S. HRG. 98-506

ARMED CAREER CRIMINAL ACT OF 1983

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

S. 52

A BILL TO COMBAT VIOLENT AND MAJOR CRIME BY ESTABLISHING A [illegible], OFFENSE FOR CONTINUING A CAREER OF ROBBERIES OR [illegible]IES WHILE ARMED AND PROVIDING A MANDATORY SEN-[illegible]F LIFE IMPRISONMENT

MAY 26, 1983

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ARMED CAREER CRIMINAL ACT OF 1983

THURSDAY, MAY 26, 1983

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 2:10 p.m., in room SD-226 Dirksen Senate Office Building, the Hon. Strom Thurmond (chairman of the committee) presiding.

Also present: Senator Specter.

Staff present: Deborah K. Owen, general counsel; Paul Summit, special counsel (Senator Thurmond); and Bruce Cohen, chief counsel; Stephen Johnson, counsel (Senator Specter).

OPENING STATEMENT OF CHAIRMAN STROM THURMOND

The CHAIRMAN. The committee will come to order.

Our hearing today is on Senator Specter's Armed Career Criminal Act of 1983.

This legislation is based upon a bill which was considered during the last Congress and which was vetoed as part of a crime package in January.

The Armed Career Criminal Act of 1983 is intended to provide a strong legislative response to the overwhelming problem of career criminals which our society faces today.

This is an intolerable situation which must be addressed at all appropriate levels of government.

S. 52 recognizes the fact that the vast majority of violent crime is committed on the State and local levels. Federal career criminals, by contrast, are usually involved in organized and white collar crime.

As a result, any Federal legislation which is aimed at violent career criminals must be narrowly crafted in order to avoid intrusion into matters which are reserved to the States under our Constitution.

In the last Congress, with input from the Department of Justice and other distinguished witnesses, efforts were made to insure that Federal prosecutors would not usurp the responsibility of their State and local counterparts.

In this Congress, we have a further opportunity to make absolutely certain that this goal is achieved. I understand that S. 52 differs in some respects from the bill which was sent to the President at the end of the last Congress.

I look forward to the guidance which today's witnesses may offer on these changes, and on other aspects of the bill.

Hopefully, their comments will enable us to craft a bill which correctly balances the need for strong penalties for career criminal activities against the preservation of State and local prerogatives under the Constitution.

Does the distinguished Senator from Pennsylvania have a statement?

OPENING STATEMENT OF SENATOR ARLEN SPECTER

Senator SPECTER. Yes, thank you, Mr. Chairman.

I wish to thank and commend the distinguished chairman of this committee for scheduling these hearings on this very important bill.

As Senator Thurmond has outlined, this legislation is designed to respond to the problem of career criminals, who have been estimated to commit some 70 percent of all of the violent crimes in the nature of robberies and burglaries in this country.

This bill has been crafted to invoke Federal jurisdiction where someone has been convicted of two or more robberies or burglaries and then commits a subsequent robbery or burglary while in possession of a firearm.

These career criminals obviously travel in interstate commerce, and the problem of violent crime is one of national importance, thus providing the requisite Federal nevus for Federal jurisdiction.

There has been an issue raised as to the proper scope of Federal participation, and as Chairman Thurmond and I and others have discussed from time to time, we wish to limit it to situations where the local district attorney requests or concurs in the action by the U.S. attorney.

There are enough of these cases that I think as a realistic and practical matter there would be no controversy. I know that when I was district attorney of Philadelphia and had something like 500 of these cases to try, and career criminals were dancing from one court room to another judge shopping, it would have been extremely helpful if the U.S. attorney could have taken two or three or four of these cases—and he could have had his pick as far as I was concerned—to Federal court. Those remaining would then have gone to trial in State court. The sentence wouldn't have been as long, but at least we could have tried the cases. There have been concerns expressed on this subject, and I believe that we can work the matter out and that the President will be again receptive to this bill. Last Congress, he gave his personal endorsement to it.

A question arose as to the item concerning concurrence or request by the district attorney being in the jurisdictional section of the bill, instead of the section on intent, and the Justice Department has expressed the concern that if it's in the jurisdictional section then there is a problem of constitutionality, but if it is in the intent section the problem is solved. It is the judgment of most of us that if the concurrence is in the intent section it will provide the necessary limitation on Federal usurpation, which I agree with Senator Thurmond we wish to avoid.

I'm very pleased to see the Department of Justice so ably represented here again by Mr. Knapp who was with us last week on the question of the juvenile provisions in the administrations crime

package. I am also glad to see my old friend District Attorney Bill Cahalan in the audience again, appearing here to give us his guidance and wisdom from years of experience as the prosecutor of Wayne County—one of the toughest in the country—encompassing Detroit, Mich.

Mr. Chairman, I thank you for the privilege of making these opening remarks.

The CHAIRMAN. Thank you. Before we begin with the first witness, I wish to place a copy of S. 52 in the record.

[The text of S. 52 follows:]

II

Calendar No. 310

98TH CONGRESS
1ST SESSION

S. 52

[Report No. 98–190]

To combat violent and major crime by establishing a Federal offense for continuing a career of robberies or burglaries while armed and providing a mandatory sentence of life imprisonment.

IN THE SENATE OF THE UNITED STATES

JANUARY 26 (legislative day, JANUARY 25), 1983

Mr. SPECTER introduced the following bill; which was read twice and referred to the Committee on the Judiciary

JULY 20 (legislative day, JULY 18), 1983

Reported by Mr. THURMOND, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To combat violent and major crime by establishing a Federal offense for continuing a career of robberies or burglaries while armed and providing a mandatory sentence of life imprisonment.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, ~~That this Act may be cited as "The Armed Career Criminal Act of 1983".~~

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~~SEC. 2. Chapter 103 of title 18, United States Code, is amended by adding at the end thereof the following section:~~

~~"§ 2118. Armed career criminals~~

~~"(a) Any person who while in possession of any firearm commits, or conspires or attempts to commit robbery or burglary in violation of the felony statutes of the State in which such offense occurs or of the United States—~~

~~"(1) may be prosecuted for such offense in the courts of the United States if such person has previously been twice convicted of robbery or burglary, or an attempt or conspiracy to commit such an offense, in violation of the felony statutes of any State or of the United States; and~~

~~"(2) shall, if found guilty pursuant to this section, and upon proof of the requisite prior convictions to the court at or before sentencing, be sentenced to a term of imprisonment of not less than fifteen years nor more than life and may be fined not more than $10,000.~~

~~"(b) Notwithstanding any other provision of law: (1) any person charged pursuant to this section shall be admitted to bail pending trial or appeal as provided in section 3148 of title 18, United States Code; (2) the prior convictions of any person charged hereunder need not be alleged in the indictment nor shall proof thereof be required at trial to establish the jurisdiction of the court or the elements of the offense; (3)~~

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any person convicted under this section shall not be granted probation nor shall the term of imprisonment imposed under paragraph (a), or any portion thereof, be suspended; and (4) any person convicted under this section shall not be released on parole prior to the expiration of the full term of imprisonment imposed under paragraph (a).

