



# Department of Justice

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"CRACKING DOWN ON VIOLENT CRIME"

REMARKS

BY

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TO THE

FIFTH NATIONAL MEETING  
ON CRIME AND DRUGS

OF THE

U.S. CONFERENCE OF MAYORS

WASHINGTON, DC  
TUESDAY, APRIL 23, 1991

I am here today to talk to you about violent crime in America -- a tough subject I know I don't have to soften for this audience. Who knows better the shock of violence -- and its vicious and tragic reverberations -- than the mayors of the United States who must daily look down your own mean streets? I share your sense of loss and frustration, but we've got to do more than bow our heads in very human sorrow. We must act -- and we can, and will act -- to restrain the societal horror that criminal violence has brought down upon too many of us in this land.

Its grim toll last year was six million of us. A citizen of this country is today more likely to be the victim of a violent crime than of an automobile accident. And that goes doubly, even triply for our minority populations. Indeed, black Americans are six times more likely to be homicide victims today than their white counterparts. I could go on with these chilling statistics, but they would only reiterate tragedy. What I want to do, instead, is offer some real prospects for staying the deadly hand of criminal violence, for lessening the dangers that demean our streets and fill our citizens with fear.

## I.

Much has been said about the need to treat the root causes of crime in America. That laudable attempt has gone on for decades, and will continue, I assume, into the future. But the

carnage in our streets demands attention today. The plain truth is, the American people demand action now to stop violent crime, whatever its causes. And that is what the President, in turn, is demanding from law enforcement -- and, in particular, from Congress by submitting his Comprehensive Crime Control Bill.

President Bush has suggested how long good men and women might need to reflect on his proposals to help in bringing a halt to criminal violence. "If our forces could win the ground war in 100 hours," he said on March 6, in the very aftermath of our Gulf victory, "surely the Congress can pass this legislation in 100 days."

This is Day Forty-Eight. The President's Comprehensive Crime Control Bill is still before committees of both house. Debate has been protracted. And I must tell you, it has become, regretfully, a too familiar talkfest over panaceas and legalities that do not address the present sense of endangerment felt by the American people -- a sense of endangerment that threatens what I have always called the first civil right of every American: the right to be free from fear in our homes, on our streets, and in our communities.

That right is what some 650 law enforcement officials and concerned citizens took up at our recent Violent Crime Summit

here in Washington. They came from all over the country, and to a person, they joined in recognizing a fundamental principle that underlies all the new laws we are proposing. And that principle comes right down to street level: the most effective way to reduce violent crime is simply to get violent criminals off the streets and into prison.

Incarceration works. The key is turning the key in the lock.

But that key must also be turned with dispatch. One lesson we learned from the Crime Summit was the dire consequences of the law's delay. Chief Reuben Greenberg -- of Charleston, S.C. -- pointed out how violent criminals do not readily connect their crimes with subsequent punishment. They have very short views of the future, seldom taking account of consequences. The answer? Get them off the streets, says Chief Greenberg, through the justice system, and into prison -- while the connection between crime and punishment is still there to be made.

Chief Greenberg's admonition speaks right to what the President's Crime Bill seeks to achieve: certain and swift apprehension, prosecution, and incarceration, so that violent criminals are held fully accountable for their actions.

Some critics have complained that we're becoming too tough, that we're locking away too many of these violent offenders.

Well, before finalizing any such conclusion, they should go visit housing projects ravaged by drugs and violent crime, or speak to the mother who fears to send her child to school and waits in apprehension for that child's safe and drug-free return, or ask those six million victims of criminal violence last year: Are we being tough enough on violent criminals?

You know what you'd hear back. We must do more to end these vicious threats to life and limb and property, and we must do it together. Fully ninety-five percent of all felonies are non-federal cases, handled by state and local law enforcement. But we -- the Feds -- can help by establishing the kinds of partnerships that are working so well in our joint drug enforcement task forces, based in major communities across the country, and by grant programs and asset forfeiture sharing, which pump federal funds into state and local police budgets. And we can also help point the way -- as I will try to do today -- toward more comprehensive measures against violent crime that can overcome the frustration of the police, the lingering legal doubt that so often produces the law's delay.

