

1970

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Recommended Citation

Orin G. Briggs, The Lawyer's Role in Criminal Justice Reform, 22 S. C. L. Rev. 738 (1970).

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THE LAWYER'S ROLE IN CRIMINAL JUSTICE REFORM

ORIN G. BRIGGS*

"It is not sufficient to have great qualities; we must be able to make proper use of them."¹ In light of the crime crisis in our nation today, these words of La Rochefoucauld should be a call to every member of the legal profession to involve himself in the war against crime and against the inequity and inefficiency of the criminal justice process in America. Although most reforms that have come to our criminal justice process have generally been initiated by the sometimes progressive leadership of members of the legal profession, much more needs to be done.

The time for apathy, or acquiescence, has passed; aggressive leadership from the legal profession must be forthcoming now. Lawyers are responsible for a number of the deplorable conditions existing in portions of our criminal justice process, and lawyers should work to rectify the situation. Because of the lack of support by the legal and other professions, police departments are not prepared to provide the protection demanded by our urban society. Lawyers as legislators and leaders in their communities have failed to support adequate financing of our corrections system; in many communities, parolees are unaided in their efforts to adjust to the community, and probationers are given no meaningful supervision. Many lawyers have failed to support needed improvements in the magistrate courts; in some states, magistrates are still not required to have a legal education. And it has been lawyers who have been responsible for perpetuating the anachronisms which clog the states' common plea courts which have jurisdiction over most of the local criminal cases. Revised criminal codes, legal advisors to police departments, modern procedures, criminal pretrial conferences, increased protection of defendant rights, and a few halfway houses are inadequate attempts; and these meager improvements will have little or no effect on the rising crime rate and the escalating fear of crime by the citizenry.

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1. LEAVES OF GOLD 116.

I. INTRODUCTION

The Need for Criminal Justice Reform

The reasons for the increase in crime are complex. But one reason is extremely clear. The nation's criminal justice system is, over-all, in a bad state of disrepair.

Police departments are undermanned, underpaid, and undertrained. Criminal courts are congested beyond belief, and in many areas felony defendants wait up to two years for trial. The corrections system does not correct. Rather, with few exceptions, correctional institutions are inhuman graduate schools in criminality.

The reasons for the desperate state of the criminal justice system can be traced accurately.

For decades, police and courts and corrections have suffered from a lack of manpower and adequate funds. For decades, they have suffered from a lack of meaningful public support. And for decades, they even have faced staggering indifference from many public officials.²

These are the often repeated words of Richard W. Velde, Associate Administrator of the Law Enforcement Assistance Administration.

This statement about the lack of commitment being the cause of an antiquated criminal justice "system" is confirmed by the latest state and local government expenditure survey conducted by the Bureau of the Census. The survey released in April, 1970, reveals that state expenditures for criminal justice activities rank fifth behind education, highways, public welfare and health care, with only 2.7% of the national total. All but two states spend less than \$20 per capita for criminal justice, and only twelve states spend more than \$10 per capita.³

The lack of commitment extends beyond the economic realm; efforts are desperately needed to upgrade every criminal justice sub-system in each state. After endorsing most of the reform recommendations of the President's Commission on Law Enforcement and Administration of Justice, Mr. Leon Jaworski,

2. Address by Richard W. Velde, Associate Administrator, Law Enforcement Assistance Administration (LEAA), Illinois Chamber of Commerce, April 15, 1970.

3. U.S. BUREAU OF THE CENSUS, *Criminal Justice Expenditure and Employment for Selected Large Governmental Units: 1967-68* at 10-11.

Chairman of the American Bar Association Special Committee on Crime Prevention and Control, testified before the House Crime Committee:

To be sure, the Congress in enacting the Omnibus Crime Control and Safe Streets Act of 1968, has provided funds which, if properly used, should alleviate the troublesome conditions to some degree. How effectively these funds will be used and how meaningful the results will be, in my opinion, will in the words of the Crime Commission 'depend to a great degree on interaction between the community and the criminal justice system.'

In my view, what has been lacking so far is the leadership on both the State and local level that is required to generate this 'interaction between the community and the criminal justice system.' There have been some groups in urban centers who have undertaken to interest themselves in the problem of crime control. Still, in the main, these have not congealed into militant and well-organized activities with definite objectives in view.⁴

This lack of leadership is probably the largest contributing factor in the failure of states, cities, and counties to make a total commitment to improve our criminal justice process. If states, cities, and counties continue to manifest an inability to cope with the problems of crime, justice, law and order, and the administration of criminal justice, the advocates of an increased role for the federal government will soon build a case which will be won even before *voir dire*. Of necessity, the federal government has had to become the major law enforcement agent in the field of organized crime. Just recently, one Congressman introduced a bill to make it a federal crime to kill or injure state or local policemen, firemen, or judges because of their official position.⁵ There will continue to be cries for more of this type of legislation, and with each new effort in this direction we move one step closer to a federal police force. Yes, most people are opposed to such a force, but the American people will not continue to be without adequate police protection and swift justice. It is abundantly clear that the criminal justice "system" needs to be improved at all levels of government.

4. *Hearings Before the House Select Committee on Crime*, 91st Cong., 1st Sess., Ser. 17, at 306 (1969).

5. H.R. 19313, 91st Cong., 2d Sess. (1970).

There is universal agreement that the criminal process as we know it in America is not a single system of criminal justice or even 51 systems of criminal justice. The President's Commission on Law Enforcement and Administration of Justice (Crime Commission) said in 1967:

The system of criminal justice America uses to deal with those crimes it cannot prevent and those criminals it cannot deter is not a monolithic, or even a consistent, system. It was not designed or built in one piece at one time. Its philosophic core is that a person may be punished by the Government, if and only if, it has been proved by an impartial and deliberate process that he has violated a specific law. Around that core layer upon layer of institutions and procedures, some carefully constructed and some improvised, some inspired by principle and some by expediency, have accumulated.⁶

In December, 1969, the National Commission on the Causes and Prevention of Violence (Violence Commission) described the failure of our non-system in unequivocal terms:

