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Department of Justice

"REFORMING THE CRIMINAL CODE"

AN ADDRESS BY

JOHN N. MITCHELL
ATTORNEY GENERAL

AT THE

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I'm delighted to join in welcoming you here, and to say how valuable I feel these conferences are in fostering an exchange of views, of problems, and perhaps even of solutions.

This morning I would like to discuss with you a project we are undertaking that is extremely important to your work, and to the future of Federal criminal justice. I refer to the project to reform the Federal criminal code, which the Department of Justice began early this year at the direction of President Nixon. Let me set the stage by reading to you an abridgment of a particular Federal statute.

Whoever... sends away any vessel... for the purpose of procuring any person from any foreign kingdom or country to be transported... and disposed of as a slave... shall be fined not more than \$5,000 or imprisoned not more than seven years, or both.

That statute in suppression of the slave trade is not necessarily out of another age. It is on the books today--Section 1582 of Chapter 77 of Title 18 of the United States Code. I could cite others, including Chapter 81, containing laws to suppress piracy on the high seas.

I mention these to dramatize the need for a thorough overhauling of the Federal criminal code. These laws have evolved over the past 181 years in a haphazard and piecemeal fashion. Statutes were enacted to meet needs as they arose, utilizing the solutions of the moment.

Our present Federal criminal code thus consists of a proliferation of ad hoc enactments, often overlapping and inconsistent at best, and outmoded and unenforceable at worst. In accounting for the Code's existence in this form we might say of it what Topsy said of herself: "I 'spect I growed. Don't think nobody ever made me."

Although the Federal criminal code has been revised three times since the first Federal criminal statutes were enacted by Congress in 1790, none of these revisions encompassed substantive reform. Since the last revision in 1948 the Code has been amended and changed literally hundreds of times.

Because no substantive reform has ever been attempted, our criminal code stands as a patchwork of efforts to improve on 19th century concepts of criminal justice. I am reminded of the classic cartoon strip during World War II in which the character "Sad Sack" starts browsing through the orders posted on an Army bulletin board. As you know, the practice was often to tack new orders on top of old ones. Sad Sack became so intrigued in leafing back through them that, late at night, and reading by the light of a match, he finally came to Washington's order to cross the Delaware.

Not only has the criminal law been subject to this kind of accretion, but many important areas of criminal law have been left entirely to development by the judiciary on a case-by-case basis. The law of defenses, such as insanity, self-defense and entrapment, offers good examples.

Another shortcoming is that offenses which are very similar are scattered throughout the code in a multiplicity of statutes. For example, literally dozens of statutes cover the one basic offense of theft. They abound not only in Title 18, but throughout the entire United States Code, appearing in titles covering such subjects as Commerce and Trade, Conservation, Foreign Relations, and Labor. Instead of one statute to define the common law crime of robbery, existing Title 18 in its chapter on robbery and burglary has several distinct robbery statutes, one dealing with the special maritime and territorial jurisdiction, another with the property of the United States, another, federally insured banks, and still another, the mails. Although each of these statutes covers the same basic offense, they are written in different language. Such a proliferation of statutes covering basically the same offense leads inevitably to conflicts, inconsistencies, and confusion.

Again, in the laws relating to sentencing there are in Title 18 alone some 18 different maximum terms of imprisonment ranging from 30 days to life. There are 14 different maximum fines, including eight different and widely ranging fine levels for the various offenses that carry just one year's imprisonment.

The complexity and confusion that exist in such a penalty structure defy logical analysis. Clearly, penalties have been attached to offenses in the same ad hoc manner in which the offenses themselves were created.

These are only some of the reasons why a complete overhaul of the Federal criminal code is long overdue.

From its beginning the Nixon Administration has stood for reform and renewal. Consistent with that policy, the Department of Justice has--among other initiatives--undertaken the first complete reform of the Federal criminal code. As you represent the prosecutive arm of the Federal Government, no legislative program that this Administration can propose will have more meaning to you and to the performance of your duties than Federal criminal law reform. When enacted by Congress, a new Title 18 will directly affect your day-to-day work and that of your successors for decades to come.

