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ADDRESS

BY

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BEFORE

THE GOVERNOR'S CONFERENCE
ON
EMPLOYMENT AND THE PREVENTION OF CRIME

6:30 P.M.
CRYSTAL BALLROOM
MARC PLAZA HOTEL
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I am glad to be with you at this symposium on employment and the prevention of crime. As you know, President Ford believes the intolerable level of crime in America can most effectively be reduced if all segments of society join in the effort. I bring you President Ford's warm greetings and his appreciation for the concern you are showing and the responsibility you are accepting in this important area.

As the title of your symposium suggests, the problem of crime is inseparable from the problem of reuniting ex-offenders with society. I want to explore that theme with you tonight and to indicate some implications it may have for government policy and for the responsibility of society.

It is a mistake to think of reunification as the last step in the criminal justice system. The process of reunification begins as soon as an individual is brought into the system. The whole criminal justice system must be viewed in light of its effect on the offender after he is released from prison.

Rehabilitation as a goal of criminal punishment has been called into question recently, in part because recidivism rates are high. We really do not have statistics good enough to measure the rehabilitative effect of imprisonment.

But the data we do have are taken to support the conclusion that persons who have spent time in prison are not less likely to commit crime again. Perhaps, indeed, they are more likely to do so. Studies such as the one published in 1964 by Daniel Glaser indicate that the two most important factors in the success of an ex-offender in avoiding criminal conduct after he is released from prison are his ability to return to a stable family situation and his ability to get a job. These are taken as proof that the offender's experience after imprisonment rather than his experience in prison is determinative. The rehabilitative ideal, proclaimed in the 19th Century as a great reform in the theory of punishment, has been proclaimed a failure by contemporary prison reformers. But there is a narrowness in this view. It looks only to the prison itself as the medium of rehabilitation.

If the whole criminal justice system is analyzed with respect to its role in rehabilitation and reunification, the perceived failure of the rehabilitative ideal is a failure of the entire process. The imposition of imprisonment is an extraordinary assertion of government authority over the individual. If the imposition of punishment appears to be fickle--a matter of chance--or if it appears to be unequal with respect to socio-economic groups, offenders who do suffer punishment for crimes may be left with an emotional scar that itself makes reunification very difficult.

The need for decency and fairness in the criminal justice system does not derive solely from the instrumental effect indecency and unfairness have upon their victims. But the bitterness a sense of unfairness breeds must be taken into account. Today there is an accidental quality to the imposition of punishment. Some 400,000 men, women and young people are in some form of corrections institution. Nevertheless, inefficiency in the criminal justice system has meant that a very small percentage of persons who commit crimes ever spend time in jail. The inefficiency shows itself at every step. Police, overcome by the high level of crime, cannot actively investigate every report of criminal conduct. People become cynical about the likelihood that criminals will be punished, so they often do not bother to report crime. Even after an offender is arrested, overworked prosecutors' offices may be forced to strike deals in which a defendant agrees to plead guilty in exchange for a sentence that does not include incarceration.

These problems build upon themselves. The inefficiency of the criminal justice system makes it less likely to serve a deterrent effect. The result is more crime and more burden on police, prosecutors and courts.

Even when an offender is brought to trial, there is a great element of chance in whether he will ever serve time in prison. A study in Pittsburgh in 1966 indicated

that nearly half of all persons convicted of a second offense of aggravated assault and more than one-fourth of all second offenders convicted of robbery were not sent to prison but were rather placed on probation. Research in Wisconsin showed that 63 per cent of all second-time felony offenders and 41 per cent of all persons with two or more felony convictions received no prison term upon their last conviction. James Q. Wilson of Harvard concluded that this evidence "suggests that the judges did not believe that jail had a deterrent effect. . ." At least one reason for this perception is that judges themselves have not imposed prison sentences with enough consistency to make the deterrent effect work. Deterrence requires considerable certainty, and we do not have that certainty.

The offenders who are sent to jail recognize the degree to which they have been losers in a game of chance. Such a recognition is bound to make their reunification with society more difficult. Not only may it appear to an offender that his imprisonment was just bad luck rather than the inevitable consequence of wrongdoing, the unfairness bred of inefficiency and unwillingness to impose uniform punishment may make the society outside the prison wall seem mean and hostile, a society that itself does not follow the rules of conduct it expects the ex-offender to follow.

