



Written Statement of
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NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

before the
United States Senate Committee on the Judiciary,
Subcommittee on Crime and Drugs

Re: "Rising Crime in the United States: Examining the Federal Role in Helping
Communities Prevent and Respond to Violent Crime."

May 23, 2007

Mr. Chairman and Members of the Committee:

The National Association of Criminal Defense Lawyers (NACDL) welcomes the opportunity to address the topic of today's hearing, "Rising Crime in the United States: Examining the Federal Role in Helping Communities Prevent and Respond to Violent Crime." NACDL supports rational and humane criminal justice policies -- policies that ensure justice and due process for persons and entities accused of crimes, compassion for crime victims, and just punishment for the guilty. Within this mission is an objective to focus more attention on the social and economic benefits of crime prevention -- through education, economic opportunity, and rehabilitation of former offenders. NACDL supports the Committee's efforts to make our communities safer through evidenced-based crime prevention programs.¹

First, recent data showing an increase in violent crime in some areas of the country warrants careful analysis by the Committee. It is our understanding that the question of whether we are witnessing a nationwide trend in crime (or, for that matter, specific types of crime) remains open to debate. While we defer to the experts in this area -- and particularly commend the written statement of the Justice Policy Institute -- we think it bears repeating that crime rates remain at a 30-year low. Acting precipitously based upon a recent uptick may result in a misallocation of resources or reliance on strategies that are not cost-effective, ultimately undermining the goal of crime prevention.

In particular, we urge the Committee to avoid creating new federal crimes and enhanced penalties such as those included in Titles I and II of "The Gang Prevention and Abatement Act" (S. 456). We firmly believe that this approach will do nothing to make our communities safer. As stated by a blue ribbon task force sponsored by the American Bar Association, "inappropriately federalized crime causes serious problems to the administration of justice in this country. It generally undermines the state-federal fabric and disrupts the important constitutional balance of federal and state systems."² S. 456 is the archetype of legislation that concerned the ABA task force. "Among the likely unintended consequences of federalizing yet another set of state and local crimes is the further erosion of state and local law enforcement's primary role in combating common street crime."³

While the specific problems with S. 456 are beyond the scope of this hearing, we note that the bill's underlying premise -- that expanded federal jurisdiction and enhanced penalties are necessary -- has never been established. Indeed, at a Department of Justice briefing earlier this year, federal agents and prosecutors touted the efficacy of existing federal laws in bringing gang members to justice. Capturing the overall sentiment, ATF Acting Director Mike Sullivan

1 See generally Lawrence W. Sherman et al., *Preventing Crime: What Works, What Doesn't, What's Promising*, in *Research in Brief* 1-2 (Nat'l Inst. of Justice, NCJ 171676, 1998) (arguing that properly evaluating crime prevention programs requires scientific evaluation), available at <http://www.ncjrs.org/pdffiles/171676.pdf>.

2 Task Force on the Federalization of Criminal Law, American Bar Association, *The Federalization of Criminal Law* (1998) (task force included present and former prosecutors and law enforcement officials).

3 Erica Little and Brian W. Walsh, *Federalizing "Gang Crime" is Counterproductive and Dangerous*, The Heritage Foundation (Sept. 22, 2006).

remarked, “The fact is Congress has really given us some very powerful tools in terms of enforcement as it relates to violent offenders who use guns and explosives material as part of their tools of the trade.”⁴ Likewise, Paul Logli, President-elect of the National District Attorneys Association, recently testified that gang-targeted criminal laws are strong enough and that what is really needed are more community-based prevention programs.⁵

To the extent that the recent rise in crime has been blamed on youth violence (an allegation convincingly disputed by the Justice Policy Institute and others), we feel obliged to discuss the issue of charging youth as adults. Study after study has shown that young offenders who move through adult courts and correctional systems, especially those incarcerated with adults, become more alienated and destructive as a result of their experience. A recent study conducted by the Centers for Disease Control and Prevention (CDC) found that teens that are transferred to the adult justice system are 34 percent more likely to commit violent crimes than youth retained in the juvenile justice system. The study also reaffirms that transfer of youth to the adult system results in an increase in pretrial violence, victimization of juveniles in adult facilities, and elevated suicide rates for juveniles incarcerated in adult facilities.⁶

Congress should retain the current federal approach to juvenile crime — nurturing the states’ more expert efforts to prevent juvenile crime and rehabilitate youthful offenders. In this regard, we are concerned that the President’s budget would end dedicated funding for juvenile justice, putting at risk critical funding to support state juvenile justice prevention and intervention. NACDL has joined a long list of child welfare advocates and service providers in calling for restoration of funding streams for services for at-risk youth. The programs funded by these grants are perhaps the most critical part of the federal government’s efforts to help communities prevent and respond to violent crime.

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NACDL is the preeminent organization in the United States advancing the mission of the nation’s criminal defense lawyers to ensure justice and due process for persons accused of crime or other misconduct. A professional bar association founded in 1958, NACDL’s 12,500 direct members -- and 80 state, local and international affiliate organizations with another 35,000 members -- include private criminal defense lawyers, public defenders, active-duty U.S. military defense counsel, law professors and judges committed to preserving fairness within America’s criminal justice system.

4 Department of Justice Briefing on Efforts to Combat Gang Violence, January 16, 2007, available at http://www.usdoj.gov/opa/opa_011607.html

5 “Making Communities Safer: Youth Violence and Gang Interventions That Work,” hearing before the House Subcommittee on Crime, Terrorism, and Homeland Security, February 15, 2007.

6 “Effects on Violence of Laws and Policies Facilitating the Transfer of Juveniles from the Juvenile Justice System to the Adult Justice System: A Systemic Review,” *American Journal of Preventive Medicine* (April 2007).