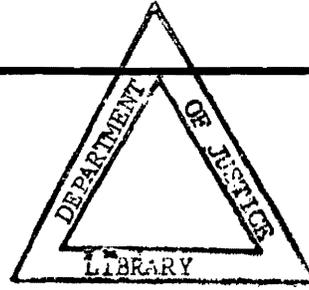




# Department of Justice

PS  
668  
.K25



ADDRESS

BY

ACTING ATTORNEY GENERAL NICHOLAS deB. KATZENBACH

AT THE

1964 ROCKEFELLER PUBLIC SERVICE AWARDS CEREMONIES

SHOREHAM HOTEL

WASHINGTON, D. C.

THURSDAY, DECEMBER 3, 1964

1:00 P.M.

Dr. Goheen, Mr. Rockefeller, and distinguished guests:

It is my very great privilege to join with you today in paying tribute to these five gentlemen who have done so much for our Government--and to the hundreds and indeed thousands of career public officials whom they represent. I want to express to Mr. Rockefeller the appreciation I know is felt through the government for the generosity and understanding which underlies these awards.

These awards are commendable because of the pride, appreciation, and honor felt in this room. They are commendable because of the dignity they give to others in government service. And there is, in my view, an even more commendable reason, one which applies across the country.

Too often, such awards suffer from what might be called the Gold Watch Syndrome. Too often, the very phrase "career public servant" evokes the image of a Bob Cratchit, tending the books for long hours and many years, uncomplaining about the lack of heat and the failing of his eyesight.

What Mr. Rockefeller and Princeton University have done through these awards is to honor not simply time in service, but how well that time has been spent. These awards honor government employees not merely because they are government employees, but because of the incalculable contribution they make to the very shape of the society in which we live.

All of us in this room recognize that contribution. All of us who work in government recognize it. But I am not sure that the nation does. Government has, perhaps, become so complex that too often the identity of individuals and the nature of their work are dismissed, collectively, as "bureaucracy."

By focusing this spotlight on these men, you do much to inform a country which can, as a result, only be reassured. Their very titles suggest the importance of their judgment and their skill.

Mr. Yost is one of our chief officers at the United Nations;

Mr. Howard is deeply involved in the future shape and spirit of our cities;

Dr. Shannon's organization may hold in its laboratories the cure for cancer or other afflictions;

Mr. Carey, of the Bureau of the Budget, represents an agency whose effectiveness I can testify to personally, particularly in this season of mating desires and dollars; and

Mr. Reis, the first winner of this award from the Department of Justice, is one of the most brilliant attorneys in government and the author of a recent legal opinion on whether government employees can accept funds from the Rockefeller Awards committee.

In the past four years, I have come to understand most clearly how much the shape and future of the United States depends on the work of officials such as these. In the Department of Justice, for example, we have been much concerned with one of the fundamental aspects of our society--the guarantee and protection of civil rights to every citizen.

This concern has taken many, sometimes dramatic forms--as on a long night at the University of Mississippi--of which Mr. Reis is a veteran; a hot day at the University of Alabama; or a critical year on Capitol Hill, during the consideration and debate over the Civil Rights Act of 1964.

In the course of these and similar events, we have made great progress. Still the task is far from complete. Citadels of bigotry do not dissolve overnight. But, with the passage of the Civil Rights Act, the principle of equal rights and equal opportunity for the American Negro has now been acknowledged, not only as a truism but as a truth.

But there is another aspect to the question of the rights of citizens about which I would like to talk to you today. It is not as dramatic as a confrontation in the schoolhouse door, but it is just as urgent. It does not relate alone to the rights of Negroes, or any minority, to be free of discrimination. It relates to the right of every citizen both to be free from oppressive prosecutive action and to be free from the often terrible effects of crime.

Both of these rights must exist. Both must be protected. What I would like to talk to you about is the damaging blindness and bitterness that characterizes the enduring present debate over both of these rights.

The battle lines are drawn. On the one side are those who believe law and order are our predominant need. On the other side are those who emphasize the need to protect the rights of the individual, emmeshed in the processes of criminal law.

Put this way, the debate does not sound like a debate at all. Each of us here--perhaps every law-abiding citizen in the country--would agree with both propositions. Our only question would be, why should protecting society and protecting the individual be incompatible?

And yet, when we examine the difficulties involved, it is possible to understand the sharpness of the debate. Let me cite a recent, particularly vivid example. It concerns the case, in the District of Columbia, of a man named Killough.

About four years ago, he was arrested and taken to police headquarters several days after his wife had mysteriously disappeared. He was questioned all that day and evening, but refused to admit or deny having done away with the missing woman. The next day, however, after further interrogation, he confessed that he had strangled her and disposed of the body.

