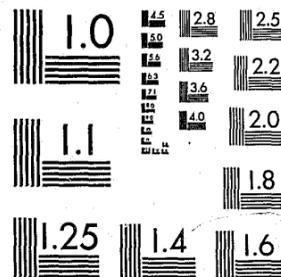


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UNITED STATES OF AMERICA

DEPARTMENT OF JUSTICE

ATTORNEY GENERAL'S TASK FORCE

ON

VIOLENT CRIME

MAIN BALLROOM
HOTEL WASHINGTON
15TH AND PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D. C.

MONDAY, AUGUST 17, 1981

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PROCEEDINGS

MR. HARRIS: At this time, we will call the meeting to order. Our schedule for this morning is as follows. We will now begin the final adoption of the Phase II Report. At 11:30, the Task Force members will make themselves available to members of the press who may have questions.

One note of caution, we have provided to members of the press, copies of the draft of the Phase II Report, and we remind you that this is in draft. There may be some changes made this morning, and to the extent you work off those drafts, please make the corrections yourself, or if you don't care to, we will have final reports as soon as we get them from the printer, which will incorporate, obviously, all the changes we make.

Gentlemen, I have, earlier in the week, sent you summaries of the recommendations and sometime over the weekend gotten to you a draft copy, which you should have in front of you, of the Phase II Report. And, first, I think what we ought to do is talk about the recommendations and then the commentary.

Are there any problems, or do you think we have incorrectly summarized the recommendations that you voted on in New York?

MR. ARMSTRONG: Jeff, I brought to your

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1 attention, and the other Task Force members, a couple of
2 items, particularly (b)(2) and (5), the wording of those
3 from my notes in New York, and it may well be that I or
4 the staff has a different interpretation of the wording
5 that we arrived at in New York.

6 MR. HARRIS: Just one second. For those of you
7 who have the book, we have renumbered, and you will find
8 (b)(5) as Recommendation 45 and (b)(2) as Recommendation
9 53.

10 MR. ARMSTRONG: I was concerned about the use
11 of the word "strictly", "strictly limited", as to how
12 that would be interpreted. It might serve to discourage
13 states from applying for demonstration programs.

14 MR. HARRIS: In Recommendation 53, Mr. Arm-
15 strong is referring to the part of our recommendation about
16 funding for state and local law enforcement programs,
17 which reads, "Grant awards for implementing such demonstra-
18 tion programs, require a reasonable match of state or
19 local funds and be strictly limited to a reasonable time
20 period", and you have a problem with the word "strictly".

21 MR. ARMSTRONG: Well, "strictly limited", and
22 it is my understanding, from my notes, that it was to be
23 a reasonable time period and a reasonable match.

24 MR. HARRIS: Does anyone else care to be heard
25 on that?

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1 MR. BELL: Well, I don't want to object to taking
2 the word "strictly" out. I am one of the two members of
3 the Task Force who is opposed to recreating the LEAA, and
4 that's -- this word "strictly", no doubt, was put in there
5 to reflect the view of Professor Wilson and me, but I
6 don't object to taking it out.

7 I think the commentary makes it clear that we
8 ought not to recreate the LEAA. And since the commentary
9 is so explicit, I don't object to taking the word
10 "strictly" out.

11 MR. HARRIS: Does anyone have a problem with
12 that change that Mr. Armstrong suggested?

13 MR. LITTLEFIELD: No problem.

14 MR. HARRIS: Okay. Then we will remove the
15 word "strictly" as it modifies "limited". Now, your other
16 one, Dave, I think, is now what is numbered Recommendation
17 45. That is the recommendation which reads, "The
18 Attorney General should seek additional resources to allow
19 state and local prosecutors to participate in federal
20 training programs for prosecutors".

21 MR. ARMSTRONG: Yes. And it is my recollection
22 from New York, that the wording was somewhere close to
23 "The Attorney General should seek additional resources to
24 allow state and local prosecutors to participate in appro-
25 priate existing federal training programs and to

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1 establish specialized training programs for those prose-
 2 cutors -- for these prosecutors in order to enhance their
 3 ability to more effectively prosecute serious violent
 4 offenders".

5 Not all existing federal prosecutor training
 6 programs deal with the prosecution of serious violent
 7 offenders. As Judge Bell, I think, mentioned at one of
 8 our hearings, it does not always -- the Attorney General's
 9 Advocacy course does not always deal with the local street
 10 violent crime problem, and this is what I think prosecutors
 11 in America are looking for, and so I simply would like --
 12 and thought the recommendation would have read "to establish
 13 specialized training programs in the area dealing with
 14 serious violent offenders".

15 Also, there may be some need to establish
 16 training programs in order to assist with the Phase I
 17 recommendation in the coordination of federal and state
 18 law enforcement agencies.

19 So, I would like to see that wording included
 20 in the recommendation. As it stands now, Recommendation
 21 45, as I read it, simply is to expand the existing federal
 22 training programs for prosecutors and would not add any
 23 additional programs to assist in violent prosecution.

24 MR. HARRIS: Well, the reason it is written the
 25 way it is, David, is because my recollection about what

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1 we did is to the contrary, and it is good that we bring
 2 this up because the staff also was somewhat unclear as to
 3 whether we wanted to make space available for state and
 4 local prosecutors in already existing programs, or whether
 5 we also wanted to take the additional step of asking the
 6 federal government to design programs for state and local
 7 prosecutors wherein the present programs do not meet their
 8 needs exactly.

9 So, let me throw it open and ask if for any
 10 other comments as to which way we wanted to go on this.

11 MR. BELL: Well, this would be a decided change
 12 from anything we have discussed. Mr. Armstrong is the
 13 National President of the State District Attorneys
 14 Association, and at one of our earlier meetings he expressed
 15 the desire to have state prosecutors attend the training
 16 school for lawyers that is run at the Justice Department.

17 And based on the experience of one who set up
 18 the training program, there is no more space at the Justice
 19 Department. You can let a few people in, and we have
 20 voted to do that, a few state prosecutors, but this would
 21 mean that the federal government would have to go somewhere
 22 else and set up these training programs. We don't now
 23 have this in the federal government anywhere.

24 Now, would it be better for the federal govern-
 25 ment to do this, or would it not be better for the State

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1 Court Institute at Williamsburg to do it. They have now
2 had a bill introduced in the Senate called the State Justice
3 Institute, I believe, Bill, or something like that, and it
4 is to fund the National Center for State Courts.

5 It seems to me this program you are suggesting
6 ought to be run there for the states, rather than the
7 federal government trying to take on another new project.

8 MR. ARMSTRONG: Well, Judge, as Governor
9 Thompson and I think both recommended at the New York
10 hearing, that there are existing training facilities for
11 state and local prosecutors. He mentioned the Northwestern
12 program, and I think I mentioned the National College of
13 District Attorneys, that already have in place the
14 machinery to deliver new and specialized training programs,
15 but as with everything else, they are somewhat hamstrung
16 with lack of finances.

17 I think both institutions, as we discussed in
18 New York, would be suitable to work along with the federal
19 training programs in some kind of overall curriculum or
20 delivery of training throughout the country.

21 There is no mention of that in the recommenda-
22 tion, and that's why I was a little concerned about it.

23 MR. BELL: Well, of course, the LEAA funds have
24 been cut off and, therefore, the National College of
25 District Attorneys is, like a lot of other groups, short

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1 of money. And I don't think we can now substitute the
2 federal government in all these areas. I think it would
3 be a very bad precedent. I think it relieves the states
4 of their own responsibility, and I've been very disap-
5 pointed that the states have not financed the National
6 Center for State Courts, but I long ago realized that they
7 were never going to finance it, so now the federal govern-
8 ment is going to have to finance that, and that may be
9 a very good way to set up this training school you are
10 talking about. But the federal government has so many
11 lawyers in it, and that's just not in the Department of
12 Justice -- the Defense Department has more lawyers than
13 the Department of Justice, for example, and I don't
14 believe that the federal government is in any shape to
15 start training state lawyers.

16 I think it is fine to have some state lawyers
17 attend the programs that already have been created and
18 are being operated for federal lawyers, but I think that
19 this would be -- you know, this is just something that
20 the federal government is not equipped to do. You would
21 be a lot better off to keep it somewhere else, and I'm
22 speaking from experience.

23 MR. THOMPSON: My recollection of the discussion
24 in New York, though, we specifically mentioned alternative
25 training programs that already exist -- Northwestern,

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1 National District Attorneys Association at Collegetown in
2 Texas -- and I thought we were talking about seeking
3 federal funds for the support of state and local prose-
4 cutors to attend those alternative training sessions, in
5 addition to finding chairs for them in the federal train-
6 ing center. Is that what you are talking about, Dave?

7 MR. ARMSTRONG: That's correct.

8 MR. THOMPSON: Because otherwise there would
9 have been no need to even mention those alternative pro-
10 grams that now exist, at least that is the sense that I
11 was left with.

12 MR. LITTLEFIELD: That is my recollection, and
13 we could discuss it on that basis.

14 MR. ARMSTRONG: That's mine, too.

15 MR. BELL: Was this going to be something like
16 federal scholarships?

17 MR. HARRIS: Yes, scholarship program.

18 MR. BELL: I must have left the meeting while
19 that was going on. I can't remember that.

20 (Laughter.)

21 MR. THOMPSON: Well, you were dismayed, Mr.
22 Chairman, about how much money we were spending at that
23 particular moment, and I think you did.

24 MR. HARRIS: I, frankly, have to say I don't
25 remember it either, but let's get a sense of what we

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1 should do, and let's do it. Frank, do you --

2 MR. CARRINGTON: I have nothing.

3 MR. HARRIS: Bob?

4 MR. EDWARDS: No.

5 MR. HARRIS: Let's do it this way then, so I
6 can get a sense of where the majority is. Dave, do you
7 want to make an alternative proposal, and we will --

8 MR. ARMSTRONG: Yes, I presented to my col-
9 leagues on the Task Force the following alternative pro-
10 posal. "The Attorney General should seek additional
11 resources to allow state and local prosecutors to par-
12 ticipate in appropriate existing federal training pro-
13 grams, and to establish specialized training programs for
14 these prosecutors in order to enhance their ability to
15 more effectively prosecute serious violent offenders".

16 Probably, we ought to make mention in another
17 portion of this alternative, is that to utilize and assist
18 the existing prosecutor training centers in the United
19 States, in some better wording than I have just given you,
20 taking into consideration the Northwestern Institute and
21 the National College of District Attorneys.

22 MR. HARRIS: Would it comport with your under-
23 standing if we changed the existing recommendation to read
24 as follows: "The Attorney General should seek additional
25 resources to allow state and local prosecutors to

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1 participate in federal and other non-governmental training
 2 programs for prosecutors", or words to that effect? I
 3 mean, is the idea that you'd like to see -- based on what
 4 Governor Thompson said, his understanding is somewhere
 5 between yours and Judge Bell's. He thinks that we agreed
 6 to have federal funds used to allow people to go to the
 7 National Institute of Trial Advocacy, the NDAA courses
 8 and Northwestern's program and the like, but not to design
 9 our own programs.

10 MR. ARMSTRONG: We are in agreement with that.

11 MR. HARRIS: You're in agreement with that. So,
 12 we are not talking about the federal government designing
 13 new programs.

14 MR. ARMSTRONG: The problem that you have is
 15 that those programs are very good, it is just that people
 16 can't afford to attend them. And so, instead of trying --

17 MR. HARRIS: How about if we take out the word
 18 "federal" in the present recommendation, and it would
 19 simply read, "The Attorney General should seek additional
 20 resources to allow state and local prosecutors to partici-
 21 pate in training programs for prosecutors", and then in
 22 the commentary make it clear we are talking about federal
 23 training programs as well as other programs which are now
 24 in existence. Would that solve your problem?

25 MR. ARMSTRONG: Yes, as long as it is pointed

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1 out in the commentary that that's exactly the intent of
 2 this.

3 MR. HARRIS: I think what we would do in the
 4 commentary is give some examples of the kinds of programs
 5 we had in mind, as well as the federal programs. Would
 6 that --

7 MR. ARMSTRONG: Yes.

8 MR. HARRIS: Does anyone disagree with that?

9 MR. BELL: I do, yes. I think I would like to
 10 say one more time, this is the last day that we will be
 11 meeting, that the federal government is the only govern-
 12 ment in the continental limits of the United States that
 13 is broke. There is no state government which doesn't have
 14 a surplus.

