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SYMPOSIUM ON THE ATTORNEY GENERAL'S TASK FORCE ON VIOLENT CRIME

FOREWARD—REMARKS BY GOVERNOR JAMES R. THOMPSON ON THE ATTORNEY GENERAL'S TASK FORCE ON VIOLENT CRIME*

JAMES R. THOMPSON**

No responsible public official is pro-crime. No one wants to see neighborhoods debilitated, citizens threatened, and spirits broken by the abject fear that violent crime engenders. In the past, however, there have been different points of view on how to approach the crime problem. With each succeeding change in our approach, the crime rate has risen. With each attempt at change, random violence on the streets of our communities has increased.

At this point in our history, the threat of violent crime has reached epidemic proportions. The statistics have gone off the charts; and it does not require a litany of shocking examples to recognize that each crime statistic represents a victimized human being, a shattered life, or a broken family. The time has come to take a unified approach to the problem of violent crime. The magnitude of the threat to our domestic tranquility requires a consensus reaction.

That is why I was particularly proud to accept Attorney General William French Smith's invitation to act as co-chairman of the Violent

* Governor Thompson's remarks were made at the Chicagoland Law Enforcement Day, on October 23, 1981 at the Conrad Hilton Hotel, Chicago, Illinois.

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Crime Task Force. Having spent my entire professional life in various law enforcement related positions, I was pleased to share the gavel with a man as distinguished in the field as Griffin Bell and to work on a panel of the most informed, experienced, and knowledgeable criminal justice experts that I have ever encountered.

We were not directed to examine the root causes of crime. Unfortunate social conditions, unemployment, and inadequate education undoubtedly contribute to crime.[1] But, even if our charge had been broader, we were not convinced that the federal government could develop new programs or recast existing institutions to create the family and community settings, the social opportunities, and the personal values necessary to have an immediate impact on crime.

We had no desire to develop recommendations that were so massive, so costly, and so uncertain as to generate a sense of desperation. That approach causes task force reports to languish on library shelves. Instead, we chose to rely on our practical experiences in the administration of criminal justice and propose real and immediate responses to the crime problem.

In developing these recommendations we visited seven cities and heard testimony from nearly eighty witnesses. The witnesses represented a broad spectrum of expertise on the federal, state, and local criminal justice levels. We received written input from literally thousands of criminal justice practitioners, scholars, and members of the general public from across the country. We benefited from the research efforts of an excellent staff from the Department of Justice.

The report that we produced is an agenda for dealing with the problem of violent crime in America.[2] It is a blueprint for making punishment more swift and certain, for focusing the available resources to enhance their impact, and for intensifying the deterrent effect of our criminal laws. It is a report which, if properly implemented, will have a real impact on our violent crime problem.

The lynchpin of the report concerns significant federal funding for new and renovated state correctional facilities. The problem of available bed space in our state prisons is the single most significant criminal justice issue in the country today.[3] It is a problem that the states, no matter how hard they try, are virtually incapable of solving themselves.

The deterrent impact of the criminal justice process rests on the prospect of an available cell. If every good recommendation for convict-

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[1] Bazelon, *Supreme Court Review Forward—The Morality of the Criminal Law: Rights of the Accused*, 72 J. CRIM. L. & C. 1143, 1148-49 (1981).

[2] U.S. DEP'T OF JUST., ATTORNEY GENERAL'S TASK FORCE ON VIOLENT CRIME: FINAL REPORT (1981) [hereinafter cited as TASK FORCE REPORT].

[3] J. MULLEN, AMERICAN PRISONS AND JAILS 12 (1980).

ing criminals were put into effect, and every valid law enforcement program implemented, the lack of state prison space would make them meaningless. If we want to get violent criminals off the streets—and we most certainly do—we must have a place to put them.

Several factors have contributed to our current crisis situation:

(l) Almost half of all state prisoners are kept in facilities constructed before 1925.[4] While public capital construction focused on schools, hospitals, and highways to meet the needs of the World War II baby boom, prisons were ignored.

