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## JACKSON LECTURE (APPROACHING THE BENCH)

22 OCTOBER 1982

I'M VERY PLEASED AND HONORED TO BE HERE THIS EVENING, PARTICULARLY SINCE WE ARE MEETING IN THE ILLUSTRIOUS SHADOW OF A GREAT JURIST NAMED ROBERT H. JACKSON. OVER THIRTY YEARS AGO, JUSTICE JACKSON WROTE SOMETHING THAT IN A SENSE ANTICIPATED THE WHOLE POLITICAL AND SOCIAL REVOLUTION OF THE LAST FEW YEARS. "IT IS NOT THE FUNCTION OF OUR GOVERNMENT TO KEEP THE CITIZEN FROM FALLING INTO ERROR," HE SAID BACK IN 1950. "IT IS THE FUNCTION OF THE CITIZEN TO KEEP THE GOVERNMENT FROM FALLING INTO ERROR."

LIKE JUSTICE JACKSON, PRESIDENT REAGAN CHOOSES TO PUT HIS FAITH IN THE AVERAGE CITIZEN AS THE ULTIMATE ARBITER OF JUSTICE. HE BELIEVES THAT AMERICA, LIKE A TREE, IS STRONGEST AT ITS ROOTS. AND THAT IS WHY FOR 21 MONTHS NOW WE HAVE BEEN TRYING TO RETURN BOTH DOLLARS AND AUTHORITY TO THE GRASSROOTS. IT ISN'T EASY; CHANGE COMES SLOWLY TO WASHINGTON. THE STATUS QUO HAS MANY POWERFUL FRIENDS. AND CONTROVERSY IS BOUND TO FOLLOW IN OUR FOOTSTEPS. OF COURSE, THAT'S A SUBJECT IN WHICH LAWYERS ARE WELL-VERSED. THERE'S A STORY TOLD OF A REVIVAL MEETING AT WHICH AN EARNEST YOUNG MAN WEARING SPECTACLES AND A THREE-PIECE SUIT GOT UP TO DELIVER A HEARTFELT PRAYER.

"O LORD," HE SAID, "STIR UP AS MUCH STRIFE AMONGST  
THEY PEOPLE AS POSSIBLE, LEST THY SERVANT PERISH."

NEEDLESS TO SAY, IT WAS A PRAYER STRAIGHT FROM A  
LAWYER'S HEART. BUT THE CONTROVERSIES I INTEND TO ADDRESS  
TODAY ARE NOT THOSE STIRRED BY LAWYERS. INSTEAD, THEY GO  
TO THE HEART OF A CRIMINAL JUSTICE SYSTEM THAT PROVIDES  
PLENTY OF LEGAL LOOPHOLES FOR THE LAWBREAKER, AND ALL TOO  
LITTLE LEGAL SATISFACTION FOR THE VICTIM. THEY RAISE AS  
WELL THE PROPER ROLE OF THE FEDERAL GOVERNMENT IN FIGHTING  
CRIME WHILE PRESERVING FUNDAMENTAL LIBERTIES AND THE  
HISTORIC CONCERN OF AMERICANS WITH BASIC FAIRNESS. IT'S  
A FAMILIAR REFRAIN THAT SAYS WASHINGTON CAN DO LITTLE OR  
NOTHING ABOUT CRIME OUTSIDE ITS NARROW JURISDICTION. IT'S  
AN EQUALLY TIRESOME TUNE THAT CLAIMS MIRACLES WILL HAPPEN  
IF ONLY WASHINGTON SPENDS ENOUGH MONEY OR CURES ENOUGH  
SOCIAL ILLS.

TO ME, BOTH HAVE A TINNY RESONANCE, BECAUSE NEITHER  
DEALS WITH THE REAL WORLD. FOR AS LONG AS I CAN REMEMBER,  
AND I'VE SPENT A GOOD QUARTER CENTURY IN THE LAW  
ENFORCEMENT FIELD, SOME PEOPLE HAVE RESORTED TO VIGILANTE  
RHETORIC TO FIGHT CRIME. OF COURSE, POLITICIANS DO POINT  
FINGERS AND ISSUE STERN PRESS RELEASES DO NOT INSURE  
EITHER THE PUBLIC'S SAFETY OR A STIFF SENTENCE FOR THOSE  
WHO ENDANGER THAT SAFETY.

THEIR MOTIVES MAY BE PURE, BUT THEIR GRASP OF THE CRIME EPIDEMIC AND ITS DEBILITATING EFFECTS ON PRECISELY THOSE WHO ARE THEMSELVES DISADVANTAGED IS SLIPPERY AT BEST. VICTIMS OF THEIR OWN SENTIMENT, THEY OVERLOOK THE POOR AND THE ELDERLY, WHO ARE PREYED UPON WITH SPECIAL VIRULENCE BY THOSE WHO ARE QUICK TO POINT AN ACCUSING FINGER AT SOCIETY AS SOON AS THEY ARE CAUGHT. IN THE MEANTIME, THEY FRIGHTEN ENTIRE NEIGHBORHOODS INTO NERVOUS GLANCES AND SUSPICIOUS ATTITUDES.

GOVERNMENT ITSELF IS FAR FROM BLAMELESS. IT'S MADE PLENTY OF DECLARATIONS OF WAR ON CRIME THESE LAST TWENTY YEARS -- AND ENGAGED IN FAR TOO LITTLE ACTUAL COMBAT. IN THE 70'S, THE FEDERAL GOVERNMENT DECIDED IT COULD ABOLISH LAWLESSNESS AS IT ONCE HOPED TO ABOLISH POVERTY, BY SPENDING IT OUT OF EXISTENCE. WE THREW EIGHT BILLION DOLLARS AT THE PROBLEM, AN INVESTMENT IN FRUSTRATION. MONEY ALONE WILL NEVER BUY PEACE, OR PEACE OF MIND. THE STATISTICS OF FAILURE ARE AS CONVINCING AS THEY ARE ALARMING: INSTEAD OF FALLING, A RATE OF VIOLENT CRIME ACTUALLY ROSE AN AVERAGE OF 5% A YEAR THROUGHOUT THE LAST DECADE. BETWEEN 1977 AND 1981 ALONE, MURDERS ROSE BY 18% -- FORCIBLE RAPES BY 29% -- ROBBERIES BY 42% -- AGGRAVATED ASSAULTS BY 23% -- AND LARCENY-THEFTS BY 21%.

