The original documents are located in Box 10, folder "Crime Message" of the John Marsh Files at the Gerald R. Ford Presidential Library.

THE WHITE HOUSE
WASHINGTON

April 7, 1975

TO: JACK MARSH

FROM: JIM CONNOR

Per our conversation.

CRIME THEME

As suggested earlier in this book, the crime theme appears to be one on which the President might concentrate. This paper sketches out some of the aspects of a crime message, analyses the political implications, and describes a strategy for passing the legislation.

Almost every poll shows a high degree of concern with crime. This is not surprising in view of the increasing incidents of violent crime and the media attention paid to it. The President is in an excellent position to establish himself in the lead on this issue. Developing a suitable program and selling it are the keys. The program should be simple and understandable, forceful and yet not possess the aura of "law and order" or racism. One such program might include.

Mandatory sentences (a year or so)for use of a gun in commission of a crime).

Mandatory sentences (three-five years) for the "professional" criminal, i.e. those convicted of(violent)crimes for the third time.

Assistance to state and local governments to expand their judicial system (judges, prosecutors and public defenders) to speed up the process and to deal with the greater workload that will result from mandatory sentences which will eliminate much plea bargaining.

Assistance to state and local governments to establish an adequate prison system to deal with the influx of mandatory stentence prisoners.

Obviously the two key changes proposed here, mandatory sentences for use of a gun and for repeat crime, would have to involve state legislation. The technique of implementing the changes would be:

--modification of Federal code to conform to standards.
--modification of LEAA program to stress fund availability to those states which change their criminal codes to conform to standards
--Presidential address to joint state legislative sessions and other state and local forums urging them to adopt changes and to get the Congress to work quickly to pass his legislative proposals.

The advantages of the above approach are:

--it deals with the gun control issue in a way which would appeal to the NRA lobby and yet which would not be perceived as ignoring the problem of guns.

--as James Q. Wilson has shown, it is an intellectually and statistically defensible approach.

--It is simple to explain. No matter what one thinks of rehabilitation or deterrence, it is hard to argue that habitual criminals should not be kept off the streets.

By taking the lead on this issue, the President can:

--identify himself concerns and fears held by very large parts of the population.
--demonstrate an ability to take decisive action.
--place the Democrats in an extremely difficult situation. If they try to outbid him on the issue, they risk losing their civil liberitarian left. If they oppose him, they risk being on the wrong side of public opinion. If they pass his program, he will have scored a major public triumph.

Mr. Marsh

MAY 29 1975

THE WHITE HOUSE

WASHINGTON

May 22, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: Jim Cannon

SUBJECT: Crime Message

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

OVERVIEW

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

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

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

OPEN ISSUES

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

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

2. Mandatory sentences -- What type of mandatory sentencing structure should the Administration advocate, and for whom?

3. Restriction on employment of ex-offenders -- Should the Administration encourage the removal of Federal- and State-enacted restrictions on the employment of ex-offenders and, if so, by what means?

4. Corrections reform -- What steps should the Administration recommend to help alleviate the problem of decrepit, over-crowded and unsafe correctional facilities?

5. Victims' compensation -- Should the Administration endorse the provisions of S. 1 providing compensation for victims of Federal crimes?

6. National defense sanctions -- Should the Administration indicate its dissatisfaction with the provisions of S. 1 dealing with offenses involving national security?

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

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

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

OUTLINE: DRAFT CRIME MESSAGE

I. Themes of the Message

A. Emphasis on Victims -- It is time we direct our attention to the victims of crime. For too long we have dwelled on the plight of the defendant, often losing sight of the plight of the victim.

B. Swift and just punishment -- The criminal justice system needs to be improved to ensure that it functions in a swift and just manner. The effectiveness of our system is often diminished because of the long delay between apprehension and sentencing.

II. Costs of Crime

A. Rate of serious crime reported -- Murder, forcible rape, robbery, aggravated assault, burglary, larceny and auto theft -- 17 per cent higher in 1974 than in 1973. (Largest increase in 42 years.)

B. Level of actual crime -- 300 to 500 per cent higher than reported crime level.

C. Violent crime increase -- 11 per cent in 1974.

D. Crime committed against strangers -- 65 per cent of all violent crime.

E. Social toll is inestimable -- pervasive fear that causes people to rearrange their lives to be suspicious of their fellows.

III. Factors Contributing to Crime

A. Economic deprivation.

B. Deterioration of social institutions which promote respect for law.

C. Increasing crime rate itself. Respect for the law declines as the people believe that lawbreakers are not being punished. A decline in respect for the law, in turn, leads to the commission of more crimes.

IV. Proposals to Attack Crime

A. Improvements in the law itself.

1. Reform of the Federal Criminal Code -- necessary to revise current laws to make them more effective and to create new offenses to deal with such matters as organized crime, white collar crime, consumer fraud.

2. Principles of sentencing -- "just punishment" and "incapacitation", as well as "deterrence" and "rehabilitation" should guide sentencing judges.

3. Require mandatory incarceration for offenders who commit violent offenses or use a dangerous weapon. Cures current deficiency since offenders often not sent to jail.

4. Appellate review of sentences -- provide for two-way review.

5. Focus on victims also includes victim's compensation -- no federal appropriations necessary; funds derived from fines (levels of which are increased) and profits from prison industry sales.

6. National security -- balance public's right to know with legitimate interests of intelligence community.

7. Handgun control.

B. Reforming the Federal Criminal Justice System.

1. Improve the management of prosecutors' offices -- urge the use of data retrieval systems so that prosecutors can make informed judgments as to which offenders deserve trial and incarceration.

2. Career criminal program -- 56 percent of inmates are recidivists. Objectives of program:

a. Provide quick identification of career criminals.

b. Accord priority to their prosecution.

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

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

a. Reduce caseloads.

b. Enable offenders to avoid criminal record and thus increase likelihood for productive lives.

c. Insure maximization of prison resources to house the more dangerous offenders.

