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NEW DIRECTIONS FOR FEDERAL INVOLVEMENT IN CRIME CONTROL

SUBCOMMITTEE ON CRIME

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

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LETTER OF TRANSMITTAL

THE LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C., February 22, 1977.

HON. PETER W. RODINO, JR.,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. RODINO: I am pleased to submit the accompanying document containing the proceedings of a Congressional Research Service workshop, entitled "New Directions for Federal Involvement in Crime Control." The workshop was held on December 1, 1976 in the Rayburn House Office Building. It is our hope that the proceedings will be useful to your Committee and to the Congress.

The CRS workshop was an outgrowth of the Congressional interest in crime expressed during 1976, the year of the Presidential campaign. Members of the staff of CRS's Education and Public Welfare Division working in the area of crime legislation were impressed by the bipartisan theme of the need to reexamine the role of the Federal government in crime control. This theme was emphasized by several Congressional committees, including your Subcommittee on Crime, chaired by Congressman John Conyers. Crime was increasing, public concern was increasing, and Federal spending on crime control remained high. An examination of the direction the Federal government is taking in its efforts to control crime, and the possible need for a redirection, seemed timely.

The CRS workshop consisted of four panel discussions on the subjects of Federal aid to State and local criminal justice agencies, sentencing and prison reform, white collar crime, and research and technology. In each case, brief remarks by the panelists were followed by a general discussion of the subject at hand.

The proceedings of the workshop were transcribed with the thought that they might provide suggestions and ideas for use by the Congress at a later time. They are presented in the accompanying document, which is organized in an attempt to accommodate the needs of readers with varying levels of interest in the subjects covered. A general summary of the proceedings appears as an overview, which is also intended as a guide to the materials that follow. The proceedings of the four panels are each accompanied by a summary and an analysis. Thus, the reader with a general interest in the subject of crime control may wish to read only the overview. A reader with a specific interest in the subject of one of the four panels may wish to skip to the summary, analysis, and proceedings of that panel. Finally, the reader interested in all aspects of the role of the Federal government in crime control may wish to read the volume in its entirety.

I would like briefly to acknowledge the specific contributions of the staff of CRS's Education and Public Welfare Division in setting up the workshop and preparing the accompanying document. The workshop was coordinated by Charlotte Moore, with the assistance of Beverly Bennett, Scott Christenson, and other members of the EPW Crime Section. The proceedings of the workshop were edited for publication by Catherine McHugh, and the analyses of the proceedings were written by Barbara McClure, Charlotte Moore, Miriam Saxon, and Joyce Vialet. Secretarial support was provided by Flora Dean, Brenda Freeman, and Nancy Sharbel.

I hope that the following will be of interest and of use to the House Judiciary Committee and to the Congress.

Sincerely,

GILBERT GUDE,
Director.

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I. Workshop Agenda

CRS WORKSHOP: NEW DIRECTIONS FOR FEDERAL INVOLVEMENT IN CRIME CONTROL

Wednesday, December 1, 1976, Room 2168 Rayburn House Office Building.
Moderator: Martha Derthick, Brookings Senior Fellow.

Morning Panels

9:00 a.m.–10:30 a.m.

Federal aid to State and local criminal justice agencies

Donald Santarelli, Santarelli, Sandground and Good, Attorneys-at-Law, Washington, D.C. (Former Law Enforcement Assistance Administration Administrator).
Daniel Skoler, Visiting Fellow, National Institute of Law Enforcement and Criminal Justice, Washington, D.C.
Sarah C. Carey, Cladouhos and Brashares, Attorneys-at-Law, Washington, D.C. (Author of several analyses of the Law Enforcement Assistance Administration).

10:30 a.m.–12:00 noon

Sentencing and prison reform

Norval Morris, Dean, University of Chicago Law School, Chicago, Ill.
Andrew von Hirsch, Associate Professor, Graduate School of Criminal Justice, Rutgers University, Newark, N.J. (Author of *Doing Justice*, report of the Committee for the Study of Incarceration).
John P. Conrad, Senior Fellow, Academy for Contemporary Problems, Columbus, Ohio.

Afternoon Panels

1:30 p.m.–3:00 p.m.

White collar crime: The Federal role

Patrick Murphy, President, Police Foundation, Washington, D.C.
Jonathan Goldstein, U.S. Attorney, District of New Jersey, Newark, N.J.
Donald R. Cressey, Professor, Department of Sociology, University of California, Santa Barbara, Calif.
Harold R. Tyler, Jr., Deputy Attorney General of the United States, Washington, D.C.

3:00 p.m.–4:30 p.m.

Research and technology

Alfred Blumstein, Carnegie-Mellon University, Pittsburgh, Pa.
Gerald Caplan, Director, National Institute of Law Enforcement and Criminal Justice, Washington, D.C.
Marvin Wolfgang, Director, Center for Studies in Criminology and Criminal Law, University of Pennsylvania, Philadelphia, Pa.

II. Overview: New Directions for Federal Involvement in Crime Control [1]

On December 1, 1976, the Congressional Research Service brought together a group of people with knowledge of both the concepts and current practices in the crime control area, to re-examine the Federal role in crime control and to suggest some new directions. The audience included staff from key Congressional committees and from the offices of a number of Senators and Representatives with a particular interest in this area. Also present were the staff of the Crime Section of CRS's Education and Public Welfare Division, and members of CRS's American Law Division. The workshop agenda precedes this overview; a list of participants appears as an appendix. This overview is followed by the proceedings of the four panels, in each case accompanied by a summary and analysis.

The subject matter of three of the panels related directly to what are generally considered to be the three major functions of the Federal government in the crime area. These are financial and technical assistance (Federal Aid to State and Local Criminal Justice Agencies); Federal criminal law, and Federal laws affecting the policies and operations of the Federal criminal justice system (White Collar Crime); and Federal criminal law as a model for State legislatures (Sentencing and Prison Reform). A fourth function, information gathering and support of independent research to an extent far surpassing current activities, was a new direction strongly endorsed by the panel on Research and Technology. Each of the panels is reviewed briefly below, with an emphasis on suggested new directions.

The principal directions suggested by the four panels were:

—Increased realism about the limited ability of Law Enforcement Assistance Administration (LEAA) to reduce crime, and a reassessment of its other goals and the appropriate funding mechanism(s) to achieve them.

—Expansion of the Federal government's information gathering and research support efforts, insulated from any political manipulation, as probably the best Federal approach to eventually reducing crime.

—Elimination of unjust sentencing disparity in the Federal sentencing system, as a desirable end in itself and as a model for the States.

—A comprehensive examination by the Congress of the Federal laws and law enforcement practices required to combat white collar crime effectively.

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[1] Joyce Vialet, Specialist in Social Legislation, Congressional Research Service.

A. FINANCIAL ASSISTANCE: FEDERAL AID TO STATE AND LOCAL CRIMINAL JUSTICE AGENCIES

The focus of the first panel was on the Law Enforcement Assistance Administration (LEAA). The three panelists approached the Justice Department agency from different points of view, reviewing and analyzing different aspects of its eight year history as background for their criticism and suggestions for change. Simply put, the panelists discussed the program in terms of its ends (Mr. Santarelli), its means (Mr. Skoler), and its track record (Ms. Carey). Martha Derthick, the general moderator for the CRS workshop summed up the results with the observation that, "I'm not sure I detect any emergence of a consensus on what new directions should be taken, though there would seem to be some consensus in regard to disappointments in the past."

Donald Santarelli, a former LEAA Administrator, expressed the view that the basic premise and hope on which LEAA had been founded—that sufficient funding of the criminal justice system would result in reduced crime—had been an "overpromise". "My perspective is, don't confuse improved criminal justice quality with crime control and crime reduction." Underlying this conclusion was his more general observation that the agencies of the criminal justice system, at least as that system is presently structured, cannot in themselves control crime at its present volume.

Mr. Santarelli observed that the basic instruments in this and any society for the prevention of anti-social behavior, and hence the control of crime, were the institutions of the community—the family, and other extensions of the family such as the neighborhood, churches, and schools. He characterized the criminal justice system as a backstop, intended to catch the occasional fast ball, "but not designed to take every pitch or foul." In his view, the reduction of the effectiveness of community institutions in recent years had led simultaneously to an increase in crime and to an increased and unrealistic reliance on the artificial governmental institutions which make up the criminal justice system. This view formed the basis for his criticism of LEAA as follows: "pouring money and talent and hope into improving the artificial instruments without fundamental changes in their function and without fundamental changes in the nature of the community support of that system is, I think, a mistake in direction."

The primary new direction for LEAA recommended by Mr. Santarelli was a refocusing and reemphasis of the program on "the community side of the criminal justice process." He noted, first, that the criminal justice system must have the support of the community in order for crimes to be reported to the police; and, secondly, that witnesses and victims are not currently seen as the responsibility of any of the agencies of the criminal justice system. Quoting:

> That's what LEAA leadership should be all about, if LEAA is to have any existence at all. To re-focus the attention of the professionals now paid to serve themselves, to serve the individuals in the community, particularly the witnesses and the victim.

The basic change in direction recommended by Mr. Santarelli was primarily attitudinal—requiring LEAA leadership, rather than legislation, in order to press for greater involvement and support in the relationship between the criminal justice system and the community.

Beyond this, his recommendations reflected the conviction that the role of LEAA in telling the States and localities what to do should remain very limited, "that the ideas, however bad or good, should come from the community, that experimentation should occur in the community, and that by and large the policy considerations involved in what is done in the field should be those choices made by the local community." This, of course, reflects the political philosophy which led initially to the adoption of the State block grant funding mechanism as a protection against Federal intervention in the operations of State and local agencies. In keeping with this, Santarelli's specific operational recommendations for directions to be taken by LEAA as an agency were not so much new as modest, reflecting his belief in leadership, as opposed to control, by LEAA. These were that it stay small and "not particularly competent" at giving advice; that it engage in a kind of revenue sharing with a limited discretionary role; that its Administrator be subject to annual review by the Congress and, relatedly, that oversight hearings be "harder and tougher"; that LEAA extensions not be for long periods of time, maybe less than three years; and that it remain a flexible program.

Daniel Skoler, a Visiting Fellow with LEAA's research institute, focused primarily on the funding mechanism of LEAA as it had developed over the past and might be changed in the future. Implicit in his discussion was a consideration of the funding mechanism as a reflection of the relation of the Federal government to State and local governments under the LEAA program, as well as of the more general interrelationship of the various elements of the criminal justice system.

Mr. Skoler discussed the various components of the initial LEAA program which he defined as (i) mandatory planning, total system planning, (ii) block grants based on States' conceptions of their problems, (iii) a research component, (iv) an education component, and (v) a technical assistance component. He described this configuration as representing the new governmental aid technology, which was the model for a series of subsequent Federal grant programs, including the poverty program as it later evolved, the Comprehensive Employment Training Act (CETA), and Title XX of the Social Security Act.

With specific reference to the LEAA program, Skoler noted that the State block grant format embodied the basic decision that the State governments would play an essential role in the program, a decision which he subsequently endorsed and recommended continue. He also noted that LEAA's initial "comprehensive aid package tied to planning" was philosophically compatible with the insight of the Katzenbach Commission, the President's Commission on Law Enforcement and Administration of Justice:

> . . . that crime control related to and relied upon a series of discrete services that had been working in tandem. The Act embraced a construct known as the "criminal justice system," consisting of police, courts, prosecution, defense, and corrections.

Both mandatory comprehensive planning and broad scale block grants were particularly appropriate to a systems approach to crime control.

With regard to both the initial LEAA program and the new technology of grants-in-aid of which it was a model, Skoler noted, "As you know, the record is quite ambivalent as to whether this ideal configuration produced the results that it had in mind." He itemized possible new directions for LEAA's funding mechanism and requirements which are currently under discussion, as follows:

(1) Dropping block grants in favor of special revenue sharing (i.e., requiring that the money still be used in the criminal justice area, as opposed to general revenue sharing, which would be unrestricted.) However, he noted that this was not really a new direction, since it had been attempted by the Nixon Administration and rejected by the Congress. He noted also that revenue sharing in general was not a new idea, since the biggest single Federal aid program for criminal justice was through general revenue sharing, under the State and Local Fiscal Assistance Act of 1972. While this was largely substituted investment, replacing State and local funds which would otherwise have been spent for criminal justice purposes, he suspected that there was a great deal of such substitution under the LEAA block grant program as well.

(2) "Purify" the block grant by eliminating all the earmarking which has been added through amendments to the initial legislation—"another new direction might be the old direction of going back to the pure block grant." Skoler observed that, "we now have a block grant program that has a number of categorical allotments." However, he subsequently observed that, alternatively, it might be in order to reexamine the whole concept of an integrated criminal justice system, noting that these categorical allocations are, in a sense, declarations of separatism, and that it might be appropriate to "nurture each segment."

(3) Drop comprehensive planning, recommended by some not because they are against planning, but as a reaction to the almost "crippling complexity in handling the block grants." Furthermore, planning is generally not done for the total system, but only for the Federal funds—arguably a waste of time. Skoler suggested that, rather than the current comprehensive plans, the achievement of Federal or State-established standards might be substituted as a prerequisite for Federal aid.

Based on a review of the various roles played by LEAA since its creation, **Sarah Carey**, author of a series of studies of the LEAA program, concluded that the only role at which LEAA had been successful was in providing straight financial aid. However, she concurred with Donald Santarelli in his differentiation between crime control and feeding money into the criminal justice system. She suggested that if it were in fact determined that the system needs more money, it should be provided in the form of general revenue sharing, particularly in view of the current lack of knowledge about how to curb crime. She also recommended the revamping of LEAA's research institute in order to attempt to find answers to the crime problem. Like

Mr. Santarelli, she suggested that crime control would probably not be accomplished primarily through the criminal justice system.

In the event that the LEAA program is continued more or less in its present form, Ms. Carey recommended that legislation be enacted to integrate the State planning agencies into regular agencies of the governments in question, and that they be brought into a closer relationship with the State legislatures.

She also recommended that consideration be given to requiring States to meet minimum standards as the only prerequisite for Federal aid, a proposal similar to one suggested by Mr. Skoler, and a concept strongly opposed by Mr. Santarelli. Ms. Carey saw this as a possible way of simplifying current procedures, noting that many local administrators feel that Federal interference is as extensive under the current block grant program as under categorical programs.

Finally, implicit in Ms. Carey's opening criticism of Congress for its neglect of LEAA was the recommendation that the Congress should exercise more oversight over the program, a point also made by Mr. Santarelli.

B. INFORMATION GATHERING/SUPPORT OF INDEPENDENT RESEARCH: RESEARCH AND TECHNOLOGY PANEL [2]

The functions for the Federal government outlined by at least two of the panelists discussing research and technology are, at least as viewed and presented by them, so far removed from what currently exists as to constitute entirely new roles for the Federal government in the area of crime control. However, information gathering and support of independent research are not new roles for the Federal government in other fields. The Bureau of Labor Statistics and the National Institutes of Health were specifically cited as possible models for the kind of activities needed in the crime area.

Gerald Caplan, the current director of LEAA's research arm, the National Institute of Law Enforcement and Criminal Justice, strongly recommended the creation of a new Federal bureau of criminal justice statistics, similar to the Bureau of Labor Statistics. The bureau would collect and make available data on all aspects of crime and the criminal justice process, including information on victimization, offender characteristics, and manpower and budgetary needs. In Mr. Caplan's opinion nothing could have more impact on criminal justice research. In terms of actual crime control, it would be "far more valuable than hasty and premature decisions to spend more funds in one area or another."

The need for such an agency was seconded later by Marvin Wolfgang, who noted in particular that the United States had no national judicial statistics. He said that Thorsten Sellin had said in the 1930's and the 1950's that the United States had the worst criminal statistics of any country in Western society, and that the statement remained true today.

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[2] The Research and Technology panel was presented fourth for scheduling purposes, and is so presented in this publication because of references by the panelists which would otherwise be unclear. It is discussed here following the panel on Federal aid because of the interrelationship of the subject matter of the two panels.

Caplan noted that we have the technology and experience to set up such a statistics-gathering unit, and that the impediment was in "the political realm." While he did not elaborate, presumably this referred at least in part to the functional interests of the existing Federal agencies with related tasks, most notably the FBI, which collects and publishes the annual Uniform Crime Reports.

He noted that the data that is collected—by the FBI and by LEAA in the area of victimization—is inadequate and contradictory. Perhaps most importantly, its reliability is questioned by the public, in part because these agencies are seen to have a stake in the outcome of their findings.

Marvin Wolfgang, Professor of Sociology at the University of Pennsylvania, discussed research from the point of view of research scholars, and the relationship "between the research community and potential users of research." He described existing research in criminology and criminal justice as extremely inadequate, uncoordinated, and segmented, and observed that the size of the research community and the amount of sophisticated research had not kept pace "with the increase in the amount of funds available, and the number of organizations and the increased sensitivity of the public and of the Federal government to the problems of crime."

Additionally, he indicated that the "chasm" between the research community and policy-making and implementation is as wide today as it was 20 years ago. Within the research community itself, communication and dissemination are inadequate; research needs to be more centralized and coordinated.

Wolfgang agreed with Santarelli's statement that there should be some separation between the research institute and the rest of LEAA. He stressed that, at the same time, the Institute should have more linkage with the research community—with the traditional academy doing so-called basic research—and with such agencies as the Crime and Delinquency Center at NIMH.

He also reviewed areas "where research might be more actively done and where the Federal government can intervene in the whole area of criminal justice," and came out in rather explicit disagreement with some basic points made by Donald Santarelli during the LEAA panel. Regarding "the ramily and 'root' causes of crime," he agreed about their importance, "but we cannot do much about that at the Federal government level, or even the State or local government level." He argued that we cannot legislate love or the proper rearing of children. Regarding "education, employment, better housing," he said that while the Federal government obviously has a major role, these things should be addressed for their own sake, not for the purpose of reducing crime. He argued that "the criminal justice system itself," and research relating to it, was the most promising focus for the Federal government: "where there is a capacity for the Federal government to manipulate, to function, to produce some change in intervention. That is where I think we need to put a considerable amount of our resources in a kind of panzer attack on the problems where we can, indeed, do something about criminal justice, about crime and punishment."

This statement was followed by a discussion by Professor Wolfgang of two research projects in which he is currently involved, with indications of their possible implications for the criminal justice system which might be useful to policy makers.

Against the background of Marvin Wolfgang's comments on the inadequacy of existing research in criminology, the lack of coordination with in the research community itself, and the ways in which research could—but doesn't—benefit policy makers, **Alfred Blumstein,** Professor of Urban Systems and Operations Research at Carnegie-Mellon University, recommended an expanded and altered Federal role to help correct these deficiencies. He observed that the nature and needs of a full-scale research program made it a particularly appropriate area for the Federal government. Research is best done on an aggregate basis because, first, it is too expensive for the benefits to justify the cost for any one jurisdiction; and, second, an effective research program requires a "critical mass."

Blumstein was generally very critical of LEAA's existing research program. At the same time, he made it clear that this criticism in no way reflected on the Institute's present director, Gerald Caplan. Blumstein praised Caplan's efforts, as did a number of other panelists during the course of the workshop, and emphasized that the problems of the current research effort were inherent in the way it was organized.

While expressing the belief that there was "a critical Federal role in research in criminal justice," he indicated that it would require a basic restructuring of the current effort. Basic to the new research program he envisioned are integrity, credibility, competence, and protection and insulation from politics. The essential need to insure that the research efforts and funding not be distorted to support specific political positions meant that "the Institute is inevitably going to have to come out from under LEAA." Blumstein noted that LEAA "has been—and probably will continue to be—held responsible for crime rates in the United States."

Blumstein also recommended that the Institute's director be from the research community, and that there be a statutorily created advisory board. His specific recommendations for the restructuring of the Institute were summed up as follows during the discussion period:

> Take the Institute out of LEAA. The Attorney General appoints the Director. The Director has sign-off authority. The Director responds not so much to the bureaucratic structure, but also to the constituency of researchers where the integrity of his position will be judged in terms of the validity of his statements and the validity of his program. The Institute should have a statutory advisory board of distinguished researchers, as well as criminal justice practitioners, providing guidance on program and providing some insulation from the pressures to support LEAA's social policy. Those sound like quite explicit prescriptions to make the Institute much more effective as an illuminator, rather than a determiner in that policy process.

Blumstein also noted that a necessary part of the new research effort would be to "repair the fragmentation" of the various Federal activities relating to research in this area, including the Institute, the LEAA statistics-gathering function, the FBI Uniform Crime Reports, Project SEARCH, etc. Based on the agencies and functions Blumstein mentioned as needing to be brought together, it is apparent that he

would house the statistics-gathering function in the research institute. Caplan had advocated a somewhat different approach, recommending the creation of a separate Federal bureau of criminal justice statistics within the U.S. Department of Justice.

Finally, with reference to the need for improved criminal justice planning, Blumstein recommended that the Federal government undertake such an effort itself, and, "as a minimum, could set a standard and example for the rest of the country." He observed that, "Probably the most plannable criminal justice system we have in the country is that of the U.S. Justice Department."

C. FEDERAL LAW AS A MODEL FOR THE STATES: SENTENCING AND PRISON REFORM

Implicitly and, in many instances, explicitly, the panel on sentencing and prison reform focused on the need for the Federal government to provide leadership through its own actions, particularly in sentencing. At the same time, a recurrent theme of this panel was stated as follows by Norval Morris: "Why this field is such a cursed field—and it *is* a cursed field—is because almost everything worth doing in it is politically unpopular."

Norval Morris, Dean of the University of Chicago Law School, began and ended his remarks with a call to the Federal government to set its own house in order "before it does too much preaching to the States, many of which are doing quite as well, indeed, I think better, than some of the Federal sentencing practices."

Morris emphasized the need for minimum standards of human decency, in which the weak were protected from the predators, in our prisons, "largely because this at least we know how to do." He emphasized that this cannot be achieved in big prisons, and requires the expenditure of more funds—"totally politically unpopular." He indicated uncertainty as to whether the Federal government could play a significant role here—"whether through revenue sharing or block grants, by standard setting, I don't know."

Turning to sentencing, which was the principal focus of this panel, Morris indicated that, "here, I think there is a powerful and important area for Federal leadership." Continuing, he said:

> Is it not time that in the next few years the Federal government at least provided leadership by a decent criminal code and decent sentencing? And some coordination of its own efforts, instead of this incessant preaching to the States about coordination, which in many of the States is a damn sight better than in Washington.

In specific terms, Morris, like John Conrad and Andrew von Hirsch after him, deplored the current unjust disparity of sentences at the Federal and State levels. He indicated that "the mandatory minimum sentence is an absurdity," in his opinion because judges only do a small part of sentencing, and "all that mandatory minimum sentences do is shift the focus of discretion in the imposed punishment."

Morris saw the sentencing issue as involving "a fairly complex problem of definition of the criteria of justice," as well as the determination of the appropriate authorities to impose the sentence, and the appro-

priate division of discretion among them. As he saw it, the plan which is gradually evolving, based on the current writing and comments of many people including the U.S. Department of Justice, includes the division of power among (1) the Congress, which will set the outer limits of punishment; (2) a statutorily created administrative board, a U.S. Commission on Sentencing, which will provide broad guidelines to typical sentences for categories of offenders and offenses; and (3) the trial judge, who must give reasons if he goes outside the guidelines in his sentence, which would also be subject to appellate review.

Morris indicated that he believed that a just common law of sentencing would take decades of effort. Further, he did not think it would reduced crime very much, if at all, but that it might deal "justly and fairly within the larger traditions of this country."

Like Norval Morris, **John Conrad,** a Senior Fellow with the Academy for Contemporary Problems, opened with a brief statement about the immediate need for an improvement in prison conditions, based on "our minimum societal obligation to the persons we place in custody because they are law violators."

In the course of a general five-part analysis of the goals of punishment by imprisonment, Conrad argued that "the probability is slight that variations in sentencing make a significant difference" in deterrence; that mandatory sentences for the purposes of incapacitation are probably not as effective as had been assumed by some; that, to date, rehabilitation programs in prison have had little or no effect on recidivism, but that this is a "bogus issue" because retribution, not rehabilitation, has always been the reason for incarceration; that incarceration probably does intimidate offenders, discouraging them from future crime, but that "it is likely that a short term is about as effective for this purpose as a much longer one"; and, finally, that it is improbable that the public will be readily convinced that street crime can be dealt with without incarceration, regardless of the other merits of incaraceration. In a related point in the subsequent discussion, Conrad observed that it is inevitable that legislatures, reflecting public opinion, tend to be severe, and that this statutory severity makes for many problems.

Based on this analysis, Conrad strongly endorsed a system of presumptive sentencing similar to that recommended in the Twentieth Century Fund Task Force report, *Fair and Certain Punishment.* Under this system, all offenders found guilty of certain classes of crime would be sentenced to short but certain periods of custodial restraint. Where the crime is repeated, the sentence would be longer for more effective intimidation. Aggravating and mitigating circumstances would be taken into account by the court, but the judge would be required to justify departures from the presumptive sentence, and such departures would be subject to appeal. A sentencing system of this type was also recommended by Andrew von Hirsch, and resembles that recommended by Norval Morris in many key aspects.

Conrad also emphasized that prison capacity is limited; prisons are not constructed of rubber. He said that any recodification of the sentencing structure along the lines he recommended should take into account existing prison population and capacity. "Either the length of the prison terms prescribed by the law should result in a popula-

tion approximately equaling the capacity in the nation's facilities, or more prisons should be built."

In his second recommendation, Conrad said that "we must adopt a policy of incarceration of the rich for the crimes they commit," as well as the poor, who tend to commit the street crimes most heavily proscribed by society. Quoting, "In any analysis, penal reform depends on justice being done and being seen to be done with convicted defendants standing in equal guilt before the sentencing judge." In general, like Morris, Conrad stressed the need for justice and fairness as the goals for long overdue sentencing reform.

A similar theme was emphasized by **Andrew von Hirsch,** Associate Professor of Criminal Justice at Rutgers University, who specifically warned against what Donald Santarelli had referred to as the overpromise of crime reduction, as a danger to be avoided in connection with sentencing reform. He indicated his agreement with both Morris and Conrad, "that the hope that you can create dramatic effects on the crime rate by tinkering around with the sentencing system is, to put it mildly, optimistic."

Andrew von Hirsch had been a member of the Twentieth Century Fund task force whose recommended presumptive sentencing scheme had been earlier endorsed by John Conrad. Von Hirsch recommended presumptive sentencing in combination with an administrative sentencing commission similar, but not identical, in function to that discussed by Morris. He saw this as necessary because of the need for flexibility and the fact that, as has been evident with S. 1 (94th Congress), it takes the legislature "an awful long time to devise a code in the criminal justice area."

During the subsequent discussion, it was agreed by the three panelists that parole boards are on their way out. However, despite the unrealistic premises and promises of parole boards, they were seen as serving some function in equalizing sentence length. Quoting Norval Morris:

> Parole serves as a sentence disparity rectification process at the moment. One should only be in favor of abolition of parole boards if one has alternative mechanisms of doing at least as well with the sentencing disparity problem.

Finally, Morris noted that there would always be a need for some sort of executive clemency or pardon board for exceptional cases.

D. FEDERAL LAW ENFORCEMENT AND CRIMINAL JUSTICE: WHITE COLLAR CRIME

The focus of the panel on white collar crime was primarily, although not entirely, on the role of the Federal government in combating white collar crime. Specific Federal laws and suggested legislation were discussed as being helpful or harmful. Recommendations were also made for new directions in Federal investigative, prosecutorial, and sentencing practices and priorities.

Professor Donald Cressey and Police Foundation director Patrick Murphy placed less emphasis on the Federal role in combatting white collar crime than did the other two panelists, both of whom dealt with the problem in their capacity as Federal officials.

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Donald Cressey, Professor of Sociology at the University of California, like Harold Tyler after him, stressed the need for a definition of white collar crime—a social concept invented thirty years ago by Professor Edwin Sutherland—if we are "to legislate against it, control it, and prosecute it." He suggested that while there was a tendency to view it as crime against businessmen, he saw real white collar crime as corporate crime.

Cressey said that much of white collar crime as he defined it was in violation of the anti-trust laws, but that it was possible that these laws were, in fact, out of date; and that we had "invented a system of socialism for the rich and capitalism for the poor" in the United States. He suggested further that we are rapidly—

> . . . moving toward a sort of melding of big government and big business, so that we have a kind of self-appointed Board of Directors at the top of our Nation. Much of the melding is in violation of law.

Mr. Cressey was not optimistic about the susceptibility of white collar crime as he had defined it (e.g., non-competition between corporations) to control by new laws, any more than by the existing ones. Possibly useful approaches which involved Federal action included Federal, as opposed to State, incorporation—which would increase Federal control; changing the tax structure, presumably in order to let people, as well as corporations, into "the system of non-competition"; and stricter sentences for white collar criminals, not on the grounds that it is only fair to incarcerate the rich as well as the poor—a point stressed in the sentencing panel—but on the grounds of the seriousness of the offense. Quoting Mr. Cressey:

> Is somebody stealing my country in the sense that they are stealing my vote, stealing my free enterprise system, stealing the traditional practices and procedures that I think of as democratic? If that is occurring, then the offenders doing it are eligible for the label "dangerous offender" and are thus eligible for imprisonment on the occasion of a first offense, in contrast to the street criminal.

U.S. Deputy Attorney General **Harold Tyler** indicated his agreement with "almost all" of Mr. Cressey's remarks. He subsequently took exception with Cressey's definition of white collar crime as corporate crime, indicating that to him this meant crime committed within the board rooms, a definition he saw as too narrow.

In the first of four basic points, Mr. Tyler addressed the definitional problem, noting that not only was white collar crime not a legal concept, but that it defied understanding by, among others, people in government. He suggested that an effort by lawyers and criminologists to come up with a workable definition would result in a better legislative reaction, and certainly a better law enforcement reaction.

Second, he stated that "the level of government best equipped to cope with what is called white collar crime has to be the Federal level." This is because of the interjurisdictional nature of white collar crime, both geographically and in terms of its goals.

His third, and major, point was that all three branches of the Federal government had been woefully remiss in their efforts against white collar crime. He saw this as particularly disturbing in view of the clear Federal responsibility for a form of crime estimated by the U.S. Chamber of Commerce as costing the country $40 billion a year, not including anti-trust crimes.

Tyler noted, with particular reference to the Congress, that the real problem was the "lack of collective understanding of just how these games are played, and just how these people are able to operate, particularly if they are people of means—and many of them are." This point was subsequently underscored by Mr. Goldstein.

Mr. Tyler was particularly critical of certain proposed or enacted tax and privacy legislation which he saw as being directly counterproductive to the investigation and prosecution of white collar crimes. In the subsequent discussion, Tyler recommended more oversight hearings by the Congress relating to white collar crime. Reiterating a major theme of this panel, he said:

> I think it would help the Congress to understand better when they cope with such things as tax reform, privacy statutes, and the like, which are very important. Yet, I've had the sense in the last 20 months that there's been a total unawareness of how the pieces fit together.

He criticized the Executive Branch on the grounds that there "has been a lack of cohesive effort across the board in all of the prosecutive agencies and bureaus, offices, divisions and the like" in the Department of Justice, the Department of the Treasury, or even the Securities and Exchange Commission (SEC), which he regarded as "one of the most alert agencies in the Federal level in this area over the years." He believed, however, that times were changing and singled out for praise the FBI's Quality over Quantity Program ("they couldn't be in Washington without having a slogan"), as indicating the kind of direction he thought should be taken:

> . . . they're shifting their priorities to get away from the old statistical game, and to work on cases which are very, very difficult, which do not create good statistics, and which often lead to no prosecution at all. And if prosecution is instituted, the result is often an acquittal because these cases are extraordinarily hard, even when you have first class accountants, first class lawyers, and first class investigators to put the case together.

He also critized the Federal judiciary system for its general reluctance to sentence white collar offenders to prison.

Finally, Mr. Tyler made the point that our criminal justice system traditionally tends to be reactive rather than pro-active, which ill suits it to dealing with while collar crime.

Patrick Murphy, President of the Police Foundation, focused on white collar crime at the local level, as it relates to the police. He noted that the inability of the police to do anything about this form of crime undercuts some of their credibility, since they are frequently thought to be in collusion, for instance, with consumer fraud, engaged in some kind of cover-up and receiving graft. He believed a more active role should be taken by the police. "As prosecutors know, when a white collar crime complaint is made, the police will do nothing more than refer the complaint to a prosecutor's office."

Murphy also expressed the view that the Federal government "at best can deal directly with only a small fraction of the total white collar crime problem," such as the kind of complicated interjurisdictional crimes discussed by Mr. Tyler. At the same time, he urged a more active Federal leadership role, through education of the public, through LEAA leadership and funds, and through the provision of better data.

Jonathan Goldstein, the U.S. Attorney for the District of New Jersey, expressed the opinion that not only was the Federal government best suited to handling white collar crime, but that State and local governments were not particularly well-suited to handling it because of their lack of resources and the vulnerability of prosecutors to political pressure.

With reference to statements during the sentencing panel that white collar offenders, as well as the poor, should be sent to prison, Mr. Goldstein indicated that the problem was much more basic: "you cannot impose a sentence on a white collar criminal unless you can apprehend and convict him." Quoting further:

> There is a basic problem, a basic lack of understanding, I think, between the Congress and the executive. I do not believe you recognize how difficult it is to apprehend these criminals.

Goldstein defined white collar crime as made up of three separate areas, all characterized by "the enormous difficulty in apprehending those who commit these crimes": (1) fraud against the U.S.—frauds perpetrated by the administrators and beneficiaries of Federal programs, and by the businesses that feed on them; (2) bribery between corporate executives, or "commercial bribery," going beyond the antitrust violations discussed earlier, and (3) political corruption, primarily in the form of politicians' extorting funds or accepting bribes.

Along the lines of Mr. Tyler's comments on the need for a pro-active approach, Goldstein noted that these are generally crimes without identifiable victims, although they are not victimless crimes; the public, the consumers, and the taxpayers are the victims. Accordingly, prosecutors must aggressively seek out this kind of corruption, which generally involves the tracing of cash. This requires accountant-auditors. "investigators who are accountants first and foremost." According to Mr. Goldstein:

> The fact of the matter is that the Federal government is very poorly equipped to provide the kind of accounting manpower and support that the Department of Justice and the United States Attorneys need to combat white collar crime.

Goldstein gave as an example the fact that the New York-New Jersey region until recently had only one auditor for the entire Medicare-Medicaid program, who was shared among three U.S. Attorneys' offices. He requested that the 95th Congress provide sufficient resources to properly administer such needed social programs and to investigate frauds against them. A positive step in that direction had been the establishment last Congress of the Inspector General's office in HEW, although the extent of the assistance this would provide was not yet known.

Indicating the need also for accountants in the area of corporate and political corruption, Goldstein said they had often used IRS personnel, "the finest accountant-auditor-investigators that I know of." However, Goldstein echoed Tyler's strong criticism of the 1976 Tax Reform Act, specifically on the grounds that it allows IRS to refuse to cooperate with U.S. Attorneys' offices in "unrelated tax investigations." Goldstein indicated that what this meant to him "is that I will no longer have the kind of IRS investigative support that my office needs to prosecute, or even investigate corporate and political corruption."

Particularly in view of this loss of the assistance of the Intelligence Division of IRS, Goldstein suggested the enactment of legislation creating a Department of Fiscal Integrity which "would be manned solely by accountant-auditor-investigators, situated within the Department of Justice and would give the Department and its United States Attorneys the ability to investigate" white collar crime. He also suggested a reconsideration of the 1976 Tax Reform Act, including a repeal of the provisions he had previously referred to, as well as further amendment "to strengthen our hand and to give the investigative resources we need." Finally, he recommended passage of a national commercial bribery statute "that will make illegal payments between corporate executives, from executive to executive, to gain business contracts, or exclusive contracts," similar to laws now in existence in some States.

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Any consideration of new directions for Federal involvement in crime control must be prefaced by an understanding of the present Federal role, its historical development, and its Constitutional limitations. A brief discussion of the development of the role of the Federal government in crime control follows—as background for the discussion and proceedings of the CRS workshop.