"(c) For purposes of this section—

"(1) 'United States' includes the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States;

"(2) 'felony' means any offense punishable by a term of imprisonment exceeding one year; and

"(3) 'firearm' has the meaning set forth in section 921 of title 18, United States Code.

"(d) Except as expressly provided herein, no provision of this section shall operate to the exclusion of any other Federal, State, or local law, nor shall any provision be construed to invalidate any other provision of Federal, State, or local law.

"(e) Ordinarily, armed robbery and armed burglary cases against career criminals should be prosecuted in State court. However, in some circumstances such prosecutions by State authorities may face undue obstacles. Therefore, any such case lodged in the office of the local prosecutor may be received and considered for Federal indictment by the Federal prosecuting authority, but only upon request or with the concurrence of the local prosecuting authority. Any such case presented by a Federal investigative agency to the Federal prosecuting authority, however, may be received at the sole discretion of the Federal prosecuting authority. Regardless of the origin of the case, the decision whether to seek a grand jury indictment shall be in the sole discretion of the Federal prosecuting authority.

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SEC. 3. The table of sections for chapter 103 of title 19, United States Code, is amended by adding at the end thereof the following new item:

"2118. Armed career criminals."

SEC. 4. (a) It is the intent of Congress that any person prosecuted pursuant to this Act be tried expeditiously and that any appeal arising from a prosecution under this Act be treated as an expedited appeal.

(b) This section shall not create any right enforceable at law or in equity in any person, nor shall the court have jurisdiction to determine whether or not any of the procedures or standards set forth in section 2(c) or this section have been followed.

That this Act may be cited as the "Armed Career Criminal Act of 1983".

SEC. 2. Chapter 103 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 2118. Armed Career Criminals

"(a) Whoever carries a firearm during the commission of an offense described in subsection (c) of this section or commits such an offense with another who carries a firearm during the commission of such offense, or attempts or conspires to do so, shall be fined not more than $25,000 and imprisoned not less than fifteen years.

"(b) An offense under this section shall not be prosecuted unless the United States proves beyond a reasonable doubt that the defendant has been convicted of at least two offenses described in subsection (c) of this section.

"(c) The offense referred to in subsections (a) and (b) of this section is any robbery or burglary offense, or a conspiracy or attempt to commit such an offense, which may be prosecuted in a court of any State or of the United States and which is punishable by a term of imprisonment exceeding one year.

"(d) Notwithstanding any other provision of law—

"(1) any person charged with an offense under this section shall be treated in accordance with the provisions of section 3148 of this title;

"(2) the indictment or the information need not contain allegations pertaining to or references to subsection (b) of this section;

"(3) the issue of whether the United States has fulfilled its burden of proof beyond a reasonable doubt

under subsection (b) of this section shall be heard and decided by the court before trial; and

"(4) the court shall not sentence the defendant to probation, nor suspend such sentence, and the defendant shall not be eligible for release on parole before the end of such sentence.

"(e) For purposes of this section—

"(1) 'State' means any State of the United States, any political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States;

"(2) 'firearm' has the meaning set forth in section 921 of this title;

"(3) 'robbery offense' means any offense involving the taking of the property of another from the person or presence of another by force or violence, or by threatening or placing another person in fear that any person will imminently be subjected to bodily injury; and

"(4) 'burglary offense' means any offense involving entering or remaining surreptitiously within a building that is the property of another with intent to engage in conduct constituting a Federal or State offense.

"(f) Except as expressly provided herein, no provision of this section shall operate to the exclusion of any other Fed-

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eral or State law, nor shall any provision be construed to invalidate any other provision of Federal or State law.".

SEC. 3. The table of sections at the beginning of chapter 103 of title 18 of the United States Code is amended by adding at the end thereof the following new item:

"2118. Armed Career Criminals.".

SEC. 4. It is the intent of Congress that—

(a) the trial and appeal of any person prosecuted under section 2118 of title 18, United States Code, as added by this Act, shall be expedited in every way;

(b) this section shall not create any right enforceable at law or in equity in any person; and

(c) armed robbery and burglary offenses should ordinarily be prosecuted by the States and that prosecutions under section 2118 of title 18, United States Code, as added by this Act, should take place only where circumstances justify exceptional handling. An offense under this section shall not be prosecuted unless the appropriate State prosecuting authority requests or concurs in such prosecution and the Attorney General or his designee concurs in such prosecution.

The CHAIRMAN. Mr. Knapp, we are pleased to have you. I believe you are the Deputy Assistant Attorney General in the Criminal Division. You may proceed now with your testimony.

So you wish to briefly summarize it and put your whole statement in the record?

Mr. KNAPP. Yes; I will summarize it.

The CHAIRMAN. All right. Without objection, your entire statement will go in the record, and you can briefly summarize it.

STATEMENT OF JAMES KNAPP, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION

Mr. KNAPP. Thank you.

Mr. Chairman, Senator Specter, members of the committee, I am pleased to appear before you today to express the views of the Department of Justice on S. 52, the Armed Career Criminal Act of 1983.

I have submitted my more detailed written statement for the record. I will summarize for you now our basic position on this bill, which is one of support, and then list those changes which we believe are necessary to strengthen the bill's effectiveness or to avoid unnecessary litigation.

Since my formal statement was prepared, I have seen proposed revisions prepared by committee staff which accomplish most of these changes, and I will acknowledge them as I proceed with my summary.

The bill provides for the Federal prosecution of persons who have already been convicted of two felony robberies or burglaries under State or Federal law, and who commit a third such offense while armed with a firearm.

If found guilty, a defendant so prosecuted would have to be sentenced to imprisonment for 15 years to life imprisonment. He could not be given a suspended or concurrent sentence, and would not be eligible for parole.

We support the basic concept of this bill. We note a similar bill passed the Senate last year 93 to 1. We view this bill as a vehicle to allow the Federal Government to assist States in dealing with the major problems of hard core recidivist robbers and burglars who prey on innocent persons in all parts of this country.

While local authorities normally are able to deal with this problem, there are some cases where there is a genuine need for Federal action.

For example, court congestion, prison overcrowding, inadequate State sentencing statutes, or any number of other factors may render State prosecution and punishment of a particular career criminal inadequate or ineffective.

We anticipate that this legislation will be used to help the States in a limited number of cases reflecting these types of special situations.

This legislation should not be perceived as a signal of general intervention by the Federal Government into areas of traditional local law enforcement.

Having expressed our general support for the goals of this measure, let me make some specific suggestions for strengthening the legislation.

First, we believe the best way to resolve the problem of concurrent local jurisdiction is to enact a separate section expressing forcefully the intent of Congress that no Federal prosecution should normally be brought unless the State or local prosecutor requests or concurs in Federal prosecution.

Since this section would be nonjurisdictional in nature, possible constitutional problems would be avoided.

