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AUG 04 1978

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A STATEMENT IN
OPPOSITION TO MANDATORY SENTENCES

PRESENTED BEFORE

THE JOINT COMMITTEE ON THE JUDICIARY
OF
CONNECTICUT'S GENERAL ASSEMBLY
HARTFORD

MARCH 18, 1977

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MANDATORY SENTENCES

I have come to Hartford from Philadelphia to oppose the passage of any of the multitude of Mandatory Sentencing proposals that have been presented to this legislature.

And a multitude there has been. I have read proposed bills presented to this General Assembly that would mandate prison sentences for offenses committed with firearms for murder, manslaughter, sexual assault, kidnapping, robbery, assault against an older person (such as myself), burglary, assault in the third degree, drug pushers, for repetitive offenders, for crimes of violence, and as proposed Bill No. 5071 so elegantly states -- for "chronic crooks."

Some would deny parole -- even until death -- for certain offenders.

Not many Philadelphians would have the motivation to come to Connecticut for such a purpose, but there are many reasons for me to come.

One, is the fact that back in 1966 my organization, the American Foundation's Institute of Corrections, conducted an intensive corrections study for this General Assembly. One result of that study was your creation of Connecticut's Department of Correction, a department that has become a standard for the nation.

I had not realized how good a correctional agency it had become until 1975-76 when my Foundation, in concert with a management firm from Princeton, New Jersey, made a nationwide

study of prison industries. During that study we visited the correctional agencies of many states, rating them according to a variety of quantifiable measures -- organization, central office leadership, institutional leadership, programs, stability, etc., etc. When the scores were tabulated, Connecticut led all the rest.

In my remarks today I wish to make only four points.

First, the frustrations which lead to this glut of proposed mandatory sentencing acts are understandable. We have the same frustrations in Pennsylvania.

Crime has become a major -- perhaps the major -- domestic concern.

The quality of our life has, as a result, deteriorated.

People and businesses flee our cities.

The home security business has become a major new industry.

Old people, trapped, fear to leave their rooms or houses.

You know the problems better than I. There is enormous pressure on elected officials such as you to do something -- to do anything.

These proposed mandatory sentencing acts respond wildly to that pressure.

Legislatures are perplexed as, indeed, we all are when it comes to dealing with the relentless changes and problems in our society, many of which contribute enormously to the incidence of crime.

There is a growing point of view -- forcefully expressed by professors and others -- that legislatures cannot -- indeed should not -- deal with crime causing phenomena.

For example, unemployment, they say, is a problem for the free economy not the government. There is enormous evidence that chronic unemployment is a precursor of crime. The very careful study on unemployment prepared for the Joint Economic Committee of the Congress of the United States -- a committee that includes among its membership this state's distinguished senior senator, Abraham Ribicoff, reveals that every one percent increase of unemployment adds 4% to the rate of prison admissions, 5.7% to the homicide rates, and a much greater increase in the incidence of other crime.

Unemployment and crime problems in your state have also been exacerbated by the immigration of poor, uneducated, unskilled people seeking a better life, and by the simultaneous out-migration of industry. That, too, we are told is a matter for the free market -- not for government. They tell us it will work out. But until it does (if it does) we will pay its price in crime.

Monumental revolutions have changed the nature of life in our country -- the automobile with instant mobility; television with its glorification of material things and of crime and violence; the racial revolution that brought unfulfilled hopes; Vietnam and Watergate which infected a generation of young

Americans with alienation and despair, the pill with the resulting changes to sexual mores and even to marriage and the family. These are problems perhaps too complex for even a sophisticated legislature.

All these, and other forces have hit this society with the impact of an atom bomb. Individually and in combination they contribute to the great increase in crime -- crimes by merchants, crimes by industrialists, crimes by stock brokers, crimes by labor leaders, crimes by lawyers, crimes by legislators, crimes by bankers, and crimes -- on the streets -- by poor people.

Incidentally, I see no proposals in the packet of bills I have read that would mandate prison terms for those who would pollute your air, contaminate your once lovely rivers, steal from your pension funds, or cheat on the state income taxes. These mandatory sentences are all directed against the street criminals -- the despairing, undereducated, unemployed sons (and daughters) of your poorest citizens. I understand that. Street crime is so direct -- so personal.

I submit that the mandatory legislation that I have read is class legislation directed against those who have been most injured by the economic and racial inequities of our society.

The Dutch have a remarkably benign penal system. It may surprise you that the average prison sentence in the Netherlands is only 35 days. This has been a deliberate decision in Holland, where so many of its middle class were incarcerated by the Nazis and the evil of imprisonment became well known. They have chosen

a path of minimal use of prisons. They view the penal system to be, itself, a social problem.

Let me quote from Dr. L. H. C. Hulsman, a distinguished Dutch criminologist.

