



Department of Justice

"CRACKING DOWN ON VIOLENT CRIME:
THE PRESIDENT'S CRIME BILL"

REMARKS

BY

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TO THE

ANNUAL MEETING

OF THE

KANSAS BAR ASSOCIATION

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I am here today to talk to you about violent crime in America -- a tough subject I will not try to soften for this conclave of lawyers. The grim toll of violent crime last year was six million Americans. A citizen of this country is today more likely to be the victim of a violent crime than of injury from 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 the 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. We can fervently hope that better schools, improved social environments, and, above all, a national restoration of values will help save our future youth from dead-end careers in drugs and violent crime. But no classroom exercise or welfare program is going to stop those on the prowl through our mean streets today -- that sixteen per cent of all offenders who commit over one-half of all serious crimes. This is a problem that demands immediate

attention. The plain truth is, the American people demand action now to stop violent crime, whatever its causes.

That is the tough job law enforcement has been given -- those of us in the Department of Justice, those who advocate and defend the rule of law in our overburdened courts, and every policeman who must daily face deadly street odds, the minute he steps out his own front door. We are all being ordered into battle against criminal violence, aggravated by a flood of illegal firearms, and funded by the drug traffic.

So when I take up with you today the President's anti-crime proposals -- in his Comprehensive Crime Control Bill -- I am urging that we all be provided with the legal tools we still need to do that hard job.

President Bush has challenged Congress to respond quickly to his proposals to help bring a halt to criminal violence. "If our forces could win the ground war in 100 hours," he said on March 6, in the aftermath of our Gulf victory, "surely the Congress can pass this legislation in 100 days."

This is already Day 94, and, thus far, the only action taken by the Congress has been to cut federal expenditures for law enforcement by \$500 million! And while the civil rights debate continues over the issue of quota or non-quota legislation, the

Congress continues to neglect what I have always regarded as 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 in Washington. They joined in recognizing a fundamental principle that underlies all the new laws we are proposing. That principle reaches right down to street level: the most effective way to reduce violent crime is to get violent criminals off the streets and into prison.

And the statistics produced at our Crime Summit prove it. Over the past three decades, statisticians and criminal justice researchers have consistently found that rising crime rates are associated with falling rates of imprisonment, and falling crime rates are associated with rising imprisonment rates. The key then is turning the key in the lock, but that key must also be turned with dispatch.

That is the whole thrust of the President's Crime Bill. I am aware that some critics complain that we're acting too swiftly, that we're locking away too many of these violent offenders. Well, before they finalize any such conclusion, I suggest they visit a housing project ravaged by drugs and crime, or speak to the mother who fears to send her child to school,

waiting 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 too tough on violent criminals?

You know what you'd hear back. Crack down on all who pose threats to life and limb and property, crack down hard, and in force.

As a former governor myself, I know that fully ninety-five percent of all felonies are non-federal cases, handled by state and local law enforcement, such as your own Kansas police and prosecutors. But we -- the Feds -- can and must help by sustaining strong anti-crime partnerships such as our joint drug enforcement task forces across the country. We must help through grant programs and asset forfeiture sharing, which pump further federal funds into state and local police budgets. But most of all, we must help by leading the way -- and offering models for the states -- with the new laws we are asking from Congress, laws which would:

- * Activate an enforceable federal death penalty for the most serious offenses.

- * End delays in carrying out criminal sentences, especially the abuse of the writ of habeas corpus in capital cases.

* Reform the judge-made exclusionary rule to allow all evidence obtained in good faith to be received at trial.

* Crack down on gun offenders with tough sentences and common-sense evidence rules.

II.

One of the first obstructions we run into -- in law enforcement today -- is delay. Let me illustrate this by addressing the lengthy delays over imposition of the death penalty. I realize the death penalty is not an easy, or pleasant, subject to discuss, and many remain opposed to it as a matter of principle. But, legally, that debate is over. Since the Supreme Court upheld its constitutionality, 37 states along with the federal government have legalized the death penalty.

Federal law allows capital punishment for only the most serious crimes -- among them, 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 in our streets.

Save for a few, however, federal death penalty statutes are presently 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 executions in that state had been delayed by ten and fifteen years, respectively, by repetitive resort, usually for manifestly inadequate cause, to the writ of habeas corpus.

Let me cite a grievous case from the State of Washington. In 1974, Charles R. Campbell violently assaulted a young mother named Renae Wicklund, holding a knife to her one-year-old daughter's throat during his brutal acts. After the attack, Renae sought help from her neighbor, Barbara Hendrickson. Both testified against Campell, who was imprisoned for rape in 1976.

Six years later, Campbell was transferred to a work release facility near the Wicklund home. On April 24, 1982, he went back there to find Renae sick at home, with her daughter, now eight, and neighbor Barbara Hendrickson helping care for her. Midst unspeakable brutalities, he slit the throats of all three and left them to die.

Campbell himself was sentenced to death in November of 1982. But today, nearly nine years later, he is still on Washington's death row. Both the victims' families -- the surviving Wicklunds and Hendricksons -- are left to wonder why his life goes unforfeited, how a ceaseless filing of appeals can paper him off from meeting his just fate.