15 If a program is worth attending, it seems to me
 16 the state could send a prosecutor, and I do not think it
 17 is necessary for the federal government to pick this up
 18 and start giving scholarships to state lawyers; therefore,
 19 I object to it.

20 MR. LITTLEFIELD: Of course, most of our prose-
 21 cutors are locally funded, and a lot of local governments
 22 are broke.

23 MR. BELL: I see.

24 MR. CARRINGTON: Would this come under the time
 25 certain provisions, that it will only be funded to send

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1 state prosecutors for a given period of years, and then
2 the state is going to have to pick it up?

3 MR. HARRIS: No, it will not be -- training
4 proposals do not come under the reasonable match or the
5 limited time period that we referred. This is separate
6 and it is not limited.

7 MR. CARRINGTON: I tend to agree with Judge Bell
8 on this. I think there should be some cut-off point. If
9 the programs are this good, and they obviously are --
10 Northwestern University, National College of District
11 Attorneys -- then there should be a point where the states
12 say, "These programs are so good, we are training the
13 prosecutors so well that it is incumbent on us now to pick
14 it up".

15 MR. HARRIS: Well, if I can speak for Dave, and
16 I certainly don't think he needs to, but I -- from what I
17 hear him saying, it is not that the local and state people
18 don't know that these programs exist or that they are ex-
19 cellent, but they simply can't afford to send people. Is
20 that your point, Dave?

21 MR. ARMSTRONG: That is exactly the point. And
22 I'm sure there is going to come a time when states perhaps
23 are going to be in better financial positions than local-
24 ities will, but right now, if we are really going to
25 attack violent crime, we need to be training the people

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1 who are at the forefront of it, and that's the prosecutors
2 of America, and it seems to me that if the federal
3 government wants to do something about violent crime, here
4 is an area that it can effectuate, and to ignore that, I
5 think, is not to really place the emphasis of this report.

6 MR. HARRIS: Well, in line with what Frank said,
7 should we not then put in the commentary some comment that
8 this is based upon our perception of financial need, and
9 were the situation to be otherwise, we would not recommend
10 -- I mean, should there not be some expression of the idea
11 that this is recommended because of our perception of
12 the lack of ability to pay.

13 MR. BELL: I'd like to make one more argument.
14 This sends the wrong signal to the states and to the
15 local communities. It is the responsibility of state and
16 local government to enforce the law, to make the streets
17 safe, safe in your home, and anything that we do that
18 allows state and local government to escape that responsi-
19 bility is bad. It does send the wrong signal.

20 We ought not to say, "Just don't worry, we are
21 going to finance everything for you. Look to Washington,
22 and if you can't get something there, don't worry about
23 enforcing the law". We ought not to send any such signal
24 as that, and this is an example of that, in my judgment.

25 MR. THOMPSON: Judge, I have two problems with

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1 that. First, it seems to me that you can differentiate
2 methods of combating violent crime and not apply the rules
3 that we might ordinarily apply to federal-state relation-
4 ships, simply on the basis of immediacy, the reason for
5 which this Task Force was created.

6 The federal government has not created a whole
7 bunch of Task Forces in other areas because it hasn't
8 found social problems of the order and magnitude which
9 would require its creation, so I think we are different
10 in that respect.

11 Secondly, as far as I can see, even with budget
12 cutting going on, the federal government still has a sub-
13 stantial hand in the training of people in other areas,
14 which are also traditionally thought of as state responsi-
15 bility -- education, for example.

16 There have got to be thousands of scholarship
17 programs out there emanating from federal financial re-
18 sources, and education all the way from training of
19 primary and secondary teachers, up to programs to train
20 doctors for the nation; public health scholarships and
21 fellowships. I bet you could run down the whole gamut of
22 traditional state activity and find substantial federal
23 financial involvement.

24 And to have us in a situation where the Presi-
25 dent and the Congress -- if you look at the budget that

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1 has just been adopted -- continue to give federal
2 financial priority to those areas even in reduced
3 amounts, but to say, "No, we're not going to put any
4 money into training law enforcement professionals", I
5 think, flies in the face of the reason why this Task
6 Force was created.

7 MR. BELL: Well, we've got other provisions for
8 training law enforcement officials. This is the state
9 prosecutors we're talking about, only.

10 MR. THOMPSON: Well, they are law enforcement
11 officials.

12 MR. BELL: Well, I know, I understand that, but
13 we're training firemen even. I'll grant you that the
14 federal government is training everyone, but now we're
15 getting ready to add another layer on where we're going
16 to start training lawyers.

17 MR. ARMSTRONG: Judge, there's a clear prece-
18 dent established with the Quantico experience that you've
19 mentioned several times. The F.B.I. Academy has spent
20 millions of dollars, I presume, of federal dollars, train-
21 ing local and state police officers.

22 And all we are simply saying is, or advocating
23 in this recommendation, is that that be a similar process
24 for state and local prosecutors, and it seems to be well
25 established in the federal government that funds have been

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1 made available for state and local police officers, why
 2 can't that be made available for prosecutors. And I
 3 think we have discussed through this Task Force the
 4 importance of the state and local prosecutor. And that
 5 is one area that has received probably the least amount
 6 of federal attention and federal funding since there has
 7 been an awareness of violent crime in America.

8 MR. BELL: Where is the need? I haven't heard
 9 any testimony that there was a need to train state prose-
 10 cutors.

11 MR. THOMPSON: The prosecutors, Judge, are at
 12 the narrow end of the funnel. If we are going to train
 13 everybody who pours the separate pieces of the system into
 14 the funnel, and we expect the narrow end of the funnel,
 15 the judicial system, to separate the good from the bad and
 16 to convict the guilty and free the innocent, then it seems
 17 to me to be going at it backwards if we are going to
 18 train everybody who pours the material into the top, we
 19 let go an opportunity to make sure that those who are
 20 involved in the final process aren't receiving as much
 21 training.

22 I don't want to put it on the simplistic basis
 23 of having smart policemen and dumb prosecutors, but it
 24 seems to me foolish to be expending the efforts that we
 25 do at the beginning of the process if we are not going to

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1 similarly pay attention to the end results of the process.

2 MR. BELL: Mr. Chairman, I have nothing else to
 3 say. I know that it is hopeless to stomp the thing any-
 4 more to get federal monies, so I give up. I've said all
 5 I can say.

6 (Laughter.)

7 MR. HARRIS: Well, as I understand where we are,
 8 we are going to remove the word "federal" from the
 9 recommendation. We are going to make it plain in the
 10 commentary that we refer to federal programs as well as
 11 others already in existence, that would be of assistance,
 12 and the only thing I'm unclear on is whether we ought to
 13 have a reference to the fact we do this to address a
 14 financial need.

15 MR. ARMSTRONG: I think we ought to cite the
 16 experience of the federal government has had with the
 17 Quantico and the F.B.I. Academy already involved with
 18 training, specialized training of local and state police
 19 officers, as a precedent in the field.

20 So, I would, Mr. Director, move the alternative
 21 recommendation to my colleagues on the Task Force.

22 MR. LITTLEFIELD: Second.

23 MR. HARRIS: Any opposed?

24 MR. BELL: Yes, I oppose it.

25 MR. HARRIS: Anyone else?

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1 MR. BELL: I don't wish to speak again.

2 MR. HARRIS: So, that will be adopted as we
3 modified it. Do other members have anything that they
4 would like to bring up? I have one that I'd like to call
5 to your attention, and it is the old Recommendation (e)(4),
6 which is now, I believe, 61.

7 Now, the thing I'd like to call to your atten-
8 tion, I was unclear -- well, I think I'm clear, but it was
9 not specifically stated. The last sentence says that
10 we recommend that in the area of juvenile funds, that funds
11 should compete along with all other programs within the
12 administrative framework for general funding.

13 Now, this deals with the funding of proven
14 successful programs in the juvenile justice area. And
15 what the recommendation is, is that these programs ought
16 to -- and this I have no doubt about, I think this was
17 clear -- we decided they ought to compete with any other
18 proven effective program for whatever limited resources
19 are available, but the portion is -- and they ought to be
20 in the same general administrative framework.

21 Now, what that translates to is that, right now,
22 we have two agencies of the government handing out money
23 -- LEAA and OJJDP -- and they both administer the funds
24 separately and have their own forms, et cetera, and here
25 we recommend that there ought to be one. Does that

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1 accurately reflect your desires in this area? Does anyone
2 have any problem with it?

3 MR. HART: Well, I have a comment. As you know,
4 the majority of the violent offenses in America are com-
5 mitted by people between the ages of, say, 12 and 24, and
6 it seems to be a specialized problem. And I wouldn't like
7 to see that program diminished because that is the source
8 of our problem.

9 MR. HARRIS: The recommendation is not to
10 diminish it, but to the extent that the programs are
11 good, they would be adopted, but instead of having two
12 bureaucracies, so to speak, to administer one set of funds
13 and the other, they would be handled separately, and to
14 the extent that they meet our criteria, namely, provenly
15 effective programs with a reasonable match, et cetera,
16 they would compete for funds in the same way any other
17 good program would.

18 MR. HART: Okay. Then I don't like to see the
19 word "compete". What you are trying to do is cut away
20 the bureaucracy, and I think we should say that rather
21 than we want to diminish it. It has the connotation of
22 diminishing the program when you say "compete", I would
23 think, with the general public.

24 MR. CARRINGTON: I agree with Mr. Hart. I think
25 we should delete that competing part. It seems to put

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1 a sort of special burden of proof on juvenile programs,
2 as opposed to anything else we've recommended, and I don't
3 think it's necessary. They are going to be competing
4 because all programs compete.

5 MR. BELL: Well, the problem is that the juvenile
6 funds have been appropriated separately. Juvenile justice
7 is a favorite of the Congress, and they will get more
8 money for juvenile justice than they can spend.

9 We had money when I was Attorney General that
10 we never could spend, and we'd always get more than we
11 asked for. And then you are short in other areas of
12 criminal justice, and -- I take it this whole thing is
13 designed to treat all parts of the criminal justice system
14 equally.

15 MR. HARRIS: I think so. I have a suggestion
16 that might take care of the concern expressed by Chief
17 Hart and Mr. Carrington. If we change the word "compete"
18 to read "should be considered for funds along with all
19 other programs".

20 MR. BELL: That is good. That would meet the
21 need.

22 MR. HARRIS: We will change the word "compete",
23 delete "compete" and put in "should be considered".

24 MR. BELL: Jeff, on Recommendation 50, "The
25 Attorney General should seek additional resources for the

1 F.B.I. to reduce the backlog of requests for fingerprint
2 and name checks and so forth".

3 We've been sort of skirting around something
4 that I'd like to get the answer to, and that is, has there
5 been any effort made to put fingerprints, the fingerprint
6 files of the F.B.I., on a computer? Somebody probably
7 knows that. Do you know that, Bob?

8 MR. EDWARDS: Yes, sir, they are making an effort.
9 They are putting it on computers.

10 MR. BELL: You know, the Congress is very
11 guarded about letting anyone have computers. You have
12 to go through the House Government Operations Committee
13 and a lot of things like that. We've never been able
14 to computerize INS, for example. We started and the
15 Congress stopped us and said it had to be studied some
16 more.

17 Now, just what is the status? If it is possible,
18 I mean, if this is a good thing, then we ought to say
19 something directly about it because, otherwise, years will
20 go by and we still won't have the fingerprint files on
21 computer.

22 MR. EDWARDS: Judge, I couldn't agree with you
23 more. I think the need is there. They are in the process
24 of computerizing the files at the present time. Recommenda-
25 tion 49, which talks about the Identification Division and

1 NCIC, and trying to develop the capability to combine
2 those, as opposed to having them in contention or competi-
3 tion will solve that, but at the present time, they are
4 computerizing those files.

5 MR. BELL: I'm talking about 50 where we criticize
6 the F.B.I. for being 25 days behind.

7 MR. EDWARDS: Okay. The issue on 50 is just
8 simply a manpower problem, as I understand it. The
9 Identification Division has some 3,000 employees in that
10 division, and they have some difficulty in attracting
11 people in that does the type of work that is necessary,
12 technically, to get those records computerized, and that
13 is where we are trying to promote, I guess, putting some
14 priority on that particular function so that states can
15 access that information in a timely manner.

