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THE WHITE HOUSE
WASHINGTON

September 18, 1976

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR: JIM CANNON
FROM: JIM CONNOR
SUBJECT: Crime Speech

The President reviewed your memorandum of September 17 on the above subject and made the following notations:

"Justice's suggestions need more discussions.

Dick Parson's ideas are excellent and he should work with speech writers. Maybe a draft by him would be a good starting point.

I'm not sure LEAA wouldn't be well advised to support his third point.

Bob Goldwin may have a point but what have States and others done? "

Please follow-up with appropriate action.

cc: Dick Cheney
Bob Hartmann

THE WHITE HOUSE
WASHINGTON

Jim Cannon

Justice's suggestions need
more discussion.

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THE WHITE HOUSE

WASHINGTON

INFORMATION

September 17, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: Crime Speech

Here are three background papers that may be helpful for your crime speech before the International Police Chiefs Association in Miami on Monday, September 27.

1. In your Crime Message you directed the Attorney General to review the lack of conformity and apparent fairness in Federal sentencing procedures. The Attorney General has carried out your directive and submitted a memorandum (Tab A) setting forth two proposals to reform the Federal criminal justice sentencing process:

In brief, the Attorney General proposes --

- the creation of a Federal Sentencing Commission to develop guidelines for sentences to be imposed upon conviction of specific crimes; and
- the abolition of the Federal parole system.

2. Dick Parsons, at my request, has prepared a memorandum suggesting actions that might be taken to reduce the level of crime (Tab B). In brief, Parsons points out --

- local police are arresting more violators than prosecutors and courts can handle and jails can hold;
- most crime is committed by repeat offenders, and we might focus more resources through the LEAA on prosecuting and jailing habitual criminals;

- since almost half the crime problem is drug-related, we can focus on what you have done and proposed to do to curb drugs; and
- one possible new step might be the initiation of a national sports and recreation program to provide unemployed youth, particularly in urban areas, with an alternative to crime. In some respects, this parallels your earlier proposals for a major National Olympic Sports Program.

3. Bob Goldwin prepared a memorandum which focuses on the need for more State prison facilities (Tab C).

I am sending copies of these papers to Doug Smith, for your speechwriters, and to Jim Lynn, with whom I will discuss these suggestions.



Office of the Attorney General
Washington, D. C. 20530

MEMORANDUM ON SENTENCING

This memorandum outlines proposals to reform the sentencing process in the federal criminal justice system and seeks the President's direction that the Department of Justice prepare draft legislation to implement them.

In his Message to Congress on Crime the President proposed a system of mandatory minimum sentences for persons convicted of certain crimes. This proposal would rule out the possibility of parole, but it contained provisions that would allow a judge to impose less than the mandatory minimum sentence if he made a written finding that certain extenuating circumstances existed--for example, that the offender was under physical duress at the time the crime was committed or was a peripheral participant in a crime actually committed by others. The President's proposal would not require the automatic imposition of long sentences, but it would increase the degree of certainty that offenders convicted of the specified crime would serve some time in prison. And certainty of imprisonment is fundamental to deterrence. The mandatory minimum sentence proposal would also remove some of the inequality of sentencing in the federal criminal justice system.

Under the current federal sentencing system, the sentence to be imposed in a particular case is left entirely to the discretion of the judge, and the judge is free to impose any sentence from one day's probation through the maximum imprisonment and fine authorized by Congress for the offense committed. The problem is that individual judges vary considerably in their sentencing philosophies and, as a result, sentences vary considerably--even for similar offenders committing similar offenses. Some sentences are unduly lenient, some are unduly severe. Neither the defendant nor the government may appeal to a higher court to have a sentence changed to a more appropriate one.

To increase the certainty of appropriate punishment and to eliminate the sense that punishment in the criminal justice system is an unfair game of chance, two further reforms that build on your mandatory minimum sentence system should be proposed.

I. Creating a Federal Sentencing Commission

A Federal Sentencing Commission should be established by Act of Congress to draw up guidelines indicating a narrow range of sentences that are appropriate for persons who commit various crimes under various circumstances. Under this proposal, a sentencing commission would be established to develop guidelines indicating appropriate sentences for a spectrum of specific cases.