I notice that the proposed changes uses this new approach, but I think it would be better to use language like "no Federal prosecution should normally be brought unless the State or local prosecutor requests or concurs," rather than the way it's drafted in the proposed amendment. This allows a little bit of residual flexibility in situations where for some reason the State decision is totally unwarranted.

The CHAIRMAN. On that point, if I can interrupt you, did you read last year's language on that subject? I'll pass it to you so you can see if this meets your approval.

[Witness is handed document.]

The CHAIRMAN. I think that accomplishes what you had in mind.

Mr. KNAPP. Well, it's close, Senator. Again, though, I'm a little concerned that this seems to say that local concurrence is necessary in all situations.

I would prefer the intent section to read that it would normally be necessary or desirable. In other words, the way I would prefer it to read is that it's our intent that no Federal prosecution shall normally be brought, and I emphasize the word "normally be brought," unless the State or local prosecutor requests or concurs in Federal prosecution.

JURISDICTION OF STATES

The CHAIRMAN. You want to give the Federal Government the power to do it anyway?

Mr. KNAPP. Well, I think we should have the power to do it.

The CHAIRMAN. Why should you have the power to take the case away from the State or local communities?

Mr. KNAPP. Well, basically we should not under normal circumstances. It's just that there may be—if this bill is going to have some viability, there may be a rare and unusual situation where local——

The CHAIRMAN. This is an unusual thing. At first, I opposed this provision altogether. These are State crimes.

Mr. KNAPP. I understand.

The CHAIRMAN. These are not Federal crimes. The States have always had complete jurisdiction in matters of this kind and still do today.

Mr. KNAPP. Yes.

The CHAIRMAN. Now, if you're going to bring the Federal Government into this field, I do not think it should be done unless the State prosecuting attorney either concurs in that or requests that.

Mr. KNAPP. Right.

The CHAIRMAN. Then the Attorney General or his designee, or we can change that to the Federal prosecuting authority, if you would like to do that, must also approve.

Mr. KNAPP. I agree with you, Senator.

The CHAIRMAN. In other words, I've studied the Constitution all my life, and I've tried to differentiate between the levels of Government. We should keep the Federal Government out of the State's business, and the State out of the Federal Government's business.

We're making an exception here, frankly, I am very dubious about the constitutionality of it.

That is the reason—to protect the constitutionality of it—that we should certainly provide that the State prosecuting attorney would have to either request a prosecution or concur in it.

I imagine, as Senator Specter says from his experiences, and he was a prosecuting attorney a long time, that he doesn't see any conflict with that. That would probably protect the constitutionality of this legislation.

Senator SPECTER. Well, Mr. Knapp, you've identified an area of great concern. Chairman Thurmond was accommodating last year when we hammered out the language, and, speaking for myself, I would be prepared to do it in a number of ways. I think there is great merit in what the Chairman had to say; I agreed with that position last year, and do so again now.

I understand your point that there might be some situation where the State might be totally unjustified in proceeding. But that is a remote possibility. Nobody wants these cases. If we could find somebody to prosecute them, everybody would like it. These are not high visibility cases, and if the State prosecutor is in a position to proceed, I think we would all want him to do so. That exception notwithstanding, my recommendation is to concur with what Senator Thurmond is seeking to accomplish here.

Mr. KNAPP. Well, we can certainly accept this language that was used last year. I, again, would express my preference for our suggested language for the admittedly remote possibility that a decision could be totally incompetent under the facts of a particular case.

Senator SPECTER. I appreciate your willingness to go along with that.

Mr. KNAPP. But we certainly would accept this.

The CHAIRMAN. Now, would you prefer, the current language, the "Attorney General or his designee," or would you prefer the "Federal prosecuting authority?"

In other words, do you want to give it to the U.S. Attorney down in the State or do you want the Attorney General or his designee to approve it? Of course, he could designate the U.S. Attorney to represent him.

Which would you prefer there? The way we had it originally was the Attorney General or his designee.

Mr. KNAPP. I understand.

The CHAIRMAN. I thought that made it a little bit tighter, and a little safer, maybe.

Mr. KNAPP. OK. I think perhaps the language, Attorney General or his designee, would be satisfactory. As long as it's clear that there is a designated authority. That would be satisfactory.

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The CHAIRMAN. Would you gentlemen agree to that, too, from the Justice Department?

Mr. KNAPP. Yes, it does. I think that's a good accommodation.

The CHAIRMAN. So we can just use the same language from last year in that particular provision.

Mr. KNAPP. All right.

The CHAIRMAN. Go ahead with your statement. I wanted to get that straightened out.

Mr. KNAPP. Second, we believe the legislation should establish a procedure for resolving the validity of the prior felony convictions prior to the attachment of jeopardy in the Federal case.

This could be accomplished by requiring pre-trial hearings for any motion to invalidate the prior conviction. We will work further with your staff in resolving this problem, which must be considered in the context of avoiding possible prejudice if a jury somehow were to learn of the prior conviction.

Third, the legislative history should be clear that possession of the firearm is an element of the offense. We believe this intent is apparent in the bill right now ourselves, but a statement in the legislative history to this effect certainly would do no damage and could resolve any possible doubt.

Fourth, we believe the legislative history should make it clear that the terms "robbery" and "burglary" are broad enough to encompass the types of conduct currently prohibited under State statutes, and that traditional common law restrictions do not apply.

Fifth, we believe the legislation should encompass not just the career criminal who possesses the firearm, but any other career criminal who participates in a robbery or burglary where any principal is in possession of a firearm.

And I note that that change has been accomplished in the proposed revisions I have been shown which were prepared by your staff.

Finally, we believe the bill should include congressional findings pertinent to the effect of these types of crimes on interstate commerce. I understand your staff has prepared a draft of possible findings which we believe are warranted and which meet this concern.

Mr. Chairman, we will be glad to continue working with you and the staff of this committee on strengthening this legislation and resolving any remaining issues.

I will now be happy to answer any questions you have.

[The material previously referred to appears as follows:]

STATEMENT

OF

JAMES KNAPP
DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

Mr. Chairman and Members of the Committee:

I am pleased to appear before the Committe today to express the views of the Department of Justice o· .. 52, The Armed Career Criminal Act of 1983. The bill provides for the federal prosecution of persons who have already been convicted of two felony robberies or burglaries under state or federal law and who commit a third such offense while armed with a firearm. If found guilty, a defendant so prosecuted would have to be sentenced to imprisonment for at least fifteen years or to life imprisonment. He could not be given a suspended or concurrent sentence and would not be eligible for parole.

