

COMMISSION STATEMENT - (Vol. 2)  
"VIOLENCE AND LAW ENFORCEMENT"

NATIONAL COMMISSION ON THE CAUSES  
AND PREVENTION OF VIOLENCE

726 JACKSON PL., N.W.  
WASHINGTON, D.C. 20506

Carol:

The attached is requested for inclusion  
as indicated.

I gave the original to Col. McD. - this  
is for the "record" files.

L.

12-1

Statement by Commissioner McFarland to be added as note at  
end of Law Enforcement Chapter

Commissioner Ernest W. McFarland notes that many of the findings and recommendations of the Commission Chapter on Violence and Law Enforcement were addressed largely to the problems and needs of the larger cities. He does not believe that all the recommended ~~xxxx~~ changes are needed or are applicable to Arizona and some of the other less urbanized states even though definite change and improvement are required in the larger cities. Upon this basis, he stated he was willing to vote for the recommendations, hoping they would be carefully studied by all the communities and states to determine whether, even if not wholly applicable, some part might be helpful in meeting their needs.

11--28--69

Presented by Ernest W. McFarland --- ~~for release~~

*as note*  
To be added at end of  
Law Enforcement Chapter

Commissioner Ernest W. McFarland, Justice of the Arizona Supreme

*notes*  
~~Court~~, stated that many of the findings and recommendations of

the Commission were based largely on reports and findings *of*  
*addressed to the problems and needs of*

Chapter on  
Violence  
and Law  
Enforcement

needs in the larger cities, - particularly the report on Violence

and Law Enforcement. *(He does not believe that*  
~~that he did not feel~~ all the recommended

changes *are* were needed, or were applicable to some of the other *Arizona and* less

*urbanized* States, ~~that the Task Force's finding in regard to conditions~~  
*as well as even though*

in the larger cities ~~required~~ definite change and improvement *as required*

Upon this basis, he stated he was willing to vote for the recom-

mendations, hoping *they would be* careful study ~~would be~~ made by all the com-

munities and States to determine whether, even ~~where~~ *if* not wholly

applicable, some part might be helpful in meeting their needs.

*Final Version*

**COMMISSION STATEMENT  
ON VIOLENCE AND  
LAW ENFORCEMENT**

**DR. MILTON S. EISENHOWER**

**CHAIRMAN**



**October, 1969**

**NATIONAL COMMISSION ON  
THE CAUSES AND PREVENTION OF VIOLENCE**

**NATIONAL COMMISSION  
ON THE CAUSES AND PREVENTION OF VIOLENCE**

**MEMBERS OF THE COMMISSION**

**DR. MILTON S. EISENHOWER**  
CHAIRMAN

**JUDGE A. LEON HIGGINBOTHAM**  
VICE CHAIRMAN

**CONGRESSMAN HALE BOGGS**

**TERENCE CARDINAL COOKE**

**AMBASSADOR PATRICIA ROBERTS HARRIS**

**SENATOR PHILIP A. HART**

**ERIC HOFFER**

**SENATOR ROMAN HRUSKA**

**LEON JAWORSKI**

**ALBERT E. JENNER, JR.**

**CONGRESSMAN WILLIAM M. McCULLOCH**

**JUDGE ERNEST W. McFARLAND**

**DR. W. WALTER MENNINGER**

**STAFF OFFICERS OF THE COMMISSION**

**LLOYD N. CUTLER**  
EXECUTIVE DIRECTOR

**THOMAS D. BARR**  
DEPUTY DIRECTOR

**JAMES F. SHORT, JR.**  
**MARVIN E. WOLFGANG**  
CO-DIRECTORS OF RESEARCH

**JAMES S. CAMPBELL**  
GENERAL COUNSEL

**WILLIAM G. McDONALD**  
ADMINISTRATIVE OFFICER

**JOSEPH LAITIN**  
DIRECTOR OF INFORMATION

**RONALD WOLK**  
SPECIAL ASST. TO THE CHAIRMAN

**VIOLENCE AND LAW ENFORCEMENT**

**I.**

Order is a prerequisite of society, a mainstay of civilized existence. We arise every workday with unspoken expectations of order in our lives: that the earth will be spinning on its axis, that the office or factory will be functioning as before, that the mail will be delivered, that our friends will still be friends, that no one will attack us on the way to work.

Our expectations are not always met. The technological creations on which modern life depends do not always function with the predictability of the physical laws of the universe. Human behavior is even less predictable. To ensure reasonable predictability to human behavior, to minimize disorder, to promote justice in human relations, and to protect human rights, societies establish rules of conduct for their members.

In a far earlier day—and still, to some extent, in small and traditional societies—the rules of conduct had only to be passed from one generation to the next by teaching and example. Universal acceptance and long tradition gave force to the rules, as did the knowledge that rule-breakers could be quickly identified by the tightly knit community, that culprits had nowhere to run, that the community would ostracize them for their misdeeds. Still, every society in history has produced deviant members. And as societies have grown larger and more complicated, so have the problems of maintaining the social order.

In modern societies many of the rules of social conduct have come to be codified as laws. The intricacies of life in the twentieth century require laws. The act of driving an automobile from one place to another requires a bookful of regulations concerning speed, traffic lanes, signals, safety devices of the vehicle, and the skill of the driver. Many other realms of social interaction also require legal regulation for the sake of justice, safety, and preservation of the social order.

Law furnishes the guidelines for socially acceptable conduct and legitimizes the use of force to ensure it. If utopian conditions prevailed—if all citizens shared a deep commitment to the same set of moral values, if all parents instilled these values in their children and kept close watch over them until adulthood, if all lived in stable and friendly neighborhoods where deviants would face community disapproval—then perhaps we would seldom need recourse to the negative sanctions of the law. But these are not the conditions of today's pluralistic society, and the law is needed to reinforce what the other institutions for social control can only do imperfectly.

This function of the law requires that it be backed by coercive power—that it be enforced. Agents of the legitimate authority must function effectively to deter lawbreaking and apprehend lawbreakers, and the laws must provide sanctions to be applied against wrongdoers. When law is not effectively enforced, the odds become more enticing for the potential offender, crime increases, and the legal system—government itself—becomes discredited in the eyes of the public. As respect for law declines, crime increases still more.

To acknowledge these basic truths is not, of course, to argue in favor of oppressive conduct by police or retributive treatment of offenders. On the contrary, police lawlessness, degrading prison conditions, and other deficiencies in criminal justice damage the goal of an orderly society by making the law seem unworthy of obedience. That, too, breeds crime and disorder.

Likewise, to say that the law requires force as a condition of effectiveness is not to argue that law enforcement must be total. The surveillance that would be required to deal swiftly

with every offense, major or minor, would be astronomically costly and an insufferable intrusion upon the lives of a free people that would not be long endured. Indeed, as the Report of our staff Task Force on Law and Law Enforcement suggests, some offenses like minor traffic infractions and intoxication now command a disproportionate share of our criminal justice resources, and many of these offenses would better be handled by various means outside of the criminal justice process.

Devotion to the principle of law is one of the great strengths of the American society, a source of the nation's greatness. As Theodore Roosevelt remarked, "No nation ever yet retained its freedom for any length of time after losing its respect for the law, after losing the law-abiding spirit, the spirit that really makes orderly liberty." Today, however, respect for law in America is weakened by abuses and deficiencies within our legal system, and it is these which are the basis of our concern.

Respect for law is also threatened by some types of civil disobedience, notably the activities of normally law-abiding citizens, regrettably including even some leaders in public life, in deliberately violating duly enacted, constitutionally valid laws and court orders. Moreover, those who violate such laws often claim they should not be punished because in their view the law or policy they are protesting against is unjust or immoral. Civil disobedience is an important and complex subject, and we shall examine the dangers to society of deliberate law-breaking as a political tactic in our subsequent statement on Protest and Violence. Every society, including our own, must have effective means of enforcing its laws, whatever may be the claims of conscience of individuals. Our present statement is concerned with the fairness and efficiency of our law enforcement system, which must apply, without fear or favor, to all who violate the law.

As a preface to our discussion, then, we offer these two reminders:

First: order is indispensable to society, law is indispensable to order, enforcement is indispensable to law.

Second: the justice and decency of the law and its enforcement are not simply desirable embellishments, but rather the indispensable condition of respect for law and civil peace in a free society.

## II.

The American system of government has been one of the most successful in modern history. But despite the reservoir of citizen trust and deference toward the government which has been a stabilizing feature of our democracy, there has always been in our history a competing attitude of insistence on results, on government's achievement of the aims supported by the citizen, as a precondition of his consent to the exercise of governmental power.

In American political theory, governments are humanly created institutions to serve human ends. The principles are stated in the Declaration of Independence: first, that the purpose of democratic government is to secure the rights of life, liberty, and the pursuit of happiness for all citizens; second, that the powers of government are derived from the consent of the governed.

Governments in the United States—local, state, and federal—must therefore be cognizant of the needs of citizens and take appropriate action if they are to command continuing respect

and if their laws are to be obeyed. Disenchantment with governmental institutions and disrespect for law are most prevalent among those who feel they have gained the least from the social order and from the actions of government.

A catalog of the features of American life that push people toward alienation and lawlessness usually emphasizes evils in the private sector: landlords who charge exorbitant rents for substandard housing, the practice of "block-busting" that feeds on racial antagonism to buy cheap and sell dear under inequitable purchase contracts, merchants with unscrupulous credit-buying schemes, employers and unions who discriminate against minorities. But we need also to consider how the institutions of law and government, often inadvertently, contribute to the alienation.

There are few laws and few agencies to protect the consumer from unscrupulous merchants. There are laws for the protection of tenants defining what landlords must provide, but housing inspection agencies have little power and are understaffed; often they can act only in response to complaints and seldom can they force immediate repairs, no matter how desperately needed. Welfare agencies, designed to help the poor, operate under strictures that contribute to the degradation of the poor. As the President recently stated, our welfare system "breaks up families, . . . perpetuates a vicious cycle of dependency . . . [and] strips human beings of their decency."

If welfare assistance is arbitrarily cut off, if a landlord flagrantly ignores housing codes, if a merchant demands payment under an unfair contract, the poor—like the rich—can go to court. Whether they find satisfaction there is another matter. The dockets of many lower courts are overcrowded, and cases are handled in assembly-line fashion, often by inexperienced or incompetent personnel. Too frequently courts having jurisdiction over landlord-tenant and small claims disputes serve the poor less well than their creditors; they tend to enforce printed-form contracts, without careful examination of the equity of the contracts or the good faith of the landlords and merchants who prepare them.

The poor are discouraged from initiating civil actions against their exploiters. Litigation is expensive; so are experienced lawyers. Private legal aid societies have long struggled to provide legal assistance to the poor, but their resources have been miniscule in comparison to the vast need for their services.

Some of this is changing. The President has recently proposed reforms in the welfare system designed to preserve family structures, sustain personal dignity, eliminate unfairness and preserve incentives to work. Private groups and new government programs are beginning to respond to the legal needs of the poor. In 1968 the Legal Services Program of the Office of Economic Opportunity handled almost 800,000 cases for the poor and won a majority of the trials and appeals. In test cases the OEO lawyers won new standards of fair treatment of the poor from welfare agencies, landlords, inspectors, urban renewal authorities, and others. They were assisted in their work by VISTA volunteers with legal training and Reginald Heber Smith Fellows, law school graduates with one year fellowships who are assigned to OEO Legal Services offices. But the 1,800 OEO Legal Services Program lawyers, 700 VISTA lawyers, and 250 Smith Fellows, together with 2,000 legal aid attorneys, are still only a small beginning in the long-range task of assuring justice for the poor. Many more attorneys are needed. Indeed, the entire bar must also assume a larger share of the responsibility, as many younger lawyers and law firms are now beginning to do.

In recent years the legal profession has contributed an increasing portion of its time to

aiding the poor and this trend will undoubtedly continue despite the financial problems involved.

*We recommend that federal and state governments take additional steps to encourage lawyers to devote professional services to meeting the legal needs of the poor.*

Specifically, we recommend that:

1. The Legal Services Program of the Office of Economic Opportunity, which already has won the strong support of the organized bar and the enthusiasm of graduating law students across the country, should be continued and expanded. The more recently started VISTA lawyers program and the Smith fellowships program should also be enlarged. Experiments should be encouraged with new programs to provide trained attorneys to deal with particular types of legal problems faced by the poor, such as welfare rights and consumer protection. The independence of all government-supported programs providing legal services to the poor should be safeguarded against governmental intrusion into the selection of the types of cases government-financed lawyers can bring on behalf of their indigent clients. The relationship between lawyer and client is as private as that between doctor and patient, and the fact of poverty must not be the basis for destroying this privacy.

2. All states should provide compensation to attorneys appointed to represent indigent criminal defendants in the state and local courts. A state may wish to provide such compensated legal assistance through the use of paid Public Defender staff lawyers, or it may choose to compensate private court-appointed attorneys at a specific rate, on the model of the Federal Criminal Justice Act.

3. The federal government and the states should provide adequate compensation for lawyers who act in behalf of the poor in civil cases. Payment—either full or partial depending on the client's ability to pay—could be made on the basis of certificates issued by the court as to the need of the client and (in suits for plaintiffs) the good faith of the action. Other appropriate safeguards could be introduced to be administered by the courts with the assistance of the local bar associations. Some federal funding for the state court programs might also be required.

The institution of government that is the most constant presence in the life of the poor is the police department. Crime rates are high in the urban slums and ghettos, and the police are needed continually. As they do their job, the police carry not only the burden of the law but also the symbolic burden of all government; it is regrettable, yet not surprising, that particularly the tensions and frustrations of the poor and the black come to focus on the police. The antagonism is frequently mutual. Racial prejudice in police departments of major cities has been noted by reliable observers.<sup>1</sup> Prejudice compromises police performance. Policemen who systematically ignore many crimes committed in the ghetto, who handle ghetto

<sup>1</sup>E.g., Donald J. Black and Albert J. Reiss, Jr., "Patterns of Behavior in Police and Citizen Transactions," *Studies in Crime and Law Enforcement in Major Metropolitan Areas*, Field Survey III, Vol. 1, a Report of a Research Study Submitted to the President's Commission on Law Enforcement and Administration of Justice (Washington, D. C.: Government Printing Office, 1967).

citizens roughly,<sup>2</sup> who abuse the rights of these citizens, contribute substantially to disaffection with government and disrespect for law.

