Department of Justice

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ADDRESS BY

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prepared for delivery to the

INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE

HOTEL FONTAINEBLEAU, MIAMI BEACH, FLORIDA

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Several days ago, a morning radio newscast offered a startling illustration of the present ferment over the critical role of police and law enforcement in the nation.

The broadcaster reported that a postage-meter company had run into a problem. It is the company's policy to allow users to imprint any slogan they wish on envelopes, so long as it is not controversial. In this case, the company felt compelled to reject one user's proposed slogan. What was his radical proposal? "Support Your Local Police."

Whatever timidity this story may reflect, there was another public expression made on the same subject several days ago, one which describes more meaningful attitudes toward the responsibilities you and your departments must meet.

As he signed the Law Enforcement Assistance Act, President Johnson declared, "The local policeman, the local district attorneys, city and state judges can know that this President will support them, without hesitation, in their efforts to fight crime in their towns."

There should be no underestimating the intensity of President Johnson's commitment to finding solutions to the problems of crime and respect for law in American society. And it is about the implementation of this concern that I would like to talk first today.

The traditional -- and proper -- stance of the federal government concerning problems of local crime has been to respect the traditional, constitutional reservation of normal police powers to local and state governments.

To say this, however, is not to say that the federal government cannot give meaningful, necessary assistance to local officials.

Intimate and important cooperation between your departments and the federal government has a long history -- in direct activities like the joint pursuit of car thieves, narcotics dealers, and other offenders; and in services and training like those offered by the FBI, most notably through the FBI National Academy.

Indeed, the FBI is now undertaking a six-fold expansion of the Academy, at a cost of some $14,000,000, bringing its capacity from 200 to 1,200 state and local officers each year.

Yet while the concept of federal assistance may not be new, the increasing burdens which you and your departments bear make the further development of such assistance essential.

And a principal focus of the President's Crime program is to do precisely that -- to permit us now to bring the resources of the federal government more sharply to bear on the problems of the patrolman on the beat, in the cruiser, or in the precinct station.

I.

One of our courses is represented by the President's Commission on Law Enforcement and the Administration of Justice, of which I serve as chairman. The mandate of the Commission is immense, but so is its promise.

Now for the first time, we have a national forum through which to examine and attack the entire inseparable spectrum of crime problems, from causes through corrections.

If this promise is to be achieved -- and I know you are as determined as I am that it shall -- it will, in large measure, be the result of the wisdom and energy the police chiefs of the nation can provide.

Beyond projects on which we seek you out, we very much want you also to bring the vigor of your ideas and the benefit of your experience to us: to me, to James Vorenberg -- the exceptionally able and expert executive director of the Commission; to Tom Cahill, who already has made an impressive mark as a member of the Commission; and to Gene Muelheisen, a police officer and authority of long experience whom we have just named to direct the Law Enforcement and Public Safety aspect of the Commission's work.

II.

A second part of the Administration's Crime program is the legislative aspect. In the present session of Congress, we have secured a new Prisoner Rehabilitation Act to help us seek more effectively to reduce the rate of recidivism. We have expanded the scope of the new anti-racketeering laws. We look forward to enactment of measures to give broader use of immunity in prosecuting racketeers, to deal more effectively with addicts, and -- emphatically -- to block the present murderous flow of mail-order guns.

Perhaps most important of all, however, is the new Law Enforcement Assistance Act.

The Law Enforcement Assistance Act gives us about ten million dollars much of which will be spent through your departments and other public and private agencies for the enlightenment of police science and further modernization of your work.

Ten million dollars neither can be nor is intended to be a subsidy. Nor are we creating a new school of police research or enshrining a new panel of experts. You <u>are</u> the experts and the aim of this measure is to provide both the funds and <u>the</u> impetus for imagination and experimentation in police work, judicial administration, and corrections.

It is our most fervent hope that this Act can help further elevate training, judgment, and ability to the point that every policeman is accorded the stature and respect warranted by a true professional.