"It is the view of the Dutch Parliament that 'even when officers of the law strive in all honesty for fair and impartial treatment, selection mechanisms continue to discriminate against the poorest social group at such varying levels as legislation, lodging of complaints, investigation, prosecution, and sentencing.'" He goes on:

"The extent to which recourse is taken to this system is therefore an indicator of the maturity with which a society perceives the true nature of its problems and seeks a reasoned solution to them. Option for the penal method is often in fact a retreat into a pseudo-solution." (Emphasis added)

The second of the four points I wish to present today concerns the matter of discretion. Legislators are rightly concerned by abuses of discretionary power conferred upon judges and parole boards among others.

There is a growing literature on this subject. Judges sentence one person to 30 years, another to probation; indeterminate sentences play into the biases and prejudices of parole boards, the Trenton New Jersey Times' (on March 14, 1977) reports of state's parole boards' insistence that an illiterate graduate from high school prior to parole; that a newly arrived

Puerto Rican pass high school equivalency test in English prior to release; that another write an essay on comparative religion.

This kind of discretion is undesirable, but mandatory sentences do not reduce discretion. They merely change the locale where discretion is practiced. The history of mandatory sentences shows that there are sub rosa circumventing practices by police, by prosecutors and by juries. In New Jersey a mandatory sentence for drunken driving has just been repealed. There are many reasons for the repeal, not the least of which is that driving under the influence is a crime of the rich, of the middle class, as well as of the poor, and in America we do not like to lock up the rich or the middle class. A second reason was that often discretion was being practiced at the lower rung of the criminal justice ladder by policemen and magistrates who identified with the offender who was about to go to jail, lose his position, and his reputation. The discretion changed the charge from drunken driving to mere careless driving.

Prosecutors used the mandatory sentence provision to increase their discretionary powers as well as their bargaining powers in the plea bargaining process. A person, even an innocent person, really has no choice when faced with the prosecutors' offer of a guilty plea to a lesser charge, when the greater charge, on conviction, will result in one of the horrendously long sentences some of the proposed acts provide.

Juries practice discretion too. They just refuse to convict when the mandatory sentence affronts their sense of fairness. Guilty people are acquitted--go free.

My third point concerns the court back-log. In most states, and I imagine Connecticut, the courts are in near crisis. Guilty pleas are the only things that enable most courts to remain even close to current. Mandatory sentences discourage guilty pleas. A person has to be irrational to plead guilty when a predetermined lengthy prison term is the only alternative.

In neighboring New York State where the Rockefeller Drug Act and the Second Felony Offender Act both require mandatory sentences, the percentage of guilty pleas has fallen from 91.6 percent in 1974 to 82.1 percent in 1976. The United States Conference of Mayors has projected the increased costs to the New York City Judiciary to be \$19 and a half million--and that for court personnel only. The additional costs for building and operating jails for those awaiting delayed trials almost defy the imagination.

The fourth and final point concerns your prison system. I have already stated that it is one of the best run and least troubled systems in the country. It is also the least violent. Any mandatory sentencing act will immediately result in a sharp increase in admissions to a system that is already near or at capacity. It will create enormous problems of your making, while doing little or nothing (I believe) to solve the state's crime problem.

Since the passage of the two mandatory sentencing acts by the New York Legislature the prison population of that state has increased from 12,800 (1973) to 17,800 (1976) at enormous cost the the New York

taxpayer. The crime rate in that state remained unabated.

