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LAW ENFORCEMENT STATES ITS VIEWS

JOHN EDGAR HOOVER†

IF A HISTORIAN were to be asked, "What is the motivating principle or the essence of the law in the history of the United States?" he could obviously give many answers; but high on any list of responses would be protecting the rights of the individual. Translated into spiritual language, this would mean the dignity of man as a child of God. The last twenty years, in particular, have witnessed a salutary emphasis on individual rights in many fields of our society. In race relations, in economic opportunity, among minority groups, individual rights have been enhanced. The dignity of the individual, socially, economically, politically, is a key objective of our democratic society.

In the legal field the same trend has been apparent. In criminal law, for example, there has been a decided strengthening of the rights of the accused. Landmark decisions, such as *Gideon v. Wainwright*,¹ *Escobedo v. Illinois*² and *Miranda v. Arizona*,³ among many others, have given the accused greater rights under the law. At no time in the legal history of this country has the individual been accorded as many rights and privileges. This trend in the criminal law is encouraging. However, we should not overlook a concomitant factor which has been brought into play by this trend, one which bears directly on the key issue involved, namely, the rights not only of the accused but of *all* the individuals in our land. The very emphasis in criminal law today on the rights of the accused (for example, those relating to the making of confessions, the freedom from unlawful search and seizure, the admissibility of evidence) at the same time, in the opinion of many competent observers, has restricted the ability and power of law enforcement to protect the rights, lives and property of the law-abiding citizen.

As far back as 1881, Oliver Wendell Holmes commented: "The life of the law has not been logic: it has been experience."⁴ Based on the practical, everyday *experience* of law enforcement, we face today a situation where law enforcement, despite amazing advances in tech-

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1. 372 U.S. 335 (1963).

2. 378 U.S. 478 (1964).

3. 384 U.S. 436 (1966).

4. HOLMES, *THE COMMON LAW* 5 (1963).

nical proficiency and know-how, is able to render less than adequate protection to the community. Hence, the law-abiding citizen, who is guaranteed by our Constitution life, liberty and the pursuit of happiness, must suffer.

Here is today's paradox. I feel the answer is not an either-or: either the rights of the accused or the rights of the law-abiding. Law enforcement must accept and abide by the judicial rulings of our courts which are the law of the land. In the highest traditions of our legal institutions we work to honor the rights of the accused. But, at the same time, we have responsibilities to the remainder of the community. We realize that the nonviolator (many of whom become victims of crime, and remembering that the victim-risk rate of crime has never been higher) also has rights. Law enforcement's responsibility *is to all the people*. Our democratic society can accommodate both increased rights for the accused and adequate protection for the community. They are complementary, not contradictory making for greater, not less, freedom for all.

This objective, however, cannot be reached unless law enforcement can operate as a strong, vigorous, trusted member of the community, with the tools, ability, and public support to enable it to protect the rights of all. Like other areas of our society, the law enforcement profession has been caught up in the mammoth economic, political, sociological and demographic changes of our mid-twentieth century world. Law enforcement has suddenly found itself in the tension-laden vortex of many of our key national issues and problems — civil rights, anti-Vietnam demonstrations, a rising crime rate, shifting populations, civil disobedience. The demands being placed on law enforcement are tremendous, and are growing. What is expected of the peace officer is almost unbelievable, ranging all the way from locating a lost child to detonating a bomb, from investigating a murder to patrolling a riot-torn street.

Yet, at the same time, no profession has been more beset by "Monday morning quarterbacking." Just about everyone feels qualified to pass judgment upon the police. Frequently, in taut situations, passions run high, tempers flare, charges and countercharges abound. All too frequently law enforcement has become a scapegoat. In some areas, law enforcement has become a virtual "punching bag" and "whipping boy." To a large extent, law enforcement's problems grow out of its unique position of responsibility to all the people. Thus, it has become the target for attack by pressure groups and individuals. Unfortunately, some of these seek to bend the law to their own interpretation or to destroy law and order completely.

