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10/19/72 6.30 P M EDT 668  
Department of Justice ,K53

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ADDRESS OF

THE HON. RICHARD G. KLEINDIENST

ATTORNEY GENERAL OF THE UNITED STATES

TO THE

CALIFORNIA NARCOTIC OFFICERS ASSOCIATION

SAN DIEGO, CALIFORNIA

October 19, 1972

One week ago tonight a special agent of the Federal Bureau of Narcotics and Dangerous Drugs was shot to death as he was attempting to make a buy from two alleged cocaine traffickers. His name was Frank Tummillo. He was 25 years old. He was to be married next month.

We in the Department of Justice mourn the loss of Frank Tummillo. I know that countless other Americans will pay their silent respects to this brave and dedicated man. Not least among them are his fellow narcotics officers in all jurisdictions, many of whom I am proud to address here this evening.

Yours is a dangerous profession. While Mr. Tummillo is the first BNDD special agent to be killed in the line of duty since the Bureau was established four years ago, there have been a number of shootouts forced upon federal agents in that period, 21 BNDD agents have been injured in the line of duty. One of these was Robert Canales of Los Angeles, who has been paralyzed since a similar shooting last year.

There have been numerous casualties among narcotics officers in other Federal, State and local agencies. You are dealing with criminals devoid of

scruple, and you deal with them at critical moments when they are the most apt to be nervous and suspicious.

Your job requires as much courage as any other profession I know, and it requires more than that. It requires a singular dedication to humanity --a dedication whose reward is the knowledge that you are front-line soldiers in the battle for human freedom.

The term "freedom" may seem peculiar here, but it is not. First, I believe that all peace officers in whatever specialty serve the cause of freedom. We can only be free to act as we will in a society that is ruled by law. It is law that is the liberator and in this sense he who is a guardian of the law is an instrument of liberation. This is why the whole movement to discredit the police is so malicious and insidious.

But I have still a further meaning of freedom applied to narcotics officers. There is no slavery more complete than the slavery of narcotics addiction. To be instrumental in sending addicts to centers of treatment, to help prevent others from being trapped in this slavery, is to be a freedom fighter of the first rank. It was in this cause that Frank Tummillo gave his life.

It is my fervent hope and determination, and I know it is yours, that such sacrifices as this will not be in vain. There are those who say we should give up the enforcement strategy against all narcotics and dangerous drugs, even including heroin. They advocate a heroin maintenance program which contains no semblance of treatment or rehabilitation, but serves simply as a source of free heroin to keep addicts from committing crimes to obtain money for their habit.

There is even more support for legalizing lesser drugs, especially marihuana. The National Marihuana Commission has reported that marihuana can be dangerous and that nothing should be done that would encourage its use. In the same report with the agility of a contortionist, the Commission advocated legalizing the possession of marihuana for personal use. It would also weaken prohibitions against "casual distribution of small amounts of marihuana for no remuneration, or insignificant remuneration".

If this does not mean encouraging the use of marihuana, then there must be some new meaning for the word. So we continue to hear the curious argument that marihuana is dangerous but should be legalized. One of those who has taken this position in the past has been the Democratic candidate for President, who told the U.S. Senate on February 15, 1972,

that marihuana might be regulated along the "same lines as alcohol." Senator McGovern now says that he never advocated legalizing marihuana, but if he wants to treat it like alcohol I must remind him that alcohol has been legal in most of the United States for 40 years.

In the same breath Senator McGovern also advocated that all regulation of marihuana should be left to the States. I might point out that in Fiscal 1972 Federal agents intercepted 147 tons of marihuana at our nation's borders. I, for one, don't believe we should lay down on that job, or any other marihuana enforcement job, and I don't believe you do either.

I do not believe for one moment that we must give in to this surrender approach to the drug menace. We are not a nation of quitters. In all of the historic issues that have beset us, we have always ended by choosing what is right over what is expedient. And we have found that what is right offers the only permanent solution to any problem.

What is more, these cries in favor of sending up the white flag come at the very time when our offensive against narcotics is gaining ground. Never before have your efforts at the State and local level received stronger support from the Federal Government. When President Nixon took office, he declared war on the narcotics traffic and

gave it the highest priority. He made narcotics enforcement part of the nation's foreign policy, and accomplished far more than any other President in securing a world-wide crackdown on narcotics trafficking.

Recently, critics of the Administration, including the Democratic candidate for President, have charged that government officials of our Southeast Asian allies are trafficking in narcotics. And they charge that President Nixon does not mean what he says about denying foreign aid to such countries.

