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LAW ENFORCEMENT IN THE ADMINISTRATION OF JUSTICE

JAMES C. CORMAN*

The only way to police a ghetto is to be oppressive. None of the police commissioner's men, even with the best will in the world, have any way of understanding the lives led by the people; they swagger about in twos and threes patrolling. Their very presence is an insult, and it would be, even if they spent their entire day feeding gum drops to children. They represent the force of the white world, and that world's criminal profit and ease, to keep the black men corralled up here, in his place. The badge, the gun in the holster, and the swinging club, make vivid what will happen should his rebellion become overt. . . .

*James Baldwin*¹

It should not have been necessary in this country and at this time for a presidential commission to engage in research and then to inform the American people that one of the most pressing problems in the whole spectrum of black-white relations involves the role of the police in the ghetto. A reading of Negro authors like James Baldwin or Claude Brown reveals the antipathy most ghetto residents feel toward the police. Yet the civil disorders commission and the crime commission which reported earlier to the President both found that another source of complaint against the police by ghetto dwellers was the lack of adequate law enforcement.²

A member of Congress is far removed from the place where the decisions that must be made in law enforcement are thrashed out and reached. There is not a great deal that Congress can do to implement the proposals of the two presidential commissions that look to im-

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1. BALDWIN, *NOBODY KNOWS MY NAME* 65 (1962).

2. NATIONAL ADVISORY COMMISSION, *REPORT ON CIVIL DISORDERS* 161-62 (1968); PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION ON JUSTICE, *THE CHALLENGE OF CRIME IN A FREE SOCIETY* 99-100 (1967); PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, *TASK FORCE ON THE POLICE* 146 (1967). An interesting commentary on the two complaints of ghetto residents can be found in J. WILSON, *VARIETIES OF POLICE BEHAVIOR* 161-70 (1968).

provement of law enforcement on the local level in the administration of justice. Because the power to make decisions is properly at the state and local levels in by far the great majority of cases, the action Congress takes is at best peripheral.

Yet, Congressmen do have influence. The 89th Congress enacted the Law Enforcement Assistance Act of 1965³ which has made more than nineteen million dollars in federal funds available to state and local law enforcement bodies for training and research programs. The 90th Congress passed the Omnibus Crime Control and Safe Street Act of 1968⁴ which the President signed on June 19, 1968. Title I of the Act provides a program of financial assistance to state and local government to assist in strengthening law enforcement. This purpose is to be carried out by grants to develop and carry out crime prevention and control programs appropriate to the particular level of law enforcement activity involved. If the states and the local political subdivisions respond with anything like the imagination and creativity which the situation requires, we may be able to expect, over the long haul, that improvement in public safety and a lowered crime rate which we all so ardently desire.

Money alone, of course, is not the solution. It is beyond the mere increased funding of police activities to which I would address myself in the remainder of this article. Service on the Civil Disorders Commission was more than an eye-opener to one who had thought himself informed about the social conditions in this country, and it afforded some insights into a perspective of police operations and practices which is alien to the middle and upper classes of Americans. There is no room for despair about the conditions and attitudes which the Commission described in its report, but there is an extreme urgency that we begin to undertake the difficult tasks of improving law enforcement and improving police-ghetto relations.

But we must get our priorities straight. That involves not merely bandying about a slogan like "law and order," or even "law and order with justice." These slogans are at best representations of a host of goals and desires; at worst they camouflage an intention to do nothing to alleviate social evils but to rely solely on the night stick and the gun to maintain an outward semblance of order. Because these slogans are at best a refracted image of what we really wish, let us get away from them and set down briefly what it is we want of our police.

3. Pub. L. No. 89-197.

4. Pub. L. No. 90-351.

Prevention of crime must be high on anyone's list. The "crime-in-the-street" image that most people have is typified by muggings and purse-snatchings, petty pilfering of stores and homes, and the like. It is this type of crime which in so many ways contributes to the apprehension many feel about being out alone at night in the city or alone at night at home.

