

University of Montana
ScholarWorks at University of Montana

Max S. Baucus Speeches

Archives and Special Collections

7-23-1982

Montana County Attorneys Convention

Max S. Baucus

Let us know how access to this document benefits you.

Follow this and additional works at: https://scholarworks.umt.edu/baucus_speeches

Recommended Citation

Baucus, Max S., "Montana County Attorneys Convention" (July 23, 1982). *Max S. Baucus Speeches*. 211.
https://scholarworks.umt.edu/baucus_speeches/211

This Speech is brought to you for free and open access by the Archives and Special Collections at ScholarWorks at University of Montana. It has been accepted for inclusion in Max S. Baucus Speeches by an authorized administrator of ScholarWorks at University of Montana. For more information, please contact scholarworks@mso.umt.edu.

Printing, Graphics & Direct Mail
ONBASE SYSTEM
Indexing Form

Senator * or Department*: **BAUCUS**

Instructions:

Prepare one form for insertion at the beginning of each record series.

Prepare and insert additional forms at points that you want to index.

For example: at the beginning of a new folder, briefing book, topic, project, or date sequence.

Record Type*: **Speeches & Remarks**

MONTH/YEAR of Records*: **July-1982**

(Example: JANUARY-2003)

(1) Subject*: **Montana County Attorneys Convention in Fairmont, MT**

(select subject from controlled vocabulary, if your office has one)

(2) Subject* **none**

DOCUMENT DATE*: **07/23/1982**

(Example: 01/12/1966)

* "required information"



REMARKS OF SENATOR MAX BAUCUS
BEFORE THE MONTANA COUNTY ATTORNEYS CONVENTION
FAIRMONT, MONTANA
JULY 23, 1982

BEING AMONG SO MANY LAWYERS THIS EVENING, I'M REMINDED OF THE STORY OF WHAT HAPPENED WHEN POPE JOHN PAUL THE FIRST DIED. IT SEEMS THAT HE AND A LAWYER ARRIVED AT THE FRONT GATE OF HEAVEN AT THE SAME TIME.

THEY WERE MET BY THEIR GUIDE. THE GUIDE WALKED THEM OVER TO A BEAUTIFUL PALACE AND TURNED TO THE LAWYER AND SAID, "THIS WILL BE YOUR HOME." HE THEN TOOK JOHN PAUL AND BROUGHT HIM TO A SMALL ONE ROOM HOUSE WITH DIRT FLOORS AND SAID, "FATHER, THIS IS YOUR HOME."

JOHN PAUL TURNED TO HIS GUIDE AND SAID, "I DON'T WANT TO BE DISRESPECTFUL, BUT WHY IS IT THE LAWYER GETS A MAGNIFICENT MANSION, AND I ONLY GET THIS ONE-ROOM SHACK?"

"WELL, FATHER," THE GUIDE RESPONDED, "WE HAVE MANY, MANY POPES UP HERE--BUT THAT'S THE FIRST LAWYER."

THERE IS NO QUESTION THAT HERE ON EARTH LAWYERS AND LAWMAKERS ARE VIEWED TODAY WITH DIMINISHING RESPECT. THE LATEST HARRIS POLL SHOWS THAT ONLY 16 PERCENT OF THE AMERICAN PUBLIC HAS SUBSTANTIAL RESPECT FOR THE LEGAL PROFESSION AND FEDERAL LAWMAKERS.

TO MAKE MATTERS WORSE, THE LEGAL PROFESSION IS BEHAVING A LOT LIKE RODNEY DANGERFIELD. IT GOES AROUND MUTTERING, "I CAN'T GET NO RESPECT," BUT IT ISN'T DOING MUCH TO EARN ANY.

THERE SHOULD BE LITTLE DOUBT THAT THE JUDICIAL SYSTEM IS FACING A CRISIS OF CONFIDENCE.

MUCH OF THE BLAME RESTS WITH CONGRESS BECAUSE IT HAS FAILED TO ENACT A SET OF REFORMS THAT COULD HELP RESTORE RESPECT AND CONFIDENCE IN OUR LEGAL SYSTEM.

