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COMMENTS AND RESEARCH REPORTS

POLICE AUTHORITY IN A FREE SOCIETY*

O. W. WILSON†

It is a great pleasure and privilege to be given the opportunity to address such a distinguished group of jurists, law makers, prosecuting attorneys, defense counsel, and law enforcement officers on the controversial subject of police authority in a free society. I come not as a lawyer but as a policeman bent on expounding the policeman's point of view on this question, and I can't escape the feeling that in talking to lawyers on this subject, a policeman is talking to a well-behaved and courteous audience but nevertheless a subconsciously hostile one. A few exceptions among you are on our side—renegades you might call them—, distinguished lawyers, teachers, and writers like Fred Inbau, Frank Remington, and Ed Barrett, to name only three, who do at least see the problem from a police point of view and have been far more eloquent and persuasive than I in expressing in lawyer-like language the plight of the policeman. But these lawyers are in the minority. The vast majority of you see the problem from the point of view of the mythical law-abiding citizen who is accosted by a brutal policeman, hauled off to jail where he is held incommunicado, beaten, tricked, or exhausted into confessing to a crime that he did not commit, and finally brought before the court after the police have further delayed his arraignment to allow his bruises and wounds to become less apparent.

This is a gross exaggeration of the civil liberty point of view, of course, but I do think that some of our rules of evidence are essentially based on this fallacious assumption.

The dilemma between preserving the individual liberty of the law-abiding citizen and at the same time protecting the law-abiding citizen against robbers, burglars, and other malefactors is the problem we are discussing. We have to sacrifice some security if we are to have individual liberty. On this we can all agree. The question is how much

* Address delivered November 16, 1962, at "A Conference of Police Officials, Prosecuting Attorneys, Defense Counsel, Judges, and Legislators Regarding Detention and Arrest, Search and Seizure, and Criminal Interrogation" sponsored by the Northwestern University School of Law.

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security should we sacrifice? I suggest that the line should be drawn about at the point where the robber and burglar begin to seriously threaten the freedom of the law-abiding citizen to walk about the streets at night or to pursue his lawful occupation. I submit that we have already passed that point in our large cities and surrounding metropolitan areas and are fast approaching that point in rural areas. Does the law-abiding citizen have more to fear from attacks by robbers, burglars, or other malefactors than he does from encroachments on his civil liberties by the police in the form of unreasonable arrests, searches, and seizures? I submit that he does. Most citizens don't yet realize it. Some law-abiding citizens *do*, however, particularly those who have been the victims of attacks by criminals and have thus seen for themselves through bitter personal experience the difficulties that confront the victim and the police in bringing criminals to justice. As the number of victims of crime continues to grow, I believe that the force of public opinion will increasingly make itself felt, not only in our law-making bodies but in our courts as well.

Let me read to you a one-page summary from the *Uniform Crime Reports for 1961*. It appears on page one under the heading "Crime Capsule":

"1,926,090 serious crimes reported in 1961 representing a 3 percent increase over the previous all-time high recorded in 1960.

* * * *

Crime during past 5 years outstripped population growth 5 to 1.

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Crime clock ticked off four serious crimes per minute.

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852,500 burglaries in 1961 up 4 percent. Average value of property stolen \$187 per burglary.

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Forcible break-ins made in 70% of all burglaries while entry gained by open means in 21 percent.

Three males murdered for each female victim. Fifty-three percent of the murders committed by use of firearms.

* * * *

Value of property stolen reached \$591,815,000 but loss cut to 48 cents on dollar by effective police recoveries.

* * * *

Police performance in solving the violent crimes of murder, aggravated assault, robbery and forcible rape up 7 percent over 1960.

* * * *

Arrests for all criminal acts increased one percent with female arrests rising at a faster pace than male arrests.

* * * *

Arrests of young people under 18 up 4 percent over previous year. Nearly half of the juvenile arrests handled by police without referral to juvenile court.

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Arrests for white collar crimes of forgery, embezzlement and fraud up four percent.

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Over 8 police officers per 100 were assaulted during course of duty in 1961 and 71 law enforcement officers killed.

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Average number of police employees per 1000 inhabitants was 1.9. No change over 1960."

The questions we can well ask ourselves are how long can we tolerate annual crime increases of 3% or more? How long can we continue to permit crime to outstrip population growth by 5 to 1?