4. Expand criminal jurisdiction of U. S. Magistrates

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

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

C. State Assistance

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

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

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

S. 1: GENERAL BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

BACKGROUND

A. The Problem

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

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

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

B. The Current Law and Its Limitations

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

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

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

DISCUSSION

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

A. Endorse no new handgun laws.

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

B. Improve current law.

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

C. "Saturday Night Special" ban.

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

D. Illegal Transportation Approach.

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

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

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

(1) Require the seller of a handgun to take reasonable steps to ensure that the buyer is not a resident of, nor intends to transport the handgun to, another state. This would require both licensed dealers and private sellers of handguns to take reasonable steps to determine the identity and residency of the buyer. In this regard, it merely changes the standard of care under the current law. In the case of a private seller, this would be accomplished by receipt of a written statement or affidavit from the buyer; in certain cases, personal knowledge would suffice. Alternatively, a private seller could discharge this burden by consummating the sale at a dealer's place of business where the dealer would take reasonable steps to identify and determine the residency of the buyer. In the case of dealer sales, particularly multiple sales, the standard of care required would be higher. Both civil and criminal penalties would be available as sanctions, depending on the culpability and status of the offender.

(2) Require the seller of a handgun to take reasonable steps to ensure that the buyer is not a resident of, nor intends to transport the handgun to, a locality where the buyer's possession of a handgun would be illegal. This would revise current law to strike at intrastate as well as interstate sales, where the purchaser resides in a locality which makes his possession of a handgun illegal. The standard of care, method of discharging such standard and sanctions for failure to do so would be the same as in (1) above.

(3) Assign to ATF Strike Forces the job of investigating violations of the Federal gun laws in certain selected areas, such as the ten largest cities in the United States. If commerce in handguns prevents local laws from being effective, and if that commerce were made clearly a violation of Federal law, a concentrated effort by the Bureau of Alcohol, Tobacco and Firearms, together with specifically assigned Federal prosecutors could help cities fight gun violence. ATF's project ID, pursuant to which it attempts to trace all handguns apprehended in connection with criminal use, could also be undertaken in such cities.

E. Metropolitan Area Approach.

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

(1) Prohibition of transfer or sale within the metropolitan area and prohibition of transportation of a handgun into a metropolitan area. This approach strikes most directly at commerce in handguns. It should be coupled with a presumption that possession of more than five handguns is possession with intent to sell.

(2) Prohibition on possession of handguns outside the individual's home or place of business. This approach would provide an easily provable Federal charge against persons who deal in guns illegally. It would also augment local law enforcement efforts against carrying concealed weapons. It is vulnerable to two arguments: that it would be unenforceable because violations would be rife and that it would make virtually all street crime a Federal offense.

F. Federal Safety Certification Card.

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

G. Transfer Notice

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

ASSESSMENT OF ALTERNATIVES

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

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

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

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

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

OPTIONS

A. No new Federal law.

Agree _____ Disagree _____

B. Improve current law.

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

Agree _____ Disagree _____

C. "Saturday Night Special" ban.

1) By quality and concealability definition.

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

Agree _____ Disagree _____

2) By Federal tax on sliding scale.

Agree _____ Disagree _____

D. Illegal transportation approach.

1) Prohibit sale to resident of another State.

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

Agree _____ Disagree _____

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

[The Attorney General favors this.]

Agree _____ Disagree _____

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

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

Agree _____ Disagree _____

E. Metropolitan approach.

1) Ban on sale and transfer.

Agree _____ Disagree _____

2) Ban on possession outside home or business.

Agree _____ Disagree _____

F. Federal safety certification card.

Agree _____ Disagree _____

G. Transfer notice system.

Agree _____ Disagree _____

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

BACKGROUND

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

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

DISCUSSION

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

A. Mandatory Sentencing Structure

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

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

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

2. Require mandatory sentence with immediate possibility of parole.

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

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

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

B. Included Offenses

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

1. Apply mandatory minimum sentences to all offenses.

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

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

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

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

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

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

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

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

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

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

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

OPTIONS

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

   a) All offenses. _____

   b) Offenses involving potential for physical injury. _____

   c) Offenses involving physical injury. _____

   d) Offenses involving a dangerous weapon, etc. _____

   e) Repeat offenses. _____

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

   a) All offenses. _____

   b) Offenses involving potential for physical injury. _____

   c) Offenses involving physical injury. _____

   [The Counsel to the President favors this.]

   d) Offenses involving a dangerous weapon, etc. _____

   e) Repeat offenses. _____

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

a) All offenses. _____

b) Offenses involving potential for physical injury. _____

[Bob Goldwin favors this.]

c) Offenses involving physical injury. _____

d) Offenses involving a dangerous weapon, etc. _____

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

e) Repeat offenses. _____

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

BACKGROUND

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

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

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

DISCUSSION

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

Steps the Administration could recommend include:

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

(2) Directing the Justice Department to draw up ex-offender civil rights legislation which would make it illegal for an employer or a union to deny a job or membership based upon an applicant's criminal record. Denial of a job or of union membership based upon an arrest, police detention (without charge), investigation, or conviction record should be barred.

(3) Directing the Civil Service Commission to submit to you an Executive Order to prohibit Federal discrimination against ex-offenders as a class.

(4) Directing LEAA, the Department of Labor, and the Department of Health, Education, and Welfare to encourage States to eliminate licensing and other statutory restrictions against the employment of ex-offenders as a class, and to cut off Federal manpower training funds (including LEAA and HEW vocational education and rehabilitation monies) after FY 1977 from all States which at that point retain statutory discrimination against ex-offenders as a class.

OPTIONS

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

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

Agree _____ Disagree _____

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

Agree _____ Disagree _____

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

Agree _____ Disagree _____

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

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

Agree _____ Disagree _____

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

Agree _____ Disagree _____

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

BACKGROUND

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

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

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

DISCUSSION

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

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

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

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

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

1. The ultimate cost to State and local governments of providing facilities which meet minimum Federal standards will obviously depend upon the nature of the standards imposed. Even a "bare bones" approach would have a significant fiscal impact, however.

2. Because of the high cost of prison construction, the $97 million budgeted for the LEAA corrections program in 1976 would serve only to "prime the pump" in terms of encouraging State and local governments to undertake a major initiative in this area.

OPTIONS

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

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

Agree _____ Disagree _____

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

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

Agree _____ Disagree _____

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

Agree _____ Disagree _____

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

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

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

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

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

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

The Crime Message would specifically endorse this concept.