The problem of inefficiency must be solved by new devices and methods that will facilitate rational decisions about prosecution. It also will require a greater degree of citizen cooperation in the detection and investigation of crime. The problem of unwillingness of judges to impose sentences is a separate and complicated matter for which special approaches are required.

The President has proposed a system of mandatory minimum sentences for various sorts of particularly serious crime. Mandatory minimums would apply to extraordinarily heinous crimes such as aircraft hijacking, to all offenses committed with a dangerous weapon, and to offenses involving the risk of personal injury to others when those offenses are committed by repeat offenders. The President's mandatory minimum sentence proposal also includes provisions to ensure fairness by allowing a judge to find, in certain narrow categories of circumstances, that an offender need not go to prison even though he has been convicted of a crime normally carrying a mandatory minimum sentence. A mandatory minimum sentence must not be imposed if the offender was less than 18 years old when the offense was committed, or was acting under substantial duress, or was implicated in a crime actually committed by others and participated in the crime only in a very minor way. Under proposals now before Congress, the trial judge's sentencing decision would be reviewable by appellate courts.

The President's proposal does not require long prison terms for persons sentenced under the mandatory minimum provisions. The need for mandatory minimum sentences is based upon the concept of deterrence and the need for swift and certain punishment following an offense. It is also based on the recognition that the fairness of punishment depends upon a degree of uniformity in sentencing decisions.

It may be time to consider an even more sweeping restructuring of the sentencing system, which United States District Court Judge Marvin E. Frankel calls the most critical part of the criminal justice system. There have been proposals to abolish the federal parole system as it now exists and to allow trial judges to determine the precise sentence an offender would be required to serve. The trial judge would operate within a set of sentencing guidelines fashioned by a permanent Federal Sentencing Commission.

This idea is consistent with the President's mandatory minimum sentence proposal. Indeed, it is an extension of the same concept. Sentences would be required to meet the mandatory minimums set forth by statutes for certain crimes. Sentences for all other crimes would generally be expected to fall within the range set forth by the guidelines. If a judge decided to impose a sentence inconsistent with the guidelines, he would have to accompany

the decision with specific reasons for the exception, and the decision would be subject to appellate review. The offender would be required to serve the sentence imposed by the judge, with a specific amount of time off for good behavior.

Currently very few offenders are required to serve anything close to the time imposed as a sentence by the trial judge. Parole eligibility after serving one-third or less of the sentence may create a lack of credibility in sentencing which undermines the deterrent effect of criminal law and adds to the sense of unfairness.

Many prisoner groups and others point out that uncertainty about parole and good time allowances creates enormous tension among prisoners. A prisoner may well not know what he must do to please the prison and parole authorities. Uncertainty may actually hinder rehabilitation in that prisoners may volunteer for institutional self-improvement programs without any real commitment to the goal of the programs but instead with a feeling that to volunteer might please the parole authorities.

It may be too early to decide whether to adopt vast reforms in sentencing along these lines. Corrections has been an area in which great new ideas emerge with regularity--ideas full of promise--only to lead to failure and despair. We do not know enough about the effect of

the criminal justice system and corrections upon crime. But even without conclusive data--which may never be obtainable in this area--reason suggests that the failure of the criminal law to deter crime sufficiently and the perceived unfairness of accidental justice requires considerable reform. In my view the President's mandatory minimum proposal and consideration of a Federal Sentencing Commission is an important and necessary first step.

I do not agree that the ideal of rehabilitation--which was an earlier medium of reform--should be abandoned although it is fashionable in some quarters to say so. But it is also nonsense to say that the purpose of prison is only to rehabilitate. Imprisonment also has deterrence and protection of society as goals. It is also nonsense to say that rehabilitation never occurs. As Attorney General I review all applications by federal prisoners for pardons. Many of those applications attest to the possibility that offenders can change for the better in prison. Decent treatment of prisoners is itself a kind of rehabilitation, and decency should most certainly remain as one of our ideals. Decency can reinforce decency in return just as much as substandard, inhumane conditions of confinement can reinforce a negative effect. Especially with respect to the young, we simply cannot give up on the effort to bring those who have broken the law back into harmony with the society. We can hold out the opportunity to inmates to improve themselves and their chances of success outside

the walls, and this is itself a form of rehabilitation.

Job training within prison is important. It prepares for an offender's reunification with society. Society also has a great responsibility in this regard-- and a great opportunity as well. As your symposium recognizes, employment after release from prison is extraordinarily important in the process of reunification. The composition of our prison population today makes it essential that, both inside prison and outside, steps are taken to facilitate the transition.

