



Department of Justice

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Address
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by
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at the
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It is a happy circumstance that in anticipation of Canada's national centennial and the world exposition in this city next year, the bar of our country should meet here. In the moulding and sustenance of both our two great federal systems the legal profession has played a vital and enduring role.

My invitation to Montreal was based--and doubly welcome--on my chairmanship of the President's Commission on Law Enforcement and Administration of Criminal Justice. My theme today is, I believe, relevant also to Canadian ears. I am aware from the productive association we have enjoyed with the Canadian Corrections Committee and with members of the Canadian bar that a fresh survey of the whole system of criminal justice and new strategies to meet crime are shared national concerns.

Crime is as old as human history, but at few times has it prompted such widespread concern as it does now in our countries. Indeed, we now are experiencing a convergence of public consciousness and political leadership which can, perhaps, impel the development of new understanding and new effectiveness. Indeed, President Johnson has placed crime at the very summit of national attention.

The journey ahead of us is a long one, the President has reminded us. "Ancient evils do not yield to easy conquest. Modern criminology has yet to light many corridors. We cannot limit our efforts to enemies we can see. We must with equal resolve, seek out new knowledge, new techniques, and new understanding. In the battle against crime, unity can give us strength."

The National Crime Commission is an expression of this commitment. A Commission by itself is no solution. All of us can think of commissions which were mere sidetracks, or echo chambers, or buglers of general call to arms. Yet we realize too that Commissions can play generative roles as well. They can be essential links in the chain of public and professional understanding, in weaving a unified fabric of knowledge, in giving sinew to strong but fragmented impulses to public action. It is our determined hope that this Commission will fulfill such a mission.

The Commission on Law Enforcement and Administration of Justice has nineteen members, including leaders of the Bar and three past presidents of this Association. The best talent in a dozen disciplines has been mobilized by the Commission. Anything which so intimately affects the quality of our civilization and daily life as the problem of crime, is necessarily affected by innumerable institutions, programs, and technologies.

The inquiries of the Commission's staff, and its consultants spread nationwide, range from police radio frequencies to the relationship between school and delinquency, from halfway houses to loan sharking.

Mere numbers and variety of disciplines do not guarantee the quality of the results, nor need the lawyer be at all diffident about the crucial contribution he makes to this inquiry. But we have found that the police expert, the systems analyst, the sociologist, the scientist all have a valuable place in this effort, for we are embarked--admittedly and proudly--on a crash program.

This crash program seeks to first discover what we do not know, second, to list and assemble what we do know, and then to design the changes that are needed at all levels of government.

Halfway through our work, we have found the first task truly discouraging. The accumulating evidence points to shocking findings about the appalling and self-defeating treatment of the misdemeanant in courts and jails, or the financial and educational dehydration of police forces. But the finding which is already inevitable--and which is most shocking--is that we are profoundly ignorant about large segments in the full sphere of criminal justice.

Those of us who are lawyers have tended to concentrate on post-arrest and trial topics, because these are areas in which the skills of the lawyer are most apt. By the nature of our training and outlook our common model of how a system of justice should work is an adversary one. The Bar has long acted on a devoted and assuredly necessary sense of responsibility toward the effectiveness and fairness of the trial process.

The rules governing fact-finding, the criteria preceding decision-making, and the proper role of prosecution and defense in the courtroom receive astute analysis from outstanding committees of distinguished lawyers. Such projects as Judge Lumbard's on Minimum Standards of Criminal Justice are both examples and culminations of the lawyer's tradition of care for the design and successful operation of institutions with which lawyers are involved. The public trial has a large symbolic meaning for the community as a whole and lawyers properly give it their care.

But how many of the persons affected by our system of criminal process ever experience a judicial confrontation? Not more than 20 percent are involved in adjudicatory proceedings. Instead, they see an administrative application. This is true in the courts. It is true in sentencing. It is true in the large police, prosecutorial, and correctional agencies which are a unique feature of this century. And yet what do the Bar, the legislator,

the scholar, the agency officials themselves--even we in this room--know about the operation and effect of the administrative scope of these agencies? The disconcerting answer is, virtually nothing.

Where the Bar is faced with administrative agencies and administrative processes in other fields no such condition of neglect and widespread ignorance prevails. The Antitrust Division, the Food and Drug Administration, the Securities and Exchange Commission receive the same careful scrutiny and periodic review, often by permanent sections of this Association, that the adjudicatory process does in criminal justice. Lawyers not only study these agencies in their client's interest; they are laudably willing to take responsibility for their smooth operation in terms of their public goals.

