



Department of Justice

KEYNOTE ADDRESS

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I am delighted to join you tonight here in the Ozarks for this 1990 Major City Chiefs/National Executive Institute Associates Conference. Many of you I count as longtime friends -- some long before you became Major City Chiefs. When I was Governor of Pennsylvania, I used to say "You've Got a Friend in Pennsylvania." Tonight I want to emphasize that you still have one in Washington.

I consider the NEI executive training program one of the best contributions our Federal Bureau of Investigation makes to nationwide law enforcement. So I trust you will take away from this conference not only new tactics, for example, to aid you in apprehending drug criminals, but an increased sense that this is a real alliance we have formed -- a banding together of federal, state, and local forces in the same intense struggle to win this war on drugs and violent crime.

That's why the President deliberately speaks of National Drug Strategy, not a Federal one. I will have some things to say tonight about new federal laws President Bush is asking Congress to enact to help us fight the drug war. But we are always aware that federal law enforcement is only part of a grander, multi-force strategy -- such as is evident in the actions of our Organized Crime Drug Enforcement Task Forces in thirteen different regions, our 62 DEA State-Local Task Forces, and our Law Enforcement Coordinating Committees, under the leadership of the U.S. Attorneys.

These efforts, as you know, seek to bring together our federal agencies and to call upon your skills and your knowledge -- the street smarts and savvy of your police departments -- so that we can combine our strengths, shore up our weaknesses and move together on all points against the criminal elements in our communities.

That is, for example, precisely how law enforcement seeks to disrupt, dismantle, and destroy drug-trafficking enterprises. Call it a 3-D operation -- disrupt, dismantle and destroy. Disrupt the marketplace by apprehending sellers and users alike. That is where you are truly the first line of defense, but where we want to help you all we can. Dismantle the drug-trafficking organizations by incapacitating their leadership. That is both of our jobs, but often we must take the lead role when interstate or international operations are involved. And most important, destroy the material infrastructure of these enterprises by seizing their illegal profits and tainted property under the forfeiture laws. That is primarily our job, but ultimately both our doing. That is why we have gladly shared some \$430 million of those forfeited criminal assets with you, in order that we can both enhance our ability to prosecute the drug criminals.

And I don't need to tell you their whereabouts. You are acutely aware of the hard-core abuse within the inner cities your men police. But these perilous times have also imposed rapid and

tragic change on the American countryside. You know, as well as I do, that the crack house isn't always some gutted South Bronx brownstone. The crack house can also be that boarded-up, Victorian home, with the slipping shingles, down at the wrong end of Main Street. No, the drug siege isn't urban or rural. It's everywhere, around the city corner, out in the cornbelt, across the whole, demographic and geographic grid of this country.

You know that, and realize the mistake in all the naive talk about drug-abuse as "a victimless crime." Incredibly, we today hear pundits, professors, and even judges, learnedly proposing to legalize drugs. What does this constitute but just the opposite of street smarts. Call it, I say, street ignorance. Because it ignores the lessons of the streets and shows we still need to make people realize the true risks that are associated with drugs.

We've simply got to reclaim these American neighborhoods -- those neighborhoods your men patrol -- the urban streets and country lanes rendered unsafe by drug siege. That duty falls upon the community at large -- yes, for treatment and education and rehabilitation -- in order to further demand reduction. But the real brunt of such duty still falls, foremost and hardest, on the criminal justice system.

You simply can't fight the war on drugs without sanctions against the drug dealers. You need to bring in the law against the downtown drug-runner, the same way we have brought in the law to apprehend and indict major menaces like General Manuel Noriega, and the fifteen Colombian narco-traffickers extradited so far by executive decree of their courageous, retiring president Virgilio Barco.

We know that effective law enforcement is literally the first line of defense against these merchants of death.