Initially, let me emphasize that the Department of Justice supports the concept of this bill just as we supported the thrust of its predecessor in the 97th Congress, S. 1688, which was passed by the Senate on September 30, 1982 by a margin of 93-1. We view this bill as a vehicle to allow the federal government to assist the states in dealing with the major problems of hard core recidivist robbers and burglars who prey on innocent persons in all parts of this country. Local police, prosecutors, and court systems in most instances would be able to deal with this threat. In some cases there may be a genuine need, however, for federal assistance. For example, court congestion, prison overcrowding, inadequate state sentencing statutes or any number of other factors may render state prosecution and punishment of a particular career robber or burglar inadequate or ineffective. We anticipate that the provisions contained in S. 52 would be used

principally to help the states in a limited number of cases reflecting these types of special situations. We believe we share with the sponsors of this legislation an understanding that its enactment is not intended to signal a general intervention by the federal government into areas of law enforcement traditionally the responsibility of state and local governments.

Having expressed the Department's general support for goals of this measure, let me now turn to some specific suggestions we have for improving the legislation. The heart of S. 52 is section two which sets out the offense in a new section 2118 of title 18. We strongly believe, initially, that subsection 2118(e) should be deleted. The question of federal intervention into cases where our involvement is not deemed necessary by the local prosecutor, should be handled as a statement of Congressional intent in a revised section four of the bill.

As presently drafted, subsection 2118(e) is apparently an attempt to overcome the Administration's chief problem with the version of this bill that was passed in H.R. 3963 and S. 1688 in the last Congress. Those bills would have allowed a state or local prosecutor to veto any federal prosecution in his district even if the Attorney General had approved prosecution. Such a restraint on federal prosecutorial discretion and delegation of executive responsibility would have raised grave constitutional and practical concerns.

Subsection (e) does appear to overcome these constitutional difficulties by leaving the ultimate decision on whether to seek a federal indictment to federal prosecutors. However, the subsection provides that a case "lodged" in the office of a local prosecutor -- apparently because it has been presented by the local police -- may be received and considered for federal prosecution only on the request of the local prosecuting authority. It is not clear how the United States Attorney's office would ever officially be made aware of such a case if the state prosecutor did not request its consideration. If federal

authorities found out about such a case unofficially they could still seek an indictment in spite of what the state prosecutor might want, but the assertion of federal power in such a manner is hardly conducive to good federal-state relations. There is no rational basis for making even the initial determination whether the state or the federal government should prosecute turn on whether a state or federal agency investigated and presented the case. The justification for any federal involvement in this area of traditional state responsibility is to aid the states in certain unique cases. This aid necessitates close coordination and cooperation between state and federal investigators and prosecutors which can often best be obtained by consultations and decisions on a case-by case basis.[1/]

We recommend that the proposed subsection 2118(e) be deleted and that a new clause be inserted in Section 4 expressing forcefully the intent of Congress that no prosecutions should normally be brought under this provision unless the state or local prosecutor requests or concurs in federal prosecution. Since Section 4 is non-jurisdictional in nature, this language would be consistent with our previously expressed concerns regarding the constitutionality of a local veto provision while at the same time it would minimize the risk of disrupting important federal-local law enforcement relationships when prosecutions are brought under this statute.

We have three other concerns with section 2118 as set out in the bill. First, and of most significance, we believe that the prior felony convictions which provide the federal jurisdictional basis should be established prior to the attachment of jeopardy. If verification of this jurisdictional element is left until sentencing, a "defective" prior conviction, e.g., one in which the defendant did not have counsel at the entry of a prior plea,

1/ It should be noted that the FBI would be the federal agency with investigative jurisdiction over the new offense. The FBI's resources are limited, as are those of local jurisdictions. We would emphasize the FBI jurisdiction would be exercised very selectively under the new section.

could nullify the entire prosecution because double jeopardy considerations would prevent retrial. We suggest the inclusion of language which requires the prosecution to notify the court and the defendant, prior to the attachment of jeopardy, of the prior convictions relied upon to establish jurisdiction and mandate that the defendant contest the validity of any such conviction prior to the attachment of jeopardy on the underlying offense.

Moreover, section 2118(a) is silent on the question of how the possession of the firearm, which is also a requirement for federal jurisdiction, is to be shown. Presumably, it is intended as an element of the offense which must be proven to the trier of fact, inasmuch as the section's application is intended to be limited to firearm-carrying recidivists, but the prior convictions requirement is explicitly not made an element. Thus, it appears that a conviction under section 2118(a) would require proof of possession of a firearm plus proof of all the elements of the state or federal statute that the defendant is charged with having violated. We suggest that this point be specifically confirmed in the legislative history.[2/]

Finally, we think that the requirement that the firearm be in the actual possession of the robber or burglar who has already been convicted twice is too narrow. We believe that the statute should cover such a recidivist robber or burglar while he or any other participant in the offense is in possession of or has readily available to him a firearm or an imitation thereof. Under the provisions of the bill as drafted, a recidivist who planned and organized a particularly life-endangering armed robbery or burglary involving several persons could remove himself from the

2/ Since the terms "robbery" and "burglary" are not defined in the proposed statute, we recommend that the legislative history also make it clear that the terms are not limited to their common law meaning and include state offenses that do not use the words "robbery" or "burglary," such as a statute that proscribes criminal entry with different gradations for the types of structures entered and the act committed therein. See United States v. Nardello, 393 U.S. 286 (1969).

reach of the new section simply by having his confederates carry all the firearms. As the Committee knows, in certain types of robberies, like bank robberies, it is not uncommon for one or two persons to actually hold the weapons while others remove the money. Since there is no meaningful difference in their degree of culpability, all participants who have the two prior convictions would be covered by the new statute.

We also suggest that the bill would be strengthened and needless problems avoided if it were amended to include Congressional findings. The proposed statute obviously relies on the commerce power of Congress, but the elements of the offense itself do not require a showing that the crime involved interstate commerce. However, under the Commerce Clause, Congress has the power to regulate even purely intrastate activity where that activity, combined with like conduct by others similarly situated, affects commerce among the states, See, e.g., National League of Cities v. Usery 426 U.S. 833, 840 (1976). Congressional findings on the effect of armed robbery and burglary on interstate commerce, like those made with respect to the effect on commerce of extortionate credit transactions, 18 U.S.C. 891-896, would facilitate the bill's withstanding a constitutional challenge. See Perez v. United States, 402 U.S. 146 (1971). It is anticipated that the bill's heavy mandatory sentence provision, while fully justified by the nature of the offense, will cause it to undergo detailed judicial scrutiny.

Mr. Chairman, that concludes my prepared testimony and I would be happy to try to answer any questions the committee may have.

The CHAIRMAN. Let me ask you this now. We have agreed on that one change, which I think is very important. I think it is important for a number of reasons, but especially to protect the constitutionality of the provision, if it's ever tested.

Now, have we made the changes that you recommended, or are there any changes that this bill does not contain that you think would be appropriate?

Mr. KNAPP. The only major change which has not been worked out yet I think is the question of how to handle the determination of the validity of the prior convictions. Whether it should be pretrial, or during trial.

The new draft says it could be done pretrial or during trial. We think it should be clear that it must be done pretrial. Otherwise, you run into possible danger of having jeopardy attach.

The CHAIRMAN. Senator Specter, do you have any comments?

