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President's Crime Commission Report

Mr. Hazard highlights the principal features and recommendations of the Report of the President's Commission on Law Enforcement and Administration of Justice. The clear implication of the report is that our traditional concepts of criminal law and the administration of criminal justice are an ineffective approach to crime control.

by Geoffrey C. Hazard, Jr. • Executive Director of the American Bar Foundation

The principal report of the President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society, is a document of prime public interest. The report is comparable in coverage and significance to the Wickersham Report of thirty-five years ago. It is hoped it will stimulate the sort of systematic effort to reform the criminal law and its institutions that should have ensued at that time. The report especially deserves the attention of the legal profession. It is available from the Superintendent of Documents, Washington, D.C. 20402, for $2.25.

The presidential commission was created by executive order in July, 1965, in response to the mounting public concern with crime, a concern that had been introduced into the 1964 election campaign. The commission chairman is former Attorney General Nicholas deB. Katzenbach, who has continued as chairman since his recent move to the international scene. The other eighteen members of the commission constitute a group diverse in geographical and political association and heavily representative of people long concerned with the criminal law, including a number of leaders of the American Bar. The commission was charged with the heroic tasks, to be completed by January 1, 1967, of inquiring into the causes of and recommending reforms to deal with crime in all its manifestations. It of course failed to exhaust the first task, but it made very substantial contributions in synthesizing thought in that direction. Its reform recommendations are sober, coherent and on the whole responsive to the problems at issue.

The work of the commission was advanced (perhaps propelled is an equally deserving word for it) by a staff under the direction of James Vorenberg of the Harvard Law School. The staff comprised an impressive array of criminal law talent as has ever been assembled on such short notice. Its work was re-enforced by consultation, supportive papers and research by a battery of advisers and consultants drawn from all over the country and from all branches of criminal law enforcement and corrections. This assistance gives the report a technical underpinning and sophistication that impressively complements the broad perspective imparted by the commission itself.

The report is conspicuous, in the first place, for its clarity of organization and lucidity of style. The principal topics are summarized at the outset and developed in ensuing concise chapters. The policy recommendations are introduced as they become relevant in the text and then collated in a table of recommendations. I am told that a professional magazine writer was drawn into the editing and that professionals were charged also with the make-up of the book itself. No doubt this assistance helped. Here and there, the refuge of euphemism is sought and reached, but the text is generally free of circumlocution.

The second conspicuous virtue of the report is its substantial recognition throughout that crime is not a problem that other people (e.g., poor people, Negroes) have. Crime is an aggregate category or series of categories of deviant behavior that is manifested and of concern in all elements of the community. For example, there is a white-collar crime wave—embezzlement, fraud, etc.—which seems to be rising on a curve sharper than that of crime of the street-corner variety, but which

2. All but four commission members are members of the Bar. In addition to Mr. Katzenbach, they include: Genevieve Blatt (State Board of Pardons, Pennsylvania), Charles D. Breitel (Associate Judge, New York Court of Appeals), Kingsman Breveleser (President, Yale University), Garrett H. Byrne (District Attorney, Suffolk County, Massachusetts), Leon Jaworski (former President, State Bar of Texas), Thomas C. Lynch (Attorney General, California), Ross L. Malone (President, American Bar Foundation), James R. Parsons (federal district judge), Lewis F. Powell, Jr. (former President, American Bar Association), William P. Rogers (former Attorney General of the United States), Robert G. Storey (former President, American Bar Association), Robert F. Wagner (former mayor, New York City), Herbert Wechsler (Director, American Law Institute), and Luther W. Youngdahl (federal district judge). The nonlawyer members are: Thomas J. Cahill (Chief of Police, San Francisco), Otis Chandler (Publisher, Los Angeles Times), Julia Davis Stuart (former President, League of Women Voters) and Whitney M. Young, Jr. (Executive Director, National Urban League).
goes publicly unnoticed because polite society shrinks from prosecuting it. For further example, the characteristic victims of street violence are not the old ladies from Dubuque but the innocent residents of the depressed slum areas where the violent crime rate is highest. Moreover, the impulse to crime is not a disease transmitted by vapors in the wind, but is an integral part of the behavior pattern of everyone. Indeed, the most salient feature of crime reported by the commission—not news, but newly astonishing—is the huge volume of crime of all kinds everywhere in the country. Until crime is regarded for what it is—a commonplace if distressing attribute of a dynamic society—efforts to cope with it will continue to be dominated by impulsive measures. If the report makes a contribution toward “de-demonizing” the crime problem, it will have achieved much.

