



# Department of Justice

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BY

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ATTORNEY GENERAL OF THE UNITED STATES

BEFORE

THE RADIO-TELEVISION NEWS DIRECTORS ASSOCIATION

12:00 NOON  
THURSDAY, SEPTEMBER 12, 1974  
QUEEN ELIZABETH II HOTEL  
MONTREAL, QUEBEC, CANADA

I was very pleased to receive your invitation and I have been looking forward for some weeks to the opportunity to be with you here today.

At the beginning, I think I should explain that all of my remarks will be directed to matters in the United States -- and not to anything involving our friends and neighbors in Canada.

When traveling in other lands, I try to observe the directions I once saw on a can of French floor polish. It said -- if you'll forgive my pronunciation -- ne pas agiter. And I believe a rough translation would be: Don't shake things up.

I attempt to follow that rule because about the last thing I need when I get back to Washington is a message to return a telephone call to the Department of State. Or to Ottawa.

But I feel few such compunctions about discussing matters that relate to the Department of Justice -- and our earnest attempts to grapple with a wide range of vexing problems.

Quite frankly, some of the difficulties that we sometimes face involve relations between the Department and the press. By the press I mean all of the communications media -- radio and television as well as newspapers and magazines.

Any time an outsider discusses the press he runs the risk of having his head served up on a plate. So I want to stress that I am not attempting to meddle in press matters or tamper in any way with its freedoms.

The Constitution says that "Congress shall make no law . . . abridging the freedom of speech, or of the press . . ." I believe that means exactly what it says. And a parallel truth is that government should not attempt to abridge that freedom through petty fiat or bureaucratic foolishness.

But we all know there are times when substantial differences of opinion do arise between the Department and the press -- and no useful purpose will be served by trying to hide that fact.

The most productive course is rather to discuss them frankly and try to resolve the differences so that reasonable solutions can be fashioned.

I doubt there will ever be a day when there are no conflicts. Such as state of affairs would probably indicate advanced lethargy -- if not senility -- on the part of either the government or the press, or perhaps both.

A sense of constructive give-and-take probably benefits both parties. But more to the point, it benefits, in immeasurable ways those whom we both attempt to honestly serve -- the people.

When his thoughtful essays graced the pages of The New Yorker, A. J. Liebling once wrote that the press is as much of a public utility as the waterworks. He may have meant many things by that. But among others I think it signifies a deep national belief that our system and our democracy could not long function without it.

I do not mean to suggest that I always agree with everything the press says or does. No more than the press, as it has made abundantly clear, agrees with everything that I say or do.

But the press has had a remarkable track record over the decades -- whether it has basked in the euphoria of acclaim or been buffeted by periods of sullen animosity. Both have occurred in the past -- and I'm certain both will recur in the future.

But whether we always agree with the free press or not, one fact stands out clearly -- we cannot do without it. In this case, there are no viable options.

As Attorney General, I believe that one of my responsibilities compels me to make available to the press and the public all information that can be released within the constraints of fairness and reason and the law.

Substantial divisions exist over some aspects of what can and should be public information -- not only between the press and the government but within the government itself.

At present, Congress is grappling with two bills of great importance to the press. One concerns proposed amendments to the Freedom of Information Act. The other relates to proposals for the privacy and security of material in the growing network of criminal justice information systems.

It would not be appropriate for me to discuss either subject today in any great detail, since Congress is still at work on those complex measures and the Department is preparing additional views that will be presented eventually in the context of that open, legislative process.

However, I will reiterate that the press and the public do have a right to know what is going on, and government policies in this area should be as frank and candid as possible -- and then some.

Another area of great sensitivity regards the Department's policies on issuance of subpoenas to members of the press for testimony in judicial proceedings.

Written guidelines have existed for several years, and they were formalized and expanded into regulations last October. While time precludes a detailed explanation of them, I want to mention at least a few key points -- because I believe many newsmen either don't know of their existence or are vague about their import.

A subpoena is issued to a newsmen only as a last resort -- after all other attempts by the Department have failed to obtain the desired evidence from other sources. Even when

those efforts fail, and we go to the news media, we seek voluntary compliance. If that fails, we then issue the subpoena.

In some instances, we seek to obtain testimony concerning a suspected offense that the newsman witnessed. In others, we seek photographs or tapes -- and normally they are those that already have been printed or broadcast.

As the final check and balance within the Department, the subpoena can be authorized only by the Attorney General.

Since I assumed this post some eight months ago, I have authorized 15 such subpoenas -- three of which related to a single case. In most of those instances, the newsmen were willing to cooperate -- but requested the subpoena first be served.

The existence of a formalized process does not guarantee there will be no difficulties. Only last week, I received a complaint that a United States Attorney's Office had issued a subpoena for a former college newspaper reporter -- without my knowledge or approval. I ordered that subpoena quashed.

After examining the issues on the merits, I subsequently authorized a subpoena for the same person. But I stress that we take the procedures seriously and we authorize such subpoenas only after stringent checks.

We will not tamper with freedom of the press or with the right of the press to pursue and report the news. Neither do we seek or want any powers to snoop in reporters' notebooks and files -- nor to tamper with the confidentiality of their sources.

