

A NATIONAL STRATEGY AGAINST CRIME

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With the end of the Cold War, perhaps the greatest threats facing our country today are the problems of crime and violence that have destroyed so many of our communities and threaten every segment of our country. Although crime rates fluctuate somewhat from year to year, the total crime rate in this country today is about as high as it ever has been in the country's history, and higher than that of any other industrialized democracy in the Western world.¹ In 1995, Americans were victimized by more than 42 million crimes, including 11 million violent crimes.² The cost of violent crime is over \$400 billion a year.³ Twenty-five percent of respondents in 1996 polls thought that violent crime was the most important issue facing our country today, compared with five percent in 1981.⁴

These statistics do not capture the full impact of crime in our society today—homes and neighborhoods that will never recover, the pervasive fear that affects so many people in this country, and families whose hopes and dreams for their children have been wiped out. While crime affects everyone, its impact is most severe on people who are least able to protect themselves in our society: the poor, the elderly, the young, and those who live in our inner cities.

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1. See Gene Stephens, *We Are Facing a Global Crime Wave*, USA TODAY MAG., July 1995, at 26.

2. See BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS 1995, at 230 tbl.3.1 (Kathleen Maguire & Ann L. Pastore eds., 1996) [hereinafter BOJS 1995]; see also Sam Vincent Meddis, *Violence Robs Nation's Youth*, USA TODAY, June 1, 1995, at 2A.

3. See TED R. MILLER, MARK A. COHEN, & BRIAN WIERSEMA, NATIONAL INSTITUTE OF JUSTICE, VICTIM COSTS AND CONSEQUENCES: A NEW LOOK 1-2 (1996); John J. DiIulio Jr., *Prisons Are a Bargain, by Any Measure*, N.Y. TIMES, Jan. 16, 1996, at A17.

4. See BOJS 1995, *supra* note 2, at 140 tbl.2.1 (reporting that 25% of respondents chose "crime; violence" as the most important problem in 1995); BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS 1994, at 140 tbl.2.1 (Kathleen Maguire & Ann L. Pastore eds., 1995) (reporting that 5% of respondents chose "crime; violence" as the most important problem in 1981).

No decent society should tolerate the level of crime we have in our country today. It is heartbreaking that the problem is getting worse, especially among our young people. Last year, while overall crime rates fell slightly, the number of teenagers arrested for violent crime increased by 7%.⁵ Over the past decade, juvenile crime arrests have increased by about 60%.⁶ Juvenile offenders are increasingly vicious and predatory, engaging in unprecedented levels of gang violence and senseless shootings and hate crimes. Population trends predict that the teenage population will grow more rapidly than the rest of the population over the next ten or fifteen years, creating what some commentators have called a "ticking time bomb" that will explode into a nightmare of violent crime unlike anything our country has seen ever before.⁷

I. THE FEDERAL SOLUTION: A NATIONAL STRATEGY, WITH LOCAL ENFORCEMENT

The levels of violence are so unprecedented and destructive that the only solution is a national strategy to deal with crime. In our country, almost everything else that is important is a federal responsibility. The federal government controls the means for fixing smog in Los Angeles.⁸ The federal government tells small employers how many hours their employees can work before the employer must pay them overtime,⁹ and it determines the minimum wage such employers must pay.¹⁰ It regulates workplace safety everywhere, under the Occupational Safety and Health Act.¹¹ It tells everyone what rights disabled people have in our country.¹² Indeed, almost no limits have been placed on the ability of federal power to regulate our society.

