCENCE, MUST PROVE HE OR SHE HAS NOT CONTRIBUTED TO THE CRIME. AND MOST STATES VIEW COMPENSATION AS A FORM OF CHARITY RATHER THAN A RIGHT, FORCING THE VICTIM TO DEMONSTRATE FINANCIAL NEED. IF THE VICTIM ALREADY HAS INSURANCE AND MEDICAL COVERAGE AND WORKMEN'S COMPENSATION, HE COLLECTS VIRTUALLY NOTHING. AND JUST LISTEN TO THE RESULTING STATISTICS.....

ONLY FOUR OF A HUNDRED VICTIMS ARE ELIGIBLE. AND ONLY A FIFTH OF THEM, FEWER THAN ONE PERS IN A HUNDRED, MAKE APPLICATION. THEY EITHER DO NOT KNOW ABOUT COMPENSATION OR DO NOT WANT THEIR LIVES INVESTIGATED.

JENNY, THE CLERK AT THE MINNEAPOLIS RECORD STORE, RECEIVED ONLY NINE HUNDRED DOLLARS FROM THE MINNESOTA BOARD. THAT'S BECAUSE JENNY WAS ELIGIBLE FOR WORKMEN'S COMPENSATION

SAFER: (CONTINUED)

BUT FINANCIAL PROBLEMS ARE NOT THE ONLY PROBLEMS THAT VICTIMS HAVE. JENNY WAS AN EXPERT WATER SKIER. NOW SHE FINDS IT DIFFICULT TO WALK. HER SENSE OF BALANCE HAS BEEN IMPAIRED. AT TWENTY-ONE, JENNY RAN MUST TRY TO BUILD A NEW LIFE OUT OF A BROKEN BODY.

WAS THERE ANY OTHER STATE AID OR STATE PROGRAM TO HELP YOU, TO REHABILITATE YOU?

JENNY RANDELL:

NO. THERE WASN'T.

SAFER:

NO PROGRAM TO TEACH YOU A JOB OR A TRADE OR EDUCATE YOU?

JENNY RANDELL:

NOTHING SPECIAL, NO. THEY HAVE THE VO-TECH SCHOOLS, BUT THAT'S FOR EVERYONE. THEY DON'T HAVE IT JUST FOR VICTIMS OF CRIME.

SAFER:

WHAT ABOUT ANY PHYSIOTHERAPY, THAT KIND OF THING?

JENNY RANDELL:

NO.

SAFER:

. . . To get you over your current problems?

JENNY RANDELL:

No, there's nothing.

SAFER:

Are you bitter in any way Jenny, that I suppose you could go into any prison in the country and see fantastic technical schools, trade schools and all kinds of methods being used to "rehabilitate" people. . .

JENNY RANDELL:

Yes, I am.

SAFER:

. . .And yet, for you, as a victim, nothing?

JENNY RANDELL:

Yeah, that bothers me quite a bit. They're trying to help them so much, but they -- you know, they don't really do anything for anybody else. You know. They pay more attention to them, they're more worried about them.

JIM FOGARTY:

There stands the victim out in the street, badly beaten or rendered destitute, or incapacitated emotionally or physically in some way.

FOGARTY: (CONTINUED)

NO ATTENTION HAD BEEN PAID TO THE VICTIM. AND I THINK ANYONE WHO HAS EVEN THAT AMOUNT OF HUMAN NATURE IN THEM CERTAINLY WOULD FEEL THAT THAT REQUIRES SOME KIND OF ATTENTION PROMPTLY.

SAFER:

JIM FOGARTY IS THE SENIOR VICTIM ADVOCATE IN THE FORT LAUDERDALE, FLORIDA, POLICE DEPARTMENT. IT'S ONE OF THE FEW SUCH PROGRAMS IN THE COUNTRY. HE'S A ONE-MAN BAND TRYING TO GIVE LEGAL ADVICE, DO SOCIAL WORK AND BE, GENERALLY, A HELPING HAND TO VICTIMS. IT'S A PITIFULLY SMALL, PITIFULL BUDGETED OPERATION. YET, HE IS A GREAT HELP TO THOSE VICTIMS HE GIVES COUNSEL TO. . . VICTIMS LIKE RUTH PITT, WHOSE MISFORTUNE IT WAS TO STOP INTO A TAVERN OWNED BY SOME FRIEND A ROBBERY TOOK PLACE AND SHE WAS STRUCK IN THE FACE BY A RICOCHETING BULLET.