III. Development of the Federal Role in Crime Control[1]

A Gallup Poll conducted in June 1975 indicated that almost half the population of this country fears walking alone at night in their own neighborhood. A May 1976 poll showed that Americans view crime and lawlessness as the fourth most important problem facing this country today. Such widespread public concern has been accompanied by calls for governmental action, including action by the Federal government, to find solutions to the crime problem. The role of the Federal government in law enforcement and the administration of criminal justice is quite limited—extending to two basic areas: (1) creating Federal criminal law and operating the Federal criminal justice system, and (2) providing financial and technical assistance to State and local criminal justice systems. Also, in passing legislation to carry out these two Federal roles, Congress often intends that the Federal criminal law should serve as a model for State law.

A. Federal Criminal Law

Under the Constitution of the United States as interpreted by the Supreme Court, the national government possesses only those powers of government which the Constitution expressly or impliedly grants to it; the States have reserved to themselves all other powers which the Constitution does not expressly deny to them.[2] Because of the silence of the Constitution, criminal law and its enforcement is primarily a matter of State jurisdiction. The Federal government has the power to regulate criminal conduct within the District of Columbia and the territories,[3] in Federal enclaves located within the borders of various States,[4] and aboard American ships and aircraft when they are outside the jurisdiction of any State.[5] The Federal government also has the express Constitutional power to create statutory crimes for a limited number of specific offenses, such as counterfeiting, piracy and treason.[6]

The Constitution additionally gives Congress the power to do whatever is "necessary and proper" to carry out the expressly conferred powers.[7] Thus, the Federal government can enact criminal statutes, without regard to Federal territoriality, pursuant to its powers to regulate interstate commerce, to establish post offices, to tax, to make war, and so forth. The scope of Federal substantive criminal law enacted pursuant to the "necessary and proper" clause has grown steadily so that at present there is a substantial amount of Federal criminal law. These laws generally fall into one of three categories: (1) those

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[1] Barbara McClure, Analyst in Social Legislation, Congressional Research Service.
[2] U.S. Const. Amend. X; *McCulloch* v. *Maryland,* 17 U.S. (4 Wheat.) 316 (1819).
[3] U.S. Const. art. I, § 8; art. IV, § 3.
[4] U.S. Const. art. I, § 8.
[5] U.S. Const. art. I, § 8; 18 U.S.C. 7 (1970).
[6] U.S. Const. art. I, § 8; art. III, § 3.
[7] U.S. Const. art. I, § 8, cl. 18.

that punish conduct primarily injurious to the Federal Government, e.g., bribery of Federal officials, thefts of Federal property, murder of Federal law enforcement officers; (2) those that punish conduct of primarily local concern with which local law enforcement agencies are unable to cope, e.g., kidnapping across a State line, transporting a stolen car across a State line; or (3) those that secure compliance with Federal administrative regulations,[8] such as pure food and drug regulations. The expansion of the role of the Federal government in enacting substantive criminal law has accompanied the ever-increasing Federal regulation of various aspects of the national welfare—interstate transportation and communication, purity of food and drugs, marketing of securities, wages and hours regulation, etc., almost all of which are enforced by criminal penalties.[9]

Most Federal criminal laws are to be found in Title 18 of the United States Code, although they can be found throughout all 50 titles of the Code. In many instances, these laws are contradictory, imprecise and out of date. Most recent Congressional concern relating to Federal criminal law has been directed toward revising, updating and consolidating this mass of Federal criminal law into a single unified criminal code. This effort began over a decade ago when Congress created the National Commission on Reform of Federal Criminal Laws (Brown Commission). Since the commission issued its report in 1970, calling for a massive revision of Federal criminal law, Congress has held extensive hearings and considered a number of major proposals on the subject. To date, legislation has not been enacted because of controversy in several areas. For example, what defenses should be recognized in Federal criminal cases? What should be the Federal law with respect to revealing government secrets, wiretapping, and drug abuse? Should capital punishment be a part of the Federal sentencing structure? Although such issues remain controversial, it seems clear that many Members of Congress see a need for a comprehensive new criminal code—one that will not only make consistent Federal criminal laws but will also serve as a model for State criminal code reform.

B. FEDERAL ASSISTANCE TO STATE AND LOCAL GOVERNMENT

Until the 1960's, because of the historic concept of State and local autonomy in the area, there was very little action by the Federal Government to aid in State and local crime control efforts. Some direct service assistance had been provided to local police, correctional and court activities. A few of these services included the FBI National Academy for training local police officers, the FBI's fingerprint and laboratory services, the U.S. Bureau of Prisons' jail inspection services, and HEW's Childrens Bureau's technical aid to police and juvenile court personnel. But there were no major Federal financial assistance programs in the area of crime control despite the fact that grants-in-aid in other areas such as education, health, welfare, housing and employment had become an important mechanism for asserting Federal influence.[10]

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[8] Schwartz, L. B. Federal Criminal Jurisdiction and Prosecutors' Discretion. 13 Law and Contemporary Problems, 64, 66 (1948).
[9] Id.
[10] Caplan, Gerald. Reflections on the Nationalization of Crime, 1964-1968. 1973 Law and the Social Order 583, 593 (1973).

Juvenile delinquency prevention was the first crime control-related field to receive Federal grant assistance. In the early 1950's the National Institute of Mental Health took the view that "crime and delinquency" was a behavioral problem justifying investment of funds appropriated for mental health purposes and initiated a delinquency research program. Under this program individual projects in the areas of delinquency research, training and treatment were funded. A second Federal aid program was also directed toward youthful offenders. The Juvenile Delinquency and Youth Offenses Control Act of 1961,[11] administered by the Department of Health, Education and Welfare, made an important contribution in the development of Federal aid programs because of its pioneering focus on aid for comprehensive demonstration projects in urban areas.[12]

Crime surfaced as a national political issue in the 1964 presidential campaign, and as a result, the embargo on treating crime as a serious Federal problem was lifted.[13] Just four months after the election, President Johnson issued a presidential message on crime which proposed two steps for a Federal anticrime program.[14] The first was the creation of a President's Commission on Law Enforcement and Administration of Justice to survey the causes, extent and nature of crime in this country. The second was a call for the passage of legislation to set up a Federal grant-in-aid program for State and local law enforcement. Legislation creating an Office of Law Enforcement Assistance (OLEA) within the Department of Justice easily received Congressional approval in 1965.[15] This legislation provided funds for demonstration projects experimenting with new methods of crime control and law enforcement. During the three years of its existence, OLEA received an annual appropriation of approximately $7 million a year, and most of its grant recipients (51 percent) were either State, local or county governmental units.[16]

In February of 1967, the President's Commission issued its 18-month study of crime in the United States entitled "The Challenge of Crime in a Free Society." More than 200 recommendations were made by the Commission, ranging from proposed Federal action to programs for State and local governments and suggestions for private citizens. The Commission spoke very directly about the action that should be taken by the Federal Government—more Federal monies to State and local law enforcement should be provided. In reaching this conclusion, the Commission was persuaded that "crime is a national, as well as a State and local, phenomenon."[17] At the time the report was issued the Federal Government was spending about $27 million on various research and demonstration projects.[18] The Commission proposed that "several hundred million dollars annually could be profitably spent over the next decade."[19] Much of the Johnson Administration's anticrime policy was based on the Commission's work.

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[11] 42 U.S.C. 2542–2545 (1965).

[12] Skoler, Daniel L. New Directions in Federal Aid for Crime and Delinquency Control: An Analysis. 45 Journal of Urban Law 259, 263 (1967).

[13] Caplan, *supra* note 10, at p. 589.

[14] Johnson, Lyndon. Crime, Its Prevalence and Measures of Prevention. Washington, U.S. Govt. Print. Off., 1965. (89th Cong., 1st sess., H.R. Doc. No. 103).

[15] Law Enforcement Assistance Act of 1965, Public Law 89–197, 79 Stat. 828.

[16] Caplan, *supra* note 10, at p. 616.

[17] U.S. President's Commission on Law Enforcement and Administration of Justice. The Challenge of Crime in a Free Society. Washington, 1967, p. 284.

[18] Id.

[19] Id.

In his State of the Union message of January 1967, President Johnson revealed his principal proposal for combatting crime—to provide massive Federal funding of projects to update and upgrade State and local police departments and other law enforcement and correctional agencies. Congress enacted the legislation the following year with passage of the Omnibus Crime Control and Safe Streets Act of 1968.[20] The Act established in the Justice Department a Law Enforcement Assistance Administration to administer the Federal grant program. Congress amended the President's original proposal by providing for a block grant system of delivering funds to State governments, i.e., lump sum grants based on relative population to be allocated at the State's discretion, rather that direct categorical grants for specific purposes to local governments. The Act authorized appropriations of just over $100 million for fiscal year 1969 and $300 million for fiscal year 1970. Appropriations have ranged from $63 million for the first year to a high of $895 million for fiscal 1975. By fiscal 1976 the total amount appropriated for LEAA's programs approached $5 billion.[21]

Despite the increased involvement of the Federal Government in the traditional State and local realm of law enforcement and crime control, Federal funds still account for probably no more than 12 percent of the total expenditures of State and local governments on their criminal justice systems each year. And the Federal government's proportion of total national resources devoted to criminal justice is also relatively small. In 1974, Federal agencies accounted for only 13 percent of the expenditures and employed only 9.3 percent of the persons employed in the administration of criminal justice. There are approximately 27,600 Federal prisoners out of a total national prison population of more than 250,000. In many respects, despite the concern about crime as a national issue, and increasing national involvement, crime control remains essentially a State and local function.

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[20] 42 U.S.C. 3701 (1970).

[21] Vialet, Joyce. Law Enforcement Assistance Administration. Washington, 1976. (U.S. Library of Congress, Congressional Research Service Issue Brief No. 76002.)

IV. Panel One: Federal Aid to State and Local Criminal Justice Agencies [1]

A. Summary of Panelists' Remarks

1. Donald Santarelli (Attorney; former Administrator of the Law Enforcement Assistance Administration):

- The original belief that Federal grants-in-aid would result in reduced crime rates was an "overpromise." The criminal justice system, as such, is not designed for mass crime control and any improvements in the components of the criminal justice system—police, courts, corrections—which may occur from the massive infusion of aid are unlikely to significantly reduce the crime rate.
- Basic to the control of crime are the institutions of the community such as the family, the neighborhood, schools, churches. A new direction for LEAA should be to direct Federal aid into "community initiatives" especially in the areas of victimization and community involvement in the criminal justice system. Such programs would serve to build public confidence in the criminal justice system and public participation in crime control.
- The Administrator of LEAA should use his office to suggest and stimulate programming; LEAA should not use financial incentives for particular programs *except* through discretionary grants.
- LEAA's National Institute of Law Enforcement and Criminal Justice should be a separate entity; it should be at a higher level administratively than it is now, and its functions should be more useful to policy-makers and the research community.

2. Daniel Skoler (Visiting Fellow, National Institute of Law Enforcement and Criminal Justice):

- The LEAA program, as originally established, was a model of the new grant technology: mandatory planning; block grants, lump sum grants to States based on a formula for implementation largely at the States' discretion; research, education, and training; and "discretionary" grants, awarded directly to projects by the Federal government for special innovative and experimental projects.
- Special revenue sharing, (i.e., block grants to States or localities for a specific purpose with a minimum of mandatory Federal requirements), would not really be a "new direction" for crime control funding. There is little difference between this funding arrangement and the block grant other than the requirement for a comprehensive plan. General revenue sharing, the Federal government's providing revenues to State and local governments for no specific purpose, would also not be new since crime control activities currently receive substantial funding through the general revenue sharing program.
- Block grants under the LEAA program might be "purified." The LEAA program has a number of categorical allotments in such areas as corrections (Part E) and juvenile delinquency (Title II of the Juvenile Justice and Delinquency Prevention Act) which might be removed, in a return to simple, unfettered block grants.
- Another new direction might be to eliminate comprehensive planning as a condition for funding, using the achievement of Federally or State established standards as the requirement for funding instead.
- In considering a new direction in Federal aid, we must question whether we wish emphasis to be placed on criminal justice functions as a system in planning and distributing aid, or whether emphasis should change to concentration on improvements in the individual components of the system. A movement

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[1] Charlotte Moore, Analyst in Social Legislation, Congressional Research Service.

toward separatism is reflected in the enactment of legislation promoting separate plannning and/or allocation of funding (for corrections, juvenile delinquency, and courts).

- A State leadership role in criminal justice planning and funding should be continued and encouraged because:
  (1) Criminal codes are statewide;
  (2) Statewide or centralized corrections, courts, and prosecution have been urged by many experts;
  (3) States are better equipped to handle the fiscal management of crime control funds.

3. Sarah Carey (Attorney; author of studies on LEAA):

- LEAA has suffered because Congress and the people don't have an idea what the Federal anti-crime money is best spent for; there are no specific goals, just "reform and reduce crime." Once you bring an ailing system up to par, then go on to repairing another ailing system. If there are no answers as to what actually will improve our capacity to cope with crime, stop throwing money at the problem.
- If a Federal crime research institute could be set up properly, some answers may emerge that could be applied to Federal policy in many areas—affecting many agencies—not just the criminal justice system.
- If money for criminal justice system improvement is to be made available at all (and this is a significant question), it should be done through general revenue sharing.
- If the LEAA program is not completely revamped, the following changes should be made to the existing program: (1) end the isolation of the State planning agencies, and bring their operations into the normal procedures of State governments; (2) offer State legislatures financial incentives to make reforms in the criminal justice system; (3) set minimum standards for States with specific requirements for funding until the State meets the standards, then provide the funds with "no strings attached"; (4) stop categorizing block grants through special earmarking.

B. CONSENSUS AND DISSENT

The participants of the panel on "Federal Aid to State and Local Criminal Justice Agencies" offered diverse perspectives. Donald Santarelli's focus was on the purpose and direction of a Federal aid program. Daniel Skoler concentrated on the structure of the Federal crime assistance program, how it had evolved, and how it might change. Sarah Carey primarily addressed the Law Enforcement Assistance Administration as the administering agency for the Federal aid program, the roles it should play, and its record in fulfilling these roles effectively. In varying degrees, however, all panelists concurred that the LEAA program, which had existed for eight years as the major Federal grant-in-aid program specifically for crime control, might benefit from some "new directions."

1. Funding mechanism

From their different perspectives, all panelists appeared to concur that the categorization of the block grant program that was originally established under LEAA (Title I of the Omnibus Crime Control and Safe Streets Act of 1968; Public Law 90–351; 82 Stat. 197) had been undesirable.

There was no general concurrence on whether Federal aid for crime control should be changed to special or general revenue sharing, commonly suggested alternatives to the current block grant system. Mr. Santarelli appeared to advocate keeping the system more or less as is. Mr. Skoler addressed this proposal by suggesting that either special revenue sharing or general revenue sharing for crime control

aid would not be that much of a change from the current system. Sarah Carey contended that if all LEAA's current program does effectively is to distribute money to keep the system operational, then the grants might as well be distributed more efficiently through general revenue sharing, provided a demonstrated need exists.

2. Requirements for funding

Daniel Skoler and Sarah Carey discussed some new directions related to State block grant funding, applicable if the State comprehensive plan were dropped as a prerequisite. One alternative would be to have the Federal government require certain minimum standards to be met by a State before it could receive any Federal funds for its criminal justice system. Another would be for the Federal government to have specific prerequisites to be met by the States in order to receive funding until a State reached certain minimum standards; then, lump sum grants would be available to the State with "no strings attached." The standards involved in these proposals could be set either by the Federal government or by the State government with Federal approval. Planning, as such, could continue as a valuable exercise for total system change, possibly with Federal support, but would no longer be a requirement for funding.

Another suggestion by these two panelists was that Federal funds be used as "incentives" for States to take certain steps on their own with regard to their own appropriations to improve aspects of their criminal justice systems.

3. Research

The Federal crime research effort was also discussed by the panelists as an aspect of the Federal aid program. All seemed to concur that research may offer the greatest promise for increased effectiveness in crime control, and that the current research effort through the National Institute of Law Enforcement and Criminal Justice had not lived up to expectations. Mr. Santarelli and Ms. Carey specifically called for a major research operation independent of LEAA. Mr. Skoler questioned whether the Federal effort should include an in-house capability or sponsor regional research centers at universities, which it currently does not support.

4. Continuation of Federal aid

The only panelist who seriously questioned the continuation of the Federal role in providing substantial aid for crime control activities was Sarah Carey. She urged a reevaluation of this role by Congress.

C. NEW DIRECTIONS—AN ASSESSMENT

In its discussion of new directions for "Federal Aid to State and Local Criminal Justice Agencies," the panel agreed that a Federal role in this area had been affirmed and reaffirmed by Congress since the mid-1960's. They further noted that legislative and administrative decisions relating to such aid should be made with recognition of the jurisdictional considerations noted by Congress since first establishing the Law Enforcement Assistance Administration program: "Crime is essentially a local problem that must be dealt with by State and local governments if it is to be controlled effectively."

A central issue that becomes evident in almost any discussion of Federal crime control assistance under a block grant funding mechanism is the appropriate balance between national priorities in the crime control area, and the spending priorities of the States and localities for their criminal justice systems. Simply stated, at what level of government should the decisions be made as to who gets the Federal funding and how much? The consensus of the panel seemed to be that through the evolution of the Federal aid program for crime control an undesirable imbalance has occurred on the side of Federally established priorities. In sum, the new directions suggested would act largely to correct this perceived imbalance by moving back toward the unfettered block grant.

Certainly no *general* consensus exists as to who should set the objectives and priorities for crime control spending. A debate over this question has continued since the Katzenbach Commission first suggested a major Federal role in this area. As a matter of fact, the block grant funding mechanism itself was not part of the original conception of the program as proposed by President Johnson in legislation in 1967. This system of funding was adopted through an amendment offered by a coalition of Republicans and Southern Democrats who felt that the authority vested in the Attorney General might lead the country to a Federally controlled police system. The viability of the block grant for the Federal crime control assistance program was seriously questioned when the program was reauthorized in 1970 on the basis of complaints that large urban areas, arguing greater need, were not receiving assistance commensurate with their problem.

A modified block grant system has since been accepted as the major funding mechanism for crime control. In conjunction with general block grant fundings, Congress has established that specific types of programs will receive additional funding, guaranteed funding and/or special attention so as to insure that nationally perceived objectives are being pursued within the broad framework of the block grant. As previously mentioned, two of these "categorical" programs are Part E of LEAA's general crime control program, which establishes a separate block and discretionary grant program for the improvement of correctional facilities and services; and Title II of the Juvenile Justice and Delinquency Prevention Act (Public Law 93–415) which provides both for a separate juvenile delinquency assistance program under LEAA and for a certain level of funding to be spent for juvenile justice projects under LEAA's own program.

These special programs were enacted by Congress with the justification that the problem was especially serious and would not receive the proper degree of assistance for any significant impact without a specialized effort. Specifically, Part E was proposed in consideration of the generally poor state of prisons in the nation and in light of the very substantial cost of prison construction and the limited amounts available for this purpose through the LEAA program. The juvenile delinquency program was primarily established because of the disproportionate share of crime committed by juveniles. Federal juvenile delinquency programs had characteristically received low priority in funding prior to the 1974 Act. The new legislation was designed to make the program both well-funded and focus new attention on

juvenile delinquency through funding and other provisions tying it to the LEAA program.

The call for a special program for courts during the last LEAA reauthorization in the 94th Congress had a slightly different justification than the programs previously mentioned. The States' judiciary argued that the State planning agencies which are chosen by the State executive branch are making decisions with regard to priorities in the judicial branch by controlling the expenditure of LEAA block funds, and this was a violation of the separation of powers doctrine. As a result, the judiciary did receive control over planning and expenditure of the block funds in the legislation but did not receive a specific allocation for their projects as they had requested.

The call for certain categorical programs and support of these programs is not necessarily confined to those who have an identifiable "stake" in the availability of funds. For example, a program was included in the last LEAA reauthorization that would encourage a "type" of project as opposed to general additional support for a system component. This was the Community Anticrime program which has a $15 million authorization of its own and is directed by a special office within LEAA.

During the panel, Mr. Santarelli suggested that projects focusing on the community would be the most cost-effective, a feeling that has been shared by others. Community anticrime efforts were first promoted in legislation considered by the House Judiciary Committee in hearings in the 93rd Congress which would have established a program for funding such efforts within the Department of Justice's Community Relations Service.

In general, there is a trend towards categoricalization of LEAA funds rather than away from it. Besides the programs mentioned above which have been passed, other legislation has been introduced in areas such as victim-witness projects, compensation for victims of crime, career criminal projects to enhance the prosecution of repeat offenders, and programs to counter school violence and vandalism. Such a trend indicates that at least in the crime area there is a definite questioning as to whether unfettered block grants are effective—whether they can affect change as well as categorical grants.

On the other side of the issue, there has been no identifiable support in Congress recently either to recast crime control assistance into special revenue sharing or general revenue sharing. As Daniel Skoler mentioned, the Nixon Administration proposed making LEAA block grants into special revenue sharing and failed. The reasons Congress rejected this concept were fears that the money would not be evenly or fairly distributed among the components of the criminal justice system or the money would not reach the areas of greatest need. The concept has not been reconsidered, but it seems possible that the same arguments would be raised in response to a proposal to convert block grants into general revenue sharing or to eliminate mandatory comprehensive planning—two other "new directions" suggested.

Other discussions related to using minimum standards as a condition for a State to receive any Federal funds at all, or as a condition to allow the State more discretion with Federal monies. An attempt was made in the last LEAA reauthorization to condition funding for cor-

rectional improvements and services on minimum standards as established by LEAA in consultation with the State applying for funds. The provision was accepted by the House Judiciary Committee but was rejected during consideration by the full House. A similar provision was added to the Senate bill during debate and passed the Senate but was finally rejected by the Conference Committee which developed the final legislation. Rejection of the provision for a minimum standard for corrections was largely based on the belief that this would amount to Federal intervention in State matters.

Sarah Carey commented on the isolation of the State planning agency from the regular agencies of State government and especially the legislature; and Daniel Skoler suggested that the State leadership role should be encouraged and that State legislatures should be influenced by Federal monies to make certain changes. A step was taken towards increasing the involvement of State legislatures in the planning for and implementation of the Federal grants in the new LEAA legislation passed in the 94th Congress. It contains a provision for the review by and comment on the comprehensive State plan by the State legislature on its own initiative prior to submission of the plan to LEAA.

D. WORKSHOP INTRODUCTION AND TRANSCRIPT OF PROCEEDINGS (FEDERAL AID TO STATE AND LOCAL CRIMINAL JUSTICE AGENCIES)

Mr. ROBINSON. I would like to welcome you to our seminar entitled "New Directions for Federal Involvement in Crime Control." I suppose it is commonplace for a group like this to congratulate itself on how eminent and outstanding it is; but in this case, I have to say this really is an outstanding group.

We have with us today some of the country's leading authorities on crime and corrections. We also have a good number—many, if not most—of the professional staff of committees or Members who have responsibilities for crime legislation or oversight—the permanent cadre of professional expertise here on the Hill. We have with us most of the staff of the crime section of the Education and Public Welfare Division of the Congressional Research Service, and staff from our American Law Division as well. And finally we have as our moderator Martha Derthick, a Senior Fellow at the Brookings Institution.

In terms of background, the Congressional Research Service, the sponsor of this seminar, is the research and policy analysis arm of the Library of Congress. We provide research assistance and policy analysis to committees of the Congress and to Members as well. Our role is to be non-partisan, and the selection of the panelists today is an indication of that. They've been selected for their expertise, not for any particular point of view or policy position which they might hold, but rather for their knowledge of the subject area.

A word about the focus of the seminar. In this seemingly most political of years, we were struck as a staff by a bi-partisan theme of a need to re-examine the Federal role in crime control efforts. We were also struck with the difficulty of that task. We decided that it might be useful before the beginning of the 95th Congress to bring a group of people with knowledge of both concepts and current practices in the crime control area, to re-examine the Federal role in crime control efforts and to suggest some new directions for that role. We have an outstanding group here to do that today. We hope to gain a lot from the seminar itself. In addition, we are going to tape the proceedings, to make available a transcript of this seminar. so that you might have the suggestions and ideas for your use at a later time. We will give the panelists a short opportunity to review the transcript and make any necessary corrections. And then finally, some time later, we hope to have an analytical summary of the session which we can pass on to you.

Without any further delay, I'd like to introduce our moderator, who is Martha Derthick, a Senior Fellow at the Brookings Institution. Before being at Brook-

ings, she taught at Dartmouth, Stanford, Harvard and Boston College. She won't remember this, but my first contact with Martha was when I was a graduate student, crew-cut and clean-shaven, at Harvard, where she lectured to a graduate seminar on a topic which I considered to be unlikely at the time, but which proved to be very stimulating—the politics of the National Guard. She has taken that very wide interest and applied her talents to a number of different fields, including welfare in Massachusetts, new towns, housing, urban politics, social services grants; and lately she's tackling the monster of all social programs, Social Security. I'd like to thank Martha Derthick for being with us today, to guide us in what I hope will be a very interesting discussion. Martha?

Ms. DERTHICK. Thank you, Bill. You probably noticed that, despite a generous introduction, Bill didn't claim any expertise for me on criminal justice, and wisely so. If innocence of the subject matter is a qualification for a moderator, I am indeed excellently qualified. I do not have a law degree. I have never written a book on criminal justice. I have read some, but not very many. I've never been arrested, indicted for or convicted of a crime. I've never witnessed one, that I can recall, or testified in a court. Never served on a jury. I have never been the victim of a crime, despite a good many years of residence in urban America.

Mr. SANTARELLI. Statistically, you don't exist.

[Laughter.]

Ms. DERTHICK. Nonetheless, I would not suppose that my life is unaffected by the criminal justice system, and I look forward, perhaps more than anyone here, to learning a great deal today. I will, however, be a diffident and deferential moderator. But while I don't know anything about the cops, I do know when it's time for lunch and will try to keep things on schedule. The plan is for each of the panelists to make a short presentation, ten minutes or so. Then the panelists will react to one another's presentations, and then we'll open the floor to participants, to the audience. We haven't agreed on any order, so I'll just take the speakers in the order in which they appear on my schedule.

The topic of the first panel is "Federal Aid to State and Local Criminal Justice Agencies." The speakers are, I think it's fair to say, two ex-insiders and a critical outsider. Donald Santarelli is a Washington lawyer and a former Administrator of LEAA. Daniel Skoler is a visiting fellow at the National Institute of Law Enforcement and Criminal Justice, and was Deputy Director of the Office of Law Enforcement Assistance. Sarah Carey is a lawyer, and, I think, a kind of one-woman watchdog for LEAA, whose work, to my mind, is a model of incisive evaluation, a demonstration of why evaluation should be done by spirited individuals rather than committees or consulting firms. Mr. Santarelli, do you want to lead off?

Mr. SANTARELLI. I will open by indicating that we each bring a different perspective. I hope that, by the conclusion of the day, the perspectives will all have contributed to some degree to everyone's understanding, some analysis and maybe some conclusions. I will take this opportunity to share with you a few thoughts that I've developed in my ten-year experience in this business. Although I see many familiar faces in here, I think it's fair to tell you something about how I got to the point from which I now view the subject, so that you can understand the perspective that I bring to bear on the subject and the meaning of my comments.

I started as a Federal prosecutor and Assistant U.S. Attorney, and had all the prosecutorial perspectives that necessarily come from that experience, and a little of the zeal. I came up here to the Hill in 1966 and '67, and was Minority Counsel to the House Judiciary Committee for the great crime debates that culminated in the '68 anti-crime legislation such as gun control, the creation of LEAA, the Safe Streets Act, etc. From there I went briefly to the Senate Judiciary Committee, under Senator Sam Ervin, where I was counsel to his Constitutional Rights Subcommittee, and worked on the subject of bail. From there to the Nixon Administration, where I served four years in the Department of Justice in a criminal justice policy planning role. And from there to LEAA, where I served as Administrator for a little less than two years, having left under questionable circumstances, two months before Mr. Nixon. And now to private practice, where I have occasion to represent criminally charged defendants. So the perspective has been a rather complete circle.

I started to look at the subject of the proper—I shouldn't even say proper, because I think we tend to give ourselves credit where it isn't due—any role for the Federal government in this question of crime control at a national level,

starting in 1966, when the debates were rather thorough over the Safe Streets Act. The bill took almost two years in extensive debate and produced a rather voluminous hearing record. If you will look at the two very thick volumes of reports of the House Judiciary Committee and the Senate Judiciary Committee, you will see that we covered almost all the ground that underpins exactly where we are today. There's a kind of a deja-vu to considerations involved in this question of what is the proper Federal role in aid to State and local law enforcement.

The Congress was very concerned about it in 1966, '67, and '68, and continues to be concerned as to what is the proper Federal role. Well, it resolved that in 1968, and subsequently, by saying there must be some role. Congress felt, as did Federal officials, that something had to be done from the Federal level because State and local governments weren't doing the job. They created LEAA, not recognizing, at the time, that it would grow into a kind of financial, political monster, with an ultimate appropriation of $886 million in 1974, I believe its highest budget, which is a considerable amount of money, more than half the Justice Department's overall budget.

Now, I suppose it's time to evaluate what the effect of that has been. For me, the evaluation is rather simple. I participated, naively and hopefully, in the creation of LEAA, not knowing that I would ever have any supervisory responsibility or any responsibility for it subsequently. I never had any idea of what the impact of it might be, but we were full of hope, hope that just funding substantially the criminal justice systems in the United States would significantly improve the quality of law enforcement and reduce crime. I think that's been an overpromise, and that's the perspective that I'd like to bring to you this morning.

Ideology and rhetoric has, for a long time, told us a number of things which aren't exactly true. That is, if the criminal justice system, as it is traditionally known—cops, courts and corrections—was simply improved as much as we know how, it would work effectively, control crime, as well as making people feel that justice is being done, et cetera, thus, the grandiose title of the bill, "Safe Streets." In my small experience, I would submit that that's not possible. It's an overpromise. I think you have to think fundamentally in order to understand, because there are so many glosses in this business. A criminal justice system is in a sense like the backstop in a baseball field, designed to catch the occasional fast ball or fly ball, but not designed to take every pitch or foul, not designed to handle all criminal misconduct in the United States. It's a very thin, very fragile and very artificial system.

The basic instruments of any society for the control of crime—antisocial conduct, if you will, that we choose to make criminal—are human institutions underpinning the artificial ones of government. They are institutions of the community. They are, basically, the family, whatever vision you have of a family, and the family's extensions, like the neighborhood and the community, and other extensions of the family in the neighborhood, such as schools and churches, as we have known them in Western society. It's also true in Eastern societies that religion and community substantially control anti-social conduct. They prevent it, they deter it, they punish it, they control it.

We've had a change in recent years, and I'll resist characterizing that change in our society, in terms of the quality of those controls. Whether we call it erosion or disappearance or reduction, nevertheless the net result is the same. The family, the neighborhood, the community, the church and the school do not now control anti-social conduct to the degree that they once did, and now we tend to rely on the last backstop, the criminal justice system, the artificial system, the system designed only for the occasional use, not for mass use. Mass control, mass conformity, mass normative enforcement, was done by the more fundamental institutions.

Now, once you look at crime from that perspective, no matter how many cops, courts, correctional facilities we put out there, no matter how lovely and attractive we make them, what is going to be their net effect on anti-social conduct? Do we really believe that if we just had more efficient cops or adjudicative courts and more sentencing and more enlightened corrections, that we're going to deal with the kind of volume of criminal conduct that we are truly confronted with in the United States? I think it's fictional to believe that the criminal justice system could ever have a significant impact on anti-social conduct when the other institutions aren't working.

So, pouring money and talent and hope into improving the artificial instruments without fundamental changes in their function and without fundamental changes in the nature of the community support of that system is, I think, a mistake in direction. In my judgment we have tended—and I participated in it for some part of the time—to rush forward after the LEAA Act was created to fund the immediately visible sections of the criminal justice system. First we went to the police, and for good cause. They were the immediate political focus. They were the best organized and the most likely to say they were under-supported, under-educated, under-funded, under-trained, under-staffed, under-technologized, all of which was true. They had the planning instrumentalities to produce the initial grant applications. And it was the Congressional desire—I'll say it again—it was the Congressional desire that the first impact be made with police improvement.

Well, we have significantly improved the police in the United States. No one can say that, in general, they are under-trained and under-equipped. We have done what the rhetoric told us to do. We have reduced response time from many minutes to just a few minutes. But we have not improved their performance level in terms of crime reduction. Has response time for patrol, or saturation, or communications, or computers, caused them to improve their closure rate? It's still 20 percent nationally, still unchanged. The police do not solve any more crimes, proportionally, than they ever did. And we know what a fiction closure rate is, because recorded crime is only a fraction of real crime.

Why don't we have more reported crime? Well, LEAA was interested in that, too, and after a $10 million first-year survey—and God knows how much it will cost continuously for the victimization survey, which is conducted by the Census Bureau of the Commerce Department—we're told what we all knew anyway, that people don't report crime because they have little confidence that any net benefit will come from it. They said, in varying ways, "It doesn't do any good." Or, "It's more of a harassment to me than it is to the defendant." Or, "It's a loss of income, wages, and it's a risk and a danger to me; it's a surfacing of me, a focusing on me in the community in a way that I don't want." Or, "It isn't worth it, and besides, the criminal justice system doesn't produce a result that I like." Et cetera, et cetera. So, people do not report crime in significant number to make criminal justice system even take note of it, much less close in on it.

What have we done in the judicial area? We have significantly improved the quality of the judiciary, with training programs, educational programs, better benches, law clerks and even computers. Has the adjudicative quality improved? We still have a significant clamor—so significant that I think the Congress will enact it—for mandatory sentences, because we have so little confidence in what the judiciary is doing to deal with crime.

I won't even talk about corrections, because there are other experts here who will pontificate on that. I happen to think that there hasn't been a significant improvement there, notwithstanding all the money that has been spent, and all the programs with which we have experimented.

Well, you say to me, "Is there a hopeful sign?" I would say that there is one area in which we have not done anything, one area toward which I tried to turn LEAA while I was there, with much resistance from the professional groups—police, courts, and corrections. They all wanted their locked-in share, and would come to Congress to ask for percentages, to guarantee that they'll get their locked-in share. (Remember, the worst thing you can do with a grant program is lock in anybody's share for any period of time. That makes them complacent and reliant, not innovative.) The area in which we had done nothing until about 1973 is victimization, an area that is just beginning to become of interest to people, an area in which we've done too little to bring out the community side of the criminal justice process.

If people don't believe in the system, they're not going to use it. Somehow, you've got to get them out from behind their locked-in and moated castles. There has been no proliferation quite as extensive in this whole area as the private security market. Why? Because the public security is not adequate, in the opinion of the public. When you get the chief of a major city, who is now President of the International Association of Chiefs of Police, saying publicly to his community, and I loosely paraphrase, "Arm yourselves. I cannot guarantee your protection," you have to be concerned with programs that reach out to the community. You have to try to rebuild, reestablish, or, if you don't want to recreate

old models, develop new kinds of community anti-crime, crime deterrent, crime reduction, and crime prevention programs. Programs must involve people—not just professionals, not just regularly paid professional interest groups.

There are, throughout the United States, community and civic organizations, either well-developed or incipient, that need support and development if we're going to continue to have a government-oriented, government-funded program, to make them do something in the areas of (1) juvenile delinquency and (2) crime identification and reporting. How can you expect a criminal justice system to work, now that you've made it so sophisticated, if we don't put anything into the machine, if people don't report crime, if people don't want to get involved? We certainly don't have the kind of police establishment in which police aggressively go out and find street crime. There's a great deal of "not seeing" in the street. The Kitty Genovese example is now ten years old, but the syndrome is quite current. "I didn't see nothing." "We were all in the bus, but I didn't see nothing." Why? Because they have no confidence that anything will happen as a result of it.

That's where the innovation and the initiative should come from if we're going to continue these massive amounts of money. Because we've already upgraded the other parts of the criminal justice system to the point where any further upgrading seems to me no longer cost-effective. We've reached a level of significant apparent improvement of the system without a net improvement in crime reduction. That is, significant improvement of the quality of each individual instrument, as we would have designed it, and as we're unwilling to redesign it, but we haven't touched the community side of the criminal justice system. That's what I would implore you all to address yourselves to. That's what I think LEAA's new initiatives should be. I call them a citizens' initiative. They seem to have submerged or disappeared, at the moment, at LEAA.

This is the perspective I would bring to you this morning. There are other experts here who will comment and criticize, but I ask you to remain fundamental in your thinking as to what we're dealing with. We're dealing with man, a rather imperfect creature in an unhappy society which has many inequities and systems that don't work. And we're seeking ways in which to get man to conform his behavior somewhat to a norm: that norm being whatever you want in your community, of social, not anti-social conduct. And I ask you, is the artificial criminal justice system as we now constitute it adequate to that task? My answer to you is no, it isn't, without a significant new base of support—the community. That's my perspective.

