

The Second Mile 6

With Liberty and Justice for All

Have you noticed that the evening news sounds different than it did six weeks ago? There seem to be more stories about crime and the criminal justice system. The subject seems to be getting more emphasis.

The evening news hasn't changed. You have. You aren't the same as you were six weeks ago. Your awareness is greater than it was.

For one thing, you are hearing more terms than you did before. When someone mentions halfway houses or personal recognizance, you respond because you've heard and used the terms yourself.

You have more information than you did. And you've come to appreciate other points of view. You have a better handle on some of the problems we face.

You are now ready to address, from your own individual perspective, two inclusive questions about the criminal justice system: where do we want to go and how do we get there?

This tabloid, the last in *The Second Mile* series, is designed to help you begin

to answer these questions.

The two inclusions under "Perspective" are both surveys. Because we have quoted from it so often, it seemed sensible to begin this last tabloid with a survey of some of the recommendations made by the President's Commission in *The Challenge of Crime in a Free Society*. This is followed by a more recent set of recommendations, those made this last January by the National Council on Crime and Delinquency.

Senator Jackson's speech (included under "Testimony") also makes recommendations, but in a different sense. He is surveying the future, outlining some of the problems that will have to be solved.

If you need further evidence of the "nonsystemic" nature of our criminal justice system, then consider the several pieces concerning the way we have treated the victim of criminal acts. The brief comment by Senator McClellan is especially relevant, since he is the Chairman of the Judiciary Subcommittee which heard testimony in the area of victim compensation and is also the sponsor of the bill now before Congress.

Several other items are more immediately practical in nature. They concern citizen involvement in solving problems. They reflect the fact that there are three basic options open to someone who wishes to involve himself, depending on the nature of his interest.

First, his interest may be local. He may be most concerned about crime in his own neighborhood or community. If so, he might want to consider affiliation with a local organization. In Seattle and King County, the logical vehicle would be one of the Community Councils, local organizations concerned, among other things, with crime prevention within specific geographic areas. If it turns out that there

isn't a local organization operating in the neighborhood, perhaps the citizen might consider starting one.

But if his interest lies more in issues, then a different tack is called for. If he wishes to work within the existing system, then he might want to begin by getting the booklet on community involvement by the National Council on Crime and Delinquency, an excerpt from which has been included here. He might also look into some of the organizations listed in the Directory on the back of this tabloid. Job Therapy's "Man to Man" and "Woman to Woman" programs provide an opportunity to work with ex-offenders. The Juvenile Probation Service is directed toward young people.

There is a third possibility. For many citizens, it is not enough simply to work within the system. They are impressed with the need for major reforms. Such people might do well to read *Struggle for Justice*, a book available through the American Friends Service Committee. The excerpt reprinted here is taken from the "Epilogue" to the book, where citizen action is discussed. It begins with a realistic look at the difficulties involved in reform and then treats briefly several reform activities, some suggested and some already realized. It thus provides a useful perspective for anyone interested in major changes.

This threefold division is, of course, artificially sharp, especially between the first two and the third. The impulse to get involved is seldom completely separate from a desire to reform things. But it is useful to keep the division in mind while considering where to go next. Enthusiasm alone is not enough. A decision about personal involvement should be a thoughtful one. The "second mile" is now ending. The real journey has just begun.

Perspective

Our "Nonsystem" System

To Richard A. McGee, president of the Institute for the Study of Crime and Delinquency at Sacramento, California, the term "system" is deceptive when applied to criminal justice in America. McGee, a career professional in corrections, thinks the label "nonsystem system" would be more accurate.

If you agree with his notion that system implies a tightly organized, finely tuned, monolith capable of rapid coordinated response to a stimulus, then you are forced to admit that what we have in our own criminal justice system is something different — a loose network of thousands of police, court and correctional agencies, widely dispersed geographically and answerable to no single authority.

Practical experience on these projects has convinced us that there is an urgent need for programs to modernize the administration of justice at all levels and in the several professional fields that constitute the criminal justice system. They share this opinion with large numbers of concerned officials both within and outside the system.

This view is perhaps nowhere more fully developed than in the final report of the President's Commission on Law Enforcement and Administration of Justice. Sent to the President in early 1967, the report has been released for public sale under the title, *The Challenge of Crime in a Free Society*.

Scores of advisors and consultants contributed their expert talents. Their recommendations underscored the urgent need

for more research, planning and coordination among the police, courts and correctional agencies that make up our criminal justice system.