RUTH PITT:

WHEN I WAS IN THE BAR AND THE MAN CAME IN AND SHOT, THE ONE BULLET BOUNCED OFF THE BAR, HIT MY CHEEK, CUTTING ALL THE NERVES ON THE SIDE OF MY FACE....WENT THROUGH MY EAR WHICH

RUTH PITT: (CONTINUED)

HAS MADE ME STONE DEAF IN THE ONE EAR AND LODGED AT THE BASE OF MY SKULL.

JIM FOGARTY:

(ON PHONE) JIM FOGARTY, VICTIM ADVOCATE OFFIC OF THE POLICE DEPARTMENT.....

SAFER:

RUTH PITT WAS DESTITUTE AND WOULD HAVE REMAINE SO HAD JIM FOGARTY NOT STEPPED IN AND CUT THROUGH THE RED TAPE, AND FOUGHT THREE APPEAL BEFORE HE WON FOR HER, A SOCIAL SECURITY DISABILITY PENSION OF TWO HUNDRED AND TWENTY DOLLARS A MONTH.

RUTH PITT:

I FOUGHT SOCIAL SECURITY BY MYSELF BY GOING DOWN THERE AND BEING HASSLED, THE FOOD STAMPS WAS THE SAME WAY. I WAS HASSLED AND -- AND SO....AND I WAS READY TO GIVE UP, I REALLY WA NO ONE HAS ANY IDEA OF WHAT IT'S LIKE UNTIL YOU GO THROUGH IT.

SAFER:

THERE ARE SOME FEDERAL FUNDS DESIGNED TO HELP VICTIMS, MONEY THAT COMES FROM LEAA, THE LAW ENFORCEMENT ASSISTANCE ADMINISTRATION. BUT THAT MONEY CANNOT GO DIRECTLY TO VICTIMS.

SAFER: (CONTINUED)

IT GOES INTO SUCH THINGS AS COURTHOUSE AMENITI LOUNGES FOR WITNESSES, PEOPLE TO HELP WITNESSE THROUGH THE LAW'S DELAYS.

BUT EVEN THIS INDIRECT HELP IS MINISCULE, ONLY SIX MILLION DOLLARS FOR THE ENTIRE COUNTR AND WHILE ALL CRIMES PRODUCE VICTIMS, FEW CRIMES RESULT IN PROSECUTION. ONLY ABOUT ONE IN TEN. WHEN THERE IS A REAL LIVE CRIMIN OUR JUSTICE SYSTEM IS DESIGNED TO ENSURE THAT HIS RIGHTS ARE PROTECTED. AND ONCE A PROSECUTION IS MADE, OUR PENAL SYSTEM SPENDS BILLIONS TO EDUCATE, REHABILITATE OR SIMPLY OCCUPY THE TIME OF THE GUILTY.

BUT ONCE A CASE IS CLOSED, WE RARELY HEAR ANYMORE ABOUT THE CRIMINAL AND HIS VICTIM. WE DECIDED TO FOLLOW UP ON ONE CRIME, TO LOOK INTO THE LIVES OF BOTH MEN.

THIS MAN, JAIME FIGUEROA, WAS SENTENCED TO TEN YEARS IN A NEW YORK STATE MEDIUM SECURITY PRISON. TWO YEARS AGO, FIGUEROA AND A FRIEND GOT A GUN AND HELD UP THIS MAN IN A NEW YORK

SAFER: (CONTINUED)

SUBWAY. HIS NAME IS SYLVESTER DAVIS, AGE THIRTY-NINE, SHOT IN THE HEAD AT CLOSE RANGE RESULTING IN BLINDNESS AND SOME BRAIN DAMAGE. HE WAS A WELL-PAID CONSTRUCTION WORKER, NOW HE VEGETATES. HE DID GET VICTIM COMPENSATION. HIS WIFE DISCOVERED HE COULD ALMOST BY ACCIDENT BECAUSE SHE WORKED FOR AN ANSWERING SERVICE THAT WORKED FOR A LAWYER WHO LED THE DAVIS' THROUGH THE PAPERWORK JUNGLE. HIS BENEFITS RUN TO JUST OVER FIVE HUNDRED DOLLARS A MONTH. AS A WORKING MAN HE BROUGHT HOME NEAR A THOUSAND.

MR. DAVIS:

SO I WENT DOWN IN THE SUBWAY STATION. PUT MY TOLL IN THE SLOT. WALKED ON IN.

