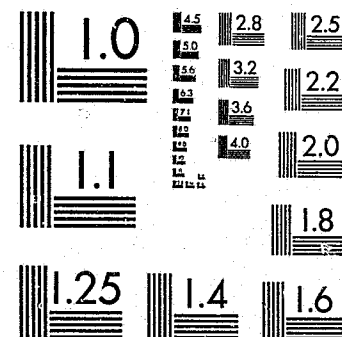


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Department of Justice

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REMARKS

BY

THE HONORABLE EDWARD C. SCHMULTS
DEPUTY ATTORNEY GENERAL OF THE UNITED STATES

TO THE
WARDENS CONFERENCE
BUREAU OF PRISONS

TUESDAY, MAY 17, 1983
KAHLER GREEN OAKS INN
FT. WORTH, TEXAS

NCJRS
JUN 6 1983
ACQUISITIONS

It is a pleasure to be here today, and to participate in the Annual Wardens Conference. Norm Carlson and his staff have done an excellent job organizing this event, and I would like to pay special tribute to Norm for his strong and effective leadership of the Bureau of Prisons these past thirteen years. I would also like to commend all of you for your dedication to improving our nation's correctional facilities. Your job is a difficult one, and your hard work has contributed enormously to the effectiveness of our criminal justice system.

While preparing for this conference, I was reminded of a story about a young man who quit his job as a department store clerk to become a policeman. When asked why he joined the force, he said, "Well, the pay and the hours are all right, but the best thing is that the customer is always wrong."

You, too, deal with individuals who at some point in their lives were wrong -- actually they did wrong. The growth in our prison population in recent years is a lamentable sign that more wrongs have been committed against our society. On the other hand, it is also a sign of the effectiveness of recent measures to solve our admittedly serious crime problem.

Still, more needs to be done. In particular, our prison system must receive new attention.

For too long, prisons have been a neglected stepchild of our criminal justice system. They play a critical role in our society, and we can ignore the crisis confronting them only at the risk of jeopardizing our other law enforcement efforts. A comprehensive program to fight crime must include strategies to improve this nation's correctional facilities.

As we all know, the prison population is growing at an unprecedented rate. As this year began, there were 412,303 inmates in federal and state prisons. In 1982 alone, the prison population increased by almost 43,000 inmates. The number of inmates in Federal institutions has topped the 30,000 mark, and federal prisons are now overcrowded by nearly 24%.

The meteoric rise in our prison population can be attributed to a number of factors. One reason for the increase in federal prison population is our crackdown on crime. In 1982, the number of offenders sentenced for drug-related offenses rose by more than 23%. Moreover, the average length of sentence imposed in drug cases increased by 11 percent last year.

We expect that our prison population will continue to increase rapidly throughout the 1980's. Recognizing the devastating impact of crime on the American people, this Administration has taken decisive action. We have crafted and implemented a number of important enforcement initiatives to reduce crime, including an eight-point program directed at

organized crime and drug trafficking. We have also tried to remove the loopholes and imbalances in Federal laws, so that our laws protect society more and free criminals less.

As you may know, the Administration recently introduced in Congress a legislative proposal entitled the "Comprehensive Crime Control Act of 1983." This bill proposes reform of those aspects of Federal criminal law that have proven to be the greatest obstacles in our effort to reduce crime. These critical reforms will, of course, directly effect the nation's corrections system. I would like to mention some of our proposals.

The first title of the bill addresses a matter of highest priority: the need to reform our federal bail system. Under current law, a court is not permitted, except in capital cases, to consider the danger a defendant may pose to others if released before trial. The Administration's proposed legislation would for the first time provide federal courts with authority to deny release on bail if the release of the defendant would pose a danger to the community. The legislation would also reverse the current presumption in favor of bail pending appeal and tighten the criteria for post-conviction release. Moreover, it would authorize courts to inquire into the source of bail and to refuse to accept money or property that will not reasonably ensure a defendant's appearance at trial.

The Administration has also proposed reforms to promote more uniform sentencing by federal judges. Current federal law provides a federal judge with wide discretion to impose a sentence pursuant to numerous sentencing options with little or no guidance as to how he should choose among the options. The many sentencing options and lack of statutory guidance has resulted in considerable disparity in sentencing. Inconsistent sentencing has undermined public confidence in the criminal justice system.

The Administration has proposed the establishment of a Sentencing Commission to create guidelines for federal judges. The Sentencing Commission would be an independent agency in the judicial branch consisting of seven voting members, appointed by the President with the advice and consent of the Senate. The Commission's guidelines would specify a range of sentences for different combinations of offense and offender characteristics. The judge would be expected to follow the guidelines unless unusual circumstances warranted a more severe or lenient sentence.

The Administration's bill also adopts a uniform, determinate sentencing system; authorizes government and defendant appeal of sentences outside the guidelines; and restructures the entire range of criminal fines and probation conditions. In abolishing the parole system in favor of certain terms of imprisonment fixed at the time of sentencing, the bill emphasizes the deterrent and retributive purposes of sentencing,

and puts the public and the defendant on notice of the real time of imprisonment to be served.

We have also proposed modification of the exclusionary rule. The rule has hampered law enforcement efforts, distorted the truth-finding process, and lessened public respect for the courts by freeing guilty defendants. A recent National Institute of Justice study found that the exclusionary rule prevented prosecution of 30 percent of felony drug arrests in California. The Administration has sought to bar the use of the exclusionary rule, particularly in circumstances where it cannot serve its primary purpose of deterring unlawful police conduct. Under our proposal, evidence seized in criminal cases, which is now excluded from evidence, would be admissible upon a showing that the law enforcement officer making the seizure acted with a good faith, reasonable belief that his actions were legal.

