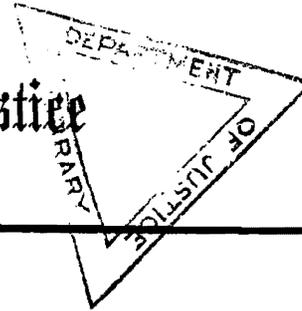




# Department of Justice



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ADDRESS  
BY  
ATTORNEY GENERAL ROBERT F. KENNEDY  
AT  
JOINT SENTENCING INSTITUTE  
OF THE  
SIXTH, SEVENTH AND EIGHTH JUDICIAL CIRCUITS  
CHICAGO, ILLINOIS  
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I am extremely pleased to be here tonight and I would like to compliment Judge Robson, Judge Harper, Judge Levin and all the other judges on the fine job they have done organizing this important meeting. I have been kept informed on the work that has gone into the preparations for this institute over the past several months and I commend you for their efforts. If hard work alone is any criterion, this meeting should be highly productive for you who have been on the bench for some time, but particularly for the several newly appointed judges. The large group of Federal judges in attendance underscores the seriousness of the problem being considered here.

We are all aware of the great variation in sentencing practices. Much has been written on the subject. It must be ranked as one of our foremost problems in the administration of justice.

This is so not only for reasons of equity or evenhandedness. Perhaps equally important is the increasing impact of crime on our society and the disposition of our criminal cases in court. It is true that criminal cases represent only a small percentage of all the cases on our federal court dockets, but the disposition of those cases, I believe, increases in importance just as steadily as does the crime rate.

J. Edgar Hoover reports that the national crime rate is increasing four times faster than the population. Organized crime has come a long way from the gangster parties in Hell's Kitchen of half a century ago which were so noisy that they gave "the rackets" their name. Organized crime has become big business, operating on an interstate basis, draining off millions of dollars of our national wealth, infecting legitimate businesses, labor unions and sports and, most importantly, corrupting public officials. The President and this Administration strongly believe organized crime and racketeering to be among the nation's most pressing domestic problems.

In the Department of Justice, we have taken action to coordinate all federal law enforcement investigations and to pool information about more than 700 top racketeers.

The Administration's efforts, with the help of both Republicans and Democrats in Congress, also have resulted in enactment of five anti-crime bills--the most legislation in this field since 1934.

So, some important action has been taken to curb organized crime and racketeering before it becomes too powerful to be stopped. As far as the major figures of organized crime are concerned, and fortunately they are relatively few in number, I am fully in accord with the view that efforts to rehabilitate them are, for the most part, a waste of time. They stand as a malignant threat to the stability of our free, democratic society and they should be removed from it.

However, this is only part of the problem. Apprehension of a criminal represents only recognition that there is a cancerous growth. Conviction is only the beginning of its treatment. It is perhaps too early in our sociological and economic history to discover the underlying social causes. However, it is not too early to treat the cancer properly and not make it worse. In this regard, I am concerned about some seemingly inconstant and inconsistent instances of sentencing

which have come to our attention and which seem to me to be inflaming the situation instead of healing.

Consider these examples. Not long ago, a former Army officer, a first offender, was convicted here in the midwest of charges involving several bad checks. He was sentenced to 18 years. About the same time, a young man with a sex record, was convicted in the Southern District of California of robbing a bank of \$5,000. He was sentenced to 98 days.

These are not isolated examples. The average sentences for auto theft vary from 11 months in the Western District of New York to 46 months in the Wyoming and Southern District of Iowa. Terms for forgery range from nine months in Maine and the Southern District of New York to 63 months in Oklahoma and 58 months in Western Arkansas.

In fact, the overall average of time spent in federal prison varies nearly as greatly. Prisoners sentenced in Northern New York average 11 months. In my home state of Massachusetts the figure is 25 months. In Southern Iowa it is 52 months.

It is possible to reappraise or rectify what appear to be the most inequitable of these disparities and we are prepared to do so.

One of my duties as Attorney General is to make recommendations to the President for commutations of sentence. Sometimes I make these recommendations to permit hopelessly stricken inmates to spend their last few months at home. Sometimes I make them so that long-term prisoners, who have worked hard to rehabilitate themselves, can become eligible for parole. Occasionally I recommend the adjustment of sentences which are obviously and severely out of line with justice as well as with prevailing sentencing practices among the Federal courts.

In May of this year, for example, I was given the case of a lawyer who had been convicted of conspiring to smuggle parrots into the United States from Mexico. He

had never been in trouble before. He had a loyal and honest family. He still suffered from injuries received in the Southwest Pacific during the war. The judge, however, felt he was arrogant and rude and gave him eleven years for the parrot smuggling.

The Pardon Attorney's investigations indicated that this man's prison record was particularly outstanding. He had already served three years. Other favorable information was made available to me. At my recommendation the President cut the sentence to five years. The man was paroled last August and returned to his family.