A system implies some unity of purpose and organized interrelationship among component parts. In the typical American city and state, and under federal jurisdiction as well, no such relationship exists. There is, instead, a reasonably well-defined criminal *process*, a continuum through which each accused offender may pass: from the hands of the police, to the jurisdiction of the courts, behind the walls of a prison, then back onto the street. The inefficiency, fall-out and failure of purpose during this process is notorious.⁷

In discussing the urgent need for reform, the Violence Commission continued:

According to the 1967 report of the President's Crime Commission, half of all major crimes are never reported to the police. Of those which are, fewer than one-quarter are "cleared" by arrest. Nearly half of these

6. PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, *The Challenge of Crime in a Free Society* at 7 (1967).

7. THE NATIONAL COMMISSION ON THE CAUSES AND PREVENTION OF VIOLENCE, *To Establish Justice, to Insure Domestic Tranquility* at 149 (1969). When the existing criminal justice process in America is described, the author has chosen to signify our non-system of criminal justice with the word system in quotes ("system").

arrests result in the dismissal of charges. Of the balance, well over 90 percent are resolved by a plea of guilty. The proportion of cases which actually go to trial is thus very small, representing less than one percent of all crimes committed. About one quarter of those convicted are confined in penal institutions; the balance are released under probation supervision. Nearly everyone who goes to prison is eventually released, often under parole supervision. Between one-half and two-thirds of all those released are sooner or later arrested and convicted again, thereby joining the population of repeater criminals we call recidivists.⁸

The Violence Commission took particular note of the previous reform recommendations of the Wickersham Commission⁹ and the Crime Commission which failed to generate the needed national commitment of resources, institutions, and personnel. The Violence Commission went on to recommend that we "double our investment in the administration of justice and the prevention of crime . . ."¹⁰ but this recommendation was conditioned by the following admonition:

Money alone will not secure crime reduction, however. Wealthy states and localities which have limited their activity merely to expending more funds have become no more noticeably crime-free than jurisdictions which have not. Similarly, a substantial portion of the Crime Commission's proposals in 1967 are remarkably similar to those urged by the Wickersham Commission established by President Hoover 37 years earlier—yet despite that Commission's equally impressive documentation, conservatism and presidential prestige, little follow-through occurred. Experience with crime commissions at the state and local levels shows similar results.

This pattern suggests the existence of substantial built-in obstacles to change. It suggests that unless much more attention is given to the inability and unwillingness of present crime control systems to effectuate reform, new money may go down old drains. Vex-

8. *Id.* at 149, 150.

9. NATIONAL COMMISSION ON LAW OBSERVANCE AND ENFORCEMENT, Report on the Police at 5-7 (1931).

10. COMMISSION ON VIOLENCE, *supra* note 7, at 157.

ing problems of politics, organization and leadership underlie the maintenance of the status quo and need to be faced directly.¹¹

This need for reform is the precise point this writer wishes to emphasize, hoping that many readers will be stirred to activism—to make meaningful contributions to the reform of our criminal justice process. It is imperative that there be a national commitment to intelligent, equitable, and efficient reform of our criminal justice process if we hope to wage a successful fight against the crime epidemic ravishing our cities and towns.

II. METHOD FOR REFORM

Fortunately, we are not without a mechanism to provide the impetus and guidelines for the needed reform of the American criminal justice "system." We are three steps closer now to a bona fide nation-wide effort to improve all elements of the criminal justice "system" than we were when the Crime Commission gave its report. In 1968, Congress responded to the pleas of the Crime Commission and the public by passing the Omnibus Crime Control and Safe Streets Act,¹² and the states have now produced their 1969 and 1970 comprehensive plans under this Act. The states have now received the second round of action funds which will be used to make across-the-board improvements in the three divisions of our criminal justice "system"—police, courts and corrections. This national anti-crime program could be the vehicle and impetus for all the improvements to our criminal justice "system" which have been needed for too long; and it should be the pallbearer for all the inadequacies, faults, sins and other injustices of our present "system" which so often has reformed only when forced to by the appellate courts.

The Law Enforcement Assistance Administration (LEAA) was established under Title I of The Omnibus Crime Act to administer this new anti-crime program. Its goals include law and order, justice, prevention of crime and delinquency, court improvement programs, offender rehabilitation, and the professionalization of criminal justice personnel.¹³ The LEAA program helps the states and units of local government to improve their criminal justice "systems" by providing the necessary funds, the much-needed technical assistance and the essential and

11. *Id.* at 158, 159.

12. 42 U.S.C. §§ 3711-81 (1968).

13. *Id.* § 3711.

heretofore unavailable research. The Congress chose the block grant approach as the method for distributing this assistance. Two block grants, planning funds and action funds, are awarded each year to each state planning agency for programs chosen by the states, not by the federal government. The state planning agencies, appointed by the governor, are required to do the comprehensive planning for the state with the help and coordination of local planning boards which are usually established on a regional basis. The state planning agency (SPA) has a full-time staff and an advisory committee representative of state and local law enforcement, local units of government and the citizenry.¹⁴

The planning funds are 90 percent federal and 10 percent state; the action funds are matched by state or local funds according to the nature of the program. Programs to combat organized crime and for the control of riots and civil disorders are funded by 75 percent federal funds and 25 percent state or local funds, and construction programs are funded 50-50. All other programs are funded by a 60 percent federal share and 40 percent by the state or local government. The SPA's are required to make 40 percent of the planning funds and 75 percent of the action funds "available to units of general local government or combinations of such units."¹⁵ The SPA is given the responsibility for producing the annual comprehensive plan for improving the state's criminal justice "system" which includes all police operations, courts (prosecution, defense and the judicial structure), and corrections, including probation and parole services.¹⁶ The SPA is also responsible for establishing the priorities and administering the subgrants to local units of government.¹⁷ The Law Enforcement Assistance Administration does not approve or disapprove subgrants.

The LEAA also administers four other programs including the discretionary grants directed by the agency's Office of Law Enforcement Programs, which also directs the block grant program and provides the general technical assistance to states and local governments. Only 85 percent of the action funds are awarded in block grant form; the remaining 15 percent is awarded in direct grants from LEAA to states and units of local government. The three other divisions of the LEAA will be

14. *Id.* §§ 3721-25.

15. *Id.* § 3733.

16. *Id.* § 3732.

17. *Id.* § 3733.

providing a number of valuable services even though they are funded at a rather modest level.

