THE CHALLENGE OF CRIME IN A FREE SOCIETY

(Additional views of Messrs. Jaworski, Malone, Powell, and Storey)

We have joined our fellow members of the Commission in this report and in commending it to the American people. This supplemental statement is submitted in support of the report for the purpose of opening up for discussion—and perhaps for further study and action—areas which were not considered explicitly in the report itself. These relate to the difficult and perplexing problems arising from certain of the constitutional limitations upon our system of criminal justice.

CONSTITUTIONAL LIMITATIONS

The limitations with which we are primarily concerned arise from the Fifth and Sixth Amendments to the Constitution of the United States as they have been interpreted by the Supreme Court in recent years. The rights guaranteed by these amendments, and other provisions of the Bill of Rights, are dear to all Americans and long have been recognized as cornerstones of a system deliberately designed to protect the individual from oppressive government action. As they apply to persons accused of crime, they extend equally to the accused whether he is innocent or guilty. It is fundamental in our concept of the Constitution that these basic rights shall be protected whether or not this sometimes results in the aquittal of the guilty.

We do not suggest a departure from these underlying principles. But there is a serious question, now being increasingly posed by jurists and scholars,[1] whether some of these rights have been interpreted and enlarged by Court decision to the point where they now seriously affect the delicate balance between the rights of the individual and those of society. Or, putting the question differently, whether the scales have tilted in favor of the accused and against law enforcement and the public further than the best interest of the country permits.

It is concern with this question which prompts us to express these additional views. As the people of our country must ultimately decide where this balance is to be struck, it is important to encourage a wider understanding of the problem and its implications.

In 1963 Chief Judge Lumbard of the Court of Appeals of the Second Circuit warned:

[W]e are in danger of a grievous imbalance in the administration of criminal justice * * *.

In the past forty years there have been two distinct trends in the administration of criminal justice. The first has been to strengthen the rights of the individual; and the second, which is perhaps a corollary of the first, is to limit the powers of law enforcement agencies. Most of us would agree that the development of individual rights was long overdue; most of us would agree that there should be further clarification of individual rights, particularly for indigent defendants. At the same time we must face the facts about indifferent and faltering law enforcement in this country. We must adopt measures which will give enforcement agencies proper means for doing their jobs. In my opinion, these two efforts must go forward simultaneously.[2]

The trends referred to by Judge Lumbard have had their major impact upon law enforcement since 1961 as a result of far-reaching decisions of the Supreme Court which have indeed effected a "revolution in state criminal procedure." [3]

THE COURT'S DIFFICULT ROLE

The strong emotions engendered by these decisions, for and against both them and the Court, have inhibited rational discourse as to their actual effect upon law enforcement. There has been unfair—and even destructive—criticism of the Court itself. Many have failed to draw the line, fundamental in a democratic society, between the right to discuss and analyze the effect of particular decisions, and the duty to support and defend the judiciary, and particularly the Supreme Court, as an institution essential to freedom. Moreover, during the early period of the Court's restraint with respect to State action, there were many examples of gross injustice in the State courts and of indefensible inaction on the part of State

[1] See Friendly, *The Bill of Rights as a Code of Criminal Procedure*, 53 Calif. L. Rev. 929 (1965); Schaefer, *Police Interrogation and the Privilege Against Self-Incrimination*, 61 Nw. U.L. Rev. 506 (1966); Traynor, *The Devils of Due Process in Criminal Detection, Detention and Trial*, 33 U. Chi. L. Rev. 657 (1966).

[2] Lumbard, *The Administration of Criminal Justice: Some Problems and Their Resolution*, 49 A.B.A.J. 840 (1963). Judge Lumbard is chairman of the American Bar Association's Criminal Justice Project.

[3] George, *Constitutional Limitations on Evidence in Criminal Cases* 3 (1966).

legislatures. In short, there was often a pressing need for action due to neglect elsewhere, and many of the great decisions undoubtedly brought on by such neglect have been warmly welcomed.