(2) In the last few years, as violent crime has increased, the public has demanded harsher sentences and many state legislatures have responded with strict statutory requirements mandating their imposition.[5]

(3) The federal courts, in recent years, have extended their jurisdiction to inmate petitions challenging the conditions of confinement.[6]

(4) The cost of new prison construction has skyrocketed in a period in which the competing demands for available publicly-funded projects on the state level have increased dramatically.[7]

As a result of these developments, our state prison facilities are burdened beyond their capacities and beyond the ability of state governments to rescue them in the immediate future. That is why the only specifically detailed funding recommendation offered by the Task Force concerned state prison construction: two billion dollars over four years to be distributed to the states under a formula based upon need.[8] Each state desiring to participate must agree to select an architectural model developed by the National Institute of Corrections, contribute twenty-five percent of the construction cost, and assure that operational funding will be available upon completion.[9] There should be no federal bureaucratic entanglements. The objective of this program is to build facilities as quickly as possible in order to get violent criminals off the streets.

When we have a sufficient number of secure and humane prison facilities, those inclined to violent crime will begin to recognize that "slap on the wrist" sentencing alternatives will not be realistic options. Judges and prison administrators will not be forced into using probation and early release programs for the violent. Violent offenders will have to pay the price for their crimes.

While prison construction is the single most significant method for

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[4] *Id.* at 28.

[5] Glick, *Mandatory Sentencing: The Politics of the New Criminal Justice*, FED. PROBATION 3, 3-9 (1979).

[6] N.Y. Times, May 10, 1982, at 14, col. 6.

[7] J. MULLEN, *supra* note 3, at 136, 137, 199 (1980).

[8] TASK FORCE REPORT, *supra* note 2, at 75 (Recommendation 54).

[9] *Id.*

reducing violent crime, there are a number of other recommendations designed to enhance certainty in the system. In too many instances, the criminal justice process has been converted into a "sporting contest." Procedures that have no bearing on guilt or innocence abound; needless delay occurs; coincidence controls actuality; and people look for—and find—ways to beat the system. Rather than functioning as a deterrent, the criminal justice process too often operates to reinforce the offender's belief that he can commit crimes with impunity. This results in police frustration, in citizen outrage, and in an increase in mayhem on the streets of our communities.

The Task Force addressed these problems by suggesting reforms in the exclusionary rule,[10] in the trial of cases involving the insanity defense,[11] and in the bail laws.[12] While the recommendations are directed toward changes in the federal law, we hope that Congress will develop statutes that can be used as models for the states. Because state prosecution is our primary defense against violent crime, sealing the loopholes in the process will have a more profound effect on the state level.

The exclusionary rule, fashioned by the Supreme Court to enforce the fourth amendment's prohibition against unreasonable searches and seizures, prohibits the admission of reliable, credible evidence—the gun, the narcotics, the counterfeit money—because an error was made in obtaining it.

When the rule was developed in 1914, it applied only to federal criminal cases.[13] At the time, federal offenders were limited to a small number of smugglers, counterfeiters, and fraud artists. When the rule was extended to the states in 1964, it operated to free those who committed crimes affecting life and limb.[14] Because of this, we heard substantial testimony advocating an abolition of the rule in its entirety. However, Bill Hart, the Police Chief of Detroit and one of our Task Force members, opposed total abolition. He contended that police officers were proud of the way that police forces around the country have modernized and become sophisticated in contemporary investigative techniques in the past two decades. Claiming that elimination of the exclusionary rule would send out an unwanted signal for retreat, he urged us to accept a responsible middle ground that focuses on the good faith of the police officer.

The fundamental and legitimate purpose of the exclusionary rule—to deter illegal police conduct and promote respect for the rule of law—

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[10] *Id.* at 55 (Recommendation 40).
[11] *Id.* at 54 (Recommendation 39).
[12] *Id.* at 50 (Recommendation 38).
[13] Weeks v. United States, 232 U.S. 383 (1914).
[14] Mapp v. Ohio, 367 U.S. 643 (1961).

has been eroded as the courts have barred evidence of the truth, however important, if there is any investigative error, however unintended or trivial. Any remedy for the violation of a constitutional right should be proportional to the magnitude of the violation. Evidence should not be excluded from a criminal proceeding if an officer obtained it while acting with a reasonable, good faith belief that his or her actions were in conformity to the fourth amendment. A showing that evidence was obtained pursuant to, and within the scope of, a warrant should constitute prima facie evidence of such a good faith belief.

