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## Regionalization as a Response to the Problems of Fragmentation in the Criminal Justice System

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The three-fold purpose of criminal law and the criminal justice system is to protect the citizens of our country from the harmful acts of their fellow citizens; to provide a just, appropriate, efficient, and effective mechanism for responding to those anti-social acts which may occur; and to provide rehabilitation as well as punishment for offenders. Today in the United States it is clear that the law is not accomplishing its purpose.

When Americans recognize that serious crimes increased 148 percent during the 1960's while population rose only 13 percent [1],<sup>2</sup> that for every 100 reported offenses only one person is imprisoned, that most persons released from prison return to crime [2], they are also recognizing that their criminal justice system is neither effective nor efficient. This failure feeds on itself. As the National Commission on the Causes and Prevention of Violence, the Eisenhower Commission, stated:

When law is not effectively enforced, the odds become more enticing for the potential offender, crime increases, and the legal system—government itself—becomes discredited in the eyes of the public. As respect for law declines, crime increases still more [3].

Money can provide more policemen, more prosecutors, more courts, and more detention facilities, but what is not needed is more of the same. If the American law enforcement system is not reformed, even revolutionized, then to a large extent the people will simply be subsidizing inefficiency and ineffectiveness on a more grandiose scale.

The system has serious organizational deficiencies, and they are not entirely the fault of the various crime control agencies themselves. Many of the shortcomings are products of the federal form of government, for the U.S. Constitution gave to the states the authority and responsibility to enforce criminal law. The states, in turn, viewed crime as primarily a local problem, and so law enforcement was thoroughly fragmented and segmented among many municipal, county, and state offices.

As times have changed, the law enforcement system unfortunately has not. As a result, police units often work "at cross purposes in trying to solve the same or similar crimes" [4], prosecuting attorneys do not confer with each other [5], one judge has a relatively empty calendar while judges in the same state or county are literally overwhelmed,<sup>3</sup> and

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<sup>2</sup> Of the five million serious crimes in 1969, 655,000 were crimes against the person and 4,334,000 were property crimes.

<sup>3</sup> "In some cities branches of the criminal Court are administratively separated so that although one judge may dispose of most of his work within two hours, there is no system for alleviating the overload of others who are unable to dispose of all their cases." [6]

the jail in one county may be akin to a medieval dungeon while the jail in the neighboring county has relatively modern facilities.

Further, the system is plagued by a dispersal of authority and responsibility among multiple levels of government. It is not uncommon for an offender to be arrested by a municipal policeman, prosecuted by a county attorney, tried in a state court, incarcerated in a municipal, county, or state detention facility, and finally released to a municipal, county, or state probation or parole officer. In most instances, these various components of the criminal justice system do not even communicate with each other, much less coordinate their efforts for the good of society and the individual [4,7].

### **Effects of Fragmentation and Multilevel Governmental Control**

#### *Police*

As early as 1931, the Wickersham Commission warned of the fragmentation in our law enforcement system [8]. In 1967, former attorney general Robert F. Kennedy deplored the existence of "some 40,000 separate and often overlapping police agencies" in the United States. At that time, 54 different police forces were serving the six counties of metropolitan Detroit; the Chicago metropolitan area encompassed over 120 local police jurisdictions; and Westchester County, New York, had 39 separate police departments.<sup>4</sup>

The vast majority of American police departments are small units, many composed of but one full-time officer, operating in small jurisdictions. At one time, they may have been capable of providing an adequate level of police service in some rural communities, but these thousands of small forces can no longer cope effectively with today's rising rural crime rate, let alone deal with the complex crime problems of the large metropolitan areas where most Americans live [7].

Typically these small jurisdictions do not have the financial resources to attract professional personnel to administer and manage a modern police force or to properly equip and train qualified personnel. They must often rely on part-time or untrained people and rarely are able to provide adequate staff services like records and identification, communications, and crime laboratory facilities [7]. Yet each is still supposed to be capable of providing adequate police service within its jurisdiction.<sup>5</sup>

As a result of this dissipation of resources, many police departments are forced to practice what has been called "selective neglect";<sup>6</sup> that is, the police resign themselves to the fact that some aspects of police service must be inadequate or even nonexistent.