Ms. DERTHICK. Thank you. Mr. Skoler, do you have any comments or responses?

Mr. SKOLER. I really have no responses. Don [Santarelli] raised a vision of a whole broad new focus, without a great deal of specification. I'm going to change scenes. I will be less fundamental and probably more preoccupied with the "artifacts." I'm going to try to sketch, in broad and summary outline, what the Federal role has been and how it evolved. From there, I will look at some of the options for new directions. However, my new directions are probably more "lower case," in contrast to Mr. Santarelli's "upper case" perspective. They will deal with some of the real alternatives you'll be likely to see in legislative submissions and analyses, presuming—perhaps in a different world view than Mr. Santarelli—that we're dealing in an ongoing government service. The police are on the streets, the prisons are operating, the courts are adjudicating—all delivering "public goods" not unlike health services and transportation services. While the new focuses are brought forward, the justice machinery has to be operated and tuned, and we must decide whether to continue in one direction or move toward another. My remarks will focus on that level of decisionmaking.

I wrote something several years back for the *Urban Law Journal*. It was called "New Directions in Federal Aid for Criminal Justice Planning." I commented, with some wonder at that time, that the then new major program for assistance to criminal justice, that is the LEAA program, was almost a model. It was conceived not merely to effect criminal justice reform, but to express the best in Federal assistance techniques, generally.

Now, what was the LEAA scheme when the 1968 Omnibus Crime Control and Safe Streets Act was passed? It was an approach to a Federal role of stimulating a positive effect on crime control and more efficiency in criminal administration (the goal Mr. Santarelli indicates we've probably maximized within the real world) based on concepts that were very current in how you organize large scale government services. First there was mandatory planning. Planning was a

big thing in the late sixties, as it is today. It made a great deal of sense. We saw a lot of non-planning in government endeavors, so the Act said there must be planning. It incorporated not merely mandatory planning, but also a great new insight of the day derived from, I suppose, the work of the Katzenbach Commission. This was that crime control related to and relied upon a series of discrete services that had not been working in tandem. The Act embraced a construct known as the "criminal justice system," consisting of police, courts, prosecution, defense, and corrections. Therefore, mandatory planning should address the system (which may not have been a real operating system, but was at least a series of functions that related to an important "public safety" goal in society). Citizens may not have cared that there were mechanisms like courts, corrections, and police per se, but they were concerned with public safety and crime and the things that had to be done to deal with them.

So we had an Act that said the Federal government is going to insist on planning; it is going to insist on comprehensive planning; and it will back this up with broad-scale block grants (formula grants to State and local governments) to implement plans related to the whole criminal justice system. The block grants were also very good form and represented the new thinking in grant technology. We had gotten into trouble on hundreds of categorical grant programs. HEW is the classic example with dozens of categorical programs operating in similar functional areas. There was nurses training legislation, doctor training legislation, paraprofessional training legislation, hospital construction grants, equipment grants, etc. This, then, was the great reform that happened in criminal justice: we would be dealing in block grants, where a comprehensive plan was developed and determined to be acceptable, there was some chance for State input and local input, we hoped; some prioritization had to be introduced; and the Federal government would be getting away from the red tape of dozens of grant programs, each with their own forms and requirements. This was plaguing the Federal government. OMB knew all about it and was concerned, as were other students of intergovernmental relations.

Now, when you're thinking of the ideal Federal role, you also think about the limited resources nationally, for everybody, or each State, or each law enforcement agency, to do research, that is to look at causes of crime, and the like. Thus, it was appropriate for the Federal government to throw a research component in its Federal assistance superstructure, i.e., to create a national institute to deal with criminal justice research. That, too, was certainly "good form." Moreover, the nation was getting a great deal of insight about the importance of training for social service professionals in any area, and so a training component and an educational program were added to the legislation.

Then, too, the Katzenbach Commission had not proposed block grants. It had reported out its recommendations not long before the Safe Streets Act. It did endorse planning and education and research. But it talked about innovation and Federal support of innovation rather than subsidies. Possibly to accommodate this need something known as "discretionary grants" were added to the assistance format. This was a modest piece of the large action grant appropriation for State implementation of programs which, hopefully, the Federal government would use as a kind of leverage for innovation. Here, it could give discretionary grants to whomever it desired and for whatever purposes. However, I think one lesson we learned is that if you allocate too much money for discretionary grants they no longer become discretionary. Groups begin to establish vested interests in them. You have to keep this kind of thing small.

So we had now introduced as building blocks for Federal crime control (i) planning, mandatory planning and total system planning, (ii) block grants based on States' conceptions of their problems, (iii) a research component, (iv) an educational component and (v) a technical assistance component with statistical collection built in. It was very much an ideal package, representing the new technology.

The only thing that was similar was a grant consolidation within HEW called Partnership for Health, which was another attempt to bring together a variety of related programs into a comprehensive aid package tied to planning. As you know, the record is quite ambivalent as to whether this ideal configuration produced the results that it had in mind. Governmental aid technology has since followed this new approach. We wound up, for example, with CETA, the Comprehensive Employment and Training Act, which is a block grant program, with research and training and large scale grants operating in the manpower develop-

ment area. We have Title XX of the Social Security Act. The poverty program evolved into this broad block grant system for States, enabling each State to plan where it wanted to put its monies to deal with the disadvantaged and a variety of social service program areas. The Community Development Act was something similar in urban affairs for replacing the Model Cities Program with another comprehensive block grant, training, research package. So, the new "Safe Streets" technology had an aftereffect and other areas of governmental service were swept into its broad format.

Turning back to the LEAA effort, I won't rehearse the criticisms of the program. But we've now had that format in place for nearly eight years and four and one half billion dollars has been spent under its various titles. The total probably goes beyond five billion with this year's appropriation.

I should mention one other important element. It was also a basic decision in this format that State government would have an essential role. It would be the planner, the comprehensive planner, that would get aid down to local governments; but State government had to pick up a leadership role in criminal justice services—that was central to this program. We have other block grants that do relate directly to localities; the criminal justice sphere doesn't. Instead, we have a whole network of State planning agencies who conduit the funds, governors who are supposed to be able to impact on criminal justice policy, and, of course, some fighting between cities and States as to whether a fair deal was inherent in the administration of the Act (in terms of getting enough aid to localities and cities where crime incidence was the highest).

Now what are some of the new directions—the "lower case" new directions? First, people are talking about dropping block grants and going to special revenue sharing, maybe abandoning large scale aid totally. These are the things that Congress is going to be thinking about. Some of the proposals are not much of a new direction. The Nixon Administration had a proposal for special revenue sharing in 1972 which failed to win Congressional support. Often, it may be only semantics as to whether you're calling a funding arrangement a block grant or special revenue sharing. If the functional area is broad enough there may be only one key difference between the two: and that is the absence of a mandatory plan requirement. In a special revenue sharing format you give money to the States to spend on law enforcement as they will, without strings. There might be Federal monitoring, or after-the-fact criticism, there might be incentives to move in a special direction, but the basic allotment is revenue sharing money. Funding is going into "special" revenue sharing because one is forced to confine utilization to the criminal justice area.

Revenue sharing funds for law enforcement isn't such a new idea either. The single largest program we now have for crime control is not LEAA. It's the State and Local Fiscal Assistance Act of 1972 [authorizing general revenue sharing], because a lot more money is going into criminal justice from that revenue sharing program than from LEAA. I'll try to give some figures. General revenue sharing is now running at about 6.3 billion dollars per year, and I don't see very much that indicates it will run less in the future. The investigations that have been made (primarily by the Brookings Institution, but also through the Office of Revenue Sharing "use reports") show that public safety is the largest single category for investment. That's primarily where local governments put their money—not so much at the State level. The national average, according to a Brookings report soon to be released, is that 23 percent of all general revenue sharing funds are reported as going into public safety activities. Now, 23 percent of $6 billion is about $1.4 billion coming from the general revenue sharing program.

Admittedly, public safety is not totally criminal justice. It also indicates fire and certain regulatory functions; but the averages seem to show that about 70 percent of public safety expenditures under general revenue sharing go to police and corrections. The courts aren't very visible here and I'm sure some money goes to prosecution and the like, but not a great deal. And so, if you take a 70 percent cut of that $1.4 billion figure, you get about $1 billion. In a very real sense, then, today's largest crime control aid program is the general revenue sharing act. Mayors are putting their money into that function. Now, the flaw in my reasoning is that research shows this is largely "substituted investment" rather than new expenditures. That is, where this Federal money is put into law enforcement, perhaps general executives in county, municipal and State governments are putting their own monies that they would have had to spend on, say,

police raises into other functions. The best research shows that only about 20 percent of general revenue sharing expenditures (1974 figures) is new money for criminal justice. But I'm not sure that we don't have a great deal of substitutive effect under block grants as well. We just don't know. There's never been any solid research on that and a good budget officer of a city is a really tough adversary for a State planning agency, if he's figuring what to do with those State funds which he may have received for diversion, when he also wants to fund a police salary raise.

Now, other groups like the Advisory Commission on Inter-Governmental Relations say let's not rush into major changes in grant formats. Let's keep block grants but purify them. An interesting (and somewhat disheartening) thing has happened since the Crime Control Act was first passed. Apparently, there was a kind of a compulsion not to give the "block grant" approach a good test, or perhaps there was even a lack of faith in block grants as an aid technique. In just two years after LEAA went into operation, a Democratic Congress and Republican Administration soon determined that there ought to be a special "kitty" for corrections. This was achieved in two ways. There was, first, a separate earmarking of large scale funds to be put into corrections, perhaps because, as Mr. Santarelli indicated, there seemed to be a first focus on police. Thus the block grant program became tainted with the special Part E appropriation for correctional upgrading. Then the Congress also established a "percentage test" even for the total portion of block grants that had to go to corrections. The 1974 amendments [Juvenile Justice and Delinquency Prevention Act] called for separate plans and an earmarking percentage of LEAA block grants to go to juvenile delinquency programs. And this year, with the latest set of amendments, we have come close to introducing categorical grants for courts. There is not yet a specific appropriation or percentage allocation for courts, but we are close to that point. Also, there's been a continuing dialogue and legislative proposals to assure that monies are set aside for the high crime areas in large localities. And so, with all this categoricalization another new direction might be the old direction of going back to the pure block grant, and letting it work its will. We really have emerged with a somewhat different picture than the original version. We now have a block grant program that has a number of categorical allotments. And I hardly mentioned the biggest one of all—the Juvenile Justice and Delinquency Prevention Act of 1974, which was a kind of categorical "tack on," saying, well, we like the general planning idea with State/local determination of priorities, but you still have to spend so much of your monies in delinquency prevention and control.

Another call is to drop planning as a prerequisite for large scale aid. Most of the people who suggest this are not against planning. We usually find a recommendation that the Federal government continue to stimulate planning, perhaps provide the funds for it, but not require that as a condition for the large formula grants. Assuming you're going to provide large scale aid for this particular government service, I think that's a very legitimate position. It is a reaction against what appears to have been almost a crippling complexity in handling the block grants, and against the bureaucracies that have been created to deal with them. The State planning agencies are complaining that government requirements have made planning a non-useful exercise. There are those who say that comprehensive plans have gotten so complex that they are no longer viable tools for programming and resource allocation. So here, too, is a new direction that we need to look at.

If you drop plans as a prerequisite for Federal aid, there is something else that might be considered in terms of requisites for Federal funding. This is probably in as little currency today as ever, what with the trend toward localism and freedom from Federal restrictions. The technique, however, has some analogies in other parts of government and merits a word. One might switch from a "plan" approach to a "standards" approach, i.e., the required achievement of standards as a prerequisite for Federal aid eligibility. (Mr. Santarelli's administration at LEAA undertook a large standard-setting effort, at the Federal level aimed at stimulating State articulation of "standards and goals".) If this were done, it would amount to a new and different kind of Federal direction. You don't go into the "whys" and "wherefores" of how States and localities plan to achieve "x" or "y" or "z" result. You just examine whether they have achieved "x" or "y" or "z", and if they do this, they qualify for Federal aid. Now this need not be a mandatory requisite. One might provide incentives for the achievement of standards.

There are two major courses for a Federal role in standard-setting. One is Federal standard-setting, and the other is Federal insistence on State standard-setting. We're an awfully large country. We can see a viable and effective British Home Office, in a nation of 60 million, that does a great amount of standard-setting for local police forces, backed by a 50 percent subsidy for operating expenses. One can analogize our States more closely, perhaps, to this technique than the Federal government. A State of 20 million, like California or New York, or a State of seven and one half million like Florida, might itself, on the grounds that criminal justice involves a mobile society and certain minimal values and protections that relate to us all, establish certain standards such as prosecution caseloads, patrol coverages, or training for professionals that apply to all communities and agencies. Indeed, we've seen that as a development, frequently supported by Federal funds, in the police "standards and training" commissions that now exist in virtually every State and, in most, set mandatory requirements for the selection of police officers and training of new recruits. This has been a major reform in the past ten or so years.

One reason people have problems with planning is that it's turned out to have been a huge, exhausting task to plan for the Federal block grant allotments. The directors of State planning agencies, a dedicated group of people who have learned a lot about the system, say that they have to spend all of their time planning for the total system. I think that most of the analysts would agree that planning should be done for a total system; and the question to be asked here is whether the Federal government can encourage that type of planning, and if so, how? Does it begin to insist on total coverage in terms of its planning allocations? Does it encourage States to adopt legislation which permits this kind of total planning to go on?

Another thing that has to be decided, in examining the Federal role, is whether we should continue to be enchanted with the concept of the criminal justice system. There are rather good arguments for saying, "That was a nice Camelot. It never quite happened." I've already mentioned the several categorical allocations that have been carved out of LEAA (corrections, delinquency, large cities) which, in a sense, are declarations of separatism. The components are saying, "We're all for the criminal justice system, but we want separate criminal justice plans and we want separate funds for our improvement efforts." And one might also say, "The system will always be a nice construct, but let's forget about the comprehensive bit and let us nurture each segment according to its needs." To do that, you need people who know their specialties well and who concentrate on them. I'm sure the criminal justice system components themselves have never felt the sense of system unity in the past eight years that was the hope of the crime commission and the experts.

Is there a disenchantment with State leadership? I tend to like the total system idea and yet there's been this constant stress and feeling that the States were going to mess up the essentially local service of law enforcement and criminal administration. Ramsey Clark felt that and, as Attorney General, he very much wanted to direct aid to the localities. Yet, there was concern about the confusion that might result, risks to the equal justice notion, and how we organize services in our complex federal system. As you know, State government executives were being by-passed in many Federal aid areas, not just criminal justice. How do you get hold of the urban mess and mobilize Federal, State and local resources to solve its problems?

After much reflection, I've come out on the side of continuing the State leadership role in the area—maybe not direct State provisions of services, but State regulation, State monitoring, State subsidies. I would also be concerned with an active Federal role. Criminal codes are statewide. Moreover, if you look at the crime commission and study group recommendations they seem to wind up with a call for more centralization in virtually all areas. There ought to be centralized statewide corrections departments; there ought to be some kind of statewide policy-setting for prosecutors, even if local prosecutors remain organizationally independent (as I think they must). The court unification concept is running strong now. States are producing unified court systems and independent local courts are coming under those umbrellas. So we see a lot of dynamics, apart from Federal aid technology, which is beginning to order things in terms of a State leadership and oversight role.

I want to mention fiscal pressure as well, because with all the talk about direct aid to localities, not flowing through the State, a great many recom-

mendations suggest that the State should be accepting fiscal responsibility for crime control. There's virtually unanimous agreement on State financing of court and defender systems, and State financing of correctional systems. In prosecution, we've seen less insistence on State fiscal support. The National Advisory Commission on Criminal Justice Standards and Goals made, I thought, a striking recommendation that localities which adopted State personnel and training standards ought to have a 25 percent salary subsidy from the State. This almost acts to move the nation to the English system of central criminal justice financing or subsidies via the British Home Office experience.

Today there are enormous fiscal pressures on local government which are not going to go away and probably won't be solved by sending Federal funds directly down to those local governments. In many cases, local governments don't want to be footing criminal justice bills. The're looking very much in that direction because they have limited revenue generating capacity, because the State is better equipped to tap in an equitable and effective way the necessary revenues, and because localities are saddled with the ailing property tax which is rather an imperfect mechanism. These, too, are factors that bear on the kind of State and local roles and responsibilities the Federal government should be encouraging.

Now I'm going to stop here because I've taken more than my time. I'm sure Miss Carey will cover the research aspects of Federal involvement. I've said enough about large-scale aid mechanisms and hope I've thrown some light on the major issues and notions.

Ms. DERTHICK. Thank you. Mr. Santarelli, do you have any comment at this point?

Mr. SANTARELLI. One comment only. As a perspective to keep in mind—and it is important to hear from Dan [Skoler] about the individual mechanistic aspects of the system and what has been done to improve them—but, my perspective is, don't confuse improved criminal justice quality with crime control and crime reduction. I think we have tended to do that in the mission of LEAA which is statutorily and rhetorically stated "to improve criminal justice and reduce crime." The two are not necessarily related. It is important to improve the quality of the individual components of the criminal justice system if for nothing else than that it gratifies us. It also assures better treatment of individual defendants as they are processed through the system. But it has very little to do with crime reduction. That's the point that I keep turning to. We may treat the defendant better, we may better assure his rights, we may have better cops, courts, and judges. But does it reduce crime, improve public safety? Not necessarily.

Mr. SKOLER. I think this gets to a fundamental issue of government. You need to move reform along in two ways. First there are the large insights and the huge realignments which are often slow in coming and very big in impact. The other route is to take the collective wisdom of the time (e.g., "How do you suture somebody better in an appendectomy?") and implement that accumulated wisdom which, over time, may show some large flaws. Perhaps in pursuing the current wisdom, you will find holes in it; like pressing the comprehensive planning myth let us know that planning wasn't the ultimate answer to crime control. So I think there's room for both approaches. I think Congress is saddled with both—perhaps the lower road even more than the higher road, because governmental services must go on.

Ms. DERTHICK. Ms. Carey?

Ms. CAREY. Talking to this group about LEAA is a little bit like closing the barn door after the horse is out. I think last year was a time when the basic issues were really up to be addressed. And I think that everybody's been pretty soft on Congress so far. But I think it's been fairly clear, particularly in the renewal hearing that have been held in regard to LEAA, that Congress has played a very superficial role in looking at the program and trying to see what it has accomplished, what it could accomplish, and what its purposes are.

I think the Senate, in particular, has had what one would call close to ridiculous renewal hearings on LEAA, and the House hasn't been too much better. There have been a few feisty Members who have tried to raise questions that are slightly out of order, but basic questions have tended to not questions of purpose or goals or so on, but how much money—more, the same, or how much more—what term—two years, three years, five years, eight years—and what new group can we look at—what new group can we single out to be sure that it will get money? That's the court syndrome last time around.

But I don't think that, other than these efforts, Congress has really looked at the program, partly because they haven't wanted to see it too closely, but generally because they're not that great on oversight. Starting from the premise that I don't really think Congress is likely to get into the basic questions about a program they've just renewed, when they didn't get at those questions when they renewed it, we can look at LEAA (which is essentially the program we're talking about) as providing a variety of roles. I think Dan [Skoler] has really set the theme by raising the question about the current wisdom or the old wisdom that existed when this kind of program was passed.

I see LEAA as originally being conceived of, or modified by each new Administrator making excuses for it not having met the previous goal, as playing four different kinds of roles. First, is straight financial aid. You give money because the criminal justice system needs assistance. Everybody else gets aid. Schools get aid, health gets aid. manpower gets aid. So let's give some to criminal justice. That's one role, and that's probably the one that LEAA has played the best. They've given out a lot of money.

The second role is the stimulator of reform, the Federal program, the Federal money being used as a means for stimulating changes or reforms. Reform if it's new, change if it's different from what was done before. And in that area, LEAA has claimed to stimulate change in a number of specific areas. One of the main ones Dan [Skoler] has gone into was planning. LEAA was going to teach people to plan. When you ask, "What has this program done in the past seven years?" LEAA's frequent fallback position is that it's gotten people from the diverse criminal justice agencies who never talked together to sit down in one room. That's $4.4 billion later.

Mr. Skoler. It's the "one room" syndrome.

[Laughter.]

Ms. Carey. That's right. The second area where LEAA claims to have encouraged change is in operations—bail reform projects, pre-trial release, computerized court systems, and so on.

The third area of change is statistics and information, and the fourth is standards—setting minimum standards throughout the system. These areas cover the second general category, stimulating change.

The third role is the Federal provider of answers; the Federal agency through the research institute is supposed to come up with answers. Money alone will help the criminal justice system work better, changes will occur from tinkering with that system, but answers about crime, and about the underlying basic questions pertaining to crime will come from the research institute.

I think that we've had, in the most recent head of the Institute, one of the uniquely honest bureaucrats in Washington, Gerald Caplan. Caplan gives a speech which his colleagues call "Losing the War on Crime", where he says that we haven't come up with answers, that we aren't much better off today than we were seven years ago in terms of answers that will get at the crime problem.

Then the fourth and final general area—and I'm going to go into these a little bit more specifically later—in which LEAA has a role is the general one I'm calling intergovernmental relations. Federal grant programs should assist local government and State government to operate more effectively in whatever field they're dealing with, whether it's health, schools, so on. And here LEAA, I think, has had one of its biggest failures. It may really be Congress' fault, which was the fault of popular wisdom, as Dan [Skoler] would say, for believing in artificial planning structures that are not integrated into regular agencies of local government. Congress spawned free-standing State planning agencies that are not part of the Department of Justice or a State agency, but that stand by themselves, not plugged in. For the most part, until recently, these entities have not related to the State legislatures. They've had trouble getting the States to absorb the cost of programs that have worked. And even more importantly, most of the basic changes in criminal justice, such as different kinds of sentencing structures, getting rid of certain categories of crime, changes in the authority of different officials within a system, have to come from State legislation. You can't buy it with model programs. Creating these artificial, freestanding entities has really cut against that. I think that if you look at what Federal aid to State and local criminal justice agencies has done to intergovernmental relations, you will find quite a few negatives. And that's without going into questions like red tape, interference with decision making, cost of administration, and so on.

Those are some of the kinds of things that a Federal program might do. I think that LEAA has suffered and still suffers, because Congress suffers and

the people suffer from not having any idea of what Federal money should be spent for. This gets to the distinction that Mr. Santarelli was making between criminal justice and crime. We know how to feed money into systems. We do it with all our systems. When I testified before Congress last time on the LEAA renewal, I suggested that if they wanted to take that as the purpose of this program, they could easily get LEAA or some independent agency to pull the statistics to demonstrate whether there is a need for further relief to bring the nation's criminal justice systems up to a floor, or whether that has been met already. Nobody was interested in the question and the information wasn't pulled together. But I think——

Mr. SANTARELLI. Sarah [Carey], Mr. Rooney used to say all LEAA needed was a check writing machine and three secretaries to lick stamps.

Ms. CAREY. Well, that's what Velde [LEAA Administrator] said he did.

[Laughter.]

Ms. CAREY. I don't know who licked the stamps. But the question of whether the system needs more money is open; nobody has bothered to pull the information together.

Another question is that of getting to answers to reduce crime. Congress has not spelled out in the legislation how you get at crime. They simply refer to reform and reduction of crime in loose, general language. LEAA doesn't know. There's no national repository of wisdom. There are no specific ideas for how one might go about reducing crime. And the Institute, for the most part, has not come up with answers.

So you get at a question which I think is one that Congress should take seriously, in regard to every substantive area: should you spend money if you don't have answers? If you want to spend it just to bring the system up to par, then when it's brought up, look at the fund commitment as flexible, move on to some other area, put money where there's another failing system. Maybe it's mental health, maybe it's something else. But until you know that certain kinds of approaches work, don't bother throwing the money out once you've met the floor. I think that's one thing that ought to be considered.

In general, in my writings on LEAA, which have all been called "Law and Disorder"—which I recommend highly if you have insomnia—we conclude that research may come up with answers. (We still have the liberal's faith in research.) And, if you can properly set up the research institute, you may get answers about reducing crime that can then be parlayed into Federal policy generally. Our bias is that you're not going to get it principally through the criminal justice system. It's going to be by looking at all of the Federal programs and policies that impact on the high crime areas. So it's Federal fiscal policy, it's housing policy, it's the range of things that the Federal government does that affects how cities are run, how neighborhoods are maintained, how people live. A research institute that is properly addressing the questions of causes of crime, and prevention, could come up with broad policies that would impact on those other agencies. We made a few suggestions on how such a research system might be set up. That's one conclusion. The other conclusion is that if Congress feels that it should make money available to fight crime, so that the people who are responsible at the lower levels can say they got money to improve their agencies, then it should distribute the funds through general revenue sharing, not special revenue sharing. Don't say these localities have to spend the funds on crime. Say they can spend it on what they want.

[Transcript tape change.]

Ms. CAREY [continuing]. Other panaceas for keeping kids out of crime. And they wrote it up into the most complicated juvenile delinquency prevention proposal you've ever seen in your life. You know, if it was general revenue sharing, they could have just honestly gone ahead and put it into recreation. That was Cleveland's priority, and nobody has to worry about it. So I think that general revenue sharing is a possibility, a consideration. It enables the local administrator to look at the needs of local government as a whole, instead of having the Federal government decide that agency X needs money. That really twists local government administration. It takes power away from local legislatures and local city councils, where it ought to be. So that would be another kind of approach.

I think that consideration should be given to finding a way to end the isolation of the SPAs—either by getting rid of them and letting the money be administered through the State department of justice or by involving them more. You can still have planning requirements if you believe in plans but you would

bring it more into the normal procedures of government. Also, there should be ways of considering the types of proposals that Dan [Skoler] has suggested—which I think are relevant to Title I ESEA, to CETA, to a whole lot of Federal grant programs, some of the health programs and so on—where Congress has got to start realizing that there are State legislatures out there, not just Governors. You can't just give the money to the Governors to spend it on their pet projects, which has really been what all of these special revenue sharing programs have amounted to. The State legislatures have to be given incentives to take steps on their own in regard to their own appropriations which are, of course, much more extensive than the five percent, ten percent, whatever amount of money the Feds hand out. And that would mean things like the type of proposal Dan [Skoler] made, rewarding States for taking certain steps in improving aspects of the criminal justice system. That's assuming, of course, that the Feds have some idea of what those steps ought to be, and that's questionable.

The second approach to the SPA problem is the meeting of the minimum standards. In this approach, you have rather specific requirements until the State comes up to a minimum standard, and once it hits that standard, just give it the money and let it go with it. Stop earmarking. Stop trying to run local agencies from Washington. I think that even though this program is called a block grant program and it was designed to avoid the problems of categorical grants, there are many local administrators who feel that the interference is as extensive in this program as it is with categorical grants. Dan [Skoler] said it's semantics whether you call it block or general revenue sharing or special revenue sharing. I say it's semantics whether you call it categorical or block.

If there is a way of designing programs to reward the States and not mess with them after they meet some minimal level, I think that would be ideal. But of course, that raises the nightmare of a bunch of Federal bureaucrats running around the States and cities trying to see if the minimum standards have been met. A sort of inspector general corps. I don't know how you would administer that.

I can give a lot of chapter and verse of specifics in terms of the various programs that LEAA has run in the past seven years. I think it's interesting to note that there are only four specific programs that the Feds actually run. (Besides these, LEAA also influences State and local governments simply by handing out money—by its general expenditure pattern.) The four areas are the Institute, the discretionary funds, the LEEP program, which is the Law Enforcement Education Program, and information and statistics. If you can make judgments about the future based on the past, then there's a strong argument to be made that these programs should be stopped, and that either there should be no program or a new start. This, of course, is totally unlikely. Naturally, the Democrats think that it was just Republicans that messed up the LEAA program; the program itself can be run properly. But I do think, if you look specifically at those four programs and what they've done that the record is extremely disappointing; and, it's also instructive about fashioning new Federal roles.

The Institute was never taken seriously. It was never integrated into the overall agency operation. The theory was that research would inform action. But this never happened. The action money was to spend on program that Institute research had found didn't work, or that the Institute had invested millions of dollars to research.

Mr. Santarelli mentioned reducing police response time. Well, the Institute did a lot of research showing that the key factor to apprehending the criminal is when the victim reports the crime. Police response time is not as important. The victim may not call for half an hour. The police can get there instantly. The cop has a computer that whizzes him off; it beeps his car; he's the nearest one; and he's there in a shorter time than you could get a cup of coffee. But it doesn't matter. The victim waited half an hour before he called.

Now, there are hundreds of proposals that LEAA has funded, based on the premise that they will reduce response time. That's true also with other more mundane expenditures, such as helicopter patrols. Helicopter patrol has been found to be of limited effectiveness in regard to certain things and of greater effectiveness in regard to others. It doesn't matter. LEAA grants are awarded for all the purposes, effective, noneffective. No coordination occurs between research and action grants.

The same failure to fulfill the legislative purposes occurs in regard to discretionary grants. Discretionary money was intended to fund projects that the

States and localities wouldn't have funded, to lead the way to do what the Feds thought worked. The Feds had all this money, they could go out and fund a project because they knew it worked; it would then become educational and help everybody else. Well, discretionary money got spread around, mostly to cover political loopholes that hadn't been covered by the States and localities; to fund all the critics of LEAA, and others such unworthy purposes. The worst example was the high impact program, which I think ranks historically as one of the most interesting bureaucratic blunders of all time. LEAA had the temerity to say that by handing out $20 million it would reduce the crime rate by 20 percent. It was one percent a million, and that was kind of catchy as a slogan, but there was nothing to back it up. There's virtually nothing left of that program in the cities where all of the money was handed out.

Mr. SANTARELLI. Make sure you credit which Administrator implemented it and which Administrator dismantled it.

[Laughter.]

Ms. CAREY. That point has just been made. I'm sure I don't need to elaborate.

[Laughter.]

Ms. CAREY. In the Justice Department itself, its own task force recommended that the discretionary program be abolished because it was costing more than it was worth.

Then, you had the education program [LEEP]. The best piece I've seen on that was a volume of the *Police Chief*, the IACP's journal, assessing the curriculum. Again you have an example where leadership was not exerted, where money was just handed out to buy a few more degrees, a little bit more time in school, and therefore more salaries. But there has been no improvement in curriculum. LEAA hasn't even related education to manpower needs. LEAA does a big annual survey of manpower in the criminal justice agencies, but the people who designed the LEEP program don't even read it. They didn't even have it in their office.

Basically, the LEAA program has not been taken seriously at high enough levels in the administration. You don't have the President, before he gives a speech on crime, consulting with the head of the Institute to find out what works. You don't have the Attorney General fashioning the Justice Department's approach towards crime on the wisdom that has been developed by LEAA. That suggests two things. Either there is no wisdom or the program is not politically related to mainstream.

Given its current status—and the amount of money involved—I think that it is past the time when Congress can just sort of sit back and say, "You know, we've got to vote on more money because everybody out there is worried about crime and this is our crime program." At some point there's got to be a stop to that. And I'd just like to, in closing, read a quote from *Alice in Wonderland*, which to me epitomizes the relationship between Congress and LEAA. You have to look at LEAA as being Alice and Congress as the cat. And Alice starts out saying, "Would you tell me, please, which way I ought to go from here?" "That depends a good deal on where you want to get to," said the cat. "I don't much care where," said Alice. "Then it doesn't matter which way you go," said the cat. "So long as I get somewhere," Alice added. "Oh, you're sure to do that," said the cat, "If you'll only walk long enough."

[Laughter.]

Ms. DERTHICK. I'm not sure I detect any emergence of a consensus on what new directions should be taken, though there would seem to be some consensus in regard to disappointments in the past. Mr. Santarelli, do you want to respond to this? Let me put a question. I wasn't clear about what, concretely, your recommendations for more participation by the community would mean. Would that mean, for example, as Miss Carey suggested, less in special revenue funds and more in general revenue sharing, so that the community, the local government, can do whatever it wants? Have more swimming pools to keep juveniles occupied in summer, for example.

Mr. SANTARELLI. That's very possible. I did not flesh out those recommendations because I tried to stay within the ten minutes allocated. Nor did I try to flesh them out too heavily when I was at LEAA, because I'm one of these ex-bureaucrats who, when he was bureaucrat, believed rather strongly in some old fashioned notions that wisdom did not reside on the east bank of the Potomac, nor in this Administrator's head. And that the best thing that an Administrator of LEAA could do would be to stimulate the thinking of the criminal justice and public community by saying, "This is where we'd like to go. You are the

people who are going to have to go there, however, and we would prefer, at least under my administration, that the program ideas for new directions in what we'll call community contributions to criminal justice, should come from the community, and not like Aphrodite from the head of Zeus, from the east bank of the Potomac." Now, that's kind of overstated, but that's what I believe. I'm somewhat troubled—and this is a good jumping point for my comment about what Sarah [Carey] says—about having your cake and eating it too. You can't have it both ways. You can't have a program run from Washington by an administration setting standards, setting guidelines, setting objectives, using the carrot and the stick, directing the program and telling the community what to do; and have a program which I think is consistent with the democratic notion that was implicit in the '68 Act, in all the hearings since and in the re-enactment, that this is a program for State and local communities. That the involvement of the LEAA in Washington should be very limited, that the ideas, however bad or good, should come from the community, that experimentation should occur in the community, and that by and large the policy considerations involved in what is done in the field should be those choices made by the local community; perhaps made through a structure called a planning organization, with one in the Governor's office, one in the county, one in the city, and one in the community. That's about the best way we know to fashion and keep alive a "democratic process."

I ask you to keep constantly in mind the primary consideration here. What is the proper role of the Federal government in the area of crime control and citizen control? There's always a very serious danger of a kind of tyranny that comes from Washington. A tyranny of intellectuals, a tryranny of right-wingers, left-wingers, a tyranny of anybody-who's-in-charge. Diversity is what we try for in our society and we know we pay a tremendously high price for that diversity, namely, sloppiness and low quality in programs. We pay the price of repeated failures and mistaken directions.

My view of the Administrator's role can't be discussed very perfectly, because we tend to think administratively, executively, engineeringly, educatedly. That isn't how man works; it isn't how his daily life is lived. The Administrator at LEAA can best perform his function, in my judgment, by using his office as a bully pulpit, to suggest, to stimulate ideas, using the carrot of a discretionary grant award, but that's it. He should not be a dictator. He should not didactically or pontifically tell people what kind of programs they must have in the States. I don't like the present guidelines of LEAA. I resisted the development of guidelines. I think they become self-serving, bureaucratic objectives, rather than bringing about criminal justice improvement or crime reduction in the community, because they end up being administered by secure bureaucrats in Washington who have no responsibility to the community out in the field.

There's an inevitability about bureaucracy. It tends to serve its own objectives, not maliciously, but naturally. The best thing that could happen to LEAA is that it stay small, not particularly competent at didactics and giving advice, that it does engage in a kind of revenue sharing with a limited kind of discretionary role for special projects, that its Administrator be made responsible to annual review by the Congress, that oversight hearings should be harder and tougher, that the extension for LEAA should not be long, certainly not as long as five years, and maybe three is even a long time. It should remain a flexible program. But don't give me this business that we need to have standards imposed by Washington to make sure that the States are conforming, because that's not my view.

This a democratic society with pluralistic ideas and diversity among States. The tendency to think as executives in large corporations—that we ought to have it all in one good channel and have a clear series of guidelines and allocations and a rigid program—would be counter-productive to my notions of a democratic society. Leadership in place of control by LEAA is the way I would put it.

Ms. DERTHICK. Your recommendation that LEAA be incompetent may be the most feasible statement I've heard in Washington in some time.

[Laughter.]

Ms. DERTHICK. Are there any reactions from the other panel members or the prospective panelists for this afternoon? Mr. Cressey?

Mr. CRESSEY. [Asks question about the subsidiary organization at LEAA, the National Institute of Law Enforcement and Criminal Justice, the research arm of LEAA.]

