

LIBERTY - THE SHERIFF'S ROLE

Adress by Robert Morgan
United States Senator
N.C. Sheriffs' Association Conference
August 1, 1978
Wrightsville Beach, North Carolina

I have a great respect for the law of this land,
and for its sacred obligation to protect the rights of
the individual. Since I have held public office, I have
tried to uphold every policy and plan that would have the
effect of protecting individual rights and supporting
law and order. As Attorney General, I created the Consumer
Protection Division so North Carolinians would have an
extra measure of freedom from abuse. The Criminal Justice
Academy, which I started in 1972 to upgrade the education
and status of law enforcement officers, has proven quite
successful. In the Senate, I have introduced legislation

protecting the public from unauthorized wiretapping surveillance and, as a member of the Intelligence Committee, I am working to get the Intelligence Community under the control of a legal charter - defining its limits and assuring its ability to function properly to protect the United States.

Together with my respect for law and order is my profound admiration for the Sheriffs of North Carolina. The office you hold has a rich tradition beginning with the REEVES of England who were elected to keep order in each County - or SHIRE, as they call them. Over the years SHIRE-REEVES (we now run that all together and call you Sheriffs) have had a sobering job: setting the standard for justice and fairness for the folks in the county they

had been elected to serve.

So I am particularly honored to be among men of such character that are willing to accept that task.

You have quite a challenge as law enforcement officers, in setting standards of justice for the county. The young lad who comes into custody of the law because of some minor first offense is taught by you and your deputies a practical working definition of what American justice is all about.

You are his teacher, and how he conducts the rest of his life in relation to officials of the law will be determined largely by the policies and the standards you have set for law enforcement in your jurisdiction.

The hardened criminal knows which county and which state metes out justice fairly and which set too low a standard.

You determine his attitude as well.

I never cease to be amazed at how often we take for granted the remarkable job you all do. You hold a public office and a public trust so you are all accountable - as I am - to an especially high level of public scrutiny of your actions. You live in a goldfish bowl and sometimes that bowl becomes a bit too small and the light a bit too bright and intense. Sometimes there are abuses by your critics that prevent you from properly doing your job. I admit that it is difficult to work in an environment where you must constantly stop and explain why you are doing what you are doing. For instance, if you physically restrain a criminal who is trying to do you bodily harm, he may cry "brutality" and public sympathy may well shift to him.

There is another great threat to your ability to perform your job - the threat of indiscriminate grand jury investigations, which is actually the threat of legal harassment.

Senator Sam Erwin warned in 1971 that the motive of a number of recent grand jury investigations has been "to suppress opposition". Today, there is a threat to use the grand jury to make a wholesale investigation of sheriffs and others - a threat I feel to be an abuse of the system.

In the Supreme Court case of Calandra v. United States, 414 U.S. 338, (1974), it was noted that the grand jury should serve as "...a protector of citizens against arbitrary and oppressive governmental action." In an earlier case, the Court noted that the grand jury has historically,

...been regarded as a primary security for the innocent against hasty, malicious, and oppressive

prosecution; it serves the invaluable function in our society of standing between accuser and accused, whether the latter be an individual, minority group, or whatever, to determine whether a charge is founded upon reason or was dictated by an intimidating power or by malice and personal ill will. Wood v. Georgia, 370 U.S. 375, 390 (1962).

Now this is the theory-- a group of our fellow citizens, called together to investigate charges of misconduct and to protect us from unwarranted prosecution.

Unfortunately, of late the theory has not been put into practice. The grand jury has in many cases been turned into an additional arm of federal investigation. Again, let me note that I am firmly behind federal enforcement of our laws and freedom of operation for our Department of Justice, Treasury and the FBI. I am not in favor of abuse, however.

From 1970 through 1973, the Internal Security Division

of the Department of Justice called for an unprecedented 100 grand juries in 36 states and 84 cities. The Division used the grand jury as a means of securing information which it could not or would not secure through other mechanisms.

For example, a party before the grand jury has no right to counsel, no right to testify on his own behalf and may never be called. The prosecutor need present only the information he wants to present as there is no requirement for presenting exculpatory evidence and there is no right to a transcript. If the prosecutor fails to secure an indictment before one grand jury, he may simply call another one into being, present the evidence and witnesses he wants and secure his indictment. The prosecutor may ask any questions he wants, even those which would be considered

irrelevant in a court of law. This has made the grand jury ripe for abuse. Without a judge present, a prosecutor can inquire into the history of a person and his knowledge about any, I repeat, any subject. Originally, the grand jury was intended to rule over the prosecutor, to use him to secure information that the grand jury wanted. Today, it is the prosecutor who holds sway and who directs the grand jury - and it requires a special type of person to go against the personality of a federal prosecutor.

One of the major problems that has developed is the use of immunity to compel testimony. The way it works is that a person has a right, under the Fifth Amendment, not to testify if the testimony would incriminate the individual. In the 1890's, the idea developed of imposing immunity from prosecution

on an individual and thereby removing the obstacle to testimony.

If a person could not be prosecuted, then incrimination would bear no penalty. Today, immunity is used to compel testimony about many wide ranging subjects, be it political affiliations, conversations with friends or news sources. Immunity allows the prosecutor to probe into many areas, and there is no requirement of relevancy.

There are other problems as well. Even if a person isn't given immunity, there were cases where a person answered questions about his name, address and age and was then told he could not invoke the Fifth Amendment and refuse to testify. If the investigation related to his dwelling place, for example, the fact that the person had begun to speak prevented use of the Fifth Amendment.