#### *Courts*

Many of the state court systems operate under 17th century multiple court theories based on transportation and communication concepts which vanished long ago [10]. Courts are jurisdictionally separated by size or type of case. Even though one judge has little to do while his colleague is swamped, "rigid jurisdictional lines prevent one from helping the other" [10]. Roscoe Pound called for specialized judges, not specialized courts, at least 30 years ago [11].

<sup>4</sup> "These situations are wasteful of scarce resources, and too often result in poor coordination in preventing crime and capturing criminal offenders." [9]

<sup>5</sup> "Regardless of size, location in relation to other units of general local government, or financial resources, each unit of local government is deemed capable of administering basic law enforcement within the confines of its own jurisdiction." [7]

<sup>6</sup> Misner states that this term originated with Professor Willard F. Schmidt, Director, Police School, San Jose State College.

The fragmentation in the courts contributes to an ever mounting backlog in cases. One result of the delay is that cases against suspected criminals must often be dismissed because witnesses disappear, change their stories, or forget what happened. In Great Britain, the period from arrest to final appeal may be as short as four months, but in many states in the U.S. the period is often as long as one and one-half years [12]. How much faith can a juror have in the testimony of a witness who had only a brief glimpse of the accused 18 months ago?

Although each state has only one criminal code, the state prosecutorial function is typically divided among a number of independent agencies. These agencies are autonomous, and there is often no normal coordination among them [6]. Chief Judge J. Edward Lumbard, U.S. Court of Appeals, 2nd Circuit, reports that "cooperation in New York State among the 62 district attorneys and more than 600 separate local agencies is entirely voluntary; there is no statewide supervision of any kind" [5]. Local prosecutors' offices are often so small that they cannot maintain specialized personnel or technical facilities.<sup>7</sup> In many American communities, a lone prosecutor works on a part-time, as-needed basis, functioning in a never-never land of ethical conduct as he gives private legal advice and assistance on one hand and prosecutes civil and criminal matters on the other. This fragmentation and lack of central control is one of the real tragedies of our law enforcement system because the prosecutor "is in the most favorable position to bring about needed coordination among the various law enforcement and correctional agencies in the community" [6,13].

The decisions and recommendations of the local prosecutor often determine the disposition of cases brought to him by the police and thus affect police arrest practices, volume of court cases, and number of offenders referred to the correctional system [6]. Each prosecutor decides whether to prosecute or drop a charge, whether to accept a guilty plea to a lesser charge, whether to push for maximum punishment or agree to a lesser sentence—all important decisions which affect society as well as the individual involved—without any statewide standards or guidelines to direct him.

### *Corrections*

There are almost 10,000 local police lock-ups and as many as 3200 county and city jails in the United States. A large number of those arrested spend time in these facilities either awaiting trial if they are not released on bond, or serving sentences for misdemeanor convictions. At any given time, there are 50,000 inmates in local jails, and almost two million persons are committed to these institutions annually. Yet most of these facilities are unfit for human habitation. Virtually all of them are understaffed, and usually there are no education or rehabilitation programs of any kind. First offenders and young men and women are not segregated from older, more experienced criminals. These institutions are cruelly overcrowded, and their facilities are primitive. In Illinois nine jails constructed in the 1850s are still in use, and 55 of the county jails were built before 1910 [14]. Although the Cook County jail was designed to house only 1317 inmates [14], 1924 were incarcerated there in December 1970 [15].

Convicted felons often receive good treatment in state institutions, while those serving short sentences for minor offenses, or those who have not been convicted at all, and, in fact, may be innocent, slowly decay in squalid, inhuman local institutions [7]. It is no wonder many judges would rather sentence a man to a year and a half in jail and insure

<sup>7</sup> Grant application A70-54; Fulton County, Illinois, submitted to the Illinois Law Enforcement Commission requesting funds to enable it to hire an investigator for the local prosecutor's office.

that he will be sent to a state institution, rather than sentence him to less than a year and have him rot in a local jail.

#### *Other Adverse Effects*

The obstacles which fragmentation and multilevel governmental control pose to effective law enforcement are too numerous to mention. Since crime does not respect legal boundaries, and since cities are often the source of rural crime, it is impossible for small law enforcement agencies to plan effectively or to practice crime control. If one jurisdiction cracks down on crime, those who wish to break the law can easily move their operations to a neighboring jurisdiction. In addition, the dispersal of authority and responsibility hinders the gathering of data which is needed to plan new programs and to evaluate those already in existence.