Senator SPECTER. That's fine. It could be pre-trial without any problem. That poses no difficulty.

Mr. KNAPP. Fine.

The CHAIRMAN. We'll instruct the staff that it suits you to make that change.

Do you think the bill is all right like it is, except for the change you just suggested, and the wording that we've been talking about from in last year's bill?

Mr. KNAPP. Yes, Senator.

The CHAIRMAN. There are a few other little changes which some of the staff have suggested that Senator Specter and I feel will not be any trouble. We'll get together on that.

Mr. KNAPP. OK, fine.

The CHAIRMAN. I want to thank you very much for your appearance here. I appreciate your testimony; you've been very helpful.

Senator SPECTER. I want to join the chairman in thanking you. The cooperation from the Department of Justice has been excellent and I think the few remaining items can be worked out and we can move ahead.

Mr. KNAPP. Thank you very much, Senator. It's my pleasure to be here.

The CHAIRMAN. The next witness is Mr. Cahalan. Mr. Cahalan, would you come around?

I have another appointment, Mr. Cahalan, so the distinguished Senator from Pennsylvania, Mr. Specter, will take over the hearing.

We want to thank you for your appearance here.

Senator SPECTER [presiding]. In Chairman Thurmond's absence, the cross-examination will not be nearly as intense, District Attorney Cahalan, but you'll just have to put up with a lesser line of questions.

Welcome, Mr. District Attorney.

Mr. CAHALAN. Thank you very much, Senator.

Senator SPECTER. You certainly are a dean, if not the dean, of America's prosecutors at this point. How long have you been in that hot spot in Detroit?

Mr. CAHALAN. Sixteen years. I don't know how long Hogan was in New York, but that's something to shoot for. I think he was there 30 years.

Senator SPECTER. I think District Attorney Hogan was there even longer.

But I think 16 years is something of a record for a big-city prosecutor today, isn't it?

Mr. CAHALAN. Yes, it is.

Senator SPECTER. That's great. I think you've done an outstanding job, and it's a very difficult position. It subjects a man to a tremendous amount of strain, operating with limited resources, and an escalating problem. I know you have been extremely successful, and we welcome you back here and look forward to your testimony.

STATEMENT OF HON. WILLIAM CAHALAN, PROSECUTING ATTORNEY, WAYNE COUNTY, MICH.

Mr. CAHALAN. Thank you, very much, Senator.

The longevity indicates either that I'm doing a fine job or nobody else wants the job. In my humility I must say that.

But I welcome this opportunity to appear.

Senator SPECTER. There is no question about the keen competition for the office of district attorney in Wayne County, Mr. Cahalan.

Mr. CAHALAN. And I gave you a copy of my prepared remarks, and I will not go over those. I would just like to make some remarks that really are in addition thereto, and to sort of direct myself to the bill, and some of the observations made in the bill.

As I say, I appreciate this opportunity, because as the bill points out, this is a national problem, and we've spent billions of dollars in urban renewal with negligible results. The result seems to be in Detroit that every major store is closing their downtown stores, and I think the reason that we don't have any great results in our attempt at urban rejuvenation is that we don't really hit the problem of urban decay, which is crime and the fear of crime, and this proposed legislation does so, and it attacks those crimes that give us the most fear, the robberies and the burglaries.

Again, this proposed legislation likens it to a natural disaster, and how true that is. And I think it's even more than a natural disaster, because I think very few people are deterred from, say, living in California because of the earthquakes or in the South because of the tornados, or along side of our major rivers because of floods, but hundreds of thousands of people are deterred from living in our metropolitan areas because of crime and the fear of crime.

And I think that it rightly likens this to a natural disaster.

And the bill also points out that the career criminals are the ones who are really committing the crimes; as you said in your opening remarks maybe 70 percent. I know there were some studies that 6 percent of the wrongdoers committed 25 percent of the crime in Washington, D.C., and that would hold true in—that 7 percent in New York was responsible for something like 65 percent.

It's true in Detroit, too, that the career criminals, as you call them, do the crime, and if we put a few of those career criminals away, it will really have an impact upon crime. We figured out statistically that our career criminal unit in the last 5 years put away

2,000 people. And the average minimum sentence was 10 years. And the conservative estimate of the number of crimes that they would have committed each year is 20, I mean major crimes. And if you figured that out, putting those 2,000 people behind bars prevented 120,000 felonies in a 5-year period.

And you're attacking the problem where there is a tremendous burden on the local prosecutor. Burglaries and robberies, particularly robberies, have a higher burden, much heavier burden than any other crime.

Ordinarily, in Wayne County, 18 percent of the felons go to trial; the others plead out. With robberies 43 percent go to trial. Last year we had about 700 robbery felonies that went to court, and half of them, about 388 were pleas, and 318 were trials.

And we do not have the statistics broken down on how many of those robberies would fit into your definition of your Federal career criminal. But we did some analyzing, and of those 318 that went to trial, probably half of them would fit into your definition, about 150.

And there won't be any problem in Wayne County about who will be trying them. Or there will be no fight about who will be trying them. I talked to Len Gillman who is the Federal District Attorney in the Detroit area just before I came here, and talked to him about this testimony. And he agreed that there would be no problem, that there's enough, as you say, enough to go around for everyone.

I'm particularly impressed with the mandatory minimum sentence. I think that we have to have those mandatory minimums to do anything, because there's a reluctance on the part of the judiciary to put people in jail. The median sentence for robbery armed, in Michigan, is four and a half years. And for B & E, breaking and entering of an occupied dwelling, of those who go to jail—and you must realize that very few go to jail—there were 531 convicted, and 190 of those went to jail. And the median sentence was 2.5 years.

And 70 percent of those people had prior criminal records. And so we would be happy to turn over to the Federal prosecutor a lot of cases. And the mandatory minimum sentences would be good, because I think that puts real teeth in it.

And you're talking about the habitual criminal statute. We have an habitual criminal statute in Michigan, but it has no teeth. It's useless. There is no mandatory minimum. I was reading the other bill, the S. 58, I think it is, where you could house in the Federal corrections system State prisoners who were convicted under the habitual criminal statute of that State who got 15 years and more.

Well, in Michigan we would send you nine. There are nine people in our correctional facilities that are there under the habitual criminal statute that are doing 15 years or more.

Senator SPECTER. What does your habitual offender statute provide, Mr. Cahalan?

Mr. CAHALAN. Well, there's no mandatory minimums. A person can be placed on probation. And so it will double the discretion of the judge, but the judge won't use it. And so when a judge sentences——

Senator SPECTER. It doubles the potential sentence but it doesn't require any minimum?

Mr. CAHALAN. Right. So it has no teeth. So if the judge sentences a person to an underlying felony, and we weren't satisfied with the sentence, and we brought him under the habitual criminal, the judge would sentence him the same. He would not increase it.

The only time that it would, that the habitual criminal statute would be effect was if the judge gave the maximum and said he wished he could give more.