Indeed, it is fair to say that the nature of modern, urban society and the dimensions of the crime problem require far more of police than we have even recently been accustomed to expect.

I don't mean to toss this out as a fresh idea. It is no revelation to you that the work of the police has become immeasurably greater, more complex and more subtle in our increasingly urban, anonymous, mobile, technological society.

For years, you have been sounding the call of police professionalism. Through a host of studies, training efforts, and special projects you have been leading the way toward greater professionalism. This assemblage represents the very highest sort of professional leadership.

But there is another aspect of police problems, more subtle but equally urgent, that cries out for a fresh response, for leadership by police chiefs.

III.

I am speaking of the most wrenching immediate controversy involving law enforcement -- the question of police interrogation and the right to counsel.

Perhaps the most disturbing feature of this controversy is the passion that fuels the conflicting positions.

Though I don't question the value of public discussions, I regret that this issue of police questioning has become such a battleground--too often a crude one between so-called "police state fanatics" on one side and so-called "bleeding-heart criminal coddlers" on the other.

I received a good deal of congratulatory mail after the publication of my correspondence with Judge David Bazelon last summer. Yet many writers were so shrill-so quick simply to take sides--that I fear they missed the point altogether.

The depth of the various views expressed is readily understandable when one considers the viewpoints of those who hold them:

--To the policeman, questioning means the ability to perform his basic duty, by securing information about crimes which he believes may be difficult or impossible to obtain elsewhere.

--To the civil rights worker, the very word "interrogation" may connote the abuse and harassment of minorities.

--To the liberal-minded attorney or judge, questioning may instantly suggest not information but intimidation--explicit or implicit.

Each, from his own experience, is persuaded he is right. Indeed, based on his experience he very likely is right. But that is the root of the difficulty. We have not sought to communicate, meld, and blend our various attitudes based on our various experience.

My feeling was and is that however firmly we adhere to the concept of equal justice before the law, the primary, deadly serious purpose of criminal investigations is to solve crimes.

We may rightly impose many limitations on police methods in the interests of fairness and the protection of personal rights. But at the same time we must recognize that each such limitation, however necessary it may be, does in fact also limit the ability of the police to discover persons who are guilty of crime.

The necessary balance is clearly a very hard one to strike. What is particularly important is that it be recognized as just that--a necessary balance--and not as a choice between absolutes or between ideological camps.

My correspondence with Judge Bazelon grew out of his criticism of the tentative first draft of the American Law Institute's Model Code of Pre-Arraignment Procedure. Now I cannot endorse or defend this Model Code; it is still being excessively revised for presentation to the advisory committee next month.

Yet I do accept what I understand to be the basic premise of the drafters: namely that there is no absolute right not to be questioned at all, and that some questioning after custody has begun may well be essential to effective law enforcement.

At the same time I take it we all believe it would be intolerable for a system to guarantee certain protection against self-incrimination and abusive practices--as ours unarguably does--without providing truly effective methods of letting people know that they have those rights.

I do not believe that by taking this position I am "taking sides" with the police--or against others.

While some courts may have paid too little attention to the crime-solving side of the balance, I do not believe that the root of our crime problems lies in the courts.

To argue that is just as irresponsible as it is to argue, as Chief Cahill has observed, that it is the police who are to blame for our crime problems--because they have not checked the increases in crime.

Faced with immensely difficult questions which they are not equipped to answer, our courts have struggled mightily to keep the scales in balance. The problem that we now confront over police questioning has arisen not out of what the Supreme Court has done but out of what other groups and agencies of government--particularly our state legislatures--have not done. The problem has arisen largely because we have pressed upon the courts unwelcome responsibilities which they were never designed to assume.

We should know by now what happens when we force the courts to referee this kind of fight one round at a time. Presented with a specific set of facts, asked to render a specific decision, a court can only come to a conclusion in the particular case--a conclusion, however, which must then be lifted from its context and superimposed upon other, perhaps unconsidered circumstances.