## II.

The price for the law's delay is most harshly paid in our procrastination over the death penalty. At present, the least

certain punishment -- the one most often mocked by the law's delay -- is the ultimate sanction. Some still oppose the death penalty as a matter of principle, to be sure, but that debate, legally, is over. The Supreme Court has upheld its constitutionality, and 37 states along with the federal government presently provide for its imposition.

Federal law allows capital punishment for, among other crimes, presidential assassination, airplane hijacking resulting in death, and fatal acts of terrorism. The President's Crime Bill would extend these capital offenses to include further modern-day savageries -- for example, heinous drug crimes, such as the murder of witnesses or trial judges ordered by drug lords, or the reckless homicide randomly incident to armed drug warfare.

Save for a few, however, these statutes are inoperative. They languish for lack of Congressional action to provide constitutional procedures implementing the death penalty. Clearly, Congress should take steps to end this charade of laws on the books that cannot be enforced.

But there is more. The death penalty is also tied up by endless court appeals. The other day, Texas Attorney General Dan Morales came by to tell me that their most recent execution was of a condemned man on death row since 1980. The next likely

execution, he added, would be of a man condemned since 1976. These are delays of ten and fifteen years -- all made possible by repetitive resort, usually for manifestly inadequate cause, to the writ of habeas corpus.

That, like much else in our penal jurisprudence, is changing. Only last week, the Supreme Court ruled, six to three, against continued "abuse of the writ." In McCleskey v. Zant, the Court held any submission of a second writ to far tighter restrictions -- for example, there must be good cause for not having raised an applicable constitutional argument in the first place, on the initial round of appeals.

But the Court cannot impose the overall orderly process that a commission, chaired by former Justice Lewis F. Powell, Jr., has recommended. The President's Comprehensive Crime Bill adopts the Powell reforms. These reforms would allow only one appeal on the writ following exhaustion of all other State court remedies, within a set time limit. The condemned man would have the assistance of competent, court-appointed counsel to see that his rights are fully protected on his appeal to the Supreme Court. New safeguards would also be built into the law to remove any potential taint of racial prejudice in all trial proceedings by prosecutors, jurors, or the judge. The condemned man would, to

be sure, have his day in court, but so would justice itself -- either way -- be sooner, and finally, done.

### III.

But there is a larger fault in the criminal law -- not one of delay, but of deliberate omission. I am speaking of the Exclusionary Rule, which requires that evidence be omitted altogether from the prosecutor's case when such evidence has been obtained by law enforcement in ways challengeable under the Fourth Amendment.

We have long believed the Exclusionary Rule is not the best means -- nor even the constitutionally required means -- to protect our citizens against illegal search and seizure under the Fourth Amendment. So, once again, we are asking Congress to enact a general exception to the Rule that would preserve such evidence for trial if the law enforcement officer acted in "good faith."

In doing so, we are seeking to extend the exception to the Exclusionary Rule that the Supreme Court has already ruled constitutional in United States v. Leon, where a "good faith" exception was made for searches requiring a warrant. The Crime Bill would preserve evidence from all searches and seizures

undertaken in "good faith." Such evidence, seized suddenly at the scene of a drug crime, is particularly helpful in drug and firearms cases.

Back in 1926, Judge Cardozo famously ruled for the State of New York: "The criminal is not to go free because the constable has blundered." In the early 1960's, a bare majority of Justices appeared, instead, to hold the blunder to be a greater evil than the crime. But in Leon, the Court recalled that the Exclusionary Rule was "a judicially created remedy designed generally to safeguard Fourth Amendment rights through its deterrent effect, rather than a personal constitutional right of the party aggrieved." The Justices then asked, sensibly, how the constable would be deterred from wrongful search if he were entirely unconscious of his blunder?

And the Court's answer: "Excluding the evidence can in no way affect his future conduct unless it is to make him less willing to do his duty." I've stressed this last to make you aware of the paradox this legal omission creates. Why, indeed, should the criminal ever go free? But isn't it far worse to return the constable to the streets, smarting from the loss of his case, determined not to blunder into apprehending any criminal ever again?

IV.

But beyond these statutory reforms, there are broader, more far-reaching aspects to our right to be free of fear. President Bush reminds us of the guarantee that right carries for domestic tranquility: "When we ask what kind of society the American people deserve -- what kind of society we hope to pass on to our children -- our goal must be a nation in which law-abiding citizens are safe and feel safe."