Fragmentation and multilevel governmental control create duplication of effort and consequently higher costs. The city of Los Angeles and Los Angeles County have duplicate information centers within four blocks of each other [7]. Until a recent merger, the City of Chicago and Cook County had separate jails located adjacent to each other but operated independently.<sup>8</sup>

Fragmentation and multilevel governmental control also mean that many of those who pass through the system may be denied due process of law. Furthermore, a law may be enforced in one police jurisdiction but not in another. As indicated above, prosecutorial discretion may mean that similar cases are dropped in one jurisdiction and prosecuted in another. A prosecutor can recommend the maximum penalty for an offense in one jurisdiction, while in another his counterpart recommends leniency and perhaps probation for the same offense. Within the same city, one alleged offender may receive a fair trial in one court while another's trial a few blocks away may present an opposite extreme.<sup>9</sup> An alleged offender may sit for months in an inhuman local jail waiting for a backlogged court to hear his case. In the end he may be acquitted, but he and his family have been punished cruelly.

The most serious effect which fragmentation and multilevel governmental control have on our law enforcement system is that they make communication and cooperation among crime control agencies extremely difficult, sometimes impossible. The structure of the law enforcement system encourages and, in many cases demands, autonomy and lack of communication. As long as the structure of the system fosters disorganization instead of organization, our crime control agencies will continue to operate as if they have no common goal.

The police will perceive their goal to be simply finding a suspect for every crime. The prosecutor will be judged by the number of convictions he secures. The courts will continue to be concerned mainly with clearing dockets, and correctional facilities will do their utmost to keep the inmates in line. Instead of working together to achieve an orderly society as free from social problems and crime as possible, each discipline within the system will continue to operate within its own occupational pigeonhole, never bothering to

<sup>8</sup> The Cook County Jail and the House of Correction of the City of Chicago stand adjacent to each other. Until a recent merger the institutions were administered separately and commitment to one or the other depended upon daily population figures reported to the judges of the criminal courts. While the Cook County Jail has often been called the worst jail in America, little scandal has surrounded the administration of the House of Correction.

<sup>9</sup> "Thus in a number of metropolitan areas an offender may be charged with a crime in any one of three or more courts: a city or municipal police court, a county court, or a state trial court of general jurisdiction. Each of these courts may have different practices and policies resulting from differences in judges, prosecutors, traditions and exigencies of judicial administration." [16]

concern itself with the effects its policies and practices may have on the rest of the system. To make matters worse, whenever one discipline observes another proceeding in a manner detrimental to its own operation, hostility develops and the chances for communication and cooperation are further diminished.<sup>10</sup>

What is the sum total of these many problems engendered by fragmentation? Inconvenience, confusion, inefficiency. But much more importantly, the result is injustice. The criminal justice system will never be truly equitable, society will never be safe, so long as these basic problems persist.

### **Efforts and Proposals to Alleviate the Problem**

The manifestations of fragmentation, unhappily, are clearcut and numerous. What about the solutions to these problems? Unfortunately, they are neither clearcut nor numerous.

Broadly speaking, regionalization appears to be the best and most immediate approach. Regionalization can mean many things. It might be consolidation of criminal justice agencies and services, brought about through merger of individual agencies or whole governments. Or, less ambitiously, regionalization can be achieved through contractual services—one unit of government providing a certain criminal justice service to another. Regionalization can also mean the enlargement of the jurisdiction or authority of an existing agency, or merely tie together certain aspects of the operations of several agencies—such as the communications or training of nearby police departments.

All these are forms of regionalization. There are undoubtedly others. This paper will not provide specific formulas, but point the way toward regionalization as a concept of governmental organization and function. No matter how intelligent or efficient the personnel may be in the various criminal justice professions, they are severely limited as to what they can achieve within the antiquated governmental structure. It is absolutely vital that this structure be modernized to minimize the debilitating effects of fragmentation and multilevel governmental control. The solution is to break down, to eliminate or at least minimize the operations of small, anachronistic governmental units or their outdated functions, and to establish new forms of unifying authority and communication. This, in a word, is regionalization.