Later that day, more than thirty hours after his arrest, he was arraigned. The proceedings were adjourned and he was committed to jail, where that afternoon he made a further, apparently unsolicited, confession to a police lieutenant who had come to return some of his personal possessions.

The District of Columbia Court of Appeals reversed his conviction of manslaughter. It ruled that all of the confessions were inadmissible--the earlier ones because they occurred during an illegal detention, the later one because it was the "fruit" of the earlier ones. On a second trial, without the confessions, Killough was acquitted.

Within a day after Killough was released, two such respected and responsible institutions as the Washington Post and the Washington Evening Star each published editorials commenting on his release. Their difference of opinion was so sharp that it was difficult to believe that they were writing about the same case. Let me quote to you briefly from both editorials.

Immediately after Killough was released, the Star said:

"James Killough, thrice-confessed strangler of his wife, is a free man in Washington today. He is free because a five-member majority of the United States Court of Appeals has made it impossible to convict him despite his obvious guilt. If ever there was a mockery of justice, this is it...Why are so many people losing confidence in the administration of justice? Why are some of our higher federal courts looked upon by the public with contempt instead of the respect which they so long enjoyed? Read the Killough case--and others like it."

The next morning, the Post, in its editorial, recalled an earlier statement of the Court of Appeals in the same case, "we necessarily concern ourselves with means, not alone with ends." Then the Post went on to say:

"Whether or not Killough is a murderer, he was entitled to be tried in accordance with the Constitution and laws of the United States...American justice involves something more than just convicting and punishing the guilty. Its processes must be consonant with civilized standards of fairness--and with the law that governs citizens and public officials alike. Ends and means are intimately related. A trial can be lawful only if it is based upon evidence lawfully obtained. And only through such a trial can popular respect for the law be preserved."

The issue that lies at the heart of the Killough case is the issue which is unquestionably the major battleground in criminal procedure today--how to strike a balance between police investigation and interrogation on the one hand, and the privilege against self-incrimination and the right to an attorney on the other hand.

In neither the Killough case, nor the parallel, now-celebrated Mallory rape case, were the police out to do any more than their job. It is the police, after all, who bear the burden of responsibility for finding criminals and building cases, so they can be punished and be prevented from repeating their crimes.

Neither of these cases involved the use of rubber hoses. In both, the police were dealing with brutal, insensible crimes and they were seeking a solution.

But Rule 5(a) of the Federal Rules of Criminal Procedure, which govern all federal criminal cases, provides that an arrested person shall be taken before the nearest available United States Commissioner without unnecessary delay. And necessary delay has been interpreted by the Supreme Court to mean only the time required for routine administrative procedures like booking and fingerprinting--not the time it takes to question the suspect about the crime.

What this rule reflects is a belief, deep-seated in our system of justice, that a man has a right to have his detention by the police tested before a judicial officer; that he is entitled to a lawyer to help protect his rights; and that he is entitled to an early setting of bail.

Seen in the context of these interests, I believe the Mallory-Killough problem takes on a new light. The interests which must be balanced run deep in our system of government--and the process of balancing them calls for a thoughtful understanding of both sides.

In the last session of Congress, the Department of Justice made legislative proposals seeking to reconcile these interests. The heart of these proposals was a requirement that a suspect be clearly informed of his rights and that questioning be limited in time.

The proposals did not pass in the last session. We have asked the newly established Office of Criminal Justice to do further work on this subject, work which I hope will lead to new proposals in the forthcoming Congress.

It does not require a detailed legal study, however, to understand the difficulties of balancing the two views represented in the Killough, Mallory and other cases. But with the greatest respect for the sincerity of both sides, let me say that simply to continue this debate in the present way is not only profitless, but it is damaging.

It is not the debate which is troublesome, for that can be healthy. It is the bitterness and blindness of the debate. As Attorney General Kennedy observed last fall, "The heat of this debate might be entrancing if it were not for the urgency of the problems which it obscures."

The area of confessions is only one of a number of areas afflicted by the same kind of emotional, polarized argument. Another issue, on which it is even easier to take sides, is wiretapping--and the related questions of electronic eavesdropping.

Since the development of our historic legal regulations concerning evidence and unlawful searches, society has become vastly more complicated. In the area of communication, the old rules were designed for the only kinds of communication then possible--either in person, by an intermediary, or in writing. The rules struck a balance between the needs of law enforcement and the needs of individual rights.

But then came the telephone--and the scales fell sharply to one side. We are now a nation of more than 100 million telephones. Needless to say, a great proportion of our country's legitimate business is conducted over those telephones.