The Police

Rapid improvement of police-community relations, especially in minority neighborhoods, drew special Commission emphasis. One need cited was for broadly based community relations programs that involve the poor, minority groups and juveniles. Also stressed was the need to create citizen advisory groups in disadvantaged areas and to step up drastically the search for qualified minority police recruits. Police were also advised to establish effective mechanisms for handling citizen grievances against public officials and to emphasize community relations in their training programs.

Law enforcement alone does not account for the mounting stacks of paper that glut police information systems. A large share of the blame falls on community-service functions such as traffic control, dog licensing, traveler's aid, emergency rescue and criminal custody. The gist is that police information handling must not only accommodate a wide variety of data but must also remain sensitive to priorities that require rapid response.

The Courts

Our courts, most notably the lower courts in our large cities, are clogged with far more cases than they can handle efficiently. The result, the Commission discovered, is that justice too often moves with either "unseemly haste" or "undue delay." Either extreme is likely to damage the citizen's trust in the court as a dignified and deliberate instrument of justice.

Findings of the President's Commission also exposed inequities in the bail system and disclosed widespread disparities in sentencing practices at all judicial echelons. Bail rates in many states pose unusual hardships for the poor and often cause the jailing of marginal offenders whose freedom would create no threat to the community. On the subject of sentencing convicted offenders, the Commission was moved to label

the process "often a rather informal one" dependent on too little information about the defendant and too little knowledge of available correctional programs.

After noting the deficiency of information available to the courts, the Commission turned its attention to the need for more clear cut policies for selecting judges and setting judicial tenure and for generally upgrading the qualifications of prosecutors, defense attorneys and probation officers. These latter are especially important to the court at the sentencing stage of the judicial process.

Having isolated these and other problems facing our courts, the Commission set about making suggestions for changes. One of the first was for unification of felony and misdemeanor courts, accompanied by an increase in judicial manpower and the modernization of facilities. In addition, there was a call for provision of prosecutors, defense counsels and probation officers for courts now lacking them.

Selection, review and continued education were the most prominent features of the Commission proposals to upgrade the efficiency of officers of the courts. There was a call both for better screening of judges and for the establishment of a uniform ten-year judicial tenure. Related to this, the Commission cited a need for training programs for judges and for the creation of commissions to review judicial conduct. There was also a proposition that more courses be given for prosecutors and defense attorneys and that states undertake and finance coordinated defense systems.

Corrections

With caseworkers in such short supply, individual caseloads have risen generally and cut into the amount of time available for counseling. This development is felt elsewhere in the corrections system — in the adequacy of data used for prison assignments, in the level of supervision for probationers and parolees, and in the quality of data on which parole boards must base their decisions.

Manpower, however, is only one problem that corrections must deal with. Recidivism

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mother, and its control, said the Commission, will require "the wholesale strengthening of community treatment of offenders with much greater commitment of resources for their rehabilitation."

estimating that it costs far more to keep an offender in custody than on parole or probation, the Commission recommended development of intensive community treatment programs as an alternative to institutionalization. To supplement such programs, it was proposed that traditional institutions be mobilized to assist in reintegrating offenders into the community.

Where prison programs were concerned, the Commission proposed upgrading educational and vocational programs for inmates, providing separate detention facilities for juveniles, using state and federal resources to expand prison industries, and segregating violent offenders from those awaiting trial.

From *SDC Magazine* (May, 1969)

Report

National Council on Crime & Delinquency

Overruling its own courts task force, the National Advisory Commission on Criminal Justice Standards and Goals has called for the abolition of plea bargaining by 1978.

It is the only other instance in which it is proposed to endorse a major recommendation of a task force, the commission also called for the abolishing of magistrate courts and having their functions absorbed by trial courts of unified judicial court systems. The courts task force was urged to preserve magistrate courts to handle minor offenses.

The commission said that plea bargaining places burdens on the rights of those who wish to defend themselves because they forfeit the chance for a lighter sentence; endangers innocent defendants; prompts prosecutors to "overcharge" to get themselves in better bargaining positions; and might inhibit changes in harsh

provisions of the law.

The commission did not make plea bargaining a law and order issue but viewed it as an evil that completely negates the objectives of prosecution, probation and sentencing.

Here are other major elements of the courts standards and goals:

- No more than 60 days should elapse between arrest and trial in felony cases. Priority cases should go to trial in 45 days or less. There should be shorter periods in misdemeanor prosecutions, generally 30 days or less.

- There should be summonses in lieu of arrest in certain kinds of cases, elimination of requirements for grand jury indictments and expanded pretrial release based on defendant's promise to appear.