16 MR. BELL: Well, I'd like to move that the
17 commentary include some reference that we believe that the
18 F.B.I. records should be computerized to the maximum
19 extent possible, including fingerprint files.

20 MR. THOMPSON: Why don't we put it in the
21 recommendation?

22 MR. BELL: It would suit me fine.

23 MR. LITTLEFIELD: I will second it.

24 MR. THOMPSON: To give high priority to completing
25 the computerization of the F.B.I. fingerprint files because

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1 it strikes me as foolish, in this day when it is tech-
2 nically feasible to do that, to have thousands of clerks
3 sitting there with cardboard boxes and paper files, looking
4 through and finding records, when other agencies of the
5 government have long used computers.

6 I don't know, we've got this phobia about
7 computers and intelligence, when we should be making every
8 maximum possible use of computerization and intelligence.
9 If the purpose is to get a fingerprint back to stop a
10 crime or clear a person's record, I don't know why we
11 are afraid of the kind of technology we use every day in
12 every other aspect of our lives.

13 MR. BELL: Well, let's do that.

14 MR. HARRIS: Okay. We will make that change
15 and include a reference to the swift completion of the
16 computerization of fingerprint records by the F.B.I. in
17 the recommendation, itself.

18 MR. EDWARDS: Jeff?

19 MR. HARRIS: Yes, Bob?

20 MR. EDWARDS: One point in that area, under
21 47(b), at the end of the sentence it makes a reference.
22 It says, "May include a national data base of such records
23 or message switching". I would suggest to you that we
24 drop the term, or drop "message switching" because that
25 is just the technical utility, and I don't think it is

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1 appropriate in the context of what we are trying to adopt
2 here.

3 MR. BELL: There was a reason for that. If we
4 don't say that we favor message switching, Congress will
5 block it. These are scare words in the Congress. As soon
6 as they hear that you are going to put anything on a
7 computer, they'll say, "Oh-oh, they are going to have
8 message switching", and it sounds like you are getting
9 ready to spy or something, on everyone. We might as well
10 call a spade a spade.

11 If we want to get this done, we will have to
12 say this. I have fought this battle so many times that
13 I couldn't name all the times that I've had to try to
14 defend message switching, and we don't have any decent
15 records now because of that. That's why we put it in.

16 MR. EDWARDS: My only feeling was that maybe
17 we have used the term inappropriately, and maybe it has
18 been given higher attention than it should have, Judge;
19 that was my only problem.

20 MR. BELL: Well, we didn't start it. There's
21 a group in the Congress that will -- they'd have to go
22 to bed, they'd draw all the shades if they thought we were
23 going to have a decent records system to catch people.
24 So, I want to call it. I want to leave it in there, myself.

25 (Laughter.)

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1 We just won't get anything done if we don't
2 come to grips, have a confrontation about it.

3 MR. HARRIS: Is the consensus that we will leave
4 it as it is? Okay.

5 The juvenile section is 58 through 61 of the
6 juvenile areas.

7 MR. BELL: All right. Now, I want to bring up
8 something that we've heard some testimony on, and I'd just
9 like to put a sentence in the commentary. I don't want
10 to start an argument about it, but I strongly believe that
11 the great increase in crime, violent crime particularly,
12 comes from lack of discipline, and a lot of it has to do
13 with the fact that we have now a whole generation of
14 people who have never been in the military, never done
15 anything for the country.

16 And I would like to suggest that there could
17 be some decrease in juvenile crime if we had some system
18 in our country for a period of national service, where
19 everyone had to be in the national service for a short
20 time, and you did not have to be in the military unless
21 you volunteered, but you'd have to do something for your
22 country, such as work in the forests, work in the
23 hospitals, work in the Park Service, that sort of thing.

24 And I'd just like to get one sentence in saying
25 that someone ought to study the feasibility -- it's been

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1 done privately, but I mean the Congress ought to study it
2 -- of some period of national service for all American
3 youth.

4 MR. HARRIS: Comments?

5 MR. HART: You said on a voluntary basis, Judge?

6 MR. BELL: No, there wouldn't be any volunteers.

7 MR. HART: Well, it's true, to take care of some
8 of the problems of crime in urban areas, we could find
9 alternatives to crime, something for the youth to do,
10 constructive. I see what you are getting at, but don't
11 you think you will have problems making it a mandatory
12 draft-type thing?

13 MR. BELL: Well, it wouldn't be as good if it
14 was voluntary because you wouldn't be able to reap the
15 maximum benefits. As I see it, a period of national
16 service, say, for a year, would do more to lower the crime
17 level than anything we could imagine.

18 It would also put about 25 percent of the people
19 in the program on the receiving end. The illiterate would
20 become literate. I saw this in World War II where we took
21 in the middle of the war when we ran short of soldiers,
22 we took 4-Fs -- you were classified 4-F if you were
23 illiterate -- I saw a program in the Army where you taught
24 people to read and write in six weeks.

25 So, a lot of people who are now illiterate would

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1 become literate. If you were sick, you'd receive medical
2 attention. You would be taken out of the ghetto for the
3 first time, and you might not ever want to go back when
4 you saw the outside world. It would be a great thing
5 for our country.

6 MR. THOMPSON: You're recommending the study
7 of this, Judge?

8 MR. BELL: That's all, just the study.

9 MR. THOMPSON: I have no objections to the
10 study. I'd want to know a little bit about the cost of
11 the program.

12 MR. BELL: Everyone says it is very costly,
13 but that's the reason it needs to be studied. But I
14 would like to see it studied by the government, by the
15 Congress.

16 MR. THOMPSON: And I'd like to see a little
17 study on what we could get for a voluntary program versus
18 what we would get for a draft-type program. I think one
19 of the unfortunate things that was phased out in the
20 congressional budget just adopted, was the Youth Conserva-
21 tion Corps, which had been started several years ago and
22 which has now been entirely or severely cut back. It was
23 an enormous success in my state in taking youngsters,
24 particularly city youngsters, and putting them to work
25 in our state forests, and camps, and highways, and

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1 places like that, to the point where we've picked it up
2 a little bit in our own state budget. We thought it was
3 successful.

4 If it's for a study and the study will get at
5 both cost and the concept of what we could accomplish with
6 a voluntary program and what we could accomplish with a
7 national service program, I'd be glad to support that.

8 MR. BELL: It might be that we'd be out of our
9 jurisdiction to recommend that Congress do it because
10 we are making recommendations to the Attorney General,
11 but I would like -- I agree with you, just a study is all
12 that it is, but it is a study that is past due.

13 MR. HARRIS: Is there any objection?

14 MR. LITTLEFIELD: Not to a study.

15 MR. HARRIS: Then we will include such a sentence
16 or two in the commentary under the juvenile section.
17 We will work that concept in. I think that is similar
18 to what the Governor expressed, the differences and
19 feasibility versus mandatory, and perhaps there ought to
20 be some voluntary and some a little less voluntary.

21 MR. HART: Not being an attorney, I have a
22 habit of expressing things in street terms.

23 MR. HARRIS: That's why I understand you, Chief.

24 David?

25 MR. ARMSTRONG: Are you finished with the

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1 juvenile section?

2 MR. BELL: That's all I had on juveniles.

3 MR. ARMSTRONG: I'd like to go back to Recommenda-
4 tion 42, dealing with habeas corpus, particularly (b)
5 section of that, and maybe the staff can tell me -- I'm
6 not that familiar with the federal procedure, but are we
7 going to have some constitutional difficulty in trying to
8 prevent the federal District Courts from holding evidentiary
9 proceedings on facts which were fully expounded and found
10 to be in the state court proceedings, without setting up
11 some kind of a guideline with that in mind?

12 I'm not sure we can even recommend to do that.

13 MR. BELL: I think it's already in the federal
14 statutes and is being, according to the state courts, is
15 being ignored.

16 MR. HARRIS: It is in the present statute, and
17 it discourages federal courts from so doing but it doesn't
18 prohibit them. This would make it a little stronger since
19 there is a feeling on the part of state courts that this
20 is not being effectively handled by federal courts and that
21 you do need to prohibit them.

22 The concept is, and it is embodied in some of
23 the proposals which are currently in the hopper, is that
24 if the facts have been fully and fairly expounded, those
25 ought to be the law of the case, so to speak, and there

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1 is no need to re-find those facts.

2 MR. ARMSTRONG: If I could play the Devil's
3 Advocate, what if I'm a defendant and I say there is newly
4 discovered evidence involved. Would this preclude me
5 from filing a habeas before a federal judge and trying
6 to bring out the newly discovered issue?

7 MR. HARRIS: My reading of it is, no, it
8 would not. We are talking about a situation in which you
9 have taken your newly discovered evidence, for example --
10 and let's assume it got discovered early on -- gone and
11 made your motion in the state court. The state court
12 held a hearing, decided that it wasn't such newly dis-
13 covered evidence -- either it wasn't new or it wasn't
14 evidence -- and denied your application.

15 If, in fact, that was done fully and fairly in
16 the state court, you wouldn't then be able to bring it
17 up and get yourself an evidentiary hearing in the federal
18 court. That's my understanding of where we're at.

19 MR. THOMPSON: If it's not, I assume you would
20 be referenced back to (a), the federal judge directing
21 that the evidentiary hearing be held, but in that forum.
22 I think the combination of (a) and (b) takes care of the
23 problem you raised.

24 MR. HARRIS: I think this question of newly
25 discovered evidence, though, is probably worth adding a

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1 sentence to the commentary about because it is clear that
2 it is not your intent, at least as I hear you, to say
3 that once the three years has run, if someone comes across
4 some evidence that they could not have discovered before-
5 hand or may have been inadvertently or willfully suppressed
6 by the police or the prosecutors or some other party,
7 that they would then be precluded from being able to bring
8 that forward, and I think we ought to make that a little
9 clearer than it is in the commentary.

10 MR. THOMPSON: I think, in fact, on that point,
11 I was going to suggest that we add it to the recommendation.
12 We now have a three-year statute of limitations on habeas
13 petitions, which doesn't bother me because I agree with
14 what Judge Bell said on Meet the Press yesterday, there
15 ought to be repose in this area just like there is in
16 every other area of the law, and the only exception we
17 now have is for the creation of a new constitutional right
18 after the running of the three years, and I think we ought
19 to expressly say that it applies also to newly discovered
20 evidence after three years.

21 I think that's what we meant. We didn't mean
22 to foreclose newly discovered evidence as opposed to
23 newly created constitutional right, and if that is so,
24 we ought to say it directly in the recommendation, add
25 it as a sub-point.

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1 MR. BELL: I have just assumed, on this federal
2 right, that that included newly discovered evidence, but
3 I think we ought to say it.

4 MR. THOMPSON: I think we ought to say it
5 clearly.

6 MR. ARMSTRONG: Could it be interpreted under
7 60.02, on newly discovered evidence, to vacate a judgment?
8 If you read, in 60.02, the Federal Rules, isn't that the
9 standing rule on vacating judgments for newly discovered
10 evidence? I think it may be.

11 MR. BELL: It's in Rule 60. I can't remember
12 the subsection.

13 MR. ARMSTRONG: Within that they define a
14 reasonable time --

15 MR. BELL: But that's federal trial.

16 MR. HARRIS: I guess the problem here --

17 MR. ARMSTRONG: But in order to have standing
18 to bring that, it has to be within the category of either
19 fraud, or coercion was used, and this motion would have
20 to be brought within a reasonable time. Are we defining
21 under that that reasonable time shall be three years?

22 MR. BELL: No. No, we are not getting into the
23 Federal Rules of Procedure.

24 MR. HARRIS: I think what David is asking is,
25 if you brought a habeas based on newly discovered

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1 evidence, should it not be limited to the same three-year
2 limitation that we are now imposing for habeas corpus,
3 generally?

4 MR. LITTLEFIELD: Three years after the evidence
5 is discovered.

6 MR. HARRIS: Three years after it is discovered.

7 MR. ARMSTRONG: Oh, I see. There's going to
8 be a correlation with our recommendation to that Federal
9 Rule. I mean, obviously, Congress and the Attorney
10 General through the Department of Justice, can assist in
11 the promulgation of a rule of that nature, and if that
12 is what we are saying, then we ought to say that here,
13 and we haven't said it.