MR. FIGUEROA:

WE WENT TO THE TRAIN STATION. WE WAS ACTUALLY GOING TO TAKE OFF A PIMP, A SO-CALLED PIMP.

SAFER:

YOU WERE GOING TO ROB A PIMP?

MR. FIGUEROA:

YEAH, BECAUSE WE KNEW HE HAD MONEY THE WAY HE WAS DRESSING, HAD A LOT OF WHITE COAT..... BUT IT SO HAPPENED THAT THIS MAN GOT IN THE

FIGUEROA: (CONTINUED)

WAY.

DAVIS:

HE GRABBED ME FROM BEHIND. AND I TWIST, AND I TURNED, SO I GOT A LOOSE FROM HIM. AND JUST AS QUICK AS I'D GOTTEN A LOOSE FROM HIM AND I LOOKED AT HIM AND THE OTHER GUY SAID, "SHOOT, SHOOT."

FIGUEROA:

WE DIDN'T WANT TO SHOOT. WE TOLD HIM. BUT HE KEPT COMING AT US, YOU KNOW, HE JUST WANTED TO GET US. YOU KNOW, HE GOT TO THE STATE WHERE IT WAS HIM OR US. THE WAY HE WAS FIGHTING, BECAUSE HE WAS BIGGER THAN US.

SAFER:

BUT THERE WERE TWO OF YOU, HE WASN'T ARMED.

FIGUEROA:

RIGHT. THERE'S TWO OF US, WE'RE YOUNG, WE'RE IGNORANT, WE'RE SCARED. YOU KNOW, WE NEED, WE'RE HUNGRY.....YOU KNOW, WE WANT TO GET MONEY TO EAT.

DAVIS:

I DIDN'T KNOW WHERE MORE MONEY WAS COMING FROM SO I HAD TO TRY AND WORK FOR IT. BUT I

DAVIS: (CONTINUED)

WOULDN'T LET ANYBODY COME UP TO ME AND TAKE IT FROM ME.

FIGUEROA:

HE WANTED TO KILL US, THAT'S HOW IT SEEMS TO ME. SO I SAID, "IT'S EITHER HIM OR ME." AND I DIDN'T WANT TO DIE SO YOUNG. I DIDN'T WANT TO GET HURT SO YOUNG.

SAFER:

BEFORE THIS HAPPENED WERE YOU A PRETTY STRONG FELLOW?

DAVIS:

VERY STRONG.

MRS. DAVIS:

THEY HAVE TAKEN MY HUSBAND AWAY FROM ME IN EVERY WAY. LIKE I NEED HIM AND HE'S NOT THERE.

SAFER:

SINCE YOU'VE BEEN OUT OF THE HOSPITAL, HAS ANYONE -- HAS A THERAPIST COME AROUND, HAS A SOCIAL WORKER COME AROUND, HAS THE STATE BEEN AROUND IN ANY WAY TO TRY AND ASK "DO YOU NEED ANYTHING? CAN WE HELP YOU IN ANY WAY?"

MRS. DAVIS:

NO WAY. NO, NOTHING.

FIGUEROA:

I WENT AND SPOKE TO MY COUNSELOR AND I TOLD HIM THAT I WANTED TO GO TO SCHOOL AND I WANTED TO HAVE A VOCATIONAL SHOP, BECAUSE I KNEW THAT IF I DIDN'T DO SOMETHING FOR MYSELF WHILE BEING IN HERE, WHEN I GO OUT THERE, YOU KNOW, I'M JUST GONNA FALL BACK INTO THESE CONDITIONS. AND WHEN I WENT TO THE SHOP --

SAFER:

YOU WENT TO SCHOOL FIRST, THOUGH, RIGHT?

FIGUEROA:

YEAH, SCHOOL AND SHOP....

SAFER:

THEY TRIED TO TEACH JAIME FIGUEROA A TRADE, WELDING. THE INSTRUCTOR SAYS HE SHOWED SOME APTITUDE. BUT HE CHOSE TO DROP OUT. HAD HE COMPLETED THE COURSE HE COULD EARN UP TO TWELVE DOLLARS AN HOUR WHEN HE'S RELEASED FRON PRISON.