Most serious crimes are committed by young people. Those most likely to commit crime are between the ages of 20 and 30. This group will reach its maximum in numbers in about 1985, when it will be about 50 per cent greater than in 1970. The economic and educational characteristics of today's prison population are consistently below those of inmates' counterparts outside the walls. It is against their counterparts that ex-offenders must compete if they are to have productive employment after their release. The average male prisoner more than 25 years old today has 2.1 fewer years of education than the average of all U.S. males in the same age group. Only 44.2 per cent of all male prisoners are skilled or semi-skilled as compared with 80.7 per cent of the total male population. These figures indicate the challenge ex-offenders present to the American labor market. But it is a challenge that can be met.

The American labor market has always had a need to retrain individuals for employment. This has never been an easy task but it is one with which the free market must be concerned. There are of course special considerations when ex-offenders are involved. These special considerations do not diminish the importance of the task. Rather, they emphasize the importance of the goal.

Federal prisons themselves have programs to help train inmates for productive work. The Federal Prison Industries, an agency of the Department of Justice which was established in 1934 to employ and train federal inmates, has 51 industrial operations in 23 correctional institutions. About 25 per cent of all federal prisoners volunteer to participate in Federal Prison Industries programs. Many of these programs do not train inmates for jobs in segments of industry that are thriving today. More than a quarter of all Federal Prison Industries workers today, for example, are employed in the shoe and textile industries. But new programs to train inmates in skills that are more in demand are under way and expanding. Three federal corrections institutions now have training programs in computer technology. Two institutions have auto mechanic training programs, and another institution will open one soon. Better training programs in federal prisons must be initiated, but they alone will not guarantee that an ex-offender's reunification with society will be a success.

There is a problem of acceptance of the ex-offender both by his employer and by his co-workers. Deep prejudices

barrier to his success in society. President Ford has directed the U.S. Civil Service Commission to review a program it administers, a program designed to prevent federal employers from unjustly discriminating against ex-offenders. The President has also asked the National Governors Conference to study steps the states can take to eliminate discrimination in their hiring of ex-offenders.

The private sector must take similar steps. Some 100,000 offenders are being discharged by federal and state prisons and local jails each year. The unemployment rate for ex-offenders is three times what it is for the regular work force. Groups such as the National Alliance of Businessmen have recognized that high unemployment among ex-offenders bodes ill for the recidivism rate. The Alliance is one of the sponsors of your forum, so permit me to dwell a moment on its important program. The Alliance does not do job placement work. It goes to businessmen and solicits from them job openings for ex-offenders. These openings are then turned over to other agencies that actually place individuals in jobs. The Alliance's ex-offender program in a little more than two years has resulted in the placement of 20,000 ex-offenders in jobs.

This program and others seem to be working, but more like them are needed. As I indicated at the outset, the entire criminal justice system needs to be viewed in light of its impact upon the final reunification of the offender with society. Society bears a great burden. Through the

system of criminal justice it imposes upon individuals the dramatic loss of liberty that is involved in imprisonment. Society must insist that the system operate with fairness and decency. But its responsibility is much greater. Society must itself be prepared to reunite with the ex-offender if he is to have a chance of succeeding outside the walls.

I have often said that high crime rates will exist so long as society stands for it. I mean by this more than simply that citizens must cooperate with law enforcement officials in reporting crime and doing their part in the criminal justice process. I mean also that crime rates will continue to be high so long as society does not realize that it cannot treat as outcasts the persons whose liberty it has once curtailed in the name of the law.

The glory of the American system, despite all the skepticism and self doubts which are at times to be expected, is that we have an open society in which many institutions, public and private, and individual citizens, public and private, can voluntarily work together for the common good. The open society relies heavily on the individual decisions and commitments of each one of us. It is based on the leadership which each one of us in our own way can give. In the complex order of the modern day it is often difficult to recapture the sense of community upon which so much depends. A realization of our common

purpose and necessity, and the importance of the values of human dignity, must bring us together. The problem of crime cannot be solved if we do not see the eventual reunification of the offender into the fruitful walks of our society as an imperative. In this endeavor there will be successes and failure. But each instance of success is a reason for celebration -- a reaffirmation of the ideals which give meaning to our own lives.

I congratulate you upon the work in which you are engaged. It is among the important items in the agenda for our times.