The need for this reform was seen by the 89th Congress, which created a National Commission on Reform of Federal Criminal Laws. As you know, this Commission completed four years of intensive work and submitted its Final Report last January to President Nixon and the 92nd Congress.

I should emphasize that the commission's report is not considered as the last word, but rather as a good start. With this in mind, President Nixon directed me to establish a team of experienced attorneys within the Department of Justice to work full-time on a comprehensive reform of the Federal Criminal Code. Such a team, known as the Criminal Code Revision Unit, has been established within the Criminal Division. This Unit is giving appropriate consideration to the alternatives submitted in the Commission's Final Report and in its working papers. It will analyze section by section and chapter by chapter the various proposed changes and their effects. It will also be free to propose additional alternative recommendations of its own, including the option of retaining existing law in particular areas.

Moreover, in accord with the mandate of the President, the Department will reexamine the procedural rules in Federal criminal courts and recommend appropriate changes. I feel this aspect of the Department's work is especially important in view of the excess proceduralism that in many cases has slowed the progress of trials and unduly penalized the prosecution.

As various aspects of the Unit's work are completed they will be submitted to a committee of high-level Department officials. This committee will, in turn, report directly to me.

You have undoubtedly heard of the controversial aspects of the National Commission's report--capital punishment, gun control, marihuana, and consensual sex offenses. But these constitute perhaps one or two percent of the volume of law under scrutiny. In my opinion most of the work ahead is a matter of common sense and professionalism.

Besides evaluating all aspects of the National Commission's report and its proposed draft of a new Federal criminal code, the Revision Unit is also consulting other authorities and literature on the subject. These include the eight new state codes adopted since 1956, and at least 16 other proposed new state codes under active

consideration by commissions or legislatures. They also include the Model Penal Code drafted by the American Law Institute, and the American Bar Association's Project on Minimum Standards for Criminal Justice.

The Unit is also in close contact with the Judiciary Committee of both Houses of Congress, with other concerned agencies of the Federal Government, and with other Divisions and Offices within the Department of Justice. In addition, the Unit wants to have the benefit of experience by our U. S. Attorneys. You have all been sent copies of the Commission's report and working papers, with the request that you send back any recommendations. If, for some reason, you have not received this material I hope you will get it from the Executive Office for U. S. Attorneys while you are here in Washington.

I might note that the personnel in the Unit have a wide variety of practical experience in Federal criminal law and that almost all of them have had trial and appellate experience as assistants in United States Attorneys' offices.

I think you can see from all this that no effort is being spared to make this an exemplary Federal criminal code that is modern, fair, practical and long-lasting.

How long will the job take? When I testified on this subject before the Senate Judiciary Committee last February, I said that the job "will require many months of intense study." On the same day the National Commission's Vice Chairman, Representative Richard Poff of Virginia, told the committee:

The people of this country, individually and as a society, must live many years with any new code we write. Let us make haste slowly, deliberately and justly.

I would therefore not like to promise when the task will be finished, although to give you some kind of framework I will say that we hope to present our recommendations to the 92nd Congress.

Let me close by emphasizing your stake in assisting this project. As you know, this is an age of law reform. Bar associations, legislative bodies, and the courts--both at the state and Federal levels--are all reexamining and reforming criminal law. Our own Law Enforcement Assistance Administration is active in this area. In fiscal 1970 and 1971 it has provided more than \$1.5 million for projects to reform the criminal codes in 30 states and the Territory of Puerto Rico.

Unfortunately, prosecutors as such have not been prominently visible in the law reform process. Yet among all lawyers, you are the ones charged with enforcing the laws. In the past you have had to wrestle with many laws that were obscure, contradictory, or unenforceable. There have undoubtedly been many times when you wished something could be done about it.

Today, this Administration is dedicated to law reform, and solicits your help. Now is the time for you to come forward and present your suggestions. An expert on wills and testaments once wrote: "It is difficult, if not impossible, to draw a perfect instrument, which will avoid all questions and problems, but certainly the effort should be made." That is exactly the kind of effort we are making on the Federal criminal code, and we need your help to assure that we will at least approach, if we cannot achieve, perfection.