Mr. SANTARELLI. I'll take a small crack at that for this reason. The Institute has not ever achieved the hopes that were held for it. I think that is largely because it has been buried in LEAA. Before I went to LEAA, I made a strong recommendation to the then-incumbent administration that the Institute be carved out of LEAA and be made a separate entity, responsible perhaps directly to the Attorney General, and kept administratively in the Department of Justice. That recommendation was not accepted, and when I went to LEAA, I made the same recommendation as Administrator of LEAA. It was again not accepted by the administration and the Congress showed no interest in doing much about it. The Congress moved a couple of inches on that subject by giving the Institute some additional responsibilities. Initially, you see, we had the problem of worrying about whether this was going to be a Federal program for the Feds or a Federal program for State and local governments. The decision was made, in '68, that it was not going to have any responsibility for Federal affairs. In fact, there was almost a prohibition against the Institute working for the Federal government even though it might be beneficial to the Attorney General in making Federal policy. That was perceived as short-sighted, and the Congress, in this last go-around, did give the Institute clear additional authority to perform research capabilities useful to the Federal establishment as well. But it has been a slow progress. I think the problem comes from where it is located. It should not be subservient to an Executive level III Administrator. It should be elevated to a higher level and thus be more useful. My reaction to what I could do about it was to bring Jerry Caplan to the Institute and make him its Director. I have great confidence in him and I had high hopes for him. They were not achieved because of its structural location, as a servant of LEAA, and not at a higher level.

Mr. SKOLER. I might add that I guess the chief new direction is whether the research effort will and should be separated as a private corporation or some kind of independent body? Sarah Carey, that's one of the recommendations in your report, is it not?

Ms. CAREY. Yes.

Mr. SKOLER. There are two other issues. One may be the Holy Grail that's never achieved. It's the notion that there should be a very solid, in-house capability in this separate research institute. It's very attractive. People have always said it was important. I think we just need to look at the general ability or inability of government to attract first quality, in-house staffs over a lengthy period of time. If you don't have a Manhattan Project, or some kind of a crash program calling for the best, it's been difficult. It may not be something achievable, but there would be calls for that.

There has also been continual talk about regional centers, university-based centers. The Katzenbach Commission recommended this as a formal part of its research program. I really don't think that we have any evidence as to the feasibility of that. Norval Morris has run one with non-Federal funds. But that's another issue in localizing research a little bit.

Ms. DERTHICK. Mr. Conrad?

Mr. CONRAD. Turning to Mr. Skoler's discussion of the standards and goals project, I wonder whether he can say that there has been any real application by the States of the standards enunciated by the Commission, or must we conclude that they serve a primarily ceremonial function?

Mr. SKOLER. I might say, relative to my earlier remark, that probably the Federal government achieved the apex of its in-house capability when John Conrad was with the Institute. But that was a rare exception, to be able to attract people like that for a spell with the Institute.

On standards, you know, we do have Federal standards. We have a Federal standard that says if you can't give treatment, you have to let people out of mental institutions. It happens to be a Constitutional standard and I'm probably misquoting it. But our Constitution is full of operational law enforcement standards. They tell you how you can operate. They're getting to resources to the extent that we're finding right-to-treatment cases. That has to do with resources. I'm not putting you off with that, but I'm trying to show that there is a nexus. There are Federal standards, and maybe the best place to leave them in the Constitution. I tend to agree with Don [Santarelli]. I conceive of the States being the standard-setters. I'd like to see that tried, because I think a State can encompass its urban-suburban differentials. . . .

Mr. CONRAD. So that the standards might be quite independent of the Federal norms?

Mr. SKOLER. Yes. Each State sets up its own standards. There might be some room for Federal norms. We don't want flogging anywhere; fortunately, that's covered by the Constitution. But there may be other values in our society that might be imposed. Apart from sporadic standard-setting, like the police standards and training commissions, I think there are some probation standards in New York that were put in place as a condition for the operation of probation and the like.

The obvious analogy I should have mentioned in my remarks—it probably doesn't apply, but it's nice to think about these things—is that we have had a very positive Federal standard-setting role in the area of highway safety. It's interesting that the standard-setting body can have only one-third Federal people on it; two-thirds have to be non-Federal. You might have the analogy at the State level. We've also had experimentation in standard-setting where you have important regional variations. I think in environmental standard-setting it's not so much the uniform Federal standard as in highway safety, but there are firm standards that are regionally determined. These are hard technologies, and I'm not sure of the application.

The one thing that attracts me about the idea is that it frees up States and localities. It says, "We're not telling you how to achieve this thing, but we do want the goal set. We do have expectations, and you figure out how to do it, but meet the standards." You're kind of preempting the result, but you're getting rid of the mess of red tape that we found existed in monitoring plans on the detailed way of achieving these. I think the Federal government can assess achievement of standards a lot better than it can look into the minutiae and manifold details of implementing a comprehensive plan.

Mr. GOLDSTEIN. [Cites his experience on a daily basis with the criminal justice system, and says that he sees things getting no better—in fact, worse. Wonders if there is any reason to continue the LEAA program, or whether the money would be better spent on some other type of program.]

Mr. SKOLER. Has your State Planning Agency, in your view, played a positive role over the past seven or eight years in New Jersey?

Mr. GOLDSTEIN. I have seen absolutely no improvements at all. [Says that in his State he has seen no improvements as a result of Federal money in the quality of justice, or in the reaction time of police departments; although in some States there have been improvements in the salaries of police. He feels that the program is giving a lot of false promises, not protecting the public, not dealing with "people" problems.]

Mr. SKOLER. Do you mean the criminal tendencies of people, or——

Mr. GOLDSTEIN. [Examples of "people" problems: setting up police departments, dealing with leadership, establishing prosecutor's office, leadership in that office, probation offices.]

Ms. DERTHICK. Anybody want to justify the program?

Ms. CAREY. Well, I think some of the rejected ideas are justifications. Things that haven't worked could perhaps have worked if they had been conceived properly. I think the short answer to his question, however, is that Congress can't stop a program once they've started it. That's a simple answer.

Ms. DERTHICK. Mr. Santarelli?

Mr. SANTARELLI. I think that I covered that in my first ten minutes.

Ms. DERTHICK. Mr. Skoler?

Mr. SKOLER. It seems to me that you can and should justify continued Federal focus on research. Inherently, to have 100 people looking at the same facts, over and over, can be wasteful. And so I see justification for the research program. In terms of Federal aid, if you talk to mayors or governors or local officials, they see a justification for large-scale aid for governmental services. Whether their preference would be general revenue sharing as opposed to special revenue sharing, I think you'll find a lot of support for Federal fiscal assistance because the Federal government is a fat cat. It collects more revenue more efficiently than State and local government.

Mr. GOLDSTEIN. [Asks why something positive isn't coming out of this program, such as better police protection.]

Mr. SKOLER. Is this a simplistic answer? I'm sure our solid waste problems are greater than they've ever been [despite] all the efforts at programs, two years ago, four years ago, six years ago. Does the question then become whether we should drop our solid waste disposal efforts financed by the Federal government since our problems are getting worse? Our cancer incidence is getting worse, is it

not? I may be overdoing the point, but that's the problem I have with your question. A lot of things in urban society are getting worse. Is the question therefore whether a Federal concern or role ought to be dropped because that's happening? It is happening, indeed.

Mr. GOLDSTEIN. [Unintelligible.]

Mr. SKOLER. And I accept your conclusions about New Jersey.

Mr. GOLDSTEIN. Maybe all this money ought to be used for other types of programs.

Ms. DERTHICK. Is there any objection to that among the panel?

Ms. CAREY. I think that's a superb point. I think he's really hit the nail on the head. Congress tends to get locked into looking at programs separately, by whoever fathered them or nurtured them, or whatever. That type of perspective, of asking the question "Aren't there certain areas where Federal intervention is not effective?" is precisely what needs to be asked.

Mr. SKOLER. I think the block grant wave came quite unexpectedly. It happened kind of in a House revolt, wasn't it, Don [Santarelli]? Legislation was prepared based on the Katzenbach Commission's much more cautious approach to Federal aid. Some funds for planning, some statistical collections, some research, and then a kitty of research and demonstration programs. I think they never published the implementation volume, but I'm sure it would have been much smaller than what happened. Maybe we would have learned a little bit more had we taken, as you said, that more modest approach and learned how difficult it was to get the few innovations that seemed to appear. You know, people felt that higher education for police was important. We might have learned more, but things did work the other way. I think it's hard to undo, as Sarah [Carey] said, a program of Federal aid like this. Your dilemma's a real one, sir.

Ms. DERTHICK. Any other questions?

[Unidentified questioner]: Is there a way the Federal government can improve information gathering on crime, discovery of crime?

Mr. SKOLER. I'm not sure. Restate your question.

[Unidentified questioner]: What can you do to get people to report crime?

Mr. SANTARELLI. That's what the citizens' initiative was designed to do, in part. That is, to improve the community's attitude and its willingness toward reporting crimes. There are lots of ways to do that, but they amount to specific projects which I had not wanted to dictate. I could list a series of ideas for you, if you want to hear them. They amount to such things as neighborhood crime reporting councils; neighborhood watch programs; the little old lady at the window; the walkie-talkie with the neighborhood busybody; police response by sending a scout car out with a tape recorder to take the report of a crime, rather than to drag the citizen down to the police station where they sit while the police officer "hunts and pecks" with two fingers on a typewriter. Making it easy to report crime. Making it easy after the fact to get to the lineup. By sending an escort and bringing the person down; not having him sit around the hall along with the defendant and the defendant's family, waiting his turn to look at him in the police identification room. Making a parking place for that citizen at the courthouse, or at the police station, for ease in reporting crime, and later testifying. Having a special witness provisional unit in the prosecutor's office and/or in the police department whose sole function it is to look after the well-being of the witness; not to waste the witness' time; not to harass the witness; not to abuse the witness; to give the witness information, direction. To give the witness something more than a summons which has nothing but the name of the defendant on it, whose name he did not know to begin with, saying, "Report at the courthouse at 8:00 p.m. that night, or the next day." A whole series of attentions to the witness and the victim.

Let me tell you why that's important. Because nobody sees that now as their responsibility. The policeman's job is to be the policeman. The prosecutor's job is to prosecute. The court and judge's job—God only knows what the judge thinks. Just imagine what went on in the French Revolution, when judges used to say, "Good morning, Mr. Citizen." Nobody says, "Good morning, Mr. Citizen." It's "Good morning, Your Honor." You pull your forelock and don't even have a seat in the courtroom. The policeman has a reserved seat and a parking place. The probation officer has the same. The lawyer has the same. And the defendant has the most reserved seat of all. Where is the witness and the victim? Who gives a damn about him? Who's interested in returning his property to him instantly, quickly and painlessly, after it has been kept as evidence? The typical attitude of the property clerk is, "Don't bother me, Mr. Citizen. I've got your

television set and I need it." A simple photograph with a $69.00 Polaroid would have satisfied the evidentiary requirements. What I'm really talking about is attitudinal. That's what LEAA leadership should be all about, if LEAA is to have any existence at all. To re-focus the attention of the professionals now paid to serve themselves, to serve the individuals in the community, particularly the witness and the victim. That's the only way you're going to get improved crime reporting and citizen cooperation.

[Same unidentified questioner]: Those are excellent ideas, but how do you propose to implement them?

Mr. SANTARELLI. The mechanism is already there—the bully pulpit from the LEAA Administrator and his discretionary pot of funds. He uses discretionary funds to fund those kinds of projects and everybody gets the message. That's better than dictation. I don't want to give LEAA Administrators authority to dictate. It's dangerous.

Mr. D'ANNA (Vince D'Anna, Senator Biden). [Points to problem being the composition of the State planning agencies. Should U.S. Attorney's office serve as a Federal watch dog?]

Mr. SANTARELLI. This misconceives the point of the statute and is contrary to law. There should be no Federal involvement at the local level. The State planning boards and their subsidiaries should be made up of local officials, not Federal or Federally-selected officials. Keep a dichotomy between those two. We went through that, thinking about putting the U.S. Attorney into that picture.

Mr. GOLDSTEIN. [Unintelligible.]

Mr. SANTARELLI. That is in the guidelines. That there must be communication and consultation with Federal law enforcement agencies by the local planning, by the State planning organizations.

Mr. D'ANNA. I'm talking about control. I'm not talking about consultation.

Mr. SANTARELLI. Well, he's talking about consultation. The answer to your question is that that's against the law.

Mr. D'ANNA. Is there a way to evaluate how local agencies are using funds?

Mr. SANTARELLI. That's what LEAA——

Mr. D'ANNA. You're telling me that's against the law.

Mr. SANTARELLI. No. It's against the law for the U.S. Attorney to sit on the planning board.

Mr. D'ANNA. LEAA at the national level can't do it, obviously.

Mr. SANTARELLI. Well, I think the statute says it should. The LEAA statute requires monitoring and evaluation.

Mr. D'ANNA. You're sounding like the bureaucrat now.

Mr. SANTARELLI. Well, I'm repeating to you what the Congress told LEAA. I don't like the evaluative and monitoring function the way it operates. You didn't hear all of what I said, apparently. What I'm now telling you is what the statute requires. I think you need to appreciate this endless confusion. First, the Congress calls the LEAA to task for the performance of its duties. It does not clearly authorize the performance of those duties and probably shouldn't. The LEAA authority to dictate the nature of its programs is clearly not there, but the Congress often treats the LEAA as though it should, and it beats the LEAA on the head when the LEAA comes up to testify. This is an endless problem. I, nevertheless, would be willing to live with that, rather than to have a statute which did, in fact, empower the LEAA to do more than it already is empowered to do.

Second, the Congress told LEAA that it must be responsible for monitoring and evaluation of the projects in the field. That's an almost impossible function, because there are 55,000 separate projects annually, at the maximum of $886 million. And LEAA's staff is well under 800—about 750 when I was there. The auditing section was about 125 people. Now, how do you get auditing of 55,000, 886 million dollars' worth of projects? You buy it on the outside. What is the quality that we have of auditing and evaluation? I think the others who are here are more analysts than am I, and I think you should ask them when they have their opportunity. It's been my judgment that evaluation and analysis is pretty poor stuff. The science of evaluation of subjectively soft programs is almost non-existent. The genius of Elliot Richardson addressed this problem for most of his years in government, and in his final definitive work on government he is hopeful, rather than recitive, of success. Evaluation has been an over-hoped-for and under-productive concept. We don't know how to evaluate the success of criminal justice programs. We tend to measure artifically, on

recidivism rates and crime rates. Those are such poor measures of success as to make evaluation almost a foolish science. Nevertheless, the Congress says do it, LEAA attempts to do it, however, unsuccessfully.

Mr. D'ANNA. You're not going to have impartial evaluation if the local police chief sits on the SPA.

Mr. SANTARELLI. They're not the evaluator. I said to you that LEAA and outside sources such as consultants are where evaluation is done. The State planning agency isn't the evaluator of its own success.

Mr. SKOLER. But you know——

Ms. DERTHICK. I'm going to have to intervene and call for a changing of the guard, unless you dissent from this last statement. I assume that you assent, fundamentally, on his statements about evaluation. Yes?

Mr. SKOLER. I just wanted to make a brief comment about the State planning agency question. You know, part of this is also federalism growing up and Congress deciding whether federalism is to make sense. There are lots of checks on State planning agencies beyond Federal control. And the recommendations say that State legislatures should become more involved. When an SPA is acting in a purile fashion, the police chiefs have a lot of power to let the state house know. The State legislator has power, the Governor, when he hears he's got a group of idiots doing something that's irrelevant, can also get at this. Now, in a way, there was a chance to hide, with all the Federal red tape, things that were falling between the cracks. But that's an important safeguard, too. In other words, if you're going through these State agencies, one has to assume that States will somehow be able to organize efficient operations and—well, that's American governance, you know.

Mr. SANTARELLI. Look at the statute. It also has a requirement as to who sits on the State planning board. The Congress said that. I think they said over one half, or is it two-thirds—have you changed it again?—must be locally elected officials.

Mr. GOLDSTEIN. It's still one half.

Mr. SANTARELLI. Is it just one half? That was what it was when I left.

Ms. DERTHICK. I think the panel on Federal Aid to State and Local Criminal Justice Agencies is now adjourned. I thank the members of the panel very much.

[Applause.]

V. Panel Two: Sentencing and Prison Reform [1]

A. summary of panelists' remarks

1. Norval Morris (Dean, University of Chicago Law School, and Director, Center for Studies in Criminal Justice):

- The Federal government had best set its own sentencing practices in order before preaching to the States, many of which are doing as well or better. It is time that the Federal government provides leadership by a decent criminal code and decent sentencing policy.
- In the next few years gross overcrowding in the prisons will increase—rendering conditions in them brutal. Building a prison that is not below minimum standards of human decency is not difficult, but it is impossible to build a big prison in which that is so. Therefore, different size institutions, innovative work in relation to what a prison is, and the expenditure of more funds will be necessary—but not politically popular.
- A legislature cannot fix sentences, cannot categorize punishments for the existing categories of crime, because there are too many diversities and variables. The proper first step is for the legislature to define the outer limits of punishment. The next step should be taken by a legislatively-created commission on sentencing which would provide more complex and detailed guidelines as to typical sentences for categories of offenders and offenses. Judges should be directed that if they impose sentences outside these guidelines, they must give reasons for doing so, and those reasons should be subject to appellate review at the instance of either the defense or prosecution.
- All that sentencing standards can do is set the outer limits of justice and injustice. It is very hard to say a sentence is just; normally all that can be said about sentences is that they are not unjust.
- It is impossible to keep parole discretion and still have rational sentencing. There are only two solutions: get rid of parole boards or compel them to fix the date and terms of a prisoner's release early. The first is the better solution.

2. John Conrad (Senior Fellow, Academy for Contemporary Problems, Columbus, Ohio):

- The practice of criminal sentencing in our society rests on five assumptions about punishment, none of which remains intact in the light of examined experience. The score on each of these assumptions is as follows: we should expect very little from general deterrence or incapacitation, and nothing at all from rehabilitation. The intimidation of the offender himself probably has some effect but we have no idea as to the amount of incarceration necessary. As to punishment for the goals of condemning an offense and restoring the balance between offender and society, it is probable that the public will continue to want prison for these purposes.
- A system of presumptive sentencing is recommended under which all offenders found guilty of certain classes of crime would be sentenced to short but certain periods of custodial restraint. Where the crime is repeated, the sentence should be longer. Where aggravating or mitigating circumstances are found, the sentence should be increased or reduced, but the judge would be required to state the reasons in writing, and the sentence should be subject to appeal.
- Any recodification of the sentencing structure along these suggested lines should take into account projections of the resulting level of the prison population. Either the length of terms prescribed should result in a population approximately equalling the capacity of the nation's facilities, or more prisons should be built.

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[1] Barbara McClure, Analyst in Social Legislation, Congressional Research Service.

• So long as we lock up the poor man for the crimes he commits, we must adopt a policy of incarceration of the rich for the crimes they commit. Penal reform depends on justice being done and being seen to be done with all convicted defendants standing equal before the sentencing judges.

3. Andrew von Hirsch (Associate Professor of Criminal Justice, Rutgers University; Senior Research Associate, Center for Policy Research):

• The main rationale of a sentencing system should be based primarily on "desert," that is, on the idea that a person should be punished proportionately to the seriousness of his crime.
• A presumptive sentencing system will require a great deal of experimentation with different versions of what is an aggravating circumstance, what is a mitigating circumstance, and what is the appropriate length of imprisonment to be set for each offense. This means a sentence-setter must be flexible enough and move quickly enough so that it can adjust its standards fairly quickly. This is the problem of relying on legislatively-set standards, and why a sentencing commission would be useful.
• Even though it is not entirely clear what constitutes a "deserved" sentence, still some definite time for presumptive sentences ought to be set in at least a rough way, because if a range of sentences is set, people who have committed identical crimes may be sentenced differently.
• Parole boards should be abolished only where a sentencing commission exists to set standards both as to whether a prison sentence should be imposed and how long. Parole boards now serve the function of equalizing sentences. If they are to be abolished, there must be standards and limitations on the discretion of sentencing judges. Another possible solution would be to give parole boards an entirely new function under which they would set terms of release early and set standards for sentence length, i.e., parole boards would function like sentencing commissions.

B. CONSENSUS AND DISSENT

All members of the panel agreed that unjust disparity results from the current sentencing practices in this country because of broad discretion vested in judges, prosecutors and parole boards. They all suggested that there should be a reexamination of the processes and criteria by which terms of imprisonment are imposed and the length of sentences decided. Although no one on the panel felt there will be any dramatic effect on the crime rate by adjusting the sentencing system, they all agreed that it is important to make the system more just and fair. The merits of various sentencing reform proposals and the means of implementing them were dealt with by the panel members in their presentations and discussion.

1. Fixing the penalty

All of the panel members were in basic agreement that there should be some way to limit the substantial amount of discretion exercised by sentencing judges. Mr. von Hirsch and Mr. Conrad endorsed a system known as presumptive sentencing in which each offense would be assigned an exact penalty based on the seriousness of the crime, which would be the presumed disposition for most offenders convicted of that crime. If the crime were repeated, the sentence would be longer. The sentencing judge would be authorized to depart from the presumptive sentence within specified limits based on the existence of certain aggravating or mitigating circumstances, but in such cases the judge would be required to state the reasons in writing, and the sentence would be subject to appeal. Von Hirsch strongly advocated that a sentencing system should be based on the concept of "desert," i.e., the

notion that an offender deserves a certain amount of punishment as a result of his offense. This concept should be utilized to develop a scale of penalties related proportionally to one another, e.g., the difference in gravity between burglary and murder should be reflected in the penalties prescribed for each. Thus, von Hirsch argued that precise penalties for given offenses should be set (1) in proportion to the seriousness of the offense, and (2) according to what each offender deserves based on the amount of harm done and his prior conviction record.

Mr. Morris disagreed with the notion of presumptive sentencing to the extent that he did not believe that desert can be so precisely quantified, or that aggravating and mitigating circumstances can be limited to a particular list. In his view, it is not possible to say whether any given sentence is just, only that it is not unjust. Therefore, Morris would escape the difficulty of having to specify an exact sentence for each offense and enumerate all relevant mitigating and aggravating factors by setting only the upper and lower limits of what is a "deserved" sentence and permitting the judge to retain discretion to set the specific sentence within these narrow limits, perhaps aided by sentencing guidelines. Morris would employ the concept of "desert" in a rougher sense to set the outer limits of the range of sanctions that may be imposed.

Von Hirsch readily agreed with Morris that it is not entirely clear what constitutes a deserved sentence and that it is difficult to list aggravating and mitigating circumstances. Despite these difficulties he felt it would be preferable to fix some definite time for presumptive sentences in at least an approximate way, using the principle of proportionality, because a range of sentences would allow similarly situated offenders to receive different sentences.

2. Who and how many should go to prison?

Mr. Conrad and Mr. Morris particularly emphasized that sentencing reform proposals must take into consideration two important questions: How many people should be locked up? Which members of society are to be imprisoned? Conrad pointed out that prisons are not "made of rubber," and therefore, any reordering of the sentencing structure must take account of projections of the resulting level of prison population. Either the length of the terms prescribed should result in a population approximately equal to the present capacity of the nation's facilities, or more prisons should be built. Morris suggested that because the problems of crime in America are pervasively complicated by the interrelationship of problems of race, a sentencing system must take account not only of the number of people to be locked up, but also of what age and what color. Conrad noted that increased use of incarceration for so-called street crime will result in increased punishment for the most disadvantaged elements of society. He suggested that so long as the poor man is to be imprisoned for his crimes, so must the rich man also be incarcerated for his crimes. In his view, inequity in sentencing is recognized by the poor as unjust, and reform depends on justice being done and perceived as being done with all convicted defendants standing equally before the sentencing judge.

3. Who should set the standards?

The whole panel agreed that a sentencing commission, not the legislature, should be the body responsible for setting guidelines for sentencing judges. They saw a necessity for a commission because of the need for experimentation with various standards; therefore, the standard-setter must be flexible enough to adjust quickly. The process would be too complex and cumbersome for a legislature. The proper legislative role should be to define the outer limits of punishment, and then an administrative or quasi-judicial commission should provide more complex and detailed standards as to the typical sentences for categories of offenders and offenses. Judges should be directed that if they impose sentences outside these guidelines they must give reasons for doing so, and these reasons should be subject to appellate review at the instance of either the defense or the prosecution.

4. Other sources of discretion: Parole and plea-bargaining

All panel members agreed that parole in its present form should be abolished because parole board discretion is not consistent with rational sentencing. Mr. Morris and Mr. von Hirsch pointed out, however, that since parole now serves the role of rectifying sentence disparity to a certain extent, it should be abolished only if there is some alternative mechanism of dealing with the sentencing disparity problem. Both mentioned that a possible alternative to complete abolition of parole would be to compel the parole board to set standards for sentence length and to fix the dates and terms of each inmate's release early, so that in effect the parole board would function in the same way as a sentencing commission.

The panel also expressed concern over the current extent of discretion exercised by prosecutors in the charging and plea bargaining processes. Mr. Conrad felt that all plea bargaining decisions should be made in open court. The panel's consensus was that sentencing guidelines cannot solve this particular problem, but they should help to make the process more open and fair. The consequences of reducing charges as a result of plea bargaining would be known in advance by all involved parties, e.g., everyone, including the public, would know that the result of reducing a charge from first degree burglary to third degree burglary would mean a reduction in sentence from five years to two years. Of course, the only way to truly limit prosecutorial discretion is to set limitations on the actual plea bargaining and charging authority of the prosecutor.

C. NEW DIRECTIONS—AN ASSESSMENT

Widespread discontent with indeterminate sentencing and the parole system in this country has recently been expressed. Virtually every State and the Federal government explicitly provide for the exercise of a substantial amount of discretion, within broad outer limits, by sentencing judges. In addition, the actual amount of time served by a convicted criminal is determined by the parole board which decides when a prisoner is "rehabilitated" and should be released into society. Much of the current debate about sentencing reform is focused on issues such as sentencing disparity, abolishing parole, and the criteria

by which sentencing decisions are made. In particular, some critics believe that rehabilitation efforts are largely fruitless, that parole boards cannot predict the future conduct of releasees, and that dangerous criminals are released into society too soon. The criticism most often sounded is that vast, often unfairly disparate sentences are imposed for offenses of a similar nature. Many people now propose that the present sentencing and paroling system should be replaced entirely by a system of definite sentences.

The panel suggested two related reform proposals: (1) a presumptive sentencing system for Federal offenses, and (2) a sentencing commission to promulgate guidelines for sentencing by Federal judges. Both of these suggestions have already received Congressional attention. Legislation to establish a Federal Sentencing Commission was introduced in the 94th Congress (S. 2699, H.R. 11665), and has been reintroduced in the 95th Congress (S. 181). Presumptive sentencing for the Federal system was proposed in the 94th Congress (S. 3752), and in the 95th Congress a measure has been introduced which would establish a Federal Sentencing Commission to devise a presumptive sentencing scheme (S. 204). In addition, two recent reports—one by the Twentieth Century Fund Task Force on Criminal Sentencing *Fair and Certain Punishment*, and the other by the Committee on Incarceration *Doing Justice: The Choice of Punishments*—have endorsed the principle of presumptive sentencing.

Another form of fixed sentencing, mandatory minimum sentencing, has also been the subject of recent attention. This proposal calls for the mandatory imposition of at least a prescribed minimum sentence of imprisonment. The effect of such a scheme would be to eliminate all judicial discretion to go below the minimum sentence, although a higher sentence could be imposed, which must be served in its entirety with no opportunity for parole. Measures which would establish a 2-year mandatory minimum sentence for certain violent Federal offenses were introduced in the 94th Congress (S. 2698, S. 2957) and have been reintroduced in the 95th Congress (S. 260).

Proponents of these various proposals contend that fixed sentencing would increase the certainty that prison sentences would be imposed and that unfair sentencing disparity would be eliminated so that all offenders would be assured of even-handed treatment.

Support for fixed sentencing is, however, by no means universal. Mandatory minimum sentencing in particular has been criticized as too extreme—threatening by eliminating all flexibility to create a system that will produce injustices of its own. Fixed sentencing has also been criticized as ineffective because prosecutors, judges and juries will circumvent results they view as too harsh by not charging, charging lesser offenses, or not convicting. Many criminal justice officials fear that fixed sentencing will add to prison overcrowding. Moreover, a recent 50-state survey of corrections officials revealed that 63 percent of the nation's prison officials still believe that rehabilitation programs can change inmate behavior for the better. The American Corrections Association has issued a statement maintaining that indeterminate sentencing and parole are needed in order to motivate inmates to take advantage of rehabilitation programs.

Important questions, many of which were considered by the panel, remain to be answered: Who should be the standard-setter, the legislature or a sentencing commission? Should the goal of a sentencing system be primarily incapacitation of offenders or proportionality in sentencing? What should be done about the problems of parole board and prosecutorial discretion? It is possible that Congress may take up consideration of questions relating to sentencing reform in connection with its efforts to revise the Federal criminal code. Previous code reform legislation would have standardized the *maximum* sentences available for Federal offenses of the same degree of seriousness, but would have preserved the present indeterminate sentencing structure. In whatever context the debate arises, interest in sentencing and parole reform is currently so widespread at both the Federal and State levels that it seems likely the search for solutions will be continued by the Congress and by State legislatures.

D. TRANSCRIPT OF PROCEEDINGS (SENTENCING AND PRISON REFORM)

Ms. DERTHICK. The panel on Sentencing and Prison Reform has convened. Norval Morris is Dean of the University of Chicago Law School, Director of the Center for Studies of Criminal Justice there, a professor, and a prolific author, whose books include *The Future of Imprisonment*. John Conrad is a Senior Fellow at the Academy for Contemporary Problems in Columbus, and a criminologist who has written extensively on prisons. Andrew von Hirsch is an Associate Professor in the Graduate School of Criminal Justice of Rutgers University in Newark. As I recall, he was on the faculty at SUNY, Albany. He was Executive Director of the Committee for the Study of Incarceration. What is the sponsorship of that committee?

Mr. VON HIRSCH. Well, the Field Foundation and the New World Foundation funded this committee. The committee produced a book called *Doing Justice, The Choice of Punishments*. The book proposes a theory of sentencing, based on the idea of "just deserts."

Ms. DERTHICK. Thank you. Dean Morris?

Mr. MORRIS. I'll try to be brief. Time seems odd in Washington, both in starting and the definition of ten minutes.

The previous discussion makes my adrenalin run powerfully, and the problem is not to continue with those high matters of disposition of money. Two fields I mean to address briefly are prison reform and sentencing; topics on which there will be action, one hopes, in the next few years. And in which, certainly in sentencing, the Federal government had best set its own house in order before it does too much preaching to the States, many of which are doing quite as well, indeed, I think better, than some of the Federal sentencing practices.

I want to start briefly with prison conditions, prison reform. I did long preparation for this morning's venture. I took the President of the American Bar Association to visit Stateville last Wednesday. Stateville reveals the typical problem of the large prisons of America. A population of 3,000, three to a cell—with an expectation of increase in that population. In arranging the visit, I spoke to the Director of Prisons for the State of Illinois and made the mistake of asking him how he was, which is always a mistake with a prison director. They tend to tell you. But he started by saying, "How do I get rid of 500 prisoners?" There is now a gross overcrowding, which is rendering the conditions of prisons in America brutal, unseemly, entirely apart from questions of crime control, matters of which we should be ashamed. And the fact of the matter is that in the next few years that crowding will increase. Three to a cell, 539 of the 3,000 in self-imposed segregation. That is, 539 fearful of being in the prison community and preferring to lock themselves up, three to a cell, in cells 10 by 8. Now, Illinois isn't worse than other States, rather better than many. It's quite a typical situation.

How old are prisoners? They're getting younger. What color are they? You know it. Their records of violence are greater. They're a more turbulent and difficult group. And that will continue. There are very, very real problems about the

maintenance of minimum standards of human decency in the large prisons of America, largely because this at least we know how to do. It isn't difficult to build a prison that is not below minimum standards of human decency, and in which the weak can be protected from the predators. It is impossible to build a big prison in which that is so, however. So it means different size institutions; innovative work in relation to what a prison is; the expenditure, I'm afraid, of more funds—totally politically unpopular. Votes only to be lost. No votes to be gained. No promises in terms of reduction in crime.

The fundamental question is what are the minimum standards that are wanted. Whether the Federal government can play a significant role in that or not, I don't know—whether through revenue sharing or block grants, by standard setting, I don't know. But that it is an acute problem, I'm quite clear. If that cheers you up, fine.

On to sentencing. Again, I'll try to be brief. Common ground, I think, Federally and State, is that there is unjust disparity of sentencing. One doesn't hear much dissent. I think there is increasing perception that sentencing is something that is not done only by judges, and therefore the more thoughtful people recognize that the mandatory minimum sentence is an absurdity because it is based on the assumption that judges do sentencing, and all that mandatory minimum sentences do is shift the focus of discretion in the imposed punishment. That we're facing a situation of unjust disparities is agreed. And I think it's agreed that we're facing a fairly complex problem of definition of the criteria of justice, of the definition of who are the appropriate authorities in this drama to impose a sentence. How do you divide discretion between legislature, administrative authority, judge, and possibly another administrative authority in the form of parole boards; because that's the nature of sentencing complexity. And the question of the division of that authority we are not agreed upon. There's a lot of dissension. I think there is some common ground that the capacity to predict behavior in the community from behavior in prison is a skill we lack, and we shouldn't base any of our sentencing practices on a relationship between an assumed capacity to predict community behavior from prison behavior. That makes quite profound differences to the theory of parole, and the theory of sentencing.

But there is still lots to be talked about. Andrew [von Hirsch] and I differ on lots of things. I think John [Conrad] and I do on a few, but the broad next step is reasonably clear.

For my own part, I think that the plan that has been gradually evolving from the writing and comments of many people including the Department of Justice for a United States Commission on Sentencing; for an abolition of the parole board; for what I view as a proper division of power between the Congress, and an administrative board (which is what the Commission on Sentencing would become, or at least a quasi-judicial board) and the trial judge, makes very good sense. It seems to me that if Santarelli is right and we should struggle with fundamentals—as I suppose, miserably enough, one should now and again—it is the job of the legislature to define the outer limits of the just punishment. But it is ingenuous of the legislature, and of those who think that legislatures should fix sentences—even presumptive sentences, save that presumption be too strong—to think that they can categorize the punishments for the existing categories of crime. They are too complex. There are too many. There are too many diversities and too many variables. So, it seems to me that the proper first step is for the legislature to define the outer limits of the punishment. I like very much the idea of a Commission on Sentencing which will take the next step and provide more complex, more detailed, more extensive, broad guidelines to typical sentences for categories of offenders, offenses, and records and problems in combination. I like the idea of directing judges that if they impose sentences outside those guidelines, they must give reasons for going outside them, and those reasons must be subject to appellate review. If they be lenient outside the guidelines, the review can be at the instance of the prosecution. If they be severe outside the guidelines, the review can be at the instance of the defense. It seems to me that that is a mature, politically sophisticated way of taking the early steps toward what is going to be decades of efforts. No quick solutions towards a common law of sentencing, towards justice.

Is it important? Will it reduce crime? I don't think it will reduce crime very much, if at all. It might make some difference at the margins. Will it make a system that helps, perhaps at the margins, to reduce crime, but more particularly,

deals justly and fairly within the larger traditions of this country? Yes, I think it might. Here, I think there is a powerful and important area for Federal leadership. Indeed, though I would like to comment enormously on the previous discussion, the only point I really want to make is this. Is it not time that in the next few years the Federal government at least provided leadership by a decent criminal code and decent sentencing? And some coordination of its own efforts, instead of this incessant preaching to States about coordination, which in many of the States is a damn sight better than in Washington.

Ms. DERTHICK. Thank you. Mr. Conrad?

Mr. CONRAD. I think I'm the first non-lawyer to address you, and I think maybe I need to identify myself a little. I'm an ex-bureaucrat. I started out as a parole officer. I spent 25 years climbing the bureaucratic ladder in California hand over hand. I worked for a number of years in various capacities at San Quentin and Soledad prisons, then in the central administration of the Department of Corrections, ending up as Chief of Research in that Department and later occupying the same position in the Federal Bureau of Prisons. For the last five years, I've been thinking over those 25 years in the bureaucracy. What did it all mean? I'm glad to have the opportunity of talking with you about sentencing and penal reform because it has forced me to think about what those 25 years really meant.

So I wrote a paper on the subject of our concern today which I would like to read. It's not too long, and I would prefer not to deal with the complexities it addresses in extemporaneous fashion.