Whatever the reason, the trend of decisions strikingly has been towards strengthening the rights of accused persons and limiting the powers of law enforcement. It is a trend which has accelerated rapidly at a time when the nation is deeply concerned with its apparent inability to deal successfully with the problem of crime. We think the results must be taken into account in any mobilization of society's resources to confront this poblem.

THE ACCUSATORY SYSTEM

In any attempt to assess the effect of this trend upon law enforcement it is necessary to keep in mind the essential characterstics of our criminal system. Unlike systems in many civilized countries, ours is "accusatory" in the sense that innocence is presumed and the burden lies on the State to prove in a public trial the guilt of the accused beyond reasonable doubt. The accused has the right to a jury trial, and—in most if not all States—the added protection that a guilty verdict must be unanimous.

Other characteristics which have marked our system include the requirements of probable cause for arrest, prompt arraignment before a judicial officer, indictment or presentment to a grand jury, confrontation with accusors and witnesses, reasonable bail, the limitation on unreasonable searches and seizures, and habeas corpus.

Argument and controversy have swirled around the interpretation and application of many of these rights. The drawing of a line between the obvious need for police to have reasonable time to investigate and the right of an accused to a prompt arraignment occasioned one of the most intense controversies.[4]

There also has been serious dissatisfaction with the abuse of habeas corpus and especially the flood of petitions resulting from decisions broadening the power of Federal courts to review alleged denials of constitutional rights in State courts.[5] No other country affords convicted persons such elaborate and multiple opportunities for reconsideration of adjudication of guilt.[6]

Another constitutional limitation, affecting criminal trials and now being increasingly questioned,[7] requires that a conviction be set aside automatically whenever material evidence obtained in violation of the Bill of Rights was received at the trial. The purpose of the rule is not related to relevance, truth or reliability, for the evidence in question may in fact be the most relevant and reliable that possibly could be obtained. Rather, the reason assigned for the preemptory exclusion is that there is no other effective method of deterring improper action by law enforcement personnel.

ESCOBEDO AND MIRANDA

But the broadened rights and resulting restraints upon law enforcement which have had the greatest impact are those derived from the Fifth Amendment privilege against self-incrimination and the Sixth Amendment assurance of counsel.

The two cases which have caused the greatest concern are *Escobedo* v. *Illinois* [8] and *Miranda* v. *Arizona*.[9] In *Miranda* the requirements were imposed that a suspect detained by the police be warned not only of his right to remain silent and that any statement may be used against him at trial, but also that he has the right to the presence of counsel and that counsel will be furnished if he cannot provide it, before he can be asked any questions at the scene of the crime or elsewhere. The suspect may waive these rights only if he does so "voluntarily, knowingly and intelligently" and all questioning must stop immediately if at any stage the person indicates that he wishes to consult counsel or to remain silent.

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[4] See *Mallory* v. *United States*, 354 U.S. 449 (1957).

[5] *Fay* v. *Noia*, 372 U.S. 391 (1963); *Townsend* v. *Sain*, 372 U.S. 293 (1963). In 1941 fiscal year there were only 127 petitions; by 1961 there were 984. The number escalated to 3,531 in 1964; during the first 6 months of fiscal 1965 there were 2,460 applications (an increase of 32.7 percent over the previous 6 months' period). See 90 A.B.A. Rep. 463 (1965). The *Townsend* case, to take one dreary example, was in the courts for more than 10 years after conviction of the defendant, with 6½ years being consumed in various habeas corpus proceedings. The great majority of these petitions are not meritorious. See Ibid.

[6] The Commission's report, ch. 5, contains helpful recommendations as to what the States can do to minimize frivolous habeas corpus petitions.

[7] See Friendly, *supra* at 951–53.

[8] 378 U.S. 478 (1964).

[9] 384 U.S. 436 (1966).