One way of achieving broad scale regionalization of services is for existing governments to be absorbed into a larger, metropolitan government [17]. Many attempts to establish such new forms of government have failed. Local pride is a stumbling block, and existing local governments want to preserve local control. In addition, most attempts to reorganize require constitutional and statutory changes [17]. Two noteworthy successes in this country are Dade County, Florida, and Nashville-Davidson County, Tennessee.

In 1957, Dade County, Florida, established the first metropolitan government in the United States. The responsibility for law enforcement is divided between Metropolitan Dade County and the cities. Metropolitan Dade County is responsible for minimum patrol and traffic control throughout the metropolitan area and maximum patrol where municipalities chose to transfer the responsibility [18,19]. It also provides services such as

<sup>10</sup> "Nearly every official and agency participating in the criminal process is frustrated by some aspect of its ineffectiveness, its unfairness or both. At the same time, nearly every participating group itself is the target of criticism by others in the process.

"Upon reflection this is not surprising. Each participant sees the commission of crime and the procedures of justice from a different perspective. His daily experience and his set of values as to what effectiveness and fairness requires are therefore likely to be different. As a result, the mission and priorities of a system of criminal justice are defined differently by a policeman, a prosecutor, a defense attorney, a trial judge, a correctional administrator, an appellate tribunal, . . ." [3].

training, communications, criminal investigations, and central police records [17]. The municipalities in turn are responsible for full patrol and traffic control services and for supplemental police training and records [18,19].

An important aspect of the Dade County approach is that the municipalities remain a viable form of local government. The Dade County technique is one which probably could be used in urban areas where a large number of municipalities already exist. Its strength lies in the fact that municipalities still continue to exist and provide needed local services, thereby assuring local control over strictly local concerns [17].

The most complete metropolitan government in the U.S. is Nashville-Davidson County, Tennessee. Under its 1962 reorganization charter, the county is divided into two districts, an urban services district and a general services district. Residents of each area pay for the level of services they receive, with a higher level of services and, consequently, costs, in the urban district. Police protection is one service provided in this manner [17].

Prior to the reorganization, law enforcement responsibility was divided between the Nashville Police Department and the elected county sheriff. Now the sheriff's only responsibilities are civil work for the court and operation of detention facilities.

The experience of Nashville with metropolitan government has been promising [17]. It can provide a model for those counties which contain few well established local governments, where governmental services are scarce, and where services such as police protection are not financially feasible. It seems unlikely that such a comprehensive reorganization plan would be successful in highly urbanized counties containing a large number of municipalities.

Another way to regionalize police services while preserving local autonomous government is the police service contract which has been used extensively in Los Angeles County, California. Under this system, small police jurisdictions make a formal contract with a larger police agency for the provision of law enforcement services [20]. It was first implemented in Los Angeles County in 1954. Now there are 29 municipalities contracting for police service with the county.

Although police service contracts are not the perfect solution, they do offer many advantages [20]:

- (1) New areas are furnished with service by a corps of existing specialists immediately upon incorporation.
- (2) Smaller jurisdictions with limited financial resources are provided with a level of performance which they could not otherwise afford.
- (3) Fiscal economies result normally from the pooling of resources and capital investments.
- (4) Each contract reduces by one the number of jurisdictions performing a function within a given region and thereby simplifies an already complicated governmental pattern.

In 1960, the city of Lakewood, California, with a population of 60,000, could utilize the personnel services of the 4000-man Los Angeles County Sheriff's Police Department [20]. To achieve such a ratio of policemen to citizens, Chicago would need a police personnel pool of 200,000 and New York 460,000.

In St. Louis County, Missouri, a county police department was established which embraces all unincorporated areas of the county and the entire metropolitan area. An incorporated municipality may contract with the county for police service, agreeing to accept the standards governing the county department, and six have done so, one abandoning its own police department. The county department is thus able to introduce some uniformity into the operations of the municipal departments [21].

Several states have implemented integrated court systems based on the Model Judicial Article of the American Bar Association.<sup>11</sup> Under this plan, the chief justice of the state supreme court is given administrative power as executive head of the state judicial system, thereby insuring uniform operation and eliminating court autonomy.

Illinois has made some progress in this direction. It adopted a new judicial system in 1964, which vests all judicial powers in three courts: Supreme, Appellate, and Circuit, with complete administrative authority through the Supreme Court.