THE REWARDS OF PUNISHMENT

Notes on Sentencing and Penal Reform

The practice of criminal sentencing in our society rests on five assumptions about punishment none of which remains intact in the light of examined experience. My purpose in these remarks is to survey the shambles and cautiously to indicate an opinion of its meaning for future legislation and the reform of our prisons. I shall consider the five assumptions in no special order. There will be two recommendations. Let me hasten to stress that neither I nor anyone else I know is sure of what an effective sentencing structure would be like, but there is general concurrence that major transformation is in order, to be confirmed by examining carefully the consequences of each innovation. I have a second preliminary note of caution. What I have to suggest for a modified sentencing structure will result in some improvement in the penal system, but the major improvements which must be made soon will be unrelated to sentencing. They can only result from a general recognition of our minimum societal obligation to the persons we place in custody because they are law violators. That is another piece of business for legislators to consider, but I do not see how I can deal with it in the time which is available to me now.

Let me begin with the aim of general deterrence which we hope to accomplish by punishment of offenders. The intent is clear and writers on criminal sentencing for the last two centuries have stressed their belief that by punishing offenders we deter potential offenders from the commission of crime. Common sense and our own experience as citizens when filling out income tax returns and driving automobiles within the view of the highway patrol tell us that general deterrence works. We don't violate the law because we don't want to suffer the consequences if we are caught. If the consequence of a violation of the law is a humiliating stretch in prison rather than a fine, it is logical to suppose that much crime will not be committed because of fear of life behind prison walls.

Unfortunately, the kinds of criminals who are sent to prison are not logicians. In spite of heavy sentences in most unpleasant prisons, the crime rates have continued to rise, especially in those categories on which the most severe penalties are imposed. There are serious differences about the efficacy of deterrence within the research community. Economists who have given the matter their attention have convinced themselves that the criminal law does indeed deter the public from committing crime, but they have so far been unable to tell us how much crime is thus prevented. I argue that the probability is slight that variations in sentencing make a significant difference. Our most voluminous research on deterrence relates to capital punishment for murder, the crime with the highest clearance rate by far, but we are still uncertain that the severity of

the sanction has any deterrent effect at all. It is difficult for me to accept that the incidence of robbery, burglary, rape and larceny, all crimes with relatively low police clearance rates, is affected by the severity of the sanction imposed. I am of the opinion that deterrence may be effective with crimes against property in which the predator can and does calculate his chances, but only if law enforcement is vastly more effective in apprehension.

The second aim of punishment is the incapacitation of the offender. We reason that the mugger in prison will mug no one while he is locked up, therefore the more muggers locked up, the less mugging. Various social scientists have made estimates of the reduction in the rates of crime which can be accomplished by mandatory sentences for the violent street criminals, or, as one writer refers to them, the persons who commit "safety" crimes: murder, rape, assault, robbery, and burglary. The estimates vary from a reduction of less than two percent per mandatory year to about eighty percent with a mandatory five year sentence for the crimes against the person and a three year sentence for burglary.

In our study of dangerous offenders, my associates and I have been interested in the effectiveness of incapacitation in reducing the incidence of the four "index" crimes against the person. Using data from the files of the Franklin County Prosecutor, we have traced the criminal histories of the 342 adult offenders indicated for these crimes during 1973. Our question was, how many of the 2,892 crimes against the person recorded by the FBI for 1973 would have been prevented if those of the 342 indictees who had been in court before had been given a mandatory sentence of a flat five years for any felony for which they might have been convicted? That means that any member of this cohort who had been convicted of any felony during the years 1968–1973 would have received a flat five year sentence, regardless of extenuating circumstances and regardless of whether the crime was against the person. Our finding was that this extremely severe sentencing strategy would have prevented no more than 4.0 percent of the violent crimes committed in Franklin County. Note that this study does not take account the juvenile records, which were not fully available to us. Our study is continuing, but we have calculated the impact of the worst case. If we assume that all the members of the cohort who were juveniles during the period 1968–73 and whose records are unknown to us had been found guilty of an offense and incapacitated for five years, about 10.5 percent of the 2,892 violent offenses committed in the county would have been prevented. But the assumption is an obvious absurdity. Juveniles are not sentenced to five years incarceration in Ohio, and certainly not all the persons in our study who were under age during the years in question committed felony offenses. Our tentative conclusion is that mandatory sentences for purposes of incapacitation are not as effective as some writers have assumed.

A third justifying aim of a criminal sentence to penal confinement is the expectation that the offender will be rehabilitated by programs of education, vocational training and psychological treatment. I need not dwell on this supposition. During the last two years a review of our experience with rehabilitative programs has clearly shown that they have little or no effect on recidivism. There are only two points to be made about this famous discovery. First, it does not mean that we should give up trying—we simply should not expect that criminals become citizens as a result of what happens to them in prison, although we do know that occasionally this transformation does take place. Second, the effectiveness of rehabilitation is really a bogus issue. We have talked a lot about rehabilitation of the offender as a justifying aim of imprisonment, but decisions to incarcerate have always been made on the entirely different basis of retribution. Judges sentence, and parole boards release offenders with essentially retributive objectives in mind. The problem in the mind of a judge or parole board is not, can we rehabilitate or have we rehabilitated this man? On the contrary, it is, how much time should he have to do considering the nature of the offense and his criminal record?

The fourth justifying aim is the intimidation of the offender himself. By subjecting him to the experience of confinement in a prison, with all its attendant humiliation and restraint, we expect that he will be convinced that the commission of crime is an unsatisfactory solution to any problem confronting him. On this aim, the evidence for its success or failure is the recidivism rate, defined in terms of the commission of new crimes, and excluding returns to prison for violation of the rules of parole. The evidence of the Uniform Parole Reports and some other recent studies is that these rates are rather low, probably less than

fifteen percent in the first year after release, perhaps much lower. Incarceration probably does intimidate offenders, but we have no idea how much incarceration is a sufficiency. From research in which I have been involved, it seems unlikely that varying the length of terms in prison by as much as a year within an average of three years has any significant effect. While much more study of this question is needed before a satisfactory policy can be recommended, it is likely that a short term is about as effective for this purpose as a much longer one.

Finally, there remains the most ancient justifying aim of punishment, the normative effect of the law in "announcing to society that these actions are not to be done," as one great legal commentator has put it. As to this aim, we rely on the legislature to tell us which actions are so serious in the view of the public as to require that the offender be incarcerated. Conceivably for the purpose of proscribing the action a sentence to prison is not needed at all, but it is improbable that the public will be readily convinced that street crime can be dealt with justly without this kind of consequence. We are shifting our expectations steadily, and most of the shifts result from the public perception of danger from any given crime. We are much less worried about the consequences of marijuana smoking than we used to be, so we have relaxed the penalties for that offense, and probably will continue to do so. We are distressed about the apparently rising incidence of robbery and, if for no other reason, we tend to favor increasing the penalty, if only to announce to society that robbery is not to be done.

The score on the aims of punishment thus rests as follows: we should expect very little from general deterrence or incapacitation, and nothing at all from rehabilitation. The intimidation of the offender himself is probably more effective than we thought. As to punishment for the social goal of condemning an offense and restoring the balance between offender and society, it is probable that the public will continue to want the prison for the purpose of condemning those offenses with which it is most concerned.

At the outset I said that this analysis will lead to two recommendations. First, I heartily advocate a system of presumptive sentencing, as described in the Report of the Twentieth Century Fund Task Force on Criminal Sentencing entitled *Fair and Certain Punishment*. Under this system all offenders found guilty of certain classes of crime, as for example the index crimes against the person, would be sentenced to a short but certain period of custodial restraint. Where the crime is repeated, the sentence would be longer, for more effective intimidation. Where aggravating or mitigating circumstances are found by the court the sentence should be increased or reduced, but the judge should be required to put his reasons in writing, and the sentence should be subject to appeal.

This system is not difficult to conceive or to justify, but its translation into legislation should take note of certain realities. The national prison capacity is finite; no prisons are constructed of rubber. Any recodification of the sentencing structure along the lines I have in mind, should take account of projections of the resulting level of prison population. Either the length of the prison terms prescribed by the law should result in a population approximately equalling the capacity of the nation's facilities, or more prisons should be built. Once the new code is enacted changes should be made as infrequently and as deliberately as possible and only for well defined cause. Justice cannot be served if sentencing policy is shifted by caprice or experimentation.

My second recommendation has to do with the consequence of the general policy I have suggested for the so-called "safety" crimes. These consequences are obvious in one respect. It will punish the poor; most of the persons who commit these crimes are from the most disadvantaged elements of society. For so long as we must lock up the poor man for the crimes he commits, we must adopt a a policy of incarceration of the rich for the crimes they commit. It will not do the judges to intone that the defendant has suffered enough pain and humiliation from his conviction and that incarceration is therefore redundant. Nor can we accept the rich man's restitution as an offset to this offense unless we are prepared to do the same for the poor. This kind of inequity in sentencing has gone on too long, and its consequences are recognized by the poor as plain injustice. Our laws and policies must be thoroughly overhauled to reduce the availability of leniency for the rich. In any analysis, penal reform depends on justice being done and being seen to be done with convicted defendants standing in equal guilt before the sentencing judge.

We have talked much about sentencing in recent years. No one has any idea of how much reform can be achieved through the enactment of a truly just code of sanctions. It is certain that all the other reforms which are needed cannot

be achieved at all without first attending to a system which is both obsolete and unjust—and getting more so all the time.

Ms. DERTHICK. Thank you. Mr. von Hirsch.

Mr. VON HIRSCH. My involvement in this issue came as a result of being involved in two reports. One was the one that John Conrad already mentioned. I was a member of the Task Force on Criminal Sentencing of the Twentieth Century Fund that produced *Fair and Certain Punishment*, which dealt with mechanisms for limiting discretion, where we recommended the presumptive sentence device.

The other project that I was involved in is the Incarceration Committee funded by the Field Foundation and the New World Foundation which produced another book called, *Doing Justice: the Choice of Punishment*, which is an attempt to set forth a rationale for sentencing. If you want a set of standards, you need not only a device, such as presumptive sentencing, but you have to have a statement about what purpose you're trying to achieve in setting presumptive sentencing. What we argued for in *Doing Justice*, and it was along the lines of what John [Conrad] mentioned, was a rationale based primarily on desert. That is, on the idea that a person should be punished proportionately to the seriousness of his crime—as a requirement of justice. We tried to argue that that should be the main rationale of a sentencing system.

One of the points that Norval [Morris] mentioned—and I assume all of the panelists here agree—is that the present system of wide-open discretion for sentencing judges is simply no longer a tenable system, and that you have to work toward standards.

If you develop standards, then one of the questions is "who decides?" I do agree with Norval [Morris] that you cannot have the legislature enact an entire sentencing code. The problem is, for example, if you're setting persumptive sentencing, that there is just an awful lot of experimentation and trial-and-error that you will need. For example, on a presumptive sentence structure, there is a normal sentence that the normal case gets, and there are aggravating and mitigating circumstances. I think it will take quite a lot of experimentation with different versions of what aggravating and mitigating circumstances are to come out with an adequate set of standards about what constitutes an aggravating circumstance and a mitigating circumstance.

For example, in the Twentieth Century Fund project what we did was to think a little while about what would be aggravating—and the ring leader seemed to be the appropriate kind of thing—and mitigating—yes, if you're under duress. But I think that we're going to have to have more experience with what kind of real cases are the special ones.

And that means you have to have a sentence standard-setter that is flexible enough and that moves quickly enough that it can adjust its standards fairly quickly as we get experience with a presumptive sentencing system.

The same thing, by the way, holds for the time, the amount of imprisonment involved, when you're setting presumptive sentencing. For example, you're going to have to start with a guess that, say, burglary gets two years, or something like that. But there are a number of inputs you're going to need. One of them is the one that John [Conrad] mentioned, that is how much capacity we have in the prison. If we sentence all convicted armed robbers to three years and all burglars to two years presumptively, what will that do to the capacity of the system?

And again you need some sort of device that is flexible enough to change the standards. The problem of relying on legislatively-set standards is, of course, that (as we've seen with S. 1 and elsewhere) it takes an awful long time to devise a code in the criminal justice area. And once you devise one then it's not very interesting for another ten years until you get another revision. So it seems to me you do need a commission to do that. Therefore, I think proposals like . . . for example, Senator Kennedy's proposal is a useful one in suggesting a commission.

It seems to me, however, that if you create a commission, you need to give the commission some sort of mandate or hint for what its purpose should be. For what aim are you going to try? In other words, if you direct a commission to set a system of presumptive sentences, what should it try to achieve? Should it be crime control? Should it be to deter? Should it be to incapacitate? What should it be?

One of the problems that we didn't completely resolve in the Twentieth Century Fund report was that we didn't deal directly with the question of purposes. This was the main subject of the other report, *Doing Justice*, to try to argue for one particular kind of purpose.

First of all, I very much agree with John [Conrad] and also with Norval [Morris] that the hope that you can create dramatic effects on the crime rate by tinkering around with the sentencing system is, to put it mildly, optimistic.

We've had, in this area, a history of failure. It hasn't just been that rehabilitation has failed. We have had a history in devising ingenious devices that are going to reduce the crime rate and then finding them not work.

I therefore find I'm very nervous when I read in James Wilson's otherwise excellent book a statement that if we adopt, for example, a mandatory minimum, that a "modest" expectation is that the robbery rate will go down 20 percent. I call an expectation of a 20 percent reduction in the robbery rate not only not quite "modest"—it seems to me some other expression like "very optimistic" would be a better way of putting it.

Mr. CONRAD. I would have said "fantastic."

Mr. VON HIRSCH. So it seems to me—and John [Conrad] made the same point in his paper when speaking of incapacitation—if we adopt a presumptive sentencing system, it may help reduce crime somewhat but I don't think it's going to have a miraculous effect.

So what are we left with? What are we trying to achieve? It seems to me the one thing we're trying to achieve in creating a system of standards is a system that's fair. And I would submit that the critical concept of fairness that we have in the area of sentencing is that you should be punished as you deserve. That is, that the severity of your punishment should be determined primarily by the seriousness of the offense.

It seems to me, for example, that the public's sense of outrage when white collar offenders get away with low sentences reflects this idea: regardless of whether the offender needs treatment or is likely to do it again, if his crime is serious, he deserves more than a suspended sentence or a bit of probation. If a white collar criminal commits a serious crime—for example by badly mistreating elderly patients under his care in nursing homes—then it seems to me he should deserve a severe punishment for the same reason that armed robbers should. But—and the but is very important—it goes the other way. If somebody committed a crime that isn't very severe, that means the penalty should be relatively mild.

It seems to me that what the legislature should do, or might consider doing, is to adopt some general directives that suggest that an appropriate standard for a sentencing commission to consider is one based partly on the seriousness of the offense. At the present time, in fact, the offices of Senators Gary Hart and Jacob Javits are working on a bill of that nature that I've been consulting on, and there are different versions of that.

If you give a commission some directives, about purposes, let's learn a little bit from the fate of LEAA. If you tell the sentencing commission that its mandate is to set sentences so that the crime rate will go down, lo and behold, five years later, the crime rate will not have gone down. And then we will have another meeting as we have had earlier this morning saying, "Oh, my God, why have we failed?"

In conclusion: we ought to set up a system of sentencing standards whose main purpose ought to be to set a fair system, that is, a proportional system. We should be wary of giving it the overloaded mandate, again, of saying, "Yes, we're going to create something that's going to stop crime."

Thank you.

Mr. MORRIS. Can I make three—not footnotes of disagreement, but really of isolated smaller issues—from what, particularly, Andrew [von Hirsch] said.

I agree completely in the need for direction to any standard-setter to guide the judges in the exercise of their discretion.

I suppose I disagree with Andrew [von Hirsch] that there is a possibility of a statement of an objective like "fairness" or "proportionality." I think there is more complexity. It seems to me that all that his guides for "proportional to the gravity of the offense" can, in the long run, do is set the outer limits of justice and injustice. That it's not a fine tuning to a more complex system.

It is very hard to say—when you think about it—hard to say a sentence is just. Normally all you can say about sentences is that they are not unjust. And that's

not a cheap or frivolous point. It pushes towards the complexity of the directions that have to be given.

Take an example. He says it's hard to list aggravating and mitigating circumstances. Of course it is very hard. Because what is an aggravating circumstance in one crime—say assault—is a mitigating circumstance in another—homicide. The degree of rage. The degree of loss of control. You see they function differently for different crimes and in different situations. And it really is not easy to put a short list. That's why I think guidelines to judges have to be complex and have to have administrative capacity for change. And I don't think there's all that much in it. In the sense that I think if we sat down and worked for a few months, we'd come up with a very, very good Federal sentencing system. With a proper role for the judge, pushing the judges to give reasons, appellate review when appropriate, building towards decency.

The last point is this. The other factor that must be considered is how many—and I really am only elaborating the "rubber prisons" point—how many people do you want to lock up? And of what age and of what color? Because what makes the problems of crime in America pervasively complicated is the interrelationship between problems of race and problems of crime. And it is very wise when you're thinking of these problems, to think about how many inner city minority youths you wish to lock up. It's a big topic. It's not one you can brush aside lightly. And one of the real problems about the Wilson mandatory minimum is how many youth [are locked up].

Mr. CONRAD. I don't think I have anything to add right now.

Ms. DERTHICK. Mr. von Hirsch.

Mr. VON HIRSCH. Norval [Morris] and I have disagreed for a long time on the question of how much leverage you get out of the idea of proportionality. And, by the way, this is the kind of issue which you'd have to address if you were drafting sentencing standards.

Norval [Morris'] argument, as I understand it, essentially is that you know better what's a grossly disproportionate sentence than what is a proportionate one—whether two years or three years is a proportional sentence.

My argument on the other side is simply this. Concededly, it may not be entirely clear whether two years is a more deserved sentence for a burglary than two and a half. But if you say, because you have such doubts, that the range of permissible sentences is between two years and four years, or two years and five years, the trouble is that people who have committed the identical burglaries can get sentenced differently. One convicted burglar can get two and another five years.

So my argument is that you have to use the principle of proportionality like this. We know that something like five years is too much for a burglary and maybe six months is too little. Between those ranges, then, we have to fix on a definite time for the presumptive sentence in a rough, and perhaps somewhat arbitrary, way, such as, "We'll take two years." If you don't set two as the definite level, if you leave it from six months to five years, then you'll have enormous disparity among people convicted of similar offenses.

Now the other point Norval [Morris] mentioned and I just want to emphasize agreement on. It's true that aggravating and mitigating circumstances are the sort of things which may run very differently in different offense categories. That's why you need to create a device like a commission. Because the commission is going to start off making a lot of mistakes. It's going to set the things up pretty crudely. Gradually, as time goes on, some particular items, let's say aggravating and mitigating circumstances, turn out to be either omitted or unworkable. And you'll also need to add new specific items.

If you have it by legislation, the big problem is that you have to go back to Congress. It becomes a much more complex and cumbersome project. In other words, the more complicated the guidelines—and they may have to be complicated to reduce discretion effectively—the more difficult it is to develop them through the purely legislative route without a commission.

Mr. CONRAD. May I address a question to Mr. von Hirsch? It seems to me that there is a way to escape adjustment of sentencing standards by a commission or by Congress. Suppose that a judge is allowed the option of increasing or diminishing sentences for good cause, stated in writing, which then could be appealed, either to a conventional court of appeals or to a special court of criminal appeals. It seems to me that such a provision would have the attractive advantage that a body of case law on sentencing would be developed. Would

not such a course be more consistent with the spirit of American law than adjustment of sentences by legislative or administrative bodies?

Mr. VON HIRSCH. One conceivable way of developing norms is through the process of case law jurisprudence.

There is some experience of this in England. That is, the English Court of Appeals Criminal Division hears appeals from sentences and issues opinions when it does. Professor D. A. Thomas, who has written extensively on the subject, argues that there are in fact some sort of norms which you can pick out of these opinions.

I'm not sure, however, how optimistic you can be about the development of caseload jurisprudence in this area, particularly because sentencing standards so much involve the comparison of different levels of severity for different offenses. In other words, in deciding whether this fellow gets more than that one, you have to worry about what happens to all other sentences on the scale. And those kinds of situations seem to be not particularly suited for case law. That's a matter of opinion.

The other problem is simply a matter of the tradition of the judiciary. The judiciary has been, thus far, somewhat resistant to developing standards, norms, and the like, in the area of sentencing. Many judges still are quite insistent on the idea of leaving discretion very, very wide. Unless there's a fairly considerable change in the thinking of the judiciary, it might turn out that the case law won't really help you very much. But that's a matter of speculation, obviously.

Ms. DERTHICK. Yes——

Mr. FEINBERG [Kenneth Feinberg, Senator Kennedy]. You referred to the Kennedy Bill. I know all the panelists are familiar with that. The bill will be reintroduced very early in the new session of Congress. But there are some real problems that none of you have addressed. Professor von Hirsch has addressed, in part, some of the problems that we face with any type of bill introduced along the lines of presumptive sentencing. I'd like the panelists to comment if you can on just a few of the problems that Kennedy has confronted already in this last bill.

Is it possible in introducing a comprehensive sentencing reform bill to avoid the problems that Dean Morris addresses in his book on parole? The minute you have to deal with parole structure as well as presumptive sentencing by the judiciary, you open up a sort of bee's nest of problems with all kinds of lobby groups and interest groups in the United States Congress. That's the first problem.

The second problem—is it possible to avoid the situation that exists now with the rules of criminal procedure, that any guidelines that are proposed by this commission must come back—for a 90 day period—to allow the Congress to disapprove them? What we fear there is that any guidelines that are proposed by this able commission will come back to the Congress and immediately be jacked up double by some concerned Senator or Congressman. And yet if you don't have Congressional approval you're in a real jam in terms of passage of the bill. That's problem number two.

Problem number three—who should deal with the commission? Certainly not just judges. Should the parole authorities have a representative, the probation authorities, the Justice Department, the American Civil Liberties Union, the NAACP? Who should staff this commission and how should we represent them?

The fourth problem—the purposes problem. Is it politically conceivable that you can put down as purposes to be served by presumptive sentencing anything that does not include incapacitation? I don't see how it's politically possible to do that, feasible.

And the last problem I have is how can you convince judges other than Marvin Frankel that it is a good idea.

Ms. DERTHICK. Do you want to flip a coin?

Mr. MORRIS. It's all right with me, but I'm happy to go first if you want.

Mr. MEEKER. (James Meeker, Subcommitte on National Penitentiaries). Can I add another problem?

Mr. MORRIS. You mean there aren't enough?

Mr. MEEKER. The other problem which I hope the panelists can deal with is related to something Dean Morris said. If mandatory sentencing is absurd because it's based on the erroneous assumption that judges impose sentence, then why aren't sentencing guidelines absurd?

Mr. MORRIS. Let me have a shot at these, each of which the interrogator well knows merits long work, though we can only give attitudes to it.

Take the last, the additional, question first. "Why don't guidelines, however stuctured, merely shift the focus of sentencing from judge to prosecutor?" This is one of those Catch 22 questions that are insolvable because rational sentencing presupposes just charging and plea bargaining. We do not have just charging and plea bargaining, and therefore, if the discretion can shift, nothing can be done in one which won't break down in the other. That's true, but the world is a squalid place and one has to reform and change gradually and then shift one's focus elsewhere. Let us try to make what judges do in courts by way of sentencing more principled, recognize the interrelationship of what prosecutors do in charging and plea bargaining, and gradually try and work on that.

Now, it seems to me the guidelines will give a greater clarity of what the price of an offense is. I think it ingenuous to think of a system by which, however you state it, "all first time burglary convictions would go to prison." The only way you could state it honestly would be "all first time burglary convictions that for one or another reason were brought to conviction or pleaded guilty for sentencing, would go to prison." Provided you always recognize you're doing that, you can state it that way and take cognizance of the spillover effect. There is Constitutional authority that there is no way of controlling prosecutorial discretion effectively.

So, the last point. We can do better. You recognize the spillover effect. You fix the price of negotiation more fairly. And it's an advance, though not a solution, which is good.

Now on the other questions. I don't think you can keep parole, discretion, and rational sentencing. I think there are only two solutions: get rid of the parole boards, which I think is probably the best; or, if you want to share sentencing discretion, compel parole boards to fix the term of release early. But that undermines the whole structure that we were talking about. And I think parole boards are on their way out. The question is just how long does the inertia of their organization protect them.

The questions of the relationship with Congress, the guidelines—my goodness—I should be asking you questions like that, not you asking me. So I'm not going to even talk about that.

Who should be on the commission? I think it's a hard question. I think there is an important judicial input. I think there is some developed expertise on the part of the releasing, paroling, prison administrating organizations. I think there is a role for public members. I think in terms of that sort of a structure, annually accountable, publishing the reason for its decision. Publicity of what it is doing is quite important.

The terrible problem of the cheap political shot will affect them as well as affecting the guidelines question in Congress. I suppose nobody has ever lost a vote by saying burglary should be four years rather than two years. But lots of people are going to think they'll lose votes, some may actually do so, by saying burglary should be two years instead of four years. And that makes it a very difficult question to reach a just system.

Why this field is such a cursed field—and it *is* a cursed field—is because almost everything worth doing in it is politically unpopular. There's really hardly any exceptions to that. And that doesn't mean that it isn't worth seriously addressing.

I know I haven't faced your question, the Marvin Frankel question at the end. I think there is more support amongst the judiciary than that. I go to lots of Federal sentencing institutes. We're talking about the Federal judiciary. I think, providing you don't push them to give reasons in all cases, but only push them to give reasons when they go outside established guidelines, they don't mind too much that there be a sharing of discretion between Congress and an administrative tribunal. As long as they can play their role, and in the exceptional case decide what they think is right, give reasons.

I suppose I think that incapacitation will have to be included as one of the purposes because it is.

Mr. CONRAD. I endorse Norval [Morris'] comment that parole boards are on their way out. I would like to hasten their departure because I think they contaminate the whole criminal justice system with unrealistic expectations based on a system of decision-making built on false premises. I think that if ways can be found to circumvent the lobbies and interest groups which Norval [Morris] has identified a great service will be done for penal reform, just by making more sense out of the criminal justice system. But I am realistic enough to concede

to Norval [Morris] that this campaign will not be politically attractive. On the issue of incapacitation, I agree that it will be difficult to convince the public that you can't affect the crime rate significantly by locking criminals up for longer periods of time. Certainly the periods of incapacitation advocated by Professor Wilson will have nothing like the impact on the crime rate that he suggests. This position is the one major flaw in an otherwise excellent book.

As to the comments on Judge Frankel's excellent book, I have nothing to add except to call attention to the fact that the Federal judiciary has provided one of the exceedingly few bright spots in improvement of the correctional system. The interventions by Judge Frank Johnson in Alabama and Judge Don Young in my own State of Ohio have been invaluable contributions.

Mr. VON HIRSCH. One thing about parole. I'm now doing an LEAA-funded study on alternatives to parole. One word of caution about getting rid of parole boards, in the context of a proposal that involves a sentencing commission. Where a sentencing commission sets standards, both as to whether or not you go to prison and as to how long, then a phasing out of the parole board may make sense. In fact, I would favor it. Although, even there it is possible to have a two tier system with one body—say the judiciary—setting the in/out decision and another—say, the parole board—setting the standards for the sentence length.

The one thing I would emphasize as a bad direction of reform is what Maine did. Namely, abolish parole, get rid of the parole board, have the judges decide how long, and give the judges no standards. That's a disaster. If the parole board with all its defects right now does serve some function in equalizing sentencing length, you can get rid of it only when and if you have standards in place that limit the discretion of sentencing judges. I have no sympathy with parole as it now exists. But, for example, the State of Oregon is now considering or is about to consider a bill in its legislature in which the parole board would be given a completely new function. It would set terms early. It would set standards for sentence length. What that kind of device does is transform the parole board into a sentencing commission.

The problem is not parole boards. It's traditional parole. It's the function of the indeterminate sentence and the function of parole supervision. That's the problem.

Regarding the legislative veto, if you have some sort of legislative veto, it shouldn't be a line-item veto. It should be a veto of "say no to the whole set of standards proposed by the commission." The veto shouldn't be one which allows the legislature to tinker with sentences for specific crime categories.

As far as the statement of purposes is concerned, at least one can try. For example, the Oregon bill has the parole board set the length-of-term standards. But, the bill requires those standards to be based on proportionality—desert—and to some extent deterrence. So in other words, it can be tried.

And just one final comment on the hydraulic model which one has heard about. Namely, the idea that if you squeeze the discretion out or limit the discretion in the sentencing area it will all flow back to the prosecutor.

Right now when a public defender plea bargains, he really has little idea what he's bargaining for. He bargains down from a robbery one to a robbery three, and he hopes the result will be that the judge will put the defendant on probation. Or he hopes that if he's not put on probation that the parole board will release early. But very often, of course, the judge goes ahead and imprisons him. And if he is, then the parole board may look to the offender's "real offense," not the pleaded one. And the result is there really isn't a bargain.

One of the effects of standards would be they'd change the form of the bargaining because everybody would know what the consequences would be. Everybody would know that if you bargained down from robbery one to robbery three that means it would reduce the sentence from ,say, three to two years. And that would have, it seems to me, one good advantage, one great advantage. It would increase the public accountability of the prosecutor. Because now the prosecutor can bargain down, and then if the fellow gets off, he can say it's the judge's fault.

It seems to me that if you have a presumptive sentencing system or something like it, and the prosecutor bargains the plea to the point where everybody knows that the result will be only six months in prison, then the prosecutor will become more accountabe for his decisions and that would be helpful.

Ultimately, of course, the only way that you can really limit prosecutorial discretion is by doing just that—limiting prosecutorial discretion. You have to begin to restructure the prosecutor's office. But when we get to the point where

we are trying to set limits on prosecutors' bargaining and charging decisions, you will probably first need guidelines on what would happen to the defendant if he were convicted. That's one of the major factors that the prosecutor deals with in making his decisions. So it seems to me that sentencing guidelines don't solve the problem of prosecutorial discretion, but it's a necessary condition that you have to meet before you can even begin to deal with prosecutorial discretion properly.

Ms. DERTHICK. Dean Morris wants to make a point.

Mr. MORRIS. I concur about the effect of the better type of sentencing structure we're talking about, improving and making more accountable the charging and plea bargaining processes.

On the other hand, on parole, I just want not to be misheard. I agree completely with Andrew [von Hirsch] and I know John Conrad and I are in substantial agreement because we were on a panel discussing this recently. Parole serves as a sentence disparity rectification process at the moment. One should only be in favor of abolition of parole boards if one has alternative mechanisms of doing at least as well with the sentencing disparity problem. Secondly, there's still going to be room for a pardon, some sort of executive clemency or pardon board should exist in exceptional cases. So I just wanted to say that those who say "abolish parole" mostly are not simplistically saying just abolish it. They are saying only do that as part of a large or more rational sentencing package. Or I hope they are.

Mr. CONRAD. I think we must start making sense of some of the confusions which Dean Morris hinted at but didn't explicitly define. We are now encountering a problem which faces all three branches of government, and it seems to me that we are trying to conceal its existence from ourselves. The problem is the use of discretion in criminal justice and we're in a panic to get rid of it.

We have always had in our judicial system some kind of device to mitigate for good cause the statutory severity of penalties enacted by legislators. I hope we always have it. In the past the principal function of the parole boards has been to provide this tempering of severity. But we have never been able to define the parole board role as simply as that. We had to include a lot of untenable nonsense about rehabilitation.

At this point, it is the prosecutor who chiefly carries out the function of reducing penalties. I'm nervous about that. Such decisions should be made in open court.

Inevitably legislatures will tend to be severe. Not only in the present climate of opinion but in any other conceivable climate softness on crime will lose votes. We have to face the direction from which our problems come. One of the most important directions is statutory severity.

Ms. DERTHICK. We bring this session to a close. Definitely it's I think the best panel discussion I've ever heard anywhere.

So thank you very, very much.

[Applause.]

VI. Panel Three: White Collar Crime: The Federal Role [1]

A. SUMMARY OF PANELISTS' REMARKS

1. Donald R. Cressey (Professor of Sociology, University of California at Santa Barbara):

- The biggest problem with white collar crime is defining what the term means. It is a social category, not a legal concept. Real white collar crime is synonymous with corporate crime.
- Perhaps current anti-trust laws are out of date and we are trying to preserve a free enterprise system that no longer exists. It is possible that we have invented a system of socialism for the rich and capitalism for the poor. Very little can be done about this trend by passing laws for the prosecution of individual criminals. The problem is an organizational one.
- Some suggestions for correcting this problem are:

(1) As in Sweden, put some ordinary citizens, who would represent the interest of the consumers, on corporate boards of directors;

(2) Establish Federal incorporation, which would give more control over corporations;

(3) Change the tax structure, presumably so that the non-rich are let into the system of non-competition;

(4) Sentence offenders according to the seriousness of the offense (i.e., do not sentence a white collar criminal to prison just because he is rich and the rich are usually treated leniently; but because acts such as stealing my vote, my free enterprise, etc., make him a "dangerous offender" who should therefore be imprisoned even for a first offense).

2. Harold R. Tyler (Deputy Attorney General, U.S. Department of Justice):

- White collar crime is not a legal concept; it is a social or practical concept which "defies definition, classification, and really any kind of understanding by the public." It would be useful if there were more attempts made by lawyers and criminologists to define what is meant by white collar crime. This would result in a better legislative and law enforcement reaction.
- The Federal government is the best level of government to cope with white collar crimes because these offenses are not usually confined to one State or local jurisdiction, either geographically or in terms of their goals.
- All three branches of the Federal government have been less than adequate in their efforts to control white collar crime:

(a) Congress has passed or introduced legislation that would make the arrests and prosecution of these types of crimes more difficult, such as the 1976 Tax Reform Act and H.R. 214, the Bill of Rights Procedures Act of 1975.

(b) In the executive branch there has been no cohesive effort in any of the prosecuting agencies, in part because it takes a tremendous amount of time, work, and money to develop a successful white collar case. However, the executive agencies have begun in the last year and a half to correct this problem.

(c) Thirdly, the judiciary has given an inordinate number of light sentences to white collar criminals.

- The real problem is a lack of collective understanding among the judicial, executive, and legislative branches of how white collar crimes are committed, and how these offenders operate, especially if they are wealthy individuals—as many of them are.

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[1] Miriam Saxon, Analyst in Social Legislation, Congressional Research Service.

• In terms of resource development, the Congress has two important roles in its budgetary and oversight responsibilities. It would be helpful if there were more oversight in the area of white collar crime so that there would be more understanding of how tax reform, privacy statutes, and other issues all fit together.

3. Patrick Murphy (President of the Police Foundation):

• The credibility of street police officers in urban areas has been weakened by the increasing amount of white collar crime around them that they do not deal with—such as consumer fraud. When a white collar crime complaint is made, the police will do nothing more than refer it to a prosecutor's office.
• In long range terms, attacking the total problem of white collar crime involves a more active role for police at the local level.
• The Federal government can at best deal directly with only a small fraction of the total white collar crime problem. However, the Federal government should play a stronger leadership role in attempting to control white collar crime. Federal attention, in terms of addressing the problem more often and more directly, is an important part of public education in this area, as are LEAA leadership and funds.

4. Jonathan L. Goldstein (U.S. Attorney for the District of New Jersey):

• State and local governments are not suited to handle white collar crime because they lack the resources, and State and local prosecutors are more susceptible to political pressures. The Federal government is best able to deal with these problems.
• A basic problem in this area is a lack of understanding between Congress and the executive agencies. Congress frequently does not realize the difficulties of apprehending white collar offenders.
• White collar crime involves three separate areas:

(1) Fraud against the United States (i.e., frauds committed by administrators of the many Federal programs, by recipients of these programs, and by the businesses that feed on these programs);

(2) Corporate corruption, or "commercial bribery," which goes beyond anti-trust violations; and

(3) Political corruption.

• In these three areas there is no complainant or obvious victim, so prosecutors must aggressively seek out these types of crimes.
• White collar crimes usually involve the transfer of funds, which results in a "paper trail." This necessitates the use of accountant-auditors as investigators, which the Federal government is poorly equipped to provide to date.
• The Tax Reform Act of 1976 (P.L. 94–455, Sec. 1202; 90 Stat. 1667) will virtually eliminate the cooperation of the IRS auditors with U.S. Attorneys in non-tax-related investigations, which will hurt future white collar investigations.
• Congress should create a Department of Fiscal Integrity within the Department of Justice to be staffed solely by accountant-auditor-investigators.
• There is a need for a Federal commercial bribery statute, patterned after the "Interstate Travel and Racketeering Act" (18 U.S.C. 1952) to provide another legal tool against such crimes.

