

The Second Mile 1

Deliver Us From Evil

"You said I should always tell the truth. But, Dad, if I do I'll be a tattletale."

Sooner or later every American child realizes he's been had. Honesty, he's taught, is the best policy. But he learns young that this is a dangerous policy to follow.

He shouldn't, for instance, cheat in school. But he knows others do. If he tells on them, he'll be squealing. He's forced to choose between what he is taught and what he has experienced.

The contradictions become more acute as he grows up. He shouldn't steal. But is it stealing when he refigures his income tax? He's only cheating the government. What about bringing home pencils and paper from work? What about that scrap lumber? No one was using it.

He shouldn't break the law. Yet he regularly goes a few miles over the speed limit and doesn't always come to a full stop at a stop sign. Is he a criminal? Of course not. Criminals are other people.

And so life easily becomes a game of winning and losing and the basic crime, it seems, is getting caught.

Perhaps our imaginations have failed us. Perhaps we've taken television too literally. Because it's easy to tell what crime is on television. There are bad guys and good guys. Bad guys steal from good guys. They beat them up. So the good guys call the police who catch the bad guys. Or they call a private detective. Either way, justice is done before the final commercial.

But life isn't like that. There are many things that ought not to be. Some of them are against the law. It's just hard to think of them as crimes.

If a man buys a new car, he shouldn't

have to worry about whether or not something is wrong with it. He shouldn't be anxious about some design defect that might kill him before the car is recalled.

The environment ought not to be polluted by factories. Progress shouldn't mean that companies can level and pave when and where they want to.

When a woman goes to the store to shop for food, she shouldn't have to worry about the additives it contains. A pound of sausage shouldn't cook up to a third of its size as the fat renders out. A dozen grade A large eggs should all be the same size. When she has a prescription filled, she should know that it has been tested thoroughly in the laboratory before coming on the market.

And when someone is charged, tried and found guilty he shouldn't be able to spend years in appealing the verdict simply because he has the money to hire lawyers. Justice ought to be swift and impartial and the protection of due process should be guaranteed to all of us.

Such things are the rule, not the exception. The world is much more complicated now than it once was. Once it was a question of smoking cigarettes. Now it's pot. Once it was a question of getting someone to buy you beer. Now it's speed or acid. The question used to be whether or not to wear a low cut evening gown. Today it's whether or not to go braless or wear a see-through dress. A one-piece bathing suit used to mean the triumph of modesty; now it means going topless.

Our children are growing up in a profoundly different world. Often the hallmark of this world is fear. Few leave homes or cars unlocked. Few walk the streets at night without anxiety. Everyone knows someone who has been victimized. Sometimes the problem seems less how to cope with these things, than where to find a place to begin.

The Second Mile is a place to begin. It is a point of departure, a place to consider what questions ought to be asked and to weigh some of the answers that have been given.

"Deliver Us From Evil," the first program in the series, concerns crime and the criminal. This tabloid, which introduces the program, considers some of the questions essential to the subject.

Inside you will find, for example, several

discussions of "crime without victims" — i.e., prostitution, gambling, drugs, pornography or homosexuality. Many feel these acts should be decriminalized. They feel there should be no restrictions upon what consenting adults want to do.

What is your opinion? Consider the arguments presented for decriminalization. Weigh them against the present situation. Talk it over and make up your own mind.

What kinds of acts do you have in mind when you talk about "crime"? Are they the crimes of violence against persons and property that the television series focuses on, or should there be a more inclusive definition? Think about the problem. Compare your conception against that of the writers included here. Talk it over with others in your discussion group. If you feel your definition has been too narrow, expand it. If you find that you are satisfied with your vision, keep it. But remember that we often fear most what we know least about.

The Second Mile does not intend to provide you with answers about the criminal justice system. Rather, its intent is to help you to explore issues. You will find problems defined in the tabloids. You will see them on the television programs. You will have the opportunity to talk about them in the discussion groups. But most important, you will have the opportunity to gain experience first-hand about them. Each of the tabloids following this one will contain a list of suggested task assignments. As you come in direct contact with the system, the questions and problems will not remain abstract.

