

So I thank you for your testimony, and we thank you for your input in all matters that come up before the Judiciary Committee in which you have an interest.

The CHAIRMAN. The Senator from Pennsylvania.

Senator SPECTER. Thank you, Mr. Chairman. Just a question or two. I appreciate the testimony, especially the emphasis on the balance necessary, and I do believe that Judge Kennedy has approached it in that manner.

We have discussed in the course of the past several days cases where he has found the State, liberalizing the introduction of evidence. The *Leon* case, which led to the good-faith exception to the exclusionary rule, and, also cases where he has found against the State, in the Oregon case, perhaps went a little too far, even, on defendants' rights.

He did testify about three specific cases, and I would like to ask each of you about the cases.

He testified about the exclusionary rule, *Mapp v. Ohio*, and he said he felt it was a rule which ought to be retained.

Mr. Stokes, do you think that law enforcement has accommodated to *Mapp v. Ohio*, the exclusionary rule, in the 26 years it has been in effect, since handed down in 1961?

Mr. STOKES. Well, I think in the *Miranda*, as you covered—

Senator SPECTER. No, no. I am on *Mapp* right now.

Mr. Stokes. Oh, okay, on the exclusionary.

Senator SPECTER. Well, take *Miranda*, if you like, and I will give Mr. Vaughn *Mapp*.

Mr. STOKES. In the *Miranda* case, I think it is safe to say that everybody knows the content, and knows their rights under *Miranda*. Every police officer has been educated, reeducated. I think it is even in high-school law, maybe down as low as grade-school law, now, that each individual, each defendant has those rights. I think some cases, the criminal element, whether it is the elite, as you talked about earlier, or down to the street criminal, knows that he, or she, has to be provided their *Miranda* rights. The fact is, I think that is how it evolved, was out of a traffic stop, when it was extended down to the very minute criminal element.

I think it is over-used, or over-extended. It has been carried a little bit further than its initial intent, but again, I think as we professionalize and educate police officers throughout this country, which we have been at before *Miranda* and since *Miranda*, and since some of the other exclusionary, and now the other rules, police officers are functioning in a very professional manner.

I do not think it needs to be carried any further.

Senator SPECTER. Mr. Vaughn, how about the exclusionary rule in *Mapp v. Ohio*? Have law-enforcement officials pretty well accommodated to it, so that it is appropriate, in your judgment, to retain it?

Mr. VAUGHN. Well, I think certainly it has been around long enough that we are certainly used to it. I think law-enforcement, at least to my knowledge, and particularly the IACP, would not support an effort to have the exclusionary rule tossed out completely.

Our concern lies primarily in two areas. One is that the sanctions imposed for what may have been misconduct really do not affect the officer who may have engaged in the conduct. The people

who are most hurt by it are innocent citizens. In many cases, criminals continually engage in criminal conduct and then are right back out on the street.

We do support meaningful sanctions that would discourage inappropriate or illegal police activity, and ensure that constitutional protections against unreasonable search and seizure be protected.

So that is our concern, the practical effect of the exclusionary rule. Secondly, in many cases, the inability or lack of willingness of the courts to apply common sense, or a good-faith exception when officers acted reasonably, appropriately, and based on that good faith. This has had a harmful effect on society at large.

I would like to speak to *Miranda*, with your permission, for a moment.

I do not think the International Association of Chiefs of Police at least would support throwing *Miranda* out, either. Our concern, however, has been—if in fact the intent of *Miranda* is to ensure the protection of the rights of the accused—that since the time *Miranda* was handed down, there have been advances in technology, and increased levels of training, and minimum standards have been implemented throughout the States. Perhaps a review of *Miranda*, in the context of the times in which we live today may be appropriate, to ensure that given that technology available, and everything else, maybe the very intent of *Miranda* in protecting people's rights could be better achieved by other means available to us today.

But we would not support any effort to throw *Miranda* out.

Senator SPECTER. Well, the other question I will not ask because my time is up. The case that Judge Kennedy referred to, on *Gideon v. Wainwright* on right to counsel. But he has testified, in very forceful terms, about his recognition of the Bill of Rights, and the expansion, by judicial remedy, of counsel in the *Gideon* case, and exclusionary rule, and *Mapp*, and confessions in *Miranda*.

And I think it is a tribute to law-enforcement officials that you gentlemen are here this evening at this later hour, and that you testify with such balance and such concern for an appropriate balance, recognizing defendants' rights and recognizing society's rights.

Thank you very much, gentlemen. Thank you, Mr. Chairman.

Mr. HUGHES. Thank you, Senator Specter.

The CHAIRMAN. You look like you want to say something else, Mr. Vaughn.

Mr. VAUGHN. I do.

The CHAIRMAN. I have known you well enough now to know you would like to. Go ahead. I can tell. I am happy to hear what you have to say.

Mr. VAUGHN. I would just like to convey to Senator Thurmond our condolences, not only as an association, for the loss of one of the strongest members of IACP, and not only the head of law enforcement in your State, but a personal relative, and I would convey our condolences to you, and express to your our sense of loss as well.

The CHAIRMAN. That is very nice of you. Well, gentlemen, thanks again. Your testimony was welcome and useful, and we appreciate your coming at this later hour in the day. Thank you.