- Speed up of review in which an appeal in a criminal case should be ready for initial action within 30 days after the imposition of sentence. Cases with only insubstantial issues should be finally disposed of within 60 days after sentencing. Cases presenting substantial issues should be resolved in 90 days.

- Courts should be provided with adequate staff to screen appeals.

- States should have unified judicial systems, with a statewide court administrator supervised by the chief justice. Each trial court system of five or more judges also should have a full-time court administrator.

Corrections

The Commission said no new major institutions for juveniles should be built "under any circumstances," and that each correctional agency should adopt a policy of not building new major institutions for adults unless "no alternative is possible." It said that emphasis must be shifted from major institutions to community corrections. Here are other major recommendations:

- By 1978 state and local correctional agencies should create classifications teams in their largest cities to aid pretrial intervention projects and help to determine which offenders need a high degree of supervision and which do not.

- Offenders have all rights that citizens

in general possess "except those that must be limited to carry out the criminal sanction or administer a correctional facility or agency." Offenders should have access to legal services. Corporal punishment should be prohibited and solitary confinement, used as a last resort, should not exceed 10 days.

- All correctional facilities and programs with the exception of the board of parole should be unified within one administrative agency in each state.

- By 1982 all local detention and correctional facilities should be incorporated within the appropriate state system.

Police

All police agencies with fewer than 10 sworn officers are urged to consolidate for improved efficiency, and police agencies should provide services by the most effective and efficient organizational means available to them. Other standards:

- By 1975 every state should provide on request specialists to assist local agencies in investigating incidents.

- Every state should enact legislation providing for civil commitment and court diversion of persons, who because of alcoholism or drug addiction need treatment and who should be dealt with outside the criminal justice system.

- Regarding minority recruiting, every police agency should immediately ensure that there are no artificial or arbitrary barriers that discourage qualified individuals from employment.

Community Crime Prevention

Its recommendations are based on the premise that responsible, purposeful and concerted involvement of people in local communities and neighborhoods must be part of the national impact on crime. Apathy and cynicism has been generated by governmental corruption, which must be fought. The commission also urged a crime and delinquency prevention role for the institutions and agencies of society, as well as for private citizens.

From *Criminal Justice Newsletter* (January 22, 1973)

Volunteer Agencies

Organizations

Juvenile

King County Juvenile Court

1211 East Alder St.
Seattle, Washington 98122
(206) 323-9500

Volunteer Coordinator: Margaret Nalos

Snohomish County Juvenile Court and

Charles R. Denny Youth Center

2801-10th
Everett, Washington 98201

Volunteers in Probation

Room 217, Pioneer Bldg.
Mt. Vernon, Washington 98273
(206) 336-5785

Youth Advocates

1614 Melrose
Seattle, Washington 98102
(206) 622-8810

S.A.Y. Social Advocates for Youth

(206) 632-1244

Echo Glen Children's Center

Department of Social and Health
Services
Route 1, Box 499
Snoqualmie, Washington 98065
(206) 624-6514

Corrections

Prisoners' Coalition

914 E. Jefferson St., Room 700
Seattle, Washington 98122
(206) 587-6917
Director: Nick Mickus

Female Offender Project

Department of Psychiatry
University of Washington
Seattle, Washington 98195
(206) 543-8391
Director: Jennifer James

Seattle Drug and Narcotics

Rehabilitation Center, Inc.
(SEADRUNAR)
209-15th Ave. E.
Seattle, Washington 98102
(206) 324-8500

Purdy Women's Treatment Center

Purdy, Washington
Volunteer Services Coordinator:
Mrs. Eleanor Green

Job Therapy of Tacoma

824 South 28th
Tacoma, Washington 98409
(206) 383-4735

Project Create

1703 Kok Road
Lynden, Washington 98264
(206) 354-4173

King and Snohomish Counties

1972 Health, Welfare and Recreation Services Directory of King and Snohomish Counties, Washington. Published by United Way of King County. This is a very comprehensive rundown of organizations and agencies which work in public health, welfare and recreation services. \$1.75. Call 682-8161 or go to 800 Lowman Building, 107 Cherry St., Seattle, Washington 98104.

Seattle-King County

Seattle-King County Youth Services Access — This excellent directory may be obtained at the Seattle Youth Division, 313½ 1st Ave., Seattle, Washington 98104. 583-5746.

Alcoholism

Alcoholism Rehabilitation Services in Washington — Alcoholism Section, Division of Health, State Department of Social and Health Services, Olympia, Washington 98504.