The Office of Academic Assistance administers the grant program known as the Law Enforcement Education Program (LEEP). Its goal is to help professionalize criminal justice personnel by providing financial assistance for post-secondary education. Agreements are made with qualified colleges and universities, which then award grants and loans to qualified students enrolled in courses of study related to law enforcement. Grants of up to \$300.00 per semester may be given for tuition and mandatory fees; grant recipients must be full-time employees of publicly-funded police, courts or corrections agencies and must agree to remain employed by their present employing agency for two years after completing their course of study.¹⁸ Loans of up to \$1,800 per academic year may be given to full-time students enrolled in graduate or undergraduate programs leading to degrees or certificates in programs of study directly related to law enforcement. Loans may cover tuition, fees and related expenses such as books, room and board, and transportation. Loans are cancelled at the rate of 25 percent per year of service in law enforcement.¹⁹ It should be noted that students pursuing either J.D. or LL.B. degrees are presently excluded from receiving LEEP awards because of the limited funds available.

The National Criminal Justice Information and Statistics Service (NCJISS) has the task of developing a nationwide computerized on-line criminal justice data system which will include complete arrest, disposition and follow-up records. NCJISS is also developing a management information system capable of providing immediate data on all LEAA grants and subgrants as they are made by the states.

The National Institute of Law Enforcement and Criminal Justice, the research and development arm of the LEAA, will be seeking new methods, procedures and techniques designed to make the criminal justice "system" operate more efficiently, effectively, and more equitably. The National Institute consists of five professionally staffed research centers as follows:

The Center for Crime Prevention and Rehabilitation
 conducts and sponsors research and development in
 identifying the conditions underlying criminal behavior

18. *Id.* § 3746(c).

19. *Id.* § 3746(b).

and in developing knowledge and programs for crime prevention, correction, and the rehabilitation of criminal offenders;

The Center for Criminal Justice Operations and Management sponsors and conducts operations research and systems analysis to identify ways in which the efficiency, structure, and tactics of the various kinds of law enforcement agencies can be improved;

The Center for Law and Justice is concerned with the appropriateness, fairness, and effectiveness of our criminal laws and the procedures through which the laws are enforced. These concerns relate principally to courts, prosecution, and defense, but police and correction procedures also fall within the Center's mandate;

The Center for Special Projects administers a variety of programs, including a graduate fellowship award competition and a small grants competition for research endeavors directly connected with crime, crime prevention, and criminal justice;

The Center for Demonstrations and Professional Services addresses the difficult problems of technology transfer and the process of acceptance of research findings within the criminal justice agencies, the various levels of government, and the community at large.

Planning, evaluation, and coordination are secured in the Institute through special units established to assure the development of a cohesive approach and joint activity among the five research centers. Special project managers develop programs for matters of current great concern, such as violence and organized crime.²⁰

The LEAA budget for fiscal year 1969 was a meager \$63 million, and the fiscal year 1970 was a modest \$268 million.²¹ Both Houses of Congress have approved appropriations of \$480 million for fiscal year 1971;²² this is still a small amount considering the number of years our criminal justice "system" has operated without a major overhaul and in light of the fact

20. NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE, *Program and Project Plan for Fiscal Year 1970* at 2.

21. 2d ANNUAL REPORT OF THE LAW ENFORCEMENT ASSISTANCE ADMINISTRATION at 2.

22. H.R. REP. NO. 91-1072, 91st Cong., 3d Sess. (1970) at 12; H.R. REP. NO. 91-1135, 91st Cong., 2d Sess. (1970) at 15.

that we spend about 6 billion dollars annually to operate our "system."²³

A. *The Need for Real Planning*

Having reviewed the Omnibus Crime Control Program, we should consider the lawyer's role in helping to produce intelligent, comprehensive plans which will help produce the urgently needed improvements in our criminal justice "system." Louis A. Allen, in his book entitled *The Management Profession*, said:

Planning is the basis for successful management action. A plan is a trap laid to capture the future. It is the process a manager follows in thinking through beforehand what he wants to accomplish and how he will do it. Neither the individual nor the enterprise need be at the beck and call of chance. We are beginning to discover that, to a surprising degree, we can master the future. We can *make* happen what we *want* to happen.

When we plan, we take time to reflect and analyze, to consider alternatives, to make sound, considered decisions about the future. We decide in advance what we are going to do, how we will do it, under what conditions we will carry it out, how we will accomplish it, and what we will require to get the results we want. Because we think ahead, we avoid the tendency to make hasty judgments and to take haphazard action.²⁴

There are four basic steps to all successful planning; if lawyers, law professors and judges will participate intensely in the first two steps, the second two steps will be successful with only moderate guidance by lawyers. Good planning can be easily analogized to the preparation and performance of a good football team. Although they may be stated in other terms, the four basic steps to successful planning are research, goal-setting, overall plans, and operational plans. Basic research to determine the strengths and weaknesses of the state and local criminal justice process is a prerequisite to effective goal-setting. This research can probably best be quantified in terms of problems and needs. The football analogy for this step is that successful teams always scout the opponent and develop special offenses and defenses for each opponent.

23. *Hearings on H.R. 14341, H.R. 15947 and Related Proposals Before Subcommittee No. 5 of the House Committee on the Judiciary*, 91st Cong., 2d Sess., Ser. 17, at 12 (1970).

24. L. ALLEN, *THE MANAGEMENT PROFESSION* 99 (1964).

The formulation of long and short term goals is essential to meaningful advancement and reform. Some criminal justice goals will be relatively simple; others will be tremendously complex. The gridiron goal is a simple one—to win every game, one at a time, i.e., long and short term goals.

The overall planning must be undertaken for each separate aspect of a goal. If the goal is to accomplish a truly speedy adjudication process, then overall planning must be done in the areas of court administration, court procedure, pre-trial investigation, prosecution, defense, presentence reporting, and post-conviction disposition, including alternatives to incarceration. The coach's overall planning will consist of planned touchdown drives and will include alternatives for achieving first downs.

The operational plans for criminal justice reform must be detailed, step-by-step procedures which give careful consideration to execution and continued evaluation. The football team's operational plans are obvious—to run each play with blackboard precision and make modifications where necessary. Again, if lawyers participate in the first two steps of the planning process—research and goal-setting—as they should, the second two—overall plans and operational plans—will have a much greater chance to succeed.