WORSE YET, THE CENSUS BUREAU'S OWN STUDY OF VICTIMIZATION SUGGESTS THAT FEWER THAN HALF OF ALL VIOLENT CRIMES IN THIS COUNTRY ARE REPORTED. WHAT WE DO KNOW IS TERRIFYING ENOUGH. WE KNOW, FOR INSTANCE, THAT OVER 20,000 AMERICANS LOSE THEIR LIVES TO CRIMINALS EACH YEAR. WE KNOW THAT OVER 25 MILLION AMERICAN HOMES WERE TOUCHED IN SOME WAY BY CRIME LAST YEAR, RESULTING IN A DIRECT FINANCIAL LOSS OF NEARLY \$9 BILLION. WE ALSO KNOW THAT THE PUBLIC IS ALARMED BY ALL OF THIS, AND UNDERSTANDABLY EXPECTS US TO DO SOMETHING ABOUT IT. ONE RECENT GALLUP POLL, FOR EXAMPLE, SHOWED NEARLY HALF OF THOSE SURVEYED WERE PERSONALLY WORRIED ABOUT THE PROSPECT OF BEING VICTIMIZED. THE FIGURE CLIMBS TO 65% FOR THOSE 65 AND OVER. AND OVERALL, NEARLY NINE IN TEN AMERICANS SAY THEY ARE MORE CONCERNED ABOUT CRIME NOW THAN THEY WERE FIVE YEARS AGO.

BAD AS THIS IS, THERE'S AN EVEN MORE SINISTER TIME BOMB TICKING AWAY IN THE NATIONAL PSYCHE. THAT IS THE PERVASIVE DISTRUST FELT BY MILLIONS OF AVERAGE AMERICANS FOR THE CRIMINAL JUSTICE SYSTEM THAT IS SUPPOSED TO ENFORCE THEIR RIGHTS AS WELL AS THOSE OF THE CRIMINAL. IN 1967, ONE POLLSTER FOUND THAT 49% OF THOSE HE QUESTIONED SAID THE COURTS WERE "TOO LENIENT" ON THE LAWBREAKER. BY THIS YEAR, THAT NUMBER HAD RISEN TO 81%. SIMILAR INCREASES HAVE COME IN THE NUMBER OF THOSE WHO JUDGE OUR CURRENT LAW ENFORCEMENT SYSTEM INCAPABLE OF DETERRING CRIME, AND THE COURTS THEMSELVES PREOCCUPIED WITH THE SUPPOSED RIGHTS OF THE ACCUSED.

WHEN JUSTICE JACKSON SPOKE OF THE NEED FOR THE CITIZEN TO KEEP GOVERNMENT FROM FALLING INTO ERROR, HE WAS NOT INDULGING IN JEFFERSONIAN WISHFUL THINKING. AMERICANS ARE LOSING CONFIDENCE IN THE CRIMINAL JUSTICE SYSTEM BECAUSE THEY SEE AND OFTEN FEEL DIRECT EVIDENCE OF ITS FAILURE. IN NEW YORK CITY, FOR INSTANCE, FEWER THAN 1% OF REPORTED FELONIES END IN A PRISON TERM FOR THE OFFENDER. TRANSIT POLICE IN THAT SAME CITY ESTIMATE THAT PERHAPS HALF OF ALL THE CRIME COMMITTED IN NEW YORK'S SUBWAYS LAST YEAR WAS THE WORK OF 500 HABITUAL OFFENDERS. YET THE COURTS AND THE CONGRESS SEEM PARALYZED TO DO ANYTHING ABOUT REMOVING THE DANGER. THE PEOPLE UNDERSTAND THIS, AND RIGHTFULLY DEMAND SOMETHING BETTER. SO THE QUESTION ARISES: HOW DO WE BEST RESPOND TO THAT DEMAND?

ONE WAY WOULD BE TO MAKE A LOT OF NOISE -- AND A LOT OF RASH PROMISES. SUCH VERBAL PYROTECHNICS GENERATE BANNER HEADLINES, BUT ULTIMATELY THEY REAP A BITTER HARVEST OF DISAPPOINTMENT. THAT'S BECAUSE, IN THE PAST, WE'VE TENDED TO FIGHT CRIME WITH RUBBER BULLETS, GOOD INTENTIONS, AND A MISGUIDED CONCEPT THAT SOCIETY ITSELF SHOULD SHARE THE GUILT OVER CONDITIONS THAT BREED CRIMINAL CONDUCT. THEN THERE'S THE FALSE ACTIVISM THAT MEASURES SUCCESS WITH A DOLLAR SIGN AND IGNORES THE VICTIM ALTOGETHER. THIS, TOO, IS SIMPLISTIC AND IN THE LONG RUN DOOMED TO FAILURE. WASHINGTON HAS TOO OFTEN SUBSTITUTED TAXPAYER DOLLARS FOR IMAGINATION.

WE HAVE WAGED SCATTERSHOT CAMPAIGNS AT BEST, FAILING TO IDENTIFY OUR PRIORITIES OR COORDINATE OUR ASSAULT AT THE LOCAL AND STATE LEVELS. IMPRISONED BY THE OLD IDEA THAT UNCLE SAM KNEW BEST, IT'S NO SURPRISE THAT FAILURE HAS RESULTED ON THE STREETS AND IN THE COURTROOMS -- OR THAT WE HAVE EXCUSED OUR FAILURE BY FALLING BACK ON THE HOARY OLD CLICHE THAT, AFTER ALL, WASHINGTON'S JURISDICTION IS TOO LIMITED TO MAKE A DIFFERENCE.