Drugs

Directory of Drug-Related Community Services Agencies, King County. Seattle-King County Drug Commission, 100 Crockett St., Seattle, Washington 98109. No fee.

Rehabilitation

Facilities, Workshops, Resources — A guide for their development and use in the rehabilitative process. Division of Vocational Rehabilitation, P.O. Box 528, Olympia, Washington 98504.

Job Therapy

222 John St.
Seattle, Washington 98109
(206) 442-1500

National Gay Prisoners' Coalition

4016-37th Ave. So.
Seattle, Washington 98118
Director: Chris Wheeler

Snohomish County Prison Reform

2519 Whitman Ave., Apt. B
Everett, Washington
(206) 259-4418
Director: Alex Powers

Courts

American Friends Service Committee

814 N. E. 40th
Seattle, Washington 98105
(206) 632-0500

Committee on Washington Courts

601 Tower Bldg.
Seattle, Washington 98101
(206) 622-7441
Chairman: Ken Billington

Community-Based Crime Prevention

Seattle-King County Association of Community Councils

4261 Roosevelt Way N. E.
Seattle, Washington 98105
(206) 632-1367
Director: Mrs. Shirley McCurdy

Seattle Crime Prevention Advisory Commission

4261 Roosevelt Way N. E.
Seattle, Washington 98105
(206) 634-0750
Director: Allan Hall

Law and Justice Planning Offices

Seattle —
2902 Smith Tower
Seattle, Washington 98104
(206) 583-6592

King County —
400 King County Court House
Seattle, Washington 98104
(206) 344-3978

Kitsap County —
920 Park Ave.
Bremerton, Washington 98310
(206) 479-3210

Northwest Regional (Whatcom, Skagit, Island) —

Whatcom County Courthouse
Bellingham, Washington 98225
(206) 734-5091

Pierce County —
1008 South Yakima
Tacoma, Washington 98405
(206) 259-9455

Thurston County (Mason) —
Thurston County Courthouse
Olympia, Washington 98506
(206) 753-8131

Volunteer Bureaus

Mason-Thurston County Volunteer Bureau

Capitol Theatre Bldg., Suite 202
Olympia, Washington 98501
(206) 943-8660 and 943-8241
Director: Mrs. Patricia DeBlasio

Voluntary Action Center, Division of United Way of Pierce County

702 Broadway
Tacoma, Washington 98402
(206) 272-4263
Director: Mrs. Betty Hash

King County Volunteer Bureau,

Division of United Way of King County

107 Cherry St.
Seattle, Washington 98104
(206) 682-8161

Director: Mrs. Jo Anne Larsen

Snohomish County Volunteer Action Center

P.O. Box 1185
2730 Oakes
Everett, Washington 98206
(206) 257-5141

Directors: Jerry and Pat McFarland

Whatcom Volunteer Center

314 E. Holly
Bellingham, Washington 98225
(206) 676-8727

With Liberty and Justice for All

Working Within the System

National Council on Crime & Delinquency

As the causes of crime lie imbedded in the structure of the community, so do its solutions. The success of a variety of local crime prevention programs suggests that the necessary elements for effective programs are available in most communities. What is most commonly lacking is the will and the knowledge of how to organize effective programs.

Citizen concern about crime must be translated into action. Crime prevention must be given the same priority attention environmental problems have received in recent years. It is incumbent upon professionals in the criminal justice system to work themselves with the community to raise the level of awareness necessary to spark widespread involvement in crime prevention activities. Responsibility for initiating action must also be accepted by citizens representing all segments of the public and private sector. Without energetic involvement of the total community, the criminal justice system will inevitably fall even further behind in its crime control, prevention and rehabilitation efforts.

This manual is intended as a guide for organizing action against crime. It has been developed with the understanding that there is no single approach which has universal applicability. Resources within each community are different and they will have to be applied in different ways to meet particular needs. It is particularly important to begin to work away from piecemeal planning and crisis management action. The time has come to coordinate the best ideas and approaches into a sensible plan for comprehensive action.

The material which follows covers approaches, methods and techniques derived from successful crime prevention and rehabilitation programs in seven communities. Some of the programs deal exclusively with rehabilitation, training and job placement of alleged or convicted law-violators. Some programs have been involved in police work and youth activities. In four cases,

of relationships between professionals within the criminal justice system and members of the private sector is a necessary prelude to planning activity.