I wish to say that these charges are based largely on a very clever and misleading use of classified Government reports obtained through clandestine channels. Much of the material quoted in the reports was never put forth as verified data, but was often a product of the political rumor mill that is a way of life in that part of the world. Comments in the reports providing some evaluation of the veracity of the charges have been deleted, so that the material is distorted when taken out of context. And much of the material is badly outdated in that the problem referred to has been corrected by our efforts.

I am sure that such misuse of Government documents obtained by stealth will continue so long as it serves a political purpose. I am also sure that our work with these allied governments will continue to

solve problems as they arise and to maintain a genuine mutual enforcement program in Southeast Asia.

Meanwhile, at our urging the government of Turkey has officially ended the production of opium in that country, and France has launched a very effective drive against heroin processors in Marseille, in cooperation with our own agents.

This is the first time that narcotics officers on the firing line here in America have been backed up with an international program to curb the influx of narcotics across our borders.

In numerical terms, Federal agents removed five times more heroin and equivalent opium derivatives from the international market in 1971 than had been removed in 1968, the last year of the previous Administration. In Fiscal 1972, ending last June 30, the Bureau of Narcotics and Dangerous Drugs alone seized six times more heroin than in Fiscal 1969. Federal agents made more than 16,000 narcotics arrests in Fiscal 1972, nearly double the number in Fiscal 1969.

Coming closer to home, let me give you some overall results to date of the cooperative effort between State and local narcotics officers and our Federal Office for Drug Abuse Law Enforcement, which was created last January and went into full operation in May.

Special grand juries are operating under this program in 41 major cities.

While statistics can not possibly reflect the efforts and accomplishments of officers at all levels participating in this program, I would like to point out that so far we have obtained 826 indictments and 186 convictions. I can assure you that many more are on the way, because we have initiated 2,300 investigations involving more than 3,500 suspects, and approximately 2,600 have already been arrested.

Our California region activity is the second busiest in the nation after New York. Our San Diego office, which has been in operation little more than two months, has obtained 19 indictments, made 38 arrests, and is currently investigating 146 suspects. In San Francisco we have obtained 45 indictments and have made 142 arrests. In Los Angeles there have been 15 indictments, 134 arrests, and there are further investigations involving 210 suspects. Only a week ago Federal agents, working with the Montebello City Police Department, seized \$2 million worth of Mexican heroin and arrested four suspects.

We believe, and I am confident those of you who are involved will agree, that this program to supplement State and local efforts is moving in high gear. Along with the overall Federal, State, and local efforts throughout the country it represents the most comprehensive



and determined drive against narcotics traffickers ever mounted in this country.

Already we are beginning to see some tangible results. We know we are disrupting heroin trafficking in many urban areas. One measurement is the difficulty our undercover agents are having in some places making buys. We are witnessing growing numbers of addicts voluntarily turning up at treatment centers. We know that the price of heroin is going up in many of our target cities, while its purity is dropping--a sure sign of traffic disruption. This has been detected over a number of months in New York and Washington, D. C., and is especially acute at this time in Boston, Philadelphia and Baltimore.

Altogether, it is clear that the experience we are gaining in this drive is enabling us to make certain headway against our enemy. This is a time to take heart and charge even harder. It is not a time to turn tail and run the other way.

As we survey the ground already won we become aware of another flank where we can hit the enemy. You and I know that it does little good for narcotics officers to risk their lives in arresting dope traffickers if a court lets a convicted violator back on the streets to pursue his evil trade. Recently President Nixon called attention to the

lenient sentences given to some drug peddlers, and he asked the Department of Justice to survey this situation looking toward possible legislation.

We have surveyed sentencing in Federal courts and are now surveying the subject in state courts. Of 955 heroin and cocaine defendants convicted in U. S. District Courts during Fiscal 1972, 27 percent were not sent to prison. Most of these--75 percent--were originally charged with trafficking, not just possession.

We have reason to think that some state courts may be more lenient. Police Commissioner Murphy has cited a study showing that of more than 1,000 defendants arrested for narcotic felony sales in New York last year, nearly all were convicted but well over half of them never went to prison. Almost all of those convicted are back on the sidewalks of New York.

Many courts do have a strong sense of public responsibility in deterring heroin traffickers, and I have the greatest respect for them. But even a small proportion of unrealistic and permissive sentences by other courts, such as I have mentioned, can undo the courageous work of our enforcement officers and can keep the contagion of drug abuse circulating in our streets.