On the basis of research conducted by the commission's staff, the commission would prepare a detailed list of characteristics of defendants and a detailed list of characteristics of offenses. The defendant list would classify a defendant according to his age, education, prior criminal record, family ties, and other pertinent characteristics. The offense list would classify a specific offense according to the number of victims, the seriousness of the injury involved, the community view of the offense, and other pertinent aggravating and mitigating factors. Thereafter, prior to imposing a sentence in a particular case, a judge would be required to ascertain the category into which the defendant fit most closely and the category into which the offense fit most closely. The applicable defendant category would be matched with the applicable offense category, and the guidelines would indicate the narrow sentencing range for such a category of defendant committing such a category of offense. For example, a first offender in his early twenties with a wife and child to support, who committed an unarmed robbery in which no personal injury was threatened, might fall into a category specifying a sentencing range of, for example, one to one and one-half years imprisonment. On the other hand, a repeat offender in his late thirties with a poor employment record, who committed a robbery at knifepoint, might fall into a category specifying a sentence of, for example, five to six years imprisonment. In each case, the judge would be expected to sentence the defendant within the range set forth in

the guidelines. The judge would only be able to impose a sentence above or below the range suggested in the guidelines if he found good reason for doing so and stated that reason in detail in writing. If the sentence imposed was within the guidelines, it would be considered presumptively appropriate and would not be subject to appellate review. However, if the sentence was above the range suggested in the guidelines, it could be appealed by the defendant, and if it was below the range suggested in the guidelines, it could be appealed by the government.

Sufficient research has been done in this area so that it seems clear that the sentencing commission proposal is entirely feasible. While the commission would operate only with respect to the federal criminal justice system, it would also serve as a model for state and local reforms.

The sentencing commission proposal would build upon the mandatory minimum proposal by extending the idea of limiting judicial sentencing discretion so that all federal crimes are covered. It would serve the two important purposes embodied in the President's mandatory minimum sentencing proposal--increasing the certainty of punishment and eliminating the game of chance quality of federal criminal justice.

II. Abolishing the Federal Parole System

Under the federal parole system as it currently exists, a defendant who is sentenced to a term of imprisonment ordinarily may expect to serve approximately one-third of the period imposed by the sentencing judge. The theory is that the judge is imposing only a maximum period of time that the defendant should be expected to remain imprisoned.

The federal parole system is thought to serve three basic purposes today. First, it attempts to mitigate unfair disparities in sentencing by releasing offenders before the specified sentence has been served--though, of course, it cannot extend a sentence that is inappropriately short. Second, it seeks to monitor a prisoner's progress in rehabilitation so that he may be released when he is ready to return to society. Third, its offer of a hope of early release serves as an incentive to good behavior in prison.

The first purpose--helping to eliminate unfairness--would be much better and more completely served by the federal sentencing commission proposal outlined above. The second purpose is based on an idea of prisoner rehabilitation and of the ability of correction authorities to predict the future behavior of prisoners that have fallen into disrepute. Scholars in the field of corrections now assert that rehabilitation is more likely to occur if it is not tied to the prospects of early release. When it is tied to parole, two problems exist. First, participation in rehabilitative programs is not truly voluntary and often not undertaken in good faith. Second, prisoners do not know precisely what they should do to secure favorable treatment by parole authorities--parole is the second game of chance. Scholars also doubt that the behavioral sciences are advanced enough to give correction authorities the tools by which to predict an inmate's future behavior--that is, to decide when he has been rehabilitated.

In addition, there is a deceptiveness about the federal criminal justice system which includes the possibility of parole. The present system makes it appear to the public that long sentences are to be served when neither the judge nor the defendant has that expectation. The public is then shocked when it learns in celebrated cases that the complete sentence was not served. Abolition of parole would serve the interests of candor--and in a related respect, of deterrence, since the message of the sentences imposed by a system without parole would be clear and unambiguous to potential criminal offenders.

A sentencing system which abolishes parole would require a reduction of a pre-determined portion of the sentence for good behavior--a necessary concession to encouraging prison discipline. To meet the argument that parole now serves the purpose of encouraging discipline in prison, good time allowances might have to be increased if parole were abolished. Other incentives for good behavior might also be developed. It is important to recognize that the sentences recommended by the commission ought not be as long as current maximum sentences. Since today few offenders spend their entire sentence in prison, if sentences were made determinate and long, the prison population would increase beyond the federal prison system's ability to handle it. Furthermore, because currently the real sentences as served by offenders are considerably shorter than the sentence imposed by the judge, sentences

under a determinate system need not be as long to serve the purposes of imprisonment.