The final safeguard for anyone receiving a subpoena is that he can go to court and contest our position. We have no reluctance in urging that this step be taken if a newsman disagrees with us.

Another matter of concern to the news media is the Department's policies relating to the use of electronic surveillance in criminal and national security cases.

These policies rest not only on the foundations of the law but are also subjected to stringent internal reviews in each and every case. We have an abiding responsibility to make certain that all electronic surveillance is both legal and proper.

The Omnibus Crime Control and Safe Streets Act of 1968 authorizes the Federal government to conduct electronic surveillance in investigations of certain criminal violations -- but only after obtaining a court order authorizing it to do so. Electronic surveillance for national security purposes is handled differently -- and I will elaborate on that in a moment.

Last year the Federal government applied for and received court authorization for wiretap and microphone installations in only 130 cases -- hardly an indication of massive surveillance. The great majority of these cases involved gambling and narcotics activities carried on by organized crime.

In the area of national security, the government had held for many years that it needed no court approval to gather through electronic means intelligence data on foreign-directed activities or on domestic threats to the Nation's security.

In a 1972 decision, however, the Supreme Court held that judicial permission must be obtained before electronic surveillance can be used against purely domestic organizations -- even though they may be an apparent threat to security. The court in that case specifically left open the question whether the government must have judicial permission before conducting electronic surveillance relating to foreign threats or foreign intelligence activities. The lower courts have uniformly held that the Government need not obtain judicial approval in these cases.

We adhere rigidly to the law, and to strict internal procedures. And I want to assure you that the number of the national security surveillances is very modest. I have said it before and I will stress it again that while I am Attorney General the term "national security" will not be used as some sort of easily-obtained hunting license. Not for anyone, not for any purpose.

In the national security area, there are strict procedures within the Department of Justice to make certain that no inappropriate surveillance is conducted.

There are nine separate checks in the FBI alone before the request reaches the Director. If he approves, then further review is conducted within the Department of Justice before I receive the request. And it is carefully studied by me.

There must be a precise explanation of the nature of the activity about which information is needed. There also must be documentation on the exact site and the time needed to gather the information. And steps are also taken, if approval is given for

such a surveillance, to protect the rights of innocent parties who might be accidentally overheard.

The logs of the conversations which are overheard are held within the executive branch on a stringent, need-to-know basis to guard against any possible misuse of the material.

There is a great need for electronic surveillance in the national security area. But I emphasize again that everything we do must always meet the test not only of need but of fairness as well.

Now, I know that you realize that substantial responsibilities also fall upon the press as far as our system of justice and concepts of fairness are concerned. How you cover and report the news is up to you. But it seems to me that new technology and the ability to instantly transmit via radio and television events of substantial importance make it essential that fairness be uppermost at all times.

I know that you and your colleagues around the Nation are constantly grappling with these issues. They are very complex issues. One day it might be televising the negotiations of convicts who have seized hostages. Another it may be the agonizing decision on whether to report a breaking story for which you have some -- but perhaps not all -- of the facts. And it can also involve careful judgments on whether to give coverage to demagogues and cranks seeking to build personal power through manipulation of the media.

Again, those are issues for you to decide. But there is another area of concern that I think should also be studied carefully when we consider the press and our system of justice.

It might be best illustrated by two separate events that occurred earlier this year.

In March, I had the honor to present a Department of Justice award to a Memphis television news cameraman who helped capture three suspected bank robbers at considerable risk to himself. I do not expect any citizen to perform the functions of a policeman. But as I said at the time, this was "a courageous act by a private individual in support of law enforcement."

A short time later, it was disclosed that another newsman -- a photographer for The Associated Press -- had answered questions asked by the FBI about what he had seen during the situation at Wounded Knee.

The photographer was not an informer -- he was simply a witness to certain events, and these events were what he was asked about.

The reaction of The Associated Press was a discouraging one from my point of view. The photographer was first suspended and then fired.

All of us in the Department felt very badly about this matter for a number of reasons -- not the least of which was that our actions to uphold the law inadvertently set into motion a chain of events which cost the photographer his job.

At about the same time, I read another press account -- and an impressive one -- which contended that it was the duty of every citizen to help uphold the law.

I agree with that. And I believe that when a newsman is a first-hand observer to an alleged crime he has a duty like every other citizen to tell authorities what he has seen.

Just as a doctor has an obligation to answer questions about a crime he has seen in a hospital. Or a lawyer a crime he has seen in his office building. Or a clergyman a crime he has seen in his church.

If we begin making exception after exception about who has a duty to help uphold the law, then our task of first controlling and then reducing crime will prove even more arduous. And no newsman should be subject to retaliation from his employer for doing his duty as a citizen.

The sad fact is that today the job of controlling crime faces enormous obstacles.

Only last week, the FBI reported that serious reported crime rose six per cent in the United States last year. Even more disheartening, crime increased by 16 per cent in the final quarter of 1973 and 15 per cent in the first quarter of 1974.