So tonight, I thought it might be useful if I reviewed with you what further action President Bush is asking from Congress to bring the law to bear on the drug-lords. You already know, I'm sure, about the funding. The Administration is asking for an additional one billion dollars that will increase expenditures to \$10.6 billion next year, about one fourth of which will go to support state and local activities. But in this fight against drugs, we are not only asking for more resources. We are also asking for new laws to remove hurdles to effective law enforcement. This legislation against violent drug crime, proposed over a year ago, and now finally being debated by Congress, is designed to help get the drug dealers off the streets, and keep them off.

We are asking for strong measures. But they are not only necessary, they are appropriate. And, finally, they are reasonable and just. And I trust you, as law officers, will recognize the import they carry, the difference they can make to your men on patrol as well as ours at risk.

First, this administration is asking for the restoration -- and also the reform -- of the federal death penalty. In limited cases of grievous harm and aggravated violence, the ultimate sanction must be available to our prosecutors as one high price that drug criminals must face, and possibly pay, for their heinous crimes.

The death penalty would become newly available in cases involving three classes of drug criminals, in amendments proposed by the President's proposed Comprehensive Violent Crime Control Act.

Major drug kingpins. These are the leaders of Continuing Criminal Enterprises (CCE) organized for large-scale, often international traffic in drugs -- who are now subject to mandatory life imprisonment.

Drug kingpins who attempt to kill in order to obstruct justice. This is to protect -- by the deterrent of the ultimate sanction -- the lives of judges, jurors, public officers,

witnesses, or their families, who can be threatened by drug lords under investigation or trial.

Federal drug felons whose offenses result in death. You will recognize this as felony murder, a sanction to be used especially against those drug criminals who act with reckless disregard for human life.

I won't dwell long on this dire topic, but I do want to raise two points about the death penalty, in relation to drug crime.

The first has to do with what we lawyers call proportionality. Is the death penalty proportionate with the barbarousness of criminal drug-trafficking, or does it represent "cruel and unusual punishment," under the Eighth Amendment? Surely drug-trafficking is comparable to espionage, treason, aircraft piracy, Presidential assassination -- or any one of the seventeen different federal crimes that are presently punishable by death. Surely drug crime and its attendant violence represent a comparable threat to the public well-being, in this time of nationwide, even international emergency.

Because the "scourge of drugs" -- rightly so named by President Bush -- inevitably compounds its evil. Its death toll never ends, but continually multiplies. Let me quote Judge

Thomas G. Gee, writing en banc for the Court of Appeals for the Fifth Circuit, in Terrebonne v. Butler.

"Except in rare cases, the murderer's red hand falls on one victim only, however grim the blow; but the foul hand of the drug dealer blights life after life and, like the vampire of fable, creates others in its owner's evil image -- others who create others still, across our land and down our generations, sparing not even the unborn."

The death penalty is surely proportionate to the endless chain of death that drug-trafficking weaves out of vulnerable, mortal existence. What do we say about the infants who enter the world, already thrashing, trying to shake the fetters of a crack addiction they were born with? We have the right to end this scourge, if necessary, with a stake through the heart. In truth, it is a greatest serial killer we have ever faced.

Then there is what we lawyers call finality. And this leads to the second element of the President's crime package. Under present circumstances, the death penalty too often translates into a seven-to-ten year residence on death row. The appeal process is redundant and endless, arguably to the point of mental cruelty. For that reason, in 1988, the Chief Justice of the Supreme Court created the Ad Hoc Committee of the Judicial Conference on Federal Habeas Corpus in Capital Cases, under

retired Justice Lewis Powell. The "Powell Committee" came up with recommendations that would limit a defendant on a state prison's death row -- after carefully defined appeals proceedings in the state courts have been exhausted, and with the aid of competent, state-provided legal counsel -- to a single federal habeas corpus petition.

We are asking Congress to enact the Powell Committee's recommended course of single, final, legal action in a capital case. This would end the dilatory repetition of writs, and impel more serious recognition that the ultimate sanction is a punishment that the state may duly and rightly impose. Undoubtedly, the threat of this final fate would have its effect on drug criminals -- as it does not now have, because of its uncertain imposition.