Here, I think, the provisions of Title I of the crime bill offer real hope for improvement. More and better trained policemen, on the beat and in prowl cars, will discourage the petty thief and mugger. Improved communication facilities which allow police to respond more quickly to calls,⁵ better street lighting, and indeed, better design of streets and street level structures offer hope. Improved correctional methods, more rapid and more individualized processing of offenders through the courts, and perhaps greater rehabilitative successes can contribute. Title I, by contributing funds for research, for development and for implementation, can upgrade crime-fighting methods and techniques.

Any improvement, however, will take time; time during which our frustrations and fears may well cause us to act precipitately. Already there is a strong feeling in the country, and in Congress as well, that somehow the Supreme Court of the United States as well as our lower federal courts are responsible in great part for the rising crime rate. That feeling led to the passage of Title II of the crime bill, which attempts to set aside by legislation some of the Court's constitutional decisions in the field of criminal procedure.

The studies I have seen so far of the effects of the cases, seem clearly to indicate that such fears have been excessive.⁶ Moreover, the unseemly spectacle of one coequal branch of government warring against another, and by constitutionally dubious methods at that, is hardly likely to foster respect for law in this country.

5. Facilities and equipment are not the only communication problems faced by police. Los Angeles Police Chief Thomas Reddin pointed out that the Los Angeles Police Department had received no significant increase in two-way radio frequency allocation from the Federal Communications Commission in the last twenty years; consequently, Los Angeles would according to Reddin be "inundated" with radio communications should a large-scale riot ever occur there again. *Hearings on Communications Problems Before the House Select Committee on Small Business*, 90th Cong., 2d Sess. (1968).

6. In particular, *Miranda v. Arizona*, 384 U.S. 436 (1966), seems to be the case arousing the greatest controversy. The best dispassionate studies called to my attention discount the horrendous results forecast in the immediate aftermath of that case. MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE, pt. 2, 101-168 (1968).

When we turn from the casual crimes—muggings, purse-snatchings, assaults, and the like—we find ourselves in a much more difficult position in terms of crime prevention. Most types of organized crime involving gambling, narcotics, and professional bank robbery are not subject to the usual methods of prevention. If they yield, they will yield to the development of higher forms of police coordination and cooperation, to improved methods of detection, to intensified prosecutorial efforts. The organized crime efforts of the United States Department of Justice over the last few years merit special mention. Since so much organized crime transcends state lines, Congress can and will do much more.

When that is said, however, we must turn again to the local level where the personal involvement of policeman and citizen is greatest. At this level, citizen interest in crime prevention—the deterrence of muggings, rapes, and assaults—intersects with a second interest. That interest is one which concerned us on the civil disorders commission and which should concern all of us. In ghetto situations, the policeman, so often white, is almost the only contact a ghetto resident, so often black, has with his government. An aggressive police drive to deter crime by increased patrols of high-crime areas inevitably increases the abrasive contact between the white policeman and the black ghetto resident.

In this regard, the civil disorders commission, the crime commission, and scholars studying the matter independently came to the same conclusion: “the ‘stop-and-frisk’ practice of stopping citizens on the street or other public places on the basis of suspicion not strong enough to constitute probable cause is a source of both actual and potential conflict.⁷ Since then, in *Terry v. Ohio*,⁸ the Supreme Court has made a cautious ruling of constitutionality in respect to the practice. The ruling is far from a vote of approval of the whole range of police activities under the “stop-and-frisk” rubric, but it does recognize the serious danger the ordinary policeman on the beat faces whenever he confronts persons who may be armed.

The civil disorders commission recommended that this practice and

7. NATIONAL ADVISORY COMMISSION, REPORT ON CIVIL DISORDERS 159-60, 164-65 (1968); PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND THE ADMINISTRATION OF JUSTICE 94-95, 101, 103 (1967). The former Police Commissioner of Detroit, now a federal judge, has argued that the gain by these practices is outweighed by the ill-will created. INSTITUTE OF HUMAN RELATIONS PRESS PAMPHLET, Ser. No. 9, 43-44 (1968).

8. 393 U.S. 1 (1968).