B. CONSENSUS AND DISSENT

It was apparent from the panel discussions that Dr. Cressey, Mr. Tyler, Mr. Murphy, and Mr. Goldstein agreed that white collar crime is a major problem in the U.S. today; that it is a growing area of concern for both the general public and police, prosecutors, and judges; and that current attempts at understanding the problems it creates or controlling it, both in terms of definitions and detection of wrong-doing, are considerably less than adequate. However, the panelists disagreed on various aspects of the problem of white collar crime.

1. The problem of definitions

With the exception of Goldstein, the panelists agreed that there is a need for a clearer definition of what offenses are included in the term "white collar crime."

Cressey and Tyler agreed that white collar crime is a social, not a legal, concept. Any person who is labeled a "white collar criminal" must have violated some specific criminal law, not merely some general law against white collar crime. Cressey went so far as to say that the problem of white collar crime from the standpoint of Congress is, at this stage, principally a definition and identification problem. He also stated that currently there is a battle regarding the definition of this social concept which is extremely important. The outcome of this contest will determine to some degree what any Federal or State program to combat white collar crime will be attacking. Cressey said that the trend is to define white collar crime as a crime *against* businessmen, not a crime *by* businessmen. He took issue with this, and asserted that the *real* white collar crime is corporate crime, not consumer frauds which are certainly easier to prosecute.

Tyler disagreed with the definition of white collar crime as corporate crime, which to him meant "crime within the board room," on the grounds that it was too limited. He said that corporations are merely devices, involving people. A great deal of crime is committed by individuals within a corporate context, but without the knowledge of, or without acting for, the corporation. Tyler also mentioned three characteristics which are associated with white collar offenses in the public mind, none of which he considers essential to, universally true of, or necessarily unique to white collar crimes. These are: the high social standing of the offender, the commission of the crime in the course of a legitimate profession, and the non-violent nature of the offense.

Goldstein indicates that the definitional problem should not be of great concern, nor should it influence how this problem is dealt with. He divided the category of white collar crime into three specific types of offenses: fraud against the U.S. (i.e., crimes involving fraud in Federally operated programs), corporate corruption (or bribery between corporate executives), and political corruption (e.g., a politician involved in extortion).

2. Which level of government has the primary responsibility for controlling white collar crime

With the exception of Cressey, all of the panelists directly addressed the issue of which level of government has the major role in combatting white collar crime. Both Tyler and Goldstein agreed that it is the Federal government which is best capable of handling this type of crime. Tyler indicated that the Federal government has the major role because of the interjurisdictional nature of most white collar crimes. Goldstein maintained further that State and local governments are specifically unsuited to dealing effectively with white collar crime because of lack of resources and vulnerability to political pressure.

Murphy asserted that the Federal government has a significant role to play in the area of white collar crime, in terms of interjurisdictional crimes, public education on the problem, and providing funds

to combat these crimes. However, he stated that it is the local police who are best capable of attacking the total problem in long range terms.

3. Sentencing of white collar criminals

The issue of the kinds of sentences which should be given to white collar offenders was addressed by Cressey, Tyler, and Goldstein. All of these panelists basically agreed that white collar crimes are serious enough to warrant prison terms in spite of the social standing of the defendants. However, Goldstein's point was that although more white collar criminals should be sentenced to prison, the real problem is that law enforcement officials and prosecutors can not even get these cases to court. Federal officials lack the manpower, financial resources, and accounting expertise to detect and collect evidence on these offenders.

Cressey's main point on the issue was that we should not sentence these offenders merely because they are rich and rarely given severe sentences, as opposed to the poor who populate our prisons. He indicated that they generally should be considered dangerous offenders and be sentenced to prison on the first offense solely because their crimes are serious enough to deserve such treatment. He stated that many white collar crimes are more serious than ordinary street crimes and should be sentenced accordingly.

4. Coordination of the efforts of Congress and Federal executive agencies

The lack of coordination of efforts between the legislative and executive branches was a major concern expressed by both Tyler and Goldstein. Tyler emphasized the lack of understanding by and between Congress and the executive agencies about how white collar crimes are committed and how these types of offenders conduct their crimes (i.e., with elaborate schemes of money laundering, with extreme secrecy, etc.). He suggested that Congress perform a more detailed oversight function in this area in order to promote more understanding and coordination.

Goldstein also said that effective Congressional oversight is a needed activity, but he also went on to state that executive agencies must perform their functions without secrecy, defensive attitudes, or the recent overconcern with public relations. Furthermore, he maintained that Congress has not recognized the need for accountant-auditors to combat white collar crimes, and that it should provide the extra funds to hire such expert investigators.

C. NEW DIRECTIONS—AN ASSESSMENT

Several significant suggestions were made by the panelists as to what might be done by the Federal government to control white collar crime. Some of the proposals are important but do not require legislative action. Among these are the suggestions that better definitions of white collar crime are needed and that there should be increased coordination among executive agencies.

However, many of the proposals are specific, and imply legislative action. One such idea is that of Federal incorporation. For example, the Corporate Accountability Research Group, a Ralph Nader associate, has proposed a Federal Chartering Act whereby the sanctions

against corporate crime would be greatly increased and there would be more checks and balances on corporate management. Perhaps such a law could also include a requirement that private citizens be included on corporations' boards of directors, a suggestion made by Dr. Cressey.

A bill was introduced during the 94th Congress (H.R. 7481) which would have established a Federal Corporate Chartering Commission and would require corporations engaged in interstate and foreign commerce to apply for a Federal Corporate Charter. No action was taken on this bill.

It has been argued that Federal incorporation is not necessary as corporations are already regulated through the regulation of stocks by the Securities and Exchange Commission and through control exercised by the Interstate Commerce Commission. Also, it is possible that the States, which collect revenue from incorporation, would oppose giving up State incorporation. However, the Corporate Accountability Research Group asserts that State chartering is a "costly anachronism" that does not force corporations to account for their actions, and they claim this is documented by the current corporate crime wave.

Two other suggestions are closely related to each other. These are: (1) appropriation of more money for the Justice Department and U.S. Attorneys to hire accountants as investigators and (2) the legislative establishment of an Office of Fiscal Integrity within the Department of Justice. Such an office would be staffed by accountants to investigate white collar crimes and would avoid interagency conflicts by providing funds for Justice Department auditors.

It was strongly argued by both Tyler and Goldstein that Section 1202 of the Tax Reform Act of 1976 should be repealed. The provisions of this section were said to prevent IRS auditors from working with the Justice Department in non-tax-related cases. It is possible that such a proposal may be considered in the 95th Congress.

Another suggestion is the passage of a national commercial bribery statute, patterned after the Interstate Travel and Racketeering Act. A commercial bribery statute was included under Section 1751 of the proposed Federal criminal code reform, the Criminal Justice Reform Act of 1975 (S. 1, 94th Congress), but this section provided a rather limited Federal jurisdiction.

One final proposal was that more LEAA money be allocated specifically for studying and investigating the problem of white collar crime. During the last Congress, Public Law 94–503, the Crime Control Act of 1976, was passed which amended Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (establishing LEAA). One new provision of this Act authorized the Attorney General "to provide assistance and make grants to States . . . to improve the antitrust enforcement capability of such State." Although this provision is to be administered by the Attorney General, not LEAA, it does involve LEAA grant monies in attempting to increase the enforcement of certain types of white collar crimes.

D. TRANSCRIPT OF PROCEEDINGS (WHITE COLLAR CRIME: THE FEDERAL ROLE)

Ms. Derthick. The first panel this afternoon is on the Federal role in the control of white collar crime. The panelists are Harold Tyler, Jr., Deputy Attorney General of the United States, formerly a district judge, and formerly Assistant U.S. Attorney General in charge of the Civil Rights Division; Professor

Donald Cressey of the University of California at Santa Barbara, a very distinguished criminologist, author of many books on crime and criminology, including a leading textbook in the field; and Patrick Murphy, President of the Police Foundation, formerly Police Commissioner in Detroit, New York, Syracuse and the District of Columbia, and the first administrator of LEAA.

Professor Cressey has volunteered to lead off on the subject of white collar crime.

Mr. CRESSEY. The problem of white collar crime, considered from the standpoint of a legislative body, is principally a problem of definition and identification. We are being asked to legislate against it, control it, and prosecute it. But what is it?

White collar crime is a social concept, not a legal one. It is just a term, like "organized crime." It is not against the law to be a white collar criminal. Any person whose behavior is put into this social category must violate some specific criminal law, not some general law prohibiting white collar crime.

Currently, we are witnessing a kind of contest regarding the definition of this social concept, invented some thirty years ago by Profesor Edwin H. Sutherland. This contest is extraordinarily important; its outcome will determine—to some degree, at least—what any Federal or State program to combat white collar crime will in fact combat. The tendency, it seems to me, is to make white collar crime a crime *against* businessmen, rather than a crime *by* businessmen.

If you look at the brochure on white collar crime put out by the United States Chamber of Commerce, you will note that the Chamber talks about white collar crime as though it involved only offenses in which Chamber members are victims, not offenses in which they are the criminals. On a much lower level, you can witness something of the same thing by noting the activities of local Better Business Bureaus, which seem to be interested primarily in keeping crooks out of town. They don't want outsiders coming in to do dastardly things to their citizens. They want to reserve that for local residents.

So the real question, it seems to me, is "Is white collar crime the sort of thing the Chamber of Commerce and Better Business Bureaus are trying to combat, or does it involve more than that?" The Federal government is funding several programs consistent with this notion that when we worry about white collar crime we should worry about consumer frauds of various kinds—the guy that's selling illegal roofing contracts, repairing your furnace when it doesn't need it. Is that what we are going to call white collar crime?

The tendency is to say "Yes, that is what we are going to call white collar crime." And this, it seems to me, is not merely a matter of crooks protecting themselves by directing attention to illegal activities against them rather than by them. Behind the tendency, I think, is also the fact that it is easier to prosecute this kind of low-level fraud, to do something about it, to make a record as an opponent of it, than it is to make a record or to prosecute what I think is *real* white collar crime, which is corporate crime.

A simple, but not too outdated, example of this kind of crime is restraint of trade. In short, violation of the anti-trust laws by the people or organizations that are putting out brochures defining white collar crime as something other than violation of anti-trust laws.

How can the ordinary policeman deal with restraint of trade? Do Members of Congress know whether or not we need any new laws pertinent to anti-trust activity? A question that seems to be at least worthy of legislative consideration is whether our current anti-trust laws—which do declare restraint of trade and some other things to be criminal offenses—are out of date. Are we trying to save a free enterprise system which has long since disappeared?

I think that there is a good possibility that we have, on the corporate level, invented a system of socialism. Thus, if the absence of price competition and the presence of what is called restraint of trade—cooperating for the welfare of the group rather than competing—are considered as indexes of socialism then it appears that we indeed have a kind of socialism for the rich. Most of the activity within this system of non-competition is in violation of anti-trust laws.

Consider the people we were talking about this morning, the kids that live in the ghetto. These ghetto dwellers are told to behave like capitalists, competing with each other for bread. They do so, and in the process, they commit crimes. The anti-trust laws ask the corporations to compete with each other also. They do *not* do so, and in the process of being socialistic, if I may use that word again, they commit crimes.

I didn't invent this idea. I cannot remember who it was that noted the possibility that in the United States we have invented a system of socialism for the rich and capitalism for the poor. If we have, then that invention, it seems to me, is the basis of the white collar crime problem. Whether or not you use that kind of slogan—actually a kind of epithet—is not what is important. What is important is violation of anti-trust laws, law violation which, in my view, is real white collar crime.

Are we to expect now, in 1976 and 1977, a return to the old-fashioned free enterprise system, to the classical free enterprise system of economics? The answer clearly is "No." We have a system of corporate enterprise which makes that a rather naive kind of hope. We are rapidly, it seems to me, moving toward a sort of melding of big government and big business, so that we have a kind of self-appointed Board of Directors at the top of our Nation. Much of the melding is in violation of law.

What can we do about it? I think you all understand that there is very little we can do about it if we focus exclusively on passing laws that have to do with the prosecution and punishment of individual criminals. The problem is an organizational one.

There are some possibilities, however. Sweden has just introduced a program whereby "public members" will sit on the boards of directors of some corporations, representing, presumably, the interests of consumers and all citizens. Perhaps this is not a very effective way of dealing with white collar crime, corporate crime, but it is a beginning.

Another possibility that I hear a little talk about, coming back into conversations after an absence since the 1930's, is a program for incorporation on the Federal level. If corporations incorporated Federally rather than in a State, the idea goes, they could be controlled more effectively.

Still another way of dealing with the white collar crime problem is through taxation. A way of letting the people into the system of non-competition—I have in mind those ghetto guys who are competing for bread—is to change the tax structure. This idea is not very ingenious. You have heard that speech many times, so I won't make it.

One final point has to do with a question that is bound to come up in a meeting such as this, the question of sentencing. What should we do with an individual corporate executive who has been found guilty of a white collar crime? There is a lot of talk these days about increasing the severity of the punishment of such offenders and this talk, it seems to me, is easy talk. It amounts to proposing that we soak the rich.

The idea is this: If a kid knocks over an old lady on the street and takes her purse, he goes to prison where something dastardly is done to him. But if somebody steals $10 million in a fraudulent stock manipulation, he gets only a slap on the wrist, and isn't that too bad?

I think it is too bad. But I also think it is time to consider whether the comparison is a fair one. There is a possibility that this idea is a proposal to discriminate against the rich, and I think there is no more need to discriminate against the rich—in the name of crime control—than there is a need to discriminate against the poor in order to control crime.

Consider what happens to people convicted of street crime. If you were to go to San Quentin today and look at what they call a "first offender," it would make your hair stand on end. Here's a guy that had four convictions as a juvenile. Then, when he became of age, he was arrested for burglary but the charge was reduced to a lesser offense and he got 30 days in the county jail. He got arrested for burglary again, plea bargained the charge down to vagrancy and got another 90 days. Then he was convicted of armed robbery and was placed on probation; he violated probation and was placed on probation again. He finished his probation and committed two more armed robberies. Then he went to the courthouse and a teenaged prosecutor—this is called "plea bargaining"—a teenaged lawyer said "I'm sick of you kid," prosecuted him for armed robbery and got him sent to San Quentin, where he is called a first offender.

I am not at all sure that we would be any better off if we changed the practices we have developed for dealing with street criminals. That is, in my hypothetical case, I don't see how it would have made much difference if the criminal had been sent to prison after his first burglary. My point is simply this: Considering the sentencing practices we use with reference to poor criminals, it does not make sense to send immediately to prison the genuine first offender who happens to be rich.

The problem to assess, it seems to me, is an old one, the one we were talking about this morning. And that is the problem of assessing the seriousness of offenses. With reference to white collar crime, I think I can make a pretty good case for the notion that corporate offenses are much more serious than the kinds of offenses that seem to be most feared these days—the muggers, the people who break into their neighbors' apartments and steal their television sets, knock down old ladies on the street and take their purses, and so on. Saying that serious crime should be seriously punished is not the same as saying that rich criminals should be punished more severely than poor criminals.

A few years ago I gave the title *Theft of the Nation* to a book I wrote about organized crime. Now it seems to me that the title pertains as well to white collar crime. Is somebody stealing my country in the sense that they are stealing my vote, stealing my free enterprise system, stealing the traditional practices and procedures that I think of as democratic? If that is occurring, then the offenders doing it are eligible for the label "dangerous offender" and are thus eligible for imprisonment on the occasion of a first offense, in contrast to the street criminal.

Ms. DERTHICK. Mr. Tyler.

Mr. TYLER. Ladies and gentlemen. I agree with much, in fact with almost all, of what Dr. Cressey has said. I would just like to share with you four propositions which I think are important in considering the question of white collar crime, and particularly in discussing a better and more meaningful role for the Federal government in that area.

The first truism, which I think has already been suggested by Dr. Cressey, is that white collar crime is not a legal concept. Rather it is a social or practical concept that defies definition, classification, and really any kind of understanding by the public. And, I am not talking only about the ordinary citizen, but, sad to say, also about people in government, whether they are in the judicial, the legislative, or in the executive branch.

Today, for example, many people who are interested in the field think that white collar offenses have three characteristics. First, they are frequently committed by persons of reasonable respectability and relatively high standing, social standing, if you will, or business standing. Second, most of these crimes are committed in connection with, or during the course of, the offender's legitimate profession or job. And third, the offense is not only non-violent, but is usually accomplished through deceit or fraud or concealment. But after mentioning those three characteristics—all of which, I think we'd agree, have some application—you then have to say immediately that not one of these is essential to, or unique to, or universally true of, all white collar crimes as most people define them. As a result of this problem of definition, right from the start the American people, including people in the legislatures and in law enforcement, have had a great deal of difficulty.

I remember a year ago speaking in Toronto at the annual meeting of the American Society of Criminology. I tried to get away with chastising the criminologists a bit, asking them to help us more by coming up with better definitions. I really think I was quite unfair because I doubt whether they or anyone else can come up with good definitions. But, on the other hand, it would be useful if there were more literature and there were more attempts by lawyers and criminologists and others to clarify what we really mean when we talk about white collar crime. I think we'd get a better legislative reaction, and I am certain we'd get a better law enforcement reaction.

A second and related truism is that in modern times, with our communications systems, with our transportation systems, and with the Federal system as we know it in the United States, the level of government best equipped to cope with what is called white collar crime has to be the Federal level. You all know what I mean when I say this because our existing Federal statutes illustrate the point clearly. It is a crime to cross State lines or use interstate communications facilities to commit fraud, and so forth. Now those laws were sensibly drafted, if only because we know that white collar offenders, whether they're situational or professional, today very frequently have to engage in activity which isn't confined to one State or local jurisdiction.

More than that, I'm afraid that it is extremely unlikely that State or local jurisdictions can successfully combat the white collar crime that affects them because so much white collar activity, as we know by experience, is conceived with a broader goal and a broader base in mind. In other words, if it's a stock fraud, it's

not aimed at just New York State, it's aimed at a number of States. In fact, it may often be aimed at all 50 States, that is at residents of those States. The perpetrators may be not only criss-crossing the country in airplanes, but they may actually be permanently based in different cities such as New York, Chicago, and Los Angeles, but still be part of the same criminal scheme.

Now this is all, of course, obvious. We all know it. And yet, in 1976, in what is called the post-Watergate era, ten years after the Katzenbach report of 1966—you remember the President's Commission on Crime chaired by former Attorney General Katzenbach—we are, as I see it, in an extraordinarily myopic state particularly given what has happened to us in this country in recent years.

And that leads me to the third truism. The fact of the matter is that all three branches of the Federal government, in my opinion, have been woefully remiss in what they have been doing to get at white collar crime.

Now I think all of you are aware of the Chamber of Commerce pamphlet discussed by Dr. Cressey, and I'm sure you've seen it, and I'm sure you've seen the Chamber's estimates of the tax levied on us by white collar crime. Last year, the Chamber estimated that it cost us as Americans, exclusive, by the way, of anti-trust crimes, $40 billion a year, at least, as a result of the ravages of white collar criminal activity. If you add anti-trust crimes, detected and undetected, why of course the amount would be a great deal more.

Despite all this, if you will simply look at what has gone on in the last year, you will find that during calendar year 1976 alone, the Congress of the United States considered and actually passed certain bills which were called by wags in the law enforcement field as the "White Collar Rehabilitation and Resuscitation Act of 1976."

One good example was certain provisions of the notorious 1976 Internal Revenue Code. Those provisions, with a certainty, will make it even more difficult to detect some very, very run-of-the-mill white collar offenders who can be detected through tax returns and tax return information, as defined by law. They will create endless litigative possibilities for any lawyer who is about three days out of any run-of-the-mill law school in any part of the country who happens to represent one of these great men. He can tie up the prosecutors, State, Federal, and local, for at least six months without even cracking a law book. He need merely to know that these provisions exist in the 1976 Internal Revenue Code.

I can add that our United States District Courts, if we lawyers are anywhere near as imaginative as we usually are, will find that their burdens are multiplied in short order, listening to some of these wretched special proceedings which favor, beyond a peradventure, a very limited class of American citizens, to wit, the big mover of sums of money under our splendid tax laws as they now exist.

I'll give you another example. Some of you here will recall a little beauty known as H.R. 214 which was kicking around for a while in the House, and with excellent motives. The House Members who considered this, and the staffers who considered it, were concerned about privacy. Fair enough. That's a legitimate concern for the Congress now and at any time. But the fact is that nobody had shown the people working on this what a lovely, absolute bar the legislation would be to the successful prosecution of many white collar cases.

Now I don't blame the Members of the Congress, and I don't blame their staffs. Nobody had told them about this. We in the executive branch, particularly in the Department of Justice, were probably remiss. We fell on everybody with a will and a vim finally, but we were probably a little late.

The real problem though is our lack of collective understanding of just how these games are played, and just how these people are able to operate, particularly if they are people of means—and many of them are. And if it isn't means at the bank at the moment, they have other resources, which make accountants, lawyers, and other professionals willing to cut corners for their benefit.

Sadly, in this area I also have to refer to the executive branch. For many, many years we have had in a very few of the United States Attorneys' offices and within the Department of Justice in Washington some men and women who are very knowledgeable about white collar crimes. But they have been pitifully few. The amount of work and time required to develop one of these cases consumes a tremendous number of budget dollars and lawyer hours. These lawyers, moreover, are frequently asked by their superiors to do other things or are misunderstood as to what they're up to by their bosses. The result has been a lack of cohesive effort across the board in all of the prosecutive agencies and bureaus, offices, divisions and the like in my own department; and I would have to add

those bureaus and offices and whatnot in the Department of Treasury; and I would even include the SEC, which on the whole, in my opinion, has been one of the more alert agencies at the Federal level in this area over the years.

Fortunately, times seem to be changing. We are very proud that in the last year and a half we've begun to try and put our own house in order a bit. I hasten to add that we have not succeeded to our own satisfaction. It takes time; it takes money. It requires a reordering of priorities.

But the much maligned FBI, for example, has already started something which hasn't come to fruition yet. It sounds like small beer to many of you, I'm sure. But it's very big beer for those of us who worked with the Bureau over the years. Of course they have a slogan for this. They couldn't be in Washington without having a slogan. It's called their "Quality over Quantity Program." And what this really means is that they're shifting their priorities to get away from the old statistical game, and to work on cases which are very, very difficult, which do not create good statistics, and which often lead to no prosecution at all. And if prosecution is instituted, the result is often an acquittal because these cases are extraordinarily hard, even when you have first-class accountants, first-class lawyers, and first-class investigators to put the case together.

Now let me turn, having thrown mud over the legislature and the executive, to the judiciary. Some of you read this morning about the Honorable James Parsons proposing sentences in our anti-trust price fixing case involving the carton fellows. Mirabile dictu, the judge imposed a little taste of jail on a lot of those gentlemen. Now some of you may have said, well, what's 45 days or what's 60 days, and I don't blame you. But believe me, I can say that in my 13 years on the bench, there were one whale of a lot of judges that wouldn't even impose five minutes let alone days on some of these gentlemen.

Let me pause and single out, while Dr. Cressey is still here, one point of disagreement with him. He is not alone in arguing that white collar crime probably means corporate crime. I am very uneasy about that concept or approach, and I'll tell you why. Despite his justified eminence, and that of others like Ralph Nader, who also, as I understand it, makes the same point, I am very uneasy for this reason. It's not enough just to focus on anti-trust crime. It's not enough just to focus on corporate crime, if you mean by that, crime committed solely by or against corporations. If we get boxed into that one, I would argue that we will be in further trouble. Corporations are a device. They involve people. No corporate form is worth a dime, good or bad, unless people are doing the work, or the hugger-mugger, or whatever is involved. There is a great deal of crime which is committed by an individual who is within a corporate or institutional employment context, but not acting for, or with the knowledge of, the corporation.

Therefore, as a lawyer, I would argue to Dr. Cressey and others similarly minded, that we will have, even on a definition and classification level, more problems than we've already got if we start insisting that white collar crime be regarded as coextensive with corporate crime. Because corporate crime means to me, as a citizen and as a lawyer, as Mr. Nader once put it to me last year when we were debating this subject on a public television program, the crime committed within the board room. I'd feel a lot happier if white collar crime were committed solely in corporate board rooms. We would have much less of a problem.

Now let me turn to the fourth and last point. The truth is that our criminal justice system is at best reactive. And if you accept that as true today, then I think you would agree that, for this simple reason alone it is necessarily inefficient in dealing with what any one of us would agree is called white collar crime.

Let me illustrate swiftly what I mean and then I'll keep quiet. Basically our police, our prosecutors, our courts are not designed and staffed to meet what I would call white collar criminal activity. This is only natural, given the evolution of our Anglo-American criminal justice system, given the fact that we as a nation, judging by just this week's editions of *Time*, *U.S. News and World Report*, *Newsweek*, and so on, are most concerned about crime on the streets, or in the country where I come from, crime in the fields. The common law crimes of burglary and larceny are the most savage things for the old, and the middle class and everybody else in our big cities, and, though we don't hear about it, in many small towns too.

I maintain that even in our Federal system there are vestiges of this phenomenon. We have some excellent United States Attorney's offices. One of them, which is presided over by one of your speakers here on my left, had to retool and

regear itself some years ago, and has continued to do so under the present incumbent, in order not to be reactive, but to be proactive.

The same is true in the United States Attorney's office where I cut my teeth 23 years ago, that is, in the Southern District of New York. The sad fact is, however, that even in our modern Federal system, we do not on the whole have prosecutors' offices that are really able to cope with these cases.

With me today are two of my colleagues, Mr. Mark Richard and Mr. Ed Dauber who are in the business, among other things, of seeing to it that we train our young prosecutors to be pro-active rather than reactive.

Pat Murphy can tell you about some of the work the major metropolitan police agencies have had to do to meet this phenomenon.

I would like to say that most of my former colleagues in the United States Courts are sadly anything but pro-active. It is true that we have individual judges who are interested and have become skilled on their own time, so to speak, in handling the difficult problems which are part and parcel of many white collar prosecutions as they unfold in a court room.

I thank you ladies and gentlemen. I hope I haven't taken too much time.

Ms. DERTHICK. Thank you very much. Mr. Murphy.

Mr. MURPHY. Thank you. First, a general observation. Crime is often referred to as a local problem, yet, in terms of dealing with crime, there are critical roles, it seems to me, for both State and Federal governments. Neither of those roles is well fulfilled. The Federal government currently deals with only a small fraction of the total crime problem and the States are not effective at their level.

Next, I want to discuss briefly white collar crime at the local street level as it relates to police departments and police officers. Some of the credibility of the street police officer in today's urban setting is weakened by the existence of white collar crime about which the officer can do nothing but for which the officer may be blamed by less sophisticated members of the community. Consumer fraud is an example. Even police departments that may be among the most honest and enjoy reputations for integrity are not spared the questions of poor people who often assume that the police are somehow part of the consumer fraud problem, that graft, payoff, some kind of coverup may exist.

Given the enormous amount of street crime, violent crime, that Judge Tyler has referred to, it may be easy for us to say that white collar crime, as a local police problem, should be put on the back burner, or ignored. In my view that does not make sense. Of course I'm thinking in long-range terms. I believe that dealing with the problem of white collar crime must inevitably mean a more active role for police at the local level. (In England, I believe, the police are more active in dealing with white collar crime than police in the United States.)

Third, let me suggest that, as a general proposition, the Federal government at best can deal directly with only a small fraction of the total white coller crime problem. Still, I agree that the kinds of cases Judge Tyler mentioned are certainly important ones which call for a level of expertise that justifies Federal jurisdiction and the involvement of the Federal Bureau of Investigation. Indeed, I think it is a very encouraging development that the FBI is more active than previously in seeking to combat white collar crime.

As part of the Federal responsibility concerning white collar crime, I would hope to see the Federal government play an even stronger leadership role in attempting to control it. Just addressing the problem more often, more directly, is an important part of public education. Through Law Enforcement Assistance Administration programs, some measure of Federal leadership can be provided and some reasonable share of LEAA resources should be allocated to dealing with white collar crime.

Fourth, let me note that Judge Tyler recently took a position on crime statistics which I think is important. He called for the creation of a central bureau of criminal justice statistics at the Federal level. The need for better data about white collar crime is a major one and it's another area in which the Federal government can make a contribution. Admittedly, before we can get better data concerning white collar crime, we need better definitions. States should be involved in the process of data collection, and possibly establish standards of law enforcement within each State.

In the interest of time I'm going to stop and only repeat my initial point. The credibility of the police is very much influenced by their inability to pay more attention to white collar crime problems. As prosecutors know, when a white collar crime complaint is made, the police will do nothing more than refer the complaint to a prosecutor's office.

Thank you.

Ms. DERTHICK. Thank you very much. The fourth panelist is Jonathan Goldstein, U.S. Attorney for the District of New Jersey, who I'm told has prosecuted more State and local officials than almost any other U.S. Attorney. I assume that this is due both to his dedication and competence and to the fertile nature of the territory.

[Laughter.]

Mr. GOLDSTEIN. I would like to think that New Jersey is no more corrupt than any other State in the Union.

Let me talk a little bit about how I perceive the white collar crime problem and try to provoke you into considering some of the problems that you, as Congressional aides, should be taking up with your Senators and Congressmen.

I am quite concerned about whether, as Judge Tyler stated before, we really understand each other as to the problems of white collar crime and how we can best fight those problems.

I do not believe that we do. So I want to take a little time to explain what the problems are, as I see them, and how I believe the Congress can best help the executive and the Federal prosecutors in this area.

First of all, State and local governments are really not equipped to handle the kinds of white collar crime which we are concerned with. They simply don't have the financial and personnel resources. In addition, State, and local county prosecutors are more attuned than their Federal counterparts to the pressures emanating from the political and business community, and so are not able to dispassionately do justice in this. I think the Federal government is more able and, in fact, best able to deal with these problems, although there is room for improvement in that area as well.

This morning some of the panelists suggested, optimistically, that if white collar criminals are incarcerated, put in jail, that might deter white collar crime. I would take issue with that. Not because I don't believe they should be put in jail; they should be. The problem is you can't get them that far because you cannot impose a sentence on a white collar criminal unless you can apprehend and convict him.

There is a basic problem, a basic lack of understanding, I think, between the Congress and the executive. I do not believe you recognize how difficult it is to apprehend these criminals.

It might be best to begin by giving you my simple definition of white collar crime. It's not very elaborate. It covers basically three very broad areas. I do not really believe that the definition of white collar crime should trouble you. It certainly should not in any way influence how we proceed to deal with this problem.

White collar crime is basically made up of three separate areas. The newest, and I think it may prove to be the most fertile area in the coming decade, is fraud against the United States. Among all the Federal programs that have been enacted by the Congress over the last decade, there are few, if any, controls over how our money is spent. It is not surprising, therefore, that in offices like mine—located in densely populated urban communities—much of our thrust in the area of white collar crime is directed to frauds committed against the United States: frauds perpetrated by individuals who administer our programs, by the beneficiaries of these programs, and by businesses that feed upon these programs.

Then there is a more traditional corporate corruption, which goes beyond the anti-trust violations discussed today. It involves bribery *between* corporate executives: what is often referred to as "commercial bribery." And, of course, there is the old-fashioned political corruption that we all know so much about by now: that is, simply, a politician with his hand out making extortionate demands or a corporate executive bribing a public official.

But in all three areas—and I must say that I see no reason to limit or try to narrow the definition of white collar crime—in all three areas we suffer from the very same problem: and that is the enormous difficulty in apprehending those who commit these crimes.

These are generally crimes without any readily identifiable victim. You and I, the public, the consumers and the taxpayers are all the victims. Unlike a street crime, where an individual is assaulted or robbed and you have an immediate victim, these crimes are silent. And the participants in these crimes want to keep them silent, and want to keep them secret, so you have no ready complainant coming to an investigative agency or a prosecutor's office. Accordingly, we prosecutors cannot sit back and wait for a complaint to come to us.

We must aggressively go out and seek out this kind of corruption. And to do that we must have certain tools, and we must have a thorough understanding of how these crimes are committed and how they may be detected.

Basically, in all these broad areas of white collar crime, cash is either being diverted from a Federal program or secretly generated from a commercial business. Literally hundreds of thousands, in fact, millions, of dollars are being diverted every day. Cash is changing hands secretly : in envelopes ; in bathrooms—as we've seen over and over again, that seems to be a favorite place of these people ; in restaurants, literally under the table, at lunch ; in airplanes in packages left at secret rendezvous.

You have to search and find the cash. And there is only one way that I know of to find those cash transactions, and that's through a very slow, meticulous, deliberate kind of investigation. It requires the use and application of accountant-auditors. They are investigators who are accountants first and foremost. Only by these techniques can we find that cash.

The fact of the matter is that the Federal government is very poorly equipped to provide the kind of accounting manpower and support that the Department of Justice and the United States Attorneys need to combat white collar crime.

For instance, in some of the Federally sponsored programs such as Medicare and Medicaid, in Region Two—which is the New York-New Jersey region—where a huge amount of Federal money is spent each year, we have had until recently only one auditor for the entire Medicare-Medicaid program. One auditor to investigate the entire program and he must be shared among three United States Attorneys' offices.

It seems to me there is something very wrong when the Congress appropriates literally billions of dollars for what I believe are much needed social programs, and when, although much of the money does *not* go to the needy, we have no ability at all to see that the programs are being administered honestly and efficiently, and no ability to prosecute people who illegally divert money into their own pockets.

And so, I say to you that one thing you must do in the forthcoming Congress is to provide not just monies for the beneficiaries of these programs, but, in addition, to provide sufficient resources to properly administer these programs and to investigate these frauds.

One positive step you took in the last Congress was to establish in the Health, Education, and Welfare Department an Inspector General's Office. Although it appears, therefore, that we will get more assistance, we do not yet know its extent. We don't know how many accountants we're going to have, nor consequently, whether or not we will be able to effectively cope with these problems.

Although we do not have accountants from the Federal agencies to look into these various kinds of schemes, it is not for want of desire on our part. In the areas of corporate and political corruption, I think the Department of Justice has had a lot of success: our colleagues in Chicago and in Baltimore and elsewhere throughout the country have demonstrated that you *can* investigate these crimes and you *can* expose these people. But we're doing it, really, with one and a half arms tied behind our backs.

We need accountants. We have often used Internal Revenue Service personnel. They are the finest accountant-auditor-investigators that I know of.

However, this past year, in the 1976 Tax Reform Act, you have actually allowed IRS to refuse to cooperate with the United States Attorneys' offices in what are euphemistically called "unrelated tax investigations." What that means from a practical standpoint, from my standpoint, is that I will no longer have the kind of IRS investigative support that my office needs to prosecute, or even investigate corporate and political corruption.

The Intelligence Division of IRS is superb. It has been honest. It has been decent. And there is no justifiable reason that I know of to try to prevent them from cooperating with the Department of Justice and the United States Attorneys' offices.

If, in the wake of Watergate, and the attendant emotionalism, or for political reasons, that must be the case, then I suggest that what the Congress should do is to create what I have called in the past a Department of Fiscal Integrity. It would be manned solely by accountant-auditor-investigators, situated within the Department of Justice and would give the Department and its United States Attorneys the ability to investigate these kinds of crimes. I'll show you, in just a couple of brief examples, why we simply cannot investigate this kind of white collar crime, this kind of corruption, without those resources.

When you're looking for cash, what you must do through a very elaborate investigation, is to go back through the financial dealings of the various corporations and individuals involved, and reconstruct, from the very beginning, every single financial transaction. I mean every single one. Because you cannot know in advance where the corrupt transaction lies. It may literally take you months—sometimes years—to find that kind of corruption. You have to piece together voucher after voucher, invoices, checks, check stubs, the back of checks. And that can only be done if you have the necessary accounting manpower and expertise. Without it, we're just not going to have these kinds of prosecutions.

How can we deter this kind of crime? Yes, they should be sentenced to jail. But if you do not expose and apprehend them—and they are most afraid of exposure, because they are frequently prominent men and women in our society—if you do not expose them, uncover their crimes, you can't apprehend them. And then it really doesn't matter how much you increase the penalties. It doesn't matter how much you talk about having new kinds of sentencing standards. You must first have the tools to investigate and expose this kind of crime. And right now we just do not have them and we need help.

I would suggest that the '76 Tax Reform Act be looked at again, very carefully. You have done, I think, a grave injustice to our honest citizens, who deserve effective law enforcement. And I think that upon calm reflection, that will be recognized. That Act ought to be—at least in this one area—repealed. In fact, the law ought to be changed to strengthen our hand and to give the investigative resources we need.