Amidst the talk from all sides about the rights of the accused, the voice of responsible law enforcement needs to be heard — the voice of the men whose day-to-day professional job is to maintain law and order, to protect the rights not only of the accused but of all the people of the community. No constructive solutions can be achieved without a fair, honest, and serious study of its view. The men and women of law enforcement (despite the views of some) are working diligently and efficiently to do their job. Their achievements, often unrecognized, are almost phenomenal. But they also have serious problems, and they are the first to so admit. Some of them are intra-police problems, arising inside the profession, and must be settled by police executives. But many have arisen from the very nature of our society, from factors beyond law enforcement's power to control. Consequently, the help of the legal profession and the concerned public is needed. Law enforcement is not an island unto itself, nor does it want to be. Our profession feels itself an integral part of American society, intimately interwoven with its progress or lack of progress toward freedom and justice. We want to participate in the ongoing national dialogue regarding the criminal law and the rights of the individual.

What are some of the problems facing law enforcement? Where do they arise? What is law enforcement doing to meet them? What is the view of responsible leaders of the profession toward the tasks which face them? High on the list of law enforcement's concerns are problems stemming from the recent judicial decisions, on various appellate levels, in the field of criminal law. Regardless of an individual's personal opinion (and there are many) regarding the decisions, these rulings have had definite and abiding effects on law enforcement's work. They have been far-reaching in their application and have upended and changed established guidelines and precedents of many years' standing.

For law enforcement, the problem is how to quickly, effectively and fairly make these changes available to the officer on the beat or in a patrol car. Here the problem of training arises. No profession is more conscious today of training than law enforcement, and it is making tremendous strides in this field. But when some 400,000 persons in thousands of departments of various types across the country are involved, the task becomes staggering. The Federal Bureau of Investigation conducts each year two sessions of the FBI National Academy in Washington, D.C.,⁵ where these legal points are discussed in great

5. The FBI National Academy was founded in 1935 and to date 5,036 law enforcement officers from every state of the Union, territorial possessions and a number of foreign countries have graduated from there. The primary purpose of the National

detail. But the National Academy can accommodate only some 200 officers a year, though plans for expansion of our Washington, D.C., training facilities are underway.⁶ Last year the FBI conducted 5,478 police training schools throughout the country at the request of local agencies. Many departments have excellent training programs of their own. But the practical problem facing every police administrator is how to translate instantaneously, in terms of training, a Supreme Court decision to his men.

The task becomes infinitely more complicated when we realize the ambiguity of many judicial decisions. What do they mean? Later court opinions may modify, clarify or even multiply the uncertainties. How then can practical guidelines be formulated when the issue is still a matter of dispute among judges? Imagine the position of the Police Chief, or worse yet, of the officer on the beat. The practical situation is often this: An emergency call is received at police headquarters. There is a robbery in progress or a stabbing or a murder. The officers respond. What is the law? What can they do or not do? Their decisions often require split-second timing. Sometimes the decisions arise in the context of a physical threat to the officer's life. Shall he make an arrest? What about searches and seizures? What amount of force can be utilized to handle the situation? Suppose he makes an honest mistake?

The judges who will decide this case — if it comes to trial and later is appealed — may take weeks, even months, to ponder, analyze and consider (and perhaps disagree among themselves). But the officers, acting in the public interest, *must act now!* The ethics of good law enforcement dictate that the officer will act quickly and on the basis of his best judgment. The question is: Will his decisions be correct? He really doesn't know. His guidelines, at best, are at present unclear and uncertain. As a respected judge⁷ has stated: "We are today, in my opinion, in a complete state of confusion as to what the law is with reference to investigating and prosecuting criminal cases." What actually is the law in a criminal case? It is what the highest judicial body says it is when that specific case has been de-

Academy is to train selected law enforcement officers as police administrators and instructors. At the present time, some 27 per cent of the graduates are executive heads of their respective departments.

6. According to present schedules, a new thirteen-million-dollar training center will be completed and ready for use in 1969. Located adjacent to the FBI's ranges on the U.S. Marine Base at Quantico, Virginia, this facility will increase to 1,200 the number of officers who can yearly attend the FBI National Academy. In addition, the expanded facilities will enable the FBI to provide specialized training courses of two or three weeks duration for as many as 1,000 officers each year.

7. Fourt, *A Search for Truth or for Error?*, FBI Law Enforcement Bull., June, 1966, p. 7.

cided. Years may be required for that decision to be reached. These words are not written in criticism, rather they serve to illustrate the tremendous problem the police administrator faces in endeavoring honestly to carry out the changes in criminal procedure.