Only two months ago, the Pardon Attorney brought to my attention another case, this one involving a 20-year-old man. The youth lived in Los Angeles with a wife and two children. Although he came from a broken home, he had never been in trouble. But after acid was sprayed in his face in an industrial accident, he became blind. His wife divorced him and took custody of the children, saying she wouldn't spend the rest of her life with a blind man. The young man recovered his eyesight. Desperate for money with which to try to get his family back, he went to Georgia and robbed a bank of \$5,000 at gunpoint. He mailed the money to himself in California. But when he returned to California, he became remorseful and turned himself in to the FBI and pleaded guilty at his trial. His sentence? Forty years.

There is no question but that this youth's offense was extremely serious, and required punishment despite his past misfortunes. But a sentence of 40 years seemed out of line with that of other offenders convicted of similar offenses. Bank robbers during the same year received sentences averaging less than 13 years. I learned also that this youth had an excellent institutional record, had become a skilled surgical nurse and technician, and had benefited emotionally from counseling he had received. He already had served more than nine years when this case was brought to my office. At my recommendation, the President reduced the sentence

to 15 years, so as to bring it into line with others similarly convicted. This meant that with credit for good time, the man qualified for release.

These are only two cases of this kind that have been submitted to me. I have several others currently under consideration. I intend to study them fully before I decide what recommendation I should make to the President, for I am extremely hesitant to take any action which would change the judgments of the courts. The information furnished me must be overwhelmingly convincing.

And commutations are at best only stop-gaps, in a few cases. They can in no way solve the problem of disparities in sentencing. Nor does the solution rest in rigidly equal sentencing. As JAMES V. BENNETT, Director of our Bureau of Prisons, remarked at a judicial conference recently: "Nothing could be more unequal than treating unequal things equally."

Circumstances of crimes vary. So do motives. And so do prospects for rehabilitation. The number of imponderables makes it impossible to sentence by formula and still sentence justly.

Indeed, where uniform penalties are mandatory by law, the results can be grossly unjust. The 1956 Narcotics Control Act provides for mandatory sentences and no eligibility for parole. An example of the result is that of the epileptic youth who was sentenced to life in prison for selling narcotics. There are many others in federal prison for life, including those convicted of multiple murders, who can become eligible for parole. But this youth is only 19 years old and he is not eligible.

The solution does not rest in making sentences equal, but in making sentencing philosophies agree.

The majority of Federal prisoners still are being committed under the definite sentence system, but it is encouraging to note that we seem to be turning toward a

wider use of the indeterminate sentence principle. The number of defendants committed under this plan nearly doubled in the 12 month period ending June 31.

This follows the national trend among the states where more than half of all defendants committed to prison are sentenced under some form of indeterminate sentence.

In the long run, a flexible sentencing procedure which works to rehabilitate offenders offers the best hope in the majority of cases in the Federal courts. I judge this also is the intent of Congress since the same law that authorized this institute provided a realistic means of assisting rehabilitation efforts and at the same time, of reducing disparities in sentencing.

I believe indeterminate sentencing can be extremely useful but I also believe that any such system should always take into consideration the special knowledge as to the facts in a case which only the trial judge possesses. I am deeply impressed with the gravity and wisdom with which most federal judges approach the responsibility of sentencing. It is a difficult, soul-searching task at best. I also am impressed with the open-mindedness with which you accept or solicit the opinions of others.

The United States Attorneys have been instructed to cooperate fully with the courts in sentencing procedures as in all other matters. I also invite all of you, especially the new judges, to visit our penal institutions as often as you are able so that you can see first hand our programs, resources and limitations. Your presence, advice and interest are most welcome.

Whenever the courts wish to receive sentencing recommendations from the prosecution, the United States Attorneys will furnish them--fully supported by facts.

It may be expected that the prosecution will urge a severe sentence automatically anticipating that the defense will ask for leniency and that perhaps the court will attempt to strike some balance between the two points of view. The Department of Justice does not go along with that type of thinking.

We urge severe sentences for the top racketeers and hoodlums and for those who make their operations possible, as well as for those who have repeatedly resorted to crimes of violence. But, we also are aware that efficiently organized greed and calculated disregard for the rights and property of others account for a minority of cases in the Federal courts. Poverty, mental illness, broken families, immaturity or blind rebellion against some real or fancied social injustice are more common basic causes and in these cases we will look not only at the past but to the future--to the day when the prisoner has demonstrated capacity for assuming the responsibilities of citizenship.

But, whatever the cause, the Executive Branch has a responsibility to aid and assist the judiciary in every way possible in dealing with offenders and I want to assure you this has been made clear to everyone in the Department of Justice.

One of Judge LEARNED HAND'S comments on liberty also seems to me to relate to sentencing. Judge HAND said: "What do we mean when we say that first of all we seek liberty? I often wonder whether we do not rest our hopes too much upon constitutions, upon laws and upon courts. These are false hopes; believe me, these are false hopes.

"Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it; no constitution, no law, no court can even do much to help it. While it lies there, it needs no constitution, no law, no courts to save it . . . ."

Justice too, in its finest and noblest sense, likewise is found in the hearts and minds of free men. So, let us reject the spirit of retribution and attempt coolly to balance the needs of deterrence and detention with the possibilities of rehabilitation. It is a subtle, risky and complex balance to achieve, but by and large, the judiciary has achieved it. We welcome the opportunity to work with you

in making substantial progress in the next few years toward correcting any injustices which have occurred and in preventing others from taking place in the future. In all this we must succeed. This is my pledge to you.