5. See Stephen Goode, *Juvenile Crime Comes of Age*, WASH. TIMES, Feb. 5, 1996, at A10.

6. See David Whitman, Timothy Ito, & Amy Kost, *A Bad Case for the Blues*, U.S. NEWS & WORLD REP., Mar. 4, 1996, at 54.

7. Fox Butterfield, *Group Says Crime Will Surge as Teen Population Rises*, AUSTIN AMERICAN-STATESMAN, Jan. 6, 1996, at A13. See also Fox Butterfield, *Crime Continues to Decline, but Experts Warn of Coming 'Storm' of Juvenile Violence*, N.Y. TIMES, Nov. 19, 1995, at A18; Tom Morganthau, *The Lull Before the Storm?*, NEWSWEEK, Dec. 4, 1995, at 40; Jerry Seper, *U.S. Violent Crime Drops; Youth Trend Worries Freeh; FBI Director Sees Upsurge in Future*, WASH. TIMES, Nov. 19, 1995, at A3.

8. See 42 U.S.C.A. § 74-1-7671Q (1995 & Supp. 1996).

9. See 29 U.S.C.A. § 207(a)(1) (1965 & Supp. 1996).

10. See 29 U.S.C.A. § 206 (1965 & Supp. 1996).

11. See 29 U.S.C.A. § 653 et seq. (1965 & Supp. 1996).

12. See 42 U.S.C.A. § 12101 et seq. (1996).

In the criminal area, we also have federalized many aspects. For example, the Bill of Rights in the federal Constitution has been applied to the States through the incorporation doctrine, thereby forcing the States to conform to federal standards.¹³ Federal habeas corpus review means that any state criminal proceeding is subject to the review of federal judges.¹⁴ A federal district judge can overturn a decision of a state supreme court whenever the judge feels like it. Federal judges are also supervising state prisons, telling them how to operate.¹⁵ And we have federal gun-control laws.¹⁶ Therefore, it is too late in the day to say that crime is a local problem that the federal government should just ignore and leave to the States. Conservatives have a credibility problem with the country precisely because they rely on a government structure argument that is inconsistent with current practice.

Liberals have regulated at the state and federal levels whenever they have held enough political power. Yet when conservatives want to accomplish something, they are paralyzed by internal doubts and indecision about which level of government is the proper one for the task at hand. In determining an allocation of responsibilities, the answer must rest on a practical analysis of the way our government and society function today. Unfortunately, even the Supreme Court has been unable to explicate a principle that would determine whether a particular function should be handled at the federal, state or local levels.¹⁷

The problem of crime and violence has become so severe that it threatens our national character. We cannot employ an agnostic approach to its solution. Obviously, a great deal of crime crosses state lines. Many criminals move from jurisdiction

13. *See, e.g.*, *Duncan v. Louisiana*, 391 U.S. 145 (1968) (holding that a defendant in a state criminal prosecution is entitled to a jury trial under the Sixth and Fourteenth Amendments).

14. *See* 28 U.S.C.A. § 2241 et seq. (1976 & Supp. 1996).

15. *See, e.g.*, *United States v. State of Michigan*, 680 F. Supp. 928 (W.D. Mich. 1987) (taking responsibility for overseeing, among other things, food and water temperatures in a state prison).

16. *See* 18 U.S.C.A. § 921 et seq. (1976 & Supp. 1996).

17. *See* *National League of Cities v. Usery*, 426 U.S. 833, 843 (1976) (holding that Congress may not "impair[] the States' integrity or their ability to function effectively in a federal system"), *overruled by* *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528 (1985); *New York v. United States*, 505 U.S. 144, 176 (1992) (holding that Congress may not "commandeer[] the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program").

to jurisdiction. Ours is a very mobile society, and therefore certain problems must be addressed on a national level. Furthermore, our federal government is so involved in how our society is operated that it is very difficult to conceive of an effective response to crime that operates purely at the state and local levels.

The solution is not to federalize crimes that are currently punished by the States. In fact, we have gone too far in creating federal offenses unnecessarily, thereby creating a large new bureaucracy to enforce a large number of new criminal laws at the federal level. The answer does lie, however, in a national strategy to deal with crime, directed from the federal level. The federal government must provide the leadership, while, as a practical matter, most of the enforcement will have to occur at the state and local levels.