Our laws provide for civil and criminal sanctions against illegal police conduct, but these are rarely effective. The so-called exclusionary rule also has some deterrent effect; it prevents use of illegally obtained evidence in trials, but this does not affect unlawful searches and seizures or other police activities that do not result in arrest and trial. A citizen can take his complaint of misconduct directly to the police department. Every major police department has formal machinery for handling citizen complaints and for disciplining misbehaving officers. But for a variety of reasons, including inadequate investigative and hearing procedures and light punishments for offenses, this internal process of review is largely unsatisfactory.

Even if all the compromising practices were eliminated, however, it is doubtful whether internal review boards could engender widespread trust—simply because they are internally administered. New York, Philadelphia, Washington and Rochester are among the few large American cities to have experimented with an external review board composed primarily of civilians. In the four months that New York City had a civilian review board, more than twice as many complaints were processed than during the preceding twelve months by the police department's own board. These experiments have fallen victim to organized opposition, however, most vocally from the police themselves. The police argue that civilian review lowers police morale, undermines respect of lower echelon officers for their superiors, and inhibits proper police discretion by inducing fear of retaliatory action by the board. The police also resent being singled out among all local governmental officials for civilian review.

The resentment is understandable. The police are not the only public servants who sometimes fall short of their duties or overstep their powers, who act arbitrarily or unjustly. If an independent agency is to exist for handling citizen grievances, it should be open to complaints concerning every governmental office: the welfare agency, the health department, the housing bureau, the sanitation department, as well as the police.

Independent citizens' grievance agencies would be a useful innovation. They could investigate and, where justified, support individual complaints against public servants. They could also perform a broader function—recommend policy changes to governmental institutions that will make them more responsive to public needs. By encouraging and goading governmental institutions to greater responsiveness, and by vindicating them against unfounded complaints, these grievance agencies could strengthen public respect for the institutions of government and thus strengthen the social order.

Both the President's Commission on Law Enforcement and Administration of Justice (Crime Commission) and the National Advisory Commission on Civil Disorders (Kerner Commission) recommended that local jurisdictions establish adequate mechanisms for processing citizen grievances about the conduct of public officials. That recommendation has not received the attention or the response it deserves.

<sup>2</sup>In a survey conducted by this Commission most white Americans disagreed with the statement: "The police frequently use more force than they need to when carrying out their duties." But a majority of Negro respondents agreed with the statement, as did a third of the lower-income people and 40 percent of the metropolitan city dwellers. In many of our recent urban disturbances, the triggering event was an arrest or other police encounter that appeared to bystanders to be unfair.



*To increase the responsiveness of local governments to the needs and rights of their citizens, we recommend that the federal government allocate seed money to a limited number of state and local jurisdictions demonstrating an interest in establishing citizens' grievance agencies.*

Because of the novelty of this function in American government, the allocating federal agency should encourage diversity in the arrangements and powers of the grievance agencies in the experimenting states and cities, should provide for continuing evaluation of the effectiveness of the differing schemes, and should publicize these evaluations among all state and local jurisdictions so that each can decide the arrangement best suited for itself. Consideration should also be given to the creation of a federal citizens' grievance agency to act on complaints against federal employees and departments. The federal agency could also serve as an experimental model for similar agencies in the cities.

We have supported this recommendation upon evidence that the poor experience special frustrations in their relationships with the government and that these frustrations breed disrespect for law. To undergird that support we add the obvious notation that the poor are not the only ones who feel that government is unresponsive to their needs. The alienation of "the forgotten American," living above the poverty line but below affluence, is also genuine and a matter for compassionate concern.

Law-abiding, patriotic, a firm believer in traditional American values, "the forgotten American" is angered and distrustful about the same institutions of government—except for the police—that alienate the poor. Some extremists prey upon his frustration and alienation by promising simplistic solutions and pointing at scapegoats—usually Negroes. The festering and sometimes violent antagonisms between lower-middle-class whites and poor blacks have their ironic side, for the two groups share many needs: better jobs, better schools, better police protection, better recreation facilities, better public services. Together they could accomplish more than they can apart. Citizens' grievance agencies could provide a modest but important start toward the reconciliation of antagonisms and the restoration of respect for the institutions of government among all citizens.

While we strongly urge innovative devices such as citizens' grievance agencies, we must not ignore the strengthening of such time-honored mechanisms of popular government as the right and the duty to vote. Extension and vigorous enforcement of the 1965 Voting Rights Act, and intensified efforts to persuade all qualified citizens to vote, remain the most direct method for citizens to shape the quality and direction of their government. Equally important as creating new citizens' grievance agencies is the continuing effort to develop more effective voter education and registration programs.

### III.

Our society has commissioned its police to patrol the streets, prevent crime, and arrest suspected criminals. It has established courts to conduct trials of accused offenders and sentence those who are found guilty. It has created a correctional process consisting of prisons to punish convicted persons and programs to rehabilitate and supervise them so that they can become useful citizens. It is commonly assumed that these three components—law enforcement (police, sheriffs, marshals), the judicial process (judges, prosecutors, defense lawyers) and corrections (prison officials, probation and parole officers)—add up to a "system" of criminal justice.

A system implies some unity of purpose and organized interrelationship among component parts. In the typical American city and state, and under federal jurisdiction as well, no such relationship exists. There is, instead, a reasonably well-defined criminal *process*, a continuum through which each accused offender may pass: from the hands of the police, to the jurisdiction of the courts, behind the walls of a prison, then back onto the street. The inefficiency, fall-out and failure of purpose during this process is notorious.

According to the 1967 report of the President's Crime Commission, half of all major crimes are never reported to the police.<sup>3</sup> Of those which are, fewer than one-quarter are "cleared" by arrest. Nearly half of these arrests result in the dismissal of charges. Of the balance, well over 90 percent are resolved by a plea of guilty. The proportion of cases which actually go to trial is thus very small, representing less than one percent of all crimes committed. About one quarter of those convicted are confined in penal institutions; the balance are released under probation supervision. Nearly everyone who goes to prison is eventually released, often under parole supervision. Between one-half and two-thirds of all those released are sooner or later arrested and convicted again, thereby joining the population of repeater criminals we call recidivists.

Nearly every official and agency participating in the criminal process is frustrated by some aspect of its ineffectiveness, its unfairness or both. At the same time, nearly every participant group itself is the target of criticism by others in the process.

Upon reflection, this is not surprising. Each participant sees the commission of crime and the procedures of justice from a different perspective. His daily experience and his set of values as to what effectiveness and fairness require are therefore likely to be different. As a result, the mission and priorities of a system of criminal justice are defined differently by a policeman, a prosecutor, a defense attorney, a trial judge, a correctional administrator, an appellate tribunal, a slum dweller and a resident of the suburbs.

For example: The police see crime in the raw. They are exposed firsthand to the agony of victims, the danger of streets, the violence of lawbreakers. A major task of the police officer is to track down and arrest persons who have committed serious crimes. It is discouraging indeed for such an officer to see courts promptly release defendants on bail and permit them to remain free for extended periods before trial, or prosecutors reduce charges in order to induce pleas of guilty to lesser offenses, or judges exclude incriminating evidence, or parole officers accept supervision of released prisoners but check on them only a few minutes each month.

Yet the police themselves are often seen by others as contributing to the failure of the system. They are charged with ineptness, discourtesy, dishonesty, brutality, sleeping on duty, illegal searches. They are attacked by large segments of the community as being insensitive to the feelings and needs of the citizens they are employed to serve.

Trial judges tend to see crime from a more objective position. They see facts in dispute and two sides to each issue. They may sit long hours on the bench in an effort to adjudicate cases with dignity and dispatch, only to find counsel unprepared, or weak cases presented, or witnesses missing, or warrants unserved, or bail restrictions unenforced, or occasional juries bringing in arbitrary verdicts. They find sentencing to be the most difficult of their tasks, yet presentence information is scanty and dispositional alternatives are all too often thwarted by the unavailability of adequate facilities.

<sup>3</sup>See "The Challenge of Crime In a Free Society," pp. 20-22 (U.S. Govt. Printing Office, Washington: 1967). Major crimes are homicide, rape, robbery, aggravated assault, burglary, larceny over \$50 and motor vehicle theft.

Yet criminal courts themselves are often poorly managed and severely criticized. They are seriously backlogged; in many of our major cities the average delay between arrest and trial is close to a year. All too many judges are perceived as being inconsiderate of waiting parties, police officers and citizen witnesses. Too often lower criminal courts tend to be operated more like turnstiles than tribunals. In some jurisdictions, many able jurists complain that some of their most senior colleagues refuse to consider or adopt new administrative and managerial systems which could improve significantly the quality of justice and the efficiency of the court and which would also shorten the time from arrest to trial.

Corrections officials enter the crime picture long after the offense and deal only with convicted persons. Their job is to maintain secure custody and design programs which prepare individual prisoners for a successful return to society. They are discouraged when they encounter convicted persons whose sentences are either inadequate or excessive. They are frustrated by legislatures which curtail the flexibility of sentences and which fail to appropriate necessary funds. They are dismayed at police officers who harass parolees, or at a community which fails to provide jobs or halfway houses for ex-offenders.

Yet, with a few significant exceptions, the prisons and correctional facilities operate in isolation and reject public scrutiny. Programs of rehabilitation are shallow and dominated by greater concern for punishment and custody than for correction. Prison inmate work assignments usually bear little relationship to employment opportunities outside. Internal supervision is often inadequate, and placed in the hands of inmates. Thus correctional administrators are often said to be presiding over schools in crime.

While speaking of prisons, it should be noted that jails—institutions for detaining accused persons before and during trial and for short misdemeanor sentences—are often the most appalling shame in the criminal justice system. Many are notoriously ill-managed and poorly staffed. Scandalous conditions have been repeatedly reported in jails in major metropolitan areas. Even more than the prisons, the jails have been indicted as crime breeding institutions. Cities are full of people who have been arrested but not convicted, and who nevertheless serve time in facilities worse, in terms of overcrowding and deterioration, than the prisons to which convicted offenders are sentenced. Accused first offenders are mixed indiscriminately with hardened recidivists. In most cases, the opportunities for recreation, job training or treatment of a nonpunitive character are almost nil. These deficiencies of jails might be less significant if arrested persons were detained for only a day or two, but many unable to post bail or meet other conditions of release are held in jail for many months because the other components of the legal system do not provide for speedy trials.

In the mosaic of discontent which pervades the criminal process, public officials and institutions, bound together with private persons in the cause of reducing crime, each sees his own special mission being undercut by the cross-purposes, frailties or malfunctions of others. As they find their places along the spectrum between the intense concern with victims at one end, and total preoccupation with reforming convicted lawbreakers at the other, so do they find their daily perceptions of justice varying or in conflict.

These conflicts in turn are intensified by the fact that each part of the criminal process in most cities is overloaded and undermanned, and most of its personnel underpaid and inadequately trained. Too little attention has been paid to the Crime Commission's finding that the entire criminal justice system—federal, state and local, including all police, all courts and all corrections—is underfinanced, receiving less than two percent of all government expenditures. On this entire system, we spend less each year than we do on federal agricultural

programs and little more than we do on the space program.

Under such circumstances it is hardly surprising to find in most cities not a smooth functioning "system" of criminal justice but a fragmented and often hostile amalgamation of criminal justice agencies. Obvious mechanisms for introducing some sense of harmony into the system are not utilized. Judges, police administrators and prison officials hardly ever confer on common problems. Sentencing institutes and familiarization prison visits for judges are the exception rather than the rule. Usually neither prosecutors nor defense attorneys receive training in corrections upon which to base intelligent sentencing recommendations.

Nearly every part of the criminal process is run with public funds by persons employed as officers of justice to serve the same community. Yet every agency in the criminal process in a sense competes with every other in the quest for tax dollars. Isolation or antagonism rather than mutual support tends to characterize their intertwined operations. And even when cooperative efforts develop, the press usually features the friction, and often aggravates it.

One might expect the field to be flooded with systems analysts, management consultants and publicly-imposed measures of organization and administration in order to introduce order and coordination into this criminal justice chaos. It is not. A recognized profession of criminal justice system administrators does not exist today.

In fact, most of the criminal justice subsystems are also poorly run. For example, court administrators are rare, and court management by trained professionals is a concept that is taking hold very slowly. The bail "system," which should involve coordination among at least a half dozen agencies, is presided over by no one. Few cities have neutral bail agencies to furnish bail-setting magistrates with reliable background data on defendants. In making their bail recommendations prosecutors usually ignore community ties and factors other than the criminal charge and the accused's criminal record. Defense lawyers infrequently explore nonmonetary release conditions in cases involving impecunious clients. Detention reports on persons held long periods in jail prior to trial are rarely acted on by courts, and bail review for detainees is seldom requested. Enforcement of bail restrictions and forfeitures of bond for bail-jumpers are unusual. Bail bondsmen go unregulated.<sup>4</sup>

Effective police administration is hard to find. The great majority of police agencies are headed by chiefs who started as patrolmen and whose training in modern management techniques, finance, personnel, communications and community relations is limited. Lateral entry of police administrators from other departments or outside sources such as military veterans is usually prohibited by antiquated Civil Service concepts.

Apart from lack of leadership, the process of crime control in most cities lacks any central collection and analysis of criminal justice information. It has no focal point for formulating a

<sup>4</sup>The Report of the Commission's Task Force on Law and Law Enforcement contains a study of our bail system and recent proposals for "preventive detention" of persons arrested for serious crimes who, in the judgment of the court on a preliminary hearing, are deemed likely to commit a serious crime if released on bail while awaiting trial. The Commission agrees with the conclusion of the American Bar Association in approving the Report of the Special Committee on Minimum Standards for the Administration of Criminal Justice that "because of the drastic effects of preventive detention, the difficulties inherent in predicting future criminality and the unresolved constitutional issues," preventive detention should not be adopted. While there is a very real public interest in preventing criminal activity by released persons awaiting trial, this interest would be better served by reforming the criminal justice system to expedite trials than by adding the additional burden of a preliminary trial to predict the likelihood of future criminality. (It should be noted that even at present some crimes, such as first degree murder, are not bailable.)

cohesive crime budget based on system needs rather than individual agency requests. It has no mechanism for planning, initiating or evaluating systemwide programs, or for setting priorities. It has no specialized staff to keep the mayor or other head of government regularly informed of the problems and progress of public safety and justice. Crime receives high-level attention only as a short-term reaction to crisis.

