



Department of Justice

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by

ATTORNEY GENERAL RAMSEY CLARK

before the

NATIONAL COLLEGE OF STATE TRIAL JUDGES

at the

UNIVERSITY OF NORTH CAROLINA

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In these dog days of 1968, we have heard much loose talk of shooting looters. This talk must stop. No civilized nation in history has sanctioned summarily shooting thieves caught in the commission of their crime. Will America be the first? China, India, Japan, Brazil, Mexico, France, Italy, Poland--nations throughout the world have experienced wild rioting with physical assaults and property crime. None has used shooting as a control device.

The need is to train adequate numbers of police to prevent riots and looting altogether. Where prevention fails, looters must be arrested not shot. The first need in a civil disorder is to restore order. To say that when the looting starts, the shooting starts means either that shooting is preferable to arrest, or that there are not enough police present to arrest. By definition, adequate police manpower, adequately deployed, could prevent looting on any large scale from ever occurring. This failing, it is the clear and unquestioned duty of police to arrest looters, like all other law violators; arrest them immediately and present them for a speedy trial. But even when convicted, they will not be shot. Where a jurisdiction has failed to provide adequate police protection, or the unpredictable nature of a disorder makes arrests impossible, other techniques--including the use of tear gas--may be necessary. The use of deadly force is neither necessary, effective nor tolerable.

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Anyone who thinks bullets are cheaper than adequate numbers of \$10,000 per year college-trained policemen, values life cheaply and misunderstands human nature. A reverence for life is the sure way of reducing violent death. There are few acts more likely to cause guerrilla warfare in our cities and division and hatred among our people than to encourage police to shoot looters or other persons caught committing property crimes. How many dead 12-year-old boys will it take for us to learn this simple lesson?

Far from being effective, shooting looters divides, angers, embitters, drives to violence. It creates the very problems its advocates claim it their purpose to avoid. The death of the 12-year-old looter and the innocent bystander will inflame minds and spirits for a generation. Is this American justice?

What terrible fear or hatred would cause us to shoot looters?

Prevent looting wherever possible. Stop looting where adequate force arrives too late to prevent it. Arrest looters, absolutely. But shoot looters and all human nature rebels at our excess.

Persons under the influence of alcohol killed 25,000 Americans in automobile accidents in 1967. Fewer than 250 people have died in all riots since 1964. Looters, as such, killed no one. Why not shoot drunken drivers? What is it that causes some to call for shooting looters when no one is heard to suggest the same treatment for a far deadlier and less controllable crime?

Is the purpose to protect property? Bank embezzlers steal ten times more money each year than bank robbers. Should we shoot embezzlers?

Is the purpose to intimidate looters? The first rule of law enforcement is never bluff. If you announce you will shoot looters and don't, the next time you will not be believed. Never pull your pistol unless you intend to use it. If you threaten to shoot and don't, you risk the lives of law enforcement officers unnecessarily. Every threat creates danger. The lesson of the empty threat is go ahead and do what you will.

A nation which permitted the lynching of more than 4500 people, nearly all Negroes, between 1882 and 1930, can ill afford to engage in summary capital punishment without trial in our turbulent times. In three years now, only three men have been legally executed for all the horrible murders and assaults we have suffered. Is our sense of equal justice under law such that we imperil the life of the officer, the looter, and escalate riots because we fail to build our police?

The problem is far too serious to be dealt with so superficially; for life to be threatened so casually. Throughout the history of law enforcement in our nation the use of deadly force has been restricted generally to circumstances in which the lives of officers or others are threatened. Some laws authorize the use of deadly force when it is necessary to effect the arrest of a fleeing felon or prevent his escape. In practice, this has usually been under circumstances where life was imperiled.

