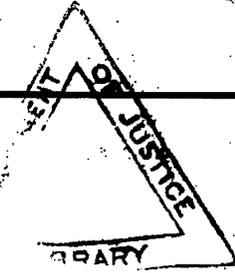




# Department of Justice

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ADDRESS BY  
ACTING ATTORNEY GENERAL NICHOLAS deB. KATZENBACH  
TO THE  
FEDERAL BAR ASSOCIATION  
SHOREHAM HOTEL, FRIDAY, SEPTEMBER 18, 1964

I am pleased to be with you today and to be a part of a program aimed at understanding one of the great laws of this century -- the Civil Rights Act of 1964.

The Act was -- and is -- a controversial law. No act was more thoroughly debated. No act was introduced with deeper conviction or opposed with deeper passion. That the Congress could have so reasonably and dispassionately debated such a highly emotional issue is surely one of the great triumphs of our legislative process.

As a nation, we are in the process of working a profound social change in human relations -- a change so deeply felt that I am hard put to find in history a comparable situation which any nation has faced and resolved more peaceably, more justly, and with greater dignity.

And so this Act symbolizes something even larger than the realization of ideals of equality and that is the strength of our entire political system. Last summer in the South, we had a spirit of bitterness and hundreds of demonstrations. This year, through almost all parts of the South -- and despite tragic exceptions -- we have a spirit of good faith and respect for the law.

This is a result for which we must give credit to the responsible men and women of the South. Its representatives, reflecting the deep feelings of their area, fought the Civil Rights Act strenuously. But now that it is law, they have spoken out for obedience, even though it has, often, taken courage to do so. This is a dramatic testimonial to our oneness as a nation and to our fundamental respect for law and the orderly process of self-government.

It is, too, a noble -- and vital -- tradition in America. It was given expression by Andrew Jackson when he was fined for contempt after the War of 1812. "Obedience to the laws," he said, ". . . is the first duty of a citizen and I do not hesitate to comply with the sentence you have heard pronounced."

It is in that tradition that the leaders and responsible citizens of the South are acting now. It is on that tradition that our rights as citizens and our very existence as a society depend.

But now another view is being heard. National attention has now shifted from political posturings in a schoolhouse door to the recent riots in Northern cities and to the problem of "crime in the streets." And there are those who say or imply that these problems are related to racial problems in the South.

They do not speak of the Civil Rights Act as the product of our national concern for equal rights for all our citizens. That Act, they say, results from capitulation to "agitators" and "demonstrators." They do not speak of the Civil Rights Act as a remedy to deeply felt grievances of Negroes in the South. The Act, they say, has encouraged disrespect for the law in other parts of the country.

Thus, a link is drawn between demonstrations for civil rights and crime in the streets. Riots in Harlem, or Rochester, or Philadelphia, are tied to rising crime rates. And profound concern is expressed over lawlessness which has made our cities unsafe and our homes insecure. Because Negroes have been importantly involved in these riots -- and despite the fact that they have been deplored by the overwhelming majority of Negroes and by all Negro leaders -- they have been called "racial."

I do not mean to suggest that these concerns with lawlessness are not real. Of course they are. The question is not whether disorders or increases in crime are serious. The question, really, is what do we do about it.

I wish I could tell you that these are simple problems that have simple solutions. But only the ignorant or the uninformed so regard them. To call them "racial" problems is not a solution but a slogan. What is worse, it is wrong.

To tie the difficult problems of racial adjustment to the equally serious problems of crime and delinquency, can only obscure, obstruct and politicize. "Prejudice, which sees what it pleases, cannot see what is plain." But that is no excuse for not looking at the facts.

The increases in the crime rate, for example, have been great, but they have overwhelmingly been increases in crime against property. Such crimes -- robbery, burglary, larceny, and auto theft -- account for 90 percent of serious crime. In 1963, crimes in this category increased by 11 percent.

Crimes against the person increased far less. Aggravated assault went up 6 percent, murder 1 percent, and rape 1 percent. These increases are only slightly greater than the population increase.

As a second point, there appears to be no significant connection between a city's crime rate and its Negro population. During debate on the Civil Rights Act in Congress, there was frequent reference to the crime rate of Washington, D. C., whose population is 54 percent Negro. I do not recall a single reference to Phoenix, Arizona -- a city I pick at random -- the population of which is 95 percent white and whose crime rate is a third higher than that of Washington.

The point is further demonstrated by suburban crime figures. In the first six months of this year, crime in the suburbs -- where there are few Negroes -- increased approximately 28 percent. But crime in the city -- where Negroes are concentrated -- increased at less than half that rate.