A recent symposium on crime problems conducted by the *FBI Law Enforcement Bulletin*⁸ highlighted this point. A number of America's top police executives, whose departments serve areas totaling more than 1,200 square miles with a population of more than six million people, were asked their reactions to this question: "Do officers of your department generally find the law on arrest, search, and interrogation reasonably clear on what it demands of the officer and what it permits him to do?"⁹ Their answers were summarized by the *Bulletin* in this way:¹⁰

Most of the panel agreed that they felt the law on arrest, search, and interrogation was generally unclear to the individual officer. One cause which contributes to the confusion, they believe, is court decisions which seem to be conflicting and ambiguous and which change procedures so rapidly that the average police officer cannot be certain as to exactly what the policies and guidelines are.

. . . .

Even those officials who stated they feel the law is clear to the individual officers in their departments added that confusion does arise. Practically all the chiefs were of the opinion that there still exists a need for clarification and guidance by the courts as to what the officer is and is not to do.

The big problem, as most of the chiefs see it, is that in the recent past there have been so many court decisions affecting police operations in the field of arrest, search, and interrogation that the officer no sooner learns one set of rules when he finds that a more recent ruling has changed the guidelines and he must now confine his actions to another interpretation.

One Chief was emphatic: "If by any chance the loose thinking now applied to criminal procedures in the area of arrest, interrogation, and

8. Symposium, *Here's How Crime Problems Look to Enforcement Officials*, *FBI Law Enforcement Bull.*, Dec., 1966, p. 17. Participants included: Col. Curtis Brostron, St. Louis, Missouri; Chief Harold A. Dill, Denver, Colorado; Superintendent Calvin F. Hawkinson, Minneapolis, Minnesota; Chief Clarence M. Kelley, Kansas City, Missouri; Chief John B. Layton, Washington, D.C.; Chief Daniel S. C. Liu, Honolulu, Hawaii; Chief James C. Macdonald, Memphis, Tennessee; Commissioner Edmund L. McNamara, Boston, Massachusetts; Chief Frank C. Ramon, Seattle, Washington; Chief Herman B. Short, Houston, Texas. Quotations are taken from the Symposium as well as other material furnished by these police executives in this connection.

9. *FBI Law Enforcement Bull.*, Dec., 1966, p. 26.

10. *Ibid.*

trial is ever applied in toto to the field of traffic control, the carnage on the highways will probably quadruple."¹¹

This whole area, moreover, is being affected by another factor — one whose full impact is still not clear. Since 1961, if an officer makes an arrest without probable cause or makes an unreasonable search, he can personally be sued by the aggrieved party for violating the latter's constitutional rights. This suit can be brought despite any remedy the victim might have in the state court.¹² In past years, the law has allowed the officer some latitude in regard to an honest mistake. Law enforcement does everything possible to be accurate, to be right, but it makes mistakes. Hence, the officer, working in a field admittedly obscure and uncertain, no longer is allowed the necessary tolerance for an honest mistake. Even though officers of the court, such as judges, attorneys and prosecutors, can and do make mistakes, only the police officer can be sued for those mistakes.

What effect does knowledge of this potential suit have on the officer's actions? No final answer can be given. Some of the Chiefs participating in the *Bulletin's* symposium felt the officer's fear was not great; others thought it was substantial. Regardless, it is a factor of concern for police executives. A key danger here, recognized by all, can be negative and precautionary: that an officer, fearing the threat of a personal suit against him, will not take the aggressive action required to protect the public interest. As one Chief commented: "[I]n spite of an insurance policy supplied by the city which makes an officer's personal finances immune from judgment if he acted in good faith, . . . the nuisance and vague fear of lawsuits deter officers from taking the indicated action at arrest incidents."¹³

Many competent law enforcement officials and officers believe that recent judicial decisions have weakened the nation's fight against crime, thereby jeopardizing the very reason for their existence — rendering the maximum protection to the community. They believe, based on their experience, that law enforcement has been unfairly handcuffed and the violator given distinct advantages. "Speedy apprehension, quick trial and swift justice," comments one Chief in the *Bulletin* symposium, "are a strong deterrent to crime. Court decisions which favor the criminal at the expense of the public, and a search for *error* at the expense of seeking the truth, slow the processes of law enforcement and may even prevent cases from ever coming to trial." "I do not feel that the American public can expect a 'leveling off' or a reduction in

11. FBI Law Enforcement Bull., Dec., 1966, p. 28.

12. *Monroe v. Pape*, 365 U.S. 167 (1961).