Accordingly, we recommend that evidence be admitted if the police officer acted in good faith in obtaining it.[15] This change, either by statute or judicial decision, will not only elevate public confidence in law enforcement, but also will serve to demonstrate our approval of responsible police conduct.

The insanity defense is another example of what the public perceives as a procedure designed to permit the guilty to escape punishment. Our existing insanity laws have not protected citizens from convicted felons with a history of violence and mental illness. They can be manipulated by criminals who would prefer to spend a short time in a mental institution rather than a long time in prison. There are too many documented cases in which a person declared not guilty by reason of insanity has been released after treatment to commit brutal crimes.[16] For these reasons, the insanity defense has been described as the chronic scandal of American criminal law.

Many court decisions have indicated that the due process clause would prohibit the abolition of the insanity defense. However, this does not mean that we cannot provide for alternative classifications to deal with offenders who are not legally insane but suffer from a mental illness. The Illinois General Assembly recently passed, and I signed, a law creating a "guilty but mentally ill" verdict as an alternative to the insanity defense in criminal cases.[17] The Task Force recommended that this device be established on a national basis.[18]

Under this procedure, when an insanity defense is raised, the court, if the evidence permits, may instruct the jury on the alternative verdict of guilty but mentally ill. When a person is not legally insane, he or she may be found guilty but mentally ill if, at the time of the offense, he or she suffered from a disorder of thought or mood that does not represent a condition amounting to insanity in the legal sense.

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15 TASK FORCE REPORT, *supra* note 2, at 55 (Recommendation 40).

16 Thompson, *The Future of the Insanity Defense in Illinois*, 26 DE PAUL L. REV. 359, 375 (1977).

17 1981 Ill. Laws 82-553.

18 TASK FORCE REPORT, *supra* note 2, at 54 (Recommendation 39).

When a guilty but mentally ill verdict is returned, the court may impose any sentence that could have been ordered for a conviction on the crime charged. However, the prison authorities must provide necessary psychiatric or psychological treatment to restore the offender to full capacity in an appropriate treatment setting. If the mental illness is cured, the offender must be returned to prison to serve out his or her sentence.

Insanity determinations under existing law deal in absolutes; a defendant must be found totally sane or totally insane. This fails to reflect reality. It does not allow the jury to consider the degree of an individual's mental impairment, the quality of the impairment, or the context in which the impairment is operative. A mental impairment does not necessarily eradicate the state of mind required to make a person guilty of a crime, and the jury should be permitted to consider the gradations of a defendant's mental state.

The guilty but mentally ill verdict does not abolish the insanity defense. It simply recognizes that there are gradations in the degree of mental impairment; it provides accountability, promotes treatment, and eliminates the need to manipulate the system. Most importantly, it is designed to protect the public from violence inflicted by persons with mental ailments who previously slipped through the cracks in the criminal justice system.

Our bail laws also represent an area in which reality is subsumed by technicality. A recent Chicago newspaper article portrayed a woman who was brutally attacked by a man on the street. Despite the presence of several witnesses to the event, the offender was released on bail shortly after his arrest and he proceeded to call and threaten the woman. She now sleeps with a butcher knife under her pillow and suffers extreme fear.

The federal bail laws were reformed in the mid-sixties to deemphasize the use of money bonds in order to eliminate disproportionate incarceration of the poor.[19] Many states adopted the federal Bail Reform Act.[20] We have learned since that bail decisions based exclusively on whether the accused will appear for trial do not work. We no longer can ignore the threat that the accused will pose to witnesses and the danger that they pose to a community.

There are some mean and vicious people who will continue to commit violent crimes unless and until they are locked away. There are some who will continue their criminal activities to obtain money to feed

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[19] Leahy & Pound, *Bail Reform—The Search for Constitutional Realism*, 11 DUQ. L. REV. 14, 14-17 (1972).