B. The New Method Not Without Controversy

Before we consider specific reform programs, it should be noted that the Omnibus Crime Control Program has not been launched without controversy. There has been a considerable amount of general criticism directed at the block grant approach and specific charges that the anti-crime funds are not going to the urban areas in sufficient quantity and that the block grant approach has established two unnecessary layers of bureaucracy at the state and regional levels. However, some agency must establish priorities, divide the funds between geographic areas and between the three criminal justice fields, and choose specific projects to be funded. Under our form of government and considering the local nature of law enforcement, it seems appropriate that the role of the federal government should be that of leader instead of dictator. The state planning agency and the local citizens on the regional planning boards are in a much better position to collect and evaluate local criminal justice information, set goals and establish funding priorities than is the federal government. This new program for criminal justice

reform can succeed if the states and local governments will judiciously exercise the responsibility which Congress has given them.

III. THE LAWYER'S ROLE

The Crime Commission noted that the criminal justice "system" is very hesitant to adopt meaningful methods, techniques and procedures which are needed to improve the "system." The Commission noted that:

Many of the criminal justice system's difficulties stem from its reluctance to change old ways or, to put the same proposition in reverse, its reluctance to try new ones. The increasing volume of crime in America establishes conclusively that many of the old ways are not good enough. Innovation and experimentation in all parts of the criminal justice system are clearly imperative. They are imperative with respect both to entire agencies and to specific procedures. Court systems need reorganization and case-docketing methods need improvement; police-community relations programs are needed and so are ways of relieving detectives from the duty of typing their own reports; community-based correctional programs must be organized and the pay of prison guards must be raised. Recruitment and training, organization and management, research and development all require reexamination and reform.

The Commission believes that the first step toward improvement is for officials in all parts of the system to face their problems. The lower courts never will be reformed if their officials do not grapple with the hard fact that the quality of justice that is dispensed in them is disgracefully low. Any program to rehabilitate prisoners must begin with the acknowledgement of the fact that most prisons today do not even try to do this job. Until the police recognize that they exercise great discretion about whom they arrest and how they investigate, no effort to ensure that that discretion is exercised widely can be made. It is futile to consider ways of making plea negotiation an open, regular procedure as long as prosecutors and defense attorneys state ritually to judges that pleas are not negotiated.²⁵

25. Crime Commission, *supra* note 6 at 14.

Similar circumstances and facts seem to have motivated the United States Supreme Court to establish some minimum standards of due process in numerous areas of criminal justice: defendant's right to counsel, *Gideon v. Wainwright*,²⁶ *Escobedo v. Illinois*,²⁷ defendant's right against self-incrimination, *Miranda v. Arizona*,²⁸ electronic searches, *Berger v. New York*,²⁹ *Katz v. United States*,³⁰ search and seizure incident to arrest, *Chimel v. California*,³¹ knowledgeable guilty pleas, *McCarthy v. United States*,³² *Boykin v. Alabama*,³³ and juvenile court proceedings, *Kent v. United States*,³⁴ *In re Gault*³⁵ and *In re Winship*.³⁶ This type of judicially imposed reform, although it may, in the long run, mean a more efficient and just system, often generates more criticism than praise. However, almost all the major criminal justice reform measures brought about by judicial interpretation and judicial legislation, would have been unnecessary if there had been a self-evaluating criminal justice system which had a progressive leadership truly dedicated to improved justice and willing to support the required legislative and financial commitments essential for meaningful criminal justice reform.

The organized bar and individual lawyers can be of immeasurable assistance in the all-important planning process and in the implementation of the state and local programs designed to improve our criminal justice "system." Lawyer participation is needed if there is to be comprehensive criminal justice planning and if anti-crime funds are not to be spent on perpetuating a process which the Violence Commission said was noted for "inefficiency, fall-out and failure of purpose"³⁷ Lawyers can provide the leadership which has been lacking; they can give and generate public support for the SPA reform projects; and, they can support the necessary legislation which must precede many needed improvements in our criminal justice "system." In general terms, the bar could, for one time, forget the game of politics and insist that the LEAA programs be funded with

26. 372 U.S. 335 (1963).

27. 378 U.S. 478 (1964).

28. 384 U.S. 436 (1966).

29. 388 U.S. 41 (1967).

30. 389 U.S. 347 (1967).

31. 395 U.S. 752 (1969).

32. 394 U.S. 495 (1969).

33. 395 U.S. 238 (1969).

34. 383 U.S. 541 (1966).

35. 387 U.S. 1 (1967).

36. 38 U.S.L.W. 4253 (U.S., March 31, 1970).

37. COMMISSION ON VIOLENCE, *supra* note 7 at 149.

minimum political consideration. Individual lawyers can volunteer their expertise, ideas, moral support, and, yes, their time to the crime control planning and action programs in their locality. Lawyers could and should demand that local projects not be new sources of pork barrel. They could make sure that only minimum amounts of anti-crime funds are used to pay salaries of officers who perform nominal duties in a funded program or who perform services which they are paid to do in the course of their regular employment. Beyond these general areas of concern, lawyers can participate in the reform programs that are needed in every segment of the criminal justice process. The organized bar should be the first element of the community to denounce the antiquated processes too characteristic of the criminal justice "system" in America and to dedicate its efforts to intelligent reforms that will benefit the "system" and the community and rehabilitate the offender.

IV. SPECIFIC AREAS OF ACTION

Not only do most states not have a system of criminal justice, most do not have a unified court system, a central corrections agency or policy, or even minimum mandatory standards for training of law enforcement officers. It should be noted that some states have made significant strides toward improving certain subsystems in recent years; therefore, the specific illustrations given are not intended to be a wholesale condemnation of every similar system in every other state. The old maxim is applicable here—if the shoe fits, wear it. The illustrations are given to highlight the general need for intelligent reform.