Now I want to talk about one particular area that I think ought to be looked at in the future: And that is the problem of corporate or commercial bribery. We had a recent case in New Jersey, involving the largest liquor wholesaler in the State. The sales manager of the firm was President of the State Senate in New Jersey. Two days ago he pleaded guilty to paying bribes in order to obtain an exclusive contract. Now, the problem in that case really was a legal problem, in the sense that the applicable statute was passed by the Congress in 1936. It dealt only in the narrow area of liquor dealerships, making that kind of "commercial bribery" a crime. And, more importantly, it did not provide for any jail sanctions at all, only for a fine of $1,000 per count. So this individual who stood to gain, in the first year, a $240,000 contract and thereafter considerably more, and who made a $6,400 cash bribe payment could be punished, at the most, by a $6,000 fine on the six counts with which he was charged. That's his entire punishment.

There is something very wrong here. There's a need, right now, to have in this country a national commercial bribery statute that will make illegal payments between corporate executives, from executive to executive, to gain business contracts, or exclusive contracts. Some States have such laws. Some States do not. A good number of the States that have commercial bribery statutes have not thought it a serious enough crime to put real teeth into the statutes. But I think if the revelations of the last year or two are any indication at all, this is a very serious problem in our country. And the only way that you can deal with it is from the Federal standpoint, because the States are not dealing with it seriously. We need a Federal statute patterned after the ITAR [Interstate Travel and Racketeering Act] and predictated upon the same legal kinds of bases.

Those are some thoughts that I want to leave with you. They are in very sketchy form, but today's program does not allow us to go into great detail. And, hopefully, your questions and answers will enable all of us on the panel to flesh out some areas that you may be particularly interested in. Thank you.

Ms. DERTHICK. I'm inclined to go straight to audience questions, unless there's something that a panel member wants particularly to assert. Questions?

Mr. FEINBERG (Kenneth Feinberg, Senator Kennedy). This question is directed to Judge Tyler and also to Mr. Goldstein. Is there any Congressional role to be played in the area of Justice Department resource deployment? I'm talking about the FBI, as the Judge mentioned the FBI becoming involved in white collar crime; or the strike force problem that's been in the newspapers, concerning whether or not strike forces should be disbanded. Does Congress have any effective role to play in that whole resource deployment problem, or is that a problem that should be left to the executive branch?

Judge TYLER. I think Congress already has a role in two ways. First, in the budgetary area, obviously. But, I think, also, it would be certainly very nice if some committee having oversight in our area were to take a look at this from time to time. I think it would be very helpful. I think it would help the Congress to understand better when they cope with such things as tax reform, privacy

statutes, and the like, which are very important. Yet, I've had the sense in the last 20 months that there's been a total unawareness of how the pieces fit together. And so I think in those two ways there would be reciprocal benefit, both to us and to the Congress.

Mr. GOLDSTEIN. I think it's really a function of the executive to decide how the FBI should be deployed. I think it's also a function of the executive to decide whether there should or should not be strike forces, although I think the Congress has a legitimate oversight role. The Department of Justice comes before Congress for its appropriation each year, and has to justify its various programs. Now, given what I've seen to be some of the problems in the past, I really don't know whether or not the Congress is well enough attuned, from an expert standpoint, to really delve into these problems. I doubt it, frankly.

From the other standpoint there are times that—I'll just use one example, that took place some years ago. There was a time when the attempt was made to get this accountant thing in a different form. We had at that time some problems with the Bureau because they just did not have any accounting capability to speak of. So an attempt was made by the Department to get an appropriation for special investigators, who were to be used by the U.S. Attorneys' offices. An appropriation got through, I think, initially. However, as I understand what transpired, the FBI interceded with Congressman Murphy to delete the appropriation of any funds that would enable the United States Attorneys to hire investigators and/or accountants. Obviously, Congressman Murphy performing his oversight function virtually killed any attempt by the Department of Justice over the past five years to secure funding for accountant-investigators. Therefore, I just don't know to what extent Congress can effectively play a role. I think in the end it's up to the executive to shape and execute the executive's policy.

Ms. HALWAX (Jennifer Halwax, Congressman Railsback). [There has been a problem in defining white collar crime. Is there also a problem within smaller corporations or any other organization of knowing the regulations? Are businesses aware of violating the law?]

Mr. TYLER. You raise a good point. As a matter of fact, there have already been some attempts to respond to that point. For example, the Bureau of National Affairs recently had a seminar for corporate house-counsel types, as I'll call them somewhat loosely, and other officials, in which they brought in prosecutors, police officials, and so on. The attempt was to meet just your point, namely to help persons within the corporate structure to understand just exactly what the problems are, what the pitfalls are, and to help responsible corporate officers detect signs of corporate hugger-mugger.

This is very important because, even aside from the smaller companies that you mentioned, there are a great many problems where people don't really understand what's going on. They could detect a lot of this and report it to the authorities and they could avoid a lot of losses to their stockholders, their contracting parties, or whoever is being bilked. It's a very important point and one that needs to be nourished and continued.

Mr. LEHMAN (Bruce Lehman, House Judiciary Committee). One of the difficulties that was raised is the problem of getting the evidence that you need to prosecute white collar crime. When a person is mugged on the street it's quite obvious they've been mugged, somebody reports the crime; the problem of detection of the crime is not a difficult one. But in the area of white collar crime detection problems are the main problems, as Mr. Goldstein pointed out. Mr. Tyler also indicated that one of the difficulties was that Congress, rather than giving the tools to detect crime more easily, in some respects is moving in the opposite direction. Because of the Watergate era and so on we have tried to legislate more privacy protection which immunized the individual from the investigative powers of the Federal government. And that presents a conflict which I don't think you've addressed. That is, certainly white collar crime is a crime, but the crime of Federal officials who violate the civil liberties of American citizens is also a very difficult problem.

How do you give prosecutors and Federal investigators the authority they need to investigate white collar crime and, at that same time, protect the law-abiding individual? For example, someone who's trying to express his political freedom, even though he may be unorthodox—to protect him from harassment by Federal investigators.

Mr. GOLDSTEIN. The answer to your question, I think, is really very straightforward. The problems you had in the Nixon White House were problems, basically, of a President and his staff. They were philosophical problems. They

were problems that you just cannot prevent by passing laws. And there's no guarantee that we will not elect another Nixon at some future date. There's no guarantee that you may not have another Haldeman or an Erlichman or a Mitchell. You just can't stop these problems by passing laws. If somebody, in any Administration, wants to call up the Commissioner of IRS and ask him for the tax returns of everybody who opposes the President in certain policies, it will happen no matter what laws you may pass in the Congress. You're talking about having responsible public officials who understand democratic principles. And you can't legislate those principles. Those principles are really part of our heritage, they're part of our philosophy, and you cannot legislate them.

To give you one very pertinent example: in the income tax area, in which the Congress and the Commissioner of the Internal Revenue Service were so concerned about protecting the privacy of individuals, I participated in a panel of the Department of Justice trying to see whether or not there have been any abuses in the manner in which Federal prosecutors have used income tax returns. In that panel we found the following: there were three instances of abuse. One State attorney general in the Midwest had improperly used IRS information and the Department and the IRS cut him off immediately and I think he was prosecuted. I believe there was one United States Attorney who had improperly used such information and he was fired. I also believe there was a disclosure of Mr. Nixon's tax returns by an IRS employee to one of the Providence papers.

That, I think, is the extent of the so-called abuses in which tax returns information was disclosed improperly. And if that's the entire extent, then it seems to me that the 1976 Tax Reform Act is very much an over-reaction. In the end, you get exactly the kinds of people in office that you elect. And no law that the current Congress or any Congress can pass is going to prevent another Nixon White House or another Watergate.

Moreover the laws that you *have* passed make it virtually impossible for another prosecutor, whether it be Archibald Cox, Leon Jaworsky, or anyone else, to ever uncover another Watergate. What you really have done is to assure any man who seeks to subvert the entire system that he now can go about it, virtually without risk. And you've given protection to other white collar criminals. You're dealing with a people problem. A philosophical problem, and you're not going to legislate that problem out of existence.

Mr. LEHMAN. You think self-regulation, in other words, is for the executive branch.

Mr. GOLDSTEIN. It's not self-regulation. Everybody must perform their function as the Constitution determined it. Our forefathers had some very good ideas and the system of checks and balances is a very important concept. If the Congress would really effectively perform an oversight function in regard to the FBI, the CIA and the executive, if we all performed our proper functions and we didn't have this kind of secrecy, if we weren't dealing in so-called public relations all the time, if we had a little bit of openness and we also had the ability to talk honestly and forthrightly to each other, then I don't think you'd have a repeat of the Nixon White House and the Nixon years.

But where an Administration feels itself under seige and where everybody is in on this attack, attack, attack basis and nothing is open and nothing is candid and nothing is forthright then, in effect, we sow the seeds of what we had in the Watergate years. And I do not think that any legislation is going to stop that at all. There is nothing you have passed in the last year, or that you have on the boards, right now, that can absolutely prevent another Nixon White House.

It just cannot, if you have another Nixon in there.

Ms. DERTHICK. Yes, sir.

Mr. LEVINE (Martin Levine, Subcommittee on Constitutional Rights). Go back for a moment to the question of resource allocations. I'm told it takes a great deal of resources to prosecute white collar crimes. Of course Congress should appropriate more. But until Congress appropriates more there's a certain amount of resources available to law enforcement from the Department of Justice's current budget. Out of a list of potential targets, let's say, many more people could be prosecuted within that budget. The criminal code sets out a category of potential targets in any given year, many times more than the appropriation allows to be prosecuted. So the process that allocates the resources of the Department of Justice is almost a parallel criminal justice system, is almost a parallel criminal code, designating who, actually, is going to be prosecuted. If you decide to spend all your resources on white collar crimes . . . [inaudible].

Mr. GOLDSTEIN. Well there's one——

Mr. LEVINE. I'd be interested in knowing to what extent there now exists in the Justice Department a planning process, a process of setting priorities to decide what fraction of the discretionary resources are designated to any particular category or department—any particular type of crime that you're dealing with.

Mr. TYLER. I'm not sure I fully understand what you're saying; but the last part I do understand and the answer is yes. That's one of the reasons why I, at least, and, I think, others who are involved in this are encouraged. We are trying to reorder our priorities. It's sort of silly to think that we can just go to Congress and say, "Look, give us more money and we'll do more things." We can't do that endlessly and we know it. There's the other side of the coin, which you, I think, mentioned, if I understood you, that we can't sit around and suddenly say one fine day that we're not going to enforce any laws except those which come within somebody's definition of white collar crime. You can't do that. And we don't want to try.

Still, within those two polar extremes, there's room to change priorities, and we are also pooling resources with others. Not long ago our White Collar Crime Committee, as we call it, set out as quietly as possible—we should have held press conferences, I guess, everyday, but we decided not to. We dealt with six or seven sister departments which give away all that marvelous Federal money. We were concerned with the problem that Mr. Goldstein thinks is going to be pervasive in the next decade, and we share his view. We have been able, so far, thanks to the efforts of a number of my colleagues, two of whom are here on my right, to meet with the Department of Labor, HEW, the Small Business Administration, etc. We've pooled resources with them, and we've assessed priorites with them, because they have the primary responsibility to see to it that the money is dispensed as Congress has legislated that it should be dispensed. This offers untold promise. We've only begun, and already there have been breakthroughs. And, I think, this is a situation where we are not in any position to complain to Congress or scream to Congress. We're not trying to do that. We want to get our own act in better order, and we should.

Mr. LEVINE. Just a follow-up question. In the Department of Justice, as it's now set up, what's the process for making decisions like the FBI spending less manpower on interstate car theft and more manpower on white collar crime; or the U.S. Attorney's office in New Jersey spending more manpower on political corruption and less on postal theft?

Mr. TYLER. Well there are a number of methods of doing this. One is this White Collar Crime Committee. This is one of our principal functions. It is made up of the senior people in components like the FBI. Mr. Kelley and some of his hierarchy happen to be members of our Committee. We sit down around a splendid big table with all those executive branch trappings, and we shout at each other. Sometimes it's very unpleasant. Sometimes it's better, and we cajole, and we threaten, and we suddenly get things done. Sometimes we don't.

Ms. DERTHICK. One more question——

Mr. FREEDMAN (Tony Freedman, Congresswoman Holtzman). Harking back to the initial inquiry, then, doesn't Congress have an appropriate role in this process? Isn't it appropriate for Congress to suggest resource allocation within the Justice Department? We may not have the expertise to analyze each individual case for its prosecutorial value, but certainly Congress has set priorities as well as either the Justice Department or the FBI for the past 30 to 40 years, on cases investigated and cases pursued. I thought that question got rather short shift.

Mr. TYLER. I don't—I'm trying to say I don't understand you. Obviously, Congress has a role; if in no other way than through the budget. It happens all the time. Always has, so far as I know from my years off and on in the Department. And I didn't hear any of us say that Congress should *not* have this role. So I'm trying to say I don't understand your question.

Mr. FREEDMAN. There are decisions such as the kind of committee you're talking about, the kind of coordination you're talking about, the kind of resource allocation in which decisions are made as to what shall be a crime in the eyes of the Justice Department in terms of what to prosecute. Is there a way that Congress can be involved in this?

Mr. TYLER. Well, I don't understand that because Congress is the one that's laid down the statutory law of the United States. The United States Criminal Code was passed by Congress, not by the Department of Justice. So I don't follow you there. Obviously we've got to enforce the laws as they're passed by Congress.

Mr. FREEDMAN. Wouldn't you acknowledge that you focus on some laws or some group of offenses? I think that point was conceded in an earlier question. I mean at some point your resources are finite. At some point a decision is made to prosecute a certain kind of case or another kind of case. At some point the FBI decides to pursue, perhaps, the Socialist Workers' Party rather than the Mafia. Decisions should be made like that, because of the fact that you have limited resources. Decisions are being made about where those resources are being put. Can Congress get in at that decision level?

Mr. TYLER. Well, if Congress wants to do the executive job, my answer is a firm no. But I don't think you really mean that. Obviously, it has always been so, and I suspect it always will be so, that Congress lays down certain broad outlines. Congress passes the criminal statutes, but Congress doesn't say, "Look, we'll be the decision-makers from now on." You're not prepared to do that, you're not equipped to do that, you don't have the people who know how to do it, and you shouldn't. So I don't really understand you at all.

Ms. DERTHICK. I have a feeling this may not be resolved. But perhaps it could be continued over the break for coffee. I'd like to thank the panel very much.

VII. Panel Four: Research and Technology[1]

A. SUMMARY OF PANELISTS' REMARKS

1. Gerald Caplan (Director of the National Institute of Law Enforcement and Criminal Justice):

- The creation of a Federal Bureau of Criminal Justice Statistics, similar to the Bureau of Labor Statistics, would have a tremendous impact on criminal justice research. This Bureau would collect information on victimizations, arrests, amount of crime reported, the processing of offenders through the criminal justice system, the relationship of the parts of the system, basic data on offender characteristics, and manpower and budgetary needs.
- We have the technology and experience to set up such a Bureau today, and some States and foreign countries are currently gathering such data. However, the problem is "in the political realm."
- Currently there are two means of measuring crime, the FBI's Uniform Crime Reports and LEAA's victimization studies. However, the information collected provides no implications for policy or program development. Probably the worst problem with these two crime measures is that they are not believed to be reliable, perhaps because the agencies that collect them are seen to have a stake in the outcome of their findings.
- A comparison of the data of the Uniform Crime Reports and the victimization surveys between 1973 and 1974 shows that not only do these two sets of data differ in the scope and amount of crime found, but they also differ in the direction of the crime trends.

2. Marvin E. Wolfgang (Professor of Sociology, University of Pennsylvania, and Director of the Center for Studies in Criminology and Criminal Law):

- A separate unit for the collection of national crime statistics is an important need. Thorsten Sellin stated in the 1930's that the U.S. has the worst crime statistics of any country in Western society, and this is just as true in 1976.
- Research in criminology and criminal justice has been extremely inadequate, uncoordinated, segmental, and with little impact on the administration of justice or on major decision-makers. The chasm between the relatively small research community and the world of policy-making and implementation is as wide today as it was 20 years ago.
- There is a great need for some kind of Federal research program to serve as a clearinghouse of research information, to coordinate major research activities, and to provide for dissemination of the valid research being done.
- The Center for Studies in Criminology and Criminal Law has been attempting to evaluate research and theory in criminology in the U.S. from 1946 to 1972, and it has discovered that since 1945 over two-thirds of the citations in criminology have been written by only 2½ to 3 percent of all persons writing or conducting research in this area.
- One of LEAA's functions should be to seek answers to the crime problem. The Institute needs to have more links with the research community, the traditional academic community, and a greater liaison with such research agencies as the Crime and Delinquency Center at NIMH. Finally, there needs to be some separation of the Institute from the rest of LEAA.

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[1] Miriam Saxon and Charlotte Moore, Analysts in Social Legislation, Congressional Research Service.

- There are "three layers" of research activity:

(1) Research on the family and root causes of crime. Here government can provide little help; love and the proper discipline of children cannot be legislated.

(2) Research on education, employment, housing, etc. and crime. Here the Federal government has a major role, but these things should be done for their own intrinsic worth, not simply to reduce crime.

(3) Research on how to improve the criminal justice system itself, an area where the Federal government has an important role.

- The future research trend should be toward longitudinal or birth cohort studies because most cross-sectional data is inadequate for prediction. Such studies would provide analyses of career crime, would help in measuring the effects of intervention programs and deterrence policies, and could indicate the interrelations of biological, psychological, and sociological factors.
- There is a need for the development and utilization of a crime severity scale (i.e., a scale assigning values to elements of a crime category, such as simple armed robbery versus armed robbery resulting in a death, and also ranking the crime categories). Such a scale would have an enormous effect on the allocation of police resources, sentencing guidelines, and the measurement of the success of various intervention programs. We cannot do much to reduce crime, but with such a severity scale we may be able to reduce the amount of seriousness in crime.

3. Alfred Blumstein (Professor of Urban Systems and Operations Research, and Director of the Urban Systems Institute, Carnegie-Mellon University):

- There is an important role nationally for a research program. This can be done only on an aggregate basis because research is expensive and no single jurisdiction is likely to find the benefits worth the costs.
- Research in its present state is ineffective because it is dispersed over many institutions, organizations, and funding sources. Also, research activities must be directed because it is clear from the evidence provided by LEAA's overall program that only throwing money at research is not sufficient.
- No effective research can be done in an environment where the results may be distorted to serve overtly political ends and to support political positions. To prevent this, the Institute will inevitably have to come out from under LEAA.
- It is essential that the director of the Institute be from the research community in order to attract good researchers. The Institute needs a statutorily created advisory board which has influence over the Institute's policy and program, but also serves as insulation between the political process and the integrity of the research findings.
- Probably the criminal justice system in the country that is best suited to planning is the Federal system because it is integrated in ways most State systems are not. Such Federal planning could set minimum standards and provide a model for the rest of the country.
- The dilemma in future years will be that research findings, especially with the introduction of econometric techniques, are going to become increasingly complex and elaborate, and thus more difficult to interpret. This will complicate the dissemination of information to policy planners and the general public.

B. CONSENSUS AND DISSENT

It was apparent from the panelists' remarks that they agreed that criminal justice research in its present state is not adequate, and that the Federal government has a vital role in the improvement and coordination of research efforts in the field of criminology. However, Caplan, Wolfgang, and Blumstein stated slightly different views as to the cause of the poor state of research and as to the possible solutions of this problem.

1. Present problems with criminological research

Caplan asserted that the major problem with criminological research is that the United States has poor methods of measuring crime.

The two national measures of crime trends, the Uniform Crime Reports and the LEAA victimization surveys, are not only generally recognized as not completely reliable, but also they do not provide the types of information needed to conduct meaningful studies of the present nature of crime, criminals, and the operation of the criminal justice system. He strongly argued for the establishment of a Federal Bureau of Criminal Justice Statistics, a central unit for collecting all national data on the crime situation in the United States.

Wolfgang agreed with Caplan's suggestion; however, he said there is an ever-widening gap between the research community and the world of policymaking and implementation, and it is this lack of coordinated efforts that concerned Wolfgang the most.

Blumstein concurred with Wolfgang on the segmental nature of current research efforts. He stated that there has been virtually no empirical testing of the numerous myths in the field of criminology, perhaps because of the fragmentation of Federally supported research efforts in this field.

2. The Federal role in research

All three panelists agreed that the Federal government has an essential role in the future development of an effective research program. Caplan emphasized a Federal responsibility in the development of more reliable and complete criminal justice statistics. Blumstein argued that a Federal research program is necessary to coordinate research efforts and provide much needed funds. He suggested that the National Institute of Law Enforcement and Criminal Justice, if it were extensively restructured, could fulfill this Federal function.

Wolfgang also saw a major role for the Federal government in research. He agreed with Caplan's emphasis on a separate unit for the collection of nation-wide statistics, especially since such statistics are essential for conducting longitudinal research studies which Wolfgang argued provide more useful results than cross-sectional surveys. Additionally, he emphasized the need for a research program to coordinate and disseminate research findings, not only to researchers, but also to the general public. His suggestion for such a research program is related to his concern that although the absolute volume of good research has grown with the recent increased availability of Federal research funds, the output of sophisticated studies has not kept pace with the increase in money and criminal justice organizations.

Finally, Wolfgang saw a significant role for the Federal government in the area of research on, and improvement of, the criminal justice system.

3. Changing the National Institute

Caplan did not specifically address problems with the current Federal research program, that is, the National Institute of Law Enforcement and Criminal Justice. However, he did comment on this topic by noting that historically LEAA has had a bias towards the practitioner in the development of its research programs, and not towards the development of new knowledge. He suggested that any restructured Institute should combine both functions. The other two panelists emphasized the development of pure research by the Institute, but they also recognized a need for the dissemination of information for the general public, Congress, and criminal justice practitioners.

Wolfgang suggested that the major changes for the Institute should include a stronger link with the research community and with such research agencies as the Crime and Delinquency Center at NIMH, and the separation of the Institute from LEAA.

Blumstein basically agreed with Wolfgang, and suggested additionally that it is essential that the director of the Institute be from the research community, and that the Institute needs a statutorily created advisory board composed of distinguished researchers and practitioners in the field to oversee the Institute's policies and to insulate the Institute from the political process.

C. NEW DIRECTIONS—AN ASSESSMENT

The call for a major Federal role in criminal justice research can be traced back to the Katzenbach Commission's recommendations in the mid–1960's. The Commission was unequivocal in its support for greatly increased Federal assistance for research, but its recommendations for the structuring of the effort were complex. Among its recommendations were that there be a research component as part of a new Justice Department assistance program; that there should be university-based research institutes supported in part by Federal funds throughout the country; that there should be a single major science and technology program within one of the university-based institutes; and, finally, that there be an independent Federal agency, "like the National Science Foundation," supported with annual appropriations from Congress. The first recommendation was the one to be adopted in subsequent legislation, the Omnibus Crime Control and Safe Streets Act of 1968, that established the Law Enforcement Assistance Administration grant program. An implicit purpose of the research effort so established was that it would provide guidance and direction for Federal aid and that research funding would be coordinated with other Federal grant expenditures.

Although the record of the National Institute since its inception has been disappointing to a number of commentators both in Congress and in the private sector, there has been very little legislative action that would significantly alter its structure or mission. In response to general criticism that LEAA-funded programs were not receiving proper evaluation, the Institute was given expanded authority with regard to program evaluation in LEAA's 1973 reauthorization. The Institute's evaluation function was further expanded in the 1976 reauthorization: "to make evaluations and to receive and review results of evaluations," and to develop criteria for the States regarding information required for proper evaluations of projects. The Institute was also required in this legislation to identify successful programs and projects and disseminate information on these activities.

The removal of the Institute from LEAA has been increasingly advocated. According to the *National Journal* (September 20, 1975, p. 1334), an unpublished internal Justice Department task force report recommended that the National Institute be "independent of the Department of Justice's policy interests in research and development and operate with autonomy similar to that of the National Science Foundation." Apparently this recommendation was rejected by the Ford Administration, but that Administration did recommend

that the Attorney General, rather than the Administrator of LEAA, designate the Director of the Institute and this recommendation was adopted in the 1976 reauthorization.

Sarah Carey, a participant in the Federal Aid Panel, mentioned the conclusion in her report, *Law and Disorder IV*, that the Institute should be an independent agency. Another major report, *Law Enforcement: The Federal Role*, by the Twentieth Century Fund, recommends that there be an entirely new Federal agency under the Department of Justice which would have as its central mission research, evaluation and demonstration. No legislation affecting such changes has been proposed as yet.

In addition to panelists' suggestions regarding the Institute, Caplan specifically suggested the establishment of a Bureau of Criminal Justice Statistics, and the need for such a single, separate unit for the collection of national crime data was also noted by Wolfgang. In 1976 several Justice Department officials, including former Attorney General Edward Levi and Deputy Attorney General Harold Tyler, called for the establishment of just such a Bureau within the Department of Justice but not under LEAA or FBI supervision. However, this proposal was opposed by the FBI and the president of the International Association of Chiefs of Police. In late Fall, 1976, the Justice Department was preparing legislation to submit to the 95th Congress; however, with a new Administration this legislation is uncertain. Nevertheless, such a proposal was suggested by the 1967 Crime Commission and has long had wide-spread support within the research community—making it a likely candidate for consideration in the new Administration.

D. TRANSCRIPT OF PROCEEDINGS (RESEARCH AND TECHNOLOGY)

Ms. DERTHICK. Judging from this morning's first panel, the one on Federal Aid to State and Local Government, this may be a large topic. Because whenever anybody talks about LEAA's grants to the States, someone is sure to say, well maybe the Federal role in assistance should be reduced to one of research and technology. I suspect that this is arrived at not because of any great faith in research, but out of pessimistic conclusions about the value of LEAA grants.

There are three panel members for research and technology. Jerry Caplan is the Director of the National Institute of Law Enforcement and Criminal Justice. Jerry, you should have been here this morning. Sarah Carey called you an honest bureaucrat or some other flattering thing.

Mr. CAPLAN. I wanted to. I haven't stolen anything lately.

Ms. DERTHICK. No white collar criminal, he. Marvin Wolfgang, Professor of Sociology at the University of Pennsylvania, Director of the Center for Studies in Criminology and Criminal Law, is an author of several distinguished works of sociology in the field of crime and criminology. And, Alfred Blumstein, former Study Director of the Institute of Defense Analysis, which, when he was there, published a national program of research development, test and evaluation on law enforcement and criminal justice. With others he has developed a computer simulation mode of the criminal justice system. Jerry, you are on the right and there's at least one precedent for starting on the right.

Mr. CAPLAN. Thank you. I'm particularly pleased to be here because, unlike some other speaking engagements, this time I have something very specific on my mind. I want to talk about an idea that has been with us for some time, and that has attracted growing interest over the past few years. In terms of impact on criminal justice research, I can think of nothing more significant than the benefits that would flow from creating a national Bureau of Criminal Justice Statistics. A number of people here know this subject better than I do. But, with all due respect, I would like to plead the case today.

The call for a Bureau of Criminal Justice Statistics has been made by every group that has studied the problem. In 1931, the Wickersham Commission was particularly eloquent on the subject. In 1967, the National Crime Commission echoed the call. Most recently, an editorial in the *Philadelphia Bulletin* took up the cry, in response to a speech by Judge Tyler [Deputy Attorney General Harold R. Tyler]. One line in that editorial particularly struck my fancy: "If the government can trace a hog from farm to market it ought to be able to trace crime from the streets through the whole criminal system." And it went on to say, "If we can do that, it might make some difference."

By the end of this fiscal year, I will have been responsible for allocating more than $130 million dollars. As I read that editorial, I thought about how differently I might have done my job had data been available from a well-run criminal justice statistics bureau. Operating somewhat like the Bureau of Labor Statistics, such an agency would look at victimization and crime reporting, the processing of offenders throughout the system from arrest, prosecution, conviction, incarceration. It would give us the basic data that does not now exist, data that other countries have been collecting for years, and that some States are now beginning to gather—data on manpower needs, budget needs.

This kind of information would move criminal justice research closer to what I would consider a scientific enterprise. It is not that now. To a very real degree, one person's opinions are as good as another.

It is important to recognize that we do not lack the know-how for this kind of enterprise. The technology is there; it's been around for a long time. The experience is there; we need only look at other countries or at some individual States. The difficulty rests more in the political realm: we have lacked the will.

What we have now are two ways of measuring crime, both of which are very inadequate and show only part of the picture. The Uniform Crime Reports, collected by the FBI for several decades, reflect only a small part of the process—arrests. LEAA's victimization studies are methodologically sophisticated, but still tell us about a small piece of the action—the relationship of reported crimes to unreported crimes. And then one draws a blank in knowing what to do about it.

The trouble with much of the information that's gathered is that it has no policy value, no programmatic implications. It is impossible to devise a recipe for change from it. We seem to be collecting data for its own sake. We no longer ask why we want to know this. We simply go on collecting it, and try to collect it more accurately. Sometimes we do and sometimes we don't.

But what one wants to know is not, after all, the number of crimes committed or the crime clock that is featured in the quarterly release of statistics. Whether a rape occurs every 18 seconds or every 32 seconds, or somewhere in between, is simply not in itself useful information. In fact, one wonders if it may be something more insidious—designed to alarm or at least having the impact of alarming. But what does it mean? If the occurrence of rape went down from every nine minutes to every eight minutes, should we applaud? It is a curious way of presenting critical information to the public.

What we need to know, at the very least, is the relationship between the parts of the system. The criminal justice system has a lot of tension at its decision-making points. For example, the prosecutor second-guesses the policeman's decision to arrest. The prosecutor says that what the police did was "wrong"—at least in terms of the prosecutor's willingness to prosecute. In many systems, he does this three out of four times or one out of two times. This fallout rate is something we just have to know more about.

We have to know about such things for very basic reasons. For example, what can we say about building more prisons, about adding more policemen? Very little. One really can't make those kinds of decisions on the data that we have now.

I realize that talking about the need to collect more information may seem irrelevant when criminals are running loose and causing so much pain and suffering. Nevertheless, I believe this is far more valuable than hasty and premature decisions to spend more funds in one area or another. I'm not saying that those judgments can't be made in individual cities or at a particular time, but they can't be made in a sensible way, in my view, from anything like a national perspective. In other words, they can't be made from where you are sitting until we have a mechanism for collecting and analyzing data. Again I think of an agency like the Bureau of Labor Statistics that goes beyond just descriptive data and attempts to analyze and explain. If a similar agency ex-

isted for criminal justice data we would, in the next 5 to 10 years, begin to have a vocabulary that would enable us to talk about crime with a degree of confidence and sophistication we simply do not now have.

Our present statistics are not only inadequate but, perhaps most damning of all, nobody believes them. Whenever crime statistics are issued, you can pick up the papers and find that the basic debate is over reliability. The question is, "Are they correct?" rather than "What do they mean?"

About six months ago I was driving to a Justice Department meeting, and I heard an announcement by the Bureau of Labor Statistics. Immediately following there were some economists on the air giving different views. I thought what a wonderful thing it would be if the release of crime data could be followed by thoughtful people analyzing the meaning, rather than the reliability of the figures.

The debate about reliability of criminal justice statistics goes on at a time when we could end it. It is not an inherently perplexing issue, as are questions about what the right sentence should be or how to rehabilitate criminals. These are terribly complex questions that we can only nip away at, finding some partial, tentative solution that is immediately under attack and can be used only as a stepping stone to further study.

Why do crime statistics lack credibility? I think the fact that nobody believes them is very much related to the institutions that collect the data, principally the FBI and LEAA. There is the appearance of a conflict of interest, that the agencies, to put it bluntly, have a stake in the outcome. Or so it appears. And that is the major weakness, apart from the chief deficiency I've already cited—that the statistics show only a very small piece of the system, and not a very interesting one at that. Data on arrests are not what I want to know if I'm going to make some big-money decisions on expenditures or some major policy decisions.

Our present system has begun to foul us up in other ways. As you know, the Uniform Crime Reports is simply a central repository for data submitted by municipal law enforcement agencies across the country. LEAA has another method for measuring crime that relies upon the Census Bureau and random survey techniques to find out victimization rates. Initially, there were differences in the extent of crime that one wanted to know more about. But in comparing the 1973–1974 FBI data and victimization data, there was not only a difference in the amount of unreported crime compared to reported crime, but in the direction of the crime rate as well.

Let me give you some examples from a study done by one of the National Institute's Visiting Fellows. For 1973–74, the UCR showed an 18 percent increase in burglary, the victimization survey showed only a 4 percent increase. For robbery, the UCR showed another 18 percent increase and the victimization data showed only a 3 percent increase. Now the dramatic example—according to the UCR, purse-snatching was a plus 23 percent, while the victimization survey showed a minus 18 percent.

Which of these figures is right, or more right, or how to reconcile them, become very important questions. For most of the country I think the mood has very much reflected the Uniform Crime Reports: things are worse than ever and we don't know what the hell to do about it. The victimization survey suggests that one explanation of the UCR figures may be that there's been a shift in reporting behavior; that is, a small change in reporting a crime will produce a big change in the statistics—not a very difficult fact to grasp if that is, in fact, the explanation. However, no explanation has been made.

The end result is that we have two systems that issue crime figures from time to time. You can take your choice, whether you want an upbeat announcement or whether you're in a grim and cynical mood and prefer to see the worst. Or whether you want to feel both ways and do as I'm doing, quoting both of them. The point is that we *can* make more sense out of these statistics.

Let me close by repeating my earlier point that people in positions like mine—not just in research, but criminal justice planning staffs and other types of practitioners—that have manpower and funds to allocate would be doing things differently—ranging from a little bit differently to very much differently—if we had the benefit of the kind of sound data that illuminates other areas of our national life.

Thank you.

Ms. DERTHICK. Professor Wolfgang?

Mr. WOLFGANG. I thoroughly concur with Jerry Caplan about having a separate unit for collection of national crime statistics, very much along the lines that Judge Tyler mentioned. We need to have a way of tracking people and offenses from the beginning of the initial complaint. One of the most difficult or virtually impossible things to do under the current FBI data collection system is to move from "offenses known to the police" to imprisonment. The layers of statistics change, the unit changes from that of the offense to the offender, and while it would seem to be relatively simple to keep data on both offenses and persons arrested and processed by the criminal justice system, it has not been done.

It is most unfortunate that in the United States we have no national judicial statistics. The attempt was made in the 1930's but died in the mid-'40's because it was inadequate. There was no representative sample, let alone a complete enumeration of all the judicial business in the country.

My mentor and former colleague, now retired, Thorsten Sellin, was quoted as having said that the United States has the worst criminal statistics of any country in Western society. He said that back in the '30's, repeated it in the '50's, and I repeat it in the 1970's.

I would like to say a word about research from the point of view of research scholars and what contribution or relationship exists between the research community and potential users of research.

Research in criminology and criminal justice in the United States has been extremely inadequate, is uncoordinated, is segmental, and with little impact on the administration of justice, or at any rate on the major decision-makers in the key, pivotal places from local community citizens to the police, judges and corrections. There is a chasm between the research community, which itself is relatively small, in a country of 215 million people, a chasm between that community and policy-making and policy-implementation. It is as wide a gap today as it was even 20 years ago. The reason is partly because the research community has increased—I'll use Thomas Malthus here as my informer—arithmetically, while the number of persons in criminal justice and the amount of money and the organizational agencies in criminal justice have increased geometrically. That geometric increase has produced a corresponding increase in mediocrity. I know that there are some people in Washington who have said that mediocrity also needs to be represented, but I would not like to see it represented in research. This mediocrity flourishes in criminal justice programs in many ways, but one way in particular is the extraordinary increase in the amount of criminal justice programs in local community colleges around the country. I suspect that they are not only neutral; I think they are probably doing harm. They grew up because money was available, but the increase in the research community and the amount of real output of sophisticated research simply has not at all kept pace with the increase in the amount of funds available, and the number of organizations and the increased sensitivity of the public and of the Federal government to the problems of crime.

I know that I sound a little dour about the research that has been done. One of the reasons I can say something about this is that our Center for Criminology has just about completed a National Science Foundation Project designed to evaluate research and theory in criminology in the United States from 1945 to 1972. We have carved out only one part of the terrain of crime and justice—everything in research and theory up to the police. We stopped short of the police and the administration of justice. But we have examined all the etiology of crimes, crime causation, organized crime, delinquency, gangs, victimization, white collar crime, etc. We reduced the enormous amount of writing down to about 3,500 books and articles, which we have captured and examined. I mention this project because it is relevant to my initial comment about the inadequency of research. We have done this evaluation in a three-pronged attack.

