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ADDRESSES

THE NATIONAL INSTITUTE ON CRIME & DELINQUENCY

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The Office of the Attorney General, as perhaps you know, was established in 1789 -- with a budget of \$1,500 per year. It was the original view of Congress that the Attorney General would have so little to do that he would be able to continue the private practice of law, with the United States as only one of his clients.

Times have changed. The Department of Justice -- like every other federal department -- has grown in size, scope, and complexity, along with the growth of our complex society.

The Department is no longer the small law firm that was originally conceived. It now has very broad responsibilities for the administration of justice -- from traditional concerns with law enforcement to concerns with crime prevention, treatment and rehabilitation. Indeed, less than 7% of its employees are lawyers; less than 10% of its budget is for legal divisions, U. S. Attorneys and U. S. Marshals.

The Department is responsible for performance not only of a litigating role in civil and criminal proceedings; it is responsible also for a leadership role in the broader, more comprehensive system of justice of which strictly legal proceedings are but an important part.

Yet, it is still true that most people, including many people within the Department itself, continue to view it as a law firm -- taking cases more or less as they come in off the street. They have been slow to recognize the full range of responsibilities which the Department of Justice now bears.

The growth in those responsibilities reflects a growth in awareness that the problems of crime and the administration of justice require comprehensive attention -- attention to our system of justice as a system.

The concept of "system," of course, implies interrelationships and interdependencies within the boundaries of some whole. And increasingly we appreciate that the boundaries of the system with which we are concerned are less narrow than one might have assumed -- and the interrelationships less simple. As your own pamphlet on "Careers in the Criminal Justice System" observes:

The concept of the essential unity of the criminal justice system is now generally accepted. What happens at any one point in the correctional process affects what happens from that point on. Working anywhere in the system provides the opportunity to contribute to the achievement of the common goal: prevention and control of crime and delinquency . . . protection of society . . . justice for the individual . . . and rehabilitation of the offender.

It is obviously not enough, therefore, just to concentrate on, say, the improvement of police procedures and police investigative techniques -- to arm the police with criminalistic experts, to improve their communications, and thereby to increase the number of arrests, the number of criminal indictments and prosecutions, the number of cases marked "solved." If that were all we did, we would inevitably create problems elsewhere in the system -- cases backed up in the courts; defendants at large on bail for prolonged periods of time, often continuing to commit crimes; increased disillusion of the general public with regard to the effectiveness of the criminal justice system; increased disregard for the deterrent impact of the law enforcement process; increased drain on the time of police departments; and so on.

Because it is aware of the "essential unity" of the criminal justice system, the NCCD has led the way in emphasizing the importance of combining expansion of police capabilities with expansion of the court systems' capabilities -- and these, in turn, with expansion in corrections' capabilities. Concern with corrections then requires us to examine social attitudes toward the convicted and face up to problems of transition to the private labor market.

The point -- which I need hardly emphasize to you -- is that the system we are dealing with is not only highly complex, but highly interdependent.

And now we have the compounding complications of Watergate -- and the associated very serious deflation of confidence. The challenge -- one to which we in the justice system have a very special responsibility to respond -- is not less than the challenge to effect a restoration of confidence in legal institutions -- and, thereby, in government.

To restore confidence -- and at this historical juncture this must be our overriding goal -- we must strengthen the components of our system through systematic attention to performance.

This will require us, first of all, to ask and to answer the very difficult questions about what we know and what we don't know. And in this endeavor, we in the legal system must be no less rigorous in digging out the facts than we would be in the most serious criminal investigation. This presents us with a challenge more difficult than many appreciate. For the truth is that we know far too little about the empirical utility of much of our law and legal activity.

We are hardly more sophisticated now in our understanding of deterrence than we were when it was observed in eighteenth century England that the incidence of pick-pocketing was highest when crowds gathered to watch the hanging of a pick-pocket!

To cite a more current example: We have no clear body of empirical evidence to indicate what impact -- if any -- vigorous prosecution of gambling offenses has on the incidence of gambling. Indeed, there are those who argue, somewhat disconcertingly, that organized crime itself could not control gambling but for a substantial amount of law enforcement pressure against gambling.

In the face of the present challenge to traditional values, we cannot allow avoidable ignorance to persist. Where empirical data could inform us -- and that is in virtually all areas of our concern -- we must better organize research and evaluation to provide it. There is too much at stake for us to fail to expend scarce resources on R&D -- and there is too much at stake to allow ourselves, through carelessness of mind or practice, to squander these resources. Our attention to fact-gathering must be thorough, disciplined, and systematic.

And we must be equally systematic in our effort to be frank in our communication about our evidence. When we have hard and relevant evidence, we should state it. When we do not, we should say so.

The processes of erosion of confidence in government have been consistently accelerated since 1960 -- accelerated by a systemic tendency to indulge in self-delusion and by a political tendency to overpromise. These erosive processes may be slower and more subtle than Watergate -- but they are also more profound.

The debilitating dynamic of overpromise and disappointment threatens not only to undermine confidence in the capacity of our system to perform, but threatens also, ultimately, to undermine the system itself.

The legislative processes have become too much a political shell game -- promising cure **either** where none is known, or where an honest look at the facts makes clear that available resources are not sufficient for the task. There have been too many lights seen at the end of too many tunnels by too many people -- people who have not had the capacity or the inclination to face up squarely to hard reality. It is no wonder that respect for law has decreased.

What I am saying, very simply, is that the time has long since come for us to level with ourselves and with each other.

Confidence in government will not be restored unless we scrupulously avoid unsubstantiated assertion and overpromise. To continue to pretend that law will do what we only hope it might do is to ensure that law will do less and less.