THE REAGAN ADMINISTRATION HAS A DIFFERENT APPROACH TO CRIME. FOR ONE THING, WE BELIEVE THAT THE CRIMINAL JUSTICE SYSTEM ITSELF NEEDS REFORM. NEW LAWS NEED TO BE WRITTEN AND OLD ONES NEED TO BE REWRITTEN TO COPE WITH THE HARSH REALITY OF A PRIVILEGED CRIMINAL UNDERCLASS. SECONDLY, THE FEDERAL GOVERNMENT HAS TO STOP WRINGING ITS HANDS OR BEMOANING ITS LIMITATIONS, AND FIND WAYS OF AIDING LOCAL AUTHORITIES IN THEIR CRIMEFIGHTING WORK. AND FINALLY, WASHINGTON HAS TO BE WILLING TO COMMIT BOTH THE FUNDS AND THE MANPOWER IT TAKES TO COMBAT TRULY NATIONAL OUTRAGES -- LIKE LAST YEAR'S TRAGIC KILLINGS IN ATLANTA, THE \$79 BILLION A YEAR ONSLAUGHT OF ILLEGAL DRUGS INTO THIS COUNTRY, OR THE ENTRENCHED FORCES OF ORGANIZED CRIME. IN AREAS SUCH AS THESE, THE FEDERAL GOVERNMENT CAN MAKE A DIFFERENCE. IT CAN SET STANDARDS AS WELL AS EXAMPLES FOR THE STATES TO FOLLOW. IT CAN INTELLIGENTLY MARSHAL ITS OWN RESOURCES TO SUPPLEMENT THESE AT THE LOCAL LEVEL. AND IT CAN MORALLY LEAD THE WAY BY ATTACHING THE DANGEROUS COMPLACENCY THAT HAS ENCOURAGED CRIMINALS IN THE BELIEF THAT LAWS ARE MADE TO BE BROKEN.

LET ME TAKE THE FIRST LEG OF THIS THREE-LEGGED STOOL. TRYING TO FIGHT CRIME WITHOUT FIRST REFORMING BAIL LAW, THE INSANITY DEFENSE, SENTENCING PROCEDURES, THE EXCLUSIONARY RULE AND HABEAS CORPUS ABUSES IS LIKE ORDERING AN AVALANCHE UPHILL -- AN EXERCISE IN FUTILITY.

THE CORE OF THE PRESIDENT'S LEGISLATIVE CRIME PROGRAM INCLUDES PROPOSALS ADDRESSING ALL THESE ISSUES. EARLIER THIS YEAR, IT BECAME CLEAR THAT EACH OF THESE INITIATIVES STOOD ONLY A SLIM CHANCE OF BEING ENACTED INTO LAW BY THE 97TH CONGRESS. SO RATHER THAN ACCEPT DEFEAT, WE COMBINED THEM INTO TWO PACKAGES. THE FIRST PACKAGE, THE VIOLENT CRIME AND DRUG ENFORCEMENT IMPROVEMENTS ACT, WAS DESIGNED TO ACHIEVE BROAD SUPPORT IN THE SENATE, AND THEN HOPE FOR THE BEST IN THE HOUSE. AND, IN FACT, IT WAS APPROVED BY THE SENATE THREE WEEKS AGO ON A VOTE OF 95-1. IT WAS THEN SENT TO THE HOUSE ATTACHED TO A HOUSE-PASSED BILL, SO AS TO BYPASS HOSTILE HOUSE COMMITTEES. ITS PROSPECTS FOR ENACTMENT IN THE LAME-DUCK SESSION ARE UNCERTAIN.

WHAT DOES IT CONTAIN? FIRST, IT WOULD REFORM THE BAIL LAWS TO PERMIT A FEDERAL JUDGE TO CONSIDER HOW DANGEROUS A DEFENDANT IS WHEN DECIDING WHETHER TO RELEASE HIM ON BAIL, AND TO PERMIT THE JUDGE TO REFUSE TO RELEASE A DEFENDANT WHO HAS SHOWN HIMSELF TO BE A DANGER TO THE COMMUNITY.

IT ALSO WOULD AUTHORIZE THE JUDGE TO REVOKE THE BAIL OF A DEFENDANT WHO IS REARRESTED WHILE OUT ON BAIL, AND PERMIT THAT SAME JUDGE TO INQUIRE INTO THE SOURCE OF BAIL MONEY.

I FIND IT DIFFICULT TO UNDERSTAND HOW ANY MEMBER OF CONGRESS REASONABLY COULD OPPOSE THESE REFORMS. PROTECTING THE PUBLIC FROM AN APPREHENDED OFFENDER WHO HAS INDICATED THAT HE IS LIKELY TO REPEAT VIOLENT CRIMES IS NOT JUST COMMON SENSE, IT IS THE FIRST DUTY OF GOVERNMENT. INQUIRING INTO THE SOURCE OF BAIL MONEY IS NECESSARY BECAUSE MOST LARGE-SCALE DRUG TRAFFICKERS USE DRUG PROFITS TO POST BAIL, THEN FORFEIT THE BAIL, AND WRITE IT OFF AS A COST OF DOING BUSINESS, EVEN IF BAIL IS SET AT A MILLION DOLLARS. YET THESE COMMON-SENSE REFORMS HAVE BEEN BOTTLED UP IN A HOUSE COMMITTEE FOR NEARLY TWO YEARS.

THE PACKAGE THAT PASSED THE SENATE ALSO WOULD ACCOMPLISH A COMPLETE OVERHAUL OF OUR SENTENCING SYSTEM. IT WOULD ESTABLISH A NATIONALLY APPLICABLE SET OF SENTENCING GUIDELINES FOR JUDGES, REQUIRE EACH SENTENCE OUTSIDE THE PRESCRIBED RANGE TO BE JUSTIFIED IN WRITING, AND PERMIT THE GOVERNMENT TO APPEAL THE OVERLY LENIENT SENTENCES THAT TOO MANY OF OUR JUDGES ARE PRONE TO ISSUE. IN ADDITION, IT WOULD REQUIRE A 2-YEAR MINIMUM SENTENCE FOR USING A FIREARM IN THE COMMISSION OF A FELONY. IT WOULD ABOLISH PAROLE IN FAVOR OF DETERMINATE SENTENCES, AND PROHIBIT PROBATION UNLESS THE OFFENDER PERFORMS SOME FORM OF PENANCE, SUCH AS MAKING RESTITUTION TO THE VICTIM, PAYING A SIGNIFICANT FINE, OR PERFORMING COMMUNITY SERVICE.