If at the end of the series you know better where you stand, then something positive will have been accomplished. But as it goes along, think about whether or not you, as a private citizen, have the ability to change anything. Is it enough simply to keep letting George do it, or is there some active role you can play?

Remember that the ultimate goal of The Second Mile is not simply to "educate" anyone. Knowledge in and of itself is of limited value. It must be translated into action. Only if you become aware of where and how you can make a difference will the goal of this public awareness project on the criminal justice system be fully realized.

**Pers
ective**

Toward Understanding Crime

President's Commission on Law Enforcement and Administration of Justice

A skid-row drunk lying in a gutter is crime. So is the killing of an unfaithful wife. A Cosa Nostra conspiracy to bribe public officials is crime. So is a strong-arm robbery by a 15-year-old boy. The embezzlement of a corporation's funds by an executive is crime. So is the possession of marihuana cigarettes by a student. These crimes can no more be lumped together for purposes of analysis than can measles and schizophrenia, or lung cancer and a broken ankle. As with disease, so with crime: if causes are to be understood, if risks are to be evaluated, and if preventive or remedial actions are to be taken, each kind must be looked at separately. Thinking of "crime" as a whole is futile.

Violent Crime

Obviously the most serious crimes are the ones that consist of or employ physical aggression: willful homicide, rape, robbery, and serious assault. The injuries such crimes inflict are grievous and irreparable. There is no way to undo the damage done to a child whose father is murdered or to a woman who has been forcibly violated. And though medicine may heal the wounds of a victim of a mugging, and law enforcement may recover his stolen property, they cannot restore to

him the feeling of personal security that has been violently wrested from him.

To be sure, the amount of pain that crime causes is a minute fraction of the amount Americans suffer accidentally every year. There were approximately 10,000 willful homicides in 1965 and more than 40,000 motor-accident fatalities. There were slightly more than 100 serious assaults for every 100,000 Americans, and more than 12,000 injuries due to accidents in the home for every 100,000 Americans. The risk of being attacked by a stranger on a street is far less than the total of violent crimes might lead one to believe. The UCR estimates that in fully two-thirds of the cases of willful homicide and aggravated assault, the criminals and the victims are known to each other; very often they are members of the same family. Studies of rape indicate that in perhaps half the cases the criminal and victim are acquainted. Robbery is the principal source of violence from strangers.

The most damaging of the effects of violent crime is fear, and that fear must not be belittled. Suddenly becoming the object of a stranger's violent hostility is as frightening as any class of experience. A citizen who hears rapid footsteps behind him as he walks down a dark and otherwise deserted street cannot be expected to calculate that the chance of those footsteps having a sinister meaning is only one in a hundred or in a thousand or, if he does make such a calculation, to be calmed by its results. Any chance at all is frightening.

Controlling violent crime presents a number of distinct problems. To the extent that these crimes occur on private premises, as most murders and rapes and many assaults do, they are little susceptible to deterrence by police patrol. To the extent that they are the passionate culmination of quarrels between acquaintances or relatives — as again many murders and assaults are — there is little that can be done to increase the deterrent effect of the threat of punishment. More than nine-tenths of all murders are cleared by arrest, and a high proportion of those arrested are convicted. Yet people continue to commit murders at about the same rate year after year. Almost a third of all rob-

beries are committed by juveniles and are, therefore, one aspect of the enormously complicated phenomenon of juvenile delinquency. Some robberies are committed by drug addicts, and a certain number of rapes are committed by sexually pathological men (or boys). Effective treatment for these diseases, in the community or in the criminal justice system, has not yet been found. Finally, more than one-half of all willful homicides and armed robberies, and almost one-fifth of all aggravated assaults, involve the use of firearms. As long as there is no effective gun-control legislation, violent crimes and the injuries they inflict will be harder to reduce than they might otherwise be.

Burglary

Only 13 percent of the total number of Index Crimes in the UCR for 1965 were crimes of violence. The remaining 87 percent were thefts: thefts of \$50 or over in money or goods, automobile thefts, and burglaries (thefts that involve breaking into or otherwise unlawfully entering private premises). Of these three kinds of stealing, burglary was the most frequent; 1,173,201 burglaries were reported to the FBI in 1965, approximately one-half of them involving homes and one-half commercial establishments. Burglary is expensive; the FBI calculates that the worth of the property stolen by burglars in 1965 was some \$284 million. Burglary is frightening; having one's home broken into and ransacked is an experience that unnerves almost anyone. Finally, burglars are seldom caught; only 25 percent of the burglaries known to the police in 1965 were solved, and many burglaries were not reported to the police.