To implement a national strategy, careful analysis is required to determine what federal legislation is necessary, to what extent the federal government should encourage or mandate activity at the state level, and how the strategy should be executed at the state level. Each topic must be studied independently to ascertain the most effective approach in each area. This proposal does not endorse the creation of a federal police force, as such, to take over law-enforcement responsibilities currently exercised by state and local governments. However, suddenly to draw the line on States' rights in the area of crime, when States' rights have been completely obliterated in every other area, seems a bit strange, because crime affects people in a very serious and fundamental way.

Addressing the problem of government structure, while leaving the moral fabric of our society unprotected, is simply unsatisfactory. The root cause of crime is moral poverty, not economic poverty. Moral poverty is caused by an innate capacity for human evil that no government, federal or state, can ever completely eliminate. However, the government has made this problem worse through welfare spending, harmful tax incentives, and the deterioration of the public schools. Since the Great Depression, we have passed many new welfare programs. Lyndon Johnson advocated the War on Poverty in 1965, and since then we have spent trillions of dollars on welfare programs

while crime rates have skyrocketed.¹⁸ This increase has not occurred because of a lack of government spending for welfare. Rather, it has occurred because of a deterioration of traditional morality and family values, a deterioration caused partly by the welfare programs themselves.

One example of this deterioration is that the rate of illegitimacy has approximately tripled, to 30%, since the War on Poverty began.¹⁹ In some inner-city communities, the out-of-wedlock birthrate approaches 80%.²⁰ Social scientists believe that the most powerful factors in producing crime among youth are a breakdown of morality, a father who is never present in the home, the absence of religious affiliation, and drug and alcohol abuse. Indeed, crime itself is criminogenic. A very high correlation exists between children who were abused as children or have criminal parents and those who go on to become criminals themselves.²¹

How can these problems be addressed? Keeping in mind the root causes of crime, five recommendations follow: (1) welfare reform to reduce incentives for illegitimacy and indolence; (2) tax reform to reduce penalties for marriage and support of children; (3) school choice; (4) promoting adoption and boarding schools for children who now live in dysfunctional families; and (5) holding the media accountable for glamorizing violence, drugs, and sexual immorality. For each of these recommendations, government funding should be available equally to religious institutions performing educational and welfare functions. Religious institutions often provide the most effective way of dealing with the social problems that produce crime.

II. MORE EFFECTIVE LAW ENFORCEMENT

Given the severity of the current crisis, we cannot address merely the root causes of crime. We also need more effective law

18. See William J. Bennett, *What To Do About the Children*, COMMENTARY, March 1995, at 23, 25 (reporting that between 1962 and 1992, welfare spending in the United States increased by over 900%).

19. See *id.* at 23.

20. See *id.*; Carol Jouzaitis, *Unwed Mothers a Common Target in Welfare Debates*, CHIC. TRIB., July 18, 1994, at A3.

21. See Patrick F. Fagan, *The Real Root Causes of Violent Crime: The Breakdown of Marriage, Family & Community* (Heritage Foundation Background, No. 1026, Mar. 17, 1995); Ted Gest & Victoria Pope, *Crime Time Bomb*, U.S. NEWS & WORLD REP., Mar. 25, 1996, at 28.

enforcement. As a practical matter, this needs to occur at the state and local levels. Policing can be most effective at the local level, although no constitutional principle so requires. Despite the efforts of the American Civil Liberties Union (ACLU) to provide constitutional status to activities such as panhandling and loitering, the success of some police in going after public-order offenses as a way of promoting more aggressive community policing is encouraging. For example, in New York, aggressive enforcement of the law against public-order offenses has increased.²² It has been surprisingly effective in reducing more serious crimes as well, because people who commit public-order offenses also commit more serious offenses. For example, many subway turnstile jumpers are wanted on arrest warrants for more serious crimes.²³

The federal government can encourage more effective policing by creating programs to encourage young people to make law enforcement a career. The ROTC-style police corps proposal and the troops-to-cops proposal are two ways in which the federal government can encourage talented young people to go into a law-enforcement career.