As a third point, the increase in crime generally is directly related to the increase in the teenage and young adult population. Young people commit a very large proportion of the crimes against property -- those crimes which have increased most. In New York City for example, more than three-fourths of all auto thefts are committed by those under 21. In Washington, D. C., young people under the age of 17 comprise half of those arrested for robberies, half those arrested for car thefts and 40 percent of those arrested for housebreakings.

The number of persons aged 15 to 24 is growing far faster than the rest of our population. And unhappily, people in this age group account for 70 percent of all arrests for serious crimes. This does not mean that our young people are crime-prone. Less than 3 percent of young people are ever arrested. But it does mean that our efforts to solve crime problems should in large measure be devoted to the problems of our youth. Juvenile delinquents may cease to be juveniles at 21, but they do not automatically cease to be delinquents.

This point applies demonstrably to the recent riots in Harlem, Rochester, Philadelphia, Jersey City and elsewhere. Plainly, these riots involved Negroes. But what is significant is not their race, but that some of our worst slum areas are occupied by Negroes; that the unemployment rate among Negroes in these cities is two and three times that of whites; that the school dropout rate among Negroes is twice that of whites. It is clear from the facts of the riots how these circumstances apply:

1. Most of those involved in the riots were between 15 and 25, unemployed, without education, jobs -- or hope.
2. Juvenile gang members played a role in the riots in each city, and a large percentage of those arrested or known to have participated had criminal or juvenile records.
3. The participants came from poor, overcrowded slum areas.
4. To the extent that these riots could be said to have had a focus, they were aimed against police officials and merchants in Negro areas. And they were motivated, in part, by the possibility of an opportunity to loot -- to make financial gain -- under cover of the disorder.

5. Only one of the riots occurred in areas of likely racial conflict, where Negro and white neighborhoods adjoin. The remainder have occurred in the heart of Negro neighborhoods.

I do not mean to imply that Negroes do not commit crimes. Of course they do. What I do mean to show is that to draw a causal connection between membership in the Negro race and crime is wrong. The relevant link is not between riots and race, but between riots and delinquency, between lawlessness and lawless environments.

It is to this complicated link, not to an emotional cliché, that we should devote our attention and our energies. F.B.I. Director J. Edgar Hoover has for years expressed the deepest concern over youth crime. And, what has become obvious to others in 1964 was obvious to Attorney General Kennedy four years ago. He realized that our most serious crime problem was and would continue to be crimes committed by young people.

Accordingly, under the leadership of President Kennedy and President Johnson, the federal government embarked for the first time on a comprehensive juvenile delinquency program. This program involved comprehensive studies of young people, their problems, and methods to deal with them at the local level. Pilot projects have been established in 10 major cities to determine, through actual work with youngsters, how to help them adjust to our complex urban society -- whether it be jobs, education, organized sports activities, or increased counseling.

In this effort, the federal government has not sought to assume responsibilities that belong to local communities. It has, rather, sought to offer assistance and experience to those communities which seek their own answers to their own problems.

Second, beginning also in 1961, Attorney General Kennedy mounted an unprecedented drive on organized crime and racketeering. Convictions against racketeers increased 23-fold in the past four years, from 14 to 325. The importance of these convictions -- and there are many more to come -- is best understood when one realizes that it is organized crime which supports and profits from the narcotics traffic, illegal gambling and prostitution. It is organized crime -- and occasionally organized prejudice -- which corrupts law enforcement agencies and public officials. Where such corruption exists, or even where it is thought to exist, we cannot have respect for law. Lawlessness feeds on lawlessness. Lawlessness of one kind breeds lawlessness of other kinds.

In many cities, a high percentage of crime can be directly related to addicts' need to pay for narcotics. In this Administration, we have sought not only to prosecute and punish those who run the narcotics business, but also to mount a drive against narcotic addiction. President Kennedy called the first national conference on this subject in history and the recommendations of the President's Advisory Commission on Narcotics and Drug Abuse have been and are being implemented by President Johnson.

Third, recognizing that slum conditions breed crime and disrespect for law, this administration has embarked upon the most extensive program of slum clearance and housing assistance in history.

Finally, under the leadership of President Johnson, the federal government, again in cooperation with local communities, has embarked on a major war against poverty. Its significance cannot be overstated. Surely it is clear to any thinking person that poverty -- the lack of food, shelter, education, work, self-respect and hope -- goes hand in hand with crime.

All of these programs are concrete, practical, realistic and non-political approaches to the crime problem. All of them are based on hard facts. None of them offer simple or simple-minded explanations or solutions.