THIS EVENING I WOULD LIKE TO DISCUSS WITH YOU SOME OF THE PROPOSALS THAT I BELIEVE OUGHT TO BE QUICKLY ENACTED.

OUR CRIMINAL LAWS

THERE IS NO AREA OF LAW IN GREATER NEED OF REFORM THAN OUR CRIMINAL LAW. VIOLENT CRIME IS A CONSTANT SOURCE OF FEAR AND CONCERN IN EVERY NEIGHBORHOOD AND ON EVERY STREET:

- PEOPLE ARE AFRAID TO VISIT CITY PARKS.
- THEY'RE AFRAID TO SEND THEIR CHILDREN TO SCHOOL.
- THEY'RE AFRAID TO WALK TO WORK IN THE MORNING AND EVEN MORE AFRAID TO WALK HOME AT NIGHT.
- EVEN IN THEIR OWN HOMES, THEY'RE AFRAID.

WHILE THE FEAR OF CRIME AND THE RATE OF CRIME STEADILY INCREASES, FAITH IN THE CRIMINAL JUSTICE SYSTEM PLUMMETS. PEOPLE

ARE BECOMING MORE CONVINCED EVERY DAY THAT THE CRIMINAL JUSTICE SYSTEM IS INCAPABLE OF DEALING WITH CRIME:

--IT'S INCAPABLE OF SECURING "GUILTY" VERDICTS AGAINST GUILTY DEFENDANTS.

--IT'S INCAPABLE OF PROVIDING APPROPRIATE SENTENCES FOR HEINOUS CRIMES.

--IT'S INCAPABLE OF KEEPING DANGEROUS PERSONS OFF THE STREETS AND IN THE PRISONS.

IT IS THESE PERCEPTIONS THAT LIE AT THE HEART OF THE DECLINING RESPECT FOR OUR CRIMINAL JUSTICE SYSTEM. IT IS THESE PERCEPTIONS THAT CONGRESS CAN AND SHOULD BE ADDRESSING BY APPROPRIATE LEGISLATION.

THE INSANITY DEFENSE

PROBABLY THE MOST OBVIOUS AREA IN NEED OF IMMEDIATE REFORM IS THE FEDERAL RULE ON THE INSANITY DEFENSE. THE IMPLICATIONS OF THE HINCKLEY DECISION GO FAR BEYOND THE PUBLIC OUTRAGE ABOUT JOHN HINCKLEY.

SIMPLY PUT, IT IS DIFFICULT TO RESPECT A SYSTEM THAT CAN ACTUALLY ACQUIT A PERSON WHO SHOT THE PRESIDENT IN FULL VIEW OF THE ENTIRE NATION. THAT RESPECT IS FURTHER ERODED BY THE FACT THAT OUR RULES MAY PERMIT JOHN HINCKLEY TO BE A FREE MAN IN THE VERY NEAR FUTURE.

THE BLAME SHOULD NOT BE PLACED ON THE JUDGE OR THE JURY FOR THE VERDICT OF ACQUITTAL. THE BLAME FOR THIS AFFRONT TO OUR SENSE OF JUSTICE HAS TO BE PLACED ON THE RULES THEMSELVES.

AS IT NOW EXISTS, THE FEDERAL INSANITY DEFENSE IS CONFUSING AND UNPREDICTABLE. IT IS NOT BASED ON A CLEAR STATUTORY STANDARD.

SEVERAL LEGISLATIVE SOLUTIONS ALREADY HAVE BEEN INTRODUCED.

I PERSONALLY FAVOR ADOPTION OF A MEASURE I CO-SPONSORED SOME TIME AGO THAT WOULD RESTRUCTURE THE INSANITY DEFENSE. IT WOULD OPERATE BASICALLY THE SAME AS MONTANA'S LAW ON THE SUBJECT.

THE ESSENCE OF THE MONTANA APPROACH IS THAT A PERSON MUST HAVE INTENDED TO COMMIT THE ACT HE IS BEING ACCUSED OF. IF HIS MENTAL DISEASE CAUSED HIM TO BELIEVE HE WAS SHOOTING A CABBAGE THEN THE DEFENSE WOULD BE AVAILABLE.

