REMARKS OF THE ATTORNEY GENERAL
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There is an old story about an attempt by the great Chief Justice, John Marshall, to dislodge a particular law book from a high and tightly packed shelf. He succeeded instead in dislodging the entire row of books, which struck him on the head and knocked him to the floor. A librarian instantly rushed to his aid, but the venerable old Chief was unhurt and answered the offer of assistance by saying:

> "I am a little stunned for the moment. I have laid down the law often, now this is the first time the law has laid me down."

Like that shelf of books long ago, our legal system is today in need of restructuring. Ineffectiveness and inefficiency threaten to lay low our legal system itself.

Nearly two decades ago, Dean Roscoe Pound observed: "Law is experience developed by reason and applied continually to further experience." During the past two decades, a growing public discontent has arisen over our civil and criminal justice system -- in large part, because reason has not been applied sufficiently to improving the federal legal system.

What are the sources of public discontent? First and foremost, a belief that our criminal justice system is more than fair to the accused but less than successful in protecting society. In addition to questioning the effectiveness of criminal justice, the public has become increasingly concerned about the efficiency of both the civil and criminal systems. Simply put, the burgeoning caseload in our courts has slowed and clogged the wheels of justice.

In asking Edmund Randolph to become this Nation's first Attorney General in 1789, George Washington observed "that the due administration of justice is the firmest pillar of good government." Since its beginnings, the Department of Justice has had a special responsibility for seeking improvements in the

administration of justice. During the last eighteen months, the Department of Justice has implemented or proposed a great number of improvements to do just that. Today, I want to review those efforts.

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.

By 1981 nearly nine of ten Americans believed that the courts in their own areas failed to deal harshly enough with criminals -- an increase of almost one-third since 1972. Also by 1981, nearly eight of ten Americans did not believe that our system of law enforcement worked to discourage people from committing crimes -- almost a fifty percent increase since 1967. In the Nation's capital, one public interest legal foundation has set up a Court Watch Project to involve its 80,000 members nationwide in the monitoring and reporting of judges who give sentences that appear far too lenient in specific cases.

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."

Too frequently today, our criminal justice system allows the criminal to be set free and imprisons the law-abiding citizens with the fear -- and reality -- of crime. We have been working for some time to secure passage of legislative reforms that 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

reforms would make it once again a quest for justice -- not only for the accused, but for society as well.

Recognizing that law enforcement is largely a state and local function, we have institutionalized a new cooperation and coordination between federal, state, and local officials. Through law enforcement coordinating committees in each federal district across the country, federal resources will be directed against the particular problems in each community on which they can have the greatest impact.

Since much of the epidemic of crime arises from narcotics trafficking, we have brought 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 the Drug Enforcement Administration. Drug trafficking not only causes so much violent crime, but is also rapidly becoming a leading occupation of organized crime. Bringing the sophisticated resources of the FBI into the effort, in conjunction with DEA, will make a vital difference in the battle against drugs.

The security of the American people -- and their respect for our legal system -- require these kinds of new initiatives to improve the effectiveness of our criminal justice system. We need not -- and must not -- compromise our respect for individual rights, but we must secure the safety of our people against crime.

In a similar fashion, the security of American economic well-being and our people's respect for law require new initiatives to meet the problem of illegal immigration to the United States. We need not -- and must not -- forsake our heritage as a nation of immigrants yearning to be free, but we must rationalize and enforce the laws governing immigration.

The staggering dimensions of illegal immigration to this country have dramatically undermined public confidence in our legal system. Although the problem is not susceptible to simple solution, the public rightly expects major improvement. As one national opinion survey found in June 1980, over ninety percent of the public favor an "all out effort to stop illegal" immigration. As is the case with criminal law, the public wants fair and reasonable immigration laws that will be effective and efficiently enforced.

In recent years, this Nation truly has lost control of its own borders. There are some three to six million illegal aliens in this country -- and the number grows by from one-quarter to one-half million each year. Added to that, the United States in 1980 admitted over 800,000 legal entrants -- the largest number since 1914. Taken together, legal and illegal immigration to this country in 1980 reached an all-time high for any year -- including the great unrestricted migrations between 1880 and 1921. The Mariel Boat Lift from Cuba in 1980 -- and the arrival of Haitians that year at a rate of about 1000 a month -- have themselves become a symbol of the failure of American immigration and refugee policy.

The largest single weakness of prior policy has been its lack of realism. Rather than confronting reality, it chose to look the other way and to adopt makeshift approaches to only the pressing problem of the moment.

On July 30 of last year the President proposed a new and comprehensive immigration and refugee policy that recognizes things as they are and logically proceeds from there on all the issues now pending -- illegal immigration, legal immigration, mass arrivals of undocumented aliens, and refugee assistance. In a similar fashion, the bipartisan Simpson-Mazzoli bill now pending before Congress would provide an excellent vehicle for achieving necessary reforms.

Although all of the interrelated proposals that go together to make a new policy workable are beyond the scope of these remarks, the central theme can be simply stated. It is to deter illegal immigration by modestly expanding the opportunities for legal employment and then concentrating more enforcement resources upon thwarting future illegal immigration. To do so, we must -- for the first time -- ban employers from hiring illegal aliens.