The *Uniform Crime Reports* not only show that there has been a steady and consistent increase in crime each year, but they also show a downward trend in the percentage of persons convicted in most categories of serious crime. The conviction rate for murder has remained fairly level at around 60% of those charged. However, the conviction rates for robbery, serious assaults, and burglary have dropped off considerably, and in no category of serious crime has there been an increase in the percentage of convictions. Comparing the average conviction rate for the years 1953 through 1956 with the rate for 1960, we find that in the

intervening years the conviction rate for robbery has dropped 18-23%, aggravated assault 7-14%, and burglary 8-10%. A different table is used in the 1961 report, making a comparison for that year impossible, but the indication is that the conviction rate deteriorated even further in 1961.

Decreases of such magnitude in conviction rates, together with the persistent increase in crime, may be taken as a warning that the scales of justice are getting out of balance. Where lies the fault? There is no indication that police procedures in marshaling evidence against the defendant are becoming less effective; indeed, the reverse seems more likely. During the past decade, the police have been strengthened not only in number but also in the quality of personnel. They are also better trained and equipped. Nor does it seem that prosecutors have grown less vigorous or that defense attorneys have discovered new and more successful techniques. May the explanation be found in the ever-increasing restrictions imposed on the police by legislation and court decisions in the field of arrest, search and seizure, interrogation of suspects, and the use of wiretapping and electronic listening devices?

There is a wide discrepancy between what the people expect the police to do and what the police are permitted to do under the law. One often wonders why this is so. It seems to me to grow out of two sources of antagonism against the police. The first concerns the responsibility of the police for enforcing traffic laws and regulations. Good citizens stopped by the police for traffic violations often blame the police rather than themselves. No one likes to admit he is wrong. The second is a tendency to blame the police for a high incidence of crime instead of recognizing that there are many crime causes, such as slum conditions, narcotic addiction, lack of parental responsibility, unemployment, cultural inequalities, and other social factors over which the police have no influence or control.

These antagonisms continue unabated because the police are not a scholarly group, skilled in presenting the police point of view. The literature in consequence is principally devoted to the case against the police; little has been written in their defense. The press, the literature, and the case law are primarily directed at incidents that tend to discredit the police. Small wonder that those who read the papers or research the literature and case law conclude that the police are evil.

Information on which a fairer judgment might be based is not generally circulated.

Highly intelligent people ponder the police role as a hypothetical abstraction and conceive the police as a potential instrument of tyranny threatening the essential liberties of a free society. Since their reading and research are restricted to incidents that discredit the police, they conclude that the police, at best, are a necessary evil. These citizens, as protectors of liberty and freedom, then align themselves against the police without giving attention to the cost of criminal depredations.

Decisions of our courts tend to reflect these hostilities against the police in a continuing stream of opinions restricting the police in their authority to enforce the law and protect the lives and property of our citizens.

I have spoken out on earlier occasions against the exclusionary rule and other rules of evidence which have the effect of setting criminals free on the peculiar theory that this is a method of "punishing" the police. It is not the police who are "punished," of course; it is society. And unfortunately the members of society do not share the burden equally. The daily victims of "four serious crimes a minute" pay the cost of crime, frequently with their lives.

The police can live with the exclusionary rule. Indeed, it seems that the police have no alternative, since the Supreme Court of the United States

in the *Mapp* case¹ has in effect written it into the federal constitution and into all of the state constitutions as well.

The police can also live with the exclusionary rule as applied by the higher courts of our states. The shoe begins to pinch in the lower courts, however, where frequently evidence is suppressed and defendants set free on grounds that I feel would not be sustained in our higher courts. A law was passed at the last session of the legislature which permits the State of Illinois to appeal from lower court rulings on motions to suppress evidence.² This is hardly an effective remedy, however. It is too expensive and time consuming. In the lower courts we are literally swamped with adverse rulings on motions to suppress. I have said that the police can live with the exclusionary rule. The real question is—can the public live with it?

I do not defend abuse of authority by the police. Those who have complained of such abuses know that these complaints are thoroughly investigated and disciplinary action taken where warranted. I plead only for the rule of reason. Let the police have the authority to do what the public expects them to do in suppressing crime. If we followed some of our court decisions literally, the public would be demanding my removal as Superintendent of Police and—I might add—with justification.

¹ *Mapp v. Ohio*, 367 U.S. 643 (1961).

² ILL. REV. STAT. ch. 38, §747 (1961), as amended, Laws 1961, p. 2453, §1.