14 MR. HARRIS: Maybe we should make reference to
15 that in the commentary under this section. What we will
16 do is add, as Governor Thompson suggested, if there is no
17 objection, under 42(c), in addition to the exception that
18 we put in for federal rights that did not exist, we will
19 add another one for newly discovered evidence. And then
20 in the commentary, cross-reference the Federal Rules and
21 express our view that there ought to be some consistency
22 in the application of this and that.

23 MR. THOMPSON: So that the three-year statute
24 of limitations would run on both, three years after they
25 were known, both the constitutional right and the newly

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1 discovered evidence.

2 MR. HARRIS: That's right, whichever -- cops.
3 This is Gary Starkman, Counsel to the Governor and
4 resident constitutional expert.

5 MR. STARKMAN: Two points: One is that the
6 newly discovered evidence has to be material and sufficient
7 to vitiate the verdict; and, second, you want to allow it
8 in the federal courts only where the state court does not
9 provide a forum.

10 MR. HARRIS: Perhaps we should include both those
11 points in the commentary.

12 MR. BELL: I think that's good.

13 MR. ARMSTRONG: The reason being that it would
14 be in the federal courts to begin with.

15 MR. STARKMAN: If you have a statute that allows
16 newly discovered evidence to come into federal court, you
17 could just skip the state court that specifically author-
18 izes habeas jurisdiction.

19 MR. BELL: This will become the new habeas
20 corpus wave of the future. Everyone will find some
21 new evidence, no matter how immaterial.

22 MR. ARMSTRONG: That was the danger that I saw
23 if you limited that. You could come back in through 60.02
24 with newly discovered evidence and you're not really
25 addressing the problem. And it's really a state problem

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1 more than it is a federal problem, and a lot of people
2 haven't recognized that, but unless you are consistent,
3 as Jeff mentioned, this recommendation will not be very
4 effective.

5 MR. HARRIS: Then we will make the change in the
6 recommendation. The Commentary will discuss the three
7 points, the two that Gary raised and the question that
8 in order not to create a loophole on the newly discovered
9 evidence, that we ought to impose the same limitation via
10 the Federal Rules that we are proposing to the habeas
11 corpus sections of the Code.

12 MR. THOMPSON: I think what we need -- the
13 ultimate purpose of the commentary ought to reassure those
14 people who are already starting to beat on our heads for
15 diminishing the "great" writ -- and, again, I think this
16 is an example of where we are, by careful limitations
17 of what are essentially worthless petitions, enhancing
18 respect for the "great" writ, just as we, in our exclu-
19 sionary rule recommendation enhance the respect that the
20 exclusionary rule deserves for those cases where it truly
21 ought to apply, and this commission ought to be out in
22 front on that notion; and, secondly, we ought to be giving
23 guidance to the statutory drafters, especially in this
24 habeas corpus area -- this is all going to depend on
25 changes in the federal statutes with regard to habeas --

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1 and we want the statute drafters, whoever they are, within
2 or without the Department of Justice, to know exactly
3 what we meant in the recommendation.

4 MR. BELL: Well, that's a good point because
5 years ago, Justice Jackson predicted that the Great Writ
6 was being trivialized and that, finally, finding the
7 constitutional right would be like looking for a needle
8 in a haystack, is the words he used, because we'd have
9 so many of these petitions that a good, meritorious case
10 was apt to be lost.

11 And I think that's the shape it's in now, you're
12 right, that some limitation will enhance the Great Writ.

13 MR. HARRIS: The other point I think Governor
14 Thompson raised was a good one, a point that was raised
15 yesterday on a TV program that Governor Thompson and
16 Judge Bell appeared on, where there was a question which
17 suggested that the questioner felt that the problem with
18 habeas corpuses we saw was that federal judges spend too
19 much of their time deciding these cases. In reality, we
20 are looking at this from the state court position that
21 there is no finality to state court judgments, and they
22 are often being reviewed on matters that they have fully
23 heard, and finding facts that they have fully found.

24 MR. THOMPSON: Wasting state prosecutorial
25 resources that ought to be used in trying cases, live

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1 cases.

2 MR. HARRIS: Is there anything else that anyone
3 has that they'd like to talk about? David?

4 MR. ARMSTRONG: Jeff, while we are on the
5 substantive recommendations, I read in a newspaper coming
6 up here yesterday where it was alleged that this Task
7 Force is proposing to eliminate the insanity defense,
8 and unless I was asleep when we discussed this, or not
9 present, I don't recall us ever making a recommendation
10 to eliminate the insanity defense; however, we are going
11 a step further, to enhance the existing legislation and
12 how we treat the criminally insane in this country, in
13 coming to another alternative disposition, that is guilty
14 but mentally ill, which I think has been needed for some-
15 time.

16 I know states like Illinois and Michigan and
17 others have moved in this direction, and it certainly
18 has not damaged any rights of anyone accused or anyone
19 who is suffering from mental illness who may commit a
20 crime, and I think it ought to be made very clear to the
21 country that this Task Force has not recommended the
22 elimination of the insanity defense.

23 MR. HARRIS: Let me tell you how that comes
24 about because I happen to know that received wide currency
25 due to a factual error reported in the New York Times and,

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1 unfortunately, a number of people who do their reporting
2 by reading other people's clips rather than what we
3 recommended, have repeated it. And it nowhere appears,
4 and has never appeared in our recommendations, and that
5 ought to be publicly said.

6 MR. THOMPSON: I think the easy way to say that
7 directly is to take Recommendation 39, in the second line,
8 and say, "The Attorney General should support or propose
9 legislation that would create the additional verdict in
10 federal criminal cases", make it clear that we have no
11 intention, and we never did have any intention of modify-
12 ing, abolishing the present defense insanity. This is
13 an additional verdict, an additional choice by the jury
14 where the judge feels the evidence warrants the submission
15 of the additional jury verdict, to take care of those
16 gray areas between sanity and insanity that we all now
17 acknowledge exist.

18 MR. HARRIS: Any problem with that? I think
19 that would clear it up. It's unfortunate that we even
20 have to, but --

21 MR. EDWARDS: I will second that.

22 MR. HARRIS: We will add, before "verdict",
23 change the word "a" to "an", and add "an additional
24 verdict".

25 MR. BELL: That's all right with me, but I don't

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1 think we ought to over-react to something you see in the
2 newspaper. There's no civilized country on earth that
3 puts insane people, finds them guilty and puts them in
4 the penitentiary.

5 I've never heard it suggested that we've become
6 uncivilized, but if you want to just respond in that way,
7 I guess it's all right.

8 MR. ARMSTRONG: It's better than having the
9 American public feel that we are trying to eliminate the
10 insanity defense, if that is not clear to them from some
11 statement by this Task Force, and I think we've just done
12 that, by amending the recommendation.

13 MR. THOMPSON: I remember yesterday, Judge,
14 when Mr. Stearn was questioning us on that, he assumed
15 we were eliminating the insanity defense, and I said,
16 "Wait, wait a minute", but they don't let you interrupt
17 on that program, so this is our chance for rebuttal.

18 MR. BELL: Yes.

19 MR. HARRIS: Does anyone else have anything
20 they want to talk about?

21 (No response.)

22 Anything with regard to the commentary that
23 anyone wants to bring up?

24 MR. THOMPSON: I have a number of things with
25 regard to the commentary, but they are language changes.

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1 They are not substantive changes, and I'm not sure it is
2 worth the time of this Task Force to sit here and discuss
3 line-by-line where we would substitute words.

4 I'd be satisfied if I could give you my marked
5 copy, and if you thought it was clean-up language -- I
6 assume we are going to have some editing of this anyway
7 in terms of clean-up, to have it thrown in there because
8 I don't think any of the things that I'm concerned about
9 go to the merits of what we say.

10 MR. HARRIS: We will, when we make these changes,
11 have it reviewed by a professional editor, to make sure
12 that we sound as literate as we think we are, and why
13 don't we do it that way. And if there are any things
14 of substance, that we think are substance and you think
15 are clerical, we will get back to you on it.

16 Anyone else have anything?

17 (No response.)

18 Well, if that finishes the comments, before
19 we finish, I just have a couple of things I'd like to
20 say --

21 MR. BELL: Should we vote now?

22 MR. HARRIS: Would you like to formally do that?
23 At this time, with the changes we've made in the draft
24 presented to you, let's put the motion this way, all those
25 who favor the adoption of the final Phase II Report to the

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1 Attorney General will signify by raising your hands and
2 saving "aye".

3 (Show of hands and chorus of "ayes".)

4 MR. HARRIS: Opposed?

5 (No response.)

6 Hearing no "nays", it is unanimously adopted.
7 I have Professor Wilson's proxy, and he, too, votes to
8 adopt.

9 Just as we finish our work in trying to restore
10 ordered liberty to this country, I just have a couple of
11 things I would like to say. First, the public should
12 know that the job I've had to do would not have been
13 possible without the active participation of all the members
14 of the Task Force.

15 They have not merely appeared at meetings and
16 gone through the motions, but have given of their time
17 freely on each and every issue, and I could not have had
18 the staff produce a report like this without that.

19 Second, we worked with a very small staff of
20 dedicated professionals from the Department of Justice, and
21 I would like to personally thank the staff for assisting
22 me in turning out the product for the Task Force at their
23 wishes. It would not have been possible without long
24 overtime and no griping. They are owed by me a personal
25 debt of thanks.

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1 There are two people I would like to single out
 2 here on a personal note. One is Joseph Band, who is with
 3 the Department of Justice. Joe, in addition to heavy
 4 substantive work on the report, made the arrangements for
 5 us in each of the cities and hotels, and we could not have
 6 gotten through this in the way we did and having been
 7 able to dedicate our efforts to substantive work without
 8 Joe's fine assistance, both in the substantive area and
 9 with the arrangements.

10 And, lastly, Dean St. Dennis of the Department
 11 of Justice, Office of Public Information, has been inval-
 12 uable in assisting both Task Force and the members of the
 13 media so that this event, to the extent you have found
 14 it newsworthy, could be covered in a responsible way, and
 15 he has been of tremendous assistance to us all in making
 16 it go so smoothly. That's all I have.

17 MR. BELL: I'd like to move that we commend
 18 Jeff Harris, our Staff Director, and all members of the
 19 staff, for a job more than well done.

20 (Chorus of "seconds".)

21 MR. HARRIS: At this time, we will --

22 MR. THOMPSON: May I say a word? I'd like to
 23 say a word to the public generally and to the members of
 24 this commission. Service on this commission was not only
 25 an enjoyable personal privilege for me, in the sense of

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1 giving me an opportunity to help confront what I think is
 2 one of the most important problems facing the nation
 3 today, but also in bringing me back to the roots of my
 4 career as a public servant, which began in the criminal
 5 justice system.

6 And I would just like to add a commentary that
 7 the service on this commission now rounds out about 25
 8 years of work in the criminal justice system for me, at
 9 all three levels of government. And I don't believe I
 10 have ever sat on a Task Force, commission, or committee
 11 at any of those levels of government in the last 25
 12 years, which was composed of more people who knew what
 13 they were talking about. I could go on and cite the
 14 backgrounds of all of my fellow task force members and
 15 why they were chosen and what they each brought to the
 16 hearings and to the recommendations and to the commentary,
 17 all of which is remarkable and self-evident in this docu-
 18 ment, but I just get the sense, after participating in
 19 things of this sort for 25 years, on all levels of
 20 government, that we had in this Task Force more people
 21 who knew who they were talking about in dealing with the
 22 criminal justice system than I've ever seen before, and
 23 I think the report itself, the recommendations and the
 24 commentary, contain more commonsense recommendations
 25 rather than fly-by-night or dream recommendations, or just

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1 throwing money at things, than I've ever seen before, too,
 2 and I think the Task Force displayed not only a great
 3 deal of criminal justice sense but a great deal of
 4 political and legislative sense, too, and the more I serve
 5 as governor of a large state and the more I interact with
 6 the federal government, the necessity for approaching
 7 problems with one eye on the legislative process and one
 8 eye on the political process to ensure that you get what
 9 you after, becomes increasingly important, and I think
 10 that ought to be on the record.

11 MR. HARRIS: At this time, ladies and gentlemen,
 12 what we will do, we have finished early, we will take a
 13 break and have the floor opened up for questions by
 14 members of the press at 11:00 o'clock instead of 11:30.