Indeed, it is assumed that the design of the agency, the procedures it uses, the criteria it applies, the resources it needs, will be subjects of continuous discussion and exchange between officials, members of the practicing bar, and legal scholars. The time which lawyers, law firms, and law schools contribute as a public service to the improvement of the daily operations, drafting of regulations, and legislative proposals by these agencies is enormous. It is responsible in large measure for their success, and the success of government under law in a complex society.

The Bar must assume the same role with respect to the now invisible administrative agencies of criminal justice. Their problems do not differ in nature. The fact that they handle people rather than products, corporations, or money should make them all the more part of the central and steady business of this organization.

To say that the system is invisible is not to say that we know nothing. Rather our span of concern and understanding does not reach out to include vital aspects of the problem. The police, the courts, the correction agencies are part of a common stream of justice, yet they rarely receive joint stress and exploration as part of the same topography.

The intellectual and practical issues we have confronted in the Commission remind me of the story about a drunk down on his hands and knees in an intersection under a street light. A policeman comes up and asks what he is up to. "I dropped my watch," the drunk replies. The policeman crouches down to help in the search. After a few minutes of careful probing and looking, the officer asks "where exactly did you think you **dropped** your watch?" "Oh" he replies "about a block down the street." "Well, why in the devil are you looking here?" the policeman asks in exasperation. "Why, because the light's better."

Has not the time come for lawyers to labor not only where there is already light, but also to bring light to the great space of darkness in the criminal justice system?

The Commission on Law Enforcement and Administration of Justice is unashamedly trying to incite a revolution in knowledge. Above all, it is trying to bring the constellation of criminal justice problems into common telescopic view. It has begun to place into some focus the wide range of

submerged questions and unexamined assumptions which have lain inert in this crucial realm of public policy. It is our hope that we shall impel people within the system of criminal justice to see themselves and their work as part of an organic system, not as officers of independent principalities of the law.

One of the major categories of the Commission's inquiries plainly involves police. We are, for example looking intensively into police-community relations--a focal part of the criminal justice system. This study has been conducted in more than 20 communities. Some team members have gone on police car patrols for days at a time. Others have interviewed police officers and citizens. Still others have observed the operations of the station house.

The efforts of the Commission have been given greater relevance and wider perspective by the parallel work being conducted under Department of Justice grants made possible by the Law Enforcement Assistance Act. More than 80 projects have been approved and funded, and many of them engage the interest of the Commission.

A noteworthy example is one beginning this week at the Harvard Business School where police chiefs from 40 major cities are gathered in an executive management institute. They are being exposed to case problems in community relations, to new methods in recruitment and communications, and to new areas of administration generally, which lie outside the police experience they have gained in rising up the ladder of career promotion.

The interrelationships at the different aspects of criminal justice are nowhere more evident than in the basic issues raised by our police studies--whether, for example, the law we see and respect is the same law seen by the urban poor--be they victim, witness, or accused.

To us, the system of criminal justice is largely invisible because we have no contact with it. But what is the view of the poor person who is thrown into frequent contact with it? Does he see dignity in the criminal law? Does he experience fairness in the criminal law? Does he develop respect for the criminal law?

To ask these questions is to answer them; the distrust and disrespect for criminal justice among the poor--however law-abiding the vast majority are--is obvious.

And yet how do we react to this knowledge, that the poor, who have the most experience with the law, do not respect it?

Too often, I fear, we do not blame the system which inspires such disrespect. Instead, we blame its subjects. Too often, we are disposed to dismiss the inequities visited by the crudities of the system on the allegation that the poor--particularly Negro poor--are shiftless, or are unsophisticated, or are prone to crime.

A second major area of Commission inquiry seeks to find better tools both to measure the incidence and trend rates of crime and to measure the success of what prosecutors and judges are trying to do.

Here again, the frequent separation of charges from the actual facts in most criminal cases through plea-bargaining has exposed large patches of ignorance. Each day in municipal courts across the country hundreds of decisions are made to drop cases without prosecution, or to accept pleas of guilty in return for rather light sentences or probations, and to prosecute a small percentage of cases to the limit.

These studies sharply remind us of the informal, off-the-record, and invisible nature of so much of the negotiating and adjusting process--usually under a seriously inadequate misdemeanor system--as well as of the police decision on whether to arrest in the first place. But we are trying to go a step further. The plea-bargaining process may well be an administrative necessity--and one with substantive merits as well. We are, nevertheless, seeking standards which give greater assurance that those sentences which do result are reasonably tailored to the correctional needs of the criminal.

Making the plea-bargaining system manageable and not just a wholesale discount operation is one large theme. Quite as important is providing law enforcement authorities with the information about offenders which can permit weaving this aspect of the legal process into such up-to-date practices as mental treatment, supervised probation, and work-release programs.