Although scholars, crime commissions, attorneys general, chiefs of police, professional organizations and other leaders in the criminal justice field have repeatedly urged the establishment of a national criminal justice information system, this basic anti-crime weapon is only in its period of gestation and four or five years away from birth. No state has comprehensive legislation which establishes effective mandatory reporting from every criminal justice subsystem. California is the only state that has a legislatively authorized state agency to collect and disseminate statewide criminal justice statistics, but even this agency does not receive reports from all subsystems. Detailed statistics are needed in each state on all crimes, arrests, trials and dispositions, including probation, parole and other aftercare.

Individual lawyers as members of the state legislatures and leaders in their communities should advocate and demand effective mandatory reporting which is essential to the establishment of a comprehensive national criminal justice information system. They should support the legislation and appropriations that are necessary before a national criminal justice information system can become a reality.

A. Police Reform

Although we often fail to recognize it, a policeman's duties extend well beyond the investigation of crime and the apprehension of suspected criminals. This policy of taking up the gap where social agencies fail, which has been thrust upon police departments, has created a variety of problems in the criminal justice process. The Crime Commission focused upon this situation before discussing needed police reforms:

Since police action is so often so personal, it is inevitable that the public is of two minds about the police: Most men both welcome official protection and resent official interference. Upon the way the police perform their duties depends to a large extent which state of mind predominates, whether the police are thought of as protectors or oppressors, as friends or enemies. Yet policemen, who as a rule have been well trained to perform such procedures as searching a person for weapons, transporting a suspect to the station-house, taking fingerprints, writing arrest reports and testifying in court, have received little guidance from legislatures, city administrations, or their own superiors, in handling these intricate, intimate human situations. The organization of police departments and the training of policemen are focused almost entirely on the apprehension and prosecution of criminals. What a policeman does, or should do, instead of making an arrest or in order to avoid making an arrest, or in a situation in which he may not make an arrest, is rarely discussed. The peacekeeping and service activities, which consume the majority of police time, receive too little consideration.³⁸

If I may again quote Richard W. Velde of the LEAA, he said, "Police departments are undermanned, underpaid, and under-

38. *Supra* note 4, at 92.

trained.”³⁹ Two major conditions have directly contributed to the growing inability of the police departments to be the deterrent force which we envision them to be. The first evil was described in a recent article by Dr. Elmer H. Johnson, Assistant Director of the Center for the Study of Crime, Delinquency and Corrections at Southern Illinois University. He stated:

The identification of law enforcement with local government in the United States has subjected it to the adverse consequences of the spoils system. Efforts of ‘respectable’ citizens to avoid the consequences of regulatory violations have contributed to the corruption of law enforcement. Professionalization has been impeded by appointments as political rewards, uncertain job tenure, undermining of personnel standards, preservation of the myth that specialized competence is not necessary for law enforcement, and erosion of ethics.⁴⁰

Yes, police departments should be responsive to the needs of the community, but they should not be accountable to the whims of local politicians. This proposition raises a related concern of many criminal justice experts—the lack of standards regarding the exercise of discretion by police officers. In the Criminal Justice Series by the American Bar Foundation, Wayne R. LaFave noted the problem in *Arrest: The Decision to Take a Suspect Into Custody*:

The “real answer” to the problem of police discretion has been said to be the development of controls of an administrative nature, which would permit decisions to be carefully reviewed within the police department. Effective control of this kind is generally absent in the current criminal justice system. The lack of regularized reporting and of review by superior officers has already been noted. Perhaps more significant is the fact that supervisory police officials have not tried to articulate and disseminate criteria to be applied in deciding whether to arrest. Either because of fear that any such criteria would be challenged, or for other reasons, non-enforcement decisions continue to be made on an ad hoc basis. Patrolmen are thus left to make decisions on the basis of their own opinions, the observations of more experienced officers, and some informal, and often

39. *Supra* note 2.

40. 60 J. CRIM. L. 509, 510 (1969).

divergent, advice from precinct personnel who review those arrests which are made.⁴¹

Illegal arrests, detention and searches have created fertile ground in which activist appellate courts could sow seeds of judicial legislation. Lawyers could be of immeasurable assistance in training policemen about the significance of "untainted" evidence, legal interrogation, constitutional searches and seizures and other legal and non-legal situations which are pregnant with the possible misuse of discretion.

The second detrimental condition is the fragmentation of police services and the lack of coordination between police departments. The police departments in America employ more than 500,000 persons in 40,000 separate, often artificially constructed, police jurisdictions. In hearings held in March, 1970, before Subcommittee 5 of the U.S. House of Representatives Judiciary Committee on proposed amendments to the Omnibus Crime Control Act, the need for consolidation of police services was frequently discussed. Congressman William McCulloch of Ohio noted that there were 65 separate police departments in just one urban county in Ohio, Cuyahoga County which includes metropolitan Cleveland. It was also noted that there is similar fragmentation in the Chicago area and the New York Standard Metropolitan Statistical Area. Cook County has 121 police departments and the New York SMSA has over 200 autonomous departments.⁴² On this point the Crime Commission said:

The machinery of law enforcement in this country is fragmented, complicated and frequently overlapping. America is essentially a nation of small police forces, each operating independently within the limits of its jurisdiction. The boundaries that define and limit police operations do not hinder the movement of criminals, of course. They can and do take advantage of ancient political and geographic boundaries, which often give them sanctuary from effective police activity.⁴³

The Commission's recommendation on this subject was:

"Each metropolitan area and each county should take action directed toward the pooling, or consolidation, of police services through the particular technique that

41. LAFAYE, *ARREST: THE DECISION TO TAKE A SUSPECT INTO CUSTODY* 157, 159 (1965).

42. *Hearings on H.R. 15947 Before Subcommittee 5 of House Committee on the Judiciary*, 91st Cong., 2d Sess. at 93,680 (1970).

43. *Supra* note 4, at 119.

will provide the most satisfactory law enforcement service and protection at lowest possible cost."⁴⁴

In most cases, consolidation cannot occur without legislation, and in many states the necessary consolidation requires a constitutional amendment. The support of this legislation by the state and local bar associations would be invaluable.