And also, we have—the accused has a right to a separate jury trial on the habitual criminal. We try him on the underlying felony, the third felony, or whatever it is, and after the conclusion of that, if he's convicted on that, then he has a separate jury trial to determine whether or not he has violated the habitual criminal statute.

And also we must file within 14 days of the underlying felony, within 14 days after he's been arraigned on the information, we must file on habitual criminal. And so it's, for all practical purposes, doesn't do us much good.

So I look forward to the Federal jurisdiction getting involved in this. I find no problem with the language you were discussing about the concurrence of the local prosecutor. I think it will work well.

Senator SPECTER. Mr. Cahalan, there has been some concern expressed by the Department of Justice about including language in the bill that the district attorney must request or concur in the jurisdictional section of the proposal. Do you see any problem in putting it in a section on the intent of Congress, in terms of having that requirement followed in the Federal courts?

Mr. CAHALAN. Just putting it in the intent and not having it in the jurisdictional?

Senator SPECTER. Yes.

Mr. CAHALAN. I see no problem with that.

Senator SPECTER. Well, that had been my thought. If it is in the jurisdictional section, the Department did not say it would be unconstitutional, but they questioned the measures constitutionality if jurisdiction depended upon an individual's concurrence. The D.A.'s association was worried that if it were in the intent section that some Federal prosecutor might be backed up by some Federal judge who would say that prosecution could be brought even if the D.A. did not agree. My own sense was that if the language in the intent section says, which it does, that it is the intent of Congress that no Federal prosecution shall be brought without agreement, or without request or concurrence, that as a matter of legal interpretation that would be adequate protection for a district attorney not to have his authority usurped.

Mr. CAHALAN. I agree, and if you're going to put it in the jurisdictional section of the bill, you're making that an element of the crime that must be proven, and then I might have to be subpoenaed into court every time the Federal district attorney prosecuted it to see if I concurred.

Senator SPECTER. Well, that's another good reason not to do it.

HABITUAL OFFENDER'S ACT

Mr. Cahalan, let us look over to S. 58 on the issue of use of Federal prisons for habitual offenders. Pennsylvania's habitual offender statute, when we had one, provided that when someone was convicted of four major felonies, they would be subject to a life sentence. But again, it was discretionary.

I believe that many States, if not most, have provisions that authorize up to a life sentence. The thrust of S. 58 is to give incentives to State courts to deal in a tough way with habitual or career criminals. It is another attack on the problem, different from S. 52 which gives the Federal court jurisdiction under the circumstances which we talked about.

Do you think that it would be helpful, that it would be an incentive for State court judges to use habitual offender statutes and sentence for long terms if they knew that those incarcerated individuals would be out of the State court system?

Mr. CAHALAN. I don't know if it would give them any incentive, but it would remove an excuse. It seems in our experience that once the judge has sentenced the person, that if we bring an Habitual Offender's Act charge against the defendant, it's almost resented by the trial court, because it's just one more case in the trial court.

And they've sentenced him the way they wanted to sentence him. So I think that the mandatory minimums should be tried.

Senator SPECTER. But when you talk about an excuse, of course, there are many judges who refuse to sentence criminals to jail at all, or to sentence them to long terms for the reason, or excuse, that the jails are so bad. Many State jails are that bad. Part of the thrust of S. 58 is to have the Federal Government take over some responsibility for the incarceration of State criminals. Senator Dole, for years, has been a leader in this field, and I have introduced legislation to give the Federal government the responsibility to pick up on jail space. If there was space available, and it was adequate space, then the judges would not have the excuse that the jails are too bad or too overcrowded, et cetera.

Mr. CAHALAN. I think that is a good idea. Something has just occurred to me here, that some of the wrongdoers in Michigan might be asking to be taken under the habitual criminal statute so they can go to the Federal penitentiary instead of our State penitentiary.

Senator SPECTER. If they ask, that may be a request that could be granted.

Mr. CAHALAN. Yes, we would grant it every time.

I see nothing wrong with it at all, and I think that we should provide whatever incentive we can to put habitual criminals behind bars, because that's the problem. If we can reduce the number of career criminals on the street, we will be doing more for our urban centers than all of the other ideas that we have for urban renewal put together.

Senator SPECTER. Mr. Cahalan, you say you have put 2,000 career criminals in jail. We have been trying to figure out, within an approximate range, how many career criminals there are in the country. One estimate has been in the 200,000 range. I assume big cities

like Detroit and Philadelphia would have more career criminals than rural areas.

What would your judgment be about the guestimate of 200,000 career criminals in the country?

Mr. CAHALAN. Let me break it down for Detroit. We have, in Detroit, about 12,000 felony defendants a year. And probably half of them are in the business of crime as a business, so that would be about 6,000 for Detroit.

Senator SPECTER. How big a metropolitan area do you have?

Mr. CAHALAN. Well, Detroit is 1½ million. The county is 2.7 million. But we always break it down into Detroit and outside Detroit. We have two court systems.

Senator SPECTER. You probably have a greater number of crimes being committed in the city proper.

Mr. CAHALAN. Oh, yes. Sure.

But outside of Detroit there are not that many crimes committed per capita. It's like any other big city. We had 1,800 B&E's. These are cases. Over 700 robbery armed's. Those are, a lot of them are career criminals.

When you get up to robbery armed you're pretty much a career criminal. Auto thefts, they're career criminals, but you're not putting them away. That's become one of the big crimes. They steal cars on order.

But I would say that—I'm not that good at math, but if you figure that we had 6,000 career criminals in Detroit and if you could figure out how much that would be nationwide—6,000 to 1.5 million is X is to 230 million.

Senator SPECTER. How large a population area would you say that your 6,000 career criminal estimate spans?

Mr. CAHALAN. 1.5 million.

Senator SPECTER. You think just the city? Wouldn't it be the metropolitan area, or even beyond that?

Mr. CAHALAN. Not much more.

Senator SPECTER. When I used to compute the career criminals in Philadelphia, I would throw in New Jersey. The career criminals would cross the river, and come from Delaware. I would figure that we drew on a base population, in the contiguous area, of some 5,000,000, on a city population which used to be 2,000,000, and is now about 1,650,000.

Mr. CAHALAN. I'm talking about the ones that are brought to trial. That's where I think my statistics are falling down, because I'm just using the ones that were accused, and were bound over for trial. So that's a real small percentage.

We would have to—there's probably more than that in the Detroit area. I never really stopped to think about it.

Senator SPECTER. Do you agree with the thesis I outlined about the leverage that would be present if the U.S. attorney would pick up a few of these career criminals, that the people charged in the State courts would be more anxious to go to trial in the State courts, and not to be judge shopping?

Mr. CAHALAN. Yes. I think so There would be more likely actually even to plea in the State court, because those 318 cases that we tried didn't have anything to lose.

I must be careful here because we may have some people who are interested in not putting pressure on people to plead guilty. There seems to be a philosophy in this country that you're not supposed to put too much pressure on people to plead guilty.

