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PROGRESS TOWARD A MODERN ADMINISTRATION OF CRIMINAL JUSTICE
IN THE UNITED STATES.

By

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Address

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of

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The subject we are to consider tonight is of such wide philosophic interest and involves so many problems of practical consequence, that I can do no more, in a brief discussion, than touch upon its fringes. That I should be speaking upon such a topic to a State conference on social service illustrates, in somewhat striking fashion, the trend of present thought in this important field. I am glad to participate in your deliberations because your organization is rightly regarded not only as one of the most forward-looking, but as one that, from year to year, has made vital contributions to the improvement of legislation and administrative procedure.

The political philosophy dominant in this country at the time of the Declaration of Independence emphasized, as of primary importance, the individual rights of man as distinguished from the requirements of organized society. It was natural that this concept should have been uppermost in the minds of our forefathers. Government, in the countries from which they came, had been largely oppressive in character. The criminal law there administered was frequently employed as a whip to compel obedience upon the part of reluctant, if not recalcitrant, subjects. Most of the early colonists came to America to escape the compulsions of arbitrary laws which seemed to them unwarranted interferences with their religious, political, and social beliefs. Moreover, the country to which they came was a wilderness in which each individual lived largely on his own responsibility. In the small clusters of population which constituted the first communities, only the most primitive forms of governmental structure were possible. Until comparatively recent years there has always been a frontier beyond which the restless could find escape. It was natural, therefore, that in the

building up of our laws - particularly those which related to crime and punishment - there should have been a sharp emphasis on the rights of the individual and a constant resistance to any form of social control which seemed to involve a limitation upon individual activity.

In the early days, the scope of criminal law was relatively narrow. The prevailing conditions of life made unnecessary the elaborate present day structure of criminal statutes. Such crimes as were committed were, of course, matters of vital consequence to the localities in which they occurred. The court house was a center of community interest and court day was an occasion for the assembling of the populace from the far corners of the country. When a murder was committed it was of such general concern as to disrupt the quiet of the countryside and to warrant the calling out of all available resources for the capture and punishment of the criminal. In fact, it was a matter of such moment that, in the absence of an effective local government, vigilante groups were active and methods of hue-and-cry and outlawry were employed.

It was under these circumstances, then, that there grew up in our constitutions and laws, the system of judicial determination which we know so well and which guarantees to each person charged with the commission of a crime, the right to counsel, the right to a day in court, the right to a jury trial, the right to have witnesses subpoenaed in his behalf, the right to be tried only upon an indictment found by a grand jury, the right to bail, the right to employ the writ of habeas corpus, the right of the presumption of innocence, the right to be present at his own trial and to be faced by the witnesses who testified against him, the right to be convicted

only upon proof beyond reasonable doubt, the right of appeal and the rest of the elaborate formulae. Every law student was taught that it is better for ninety-nine guilty men to escape than that one innocent man should be punished. In modern days these wholesome processes and sound guarantees have far too often been debauched and diverted from their original purpose.

It was but natural that we were led into many grievous difficulties of administration.

Criminal laws were frequently enacted to satisfy the wishes of interested minority groups or in response to tempests of popular emotion. Moreover, this confusion was increased by the fact that not only the federal government, but each state and each political sub-division thereof was possessed of large power to define crimes and to fix penalties.

The Federal criminal law, as a system distinct from that of the states, followed two major lines of development. One had to do with the control of territories directly administered by the Federal Government. The other body of law was concerned with such problems as treason, piracy, sedition, interference with the mails, the collection of internal revenue and other purely federal functions.

Let us not forget that the development of the United States has produced certain phenomena peculiar to ourselves which present problems of the most varied and baffling character. There came to our shores a heterogeneous population, bearing within itself national strains and racial traits that were to contribute to the cosmopolitan character of American life, but which, at the same time, could not be welded into a common pattern of behavior without subjecting our new citizens to many of the compulsions which their arrival on these shores was designed to avoid. The mere territorial extent of our domain, while affording opportunities for the assertion

of the vigor of the pioneer, at the same time subjected the influence of law and order to a process of indefinite attenuation. Industrial and manufacturing communities, great centers of population and of enterprise, grew up, each with its particular texture, atmosphere and standards of public morals. Between some of these large centers the greater part of Europe might have been superimposed with room still left for an almost uninhabited frontier. There came into existence forty-eight states, each sovereign within its own jurisdiction, each with its own capital, each with its own government, and each with a population drawn together through some common interest in the natural or human advantages of its peculiar environment. The Federal Government, established through fiat on the banks of the Potomac, isolated with conscious purpose from the great centers of population, trade, manufacturing, business and industrial life, bore a relationship of limited and delicate character toward all of these other units.