[20] Bail Reform Act of 1966, 18 U.S.C. §§ 3146-52 (1969).

a drug habit. There are some, like large volume drug dealers, who will post bail and flee the jurisdiction.

Because we must have a method for dealing with these offenders, the Task Force recommended that the courts be allowed to deny bail to persons who are found by clear and convincing evidence to present a danger to particular persons or a community, to those who had previously, while on pretrial release, committed a serious crime, or to those for whom no conditions of release are adequate to assure appearances at trial.[21]

Judges who deal with criminal cases on a daily basis are capable of determining who would pose a danger to the community and who would not. The nature of the alleged offense, the number of witnesses, and the accused's criminal history would lead to an informed determination. And courts that must decide issues of probable cause, reasonable belief, and length of sentence are equally equipped to resolve the question of dangerousness.

These changes in our pretrial release practices will do more than protect the community. They will end the hypocrisy in the system under which artificially high bonds are set as an indirect method for pretrial detention. They will provide defendants faced with detention a hearing at which the government would be required to establish dangerousness by clear and convincing evidence.

By focusing on four of the most important—and controversial—recommendations of the Task Force, I do not mean to diminish the prominence of the other sixty recommendations. Significant recommendations were put forward in the area of determinate sentencing[22] to end the gamesmanship and uncertainty of the parole system, and, in the area of post-conviction relief,[23] to promote finality in the process.

We urged that federal prosecution policies be redirected to focus on drug pushers by using military assistance to intercept illegal narcotics at the borders,[24] by engaging in international crop destruction,[25] by cracking down on urban youth gangs by using the full range of federal resources now directed against more traditional organized crime activities,[26] and by stepping up the apprehension of fugitives with a history of violent criminal activity.[27] We recommended an increase in in-

21 TASK FORCE REPORT, *supra* note 2, at 50 (Recommendation 38).

22 *Id.* at 56 (Recommendation 41).

23 *Id.* at 58 (Recommendation 42).

24 *Id.* at 28 (Recommendation 16).

25 *Id.*

26 *Id.* at 84 (Recommendation 60).

27 *Id.* at 62 (Recommendation 43).

vestigative and prosecutorial resources to meet these demands.[28] If the federal government intends to aid the states in the battle against violent crime, we believe it must have its own house in order first.

As we continue to do everything feasible to prevent violent crime and bring to justice those who commit it, it is clear that our nation owes a duty to the victims of crime. In this context, we urged the Attorney General to develop standards for the fair treatment of victims and to give further thought to the question of victim compensation at the federal level.[29] We must not forget that prosecutions cannot be successful without the assistance of victims and witnesses.

Violent crime is exacting a fearful toll in the communities of our nation. Millions of our fellow citizens are being held hostage by their fear of crime and violence. Though violent crime can strike anyone, it most frequently affects the poor, the old, and the residents of the inner cities—precisely those persons who are least able to protect themselves. Even those who can afford a suburban residence or a privately guarded city apartment often find themselves defenseless on the streets.

Because violent crime strikes at the very fabric of society, we must band together to strike back. I was proud to serve as co-chairman of the Violent Crime Task Force. I believe that the recommendations, if implemented, will provide responsible answers to the epidemic of violent crime that is sweeping our nation. And I am confident that the President and Congress will use the Report as a starting point as they attempt to develop meaningful legislative responses to the violent crime problem.

There is no reason to turn away in desperation as street crime increases to intolerable levels. The system that society has created for protection and security is the criminal justice system. If problems occur in that system, the answer is not to barricade ourselves in our homes, purchase handguns for protection, or form vigilante groups. The answer is to improve the system. As Mr. Justice Cardozo stated: "The inn that shelters for the night is not the journey's end. The law, like the traveler, must be ready for the morrow. It must have the principle of growth."[30]

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[28] *Id.* at 46 (Recommendation 37).

[29] *Id.* at 88 (Recommendation 62).

[30] B. CARDOZO, THE GROWTH OF THE LAW 19-20 (1924).