But if—they would have nothing to lose by going to trial, but if there was the thought that they were going to go over to the Federal system and face a mandatory 15 years, that would be an inducement to plead guilty in our system.

Senator SPECTER. Well, that was my thinking. Plead guilty for one thing, certainly go to trial for another. We have tremendous judge-shopping problems in the city of Philadelphia.

Is that a problem that you have in Detroit, or do you have the individuals judge calendared?

Mr. CAHALAN. They don't have to do much judge shopping. They're all pretty much conditioned to——

Senator SPECTER. Bargains at every corner?

Mr. CAHALAN. Yes.

Senator SPECTER. Well, Mr. District Attorney, it's a great pleasure to see you here again today.

We very much appreciate your coming. As the chairman said, your complete prepared statement has been made a part of the record.

[The material referred to appears as follows:]

TESTIMONY ON S-52

ARMED CAREER CRIMINAL ACT

BY

WILLIAM L. CAHALAN

Prosecuting Attorney, Wayne County, Michigan

FEAR OF BURGLARY AND ROBBERY IS MAKING ALL OF US PART OF THE GREATEST PRISON POPULATION IN HISTORY — SELF-MADE PRISONS FORMED WHEN WE PLACE BARS ON OUR WINDOWS, DOUBLE LOCKS ON OUR DOORS, ALARM SYSTEMS THROUGHOUT OUR HOMES AND GUARD DOGS OUTSIDE OUR ENTRANCES. WE SET LIMITS ON OUR MOBILITY; WE ARE PRISONERS IN OUR OWN HOMES BECAUSE WE FEAR TO WALK THE STREETS AT NIGHT. THIS FEAR, IF ALLOWED TO GO UNCHECKED, WILL DESTROY THE AMERICAN SENSE OF FRIENDLINESS AND COMMUNITY.

SENATE BILL S-52 IS A MAJOR STEP TOWARD CHECKING THE GROWTH OF FEAR IN OUR COMMUNITIES. THIS COMMITTEE AND THE SENATE SHOULD BE COMMENDED FOR ATTEMPTING TO BLUNT THE IMPACT BURGLARY AND ROBBERY ARE HAVING ON OUR LIVES.

THIS PROPOSED LEGISLATION INCORPORATES SEVERAL EXCELLENT IDEAS: (1) RECOGNITION OF THE IMPACT CAREER CRIMINALS HAVE ON OUR COMMUNITIES AND (2) CERTAIN AND SUBSTANTIAL PUNISHMENT FOR THOSE CAREER CRIMINALS WHO ARE CONVICTED.

SENATE BILL S-52 RECOGNIZES THAT THE COMMUNITY MUST BE PROTECTED FROM THAT SMALL PERCENTAGE OF THE CRIMINAL POPULATION RESPONSIBLE FOR A DISPROPORTIONATE AMOUNT OF THE CRIME. A STUDY FUNDED BY THE LAW ENFORCEMENT ASSISTANCE ADMINISTRATION FOUND THAT IN WASHINGTON, D.C., SEVEN PER CENT OF THE DEFENDANTS WERE RESPONSIBLE FOR 25 PER CENT OF THE CASES. A

STUDY BY THE NEW YORK TIMES FOUND THAT IN NEW YORK, SIX PER CENT OF THE DEFENDANTS WERE RESPONSIBLE FOR 67 PER CENT OF THE VIOLENT CRIMES.

IN 1975, WITH THE ASSISTANCE OF THE FEDERAL GOVERNMENT, WE ESTABLISHED IN OUR OFFICE A CAREER CRIMINAL UNIT. TO THIS UNIT WERE ASSIGNED THOSE CASES INVOLVING DEFENDANTS WHO REALLY WERE ONE MAN CRIME WAVES. MANY OF THE CRIMES PERPETRATED BY THESE CAREER CRIMINALS HAVE BEEN THE LIFE-ENDANGERING CRIMES OF ARMED ROBBERY AND BURGLARY.

OUR LOCAL CAREER CRIMINAL UNIT HAS CONVICTED OVER 2,000 HARD-CORE CRIMINALS SINCE 1975. THE AVERAGE MINIMUM SENTENCE HAS BEEN 10 YEARS. IT IS REASONABLE TO CONCLUDE THAT ON A CONSERVATIVE ESTIMATE EACH WOULD BE RESPONSIBLE FOR 20 POTENTIAL FELONIES PER YEAR. IT IS ALSO REASONABLE, THEREFORE, TO CONCLUDE THAT THIS UNIT HAS PREVENTED 120,000 FELONIES OVER A FIVE-YEAR PERIOD.

I SAY THIS IS A CONSERVATIVE ESTIMATE IN LIGHT OF SOME OF THE DEFENDANTS WHO HAVE BEEN CONVICTED. A SAMPLE OF THEIR ACTIVITIES — ONE DEFENDANT COMMITTED 65 ROBBERIES IN THREE MONTHS, ANOTHER 200 BURGLARIES IN ONE YEAR, AND A THIRD COMMITTED 28 ROBBERIES IN TWO MONTHS.

UNFORTUNATELY, THE FUNDING FOR THIS UNIT HAS BEEN CUT IN HALF BY LOCAL AUTHORITIES.

DESPITE THE REDUCTION IN FUNDING, HOWEVER, THE BATTLE AGAINST CAREER CRIMINALS CONTINUES AND WE CONTINUE TO PROSECUTE THEM. AS WE CONTINUE OUR BATTLE, WE WELCOME THE PROPOSED SUPPORT AND PARTICIPATION OF THE FEDERAL DISTRICT ATTORNEYS'

OFFICES. SENATE BILL S-52 UNDOUBTEDLY WILL PROVIDE VALUABLE ADDITIONAL RESOURCES IN THE BATTLE AGAINST CAREER CRIMINALS.

SENATE BILL S-52 ALSO PROVIDES CERTAIN AND SUBSTANTIAL PUNISHMENT FOR THOSE CAREER CRIMINALS WHO ARE CONVICTED. THIS IS AN IMPORTANT POSITIVE STEP IN LAW ENFORCEMENT, BECAUSE CERTAINTY OF PUNISHMENT IS CRITICAL TO THE DETERRENCE OF CRIMINAL ACTIVITY AND PROTECTION OF THE COMMUNITY.

UNDER OUR PRESENT SYSTEM, THE LEGISLATURE DEFINES WHAT SHALL BE A CRIME AND SUGGESTS A MAXIMUM PENALTY. THE JUDICIARY AND THE PAROLE BOARDS DETERMINE WHAT, IF ANY, PENALTIES SHALL BE IMPOSED UPON ANYONE CONVICTED OF VIOLATING A CRIMINAL LAW.