THE THIRD PRINCIPAL ELEMENT OF THE SENATE BILL IS A SET OF AMENDMENTS TO IMPROVE EXISTING LAWS ON CRIMINAL FORFEITURES. CURRENT FORFEITURE PROVISIONS ARE NOT IMPOSING A SIGNIFICANT COST ON ORGANIZED CRIME AND DRUG TRAFFICKERS. THESE AMENDMENTS WOULD EXTEND THE APPLICABILITY OF THE FORFEITURE PROVISIONS, IMPROVE THE EFFICIENCY OF THEIR ADMINISTRATION, AND ESTABLISH A GENEROUS REWARD PROGRAM TO ENCOURAGE INFORMANTS.

IN ADDITION TO BAIL REFORM, SENTENCING REFORM, AND CRIMINAL FORFEITURE AMENDMENTS, THE BILL CONTAINS SEVERAL OTHER PROPOSALS, INCLUDING RATIONALIZING AND INCREASING PENALTIES FOR DRUG TRAFFICKING, AUTHORIZING WIRETAPS WITHOUT COURT ORDER IN LIFE-THREATENING EMERGENCIES, AND MAKING MURDER FOR HIRE AND ROBBERY FROM A PHARMACY FEDERAL FELONIES. CLEARLY, IF THIS PACKAGE IS PASSED BY THE HOUSE, IT WOULD ACCOMPLISH NUMEROUS, FAR-REACHING IMPROVEMENTS TO THE FEDERAL CRIMINAL LAWS.

OUR SECOND LEGISLATIVE PACKAGE, THE CRIMINAL JUSTICE REFORM ACT, CONTAINS THE ADMINISTRATION PROPOSALS FOR REFORMING HABEAS CORPUS PROCEDURES, LIMITING THE INSANITY DEFENSE, AND MODIFYING THE EXCLUSIONARY RULE. SEPARATE PROPOSALS ON THESE ISSUES LANGUISHED ON CAPITOL HILL FOR MONTHS. SEVERAL WEEKS AGO, THEY WERE RESUBMITTED AS A PACKAGE, ONE THAT WE HOPE THE CONGRESS WILL CONSIDER DURING THE LAME DUCK SESSION.

THE NEED FOR REFORM IS PAINFULLY OBVIOUS. WE CLAIM TO BELIEVE IN PRISONER REHABILITATION. YET THAT PROCESS CANNOT BEGIN IF PRISONERS ENDLESSLY RELITIGATE THE PROPRIETY OF THEIR CONVICTIONS BY MEANS OF FEDERAL HABEAS CORPUS PETITIONS. THE ADMINISTRATION'S LEGISLATIVE PACKAGE WOULD TREAT TRIAL COURT PROCEEDINGS WITH MORE FINALITY. WE WOULD ALSO IMPOSE A REASONABLE TIME LIMIT FOR BRINGING THOSE FEW CASES THAT WARRANT COLLATERAL FEDERAL REVIEW.

NEXT, THERE IS THE INSANITY DEFENSE. THERE IS A GENERAL CONSENSUS, IN LIGHT OF THE HINCKLEY VERDICT, THAT IT NEEDS TO BE LIMITED IN SOME WAY, YET LAWMAKERS DISAGREE ABOUT HOW BEST TO DO IT. THE ADMINISTRATION HAS PROPOSED THAT A MENTAL DISEASE OR DEFECT SHOULD NOT CONSTITUTE A DEFENSE UNLESS IT PREVENTED A DEFENDANT FROM HAVING THE STATE OF MIND REQUIRED TO BE PROVED AS AN ELEMENT OF THE OFFENSE. WE FEEL THAT ANY OTHER MENTAL DISEASE OR DEFECT SHOULD ONLY BE A FACTOR TO BE CONSIDERED IN SENTENCING THE DEFENDANT, FOR EXAMPLE, TO PRISON OR TO A MENTAL HOSPITAL.

HOW OFTEN THE INSANITY DEFENSE IS SUCCESSFULLY USED IS LESS IMPORTANT THAN THE SYMBOL IT PROVIDES TO BOTH THOSE WHO FOLLOW AND THOSE WHO BREAK OUR LAWS. THE PUBLIC NEEDS TO KNOW THAT WHEN SOMEONE COMMITS A CRIME, NO AMOUNT OF LEGAL SOPHISTRY WILL HAVE HIM RELEASED SO HE WALKS OUT OF COURT. THEY NEED TO KNOW THAT A PSYCHIATRIST'S COUCH IS NO LONGER AN EASY ALTERNATIVE TO A JAIL CELL BUNK.

PEOPLE HAVE SAID TO ME, WHY IS THE FEDERAL GOVERNMENT GETTING INVOLVED IN THE INSANITY DEFENSE. ISN'T THAT USUALLY A MATTER FOR THE STATE COURTS? WELL, WE HAD A COUPLE OF INTERESTING CASES RECENTLY TO TEST THAT THEORY. WE HAD ONE IN WHICH A DEFENDANT ROBBED A FEDERALLY-INSURED BANK WITH A HANDGUN, OBTAINED OVER \$15,000 AND FLED. HE WAS APPREHENDED, TAKEN INTO FEDERAL COURT FOR BANK ROBBERY, AND CLAIMED INSANITY UNDER THE MODEL PENAL CODE STANDARD WHICH HAD BEEN RECENTLY ADOPTED BY THE NINTH CIRCUIT COURT OF APPEALS. IN THIS CASE, THE DEFENSE PRESENTED TESTIMONY FROM A PSYCHIATRIST TO SUGGEST THAT HE SUFFERED FROM A "SEVERE TRANSIENT SITUATIONAL DISTURBANCE" ATTRIBUTABLE TO HIS HAVING BEEN RAISED IN A DEPRIVED MINORITY NEIGHBORHOOD -- A HIGHLY CRIMINOGENIC ENVIRONMENT. AS A RESULT, HE WAS ACQUITTED, AND BECAUSE THERE WAS NO PROVISION IN THE FEDERAL LAW FOR EVEN AN INCARCERATION FOR TESTING, HE WAS RELEASED AND WALKED OUT OF THE COURTROOM. YOU MAY THINK THAT IS AN EXTREME CASE, BUT WE HAVE ONE THAT BEATS EVEN IT.