A single police retirement system for the entire state would permit lateral promotions and prevent the loss of the service of a veteran officer unable to advance vertically in his particular department. Minimum standards for the training of all law enforcement officers and central police academies should be established in each state. On this point the Crime Commission recommended that:

"Police standards commissions should be established in every state, and empowered to set mandatory requirements and to give financial aid to governmental units for the implementation of standards."⁴⁵

A recent survey conducted by the International Association of Chiefs of Police indicates that only 25 states have mandatory minimum training standards for all police officers and 8 more have voluntary training standards. Of these 33 only 10 have an educational level prerequisite.⁴⁶ In regard to better police services for all sections of a jurisdiction and improved relationships and cooperation between the police and the community, the Crime Commission made two controversial but important recommendations:

It should be a high-priority objective of all departments in communities with a substantial minority population to recruit minority group officers, and to deploy and promote them fairly. Every officer in such departments should receive thorough grounding in community relations subjects. His performance in the field of community relations should be periodically reviewed and evaluated.⁴⁷

Every jurisdiction should provide adequate procedures for full and fair processing of all citizens griev-

44. *Id.* at 123.

45. *Id.*

46. *THE POLICE CHIEF*, August, 1968, at 64-65.

47. *Supra* note 4, at 102.

ances and complaints about the conduct of any public officer or employee.⁴⁸

In order to illustrate the extent of legislative and appropriation support that is needed for a typical set of comprehensive reform measures, the following list of police reforms, recommended by the authors of *The Honest Politician's Guide to Crime Control*, is cited:

1. Police salaries must be raised to provide adequate starting stipends and appreciable increments for each promotion. At the top, the salaries of police inspectors should be equivalent to those of circuit court judges while a chief inspector should receive the same remuneration as a Supreme Court Justice. Police salaries must be sufficient to recruit and retain college graduates.
2. Police recruitment standards must be raised in respect of education, intelligence, and personality characteristics and relaxed in respect of height, weight, visual acuity, and residential qualifications.
3. Police will be recruited at three levels: Police agents (college graduates), police officers (high school graduates), and community service officers (on an aptitude and intelligence test basis). In-service training will be organized to avoid inequities arising from lateral entry. All recruits will serve at least one year's probation.
4. Police academies, national and regional, must be established to provide basic training for all recruits and in-service training at all levels. In addition, all police must be given incentives and aid to continue their general education or to acquire special skills.
5. Every jurisdiction shall provide adequate procedures, independent of police departments themselves, for processing citizen grievances and complaints. If this is not done through the agency of an ombudsman handling complaints against all state employees, a civilian review board concentrating on the police must be established.
6. Traffic warden corps shall be established to relieve the police of routine traffic law enforcement.

48. *Id.* at 103.

7. Portable transceivers shall be carried by all police on patrol so that they may be in immediate contact with police headquarters without being tied to a patrol vehicle.
8. The established technology of crime prevention must be applied and its newer developments tested. Primitive protective devices and halting communications must be replaced by a sophisticated technology and swift communications.⁴⁹

Some of these improvements face overwhelming legal problems in order to be implemented, not to mention the political problems and the task of educating the public on the advantages of such changes. Lawyers should be advocates for improved police service, service that is impartial and relatively free from political partisanship.

B. Court Reform

Misdemeanor courts in almost every state are a mockery of efficient and speedy justice, and in too many cases felony courts are in no better shape. The operation of justice in a typical misdemeanor court was described vividly by *The Washington Star* writer, John Fialka, in an article entitled "A Long Day in Court." He first discussed a few typical mishaps in Judge George H. Goodrich's court during the arraignment proceedings where Assistant U.S. Attorneys Zollie Richburg and Charles Roistacher were having difficulties:

But often something is missing. Richburg is having a bad morning. There are about 50 persons sitting with him in the witness room and there are 50 more watching the proceedings in Courtroom 17, and another 50 or so milling around in the hall.

But nowhere is the complaining witness in Case 37. Somebody says he is at Howard University, registering for the new semester. A clerk calls the university and is told he is somewhere among 10,000 students registering. Richburg asks Roistacher to ask Goodrich to continue the case.

In one case a narcotics detective is temporarily missing. In another case the marshals have failed to deliver the defendant from jail.

⁴⁹ MORRIS & HAWKINS, *THE HONEST POLITICIAN'S GUIDE TO CRIME CONTROL* 91, 92 (1969).

A lawyer is sick. The evidence in one case breaks down at the last minute. Three defendants have jumped bond and are not in court. Three more agree to enroll in a special program for first offenders if charges are dropped. Police press for charges to be dropped in another because the defendant has assisted them by giving information.

Richburg puts together the cases he can. Roistacher wheels and deals with Judge Goodrich and the defense attorneys. In the end, nine cases are 'nollied' and 18 are continued. The rest continue on to the trial stage.⁵⁰

In describing the actual trial procedure, Mr. Fialka notes:

One of the jury cases goes to the courtroom of Judge James A. Belson, where Asst. U.S. Attorney Cohan has just walked in the door.

The arresting officer hands him the file on the case of Rufus Wooten, 26, who faces drug charges stemming from two separate incidents.

Cohan flips through the papers on the case. Perry Mason fans will be shocked to know that trial prosecutors at General Sessions don't spend days or even hours in intensive preparation of each case.

Cohan has about 10 minutes before he is to begin picking the jury. He has never seen the case before.⁵¹

Experienced trial attorneys have indicated to me that the above description of the District of Columbia Court of General Sessions is a description of one of the best misdemeanor courts in America.

In the process of evaluating the recommendations of the Crime Commission, the National Council on Crime and Delinquency made the following observations on court reform:

Problem

The nation's criminal court system was originally designed for a rural nation. But criminal problems have changed and today no carefully worked out procedures have been developed to deal with the thousands of minor offenders who now come before the courts, particularly the lower courts. Lower courts are doing a

50. Fialka, *A Long Day In Court*, The Evening Star (Washington, D.C.), Feb. 24, 1970, at A-5.

51. *Id.*

very poor job of distinguishing between offenders who are dangerous or potentially dangerous and those who are not. The number and quality of judges, prosecutors, defense attorneys and other officers of the lower courts (which generally have lower status) stand far below acceptable levels. Most do not have probation staff to follow through on rehabilitation efforts.

Goal

To establish a unified court system in each state.

Action Recommendations

1. Over the long range—unified, statewide court systems should be encouraged, with due regard for local participation.

2. At the least each state should be urged to set up a centralized court administration to organize and manage the courts. This unit should be given responsibility and authority for preventing a backlog of criminal court cases.

