



Statement of

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Concerning

“Correcting the Revolving Door of Justice
New Approaches to Recidivism”
“Three Strikes and You’re Out” Proposals

Before the

SUBCOMMITTEE ON CRIME AND CRIMINAL JUSTICE
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

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Chairman Schumer, my dear friend and colleague Rep. Craig Washington, and

Members of the Subcommittee on Crime & Criminal Justice -

On behalf of the National Association of Criminal Defense Lawyers (NACDL), I thank you for the opportunity to testify before you today. We applaud you, Chairman Schumer, for convening this hearing, and also for holding two days of hearings last week on H.R. 3315, "The Crime Prevention and Criminal Justice Reform Act" and H.R. 3355, "The Violent Crime Control and Law Enforcement Act of 1993". Crime and criminal justice policy issues are important to all of us, and should be the subject of active and open debate here in the Congress and in our country, to ensure the full airing of options and policy development based on the best and most current information at our disposal. We commend you, Mr. Chairman, Rep. Washington, Rep. Scott, Rep. Watt, Rep. Becerra and the other members of the subcommittee for exercising leadership in this area.

NACDL is a nationwide organization comprised of 8800 criminal defense lawyers actively engaged in defending citizens accused of crime. We are also affiliated with 70

state and local criminal defense bar associations with which we work cooperatively on issues of common concern, allowing us to speak for more than 25,000 criminal defense lawyers nationwide. Founded in 1958, NACDL is the only national bar association devoted exclusively to the interests of criminal defense lawyers. NACDL's goals, as defined in our bylaws, include: promoting the proper and fair administration of criminal justice; preserving the adversary system of justice; maintaining and fostering the integrity, independence and expertise of defense lawyers in criminal cases; and ensuring justice and due process to persons accused of crime.

Let me say emphatically that NACDL does **not** oppose the imposition of swift and sure punishment on those who commit violent crimes after they receive a full and fair trial on the merits and are duly convicted by a jury of their peers, with appropriate appellate review. There can be little question that some individuals forfeit their right to live among us by their lack of respect for the lives of others.

SUPPORT FOR H.R. 3315

NACDL endorses H.R. 3315, the anti-crime bill authored by Rep, Craig Washington and members of the Congressional Black Caucus and the Hispanic Caucus, because we believe this bill offers an appropriate and realistic balance between prevention and punishment. It seems clear that we cannot continue to pursue criminal justice policies that result in the highest incarceration rate in the free world, with intolerable racial implications; that threaten to bankrupt our states and cripple our federal budget. Skyrocketing prison construction costs represent only a small fraction of the long term economic impact of these proposals. At over \$20,000 per inmate per year (in today's costs), the pricetag of setting aside such astonishingly expensive bed space for years, and even lifetimes, with minimum mandatory penalties, while failing to provide adequate educational opportunities for those critically impacted segments of our society, is nothing short of immoral.

We also support Mr. Washington's bill because it addresses the issue of the inordinate impact our criminal justice policies have on some minority communities - both in application of the law and in prevention strategies. As the ABA testified before you last

week, " Unless the conditions that nurture violence and crime are addressed, these 'weeded out' individuals will be quickly replaced..." We are especially concerned with the inordinate impact of a federal "three strikes" proposal on Native Americans. These implications must be addressed in a forthright manner and we commend you for doing so.

OPPOSITION TO "THREE STRIKES" PROPOSALS

We oppose current "Three strikes and you're out" proposals for three basic reasons: (1) these proposals are simply a variant of other mandatory minimum sentencing schemes, which we oppose philosophically because they remove the consideration of individual factors in sentencing; (2) the "three strikes" proposals, as currently drafted in the Senate crime bill, will be particularly costly and detrimental to our system of criminal justice, will result in the life imprisonment of tens of thousands of non-violent offenders and will perpetuate the racial disparities that are reflected in the victims of other mandatory minimum penalties; and (3) the current federal deficit is such that our crime policies must be not only tough and smart but economical. The inordinate costs ,

both financial and otherwise, of incarcerating large numbers of persons for their entire lives would be extraordinary, and would require expenditures well beyond that which the states can afford or voters would support. In short, "three strikes" would clog our courts and our prisons with non-violent offenders, would be inordinately expensive and would have little impact on the alarming rate of violent crime. Surely we can do better.

Let me specifically address "three-strikes" proposals:

[1] LOSS OF INDIVIDUALIZED SENTENCING

"Three Strikes" proposals, as a variant of mandatory minimum penalties, are subject to all the criticisms which are leveled at general mandatory penalties. The difference is the sentence - life as opposed to a time certain. We oppose mandatory minimum sentencing schemes because they do not allow the criminal justice system to acknowledge the particularity of crimes and of those who commit them.

Mandatory minimum sentences and the U.S. Sentencing Guidelines were devised to eliminate sentencing disparity. It is now clear that they do not. The Sentencing Commission's own studies have shown that sentencing disparity exists and that it is racial

in nature. Mandatory minimums and the Sentencing Guidelines have simply transferred sentencing discretion from judges to prosecutors. The fact is that over a third of federal defendants whose criminal conduct makes them eligible for mandatory penalties do not receive them, while minority citizens receive an inordinate proportion in relation to their numbers in our population..

[2] THOUSANDS OF NON-VIOLENT OFFENDERS WILL BE UNJUSTLY CAUGHT IN THIS NET

If "three strikes" proposals are to be adopted, they must be drafted with great particularity so as to focus on repeat violent offenders -those who have repeatedly been convicted of using deadly force to commit a crime - not the ubiquitous family members, low level drug courier, street salesman, addict, or those who commit property crimes, who currently disproportionately populate the federal penal system. Under current proposals, property offenses and low level, non-violent drug offenses would be treated the same as murder.

