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Department of Justice

ADDRESS OF

THE HON. RICHARD G. KLEINDIENST

ATTORNEY GENERAL OF THE UNITED STATES

BEFORE THE

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

LAKE TAHOE, NEVADA

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Less than a month ago the nation honored its war dead on Memorial Day, and I would like to open my remarks by calling attention to another national event that should deserve our recognition every May 30th. Unlike some other events such as Independence Day, this particular occurrence is not known to every American school boy. The original event was not marked by the booming of cannons, the cheers of a crowd, or the ringing words of a patriotic orator. In fact, its most poignant moment was marked by profound silence.

On May 30th, 1787, the delegates assembled for the fourth day of the Constitutional Convention in Philadelphia. As they got down to serious business, Edmund Randolph of Virginia stated that a mere revision of the Articles of Confederation would not solve the Colonies' problems. Instead he proposed "That a national government ought to be established consisting of a supreme legislative, judiciary, and executive."

It was then that the delegates responded with a prolonged silence. Considering that the most accomplished and vocal leaders in America were assembled there, this silence was astonishing. However, it was soon apparent that they were occupied with thinking very actively on the significance of such a move. One of them finally spoke up and asked Randolph if he meant

to abolish the State governments. He replied that they would only relinquish certain specified powers to the national government. Satisfied with this assurance, the delegates passed the resolution. The Convention went on to create a Constitution, but the decision made on May 30th was a critical turning point in this nation's history. America was committed to a unique form of dual sovereignty which provided popular government at both the national and the local level. And that dual system has been remarkably successful for 183 years.

Over those 183 years we have heard a lot about Federal invasion of state powers, and about conflicts over jurisdiction between the states and the Federal government. But we have not heard much about cooperation between Washington and the states. Actually, such cooperation has been building in recent years. We here today, who share a mutual concern in law enforcement and prosecution, have developed it to a fine point in such areas as extradition, criminal investigation, sharing of information, apprehension of fugitives, and the creation of common standards and model laws.

My point is that we here today have parallel responsibilities in law enforcement and prosecution. We respect each other's jurisdictions and prerogatives, based on the dual system of Federal and state sovereignty, but we are also reasonable people who understand the value of mutual assistance.

At a time when the crime rate in the United States continues at a high level, such cooperation is not only desirable, it is essential. And because Federal taxation has preempted so much of the tax potential in this country, many State and local governments have had trouble finding the funds to strengthen their criminal justice systems. For this reason I believe the Federal Government has a special obligation to offer financial assistance. I would therefore like to concentrate on the cooperation that is possible through the agency designed for this purpose, the Law Enforcement Assistance Administration, and the results to be expected as we continue to use it wisely.

From its inception in 1968, LEAA has budgeted a total of well over one-and-a-half billion dollars for State and local criminal justice systems. Perhaps the most striking fact about LEAA has been its rapid expansion from a budget of \$68 million in fiscal 1969 to \$700 million in fiscal 1972--more than a tenfold increase in four years' time. And Congress just appropriated \$850 million for LEAA in fiscal 1973, the full amount that President Nixon requested. Naturally it has had growing pains, and there have been criticisms. Most of them were recognized first by LEAA itself, and they have been corrected under the able leadership of the Administrator of LEAA, Jerris Leonard.

We feel, therefore, that LEAA has successfully surmounted the difficulties that are implicit in the headlong growth that it has experienced.

We believe it has made and is making a recognizable impact on the improvement of criminal justice in this country. There are many at the other end of the Federal-State-local spectrum who agree with us.

The Chief of Police in Kansas City, Missouri, has written us, "I want to... tell you very frankly that if we had not had assistance from you here in Kansas City, we would be in bad straits."

The Los Angeles Police Chief wrote: "With the assistance of LEAA, law enforcement in the City of Los Angeles has been able to progress to a level of service otherwise unobtainable."

The Police Commissioner for the City of Detroit writes that "here in Detroit, the assist we have received from LEAA is truly making our Department far more responsive and far more effective."

The Police Chief of Charlotte, North Carolina, which showed a noteworthy reduction in crime in 1971, states, "Projects funded by your agency have been a decisive factor in our ability to achieve this reduction."

These are only a few of many such expressions received from State and local officials, and I believe these examples speak for themselves.

To be more specific, what are some of the results of the LEAA programs?

We knew at the outset that it would not be easy to correlate specific

LEAA programs with tangible results such as reduced crime rates and lower recidivism rates for ex-offenders. But I would like to point out some broad successes and to say that LEAA has made a substantial contribution to these successes.

First, the increase in crime that was accelerating so alarmingly in the 1960's is now decelerating in the 1970's. From an increase of 17 percent in 1968 it has tapered off to an increase of only 6 percent in 1971.