From *The Community & Criminal Justice: A Guide for Organizing Action* (1973)

Organize

Bruce Porter

Getting neighborhoods organized is a movement that seems to be spreading throughout the country, in cities and suburbs alike. Whether the residents call themselves homeowner groups, improvement associations, or community councils, these do-it-yourself quasi-governments are providing an antidote of sorts to governmental and corporate bigness. In the cities the movement blossomed in the 1960s, paralleling the demise of old political clubhouses whose "Irish socialism" had once provided local neighborhoods with the illusion at least that they were being cared for. "People don't want a shovelful of coal anymore," says Sandy Turner, who looks after New York City's 6,000 to 8,000 block associations for the city's Office of Neighborhood Government. "But they do want things like police service and garbage pickups and an abandoned car taken away. The block associations are a way of combating their sense of powerlessness. They're a way of saying, 'we're here.'"

From *Saturday Review of Society* (April, 1973)

Due Process for Victims

Luis Kutner

One of the risks of living in a society is the recurrence of criminal violence attributable to a permissive society indulging in disrespect for law and order, the increasing incidence of drug addiction that must be fed by the fruits of crime. Liberal rulings by the U.S. Supreme Court expanding the

Among those most aware of crime patterns in the city is the Laurelhurst Crime Prevention Council. Their program has helped city police keep crime down.

The Council, activated last December, is supported by the Laurelhurst Community Club and has been encouraged by the Seattle Crime Prevention Advisory Commission and the Seattle Police Dept.

Laurelhurst Crime Prevention Council Chairman Dr. Carl Sandler said the 15 member Council sees its primary task as the removal of isolation between Laurelhurst families and the cultivation of a spirit of neighborly helpfulness and alertness to prevent crime within the community.

The Laurelhurst community was first broken down into about 70 zones of 25 homes each. The zones were then grouped into six sections of about 280 households.

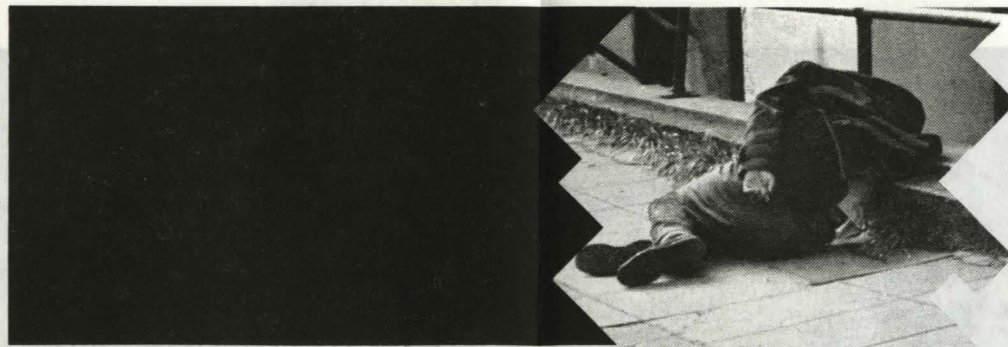
A network of section leaders and zone chairmen reaches all the residents in the

community. Sections, zones and the entire community hold regular meetings.

Since February, a Community Club phone has been manned by a volunteer in order to collect information on criminal activity in the area. Citizens are urged by the Council to report new crimes or observations of suspicious activity, such as furniture being moved without authorization and strangers on foot or in cars who might be casing the neighborhood.

"We are finding that our program does make a difference and is becoming increasingly effective in assisting the police and rendering service to the community," said Sandler in discussing the possibility of helping expand the Laurelhurst plan to other parts of Seattle.

From *University District Herald* (December 21, 1971)



Laurelhurst Crime Council

Carol Wahlgren



Change: Challenge to the Law

Sen. Henry M. Jackson

Address given to the Annual Law Alumni Day Luncheon at Wayne State University Law School, Detroit, Michigan, on April 18, 1971.

Over a period now of almost four decades, the law has been a part of my life, as it is of yours. As student, private practitioner, public prosecutor and as public lawmaker in both House and Senate of the Congress of the United States, I have seen the law from many sides, in many circumstances and many different times. I share with each of you a respect for law and an abiding faith in it. But it is that very respect and faith which impels me to speak now as I do...

The history of nations is a history of continuous struggle between the people and the governments over them about the usefulness and responsiveness and even the very rightness of the law. At this period in our own history, I believe we are in the midst of such a struggle in our own land.

Vietnam

On this, as on much else, the issue of Vietnam has served — and is serving — to conceal far more than it reveals of the pervasive discontent and unease among Americans. Men and women, young and old, black and white who are not by nature or conviction participants in public demonstrations are, nonetheless, increasingly concerned about what they regard as the injustice of present-day American justice.