There is evidence of some progress in the regionalization of correctional facilities. In Connecticut, a state jail administrator's office has been established to operate all local jails in a system parallel to the state penal system for all sentenced felons. Police agencies do not operate their own detention facilities, and management of jails has improved significantly in Connecticut as a result of the change. Local units in the state are now free from heavy investment in money and manpower to operate jails, making some of these resources available for more important police needs [17].

Another approach is to have county-operated detention facilities with the agency responsible for their management not involved in law enforcement work. This is the pattern mentioned earlier in Nashville-Davidson County, Tennessee, where the sheriff operates the jail but performs no police work. In St. Louis County, Missouri, the office of sheriff has been eliminated, and the jails are operated by the county's welfare department [17].

Another technique is the sharing of facilities through contractual agreements. The City of Oakland pays Alameda County for each city prisoner detained in the county jail, and vice versa [17]. Portland, Oregon, and Multnomah County have a similar arrangement. The City of Tacoma and Pierce County, Washington, provide special detention facilities on a shared basis for youthful offenders and females, eliminating the need for each government to provide a full range of these specialized facilities [17]. The greatest contractual regionalization is in Los Angeles, where the county provides complete jail service for all but five cities in the county [17].

These are highly encouraging steps toward reducing the fragmentation in our criminal justice system. They demonstrate that regionalization can be made to work, that it does lead to improved criminal justice operations. But there is now the need for more than an occasional regional arrangement here or there around the country. It is now necessary to promote and encourage regionalization as a matter of public policy, in all aspects of the criminal justice system, in every state and particularly in every metropolitan area.

The only way to begin to meet this need is by planning. Through careful, professional planning, communities can assess their needs, assign priorities, and develop realistic programs to bring about improvements in a systematic, orderly fashion, without reliance on emergency crash programs.

Business has traditionally engaged in both short-term and long-range planning, and so the tools of the trade are well developed, but state and local government unfortunately are not so experienced. The lack of planning is especially apparent in criminal justice, because of our multiplicity of agencies crying for coordination.

Both the prestigious Eisenhower and Katzenbach Commissions recommended strongly that state or metropolitan planning and coordinating agencies be established throughout the country and that federal funds be used to reform the law enforcement system [3,23].

<sup>11</sup> McWilliams reports that as of 1963, the essential provisions of the Model Judicial Article had been adopted in New York, Connecticut, Maine, Iowa, Nebraska, Illinois, North Carolina, and Colorado [22].

In 1968, Congress passed the Omnibus Crime Control and Safe Streets Act.<sup>12</sup> This is unquestionably the single most important piece of crime prevention legislation ever enacted. The Act created the Law Enforcement Assistance Administration for the purpose of making grants to the states for law enforcement planning and operations. Of crucial significance is the Act's requirement that each state establish a planning agency to prepare statewide plans for comprehensive improvement of the criminal justice system.

Through the Act, the federal government provides the bulk of the financial resources, but the ultimate responsibility for reforming and strengthening crime control agencies is assigned to the states. The state is the governmental unit best suited to direct the fight against crime in the U.S. today. It has the constitutional power to enforce the criminal law within its boundaries; it is close to the local level and yet can see broader needs going beyond local jurisdictions; and it has the political strength to deal with the federal government without being absorbed into the federal bureaucracy.<sup>13</sup>

Most states are now divided into regions which have their own planning agencies. The memberships of these planning groups and the state commission comprise local elected officials, law enforcement officers, business and civic leaders, and the heads of various social and welfare agencies. The participation of these community leaders in the planning and coordinating process provides immeasurable help in overcoming political obstacles and moderating the inherent conservatism of law enforcement agencies. These leaders cannot easily reject the plans they themselves help make.

The most promising aspect of the state planning agencies is that they provide communication and coordination within the field of law enforcement. Although each state is responsible for establishing and implementing its own crime control program, it must submit a comprehensive plan to the federal Law Enforcement Assistance Administration in the U.S. Department of Justice to qualify for the vitally needed federal funds. In turn, local governmental and social agencies that apply to the state agencies for funding must design their proposed projects to carry out the state plan. Through this process, law enforcement planning, activity, and research are channelled toward a common goal. A new spirit of teamwork, which a few years ago would have been regarded as impossible to achieve, is beginning to develop within the law enforcement system throughout the country.