The increases came after a four per cent decline in crime in 1972 -- the first such reduction in 17 years.

It now seems apparent that we have suffered a major setback -- a failure of upsetting proportions -- in the long and costly struggle to reduce crime to reasonable levels.

There is always the possibility that what we are seeing is a temporary upsurge in the crime figures. Personally, I harbor some hope that they may begin to decline again next year.

But there is simply no way to accurately predict what the future holds. Even if a slight decrease could be recorded soon, we can take slight comfort from tenuous straws in the wind in view of the over-all magnitude of the crime problem.

In 1973, there were an estimated 8.6 million serious crimes reported in the Nation. That figure does not include a host of other reported crimes -- and it does not include what may be a substantial number of offenses that are never reported to authorities.

The level of crime might be even higher still if it were not for the new programs begun at the local, state, and Federal levels during the past five or ten years. However, no matter how we view it, there is simply too much crime -- and better ways to combat it must be fashioned.

There seems to be a tendency on the part of many to look for a single solution in a field where there simply is no touchstone.

Some contend the real answer rests with solving all of the social and economic problems relating to crime. Others feel that we should ignore those things and rapidly expand criminal justice manpower and expenditures. And debates rage within criminal justice over where the resources should be expended. Some want most of the funds for police, while others say the police should be given short-shrift in favor of courts or corrections or

programs to divert offenders from traditional institutions.

My view is that only a program of many facets offers any real hope for lasting success.

Poverty and unemployment do contribute to some crime -- particularly among the young -- and they must be coped with in much more adequate ways than the Nation has yet devised.

The criminal justice system at the state and local levels -- where the basic responsibilities for crime control rest -- does need more manpower and more funds. It also needs more effective ways to prevent crime and to make sure that justice is swift and certain.

Every component within the system needs substantial improvement -- as the best minds in the field have long maintained.

And on top of everything else it must do, criminal justice simply has to create better programs to cope with the violent offender. Through judicious programs of sentencing and humane imprisonment, dangerous offenders must be kept in custody until they no longer are a threat to society.

I stress here that such efforts must be in full accord with the law and the rights of each offender. But our newspapers, to say nothing of our criminal justice files, are replete with accounts of offenders who are freed in one way or another and promptly commit fresh crimes of violence.

Every effort should be bent to rehabilitate every offender. But it is a short-sighted society indeed that will tolerate the release of dangerous men by whim or by wishful thinking.

Among other things noted in the recent FBI report on rising crime is that 77 per cent of those known to have been involved in the slayings of policemen during the past ten years had been arrested previously on a criminal charge.

But when all of the factors have been considered it becomes very plain that the government and the criminal justice system cannot solve the crime problem by themselves.

The pivotal factor may be how we live as a people -- how hard we are willing to work, how moral we are willing to be.

Every illegal act either committed or tolerated spreads an influence in ever-widening circles. We may think no one is watching -- or being affected -- but that is not the case.

Among other things, the young are watching -- the young who learn from us and emulate us.

As the beneficial influences of the home and the school and the church wane, we see all sorts of models of non-productive behavior rushing into the vacuum.

Public office holders default on their trust.

Cheating of all sorts becomes so widespread -- from tax returns to marriage vows -- that the concept begins to seep into the consciousness that honesty is only for suckers.

Attention is riveted to the gouge, the rip-off, the fast buck, the adroit hustle -- not to the victims or the ethics left behind in the rubble.

The poor child sees the sleek emissaries of organized crime and the prosperous pimps riding around in big shiny cars while his own honest father is ground under the boot of discrimination -- offered neither a helping hand nor an even break.

And the adult use of alcohol and drugs becomes so widespread that a child is in a sense programmed to become a future addict before he has any awareness of what is really going on.

Aside from what we as a people may actually do, there also seems to be a monumental national passivity about things that if not illegal certainly tend to corrode and twist the young.

Violence permeates the mass art forms of movies and television -- and the victims are not only sweet reason but millions of children who will never be quite the same again.

A noted scholar once said that he was astounded at which set of James brothers had monuments erected in their honor -- Jesse and Frank, as it turned out, and not William and Henry.

There are problems rooted deep in our country that will simply not be wished away -- nor solved by endless wrangling over procedural matters.

While we debate how to cope with discrimination, millions are still trapped in the perpetual twilight of the ghetto.

While we argue whether the public or private sectors should have the lead in fighting poverty, millions still go badly fed and housed.

While we debate how to achieve health care, millions still have woefully inadequate medical treatment.

And in the field of crime control, as we debate this or that procedural matter, millions of persons fall prey each year -- and there is no end to that in sight.

A giant of a nation stands chained by wrangling and indecision and performance so shoddy it cannot even protect vast numbers of its people from harm.

In just the same way that we reflect on a free press, there simply is no viable option to this matter of crime control.

It has to become a fact -- as difficult, as disheartening, as costly, as time consuming as it may be to reach our goal.

And in addition to everything else that must be done, there is no better starting point than ourselves -- enhancing our own conduct and broadening our concern for our fellow man, so that we really care about how he is and what he needs.

There is no viable option for that, either.

Thank you.

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