The number of cities over 100,000 in population which have shown an actual decrease in crime has been growing dramatically. By 1971, one-third of such cities showed a crime decrease.

The worst fears about mounting crime have centered around the very large American cities, and here we are seeing an actual crime reduction. I refer to the six cities of over one million population--New York, Chicago, Los Angeles, Philadelphia, Detroit, and Houston. From an increase of 12 percent in the first quarter of 1971, total crime in those cities showed a steady slowdown in this increase for the next two quarters. And it showed an actual decrease of 3 percent in the last quarter of 1971.

Obviously none of us here will be satisfied until the national crime figures are substantially reduced. No recitation of favorable statistics is much comfort to the victim of last night's mugging assault. But we can take encouragement from evidence that we are on the way to fulfilling the

goal of a safe and law-abiding America.

I say that LEAA support is helping mightily in this effort and I have offered some supporting testimony of others. But sometimes specific examples are more eloquent, and I would like to offer a few.

In Fort Worth, a new concept in foot patrol teams through the areas of high crime incidence has reduced crime by 25 percent in that area. It was funded by LEAA.

In San Diego a project for the treatment of uncontrollable children involved in the juvenile justice system has shown great success. Drug use has been significantly curtailed and of more than 40 residents released in the past year, none has since been arrested. This project was funded by LEAA.

In the New York Boroughs of Queens and the Bronx, where the courts were jammed with criminal cases, a project has doubled the number of assignment courts handling night and weekend arrest cases. This has eliminated delays in many cases and has increased the rate of disposition of cases by 445 percent. The program is funded by LEAA.

In Arlington, Virginia, an After-Care Program provides counseling to young people after release from juvenile courts. It has reduced the juvenile recidivism rate by more than 16 percent, and it has been funded by LEAA.

Let me give two examples that are even more specific.

In Baltimore, a police helicopter that was responding to an assault and robbery call was able to locate the suspect within 90 seconds of the crime and only a block away from the scene.

In Tampa, Florida, a video alarm system enabled police to arrive at the scene of a robbery within 56 seconds, so that they could greet the suspect at the door as he was attempting to leave.

The equipment in both of these cases was funded by LEAA.

Gentlemen, I call that good law enforcement, and I consider it a glimpse of the effectiveness that is possible across the nation as we move further along the road of Federal and State cooperation.

At this point let me return to my emphasis on dual sovereignty, and point out that, as we all know, our country's principal line of defense against crime is maintained by the State and local agencies. It is estimated that in the last fiscal year more than \$10 billion was spent in this country for the operation of police departments, courts, and prisons. Of this, the State and local governments provided nearly \$9 billion.

In establishing the LEAA program in 1968, Congress recognized and maintained this primary State and local responsibility. It provided for the allocation of 85 percent of LEAA funds to the States in the form of block grants.

The States, in turn, would initiate the plans and the decisions, in cooperation with their local units, on how the money would be used. This is in the American tradition of maintaining the public safety at the State and local levels and avoiding anything that might approach a national police force.

In short, the wise use of LEAA funds and the success of the program is up to the States and localities.

This role has been recognized by the governors of the States. In the National Governors' Conference in 1971 and again in 1972, they passed a resolution affirming their support of the LEAA program and pledging their cooperation in "Comprehensive Planning and Intergovernmental Action."

I know that nearly all of the Attorneys General of the States and territories are represented on the boards of the State Planning Agencies which allocate LEAA block grants. I trust that you will bring to bear the broad experience and comprehensive approach of the Attorney General's office as those agencies continue to develop their criminal justice plans. The LEAA program must not be a disjointed collection of projects. If we are to see dramatic progress in stopping the crime wave in this country, we must do it with a systematic approach, and that is primarily the job of the States.

In this connection, I would like to mention one area that I believe has not received enough attention in the past. As you know, the LEAA program was created to improve the entire criminal justice system, including enforcement, the courts, and corrections. However, at present the LEAA funds allocated to programs for improving the courts amount to only 10.8 percent of the total.

I think you will agree from your experience that the sureness and the speed of the trial process is one of the key factors in deterring crime.

I think you will also agree that the sureness and speed of the trial process is one of the weak links in the total criminal justice system. It does little good for us to improve the efficiency of our police departments and to improve the rehabilitation of prisoners if the whole system bogs down in the middle.

I refer to the need for modern court administration, for the creation of more judgeships and courtrooms, and for model laws that will clarify the operation of due process.

I know that this entire area is receiving the attention of many legal organizations, including the National Association of Attorneys General. Much of this effort is funded by LEAA. In fact, as a result of a proposal made by Chief Justice Warren E. Burger, LEAA is funding a National

Center for State Courts whose purpose is to improve the operation of such courts. I am happy to observe that nearly all of the States have used at least some of its many facilities.