Although the full meaning of the code of conduct prescribed by *Miranda* remains for future case-by-case delineation, there can be little doubt that its effect upon police interrogation and the use of confessions will drastically change procedures long considered by law enforcement officials to be indispensable to the effective functioning of our system. Indeed, one of the great State chief justices has described the situation as a "mounting crisis" in the constitutional rules that "reach out to govern police interrogation." [10]

THE FATE OF POLICE INTERROGATIONS

If the majority opinion in *Miranda* is implemented in its full sweep, it could mean the virtual elimination of pretrail interrogation of suspects—on the street, at the scene of a crime, and in the station house—because there would then be no such interrogation without the presence of counsel unless the person detained, howsoever briefly, waives this right. Indeed, there are many who now agree with Justice Walter V. Schaefer who recently wrote:

The privilege against self-incrimination as presently interpreted precludes the effective questioning of persons suspected of crime.[11]

In *Crooker* v. *California*, the Court recognized that an absolute right to counsel during interrogation would "preclude police questioning—*fair as well as unfair* * * *." [12] Mr. Justice Jackson, familiar with the duty and practice of the trial bar, perceptively said:

[*A*]*ny lawyer worth his salt will tell the suspect in no uncertain terms to make no statement to police under any circumstances.*[13]

There will, it is true, be a certain number of cases in which the suspect will not insist upon his right to counsel. If he makes admissions or a formal confession, the question whether his waiver of counsel was "voluntarily, knowingly and intelligently" made will then permeate all subsequent contested phases of the criminal process—trial, appeal and even post conviction remedies. And the prosecution will bear the "heavy" burden of proving such waiver; mere silence of the accused will not suffice; and "any evidence" of threat, cajolery or pressure by the government will preclude admission.

The employment of electronic recorders [14] and television possibly may enable police to defend such an interrogation if conducted in the station house. But in the suddenness of a street encounter, or the confusion at the scene of a crime, there will be little or no opportunity to protect police interrogation against the inevitable charge of failing to meet *Miranda* standards. The litigation that follows more often than not will be a "trial" of the police rather than the accused.

There are some who argue that further experience is needed to determine whether police interrogation of suspects is necessary for effective law enforcement. Such experience would be helpful in defining the dimensions of the problem. But few can doubt the adverse impact of *Miranda* upon the law enforcement process.

Interrogation is the single most essential police procedure. It benefits the innocent suspect as much as it aids in obtaining evidence to convict the guilty. Mr. Justice Frankfurter noted:

Questioning suspects is indispensable in law enforcement.[15]

The rationale of police interrogation was well stated by the Second Circuit Court of Appeals in *United States* v. *Cone:*

The fact is that in many serious crimes—cases of murder, kidnapping, rape, burglary and robbery—the police often have no or few objective clues with which to start an investigation; a considerable percentage of those which are solved are solved in whole of in part through statements voluntarily made to the police by those who are suspects. Moreover, immediate questioning is often instrumental in recovering kidnapped persons or stolen goods as well as in solving the crime. Under these circumstances, the police should not be forced unnecessarily to bear obstructions that irretrievably forfeit the opportunity of securing information under circumstances of

[10] Traynor, *supra* at 664. Chief Justice Traynor discussed this "mounting crisis" in the Benjamin N. Cardozo Lecture at the Association of the Bar of the City of New York on Apr. 19, 1966, prior to the Court's decision in *Miranda*.

[11] Schaefer, *supra* at 520. See also Justice Schaefer's first lecture in the 1966 Julius Rosenthal Lectures, Northwestern University Law School 8 (unpublished manuscript).

[12] 357 U.S. 433, 441 (1958), the holding of which was overruled in *Miranda*, *supra* at 479 n. 48. [Emphasis in original]

[13] *Watts* v. *Indiana*, 338 U.S. 49, 59 (1949) (dissenting opinion).

[14] As recommended in *Model Code of Pre-Arraignment Procedure* § 4.09 (Tent. Draft No. 1, 1966).

[15] *Culombe* v. *Connecticut*, 367 U.S. 568, 578 (1961), quoting *People* v. *Hall*, 413 Ill. 615, 624, 110 N.E. 2d 249, 254 (1953).

spontaneity most favorable to truth-telling and at a time when further information may be necessary to pursue the investigation, to apprehend others, and to prevent other crimes.[16]

THE FUTURE OF CONFESSIONS

The impact of *Miranda* on the use of confessions is an equally serious problem. Indeed, this is the other side of the coin. If interrogations are muted there will be no confessions; if they are tainted, resulting confessions—as well as other related evidence—will be excluded or the convictions subsequently set aside. There is real reason for the concern, expressed by dissenting justices, that *Miranda* in effect proscribes the use of all confessions.[17] This would be the most far-reaching departure from precedent and established practice in the history of our criminal law.