Larceny

Larceny — stealing that does not involve either force or illegal entry — is by far the most frequent kind of stealing in America. It is less frightening than burglary because to a large, perhaps even to a preponderant extent, it is a crime of opportunity, a matter of making off with whatever happens to be lying around loose: Christmas presents in an unlocked car, merchandise on a store counter, a bicycle in a front yard, and so forth. In-

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ar as this is so, it is a crime that might be
reduced by the adoption of precau-
ary measures by citizens themselves. The
erse side of this is that it is an extremely
icult crime for the police to deal with;
re are seldom physical clues to go on, as
re are more likely to be in cases of break-
and entering, and the likelihood of the
im identifying the criminal is far less
n in the case of a face-to-face crime like
bery. Only 20 percent of reported major
enies are solved, and the solution rate for
or ones is considerably lower.

Car Theft

A unique feature of the crime of automobile
ft is that, although only a quarter of all
omobile thefts — and there were 486,568
orted to the FBI in 1965 — are solved,

some 87 percent of all stolen automobiles are
recovered and returned to their owners. The
overwhelming majority of automobile thefts
are for the purpose of securing temporary
transportation, often for "joyriding."

More than 60 percent of those arrested for
this crime in 1965 were under 18 years of
age, and 88 percent were under 25. However,
automobile theft for the purpose of stripping
automobiles of their parts or for reselling
automobiles in remote parts of the country is
a lucrative and growing part of professional
crime, a Commission study of professional
criminals indicates. What is especially sug-
gestive about these facts is that, while much
automobile theft is committed by young joy-
riders, some of it is calculating, professional
crime that poses a major law enforcement
problem. The estimated value of the unre-

covered stolen automobiles in 1965 is \$60
million. In other words, coping with auto-
mobile theft, like coping with every kind of
serious crime, is a matter of dealing with
many kinds of people with many kinds of
motives. No single response, by either the
community or the criminal justice system,
can be effective.

White Collar Crime

These three major crimes against prop-
erty do not tell the whole story about steal-
ing. In fact, the whole story cannot be told.
There is no knowing how much embezzle-
ment, fraud, loan sharking, and other forms
of thievery from individuals or commercial
institutions there is, or how much price-
rigging, tax evasion, bribery, graft, and
other forms of thievery from the public at
large there is. The Commission's studies in-
dicate that the economic losses those crimes
cause are far greater than those caused by
the three index crimes against property.
Many crimes in this category are never dis-
covered; they get lost in the complications
and convolutions of business procedures.
Many others are never reported to law en-
forcement agencies. Most people pay little
heed to crimes of this sort when they worry
about "crime in America," because those
crimes do not, as a rule, offer an immediate,
recognizable threat to personal safety.

However, it is possible to argue that, in
one sense, those crimes are the most threat-
ening of all — not just because they are so
expensive, but because of their corrosive ef-
fect on the moral standards by which Ameri-
can business is conducted. Businessmen who
defraud consumers promote cynicism towards
society and disrespect for law. The Mafia or
Cosa Nostra or the Syndicate, as it has vari-
ously been called, is deeply involved in busi-
ness crime, and protects its position there by
bribery and graft and, all too often, assault
and murder. White-collar crime and organ-
ized crime are subjects about which the
criminal justice system, and the community
as a whole, have little knowledge. Acquiring
such knowledge in a systematic way is an
extremely high-priority obligation of those
entrusted with protecting society from crime.