It is our hope that the States will continue to enlarge their interest in LEAA projects for court reform, and that such projects can be increased to at least 15 percent and perhaps as much as 20 percent of total LEAA block grants.

Beyond the LEAA program, you are aware that in most States the laws governing court procedure and rights of the accused are under close scrutiny by groups of judges and attorneys. I would hope that you and your staffs are making it your business to participate actively in this review, contributing the viewpoint of the prosecutor. In this connection I want to emphasize the example and the leadership provided by the National Association of Attorneys General. In particular, let me cite the work of the Association's Habeas Corpus Committee, chaired by Evelle Younger, Attorney General of California.

As you know, one of the chief factors that has slowed and frustrated the justice process has been the interminable collateral attacks made possible by the post-trial use of the Federal writ of habeas corpus. While I recognize the place of collateral attack in the justice process, I do deplore

the abuse of it that has mushroomed in the last 20 years. I am told of instances in the Federal courts in which prisoners have filed as many as 40 or 50 petitions. It is no problem to cite cases in which the post-trial review has dragged on for a dozen years.

One result is that the State or Federal prisoner never reaches the point of accepting his own guilt so that he can begin the process of rehabilitation.

The other result has been to clog the trial system with a mountain of collateral attacks which drains the system's resources away from its regular work. Federal courts have become flooded with habeas corpus petitions. State prosecutors are staggered with the burden of answering these petitions, many of them frivolous. And as District Attorney Frank Hogan of New York has said, "Our old cases come back in a great wave, threatening to engulf the gasping trial courts, already up to their chins in current business."

Thus a device originally intended to insure justice is now threatening a breakdown of justice.

I am happy to report that a remedy for this situation is at hand and it is an outstanding example of cooperation between State and Federal authorities.

The Habeas Corpus Committee of NAAG has drafted legislation that would restrict collateral attacks in the Federal courts on State court proceedings. It would require that such collateral attacks be primarily presented in the State courts, rather than in the lower Federal courts-- subject, however, to possible review by the United States Supreme Court.

At the same time, the United States Department of Justice has also reviewed the Federal habeas corpus procedure. It drafted a proposal to restrict the use of collateral attacks to alleged violations of a constitutional right that involves the integrity of the fact-finding process or of the appellate process. All other legal objections on behalf of the defendant may, of course, be made at the time of the trial or on direct appeal following the trial. They may not be made thereafter through collateral attack, which would be limited to factors, such as perjured testimony, which show a flaw in the fact-finding process.

Through conferences between the NAAG committee and our own Office of Criminal Justice, headed by Donald Santarelli, it was determined that the NAAG approach and the Justice Department approach dovetailed well together. A bill was drafted incorporating the elements of both approaches and this bill is now before the House Judiciary Committee. I have just completed a review of this bill and have endorsed it with the additional

proposal that it be applied to Federal prisoners as well. My letter of endorsement was sent to the House Committee last Friday, and you may be assured that the United States Department of Justice will give every support to this legislation.

Thus we see here a very significant example of cooperation between representatives of State and Federal governments---one that can have a profound effect on the speed and effectiveness of American justice. I am also convinced that through the deterrent effect of swift and sure justice it will also help to reduce serious crime in this country.

Thirty years ago it was almost fashionable to say that the Federal system of dual sovereignty was on the way out. In 1939 the noted political scientist, Harold Laski, wrote an article entitled, "The Obsolescence of Federalism," and proclaimed, "The epoch of Federalism is over." In 1949 a respected news commentator said, "Our Federal system no longer exists and has no more chance of being brought back into existence than an apple pie can be put back on the apple tree."

I have news for these gentlemen. In the past generation we have witnessed a strengthening of the separation between Federal and State powers. One of the reasons has been the development of cooperation be-

tween the jurisdictions that has brought with it a profound mutual respect. We are seeing a further step in this direction with the cooperation of Federal, State, and local agencies in attacking the menace of crime in the United States. We are witnessing still another step in the progress through Congress of the revenue-sharing proposal of President Nixon-- a proposal that will provide far larger funds to enable the states to solve their own problems in their own way.

In 1968 President Nixon called for an end to Federal inroads against State jurisdiction and a new beginning for more effective State government. "I happen to believe," he said, "...that a local commissioner, or a State governor, knows a lot better about what is best for his city, or his State than somebody in Washington, D. C."

Four years later, I believe the President has lived up to that declaration. I believe that each of us in positions of responsibility at both levels of government should do what we can to promote that concept. In the process we will keep faith with our fellow Americans who believe that democracy begins at home. And incidentally, we will also keep faith with those who, nearly 200 years ago, made the initial decision to risk their liberties in the unique Federal-State system that we call the United States of America.