The best rule is stated by the FBI:

"The most extreme action which a law enforcement officer can take in any situation is the use of firearms. Under no circumstances should firearms be used until all other measures for controlling the violence have been exhausted. Above all, officers should never fire indiscriminately into a crowd or mob. Such extreme action may result in injury or death to innocent citizens and may erupt into a prolonged and fatal clash between the officers and the mob. The decision to resort to the use of firearms is indeed a grave one. Such a decision must be based upon a realistic evaluation of the existing circumstances. Among the important considerations, of course, are the protection of the officer's own life, as well as the lives of fellow officers, and the protection of innocent citizens. A basic rule in police firearms training is that a firearm is used only in self-defense or to protect the lives of others.

"The firing of weapons over the heads of the mob as a warning is objectionable. In addition to the possibility of injuring innocent persons by ricocheted bullets or poorly aimed shots, the firing may only incite the mob to further violence, either through fear or anger. At best, this is a bluffing tactic and a basic rule when dealing with a mob is never bluff."

In guidelines prepared for law enforcement agencies, the International Association of Chiefs of Police states:

"The use of firearms should be considered as a last resort, and then only when necessary to protect the lives of citizens and officers."

The excessive use of force can have unforeseen consequences. The FBI Manual points out:

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"unwarranted application of force will incite the mob to further violence as well as kindle seeds of resentment for police that, in turn, could cause a riot to recur."

General Robert H. York, explaining his use of minimum effective force in Baltimore in April 1968, spoke meaningfully on this subject:

"Force invariably produces counterforce. Here in Baltimore we did not have a race riot as such-- and it was my endeavor to prevent that if at all possible. This is what the extremists want, as you know, and I feel we would have been playing directly into their hands if we had created a situation whereby this would have occurred. And, of course, if it had occurred, the loss of lives and the destruction of property would have been immensely greater than I feel it has been. No one--your women, children--would have been safe under these kinds of circumstances, and neither would any home in the city . . . We know from experience that when there is indiscriminate firing, more innocent people have been killed than guilty ones."

The fundamental purpose of government is to protect the lives and property of its citizens. This requires the maintenance of order under law. We cannot fail to make the effort essential to effective control. We know that riots can usually be prevented and can always be controlled. The question is whether we have the determination to act, or will resort to the law of the pistol.

If our only purpose was order and life meant little, still the most effective technique would be balanced enforcement. Our whole experience tells us this.

Intensive police training through the past winter brought a new discipline and a new effectiveness to police control efforts. Violence with riot potential in more than 100 cities following the murder of Dr. Martin Luther King, Jr., resulted in fewer deaths and less property loss than a single riot in a single city last summer. A firm balance by police in a dozen cities experiencing widespread violence resulted in effective control, minimum loss of life and less resulting division, bitterness and anger which can only lead to greater hostility and later violence.

The police must be thoroughly trained to act swiftly; to avoid overaction or underaction, repressiveness or permissiveness. The chance to snuff the incipient riot is with the local police and with them alone--unless we garrison soldiers throughout our cities. By fast, careful, firm action they can catch trouble before it is out of control.

What do the police themselves believe? It is the police to whom some would say, pull the trigger when looters are fleeing-- perhaps dozens of looters fleeing toward a crowd; women, children; some making trouble, some committing crime, some trying to talk sense to a mob, to cool it.

I asked the International Association of Chiefs of Police to survey police in eight cities which experienced serious rioting in April 1968. In the relevant part of the lengthy report, it was found:

"Although police in the United States are trained and equipped to apply several degrees of force, most of the current public controversy centers on the use of firearms--the resort to fatal force. It was the unanimous conclusion of the interview teams that, except for two departments which will be discussed in greater detail below, policies regarding the use of fatal force were clearly understood and generally endorsed by personnel at all levels of the police structure.

"In the present study, police personnel interviewed were asked to select one or more of the following five statements that they felt best described their department's policy regarding the use of fatal force.

- "(A) Use fatal force only as a last resort to prevent a direct and immediate threat to life.
- "(B) Use fatal force to prevent the commission of other serious felonies such as burglary, arson, etc.
- "(C) Use fatal force to prevent a fleeing felon from escaping but only after other means of effecting his arrest have failed.
- "(D) Use fatal force to prevent a fleeing felon from escaping even though lesser means were not tried.
- "(E) Use fatal force to stop persons from continuing to loot.