13. FBI Law Enforcement Bull., Dec., 1966, p. 26.

crime in the near future," writes another Chief, "because the police today are handcuffed by court decisions. There is too much concern for technicalities. It appears to me that, in many instances, the police are being tried today instead of the criminal."¹⁴

This feeling, that the police are being unfairly handcuffed, is adversely affecting the esprit de corps of law enforcement. It has bred discouragement, demoralization and frustration among some — a feeling that "it's not worth it." An officer risks his life to apprehend a dangerous fugitive, a few days or weeks later he sees the man released on parole or probation, shortly thereafter to commit another serious crime. Or a hardened criminal is given his freedom through a technicality. (One of the Chiefs recalled an incident in his city when a criminal with a record of more than 50 arrests was freed of a charge because the judge failed to sign the jacket and subsequently died before the matter was concluded.)¹⁵

Such flagrant abuses of justice often cause officers to lose that most vital of feelings, a sense of positive accomplishment in protecting the community. They work hard, solve a case, often at great personal risk, but frequently the whole matter disappears as a result of judicial abuse. The alarming effect of such a situation is evident from this observation by a police executive:

Many men retiring from our department tell me that it is too discouraging to be a policeman these days. When they become eligible, they retire rather than continue the increasing struggle. I have had criminals tell me that they employ every angle they can with lenient courts to avoid penalties for their crimes and they do not expect to serve time as most courts will turn them loose because of some minor technicality.¹⁶

Another Chief emphasized the difficulty of maintaining the morale of investigative units whose men often see their best efforts swept aside.¹⁷

In all fairness, however, the feelings of frustration and unhappiness of competent police executives come not only from the impact of judicial decisions, but also from a myriad of factors, many of which are beyond the control of law enforcement. One of the most immediate, and perennial, problems is low salaries. A police officer has a family to feed, children to support, college educations to provide. He desires, as much as other citizens, respect and dignity as a human being.

14. *Id.* at 18.

15. *Id.* at 24.

16. *Id.* at 24 (Superintendent Hawkinson).

17. *Id.* at 24.

Police salaries are now rising, but they are still pitifully inadequate. We ask young men to accept a job of great responsibility involving personal risk (in 1965 fifty-three law enforcement officers were murdered in the line of duty and many others injured), long hours, odd shifts and emergency calls at all hours of the day and night. Yet we are not willing — nor have we as a nation ever been willing — to compensate him commensurately. This is one of the paradoxes of our time: Why is an affluent society so niggardly to the men and women entrusted to protect the rights, lives and property of its citizens?

Financial stinginess has also brought pressures in the areas of equipment and training. Law enforcement, like other segments of society, is entering the computer age. Such devices¹⁸ are now recording tremendous amounts of information. However, they are very costly. State legislatures and city councils have been reluctant to invest adequate sums to give their peace officers the tools to meet the criminal challenge. The need for a rising standard of professionalism and better training of policemen is another aspect of the enforcement problem. Training is a continual process for the competent officer. In years past an officer completed rookies school and, suddenly, he was considered "educated". These days are gone. Progressive departments not only have specialized training but "in service" courses, designed to bring the officer up to date with the latest developments in crime detection. The best protection of the rights of the accused is a competently trained officer, loyal to his profession, who is motivated by the highest principles of public trust and service. Many departments are understaffed. They simply cannot recruit acceptable men. A news story, reporting about a metropolitan department, stated: "Come Jan. 1, the Chief pointed out, the Department will be about 200 men short of its authorized strength. In addition, the Department does not have sufficient funds or enough qualified applicants to fill the civilian jobs." Some departments resort to almost emergency measures to secure applicants, such as sending recruiting teams to other cities, setting up

18. Starting in January, 1967, the FBI National Crime Information Center (NCIC) was instituted at FBI Headquarters in Washington, D.C. The NCIC is designed as the hub of a computerized information network which will serve as a rapid means of processing, storing, retrieving and instantly transmitting vital police data throughout the country in a matter of seconds. In its initial phases, NCIC programmed services include data on stolen automobiles, other identifiable stolen property and wanted persons. As the Center expands, other phases will be added and the number of participating agencies increased. Eventually it is hoped that all of law enforcement, local, state and national, will be coordinated by this Center. The NCIC represents the entrance of law enforcement into the computer age and is an innovation which undoubtedly will revolutionize the law enforcement profession, enabling it to become ever more efficient against the criminal.

booths in downtown areas, running advertisements. One Chief pointed out that his department had a policy of giving five days vacation to every officer bringing in an applicant who is accepted and begins recruit training.