Until *Escobedo* and *Miranda* the basic test of the admissibility of a confession was whether it was genuinely voluntary.[18] Nor had there been any serious question as to the desirable role of confessions, lawfully obtained, in the criminal process. The generally accepted view had been that stated in an early Supreme Court case:

[T]he admissions or confessions of a prisoner, when voluntary and freely made, have always ranked high in the scale of incriminating evidence.[19]

It is, of course, true that the danger of abuse and the difficulty of determining "voluntariness" have long and properly concerned the courts. Yet, one wonders whether these acknowledged difficulties justify the loss at this point in our history of a type of evidence considered both so reliable and so vital to law enforcement.

THE "PRIVILEGE" AND CRIMINAL TRIAL

The impact upon law enforcement of the privilege against self-incrimination as now construed by the Court is not confined to the *Miranda* issues of interrogation and confession. The privilege has always protected an accused from being compelled to testify; it now prevents any comment by judge or prosecutor on his failure to testify; and it limits discovery by the prosecution of evidence in the accused's possession or control.[20] It was not until 1964 that the privilege was held applicable to the States by virtue of the 14th amendment,[21] and the final extension came in 1965 when the Court held invalid a State constitutional provision permitting the trial judge and prosecutor to comment upon the accused's failure to testify at trial.[22]

The question is now being increasingly asked whether the full scope of the privilege, as recently construed and enlarged, is justified either by its long and tangled history or by any genuine need in a criminal trial.[23] There is agreement, of course, that the privilege must always be preserved in fullest measure against inquisitions into political or religious beliefs or conduct. Indeed, the historic origin and purpose of the privilege was primarily to protect against the evil of

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[16] 354 F. 2d 119, 126, *cert. denied*, 384 U.S. 1023 (1966). Perhaps the best published statement of the considerations favoring in-custody interrogation is that found in the *Model Code of Pre-Arraignment Procedure*, Commentary § 5.01, at 168–74 (Tent. Draft No. 1, 1966). See also Bator & Vorenberg, *Arrest, Detention, Interrogation and the Right to Counsel: Basic Problems and Possible Legislative Solutions*, 66 Colum. L. Rev. 62 (1966); Friendly, *supra*, at 941, 948.

[17] Mr. Justice White, joined by Mr. Justice Harlan and Mr. Justice Stewart, said "[T]he result [of the majority holding] adds up to a judicial judgment that evidence from the accused should not be used against him in any way, whether compelled or not." *Miranda* v. *Arizona*, *supra* at 538 dissenting opinion).

[18] Indeed, until very recently and back through English constitutional history, a distinction had been made between the privilege against self-incrimination and the rules excluding compelled confessions. See Morgan, *The Privilege Against Self-Incrimination*, 34 Minn. L. Rev. 1 (1949); 3 Wigmore, *Evidence* 819 (3d ed. 1940). But see *Bram* v. *United States*, 168 U.S. 532, 542 (1897). In the United States, the common law and the due process clauses of the Constitution were construed to provide a voluntariness standard for the admissibility of confessions. See *Developments in the Law—Confessions*, 79 Harv. L. Rev. 935 (1966). The Fifth Amendment was adopted in 1791. Before that time, in England and in this country, the privilege was construed to apply only at judicial proceedings in which the person asserting the privilege was being tried on criminal charges; at preliminary hearing the magistrate freely questioned the accused without warning of his rights and any failure to respond was part of the evidence at trial, such evidence being given by testimony of the magistrate himself. See Morgan, *supra* at 18. Dean Wigmore and Professor Corwin suggest that the intent of the framers of the Fifth Amendment was to retain these limitations upon the privilege See Corwin, *The Supreme Court's Construction of the Self-Incrimination Clause*, 29 Mich. L. Rev. 1, 2 (1930); 8 Wigmore, *Evidence* § 2252, at 324 (McNaughton rev. 1961).