That should be our ideal. Yet too often we hear critics say that America is a violent society. We have always resorted to violence, runs their argument, which once moved lawlessly westward, and now surges back into our urban canyons with the vicious venturism of the drug wars. While understanding some of this criticism, I cannot accept that regressive view of our communities. Like the President, I see us as a law-abiding society, undeservedly plagued by violence. And I believe that violence -- far from being part of our nature -- is a criminal force that denatures our very freedoms.

I do not believe we need live today by yesterday's Law of the Six Gun. The real problems -- as many told us at the Crime Summit -- arise out of what, variously, we do with guns. The President's approach is aimed at all dangerous criminals and the

life-threatening way they use guns, no matter what their supply source, whether the gun store or the black market.

And, whether it be the so-called Brady Bill or competing point-of-purchase proposals, let us recognize there are still serious drawbacks to any proposals regulating the over-the-counter sale of handguns. Today the records needed to make the match-up of a potential firearms purchaser with his possible criminal past do not adequately exist. To put it bluntly, we can't presently come up with the needed facts, on a consistent basis -- even within a mandated seven-day waiting period. And I want that to change. We've already begun to do so -- at a cost of some \$40 million dollars. As a result, the FBI's files and your home state criminal files will soon be in sync -- a giant step forward in ensuring we can track down all those felons who pose the greatest threat to our society.

But let me warn you of something we cannot change. We cannot change the disturbing but undeniable fact that today only one out of six felons actually purchases his weapon at a sporting goods store. We cannot change where five out of six murder weapons actually come from -- the rampant, illegal, underground black market in deadly arms.

We can, however, take more effective action to deal with the rogue's gallery of armed felons who would be little deterred by any gun control measure. Such criminals should be physically rounded up, along with their illegal arms. Taking these desperados and their firearms off the streets is exactly what we are doing, right this moment, through Project Triggerlock.

We launched Triggerlock last month, on my orders that every U.S. Attorney assign a designated prosecutor to work with local authorities to target criminals in their community who can be charged under the federal Armed Career Criminal Act. Those with three prior state felony convictions for violent or drug offenses will be charged whenever they are found in possession of a firearm and dangerous felons are to be indicted for illegal possession of firearms. Under federal law, they can be sentenced to as much as fifteen years imprisonment -- no probation, no parole, no plea bargaining, and no more problem to society.

And further federal legislation, part of the President's Crime Bill, can assure that the key really turns in Triggerlock.

First, mandatory penalties for illegal possession of firearms must be strengthened. A first-time offender -- convicted for use or possession of a firearm during the

commission of a felony -- will receive a minimum mandatory five-year sentence. The Bill contains other precise provisions that allow us to apprehend these armed felons, including stiff penalties for lying to obtain a license for a gun or even entering a school yard with a weapon.

Second, and more important, we are asking for another specific exception to the Exclusionary Rule in the case of illegal possession of firearms.

The seized weapon -- no matter how it was obtained -- should stand as evidence. The constable may be disciplined, but the firearm still goes to court and to the jury. Because the time has come -- in this grim and unequal struggle for control over criminal violence -- to employ what I have called the Inclusionary Rule.

This Inclusionary Rule holds that the gun-toting criminal will not go free because the court has blundered by failing to allow all available evidence to be presented.

Since all of you know what it is like, night by night, to face violence in your streets, I am not just asking -- I am assuming your strong support for these new federal laws against violent crime. But I also urge you to consider them as possible

models for criminal statutes to be adopted by your own state legislatures when you return home. By that time, it will be at least Day Forty-Nine, if not Day Fifty. That means, in light of the President's challenge, we are almost halfway there. Don't let another day pass without letting your Congressmen know how far along they should be -- and have yet to come -- in this urgent battle against violent crime.

The problem is not a new one. It was the Old Testament prophet Ezekiel who intoned: "The land is full of bloody crimes. And the city is full of violence."

But the resolve to shield our communities from bloody crimes and violence in these 1990s is firm. We saw it at the Crime Summit. I sense it at this gathering today, and, in truth, I feel the Congress is at long last poised to take truly effective action against violent crime.

Let us, together, seize this moment so that even the most vulnerable among us will be able to look forward to lives free from fear, and safe from the armed and violent predator who today stalks too many of our streets.