There is a major leadership role for the Federal Government in the effort to expose facts and to improve our understanding of the system -- through research, development, and evaluation. Given the scope of our ignorance, this is a necessary area of primary emphasis.

Such federal leadership is, in a sense, pre-conditional for two related roles and responsibilities -- the provision of technical assistance to those

portions of the system, the major portions, which the Federal Government does not control; and the provisions of exemplary models through those portions of the system which the federal level does control. It is irresponsible to attempt to provide examples or technical assistance in the absence of sound supporting data -- just as it is irresponsible to fail to provide for technology transfer when there is available supporting evidence.

Serious attention to research, development, and evaluation is, it seems to me, similarly pre-conditional to the development of sound crime prevention strategies -- at least insofar as these would address themselves to root causes of crime. For crime prevention, clearly the most appealing portion of the system, is the portion about which we are perhaps most ignorant.

Here I think there tends to be a rather loose and insufficient basis for the assumption that social welfare programs can have a significant preventative impact. That they can have such an impact is not at all clear.

There are the disconcerting indications, for example, that drug education may actually increase the rate of drug abuse. There is also the question of the correlation between economic status and crime. While there may be a clear correlation between low-income status and street crime, it is not at all clear that any such correlation exists with regard to crime in general. It may well be that what one finds at higher income levels is simply a higher incidence of so-called white collar crime -- tax evasion,

fraud, embezzlement, inside trading in violation of securities laws, and other forms of cheating on our fellow citizens.

In my view there needs to be a good deal more work done to understand why it is that some people commit crime and some don't -- and to what extent we are dealing with a phenomenon that has to do generally with the evolving standards and values of society.

I do not mean to suggest by this line of discussion that the Justice Department need wait idly for research findings before exercising its responsibilities in its broader leadership role. The present state of the art, and of our understanding, makes it clear that there are significant opportunities for improvement throughout the system -- through attention to management reform. This is a subject of little public interest, but of great importance nonetheless.

We can and we should, through the Law Enforcement Assistance Administration, encourage states and localities to engage in more meaningful planning -- comprehensive in scope, and oriented toward performance in relation to relevant "output" measures.

We can and we should encourage the more efficient administration of the courts, the rationalization of our relations with other levels of government, the reform of prisons, and reform of the internal management processes of the Department of Justice.

In regard to the latter, I am particularly concerned that we develop approaches which will foster the more effective concentration of scarce resources on a selected number of special priority concerns. I have in mind the kind of concerted effort that has been developed for the investigation and prosecution of organized crime. Indeed, we pioneered this development at the state level when I was Attorney General of Massachusetts.

I have not yet determined which priority concerns would most appropriately receive this special treatment. But it is clear that there is no lack of contenders -- from youth development to criminal code reform, from white collar crime prevention to election reform. And it is equally clear that we cannot do all the things that we might like to do at once -- nor will we do any satisfactorily if our effort is too fragmented.

This problem of wasteful governmental fragmentation, I may say, is one which is continually perplexing. It has been brought to the level of the absurd in Washington -- as I have now had occasion to observe firsthand from several vantage points.

As Secretary of Health, Education, and Welfare, I found myself in charge of the administration of some 300 separate programs, many of which were overlapping -- each with its own independent administrative apparatus and procedures, each a little competing branch of the supposedly monolithic Executive.

As Secretary of Defense, I encountered well-known rivalries among the military services.

And as newly-confirmed Attorney General, I found that one of my first legislative challenges was to get Congress to enact a Reorganization Plan which would end the wasteful competition among agencies involved in the fight against drug abuse. In attempting to persuade Members of Congress, I made effective use of a not atypical story of the importation of a Jaguar automobile loaded with heroin. The intended importation was known considerably in advance. But by the time that customs agents and personnel from the Bureau of Narcotics and Dangerous Drugs resolved their bureaucratic differences as to how best to proceed, the car had long since been driven from the dock.

I am pleased to be able to report that our drug reorganization plan was approved by the Congress. But I need hardly tell you that there is a very great deal more to be done.

In conclusion let me touch on a transcending concern -- calling not only for federal leadership, but also for serious attention throughout the legal system.

Perhaps the saddest manifestation of the circumstance in which we find ourselves today is the tendency of so many people to think of government as "they," not "we." People attribute to government the representation

of the "interests" or "big business" or "the insider," rather than all of us. This, of course, is not new. It is an attitude toward government that Americans have traditionally had, and, in many respects, it is a healthy attitude. It is one that continually calls upon government to produce on behalf of people in general. And yet carried too far and etched too deeply, this corrosion of belief in government's concern for all of us is incompatible with the most fundamental principles of free self-government.

We have a particular responsibility -- and a special opportunity -- not only to combat the attitude I have spoken of but, more especially, to combat the conditions that give rise to it.

I often quote, because it expresses better than anything else I know my general attitude toward the responsibility of government, the dedication of a book by Joseph Mitchell, called McSorley's Wonderful Saloon. McSorley's was a great old place on the lower East Side of New York. It was the center for a remarkable collection of characters who were memorialized in this book. The dedication went something like this: "This book is dedicated to the people who are sometimes called the Little People. Well, I want you to know they're just as big as you are, whoever you are."

The system of justice of the United States has a special charge to represent all the people of this country no matter how big or small they are, no matter who they are. They are the very reason for the existence of our government.

Those of us in the criminal justice system have a continuing responsibility which, in the present historical circumstance, is a special one. We must enhance confidence in government through our leadership and our performance -- on behalf of all the people.

Thank you very much.