What would happen if someone refused to testify or do what the prosecutor wanted? Contempt and a jail term for the life of the grand jury or up to 18 months.

Let me give an example reported in the New York Times. One Phil Shinnick, a world record holder in the long-jump who represented the U.S. twice in Olympic competition, was called before a grand jury. He was guilty of no crime and was not charged with a crime. Yet he was imprisoned on the basis of civil contempt. It was his presence at the grand jury which generated a crime. He had not refused to answer any questions, nor had Mr. Shinnick refused to provide any evidence for the grand jury's deliberations. He refused to give the FBI samples of his handwriting, his fingerprints or a cut of his hair. Mr. Shinnick was instructed to go to

a room adjacent to the grand jury room and meet with the
FBI.

What was the FBI doing there? Well, it turns out that
the FBI has no subpoena power and could not, outside the
grand jury room, secure the information it wanted from Phil
Shinnick in a secret fashion. Interestingly, Mr. Shinnick's
fingerprints were available from the Air Force as were
samples of his handwriting. He offered to give the grand
jury, but not the FBI, a sample of his hair. Shinnick had not
been given immunity and was naturally uneasy about dealing
with the FBI, which really didn't appear to belong in a grand
jury proceeding. As it turns out, the FBI suspected Shinnick
of involvement in the Patty Hearst case.

Now I wouldn't pass judgement on the case of Mr. Shinnick

and perhaps the FBI should have pursued him. My concern is that the FBI attempted to do something it should not have, within our laws, and in reality could have done without violating the law. This is a good example of unnecessary effort which ends in abuse of our legal system.

The issue here is whether we can tolerate an abuse of our institutions in the name of law enforcement. I do not believe that we can. When citizens gave powers to their government, they gave the government the ability to create procedures for enforcing the people's laws. With all this power, it is hard for me to see why law enforcement must be devious and operate in an illegal fashion. Today, the greatest challenge is in maintaining the confidence of our people in their government. If we cannot abide by our own

rules, which we have created for ourselves in government, how can we expect the people to have faith in the system of government and respect for their institutions? As I have stated on other occasions, I am for effective law enforcement through legal means. I am well aware of the problems of law enforcement and the feeling that your hands are tied. I shall continue to work for laws which maintain our constitutional framework and which allow for effective enforcement. I shall continue to speak out against unwarranted violations of the law by our law enforcement machinery. I am convinced that we can have efficient law enforcement within the legal guidelines that we have established; I am reassured by meeting with people such as yourselves that what is possible will come to be.

Pressures ranging from the improper, like grand jury abuse, to the legitimate public concern that you do your job, will always be with you. The problem is not altogether new: 300 years ago John Tillotson observed that

Those who are in highest places, and have the most power, have the least liberty, because they are the most observed.

Yes, you have to sacrifice quite a bit in order to do your duty in such a responsible position, but - as Thomas Paine said at the founding of our country:

Those who expect to reap the blessings of freedom must, like men, undergo the fatigue of supporting it.

What is expected of you, then, is a lot of hard work, long hours, and solid reliability.

Sometimes, many of your duties seem routine - serving

papers on some evasive fellow, or even the unpleasant feeling that comes when a family's tears greet your knock. The Lord Chief Justice of England once said that the greater part of his judicial time was spent investigating collisions between propelled vehicles, each on its own side of the road, each sounding its horn, and each stationary. So you are not alone!

But what you are doing is a fundamental part of American justice, and how you do it makes all the difference in the world. Judge John Wisdom said

If police efficiency were an end in itself, the police would be free to put an accused on the rack. Police efficiency must yield to constitutional rights.

You are standing alone between a public that needs your protection and fair administration of justice, and the requirement to

execute your duty in such a way as to set a standard of just action. You have an awesome power, and we have given it to you so you can protect us - not so you can abuse our rights.

The great English philosopher John Locke warned in the 1600's that

Whenever Law ends, Tyranny begins.

That is true for nations as it is also true for the relationship between individuals. Your execution of the law, then, has the same effect. Whenever you withhold the protection of the law from a citizen, tyranny begins.

There are times when I can't help but wonder, as a United States Senator, if I can ever accomplish enough good and to do it quickly enough. There is so much that needs to be done, and the process of getting it done is so complex and

so slow that it is easy to become discouraged. But when I think of some of the major victories - and the little improvements too - that I have been fortunate enough to make since you elected me to the Senate in 1974, I am somewhat comforted.

I know that there must be times that you have shared the kind of discouragement and frustration I am talking about.

Patrick Henry once said

We are not weak if we make the proper use of those means which the God of Nature has placed in our power. ...The battle, sir, is not to the strong alone, it is to the vigilant, the active, the brave.

All we can do, and the least we MUST do, is our best.

Finally, what it comes down to is that you, as sheriffs, stand in the center as a moderating force: between the

citizen and possible abuses of his rights; between the
citizen and groups that try to put unethical and improper
pressure on you; between the citizen and a bureaucracy
that moves slowly and often without sensitivity. You
have a host of duties: serving papers, eradicating cattle
ticks, listing delinquent taxpayers - and every one of
those duties is absolutely vital to the continuation of
our American way of life. Sometimes it is a lonely thing
to do your duty day in and day out, staying fair and honest
under unrelenting temptation and pressure. But you do it
well and I salute you for it. There are lots of folks
willing to give you advice until the going gets rough.
"In a calm sea every man is a pilot." But in the final
analysis the burden of providing justice for the people of
this State is squarely on your shoulders.