Just as the problems of crime and illegal immigration have revealed ineffectiveness in the federal justice system, dramatic increases in the burdens upon the courts have fostered its inefficiency. Since 1960 annual civil filings in the district courts have more than tripled. In the same period appeals increased seven-fold. And the trend is continuing. For the twelve-month period ending this March 31st, civil filings were up twelve percent and appeals were up eleven percent over the previous twelve-month period. During its last term, the United States Supreme Court itself accepted fifteen percent more cases for argument than during the

preceding term -- and thirty-six percent more cases than just the term before that.

Most significantly, the number of cases per judge has increased dramatically. Despite the Omnibus Judges Bill of 1978, which added 152 judges to the federal bench, the growth of the federal judiciary has not kept pace with the litigation boom. At the district court level, judges today must process fifty percent more new filings each year than in 1960. Judges at the appeals level must hear almost four times as many cases today as in 1960.

In addition, litigation is more complex and time-consuming than ever before. For example, compared to 1960, five times as many federal trials took more than one month in 1981. It is unsurprising that expeditious resolutions of civil suits seldom occur. A recent study found over 15,000 cases in our federal district courts that had been pending for more than three years.

The first step in responding to these problems must be more judicial resources. The 1978 Omnibus Judges Bill represented the first increase in the size of the federal judiciary in the past two decades. Already there is an obvious immediate need for more federal judges to handle the burgeoning caseload. In addition, I believe it is time to recognize that the creation of judgeships should be regularized and based upon such an assessment of need, not politics.

The problem facing the federal courts, however, is not simply one of too few judges to handle the work. Too great an expansion of the federal judiciary would create its own set of problems. Constant, dramatic expansion tends over time to dilute the prestige and reduce the collegiality of the federal bench, making it harder to attract the best candidates. Increasing the number of decision-makers issuing opinions would threaten uniformity, evenhandedness, and stability in the application of the law. Doctrinal confusion even within a single jurisdiction has become increasingly difficult to avoid. As former Assistant Attorney General Daniel Meador has noted, we risk creation of a "judicial Tower of Babel."

We are therefore actively supporting a wide range of legislative initiatives which will, if enacted, significantly lessen the burden on the federal courts. We support the abolition of diversity jurisdiction, which accounts for a quarter of the civil filings in the

district courts and about 14 percent of appeals in the circuit courts. There is no longer any persuasive rationale for diversity jurisdiction, and its abolition would free the federal courts for their primary task of interpreting and enforcing federal law.

We have also proposed a major revision of the federal habeas corpus laws, to impose a statute of limitations and provide that issues fully and fairly litigated in state court not be subject to relitigation in federal court. Our purpose is to restore finality in criminal law. An incidental effect would, however, be the removing of an unnecessary burden on the federal courts, since state prisoners filed over 8,000 habeas cases in federal courts last year. The only thing to commend the vast majority of those cases, to paraphrase Judge Learned Hand, "is the hardihood in supposing they could possibly succeed."

We are also considering the proposal to create special tribunals to decide certain types of factual disputes arising in the administration of welfare and regulatory programs. The resolution of many such disputes does not require the resources or expertise of an Article III court. The creation of such tribunals was proposed over five years ago by a Justice Department Committee headed by Judge Bork.

To ease the burden on the Supreme Court itself -- which has doubled since 1960 -- we are proposing legislation that would abolish the mandatory jurisdiction of the Supreme Court. The Supreme Court could better supervise the development of law in the federal circuits if it had complete discretion over its own docket. Every case which the Supreme Court must hear because of mandatory jurisdiction represents one less case the Court could have heard because of its importance. Chief Justice Burger has urged that "all mandatory jurisdiction of the Supreme Court that can be should be eliminated by statute," and the Department of Justice fully agrees.

The measures I have mentioned today would do much to improve the effectiveness and efficiency of our federal justice system. There is, however, one further problem that must be immediately addressed. We must amend the Bankruptcy Act of 1978 to remedy the constitutional defects found by the Supreme Court in its recent decision in Northern Pipeline Construction Co. v. Marathon Pipe Line Co.

The Bankruptcy Act of 1978 sought to improve the efficiency of the federal courts in dealing with bankruptcy matters. The dimensions of that undertaking are readily apparent -- as of March 31 of this year nearly 700,000 estates were pending before the federal bankruptcy courts. As the result of the Supreme Court's decision, however, a new system must be in place by October 4 of this year when the Court's mandate will issue.

We are presently engaged in an expedited review of the options available under the Supreme Court's opinion. There are at least three -- all of which present difficulties. First, we could return to the pre-1978 system, but it was that system which caused Congress to pass the 1978 Act. Second, we could grant Article III status to bankruptcy judges, but that would mean the appointment of some 200 federal judges with life tenure. Or third, we could continue the bankruptcy courts as Article I courts, but narrow their jurisdiction to exclude private civil cases such as Northern Pipeline. Unfortunately, this third option is perhaps the most complex analytically -- particularly in light of the limited time available -- and would reintroduce at least some of the inefficiencies the 1978 Act sought to eliminate.

Although the October 4 deadline makes changes in the bankruptcy system necessary immediately, the other changes I have outlined today are also imperative and require timely action. Public discontent with the federal criminal and civil justice system increases daily as the perception spreads that it is neither effective nor efficient enough to meet the needs of modern society. Discontent over the role of law may inevitably lead to disrespect for the rule of law -- unless we take well-reasoned action soon. Reform is therefore essential. As Winston Churchill once wrote:

> "Things do not get better by being left alone. Unless they are adjusted, they explode with a shattering detonation."

The fuse of public discontent is lit. It is up to all of us -- especially the leaders of the organized bar and the officials of the Justice Department -- to avert the threatened explosion.