Nor does the criminal justice process function in coordination with the more affirmative social programs for improving individual lives. For example, a major goal of an offender's contact with the criminal process is said to be corrective—rehabilitation followed by reintegration into the community, with enhanced respect for law. Yet the opposite is often true: the typical prison experience is degrading, conviction records create a lasting stigma, decent job opportunities upon release are rare, voting rights are abridged, military service options are curtailed, family life disruptions are likely to be serious, and the outlook of most ex-convicts is bleak. The hope of the community that released offenders have been "corrected" is defeated by outdated laws and community responses.

Experienced judges have resorted increasingly in recent years to various forms of post-conviction probation. They have done so after weighing the possibilities for rehabilitation if the offender is so released against the usually disastrous prognosis which would accompany his incarceration. It is a painful choice, little understood by the public. But the decision to seek correction of an offender in the community reflects not a compassionate attitude towards law-breakers, but a hardheaded recognition, based on data, that long term public safety has a better chance of being protected thereby.

The bleak picture of criminal justice we have painted is not without its bright spots. Within the past few years, scattered about the country, innovations have been introduced, new leadership has emerged, modern facilities have appeared, and systems analysis has been undertaken.<sup>5</sup> The impact has to date been small, but hopes have been raised. States here and cities there have demonstrated that something can be done to improve crime control with justice. The question is whether these incidents will initiate a national trend or will disappear as isolated sparks doused by the rain.

#### IV.

The administration of criminal justice is primarily a state and local responsibility. The grave deficiencies we have noted reflect the fact that our states and cities lack both the resources to make a substantial investment in physical improvements, personnel, and research, and the management techniques to operate the system efficiently. Acting on the findings and recommendations of the Crime Commission, the federal government in recent years has sought to make additional resources available.

In the Omnibus Crime Control and Safe Streets Act of 1968, the Congress created the Law

<sup>5</sup>For example, the new Federal Judicial Center under the leadership of retired Supreme Court Justice Tom Clark has initiated several innovative administrative and managerial projects which offer great promise for reduction of court backlogs and the shortening of time periods to trial. It is reported that one project in the U.S. District Court for the District of Columbia resulted in the judges reducing the criminal docket in a recent two-week period more than they had in the entire prior year. Another example of important work being done is the courses of instruction for District Attorneys being given by the National College of District Attorneys.

Enforcement Assistance Administration, for the purpose of making grants for law enforcement planning and operation to the states, and its subsidiary, the National Institute of Law Enforcement and Criminal Justice, to encourage research and development in the field of law enforcement. In another 1968 enactment, Congress also authorized the Department of Health, Education, and Welfare to carry on comparable activities in the field of juvenile delinquency and youth opportunity. Both of these programs, however, have only a modest degree of funding; fiscal 1970 appropriation requests for law enforcement are less than \$300 million—a sum which, together with matching state funds, would increase the nation's expenditures in that field by less than 10 percent. About \$15 million is being requested for the youth programs.

This nation is justifiably concerned about the increased rate of crime and about the conditions that give rise to crime, including our inadequate system of criminal justice.

*In this Commission's judgment, we should give concrete expression to our concern about crime by a solemn national commitment to double our investment in the administration of justice and the prevention of crime, as rapidly as such an investment can be wisely planned and utilized.*

When the doubling point is reached, this investment would cost the nation an additional five billion dollars per year—less than three-quarters of one percent of its national income and less than two percent of its tax revenues. Our total expenditure would still be less than 15% of what we spend on our armed forces. Surely this is a modest price to pay to "establish justice" and "insure domestic tranquility" in this complex and volatile age.

Given the realities of state and local financial resources, the federal government will have to take the lead in making this commitment, and in providing most of the required funds under the matching grant formulas already contained in the 1968 statutes. The federal commitment should be made in a manner that will convince the states, cities and the public that they can rely on the seriousness and continuity of the undertaking, and that they can invest matching funds of their own without fear that the federal portion may be curtailed midway in the program.

Congress has available a variety of tested methods for making meaningful long-term commitments along these lines. These include:

(a) Amending the 1968 statutes to authorize the Law Enforcement Assistance Administration and the Department of Health, Education, and Welfare to enter into long-term contracts with state and local agencies, committing the federal government to expenditures for the capital and operating costs of specified projects over a period of up to 10 years. Actual disbursements would be subject to annual appropriation measures.

(b) Amending the 1968 statutes to authorize the issuance of federal guarantees of long-term bonds issued by state and local agencies to cover capital costs of the construction of new facilities and obtaining major items of new equipment (e.g., communications systems), with an underlying contract under which annual contributions in a predetermined amount would be made by the federal government toward payment of interest and amortization of principal on the bonds. Actual expenditures would be subject to annual appropriation measures, but the credit of the United States would stand behind the bonds. The Public Housing program is financed in this manner.

(c) Multi-year appropriation measures, such as those that have been made for urban renewal, federal construction projects, defense contracting and similar purposes.

Money alone will not secure crime reduction, however. Wealthy states and localities which have limited their activity merely to expending more funds have become no more noticeably crime-free than jurisdictions which have not. Similarly, a substantial portion of the Crime Commission's proposals in 1967 are remarkably similar to those urged by the Wickersham Commission established by President Hoover 37 years earlier—yet despite that Commission's equally impressive documentation, conservatism and presidential prestige, little follow-through occurred. Experience with crime commissions at the state and local levels shows similar results.

This pattern suggests the existence of substantial built-in obstacles to change. It suggests that unless much more attention is given to the inability and unwillingness of present crime control systems to effectuate reform, new money may go down old drains. Vexing problems of politics, organization and leadership underlie the maintenance of the status quo and need to be faced directly.

In the search for more effective ways of carrying out crime commission recommendations, we have noted two promising but comparatively untried strategies based on recent experiments on the frontiers of criminal justice; these are:

(1) a program to coordinate criminal justice and related agencies more effectively by establishing central criminal justice offices in major metropolitan areas; and

(2) a program to develop private citizen participation as an integral operating component, rather than a conversational adjunct, of criminal reform.

The two innovations complement one another; the success of citizen participation will in many ways be dependent on the establishment of a central criminal justice office, and vice versa.

#### *The Criminal Justice Office*

The pervasive fragmentation of police, court and correctional agencies suggests that some catalyst is needed to bring them together. An assumption that parallel and overlapping public agencies will cooperate efficiently can no longer suffice as a substitute for deliberate action to make it happen in real life.

Periodic crime commissions—which study these agencies, file reports and then disappear—are valuable, but they are much too transient and non-operational for this coordinating role. A law enforcement council—consisting of chief judges and agency heads who meet periodically—is usually little more than another committee of overcommitted officials.

A full-time criminal justice office is basic to the formation of a criminal justice system. Its optimum form, i.e., line or staff, and its location in the bureaucracy, need to be developed through experimentation.

The function could be vested in a criminal justice assistant to the mayor or county executive, with staff relationships to executive agencies, and liaison with the courts and the community. Alternatively, it could operate as a ministry of justice and be given line authority under the direction of a high ranking official of local government (e.g., Director of Public Safety or Criminal Justice Administrator), to whom local police, prosecutor, defender and correctional agencies would be responsive. (Special kinds of administrative ties to the courts would be evolved to avoid undermining the essential independence of the judiciary.) A third alternative might take the form of a well-staffed secretariat to a council composed of heads of

public agencies, courts and private interests concerned with crime. To avoid the ineffectiveness of committees, however, either the chairman of the council or its executive director would have to be given a good measure of operating authority.

Whatever its form, the basic purposes of the criminal justice office would be to do continuing planning, to assure effective processing of cases, and to develop better functioning relationships among the criminal justice subsystems and with public and private agencies outside the criminal justice system. For example:

- It would develop a system of budgeting for crime control which takes account of the interrelated needs and imbalances among individual agencies and jurisdictions.

- It would initiate a criminal justice information system which would include not simply crime reports (as is typical today), but arrests, reduction of charges, convictions, sentences, recidivism, court backlogs, detention populations, crime prevention measures, and other data essential to an informed process.

- It would perform or sponsor systems analyses and periodic evaluations of agency programs, and encourage innovations and pilot projects which might not otherwise have a chance in a tradition-oriented system.

- It would perform a mediating and liaison role in respect to the many functions of the criminal process involving more than one element of the system, e.g., to develop programs for the reduction of police waiting time in court, to improve pretrial release information and control, to enlist prosecutors and defense attorneys in cooperative efforts to expedite trials, to bring correctional inputs to bear on initial decisions whether to prosecute, to improve relations between criminal justice agencies and the community.

- It would also perform the vital but neglected function of coordinating the criminal justice agencies with programs and organizations devoted to improving individual lives—e.g., hospitals, mental health organizations, welfare and vocational rehabilitation agencies, youth organizations and other public and private groups.

- It would develop minimum standards of performance, new incentives and exchange programs for police, court attaches and correctional personnel.

The comprehensive grasp of the system by an experienced criminal justice staff would facilitate informed executive, judicial and legislative judgments on priorities. It would help decide, for example, whether the new budget should cover:

- A modern diagnostic and detention center to replace the jail, or an increase of comparable cost in the size of the police force;

- Additional judges and prosecutors, or a prior management survey of the courts;

- A computerized information system or a new facility for juveniles;

- New courtrooms or new halfway houses.

For a full-time well-staffed criminal justice office to be successful, it must achieve a balanced perspective within its own ranks on the problems of public safety and justice. Practical experience in law enforcement, in the protection of individual rights, and in the efficiency and effectiveness of programs must be represented, as must the interests of the community. Such representation can be provided through an advisory board to the criminal justice office and through involvement of relevant persons in task force efforts to attack particular problems. Broadbased support of the office is quite important.

The transition from today's condition to a well-run system will not be easy. Especially troublesome is the fact that the criminal justice process does not operate within neat political

boundaries. Police departments are usually part of the city government; but county and state police and sheriffs usually operate in the same or adjacent areas. Judges are sometimes appointed, sometimes elected, and different courts are answerable to local, county and state constituencies. Correctional functions are a conglomerate of local and county jails, and county and state prisons. Prosecutors may be appointed or elected from all three levels of government. Defense lawyers usually come from the private sector but are increasingly being augmented by public defender agencies. Probation systems are sometimes administered by the courts, sometimes by an executive agency.

If this confusing pattern makes the creation, location, staffing and political viability of a criminal justice office difficult, it also symbolizes why little semblance of a system exists today and why criminal justice offices are so badly needed in our major metropolitan areas.

*To encourage the development of criminal justice offices, we recommend that the Law Enforcement Assistance Administration and the state planning agencies created pursuant to the Omnibus Crime Control and Safe Streets Act take the lead in initiating plans for the creation and staffing of offices of criminal justice in the nation's major metropolitan areas.*

The creation of criminal justice offices will require the active participation and cooperation of all the various agencies in the criminal justice process and of officials at many levels of state and local government. Helpful insights in establishing the first such offices may be derived from the experience of some of the state law enforcement planning agencies (e.g., Massachusetts) now making efforts in this direction, from the criminal justice coordinating role developed by the Mayor's office in New York over the past two years, and from the experience of the Office of Criminal Justice established in the Department of Justice in 1964.

#### *Private Citizen Involvement*

Government programs for the control of crime will be most effective if informed private citizens, playing a variety of roles, participate in the prevention, detection and prosecution of crime, the fair administration of justice, and the restoration of offenders to the community. New citizen-based mechanisms are needed at the local and national levels to spearhead greater participation by individuals and groups.

In recent years, an increasing number of citizen volunteer programs have become allied with one or another phase of the criminal justice process. These are in addition to long-standing efforts of organizations like the Big Brother movement and Boys' Clubs. Remarkable have been certain programs utilizing citizen volunteers for probation supervision and guidance of juvenile and misdemeanor offenders.<sup>6</sup>

Perhaps the most successful of private organizations in attacking the broad range of crime control problems through a public-private partnership is New York City's Vera Institute of

<sup>6</sup>Example programs in this area include those outlined by the Project Misdemeanor Foundation, Royal Oak, Michigan, and the Juvenile Court of Boulder, Colorado.

Justice.<sup>7</sup> Its unique role in cooperation with the mayor's office, the police, the courts, and the correctional system has developed over eight years. Its nonbureaucratic approach has permitted it to test new programs, through experiments and pilot projects, in a way no public agency would likely find successful. Its core funding is entirely private; its individual project financing comes from federal, state, and private sources.

Vera has achieved a number of concrete successes. Its Manhattan Bail Project resulted in bail reforms so successful in New York City that they became the basis of the federal Bail Reform Act of 1966. Its summons project proved the practicability of permitting the police to issue station house citations for minor offenses, sparing both police and citizens the time-consuming process of arraignment and similar pre-trial court procedures.

There are a number of reasons why private organizations such as Vera can be successful where a public agency cannot. Because municipal agencies are chronically understaffed and underfinanced, they are unable to divert resources for experimental purposes except in the most limited manner. Private organizations do not pose threats to existing agencies and carry no residue of past misunderstandings. They can intercede with a city's power structure without being bound by chains of command. They can test programs through a pilot project carried out on a small scale, which can be easily dismantled if it proves unsuccessful. If it proves effective, it can be taken over as a permanent operation by the public agency and the private group can move on to a new area.

In the broader field of improving urban society, citizens' organizations have launched programs in a number of major cities to stimulate both public and private efforts to improve housing, schools, and job opportunities for the urban poor, to identify and treat the juvenile offender, and to improve relations between the police and the residents of the inner city.<sup>8</sup> These efforts are of vital importance, because improvements in the criminal justice machinery, isolated from improvements in the quality of life, e.g., education, housing, employment, health, environment, will merely return convicted offenders to the hopelessness from which they came.

The successes of such groups have demonstrated that public institutions are receptive to changes proposed by private organizations. Organizations such as these should receive maximum encouragement and every effort should be made to extend their influence on the broadest scale. Of particular importance is the potential supporting role which private groups can have in relation to the new offices of criminal justice we have recommended.