From *The Challenge of Crime
in a Free Society* (1967)

Glossary

- Accessory** A party to a crime not present at the commission of the crime.
- Complice** A party to a crime who actually helps commit or is present at the crime.
- Consenting adult** A person who has reached the age at which he is legally responsible for a particular act (often 18 to 21) and who chooses to participate in that act. (See victimless crime.)
- Crime** An act committed or an act of negligence which is in violation of the criminal code.
- Criminalize** To make what was formerly considered to be a crime no longer criminal; e.g., abortion was recently decriminalized under specified conditions.
- Felony** An offense punishable by imprisonment in a state prison or penitentiary, usually for a period of more than one year.
- Index crimes** The seven crimes (robbery, willful homicide, forcible rape, aggravated assault, burglary, theft of over \$50 and motor vehicle theft) considered by the FBI to be indicative of general crime trends and reported annually in the Uniform Crime Report (UCR).
- Misdemeanor** An offense considered of lesser magnitude than a felony which is punishable by fine or imprisonment in a local (as opposed to state or federal) facility.
- Municipal ordinance** The act of the legislative body of a municipal corporation; a municipal law.
- State statute** An act of the state or federal legislature as an organized body; a state or federal law.
- Victimless crime** An act defined as criminal in which both parties mutually consent (prostitution or gambling) as opposed to a criminal act in which one party imposes his will on another's person (rape, assault) or property (theft).

Deliver
us from
Evil

Testi
mony

Drug Crime

Edward Bennett Williams

The last thing on that subject — and I don't expect to say this this morning, but I must say it. It's a police problem. It's a city administration problem. But there's something that's hovering over the whole thing like the ghost of Banquo. I wouldn't have believed this a year ago but I'm convinced of it now, though I can't prove it to you yet. I can't prove it to you with the kind of hard information with which I can talk to you about the police function in this country. I'm interested myself enough to find out something about the narcotic problem in America this year. I wondered — because I'd heard so much talk about the kind of crime that we're discussing being committed by addicts — if this were really true. So, I conducted an experiment and had several hundred cases pulled at random from the probation offices of a large city in the East and I found to my dismay that 79 percent of the persons convicted of robbery, larceny and burglary were addicts of narcotics, hard narcotics. We've got to come to terms with the drug culture in this country. We've got to revolutionize our thinking about it because it is inexplicably linked to the kind of crime that we're speaking that we've got to develop the hard information necessary to develop programs to stamp out the illicit traffic in drugs.

From *The State Bar of California Journal* (November/December, 1970)

Drug Tactics

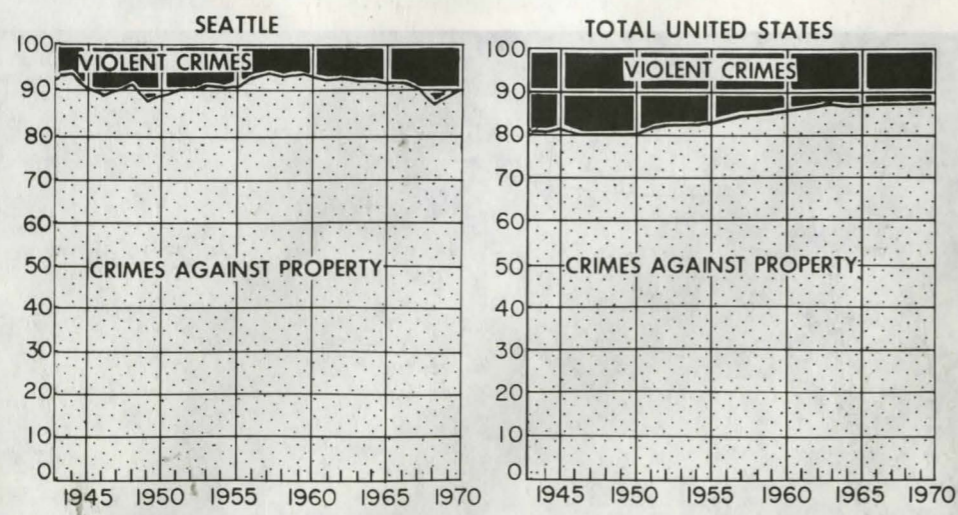
Thomas J. Stachnik

At some time in our past, most of us can recall having read a newspaper byline which announced that a narcotics ring had been broken up. Most of us can also recall an ill-fated but unmistakable feeling that some good had happened. We had the clear impression that some evil men had been identified and apprehended, that their traf-