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

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

Specifically Endorse _____ Reserve Judgment _____

Should the Crime Message indicate some dissatisfaction with the national defense provisions of S. 1?

During the development of S. 1, most adverse commentary focused upon the provisions contained in Chapter 11 (Offenses Involving National Defense) of the bill. Basically, Chapter 11 recodifies current law save the new provisions contained in Section 1124.

Section 1124 makes it an offense for a person in authorized possession of classified information knowingly to communicate such information to a person not authorized to receive it. As originally drafted, it was not a defense to the crime that the information was improperly classified.

As a result of the hearings on S. 1, three changes have been incorporated in the current draft. First, a complete bar to prosecution would become operative if there were not in existence at the time of the offense an agency and procedures to provide for the review of the classification. Second, an appropriate government official would have to certify prior to prosecution that the classification which was violated was correct. Third, an affirmative defense is created which would have applicability in circumstances where the defendant has exhausted his remedies under administrative review provisions and has not communicated the classified information to a foreign agent or for anything of value. If these requirements are met, the defendant would be allowed to litigate the propriety of the classification. Although it should be noted that a recipient of the classified information, such as a newsman, is not subject to prosecution under Section 1124, the press generally perceives this particular section of the bill to be violative of basic free press concepts.

In light of recent enactments, e.g., the Freedom of Information Act, it is likely that further changes will be made to Section 1124. Although it is impossible to identify these changes with any degree of precision at the current time, there would be some utility in having your Crime Message indicate that you do intend to review options in this area and other controversial aspects of the subject bill. This should preclude any adverse commentary on the Crime Message which would deal only with this one section and disregard the balance of the statement.

[The Attorney General, the Counsel to the President and the Domestic Council recommend that you agree.

Bob Goldwin and Max Friedersdorf make no recommendation.]

Agree _____ Disagree _____

Jack FIF R.

MAR 1975

THE WHITE HOUSE
WASHINGTON

5/23/75
6:20 PM

Russ:

Here's the memo about which we spoke, for Jack Marsh's information. My understanding is that he is now supposed to be in a 5:00 PM meeting with the President and a variety of other folk in the Cabinet room on Monday, to discuss the crime message.

The memo is a suggested draft, officially from HEW to the Domestic Council. It raises some issues not in the final memo to the President.

Cheers,

Jack

MEMORANDUM DRAFT Rick Tropp

THE WHITE HOUSE

WASHINGTON

May 15, 1975

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Issues to be Addressed in Special Message on Crime

The Attorney General's draft special message on crime concentrates on revision of the Federal criminal code, in lieu of discussion of all possible remedies which you might offer in order to diminish the incidence of violent crime. We believe that there is a variety of such remedies available, and that they suggest several Federal initiatives which you can announce in your special message.

This memorandum sketches out those possible Federal initiatives, and recommends that you address in your special message the issues which we raise below.

I. Should you support flat-time sentencing in the Federal criminal code, and use Federal funding as leverage to encourage states to move from indeterminacy toward flat-time sentencing?

BACKGROUND

Nearly all state criminal sentencing, and most Federal sentencing, is now either completely indeterminate or indeterminate within very broad ranges ("one to twenty", for instance). The French and Italian codes enumerate aggravating and mitigating circumstances which judges must find to increase flat-time penalties, and Scandinavian statutes enumerate criteria to guide judges in all of the considerations involved in a sentencing decision, but American statutes typically provide no criteria to guide the exercise of the judge's discretion.

The effect of broad sentencing statutes without criteria is that judges generally abdicate in the exercise of their discretion. They sentence with virtually no minimums and no maximums, and effectively transfer the sentencing decision to the later deliberations of parole boards. Parole boards also have no criteria sufficiently specific to guide their decisions, and they frequently delegate those standardless decisions to parole hearing examiners.

In contrast to the public image, then, in which thoughtful and well-educated judges make informed sentencing decisions with tight reasoning behind them, the reality is that parole board employees wind up making the decisions on how long a sentence will be, with little or no articulated reasoning behind them. Decisions on similarly situated people are wildly inconsistent, and the decision process is unregulated and invisible to the public.

James Bennett, formerly Director of the Federal Bureau of Prisons, captured the arbitrariness of the process in a Task Force report of the President's Commission on Law Enforcement and the Administration of Justice:

> "In one of our institutions a middle-aged credit union treasurer is serving 117 days for embezzling $24,000 in order to cover his gambling debts. On the other hand, another middle-aged embezzler with a fine family is serving 20 years, with 5 years probation to follow. At the same institution is a war veteran, a 39-year-old attorney who has never been in trouble before, serving 11 years for illegally importing parrots into this country. Another who is destined for the same institution is a middle-aged tax accountant who on tax fraud charges received 31 days and 31 years in consecutive sentences."

Compare these sentences, and the long sentences meted out to violators of the Dyer Act (interstate transport of stolen automobiles) who fill the Federal prisons, against the short or suspended sentences given to violent offenders.

There is extensive hard data, and reams of "soft" evidence from inmates and inmate groups, which suggests that the uncertainty caused by this standardless and invisible sentencing process contributes heavily to unrest within prisons and to attitudes of contempt by inmates toward the law. Faced with a system which makes decisions about them that they don't understand, without explaining to them precisely what behavior is expected of them and how precisely that behavior will affect the length of their sentence, they perceive law enforcement as arbitrary and irrational, and long sentences as simply the product of bad luck and of the prejudices of particular parole examiners and guards.

Those subject to the criminal justice system, according to the data, emerge from their encounter with it believing that it is completely random in its application of "justice," and unfair in the wildly different ways in which it treats basically similar people who have committed the same offense. They react to that belief, and to their sense of ambiguity about what is going to happen to them and why, by more violence.

An increasing number of academic study groups, public commissions such as the National Advisory Commission on Criminal Justice Standards and Goals, ex-offender groups, and groups of state correctional administrators have written reports urging the diminution of sentencing discretion of all types (initial sentence, probation revocation, parole granting and revocation). Those reports uniformly urge the end of indeterminate sentencing, the statutory articulation of sentencing standards, reviewability of sentences, and in some cases the end of parole. They conclude by urging either mandatory minimums and maximums, or simply flat-time sentences.