Out of this relationship, fixed in our Constitution, and out of the great impulses that created the drama of our material conquest of this continent, have arisen intricate problems in the administration of human relationships that confront us all at this hour. Of these problems the administration of criminal justice is one of the most fundamental.

The dangerous inroads that organized crime was making were apparent on every hand and, finally, reached a climax in a notorious series of kidnapings that brought the issue into the focus of national attention. To put it bluntly, we had outgrown our law enforcement system and it had broken down under the strain.

Many of us felt that, in the premises, a heavy responsibility rested upon the Federal Government and that means could be devised to meet

it within the limitations of the Constitution, and without doing violence to the genius of our institutions or the customs of our people.

The first significant appearance of the Federal Government in this field took place when the so-called "Lindbergh" Anti-Kidnaping Act was passed in June, 1932. While this was an excellent beginning, it dealt somewhat inadequately with but a single class of crime. It was imperative that the Federal authorities should be empowered to go much further.

Between Federal and State jurisdictions there existed a kind of twilight zone, a sort of neutral corridor, unpoliced and unprotected, in which criminals of the most desperate character found an area of relative safety. It was the unholy sanctuary of predatory vice. Here the instructed criminal sought and found refuge. It was into that zone that the Federal Government has sought to enter. We have resisted, and we shall resist, all attempts to bring the Department of Justice into the sphere of State or local criminal activities. Frankly, I have endeavored to develop in the Department of Justice a structure and a technique predicated upon co-operation with state and local agencies, as well as with appropriate semi-public groups, toward the accomplishment of the common end - the eradication of crime in its more outrageous and organized phases and the progressive control of the rest.

It was, therefore, from no desire to usurp the functions of State or local authorities, that the Department of Justice requested from the Congress, and secured, authority to deal with this difficult situation. There was introduced in the 73rd Congress what has been termed the Twelve Point Program of the Department of Justice, which ultimately resulted in the passage of twenty-one important enactments.

Throughout these difficult and formative days the Congress and its committees rendered every assistance in their power; and I pay grateful tribute to them for their unfailing confidence and support.

In order to assist the States in developing a more effective program of nationwide cooperation, I sponsored the adoption by the Congress of a law authorizing interstate compacts for mutual cooperation in the prevention and punishment of crime. The passage of this law has already stimulated wide interest in a hitherto unused means of approach. An Interstate Commission on Crime has been formed, composed of members representing every State in the Union; and a comprehensive program of legislation is in process of development.

The other enactments dealt with racketeering, transportation of stolen property where the value exceeded five thousand dollars, extensions of the kidnaping statute, flight from one state to another to avoid prosecution or the giving of testimony in felony cases, bank robberies, killing or assaulting a Federal officer, riot in or escape from a Federal penal institution, taxation upon the manufacture or sale of sub-machine guns and certain other types of firearms, the right of agents of the Federal Bureau of Investigation to carry firearms and to make arrests, improvements in criminal procedure, rewards, and similar matters. These beneficial and constructive acts were carefully worked out and served as an answer to a great national need. Moreover, the Congress wisely provided additional appropriations for equipment, personnel, laboratories, scientific apparatus and the like.

The immediate result of these various acts and measures was to enable the Federal Bureau of Investigation and the Criminal Division of the Department of Justice to deal successfully with a series of outrageous kidnapings, and to put an end to the operations of many notorious murderers, gangsters, bank robbers and hold-up men, whose activities had made American justice a subject of wonder to the rest of the world. The Federal authorities confronted a desperate situation and, I am proud to say, met it in a manner that received national and even international commendation. Encouraging as these events were, thoughtful persons realized that much remained to be done.

With that thought in mind I summoned to meet at Washington, D. C., in the winter of 1934, a conference on crime, based upon a new method of approach. Theretofore the public, expressing itself through conferences or otherwise, had appealed to the public authorities for aid in dealing with the menace of lawlessness. Now the process was about to be reversed -- the Government was to appeal to the public for its thoughtful advice, for its sustained interest and for its active help.

Attended by six hundred delegates, each an expert in his own field, the Conference sought to approach the question in as dispassionate, as objective and as practical a manner as possible; to consider crime in the light of the experience of the participating groups, without at the same time getting into the field of particular crimes, specialized suggestions and minute professional preoccupations.

This gathering, I believe, elicited an unusually valuable exposition of basic facts and was of great assistance in enabling the public to see

the problem of crime in its broader aspects and to see it whole. Since that time a number of State conferences of a similar nature have been held. Many things are afoot. The psychology of our people has undergone a wholesome change. No longer does the public glorify the gangster. Its admiration and its gratitude go out to those who, daily taking their lives in their hands, seek to enforce the laws that are our common protection.