In addition to eliminating the complexities of the current parole system and eliminating the opportunities for endless litigation over parole board determinations, such an approach would have an important collateral benefit. By eliminating the uncertainty concerning a prisoner's release date a major cause of prisoner complaints would be removed. The increased fairness, and the increased appearance of fairness, could reduce a major cause of prisoner bitterness--a bitterness which hampers preparation for reentry into society since real or imagined injustices focus a prisoner's attention upon relitigating the propriety of his incarceration rather than upon his future after release.

Should the President decide to propose the abolition of federal parole, the existence of the system would probably have to continue for some time in order to make the necessary determinations with respect to prisoners sentenced before the new system goes into effect. However, the other functions of the parole system--for example, the supervision of ex-offenders after release from prison and the provision of half-way houses and other controlled release programs--could be undertaken by prison or probation authorities.

Conclusion

The creation of sentencing guidelines coupled with appellate review of sentences and the abolition of parole would add a greater consistency and clarity to the federal criminal justice system. It would increase the fairness of the system, its candor, and the deterrent effect of the criminal law.

B

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

September 13, 1976

MEMORANDUM FOR: Jim Cannon

FROM: Dick Parsons

SUBJECT: Crime

You recently asked me to give some thought to the question of what additional steps the President could take (or propose) to reduce the level of crime in the country. Herewith, my preliminary ruminations.

Expand Career Criminal Program

The crimes most Americans fear -- murders, muggings, rapes, robberies -- usually do not fall within the criminal jurisdiction of the Federal government. Rather, these crimes must be dealt with at State and local levels. Therefore, unless one is prepared to suggest that all so-called "street" crimes be made Federal offenses (which would present constitutional as well as other problems), the role of the Federal government in combating this kind of crime must be essentially a supportive one.

Given this limitation, the major presence of the Federal government in the criminal justice area in recent years has been the Law Enforcement Assistance Administration (LEAA), which, as you know, provides financial and technical assistance to State and local governments to improve their criminal justice systems. The effectiveness of LEAA has been seriously questioned of late, however, because of the fact that crime has continued to rise precipitously ever since LEAA's creation.

One reason for this, I believe, is that the \$6 billion-plus LEAA has pumped out to State and local governments over the past nine years has been spread too thin to have real impact (that amount is, after all, less than 5 per cent of total criminal justice expenditures in the United States). Too much has gone to the police, who are already out-stripping the rest of the system. What has gone to prosecutors, courts and correctional systems has not been targeted on serious offenders, by and large, but has been used simply to "fill in the holes" created by shortages of State or local funds.

The failure of our State and local criminal justice systems -- and of LEAA -- has been a failure to differentiate between types of defendants for the purpose of according different kinds of treatment to different kinds of defendants. A failure to prioritize, if you will, to put the emphasis on prosecuting and incarcerating those who pose the greatest threat to society.

We know, for example, that most crime is committed by a relatively small number of individuals. The recent case here in Washington of a single individual who has admitted to committing about 50 rapes, 80 burglaries, 10 armed robberies and an uncounted number of car thefts serves to illustrate the point. And, while this is an extreme case, a recent study of over 225,000 persons awaiting trial on criminal charges revealed that two out of three had significant previous criminal histories. It stands to reason, therefore, that we can make a significant impact on the problem of serious crime in this country through the immobilization of a relatively small number of people -- those who repeatedly and habitually commit crimes.

Two years ago, the Law Enforcement Assistance Administration (LEAA) began an experimental program designed to focus the attention of the criminal justice system on the habitual criminal. Under this program, LEAA provides funds to local prosecutors to establish special "career criminal" bureaus within their offices. Such bureaus are comprised of senior or experienced assistant district attorneys whose sole responsibility is the prosecution of career criminals. LEAA also provides funds for the establishment of mechanisms and procedures to screen out career criminals as soon after arrest as possible. This enables identification of the truly serious offender as soon as he comes into the system and the immediate assignment to his case of an experienced prosecutor, who handles the case from beginning to end. These cases are also given priority by the courts to insure prompt trials.

So far, the results of these career criminal programs have been tremendously impressive. Through the first 18 months of operation in eleven jurisdictions:

- 615 individuals were identified as career criminals;
- the average adjudication time from arrest to final disposition was approximately 84 days;
- the conviction rate was 95 per cent (or 585); and
- the average sentence was 21 years imprisonment.

More importantly, many of the jurisdictions participating in the career criminal program have reported a decrease in the rate of crime.