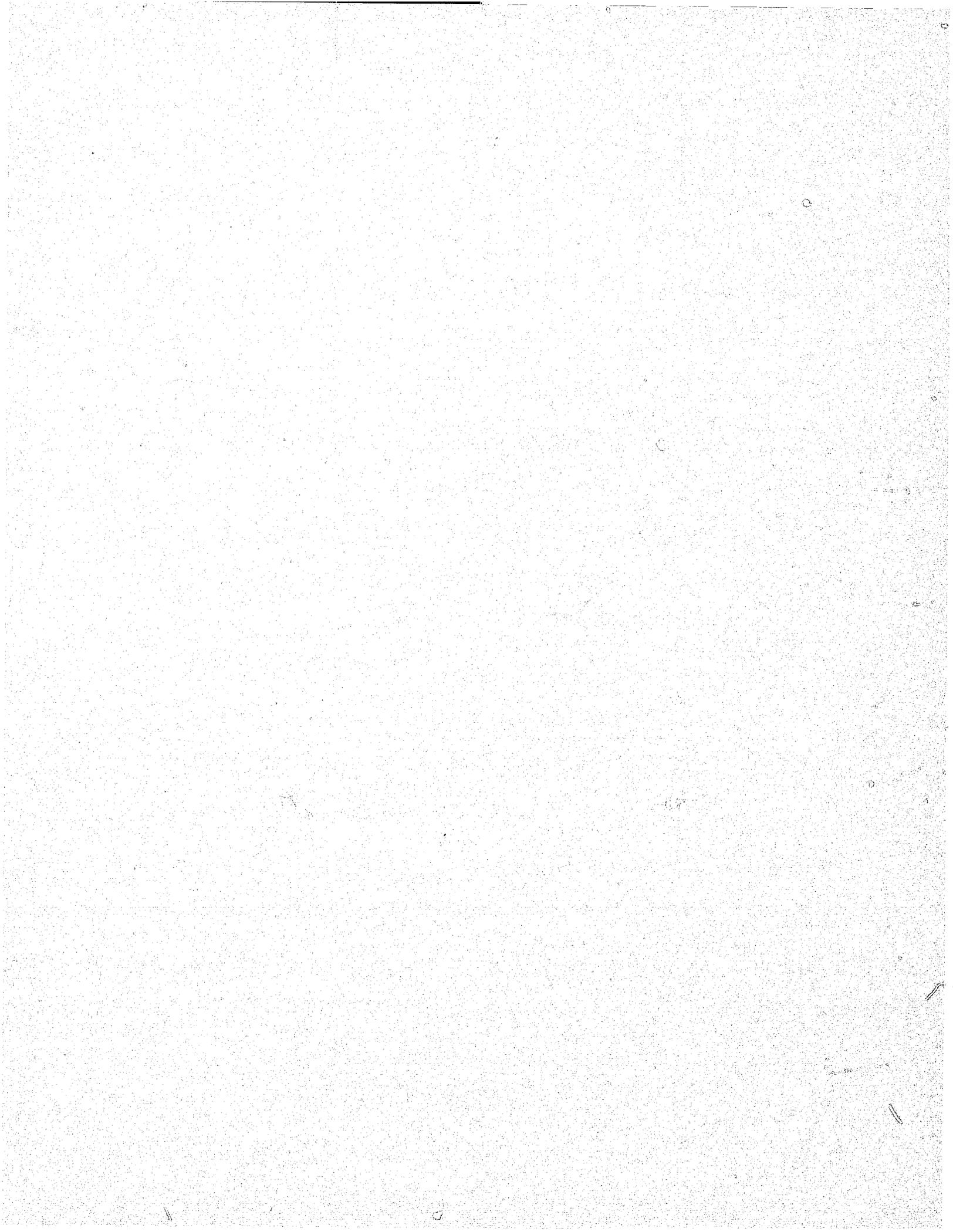
Florida, in 1975, passed a sentencing act mandating three years to life for any offense in which a gun was used. This was accompanied by the most massive public relations effort I have ever seen. Billboards throughout Florida tell the story--a huge picture of a gun and the caption "Three Years to Life." Stickers on store doors repeat the warning. A party leader in the State Legislature, in a widely publicized speech, declared that his state's legislature was ready to cut education, social services, programs for the mentally ill, medicaid, and anything else necessary to build the prisons needed to lock up those gun-toting criminals. And, indeed, Florida has built them. The 1977 edition of the Directory of Adult Institutions shows the state of Florida to be operating or building 35 prisons for 15,000 inmates plus 29 community facilities housing several thousand more. All this does not include the 67 county jails, the county work farms, or the hundreds of town jails. You in Connecticut may be surprised to know that the modest sized town of Lakeland has a city jail with a capacity for 110. Winterhaven, the home of Cypress Gardens, has a local jail accommodating 80. Even little Haines City (did you ever hear of Haines City?) can lock up 50 in its new town lock-up. Yet Florida, with all its mania for prisons, and jails, and mandatory sentences remains among the most criminalistic states in the nation.

Your state has only four prisons with a total capacity of less than 2,000 plus six community correctional centers (your equivalent to the county jail). In your frustrations about the difficult crime problem, don't, I would plead, take the expensive and endless road that Florida has taken.

The cost, I need not remind you, is enormous. Forty thousand dollars per cell, plus operating increases, per inmate, of thousands more. In New York State the construction costs generated by the mandatory sentencing laws are in the neighborhood of \$160 million. A legislative study in my own state of Pennsylvania costed out the effect of a mandatory sentencing act proposed in the 1976 session of our General Assembly. Its report indicated that the proposed bill would increase our state prison population by 3,100 at a construction cost of \$105 million and increased operating cost of approximately \$54 million per annum. The Chairman of our House Judiciary Committee appearing on a TV program with me a week or so ago, stated that a proposed mandatory sentencing act in Pennsylvania will have to be accompanied by a 10 percent increase in our state's income tax. I am sure you will find the situation similar in Connecticut.

In conclusion, then, I repeat my urging that you remain unaffected by the mandatory sentencing mania that is sweeping the nation. We have not yet developed any easy vaccine to prevent crime. Mandatory sentences are not that vaccine. They are, to the crime problem, what leeching was to fever in the older days. Both make us feel that we have done something about the problem, but in reality, both leave us even more weakened.

Sentencing is an important issue. It should be considered soberly. Changes in the sentencing acts are necessary in your state as well as in most others. It is my understanding that this legislature has a special committee on sentencing. It would be my suggestion that you await its recommendation.



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