Department of Justice

"IS CRIME BEING ENCOURAGED?"

ADDRESS OF

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BEFORE THE

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More than 2000 years ago Cato the Elder, one of the chief statesmen of the Roman Republic, told the judges: "Those who do not prevent crimes when they might, encourage them." Today, we who are associated with the criminal justice system in the United States believe we are doing everything we can to prevent crime. The last thing we would believe is that we are encouraging it. Certainly Cato's admonition could not be aimed at us.

But could it? Let me cite some representative cases which may sound familiar to many of you. A recent report by the police department in one of our major cities gave some examples of defendants who were making a game out of the court system, who were involved in a continuing cycle of arrest and bail, without coming to trial.

For 17 months, a burglary suspect had been arrested and freed on bail eleven times, without standing trial.

Over a period of 30 months a suspected thief and forger was arrested and released on bail seventeen times--again, without coming to trial.

This same major police department cited other cases of similar magnitude and added that its study showed that "Time and time again we have documented cases where persons were freed on five, seven,

and nine bonds awaiting trial."

This city is not unique. Where data are available they usually show similar or even worse abuses of the court system in other major American cities.

Now the question is, could these crimes have been prevented? If so, by whom? And may we not invoke Cato's indictment that those who could have prevented these crimes are guilty of encouraging them?

We are all aware of the clamor that is abroad today for court reform. We do not hear much, however, about prosecutive reform, and I, for one, feel that we prosecutors ought to resent the oversight. It is almost as though our operations were not important enough to need reforming.

I believe that much of the abuse in the criminal justice process can be mitigated by decisive action on the part of the prosecutor. And I believe we prosecutors are on solid ground in demanding our right to have a reform movement all our own.

What has been the chief cause of the movement calling for change in the way criminal cases are handled in this country? Mainly it has been the overweening delay in such cases.

We in the Federal system believe we are in the forefront of improvement, yet the Administrative Office for U.S. Courts shows

in its latest report that the median time for disposition of a criminal case in a jury trial is 6.3 months. In some districts it runs up to 12 and 15 months. My information is that the situation is at least as bad in many State courts. In one Eastern metropolis the average time from arrest to disposition of a felony case is six-and-a-half months, while many cases run much longer. Other studies show an average lapse of more than eight months in two different populous counties in the Mid-west. I understand that in many State courts a disposition time of two years or more is not uncommon.

All of you know that there are many reasons for trial delay, not least of which are brought about by the defense. The experienced defendant who knows he is guilty has everything to gain from delay. He will start by choosing an overworked defense attorney whose appearance is required in many courts and whose enforced absence will be a repeated cause for continuances. And many a veteran defense counsel has a whole bagful of pretrial motions, many of them simply designed to delay. For as we know, delay erodes the prosecution's case. Where the delay moves from months to years, evidence is lost and witnesses disappear or suffer loss of memory.

Meanwhile, if the defendant is out on bail, he may be preying on the community in much the same manner that I documented at the beginning of my remarks.

On the other hand, there can be many other causes of delay not due to the defense. And if the defendant stays in jail, either because he cannot raise bail or is charged with a non-bailable offense, then there is a clear injustice to him in any protracted delay before he is proven guilty or innocent.

In all this, I am not advocating pure speed for its own sake, at the expense of justice. Some judges have dismissed charges arbitrarily after a certain lapse of time or a certain number of continuances, thus in my opinion aggravating the problem, rather than solving it, by giving criminals a new hunting licence against society.

If anything, the threat to society in this instance is even worse than in cases where the defendant is released pending trial, since the defendant whose case is arbitrarily dismissed is not only freed physically but is freed of any respect for the law whatever. This kind of non-solution does not in any way prevent crime, and by Cato's yardstick, encourages it.

What is needed is to make use of judgment and planning to minimize delay while enhancing justice. Both the defendant and the public have a right to expect justice and speed, and each of us in this room has a moral imperative to do all in his power to give them both.

What, then, can the prosecutor do? I believe he can do more than any other figure in the criminal justice process. To those who

think they are already doing everything, let them measure their efforts against these questions.

Do you simply toss every criminal case as it comes along into the docket, there to await its turn for trial without evaluation as to the merits, the magnitude of the crime, or the record of the defendant?

If you do screen your cases and assign priority, what criteria do you use?

Do you make an early evaluation of the evidence to determine whether you have a viable case?

Is your office organized so you can handle a number of cases at once, or are all resources focused on only one case at a time?

Do you plan ahead for potential problems, or are you able to do no more than simply jump from one crisis to another?

Many will say that the courts in their county are so flooded with cases and so bound by traditional procedures that many of these questions are really academic. But I would answer that where the court system itself is operating under such overwhelming handicaps there is nothing wrong with the prosecutor making his voice heard in the legislative chambers. I think it is a professional hazard among prosecutors

that many are so busy rowing against the floodtide of cases that they do not take time to play their role in stopping the break in the dam. And I would point out that if you do not take part in such reforms you may have to live with reforms that other interested parties are making for you.

But short of legislation, I would insist that much of the difficulty can be met by genuine prosecutive management. It is an unfortunate commentary on American life that, while we have applied advanced management techniques in the business world and have achieved a productivity second to no nation on earth, we have neglected to apply them in the field of human justice.

I am talking now about an executive with more stature, training, and experience than what we have come to call an office manager. I am referring to a person who, while freed of the duties of preparing and prosecuting cases, can so manage the workload, the scheduling, and the data needed for decisions that he will, in turn, substantially reduce the burden on those who do prosecute.