There are many bases for these concerns. In many problem areas of our society — from drug addiction to trade regulation — the relevance of the law to the issues in-

Government, as an institution, is sorely troubled...

The institutional interests of government and the individual interests of the people are in conflict.

As the people react against the inequities of our present system, government does not respond. As the people seek to assert long dormant rights, government does not respond. As the people cry for change, government responds little — or not at all.

This conflict of interests poses the grave challenge facing not only the liberties of our system but also the rule of law. Can we emerge from the tests of the 1970s without bringing into being a government "too strong for the liberties of its people?"

I cannot, of course, engage in prophecy. But I cannot ignore existing evidence.

Over recent years, we have seen emerge a consistent pattern of response from government besieged.

Repression

Whether the challenge has been to war policies or peace policies, whether to foreign policies or domestic policies, government has more and more answered criticism with aggressive over-reaction. Increasingly, there has been resort to tactics which can only be described as repressive.

On this again, as on so much else, I would point out that the war issue — the Vietnam issue — has distorted our perception. Our attention has focused on the action involved in preventing disorder in the street. Yet, in the process, our attention has been diverted from the action involved in twisting old and cherished traditions of the law.

This is not idle rhetoric. We all read of last year's poll in which a majority of Americans declared themselves ready to restrict the freedoms guaranteed by the Bill of Rights. Some of these rights, such as the right to privacy, are already in jeopardy. But the problem goes beyond this. The illusion that we can buy social order at the expense of civil liberties has already been translated into statute by Congress, most recently in the District of Columbia crime bill enacted last year.

I invite your attention in particular to the concept of preventive detention embodied in that bill. It was sold to Congress as an imperative for a war against crime in the streets. Implicit in the argument of its advocates is the idea that preventive detention is no real concern of the law-abiding citizen. Yet I would contend that this argument

Three of the programs deal exclusively with the rehabilitation, training and job placement of alleged or convicted law-violators. One program has been involved in police studies and youth activities. In four cases, the major thrust has been to stimulate citizen action and improvement of local criminal justice systems through public education and advocacy campaigns.

Experience of the seven communities involved in this study indicates the varied nature of the processes which have served to stimulate direct action in crime prevention and rehabilitation programming. Formation



Reforming the System

American Friends Service Committee

The criminal justice system is also firmly supported by most of those who work as part of it — police, judges, prison administrators, probation officers, and other functionaries. Any change that threatens their security or power they naturally resist. They seek to increase their budgets and programs, especially those that increase their discretionary powers. The plea-bargaining system, for example, has become the cornerstone of almost every court system in the United States. Most correctional systems depend upon the discretionary power of parole boards to keep order in the prisons. The police, from the cop in the patrol car up to the chief, use their discretionary powers every day. These aspects of the system are not going to be changed without a vigorous counterstruggle by the incumbents. How do proposed actions measure up in this regard?

The experts — even the most enlightened and progressive — also line up solidly in support of the system, asking only for more of the same. Most established penologists and criminologists support the treatment and individualized treatment principles. Most legal scholars support the principle of discretion. We venture to hope that this report will inspire reconsideration by such experts. How might proposed actions help in this sphere?

Though there is little support on the level of officials and authorities for the changes we recommend in the criminal justice system, this does not mean all are content with the system as it is. In limiting the scope and functions of criminal law, we envision a corresponding expansion of the voluntary sphere of our society. We envision the growth of community. By "community" we mean people taking action together to attain shared objectives. A community might be a neighborhood, a religious, ethnic, racial, or occupational group, or simply persons with a common goal, such as a peace group. Today a variety of community organizations are engaged in actions involving aspects of the criminal justice system. We will describe some of these groups in this Epilogue.

From *Struggle for Justice* (1971)

is the recurrence of criminal violence attributable to a permissive society indulging disrespect for law and order, the increasing incidence of drug addiction that must be fed by the fruits of crime. Liberal rulings by the U.S. Supreme Court expanding the protecting cloaks around the criminal and decreasing the security around the victim, together with the expanding propaganda of the abolition of capital punishment, are consummated in a growing decline of social conditions.

Prevention of violent crimes to a degree where public streets and highways can become safe for the law-abiding is bordering on the visionary and the utopian. As long as there exists no liability of municipalities or any other governmental entity to victims of crimes of violence, law-abiding citizens will have to remain indoors while the criminal and the lawless remain free to roam the streets with impunity.