IN THIS CASE THE ACCUSED WAS CHARGED FOR EMBEZZLEMENT FROM A FEDERALLY-INSURED BANK WHERE HE WAS A LOAN OFFICER. YOU MAY THINK, HERE IS A LOAN OFFICER WORKING EVERYDAY.. HOW DOES HE GET OUT OF THAT ONE? HE DID IT BY GETTING A PSYCHIATRIST TO TESTIFY THAT THE CONFLICT BETWEEN HIS DRIVE FOR AFFLUENCE AND HIS LIMITED RESOURCES CREATED TENSION WHICH CONSTITUTED A MENTAL DEFECT RESULTING IN THE LOSS OF HIS ABILITY TO KEEP HIS HAND OUT OF THE TILL.

THESE ARE THE KINDS OF THINGS THAT WE HAVE GOT TO PUT AN END TO, AND THE ONLY WAY WE ARE GOING TO DO IT IS BY COMMON SENSE AND NATIONAL LEGISLATION AT THE FEDERAL LEVEL PROVIDING MODELS. ACTUALLY, THE FEDERAL GOVERNMENT CAN LEARN FROM THE MODELS ALREADY STARTED IN SEVERAL OF OUR STATES WHERE WE ALREADY HAVE CHANGES IN THE INSANITY LAW AND IN SOME 20 STATES CURRENTLY REFORMING THOSE LAWS. WE NEED TO DO THE SAME THING AT THE FEDERAL LEVEL, SO THAT NO PLACE IN THE COUNTRY CAN A PERSON MAKE A DEFENSE OF INSANITY THAT IS SPURIOUS DEFENSE OR WHERE HE HAS BEEN ACTING IN A WAY THAT SHOWS COGNITION OF WHAT IS GOING ON AND THEN USE THE DEFENSE AS A LOOPHOLE TO AVOID CRIMINAL RESPONSIBILITY.

FINALLY, THE ADMINISTRATION HAS PROPOSED THAT THE EXCLUSIONARY RULE BE MODIFIED SO THAT IF A LAW ENFORCEMENT OFFICER HAD A REASONABLE, GOOD FAITH BELIEF THAT HE WAS CONDUCTING A SEARCH OR SEIZURE IN ACCORDANCE WITH THE TECHNICAL AND EVER-CHANGING REQUIREMENTS OF THE FOURTH AMENDMENT, THEN EVIDENCE OBTAINED IN THE SEARCH OR SEIZURE COULD BE ADMITTED AT TRIAL.

THE COURTS AND CONGRESS MUST REALIZE THAT THE CURRENT, STRICT APPLICATION OF THE EXCLUSIONARY RULE RESULTS IN DISMISSALS, LENIENT PLEA BARGAINS, ACQUITTALS AT TRIAL, AND REVERSALS ON APPEAL. IT HURTS OFFICER AND PROSECUTOR MORALE.

IT CONTRIBUTES TO THE PUBLIC'S PERCEPTION OF AN INEFFICIENT AND INEFFECTIVE CRIMINAL JUSTICE SYSTEM.

EVEN THESE COSTS WOULD BE ACCEPTABLE IF THE EXCLUSIONARY RULE WAS MANDATED BY THE CONSTITUTION OR WAS NECESSARY TO ACHIEVE SOME OTHER, PARAMOUNT BENEFIT TO SOCIETY. IN FACT, NEITHER IS THE CASE. THE ONLY JUSTIFICATION THAT COURTS NOW CITE FOR THE RULE IS DETERRENCE -- THE ASSUMPTION THAT THE PROSPECT OF HAVING A CHARGE THROWN OUT WILL DETER POLICE FROM VIOLATING CONSTITUTIONAL RIGHTS. WHETHER OR NOT THAT IS TRUE, IT IS CLEAR THAT AN OFFICER WHO HAS A REASONABLE, GOOD FAITH BELIEF THAT HE IS ACTING PROPERLY WILL ACT NO DIFFERENTLY BECAUSE OF THE EXCLUSIONARY RULE. AS A PRACTICAL MATTER, ADOPTION OF OUR PROPOSED GOOD FAITH TEST WILL NOT AFFECT THE APPLICATION OF THE EXCLUSIONARY IN CASES OF SERIOUS VIOLATIONS. IT WILL, HOWEVER, ELIMINATE THE PRESENT FIXATION ON MINUTE TECHNICALITIES -- FINE POINTS OF POLICE PROCEDURE THAT HAVE NO RELEVANCE TO THE MORE SIGNIFICANT ISSUES OF THE DEFENDANT'S GUILT OR INNOCENCE AND THE PROTECTION OF BASIC CONSTITUTIONAL RIGHTS.

THE NEXT AREA WHERE WASHINGTON CAN MAKE A DIFFERENCE COMES IN THE REALM OF PRISON FACILITIES AND TRAINING FOR LOCAL OFFICERS. WE ALL KNOW OF JUDGES WHO REFUSE TO SENTENCE PEOPLE TO PRISON, NOT BECAUSE THEY DON'T DESERVE IT, BUT BECAUSE THERE IS NO PLACE TO PUT THEM.

OR WE HAVE JUDGES WHO SAY YOU CAN'T PUT ANY MORE PEOPLE IN THE PRISON UNLESS YOU RELEASE SOME WHO ARE ALREADY THERE, AND SOME OF THOSE GOING OUT THE OTHER END ARE OFTEN NOT READY FOR RELEASE. I AM GLAD TO SEE THAT MANY STATES ARE NOW DEVELOPING NEW PRISON FACILITIES ON THEIR OWN. WE FEEL THAT THE FEDERAL GOVERNMENT CAN COOPERATE AND SO WE HAVE INITIATED A PROGRAM TO TURN OVER EXCESS FEDERAL FACILITIES TO STATE AND LOCAL GOVERNMENTS AT NO COST TO THE LOCAL JURISDICTIONS.