I NEED NOT CITE STATISTICS TO PROVE THAT WE HAVE DETERRED FEW, IF ANY, POTENTIAL OFFENDERS FROM VIOLATING OUR CRIMINAL LAW. THE POTENTIAL OFFENDER IS NOT DETERRED BECAUSE OUR DETERRENTS ARE NOT USED TO DETER, AND OUR PENALTIES DO NOT PENALIZE. THE LEGISLATURE PROVIDES PENALTIES, BUT THE COURTS AND THE PAROLE BOARDS DO NOT IMPOSE THEM. SIXTY-FIVE PERCENT OF ALL PERSONS CONVICTED OF A FELONY LAST YEAR IN WAYNE COUNTY DID NOT GO TO JAIL. THEIR CRIMES DID NOT COST THEM ONE DAY OF FREEDOM.

THIS IS NOT ONLY TRUE IN MICHIGAN BUT EVERY STATE IN THE UNION. A RECENT STUDY OF WISCONSIN SHOWS THAT 63 PER CENT OF THE ADULT MALES CONVICTED OF A FELONY WHO HAD PREVIOUSLY BEEN CONVICTED OF ANOTHER FELONY WERE PLACED ON PROBATION. IN FLORIDA LAST YEAR, 80% OF THOSE CONVICTED OF A FELONY WERE PLACED ON PROBATION. EVEN WHEN CONVICTION RATES ARE INCREASING, FEWER PEOPLE ARE BEING SENT TO PRISON.

QUITE OBVIOUSLY, IF WE DO NOT PENALIZE THE LAW-BREAKERS

WHOM WE CONVICT, WE HAVE NO HOPE OF DETERRING THE POTENTIAL LAWBREAKER.

NOT ONLY HAS IT FAILED TO ACCOMPLISH ITS PRIMARY GOAL — DETERRENCE OF CRIME — BUT OUR SYSTEM OF SENTENCING BY ITS VERY NATURE IS DISCRIMINATORY AND UNEQUAL. WE ATTEMPT TO INDIVIDUALIZE THE SENTENCE TO FIT THE INDIVIDUAL CONVICTED OF THE CRIME. OUR WHOLE SYSTEM OF ADMINISTRATION OF CRIMINAL JUSTICE IS BASED ON THE EQUAL ENFORCEMENT OF THE LAW — FROM THE ENACTMENT OF THE LAWS BY THE LEGISLATURE TO THE INVESTIGATION AND APPREHENSION BY THE POLICE AND THE TRIAL IN A COURT OF LAW. HOWEVER, ONCE THE PERSON IS CONVICTED, WE FORGET ALL ABOUT EQUALITY AND TREAT EVERY PERSON UNEQUALLY. WE GIVE TO OUR SENTENCING JUDGES AND TO OUR PAROLE BOARDS AWESOME POWER OVER THE FREEDOM OF THOSE CONVICTED. FEDERAL JUDGE MARVIN FRANKEL IN HIS RECENT BOOK, CRIMINAL SENTENCE/LAW WITHOUT ORDER, STATES " . . . THE ALMOST WHOLLY UNCHECKED AND SWEEPING POWERS WE GIVE TO JUDGES IN THE FASHIONING OF SENTENCES ARE TERRIFYING AND INTOLERABLE FOR A SOCIETY THAT PROFESSES DEVOTION TO THE RULE OF LAW." HE SAYS FURTHER: "IN FACT, HOWEVER, IT ALLOWS SENTENCES TO BE INDIVIDUALIZED, NOT SO MUCH IN TERMS OF DEFENDANTS BUT MAINLY IN TERMS OF THE WIDE SPECTRUMS OF CHARACTER, BIAS, NEUROSIS, AND DAILY VAGARY ENCOUNTERED AMONG OCCUPANTS OF THE TRIAL BENCH."

AS A MAJOR STEP AWAY FROM INDIVIDUALIZED SENTENCES, SENATE BILL S-52 IS A WELCOME RETURN TO THE CONCEPT OF "LET THE PUNISHMENT FIT THE CRIME". I AM CONVINCED THAT OUR SYSTEM OF LAW ENFORCEMENT AND CRIMINAL JUSTICE WOULD THEN ACCOMPLISH THE PURPOSES OF DETERRENCE OF CRIME AND PROTECTION OF OUR CITIZENS.

I BELIEVE THAT SUBSTANTIAL PUNISHMENT FOR CAREER CRIMINALS IS AS IMPORTANT AS CERTAIN PUNISHMENT. WHILE WE CAN NEVER TOTALLY ABANDON THE IDEA THAT SOME SMALL PERCENTAGE OF

CAREER CRIMINALS MAY BE REHABILITATED, OUR EXPERIENCE SHOWS THAT THE OVERWHELMING MAJORITY OF CAREER CRIMINALS CANNOT REASONABLY BE EXPECTED TO BE REHABILITATED. REHABILITATION FOR CAREER CRIMINALS IS IN THE WORDS OF JUDGE IRVING KAUFMAN, " . . . ONE OF THE GREAT MYTHS OF TWENTIETH CENTURY PENOLOGY".

IF REHABILITATION IS NOT LIKELY, THEN THE COMMUNITY DESERVES TO BE PROTECTED FROM THE LIFE-ENDANGERING ROBBERIES AND BURGLARIES PERPETRATED BY ARMED CAREER CRIMINALS. OUR CITIZENS ARE ENTITLED TO BE PROTECTED. THIS PROPOSED LEGISLATION PROVIDES THAT PROTECTION.

I THINK ITS JUST AND RIGHT THAT THE FEDERAL GOVERNMENT ENACT THE PROPOSED LEGISLATION. CRIME SHOULD BE OF PARAMOUNT CONCERN TO THE FEDERAL GOVERNMENT. THE QUALITY OF LIFE IN OUR MAJOR CITIES IN THE UNITED STATES HAS DETERORIATED BADLY. WHEN CRIME CONTINUES TO GROW UNCHECKED, NOT ONLY WILL OUR MAJOR CITIES BE AFFECTED, BUT OUR TOTAL COUNTRY WILL. OUR NATION HAS MORE TO FEAR FROM DOMESTIC DANGERS THAN IT DOES FROM FOREIGN POWERS.

CERTAINLY IT WILL BE COSTLY FOR THE FEDERAL GOVERNMENT TO UNDERTAKE THIS PROGRAM BUT, IN THE WORDS OF JAMES RESTON, LESS COSTLY THAN THE BILLIONS OF DOLLARS AND THOUSANDS OF LIVES NOW HOSTAGE TO CRIME IN THIS COUNTRY. AS JUSTICE BURGER RECENTLY SAID, "THIS IS AS MUCH A PART OF OUR NATIONAL DEFENSE AS THE PENTAGON BUDGET."

I URGE THE ADOPTION OF THIS LEGISLATION. I LOOK FORWARD TO THE DAY THAT WE CAN COOPERATE WITH THE FEDERAL ATTORNEYS IN DETROIT TO MAKE IT THE KIND OF CITY WE WANT IT TO BE.

Senator SPECTER. Thank you again.
Mr. CAHALAN. Thank you, good talking to you.
Senator SPECTER. That concludes our hearing.
[Whereupon, at 2:50 p.m. the committee was adjourned.]

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