According to the recent report of the Dept. of Justice, 21% of the entire federal

prison population [some 16,316 federal prisoners] are non-violent offenders; the majority of them are sentenced under existing mandatory minimum laws. As drafted, current "three strikes" proposals would include many additional non-violent offenders within their coverage, further exacerbating the existing problems and wasting prison beds and resources that should be devoted to violent offenders. This is unjust, unwise, and economically intolerable.

We know that a large percentage of all violent crimes are committed by a small number of criminals. We should identify that population very specifically and draft legislation that narrowly focuses on that group, and that group only.

[3] EXTRAORDINARY COSTS OF HOUSING PRISONERS FOR LIFE

As currently drafted, federal "three strikes" proposals would result in an estimated 284 new federal life prisoners each year, or 689 new life prisoners if drug offenders are included, costing as much as \$400,000 to \$600,000 per prisoner total, as they advance in years and require substantial health care.

Michael Quinlan, former director of the Federal Bureau of Prisons, testified before

you last week and enunciated the additional costs associated with a "geriatric" prison population. The prime crime years are ages 15-24. It is simply uneconomical to incarcerate large numbers of offenders for 50-60 years, beyond the time we need worry about their committing additional crimes. The medical costs alone would be prohibitive; and tens of thousands of valuable prison beds would be wasted on offenders, men and women who are well beyond their crime-producing years. The greatest rehabilitative factor of all is aging.

The costs of incarcerating a geriatric population are phenomenal. The average cost of incarcerating a federal prisoner is \$20,072 per year, or approximately \$55 per day. The cost of incarcerating an aging prisoner is estimated to be three times that amount, over \$60,000 a year. [This figure does not include operations such as liver transplants or hip replacements which are not uncommon for the elderly.] The Bureau of Prisons estimates that they will spend over \$40 million a year by the year 2000 on outside medical treatment of cardiac cases and hypertension - without the additional costs brought by the implementation of a "three-strikes" proposal. We can't continue to spend

money at these rates; funding the Senate bill through the "Trust Fund" will necessitate lowering the caps on discretionary spending so that we will now be spending more on incarcerating people than in educating people. These factors must be taken into consideration.

NO QUICK FIXES; ONLY LONG TERM SOLUTIONS

Gentlemen, our society is enamored of quick fixes. Someone should tell the voters straight out that there is no "quick" way to reduce crime. We must begin to focus on long term strategies. We can't build our way out of this problem - no matter how many billions of our tax dollars we are willing to spend on prison construction. And you and I know that the federal level is not the place to put these kinds of dollars. Only 4% of violent crime is federal; the rest is state. Crime is and always has been largely the province of the states. A federal "three-strikes" proposal will have no impact on crime.

The National Governor's Association, the Conference of Mayors, and the National Conference of State Legislatures have all testified before you. They told you what they need to fight crime on the streets. More cops on the streets. No more unfunded

mandates; no more huge prison construction bills; no turning of their sentencing systems into mini -Federal Sentencing Guidelines systems.

The Attorney General, when she first came to Washington, spoke of learning a lesson in Florida that mandatory minimum penalties that focus on non-violent offenders simply saturate the prisons and do nothing to reduce crime. The recent report of the Department of Justice on mandatory minimum sentences reinforces that position. An examination of the federal prison population reveals that offenders with no current or prior violence in their records, no involvement in sophisticated criminal activity, and no prior commitment constitute 36.1% of all drug law offenders in the system and 21.2% of the total federal prison population. 16.6% of all prisoners and 28.2% of all drug law offenders in the population have no prior criminal history whatsoever [according to U.S. Sentencing Commission figures]. More than 20% of all prison space is being used for non-violent offenders. Present budgetary restraints dictate that this cannot continue.

Surely some persons must be incarcerated for their criminal behavior. Let's focus

on those who pose the greatest risk to society.

On the federal level, the Sentencing Guidelines already assure that a federal prisoner will serve an average of 85% of his sentence; and repeat offenders receive harsher sentences. If there is a problem with the early release of repeat violent offenders, it is with a few states, not at the federal level. These federal proposals seek to fix a system that is not broken. There are no early releases of violent federal offenders.

NACDL joins with federal judges from every judicial circuit in the country, the U.S. Sentencing Commission, former Deputy Attorney General Phil Heymann, corrections officials, the ABA, ACLU, NLADA, and many other organizations in opposing additional mandatory minimum sentencing schemes. We join with you in supporting education and training for jobs, creation of meaningful jobs, drug treatment, Head Start, Healthy Start, and meaningful rehabilitation of the prison population. And we support thoughtful, reasoned reform of our criminal laws to pose the greatest risk of incarceration -- significant incarceration -- to those who pose the greatest risk to our safety.

On behalf of NACDL, I also respectfully request that as you consider provisions

to provide 100,000 more police officers, to continue the federalization of street crime, and to add 50 new federal death offenses, remember that we must adequately fund the defense of the indigent. The constitutional right to counsel applies to all who are accused of crime, regardless of their economic status. Yet in three of the last four years the federal government has run out of money to pay lawyers to represent indigent defendants. We urge you to adequately fund all necessary components of the criminal justice system. As you create new crimes and add more police and prosecutors, you must also spend more on Criminal Justice Act funding to assure that the poor receive the full and equal protection of this essential constitutional right.

Finally, just as we require environmental impact statements to assess the effect of new legislation upon our environment, we must begin to consider requiring economic impact statements to accompany criminal justice legislation in order to assure that our able legislators and those who elect them fully appreciate what proposed new programs and facilities will cost.

Thank you very much for allowing NACDL to address you briefly today. We

understand the complexity of this process and appreciate your willingness to grapple with these issues. I'd be happy to respond to any questions.