These studies are not the indulgent reflections of the scholar. They focus on the first principles of a democratic order. Yet there are virtually no guidelines, or reports, or commentaries about decisions which represent more than 90 percent of the cases which involve liberty or imprisonment for millions every year.

A third major category of the Commission's work is our national survey of corrections, really the first that has been made. The profile we have is a very disheartening one. In few areas has the 20th century made such shallow penetration or are public preconceptions so hardened. What advances have occurred in penology and corrections are little understood or accepted.

Only occasionally is the inertia broken. Those engaged in corrections increasingly sense the possibilities in community treatment of offenders through supervised work programs. So far these notions have lacked proof.

In California--a state which in recent years has demonstrated unusual leadership in correction programs, in an integrated criminal justice information system, and in strategies to detect crimes of violence--there have been hopeful signposts. No large state has in recent years made more progress in relating and overhauling rationally and effectively all the major instruments of justice and law enforcement.

Beyond these and other efforts to bring knowledge where there is now only anxiety, the Commission also is intent on relating discovery to reform. Though its life is short, it is seeking every means to mesh its findings with the work of the permanent agencies of law enforcement and legal training.

Indeed, I believe that with support from the Bar Associations in the spirit which organized the American Bar Foundation, we can look forward to a national establishment for research into crime and the effects of a system

of criminal justice--much like the research agencies in health, agriculture and other fields of national concern.

As a more immediate measure, the President has already asked the **Governors** of each state to establish planning commissions which will provide both an enduring network for the exchange of information and help carry forward the work of the National Commission.

Even if the Commission succeeds in its first task of identifying and analyzing the areas of ignorance--and even if it makes sound and broadly imaginative suggestions for change--no commission alone can provoke sufficient change and reform. No commission and no report--however, ambitious, comprehensive, careful, or incisive--can possibly make the difference. The Bar, as well as bodies of government must be receptive to recommendations and actions.

The future depends on a partnership in which lawyers and a legal profession willing to use and apply knowledge are the catalyst. An aroused Bar has great power. The lawyer has always been and remains today not only an interpreter of change, but also an inventive artisan of social progress and community adjustment.

In suggesting the importance of these fresh approaches, I do not ask that the members of the Bar dilute their professional standards by trying to be all things at once--attorney, social worker, penologist, and systems analyst. What I do suggest is that the lawyer--with the knowledge he possesses--often does not seize open opportunities for dispelling corners of darkness. Collaboration with other professions and cross-fertilization is badly needed, but many lawyers look upon this as a surrender of professional prerogative or as venturing into trackless areas of social theory.

Fortunately there are heartening trends among lawyers, law schools, and courts which show an awareness of the dynamics of crime and opportunities for greater involvement by the lawyer in redesigning and reinvigorating the criminal justice system. There is accumulating evidence that much can be done in countless communities through a variety of programs.

This Association, with the aid of the Foundations and local bar associations which have demonstrated concern for the state of criminal justice in this country, could establish a program for law students--perhaps more usefully in the summer of their second year of study--which would provide openings in local police forces, correctional institutions and programs, prosecutor's offices, bail programs, lower criminal courts, and agencies involved in the sentencing process. I can pledge the full cooperation and support of the Department of Justice in both the establishment and operation of such a program.

Obviously, the local bars and bar associations would play the major role in devising such participatory programs which would be both part of an educational experience for the young lawyer and a means for seeding practical reforms. The benefits would be multiple. New perspectives and impetus for reform would be brought from the outside. Much practical work could be done

at little cost. Not least, they would create an informed and concerned legal constituency of persons who recognize an issue because they have seen and experienced it. Such a "law corps" would be of inestimable value during the next two decades when problems of criminal justice will be among the most intellectually demanding the profession will face.

Many law firms have established traditions of contributing for short periods the services of both senior members and young associates for vital public tasks. Such short sabbaticals have helped enormously, for example in civil rights counselling and litigation in the South. In many communities lawyers are encouraged to give representational service to indigents. If such practices can be broadened and made more uniform throughout the country, then the bar will have assisted in a foremost national mission.

The problems ahead in criminal justice resist easy exhortation and quick cure. The President's Crime Commission will not mark a straight path to solution, and there will be many more fresh and unsettling discoveries in the future. But these problems impinge on the lives and consciousness of us all. They fit no narrow specialty, and yet they desperately require attention as well as national heed.

Mr. Justice Cardozo told us some years ago, "The process of justice is never finished, but reproduces itself, generation after generation, in ever-changing forms."