[19] *Brown* v. *Walker*, 161 U.S. 591, 596 (1896). Moreover, as Judge Friendly has pointed out: "[T]here is no social value in preventing uncoerced admission of the facts." Friendly, *supra* at 948.

[20] See 8 Wigmore, *Evidence* § 2264 (McNaughton rev. 1961). Beyond the trial itself, the privilege protects grand jury witnesses (*Counselman* v. *Hitchcock*, 142 U.S. 547 (1892)); witnesses in civil trial (*McCarthy* v. *Arndstein*, 266 U.S. 34 (1924)); and witnesses before legislative committees (*Emspak* v. *United States*, 349 U.S. 190 (1955); *Quinn* v. *United States*, 349 U.S. 155 (1955)).

[21] *Malloy* v. *Hogan*, 378 U.S. 1 (1964).

[22] *Griffin* v. *California*, 380 U.S. 609 (1965).

[23] See, e.g., McCormick, *The Scope of Privilege in the Law of Evidence*, 16 Texas L. Rev. 447 (1938); Schaefer, *supra;* Traynor, *supra;* Warden, *Miranda—Some History, Some Observations and Some Questions*, 20 Vand. L. Rev. 39 (1966).

governmental suppression of ideas. But it is doubtful that when the Fifth Amendment was adopted it was conceived that its major beneficiaries would be those accused of crimes against person and property.

Plainly this is an area requiring the most thoughtful attention. There is little sentiment—and in our view no justification—for outright repeal of the privilege clause or for an amendment which would require a defendant to give evidence against himself at his trial. But a strong case can be made for restoration of the right to comment on the failure of an accused to take the stand.[24] As Justice Schaefer has said:

[I]t is entirely unsound to exclude from consideration at the trial the silence of a suspect involved in circumstances reasonably calling for explanation, or of a defendant who does not take the stand. It therefore seems to me imperative that the privilege against self-incrimination be modified to permit comment upon such silence.[25]

Any consideration of modification of the Fifth Amendment also should include appropriate provision to make possible reciprocal pretrial discovery in criminal cases. One specific proposal, meriting serious consideration, is to accomplish this by pretrial discovery interrogation before a magistrate or judicial officer.[26] The availability of broad discovery would strengthen law enforcement as well as the rights of persons accused of crime,[27] and would go far to establish determination of the truth as to guilt or innocence as the primary object of our criminal procedure.

OTHER COUNTRIES LESS RESTRICTIVE

We know of no other system of criminal justice which subjects law enforcement to limitations as severe and rigid as those we have discussed. The nearest analogy is found in England which shares through our common law heritage the basic characteristics of the accusatory system. Yet, there are significant differences—especially in the greater discretion of English judges and in the flexibility which inheres in an unwritten constitution. There is nevertheless a developing feeling in England, parallel to that in this country, that criminals are unduly protected dy the present rules. The Home Secretary of the Labor Government, speaking of proposed measures to aid law enforcement, recently said:

The scales of justice in Britain are at present tilted a little more in the favor of the accused than is necessary to protect the innocent.[28]

One of the measures recommended by the Labor Government is to permit a majority verdict of 10, rather than the historic unanimous vote of all 12 jurors.[29] Leading members of the English bar are pressing for further reforms. After pointing out that "the criminal is living in a golden age," Lord Shawcross has commented:

The barriers protecting suspected and accused persons are being steadily reinforced I believe our law has become hopelessly unrealistic in its attitude toward the prevention and detection of crime. We put illusory fears about the impairment of liberty before the promotion of justice.[30]

Among the reforms being urged in England are major modifications of the privilege against self-incrimination, broadened discovery rights by the state, and the adoption of a requirement that accused persons must advise the prosecution in advance of trial of all special defenses, such as alibi, self-defense, or mistaken identity. Another change suggested would allow the admission in evidence of previous convictions of similar offenses, although convictions of dissimilar crimes still would not be admissible.[31]

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[24] See Traynor, *supra* at 677: "I find no inconsistency in remaining of the opinion that a judge or prosecutor might fairly comment upon the silence of a defendant at the trial itself to the extent of noting that a jury could draw unfavorable inferences from the defendant's failure to explain or refute evidence when he could reasonably be expected to do so. Such comment would not be evidence and would do no more than make clear to the jury the extent of its freedom in drawing inferences."

