

TESTIMONY OF THE ATTORNEY GENERAL  
SUBCOMMITTEE ON CRIMINAL LAW  
SENATE JUDICIARY COMMITTEE  
WASHINGTON, D. C.  
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Mr. Chairman, Members of the Subcommittee:

I am pleased to be here today to testify on behalf of the Comprehensive Crime Control Act of 1983.

Our bill is just that -- comprehensive, in the sense that it concerns problems throughout the criminal justice system. The most serious of these problems, however, are those raised by the involvement of organized crime in drug trafficking. Before commenting on the legislation before you, I would like to take a few moments to review these problems and our response to them.

Organized crime has expanded its operations to include drug trafficking. Indeed, most drug trafficking today is organized crime.

Large-scale drug dealers must organize their operations. They obtain the illicit substances, or the rights to the substances, overseas. Within our borders, the drug dealers have set up elaborate enterprises for cutting the pure imported drugs and distributing them over wide geographical areas.

And the organization does not stop there. Drug money is laundered through businesses set up as "fronts" for drug dealers. The profits are then plowed back into the drug business, as with any major enterprise. Increasingly, some of the profits are actually invested in legitimate businesses -- including real estate in Florida, restaurants in California, and other businesses across the Nation.

And the tremendous multi-billion dollar profits from drug trafficking are used to finance the other illegal activities of organized crime -- gambling, pornography, prostitution, extortion, loansharking, fraud, weapons trafficking, and public corruption.

Through its drug profits, organized crime spawns a great deal of the crime in this Nation. In addition, illicit drugs themselves spawn a great

proportion of crime. One recent study demonstrated that over an eleven-year period some 243 addicts committed about one half million crimes -- an average of 2000 crimes each or a crime every other day -- to support their habits. Half of all jail and prison inmates regularly used drugs before committing their offenses. According to a recent Rand study, addicted offenders in California committed nearly nine times as many property crimes each year as non-addicted offenders.

Although much remains to be done, this Administration has already launched a new and promising assault upon organized crime and drug trafficking. A year ago last January, the FBI was brought into the drug fight for the first time -- to complement the excellent work of the DEA. Thereby, we gained not only the FBI's resources, but also its years of experience in fighting organized crime. Prior to January of 1982, the FBI had no specific drug investigations underway. As of April 25th of this year, the FBI had more than 1300 -- and about 30% of these were joint investigations with the DEA.

We have in fact scored dramatic successes against organized crime. We have indicted and convicted numerous high-level members of syndicate families -- in some cities, the top structure of organized crime families regarded as untouchable a few short years ago. In the last two years, we have convicted more than 1200 persons in organized crime cases -- including more than 350 members and associates of La Cosa Nostra. In addition, more than 300 La Cosa Nostra members and associates are currently awaiting trial.

To build on these successes, the President announced last Fall perhaps the most significant assault on organized crime and drug trafficking ever planned. Critical in this effort are the twelve new regional Task Forces designed to mount a coordinated attack by all the involved federal agencies against organized drug trafficking. These Task Forces are operational -- they have cases under investigation. We expect each of the Task Forces will be fully staffed by the end of the summer.

By creating these Task Forces -- and bringing the FBI into the battle against drug trafficking last January -- we will have approximately doubled our drug enforcement resources in one year. Unlike prior federal drug efforts that focused on the street level, our new

Task Forces will concentrate on destroying the top levels of organized drug trafficking.

In addition, just last month the White House announced the creation of a new drug interdiction group headed by Vice-President George Bush. This group will be looking outward from our borders in an effort to stop the movement of illicit drugs into this country. This new group will harness the power of the U.S. Customs, the Coast Guard, and the military to deploy a first line of domestic defense against illicit substances shipped towards the United States. Meanwhile, within our borders, the Organized Crime Task Forces will fight drug trafficking.

Although we have made a good beginning in this new effort against the most serious form of crime in America, it is essential to the fight against organized crime that the Congress enact the significant criminal law reforms that the President has proposed. Organized crime is sophisticated and will take advantage of any weakness in the law -- and weaknesses in each of these areas have been clearly identified through difficult and costly experience.

Appearing before you shortly will be Associate Attorney General Rudolph Giuliani, Assistant Treasury Secretary John Walker, and Assistant Attorney General Lowell Jensen, who will cover the major parts of the bill in more detail. Right now I would like briefly to note several areas where we believe reform is badly needed.

We propose reform of the federal bail system by authorizing the pretrial detention of defendants shown to be dangerous to the community and by reversing the current presumption in favor of bail pending appeal. This has been the law in the District of Columbia, and it would restore the discretion vested in federal judges prior to the Bail Reform Act of 1966. The courts should be specifically authorized to inquire into the source of bail, and they should refuse to accept money or property that will not reasonably ensure a defendant's appearance at trial.