At the moment, LEAA funds career criminal programs in some 18 jurisdictions throughout the country at a total cost of approximately \$6 million (see attachment for detail).

In my view, this has been LEAA's most successful program, at least in terms of reducing crime, and I would think that one of the most important things the President could do about crime is significantly expand the career criminal program. Of course, the level of expansion is subject to negotiation, but I would think something on the order of a tenfold increase would be appropriate.

Improve Federal Drug Program

In addition to helping State and local governments immobilize those who commit crimes, there are things the Federal government can do directly which will have an indirect impact on crime. One such thing would be to improve the Federal drug abuse program.

As you know, a number of recent surveys have indicated that anywhere from one-third to one-half of all street crime is drug abuse-related. While no one can say what the precise correlation between drug abuse and crime is, reason and experience tell us that the two are related and that reductions in the level of drug abuse can lead to reductions in the level of crime.

During the past 18 months, the President has made reducing drug abuse a priority objective of his Administration. We have produced a White Paper on the subject, created several new coordinating mechanisms, proposed new legislation, and infused in the troops a new spirit of enthusiasm and cooperation. The one thing we have not done, however, is substantially increase the resources we are committing to this effort.

For FY 1977, the President has requested \$780 million for the Federal drug program. In FY 1974, however, the Federal drug budget was \$782 million. What has happened over the past three years is that the massive budgetary increases of the early 1970s (when the Federal drug budget went from less than \$100 million in FY 1969 to almost \$800 million in FY 1974) have been completely absorbed by the bureaucracy. We are now operating at close to maximum capacity and, simply put, we aren't going to get much more out of the program without putting more into it.

I note by way of historical perspective that the only time we have made truly significant (or at least dramatic) progress in reversing the drug abuse trend was in late 1972/early 1973. I note also that crime decreased for the first (and only) time in the last 20 years during that period. I believe it is more than coincidence that this dramatic progress, which the former President hailed as "turning the corner on drug abuse," came on the heels of a massive increase in Federal spending to prevent and treat drug abuse (from \$223 million in FY 1971 to \$511 million in FY 1972).

I do not here suggest that simply by infusing more money into the program we will produce a result similar to that achieved in 1972/3. However, I do think we will have to increase the resources we have committed to combating drug abuse if we hope to do more than simply keep our heads above water. I would think an increase on the order of \$100 million to \$200 million (the latter figure bringing total expenditures up to about \$1 billion) would not only be responsible in terms of the Federal drug program but could lead to a reduction in drug abuse and crime.

If this appeals to you, I can work with OMB and the agencies to develop a tentative breakdown of where the additional funds would be spent.

Provide Greater Recreational Opportunities

Another think the Federal government could do which would, I believe, have a positive impact on crime would be to establish a national sports and recreation program.

We have known for a long time that opportunity to participate in organized sports can be a real alternative to crime among young people. Sports can provide an outlet for pent-up energies and aggressions. For some, it even provides a medium for self-expression. At worst, it can provide young people who would otherwise be idle with something constructive to do.

Yet, the Federal government does very little to insure that recreation programs and facilities are widely available. This responsibility falls mainly on the shoulders of local governments (i.e., public school systems), a handfull of highly fragmented private concerns and, of course, each of us in our individual capacities. Thus, it can truly be said that there is no coherent, comprehensive national sports and recreation program for our nation's youth.

I believe the establishment of such a program, designed to insure that every child has a continuing opportunity to engage in organized sports activities, would serve several national purposes -- not the least of which is reducing crime. To be effective, such a program would have to be more than just a policy-making, coordinating kind of operation. Substantial resources would have to be made available to construct facilities where none now exist (or to renovate inadequate facilities), to purchase equipment and to employ staffs. The cost could be anywhere from \$10 million to \$100 million or more, depending on how ambitious the program might be (it could, for example, be targeted only on high-risk groups like inner city youth).

Whatever the level of investment, I think this kind of program has real potential. Moreover, the long-range implications of not doing this, or something like it, are frightening. With youth unemployment in some cities in excess of 60 per cent, and with no real likelihood of substantially reducing this figure, we have got to begin to think about providing these young people with something to do. If we don't, crimes committed by youth will continue to soar.