Just this term, the Supreme Court ruled, six to three, against such continued abuses. In McCleskey v. Zant, the Court held second and subsequent appeals to the writ of habeas corpus to far tighter restrictions, Justice Kennedy aptly noting, "Perpetual disrespect for the finality of convictions disparages the entire criminal justice system."

But the President's Crime Bill incorporates further recommendations made by a commission chaired by former Justice Lewis F. Powell, Jr. that would end this abuse altogether. If Congress acts, the condemned will be limited to one timely appeal to the Supreme Court, all his rights fully represented by competent, court-appointed counsel, and protected by safeguards against any racial bias. 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 so-called 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.

Back in 1926, Judge Benjamin Cardozo famously ruled for the State of New York: "The criminal is not to go free because the constable has blundered." In 1961, a bare majority of the United States Supreme Court appeared, instead, to hold the blunder a greater evil than the crime. More recently, in United States v. Leon, the Court made a "good faith" exception for searches requiring a warrant, asking, sensibly, how the constable would be deterred from a wrongful search if he were unconscious of his blunder?

The President's Crime Bill extends the Court's Leon ruling to cover all searches and seizures challengeable under the Fourth Amendment, so long as the policeman acts in good faith.

Remember, our police are often suddenly at the dangerous scene of the crime -- particularly in drug and firearms cases -- forced to make split-second decisions to survive themselves, and

to make the arrest, and to haul in the evidence. How can judges, over months of reflection, equitably second-guess a law officer's good faith on-the-spot decision, made at a moment of peril?

But beyond that, not only can the constable's blunder let the criminal go free. Sometimes, even when the constable ponders, the criminal goes free. Let me cite Sergeant J.J. Brennan's experience, as a member of a Washington, D.C. drug squad. At the Greyhound Bus Station, Sergeant Brennan and his men had seized a bag that they believed was likely to contain cocaine. They consulted together, and decided the circumstances probably required a warrant to search the bag. They called the local prosecutor's office, and an experienced, seasoned lawyer told them they didn't need a warrant. They opened the bag, and sure enough, found a large supply of cocaine.

Only, guess what? The federal judge ruled the evidence inadmissible, even though Sergeant Brennan had acted in good faith -- even in contradiction of his own better instincts. That kind of thoughtful, law-abiding police work should be rewarded, not punished, and the President's Crime Bill would assure that such evidence always survives in court.

IV.

Beyond these statutory reforms, however, there are other, immediately effective steps we can take to contain armed violence on our streets. One example is Operation Triggerlock.

We launched Triggerlock this spring in cooperation with local authorities to target criminals in their district who can be charged under the Federal Armed Career Criminal Act. What does this mean? It means that those with three prior federal and/or state felony convictions for violent or drug offenses will be charged whenever they are found in possession of a firearm. These may be hard men, but they make easy marks. Under federal law, they can be swiftly sentenced to 15 years -- no probation, no parole, no plea bargaining, and no more problem to society.

And if Congress will pass new provisions of the President's Crime Bill, these cases will be even easier and tougher. One "prior" plus possession of a gun will send a felon away for five years.

But one other provision of the President's Crime Bill is needed if we are truly to close the book on the armed career criminal -- and throw it at him. The most important evidence to be brought into court -- and off the street -- is often the illegal gun itself. Therefore, we are also proposing a specific

exception to the Exclusionary Rule for firearms. The seized weapon -- no matter how it was obtained by law enforcement -- will 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 -- for what I have called an Inclusionary Rule. This will assure that the gun-toting criminal will not go free because the court has blundered by failing to allow his gun in evidence. That is how we can best assure the key really turns in Triggerlock.

And let there be no doubt, turning the key for good is a great surprise -- and his ultimate undoing -- for any armed career criminal. As one such felon replied -- when asked if he ever realized possession of a firearm would put him away for 15 years -- "No, I'd have eaten the gun, if I had known."

In terms of Good & Evil, the terror we face is, of course, not a new terror. 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 very new, and very firm. We saw it at the Crime Summit. I sense it in this gathering today, and,

in truth, I feel the Congress may at long last be poised to take truly effective action against violent crime.

As you are recalling today by this conference, this is the year in which we observe the 200th anniversary of our Bill of Rights. Those magnificent guarantees have not only survived the test of time, but today shine as a beacon of hope for aspiring democracies around the world. Those guarantees, however, will count for little -- as we have also seen from the enmity this new democratic spirit has often aroused around the world -- if we are not able "to preserve the domestic tranquility." That is what -- in any free society -- allows for their free exercise. It is to this end that the President has challenged the Congress to act now to deal with the violent predators who stalk too many of our law-abiding communities. And it is to this end that I urge your support for this major initiative.

Let us, together, seize this moment so that even the most vulnerable among us may walk abroad in the warmth of day, or the comfort of the night, living free from fear -- and enjoying those precious rights that make this nation still an exemplar to the world.