

REMARKS OF THE ATTORNEY GENERAL
JAMES J. KILPATRICK AWARD
THE INTERNATIONAL PLATFORM ASSOCIATION
WASHINGTON, D. C.
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I am deeply honored to be presented with the James J. Kilpatrick Award as "the nation's most effective conservative voice." This award is in one sense ironic -- not because I am anything less than proud at being called conservative, but because I have never considered myself an orator.

I will not comment further on whether the award is appropriately bestowed this year, but I do know that it is appropriately named. Mark Twain once noted that there was nothing more difficult to put up with than the annoyance of a good example, and by that standard Jack Kilpatrick is a supreme annoyance. His clear yet passionate articulation of conservative principles has been a splendid example for all of us.

It is of course somewhat humbling to rise to address an audience of public speakers. On many occasions I find it expedient to distribute copies of my speeches, not because they are particularly splendid examples of the art form but to give wider circulation to the policy pronouncements they contain. Winston Churchill used to avidly distribute copies of his parliamentary speeches as widely as possible. A member of the opposing party acknowledged the receipt of one such package in the following manner:

"Dear Mr. Churchill: Thanks for the copy of your speeches lately delivered in the House of Commons. To quote Lord Beaconsfield, 'I shall lose no time in reading them.'"

Although I do not pretend to any expertise in delivering my speeches, at least when I do I know the audience has taken the time to listen. Before an audience such as this one, more accustomed to delivering speeches than listening to them, I am doubly grateful.

The receipt of an award based in part on the principles which guide my public life naturally prompts me to examine anew those principles. Our Founding Fathers were revolutionaries, but they were revolutionaries who recognized that it was the restraint

of law which made men free. A conservative involved in the administration of justice today must be dedicated to preserving the role of laws as the restraints which make us free.

In many areas, however, excesses by all three branches of government have transformed our laws from restraints which make us free to restraints on the very freedom they are supposed to promote. For that reason the conservative today must, paradoxically, be a reformer.

Calvin Coolidge was once asked what a clergyman preaching on sin had said. Coolidge responded: "He said he was against it." Today, however, it is not enough simply to criticize the all-too evident problems in our legal system. If we are to preserve the rule of law our forefathers fought for, changes must be made.

In no area is the need for change clearer than in our criminal laws. In recent years, through actions by the courts and inaction by Congress, an imbalance has arisen in the scales of justice. The criminal justice system has tilted too decidedly in favor of the rights of criminals and against the rights of society.

We have focused so much on protecting the accused that we have lost sight of the purpose for which government itself was established -- to protect citizens from those who would prey upon them. Let us be ever mindful of the need to safeguard individual liberty, but let us also recognize that the most basic individual liberty is freedom from violence. That basic liberty can be secured only by the effective and vigorous enforcement of our criminal laws. As Judge Learned Hand recognized fifty years ago: "Our dangers do not lie in too little tenderness to the accused . . . What we need to fear is the archaic formalism and the watery sentiment that obstructs, delays, and defeats the prosecution of crime."

Although laws are the restraints which make men free, our criminal laws today seem to be freeing only those who should be locked behind bars. They are not freeing law-abiding citizens from the imprisoning fear -- and reality -- of crime. We have been working for some time to secure passage of legislative reforms which would restore the balance between the forces of law and the forces of lawlessness by making our criminal laws more effective. The United States Senate now has before it a package of reforms which would, among other things:

-- Reform our bail system to prevent the most dangerous offenders from returning to the streets once they've been caught;

-- Make jail sentences more certain and abolish the frequently abused process of parole;

-- Provide stronger criminal forfeiture laws that will take the profit out of crime, especially organized crime and drug-trafficking;

-- Increase the other federal penalties for drug-trafficking;

-- Recognize the rights of the victim more fully and require judges to weigh the criminal's impact upon the innocent when sentencing;

-- Make it a federal crime to kill, kidnap, or assault senior federal officials, including Justices of the Supreme Court; and

-- Permit the federal government to transfer surplus property to the states, free of charge, when the property is needed by the states for prisons.

The importance of these reforms to our system of justice and to the safety of the public cannot be overstated.

At a time when the incidence of crime has reached crisis levels it would be irresponsible for Congress not to act on these badly-needed reforms. In the last decade violent crime jumped eighty-five percent. In the time it takes to deliver my remarks this afternoon, an average of 50 violent crimes will be committed across the country. During that same period, over 400 property crimes will be committed. Last year alone, one out of every three households in our Nation was victimized by some form of serious crime. The American people will not tolerate further delay by Congress, which should act immediately on the bill before it.

We are also pressing for other reforms. We have proposed modification of the exclusionary rule so that the criminal would not go free when the officer seizing evidence acted in the reasonable, good faith

belief that his actions were lawful. We have proposed habeas corpus reform to end the constant relitigation in federal court of claims fully and fairly disposed of in state court. And we favor limiting the insanity defense so that only those who did not have the mental state which is an element of their crime would escape responsibility for their acts. Abuses in these three areas -- exclusionary rule, habeas corpus, and insanity -- have helped turn the criminal justice system into a cynical game. Our reforms would return it to a quest for justice -- not only for the accused but for society as well.