Public opinion has begun to express itself in many ways. It is not an opinion that impinges alone upon the Federal Government. If I mistake not the signs, it is beginning to affect all governmental authorities throughout the nation, whether their jurisdiction be great or small. There is a demand for action in each particular jurisdiction, for the most expert coordination of which the authorities are capable. These large expectations should find an unreserved welcome on the part of law-enforcement officials, for there is thus provided the encouragement and stimulation necessary to such an administration of justice as befits the dignity of American life.

With respect to the practical recommendations of that Conference, time does not permit me to offer a discussion, except to state that one of the important actions taken was that approving the establishment at Washington, D. C., of a scientific and educational center to provide national leadership in the broad field of criminal law administration and the treatment of crime and criminals. The Advisory Committee which I appointed to consider this recommendation approved the creation of the proposed center within the structure of the Department of Justice, and it was decided to use the existing facilities of the Department for this purpose.

For several years, under the guidance of its skilled Director, Mr. J. Edgar Hoover, there had been in successful operation in the Federal

Bureau of Investigation an excellent training school for the instruction of Special Agents whose high personnel standards are too well known to require comment on this occasion. It was decided to make that training course, with suitable adaptations, available to selected law enforcement officials throughout the United States.

The first Police Training School was held in the summer of 1935, and a second group of law enforcement officers was graduated a short time ago. Plant, technical equipment, scientific facilities, lecturers, and instructors are made available for this important work. The sole expense to those who take these courses is the cost of transportation to and from Washington, and of personal maintenance during the period of instruction. The Department cannot, of course, offer these advantages indiscriminately, but it can and does undertake to supply to a limited number of experienced police officials instruction in all of the manifold scientific and technical subjects in which Special Agents of the Federal Bureau of Investigation are now trained. In this way we both teach and learn.

We have followed the subsequent careers of the graduates of this school. Many of them, promoted in rank and given increased compensation, are now passing on this instruction to their colleagues and subordinates in various State and local police jurisdictions. The results, thus far, have been highly satisfactory.

Under the Federal Bureau of Prisons of the Department of Justice there has been set up a classified prison system which includes a reformatory for women; two reformatories for youthful first offenders; a special institution for the treatment of narcotic addicts; the United States Hospital for

Defective Delinquents at Springfield, Missouri, where remarkable rehabilitative work is being done with the insane and tuberculous as well as those suffering with chronic, degenerative diseases; four regional jails; five prison camps; four walled penitentiaries and finally, on Alcatraz Island, a maximum security prison for persistently intractable prisoners and those with serious records of violent crimes. Supplementing the classification program there is a carefully conceived procedure for the individual study and treatment of inmates in each institution.

In the selection of personnel, both at Washington and in the field, the Federal Bureau of Prisons has recognized the importance of professionalizing the service. A comprehensive plan of in-service training for the custodial officers is now being put into operation and in the future all promotions and salary raises will be made upon the basis of the completion of the training requirements as well as the maintenance of satisfactory service records. Not only does the proposed scheme offer an opportunity for developing the best qualities in candidates for the position of prison officer, but it also assures to them something in the nature of a career service.

This training course for Federal prison officials now maintained under the experienced direction of Mr. Sanford Bates, Director of the Federal Bureau of Prisons, can, I hope, be made available under proper conditions to selected State and other officers in this field. While this is a difficult arrangement to work out, it is being given serious study.

Probation, as a device for penal treatment and for the protection of society, has been widely developed under the Federal system and with increasingly satisfactory results. Although the appointment of probation

officers is, under the law, left to the discretion and authority of the United States District Judges, the administrative, instructional and inspectional phases of the probation system as a whole have been placed under the Director of the Bureau of Prisons on whose staff there is a highly competent Supervisor of Probation.

Persons sentenced in the Federal Courts to terms of more than one year are, under the law, eligible for parole when they have served one-third of the full sentence. The decision as to whether parole shall be granted, and when it shall be effective, rests with the United States Board of Parole, consisting of three members appointed by the Attorney General. The Board has its headquarters in Washington, but regular hearings are held at the various institutions.

In general, it may be said that parole is granted when, in the judgment of the Board, a prisoner is competent and willing to readjust himself socially and when the factors which will affect him and his family after release guarantee adequate public security. A definite "parole plan," which includes suitable employment and an approved "local adviser" together with such other conditions as the Board thinks necessary for the protection of society, must be submitted for the approval of the Board before release on parole is actually effective. The details of all such parole plans must be verified by field investigations made by an accredited social service agency or by a United States Probation Officer.