A court cannot collect empirical information. It cannot compare the competing needs of the interrelated parts in a total process. It cannot draw

up general standards for future conduct or establish sanctions to apply when such standards are ignored.

A court can look only at the facts of the case at hand and only after they have already occurred. It can deal only with the wrong alleged.

A legislature can bring the collected facts of many cases to bear on the system as a whole. It can apportion alterations among the parts of the whole. It need not risk an unbalanced end result because it is required to tinker in limbo with one cog.

This is something certainly of which the courts are deeply aware.

The distinguished Chief Justice Roger J. Traynor of the Supreme Court of California has given expression to this awareness.

"There are no adequate precedents," Judge Traynor has written, "for much of the law that must be formulated today to regulate multi-minded, multi-handed human beings. The main preoccupation of such law must be with the future. Its main formulation belongs appropriately to legislators, who are freer than judges to write on a clean slate, in terms of policy transcending case or controversy, and to erase and rewrite in response to community needs."

The courts, in short, have been active only by default: default of law enforcement professionals and law-making bodies in devising a reasonable and coherent set of rules governing such things as arrests, interrogation, search and seizure and eavesdropping; and again, default in specific cases by police officers and organizations who overstepped reasonable bounds in pursuit of particular suspects.

Two of the most controversial and significant Supreme Court decisions in this area are Mapp v. Ohio, which excluded illegally seized evidence, and Escobedo v. Illinois, which prohibited quarantining a suspect from his lawyer. Yet whatever views you may hold about the impact of those decisions, I strongly suspect that on the specific facts of the cases each of you might have reached the same result the Court did.

And this leads us to the heart of the matter. The underlying problem is that where there is a vacuum of statutory guides, recourse for a particular injustice is to the courts; and once that recourse is taken, the court's decision is broadly read and not lightly altered.

For the courts, after all, have no choice. They must decide the cases --each in its own limited context--that come before them. And yet to let general rules of police procedure emerge in this way would, I believe, be unfortunate both in process and in result.

IV.

There are, I believe, two immediate courses for us to follow. The first is to lend the warmest, wisest possible support to the present efforts of those seeking to frame general guidelines that are not constricted by the excesses of a particular case.

Again, without offering specific endorsements, I commend to you the manner in which the American Law Institute committee members have gone about drafting a model state law on these questions. This is the first and only attempt that I know of to draft legislative rules guiding police procedure in the period between arrest and the courtroom appearance of a suspect.

The President's Commission, especially, will look forward with considerable anticipation to the result of the work of this committee--which includes not only judicial, bar, and federal representatives, but also four of your most eminent members -- former Commissioner Michael J. Murphy of the New York City Police; Cincinnati Chief of Police Stanley R. Schrotel; Philadelphia Police Commissioner Howard R. Leary; and Chief John B. Layton of the District.

The second course is to make it plain that such a legislative solution is adequate. This means continuing to do the utmost to avoid the cases of excess which already have brought court decisions of such broad impact. It means assuring the reasonableness of arrests. It means demonstrating the need for questioning on the basis of facts, not merely on experienced -- but undocumented -- conclusions.

From my own experience, I have the fullest confidence that these purposes can be achieved; it is necessary as an example only to look to the full responsible assistance provided in the District of Columbia by Chief Layton, without whose assistance the Department of Justice could not conduct its studies of police questioning, and whose department is cooperating fully with efforts to experiment with warning, record-keeping, and other safeguards.

These are sensitive responsibilities. Some may feel they are meddlesome or bureaucratic, that public safety is the business of the police and that the police should be let alone to protect it.

To them I would say public safety is not and must not be our only business, just as I would say to others that safeguarding the rights of defendants is not and must not be our only business.

These cannot be alternate aims. We cannot seek safety alone any more than we can seek freedom alone. For it is our ultimate business -- as citizens of a democracy as well as officers of the law -- to demonstrate that our cities, our nation, and our system can be and will be both safe and free.