We believe that these proposals, and the many others contained in our crime package, will provide federal law enforcement officials with important new tools to combat crime. We recognize, however, that they will also result in the incarceration of more criminals, and thus increase the pressure on our already overcrowded prison system.

Overcrowding in our corrections facilities presents us a number of challenges. Overcrowded conditions, as we all know have resulted in numerous lawsuits. More than half of the state

correctional systems have had one or more institutions declared unconstitutionally overcrowded. Prisoners' civil rights suits have multiplied, resulting in the assumption of prison managerial authority by federal judges.

While the courts have forced reluctant legislatures to recognize the many serious problems in our prisons, I believe that problems associated with a burgeoning inmate population should be solved, if possible, outside the courtroom. As the Supreme Court noted in Bell v. Wolfish, 441 U.S. 520, 547 (1979): "Prison administrators should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security."

One effective means of resolving inmate problems without litigation is the administrative grievance procedures. The experience of the Federal Bureau of Prisons has shown that proper use of these procedures can help keep the management of our prisons in your capable hands, and avoid the need to turn over administration of our prisons to federal judges. Moreover, the Department will continue its policy of trying to resolve problems of prison overcrowding through informal conciliation and negotiation, and its policy of seeking remedies that are fully sensitive to the practical difficulties facing prison administrators.

The Department will also continue to work with you to help reduce the overcrowded conditions of our prisons and jails. The Bureau of Prisons' proposed budget for 1984 contains a request for construction funds for a facility in the Northeast, and planning and site acquisition funds for a Metropolitan Correctional Center in Los Angeles and another facility in the Northeast. Furthermore, the Bureau of Prisons is continuing to work with states to help them build prisons in the most cost-effective manner.

The extremely high costs of new prison construction, however, demand that we find alternative means of expanding prison capacity. One effective way to increase prison capacity is to convert federal surplus properties, such as abandoned military bases, to prison facilities. Use of federal surplus properties can enable us to expand prison capacity at a fraction of the cost of new construction. To enhance our federal surplus properties program, the Department is supporting legislation to permit the conveyance and lease of these properties to state and local governments at no cost.

Another effective way to increase prison capacity is to use space in existing facilities better. For too long, offenders have been placed in costly maximum security facilities when it would be more appropriate for them to be housed in less secure facilities. A classification systems, like that used by the Federal Bureau of Prisons, can identify those prisoners for whom

maximum security is appropriate and save us millions of dollars. We can also minimize the need for increased prison capacity by using alternatives to incarceration for certain nonviolent criminals where the alternative sanction can be sufficient to appropriately punish the offender.

Two months ago, the Attorney General spoke at Vanderbilt Law School of the challenge we face in improving the effectiveness and efficiency of our Nation's prisons. While outlining a number of measures to respond to the current, critical situations, the Attorney General also noted the need to consider alternatives to incarceration for certain offenders. The Attorney General said:

In many cases, an expenditure of well over \$10,000 a year to keep a criminal in jail and off the streets is worth it. In other cases, it is too high a price Prisons are necessary for those who pose serious threats to society or for whom anything less than a prison sentence would unduly minimize the seriousness of their offense. We are, however, studying alternative forms of punishment for nonviolent offenders that will deter criminal behavior and reduce the chance that an inmate will return to criminal activity, without placing an unnecessary burden on the taxpayer.

Let me re-emphasize, however, that many criminals -- including non-violent so-called "white-collar" criminals -- deserve to be sent to prison. Our effort to determine whether alternatives to imprisonment are appropriate will take full account of the fact that some of the worst crimes perpetrated upon society may be non-violent crime. Some non-violent crime may spawn violent crime; other non-violent crime -- like public corruption -- may do violence to our system itself. Those kinds of crime should in most instances receive stiff prison sentences.

In recent times, this Nation has been plagued by an outbreak of crime unparalleled in its history and unequalled in any other society. Crime has eroded the social and cultural bonds of our people and contributed to the deterioration of our cities. It is imperative that we come to grips with our horrendous crime problem.

An effective fight against crime will require the combined talents of all members of our criminal justice system. We cannot neglect our prisons, anymore than we can neglect the arrest and prosecution of criminals. To solve this country's crime problem, the entire criminal justice family must work together.

Improving this nation's prisons will not be easy. For too long, society has tried to ignore the many problems facing our prisons. We can, however, find solutions to the critical

problems presently facing our correctional institutions, and work together to create an efficient and humane prison system. Trained professionals like all of you are the essential ingredient in developing those solutions -- and in making them work.

As many of you know, last Monday, the Attorney General and Norm Carlson visited two of your institutions, Butner and Leavenworth. When he returned he briefed the Senior Staff on what he had seen. He told us that he was struck by how well-managed, clean and efficient the institutions were. He was impressed at how security can be maintained while avoiding the sense of an old style prison environment. Most of all, however, he was impressed with the quality of people he met at all levels within the Federal prisons system.

I am reminded of a story about William Howard Taft soon after he became President. A young aide came in to brief the new President on what the young man referred to as "the machinery of government." After the aide had left, the President turned to a friend who had attended the briefing and said: "You know, that poor fellow really thinks government is machinery and not people."

People, not machinery, make government work. And if government is to work well, the people in government must be willing and able to meet the tremendous responsibilities society

places in their hands. After more than two years as Deputy Attorney General, I know that the people of the Bureau of Prisons are more than able to meet those responsibilities.

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END