Some people will be tempted to say that the police are responsible for solving these problems, for that is the reason they are hired. If only it were this simple! Law enforcement is working diligently to solve many of these problems; its accomplishments are praiseworthy. But some of these difficulties are community responsibilities, outside the power of law enforcement itself to master. A current practice is to hold law enforcement completely blameworthy when something goes wrong, as when crime rates rise or riots destroy property and disturb the public peace.

An example is the matter of city-wide protection during the riots which have occurred in some of our metropolitan areas. The police handle the brunt of the work, though frequently other authorities must be called in to restore law and order. What happens to the protection of citizens in other areas of the city? It declines drastically. In one riot-torn city, crime jumped considerably because a tremendous number of officers were required to handle the emergency situation. Can law enforcement alone be blamed for the sudden crime increase?

Even more agonizing for law enforcement are the apathy, unconcern and indifference of the general public. The opening question posed in the symposium highlights this difficulty: "What is the most crucial problem facing law enforcement in the United States today?"¹⁹ The *Bulletin's* summary indicated: "While all the police officials were greatly concerned by the massive crime problem, the majority suggested that the crucial issue facing law enforcement itself was the lack of public cooperation and support in fighting crime."²⁰

"Criminality — like poverty, unemployment, and slums — is a community problem, not a problem for police alone," commented one Chief. "The police have the responsibility of preventing and suppressing crime and of solving crime once it has occurred, but the police cannot prevent every crime from happening nor solve every crime that occurs. The public must recognize its responsibility for conditions which breed crime."²¹

Too frequently law enforcement suffers from a poor public image, with citizens considering the police as a riffraff of miscellaneous types, not well trained or educated, to be "tolerated" at best, but not genuinely

19. FBI Law Enforcement Bull., Dec., 1966, p. 17.

20. *Ibid.*

21. FBI Law Enforcement Bull., Dec., 1966, p. 19 (Commissioner McNamara).

respected. This false image represents one of law enforcement's greatest handicaps, and it exists simply because citizens know little factually about the police: its personnel, equipment, duties and accomplishments. Yet, at a moment's notice, a citizen will spew out invective against the police containing a whole assortment of misstatements and untruths. "In essence," the *Bulletin* states, "an erroneous picture is being painted of the police officer as an individual who is trying to take freedom away from the people, when actually he is merely trying to enforce the laws which have been established by the representative governments of the people."²²

Ironically, another Chief commented that at the very time when enforcement agencies "are at their peak of efficiency, training, and honesty," there has been a decline in respect for law and order. Frequently police find law-abiding citizens simply will not furnish information in their possession about the commission of a crime. A bus driver is assaulted, a woman is stabbed in front of her apartment, a man is mugged on the street; citizens, seeing the violation, will not lift a hand to either help the victim or assist the investigating officer.

In America today there is a frightening lack of respect for law and order and a growing tendency toward civil disobedience — a doctrine that is abhorrent to the orderly processes of law and order. The Chiefs emphasize the concern this tendency poses for responsible law enforcement.

The real danger in civil disobedience is that it constitutes a redress of grievances outside the rules of society. The method of gaining objectives by men rather than law is inherently undesirable and cultivates a disrespect for all laws.

. . . .

I strongly feel that the civil disobedience occurring all over the country on such a wide scale is increasing crime today. Civil disobedience, to me, is a means which the criminal can use to commit crimes. It seems that where civil disobedience occurs, disrespect for law and order also prevails. As long as this condition exists, I do not expect the crime picture to improve.²³

Still another Chief pinpointed the special difficulty posed for the police:

The difficulty with civil disobedience today is that when the police act to uphold the law, they are criticized more often than those who violate the law. Leaders from every walk of life are quick to place the blame for any failure of society entirely upon those whose duty it is to uphold the law. Until these leaders realize that good

22. *Id.* at 20.