15 (Whereupon, at 10:50 a.m., the Attorney
 16 General's Task Force on Violent Crime was adjourned.)
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CERTIFICATE OF REPORTER

1 This is to certify that the proceedings of the
 2 Attorney General's Task Force on Violent Crime were held
 3 in the Main Ballroom, Washington Hotel, 15th and Penn-
 4 sylvania Avenue, N.W., Washington, D. C., on Monday,
 5 August 17, 1981, as herein appears, and that this is the
 6 original transcript thereof.
 7
 8
 9

10
 11 Phyllis P. Young
 12 Phyllis P. Young
 13 Court Reporter
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UNITED STATES OF AMERICA

DEPARTMENT OF JUSTICE

ATTORNEY GENERAL'S TASK FORCE
ON VIOLENT CRIME

PRESS CONFERENCE

MAIN BALLROOM
HOTEL WASHINGTON
15TH AND PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D. C.

MONDAY, AUGUST 17, 1981

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TASK FORCE MEMBERS PRESENT:

JEFFREY HARRIS Executive Director
U.S. Department of Justice
10th & Constitution Avenue, N.W.
Room 4418
Washington, D. C. 20530

GRIFFIN B. BELL Co-Chairman
King and Spaulding
Atlanta, Georgia

JAMES R. THOMPSON Co-Chairman
Governor
State of Illinois
Springfield, Illinois

DAVID L. ARMSTRONG
Commonwealth Attorney
Louisville, Kentucky

FRANK G. CARRINGTON
Executive Director
Crime Victims Legal Advocacy
Institute
Virginia Beach, Virginia

ROBERT I. EDWARDS
Director, Division of Criminal Justice
Information Systems
Florida Department of Law Enforcement
Tallahassee, Florida

WILLIAM L. HART
Chief of Police
Detroit, Michigan

WILBUR F. LITTLEFIELD
Public Defender
Los Angeles, California

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P R O C E E D I N G S

1
2 MR. HARRIS: What we plan to do is to open up
3 for questions for a half hour or less, if you don't feel
4 that you have questions that will run that long, and if
5 you would like a specific member of the Task Force to
6 answer, please indicate so in your question.

7 At this time, we are ready to go. And if you
8 want to speak to any individual member of the Task Force
9 after the general press conference, they will make them-
10 selves available for a few minutes before lunch, for
11 interviews that you may think you want to do.

12 QUESTION: Mr. Harris, I've got sitting on my
13 bookshelf back in my office a similar set of reports.
14 For instance, the President's Commission on Law Enforce-
15 ment back in the 1960s; the National Advisory Commission
16 on Criminal Justice Standards and Goals for the 1970s.

17 Those task forces made a great deal of recom-
18 mendations on what they though could be done to combat
19 crime in the United States, and very few of those recom-
20 mendations were ever adopted.

21 What is going to make this report any different?

22 MR. BELL: Well, I think the thing that will
23 make this Task Force report different is the fact that we
24 have been asked to do this by the Attorney General. And
25 the strength of the movement depends directly on the

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1 strength of the Attorney General. If the Attorney
2 General wants to do something about these things, he can
3 do so.

4 We have given him some very practical recom-
5 mendations. There is not one recommendation that is not
6 feasible from the standpoint of, as Governor Thompson
7 said, the Congress and politics, and I think that all of
8 these things can be done.

9 I believe the Attorney General will want to
10 implement these recommendations. We have, in a sense,
11 been working for him. I have a feeling that President
12 Reagan and the White House staff would be just as much in
13 favor of these recommendations as would the Attorney
14 General.

15 Now, with that kind of combination, plus the
16 fact that the Democrats and Republicans on the Hill are
17 in favor of doing something about violent crime, it seems
18 to me that all of these things are apt to be done. And
19 I have high hope that they will be done.

20 MR. THOMPSON: I think you have a different
21 mood in the country now, too. President Johnson's Task
22 Force, back in the '60s, to which I served as a consultant
23 for one summer, while it produced a number of recommenda-
24 tions to fight crime, also had to compete in the Congress
25 and in the Administration, with one of the greatest arrays

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1 of social legislation ever to come down the pike.

2 We are out of that era, it seems to me. The
3 election of this Administration, indeed, the closing
4 days of the last Administration and the increasingly
5 conservative nature of the Congress, the people and the
6 Executive Branch, I think, have moved crime and crime
7 prevention and crime fighting up the list of priorities,
8 both for resources and for personnel, and I think we find
9 ourselves confronted in specific areas, like prison over-
10 crowding, with problems that simply didn't exist in the
11 past.

12 And this Administration, I think, has shown a
13 willingness to go out and fight for a program and get it
14 done. Everybody said you couldn't cut the budget, but
15 they did cut the budget. Everybody said you couldn't
16 pass a tax cut of that magnitude, but the President did.

17 And I think if the same determination is adopted
18 in implementing the recommendations of this report, it
19 can be successful.

20 QUESTION: One of the specifications of Number
21 54 recommends that \$2 billion be spent for prisons, but
22 the others often recommend additional resources but don't
23 set specific amounts of money.

24 Can anybody on the Task Force estimate how much
25 all of the resources and grants that you are recommending

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1 in other parts of the report would add to? I mean, is it
2 like a 10 percent increase in federal spending on law
3 enforcement, or 15, or how much?

4 MR. BELL: Well, the \$2 billion for prisons is
5 more than the Department of Justice budget, just for
6 prisons, but everything in life is relative. That's
7 particularly true in the government.

8 Remember that in 1977, to create jobs, we had
9 a \$6 billion public works program. If that \$6 billion
10 in 1977 had been spent on prisons, we would not be recom-
11 mending \$2 billion now. And this \$2 billion is over four
12 years, so that's \$500 million.

13 The LEAA budget, when I became Attorney General,
14 was \$800 million. So, everything we recommend would be
15 less than the LEAA budget was in 1977-78, I'm certain of
16 that. We've not quantified, I guess you would call it,
17 the cost, and the \$2 billion figure is the only actual
18 figure used, but based on experience, these other things
19 are not that expensive.

20 QUESTION: It would all be less than the \$800
21 million budget for LEAA?

22 MR. BELL: Oh, there's no question about that in
23 my mind at all.

24 MR. THOMPSON: Things are relative. For example,
25 in the recommendation to increase the resources of U.S.

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1 Attorneys and the F.B.I. and DEA, it depends on the par-
2 ticular nature of the problem that we are attempting to
3 get at.

4 We recommend, for example, that the Justice
5 Department, the U.S. Attorneys and the F.B.I. go after
6 street gangs in large urban areas of the country that
7 operate much like the traditional Mafia organized crime
8 activity. That would indicate additional resources for
9 those particular U.S. Attorneys' offices in jurisdictions
10 who are confronted by that problem, but it wouldn't happen
11 in other parts of the country.

12 And, similarly, when we recommend additional
13 resources to investigate and prosecute narcotics, I assume
14 a great deal of the money would be directed at those
15 areas of the country where there has been a sudden pro-
16 liferation of the problem -- Florida, for example, where
17 we took very dramatic testimony about the impact of the
18 influence of cocaine and marijuana down there in South
19 Florida is having on local violent crime.

20 So, it is very hard to put a dollar figure on
21 something that may be a problem in one part of the nation
22 but not another. The prison construction problem is such
23 a widespread one that the Task Force eventually ended up
24 in agreement with the National Governors Association
25 Criminal Justice Committee's recommendation that it be

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1 designated the Number One criminal justice priority in
2 the nation. And when all 50 governors agree on something
3 as a Number One priority, I think you can see the dramatic
4 nature of the problem and its widespread effect, and
5 that's why specific dollars were put in.

6 QUESTION: Judge Bell, you're recommending a
7 modification of the insanity defense. What is wrong with
8 the current insanity defense, the model penal code defense,
9 and what effect would your changes have on the model
10 penal code insanity defense?

11 MR. BELL: Well, I think our recommendation en-
12 hances the plea of insanity because rather sustained now,
13 as you know. It does something, though, that is not
14 much needed, and that is, you can be found guilty but
15 mentally ill.

16 That means instead of being released, you are
17 in the custody of the prison system, but you are sent to
18 a mental institution. And if you later recover, you
19 still would serve your term or your sentence. So, the
20 public, in that way, would be protected, but the defendant
21 would also be protected because he would have been found
22 mentally ill and would be treated.

23 The way it is now, if you are found not guilty
24 by reason of insanity, you are just usually committed to
25 an institution, but you are soon out, and nothing is done

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1 and the public is not protected.

2 QUESTION: Judge Bell, can I ask you a question,
3 and then I would like to ask Mr. Littlefield if he would
4 answer the same question. It has to do with the exclu-
5 sionary rule.

6 If the exclusionary rule were modified to give
7 trial judges around the country the discretion to make
8 a subjective judgment as to whether or not the illegal
9 police activity was done purposely or whether it was done
10 without intent to violate individual rights, isn't there
11 some concern that injecting this subjective element into
12 it will permit judges around the country to let into
13 evidence material that really should be suppressed in the
14 interest of justice?

15 MR. BELL: Sure, that's a concern, and every
16 trial is a concern. I mean, is the judge honest? Are
17 the prosecutors honest? We know not everyone is honest,
18 but most people are, and you would always have that
19 problem.

20 I think it is important to note that we have
21 not recommended that we do away with the exclusionary
22 rule all together. There is a strong movement in this
23 country to do away with it all together.

24 We've taken a middle ground, which is that if
25 the government can show that the officer acted in good

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1 faith, then the evidence would be admitted; otherwise, no.
2 This may save the exclusionary rule; otherwise, it is
3 quite likely that the exclusionary rule, at some time in
4 the future, will be abolished. It does not serve the
5 purpose for which it was originated, in my judgment, any
6 longer, and it should be modified.

7 I, myself, do not favor doing away with it,
8 but it certainly could be modified.

9 MR. LITTLEFIELD: I am concerned, of course,
10 with any diminution of the exclusionary rule, or any
11 modification, but -- and I agree that it is going to be
12 difficult, I think, for trial judges to look inside the
13 head of a police officer who has made an arrest and
14 seized evidence, to see just what was going on in his
15 mind at the time. I think it is going to be difficult,
16 yes.

17 MR. THOMPSON: Could I respond to that? Fred,
18 I don't think it is anymore difficult than what judges
19 do every day, even in the area of search and seizure.
20 Judges have to make subjective judgments based on the
21 evidence in front of them, as to whether or not there
22 was probable cause for arrest; probable cause for the
23 issuance of a search warrant; probable cause for the
24 seizure of evidence without warrant. There really is no
25 difference from those probable cause determinations, or

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1 reasonable grounds to stop and frisk somebody under the
2 Supreme Court stop-and-frisk decision and what a judge
3 would be required to find under the modification that
4 we've suggested.

5 In the tort law, judges make those kinds of
6 subjective judgments about proximate cause, and compara-
7 tive negligence, and that's what the business of judging
8 is all about, and I don't think we've made the judge's
9 job anymore difficult here than any other place in the law.

10 What we have said is that we think enough of
11 the exclusionary rule as a device to keep the door-kickers
12 down in place. None of us wants to return to the '20s and
13 the '30s and the conditions of police lawlessness which
14 gave rise to the exclusionary rule, that rather than see
15 it risk being lost totally because the public is revulsed
16 by the notion that judges are suppressing the truth in
17 cases because of the way in which the truth was gotten,
18 that if we modify it and provide that sanction against
19 police conduct is appropriate to the violation that they
20 engaged in, we enhance what is left rather than do away
21 with the fundamental right.

22 QUESTION: \$2 billion for prison reform at a
23 time when money is being cut out of other parts of the
24 budget, what are your chances of getting that put in?

25 MR. THOMPSON: Well, I think the chances are

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1 fairly decent because, as I say, there is this consensus
2 of opinion around the nation that it is an urgent priority.

3 I have likened it before to the President's
4 determination to cut domestic spending but increase de-
5 fense spending. Our country is being racked by internal
6 violence. We have domestic enemies in the form of violent
7 criminals who are on the street, who ought not to be on
8 the street.

9 And I think the prison construction recommenda-
10 tion has to be looked at in two specific ways: One, to
11 confront what the governors of the nation have unanimously
12 agreed is the Number One criminal justice priority now --
13 the overcrowding of our prisons. We've got many states
14 where the prisons aren't being run by the Director of
15 Corrections, they are being run by federal judges, to the
16 point of mandating release of prisoners, just turning them
17 out; secondly, it is the linch pin upon which all of our
18 other recommendations are built.