ALREADY, THE STATE OF NEW YORK IS LEASING FOR ONE DOLLAR A MONTH A FORMER AIR FORCE STATION. GSA AND DADE COUNTY, FLORIDA ARE APPRAISING 5 ACRES OF PROPERTY AT THE OPA LOCKA COAST GUARD STATION. AND THE DEPARTMENT OF EDUCATION IS ABOUT TO TRANSFER A FORMER JOB CORPS CENTER IN BRANCHVILLE, INDIANA TO THE STATE FOR CONVERSION INTO A 350-BED MINIMUM CUSTODY CAMP.

ANOTHER AREA WHERE WASHINGTON CAN HELP IS IN THE MATTER OF TRAINING. WE RECENTLY HAD OUR BEST DIPLOMATIC EXPERTS ARRANGE A TREATY BETWEEN THE JUSTICE DEPARTMENT AND THE TREASURY DEPARTMENT, AND WE NOW HAVE A JOINT PROGRAM IN WHICH THOSE TWO DEPARTMENTS COMBINE TO TRAIN LOCAL LAW ENFORCEMENT OFFICIALS IN AREAS SUCH AS ARSON, EXPLOSIVES AND OTHER DEVICES WHERE THEY HAVE PARTICULAR SKILLS.

WE ARE EXPLORING THE POSSIBILITIES OF OPENING UP A NATIONAL TRAINING CENTER TO COMPLEMENT THE EXCELLENT NATIONAL ACADEMY OF THE FEDERAL BUREAU OF INVESTIGATION AS WELL AS THE NEW FORENSIC SCIENCES TRAINING CENTER AT THE FBI ACADEMY. THIS IS AN AREA WHERE WE CAN DO THINGS ON A NATIONAL BASIS THAT LOCAL JURISDICTIONS OR THE STATES ARE NOT ABLE TO DO ON A SIMILAR SCALE.

IN THESE AND OTHER WAYS, THE FEDERAL GOVERNMENT CAN SHARPEN THE TOOLS AT OUR DISPOSAL, NOT ONLY TO CONVICT THE CRIMINAL, BUT TO HOUSE THOSE CONVICTED.

FINALLY, THERE ARE CRIMES FOR WHICH ONLY THE FEDERAL GOVERNMENT HAS THE RESOURCES TO WAGE AN EFFECTIVE COUNTERATTACK. MANY OF YOU, NO DOUBT, ARE FAMILIAR WITH THE WORK OF THE SOUTH FLORIDA SPECIAL TASK FORCE, WHICH HAS BEEFED UP EXISTING ENFORCEMENT PERSONNEL IN THE AREA WITH AN EXTRA 145 CUSTOMS AGENTS, 43 MORE FBI AGENTS, 20 ADDITIONAL DEA AGENTS, AND 11 FRESH DEPUTY U.S. MARSHALS. CHIEF JUSTICE BURGER HAS ASSIGNED A TOP ASSISTANT TO HELP LOCATE MORE FEDERAL JUDGES FOR FLORIDA. THE NAVY AND COAST GUARD ARE OPERATING IN TANDEM TO INTERDICT SMUGGLERS OFF THE FLORIDA COAST, AND AIRCRAFT COMING INTO THE STATE. THE FAA IS MONITORING AIR MOVEMENTS. THE RESULT OF ALL THIS IS A VIRTUAL STANDSTILL OF MARIJUANA AND COCAINE SMUGGLING IN AND AROUND MIAMI -- AND A LOT OF GROUNDED AIRPLANES IN THE BAHAMAS.

THE TASK FORCE, ESTABLISHED IN VICE PRESIDENT BUSH'S OFFICE AND ENJOYING THE FULL COOPERATION OF BOTH FEDERAL AND LOCAL AUTHORITIES, SUGGESTS HOW MUCH CAN BE ACHIEVED, EVEN IN THE FACE OF ENTRENCHED CRIMINAL ACTIVITY, WHEN ALL THE WEAPONS AT OUR COMMAND ARE MOBILIZED.

WHICH LEADS ME DIRECTLY INTO THE THIRD MAJOR CRIME-FIGHTING INITIATIVE UNDERTAKEN BY THE FEDERAL GOVERNMENT. WE'VE LEARNED A LOT FROM THE SOUTH FLORIDA TASK FORCE -- NOT LEAST OF ALL, THAT THE PESTILENCE OF ORGANIZED CRIME AND ILLICIT DRUGS IS HARDLY LIMITED TO THAT PART OF THE COUNTRY. IN FACT, SALES OF ILLEGAL DRUGS LAST YEAR EXCEEDED THOSE OF EVERY MAJOR U.S. CORPORATION BUT EXXON. AND NO FIGURES ON A LEDGER CAN ADEQUATELY CAPTURE THE COSTS IN HUMAN SUFFERING -- THE LIVES LOST, THE NEIGHBORHOODS TERRORIZED, THE JAIL CELLS FULL AND THE FRONT DOORS PADLOCKED. IT'S BEEN ESTIMATED THAT HALF OR MORE OF ALL PROPERTY CRIMES IN THIS COUNTRY ARE DRUG-RELATED. ONE STUDY OF 243 ADDICTS IN A SINGLE AMERICAN CITY DISCLOSED THEIR RESPONSIBILITY FOR HALF A MILLION OFFENSES OVER AN 11 YEAR PERIOD.

EQUALLY SQUALID AND EQUALLY PERVASIVE IS ORGANIZED CRIME, WHICH FEEDS OFF DRUG ABUSE LIKE BEETLES ON A LEAF.

WITH ITS ILLEGAL PROFITS, IT TAKES OVER LEGITIMATE BUSINESS, HOLDS HONEST UNIONS HOSTAGE, ENGAGES IN RACKETEERING, PORNOGRAPHY, PROSTITUTION, AND GAMBLING. TO PROTECT ITS ILLEGAL EMPIRE, IT ENFORCES A MURDEROUS CODE OF SILENCE AND UNQUESTIONED LOYALTY THROUGH PHYSICAL INTIMIDATION, EXTORTION, LOANSHARKING AND MURDER-FOR-HIRE.