Congress and state legislatures have frequently reacted to public pressure for certainty of punishment and for longer punishments by enacting what sentencing experts on Capitol Hill call "fictitious mandatories"--mandatory penalties of fixed periods, with immediate eligibility for parole. The effect is to enact politically salable legislation, and to permit the judge to abdicate to less visible parole officers, secure in the knowledge that his sentence will never be carried out.

DISCUSSION

Sentencing indeterminacy is predicated on two assumptions--that different people who have committed the same offense require different periods of restraint before they become no longer dangerous to society, and that different people who have committed the same offense require different periods of restraint in order to be "rehabilitated". Based on these assumptions, the traditional conclusion has been that it is justified for dissimilar sentences to be given to those who have committed the same offense.

There are two critical problems with those assumptions, however. Firstly, while it may be true that different people need to be detained for different periods before they are no longer dangerous, we do not have the knowledge to calculate sentence lengths based on dangerousness. All of the studies on dangerousness conclude that we simply do not know

how to predict it, and that a judge's or a prison guard's intuition about an offender is more likely to be incorrect than it is to be correct.

It turns out, moreover, that time served in prison bears at best no relationship to how the offender will behave on release (most of the evidence, in fact, shows that all other factors held constant, the offender who is in prison longer will commit more crime later). Time served on parole and on probation also has an inverse relationship with crime committed after release.

The second problem with the assumptions behind indeterminacy is that we do not know how to rehabilitate. Perhaps we could justify keeping one assaulter in prison for a year and another for five years if we could show that keeping the latter in for five years would result in his not committing another assault. The best that we can show, however, is that any service which we provide him in prison--whether it be individual therapy or counselling, group counselling, remedial education, vocational training, or virtually any other service--has no effect on him. The evidence supports the conclusion, in fact, that there is an inverse relationship between the amount of services provided to an offender and his propensity to recidivate.

If we do not know who to detain in order to prevent crime, and if we do not know how to treat those whom we do detain, the theoretical justification for indeterminate sentences disappears. Add to this the practical facts that uncertainty about release date contributes heavily to prison unrest and to contempt for the legal system, and makes offenders and their families miserable and hopeless, and one has a powerful argument that the primary objectives of our sentencing policy ought to be <u>certainty</u> and <u>equity</u>--so that potential offenders will know exactly what fate awaits them for commission of a particular crime, and will know that all like them will be treated exactly the same.

The Illinois Law Enforcement Commission has drawn precisely this conclusion, and has recommended the end of indeterminacy in the Illinois criminal justice system, and an end to parole, on the ground that it has been tried and has failed. The Governor of Illinois supports this reasoning, and has prepared legislation which is being circulated prior to formal submission. He proposes to transform the sentencing process in Illinois into a flat-time system.

We concur with this line of reasoning, and recommend that you direct the Justice Department to draft the Administration's proposed criminal code revision legislation so that it contain flat-time sentences only, with specified increments and decrements for specified mitigating and aggravating circumstances in particular cases. The important point is that the judge not simply be given discretion to make alterations in the flat-time sentence however he wishes based on whatever factors he wishes to consider relevant, but rather that the mitigating and aggravating circumstances be statutorily specified, and that the sentence alteration which follows from each possible circumstance also be specified.

The code revision ought to include exactly analogous criteria for probation/parole decisions and for awarding of "good time" and early release. All decisions which may affect sentence length should be constrained by specified criteria.

We recommend further that you withhold support from any "fictitious mandatories," and that all sentences in the revised code have true minimums--no immediate eligibility for parole--and specified maximums.

Since we believe that exactly the same line of reasoning applies to state criminal justice systems, and since the states have under their jurisdiction more violent offenders than do the Federal courts, we further recommend that you direct LEAA to provide financial support to states for criminal code revision directed at a flat-time sentencing structure, and to withhold after FY 1977 financial support from any state court system and any state law enforcement commission in a state which has not ended indeterminacy in its sentencing structure.

We note, in conclusion, that there is a large literature by economists and econometricians about the deterrent effects of sentencing. The studies conflict as to whether length of sentence has any deterrent effect on crime, but they do agree on one point--the evidence is clear that certainty that a specified length of punishment will follow conviction of an offense has a deterrent effect on commission of that offense.

OPTIONS

(a) Require the Justice Department to draft the criminal code revision legislation so that all stages of the sentencing process--judicial, probation revocation, parole release and revocation, good time, and early release--are characterized by flat-time sentences (mandatory minimums and mandatory maximums, with a flat-time starting point subject to application of specified mitigating and aggravating circumstances).

Approve _____ Disapprove _____

(b) Disapprove "fictitious mandatories"--apparent mandatory minimums with immediate parole eligibility.

Approve _____ Disapprove _____

(c) Direct LEAA to provide financial support to states for state criminal code revision directed at flat-time sentencing structures, and withhold after FY 1977 financial support for law enforcement commissions and courts in any state which has not ended indeterminacy in its sentencing structure.

Approve _____ Disapprove _____

II. Should your special message emphasize the removal of Federal and state restrictions on the employment of ex-offenders?

BACKGROUND

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

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

An American Bar Association survey has found that state legislative codes contain nearly 2000 separate statutory prohibitions which inhibit the licensing of persons with arrest or conviction records. About 350 different occupations are completely closed or severely restricted to ex-offenders. They cannot become accountants, architects, barbers, beauticians, butchers, bartenders, taxi drivers, dental hygienests, electricians, junk dealers, nurses, pharmacists, social workers, teachers, or watchmakers. If the job requires a state license, it is generally closed to ex-offenders.

DISCUSSION

Given the data on the relationship between unemployment and recidivism, job market discrimination against ex-offenders seems to be counter-productive with respect to your goal of reducing violent crime. Some of the discrimination is private and may be regulated by Federal statute, some is Federal and may be regulated by executive order, and probably the most significant discrimination is sanctioned by state statutes, and can be changed only by amendments to those statutes.

We recommend that you take several steps:

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

(2) Direct the Justice Department to draw up ex-offender civil rights legislation patterned after Hawaii's Fair Employment Practices Law amendments of 1974, which makes it illegal for an employer or a union to deny a job or membership based upon an applicant's criminal record, as it would be to deny a job or membership based upon race or sex. Denial of a job or of union membership based upon an arrest, police detention (without charge), investigation, or conviction record should be barred.