*We urge the creation and continued support—including private and public funding—of private citizens' organizations to work as counterparts of the proposed offices of criminal justice in every major city in the nation.*

<sup>7</sup>The Vera Institute was founded in 1961 by industrialist Louis Schweitzer and named for his mother. Until 1966, it was funded entirely by the Schweitzer family. In 1966, in order to expand and start special projects, Vera was given a 5-year grant from the Ford Foundation, and since then it has also received other federal, state and private grants earmarked for special projects. Herbert Sturz has been the Director of the Institute since 1961.

<sup>8</sup>Among the leading national organizations working in these fields are the League of Women Voters, the Urban League, the American Friends Service Committee, the National Council on Crime and Delinquency, the Lawyers Committee for Civil Rights Under Law, the Urban Coalition, and the Legal Defense Fund of the N.A.A.C.P.

A catalyst is needed at the national level to help in the formation of such local citizen groups.

*We therefore recommend that the President call upon leading private citizens to create a National Citizens Justice Center.*

A similar presidential initiative led to the formation in 1963 of the Lawyers Committee for Civil Rights Under Law, a private group which has enlisted the organized Bar in the effort to make civil rights into a working reality.

The membership of the Center could be drawn from many sources, such as the National Council on Crime and Delinquency, the American Bar Association, and the members, staffs and consultants of the four federal commissions which have recently studied the problems of crime, violence and social disorder—the President's Commission on Crime in the District of Columbia, the President's Commission on Law Enforcement and the Administration of Justice, the National Advisory Commission on Civil Disorders, and this Commission.

The Center would supplement rather than duplicate the promising and important work of existing private entities. Following the successful precedent of Vera, the Center would concentrate on the various aspects of the criminal justice system, from crime prevention and arrest to trial and correction, including the specialized treatment of actual and potential juvenile offenders. We would expect it to receive financial support from foundations, business and labor sources, as well as from the legal profession.

The Center would help to form and support local private counterparts of Vera in our major urban areas, to work alongside local governmental agencies on specific operating and administrative problems. It would act as a clearing house for transmitting news of successful innovative procedures developed in one city to the attention of agencies faced with similar problems in another. It would cross-fertilize new approaches, and provide continuing public education about the complexity of crime prevention and the treatment of offenders. It would offer workable answers to the persistent citizen question—what can I do to help? Not least important, it might lessen the future need for *ad hoc* Presidential commissions in this field, by assuring greater use of the findings and recommendations of the many commissions that have gone before.

## V.

The levels of funding and the various public and private mechanisms we have suggested could go a long way toward organizing our criminal justice agencies into an effective system; our recommendations of additional legal services for the poor and new citizens' grievance agencies could do much to strengthen respect for legal processes and for the institutions of government.

The injection of federal funds into state crime control programs in 1968 was an important step, and the Law Enforcement Assistance Administration is doing a commendable job with limited resources. Much more money must be provided, and must be injected into research, development and pilot projects, if the outdated techniques of yesterday are to be converted into an effective criminal justice system tomorrow.

Until more funds are committed, and until staffed organizations—public and private—are developed to assure wise investment and monitoring of new funds, the control of violent crime will be a campaign fought with bold words and symbolic gestures, but no real hope of success. The mobilization of private and public resources toward an ordered society—one in which the rights of all citizens to life, to liberty, to the pursuit of happiness are safeguarded by our governing institutions—deserves a high priority for the decade of the 1970's.

LE

THE WHITE HOUSE  
WASHINGTON


October 29, 1969

Dear Mr. Campbell:

John Ehrlichman has asked me to thank you for the copies of the Commission's statements on "Violence and Law Enforcement" and on "Assassination".

These statements will receive our most careful attention and review.

Sincerely,

  
Tod R. Hullin  
Administrative Assistant to  
John D. Ehrlichman

Mr. James S. Campbell  
General Counsel  
National Commission on the  
Causes and Prevention of Violence  
726 Jackson Place, N. W.  
Washington, D. C. 20506

October 28, 1969

Honorable John N. Mitchell  
Attorney General  
Department of Justice  
Washington, D. C.

Dear Mr. Attorney General:

Today the Commission has forwarded to the White House the enclosed statement on "Violence and Law Enforcement," which Dr. Eisenhower will issue this Friday for use in the Sunday papers.

At the direction of our Executive Director, Lloyd N. Cutler, I am transmitting to you and to Mr. Rogovin a copy of this statement. Mr. Cutler will be available to discuss it with you or with Mr. Rogovin at any time on or after this Thursday, should you so desire.

Very truly yours,

James S. Campbell  
General Counsel

cc: Honorable Charles H. Rogovin



October 28, 1969

MEMORANDUM FOR THE HONORABLE JOHN D. EHRLICHMAN

At the Chairman's request, I am transmitting herewith for your information copies of the Commission's forthcoming statements on "Violence and Law Enforcement" and on "Assassination."

Dr. Eisenhower plans to release these two statements at a press conference on Friday, October 31: the Law Enforcement statement will be for use in the Sunday papers, and the Assassination statement will be for use in the Monday papers.

An advance copy of the statement on "Violence and Law Enforcement" is also being sent to the Attorney General and to the Director of the Law Enforcement Assistance Administration.

James S. Campbell  
General Counsel

cc: Honorable Daniel P. Moynihan  
Honorable Henry C. Cashen II

Freed's insert paragraph for page 23 of "Order and Justice in America" (to be inserted just before paragraph which begins, "Such, then, etc.)

The bleak picture of criminal justice we have painted is not without its bright spots. Within the past few years, scattered about the country, innovations have been introduced, new leadership has emerged, modern facilities have appeared, and systems analysis has been undertaken. The impact has to date been small, but hopes have been raised. States here and cities there have demonstrated that something can be done to improve crime control with justice. The question is whether these incidents will initiate a national trend or will disappear as isolated sparks doused by the rain.

(JSC: Insertion of the above paragraph will require a change in the next. Freed said you are aware of this.)

-----  
Insert sentence for page 28. (to be inserted in first full paragraph right before sentence beginning "Vexing problems of politics, etc.)

It suggests that improvements in the criminal justice machinery, isolated from improvements in the quality of life, e.g., education, housing, employment, health, environment, will simply return convicted offenders to the hopelessness from which they came.

6  
October 17, 1969

ORDER AND JUSTICE IN AMERICA

Rider for page 4

[Insert after second full paragraph]

9  
Respect for law is also threatened by some types of  
civil disobedience, notably the activities of normally  
law-abiding citizens, regrettably including even some  
public officials and policemen as well as students and  
other young persons in deliberately violating duly enacted,  
constitutionally valid laws. Moreover, those who violate  
such laws often claim they should not be punished because  
in their view the law or policy they are protesting  
against is unjust or immoral. Civil disobedience is  
an important and complex subject, and we shall examine  
the dangers to society of deliberate law-breaking as a political  
tactic in our subsequent statement on Protest and Violence.

an  
says.

October 17, 1969

ORDER AND JUSTICE IN AMERICA

Rider for page 4

[Insert after <sup>second full paragraph</sup> Roosevelt Quotation]

~~Today, however, respect for law in America is weakened in~~  
~~First, it is~~ threatened by some types of civil dis- <sup>two ways.</sup>

Respect  
for law  
is also ~~obedience, notably the~~ <sup>refusals</sup> ~~refusal~~ of normally law-abiding  
citizens, regrettably including even some <sup>public officials and policemen</sup> ~~Governors~~ of our  
~~states,~~ <sup>as well as students and other young persons,</sup> to obey valid and duly enacted laws with the merits  
of which they passionately disagree. This refusal is not  
always passive; it sometimes takes the form of deliberately  
violating <sup>duly enacted, constitutionally valid</sup> ~~neutral and unchallenged~~ laws, such as those for-  
bidding the obstruction of public places, in order to drama-  
tize opposition to some entirely different law or policy.  
~~Nor~~ <sup>Moreover,</sup> are those who ~~refuse to obey~~ <sup>violate</sup> such laws <sup>often</sup> ~~always willing to~~  
~~accept the normal legal punishment for their acts;~~ some  
claim they should not be punished because in their view the  
law or policy they are protesting against is unjust or immoral.

← Civil disobedience is <sup>an important and complex</sup> ~~a complicated~~ subject, and we shall  
~~examine the dangers it presents to an orderly and just society~~ <sup>to society of deliberate law-breaking as a political tactic,</sup>

<sup>Salem</sup> in our subsequent chapter on Protest and Violence. ~~In this~~  
~~chapter we deal with a second threat to respect for law—~~  
~~the weaknesses and abuses that exist within our legal system.~~

Rider to replace second paragraph on page 18. (Footnote to be eliminated)

Yet, with a few significant exceptions, the prisons and correctional facilities operate in isolation and reject public scrutiny. Programs of rehabilitation are shallow and dominated by greater concern for punishment and custody than for correction. Prison inmate work assignments usually bear little relationship to employment opportunities outside. Internal supervision is often inadequate, and placed in the hands of inmates. Thus correctional administrators are often said to be presiding over schools in crime.

While speaking of prisons, it should be noted that jails - institutions for detaining accused persons before and during trial and for short sentences - are the most appalling shame in the criminal justice system. They are notoriously ill-managed and poorly staffed. Repeatedly scandalous conditions have been reported in the jails in major metropolitan areas. Even more than the prisons, the jails have been indicted as crime breeding institutions. Cities are full of people who have been arrested but not convicted, and who nevertheless served time in facilities worse, in terms of overcrowding and deterioration, than the prisons to which convicted offenders are sentenced. Accused first offenders are mixed indiscriminately with hardened recidivists. The opportunities for recreation, job training or treatment of a nonpunitive character are almost nil.

10/16/69

Rider to replace second paragraph  
on page 18. (Footnote to be eliminated)

Yet, with a few significant exceptions, the prisons and correctional facilities operate in isolation and reject public scrutiny. Programs of rehabilitation are shallow and dominated by greater concern for punishment and custody than for correction. Prison work attracts few personnel with qualifications in rehabilitation work. Prison assignments usually bear little relationship to employment opportunities outside.

Internal supervision is often inadequate and placed in the hands of inmates. Thus correctional administrators are often said to be presiding over schools in crime.

While speaking of prisons, it should be noted that jails - institutions for detaining accused persons before and during trial and for short sentences - are the most appalling shame in the criminal justice system. They are notoriously ill-managed and poorly staffed. Repeatedly scandalous conditions have been reported in the jails in

major metropolitan areas.

~~Footnote 1~~

~~testimony of the Commission~~

~~& Co. reference to the~~

Even more than the prisons, the jails  
have been indicted as crime breeding  
institutions. Cities are full of people.

(quoted from p 23)

W.W.M.

(Insert after second full paragraph on p. 4)

We do not mean to infer that there are not other threats to respect for law in our country. Respect for law is threatened today by new variations of the concept of civil disobedience. Many of our citizens, not only students and other young people but also some public officials and civil servants, deliberately violate duly enacted and constitutionally valid laws. Often they claim they should not be punished because in their view the law or policy they are protesting against is unjust or immoral. This new tactic of confrontation, relying as it does both on intentional disruption of the public order and on discrediting both the law and those who execute the law, is ~~xxx~~ essentially different from the traditional concept of civil disobedience. Civil disobedience, in its many variations, is an important and complex subject. In our statement on Protest and Violence we shall examine this subject.



Insert after second full paragraph on P. 4

We do not mean to infer that there are not other threats to respect for law in our country. Respect for law is threatened today by new variations of the concept of civil disobedience. Many of our citizens, not only students and other young people but also some public officials and civil servants, deliberately violate duly enacted and constitutionally valid laws. Often they claim they should not be punished because in their view the law or policy they are protesting against is unjust or immoral. This new tactic of confrontation, ~~relying~~ relying as it does <sup>both</sup> on intentional disruption of the public order and on discrediting both the law and those who execute the law, is essentially different from the traditional concept of civil disobedience. Civil disobedience, in its many variations, is an important and complex subject. ~~to shall~~ ~~shall the dangers to society~~ In our statement on Protest and Violence we shall examine this subject.

NATIONAL COMMISSION ON THE CAUSES AND PREVENTION OF VIOLENCE

726 JACKSON PL., N.W.  
WASHINGTON, D.C. 20506

DR. MILTON S. EISENHOWER  
CHAIRMAN

CONGRESSMAN HALE BOGGS  
ARCHBISHOP TERENCE J. COOKE  
AMBASSADOR PATRICIA HARRIS  
SENATOR PHILIP A. HART  
JUDGE A. LEON HIGGINBOTHAM  
ERIC HOFFER  
SENATOR ROMAN HRUSKA  
LEON JAWORSKI  
ALBERT E. JENNER, JR.  
CONGRESSMAN WILLIAM M. McCULLOCH  
JUDGE ERNEST W. McFARLAND  
DR. W. WALTER MENNINGER

October 10, 1969

LLOYD N. CUTLER  
EXECUTIVE DIRECTOR

THOMAS D. BARR  
DEPUTY DIRECTOR


JAMES F. SHORT, JR.  
MARVIN E. WOLFGANG  
CO-DIRECTORS OF RESEARCH

JAMES S. CAMPBELL  
GENERAL COUNSEL

WILLIAM G. McDONALD  
ADMINISTRATIVE OFFICER

MEMORANDUM FOR THE COMMISSIONERS

Attached is a redraft of the proposed Commission statement on "Order and Justice in America," to be considered at the next Commission meeting.

  
James S. Campbell  
General Counsel

Attachment

October 8, 1969

MEMORANDUM FOR LLOYD N. CUTLER

The last sentence of the footnote on page 19a is still unsubstantiated: Lynn Curtis is checking the UCR statistics for confirmation.

Pages 29-40 contain changes throughout to reflect the conversations I have had with Dan Freed and especially Sheldon Krantz (they would both like to see this draft when we get finished with it and, as I mentioned on the phone, we might try to bring them in for the meeting).

Pages 8 to 8c reflect information supplied by Frank Lloyd.

James S. Campbell

DRAFT 6

October 4, 1969

ORDER AND JUSTICE IN AMERICA

I ~~the cause for an~~ Orderly Society  
Order is ~~the~~ prerequisite of society, ~~the~~ mainstay

of civilized existence. We arise every workday with unspoken expectations of order in our lives: that the earth will still be spinning on its axis, that the office or factory will be functioning as before, that the mail will be delivered, that our friends will still be friends, that no one will ~~shoot us in the back~~ <sup>attack on the way to work</sup> or poison our food.