What about gun control, a favorite liberal panacea? Very few criminals go to a licensed gun dealer to buy their firearms. The Brady Law²⁴ supposedly has stopped 40,000 people from buying firearms who otherwise would be eligible.²⁵ However, half a million firearms are stolen every year.²⁶ By definition, when a firearm is stolen, that firearm goes into the hands of a criminal. Therefore, rather than thinking up new restrictions on licensed firearms dealers, we should crack down very aggressively on firearms theft and other violations of existing firearms laws.

There has been a lack of accountability with federal police agencies. We should centralize federal police authority in a

22. See John J. DiIulio, *Arresting Ideas: Tougher Law Enforcement is Driving Down Urban Crime*, POLICY REVIEW, Fall 1995, at 12, 13; Ruben Castaneda, *As D.C. Police Struggle On, Change Pays Off in New York*, WASH. POST, Mar. 30, 1996, at A1; Clifford Krauss, *New York's Violent Crime Rate Drops to Lows of Early 1970's*, N.Y. TIMES, Dec. 31, 1995, at A1.

23. See William D. Eggers & John O'Leary, *The Beat Generation: Community Policing at its Best*, POLICY REVIEW, Fall 1995, at 4, 9 (reporting that one out of six subway fare evaders was carrying a weapon or wanted on an outstanding warrant).

24. 18 U.S.C.A. § 921 et seq. (1976 & Supp. 1996).

25. See William J. Clinton, *Remarks Commemorating the First Anniversary of the Brady Law and an Exchange With Reporters*, 31 WEEKLY COMP. PRES. DOC. 326 (Feb. 28, 1995).

26. See Philip J. Cook, Stephanie Molliconi, & Thomas B. Cole, *Guns and Violence Symposium: Regulating Gun Markets*, 86 J. CRIM. L. & CRIMINOLOGY 59, 81 (1995).

limited number of organizations responsible to the Attorney General and thereby enhance their accountability. However, we should keep in mind that the victimization caused by crime and criminals is a much greater threat to America than any problems caused by agents of our law-enforcement establishment. It is simply irrational for people to be so concerned about occasional police excesses—and there have been some excesses—when over 42 million crimes are committed in America every year.²⁷

III. REFORM OF TRIALS AND PUNISHMENT

A few other reforms are necessary as part of our national strategy to address crime. We need to reform the criminal trial process by instituting jury reform, eliminating the exclusionary rule, and recognizing victim rights in the trial process. In this manner we can ensure that criminal trials are no longer a game or a sporting contest, but instead are a search for the truth.

We also need to address the gap between crime and punishment. The weakest link in our criminal justice system today is the lack of adequate prison capacity. We arrest criminals, prosecute them, convict them—and then we turn them loose, repeatedly. The amount of time served for serious crimes is shockingly short. We need to lengthen greatly the sentences imposed on violent criminals, particularly repeat offenders, in order to incapacitate people who commit these offenses.

Doing so will, of course, require more prisons. The federal government should play a role in making more prison capacity available, in reducing the interference of federal courts with the management of prisons, and also in discouraging frivolous prisoner lawsuits, which are a constant drain on the attentions of the federal judiciary.

The Supreme Court just decided a case in which the Clinton Administration had taken the side of prisoners arguing that law libraries should allow even the most dangerous prisoners open access to legal materials, with full-time librarians and bilingual assistants to assist the prisoners with their lawsuits.²⁸ The Court

27. See BOJS 1995, *supra* note 2, at 230 tbl.3.1 (reporting 42,359,370 victimizations in 1995, not including murder); *id.* at 337 tbl.3.114 (reporting 23,305 murders and intentional manslaughters in 1995).