We have also been pursuing initiatives within the Executive Branch. Recognizing that law enforcement is largely a state and local problem, we have stressed cooperation and coordination between federal and state and local officials. The basic conservative value of federalism will be implemented in this area through law enforcement coordinating committees in each district across the country. These committees permit federal resources to be directed to the particular problems in each community on which they can have the greatest impact.

We have also gotten serious about narcotics trafficking by bringing the resources and expertise of the FBI to bear on the drug problem for the first time. Since last summer, the FBI has initiated over 800 investigations nationwide involving narcotics trafficking, including 200 joint investigations with DEA. Drug trafficking not only causes so much violent crime but is also rapidly becoming a leading occupation of organized crime. We will not allow bureaucratic divisions to hobble our own effort to combat it. Bringing the resources of the FBI into the effort, in conjunction with DEA, will make a vital difference in the battle against drugs.

Apart from such organizational reforms, we are also revising regulations which hamper law enforcement without any significant benefits. We have revised executive orders on intelligence to permit more effective security against the threat posed by foreign agents. And we are nearing completion of revisions on the Domestic Security Guidelines. Although the process is still underway, I can tell you that the revised guidelines will remove unnecessary obstacles to the FBI's efforts in protecting us against the threat of internal terrorism.

Another area in which change is necessary to preserve the system devised by the Founding Fathers is the shift of power over the past three decades from the elected branches and the states to the federal courts. I have spoken on several occasions about the need for the courts to avoid intruding on the domains of the executive and legislative branches by judicial policymaking. Some judges have strayed across the constitutional line to legislate rather than interpret the law. Some courts have intruded upon executive functions by taking upon themselves virtual administration of, for example, school systems and prisons. Such tendencies on the part of some judges -- or justices -- are particularly disturbing to the public since federal judges are insulated from the ballot and may not be directly removed by the people. When policy judgments are to be made by government, the values of the people expressed by their elected representatives -- rather than the personal predilections of unelected jurists -- should control.

The Framers recognized the need for courts to safeguard liberty, but did not intend the judiciary -- "the least dangerous branch" -- to usurp the people's freedom to form policy through elected officials. The best way to reverse the unhealthy flow of power from the elected branches to the courts is for judges to recognize the limited nature of their role. We have been urging that recognition through our appointments to the bench and through a litigation program designed to promote the constitutional values of judicial restraint.

In a broad range of other areas we have been reversing excesses in the law that have undermined the basic purpose of law. In antitrust we have brought enforcement policy back from flirtation with far-out academic theories to the world of economic reality. We now focus our enforcement efforts on truly anticompetitive activities.

In civil rights we have vigorously enforced existing laws in order that no American be denied equal opportunity because of race, color, or sex. We have renounced certain devices that disserve that goal, such as forced racial busing and racial quotas. We believe that the civil rights laws were intended to guarantee individual rights, not group results.

And we have enforced the rule of law despite pressures from some quarters to compromise our commitment to justice. For example, we firmly enforced the law that forbids federal employees from striking. And we are

enforcing the law requiring registration with the selective service system.

The words of Daniel Webster, one of the founders of this Association, are inscribed on the Department of Justice building. The inscription reminds me every morning that justice is "the great interest of man on earth." The pursuit of that interest requires, at present, the pursuit of reform: reform to strengthen our criminal laws, to encourage judicial restraint, and to move away from failed experiments in antitrust theory and civil rights remedies. At the Department of Justice we are pursuing such reform while vigorously enforcing existing law.

It would, of course, be easier to do nothing new. Our active reform agenda has engendered criticism from those with entrenched interest in the status quo. In the criminal law area we are charged with threatening civil liberties, when in fact we seek to promote the most basic freedom of all -- freedom from the preying criminal. In the area of judicial restraint, we are criticized for attacking the courts, when our intent is to strengthen the courts against the inevitable attack that occurs when they depart from their proper constitutional role. In antitrust we are said by some to be fostering monopoly when we are encouraging the only known cure for monopoly -- competition. And in civil rights we are accused of retrenchment because we seek remedies that are more effective than the ones which have proven to be failures.

Doing nothing would still this criticism, but at too great a price. I for one cannot sit comfortably by when one in three households is victimized by crime, when courts arrogate to themselves decisions which belong to the people, when our free enterprise system is hobbled by excessive regulation, or when rights to equal opportunity become submerged in adherence to failed remedies. One of the great conservatives, Edmund Burke, recognized that the preservation of a society's values requires action. As he put it in his now-famous quotation: "The only thing necessary for the triumph of evil is for good men to do nothing." It would be a gross perversion of conservative values to take any comfort in the status quo. It is a time for change. I will continue to speak out about the need for that change.

I suspect that the membership of an association dedicated to public speaking will recall Thomas Mann's words on the value of speech:

"Speech is civilization itself. The word, even the most contradictory word, preserves contact -- it is silence which isolates."

This association, through the promotion of public speaking, breaks through the isolating silence and fosters the development of our civilization. At the Department of Justice we are striving to make it a safer and more just civilization for all.