(3) Direct the Justice Department to initiate the process of bringing a test suit against a state licensing statute which discriminates against ex-offenders as a class.

(4) Direct the Justice Department to submit to you draft criminal justice information safeguards legislation which tightly restrains Federal and state release of arrest, detention, and investigation records, and which provides for sealing after a specified time of conviction records.

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

(6) Direct LEAA, the Department of Labor, and the Department of Health, Education and Welfare to encourage states to eliminate licensing and other statutory restrictions against the employment of ex-offenders as a class, and to cut off Federal manpower training funds (including LEAA and HEW vocational education and rehabilitation monies) after FY 1977 from all states which at that point retain statutory discrimination against ex-offenders as a class.

OPTIONS

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

   Approve_____ Disapprove_____

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

   Approve_____ Disapprove_____

3. Direct the Justice Department to bring test litigation against a state licensing statute which discriminates against ex-offenders as a class.

   Approve_____ Disapprove_____

4. Direct the Justice Department to submit to you draft criminal justice information safeguards legislation, restraining release of Federal and state criminal justice records, and providing for sealing of conviction records after a specified period.

   Approve _____ Disapprove _____

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

   Approve _____ Disapprove _____

6. Direct LEAA, the Department of Labor, and the Department of Health, Education and Welfare to encourage states to eliminate statutory restrictions against employment of ex-offenders as a class, and to cut off Federal manpower training funds after FY 1977 from all states which at that point retain such statutory discrimination.

   Approve _____ Disapprove _____

III. Should your special message direct a change in the terms on which rehabilitative services are offered to prisoners, and a reallocation of rehabilitative services funding out of the prison?

BACKGROUND

The data is quite conclusive (cf. the Martinson and Wilkins studies, and the findings of the Illinois Law Enforcement Commission) that we simply do not know how to prevent recidivism. None of our allegedly rehabilitative services seem to be worth the investment in them. In particular, education, counselling, and vocational rehabilitation and training programs seem not to have any effect at all upon whether those who engage in them commit second crimes.

When a violent offender in prison is offered an education or a manpower training program, what we usually wind up with at best is a better-educated and perhaps an employed second-time violent offender.

The data is insufficient to reach any conclusion about education and manpower training programs offered to ex-offenders after they have been released from prison and parole. The same is true for therapy and counselling programs.

It is unclear, with respect to the manpower training programs, whether their apparent failure within the prison is due to the fact that even the best possible manpower training cannot affect propensity to violent crime, or is due to their being poor training and unrelated to jobs available outside the prison. What we do know is that only a tiny percentage of offenders trained within prison or while on parole wind up holding jobs in the field to which they have been trained.

DISCUSSION

The data warrants the clear conclusion that our education and vocational training programs for offenders, like our counselling and therapy programs, are failures. As structured, they do not warrant the investment of several billion dollars which the Federal government is making in them. One of two conclusions follows: either we should simply terminate all Federal investment in such programs, or we should tightly restructure them in the hope that perhaps radically changed education, training, and counselling and therapy programs might make a difference in recidivism.

Accordingly, we recommend that you announce several steps in your special message:

(1) Federal, state and local prisons generally require inmates to participate in a variety of rehabilitative programs or, alternatively, predicate "good time" and parole release decisions on whether an inmate "voluntarily" participated. This is particularly counter-productive with respect to counselling and therapy programs, since there is very clear psychological evidence that only a person who voluntarily enters such a program, and is emotionally committed to it, can gain from it.

We recommend, therefore, that you direct the Bureau of Prisons to end the compulsory nature of its rehabilitative programs, and that you direct the Bureau and the Board of Parole not to consider an inmate's participation in such programs as relevant to parole release and revocation, and early release and "good time" decisions.

We recommend further that you direct the Bureau, LEAA, HEW, and the Department of Labor to withdraw funding from any state or local institution in which education, training, or counselling and therapy services are compulsory, and that you direct LEAA to withdraw funding after FY 1977 from any state in which the Board of Parole treats participation in rehabilitative services as relevant to parole release and revocation decisions.

These recommendations are in line with the findings and recommendations of the Illinois Law Enforcement Commission.

(2) Since we are sure that programs within prisons don't work, and unsure whether rehabilitative services to ex-offenders outside the prison do or do not work, we recommend that you direct the Bureau of Prisons, LEAA, HEW, and Labor to maximize their funding of ex-offender rehabilitative services after prison and parole release, in comparison to prison and parole programs. We recommend that you direct the agencies to use their funding leverage to encourage states to make a similar reallocation of funds from in-prison services to ex-offender services.

We assume that, simultaneously with this major transfer of funds, programs will remain available within prisons and juvenile institutions for those who really voluntarily seek them, when parole and release decisions become divorced from participation in them.

(3) Since there are a variety of possible reasons for manpower training failure within the prison, we recommend that you direct that hereinafter no Federal agency may fund any prison or ex-offender manpower training program unless the grantee has first specifically identified the jobs in which those who are to be trained will be employed afterward, and unless the training is very specifically directed toward the skills and the behaviors necessary in those identified jobs.

OPTIONS

1. Direct the Bureau of Prisons to make all education, training, and counselling and therapy programs completely voluntary, and direct the Bureau and the Board of Parole to divorce sentence length decisions from participation in rehabilitative programs.

   Approve _____ Disapprove _____

2. Direct the Bureau, LEAA, HEW, and the Department of Labor to withdraw funding from state and local institutions in which such rehabilitative programs are compulsory, and direct LEAA to withdraw funding after FY 1977 from any state in which the Board of Parole fails to divorce sentence length decisions from participation in such programs.

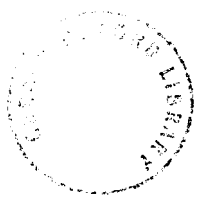
   Approve _____ Disapprove _____

3. Direct the Bureau of Prisons, LEAA, HEW, and Labor to shift funding from in-prison education, training, and counselling/therapy programs to ex-offender services after release, retaining sufficient funds for in-prison services for those who voluntarily seek them. Further direct the agencies to use their funding leverage with the states to encourage states to make a similar reallocation from the prison into the community.