One of the most important phases of our crime problem is that of the care and treatment of juvenile offenders. Under a statute passed for that purpose, there has been established a special policy for dealing with those under nineteen years of age who violate Federal laws. A person trained and

experienced in the work of dealing with youthful offenders has been assigned to the further development of this policy. Distinct and gratifying progress is being made in this field, the importance of which cannot be over-emphasized. If we can perfect our own system it will have a stimulating effect in every State in the Union.

There has been much discussion as to the relative merits and results of various methods of parole. Unfortunately we suffer from a woeful lack of reliable information.

Because of the variations existing among the statutes and practices of the several jurisdictions, I became convinced that a nation-wide survey should be made and that it should also include within its scope pardon, probation, commutation, suspended sentences and related subjects. With these considerations in mind I procured funds for such an inquiry from the Works Progress Administration. During the following weeks, under the direction of Mr. Justin Miller, a former President of this Conference and a member of the staff of the Department of Justice, a group of trained workers was sent into the field to initiate the undertaking. Such a survey has never heretofore been undertaken. It is in the nature of a large but promising experiment. We are receiving excellent cooperation in the various States and the compiled results will be made available to all who are interested in the subject. Perhaps, at last, we are in a fair way to come to grips with the vexing problem of parole.

I am persuaded that as time goes on our national program must place an increasing emphasis upon crime prevention. Here is a great field which many people, either because of inadequate information or lack of imagination, are reluctant to enter. In this area, as in the matter of detection and apprehension, as well as of punishment and rehabilitation, the Federal Govern-

ment owes a duty of leadership. With only a moderate extension of activities, the Department of Justice can be made a nerve center of helpful impulses and a clearing house of useful information. The chief reliance, however, will naturally be placed upon scientific groups, universities and training schools, many forms of industrial, business and social agencies, and the States and local governments. Here again co-operation is the key word if we are to have a unified and co-ordinated program.

During recent months there has been a tremendous increase in the activities of various agencies all along the line. In several universities courses of training have been provided for improving the personnel of police administration. Chambers of Commerce and municipal leagues have been engaged in similar programs. Fraternal and religious organizations, women's societies, the Boy Scouts, and other groups have been helpfully active. The movement to establish and extend boys' clubs, playgrounds and the like is in line with the desired end. The American Bar Association, as well as the various state and local Bar Associations, have been carrying on an intensive program, particularly for the improvement of laws relating to procedure and administration. The important work of the American Law Institute in the preparation of a model code of criminal procedure is one of the most striking of recent achievements.

The American Judicature Society, the American Institute of Criminal Law and Criminology, the International Association of Chiefs of Police, the National Probation Association, the American Prison Association and many other organizations have made substantial progress in forwarding their respective programs of action. The creation of juvenile courts and co-ordinating councils, proposals for State Departments of Justice, and State

police departments all merit careful attention and promise rich results. In short, we are slowly but surely developing a national program and an adequate public leadership.

When one speaks of leadership, one speaks, perhaps, of the most essential single factor in our entire program. On another occasion I made this assertion:

"Much has been said about the importance of an informed public opinion. This aspect of the matter is not for a moment to be underrated; but all too often public officials are content merely to lecture the citizen for his alleged indifference to the duties which inhere in citizenship. This seems to me to be somewhat less than fair and an altogether too convenient escape from the responsibilities which rest upon the public officials themselves. Our people have placed such officials in key positions of power and trust, and have a right to expect that their high responsibilities will be faithfully and efficiently discharged.

"Our experience has shown that what might have appeared to be public indifference was, largely, the apathy of the disillusioned, resulting from the frequent failure of public authorities to supply the service and the type of leadership to which the American people are entitled. Once a reasonable course of action has been projected; and representatives of Federal, State and local interests have been brought together for concerted action, public opinion is inspiringly spontaneous in its support of the common objective."

There is no magic formula for the solution of the problem of crime, and, with our human frailties, no perfect administration of criminal justice is apt to be devised. But all of us, each in his own field and each maintaining cooperative contact with the others, can contribute to our common purpose. That objective, if I understand the temper of the American people, is to put into effect a program for crime control scientifically conceived, broadly based and adapted to modern conditions of life and government.

Such a program must include, among other essential elements, compassion for the unfortunate, instrumentalities to guide those in danger of

anti-social contaminations, solicitude for first offenders, rehabilitation where rehabilitation is possible, progressively improved procedures, prompt detection and apprehension followed by the swift and inevitable punishment of the guilty, vigorous and understanding administration, unfaltering resistance to political interference, and the raising of the personnel in this great field of human relationships to unimpeachable standards of individual character and professional competence. Without such a program to guide us, progress, at best, will be intermittent and wavering, but with its aid the American people can put their house in order and go about their ways of living under conditions of domestic peace.