WHEN WE CHANGE THESE RULES WE MUST ALSO ENSURE THAT ALL MENTALLY ILL DEFENDANTS RECEIVE APPROPRIATE TREATMENT. THOSE WHO ARE ACQUITTED ON THE BASIS OF INSANITY SHOULD NOT BE ALLOWED TO GO BACK INTO THE MAINSTREAM OF SOCIETY IF THEY ARE STILL DANGEROUS. THE MENTALLY ILL WHO ARE CONVICTED SHOULD BE TREATED IN PRISON.

THE PROPOSALS I HAVE JUST DESCRIBED WOULD BE A DRAMATIC IMPROVEMENT IN THE INSANITY DEFENSE. I BELIEVE SUCH A DEFENSE

WOULD GIVE OUR JUDGES AND JURIES A CLEAR AND MORE REALISTIC WAY TO ASSESS THE CULPABILITY OF CRIMINAL DEFENDANTS. IMPORTANTLY, SUCH PROPOSALS WOULD RESTORE CITIZEN RESPECT FOR A CRIMINAL RULE THAT IS CLEARLY NOT WORKING TODAY.

SENTENCING AND PAROLE

THE INSANITY DEFENSE IS ONLY ONE OF MANY CRIMINAL LAWS THAT ARE NOT WORKING. FEDERAL SENTENCING PRACTICES ARE ANOTHER MAJOR SOURCE OF PUBLIC SKEPTICISM.

THE SENTENCING OF CONVICTED DEFENDANTS IN OUR FEDERAL SYSTEM IS MARKED BY INCONSISTENCY AND DOUBLE TALK.

TODAY, FEDERAL JUDGES HAVE TOO MUCH DISCRETION IN THE IMPOSITION OF SENTENCES FOR FEDERAL OFFENSES. THE LENGTH OF A PARTICULAR SENTENCE IS TOO DEPENDENT ON THE INDIVIDUAL JUDGE'S PERSONAL SENTENCING PHILOSOPHY. THE RESULT IS THAT WIDELY DISPARATE SENTENCES ARE BEING IMPOSED FOR SIMILAR OFFENSES AND SIMILAR CONDUCT.

FURTHERMORE, PUBLIC CONFIDENCE IS ERODED WHEN THE SYSTEM PERMITS JUDGES TO PUBLICLY PRONOUNCE A 30-YEAR SENTENCE THAT MAY TRANSLATE INTO ONLY 5 OR 6 YEARS IN PRISON. THIS JUDICIAL DOUBLETALK IS EXACERBATED BY THE UNCERTAINTY CREATED BY OUR PAROLE SYSTEM.

I STRONGLY FAVOR REFORMS THAT WOULD REDUCE JUDICIAL

DISCRETION IN SENTENCING AND WOULD ELIMINATE THE PAROLE SYSTEM AS WE KNOW IT.

LEGISLATION I HAVE CO-SPONSORED WOULD CREATE A FEDERAL COMMISSION TO ESTABLISH SENTENCING GUIDELINES FOR FEDERAL OFFENSES. JUDGES WOULD BE BOUND BY THESE GUIDELINES UNLESS THEY COULD SPECIFICALLY FIND AGGRAVATING OR MITIGATING CIRCUMSTANCES.

THE BILL WOULD ALSO FORCE JUDGES TO SENTENCE THE CRIMINAL TO THE TERM THEY ACTUALLY THOUGHT SHOULD BE SERVED--THUS ELIMINATING JUDICIAL DOUBLE TALK.

IN ADDITION, THE BILL WOULD ELIMINATE THE POSSIBILITY OF EARLY RELEASE ON PAROLE AND WITH IT THE UNPREDICTABILITY OF THE CURRENT PAROLE SYSTEM. GOOD BEHAVIOR IN PRISON WOULD STILL BE RECOGNIZED, BUT EVERYONE-- THE PUBLIC AND DEFENDANT ALIKE--WOULD KNOW AHEAD OF TIME HOW MANY MONTHS OF GOOD TIME A FELON WOULD RECEIVE IF HE WERE A MODEL PRISONER.