3. More immediately, steps should be taken to see that judges, prosecutors, probation officers and defense counsel serving our criminal courts are adequate in number, sufficiently trained and properly compensated. Their physical and other facilities should be improved so all court divisions will be able to cope with the volume of cases coming before them in a dignified and deliberate way.

4. The highest priority would be the requirement that all judges be members of the bar.

5. Measures need to be taken toward the elimination or reform of the justice of the peace system, e.g., elimination of the fee system.⁵²

Each of these suggestions deserve the attention of the bar associations because they are aimed at making the lawyer's day in court more productive and at regaining society's respect for the adversary trial system. In many cases only lawyers can be effective in removing the obstructions which create the inefficiency in our court systems in America. Court backlogs in many states and in many federal courts are disgraceful. This results from a number of contributing factors including lazy and sick

52. NATIONAL COUNCIL ON CRIME AND DELINQUENCY, GOALS AND RECOMMENDATIONS 15 (1968).

judges, dilatory tactics of counsel—defense and prosecutor, understaffed prosecutors and public defenders, the lack of efficient methods of administration and management of our court systems, activist appellate courts, and inadequate investigation, both criminal investigation and investigation which goes into the presentence report in those states that are “progressive” enough to require written reports to aid the sentencing court. In testimony before Subcommittee No. 5 of the House Judiciary Committee, the Cleveland Bar Association, discussing court delay, said:

A recent survey of northeastern Ohio counties, based on a random sample, determined that in the Common Pleas Court (criminal court of unlimited jurisdiction), although the median span between indictment and arraignment was only one week, the median delay between arraignment, and adjudication (on guilty plea or otherwise) was 30 weeks, with some cases taking up to a year and a half. Then, after guilt determination, the average delay before sentencing was 31 weeks.⁵³

The inefficiency, and yes, the injustice of court delays should cause every member of the legal profession to ask himself whether he contributes to this disgraceful and intolerable situation.

State and local bar associations and individual lawyers should become familiar with the American Bar Association Project on Minimum Standards for Criminal Justice. The recommendations contained in this project are clear and concise, and are designed to improve the court system so as to provide speedy and just adjudication of the issues. One quote from the volume entitled “standards Relating to Post Conviction Remedies” will illustrate the quality of these recommendations:

The Advisory Committee on Sentencing and Review gave first priority to the development of standards for a post-conviction remedy. Its conclusions are contained in this report. The Advisory Committee envisions a unified, comprehensive post-conviction remedy, adequate for current and foreseeable needs, integrated with and an extension of the prior criminal proceedings. Given the peculiarities inherent in any system for post-

53. *Supra* note 29.

conviction review, the Committee has sought to minimize procedural complexities and confusions and to facilitate prompt consideration of applications on the merits of the contentions advanced. Processes tending rapidly and effectively to bare the validity of claims have been stressed, far more than any existing post-conviction system known. Rules that tend to prevent or to obstruct expeditious disposition of the merits of applications generally have been disfavored.⁵⁴

Justice does not demand the adjudication (including guilty pleas) of every criminal indictment to the exclusion of other alternatives. Lawyers should support community services-type alternatives for most misdemeanants and most first offenders. Even where there is a determination of guilt, communities should offer alternatives to incarceration in the kind of prisons we now operate in most states. In regard to sentencing, the Crime Commission recommended that, "All courts, felony and misdemeanor, should have probation services."⁵⁵ The Commission went on to say,

"All courts should require presentence reports for all offenders, whether those reports result from full field investigations by probation officers or, in the case of minor offenders, from the use of short forms."⁵⁶

More judges, prosecutors, public defenders and sufficient supporting personnel are needed. The state attorney generals could provide prosecutor training and trial support to local prosecutors. However, more personnel alone will probably not solve the severe problems in our adjudication process. We need new methods, better party coordination, and in general, better administration. Lawyers must take the initiative to modernize their own bailiwick before they will be successful in accomplishing the other criminal justice reforms that are long overdue.

C. Corrections Reform

South Carolina's adult corrections department has a young, competent and progressive director and its programs are probably above average. However, the system has only three small work-release facilities capable of handling a total of 175 short-timers and the vocational training program provides training in only 10 trades for only 450 of 1400 inmates in the central state

54. ABA PROJECT ON MINIMUM STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO POST-CONVICTION REMEDIES 3 (1968).

55. *Supra* note 4, at 144.

56. *Id.*

facility. Although the Youthful Offender facilities provide vocational and academic training for all of their 700 indeterminate sentenced inmates, these facilities are overcrowded and understaffed.⁵⁷ The juvenile corrections program, operated separately from the adult program, is a disgrace. Two facilities housing a total of 700 boys, both of which should be replaced, have minimal academic training and no real vocational training program and provide no effective evaluation or segregation of offenders according to the types of offenses or the needed treatment.

The American prison system was described in rather drab terms by the author of *I Chose Prison*.⁵⁸

Even today a prison sentence is tough medicine. It takes men from their families and friends for extremely long periods. It imposes a lifelong stigma. It confines them to a few dreary acres and enforces a monotonous clockwork of hours. It clothes them in cheap uniforms from which individuality has been expunged. It destroys their privacy and clusters them with fellows they might loathe. It deprives them of normal sexual relationships and imposes a temptation toward homosexuality. A prison sentence at its worst amounts to a refined torture much harsher than corporal punishment.⁵⁹

These are the words of James V. Bennett, the Director of the Federal Bureau of Prisons for 27 years. Mr. Bennett introduced a number of effective reform programs in the federal corrections system. During his tenure the Bureau of Prisons established the Federal Prison Industries, which provides a wide range of vocational training opportunities for federal prisoners. The Youth Corrections Act was passed, giving judges the discretion to either send youthful offenders to reformatories for indeterminate sentences or place them on probation after preliminary commitment and sentence recommendations by the Bureau of Prisons. Sentencing institutes were begun, designed to encourage relatively uniform sentences for similar offenses committed by similar individuals. The Bureau of Prisons also established work camps known as prisons without walls and work-release and study-release programs under the leadership of James Bennett.