In the legitimate concern with the rights of those accused and convicted criminals, we seem to have forgotten that the potential victim has at least as much a human right not to be violently molested, interfered with and outraged as the person accused

An action against a governmental unit by a crime victim partakes partially of the nature of an action for breach of contract and partially of the nature of a tort. The tax dollar that a citizen pays to the municipality, state or federal government is the consideration furnished by the citizen for a contract implied in fact. The governmental unit in return furnishes means for the general welfare, such as adequate police and fire protection, public works, streets, sanitation facilities, schools, etc.

When the governmental unit fails in its consideration so that a taxpayer or third-party beneficiary is injured, there is a breach of a contractual duty. The governmental unit cannot reject responsibility by defending on the ground that adequate police protection is a gratuitous act that it has voluntarily assumed. Such is not the case. Furthermore, the injuries to a crime victim that arise from inadequate police protection are reasonably foreseeable and, therefore, should be compensable from that point of view.

Looking at the crime-tort action from the breach of contract point of view, there is another aspect of *quid pro quo*. As late as

as having no more responsibility (ies) or privileges in this regard than the ordinary citizen. The extent of this notion was evidenced by the common law crime of misprision of felony, which applied to cases where a citizen failed to fulfill his duty of apprehending a felon despite an opportunity to do so.

Gradually, however, this lack of distinction between police and general citizens proved to be unworkable. Accordingly, the police have been granted much greater authority and privileges, whereas the duties of private citizens in active crime prevention have diminished. For example, police officers have a broader privilege to use force in the apprehension of criminals than do private citizens.

A more important effect of this distinction has been the enactment of statutes restricting the right of self-defense. Most, if not all, states have statutes outlawing the carrying of concealed weapons and exercising of other common law privileges. The state thus has taken efficient means of self-protection from the citizen in return for an assumption of protection by the government. This is another kind of contractual duty implied in fact. A victim of a crime who refrains from carrying a concealed weapon when such a weapon could possibly have prevented the crime has this additional basis to support an action of crime tort.

Acts prohibiting the carrying of concealed weapons purport to protect the public against the recurrence of assaults, frays and crimes of violence which are encouraged by the general and promiscuous carrying of such arms. The practical effect of this legislation in certain crime ridden districts is merely to encourage the mastery of knife-fighting. Perhaps the only real deterrent effect it has is to prevent large numbers of law-abiding citizens from arming in defense of their persons.

From *Trial* (May/June, 1972)



Witnesses

Michael Ash

Exposure to the criminal court process as it actually exists discourages countless numbers of witnesses from ever "getting involved" again — that is, from reporting crime, from cooperating with investigative efforts, and from providing testimony crucial to conviction.

Crime goes unsanctioned because of the disaffection of witnesses. Every experienced prosecutor in a major urban area has a storehouse of tales to tell about how cases were lost and how crime went unpunished because disgusted witnesses grew weary of wasting time, became uncooperative, and ultimately refused to appear.

Many crimes are committed by persons who might have been "incapacitated" or "neutralized" by prison terms or "rehabilitated" by correctional processes but the convictions were "lost" because of the "wearing out" of witnesses.

I submit that it is time for the entire criminal justice community to start thinking about witnesses and about ways of easing their burden. If we remain only subliminally conscious of witnesses, nothing will change. If we come to see them as living, breathing human beings, deserving of respect and dignity, improvement will follow.

No more then will witnesses be treated as objects to be manipulated as unfeeling pawns to be moved about and even discarded as other of the system's demands may seem to require. The fair treatment of witnesses will come to be perceived for what it is — an indispensable component of a just, effective criminal justice system.

From *LEAA Newsletter* (July, 1972)

Compensation

Robert Utter

The moral basis for compensation of victims has two premises. The first is that the responsibility of the state exceeds that of the victim, and secondly, that criminal violence is a part of our society and the only tolerable way to sustain damage is to share it in common. The latter rationale is like that which existed in England during the second war. The state assumed the responsibility for compensation for damage caused by aerial bombings. The population knew bombings would occur and that damage would result, and yet no one could foretell the exact place it would occur. This being so, it was believed only proper for all citizens to share in the loss when it did occur.

By urging compensation for victims I do not mean to ignore the responsibility of the person causing the injury. This responsibility is primary. However, to have said the primary responsibility is that of the offender is inadequate to solve the problem for a number of reasons. In most cases the offender is never identified, let alone apprehended. If he is found, he is often unable to pay any damages at the time of arrest because of his own impoverished circumstances. If he has any resources, most of these are spent in the costs of defense and if convicted, he is normally imprisoned which eliminates any source of appreciable income he might have had which could have been directed to the victim. In addition, a failure of police protection is a prerequisite to any crime, and an additional reason why the state should assume a major portion of responsibility to the victim.