We propose sentencing reform in order to reduce the considerable disparity in the sentencing process and also to restore truth in sentencing. Specifically, we propose abolishing the Parole Commission and establishing a system of uniform, determinate sentencing; authorizing government appeal of sentences; and restructuring the entire range of criminal fines and prison terms.

Determinate sentencing improves the ability of the courts to impose a just, visible punishment that reflects a measured balance of society's interests. This bill includes provision for a new level of mandatory sentencing for violent crime, and it would serve to enhance the deterrent effect of imprisonment where imposed in proper cases in the area of "white collar" crime such as fraud, antitrust, and tax cases in particular.

We propose making criminal forfeiture available in all major drug trafficking cases. We must strengthen procedures for "freezing" forfeitable assets pending judicial action, expand the classes of property subject to forfeiture, and facilitate the administrative forfeiture of conveyances and other property in uncontested cases. We must provide specific authority for the forfeiture of the proceeds of an "enterprise" acquired or maintained in violation of the RICO statute.

We also propose modification of the exclusionary rule, which has substantially hampered our law enforcement efforts. The suppression of evidence has freed the clearly guilty, diminished public respect for the law, distorted the truth-finding process, chilled legitimate police conduct, and put a tremendous strain on the courts. A recent National Institute of Justice report found that when felony drug arrests were not prosecuted in California, 30 percent of the time it was for search and seizure reasons. It also found that "[t]o a substantial degree, individuals released because of search and seizure problems were those with serious criminal records who appeared to continue to be involved in crime after their release."

It is time to bar the use of the exclusionary rule when a law enforcement officer has acted in good faith, reasonably believing his action to have been legal. This modification of the exclusionary rule -- which is already the law in the Fifth and Eleventh Circuits -- would by itself do a great deal to restore public confidence in our criminal justice system.

Another reform concerns the insanity defense. It is used in only a small percentage of criminal cases -- and it is used successfully in an even smaller percentage. Nevertheless, the public attention received by those cases has fully exposed glaring flaws in that defense. It is for this reason that the Administration proposed reform of the insanity defense to limit its use to those who are unable to appreciate the nature or

wrongfulness of their acts. Under our original proposal, the burden would rest on the defendant to establish insanity by clear and convincing evidence.

Already, our original proposal -- plus public concern about the abuse of the insanity defense -- has moved many knowledgeable persons to rethink the issue. Committees of the American Bar Association are considering -- and the American Psychiatric Association has adopted -- worthy proposals for reform. Those proposals would eliminate the second -- or "control" -- prong of the two-part ALI-Model Penal Code test. In other words, they would limit the insanity defense to those situations in which, as the result of mental disease or defect, a defendant could not appreciate the wrongfulness of his conduct. Combined with requiring the defendant to prove by clear and convincing evidence that he didn't appreciate the wrongfulness of his conduct, this approach would represent a substantial improvement over present law. By supporting such an approach, we hope to fashion a modification of the insanity defense that will enlist a broad base of support -- and ensure speedy reform in the Congress.

As several members of the Supreme Court -- and other concerned citizens -- have pointed out, one of the greatest problems facing our legal system is the overload of cases in the courts. Too much business ensures that the cases most in need of prompt judicial attention may not receive it. As one observer noted, due process of law risks becoming overdue process of law.

To ease at least some of the burden on the courts, we also propose a revision of the federal habeas corpus laws. Our reform would impose a statute of limitations and provide that issues fully litigated in state courts would not be subject to relitigation in federal courts. The purpose of this reform is to restore a degree of finality to criminal convictions, but an incidental effect would be the reduction of substantial burden on the federal courts. State prisoners filed more than 8,000 habeas cases in federal court just last year. The only thing to commend the vast majority of those cases, to quote Judge Learned Hand, "is the hardihood in supposing they could possibly succeed."

The legislation before you now includes all of these proposals plus more than twenty others. This comprehensive criminal law reform bill collects in one place all of the most necessary changes -- including, for example, a constitutionally sound federal death penalty.

It also includes provisions concerning the Tort Claims Act, the Justice Assistance Act, drug enforcement penalties, and surplus federal property.

In drafting this bill, we were ever mindful of the need to safeguard individual liberty. But we also recognized that the most basic individual liberty is freedom from violence, and that liberty can be secured only by effective and vigorous enforcement of the criminal laws. As Judge 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."

That concludes my opening statement. Thank you. Rudy Giuliani, John Walker and Lowell Jensen are here to discuss the legislation in more detail and to answer any questions you may have.