CAREER CRIMINAL PROGRAM

| <u>Jurisdiction</u> | <u>Award Amount</u> |
|----------------------------------|---------------------|
| 1. San Diego, California | \$ 247,118 |
| 2. Columbus, Ohio | 239,416 |
| 3. Suffolk County, Massachusetts | 463,192 |
| 4. New York County, New York | 556,155 |
| 5. Detroit, Michigan | 576,040 |
| 6. Salt Lake City, Utah | 201,708 |
| 7. Kalamazoo, Michigan | 78,548 |
| 8. Houston, Texas | 266,068 |
| 9. New Orleans, Louisiana | 421,789 |
| 10. Dallas, Texas | 308,246 |
| 11. Indianapolis, Indiana | 315,000 |
| 12. Miami, Florida | 350,000 |
| 13. Rhode Island | 190,304 |
| 14. Saint Louis, Missouri | 350,000 |
| 15. Albuquerque, New Mexico | 98,522 |
| 16. Louisville, Kentucky | 285,000 |
| 17. Memphis, Tennessee | 300,000 |
| 18. Las Vegas, Nevada | 135,000 |

C

THE WHITE HOUSE

WASHINGTON

September 8, 1976

MEMORANDUM TO JAMES CANNON

FROM: ROBERT GOLDWIN *RG*

SUBJECT: Crime

I spoke on the telephone today to Professor James Q. Wilson of Harvard and asked him if he had suggestions or advice on the subject of crime. He said that he had just this morning reread the President's Sacramento speech and that it stands up very well. He would add to it now only one additional recommendation, based on developments since the time of that speech.

It seems that there is an improved change of mood and viewpoint in the past year and judges are now beginning to sentence convicted criminals to prison in greater numbers. The result is that crowding in State and local prisons is getting worse. This is partly the result of some judges getting more stern and partly the result of the behavior of the criminal element of the youth cohort that came up in the 1960s. This is the group of young people, mostly young men, who were born between 1945 and 1960 when the birth rate was very high. The birth rate has been going down since 1960. Since age is a very important factor in the crime picture, what Wilson sees is that people whose criminal careers began in the middle or late 60s, when judges were more lenient, and who got off easily two or three times, are now coming before tougher judges for their fourth and fifth offenses and are being sent to prison. In any case, whatever the explanation, the prison population is going up close to 250,000 in State and local prisons (this doesn't include persons held in local jails pending trial or serving very brief sentences). Many of the jails and prisons are so overcrowded or in such deplorable physical condition, that for humane reasons judges are ordering them to be closed or the population significantly reduced.

There is an obvious problem here that if judges begin to follow the President's advice, and send more convicted criminals to prisons that are already full or overfull, the trend cannot last long and judges will stop sending them to prison unless more prison spaces are developed.

It is my understanding that present federal legislation specifically prevents the use of federal funds for "bricks and mortar," but bricks and mortar are now what is most needed. The President could recommend legislation to provide funds for expanding and improving State and local prison facilities. In doing so, the federal government could mandate minimum standards either for facilities built with federal funds or for facilities throughout a State that accepts federal assistance for improving or building new prison facilities.

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If the President does decide to call for legislation that would provide federal funds for construction of State prison facilities, there will be the problem of explaining his support for new spending. He could say that the public knows full well how hard he has tried to hold down the rate of increase of federal expenditures and that the only exception he has made is in the area of national defense. But just as he has advocated that we increase our spending to meet our critical defense needs, so he now advocates, for the same reason, that we increase our spending on domestic defense against the criminals who prey on us. It is now clear that the great concern about crime evident everywhere throughout American society requires an expenditure so that criminals who have received a fair trial and have been convicted can be sent to prison. The crime rate in this country has just about doubled since 1960 but there has been no increase in that time in the capacity of our prisons (I am pretty sure that statement of fact is correct, but we should, of course, check it carefully).

Otherwise, there is not much need to recommend new things beyond the very sensible proposals the President has already made and which have not been acted on. He should reemphasize the importance of protecting potential victims and demonstrating a real concern for victims of violent crime. He should repeat his recommendations for protection of the rights of witnesses and urge that programs be developed to encourage public cooperation with police and courts through protecting them when they serve as witnesses or suffer as victims.

He should repeat the need for swift and certain punishment as the best way to deter crime and to keep the repeat offender separated from his potential victims. The President should repeat the sound analysis that a very high proportion of violent crime is committed by a small proportion of career criminals and that special attention to catching them, trying them, convicting them, and imprisoning them if convicted would be very helpful in diminishing the kind of crime that concerns most people.