I have talked thus far about how we have sought to respond positively to the causes of crime and how we should continue to do so. But this long-range concern would not obscure and has not obscured the equally important needs of day-to-day law enforcement. Lawbreakers must be apprehended and punished with appropriate severity. Law enforcement authorities must have the widest public support and assistance. It should go without saying.

But there is no conflict between this need and the parallel need to attack the causes of crime. Rather, the two needs are complementary. Obsessive emphasis on either -- whatever its inspiration -- can only handicap effective law enforcement.

While the principal responsibility in this area rests on local law enforcement authorities, the federal government has sought to provide maximum assistance to them. The anti-crime legislation enacted in 1961 -- the most extensive addition to the criminal laws in 30 years -- has permitted us to expand considerably the kinds of investigative and other assistance we can provide. The FBI has built a proud body of alumni of its National Academy in police departments all over the country. And our greatly accelerated crime effort has produced leads and information which we have shared, to mutual benefit, with state and local officials.

It is for this reason that I welcome the support of all members of Congress who believe, as I do, in the importance of these programs. Anti-crime legislation has never been a partisan issue. It should not become one.

Yet I have read the opinion recently that the problems of crime and of local law enforcement stem from an "obsessive concern" on the part of judges "for the rights of the criminal defendant." I have read that the courts have taken away from the states powers which are "absolutely necessary for fair and efficient administration of criminal law." And, I have read, this is why crime is increasing.

These assertions are uninformed. More damaging, they are irresponsible. It is a historic function of the Supreme Court to insure that state convictions comport with due process of law. Undeniably, some decisions have

created problems for state law enforcement officials. But then so has the Bill of Rights. In neither case have any fundamental state powers been destroyed.

I think it is helpful to review some of the fruits of powers which are supposedly "absolutely necessary" to the states and which the Supreme Court has declared unconstitutional:

- the conviction of a man without evidence;
- the conviction of a man upon the prosecutor's knowing use of perjured testimony;
- the trial of a man for a serious crime without the assistance of a lawyer;
- the conviction of a man upon a confession coerced by the police, or upon a subsequent confession induced by the knowledge that the police already had the extorted confession;
- the trial of a man before a jury biased against him.

Which of such vital powers, I wonder, should a state have?

The individual rights the Court has defended in these cases are part of the fundamental guarantees our country makes to every citizen. I cannot understand how anyone committed to individual liberty could consider violations of these rights as mere "technical" violations, or consider protection against such violations as "obsessive concern" by our judges.

Approximately half the federal judiciary -- and two-thirds of the Supreme Court of the United States -- have been appointed since 1952. During the whole of the administrations of Presidents Eisenhower, Kennedy, and Johnson, the American Bar Association has been consulted on each and every judicial appointment. In all these administrations, the views of the organized bar have been sought, appraised, and honored. The record is public and open to examination.

I hope -- under these circumstances -- that I may be excused for wondering how the growing crime rate can be blamed on judges so selected. If the ABA is too liberal to be entrusted with this responsibility -- or if the ABA is incompetent -- then to whom do we turn for advice?

I believe that both candidates for the Presidency will continue to adhere to a system which seeks and respects the advice of the organized bar on judicial appointments. And I think both will feel, as I do, that professional, not ideological, criteria are appropriate.

To attribute the growing crime rate to the attitudes or decisions of the federal judiciary is an insult not merely to the courts but also to the Bar. As a lawyer, I cannot but resent those who seek to make political capital by attacking the decisions of an independent judiciary which cannot,

in propriety, defend itself. Indeed, I have an obligation to defend the courts against such an attack.

I had thought -- perhaps I had only hoped -- that the judiciary was beyond the realm of partisan politics. I had thought -- perhaps I had only hoped -- that all would realize that the constitutional independence of our judiciary, the separation of powers, was basic to the whole cause of law and order, and that to bring the courts into politics could only undermine that respect for law which is the cornerstone of our Republic.

Clearly I am not saying that our courts are immune from criticism. Indeed, responsible and informed criticism is one of the factors which shapes the law. Every lawyer knows this. And every lawyer -- I hope -- has respect for a court's decisions even when he disagrees vehemently with the result of the reasoning. And every lawyer has confidence in the independence of our judges.

We need to protect the rights of the individual from hasty infringement just as much as we need to protect society from lawlessness. Each is essential to ordered society and responsible freedom. There is need for everyone, whether from the South or the North, the East or West, to join in strengthening respect for law and order. Your presence at this conference demonstrates your participation in this process.

Law-government is a process which begins with respect for the Constitution, the decisions of our courts, the laws of our land, and the rights of each individual. It is a process which requires all of us, at all levels of government and in each walk of private life to seek to identify our common problems and to work together toward their resolution.