57. See S.C. CODE ANN. §§ 55-391 to -400.6 (1969 Supp.).

58. *Id.*

59. *Id.* at 15-16.

In his book, *I Chose Prison*, Mr. Bennett goes on to say:

After many years in charge of the federal prisons, I can hardly be accused of being naive. I am well aware that some of our prisoners are violent, vicious, unregenerate enemies of their fellow men. But many more are physically and mentally handicapped, the unwanted and unneeded, the disadvantaged and the dropouts who perceive no merit in completing their education. When the population of the local jails is analyzed, my point is incontestable: more than seventy-five per cent of the men and women in the lockups are drunks, vagrants, mental defectives, drug addicts, and other social misfits who ought to be in clinics, not jails.

The true course to follow in our pursuit of the rule of law, is rehabilitation, not retribution, and the cry for blood must not prevail. Prisons will serve our purpose in prosaic ways, by providing for medical care, religious instruction, routinely scheduled work, vocational training, academic education, sure discipline, psychological guidance, family visits and correspondence, the provision of an organized life on a timetable.⁶⁰

Lawyers should be familiar with the corrections programs in their states and should help to educate the public on the possible benefits that can come from rehabilitative programs. The public is generally unaware of the relationship between good corrections programs and reduction of crime. The FBI Uniform Crime Report for 1968 indicates that the national recidivism rate is about 60 percent, i.e., 60 percent of all persons released by our correctional institutions commit other major offenses and are rearrested, convicted and sentenced again.⁶¹ Since many of these repeaters have committed offenses never reported, a five or ten percent reduction in the recidivism rate, resulting from public support of new programs, could mean a reduction of crime of some 10 to 40 percent. This hypothesis seems to be especially valid in regard to juvenile offenses which have increased astronomically in recent years. Every juvenile detention facility needs adequate academic and vocational training and communities should provide alternatives to incarceration of juveniles. Supervised probation will assist the young offender to establish himself in his community or in another community, if necessary.

60. *Id.* at 16, 17.

Workloads of probation supervisors must be reduced to levels that will insure effective assistance to probationers, and social services must be developed as part of any effective probation program. Too many corrections programs do not correct and too many states offer no effective alternatives to incarceration. The participation of the state and local bar is necessary if we are to have corrections systems which correct instead of perpetuate crime.

President Nixon, in a recent directive requesting the Attorney General to take action to improve corrections programs in America, noted the urgent need for corrections reform:

Eight out of every ten offenders sampled in a recent FBI study had at least one prior arrest and seven out of ten had a prior conviction. Of those charged with burglary, auto theft or armed robbery, between sixty and seventy percent had been arrested two or more times in the preceding seven years.

For youthful offenders, the picture is even darker. The repeater rates are greater among persons under twenty than over and there is evidence that our institutions actually compound crime problems by bringing young delinquents into contact with experienced criminals.

A nation as resourceful as ours should not tolerate a record of such futility in its correctional institutions. Clearly, our rehabilitative programs require immediate and dramatic reform.⁶²

Corrections programs have been on the bottom of the legislative and appropriations list for too many decades. A number of state prison systems have cell blocks more than a hundred years old; too few offer only minimal vocational training; and, most are dreadfully understaffed. Lawyers should become crusaders for corrections programs that correct; we have been silent for too long. This position has been advocated by Chief Justice Warren E. Burger on a number of occasions, most recently in an article entitled "No Man Is an Island" in the ABA Journal, April 1970.⁶³ I trust that Chief Justice Burger's plea for corrections reform will move many lawyers to become involved in new efforts to rehabilitate offenders and reduce crime by reduc-

61. FBI UNIFORM CRIME REPORT at ____ (1968).

62. Presidential Directive on Corrections, November 13, 1969.

63. 56 A.B.A.J. 327 (1970).

ing recidivism. While describing the desperate condition of most of our prisons, Chief Justice Burger said,

The legal profession can be the most powerful force for good—the most powerful lobby, if you will—that this country knows. Lawyers are perceptive and analytical, and they have the advocate's skills to persuade others. Where do you begin? The same way you prepare a case. By getting all the facts, visiting the scene, if necessary, and then organizing the evidence. In this area most of the facts are available at the prisons and from prison authorities. A visit to most prisons will make one a zealot for prison reform. A fact-finding party of one judge and two or three lawyers will soon discover that 75 to 80 per cent of all prisoners are in substandard institutions.⁶⁴

"The reasons for the increase in crime are complex. But one reason is extremely clear. The nation's criminal justice system is, over-all, in a bad state of disrepair,"⁶⁵ according to LEAA Associate Administrator, Richard W. Velde. However, the programs of the LEAA offer new promise in the war against crime.

Leadership is needed if we are to be successful in converting our hodgepodge of processes into an effective, efficient and just criminal justice system. There are a number of specific reform measures which lawyers should support. Individual lawyers as members of the state legislatures and leaders in their communities should demand effective mandatory reporting of information, which is essential to the establishment of a comprehensive national criminal justice information system. Police departments need legal advisors to help train officers in legal and non-legal matters which present possibilities of abuse of discretion and legal stumbling blocks. Lawyers could support efforts to provide more effective police services through consolidation. Lawyers should be advocates for improved police service, service that is impartial and relatively free from political partisanship.

Lawyers need to make court reform their first order of business. Their efforts in other reform programs will be for nought if court backlogs continue to frustrate justice. More judges, more prosecutors and more public defenders are needed, and all courts

64. *Id.* at 327.

65. *Supra* note 2.

require additional supporting personnel and adequate probation services. For too long now, lawyers have been unconcerned about the failure of our corrections programs to rehabilitate convicted offenders. If recidivism rates are to be reduced, new legislation and substantial increases in appropriations for our corrections system will be necessary. The public support of corrections reform by state and local bar associations is imperative.

The experts, Presidential Commissions, outside observers, and lawyers who are students of criminal justice reform have thrown down the gauntlet. Will you respond in an intelligent and affirmative manner? The citizenry is crying for relief from the crime wave but they are unable to devise a plan of attack. Inefficient and ineffective police departments, unresponsive courts, and non-correcting correctional systems must be improved. Leadership is needed, and in fact, it was needed yesterday. Will you stand up and be counted for intelligent, effective and just reform of our criminal justice "system"?