[25] Schaefer, *supra* at 520.

[26] Schaefer, *supra* at 518-20.

[27] The Commission's report emphasizes the need for broader pretrial discovery by both the prosecution and the defense.

[28] Address of the Rt. Hon. Roy Jenkins, M.P., Secretary of State for the Home Department, National Press Club, Washington, D.C., Sept. 19, 1966. Mr. Jenkins, in emphasizing the deterrent effect of swiftness and certainty in justice, also said: "Detection and conviction are therefore necessarily prior deterrents to that of punishment, and I attach the greatest possible importance to trying to increase the chances that they will follow a criminal act."

[29] The rule in Scotland long has been that a simple majority vote suffices to convict.

[30] Address by Lord Shawcross, Q.C., Attorney General of Great Britain, 1945-51, before the Crime Commission of Chicago, Oct. 11, 1965, reprinted in U.S. News & World Report, Nov. 1, 1965, pp. 80-82. See also Shawcross, *Police and Public in Great Britain*, 51 A.B.A.J. 225 (1965).

[31] See statements of Viscount Dilhorne (Q.C. and Lord Chancellor, 1962-64 and Attorney General, 1954-62), and Lord Shawcross, as reported in The Listner, Aug. 11, 1966, pp. 190, et seq.

THE FIRST DUTY OF GOVERNMENT

In the first chapter of the Commission's report the seriousness of the crime situation is described as follows:

Every American is, in a sense, a victim of crime. Violence and theft have not only injured, often irreparably, hundreds of thousands of citizens, but have directly affected everyone. Some people have been impelled to uproot themselves and find new homes. Some have been made afraid to use public streets and parks. Some have come to doubt the worth of a society in which so many people behave so badly.[32]

The underlying causes of these conditions are far more fundamental than the limitations discussed in this statement. Yet, prevention and control of crime—until it is "uprooted" by long-range reforms—depends in major part upon effective law enforcement. To be effective, and particularly to deter criminal conduct, the courts must convict the guilty with promptness and certainty just as they must acquit the innocent. Society is not well served by limitations which frustrate reasonable attainment of this goal.

We are passing through a phase in our history of understandable, yet unprecedented, concern with the rights of accused persons. This has been welcomed as long overdue in many areas. But the time has come for a like concern for the rights of citizens to be free from criminal molestation of their persons and property. In many respects, the victims of crime have been the forgotten men of our society—inadequately protected, generally uncompensated, and the object of relatively little attention by the public at large.

Mr. Justice White has said: "The most basic function of any government is to provide for the security of the individual and of his property." [33] Unless this function is adequately discharged, society itself may well become so disordered that all rights and liberties will be endangered.

RIGHTING THE IMBALANCE

This statement has reviewed, necessarily without attempting completeness or detailed analysis, some of the respects in which law enforcement and the courts have been handicapped by the law itself in seeking to apprehend and convict persons guilty of crime.

The question which we raise is whether, even with the support of a deeply concerned President [34] and the implementation of the Commission's national strategy against crime, law enforcement can effectively discharge its vital role in "controlling crime and violence" without changes in existing constitutional limitations.

There is no more sacred part of our history or our constitutional structure than the Bill of Rights. One approaches the thought of the most limited amendment with reticence and a full awareness both of the political obstacles and the inherent delicacy of drafting changes which preserve all relevant values. But it must be remembered that the Constitution contemplates amendment, and no part of it should be so sacred that it remains beyond review.