19 If all of the other recommendations are put into
20 effect and if they work, as we suppose they will, then
21 the end result ought to be the apprehension and conviction
22 of more violent offenders.

23 That tells us there is going to be a need for
24 additional bed space beyond the crisis stage that we have
25 now, and we ought to be building prisons. And we are not

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1 necessarily going to be building more maximum security
 2 facilities. A lot of the states will take advantage of
 3 this if it is passed by Congress, to build minimum security
 4 facilities so that we can better separate the violent
 5 from the non-violent within the penitentiary system, and
 6 use some of our precious state resources to develop even
 7 more sophisticated alternative treatment programs to
 8 incarceration -- the work release, or halfway house, or
 9 probation systems -- and you shouldn't forget, we are
 10 matching funds under this proposal -- 25 percent, which
 11 is more money than we put up for some highways.

12 QUESTION: Can we go back to the insanity defense
 13 for a moment? The insanity defense is about the most
 14 unsuccessful in American criminal law. It is not clear
 15 to me, who would be going to prison under that proposal
 16 that currently escapes going to prison?

17 MR. BELL: Well, the problem is that under the
 18 present system -- and we hear this from prosecutors -- if a
 19 person is found not guilty by reason of insanity, he then
 20 leaves for the state mental institution.

21 In a week, or two weeks, he is on the street.
 22 There is no one that has custody. Now, if the person
 23 was guilty but mentally ill, the prison officials would
 24 have custody of him in case they let him out of the mental
 25 institution.

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1 Now, in Georgia, for example, just this summer,
 2 a man who had been found not guilty by reason of insanity
 3 had been sent to a mental institution, was released in
 4 a very short time, came in to see a local judge and said,
 5 "I think I'm breaking down, I need to go back to a mental
 6 institution."

7 They sent him, would not take him. A week
 8 later, he went into a bar and killed three people. Now,
 9 that's the sort of thing that goes on. Now, if you are
 10 guilty, but mentally ill, and a mental institution releases
 11 you, you would then be picked up by the prison.

12 QUESTION: The number of alleged criminals
 13 turned loose each year because of the insanity defense,
 14 the exclusionary rule, habeas corpus rulings, favorable
 15 rulings by the judges, those three categories take a great
 16 deal of your time and effort, adds up to just a very
 17 small fraction of the number of people going through the
 18 criminal justice system.

19 Are your recommendations really symbolic?

20 MR. BELL: Well, to some extent, they are
 21 because if the public loses confidence in our criminal
 22 justice system, then our nation is in big trouble. The
 23 public is losing confidence, and they are losing confi-
 24 dence because they see everything as too technical.

25 QUESTION: But you're not going to change the

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1 numbers. The number of violent crimes committed in the
2 United States is not likely to be dramatically affected
3 by those recommendations.

4 MR. BELL: Oh, you can't imagine how many more
5 cases you could try if you did not spend so much time
6 dwelling on the exclusionary rule. This takes vast time
7 of prosecutors and courts, and habeas corpus.

8 MR. ARMSTRONG: One thing, Judge, if you're
9 looking at the federal system, you may very well be right,
10 but the impact on the state courts has been devastating
11 in all these categories. And as a better answer to that
12 question on the insanity defense, it really gives a
13 medium ground because juries and state courts throughout
14 the country either are sending truly insane people to
15 prison where they are not being treated, or they are
16 letting truly guilty people who are not insane on the
17 streets.

18 This is a medium ground that juries throughout
19 the country can address and really deliver some kind of
20 alternative disposition. As it stands now, you are simply
21 rolling the dice, hoping that there is going to be some
22 reaction one way or the other. So, this is going to solve
23 that problem.

24 MR. THOMPSON: I think, too, that there is a need
25 for this Task Force to squarely address the notion that

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1 there is an awful hypocrisy in our criminal justice
2 system today, and we ought to do away with it.

3 On the bail recommendations, for example, where
4 we've said that dangerous offenders ought not to get
5 bail; persons who are likely to flee, no matter what the
6 conditions, ought not to get bail; persons who have
7 violated bail status before by the commission of serious
8 crimes ought not to get bail the second time.

9 We know now that judges do those things every day
10 with the sanction of the legislature and the Supreme
11 Court simply by putting bail of \$500,000, or \$1 million,
12 or \$2 million, or \$10 million, whatever it is, and it's
13 just hypocrisy.

14 What those judges mean to do and what they
15 should be doing is keeping dangerous people off the
16 streets. We go to the root of that and give them that
17 power directly, and it's the same thing, as Dave said,
18 with regard to insanity.

19 Now we are forcing our psychiatrists to come
20 into court and testify, give evidence from a medical
21 standpoint, in accordance with legal definitions, that
22 they believe don't square with the present state of
23 medical knowledge. It's either all black or white. It's
24 either insane or not insane, when psychiatrists tell us
25 there is a great vast array of middle ground responsibility

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1 for actions, yet a diminished capacity, or diminished
2 understanding, or diminished responsibility, that the
3 system ought to address.

4 We haven't touched the insanity defense at all,
5 not one iota. We couldn't constitutionally touch the
6 insanity defense, the due process right not to be con-
7 victed if you are not responsible, in the traditional
8 terms, for your actions, but what we have done is to
9 free up both medicine and the ultimate factfinder, the
10 judge or jury, to find that a defendant ought to be held
11 responsible for what he has done, but ought to be treated,
12 if treatable, and then when the medical system can't do
13 anymore for him, for him to serve out his sentence like
14 the criminal who was convicted, that he is.

15 And I think that's commonsense. It is
16 eliminating a lot of the evasions and hipocracies of the
17 present system that have been contained in it for far too
18 long.

19 QUESTION: Could I ask a question on the bail,
20 denial of bail to those who are found dangerous. The
21 report says that two members of the commission dissented
22 on that recommendation. I wonder if you could identify
23 them, and if one of them could explain why he dissented?

24 MR. LITTLEFIELD: I made one and Professor
25 Wilson was the other dissenter. I dissented for three

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1 reasons. Number one, I have difficulty in feeling that
2 there is any way to predict future behavior; number two,
3 the person that we're talking about has not been convicted
4 of the offense for which he is presently in custody; and,
5 three, the recommendation quite decently and properly
6 says that there should be a full and fair hearing about
7 that.

8 That means there are going to be more court
9 hearings in connection with that, and our courts are
10 busy enough as they are now, without additional court
11 hearings.

12 QUESTION: Could I ask the proponents, wouldn't
13 that hearing be like a trial before a trial?

14 MR. BELL: We have hearings now, bail hearings
15 go on every day, but in the federal system at least, and
16 in some states, you are not allowed to consider danger
17 as a basis for not admitting someone to bail.

18 I think now that we are on the bail provision,
19 it is important to note one thing, and that is, you have
20 to -- is this the one where we put clear and convincing
21 evidence in?

22 MR. HARRIS: That's right.

23 MR. BELL: Clear and convincing evidence, to
24 lawyers, means that the standard is a good deal higher --

25 QUESTION: Is it beyond a reasonable doubt? Is

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1 it the same trial standard?

2 MR. BELL: Oh, no.

3 QUESTION: Wouldn't this be a replay of the
4 trial, or an early rehearsal?

5 MR. BELL: No, no.

6 MR. HARRIS: Let me clarify one thing. The
7 difference between our recommendation and the present
8 D. C. law is that we do not require a determination of
9 the likelihood of guilt on the underlying charge. This
10 is simply a determination of whether the defendant repre-
11 sents a danger to the community.

12 You would not have to come forward and say,
13 "And he's dangerous, and we think we will prevail at
14 trial".

15 QUESTION: What would be the evidence of danger,
16 past record, criminal record?

17 MR. BELL: Well, if you'd just murdered someone,
18 it might be thought that --

19 QUESTION: How would you know that, Judge, if
20 you haven't tried him yet?

21 MR. BELL: But you just were arrested coming
22 out of a whiskey store where you just shot the operator,
23 you'd have some feeling that the man might be a danger
24 to the community. I don't mean to give you a short
25 answer, but this is happening. In the real world, people

1 are being killed and robbed and those sorts of things.

2 MR. HARRIS: Our second recommendation addresses
3 another indication. For example, if the person has been
4 convicted on a prior occasion of a criminal conduct while
5 previously on bail; a person is in possession of an
6 illegal firearm, the judge might find that to be evidence
7 of dangerousness.

8 There are a number of factual scenarios that
9 you could hypothesize about.

10 QUESTION: Governor Thompson, I'm a little
11 puzzled by your statements on the insanity defense. You
12 say they are due process rights, and one ought not to be
13 punished when he is not responsible for his actions, yet
14 under your proposed modification of the insanity defense,
15 one would be treated, and then you say he would be in the
16 custody of the penal authorities and would still be
17 punished even though he may have been mentally ill when
18 he committed the crime,

19 MR. THOMPSON: There is no due process right to
20 keep you from the criminal justice system simply on the
21 grounds of mental illness. There is only a due process
22 right not to be convicted of a criminal offense if you
23 can prove that you fall within the traditional tests of
24 insanity, not responsible for your actions, or whatever
25 test -- the states use different tests, and the Supreme

1 Court has never held that there must be a uniform test
2 among the states.

3 If you fall within the traditional grounds of
4 insanity, you are entitled to a verdict of not guilty
5 by reason of insanity, and then the law enforcement
6 authorities will have to deal with you under any other
7 alternative provisions that a state or the federal
8 government may have, but since those tests were formulated,
9 some of them as long as 100 or 150 years ago, medical
10 science has shown, I think beyond doubt, that the mind
11 doesn't operate under those black and white conditions
12 in many persons, that you may have many persons who, in
13 terms of fairness, equity, due process, call it what you
14 will, ought to be held responsible for their criminal
15 conduct because they are capable of controlling it and
16 knowing the difference between right and wrong but choose
17 not to, but they are mentally impaired in some fashion.

18 This gives juries the alternative not of
19 freeing them under a false insanity verdict, or locking
20 them up in a penal facility with no hope of medical treat-
21 ment, but giving them an alternative disposition which
22 says, "Yes, you are responsible for your crime. We find
23 you guilty and we impose a specific sentence, but you
24 start that sentence with the hope of treatment, and only
25 when there is no further hope of treatment are you remanded

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1 to the criminal system". It is for those gray area
2 people, those middle area people.

3 QUESTION: So the other defense would still
4 exist?

5 MR. THOMPSON: Still exist, untouched.

6 MR. BELL; And you could plead both.

7 MR. THOMPSON: You can plead both, and the
8 jury takes its choice based on the evidence that you
9 present at the trial.

10 QUESTION: Judge Bell, if I understand it, your
11 report would recommend that a theft of a firearm would
12 have to be reported, but a resale would not. Could you
13 explain why?

14 MR. BELL: Yes. We took testimony from ATF
15 officials -- that's the Firearms at the Treasury -- and
16 they said they didn't need the report of sales, that they
17 could always go to the first sale, the first purchaser,
18 and find out what happened to the weapon, if they are
19 tracing a weapon.

20 The reason for all this, of course, is to trace
21 weapons, but they said that a loss or a theft should
22 be reported so that they could know that.

23 QUESTION: There's no requirement, as I under-
24 stand it, for someone selling a firearm in a second sale,
25 to keep a record. So, if ATF goes to him, he may have

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1 no record whatsoever.

2 MR. BELL: But he ought to be able to remember,
3 though, and they said that they didn't need to do this,
4 so we are relying, to some extent, on them. We are very
5 interested and hopeful about the recommendations we made,
6 and we concluded, based on what they said, that we did
7 not need to set up a national repository on all of these
8 records. They leave them at the dealers or the manu-
9 facturers, and they say that is good enough for tracing
10 purposes.

11 QUESTION: Will ATF need additional resources
12 to do the task that you have outlined for them in here?

13 MR. BELL: I doubt it, but that would depend
14 on what the states do about this. There are now 23
15 states that have some sort of a waiting period law, and
16 I think it might turn out that the ATF wouldn't have to
17 do anything except maybe keep reports of lost or stolen
18 weapons, and that would just be put on a computer -- the
19 NCIC? Tell them what the NCIC is.