28. See *Lewis v. Casey*, 116 S. Ct. 2174 (1996) (overturning a Ninth Circuit decision, supported by the Clinton Administration, which had required prison authorities to

correctly decided that these programs are not necessary.²⁹

Prisons should not be inhumane. Prisons should be well-managed and prisoners should be protected from each other. On the other hand, there should not be frills in prisons. Prisoners should not be able to engage in unhealthy or undesirable conduct. They should spend their time working in real jobs to reduce the cost of confinement to society instead of watching violent movies or television, reading pornography, joining gangs or hate groups, or working out in prison weight rooms.

After all, well over half of all violent crimes are committed with no weapon other than brute force.³⁰ The system is working against itself when it sends violent criminals to prison where they can work out in weight rooms and enhance their ability to use that brute force to victimize innocent citizens.

IV. JUVENILE CRIME

Our juvenile justice system must be completely overhauled. We need to eliminate the presumption that juvenile criminals are misguided youths who just need a little bit of straightening out to make everything right. They are hardened, vicious, predatory criminals, and they simply need to be locked up and kept away from law-abiding members of society.³¹ They should not be released automatically when they turn twenty-one. They should be kept in prison as long as it takes to protect society.

There are undoubtedly some young, troubled offenders who can perhaps be straightened out through old-fashioned reform schools or other similar approaches. Unfortunately, many are hardened criminals by the time they reach the age of fifteen or sixteen. We are simply deluding ourselves by thinking that they can be recycled through the juvenile justice system in a few years and not later become hardened criminals.

One of the problems with the three-strikes approach to crime

provide unrestricted access to library materials even to dangerous prisoners otherwise kept in lockup).

29. *See id.* at 2182 (holding that precedent guarantees only a general right of access to the courts, and does not guarantee any particular methodology by which to pursue that access).

30. *See* BOJS 1995, *supra* note 2, at 236 tbl.3.15 (reporting that 64.3% of violent crimes were committed without the aid of a weapon).

31. *See* Bennett, *supra* note 18, at 27 (noting that 70% of juvenile offenders are recidivists).

is that we really do not lock up the serious criminals until after they are much too old. The peak crime-committing years are fifteen to twenty-five. However, under a three-strikes proposal, people are not incarcerated until they are twenty-five or thirty years old. We need to find a way to take the hardened criminals when they are fifteen and to lock them up at least for their peak crime-committing years.

V. DRUGS AND CRIME

Finally, a word about drugs and crime. A drug problem is not inevitable. Great progress was made in our society during the decade of the 1980s. Drug use was reduced by more than 50%.³² However, we are in danger now of seeing that success evaporate. Drug use among high school students has rebounded sharply since 1992,³³ when Bill Clinton was elected president. Bill Clinton's drug policies have been a disaster since he first took office and decided to make room for more political appointees on the White House staff by eliminating more than 80% of the staff of the drug policy office.³⁴ Senate Judiciary Committee reports have pointed out the shortfalls in drug enforcement and interdiction in the Clinton Administration.³⁵ Additional drug treatment capacity has not been added, despite the massive increases in federal funding.³⁶

Some commentators, including William F. Buckley and the ACLU, have argued that we should declare the war on drugs a failure and legalize drugs.³⁷ This is simply not the answer, for five reasons. First, because public sentiment is overwhelmingly opposed to drug legalization,³⁸ it is not politically feasible. Saying that we cannot do anything about our crime problem until we first legalize drugs is simply an excuse not to take

32. See Terence J. Pell & John P. Walters, *What Did We Do in the Drug War? Plenty*, WASH. POST, Apr. 16, 1993, at A25.

33. See Gest & Pope, *supra* note 21.

34. See Bob Herbert, *In America, Violence in Real Life*, N.Y. TIMES, July 11, 1993, at 4:19.

35. See Naftali Bendavid, *The Coming Drug Campaign*, LEG. TIMES, Mar. 4, 1996, at 1.

36. See John P. Walters, *How the Clinton Administration is Abandoning the War Against Drugs* (Heritage Foundation Backgrounder No. 989, June 16, 1994).