fic had been cut off at approximately the same level. Therefore, what we have succeeded in doing is reducing the supply of heroin in a given area while the demand has remained constant. If the usual laws of supply and demand hold, the net result will most likely be an increase in the price of the remaining heroin. What was before, on the average, a \$50-a-day habit, may now well be a \$70-a-day habit. Now, how will the 1,000 addicts raise the additional \$20 a day to support their habit? It seems a safe assumption that they will raise the additional \$20 in exactly the same way they raised the first \$50, namely, through antisocial activities such as shoplifting, breaking and entering, purse snatching, etc. While some of this is admittedly speculative, it is quite possible that an anticipated reduction in crime as a function of smashing a narcotics ring may, in fact, precipitate an increase in criminal activities.

From *American Psychologist* (July, 1972)

Percentage: Violent Crimes and Crimes Against Property



Corporate

Legislating Morality

We have tended to view our criminal justice apparatus as the machinery for dealing with a wide range of often unrelated social ills. As a result, we have lost sight of the primary goals we have assigned to the criminal justice process — the maintenance of domestic order and tranquility. Violent crime in our cities presents the greatest threat to that goal, but the priorities of criminal justice agencies seldom reflect that primary goal.

Misplaced Priorities

The problem of overcriminalization is a leading example of misplaced priorities. Over-

From *Human Resources Agencies — 1971 Annual Report*

the other poorer portions. The kind of vicious consumer abuses that have now been documented all over the country from the loan shark area to the dumping of diseased meat

American Bar Association Special Committee on Crime Prevention and Control

Overcriminalization is a term that describes the application of criminal sanctions to so-called 'victimless' crimes — those forms of behavior in which the participants do not consider themselves to be harmed. Overcriminalization has been described quite aptly by the Violence Commission Task Force as the "misapplication of the criminal sanction." Because as a nation we seem to believe that an endless variety of morally objectionable conduct can be deterred by imposition of the criminal sanction, overcriminalization is extensive and constitutes a significant drain on the resources of our criminal justice system.

The Violence Commission Task Force identified three principal categories of overcriminalization: (1) moral statutes, in which the criminal law is used to impose public standards on private morality — as in regulation of such forms of sexual conduct as adultery, homosexuality and fornication; (2) illness statutes, which regulate public intoxication and possession of narcotics; and (3) nuisance statutes, which govern such diverse offenses as disorderly conduct, vagrancy, the use of profanity in public and kite flying. When we ask the criminal justice agencies to enforce those and similar prohibitions, we necessarily divert their attention and resources from the more compelling task of controlling urban crime.

The Legislature

The broad range of victimless crimes illustrates the critical but frequently overlooked role of the legislature in the criminal justice process. Statutes defining victimless crimes are the legislature's response to society's desire to be protected against the conduct they regulate. In the absence of such statutes, such conduct simply would not be criminal and would not be cognizable by the criminal justice system. By responding to the public pressure to codify morality in the

An Attica Inmate Speaks

Frederick Wiggins

The subject of prison reforms mystifies me because there are so many ways penal reform could go. I am not sure what prison reforms should be made, but I know that some should be made and damn soon!

If prison reforms only are made but our judicial, parole and probation systems aren't modernized then prison reform will be of no avail.

The first thing that must be understood before any reforms are initiated is that some people are incorrigible. I hate to disillusion the liberals and the bleeding hearts but that is a fact. The incorrigible inmate should be isolated in a special prison for such people.

Prison is also a place where people from diverse ethnic, racial, economic and political backgrounds must live together and most of us would rather not have to put up with people who are constantly keeping the environment we live in in a turmoil. It is bad enough being in prison without having to be constantly in fear of your life.

Prison is a cold, sterile and abnormal environment, and no matter what frills may be added it will never rehabilitate one man! I am 100 percent positive of that. Prisons are an absolutely necessary part of our society, but let us not deceive ourselves into believing they are places of rehabilitation.

What the hell is rehabilitation? To me it is a man who gets so fed up with himself that he really wants to change for the

what time to get up and where and at what he must work. He learns to react to the ringing of bells and the pounding of sticks as automatically as Pavlov's dog learned to salivate at the ringing of a bell.