20 MR. HARRIS: The report of theft or loss to a
21 local police department, which is now made, the local
22 police departments routinely pass these on to the NCIC,
23 which is a computerized record maintained by the F.B.I.

24 MR. BELL: And it would just be left in the
25 computer until they need it, need to find out about it.

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1 MR. HARRIS: That's right.

2 QUESTION: Governor, is it fair to say that
3 the bottom of this report is that we simply have to lock
4 up more people and keep them locked up?

5 MR. THOMPSON: We have to lock up every violent
6 offender that we can apprehend, fairly prosecute, find
7 guilty; yes. I mean, I don't believe anybody is in
8 favor of a system of criminal justice or a nation which
9 prides itself as living under ordered liberty, who would
10 say that once a person has been accused of and found
11 guilty of in a trial that is fair, a violent crime, and
12 you would believe it likely that he would commit another
13 violent crime if left unincarcerated, ought not to go to
14 jail.

15 We ought to go to jail. Look at all the states
16 that are moving to determinate sentencing and mandatory
17 sentencing. They are expressing a feeling of public
18 outrage over the fact that the criminal justice is so
19 crowded and cumbersome and delayed, that there are too
20 many violent criminals on the street and they ought to be
21 taken off the street.

22 The streets ought to be for the peaceful and
23 lawabiding people, not for the violent.

24 QUESTION: Governor Thompson, the American Civil
25 Liberties Union feel that the recommendations coming out

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1 of this Task Force pose a serious threat to the funda-
2 mental freedoms in this country. How do you address
3 those concerns and try to dispel them?

4 MR. THOMPSON: Well, if the ACLU thinks that
5 our recommendations pose a serious threat to constitutional
6 freedoms, the ACLU is standing the constitution on its
7 head.

8 These are the mildest, most practical recom-
9 mendations for the criminal justice system that I've seen
10 in 25 years, and I don't believe that any serious student
11 of constitutional law is going to believe that they pose
12 a serious threat to the Constitution.

13 MR. HARRIS: I'd like to say something also.
14 I met with the ACLU during the course of this, for about
15 three years, when we started this phase of our delibera-
16 tions, and told them each issue we would be addressing.

17 And they said they were very concerned and would
18 forward to us their positions on each of the issues and
19 their reasons therefor. Last week, we received a one-page
20 letter from them. So, I am saying to you that perhaps
21 this expressed concern is not matched by a commitment to
22 do the underlying work that it would have been helpful
23 for us to have.

24 MR. BELL: In addition to that, they ought to
25 talk to some of the victims of crime, and people who are

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1 afraid to walk on the streets. Maybe they could help some
2 of the victims sometimes.

3 QUESTION: Governor, aren't the sentencing
4 recommendations in your proposal going to be for longer
5 sentences, people being locked up longer, and was there
6 any dissension on the Task Force that longer sentences
7 are not ultimately to the benefit of society?

8 MR. THOMPSON: Well, I don't think that there's
9 any doubt that when you move to a system of determinate
10 or mandatory sentencing, you are going to have, on the
11 average, longer sentences. That has been the experience
12 of the states that have moved -- and I say, the states
13 have been moving in that direction, generally, with the
14 approval of criminal law scholars. It has been quite
15 a dramatic move in sentencing in the United States.

16 Now, some of us in the criminal justice system,
17 and particularly those of us who deal with corrections
18 on an everyday base, correctional directors, are somewhat
19 concerned that we don't have a corresponding mechanism
20 to take out of the penitentiaries those cases who become
21 the so-called burnouts before their sentences expire
22 because we do away with parole in the traditional sense,
23 when we go to determinate sentencing.

24 Whatever you get for your crime in terms of
25 sentence, less whatever good time you earn in the

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1 penitentiary, that's your sentence, and parole boards
2 don't sit in judgment anymore on whether you ought to get
3 out early. And some corrections people feel, I think,
4 that they operating the front lines could probably tell
5 you that if you let Joe out ten years early, Joe would
6 not be a problem.

7 And I think criminal justice systems, both at the
8 state and federal level, has an obligation to try and
9 develop the mechanisms to put those beliefs into practice
10 because if we could truly take out of the system somebody
11 who would not pose a threat, I think most states would
12 like to do that, although you've got to take into account
13 one of the reasons for sentencing, and that is to deter
14 others from committing particularly heinous offenses,
15 but if the price we have to pay for making the criminal
16 justice system more swift and more certain is longer
17 sentences and therefore a greater need for penitentiary
18 facilities, I think the American people are willing to
19 pay it.

20 QUESTION: Well, why do you eliminate that
21 safety valve of the parole system if you think it is
22 necessary?

23 MR. THOMPSON: One of the reasons is because
24 of the wide disparity in sentencing that we now find in
25 systems which don't have determinate sentences, and the

1 feelings of unfairness among inmates themselves that one
2 person got ten years for an offense and another person
3 got 20 for a similar offense, and to give some feeling
4 of security to the public that, by God, when the sentence
5 is imposed, it is going to mean what it says.

6 MR. HARRIS: You know, the first thing that
7 happens to a federal inmate upon arrival at an institu-
8 tion under our present system is, he receives a counseling
9 session where someone figures out for him how long he
10 will have to serve in jail based on the sentence he got,
11 and one number has no relation to another.

12 I think what we are talking about is truth in
13 sentencing. It is the judge who is -- our system is
14 designed for the judge to make that decision, and his
15 decision ought to bear reasonably to what actually
16 happens, and that doesn't now happen.

17 MR. BELL: Well, I think that probably this
18 gentleman doesn't know about the federal sentencing
19 proposal that has been already passed by the Senate.
20 We recommend that that be enacted now, taken out of the
21 Criminal Code and enacted as a separate statute.

22 The Judicial Conference of the United States
23 would set parameters on sentences. If you are sentenced
24 outside the parameter, above the parameter, the limit,
25 you could appeal your sentence. If you are sentenced

1 below the parameter, the government can appeal. That is
 2 all part of this effort to have more uniform sentencing,
 3 There is a wide disparity now, from district to district,
 4 judge to judge, on sentences that are imposed, and this
 5 will tend to make sentencing uniform and, as Governor
 6 Thompson says, in addition to that, you will know you
 7 have to serve your sentence less good time.

8 And now the parole board is thought sometimes
 9 to be arbitrary. They make up a lot of guidelines
 10 themselves that you have to meet, severity of the offense
 11 and those sorts of things, and nobody knows just for sure
 12 what a sentence is anymore, and it needs to be changed.

13 QUESTION: Judge Bell, this Task Force has
 14 come forward with many recommendations that have been
 15 around for a long time. You were Attorney General for
 16 two and a half years, sir. Why didn't you, when you were
 17 in a position to do something about it, implement some
 18 of these ideas during your tenure?

19 MR. BELL: That's the same question Mr. Stearn
 20 asked me yesterday on Meet the Press, so I've had some
 21 experience answering the question already. I spoke out
 22 many times for most every recommendation that is in this
 23 report. Unfortunately, we have been through a period in
 24 our country where we were not as interested in doing some-
 25 thing about the prevention of crime as we should have been.

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1 That's seen in the nation's police forces,
 2 where we have fewer policemen, police personnel, than
 3 we had five years ago. The American people have finally
 4 let it be known that they are tired of having to barricade
 5 themselves from criminals, that they want something done,
 6 that if you are a public official and you won't do anything
 7 about it, you're going to be put out of office, at what-
 8 ever level of government you happen to be on.

9 This all has just happened in the last year or
 10 so, and it is just now the time when you can get some of
 11 these things done. It is not that I haven't been in
 12 favor of eliminating crime, you know, I've spent a good
 13 part of my life in this area, and I don't think I'm known
 14 as a person who is soft on crime and that sort of thing,
 15 but you couldn't get all these things done then. I hope
 16 we're going to get them done now. I am misreading the
 17 public will, maybe, but I don't think so. I think the
 18 people want something done.

19 QUESTION: Judge Bell, would it be correct to
 20 say that you possibly are closer philosophically on this
 21 subject, to President Reagan, than you were to the man
 22 that you served under?

23 MR. BELL: Well, I've been accused of that.

24 (Laughter.)

25 President Carter was not thought of as being a

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1 President who was particularly tough on crime but, in
2 fact, he was. He once, in a cabinet meeting -- I will
3 tell you this one little story because I think it tells
4 you something about President Carter that the public
5 probably never appreciated.

6 In a cabinet meeting, he came in one Monday
7 with a copy of the New York Times Sunday Magazine on
8 the cover of which appeared the picture of Mickey Barnes.
9 Mickey Barnes was supposed to be the largest heroin
10 pusher, dealer in the country.

11 And they had a long story in the New York Times
12 magazine about how he had never served a day in jail. And
13 the President came in the cabinet meeting holding this
14 magazine and said to me, "The law is a disgrace if you
15 can't do anything about a person like this". So, I said,
16 "Well, I'll see about it. I don't know anything about it,
17 I didn't read the magazine". But I checked up when I
18 got back, and actually Barnes was under indictment at that
19 time. Well, he was later prosecuted and I think he is
20 doing life now, prosecuted personally by the United States
21 Attorney in the Southern District of New York, Bob Fisk,
22 but President Carter had a strong attitude in this area,
23 but somehow or other, he never got that over.

24 QUESTION: Is it correct that white collar crime
25 is your top priority for four years?

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1 MR. BELL: That was one of our top priorities,
2 white collar crime, yes. And, again, that is something
3 that is necessary because people have to have confidence
4 in the law. If they think that the criminal justice
5 system is not even-handed, that you excuse white collar
6 criminals, they lose confidence in it. You can't excuse
7 anyone from the law. That's one of the problems I think
8 we've had.

9 And now the Attorney General has said he
10 wants to keep on with white collar crime prosecutions.
11 It is not that we are going to stop that. We are going
12 to have some national leadership for the states and local
13 government in doing something about violent crime, plus
14 we are going to have some national action in those areas
15 of violent crime where the federal government has a
16 responsibility.

17 QUESTION: Judge, there were some figures
18 published -- I don't vouch for their accuracy -- that
19 approximately 2-1/2 percent of the persons in prison are,
20 in fact, innocent of the crime for which they were
21 sentenced.

22 Looking at your habeas corpus recommendation
23 and bearing in mind that we all know of stories where
24 state courts failed to properly do what they should have
25 done to review convictions, and the federal courts,

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1 feeling independent of local politics and the state system
 2 stepped in and did what should have been done. Knowing
 3 this, aren't you a little concerned, don't you have a
 4 little trepidation that perhaps the number of innocent
 5 people may increase if these recommendations on habeas
 6 corpus are adopted?

7 MR. BELL: You understand you are talking to a
 8 man who has been in probably 500 habeas corpus cases,
 9 and I have not seen one innocent person show up in all
 10 those cases I was in. I don't know where these 2-1/2
 11 percent are. I would personally represent somebody if
 12 you would produce some innocent person that is being
 13 held somewhere.

14 No, no. There's many cases where there was an
 15 error of constitutional magnitude, where you had to grant
 16 release. I have seen many of those cases, but I have not
 17 yet seen an innocent person that was released because of
 18 a habeas corpus petition that I was in. There probably
 19 may be some, somewhere.

20 QUESTION: Don't you fear that the adoption
 21 of the recommendations that you have could lead to leaving
 22 more innocent people in prison?

23 MR. BELL: You have a trial, everyone has a
 24 lawyer now -- in the old days, you didn't -- just every
 25 kind of a safeguard now, and it is very unlikely that an

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1 innocent person is convicted. I'm sure that that does
 2 happen once in a while, somewhere, but you have a trial,
 3 you have an appeal, you then can go back and have a habeas
 4 corpus in the state court and appeal that, then you go
 5 to the federal court and go through the same thing again,
 6 and I once figured up that in one southern state, you
 7 would get 11 hearings, 11 hearings, if you were just
 8 convicted with, say, stealing an automobile. That
 9 counts the trial and appeals and the habeas, too, but
 10 you have three years under this recommendation to raise
 11 any contention in the federal court, as to an unfair
 12 trial of some kind. You have three years.

13 MR. THOMPSON: I'd like to make two points on
 14 that. I think it would be instructive for observers of
 15 our work, whether they are members of the press or not,
 16 to go back into the history of our proceedings -- we do
 17 have published transcripts -- and take a look at some
 18 of the recommendations we did not adopt.