WHEN WE TOOK OFFICE, WE FOUND SOMETHING QUITE ASTONISHING. WE FOUND THAT IN FOUR YEARS ALONE, THE FBI AND DEA HAD LOST MORE THAN 900 AGENTS -- NEARLY 10% OF THEIR TOTAL FORCE. IN A LARGER SENSE, WE DISCERNED A LAXITY, OR SIMPLY A CYNICISM, ON THE PART OF SOME WHO WERE INCLINED TO REGARD ORGANIZED CRIME AS A PERMANENT, IF DISTASTEFUL, FACT OF NATIONAL LIFE, AND THE DRUG TRADE AS A SORDID INEVITABILITY. WE DISAGREE. OUR DISAGREEMENT LED US TO APPOINT THE ATTORNEY GENERAL'S TASK FORCE ON VIOLENT CRIME TO GIVE THE FBI CONCURRENT JURISDICTION WITH THE DRUG ENFORCEMENT ADMINISTRATION, THEREBY EXPANDING BY NEARLY 8,000 THE ANTI-DRUG ARMY AND TO ESTABLISH COORDINATING COMMITTEES IN EACH OF THE 94 FEDERAL JUDICIAL DISTRICTS WHICH WOULD, IN TURN, IDENTIFY LOCAL PRIORITIES AND HOW BEST TO ALLOCATE LOCAL AND FEDERAL RESOURCES.

WE ENLISTED THE MILITARY FOR THE FIRST TIME IN THE FIGHT AGAINST DRUG TRAFFICKING. AND WE PROPOSED LEGISLATION THAT I HAVE ALREADY DESCRIBED, TO MAKE CERTAIN THAT DANGEROUS DRUG OFFENDERS ARE NOT RELEASED PENDING TRIAL, OR SET FREE ALTOGETHER AS A RESULT OF MINOR TECHNICALITIES IN AN OTHERWISE SOLID CASE.

NOW THE PRESIDENT HAS COME FORWARD WITH A COMPREHENSIVE PROGRAM TO BUILD ON THIS FOUNDATION. AMBITIOUS IN SCOPE AS THE PROBLEM IS VAST, IT WILL CALL FOR EXPENDITURES IN ITS FIRST YEAR OF BETWEEN \$160 AND \$200 MILLION -- MONEY WE INTEND, WITH CONGRESSIONAL APPROVAL, TO REDIRECT FROM EXISTING FEDERAL PROGRAMS.

QUITE SIMPLY, THIS REPRESENTS THE MOST SWEEPING SINGLE ASSAULT ON ORGANIZED CRIME AND DRUG TRAFFICKING THAT HAS EVER BEEN MOUNTED IN THIS COUNTRY. LEST YOU SUSPECT ME OF INDULGING IN THE KIND OF RHETORICAL OVERKILL I EARLIER DECRIED, LET ME HASTEN TO DESCRIBE AS BRIEFLY AS POSSIBLE JUST EXACTLY WHAT IT IS WE PROPOSE TO DO. FIRST OF ALL, WE WILL ESTABLISH A DOZEN REGIONAL TASK FORCES, PATTERNED ON THE MODEL OF SOUTH FLORIDA'S. THESE WILL CONSOLIDATE FEDERAL RESOURCES, INCLUDING THE FBI, DEA, IRS, ATF, IMMIGRATION AND NATURALIZATION, U.S. MARSHALLS, THE CUSTOMS SERVICE AND THE COAST GUARD -- ALL THE WHILE COORDINATING THEIR EFFORTS WITH THOSE OF LOCAL AND STATE LAW ENFORCEMENT OFFICIALS.

SECOND, WE HAVE ESTABLISHED A PRESIDENTIAL COMMISSION, IN THE MOLD OF THE OLD KEFAUVER AND MCCLELLLEN COMMITTEES, TO ASSESS ORGANIZED CRIME AND FOCUS PUBLIC ATTENTION ON WAYS TO COMBAT IT.

THIRD, WE WILL ENLIST THE FIFTY STATE GOVERNORS IN A MASSIVE OVERHAUL OF STATE STATUTES THAT RETARD THE FIGHT AGAINST RACKETEERING AND ILLEGAL GAMBLING, AMONG OTHER OFFENSES.

FOURTH, ALL RELEVANT FEDERAL AGENCIES AND LAW ENFORCEMENT BUREAUS WILL COME TOGETHER IN A CABINET-LEVEL COMMITTEE CHAIRED BY THE ATTORNEY GENERAL, TO BE COMPLIMENTED BY A WORKING GROUP HEADED BY THE ASSISTANT ATTORNEY-GENERAL.

FIFTH, THE TREASURY AND JUSTICE DEPARTMENTS WILL EXPAND THEIR TRAINING EFFORT AT GLYNCO, GEORGIA TO INCLUDE SYNDICATED CRIMES SUCH AS ARSON, BRIBERY, COMPUTER THEFT, CONTRACT FRAUD, AND BID RIGGING -- AS WELL AS DRUG SMUGGLING.

SIXTH, WE WILL LAUNCH A NEW OFFENSIVE ON THE LEGISLATIVE FRONT FOR THE KINDS OF STATUTORY REFORMS I HAVE ALREADY OUTLINED. WE WILL NEED YOUR HELP, IF THE SPECIAL SESSION OF CONGRESS IS TO SHED THE PEJORATIVE BUT TIME-HONORED DESCRIPTION OF LAME-DUCK.

SEVENTH, THE PRESIDENT HAS ASKED THE ATTORNEY-GENERAL TO SUBMIT AN ANNUAL REPORT DESCRIBING PROGRESS IN THE FIGHT AGAINST ORGANIZED CRIME AND DRUG DEALING.

EIGHTH AND LAST, WE WILL ALLOCATE MORE MONEY -- MILLIONS OF DOLLARS MORE -- TO EASE THE OVERCROWDING OF PRISONS THAT NOW RESULTS IN THE PREMATURE RELEASE OF DANGEROUS CRIMINALS. AT 11 EXISTING FEDERAL PRISONS, WE WILL BUILD FACILITIES CONTAINING SPACE FOR 1,260 ADDITIONAL INMATES. AND INSOFAR AS THE VARIOUS TASK FORCES ARE CONCERNED, WE WILL CREATE ABOUT 1,100 TO 1,200 NEW LAW ENFORCEMENT POSITIONS. THE COST OF ALL THIS WILL PROBABLY NOT EXCEED WHAT IS SPENT ON ILLEGAL DRUGS IN A SINGLE DAY. THE POTENTIAL REWARDS ARE ALMOST INCALCULABLE.