Our expectations are not always met. The technological creations on which modern life depends do not always function with the predictability of the physical laws of the universe. Human behavior is even less predictable. To ensure reasonable predictability to human behavior, to minimize disorder, and to promote justice in human relations, societies establish rules of conduct for their members. Among the social institutions created to promulgate and enforce justice and order in the affairs of men are family, schools, churches, legislatures, codes of law, and courts.

In a far earlier day--and still, to some extent, in small and traditional societies--the rules of conduct had only to be passed from one generation to the next by teaching and example. Universal acceptance and long tradition gave force to the rules, as did the knowledge

that rule-breakers could be quickly identified by the tightly knit community, that culprits had nowhere to run, that the community would ostracize them for their misdeeds. Still, every society in history has produced deviant members. And as societies have grown larger and more complicated, so have the problems of maintaining the social order.

In modern societies many of the rules of social conduct have come to be codified as laws. The intricacies of life in the twentieth century require laws. The act of driving an automobile from one place to another requires a bookful of regulations concerning speed, traffic lanes, signals, safety devices of the vehicle, and the skill of the driver. ~~Activity on streets and highways must be orderly and predictable, and no one concerned about public safety opposes traffic laws.~~ <sup>Many</sup> Other realms of social interaction also require legal regulation for the sake of justice, safety, and preservation of the social order.

Law furnishes both the guidelines for socially acceptable conduct and the force to ensure it. ~~This latter function of law has grown in importance over the centuries as societies have grown more complex and as other forms of social control have been losing their effectiveness.~~ If utopian conditions prevailed -- if all citizens shared a deep commitment to the same set of moral values, if all parents instilled these values in their children and kept close watch over them until adulthood, if all lived in stable and friendly neighborhoods where deviants would face community disapproval -- then perhaps we would seldom need recourse to the negative sanctions of the law. But these are not the conditions of ~~an open,~~ <sup>today's</sup> pluralistic society, and the law is needed to reinforce what the other institutions for social control can only do imperfectly.

This function of the law requires that it be backed by ~~coercive power~~ <sup>- that it be enforced.</sup> Agents of the legitimate authority must ~~be strategically dispersed~~ <sup>function effectively</sup> to deter lawbreaking and apprehend lawbreakers, ~~and~~ <sup>provide</sup> the laws must ~~define the appropriate~~ <sup>to be applied</sup> sanctions against wrongdoers.

When law is not effectively enforced, the odds become more enticing for the potential offender, <sup>crime increases,</sup> and the legal system, and government itself, becomes discredited in the eyes of the public. As respect for <sup>law</sup> declines, crime will increase ~~still further~~ more.

of course, To acknowledge these basic truths is not to argue in favor of oppressive conduct by

On the contrary, we expect the police to behave lawfully and with deep respect for the physical safety, dignity, and constitutional rights of all citizens. We seek, whenever possible, to restore offenders to a satisfying, useful, and law-abiding role in society. That our own society has fallen short on both counts does not obviate the need for force to execute the law.

likewise, To say that the law requires force as a condition of effectiveness is not to argue that law enforcement must be total. The surveillance that would be required to deal swiftly with every offense, major and minor, would be astronomically costly and an insufferable intrusion upon the liberties of a free people.

and of the...  
Police lawlessness,  
and degradation  
of our  
society by  
making the  
law seem  
unworthy  
of obedience.  
Effect too  
 breeds crime  
and disorder.

Indeed, as the Report of our Staff Task Force on Law and Law Enforcement suggests, ~~minor offenses~~ now command a disproportionate share of our criminal justice resources, and many of these ~~offenses would~~ better be handled by various ~~other~~ means outside of the criminal justice process.

like traffic infractions and public intoxication

Devotion to the principle of law is one of the great strengths of the American society, a source of the nation's greatness. As Theodore Roosevelt remarked, "No nation ever yet retained its freedom for any length of time after losing its respect for the law, after losing the law-abiding spirit, the spirit that really makes orderly liberty."

however,  
respect  
for  
law  
in  
America

Today, ~~the cause of orderly liberty~~ <sup>upbeatness</sup> ~~respect for law~~ is threatened by ~~our~~ <sup>our</sup> ~~deficiencies~~ and abuses ~~with~~ <sup>within</sup> ~~the~~ <sup>our</sup> ~~American~~ legal system, and it is these

deficiencies which are the <sup>primary</sup> subject of this statement. As a preface to our discussion, <sup>then</sup> ~~of order and justice in America~~, we offer these <sup>two</sup> reminders:

First: order is indispensable to society, law is indispensable to order, enforcement is indispensable to law.

Second: the justice and decency of the law and its enforcement are not simply desirable embellishments, but rather <sup>the</sup> indispensable condition of respect for law and civil peace in a free society.



-6,7-

II  
Disrespect for Law  
~~II~~

The American system of government has been one of the most successful in modern history; only Great Britain has a longer record of continuity in its political institutions. But despite the ~~common man's~~ <sup>ordinary citizen's</sup> reservoir of trust and deference toward his ~~own-elected~~ government which has been a <sup>stabilizing</sup> feature of our democracy, there has always been in our history a com-

peting attitude ~~now becoming stronger than ever before~~ <sup>on government's achievement of the aims supported by the citizen</sup> of insistence on results, as a precondition <sup>to consent by the</sup> of the governed. <sup>of his</sup> This attitude has been powerfully reinforced <sup>to the exercise of</sup> <sup>governmental</sup> <sup>power.</sup>

Americans regard governments as humanly created institutions to serve human ends. The principles to which Americans claim allegiance were stated in the Declaration of Independence: first, that the purpose of democratic government is to secure the rights of life, liberty, and the pursuit of happiness for all citizens; second, that the powers of government are derived from the consent of the governed.

~~such as life, liberty and the pursuit of happiness~~  
It follows that ~~governments~~ <sup>therefore</sup> in the United States -- local, state, and federal -- must be responsive to the ~~needs~~ <sup>and</sup> needs of citizens if they are to command their continuing respect and if their laws are to be obeyed. ~~Respect for laws~~

~~Commission~~

requires respect for the institutions that make laws and carry them out. Where respect for those institutions is lacking, as it appears to be in many segments of American society, it is dangerously myopic to focus <sup>narrowly</sup> on declining respect for the law when a deeper disenchantment with governmental institutions themselves is at work.

It is equally myopic <sup>of course</sup> to focus all the blame for crime and lawlessness upon the institutions of government. Other <sup>aspects of modern life</sup> elements of society Public disrespect for the law <sup>both feeds and is fed by</sup> is compounded by the <sup>success</sup> ability of organized crime <sup>to operate successfully</sup> beyond the reach of legal force -- a success sustained by this same disrespect since organized crime <sup>lives</sup> not only by extortion from lawful business and labor activities, but also by providing illegal services that large numbers of ordinary citizens, knowing of <sup>the</sup> their illegality, are nevertheless ready to buy.

FN  
to  
P. 5

~~satisfying lives \*  
been denied them.~~

← Disenchantment with governmental institutions <sup>and disrespect for law are</sup> is most prevalent among those who have gained the least from the social order <sup>and from the actions of government.</sup> These are most often the poor, especially the urban poor, who are usually also the Negro poor. <sup>highest</sup> That <sup>the smallest</sup> crime rates are <sup>the smallest</sup> higher among groups that have had a ~~small~~ voice in government and a ~~small~~ stake in the social order is no mere coincidence.

FN from P. 5.

Commission

There is a higher incidence of violence among the poor, in part because violence is a response to frustration -- the frustration of being continually passed by; the frustration of suffering discrimination, indignities, and exploitation; the frustration of finding the institutions of government unresponsive or inadequate or degrading. Violence also offers a relatively easy path to money and property that the poor cannot obtain through legitimate efforts.

A catalog of the features of American life that push the poor and the black <sup>toward</sup> ~~to~~ alienation <sup>and lawlessness</sup> usually emphasizes the private sector: landlords who charge exorbitant rents for substandard housing, the practice of "block-busting" that feeds on racial antagonism to buy cheap and sell dear under inequitable purchase contracts, merchants with unscrupulous credit-buying schemes, employers and unions who discriminate against minorities. But we need also to consider how the institutions of <sup>law and</sup> government, often inadvertently, contribute to the alienation.

There are few laws and few agencies to protect the consumer from unscrupulous merchants. There are laws for the protection of tenants defining what landlords must provide, but housing inspection agencies have little power and are understaffed; often they can act only in response to complaints and seldom can they force immediate repairs no matter how desperately needed. Welfare agencies, designed to help the

poor, staffed for the most part by dedicated personnel, operate under strictures that contribute to the degradation of the poor. As the President recently stated, our welfare system "breaks up families, . . . perpetuates a vicious cycle of dependency . . . [and] strips human beings of their decency." Typically the welfare system intrudes into every aspect of the recipients' lives -- determining where they live and with whom, whether children get new clothes for school, where they go when they get sick. It has been called, aptly, life-long probation.

If welfare assistance is arbitrarily cut off, if a landlord flagrantly ignores housing codes, if a merchant demands payment under an unfair contract, the poor -- like the rich -- can go to court. Whether they find satisfaction there is another matter. The dockets of the so-called people's courts are overcrowded, and cases are handled in assembly-line fashion, often by inexperienced or incompetent personnel. Too frequently landlord-tenant courts and small claims courts serve the poor less well than their creditors; they tend to enforce printed-form contracts, without careful examination of the equity of the contracts or the good faith of the landlords and merchants who prepare them.

The poor are discouraged from initiating civil actions against their exploiters. Litigation is expensive; so are experienced lawyers. →

Private legal aid societies have long struggled to provide legal assistance to the poor, but their resources have been miniscule in comparison to the vast need for their services.

Some of this is changing. The President has recently proposed bold and urgently needed reforms in the welfare system, designed to preserve family structures, sustain personal dignity, eliminate unfairness and preserve incentives to work. Private groups and new government programs are beginning to respond to the legal needs of the poor. In 1968 the Legal Services Program of the Office of Economic Opportunity handled almost 800,000 cases for the poor and won a majority of the trials and appeals. In test cases the OEO lawyers won new standards of fair treatment of the poor from welfare agencies, landlords, inspectors, urban renewal authorities, and others. But the 1,800 OEO lawyers, together with 2,000 legal aid attorneys, are only a meager beginning in the long-range task of assuring justice for the poor. Many more OEO and legal aid attorneys are needed, <sup>and</sup> the entire bar must also assume a <sup>larger</sup> ~~large~~ share of the responsibility, as many younger lawyers and leading law firms are now beginning to do.

The institution of government that is the most constant presence in the life of the poor is the police department. Crime rates are high in the urban slums and ghettos, and the

As they do their job,  
police are needed continually. ~~They are not always~~  
~~appreciated; they are often subject to abuse.~~ The police  
carry not only the burden of the law but also the symbolic  
burden of all government; it is regrettable, yet not  
surprising, that the tensions and frustrations of the poor <sup>and the black</sup>  
come to focus on the police. ~~When the poor are also black,~~  
~~then the police bear the added burden of symbolizing the~~  
~~alien world of "the white Establishment."~~ The antagonism  
is frequently mutual. Racial prejudice in police departments  
of major cities has been noted by reliable observers.  
Prejudice compromises police performance. Policemen who  
systematically ignore many crimes committed in the ghetto,  
who handle ghetto citizens roughly, \* who abuse the rights  
of these citizens, <sup>contribute substantially to distrust in</sup>  
~~rationalize their actions by saying,~~  
<sup>with government and disrespect for law,</sup>  
~~"That's the way they treat each other," or "That's all they~~  
~~understand."~~

FN.  
\* In a survey conducted by this Commission most white  
Americans disagreed with the statement: "The police frequently  
use more force than they need to when carrying out their  
duties." But a majority of Negro respondents agreed with the  
statement, as did a third of the lower-income people and  
40 percent of the metropolitan city dwellers. In many of our  
recent urban disturbances, the triggering event was an arrest  
or other police encounter that appeared to bystanders as unfair.

Our laws <sup>provide for</sup> afford civil and criminal sanctions against illegal police conduct, but these are rarely <sup>effective.</sup> employed. The so-called exclusionary rule also has some deterrent effect; it prevents use of illegally obtained evidence in trials, but this does not affect unlawful searches and seizures or other police activities that do not result in arrest and trial.

A citizen can take his complaint of misconduct directly to the police department. Every major police department has formal machinery for handling citizen complaints and for disciplining misbehaving officers. But for a variety of reasons <sup>including inadequate investigation and inadequate procedures and light punishments</sup> this internal process of review is largely <sup>unsatisfactory</sup> <sup>for offenses</sup> distrusted. In some cities, for example, the procedural formalities are so complex that citizens are discouraged from filing grievances. In about half the departments, investigations are handled by the local unit to which the accused officer belongs, not by the central department where greater impartiality might be expected. In many departments there are no formal hearings even to consider very serious charges. Cities that do have hearing procedures often conduct them secretly, sometimes without cross-examination privileges for the complainant, and sometimes with no disclosure -- to the complainant or the public -- of the board's findings

~~Commission~~

and recommendations. Punishments are often light; in one city, for example, the punishment for "conduct offensive to the public" is the same as for "unexcused tardiness."

Even if all the compromising practices were eliminated, however, it is doubtful whether internal review boards could engender widespread trust -- simply because they are internally administered. In the four months that New York City had a civilian review board, more than twice as many complaints were processed than during the preceding twelve months by the police department's own board.

New York, Philadelphia, Washington and Rochester are among the few large American cities to have experimented with <sup>an external</sup> review board composed primarily of civilians. <sup>that</sup> All of these <sup>however,</sup> experiments have fallen victim to political opposition, most vocally from the police themselves. The police argued that civilian review lowers police morale, undermines respect of lower echelon officers for their superiors, and inhibits proper police discretion by inducing fear of retaliatory action before the board. The police also resent ~~the~~ being singled out among all local governmental officials for civilian review.

The resentment is understandable. The police are not the only public servants who sometimes fall short of their duties or overstep their powers, who act arbitrarily <sup>or</sup> and unjustly. The grievances of the poor <sup>stem from</sup> ~~about indignities and~~

Commission,



~~injustices apply to~~ nearly every governmental institution they encounter. If an independent agency is to exist for handling citizen grievances, it should be open to complaints concerning every governmental office: the welfare agency, the health department, the housing bureau, ~~and~~ the sanitation department, as well as the police.