Whatever can be done to right the present imbalance through legislation or rule of court should have high priority. The promising criminal justice programs of the American Bar Association and the American Law Institute should be helpful in this respect. But reform and clarification will fall short unless they achieve these ends:

An adequate opportunity must be provided the police for interrogation at the scene of the crime, during investigations and at the station house, with appropriate safeguards to prevent abuse.

The legitimate place of voluntary confessions in law enforcement must be reestablished and their use made dependent upon meeting due process standards of voluntariness.

Provision must be made for comment on the failure of an accused to take the stand, and also for reciprocal discovery in criminal cases.

If, as now appears likely, a constitutional amendment is required to strengthen law enforcement in these respects, the American people should face up to the need and undertake necessary action without delay.

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[32] Commission's General Report, ch. 1.

[33] *Miranda* v. *Arizona*, *supra* at 539 (dissenting opinion).

[34] In his recent State of the Union Address, President Johnson said: "Our country's laws must be respected, order must be maintained. I will support—with all the constitutional powers I possess—our Nation's law enforcement officials in their attempt to control the crime and violence that tear the fabric of our communities." State of the Union Address, Jan. 10, 1967.

CONCLUSION

We emphasize in concluding that while we differ in varying degrees from some of the decisions discussed, we unanimously recognize them as expressions of legally tenable points of view. We support all decisions of the Court as the law of the land, to be respected and enforced unless and until changed by the processes available under our form of government.

In considering any change, the people of the United States must have an adequate understanding of the adverse effect upon law enforcement agencies of the constitutional limitations discussed in this statement. They must also ever be mindful that concern with crime and apprehension for the safety of their persons and property, as understandable as these are today, must be weighed carefully against the necessity—as demonstrated by history—of retaining appropriate and effective safeguards against oppressive governmental action against the individual, whether guilty or innocent of crime.

The determination of how to strike this balance, with wisdom and restraint, is a decision which in final analysis the people of this country must make. It has been the purpose of this statement to alert the public generally to the dimensions of the problem, to record our conviction that an imbalance exists, and to express a viewpoint as to possible lines of remedial action. In going somewhat beyond the scope of the Commission's report, we reiterate our support and our judgment that implementation of its recommendations will have far reaching and salutary effects.

Mr. BYRNE, Chief CAHILL, and Mr. LYNCH concur in this statement.

ORGANIZED CRIME AND ELECTRONIC SURVEILLANCE—IN VIRGINIA?

The Virginia Crime Commission, created in 1966 and since continued, was authorized to conduct a number of studies. One of these was to determine the activities of organized crime in Virginia, and ways and means to reduce or prevent it.

ORGANIZED CRIME IN VIRGINIA

On March 16, 1971, Delegate Stanley C. Walker, Chairman of the Virginia Crime Commission, stated:

> Our preliminary work so far has found that there is some organized crime in Virginia. * * * We have been told (for example) by responsible authorities that about a quarter of a million capsules of heroin are put up every week in the Richmond metropolitan area. Such large scale illegal activities could not occur without large financial support and a framework for the transportation and distribution of such narcotics.

The Commission is continuing its study, and will report by November of this year. In view of this study, it may be of interest to take a look—necessarily a superficial one—at the organized crime problem in our country, and at the use of electronic surveillance as the most effective means of attacking it.

THE NATIONAL SITUATION

As the Virginia study is in process, I will speak generally about the national situation. While the problem is most acute in the great metropolitan areas, it is sufficiently national in scope to encompass the heavily urbanized centers in Virginia.

Most of us think we know a good deal about organized crime—especially since "The Godfather" became the book everyone hides under his mattress. Yet, the truth is that the public generally has little conception of its scope or of the extent to which it preys upon the weakest elements of society.

What is "Organized Crime?"

The National Crime Commission [1] appointed by President Johnson (and on which I served) made an extensive study of this subject. In its 1967 Report, the Commission described organized crime as follows:

> An organized society that operates outside of the control of the American people and their government, it involves thousands of criminals, working within structures as complex as those of any large corporation, subject to private laws more rigidly enforced than those of legitimate governments. Its

[1] President's Commission on Law Enforcement and the Administration of Justice, 1965-67.