19 I remember recommendations in the area of habeas
 20 corpus that gave us that feeling of trepidation that you've
 21 just discussed. For example, we at one time discussed
 22 a provision that was suggested to us about removing
 23 federal habeas corpus jurisdiction over the issue of
 24 lineups, in the same way that federal habeas corpus
 25 jurisdiction is now removed in the area of search and

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1 seizure, and we did have that feeling because to those
 2 of us who understand the criminal justice system, po-
 3 tentiality for mis-identification, for not getting at
 4 the truth coming out of lineups is something entirely
 5 different from those things that are involved in search
 6 and seizure, and so we rejected that suggestion that was
 7 made to us and came up with what I think are rather modest
 8 proposals in the area of habeas, far less than was re-
 9 quested of us by state attorney generals or state local
 10 prosecutors.

11 So, what we left out of this report in terms of
 12 clamping down on habeas is probably more important than
 13 what we put in, insofar as safeguarding the Great Writ
 14 is concerned. And the same thing is true of the exclu-
 15 sionary rule, and the same thing is true of the insanity
 16 defense. You have to see what we discarded as well as
 17 what we included.

18 And on the issue of innocence, I suspect that
 19 even if your numbers are correct -- and you say you can't
 20 vouce for them, and I don't know of anybody who can
 21 account by numbers for those who are innocent and con-
 22 victed -- most of those cases are probably the result
 23 of the jury's acceptance of the testimony of somebody
 24 when they ought not to have been believed, not an issue
 25 that is ever reached in habeas.

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1 QUESTION: There's two things you may have ad-
 2 dressed that I may have missed, death penalties and,
 3 more frequently, the invocation of deadly force, what
 4 are the current restrictions on police use of firearms
 5 or injury in the battle of violent crime?

6 MR. BELL: We didn't address either one of
 7 those. We had somebody try to get into the report that
 8 we were going to require the police to use rubber bullets,
 9 but we promptly took that out. I don't know how it got
 10 in to begin with, but that's the only time I've heard
 11 anything about these two items. We didn't get into that.

12 QUESTION: Mr. Harris, there's a number of
 13 recommendations in the report concerning the F.B.I. use
 14 for interstate criminal identification network, which
 15 would seem to call into question increased dissemination
 16 of criminal history records.

17 The report also contains brief references to
 18 the F.B.I. problems in processing requests for criminal
 19 history information from non-law enforcement agencies.
 20 Does the commission feel that the private sector should
 21 have increased access to criminal history record informa-
 22 tion?

23 MR. HARRIS: That was not an issue that was
 24 addressed, but as you know, there are records checks done
 25 by private employers, in hiring people, for example, in

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1 defense work for sensitive positions, and the overall
 2 concern that we addressed is that it now takes 25 working
 3 days to get a return on a request for fingerprint identi-
 4 fication. In a criminal case, that is obviously unaccept-
 5 able. You can't wait 25 days. If you sort of impose
 6 that waiting period and the speedy trial act, if you
 7 put them both in the same jurisdiction, you might have
 8 to go to trial before you got your fingerprints back.
 9 So, that was not the intent, but we are concerned that
 10 the Bureau have adequate resources to be able to handle
 11 such requests.

12 As to the interstate identification index, that
 13 is a concept which the Bureau is now testing, in which
 14 the Bureau would not maintain records on people but merely
 15 maintain an index so that if a state wanted to know what
 16 information was available on John Smith, the Bureau would
 17 say to them, "The states of A, B and C have information
 18 on John Smith. You go to those states and they will
 19 determine whether to give you that information consistent
 20 with their own law",

21 QUESTION: Well, regardless of whether it is
 22 stated in the report or not, is there a general feeling
 23 among members of the commission here that the private
 24 sector should have increased access to criminal history
 25 information?

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1 MR. HARRIS: Let them speak for themselves.
 2 Is there anyone who would like to answer that?

3 MR. BELL: Not even local police now can get
 4 access. I'd like to go through that step first, before
 5 we get to worrying about private people doing it.

6 QUESTION: Mr. Thompson, the United States
 7 jails more people per capita than any other western
 8 democracy. The National Institute of Justice has just
 9 issued a major study on prisons and jails. There is
 10 strong evidence that the more space you build, the more
 11 space you will fill. Don't you see a danger in just
 12 having more bed space without also calling for alternatives
 13 to incarceration?

14 MR. THOMPSON: Right, I do see that danger.
 15 I guess I've got a perspective that lets me see both
 16 sides because as a governor of a large state with a big
 17 crime problem and a desperate need for bed space, I have
 18 to be concerned with having the room for violent criminals
 19 that I know judges are going to sentence to the penitentiary,
 20 and I don't want to have my state's correction system put
 21 in receivership in the federal court.

22 On the other hand, Illinois is one of the leaders
 23 in the country in alternative sentencing, within and with-
 24 out the state correction system, halfway houses, work
 25 camps. Our state fair has just completed a ten-day run.

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1 When our state fair is not running at the state fair
 2 grounds, we have a prison camp out there, with the most
 3 trustworthy inmates, the ones likely to go on release
 4 soon, coming from Logan Penitentiary about 30 miles away,
 5 to a very minimum security dormitory camp at the Illinois
 6 state fair grounds, housed in the same places where the
 7 4-H kids are housed during the run of the state fair, and
 8 they keep that place in shape.

9 We do that as much as we can. I've got sitting
 10 on my desk now a bill which, if I sign, for probation
 11 services in the State of Illinois, will cost me \$16 million
 12 beginning with the next fiscal year, and then on up from
 13 there. I'm quite likely to sign that bill, but I worry
 14 about whether or not I'm meeting my immediate priorities
 15 in terms of prison construction. And I think any rational
 16 governor will attempt to do both so that you end up with
 17 a system in which only those who need to go to the
 18 penitentiary ought to go to the penitentiary.

19 I hope also that out of these hearings will
 20 come a desire to study whether or not we ought not to
 21 be sentencing more people to the penitentiary on a first
 22 offense, for a very short period, to give them a taste
 23 of what life behind bars is like, increasing the likelihood
 24 that they won't do it again, where now they get probation
 25 and may be encouraged to continue in a life of crime.

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1 I don't think enough attention has been devoted
 2 to that feeling on the part of many^{//}, in both social work
 3 and corrections, that a lot of youngsters could do with
 4 5, 10, 15 days behind bars, but judges now will never
 5 put them behind bars because the conditions behind bars
 6 are so miserable, and we've got to clean that up.

7 You've also got to take into account the fact
 8 that we're talking about constructing penitentiaries in
 9 accordance with standards of humanity and decency and
 10 constitutionality of the 1980s. The prisons that we are
 11 going to be building under this grant, if the Congress
 12 and the President approve, are not going to be prisons
 13 which are going to triple-cell people, for example, or
 14 jam people into very small spaces of the confinement and
 15 encourage further crime in the prison, so that even when
 16 the prison population declines, your facilities will not
 17 be outmoded as some of our public schools are now because
 18 we didn't build them in accordance with the demographics
 19 that we could predict.

20 MR. HARRIS: We're going to take two more
 21 questions.

22 QUESTION: I'd like to ask a followup. In any
 23 year, there are about 300,000 people, I guess, in all
 24 the state prisons in the country, but at the local level
 25 there are about 6 million people that cycle through local

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1 jails. What is the Task Force recommending about local
2 jails?

3 MR. THOMPSON: The Task Force has given atten-
4 tion to those local jails which are most intimately con-
5 cerned with housing federal prisoners on a temporary
6 basis because we think that is the most immediate need
7 of the federal government.

8 We agreed with the judgment of the Governors
9 Association that the most immediate need facing the nation
10 is the construction of state prison bed space, and while
11 we recognize the deplorable conditions of local jails
12 generally, we decided that the financial cost of that
13 was so great, the likelihood of Congress giving any
14 substantial resources to it in these times was so small
15 that we would go for the program that had the greatest
16 chance of adoption and could have the greatest impact
17 on the local criminal justice system in terms of housing
18 violent offenders, and that was state prison construction.

19 QUESTION: If the taxpayers won't provide
20 additional monies, will any of these technical changes
21 that you've recommended produce a decrease in violent
22 crime?

23 MR. BELL: Well, adding prisons is not a tech-
24 nical change, but you mean like the exclusionary rule,
25 bail and those sorts of things? The change in the bail

1 laws would have a very good effect.

2 QUESTION: If the money isn't there, will the
3 technical changes alone produce any results?

4 MR. BELL: Well, you will find that the money
5 will be made available on the local level. The gentleman
6 just asked about jails. Well, there's not enough money
7 in the federal Treasury to build every city a new jail,
8 or every county a new jail. That is a local problem.

9 The people are going to expect local government
10 to do its part. We've got to get back to our system of
11 federalism where we have three levels of government.
12 Each one has certain responsibilities.

13 That is one of the great things I think that
14 will come out of this Task Force report. The Attorney
15 General of the United States will be in a leadership
16 position, to try to get all three levels of government
17 to do their duty, with regard to holding down the crime
18 wave.

19 MR. HARRIS: Last question.

20 QUESTION: On your narcotics recommendations,
21 it didn't seem to take much imagination to suggest that
22 there should be a clear and coherent national enforcement
23 policy.

24 Can somebody there tell the people of, say,
25 Miami how your recommendations would help them solve their

1 very critical narcotics problem?

2 MR. BELL: Go ahead.

3 MR. THOMPSON: Greater resources for DEA, for
4 example, if it remains DEA, or whatever organization
5 ultimately is entrusted with the job of fighting narcotics
6 crime; concentrations in those geographic areas of the
7 nation which have the particular problems, like south
8 Florida; greater use of military assistance to interdict
9 the smuggling of narcotics into this country -- in fact,
10 the Congress is already acting on that through an amend-
11 ment to a Defense appropriations bill, I believe, as a
12 result of our Phase I recommendation -- a more coherent
13 policy in the destruction of crops both in the United
14 States and in foreign countries.

15 We are now in the position sometimes, of asking
16 foreign countries to do things that we wouldn't do here
17 at home. Our narcotics agents are faced with the
18 embarrassing questions from foreign officials, and a
19 re-examination of the ban on paraquat.

20 MR. BELL: Let me add something here because
21 you are making light of a very important recommendation.
22 We have not had a coherent drug policy, and I will give
23 you two examples. In one western state where they had
24 run out of prison cells, they were not prosecuting any-
25 one for trafficking in marijuana.

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1 The federal policy was not to prosecute anyone
2 who did not have 70 or more pounds of marijuana when
3 apprehended. So, anyone who had less than 70 pounds was
4 left alone, and this actually happened in a western state.

5 Congress passed a law to prohibit the spraying
6 of marijuana with paraquat. They passed a law at the
7 same time the State of Florida was using thousands of
8 pounds of paraquat to spray vegetables. Now, that's a
9 non-policy, when you get into that sort of thing, and
10 that's just two examples of the fact that we do -- we
11 have not had a coherent policy, and it is important that
12 we get one.

13 Another thing we have not had enough of is a
14 joint operation between the DEA and the F.B.I. There
15 had never been a joint operation until I was Attorney
16 General and we started it. We started three, I think, at
17 that time. Now Attorney General Smith is moving to have
18 even more coordination between the DEA and the F.B.I. In
19 fact, he has just assigned as a Director of the DEA, an
20 Assistant Director of the F.B.I. and who is still on the
21 F.B.I. status.

22 So, all those things will be good, but they
23 are indications of moving toward a coherent policy.

24 MR. HARRIS: Thank you very much, ladies and
25 gentlemen. If you need members individually, they will

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1 be available for a few minutes. We will have remarks at
 2 our luncheon, which starts at 12:30, by the Associate
 3 Attorney General, Rudolph Giuliani. If any of you want
 4 to make arrangements to cover his remarks, please see
 5 Dean St. Dennis, who will assist you with anything you
 6 need. Thank you.

7 (Whereupon, at 12:00 o'clock, noon, the press
 8 conference of the Attorney General's Task Force on
 9 Violent Crime was concluded.)

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This is to certify that the proceedings of the
 Press Conference with the Attorney General's Task Force
 on Violent Crime were held in the Main Ballroom, Washing-
 ton Hotel, 15th and Pennsylvania Avenue, N.W., Washington,
 D. C., on Monday, August 17, 1981, as herein appears, and
 that this is the original transcript thereof.

PHYLLIS P. YOUNG
 Reporter

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