   Approve _____ Disapprove _____

4. Direct that Federal agencies fund only those prison and ex-offender manpower training programs in which the grantee has first identified the jobs in which those who are to be trained will be employed afterward, and in which the training is very specifically directed toward the skills and the behaviors necessary in those particular jobs.

Approve _____ Disapprove _____



IV. Should you direct the reallocation of Federal funds and of prison facility space by concentration on smaller facilities, imprisonment of only those from whom society needs protection, minimization of pretrial detention, and new sentencing alternatives?

BACKGROUND

The Director of the Massachusetts Department of Children and Family Services testified before the House Select Committee on Crime in 1973 that keeping a juvenile in an institution in that state cost up to $15,000 per person per year. In New York, it was over $20,000; in Connecticut, over $25,000; in Illinois, nearly $20,000. The National Assessment of Juvenile Corrections reports that dozens of states spend over $20,000 per year, with one state in FY 1974 spending an average of $39,000. The figure for adult prisons is not far behind.

The Massachusetts Director commented--

> "That is a great deal of money...to treat someone who has a problem of delinquency. I submit if anyone in this room had a youngster who was in trouble and was given by the State between $200 and $300 a week to solve that problem, he would come up with something more original than a large training school. For what it costs to keep a youngster in a training school you can send him to the Phillips Exeter Academy, you could have him in individual analytic psychotherapy, give him a weekly allowance of between $25 and $50, plus full clothing allowance. You could send him to Europe in the summer, and when you bring him back, still have a fair amount of money left over. That is what we are spending in a present system which generally is a failure and generally makes things worse rather than better."

What does the Federal government obtain from its part of this expenditure? It purchases recidivism rates of over 80%, and immediate and continuing gang rape and brutalization of all those

whose institutionalization and imprisonment it subsidizes. It purchases imprisonment of adults convicted of interstate transportation of stolen automobiles and of white slavery," while those convicted of aggravated assault and rape are not incarcerated because judges are afraid of what will happen to them in prison or do not see the space to which they can be remanded. It purchases institutionalization of one juvenile convicted of an offense, to ten juveniles merely awaiting trial or the provision of services. It purchases institutionalization of "wayward" fourteen-year-old girls who have engaged in sex with a boyfriend, or of "incorrigible" thirteen-year-olds who insist on remaining out beyond their parents' curfew, while juveniles who violently attack older people are left out for lack of space.

Perhaps worst of all are our detention facilities. As many adults are detained before trial as are incarcerated in sentence institutions, and ten times as many juveniles are in detention and shelter facilities as are in sentence (remand) institutions. Detention facilities are by far the sorriest of a sorry lot--the most brutal, the most boring, the most lacking in any treatment services, the most depriving of civil liberties. Given that most of those detained will never be convicted, detention facilities are the most unjust and the most counterproductive part of the criminal justice system. Those who have been in them, predominantly innocent adults and juveniles held for "status offenses," emerge permanently stigmatized and generally jobless.

DISCUSSION

What can the White House do in order to reallocate prison space and resources toward true violent criminals, and to spare those who are not a danger to society from the brutalization and the stigma of incarceration?

(1) You can direct the Justice Department to include in the criminal code revision legislation, and to encourage states to include in their sentencing statutes, alternatives to incarceration for all except violent offenders. Restitution, for instance, holds great promise as a remedy in all property and financial crimes, as does sentencing to work in the community (both alternatives widely and successfully employed in Minnesota and Iowa). If prison does not rehabilitate, and if we do not need to protect society from a particular offender, there is no benefit to the government from investing $15,000-$20,000 in his maintenance and brutalization in an institution.

Nevada has used programs such as Outward Bound and Adventure Trails to good effect in rehabilitating dangerous juveniles. The states ought to be encouraged to adopt as an alternative to incarceration sentencing to such a program plus community work, incorporating perhaps a contract between victim and offender for restitution to the offender.

Unlike incarceration, restitution provides to the victim a measure of recompense for his pains, an opportunity to affect the course of the life of the offender, and an opportunity for a personal experience with the offender which will perhaps remove much of the diffuse anxiety caused by the crime. For the offender, restitution forces him to take personal responsibility for the consequences of his offense, and to engage in the catharsis of dealing with the victim as a person.

It is noteworthy that the Federal judiciary employs probation and the suspended sentence far less than state courts, although states generally have more dangerous offenders. Comparative statistics of Federal versus state probation use suggest that a large number of Federal offenders might be usefully diverted from imprisonment into probation without any harm to society, and at substantial financial savings to the government.

(2) You can direct the Justice Department to include in the code revision legislation, and to encourage states to include in their sentencing statutes, provisions that only when a court finds that an offender has repeatedly committed violent crime can he be sentenced to a maximum-security prison. Where his dangerousness warrants prison, the presumption should be in favor of a less costly minimum-security institution. Where the offense warrants physical restraint of some kind, the presumption should be in favor of remand to foster care or to a small group home or other community institution, in lieu of prison.

Dozens of studies support the conclusion that most of the offenders in maximum-security institutions need not be there in order for society to be protected, and that most adults and juveniles in prison need not be in prison at all for society to be protected. We are wasting money, and to no effect.

Contrary to the claims of the more advanced correctional academic experts, the evidence does not support the proposition that "community-based institutions" (instead of prisons) rehabilitate people, and thereby minimize recidivism. The data generally suggests that someone in a small group home is about as likely to recidivate as someone in a prison. He is no more likely to recidivate, however, and it will cost us considerably less to maintain him in a small group home.

Israel and some European countries have had experience which suggests that foster family care, for one offender or for half a dozen at a time, can reach the offender emotionally and make him less likely to recidivate. Although we have no evidence one way or the other on that issue in this country, the foreign experience with foster care for both juveniles and adults suggests that we should be using foster care in families far more as a sentencing alternative than we do now. If we can plow $15,000 per capita into a large institution, why not pay two decent people half that amount to try their luck with an adolescent?

(3) For violent offenders, you might direct the Justice Department and the Department of Health, Education and Welfare to explore the options of relocation within and outside of the country as alternatives to imprisonment.