A man in prison sees no women, no children, and sees very little tenderness and softness. These are the leavening in most men's lives — but not for the prisoner!

The very worst thing a man can be, under the present penal system, is an independent thinker. If he dares to disagree, no matter how constructive his criticism may be, he is instantly marked as a troublemaker.

All the above work against rehabilitation. They certainly aren't conducive to teaching a man how to live normally on the street. After a few years of prison life an inmate has a hell of a time adjusting to street life.

Work

Maybe you can explain to me why we should raise a man's educational level while he is in prison when, upon his release, due to his felony conviction, his employment potential will be cut by two-thirds.

Even though a convict may raise his intellectual level to that of a college graduate he can never be a doctor, lawyer, CPA, registered nurse, pharmacist, insurance broker or agent, real estate broker, or in most areas a teacher. He can't work 98 percent of the places where he has to be bonded, and these include banks, finance companies, department stores, chain groceries, etc. An ex-con can't work where they sell alcoholic beverages and that eliminates most hotels, restaurants and grocery stores. He can't work at places where he needs a government security clearance, thus eliminating many of the better factory jobs, and he can't work at most civil-service jobs.

From my own personal experience I don't believe prisons are the only cause of the high recidivist rate. I believe the extralegal punishment a man is faced with upon his release

icking in narcotics would cease, and that the crime rate in that particular area would decline.

But the anticipated reduction in crime may have been a false hope for the following reasons: Let us suppose that the narcotics ring in question serviced 1,000 heroin addicts in a large metropolitan area. Let us further suppose that those 1,000 addicts had, on the average, a heroin habit of \$50 a day prior to the smashing of the narcotics ring. What will now happen? Will those 1,000 addicts give up their habit because their usual source of supply has been eliminated? They will not. What they will do is seek another source of supply and attempt to maintain their habit

Continued Column 2

Who Is In Prison?

Bruce Johnson

But let's look at those we have in prison. Of 1,805 new commitments during the previous biennium, 1,483 were in for offenses against property or non-violent offenses against persons; 322 were committed for robbery, assault, homicide, kidnapping, rape or arson. The great bulk of people in prison are the inept, the awkward, the ignorant, those without work skills, without education, without positive family relationships, those with the fewest resources available to maintain themselves constructively in a community.

I believe the general public has a misconception based on the wide publicity given spectacular offenses such as Speck, Ray, Sirhan, Al Capone, Dillinger and so on. When in reality these cases represent probably no more than 1% or 2%.

From *Washington State Bar News* (April, 1969)

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Crime

Ralph Nader

The contempt for the law pervades the entire range of society and the most culpable segment of that contempt has to rest not on those who are oppressed but on those who have least excuse, and the greatest means to prevent this contempt, namely those who control power and wealth in a society.

The lack of law and order did not start in Watts or in New York or Detroit. That began years ago when owners of buildings flagrantly violated building and health codes leading to rat traps, fire traps, and leading to sources of disease, not to mention a breaking of certain contractual responsibilities. It began with the kind of deterioration in the public services, in the protections that were accorded one portion of the city but ignored

and other products by slum supermarkets.

In short, almost every eruption now at street level can be endemically connected to an institutional contempt, a privileged contempt, a property contempt for law and order and justice and for observing the integrity of government.

The recent uncoverings of police corruption in New York City and other areas illustrate how deeply this has penetrated. When enforcement officials, who wanted to pursue honest paths, found they were so outflanked and outnumbered and overpowered that they were intimidated and couldn't speak out, year after year, and that it took a newspaper, not the police chief, not the city council, not the mayor, but a newspaper to break this log jam, illustrates not just the prevalence but the depth of the illegalities and the contempt for legal processes.