First, we have entered history and philosophy of science literature and have produced a Criminology Citation Index. What that means is that we have looked at the number of times that research authors have been cited. This is a simple counting system, but it works well in the physical sciences like physics, biology, mathematics and engineering. These disciplines have a history, since 1962, of the science citation index. They have been analyzed to such an extent that they believe they can predict Nobel Prize winners simply by counting the frequency authors have been cited in the literature. And they can, as a matter of fact. We have done this for criminology since 1945, in the United States. It sounds like a laborious, tedious task, which it is, but we did it, of course, with the help of the technology of computers.

The second prong was to do a peer evaluation; that is, very simply, we sent out questionnaires to a selected sample of persons in the field across the country and asked them to rate various research works in the literature since 1945. We got feedback on that and compared the peer evaluations with the science citation index.

Third is the content analysis. We read all of these 3,500 articles and books with a special schedule of information, accumulated the data, put the data and analyses on computer tape, and are in the final stages of examining the character of the research that was done. We are now making comparisons among these three methods.

There is just one point that I wanted to make about this particular study relative to research in criminology and criminal justice. That is, most of the work that has been done since 1945 has never been cited by anybody. Over 50 percent of what was written has never been cited by anybody, anywhere, even by the authors of the original studies. They do not even cite themselves. This is a sad commentary, to realize that much that is printed is put on the shelf with no one listening. As a matter of fact, only about two and one half to three percent of all the persons who have done work in criminology, in this territory to which I was referring, since 1945, are cited. About two-thirds of all the citations are represented by two and one half to three percent of the researchers. In short, it's a relatively small cadre of people who are ever cited and these are often repeatedly cited in the field.

One of the things we hoped to show with this particular study on research in criminology is in what areas the best research has been done, where the weakest research has been done, and where we need to have more research that will provide the kinds of answers that Sarah Carey had mentioned.

More broadly, I should like to say that the allocation of LEAA action funds should be decentralized. I say just the opposite about research. Research needs to be more centralized, more coordinated. Research cannot be democratized. We need to have some separation of the Institute, as Santarelli has said, from the rest of LEAA; we need to have more of a linkage of that Institute, as various evaluators are now saying, with the research community, with the traditional academy that is doing basic, fundamental research; and a greater liaison of this Institute with such agencies as the Crime and Delinquency Center at NIMH. Democracy has some virtues in its inefficiency, mainly concerning the bureaucracy. But with respect to research, I am not suggesting that we centralize and coordinate our research activities to such an extent that we stifle creativity or innovation that may come from the fringes or radical edges of the research community. We have to be sensitive not to do that. But I shall give one example of the lack of coordination and cooperation that came to me just today in this conference. Here is John Conrad, an old friend and colleague for many years, living only one State away from me, who reported some research on incapacitation. Now my Criminology Center at Penn is engaged in incapacitation research also, but I never knew that he was doing this. I never heard about it until today, and I have to drop him a note to ask him to send me a copy. Now that kind of thing should not happen. I think it is not happening now in heart research or cancer research. It should not happen, but it continues to happen repeatedly in criminology and criminal justice.

There is an overall perspective that I think might be useful about where research might be more actively done and where the Federal government can intervene in the whole area of criminal justice. This idea is not original with me, but let us think in terms of three different layers. I think Santarelli this morning talked about the family and the "root" causes of crime. Most of us are quite willing to agree that the family as a social unit is extraordinarily important relative to the inculcation of norms of behavior and the lack of discipline or supervision in the home. But we cannot do much about that at the Federal government level, or even the State or local government level. We cannot legislate love, or supervision or discipline of children.

The second layer is that of education, employment, better housing. Here, the Federal government, obviously, has a major role, but it seems that these are targets that should be intrinsic. We generally should have better education, improved housing, improved employment opportunities, etc. Not just to reduce crime, but for their own sake.

The third level is the criminal justice system itself, where there is a capacity for the Federal government to manipulate, to function, to produce some change

in intervention. That is where I think we need to put a considerable amount of our resources in a kind of panzer attack on the problems where we can, indeed, do something about criminal justice, about crime and punishment.

My personal and professional research proclivity has been that of longitudinal or birth-cohort studies. This interest developed about 15 years ago when it became evident to me that most cross-sectional data were inadequate for promoting probability statements about being arrested, being convicted, imprisoned, being a recidivist and so forth. The chances of ever being arrested, as a juvenile under age 18, or as an adult or through the critical ages up to 50, or even over a lifetime, were not generally and nationally known in this country.

I have become a promoter of longitudinal studies, wherever possible. From our own Philadelphia birth-cohort study we took 10,000 boys who were born in 1945, and we followed them up to age 18. Since then, we have continued to follow a 10 percent sample up to age 30 in 1975. We are fortunate in having been granted an opportunity to do a replication of the Philadelphia study and we will be starting shortly by taking a birth year of 1958 and following, this time, both males and females.

The problems of doing longitudinal studies in this country are enormous, however. There is no central filing system, not only nationally, but even on the local, urban level. There is a concern for the privacy of the files, and that concern conflicts with research interests. And I think that conflict needs to be settled before we can think of engaging in this kind of longitudinal analysis on a broader scale. We have difficulty tracing people by name or number in this country. That is unlike the capacity that exists, for example, in the Scandinavian countries. I'm turning more and more of my own research attention to Denmark where there are abundant opportunities for tracing people in the penal registry from birth until death, and I have linked up some of my research interests with scholars at the University of Copenhagen because of the capacity to do longitudinal birth-cohort studies that makes it possible to produce probability statements.

The purpose of doing career analyses of crime and criminals, to look at the crime switches, the changes that occur in crime commission, to look at the amount of crime-free time that exists between the commission of crime, not only in civilian life, but during conditions of restraint and incarceration, is to determine how many crimes are likely to be committed on the average by an average offender over his lifetime. To know the amount of time an offender has been in prison, or has been under some kind of serious restraint, one can only obtain from a longitudinal study.

Such studies help to measure the effects of intervention programs, treatment, deterrence policies, to study the inter-active effects, for example, of biological, physiological, endocrinological, psychological, as well as sociological factors. I think these are truly significant interactions that we have not begun to examine in this country and I consider these interactions important not simply as an academic exercise, but for social policy purposes as well. I am inclined to think that the lack of protein, for example, or poor diets that exist in many ghetto children's lives, have a significant effect on their behavior and aggressive behavior.

We spent a lot of time on the birth-cohort study, talking about our chronic offenders, those who committed five or more offenses before they were age 18. We have now added to that population, when we take them up to age 30, about 14 percent to our original group. There are many social policy implications involved in what we are doing with them. This is not so much for purposes of predicting, in advance, who is going to become a chronic, serious criminal, as it is for prevention and to look at the effects of incapacitation.

One final point I wish to make. We are also involved in a crime severity project. About 15 years ago, Thorsten Sellin and I, interested in producing a better crime index than the FBI had, began to look at the seriousness of crime, that is, how serious robberies are in comparison with rapes—not in terms of the frequency of commission, but in terms of people's perceptions about the seriousness. After all, legislators, when they write penal codes, give more severe sanctions to rape than they do automobile theft. And so we did a small study in Philadelphia, with about 1,000 subjects—police officers, juvenile judges, and the usual captive university students—and asked them to give us numbers that would represent the degree of seriousness of a robbery, a rape, etc. We had 141 different offense descriptions. We are now in the process and at the end of the first year of doing this same study on a national representative sampling basis.

We are riding piggyback on the victimization survey that Jerry Caplan talked about. This summer we will be entering, with the census enumerators, about 30,000 households, or having approximately 60,000 interviews during which people will be asked to give us score values for the relative seriousness of approximately 200 offenses. We have now added environmental pollution, bribery offenses, corruption, and other white collar crimes.

We expect to produce a kind of Beccaria's scale of seriousness of crime from the least serious to the most serious, which will tell us what those ratios are. How much more serious is a murder than a rape, or a rape than a robbery, etc. The utilization of that kind of scaling I think is enormous, more than I originally anticipated 15 years ago, with respect to the allocation of police resources, to guidance in sentencing decisions, in measuring the success of various intervention programs. We may not be able to reduce crime, but we may be able to reduce the amount of serious crime. If people who have been subjected to a treatment program are still recidivating at the old rate, maybe they could be doing less serious things than they've done before.

Ms. DERTHICK. Thank you Professor Wolfgang. Professor Blumstein.

Mr. BLUMSTEIN. I'm sorry I missed much of the discussion this morning, and apparently many of the points I wanted to make were made implicitly by one of the speakers. First, I would like to join in what I gather was Sarah Carey's position, and certainly Marvin [Wolfgang's] position, that emphasizes the very important national role for a research program. One may have doubts about whether the LEAA grant program ought to be special revenue sharing, or whether it is special revenue sharing, or even whether it ought to be general rather than special revenue sharing. But it's clear that a research program can only be done on an aggregate basis to take account of the economies of scale: research is expensive; the benefits of a research project are wide-spread; and no single jurisdiction is likely to find the benefits worth the costs for that jurisdiction, but the aggregate of benefits indeed do make it appropriate that there be a central national program.

There's also a basic need for critical mass in the development of a research program. One of the problems with current criminology and criminal justice research is the degree to which it is dispersed over many institutions, many organizations and many funding sources, without bringing together the kind of thinking that would guide and fuel a creative, competent and effective research program. And it's clear that money alone won't achieve this. LEAA's overall program provides evidence that throwing money at the problem of crime is not sufficient, and the LEAA research program demonstrates that throwing money at research alone won't achieve it. There are structural issues about the nature and the character of a research program that must be addressed in order to make the research program interesting and effective.

The research has got to be directed first at finding out about crime and the factors that influence crime—the research itself. Then there must be *development*—finding better ways of doing the jobs that are needed. Then, there must be careful evaluation of some of these alternatives.

Most fundamentally, in this field which is so laden with rhetoric, the research has a basic responsibility of holding the feet of that rhetoric to the fire of empirical reality. There is a great quantity of myth about what works and about what doesn't work to control crime. And there is virtually no empirical testing of those myths. A fundamental responsibility of the research program must be to focus on the rhetoric that is introduced into the various policy debates and to illuminate the empirical aspects. We saw much of it in the sentencing discussion this morning. Sentencing policies might be based on pure retribution, and empirical reality is not terribly important for that, other than seriousness weights. On the other hand, the utilitarian questions of what works are fundamentally empirical; yet there has been very little illumination of that debate by empirical reality.

Partly as a result of the initiative of the Institute, there is a panel of the National Academy of Sciences, of which both Marvin Wolfgang and I are members, which indeed is trying to look at the variety of research findings, regarding deterrence and incapacitation. There have been a number of very significant advances in trying to estimate the effects on crime of the various sanctions—imprisonment for incapacitation and the whole range of sanctions for deterrence—to see what good they do in what settings. It's clear that much more has been made of some of the research findings than they deserve, but it's also clear that we *are* indeed moving forward, and finding some research progress

that, at some point in the not too distant future, will indeed help in making better sentencing policies.

Given that we should and, indeed, have to have a Federal research program, it's critical that that program be right. And I think we've seen over the past history of LEAA and the Institute, some striking examples of ways to do it wrong.

In introducing the legislation that created the Institute, Congressman Scheuer had some very important visions of the kind of research program that might come about, and that might illuminate the policies of concern. Unfortunately, there have been a large number of stumbles and disappointments in transforming that vision into the research program that we now see within the Institute—within LEAA.

The primary requirement of an effective research program is that it have integrity; and for integrity its results must be credible; and for its results to be credible, they must be derived from a process that is not driven by one of the ideological positions in the policy debate. It requires, therefore, that there be a reasonable scientific objectivity in that research so that, indeed, we can find out what works and what doesn't work. There were earlier commitments by LEAA to undertake a striking new program—an "impact cities" program—that was going to reduce certain target stranger-to-stranger crimes by 5 percent in two years and 20 percent in five years, and, indeed, the Institute and its research program were held responsible for bringing about that reduction. It is unreasonable to make those kinds of demands and irresponsible to make those kinds of commitments in an environment where no one knows the effects on crime of the actions taken by the criminal justice system. That is especially true for an agency as remote from the problem as LEAA is, and even much more so for the research program. When a research institute becomes involved in such commitments as part of the political process, it ends up destroying the credibility and integrity that a research program must have.

A research program cannot have the integrity that it needs without having extremely competent staff. Incompetent results and wrong results are simply not credible themselves, and reflect on the integrity of the entire program. Thus, the operation of the research program must be structured to draw good people into the Institute, and to attract good grantees to its program.

This structuring must take account of the organization and sociology of the research environment, and of the incentives that good researchers will respond to. It's essential, for example, that the Director of the Institute be somebody who comes from the research community. It's very difficult to convince good research people to join an organization that is not headed by someone who is himself experienced and preferably skilled in research. They want somebody who will indeed understand and indeed critically evaluate their work on their terms. They will want someone who will create an environment in which they can prosper. One cannot accomplish effective research work or even attract effective research people in an environment where the results of their research will be distorted for political ends.

It's clear that research in the criminal justice field deals with an inherently political problem. That doesn't preclude it, however, from being adequately insulated from the direct political manipulation and distortion of the findings to serve political ends. The research effort should not be distorted and the research findings, particularly, should not be distorted to support specific political positions. This means that one has to provide some insulation between the Institute and the specific institutions that do have the political pressures on them. That specifically includes LEAA, which, indeed, has been—and probably will continue to be—held responsible for crime rates in the United States, and that means that the Institute is inevitably going to have to come out from under LEAA. It also means that the Institute is going to have to have a statutorily created advisory board, which has some influence over the policy and program of the Institute, but also at the same time, offers some insulation between the political process and the integrity of the findings of the Institute.

Jerry Caplan, in his tour of duty as Director of the Institute, has done an extremely noble and effective job in protecting the Institute from a wide variety of attempts to dismember it, to attack it and to distort its output. He has performed a magnificent job of defense.

I would hope that we will see in the next few years a shift in emphasis from simply defending the Institute and its program to trying to create and build an effective institution that will have a major impact on our knowledge and on our thinking about crime and criminal justice.

A necessary part of this effort will be to repair the fragmentation that has splintered the various activities, all of which directly involve research within the area of criminal justice. We have a National Institute which has just some pieces left; we have a NCJISS [National Criminal Justice Information and Statistics Service] which does its own statistics without any relationship to the research effort; we have a UCR [Uniform Crime Reports] which does a separate crime rate measurement activity; we have a project SEARCH [System for Electronic Analysis and Retrieval of Criminal Histories] which does a variety of technological things; and all of these are fragmented and not coordinated, and not effectively interrelated. All of these efforts are going to have to come together in order to make the program effective and in order to have the kind of integrity that it will need in order to attract the competent people needed to manage and to carry out this program.

It's imperative that the Institute be structured so that it move to the forefront in the research agenda of the nation in criminal justice. The past few years have seen a number of important research efforts that, indeed, have had some impact on thinking about crime and criminal justice operations. One of these has been the Kansas City Preventive Police Patrol experiment, set up and managed by the Police Foundation, of which Pat Murphy is president. We've seen some findings on deterrence by a wide variety of econometricians. We've seen some new research that has significantly helped to illuminate and provide insight into incapacitative effects. We've seen work by Robert Martinson that has pulled together a variety of correctional rehabilitative studies and found that there doesn't seem to be much difference among alternative strategies of rehabilitation. Each of these is limited in not providing definitive information on which people can make immediate policy judgments; but each of them is terribly valuable as a step forward in knowing where we are in crime and crime control.

It's disappointing to note that none of those derived from the efforts of LEAA and its research program, but each of them came about, at least initially, through efforts outside the LEAA program. There should be a major effort to bring together the best thinking possible to guide the Institute—this integrated program within the Justice Department—so that it can represent the major force for progress that was envisioned at its creation and is reflected in its having the largest piece of the money.

There's been some discussion about the need for improved criminal justice planning. Probably the most plannable criminal justice system we have in the country is that of the U.S. Justice Department. Only for a short period during Elliott Richardson's term as Attorney General, did there seem to be a significant, conscious effort to plan for the Federal criminal justice system, as the Federal government has mandated the States to plan through the LEAA program. That effort disappeared as Elliott Richardson got involved in other more serious matters and as far as I've been able to determine, there's still been very little effort to plan for the Federal system, which, indeed, is integrated in ways that most State systems are not and which, indeed, could be planned for, and as a minimum, could set a standard and example for the rest of the country.

To summarize briefly, then, I believe that there is indeed a critical Federal role in research in criminal justice, and the degree to which that role will be effectively implemented over the next few years will depend critically on the way the program is organized and the degree to which that organization attracts competent and effective people for its planning, management and operation.

Ms. DERTHICK. Thank you very much. Professor Wolfgang has to leave shortly. Let's go right to questions.

Mr. MEEKER (James Meeker, Senate Judiciary Subcommittee on National Penitentiaries). Professor Wolfgang, you hinted that in the extension of your cohort study you may have learned something about the relationship between incapacitation and crime. Could you briefly summarize—

Mr. WOLFGANG. Unfortunately, we haven't finished that yet. I think in another month or two, we'll have it. But one of the things we have been able to do with the follow-up to age 30 has been to fill in empirically the research model of incapacitation that has been mentioned previously. As Al Blumstein said, we're both on a panel in which the deterrent and incapacitative effects are being looked at wherever the studies have existed. Unfortunately, I don't have any data to give you. I simply referred to it as a basis for giving us some more information about the incapacitative effects through longitudinal study.

Mr. BARBOZA (Maurice Barboza, House Judiciary). Recently I've had the displeasure of filling out an anonymous questionnaire for a political science

professor doing some research on hearing procedures. One of the questions was: "How often do outside sources and experts in particular make proposals for hearings?" On a scale of one to ten, we added a category of zero. This morning Sarah Carey alluded to both the Senate and the House hearings on LEAA, and criticized both bodies for failing to look closely at the LEAA program. Of course, just a moment ago Professor Wolfgang noted that he had not been aware of a study that Mr. Conrad had prepared. Well, if you're not aware of the studies that your own colleagues are preparing, then how do you think Congress is going to be aware of some of the things that you're doing, particularly the things that aren't yet published and the studies that are in progress?

I think Congress suffers a great deal of perhaps unwarranted criticism for failing to look closely and carefully at problems. During my four years on the Subcommittee on Crime we had a very small staff. Much of our work was geared toward finding witnesses, preparing hearings. We had, of course, the expert help of the Library of Congress in preparing bibliographies and things of that sort, but during that entire time only one person ever sent an article that he had written to us. Only one person had written an article. No one had ever written a letter to propose that we conduct a hearing on this area of sentencing or on a particular aspect of the legislation. What do you feel is your role in helping to make public your work in crime and helping to bring to our attention your studies on crime?

Mr. WOLFGANG. I think you're right. Congress should not be indicted for not knowing everything that is going on. The research community itself does not. That's why I wish to underscore what has been said by all three of us about the necessity to have some kind of Federal research program that helps to coordinate major research activities as a clearinghouse of information and a program of dissemination of the good research that's being done. Unless or until we have such a Federally-coordinated, functioning program, we are going to continue to be as fragmented and as full of as much pluralistic ignorance as we currently are.

Some years ago I served on the National Commission on Obscenity and Pornography. One of the first things we did was to determine what research was being done on erotic stimuli. We put a considerable amount of money and time into pulling together all research in this area and that mini-operation was successful. It is that kind of organization, with an ongoing coordinated research program, that could make data and findings available to Congress with dispatch as well as to other researchers across the country.

The kind of scientific evaluation we have been doing in Philadelphia is extraordinarily ambitious and arrogant, because we are providing a rating of research production. I think we need to be more self-critical in the research community and I think a coordinated Federal research program should be established to help us in this task.

Ms. DERTHICK. Could you say very quickly how you think the quantity and quality of research have been affected by the availability of Federal money in recent years?

Mr. WOLFGANG. I think that the quantity is greatly increased, but I am not sure that the proportionate amount of top-quality research has correspondingly increased. The total volume of good research or the absolute volume of good research, I think, has greatly been affected by the amount of Federal funds that have been available. But we pay a big price under the existing programs because the payoff is still relatively small.

Mr. BLUMSTEIN. I think research is essentially a low yield operation and you end up having to fund a lot just to get a few good nuggets. And I think it is important to recognize that the absolute level of good stuff has increased, even though the average level may, indeed, have gone down. But it's the nuggets that you pay for.

I'd like to make another comment in response to the question about getting material to the Congress. One of the dilemmas you're going to be facing in future years is that the nature of the research findings are going to become increasingly complex and elaborate and more and more difficult to interpret. One of the reasons that this panel on deterrence and incapacitation was created is that the deterrence research involves elaborate econometric models whose assumptions are very difficult to ferret out, and whose failings, therefore, and vulnerabilities are very difficult to assess. And this problem is particularly critical in the field of criminal justice, which is populated by people, typically, without

the technical background to make those technical judgments, but who have to make and use those assessments. Which is precisely why the panel brought in econometricians who didn't know much about criminal justice and statisticians who didn't know much about criminal justice, in order to get a technical assessment of where the research is right and where it is wrong. So that as the flood of material starts coming to you in response to your request, you're increasingly going to have the problem of interpreting it all.

Ms. DERTHICK. Mr. Caplan?

Mr. CAPLAN. Yes, I'd like to focus the issue somewhat differently. Historically, LEAA has had a bias toward the practitioner in developing its research program, and not toward the researchers or toward development of new knowledge such as that coming from these very difficult mathematical studies that economists are now urging upon sociologists. This is a debate that's been looming for a couple of years. If you look at the most significant successes of the National Institute, for example, I would say that they're generically different from what Al Blumstein's talking about. They are geared toward a different audience. For example, I would say that one of the Institute's most important projects was a study of juror usage. It was a relatively simple study that looked at a number of jury systems and found that jury commissioners were calling about 20 to 25 percent more jurors than were needed. This seemed to be the case almost everywhere. The project then applied a rather simple, well-known mathematical technique and queuing formula that showed the courts how they could reduce the size of the jury pool by about 20 to 25 percent and still have enough jurors for trials. At the same time, jurors seemed to be more pleased about serving, because they spent less dead time, idly waiting. That study has been widely adopted—some 50 to 75 jury systems have taken advantage of it. And the savings in one city have been as much as a million dollars. We can say that this has really made a difference. But in a researcher's terms it's important only in the sense that it comments on the very underdeveloped, backward apparatus of criminal justice. It in no way adds to our understanding of the behavior of criminals.

I just had some Congressional investigators spend two hours with me, and they said they had been talking with some chiefs and some prosecutors and judges and these guys want to know, "What is the National Institute? What do you guys do? What have they done for me?" And "No one's consulted me." I think this has been the real tension between the Institute and its constituency. It may be that the structural changes in the Institute that have been called for should be designed to permit serving the function of meeting practitioner needs, as well as trying to get a better handle on the crime problem.

Mr. HART (Timothy Hart, House Judiciary Committee). One of the things that has disturbed me is that the academic researcher is used as a selective "fire support weapon" for social policy propositions. The most egregious example I can think of is the use of Professor Wolfgang's first cohort study as the basis for definitive arguments against gun control and for mandatory minimum sentencing and vice versa. Professor Blumstein has framed the issue in terms of independence that is protecting; he mentioned an advisory board with the power to direct the course of the National Institute and also to provide insulation. In legislative terms, it sounds as though he's building a green serpent.

Mr. BLUMSTEIN. A what?

Mr. HART. A green griffin—you're describing something which can't exist. We understand the why and wherefores, what we need is the hows. How do you create an institution which will protect your research and still have an impact on social policy questions on the Federal level?

Mr. BLUMSTEIN. I think first that we have to recognize that we still really don't know what to do about controlling crime well. I think we are phenomenally in the dark about the social policy regarding crime. And there are two aspects to that policy. One is the empirical knowledge of what actions have what effect on whom. The other is the imposition of the values on which of those effects we want to buy. The Institute, inevitably, will have to make a trade-off between insulation and direct impact. The closer it wants to come to *setting* social policy, the less insulation it can count on. The more it is prepared to *illuminate* the debate on social policy—which I would argue is the real function of a research institute—the more it will need the protection, and the more effectively it can function with that protection.

I'm not arguing that its advisory board should direct the program. I'm arguing that the advisory board should *advise* on the program, but it should advise effectively. It should see to it that the program has empirical and intellectual integrity, which the criminal justice system desperately needs. The system has

many people who want to establish social policy. It sorely lacks the institutions within it which can effectively provide empirical guidance to illuminate the social policy debate without taking sides in it. And that's been the problem created in LEAA, which has wanted to bring the Institute and its guns onto the side of *its* policy rather than let it provide that much-needed illumination.

Mr. HART. What I'm looking for are suggestions. Mr. Caplan has assured the survival of the Institute but not its vitality, which he can't do because the Institute feels the direct brunt of political pressure.

Mr. BLUMSTEIN. Well, but some of the movements have already started. The Director is now to be appointed by the Attorney General, rather than by the Director of LEAA. It has been recommended and was clearly inherent in some of the renewal legislation that the Institute itself be brought out of LEAA. I think it's inappropriate that the Director of LEAA have sign-off authority on all Institute grants. There was an attempt by the Administrator of LEAA to review research reports done under Institute grants. There is very little peer review in the Institute's research program, and peer review is an important mainstay that protects the integrity of the NIH and the NIMH research programs. There are a variety of mechanisms in government for enhancing the quality and integrity of a research institution, but that is inevitably going to require, at least for a developmental period, that it remove itself from direct participation in the social policy setting, letting others impose those value judgments on what should be done, but helping them do it through the assistance of their research findings.

Mr. HART. I don't follow that. Could you give us a hint as to how we do that?

Mr. BLUMSTEIN. Well, I thought I not only was hinting but prescribing. Take the Institute out of LEAA. The Attorney General appoints the Director. The Director has sign-off authority. The Director responds not so much to the bureaucratic structure, but also to the constituency of researchers where the integrity of his position will be judged in terms of the validity of his statements and the validity of this program. The institute should have a statutory advisory board of distinguished researchers, as well as criminal justice practitioners, providing guidance on program and providing some insulation from the pressures to support LEAA's social policy. Those sound like quite explicit prescriptions to make the Institute much more effective as an illuminator, rather than a determiner in that policy process.

Mr. HART. Perhaps I am unable to reconcile this because it seems to me that illumination alone is not sufficient to combat social problems. What I see, rather pessimistically and cynically, is institutions like the National Commission on Marihuana and Drug Abuse. That was a sufficiently independent body in terms of research and recommendations, which was virtually ignored——

Mr. BLUMSTEIN. Virtually——

Mr. HART. Virtually ignored by the policy-makers.

Mr. CAPLAN. It's very hard to monitor the impact of research, but I wonder if that's true in that case. There has been a lot of activity in the States towards a kind of de facto decriminalization.

Mr. SCHEUER (James H. Scheuer, Congressman from New York). I'd like to speak to that. I think the marihuana report had an enormous impact. The decriminalization took place on a lot of levels. Pat Murphy will tell you that about five years ago he simply announced, as New York City Policy Commissioner, that there were not going to be any more marihuana busts in New York. If somebody was picked up with heroin or morphine or cocaine or whatever and he had some marihuana, that would be an additional count in the indictment, but no more marihuana busts. So the police establishment has gone a long way toward decriminalizing marihuana simply by not enforcing the law. The courts have gone a long way, the legislatures have gone a long way, and this has all been summarized by NORML [National Organization for the Reform of Marijuana Laws]. It's had a tremendous impact. And remember it had a tremendous impact despite the fact that the Commission was put together by a President and an Administration that designed the membership of the Commission to come in with a very hard-hitting, know-nothing report. I think it's an enormous credit to the process that over that year-long period the greatest educational job was on the Commissioners themselves. They thoroughly expected to come in with a do-nothing, hard-hitting, right-wing report and they didn't. I think this is an example of the effectiveness of a Commission under the worst conceivable possible auspices, given its original make-up and design, and an Administration that wanted to bury it from the word go. I think the fact that it had the impact that it had is a miracle.

Mr. BLUMSTEIN. You've got to deal with a realistic model of the process by which research findings are diffused into social policy. Those things don't happen instantaneously. Any single research study is not credible on its own because there are all kinds of reasons why research is bad or is wrong. It requires, first, an accumulation of some research and that's in part what made the Martinson work have so powerful an impact, rightly or wrongly. It was an accumulation of findings. Then there's a whole process of re-socialization of the many institutions that have a stake in the former social policy. So to think that suddenly a study or suddenly a commission report will instantaneously revise practice or—even more difficult—legislation, is asking too much. You've really got to deal with a continuing process and how research can best contribute to that continuing process.

Mr. HART. I hope I didn't sound that naive, but I was isolating the issue of the impact upon Federal leadership in the area. Using that example, what was the impact of the Commission's report on Federal grants? On legislative or social policy in any of the three branches? Should we just set up a simple bureau of criminal justice statistics with that type of independence; the best we can hope for the Federal impact being re-socialization at the State and local level, which will force the Federal government to stop dragging its heels?

Mr. BLUMSTEIN. I just don't see the argument you're making. I don't know what impact it's had at the Federal level. Are you arguing that it has had none?

Mr. HART. In terms of institutional or legislative policies it has had very little.

Mr. BLUMSTEIN. Are the Federal narcs pushing marihuana busts the way they used to?

Mr. HART. As far as I know.

Mr. BLUMSTEIN. They are? Really. I'd be very surprised. I don't know.

Mr. HART. Prosecutions, without question.

Mr. BLUMSTEIN. Well, prosecution feeds back to the police. I mean, the police are realistic in that they are not going to keep pursuing cases that the prosecutor won't charge.

Ms. DERTHICK. Mr. Conrad, you——

Mr. CONRAD. Al's comments on the Impact Cities fiasco forced me to reexamine my role in that sad affair. I was there, and I didn't do anything to avert it. The program resulted from a series of unilateral decisions by the LEAA Administrator and the Director of the Institute. I think it is accurate to say that the Institute staff almost unanimously opposed the whole thing, but we had no way to say so. Our superiors made it clear that we were to make the program work, not to make policy. We had no way of communicating our distress to the outside research community, and I doubt that many of the criminal justice researchers like Al Blumstein knew what was going on until it was too late to intervene. When there was publicity about the program through the offices of a busy LEAA public relations office, there was no protest about it from the research community.

I firmly believe that this episode, in which so much research money was wasted, argues eloquently for removal of the Institute from the control of the LEAA and administrators who have not been qualified to make responsible decisions about the expenditure of research funds.

Ms. DERTHICK. Thank you very much. I think we'd better wind things up. This is another panel in which there's been a surprising amount of consensus and a great deal of content.

Mr. ROBINSON. I would like to close by expressing our appreciation on behalf of the Congressional Research Service for the participation of all of the panelists today. We really do appreciate their time. They've given us a great deal to think about and to work with. I would like to express my appreciation to Martha Derthick, our moderator. And to you, as participants, for bringing in live material and active questions that concern you in the area of policy and in criminal justice legislation. We do appreciate it.

Since she's here now I would also like to express my special appreciation to Charlotte Moore who—perhaps almost single-handedly—brought this conference and seminar into being. And with that I'd like to dismiss, with a round of applause for Charlotte for her fine work.

[End of proceedings.]

APPENDIX

CRS WORKSHOP—NEW DIRECTIONS FOR FEDERAL INVOLVEMENT IN CRIME CONTROL

List of participants

I. Moderator

Martha Derthick, Brookings Institution, Washington, D.C.

II. Panelists

Alfred Blumstein, Professor of Urban Systems and Operations Research, and Director, Urban Systems Institute, Carnegie-Mellon University, Pittsburgh, Pa.

Gerald Caplan, Director, National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, U.S. Department of Justice, Washington, D.C.

Sarah Carey, Cladouhos and Brashares, Attorneys-at-Law, Washington, D.C. (author of several studies on the Law Enforcement Assistance Administration).

John P. Conrad, Senior Fellow, Academy for Contemporary Problems, Columbus, Ohio.

Donald R. Cressey, Professor of Sociology, University of California, Santa Barbara, Calif.

Jonathan Goldstein, U.S. Attorney for the District of New Jersey, Newark, N.J.

Norval Morris, Dean, University of Chicago Law School, Chicago, Ill.

Patrick Murphy, President, Police Foundation, Washington, D.C.

Harold R. Tyler, Deputy Attorney General of the United States, Washington, D.C.

Donald Santarelli, Santarelli, Sandground and Good, Washington, D.C. (former Administrator of the Law Enforcement Assistance Administration).

Daniel Skoler, Visiting Fellow, National Institute of Law Enforcement and Criminal Justice, Washington, D.C.

Andrew von Hirsch, Associate Professor, Graduate School of Criminal Justice, Rutgers University, Newark, New Jersey (author of *Doing Justice*, report of the Committee for the Study of Incarceration).

Marvin Wolfgang, Professor of Sociology, and Director, Center for Studies in Criminology and Criminal Law, University of Pennsylvania, Philadelphia, Pa.

III. Congressional Research Service (CRS) Personnel

Education and Public Welfare Division

William H. Robinson, Chief.
Earl Canfield, Assistant Chief.

Joyce Vialet, Section Head (Crime).
Beverly Bennett.
Scott Christenson.
Barbara McClure.
Catherine McHugh (transcript editor).
Charlotte Moore (workshop coordinator).
Miriam Saxon.

Harry L. Hogan (Specialist in Gun Control and Drug Abuse).
Nancy Sharbel.

American Law Division

Joseph E. Ross, Chief.
Charles Doyle.
E. Jeremy Hutton.

IV. Congressional Guests

Congressman James Scheuer.
Fred Asslein, Senate Government Operations.
Maurice Barboza, House Judiciary.
Timothy Boggs, House Judiciary (Subcommittee on Courts, Civil Liberties).
Thomas Boyd, House Judiciary (Subcommittee on Crime).
Thomas Breen, House Judiciary.
Brent Budowsky, Senator Bentsen.
Brian Conboy, Senate Government Operations.
J. Cuclis, Senator Bentsen (Intern).
Vincent D'Anna, Senator Biden.
Charles H. Dolan, Jr., Congressman Early.
Paul Douglass, Congressman Danielson.
Kenneth R. Feinberg, Senate Judiciary (Subcommittee on Administrative Practices).
Anthony Freedman, Congresswoman Holtzman.
Gene Gleason, House Judiciary (Subcommittee on Crime).
Lawrence Grisham, Congressman Metcalfe.
Jennifer Halwax, Congressman Railsback.
Timothy Hart, House Judiciary (Subcommittee on Administrative Laws).
Gail Higgins, House Judiciary (Subcommittee on Courts, Civil Liberties).
Richard Kait, Senator William Scott.
Michael Klipper, Senator Mathias.
Phil Manuel, Senate Government Operations.
Toni Lawson, House Judiciary (Subcommittee on Criminal Justice).
Bruce Lehman, House Judiciary (Subcommittee on Courts, Civil Liberties).
Robert Lembo, House Judiciary (Subcommittee on Criminal Justice).
Martin Levine, Senate Judiciary (Subcommittee on Constitutional Rights).
Robert Malson, Senate Judiciary (Subcommittee on Constitutional Rights).
James Meeker, Senate Judiciary (Subcommittee on National Penitentiaries).
Lynn Miller, Senate Government Operations.
Dempsey Mizelle, House Appropriations (Subcommittee on State, Justice, Commerce and Judiciary).
Tim Morgan, Congressman Russo.
Michael Mullen, Senator Philip Hart.
Michael Nevens, House Judiciary.
Chris Nolde, House District of Columbia (Subcommittee on Judiciary).
Lynn Runge, Congressman McClory.
Robert Sachs, Congressman Wirth.
Robert Sloan, Senate Government Operations (Permanent Subcommittee on Investigations).
Raymond Smietanka, House Judiciary (Subcommittee on Criminal Justice).
Brian Stark, Senate Government Operations (Permanent Subcommittee on Investigations).
Paul Summitt, Senate Judiciary (Subcommittee on Criminal Laws and Procedures).
Dennis Thelen, Senate Judiciary (Subcommittee on Criminal laws and Procedures).
Roger Wagner, Senator Mathias.
Allan Weiman, Senate Government Operations (Permanent Subcommittee on Investigations).
Peter Wentz, Senator Biden.
Judy Winchester, Senator Biden.

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