THERE ARE OTHER TRADES OPEN TO FIGUEROA, BUT NONE INTEREST HIM. THERE'S ALSO A HIGH

SAFER: (CONTINUED)

SCHOOL WITHIN THE PRISON AND SOME COLLEGE DEGREE COURSES. FIGUEROA WENT TO SCHOOL BUT THEN DECIDED THAT HE WOULD DROP OUT OF THAT AS WELL. THE STATE GIVES HIM A CHOICE OF THE KIND OF WORK HE WILL DO IN PRISON AND HE CHOOSES THIS. . .JANITOR WORK IN THE SCHOOL BUILDING. IT COSTS THE STATE FIFTEEN THOUSAND DOLLARS A YEAR TO KEEP JAIME FIGUEROA, BUT HE IS NOT IMPRESSED WITH THE FACILITIES.

FIGUEROA:

OKAY, THEY GAVE ME A PAIR OF PANTS TO WEAR, OKAY. BUT WHAT DO THEY GIVE ME TO REHABILIT ME SO THAT WHEN I GO OUT THERE I WON'T DO THE SAME THING?

SAFER:

THEY TRIED TO TEACH YOU A TRADE.

FIGUEROA:

A TRADE? A TRADE, ANYBODY WITH A TRADE CAN GO OUT THERE AND COMMIT CRIMES AGAIN, BECAUSE YOU CAN USE THE TRADE TO COVER UP YOUR CRIMES SO WHAT'S A TRADE. A TRADE AIN'T NOTHING IF THEY DON'T GIVE YOU SOMETHING FOR YOUR MIN

SAFER:

DOES IT BOTHER YOU THAT THOSE MEN INSIDE NOW, ARE BEING OFFERED OPPORTUNITY TO GO TO SCHOOL, OPPORTUNITY TO LEARN A TRADE? THAT THE STATE IS PUTTING THAT KIND OF EFFORT INTO REHABILITATING, AS THEY CALL IT, THOSE MEN?

MRS. DAVIS:

I FEEL THAT IF THEY CAN DO IT FOR THEM THEN THEY SHOULD DO IT FOR US. BECAUSE NUMBER ONE, WE WERE BOTH WORKING PEOPLE ALL OUR LIVES AND I WOULDN'T SAY THEY OWE US, YOU KNOW, ANYTHING, BUT AT LEAST THEY SHOULD - IF THEY CAN OFFER THAT TO THEM, THEN, YOU KNOW, DO THE SAME TO SOMEONE THAT ARE UNPROTECTED.

SAFER:

DON'T YOU THINK THAT IT'S KIND OF UNFAIR THAT HERE YOU ARE IN HERE WITH THE STATE SPENDING A GREAT DEAL OF MONEY ON YOU WITH SCHOOLS, AND HOSPITALS AND A WARM PLACE TO SLEEP, AND ALL THAT, AND THERE'S MR. DAVIS OUT THERE VIRTUALL BLIND, THE STATE'S DOING ALMOST NOTHING FOR HI

FIGUEROA:

YOU SEE, IT'S NOT A POINT OF BEING FAIR OR NOT, OKAY. IF THE STATE PUT ME HERE SO THAT I COULD SEE MY WRONG. SO THAT WHEN I GO OUT THERE, THEN I WON'T DO IT AGAIN..... THEN IT'S FAIR FOR ME TO RECEIVE ALL THIS BECAUSE I KNOW WHAT I DONE WRONG AND I KNOW IT WAS WRONG, AND THERE'S NO WAY IN THE WORLD I COULD REPAY MY WRONG TO THAT PERSON BECAUSE HOW CAN I GIVE THAT MAN BACK HIS EYES, HIS EYESIGHT? I CAN'T DO THIS, I'M NOT GOD. ONLY GOD COULD REPAY WHAT I'VE DONE WRONG.

SAFER:

THE GOVERNMENT TAKES MUCH THE SAME ATTITUDE TO VICTIMS AS JAIME FIGUEROA. OF THE FIFTEEN BILLION DOLLARS SPENT EACH YEAR ON CRIMINAL JUSTICE, POLICE, COURTS, PRISONS AND REHABILI TATION PROGRAMS, LESS THAN ONE PERCENT GOES TO HELPING VICTIMS OF CRIMES.

CLOSE

SAFER: A federal bill that would help states pay victims compensation and promote more compensation boards failed once again to clear the House of Representatives in the last Congress. The chief opposition came from the Justice Department on financial grounds.

For filing

THE WHITE HOUSE

WASHINGTON

December 9, 1976

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR: JIM CANNON

FROM: JIM CONNOR JEC

SUBJECT: 60 Minutes on the Victims of Crime

The President reviewed your memorandum of December 6 on the above subject and made the following decision:

"Ask Attorney General Levi to contact 60 Minutes"

Please follow-up with appropriate action.

cc: Dick Cheney
Phil Buchen ✓