23. *Id.* at 22 (Chiefs Kelley and Macdonald).

laws and strict enforcement of them are the basis for the way of life in this country, the police will be the target every time society fails to solve a problem.²⁴

Inasmuch as the police on the scene of community disorder are the visible symbols of authority, they almost automatically draw the wrath, resentment and bitterness of groups and individuals, particularly of those who feel their aims have been frustrated by police intervention. Such attitudes frequently bring false charges of "police brutality." To police executives this is a highly sensitive issue. No responsible executive in any way will tolerate misconduct on the part of his men. The words "third degree" are as abhorrent to him as to any American. He is a professionally trained enforcement officer who believes skilled, efficient and effective investigations, based on the highest principle of ethics, are not only the best way to solve the case and convict the guilty, but also to protect the innocent. However, Departments today find themselves bombarded with baseless charges of "brutality." Regardless of how ridiculous the charge may be, it is thoroughly investigated by the proper authorities. The vast majority are determined to be absolutely false, stemming from pique, spite or a vulgar desire to intimidate — to keep an issue "boiling" by special groups inflamed against "an enemy." But, unfortunately, the truth seldom catches up with the original false charges which may be sensationally reported on radio and television or in the press.

The result is that police executives feel that frequently these false charges represent a means of harassment, designed to derogate the image of law enforcement in the community and weaken effective police operations. The thousands of "good cases," where officers protect lives and property, are simply forgotten. Suddenly one or two officers, or the Chief himself, or a certain precinct station becomes the object of a calculated attack by vilification. Reason and common sense are abandoned to emotion and vindictiveness. In the symposium, the Chiefs disagreed as to the cumulative effect of false charges on police morale, efficiency and integrity, but all recognized them as a major hazard of their profession today.

Not only are vital police-community relations damaged, but such false charges encourage demands that the legitimate powers of law enforcement be curtailed. They engender feelings that police executives cannot be fully trusted in handling their own personnel or carrying out investigations. These attitudes, among others, have led to vociferous demands for the establishment of Civilian Review Boards. The appoint-

24. *Id.* at 22-23 (Commissioner McNamara).

ment of Civilian Review Boards would be a significant backward step in the development of effective and professional law enforcement. Not only would the rightful authority of the police executive be usurped, but the door opened for possible political control. Responsible law enforcement has fought for years to eliminate political control, in order to run departments solely on standards of merit and competence. Only in this way can a police agency recruit capable men, set high-level standards of operation and achieve positive results. If the Chief's authority is undermined by an extra-departmental reviewing agency, some of whose members may be inexperienced in law enforcement matters, difficulties will necessarily follow. Law enforcement is already accountable to legitimate civilian control — the Mayor, City Council, Governor or state legislature, and ultimately to the people. Now is not the time for the police to become pawns of any special interest or political groups represented by a so-called Civilian Review Board.

Law enforcement strongly supports protecting the rights of the accused. It eagerly seeks to comply with the judicial decisions of the land. What it asks are the tools, the trained manpower and the public support to carry out these objectives. For that reason, law enforcement wants its voice to be heard; a voice not of complaint, of unreasonableness or rash rebellion, but rather a voice which seeks to set forth law enforcement's position, fully, honestly, and factually. This voice says that law enforcement is not defeatist, lazy or incompetent, rather it is optimistic, hard working and more efficient than ever before in its history. Responsible police executives are working diligently to modernize, to train their men, to be responsive to the needs of the community. Police standards are much higher than a decade or even a year ago. The trend is toward greater professionalization, computerized efficiency and community service.

On the other hand, law enforcement asks public recognition of the problems which, because they are of community origin, are beyond its ability to master. It seeks constructive help, not the indiscriminate badgering that seems to have increased in recent months. Nothing constructive can be achieved if the police are constantly pilloried as "public offenders" and "irresponsible" enemies. If the rights of the accused and the rights of law-abiding citizens are to be fully protected within the meaning of our court decisions, law enforcement must be trusted and respected. Otherwise, neither will be achieved to the adequate satisfaction of the community.