From *Washington State Bar News* (July, 1970)



Youth

President's Commission on Law Enforcement and Administration of Justice

Two striking facts that the UCR and every other examination of American crime disclose are that most crimes, wherever they are committed, are committed by boys and young men, and that most crimes, by whom ever they are committed, are committed in cities. Three-quarters of the 1965 arrests for Index crimes, plus petty larceny and negligent manslaughter, were of people less than 25 years old. More 15-year-olds were arrested for those crimes than people of any other age, and 16-year-olds were a close second. Of 2,780,015 "offenses known to the police" in 1965 — these were Index crimes — some 2 million occurred in cities, more than half a million occurred in the suburbs, and about 170,000 occurred in rural areas. The number of city crimes per hundred thousand residents was over 1,800, the suburban rate was almost 1,200, and the rural rate was 616.9. In short, crime is evidently associated with two powerful social trends: the increasing urbanization of America and the increasing numerosness, restlessness, and restiveness of American youth. The two trends are not separate and distinct, of course. They are entangled with each other in many ways, and both are entangled with another trend, increasing affluence, that also appears to be intimately associated with crime. An abundance of material goods provides an abundance of motives and opportunities for stealing, and stealing is the fastest growing kind of crime.

From *The Challenge of Crime in a Free Society* (1967)

Court Reform

Jeremy Main

Judges lose their judicial cool when they talk about the time they must spend on sumptuary and other minor crimes. The chief judge of one of the nation's major city courts protests that dealing with bookmakers as felons is "a lot of crap." Another big-city judge, complaining of the time and money lavished on the case of a vendor caught peddling without a \$5 license in a baseball stadium, said, "We get a lot of garbage that shouldn't be here."

Dorothy Nelson, the attractive, enthusiastic dean of the University of Southern California Law Center, sees another reason for removing certain kinds of cases from the courts. "We ought to keep people out of the legal system whenever we can, because once you are in it, it has a lifelong effect. Sometimes society would benefit if juvenile offenders were simply allowed to go home under supervision, because even the best institutions seem to do them harm." The removal of some sumptuary crimes from the law books would in many instances of minor offenses eliminate this first and lasting contact with the law.

As in criminal law, in civil law there are matters that could be "delegalized" — the bookkeeping, form-filling routine matters which could be handled just as well by a clerk, accountant, or referee as by a judge.

A list of the criminal and civil matters that clearly could be removed from the various courts includes:

Drunkness. One-third of all the persons arrested in the U.S. are charged with no other crime than being drunk. This has no noticeable effect on alcoholism, but it has a great effect on the burdens of the courts.

criminal law, the legislature overburdens criminal justice agencies with work that they are frequently ill-equipped to handle.

The problem of overcriminalization has an impact on the criminal justice system far broader than simply adding to the list of offenses that must be processed and prosecuted. For the enforcement of victimless crimes can and does generate far more serious criminal activity. Legislation proscribing a particular form of victimless criminal conduct creates a primary prohibition. However, the very existence of the primary prohibition often leads to crimes of a more dangerous and victimizing type. In this sense, the primary prohibition of a victimless crime causes satellite criminality which does serious harm to society.

From *New Perspectives on Urban Crime* (1972)

Prostitution. Parading prostitutes through the courts, often the same ones over and over again, has no uplifting effect on anybody.

Addiction. The use of drugs, or, legally speaking, the purchase or possession of drugs, should be decriminalized. Drug use is imposing a fast-growing burden on the courts, but treating it as a crime is pointless, although trafficking in drugs should remain a crime.

Gambling. Betting has become such a part of national life that few people seriously consider it a crime, including the policemen who haul in the small fry and the judges who give them minimal sentences. More than three-quarters of the suspects charged with gambling felonies in New York City last year had their charges reduced to misdemeanors.

Wills. Probate could be handled by a tax office. Judge Samuel Silverman, of the New York Surrogate's Court, says, "Nine hundred and ninety-nine out of 1,000 wills are perfectly all right. So why not just file the things, the way you do the deed for the sale or transfer of property? Why do you have to treat a will as though it were a lawsuit?"

Divorce. Uncontested divorce is a routine process that does not require the skill of a judge, yet judges have to go through the ritual of making it a trial. These divorces — and nine out of ten divorces are uncontested — could be handled by an arbiter.

Bankruptcy. Ninety percent of the 200,000 bankruptcies filed in federal courts are "no-asset" cases, yet the judges have to go through the whole routine of a trial, and appoint trustees whose job it would be to distribute the bankrupt's assets if he had any.