The consequence, I fear, is likely to be both an increase of abrasive ghetto action by police and a greater public outcry against the court for playing their limited role in restricting this abrasion. The provisions of Title II of the crime bill, mentioned above, bear testimony to the force of this outcry already. We must, therefore, await the outcome of this conflict with some sense of trepidation.

Other steps we can take do not involve the potential backlash of public opinion, but all of them do involve increased expenditures. Though Title I of the crime bill promises federal funds, there must be increased expenditures all along the line. Improved police training and increased police salaries will surely contribute much towards enabling the policeman on patrol to better fulfill the many functions expected of him, from law enforcement and crime prevention, to midwifery and juvenile counseling.

One very important thing we can do to reduce the burden of the policeman is to bring apprehended suspects to trial much faster. The crime commission strongly emphasized greater efficiency in the court as a means of reducing crime and improving the administration of justice. The docket backlog in our courts is tremendous, partly due to the shortage of judges and courtroom space in many of our urban areas, but also due to the lack of research, training, and continuing education programs for our judicial personnel—including judges.

The result is that many suspects may languish in jail without judicial determination of their guilt or innocence. Moreover, to the frustration of both police and citizen, many guilty suspects will be out on bail awaiting trial for a year or longer, in which time they may commit other crimes.

Recent congressional approval of a bill to establish a Federal Judicial Center⁹ in the administrative office of the United States courts should help alleviate this docket congestion. The center, already in operation will stimulate, coordinate, and conduct research in all aspects of federal judicial administration. Of course, state and local courts will share the benefits of the center's findings.

Finally, tired cliché as it may be, we are not going to be rid of the problem of crime by increasing the size of our police forces, the number of our jail cells, or by improving the efficiency of our courts. Much more will be required. Insofar as crime and its increasing rate can be attributable to the ghetto and the discrimination and neglect

9. Pub. L. No. 90-219.

other on-the-street investigatory procedures be covered by specific guidelines to aid the policemen in the most effective utilization of them consistent with the greatest reduction of possible conflict. Perhaps we were asking the impossible, but we were convinced that some means must be found to reduce the abrasive nature of so much police-ghetto resident contact while improving impartial law enforcement in the ghetto. So far we have been content (or ill-content, as the case may be) to avoid making conscious choices in this area and to put the burden on the courts, especially when it has come to making sure that our police follow the rules established by the Constitution and statutes.

Hardly anyone doubts that large numbers of illegal arrests and searches and seizures take place—particularly among the poor and the black. When such an arrest or search turns up something incriminating, prosecution follows, and at that point the court-established rules of exclusion of illegally obtained evidence may come into play. No one knows how effective the exclusionary rules are in deterring unlawful police conduct, but the evidence indicates that the deterrence may be low. If this is true, we may well be sacrificing numerous convictions of guilty people in a futile attempt to obtain a desirable end.

The obvious alternative, of course, is for the state legislatures and the local police administrators to develop adequate techniques independent of the exclusionary rules to deter illegal police activity. These might include civil and criminal relief to the wronged party, internal police discipline, some sort of civilian review board, or perhaps some method yet to be conceived. But the prospect is not good. Affirmative action would have to be taken in the face of an insistent public demand that the police not be “handcuffed,” that they be “turned loose” on the criminals supposedly infesting our streets. That sort of demand is likely to repel any such recommendation for limitations on the police.

The option is presented for congressional action. Since the limitations on arrests and searches and seizures of the fourth amendment and the guarantees against illegally obtained confessions of the fifth amendment have been held applicable to the states through the due process clause of the fourteenth amendment, there is no constitutional reason why Congress, exercising the power to enforce these provisions of the amendments, could not enact comprehensive regulations along the lines suggested above. While there is no constitutional reason, reasons both of federalism and of political reality appear to dictate another answer.

that hems people in there, so it will continue to grow until we find some means of tearing down the walls that separate people. What this involves, of course, is an enormous effort to reduce unemployment, to improve educational opportunities, to upgrade housing conditions and transportation facilities, and to revise our welfare system. Most difficult of all, it means reducing social and economic discrimination, much of it deliberate, but much unconscious, which has produced a sub-class of people in this country.