<sup>Independent</sup>  
Citizens' grievance agencies would be a useful innovation <sup>they could</sup> to investigate and, where justified, ~~to~~ support individual complaints against public servants. They could also perform a broader function -- to recommend policy changes to governmental institutions that will make them more responsive to public needs. By encouraging and goading ~~the~~ governmental institutions <sup>and by vindicating them against unfounded complaints,</sup> ~~to~~ <sup>could</sup> greater responsiveness, ~~these~~ <sup>the institutions,</sup> grievance agencies ~~would~~ strengthen public respect for government, ~~which in turn would~~ <sup>and thus</sup> strengthen the social order.

Both the <sup>President's</sup> Crime Commission <sup>on Law Enforcement and Administration of Justice (Crime Commission)</sup> and the National Advisory Commission on Civil Disorders (Kerner Commission) recommended that local jurisdictions establish adequate mechanisms for processing citizen grievances about the conduct of public officials. That recommendation has not received the attention or the response it deserves. ~~We therefore urge that the citizens' grievance agency should be given renewed consideration.~~

To increase the responsiveness of local governments to the needs and rights of their

citizens, we recommend that the federal govern-  
ment allocate seed money to a limited number of  
state and local jurisdictions demonstrating an  
earnest interest in establishing a citizens'  
grievance agency.

Because of the novelty of  
this office in American government, the allocating  
federal agency should encourage diversity in the  
arrangements and powers of the grievance agency in  
the experimenting states and cities, should provide  
for continuing evaluation of the effectiveness of the  
differing schemes, and should publicize these evalu-  
ations among all state and local jurisdictions so that  
each can decide the arrangement best suited for itself.  
Consideration should also be given to the creation of  
a federal citizens' grievance agency to act on com-  
plaints against federal employees and departments,  
which could also serve as an experimental model for  
similar agencies in the cities.

~~While encouraging diversity of arrangements among cities,  
we join the Kerner Commission in advising that each citizens'  
grievance agency meet the following criteria: that it be  
independent of existing agencies and political interference;  
that it be adequately staffed and funded; that its jurisdiction~~

We have supported this recommendation upon evidence that the poor experience <sup>special</sup> frustrations and injustices in ~~and that these frustrations need support for some.~~ their relationships with government. To undergird that support we add the obvious notation that the poor are not the only ones who find government unresponsive to their needs. In particular, a large segment of the American population, living above the poverty line but below affluence, have come to feel aggrieved when government deducts from their paychecks funds to feed and "pamper" the poor, to subsidize professors and college students, to fatten the pockets of oilmen and aerospace industrialists -- in short, to help everyone but them.

← The alienation of "the forgotten American" is also genuine and a matter <sup>for</sup> of compassionate concern. Law-abiding, patriotic, a firm believer in traditional American values, "the forgotten American" believes he can reach his government only at the ballot box, and yet most do not even make this effort. The "forgotten American" is angered and distrustful about the same institutions of government -- except for the police -- that alienate the poor. Extremists prey upon his frustration and alienation by promising simplistic solutions, as do bigots screaming and pointing at scapegoats -- usually Negroes. The festering <sup>and something more</sup> antagonisms between lower-middle-class whites and poor blacks have their ironic side, for the two groups share many needs: better jobs, better schools, better police

protection, better recreation facilities, better public services. Together they could accomplish more ~~politically~~ than they can apart. A

The reconciliation of ~~factional~~ <sup>and</sup> antagonisms, the restoration of respect for the institutions of government among all citizens, ~~must begin among the people themselves.~~

Citizens' grievance agencies ~~would~~ <sup>could</sup> provide a modest <sup>but important</sup> start <sup>toward</sup>

Perhaps these agencies, as they accumulate experience with the deficiencies of governmental institutions, could in turn generate ideas that would improve the responsiveness of government --- at all levels --- to the needs of all citizens.

III

## The Non-System of Criminal Justice

3. (19)

The responses set forth below sketch a profile of today's criminal justice process and suggest some of the ingredients for its improvement.

~~Myth of a Criminal Justice "System"~~  
a. ~~The System: Theory vs. Practice~~

Our society has commissioned its police to patrol the streets, prevent crime, <sup>and</sup> arrest suspected criminals <sup>and</sup> "enforce the law." It has established courts to conduct trials of accused offenders <sup>and</sup> sentence those who are found guilty, <sup>and</sup> "do justice." It has created a correctional process consisting of prisons to punish convicted persons and programs to rehabilitate and supervise them so that they <sup>can</sup> ~~might~~ become useful citizens.

← It is commonly assumed that these three components -- law enforcement (police, sheriffs, marshals), the judicial process (judges, prosecutors, defense lawyers) and corrections (prison officials, probation and parole officers) -- add up to a "system" of criminal justice. The system, however, is a myth.

A system implies some unity of purpose and organized interrelationship among component parts. In the typical American city and state, and under federal jurisdiction as well, no such relationship exists. There is, instead, a reasonably well-defined criminal process, a continuum through which each accused offender may pass: from the hands of the police, to the jurisdiction of the courts,

346

to identify symbolic issues, such as Supreme Court decisions, civilian review boards, capital punishment and preventive detention, as if they held the <sup>major</sup> keys to the crime problem.

The <sup>1967</sup> ~~anger~~ with which such issues have been debated in recent years has contributed little to public confidence, to the safety of streets or to the effectiveness of criminal procedures. It has, however, ~~caused actual reform in the institutions of public order and justice to lag far behind~~ <sup>diverted public and official attention away from</sup> the excellent <sup>changes in accordance with</sup> recommendations of <sup>the</sup> three presidential crime commissions (~~National, D.C., and Civil Disorders~~) which have reported since the end of 1966.

The chapters which follow contain discussions of some of the reforms which need to be addressed promptly if the sad record of the 1960's is to be bettered as law enforcement and criminal justice face the challenge of the 1970's. As a backdrop for those discussions, <sup>discussion of criminal justice</sup> this introduction ~~considers~~ <sup>discusses</sup> three questions:

- a. What does a typical criminal justice system look like today?
- b. How well is that system integrated into the program of cities for meeting the problems of urban inadequacy?
- c. What new directions should comprehensive reform of the criminal justice system take?

345

behind the walls of a prison, then back to this inefficiency, fall-out and failure of this process is notorious.  
According to the 1967 report of the President's Commission on Law Enforcement and Administration of Justice, over half of all crimes are never reported, and nearly half of those which are, fewer than half are ever reported to the police.



Upon reflection, this turmoil is not surprising. Each participant sees the commission of crime and the procedures of justice from a different perspective. His daily experience and his set of values as to what effectiveness requires and what fairness requires are therefore likely to be different. As a result, the mission and priorities of a system of criminal justice will in all likelihood be defined differently by a policeman, a trial judge, a prosecutor, a defense attorney, a correctional administrator, an appellate tribunal, a slum dweller and a resident of the suburbs.

For example: The police see crime in the raw. They are exposed firsthand to the agony of victims, the danger of streets, the violence of lawbreakers. A major task of the police officer is to track down and arrest persons who have committed serious crimes. It is discouraging indeed for such an officer to see courts promptly release defendants on bail, or prosecutors reduce charges in order to induce pleas of guilty to lesser offenses, or judges exclude incriminating evidence, or parole officers accept supervision of released prisoners but check on them only a few minutes each month.

Yet the police themselves are often seen by others as contributing to the failure of the system. They are the

348

target of charges <sup>with</sup>  
sleeping on duty, <sup>in</sup> ineptness, discourtesy,

as being inscrutable by large searches. They are

citizens they are employed  
Trial judges and neutral  
side





job is to maintain secure custody and design programs which prepare individual prisoners for a successful return to society. They are discouraged when they encounter convicted persons whose sentences are either inadequate or excessive. They are frustrated by legislatures which curtail the flexibility of sentences and which fail to appropriate necessary funds. They are dismayed at police officers who harass parolees, or at a community which fails to provide jobs or refuses to build halfway houses for ex-offenders.

Yet jails are notoriously ill-managed. Sadistic guards are not uncommon. Homosexual assaults among inmates are widely tolerated. Prison work usually bears little relationship to employment opportunities outside. Persons jailed to await trial are typically treated worse than sentenced offenders. Correctional administrators are often said to be presiding over schools in crime.

In the mosaic of discontent which pervades the criminal process, public officials and institutions, bound together with private persons in the cause of reducing crime, each see ~~their~~ <sup>his</sup> own special missions being undercut by the cross-purposes, frailties or malfunctions of others. As they find their places along the spectrum between the intense concern with victims at one end, and total preoccupation with reforming convicted lawbreakers at the

350

other, so do they find their daily perceptions varying or in conflict. The conflicts in turn intensify by the fact that each part of the process in most cities is overloaded and undermanned. Under such circumstances it is hardly surprising find in most cities not a smooth functioning criminal justice but a fragmented and inadequately trained police view courts and enforcement.

7  
24  
a

other, so do they find their daily perceptions of justice varying or in conflict. The conflicts in turn are intensified by the fact that each part of the criminal process in most cities is overloaded and undermanned, and most of its personnel underpaid and inadequately trained. <sup>Too</sup>

Under such circumstances it is hardly surprising to find in most cities not a smooth functioning "system" of criminal justice but a fragmented and often hostile amalgamation of criminal justice agencies. To the extent they are concerned about other parts of the "system," police view courts as the enemy. Judges often find law enforcement officers themselves violating the law. Both see correctional programs as largely a failure. Many defendants        perceive all three as paying only lip service to individual rights.

<sup>Obvious</sup>  
~~Mechanisms~~ Mechanisms for introducing some sense of harmony into the system are <sup>not</sup> seldom utilized. Judges, police administrators and prison officials hardly ever confer on common problems. Sentencing institutes and familiarization prison visits for judges are the exception rather than the rule. Neither prosecuting nor defense attorneys receive training in corrections upon which to base intelligent sentencing recommendations.

Nearly every part of the criminal process is run

little attention has been paid to the Crime Commission's finding that the entire criminal justice system, federal, state and local, including all police, all courts and all corrections, is allocated only one half of one percent of

our national income and less than two percent of our tax revenues. <sup>all government expenditures</sup>

custody and design programs which  
bers for a successful return to  
couraged-when they encounter convicted  
os are either inadequate or excessive.  
by legislatures which curtail the  
ences and which fail to appropriate  
They are dismayed at police officers who  
houses for ex-offenders.  
Sadistic Guards  
es are

with public funds by persons employed as officers of justice to serve the same community. Yet every agency in the criminal process in a sense competes with every other in the quest for tax dollars. Isolation or antagonism rather than mutual support tends to characterize their intertwined operations. And even when cooperative efforts develop, the press usually features the friction, and often aggravates it.

One might expect the field to be flooded with systems analysts, management consultants and publicly-imposed measures of organization and administration in order to introduce order and coordination into this criminal justice chaos. It is not.

A recognized profession of criminal justice system administrators does not exist today. In fact, most of the <sup>also</sup> subsystems are poorly run. For example, court administrators are rare, and court management by trained professionals is a concept that is taking hold very slowly.

The bail "system," which should involve coordination among at least a half dozen agencies, is presided over by no one. Few cities have neutral bail agencies to furnish bail-setting magistrates with reliable background data on defendants. <sup>In making their bail recommendations,</sup> Prosecutors usually ignore community ties and factors other than the criminal charge and the accused's criminal record. <sup>in recommending bail.</sup> Defense lawyers <sup>infrequently</sup> rarely explore.

nonmonetary release conditions in cases involving impecunious clients. Detention reports on persons held long periods in jail prior to trial are rarely acted on by courts, and bail review for detainees is rarely requested. Enforcement of bail restrictions and forfeitures of bond for bail jumpers are unusual. Bail bondsmen go unregulated. The great majority of police administration is unregulated. Enforcement chiefs who started as patrolmen and whose higher education is hard to find in modern management techniques and whose isolation and communication and tech



mayor or other head of government regularly informed of the problems and progress of public safety and justice. Crime receives high-level attention only as a short-term reaction to crisis. An effective system does not exist.

b. Criminal Sanctions as a Solution to Urban Problems

(1) Scope of Sanctions. The internal disorganization of the criminal justice system is not its only handicap. Even if it functioned like a well-oiled machine, it would --without other changes-- probably fail to achieve either a substantial reduction in most categories of conduct now labelled as crime, or a material increase in public respect for law.

The likelihood of failure is promoted by two traditional features of criminal law administration: (1) the criminal sanction applies by statute to much more human behavior than it can realistically control, and (2) the criminal process operates too largely in isolation from other programs aimed at the breeding grounds of antisocial behavior. Until the target conduct of criminal penalties can be narrowed and the myth of full enforcement dispelled, and until crime reduction is perceived as requiring better education, housing, health and employment opportunities for would-be offenders, the criminal process will continue to suffer from demands that it accomplish more than is possible with less help than is indispensable to

Manhattan Bowers Project. Others, like traffic  
might be transferred to an administrative or re  
process, as California and New York have done.  
until the wide range of behavior now subj  
arrest, trial and sentencing is materi  
whelmed and underach  
(1) and  
(2) and



rights are abridged, military service options are curtailed, family life disruptions are likely to be serious, and the outlook of most ex-convicts is bleak. The expectation of the community that released offenders will be "corrected" is matched by outdated laws and community responses which tend strongly to defeat those expectations. \*

*FN*  
~~This~~ This unfortunate pattern is not confined to the handling of convicted offenders. The odds are high that unconvicted persons will encounter similar, and sometimes greater constraints. Cities are full of people who have been arrested but not convicted, and who nevertheless served time in ~~fail and were stigmatized in other seriously disabling ways.~~

~~Thus, local facilities in which arrested persons are detained prior to conviction are typically worse, in terms of overcrowding and deterioration, than the prisons to which convicted offenders are sentenced. Accused first offenders are mixed indiscriminately with hardened recidivists. The opportunities for recreation, job training or treatment of a nonpunitive character are almost nil.~~

~~If released, a person's arrest record alone becomes a substantial liability. To many segments of a community, the difference between arrest status and that of conviction is indiscriminately regarded as a technicality.~~

15 2  
In its present state of disrepair, the criminal justice system is a holding function, the criminal record and minimal respite when a serious offender allows cases, denial of improvement may seem to be the best possible outcome for convicted offenders.