THE END RESULT OF THESE REFORMS IS THAT THERE WILL BE INCREASED PREDICTABILITY IN OUR CRIMINAL JUSTICE SYSTEM. CRIMINALS WOULD BE ON NOTICE OF THE TERM OF IMPRISONMENT THEY COULD ACTUALLY EXPECT TO RECEIVE FOR COMMITTING A CRIME; AND ONCE WITHIN THE SYSTEM, THEY WOULD ALL BE TREATED EVENHANDEDLY.

THE VICTIMS OF CRIME--AND THE AMERICAN PUBLIC IN GENERAL--WOULD BE GIVEN A RENEWED SENSE OF CONFIDENCE THAT THE RULES GUIDING THEIR CRIMINAL JUSTICE SYSTEM ARE APPLIED

CONSISTENTLY AND FAIRLY.

BAIL REFORM

THERE IS ONE OTHER AREA OF OUR CRIMINAL RULES THAT MUST BE ALTERED. IT IS SIMPLY UNACCEPTABLE FOR DANGEROUS INDIVIDUALS WHO ARE IN THE CUSTODY OF OUR COURTS TO BE PERMITTED TO GO BACK ON THE STREETS TO COMMIT ANOTHER CRIME.

CURRENT FEDERAL BAIL PRACTICES ARE DESIGNED TO DETAIN ACCUSED CRIMINALS WHO ARE NOT LIKELY TO REAPPEAR FOR TRIAL. HOWEVER, JUDGES ARE MISUSING THE MONEY BAIL SYSTEM TO DEAL WITH DEFENDANTS WHO ARE A DANGER TO THE COMMUNITY. THE UNFORTUNATE RESULT IS THAT THOSE DANGEROUS DEFENDANTS WHO HAVE MONEY OR ACCESS TO MONEY--LIKE THOSE LINKED TO ORGANIZED CRIME--ARE RELEASED, WHILE THOSE WHO DON'T HAVE MONEY ARE NOT.

I HAVE CO-SPONSORED LEGISLATION THAT WOULD ELIMINATE MONEY BAIL. JUDGES WOULD THEREBY BE REQUIRED TO DETERMINE WHETHER THE RELEASE OF THE ACCUSED WOULD ENDANGER THE COMMUNITY.

THIS WOULD BE DONE IN A FULL-BLOWN HEARING WITH CIVIL LIBERTY PROTECTIONS. IF THE ACCUSED WERE FOUND DANGEROUS, THE JUDGE COULD IMPOSE CONDITIONS ON HIS RELEASE.

I BELIEVE THIS REFORM IN OUR BAIL PROCEDURES WOULD BRING MORE CANDOR TO OUR SYSTEM BY PERMITTING JUDGES TO DIRECTLY ASSESS THE IMPACT OF THEIR DECISION ON THE SAFETY AND SECURITY OF THE

COMMUNITY. IT IS A SENSIBLE AND REALISTIC APPROACH TO THE NEED FOR REFORM IN OUR BAIL RULES.

CONCLUSION

THE REFORMS IN THE INSANITY DEFENSE, SENTENCING, PAROLE AND BAIL THAT I HAVE OUTLINED THIS EVENING SHOULD BE COUPLED WITH REFORM OF THE EXCLUSIONARY RULE AND THE IMPOSITION OF A FEDERAL DEATH PENALTY FOR HEINOUS CRIMES. THIS IS A PACKAGE OF REFORMS THAT OUGHT TO BE ENACTED BY CONGRESS AT ONCE.

LET US NOT, HOWEVER, OPERATE UNDER ANY DELUSIONS. THESE REFORMS WILL NOT ELIMINATE CRIME. THEY WILL, HOWEVER, END THE PERCEPTION THAT THE RULES OF OUR CRIMINAL JUSTICE SYSTEM ARE CONTRIBUTING TO THE CONTINUING CRIME PROBLEM OUR COUNTRY FACES.

IF WE CAN DISPELL THAT PERCEPTION, WE WILL IN FACT HAVE GONE A LONG WAY TOWARD RESTORING SOME RESPECT FOR THE SYSTEM.

THANK YOU.