From *Washington State Bar News* (April, 1972)

Federal Legislation

McClellan Subcommittee Hearing, November 30, 1971

Senator McClellan. Most legislation passed to stop the increasing flood of crime is directed toward dealing with the criminal himself. The common element of the bills before us today is that they concern the individuals who face the criminal — the law enforcement officer and the victim. Crime is not just the annoying antisocial behavior of an individual. Crime is a terrifying injury to society as a whole and to the individual. Crime injures the mind and spirit and body, and destroys the lives for which many people have worked so hard. Crime exposes law-abiding citizens to constant dangers and requires law enforcement officers to risk their lives daily. We must stop the criminal. But we also must consider means of dealing with the consequences, the aftermath of crime. We must consider how to help the people who have literally been held at gunpoint for nothing they have done, but because someone else refuses to accept the responsibility of getting the things he wants by any way other than forcefully taking it from another.

From *Victims of Crime* (1972)

cerned about what they regard as the injustice of present-day American justice.

There are many bases for these concerns. In many problem areas of our society — from drug addiction to trade regulation — the relevance of the law to the issues involved is open to serious question.

In the administration of criminal justice — from traffic court to death row — the rightness of the law is open to serious question.

But there is more. At the very root of the rule of law which we honor today lies the concept of the oneness of the law — one law, one standard, one justice for all. Yet we are increasingly aware that this fundamental concept is honored more in the breach than in the observance, that the principle is — all too often — lost in the practice.

Rich and Poor

We are tolerating not only one law for the poor and one law for the rich. We are, as well, accepting submissively one law for the young and one for their elders; one law for the dissident and one law for the conformist; one law for the man in uniform and one law for the civilian; one law for the uneducated and one law for the college graduate; one law for the small tax-payer and one law for the large tax-avoider; one law for the ordinary voter and one law for the big contributor; one law for the buyer and one law for the seller; one law for the borrower and one law for the lender.

This is wrong. We know it is wrong. Yet among those who have chosen, by their profession, to serve as custodians of the law, there remains all too often a curious passivity toward these wrongs. It is not enough for affluent practitioners, able professors or active public servants to sit in the sanctuaries of the law factories, or in the quiet of academic halls, or in the spotlight of daily affairs talking about equal rights and legal remedies.

We must not only talk the law, we must live it.

The alternative seems clear: a steady decline in respect for the law, a steady decline in the effectiveness of law as a balancing force in our society.

We should, I believe, be encouraged by the fact that we are in the midst of a major effort to make law more relevant, more responsive, more right.

We have seen this in the dramatic development of legal services for the poor, largely under government sponsorship; in the creative use of the law to fill the void left by moribund regulatory agencies; and in the use of statutes like the National Environmental Policy Act to protect the public interest in a healthy environment.

As these efforts have moved forward, they have stimulated an increasing interest in the law as an instrument of social change. Without acceding to extreme demands, without imposing impossible burdens on the law, I believe we must encourage and support the development of a more vital and relevant role for the law in the lives of all Americans. . . . But as we turn to the task of correcting the imbalances which pervade our system, we must not forget the reality of man's long history of struggle with governments.

Struggle with Government

Abraham Lincoln put it squarely long ago when he said:

"It has long been a grave question whether any government, not too strong for the liberties of its people, can be strong enough to maintain its existence in great emergencies." . . .

in that bill. It was sold to Congress as imperative for a war against crime in the streets. Implicit in the argument of its advocates is the idea that preventive detention is no real concern of the law-abiding citizen.

Yet I would contend that this argument is an adaptation of Orwellian "Doublethink". The very purpose of preventive detention is to permit the jailing of citizens not for crimes they have committed but for crime — in the opinion of the authorities — they might commit.

The existence of such a power — so alien to all the principles of the rule of the law — should properly disturb the law-abider more than the law-breakers.

Tyranny

For such a power is the first power of tyranny.

If such a power exists, then it changes the import and meaning of other activities which government is increasingly asserting as its right — activities such as wire tapping, surveillance of private citizens, public villification of political views of those in private organizations, public denunciation against and attacks through public agencies on the media which exist to inform the citizenry.

The power to detain citizens for crimes which they might commit is not far removed from the power to detain citizens for words they might speak or thoughts they might think. . . .

If our Life, Liberty and Pursuit of Happiness are threatened by our adversaries' aggressiveness, they are no less threatened by our own passivity.

Law will rule our land only so long as those of us who study it, practice it and make it devote ourselves with courage to its safe-keeping.

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