...ilitary service options are curtailed,  
...s are likely to be serious, and the  
...victs is bleak. The expectation  
...t released offenders will be "corrected"  
...d laws and community responses which  
...ate pattern is not confined to the  
...defeat those expectations. \*  
...victed offenders. The odds are high that  
...victed offenders similar, and sometimes  
...ons will encounter similar, and sometimes  
...aints. Cities are full of people who have  
...convicted, and who nevertheless  
...matized in other seriously

25  
21

29

In its present state of disrepair, the criminal process -- when it operates alone -- at best performs ~~merely~~ a holding function. This function may provide society ~~with~~ <sup>with</sup> respite when a serious offender with a long record and minimal prospect of improvement is identified. In such cases, denial of release for as long as the law allows may seem reasonable, even though ~~almost all~~ <sup>almost all</sup> convicts ~~are~~ <sup>are</sup> eventually released.

In ~~most other~~ <sup>nearly every</sup> cases, however, a city candid about its own criminal justice deficiencies needs to ask whether full enforcement ~~is~~ <sup>is</sup> aimed at detention, prosecution and imprisonment, will ~~ultimately~~ <sup>in the long run</sup> reduce or reinforce criminality.

The traditional assumption ~~has been that punishment will reduce crime.~~ In attempting to separate myth from reality, however, it is worth noting that ~~Experienced~~ <sup>PE</sup> judges have resorted increasingly in recent years to various forms of post-conviction probation. They have done so after weighing the possibilities for rehabilitation if the offender is so released against the usually disastrous prognosis which would accompany his incarceration. It is a painful choice, little understood by the public. But the decision to seek correction of an offender in the community reflects ~~less~~ <sup>not</sup> a compassionate attitude towards law-breakers, ~~more~~ <sup>but</sup> a hardheaded recognition, based on data, that long term public safety has a better chance of being

359

Commission,

...sary of permitting

Such, then, is the state of our criminal justice "system". What can be done to improve it?

protected.

The alternatives are no longer simply prison or outright release. Integrating the criminal process with community programs requires closely supervised forms of release: daytime work release, release in the custody of reliable counselors, prerelease guidance centers, alcoholism and narcotic treatment centers, halfway houses.

Community-based programs will, of course, fail equally with prisons if the resources and attitudes which accompany them are no better. Identifying the offender's needs in terms of education, job training, employment, family aid, hospitalization and shelter, and providing for them, must be seen as inuring to society's benefit as well as his <sup>to that of the offender.</sup> own.

The stage at which these services are furnished should whenever possible be advanced from after conviction to after arrest. Voluntary correctional programs <sup>should</sup> ~~could~~ be offered without a prior finding of guilt. As urged by the National Crime Commission, accused offenders should be routed away from the criminal process at the earliest stage that vindication of the community's interest permits.

Most such efforts will tend to <sup>improve effectiveness</sup> reduce the ~~cost~~ of criminal prosecution by eliminating it when it is not needed, and to <sup>by</sup> increase <sup>ing</sup> the speed and firmness of prosecution for hardened offenders for whom no meaningful alternative exists. Public funds <sup>can be shifted</sup> ~~thus diverted~~ from the revolving-door functions of imprisonment, warehousing, degradation and contamination. They can be invested <sup>360</sup> instead in community programs where the crime reduction payoff is higher.

IV

Recommendation  
- 29 -  
early prison release under supervision--provided enough well-trained personnel to guide them. As it two-thirds of the 1.3 million people under correctional authority in the United States are already living in communities under probation or parole. As it of the money and one-seventh of the staff in corrections are devoted to helping or supervising released from

30



appropriation requests are less than \$300 million for law enforcement which would ~~only~~ increase the nation's expenditures in that field by ~~about 5 percent~~. About \$15 million is being requested for the youth programs.

This nation is justifiably concerned about the increased rate of crime and about the conditions that give rise to crime, including ~~a~~ <sup>our</sup> very inadequate system of criminal justice.

In this Commission's judgment, we should give concrete expression to our concern <sup>about crime</sup> by a solemn national commitment to double our investment in the administration of justice and the prevention of crime, as rapidly as such an investment can be wisely planned and utilized.

When the ~~point is reached~~, doubling this investment would cost the nation less than an additional one-half of one percent of its ~~total income~~ <sup>national income</sup> and less than two percent of its ~~total income~~ <sup>tax revenues</sup> to "establish justice" and "insure domestic tranquility" in this complex and volatile age.

INDENT

an additional five billion dollars per year

Given the realities of ~~our~~ state and local financial resources, the Federal Government will have to take the lead in creating this commitment, and in providing most of the required funds until the matching formulas already contained in the 1968 Statutes. The Federal

~~The~~ commitment should be made in a manner that will convince the states, cities and the public that they can rely on the seriousness and continuity of the undertaking, and that they can invest matching funds of their own without fear that the federal portion may be curtailed midway in the program.

We recommend, as a first step, that the Congress take effective measures to dedicate two percent of the federal income tax revenues to additional expenditures in the fields of

Our total expenditures on law enforcement would still be less than 15% of what we spend on our armed forces.

See p. 38  
Flag housing etc

...with the possibility of permitting

32

law enforcement and crime prevention, over and above present expenditures for these purposes. This would amount to an increase of approximately \$2.5 billion annually. With matching state and local funds under the existing formulas, it would represent an annual increase of fifty percent in the current level of expenditure, federal, state and local. When these sums have been fully employed, we recommend that Congress give further consideration to the raising and employment of an additional \$2.5 billion per year to the extent found necessary at that time.

3-4

5

These additional funds could be publicly and meaningfully ~~methods for ex. making a meaningful long term~~ committed by any one or more of a variety of Congressional ~~commitments~~. Among these are the following: actions, such as the following:

along these lines,

c) <sup>Criminal Justice</sup> Creation of a Law Enforcement Trust Fund similar to the Social Security Trust Fund and the Highway Trust Fund, to which ~~two percent of~~ <sup>a ~~specified~~ Congressionally determined amount of</sup> federal annual income tax revenues would be allocated for a period of ten years. <sup>Following</sup> ~~As in the~~ <sup>the precedent</sup> case of the Highway Trust Fund, actual expenditures from the trust fund would be <sup>limited to criminal justice purposes,</sup> subject to annual <sup>and would</sup> appropriation measures by the Congress. <sup>be</sup>

Rider C P. 32 P. 32

32a

a) *Amendm*

b) The enactment of laws authorizing the appropriation of two percent of federal annual income tax revenues for law enforcement and crime prevention for a period of ten years, over and above present authorizations for such purposes. Actual expenditures would again be subject to the passage of annual appropriation measures. The President's recent tax-sharing proposal is an example of such a commitment.

a) *Amending the 1968 statute so as to*  
~~The enactment of laws authorizing the~~

~~Law Enforcement Assistance Administration, the Department of Health, Education and Welfare, or other appropriate federal agencies to enter into long-term contracts with state and local agencies, committing the Federal Government to provide such contracts not to extend more than ten years beyond the effective date of the statute and to require annual payments by the federal government of no more than \$2.5 billion or two percent of the federal income tax revenues, whichever is greater, with the proviso that where annual payments in any one year fell short of the authorized rate, the difference could be applied to increase authorized annual payments in subsequent years. Actual expenditures would once again be subject to annual appropriation authorization measures. [Cite precedents]~~

*expenditures for the capital and operating costs of*

32b

d) Amending the 1968 statutes so as to  
 The enactment of laws authorizing the  
 issuance by state and local agencies of federally  
 guaranteed long-term bonds to cover capital costs  
 of the construction of new facilities and obtaining  
 major items of new equipment (e.g., a communications  
 system), with an underlying contract under which  
 annual contributions in a predetermined amount would  
 be made by the federal government toward payment of  
 interest and amortization of principal on the bonds.

Actual expenditures would <sup>be</sup> remain subject to annual  
 appropriation measures, <sup>but the full faith and credit of the United</sup> (The Public Housing Program  
 States  
 would be  
 committed  
 stand  
 behind  
 the bonds.)  
 is an example of this type of financing.) However,  
 because many of the financial needs in the law  
 enforcement area are for programs such as better  
 training, more personnel and higher salaries to  
 attract more talented people, which fall in the realm  
 of operating expenses rather than capital costs, this  
 approach would go only part way toward fulfilling the  
 need for a long-term commitment to supply the needed  
 funds to local authorities.

(c) Rider  
 from  
 P. 31

e) Passage of a joint resolution confirming the  
 intent of the Congress to commit an additional two  
 percent of federal income tax revenues annually to these  
 purposes.

33

### 4. Turning the Non-System into a System

without new organizations and relationships to help spend money wisely and use personnel well, history suggests that significant changes are unlikely.

~~Reform in the criminal field has a long record of excellent recommendations never carried out.~~ A substantial

portion of the National Crime Commission's proposals in 1967 are, ~~for example,~~ remarkably similar to those urged by the Wickersham Commission established by President Hoover 37 years earlier: ~~Despite that Commission's~~ equally impressive documentation, conservatism and presidential prestige, little follow-through was mounted.

Experience with <sup>crime</sup> commissions at the state and local levels

~~has~~ shows similar results: Library shelves are crowded with ~~excellent~~ reports on police inadequacy, court chaos, ~~AND~~ prison disgrace, and reform proposals which never produced effective action.

~~Moreover,~~ money poured into the crime problem, ~~is~~ <sup>does</sup> not ~~bring~~ <sup>BY ITSELF BUY</sup> crime reduction, <sup>however.</sup> Wealthy states and localities which have spent vast sums for crime control have become no more

noticeably crime-free than jurisdictions which haven't. The

District of Columbia, with a <sup>Presidential</sup> superior Crime Commission report <sup>analyzing</sup> ~~the~~ constant <sup>OVERSIGHT BY</sup> ~~oversight~~ Congress and federal money close by <sup>what two Presidents have called</sup> has failed to achieve anything resembling a model system of

<sup>criminal justice.</sup>

363

its problems  
in minute  
detail,

Its name the basis of the federal Bail Reform Act of 1966. <sup>its summons project proved the practicability of permitting</sup>



21 (35)  
criminal justice, ~~despite substantial flourishes to that effect by two incidents.~~

This pattern suggests the existence of substantial built-in obstacles to change. It suggests that unless much more attention is spotlighted on the inability and unwillingness of present crime control systems to ~~effectuate~~ <sup>effectuate</sup> reform, new money may go down old drains. Vexing problems of politics, organization and leadership underlie the maintenance of the status quo and need to be faced ~~at~~ <sup>at</sup> ~~it~~ <sup>it</sup> directly.

In the search for new ~~approaches to the implementation~~ <sup>more effective ways of carrying out</sup> of crime commission recommendations, ~~we have noted~~ <sup>we have noted</sup> two promising but comparatively untried strategies ~~have been suggested by~~ <sup>based on</sup> recent ~~experience~~ <sup>innovative experiments</sup> on the frontiers of criminal justice. ~~These are:~~ <sup>These are:</sup> in several cities: (1) a program to coordinate <sup>public</sup> criminal justice agencies more effectively by placing them under the supervision of a new high-level criminal justice office; ~~staff or agency;~~ and (2) a program to develop private citizen participation as an integral operating component, rather than a conversational adjunct, of criminal reform. ~~The success of citizen participation will in many ways~~ <sup>two innovations complement one another; the</sup> be dependent on the establishment of a central criminal justice office, and vice versa.

~~The criminal justice agency.~~ <sup>i. office</sup>

The pervasive fragmentation of police, court and

correctional agencies suggests that some cat  
needed to bring them together. An assumption  
public agencies will operate consistently can  
longer suffice as a substitute for deliberate ac  
to make it happen in real life. Arrested offende  
the common target or client of criminal justice  
agencies -- afford their only continuous link today  
Periodic crime commissions -- which  
agencies, file reports and then  
but they are too too  
law enforcement

131  
22 (35)  
correctional agencies suggests that some catalyst is needed to bring them together. An assumption that public agencies will operate consistently can no longer suffice as a substitute for deliberate action to make it happen in real life. ~~Arrested offenders -- the common target or client of criminal justice agencies -- afford their only continuous link today.~~

Periodic crime commissions -- which study these agencies, file reports and then disappear -- are valuable, but they are too transient for the catalyst role. A law enforcement council -- consisting of chief judges and agency heads who meet periodically -- will likely constitute little more than another committee of overcommitted officials.

A full-time criminal justice ~~position or~~ office should be considered basic to <sup>the</sup> formation of a criminal justice system. Its optimum form, <sup>i.e. line</sup> ~~or staff~~, and its location in the bureaucracy needs to be developed through experimentation. <sup>the function</sup> ~~it~~ could be vested in a criminal justice assistant to the mayor or county executive, with staff relationships to ~~the~~ executive agencies, and liaison with the courts and the community. <sup>Alternatively operate</sup> ~~Second~~, it could, ~~function~~ as a ministry of justice and be given line authority under the direction of a high ranking official of local government (e.g., Director

365

existence of substantial  
It suggests that unless  
lighted on the inability and  
time control systems to ~~the~~  
time old drains. Vexing problems  
down old drains. Vexing problems  
n and leadership underlie the  
us quo and need to be faced ~~the~~  
the ~~the~~ way of ~~the~~  
to the ~~the~~ implementation  
to the ~~the~~ note of  
but.  
to the ~~the~~ promising  
but.

of Public Safety or Criminal Justice Administrator), to whom local police, prosecutor, defender and correctional agencies would be responsive. (Special kinds of administrative ties to the courts would ~~be~~ be evolved to avoid undermining the essential independence of the judiciary.)

A third alternative might take the form of a well-staffed secretariat to a council composed of heads of public agencies, courts and private interests concerned with crime. To avoid the ineffectiveness of committees, however, either the chairman of the council or its executive director would have to be given a good measure of leadership authority.