In fact, but for this kind of leniency our BNDD agent, Frank Tummillo, might be alive today and his partner in the attempted buy last week would not be paralyzed. Their assailants, who were also killed in the shooting, had criminal records more than 10 years old. When the shooting

occurred one of them had been out on bail for more than two years pending trial on a narcotics charge. The other had a record of seven arrests including four narcotics charges. At one time he was convicted of selling narcotics and was sentenced simply to the time he had already served pending trial, which was three months. Before the same year was out he had been arrested twice more on narcotics charges. It took a shootout, in which this pair were the aggressors and in which they took a fine young narcotics agent with them in death, to do what the courts did not do--that is, to bring their careers as peddlers of living death to an end.

President Nixon and I have had discussions on this matter, both together and with our staff experts in this type of criminology. We are now drawing up the proposed Federal legislation that President Nixon referred to in his television address last Sunday.

First, under existing Federal law a defendant arrested for trafficking in heroin or cocaine can be released on bail pending trial. Many such defendants have long criminal histories of narcotics trafficking, and because of the fat profits in their evil business some of them are able to put up almost any size bail, up to and including one million dollars. They are then free to pursue this diabolical trade pending trial.

Our records show that 71 percent of heroin and cocaine defendants are freed pending trial for at least three months, and 36 percent are free in this way for six months or longer. This means that they can be

out on the street continuing to spread their dread contagion even after the police have done their job in bringing them to justice.

We propose to interrupt this vicious cycle by putting upon such defendants in Federal cases the burden of convincing the court that their release on bail would not pose a danger to another person, to the community or to the property of others.

Second, under the present Federal law it is possible for a convicted heroin or cocaine trafficker to be released on bail while awaiting sentence or appeal of his case to a higher court. Our study shows that 13 percent of such convicted offenders have been freed pending appeal. We believe this makes even less sense than freeing anyone charged with heroin trafficking on bail, because in this instance his culpability has been proven in court and the chances are overwhelming that he will spread his terrible infection while he is out on bail. We propose to prohibit Federal courts from releasing a convicted heroin or cocaine trafficker while awaiting sentence or appeal.

Third, under existing Federal law, convicted heroin or cocaine traffickers may be put on probation unless they are proven to have engaged in a continuing criminal enterprise. I have already shown how probation can be abused at the expense of the public safety. We propose to prohibit probation in Federal courts for convicted heroin or cocaine traffickers. Instead we propose strict minimum mandatory sentences for first-time traffickers, and still tougher minimum mandatory sentences for second offenses, and we would include felony convictions under state as well as Federal narcotics laws in counting prior offenses.

Fourth, under present Federal law simple possession of heroin or cocaine is a misdemeanor. We believe the virus of hard drug addiction is so dangerous to the public safety that a strong deterrent is needed against possession. We therefore propose making this a felony offense.

Finally, I wish to say that this proposed legislation which will be sent to Congress at its next session is realistic in meeting the threat of hard drug contagion. It proposes to quarantine the carriers of this fearsome disease so that it may be contained and then controlled. It is not punitive for punishment's sake.

The long-recognized and successful practice of parole would still be exercised if the convict shows by his behavior that he is ready for parole. But it should be clear that when such parole is granted the offender is under the strictest kind of supervision by his parole officer and he is subject to reincarceration for violating any of his parole restrictions.

And again, the type of institution to which the convicted offender would be sent will vary with the case. The simple addict convicted of possession could be sentenced under the Narcotic Addict Rehabilitation Act or treated with a possibility of parole to an outpatient treatment program. The trafficker who is also an addict could receive the same length of detention as a non-addict trafficker, but he could spend this time under a treatment institution. The objective is to use the justice process to curb the narcotics menace, rather than to encourage that menace through misplaced sympathy that cares more for the trafficker than for the public.

There are other features of this legislation that I will not detail at this time, but I believe that this represents the kind of law that is equal to the enormity of the problem. It would help greatly in closing perhaps the most serious gap in our offensive armament against this terrible enemy. For if enforcement can receive such absolute support from the courts, if this total approach can quarantine the carriers of this dread disease, we can begin at last to conquer the scourge of narcotics. And we would hope that such a Federal law can become a model for the States to follow, so that the men and women in all levels of narcotics enforcement can have the same complete support from the halls of justice. When that is done we will have far better assurance that the hundreds of thousands who are now addicted to narcotics will not be followed by other Americans who still have their freedom. We will have added assurance that brave Americans like Frank Tummillo and Robert Canales will not have sacrificed in vain.