In the days when America had a frontier in the West, our criminals were "rehabilitated" by being shipped out of the community into new homes on that frontier. Georgia, Maryland, and Australia were formed by groups of such exiles. The Philippines encourages offenders to go off to island colonies which need settlers, and give the offenders a dozen acres on those islands on which to build a house. In what Leslie Wilkins calls "humanistic banishment," the offenders live among persons who have gone to the colonies to start a new life for other reasons. Mexico exiles its violent offenders to the island of Tres Marias and assists them in building a home and starting a business or a farm there, with the caveat that they will be shot if they set foot off the island.

Although we clearly do not know what to do with our violent offenders, it is not clear that the corollary of not knowing what to do is that we must imprison them all for long periods. If our objective is to remove them from society, assistance in resettlement elsewhere may be a more humane, less costly, and more permanent means of both protecting society and helping them to retain some human dignity. While on its face the notion of banishment to a distant place may seem cruel, it is far less so than the gang rape, the boredom, the sense of utter powerlessness and hopelessness which comes with incarceration.

The Social Security Act already provides authorization for funding of the relocation and the initial resettlement costs of those for whom the alternative is public assistance. Perhaps this provision ought to be used more broadly, and the option of relocation ought to be offered to every recidivist who comes before a Federal court. It may be, if he cannot claim and have accepted a new, non-criminal identity when he returns to his old neighborhood and circle of acquaintances, that that is the

only realistic rehabilitative option available to him. This country's history suggests that it is a rehabilitative option which may work.

(4) With respect to pretrial detainees, you might direct the Justice Department to include in the code revision legislation, and to encourage states to include in their sentencing statutes, a provision that the presumption is against detention unless specified criteria are met. You might direct, in particular, that no Federal funds be provided to institutions in which status offenders are detained.

Ten times as many juveniles are imprisoned before trial or for status offenses ("incorrigible", "wayward minor", "person in need of supervision", truant) as are institutionalized after conviction of a crime. Except where a juvenile has been charged with commission of a crime (i.e.--an act which would be a crime if it were committed by an adult, unlike a "status offense"), and even in some cases of alleged juvenile crime, it serves neither society's interests nor that of the child for him to be detained.

Most detained juveniles are brutalized and raped while in the detention center; many are detained in adult jails, where they are taught sophisticated criminal techniques as well as brutalized. For many, the psychological consequences of detention are irrevocable criminalization.

Except where a finding of dangerousness is made by a court, there is no reason at all for either an adult or a juvenile to be detained. Ending detention of non-dangerous youth would cut the incarcerated juvenile population by somewhere near 90% and would diminish violent crime as well.

It may be that you will want to instruct the Justice Department to explore two corollaries of minimizing imprisonment for status offenses:

(a) perhaps we should encourage the states to wipe status offenses off the books altogether, and to treat as a crime for a child only that behavior which would be a crime if it were committed by an adult, and

(b) perhaps we want to think about the converse of that as well--that when juveniles commit adult crime, they might be adjudicated and sentenced pursuant to exactly the same standards under which adults are adjudicated and sentenced. Is there any reason today, when most violent crimes are committed by teenagers, that we should treat a murder or a rape by a 16-year-old any more gently than one by a 30-year-old?

OPTIONS

1. Direct the Justice Department to include in its criminal code revision legislation, and to encourage states to include in their sentencing statutes, alternatives to incarceration such as restitution, greater use of probation, community work, and Outward Bound. Direct the Department to incorporate in the legislation a presumption that such alternatives are the presumed disposition absent a finding that imprisonment is required to protect society.

Approve _____ Disapprove _____

2. Direct the Justice Department to include in the code revision, and to encourage states to include in their sentencing statutes, a presumption that minimum security institutions are to be favored as a sentencing disposition absent a finding that incarceration in a maximum-security institution is required to protect society, and a presumption that small community-based facilities and foster homes are to be favored as sentencing dispositions absent a showing by the prosecution that imprisonment is necessary to protect society.

Approve _____ Disapprove _____

3. Direct the Justice Department and the Department of Health, Education and Welfare to report to you by September 1 on the possible employment of voluntary relocation as a sentencing option for all offenders.

Approve _____ Disapprove _____

4. Direct the Justice Department and DHEW to report to you by September 1 on the possible employment of involuntary humanistic banishment as a sentencing option for those violent offenders for whom maximum-security imprisonment is the only alternative.

Approve _____ Disapprove _____

5. Direct the Justice Department to include in the code revision, and to encourage states to include in their sentencing statutes, a presumption of no pretrial or prehearing detention for adults or juveniles unless a charge of a second violent crime has been made, and a flat ban on detention of juvenile status offenders not charged with a crime.

Approve _____ Disapprove _____

6. Direct the Justice Department and DHEW to report to you by September 1 on whether juvenile status offenses should be eliminated on all governmental levels, and, if so, on what the Federal government should do about state statutes which have established status offenses.

Approve _____ Disapprove _____

7. Direct the Justice Department and DHEW to report to you by September 1 on whether juveniles who commit violent crime should be adjudicated and sentenced pursuant to the same standards which are applied to adults.

Approve _____ Disapprove _____

V. Should you direct the Justice Department, HEW, Labor, and Defense to withhold Federal subsidy from prisons, juvenile institutions, and detention centers which do not meet Federal standards?

BACKGROUND

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

State and local prisons, and particularly detention facilities, typically do not meet the standards which the Federal courts have held incumbent upon the Federal government. Mail is censored and restricted, reading matter is constrained, visits from friends and family are constricted, conjugal visits are almost nonexistent, physical facilities are typically fifty-person barracks which facilitate gang rape outside of the sight and control of guards, food is terrible, medical care is provided by senile doctors and those with poor practices but political connections, custodial and treatment staff frequently assault prisoners, racial and ethnic discrimination is open and continual, work and recreation activities are rarely programed, privacy is nonexistent, and physical movement is constrained far more than necessary to meet the security needs of the institution.

Federal prison officials found, just a few weeks ago, that Federal prisoners are being held in Puerto Rico naked, without toilet facilities, in a strip cell (no bed, no blanket, no light)--all Federal prisoners in San Juan, not just those singled out for special punishment because of violence within the prison.