No fault for autos. All these reforms would be overshadowed if the courts were relieved of their single greatest burden: the automobile. Along with pollution and death on the highway, the automobile brings us court congestion. Personal-injury cases flood the trial courts, and traffic cases flood the criminal courts. "Automobile Accident Litigation," a survey prepared by the Federal Judicial Center for the Department of Transportation, estimates that 17 percent of all the judge time in the U.S. is spent on personal-injury cases arising out of auto accidents. The more dense the population, the greater the percentage of auto litigation becomes. In Los Angeles the superior-court judges spend about one-quarter of their time on auto-injury cases, and New Jersey's trial judges about one-third.

From *Fortune* (August, 1970)

better. Then and only then can a convict be helped. A convict is like an alcoholic, he can't be helped until he decides he really wants to be helped. That can't be taught! It has to come from the heart.

The Streets

The best place to rehabilitate a man is on the streets, if possible, not in the dismal and sordid confines of a prison. Stronger emphasis should be placed on probation and parole.

The probation and parole programs as they are today are a complete farce. They could and should be wonderful tools in the implementation of the rehabilitation process. The state should make up its mind whether prisons are for punishment or rehabilitation. If they are for rehabilitation they are dismal failures. If they are for punishment they are a smashing success.

The Joint

Prison life is diametrically opposed to rehabilitation. Prison makes a man an automaton.

The inmate is told when he can leave his cell, when to eat, what he can wear, what he can eat, what he can't read, whom he can write to, what time his lights have to go off, when his radio must go off, when he can go into the yard, whom he can have as visitors,

is a primary factor. He has paid his debt to society yet he remains (in many ways) a second-class citizen for the rest of his life. Why should a man be constantly frustrated by such asinine rules?

Not having a felony conviction doesn't mean a man is honest and having a felony conviction doesn't mean a man will remain dishonest for the rest of his life.

Every day mayors, politicians, lawyers, doctors, even police break the law, and their having had a clean record did not prevent them from doing so.

Extralegal punishment should be abolished. If this is done a man can leave prison with some hope of bettering his situation in life. As things now stand most ex-cons feel they are licked before they start.

We have put the cart before the horse. There is no need to educate a man if we are going to place legal restrictions on what he can do with the education he receives.

I grant you that there are many ex-cons who would not strive to reach higher levels of attainment no matter how favorable their situation might be, but there are many of us who aspire to become something in life and are severely hindered from doing so by extralegal punishment.

From *The National Review* (March 31, 1972)

The Warren Court Myth

Edward Bennett Williams

The very first thing that we must do as lawyers is explode a myth. We must explode a myth that is demonstrable hokum, the myth that is promulgated to the effect that the spiraling rate of crime is attributable to what the critics of the Warren Court call the "turn-them-loose" decisions. This is humbug and it can be exploded by the most cursory resort to the record. Tonight you and I can go to a precinct station in Los Angeles, or Washington, or New York, or Chicago. We can sit there for a night or a month, or four months. We can ride in a prowl car with two policemen for a night, or a week, or four months, and we'll never meet one young delinquent who is brought in after committing his crime on the street who ever heard of Miranda, or Mapp, or Mallory, or Escobedo, or Gideon — or who ever gave one fleeting thought to his constitutional rights or his constitutional liberties or to criminal procedures before he went into the street to do his mischief. They go out in the street to do their mischief on one basic premise — that they won't get caught! And the record shows they're right 80 percent of the time! And they go out on another basic premise. Their downside position is that if by some wild fortuity they're apprehended by the police that they can tinker with the archaic, outmoded, antiquated American criminal justice system for two years before they face the day of reckoning. You think that's a deterrent? You bet it's not!

What's more, the record remains the same. The record is there for all to read. We're still convicting the same percentage of those who are arrested as we did before the Warren Court. We're still convicting the same percentage of those indicted as we did before the Warren Court. And the hard information that is now being developed shows that we're still getting the same percentage of precinct confessions that we did before Miranda and

Escobedo.

To advocate the overturning of Supreme Court decisions, to advocate more and more wiretapping, to advocate no-knock provision for entries by the police, to advocate preventive detention as a means of stemming the spiraling urban crime rate is like prescribing aspirin for a brain tumor.

From *The State Bar of California Journal* (November/December, 1970)

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