In my opinion the key to the problem is the last factor that I mentioned--that is, maintaining, analyzing, and using information. One of the reasons why our society is beset by repeat criminals who are out on bail is that prosecutor's offices simply do not know

about their prior records. Nobody is able to stand before a judge and advocate that a defendant be required to post extra heavy bond because he has already amassed a total of a dozen arrests and bonds outstanding. Nor is anyone able to say that this defendant should be tried immediately, in order to reduce his period of freedom on bail, because he is almost certain to go out and add to his long list of arrests. And for lack of adequate information, in an overcrowded judicial district where hard choices must be made, no one is able to decide that this first offense on a misdemeanor charge should be dismissed, and that another misdemeanor charge against a dangerous criminal should be pressed with every means at the prosecutor's command.

I feel at home pressing these views in this forum because the National District Attorneys Association has been one of the early leaders in this field. For the past year its work in prosecutive reform has been focused in its National Center for Prosecution Management, headquartered in Washington, D. C., and supported by LEAA. What is needed now is for more prosecutor's offices to make use of this and other similar resources to upgrade their operations. One that has been a pioneer in this field is the U. S. Attorney's office in Washington, D. C., and I would like to amplify some of its accomplish-

ments because I am familiar with them at first hand.

Let me begin by describing the larger problem that mounted in the District of Columbia courts in the 1960's. From 1958 to 1969 serious felonies in the District increased almost 600 percent. But because little or nothing was done to meet this growing caseload, the number of felonies prosecuted remained relatively constant. The backlog of cases naturally multiplied, reaching more than 6,300 cases in the juvenile court alone. Trial delays averaged between nine months and a year.

As a stop-gap remedy--and a very undesirable one--many serious felonies were downgraded to misdemeanor status for trial in the Court of General Sessions. The effect of this device, while it helped to keep the calendar moving, was to make a mockery of justice and virtually to remove the element of criminal deterrence.

This, of course, simply added to the vicious cycle of crime in the District of Columbia, which became known not only as the nation's capital, but also as the nation's crime capital.

When President Nixon took office in 1969, he overhauled the D. C. enforcement program and proposed a new law reforming the entire criminal justice system. As finally passed by Congress, the law went into effect two years ago. Among other things it restructured

the court system and procedures, added more judges, reformed the bail system, and expanded the office of the U. S. Attorney, who serves as prosecutor for local common law crimes in the District of Columbia as well as for Federal crimes.

In turn, the U. S. Attorney's office created some further reforms. Chief among them was a new computerized system to give the prosecutor all the information he needed to screen cases and give priorities to his staff. It also provided a method for tracking defendants through the criminal justice system so as to minimize delays, reduce the chance of additional crimes while out on bail, and minimize the time that non-bailable defendants would remain in jail awaiting proof of guilt or innocence. This system was funded by LEAA and went into effect on January 1, 1971. It is known as PROMIS, which stands for Prosecutor's Management Information System.

Among other things, this system provides a quantitative method of evaluating the seriousness of any given case. Factors taken into account include the number and type of previous charges against the defendant and, of course, the magnitude of the current charge.

In other words, the data on all defendants in the District are standardized, beginning with a prescribed form filled out by the arresting policeman. This factor of standardization is vital because it minimizes

subjective judgments and personal prejudices which can dilute the quality of American justice. In fact, many district attorneys who now properly screen and evaluate their cases on an informal basis would find that with such data they are in a much better position to substantiate their decisions if they are challenged. I might add that other jurisdictions can apply through their State Planning Agencies for LEAA support in this kind of program.

Now, in view of the numerous reforms that have been made in the D. C. system, one cannot ascribe the results to any one of them. However, we believe that the improved management that I have described in the prosecutor's office has been a major factor in reducing the time from arrest to trial from an average of ten months in felony cases before the D. C. reforms to an average of only three months and ten days, as of today.

Before the criminal justice reorganization was put into effect there were more than 1700 felony defendants awaiting trial. Today there are just over 1150. Before the reorganization there were more than 2200 misdemeanor defendants awaiting trial. Today there are just under 1100 --a 50 percent reduction. And the backlog of cases for juvenile offenders has been practically eliminated.

The improvement in the handling of felonies is all the more remarkable when you consider that instead of continuing to reduce felony charges to misdemeanors, we have increased felony indictments from about 2400 in the year before reorganization to about 3900 in the first year after reorganization.

I think it is obvious that these reforms, including prosecutive reform, constitute an honest answer to the Roman statesman and his stern admonition. The number of crimes committed per day in Washington, D. C., has been cut by more than half. From an average of 220 offenses per day in the peak month of November 1969, the number has dropped to an average of 93 per day in January 1973. This is the lowest in more than six years. I think there is no question that crime is being prevented, and not encouraged.

Lest I be misunderstood, I do not mean that in this crisis of criminal justice that we face, the U. S. Department of Justice has all the answers. I do not mean that the reforms instituted in the District of Columbia are the ultimate answer, or that they would apply in toto everywhere.

I do say that the criminal justice system in the U. S. is falling far short of its job. It must make drastic reforms to restore itself as the foundation stone of American democracy. In those reforms the prosecutor can and must play a crucial role. This role is shaped by the need to manage his workload so that the most serious crimes and the defendants with the most serious records are given priority; so that the trivial and the weak cases make way for the important and the strong cases; and so that the prosecutions which are brought forward to command

the attention of the court represent the best use of the court's time and resources.

Those of you who operate on the firing line day after day know as well as I the urgency of such reforms. You face the overflowing dockets, the overcrowded calendars, the routine abuses of plea bargaining, the flagrant delay of justice that can be a clear injustice both to the defendant and to the community. You know that for those who have it in their power to depart from the routine and make innovations that will help to straighten this twisted justice, they are under a moral imperative to do so. Delmar Karlen, the noted legal scholar, has concluded a book on this subject with two questions which define this imperative in bold terms:

"Is there any other alternative if the rule of law is to survive in America? Can our civilization itself survive if the rule of law fails?"