NOW UNDOUBTEDLY, THERE WILL BE CRITICISM OF THIS, AS OF OUR INITIATIVES IN THE FIELDS OF CRIMINAL JUSTICE REFORM AND IMPROVED COORDINATION BETWEEN FEDERAL AND LOCAL AUTHORITIES. CRITICISM IS THE PRICE ONE PAYS FOR TRYING TO DO SOMETHING DIFFERENTLY. ALREADY, SELF-PROCLAIMED GUARDIANS OF CIVIL LIBERTIES HAVE ASSAILED OUR PROPOSALS TO REFORM BAIL PROCEDURES, THE EXCLUSIONARY RULE AND THE INSANITY DEFENSE. THEY IMAGINE THE WORST, WHILE MILLIONS OF OUR CITIZENS ARE ACTUALLY EXPERIENCING THE WORST -- IN THE FORM OF PHYSICAL ASSAULTS AND PSYCHOLOGICAL IMPRISONMENT. AND IT'S ONE HOPE THAT AN AROUSED CITIZENRY WILL MAKE KNOWN TO CONGRESS, AS A CERTAIN MOVIE ANCHORMAN OF A FEW YEARS AGO DID, THAT THEY'RE MAD AS HELL AND NOT GOING TO TAKE IT ANYMORE.

FOR THE ALTERNATIVE IS MORE DELAY, MORE VIOLENCE, MORE DISILLUSIONMENT AND ULTIMATELY, MORE DOUBT ABOUT THE ABILITY OF A DEMOCRATIC SOCIETY TO POLICE ITS OWN STREETS AND ENFORCE ITS OWN CODE OF CIVILITY. THAT WOULD BE INTOLERABLE. ALREADY, WE HAVE SEEN TOO MANY LIVES AND TOO MANY DREAMS DESTROYED BY THOSE WHO RESPECT NEITHER. AND OUT OF THAT SORRY EXPERIENCE COMES A FRESH APPROACH. THE CRITICS FAIL TO UNDERSTAND THAT VIGILANCE IS NOT THE SAME THING AS VIGILANTISM. THEY SEEM BLIND TO THE FACT THAT JUSTICE FOR ALL MEANS JUSTICE FOR THE ACCUSER AS WELL AS THE ACCUSED.

THE CAUSES OF CRIME ARE COMPLEX. BUT NO SELF-RESPECTING SOCIETY CAN LONG AFFORD TO BE PARALYZED BY COMPLEXITY, OR SHACKLED BY DOUBT. IF GOVERNMENT HAS A SINGLE OVERRIDING FUNCTION, IT IS TO PROMOTE THE COMMON DEFENSE. A FREE SOCIETY MUST ALSO BE A SAFE SOCIETY. ANYTHING LESS THREATENS THE FRAGILE COMPACT DRAWN UP BETWEEN INDIVIDUAL AMERICANS, THEIR NEIGHBORS AND THEIR GOVERNMENT. IT IS NOT ENOUGH TO OFFER MORAL LEADERSHIP -- WE MUST OFFER TOUGH LAWS AND JUDGES WHO WILL SEE THEM CARRIED OUT. WE MUST ASSURE A PARTNERSHIP OF EQUALS BETWEEN LAW ENFORCEMENT PERSONNEL AT ALL LEVELS OF THE FEDERAL SYSTEM. AND WE MUST BE WILLING TO UNDERTAKE CAMPAIGNS AS BOLD AS THE ONES I HAVE OUTLINED, OR ELSE RUN THE RISK OF CONDEMNING MILLIONS OF OUR CITIZENS TO A FUTURE OF FEAR.

IT SEEMS ONLY APPROPRIATE FOR ME TO CLOSE BY QUOTING JUSTICE JACKSON. IN A 1949 CASE, HE PENNED SOME WORDS THAT ALL OF US WOULD DO WELL TO REMEMBER, ESPECIALLY DURING THE DEBATE SURE TO CONSUME THE NEXT FEW WEEKS. "THERE IS DANGER," HE WROTE, "THAT IF THE COURT DOES NOT TEMPER ITS DOCTRINNAIRE LOGIC WITH A LITTLE PRACTICAL WISDOM, IT WILL CONVERT THE CONSTITUTIONAL BILL OF RIGHTS INTO A SUICIDE PACT." WE BELIEVE IT IS POSSIBLE TO PROTECT THE AVERAGE AMERICAN FROM CRIMINAL ASSAULT -- AND PRESERVE HIS CONSTITUTIONAL RIGHTS AT THE SAME TIME.

WE DO NOT HAVE TO CHOOSE; WE DO NOT HAVE TO SURRENDER TO THE COUNCILS OF DESPAIR, OR THE CYNICS WHO HOLD THAT CRIME IS AN UNAVOIDABLE EVIL SO LONG AS SOCIETY FALLS SHORT OF UTOPIAN PROMISE. LIKE JUSTICE JACKSON, WE ASSERT THE NEED FOR "A LITTLE PRACTICAL WISDOM." WITH YOUR SUPPORT, AND THE SUPPORT OF OTHERS WHO SHARE YOUR COMMITMENT TO A NATION OF LAWS AND NOT MEN, WE CAN ACHIEVE OUR GOALS. WE CAN MAKE OUR STREETS SAFE AGAIN. WE CAN RESTORE THE RIGHTS OF THE INNOCENT. AND WE CAN, AS ROBERT JACKSON URGED US THREE DECADES AGO, ONCE AGAIN REASSERT THE CONTROL OF THE CITIZEN OVER HIS GOVERNMENT, HIS COMMUNITY, AND THE FORCES THAT UNDERMINE BOTH.

WITH THE STAKES SO HIGH, WHO AMONG US DARES NOT MAKE THE EFFORT? AND, HAVING STARTED, WHO DARES TO FAIL?