The third principal feature of the report is its endeavor to project criminal law administration as a problem for systematic organization and managed operations. Down to date, our crime control policy has not been so conceived. Rather, it has been assumed that proscription, coupled with punishment and assisted by policing for detection and apprehension, will do the job. In this conception, crime somehow simply happens, whereupon the offender is caught, convicted and punished, and returned to society a chastened and better man. In this conception also, the failures to detect, the gaps in prosecution and the high rates of recidivism following sentencing are simply unavoidable slippages in the workings of a system that is essentially sound.

The report, however, clearly implies if it does not say in so many words that our traditional conception of the administration of criminal justice is inappropriate for an effective approach to crime control. An effective approach to crime control requires that it be considered a matter of active, systematic and persistent social management: reconstituting family and social environments; organizing and deploying re-enforcements of acceptable conformity such as school programs and family service re-

ources; increasing police forces in size and quality and employing them more systematically; treating the charging process as a corrections-oriented mechanism for disposition and not simply as the choice of what cases to try; and enlarging and diversifying the types of correctional programs and services.

The hard-handed school will doubtless regard all this as “coddling”. But the alternative to being hard-handed is not to be soft-headed. Perusal of the report and reflection on the bankruptcy of our traditional penal policy suggest that what is needed for criminals is not less but more “coddling”—treatment that is compassionate for all that it is firm. One doesn’t bring up children with a strop alone, and most criminals are socially and psychologically akin to children. Indeed, the largest single group of them, as the report demonstrates, are children—fifteen- and sixteen-year olds. Perhaps the report will assist us in grasping the point that crime control on the cheap—using damnation as a substitute for a program—has become too expensive.

Within this general framework, the report makes a host of recommendations, many of which would be concerned in by almost everyone—that there be more and better police, better youth guidance programs, decarceration of criminal court calendars, more community-based correctional resources, better organized efforts to deal with organized crime, broader use of scientific technology in crime prevention and detection. A few seem less securely grounded or even seriously dubious—for example, the expectation that urban slum rehabilitation is likely to have direct effects on crime control or that the narcotics problem is at present being pursued along substantially cogent assumptions. Some issues, notably wire tapping, the commission appears simply to have ducked. Nevertheless, the recommendations as a whole, certainly when considered as interlocking, are challenging, constructive and overdue for adoption.

This is the commission’s general report. Others, on specific topics—the police, the courts, corrections, juvenile delinquency and youth crime, organized crime, science and technology, assessment of crime, narcotics and drugs, and drunkenness—have been issued in recent weeks as task force reports. It is to be hoped that they match the general report in quality.

At all events, to read the commission’s general report is to get an introduction to the commission’s work as a whole, an appreciation of the intricacy of the crime problem and an invitation to share in reforming our system of criminal justice. The Bar has a unique professional responsibility in this troubled area. Presumably, it will accord the report the consideration and respect it so fully merits.

4. In this regard, Miss Blatt’s additional views on page 302 of this report are discordant. She observes the report seems deficient “in that it neglects to recognize godlessness as a basic cause of crime and religion as a basic cure”. We all might share her concern for the present state of irreligion and her supposition that a more religious society might well be more law-abiding. It does not follow that systematic efforts of religious conversion, even if their content could be agreed upon, would have any direct effects on our present crime problems. Indeed, some might be of the view that it is a perversion of religion to regard it as an instrument of social control. And if religion is not to be used instrumentally, it is difficult to see why it should be referred to in a report regarding instrumentality for crime control. Of course, Miss Blatt’s is not the first jeremiad.