Whatever its form, ~~a number of functions of~~ ~~regional authorities would be important to include in the~~ ~~new unit.~~ <sup>of the new staff</sup> The basic purposes would be to allocate resources, to assure effective processing of cases and to develop understanding and respect among the component subsystems. For example:

- It would develop a system of budgeting for  
← crime which takes account of the interrelated  
← needs and imbalances among individual agencies  
← and jurisdictions;
- It would initiate a criminal justice information  
← system which, ~~as an adjunct to personnel, budgeting~~

366

and legislative decisions  
simply crime reports (as  
arrests, reduction of char-  
sentences, reduction of char-  
populations, recidivism, cour-  
data essential to an informed  
- - Put would perform a mediating ar-  
in respect to the many over-  
criminal process, e.g., de-  
to reduce police  
pretrn

NO  
INDENT

essential independence of the form of a well-organized body of heads of  
prosecutor, defender and correctional  
Criminal Justice Administrator), to  
be evolved to avoid  
Special kinds of administrative  
responsive.

24 (37)

and legislative decisions, would embrace not simply crime reports (as is typical today), but arrests, reduction of charges, convictions, sentences, recidivism, court backlogs, detention populations, crime prevention measures, and other data essential to an informed process;

NO INDENT

It would perform a mediating and liaison role in respect to the many ~~overlap~~ functions of the criminal process, <sup>involving more than just</sup> ~~of the system~~ <sup>example</sup> e.g., development of programs to reduce police waiting time in court, to improve pretrial release information and control, to enlist prosecutors and defense attorneys in cooperative efforts to expedite trials, to bring correctional inputs to bear on initial decisions whether to prosecute, to improve relations between criminal justice agencies and the community;

It would perform or sponsor systems analyses and periodic evaluations of agency programs, and encourage innovations and pilot projects which might not otherwise have a chance in a tradition-oriented system;

It would develop minimum standards of performance, new incentives and exchange programs for police, court and correctional personnel.

367

Most of all, the comprehensive grasp of the system by an experienced criminal justice staff would facilitate informed executive, judicial and legislative judgments on priorities. It would help decide, for example, whether the new budget should cover:

- A modern diagnostic and detention center to replace the jail, or 1000 policemen;
- Additional judges and prosecutors, or a prior management survey of the courts;
- A computerized information system or a roving leader program for juveniles;
- New courtrooms or a ~~half-dozen~~ <sup>number of</sup> halfway houses.

For a full-time well-staffed criminal justice office to be successful, it must achieve a balanced perspective within its own ranks on the problems of public safety and justice. Practical experience in law enforcement, in the assertion of individual rights, and in the efficiency and effectiveness of programs must be represented.

The transition from today's chaotic process to a well-run system will not be easy. Most troublesome is the fact that the criminal process does not operate within neat political boundaries. Police departments are often funded

at the city level; county and state police must also be taken into account. Judges are appointed, sometimes elected, and different county jails, and county and state correctional functions are a conglomerate systems are sometimes appointed or elected by an executive lawyer.

25 (38)

26 (39)

at the city level; county and state police and sheriffs must also be taken into account. Judges are sometimes appointed, sometimes elected, and different courts are answerable to local, county and state constituencies. Correctional functions are a conglomerate of local and county jails, and county and state prisons. Probation systems are sometimes administered by the courts, sometimes by an executive agency. Prosecutors may be appointed or elected ~~from~~ <sup>from</sup> all three levels of ~~local~~ <sup>local</sup> government. Defense lawyers usually come from the private sector but are increasingly being augmented by public defender agencies.

~~Reform will be difficult even within a single jurisdiction, where political control of criminal justice agencies is traditionally loose. Many mayors have difficulty with the concept of the police department as a subordinate agency. "Keep the politics out of policing" has become a watchword often used by inbred police departments to resist the recruitment of new leadership from outside police civil service rosters. By deferring more to police chiefs than to the heads of other critical city agencies, mayors avoid making crime their own problem. At the same time, the police themselves have avoided responsibility for crime control, especially in recent years,~~

369

prehensive grasp of the system  
Justice staff would facilitate  
al and legislative judgments on  
decide, for example, whether  
er:  
tic and detention center to  
police;

by attributing the increase in crime to Supreme Court decisions.

If this confusing pattern makes the creation, location, staffing and political viability of a criminal justice office difficult, it also symbolizes why little semblance of a system exists today. Fragmentation is in many ways inherent in the antiquated structure of local government. The challenge of crime poses a high priority inducement to reallocate political power and make government more effective.

370

34  
27

An adequately staffed criminal justice system should be more than most cities can afford. Its need is not in their priority lists. Its need is not in the offices of the state or federal government. To encourage direct financial aid to the Violence Commission, suitable financial aid should be provided by the state and local governments. Caution will have to be exercised in operations which are prosecuted.

ing pattern makes the creation, location,  
ical viability of a criminal justice  
symbolizes why little semblance  
ation is in many ways  
government.

crease. In crime to Supreme Court

The Omnibus  
Crime Control  
and Safe Streets  
Act

40

An adequately staffed criminal justice office will  
be more than most cities can currently afford.

← Its need is not presently seen as high on  
their priority lists. To encourage the development of  
~~such offices~~ <sup>we</sup>, the Violence Commission should recommend  
~~amendments of the CAA legislation~~ <sup>by LEAA</sup> to provide  
direct financial aid to cities or counties submitting  
suitable plans for structuring and staffing ~~them~~ <sup>such offices</sup>.

~~Caution will have to be exercised to avoid funding new  
operations which are systemwide in appearance but  
Some  
prosecutorial in purpose. / commitment should be  
required to assure the recruitment of a balanced staff.~~

The applicant's plan should  
also spell out in detail the contemplated  
relationship between the proposed office and the  
relevant governmental structure of the city, county  
and state.

← Helpful insights in establishing <sup>the first</sup> such offices may  
be derived from the experience of state law enforcement  
planning agencies established under the ~~LEAA Act~~ Omnibus Crime  
Control and Safe Streets Act. Useful  
precedents may also be found in the criminal justice  
coordinating role developed by Mayor Lindsay's office in



29

New York over the past two years and now being explored by several other cities, and in the experience of the Office of Criminal Justice established in the Department of Justice in 1964, by ~~Attorney General Kennedy, and initially directed by Professor James Vorenberg of Harvard.~~

ii.

~~(a)~~ Private Citizen Involvement

Government programs for the control of crime are unlikely to succeed all alone. Informed private citizens, playing a variety of roles, can make a decisive difference in the prevention, detection and prosecution of crime, the fair administration of justice, and the restoration of offenders to the community.

~~Each function is being grossly underplayed today.~~  
New citizen-based mechanisms are needed at the <sup>local</sup> ~~national~~ and <sup>national</sup> ~~local~~ levels to spearhead greater participation by individuals and in groups.

~~(a) National Criminal Justice Consulting Center~~

~~Enlisting all segments of business and citizen life in constructive crime programs is no easy task. The Federal government has not done it. No existing private organization appears to combine enough prestige, knowledge and experience. To serve as a catalyst, a national citizen group must know the crime problem intimately and broadly, have practical insights into its complex solutions and~~

372

Washington, D. C. has pro-  
zation run by ex-offenders  
trouble.  
Perhaps the most successful  
attacking crime control problems  
partnership is New York City's Ven-  
Its unique role in cooperat-  
police, the courts  
over eight  
it



easily dismantled if it proves unsuccessful. If it proves effective, it can be taken over as a permanent operation by the public agency and the private group can move on to a new area.

In the broader field of improving urban society, national citizens' organizations such as the Urban Coalition, the Lawyers Committee for Civil Rights Under Law, the Urban League, the National Council on Crime and Delinquency, the League of Women Voters, and the American Friends Service Committee, have launched programs in a number of major cities to stimulate both public and private efforts to improve housing, schools, and job opportunities for the urban poor, to identify and treat the juvenile offender, and to improve relations between the police and the residents of the inner city.

rearrange order

Identify these elements

~~Several elements critical to the success or failure of such groups and their overall impact upon law and justice in the community have emerged from their experience. They include long-term continuity, involvement in a variety of urban problems, frequent evaluation of progress, full-time staff funded from private sources, and adequate project funding. Critical to success is a willingness to work with -- not in opposition to -- public agencies, and to stay in the background and allow those in public office to receive credit.~~

The experience of such groups has helped to identify

430a

The successes of such groups have demonstrated that public institutions and ~~private attitudes~~ are receptive to change proposed by private organizations. Organizations such as these should receive maximum encouragement and every effort should be made to extend their influence on the broadest scale. ~~We urge the creation and continued support of private citizens' organizations in every major city in the nation.~~

Federal, city, and state governments can do much to promote the success of such groups by providing project funding, for example through such agencies as the LEAA and its National Institute of Law Enforcement and Criminal Justice; the Department of Housing and Urban Development; and the Department of Health, Education and Welfare.

Enlisting the private citizen in constructive programs for urban justice is no easy task, and providing funds alone will not achieve it.

To serve as a catalyst for the formation and support of such groups, particularly in the field of law enforcement, we recommend that the President call upon leading private citizens to create a nationwide private group to be called the National Committee for the Administration of Justice. A similar Presidential initiative led to the creation

including  
state private  
and public  
funding -

2  
0

44

To secure <sup>no</sup> a catalyst <sup>at the national level as needed to</sup> for the help in  
formation and support of ~~such~~ <sup>citizen</sup>  
such local citizen groups. We therefore recommend

that the President ~~take~~  
call upon leading private  
citizens to create  
a national center,  
to be called  
the Citizens Justice  
Center. A similar  
President's initiative led to  
the formation

in 1963 of the Lawyers Committee for Civil  
Rights Under Law, a private group which has <sup>enlisted</sup> placed  
~~organized~~ the Bar in the forefront of the effort to make  
civil rights into a working reality. <sup>The members</sup> ~~The members~~  
and staffs of the four federal commissions which  
have recently studied the problems of crime,  
violence and social disorder -- the President's  
Commission on Crime in the District of Columbia,  
the President's Commission on Law Enforcement and  
Administration of Justice, the National Advisory  
Commission on Civil Disorder, and this Commission,  
constitute a bipartisan reservoir of experienced  
people from which at least part of the nucleus of  
such a body could be formed.

The membership of the  
Center could  
be drawn  
from many  
sources, such  
as the National  
Council on  
Crime and  
Delinquency,  
the American  
Bar Association,  
and

~~Such a national body~~ <sup>of the Center</sup> would supplement rather than dupli-  
cate the promising and important work of <sup>existing</sup> ~~the Urban Coalition~~ <sup>private entities</sup>  
and the Lawyers Committee. Following the successful precedent  
of Vera, the <sup>Center</sup> ~~National Committee~~ on the Administration of  
Justice would concentrate on the various aspects of the criminal  
justice system, from crime prevention <sup>and</sup> ~~to~~ arrest to trial and  
correction, including the specialized treatment of actual  
and potential juvenile offenders. We would expect it to  
receive financial support from the same foundation, business,  
and labor sources, as well as from the legal profession. ~~The~~

*The Center*  
National ~~Committee~~ would help to form and support local private counterparts of Vera in our major urban areas, to work alongside local governmental agencies on specific operating and administrative problems. It would act as a clearing house for transmitting news of successful innovative procedures developed in one city to the attention of agencies faced with similar problems in another. It ~~would~~ provide continuing public education about the complexity of crime prevention and the treatment of offenders. Not least important, it ~~would provide some continuity between~~ <sup>might lessen the need for</sup> ad hoc Presidential <sup>such as this one</sup> commissions <sup>greater</sup> and make ~~some~~ use of their findings and recommendations.

*Next* The mobilization of private and public resources toward an ordered society -- one in which the rights of all citizens to <sup>life,</sup> ~~physical safety,~~ to liberty, to the pursuit of happiness are safeguarded by our governing institutions -- is an appropriate priority for the decade we are about to enter. Indeed, ~~by the~~ bicentennial of this nation's independence we should be able to declare that all our institutions of government have earned, not simply the consent of the governed, but the abiding respect and unwavering allegiance of all citizens.

It would offer workable answers to the persistent citizen question - what can I do to help?

*Ident*  
NEXT PAGE  
*for p. 45*

It would furnish proven budgets, job descriptions, court rules, draft legislation, and operating know-how. It would cross-fertilize new approaches, and

Conclusion

*Conclusion* (150)  
The <sup>funding and the</sup> mechanisms <sup>we have</sup> suggested here could go a long way towards reversing the picture of a criminal justice non-system falling apart at the seams. ~~Money in vast sums is the other part of the life blood of a functioning~~ system. The injection of federal funds into state crime control programs in 1968 was an important step in the right direction. Much more money must be channeled, and must reach down into the cities, if action to reduce crime is to make a difference. Much more money must be injected into research, development and pilot projects, if the outdated techniques of yesterday are to be converted into an effective criminal process tomorrow.

The Law Enforcement Assistance Administration is doing a commendable job under adverse circumstances. <sup>But we urge that</sup> Congress ~~needs~~ <sup>to</sup> ~~has~~ <sup>more</sup> ~~appropriated~~ <sup>to LEAA</sup> ~~less~~ <sup>and especially</sup> money than it needs for grants and staffing, ~~has given only a drop in the bucket~~ for its vital National Institute of Law Enforcement and Criminal Justice; <sup>that Congress remove some of the</sup> and has beset ~~the entire program with~~ restrictions which make progress difficult.

Until these impediments are remedied, and until staffed organizations -- public and private -- are developed to assure wise investment and monitoring of new funds, crime control will continue to be a ~~high priority~~ campaign fought with bold words but no system.

382

Chapter 13. The Police and Their Problems.

"In society's day-to-day efforts to protect its citizens from the suffering, fear and property loss produced by crime and the threat of crime, the policeman occupies the front line. It is he who directly confronts criminal situations, and it is to him that the freedom of Americans to walk their streets and be secure in their homes ... depends to a great extent on their policemen." 1/

There is little question that during the past decade of turbulent social change, our nation's policemen have not been able to escape from the front lines. More than that, they are called upon to fight against one side one day and then for it the next day. The same policeman who on a Wednesday is mobilized to help control a blazing ghetto riot and arrest throngs of looters may by week's end, find himself assigned to keep traffic clear from the parade route being followed by hundreds of blacks conducting an anti-poverty march.

In fact, the very same policeman may on a Saturday rescue a hippie college student victimized by a gang of motorcyclists, and by the next Monday be summoned to the campus to assist university officials in re-capturing a building held by stone-throwing, epithet-screaming student dissidents. The same policeman in the morning may be

---

For footnotes see following page.