One example of this program in action is the state planning agency in Illinois called the Illinois Law Enforcement Commission (ILEC). It has made great strides since its inception less than three years ago. Illinois had been fortunate because of the strong support and backing of the present Governor, Richard B. Ogilvie. The General Assembly has allocated \$11.8 million in state funds as a supplement to the \$30.4 million provided by the federal government. Much of the funding is being employed to encourage regionalization in one form or another.

With the aid of a \$118,422 grant from ILEC, the Illinois Department of Law Enforcement has developed a statewide police communications system that enables police cars of different departments to talk directly to each other across jurisdictional lines. It is called the Illinois State Police Emergency Radio Network (ISPERN) and is the first network of its type in any state [24]. The system calls for a second radio in each police car. In 1970, with more than \$1 million in ILEC financial assistance, 3345 ISPERN radios were distributed throughout the state with emphasis on the urban cities where a multitude of jurisdictional and communication problems exist. Two thousand additional radios are scheduled for installation during 1971 [25], and ultimately every police car in the state will

<sup>12</sup> Public Law 90-351, 90th Congress, H. R. 5037, 1968, Title I.

<sup>13</sup> For an excellent discussion of the state's role in law enforcement see Lumbard, E. H., "State and Local Government Crime Control," 43 *N.D. Law.* 889, 895-896 (1968).

have such a radio, making it possible for city, county, and state law enforcement vehicles to cooperate fully with one another in natural disasters or civil disorders, to pursue fleeing suspects, or in other emergencies.

A \$300,000 grant from ILEC to the Illinois Department of Law Enforcement has enabled the department to establish five regional crime laboratories in the Rockford, Carbondale, East St. Louis, Champaign, and Rock Island-Moline areas. The department's Bureau of Identification has also been able to expand its crime laboratory services by establishing 10 regional crime scene areas with polygraph and crime search personnel within 50 miles or an hour's drive of every law enforcement agency in the state [24].

Last May, the city of Moline was awarded \$250,000 from ILEC to help finance construction of a police facility, which will be used by law enforcement agencies from several communities. The shared-use police facility will offer combined services of training, record keeping, facilities for the selection and recruitment of candidates, and a possible Quad-Cities communications area [25].

Similarly, a \$98,272 grant was given to the city of Springfield to construct and equip a law enforcement training facility to serve central Illinois. The building will be on an isolated, 30-acre lot providing both security and a variety of natural terrain for training in such work as crime scene searches, missing person searches, use of firearms, crowd control, defensive driving, and traffic crash investigations [24].

A 3-year grant to the Illinois Public Defender Association to develop defender services includes experimentation with statewide defender services at the appellate level.

Last June, ILEC awarded \$939,000 to the Illinois State's Attorney's Association for a project to expand state's attorney's services and demonstrate a regional approach to prosecutor operations. The project involves a circuit state's attorney's office in the Eleventh Judicial District, composed of five counties, and an office serving the Second Appellate District, comprising 13 counties [26]. This is a distinct departure from the traditional county-by-county state's attorney system in Illinois.

The Illinois Department of Corrections, under a dynamic young director, is placing important new emphasis on many progressive programs that include development of regional facilities scattered throughout the state. ILEC has granted funds to the department for six community homes to provide group counseling, job placement, tutoring and other services to juvenile parolees and other young people under state supervision.

These projects are encouraging indicators of how various types of regionalization can effectively combat fragmentation in criminal justice. Other proposals have also been received: a plan for one municipality to provide complete police service for another nearby; a projected merger of a county police department with the department of the largest municipality in the county. There is no end to the ways in which the state and local communities can develop regional solutions to the problems of fragmentation.

Experience in Illinois and elsewhere is demonstrating that it is possible to overcome the tradition, the apathy, and the jealousy that naturally arise to perpetuate fragmentation whenever it is questioned. Clearly, regionalization is the answer to one of the major problems confronting the criminal justice system today.

When criminal justice regionalization in its many forms and approaches is adopted throughout the United States, three positive results will follow: (1) the criminal law and criminal justice system will function more appropriately, justly, and effectively; (2) Americans will feel and be safer in their homes and at work and play; and (3) by eliminating one of the most negative and wasteful features of the fragmented 3-tiered governmental system operating in the United States, the identification and opportunity for resolution of the other problem areas in our system of the administration of criminal justice will become easier and clearer.

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