# Department of Justice

ADDRESS

BY

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BEFORE

THE VIRGINIA STATE BAR

7:30 P.M.
FRIDAY, JUNE 10, 1977
THE HOMESTEAD
HOT SPRINGS, VIRGINIA

I have high expectations that the final stage of the long effort to obtain a modern Federal criminal code has been reached.

On Tuesday, I testified before the opening session of Senate Judiciary Committee hearings to emphasize my personal commitment and the support of this Administration for what is now called Senate Bill S. 1437 -- what in a previous form and incarnation was called S. 1. Some newspaper editorialists have labeled the current effort "Son of S. 1."

By whatever name, this bill is the evolved product of ten years of effort and represents the most significant and comprehensive revision of the criminal laws in our history.

No one need tell you that our present Federal criminal code is a labyrinthian hodgepodge. It is a jumble of piecemeal legislative efforts which have been enacted over a span of nearly 200 years.

Many current provisions are outmoded -- such as the offenses of piracy under the commission of aforeign prince, detaining a U.S. government carrier pigeon, or seducing a female passenger on a steamship. Still others are unenforceable, either because of inadeuqate drafting in the first instance, or court interpretations construing provisions in an unintended fashion. For example, the statute prohibiting felons from possession of firearms has been construed by the courts to require that the firearms actually be moving in interstate commerce at the time of such possession.

Even those statutes that have current utility are in many respects overlapping and inconsistent. For example, there exist today dozens of theft offenses, several of which may apply to a single criminal act -- but each describing theft in a different fashion and often prescribing different penalties. Moreover, there are serious gaps in the coverage of the Federal criminal laws. There is, for example, no statute covering extortion of monies from a bank.

Even finding the law is a serious problem. Some areas of law where there might appear to be gaps -- such as aircraft hijacking and espionage involving atomic weapons -- actually are covered in obscure parts of the regulatory provisions of the United States Code. Conversely, some essentially regulatory provisions -- such as the prohibition against improperly using the likeness of Smokey the Bear -- appear in the midst of statutes covering such heinous offenses as murder, kidnapping, and rape.

Other provisions of law are not in the code, because they have evolved entirely on a case-by-case basis from judicial decisions.

Adding to the jumble is the fact that vastly different terms are used to describe the state of mind that is required before a person can be charged with a criminal offense. Some 79 different terms such as "maliciously" or "feloniously" are used in the criminal code.

Perhaps most important of all, current sentencing provisions are often unjust and irrational. Similar offenses carry widely differing penalties.

It is not surprising, therefore, that the law often baffles experts. And even when it doesn't, it consumes an inordinate amount of the time of prosecutors, defense lawyers, and judges.

It is partly because of this confusing state of our law that so much attention is focused in individual cases upon attempting to unscramble and rationalize the law. This causes an expenditure of precious time on the part of judges and lawyers that would be unnecessary under a more modern criminal code. It also introduces unfairness into our Federal criminal justice system -- unfairness because of the delay caused by the confusion in the present system, and unfairness because the current law is almost incomprehensible to ordinary citizens.

By inadvertence rather than by design we have almost reached the situation that existed in Rome at the time of the Emperor Caligula when the laws were deliberately posted on columns so far above eye level that the citizens could not read them.

These were some of the reasons why, in 1966, Congress established the National Commission on Reform of the Federal Criminal Laws. This Commission was known as the Brown Commission, after its chairman, former Governor Edmund G. Brown of California.

After three and a half years of work, the Commission submitted a draft document to the President and Congress. In 1974, Department of Justice lawyers and the staff of the Senate Judiciary Committee worked together to produce a revised bill which became the controversial S. 1.

About a dozen aspects of S. 1 drew controversy. Despite efforts at compromise, the bill never approached passage. By the start of 1977, prospects for code revision seemed bleak.

However, progressive forces were at work. Senators McClellan and Kennedy told their staffs to collaborate with the Justice Department on a revision that would have broad support.

As soon as I became Attorney General, I set up a Department of Justice task force to work with the congressional staffs. I personally met with a number of members of the Congress to remove stumbling blocks to a new version of the bill.

On May 2, S. 1437 was introduced. We had a news

conference that included myself, Senators Kennedy and McClellan, and Congressmen Rodino and Mann, Chairman of the House Judiciary Committee and that committee's Subcommittee on Criminal Justice.

S. 1437 provides a remedy for problems in the existing code by establishing for the first time an integrated code of virtually all statutes and rules concerning federal crimes and the federal criminal justice process. Probably its single most important contribution is in setting forth the law in a far more comprehensive, orderly, and simple manner than the statutes existing today.

This itself is a major step. It will make the law far more understandable to professionals and laymen alike. It incorporates most major areas of judge-developed law into associated statutory provisions, leaving uncodified only a few areas -- such as defenses to prosecution -- where compromise has made necessary, for the time being, the continuance of the practice of deferring to judges on the exceptions to criminal liability. Thus, the new code provides, with the exception of the statement of defenses, a single, basic source of federal criminal law.

The new code's value goes far beyond its simplicity and comprehensiveness. It contains literally hundreds of improvements over the existing state of the law. Certainly it will make the criminal justice system more efficient,

permitting the Department of Justice and the courts to respond to crime -- from organized crime to white collar crime -- in a more effective manner.

One significant provision in S. 1437 is creation of a Sentencing Commission within the judicial branch. This Commission would establish sentencing guidelines that would take into account the purpose of sentencing, the characteristics of offenders, and aggravating or mitigating circumstances.

For each federal offense, the guidelines would specify an appropriate range of sentences. Judges could sentence outside the guidelines, but if they do the sentence could be appealed -- by the defendant if longer than the guideline maximum and by the prosecutor if shorter than the guideline minimum.

Such a system may prove so fair and effective that we could do away with the Federal parole machinery.

Prospects for passage of this legislation are good. The Senate Judiciary's Subcommittee on Criminal Laws and Procedures has compiled some 8,500 pages of hearing record over the last six years and hopes to conclude its hearings this month.

In the House, the Criminal Justice Subcommittee is expected to start hearings in late June or early July.

Some 35 states have codified their criminal laws, or are in the process of doing so. The federal government is out of step, and I hate to think that it is not equal to the task of catching up.

The new bill is long -- 308 pages -- but it is less than half the length of last year's. I, for one, hope that all of us will be reading it in bound volume before the end of this Congress.