"With the two exceptions noted below, all of the personnel interviewed agreed that the policy governing the use of force in effect in their department during the recent disorders were as follows:

"6 Cities - Policy Statement A only.

"2 Cities - Policy Statements A and C only.

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"The two exceptions to unanimous agreement were found, as might be expected, in the only two cities which had not reduced their firearms policy to written form. In both of these cities, operational personnel all agreed that the policy was best described by Statement A only, while the Chiefs reported that their policy was best described by Statements A & B, and A, B & C respectively. Irrespective of any confusion created by the failure of two departments to reduce their policy to written form, this study clearly suggests that for most officers most of the time the 'preventive' use of fatal force was never considered as a legitimate alternative under existing departmental policy or legislative guidelines.

"Most of the interview teams agreed that the explanation for general police agreement regarding the use of force under riot conditions was to be found in the fact that no attempt was made to modify the fatal force policy under which police officers operate during routine operations. Only in one city were supplementary instructions issued, and these simply cautioned officers not to shoot looters. In short, the police use of fatal force is regulated by law and police are trained to comply with this law, whether under riot conditions or not."

Who are the rioters and looters of whom we speak? Nearly all are Negroes.

Of those arrested, in Boston 29.4% and in Grand Rapids 6.4% were white collar. In Grand Rapids 14.2% and in Buffalo 3.5% were skilled employees. In Newark 59% and in Boston 47.1% were unskilled employees.

In Boston 48.4% and in Cincinnati 22.5% were married. In Grand Rapids 19.7% were between 10-14 years old. In Cincinnati 73.4% were 15-24 years old. In New Haven 35.4% were between 25 and 34. In Detroit 37% of the self-reported rioters were women.

Of persons arrested for looting in the riots in Buffalo, Cincinnati, Detroit and Newark, 48.1% were between 10 and 24 years of age.

Of the riot area residents between the ages of 9 and 60, 35% in New Haven and 11% in Detroit are estimated to have participated in rioting.

In every effort at control, law enforcement must always remember that when order is restored, as it will be, we shall have to go on living together, black and white, forever on the same soil. Excessive force, inhumane action, a blood letting can only lead to further division and further violence. The threat of excessive force leads to the cries heard in the disorders in Miami last week, "They want to kill us all"; to which a bystander was reported to observe, "The worst part is they believe it."

It takes more courage for the police to act with balance with careful control than to either overact or underact. Those who without understanding or humaneness encourage a shooting are doing police no favor. Both overaction and underaction increase danger for the policeman. Balance will encounter fewer risks in the long run. The police understand and are prepared to act with balance. Repressiveness can cause a degeneration into terror tactics and guerrilla warfare. Many nations have experienced this in recent years. America has no natural immunity.

A strong, well-financed, well-trained police department is the first, best line for riot control. Strong police-community relations is the most essential need in riot prevention. In final analysis, police-community relations--far from being public relations--measures the difference between a government of the people, by the people and for the people and an authoritarian state; between a public protector and an army of occupation; between those who serve and those who subject. Police-community relations is the total measure of attitudes between the police and the public they serve. There can be no relations between police and a people they threaten to shoot.

The police must use such force as is necessary to protect lives and property or to arrest a person who has committed an offense for which arrest is indicated and no more. Firearms should not be used unless there is a threat to life and all other control measures have been exhausted or are inadequate to the peril. Any other use is inconsistent with the ideals of a wise and courageous people.

A well-disciplined, well-trained, adequately-manned police department with effective communication with all segments of the public can prevent riots. That failing, it can meet and contain rioting and violence with superior force. By balanced action, it can provide us the few precious years needed to activate the massive effort required to rebuild our cities, to restore faith in our citizens, to promise every American the opportunity for his own fulfillment. Excessive force and inadequate force both promise the holocaust.

If America has a conscience we had best awake from this wild talk of shooting looters and face reality.