37. See William F. Buckley, Jr., *Prohibition Against Drugs is a 100-Year Battle the Nation Has Been Losing*, HOUSTON CHRON., Oct. 3, 1994, at 11 (arguing in favor of drug legalization); L. Gordon Crovitz, *Rule of the New Civil Rights*, WALL ST. J., Sept. 5, 1990, at A15 (noting the ACLU's stance in favor of drug legalization).

38. See William J. Olson, *Why Americans Should Resist the Legalization of Drugs* (Heritage Foundation Backgrounder No. 993, July 18, 1994).

effective action.

Second, legalizing drugs is not practical. No system of drug legalization can adequately deal with the problems of teenage drug use, drug advertising, and drug impurity.³⁹ It simply is not feasible to envision a state in which drugs can be legally traded.

Third, our society does not do a very good job of legalizing conduct without legitimizing it. Once conduct is recognized as being legal, there is a push not only to legalize it but also to say that it is good and to protect it against discrimination. The history of homosexuality in the United States fits this model. For example, the ACLU thinks that private employers should not be able to test their employees for drugs, even though the testing is purely private and not enforced by the government.⁴⁰ If we were to legalize drugs, our society inevitably would legitimize drug use rather than ostracize it.

Fourth, legalization would lead to an enormous increase in the level of drug use beyond what we have now, with unacceptable attendant costs: lives and families ruined, child abuse, crime, and a whole generation destroyed.⁴¹

Finally, crime would not be reduced by drug legalization.⁴² People who are going to prison today on drug offenses are not drug users, they are drug traffickers. They are not otherwise law-abiding citizens who just happen to have a sideline that is illegal. The people who are in prison for drug trafficking are the same people who father illegitimate children, engage in domestic violence, possess firearms illegally, and commit all kinds of petty and serious crimes. In essence, they are unable to control their own conduct and indifferent to the interests of others. If drugs are legalized, these people will find a way to continue to engage in illegal conduct and victimize society; therefore, there will not be a reduction in the level of crime.

The fundamental challenge of our national policy with regard to drugs is to overcome our ambivalence about drug use. We must reduce the demand for drugs by preventing young people

39. See *id.*; see also Gregory A. Loken, *The Importance of Being More Than Earnest: Why the Case for Drug Legalization Remains Unproven*, 27 CONN. L. REV. 659 (1995).

40. See Walter Goodman, "Hard Drugs, Hard Choices" Spurs Healthy Discussion, ATLANTA J. & CONST., at C6 (reporting that Nadine Strossen of the ACLU "agrees that general drug testing in the workplace . . . is a terrible idea that would be ineffective as well as an infringement on rights of privacy").

41. See Olson, *supra* note 38; see also Loken, *supra* note 39, at 682-83.

42. See Olson, *supra* note 38.

from using drugs and compelling those who do use drugs to stop. In that regard, we should institute drug testing of welfare recipients and other government-benefit recipients who use their government benefits to subsidize this unhealthy and disabling practice. Treatment programs should be held accountable for their results. We especially should encourage faith-based programs, such as the Teen Challenge program in San Antonio, which often produce the best results at the lowest possible costs.⁴³ Moreover, we need to restore a level of moral leadership to the White House on this issue.

VI. CONCLUSION

Random violent crime is epidemic in our society today,⁴⁴ and it is simply not acceptable for us to say that principles of federalism require us to leave this problem for the States to resolve. Crime is a crisis affecting the quality of life for every part of our society. The only solution is a national crusade against it.

43. See *Children, Family, Drugs and Alcoholism—The Effectiveness of Private Charity: Hearings Before the Subcomm. on Children and Families of the Senate Comm. on Labor and Human Resources*, 104th Cong., 1st Sess. (1995) (testimony of William H. Mellor, President and General Counsel of the Institute for Justice); see also *Spiritual Solutions for Society*, INDIANAPOLIS NEWS, Oct. 4, 1995, at A18.

44. See, e.g., Nancy Lewis, *Four Indicted in a Search for Drug Money that Ended in Death*, WASH. POST, July 16, 1994, at D1.