Let me also make clear that asking for the death penalty is a prosecutorial decision to be made only at the highest level. Under Justice Department guidelines, no federal prosecutor can seek the death penalty without the approval of the Attorney General. (Even then, a jury must unanimously find present the requisite aggravating factors -- and absent any mitigating factors -- to impose the death penalty.) One certain check on any misuse of the ultimate sanction is the Attorney General's inescapable responsibility for that mortal choice.

But there is one other important legal decision for which I bear no responsibility -- and only experience deep frustration. It is often reached by the courts, and leads to too many cases lost -- or not even brought, because evidence would have to be suppressed. I am speaking now of the Exclusionary Rule, which suppresses evidence gained by unlawful searches and seizures prohibited by the Fourth Amendment.

We believe this judge-made rule needlessly restricts the use of evidence gained through objectively reasonable searches that later turn out to be technically defective. Evidence obtained in good faith pursuant to a defective warrant is already admissible. So, we believe, should evidence obtained in good faith by reasonably objective searches without warrants be admissible. So the third component of the President's anti-crime package asks Congress to lift this restriction on warrantless searches, in cases where a law enforcement officer has acted in good faith.

We would prefer that the Supreme Court so rule, and the Court may yet, based on its holdings in the Leon and Duckworth cases. But in light of the legal emergencies arising out of the drug war, we cannot afford to wait that patiently. Action against drug dealers is often of the instant, taking advantage of sudden, circumstantial opportunities for seizure and exposure. We see no reason why solid evidence against drug dealers should not be before the courts -- when the police, immediately on the

scene, have every sound reason to act upon their suspicions, and do so in good faith that they are carrying out the law.

So if these fundamental legal reforms -- plus several other changes proposed by the Violent Crime Bill -- are passed by the Congress, here are the new circumstances under which a drug criminal, caught in the act, might find himself facing justice:

If he possesses a firearm -- most particularly, a semi-automatic weapon -- he faces a mandatory ten-year prison term. If your police officers search the trunk of his car -- acting in reasonable good faith -- to find other weapons, and also find drugs, either can be brought into court as evidence against him. If, before trial, he offers to plead, he will face far stricter guidelines to federal prosecutors on so-called plea bargains. If he is sentenced to jail for this offense, there will be a jail to contain him. And in line with the fact that one half of all jail inmates are there on drug-related charges, he can be tested after his release -- and held accountable as a parolee -- for subsequent drug usage. If, during the criminal action, he should kill an innocent bystander in a burst of reckless gunfire, he may be subject to the death penalty. If he goes to jail, under sentence of death, there will be a finality to the decision on his appeal, within a legally established time frame.

Those then are the fundamental points on which we believe the law must change if the major drug dealers are to be brought to justice, and appropriately punished. I am hopeful that the Congress will see these revisions of the law in the same light, and enact them as part of the President's Violent Crime Bill, in aid of our National Drug Control Strategy. We owe it to our own citizens -- as well as those foreign leaders who have joined us in this drug war -- to see that justice is done, swiftly and surely, under the rule of law. And the best way to ensure that is to see that the law is restored and reformed to its full powers, not only as the bulwark of our rights, but as the final arbiter of criminal fate.

We all share President Bush's goal of a kinder and gentler America. But in order to create that kinder and gentler nation for all Americans, we are going to have to get rougher and tougher with some Americans -- those who traffic in illegal drugs and spawn the inevitable violence that accompanies these activities. It is upon such transgressors that our law enforcement actions -- federal, state and local -- must be focused. In so doing, we but honor our solemn responsibility to protect and preserve what I have always considered to be the first civil right of every American: the right to be free from fear -- in our homes, on our streets and in our communities.

May I wish you Godspeed in your endeavors toward this goal.