So also is a substantial amount of illegitimate business. Perhaps the most vivid types are extortion schemes and kidnappings. Of broader impact is the use of the telephone in organized crime, such as gambling, whose undoubted profits reach into the billions, and which provide much of the capital for other forms of racketeering.

In other words, the legal balance once achieved concerning communication has been upset. Law enforcement methods appropriate to a non-mechanical society do not apply today. And, thus, what seems to me to be the perfectly reasonable question is, how should we restore the balance?

There is perfectly sensible ground for debate over this point. I don't like the principle of wiretapping. None of us likes the prospect of indiscriminate interception of our telephone calls. It is an invasion of privacy.

But to understand the other side, it is only necessary to imagine the country involved in an international crisis and to think of the espionage or other violations of national security that could be detected. It is only necessary to think of the crimes that could be prevented, or of kidnappers, or those who would corrupt public officials who go free because the evidence which might prove their guilt is inadmissible since it came from wiretaps.

The problem takes on an ironic aspect because wiretapping, as such, is not now illegal. While present law forbids the disclosure of wiretap information in court or in public, it does not, in the opinion of court decisions and eight Attorneys General, forbid actual interception by wiretap.

Meanwhile, private investigators and others tap phones widely--in divorce cases, in seeking inside information on the stock market or the races, in extortion schemes, or even, as in one bizarre case, in an effort to check on the progress of government investigative agents.

It is not easy to devise controls which strike a new balance, in this mechanized, electronic age, between the needs of the individual and the policeman, but it is not impossible either. Perhaps the most difficult obstacle is not so much legal as it is emotional.

We learned that first hand in the Department of Justice when we drew up a new legislative proposal concerning wiretapping. Our bill prohibited all wiretapping except when used by law enforcement officers in connection with a small number of specified crimes. Even this exception was closely controlled by a variety of safeguards administered by the courts and by Congress. I thought the bill provided an excellent effort to modernize the legal balance.

Yet, no sooner was the bill introduced than it was submerged in a torrent of criticism so emotional and so complete that rational debate has not yet been possible. Many of the critics were so intent on expressing themselves that they did not take time to read the bill.

The passion of the criticism can be gauged from the fact that the American Civil Liberties Union strenuously opposed the bill, while its president at the time, former Attorney General Francis Biddle, testified in favor of the bill.

And all this feeling was expressed only on trying to deal with the telephone. We have not yet tried to respond to the even greater problems posed by the whole, growing array of electronic eavesdropping devices--like the miniature microphone which can be sewn, unknown to the wearer, into a lapel; or the "bug" recently advertised for \$100--if placed on the outside wall, it allows one to hear what goes on inside the "boss's office."

The questions of police interrogation and wiretapping I have touched on are only two of the difficult areas in the field of criminal justice. There are many more, in a variety of areas. But however they may differ on their specifics, they all have one thing in common: emotional disagreement.

Let me suggest that it is not necessary to take sides. It is not necessary to dismiss anyone who believes in the rights of the individual as a coddler of criminals. Nor is it necessary to dismiss one who believes in strict law enforcement as a cop-lover or a sadist. The aims of each side should be the aims of both. Our mutual attention should be directed to working out the best solutions possible. Until we do, we must expect to pay the price exacted by division and delay.

I do not pretend to know what the answers are. They should be the product of debate--of positive, constructive debate. And the answers must thus necessarily represent some form of compromise. One thing I can say, however, is that we have no right to continue to leave the issue as murky, no matter how passionately murky, as it is.

To do so is to pass the buck, and the place the buck stops is with the policeman. While we, on the plateau, may argue, it is the policeman, on the spot, who must try to sort out all that philosophy. It is he who must,

in the heat of the moment, make a decision to which devoted judges may later devote days of deliberation--and even then divide, 5 to 4.

None of this is intended as the slightest reflection on policemen or on the courts. It is a reflection, rather, on the difficulty of these decisions and on the urgency of the need for clear standards.

There is no question that all three branches of government have a heavy responsibility in this necessary effort. It is because of this kind of responsibility that we set up our new Office of Criminal Justice. A staff of attorneys there is now evaluating precisely these kinds of problems. It is our hope that this office can become a catalyst for consensus from diverse views and thus assist in affirmative reform.

The responsibility is shared by the legal community as well, notably in the painstaking studies of the American Law Institute and by others concerned with this most important and perplexing problem.

Finally, the responsibility must be shared by each of us, in our understanding that our society is based on respect for the Constitution, our courts, our laws, and the rights of every individual. And to that, we can all contribute.