DISCUSSION

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

The Department of Justice has taken the position that the Federal government has the constitutional obligation to ensure that prisoners in state and local prisons and juvenile institutions are not being subjected to cruel and unusual punishment. As a consequence, the Department has filed suit in Texas to require that state's juvenile institutions to meet Federal standards, in Louisiana to require the state prison to meet Federal standards, and in Alabama to require state and local jails (for pretial detention) to meet Federal standards. After consultation with correctional experts within and outside of the Federal government, the Civil Rights Division of Justice has drafted standards which state prisons must meet (Williams case in Louisiana) and which state juvenile institutions must meet (Morales case in Texas). Those standards have been submitted to Federal courts.

In order to alleviate unnecessary cruelty to which prisoners and detainees are subjected to no useful purpose, you may want to direct all Federal agencies that Federal standards must be met by any prison, juvenile institution, jail, or other detention facility as a prerequisite to the receipt of any Federal money under grant or contract. You may want to adopt the standards which the Justice Department has submitted to the judiciary, or you may want to direct Justice and HEW to draft new standards by a date certain.

OPTIONS

1. Direct all Federal agencies that no Federal funding is to go, under grant or contract, to any state or local prison, juvenile institution, jail, or other detention facility which is not in compliance with Federal standards after July 1, 1976.

Approve _____ Disapprove _____

2a. Publish the standards which the Justice Department has already submitted in the Morales and Williams cases, and plans to submit in the Alabama (jails) case, as standards prerequisite to Federal funding of state and local correctional facilities.

Approve _____ Disapprove _____

or

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

Approve _____ Disapprove _____

JUN 19 1975

THE WHITE HOUSE

WASHINGTON

June 19, 1975
12:30 a.m.

REVISED PLAN FOR HANDLING CRIME MESSAGE

1. Transmittal to Congress 3 p.m. Thursday, June 19

-- Attorney General and President meet. President will sign Message - photo opportunity.

-- President will then go to the briefing room at 3:30 p.m. accompanied by the Attorney General and make a brief statement on the Message.

-- The President will then depart; the Attorney General will brief reporters on the Message and take questions.

2. Briefings

a. The Congress

-- Republican leadership was briefed by the President and Attorney General on Tuesday, June 17.

-- Senate Judiciary Committee were briefed by Ken Lazarus on Wednesday, June 18.

-- House Judiciary Committee were briefed by Dick Parsons on Wednesday, June 18.

b. Media

-- Justice Department backgrounded--on Wednesday, June 18--(on an embargo basis) reporters who cover the Justice Department from the following papers and wire services:

UPI, AP, Los Angeles Times, New York Times, Washington Post, Chicago Tribune, Newsweek and Time.

-- Attorney General to appear on the Today Show.

-- Jim Cannon and Dick Parsons to brief selected group of columnists put together by Bill Greener.

c. Public Interest Groups

-- Jim Falk will brief by telephone key officials of the National Governors' Conference, including Governors Dan Evans, Bob Ray, and Cal Rampton.

-- Jim Falk will brief John Gunther of US Conference of Mayors and provide him with text of Message which Gunther will dex to the mayors of the 150 largest cities.

-- Jim Falk will brief Bernie Hildebrand of the National Association of Counties.

-- Jim Falk will prepare Presidential letter to send to the 50 Governors with copies of the Message.

d. National Rifle Association

-- Jim Cannon and Mike Balzano covered this base on gun control.

e. Special Interests Groups

-- Bill Baroody and Ted Marrs are putting together a list of outside groups to be invited to a Roosevelt Room briefing by the Attorney General, Jim Cannon, and Dick Parsons.

-- Bill Baroody to do mailing of Message to the presidents of selected groups.

3. Legislation

LEAA - to be ready by June 25.

Gun Control - to be ready by June 25.

Mandatory Sentencing - to be ready by June 25.

THE WHITE HOUSE

WASHINGTON

June 19, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: MAX L. FRIEDERSDORF

SUBJECT: Crime Message and Gun Control Proposals

Yesterday afternoon, Bob Wolthuis and Ken Lazarus went to the Hill and met with the following Members regarding the Crime Control Message:

SENATE	HOUSE
Helms	Holt
McClure	Dingell
Hansen	Sikes
Fannin	Waggonner
Goldwater	
Hruska	
McClellan	

The following, except where noted, is a consensus of the opinions they expressed:

1. With the exception of Senator Helms, Senator McClure and Mrs. Holt, they all felt that the "Saturday Night Special" would be a legitimate ban if it could be defined acceptably, and if the ban stopped there. Most expressed doubt that this would happen.

2. Senator Goldwater, quoting the Los Angeles Chief of Police, said that he was okay on "Saturday Night Specials" The others took the position that among conservatives, the gun lobby and the gun owners, it would be perceived as only the first step towards a total ban on handguns.

3. Except for Senators Goldwater, Hruska and McClellan, there was unanimous agreement that the proposal on "Saturday Night Specials" would be very damaging to the President on the political right. McClure and Helms stressed that it would be a very volatile issue for Wallace, and Dingell and Sikes made the same comment about Reagan.

4. Dingell stressed that it would also be damaging to the President in Western and Midwestern States in the November '76 election, and in the Republican National Convention.

5. Senator Helms said, "Bye-Bye Jerry." He said as far as the conservative right is concerned, this would be another "Rockefeller appointment."

6. There was also near unanimous feeling, and expressed most strongly by Sikes and Dingell, that the "Saturday Night Special" will not make the President any political friends in the middle and on the left. The proposal does not go far enough to satisfy them. (McClellan and Hruska said nothing on this.)

7. Dingell stressed that it would be a mistake to open up the 1968 law if the "Saturday Night Special" proposal is sent up to the Congress. He felt it should not be in the form of amendments to the 1968 Act. He argued that the 1968 law has never really been enforced.

8. Dingell felt that a proposal to ban "Saturday Night Specials" will not be the end legislative product. He thinks the liberals may well be able to enact a licensing and registration law. He asked how the President would react to that.

9. Without exception, there was strong support for the mandatory penalties provision in the message. Senator McClure and Congressman Sikes both recommended that it also appear in the message in the gun control section.

10. Senator Hruska had no objection whatever to the substance or the merits. Ken Lazarus thinks he would prefer nothing, though this was not expressed today by Hruska. Hruska did, however, say "Looks good and I can support all of it."

11. If we go with the message as now constituted, most felt we should include more details on the definition of "Saturday Night Specials" and on bonafide dealers.