

The War on Crime: Five Futile Years

By James Vorenberg

A Harvard law professor, Vorenberg was executive director of the national Crime Commission appointed by President Johnson. His article is excerpted from the May issue of the *Atlantic Monthly*.

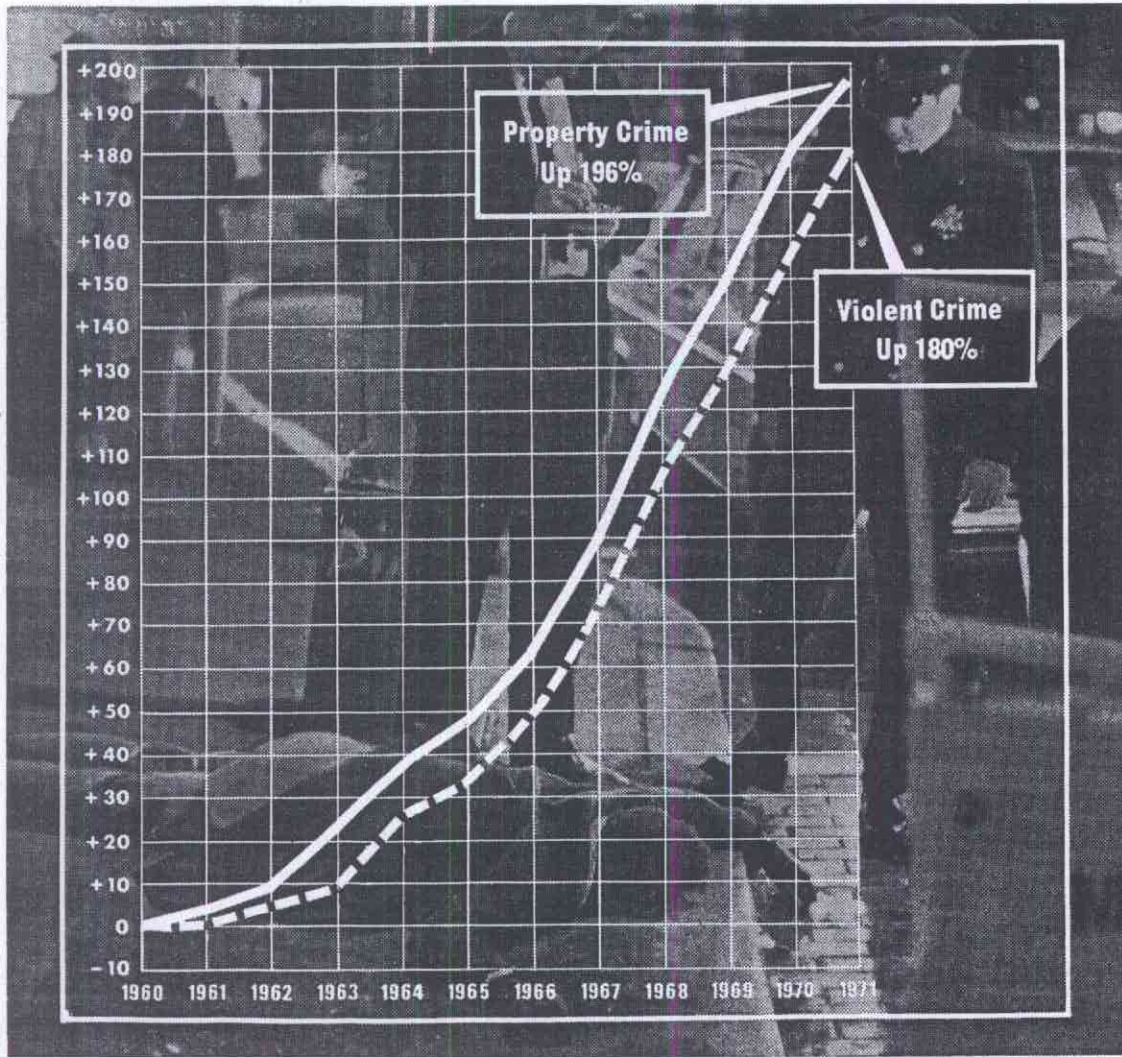


Chart by Ken Burgess—The Washington Post

FBI figures show the climb since 1960 of violent crimes (murders, forcible rapes, robberies and ag-

gravated assaults) and crimes against property (burglary, larceny of \$50 or more and auto thefts).

FIVE YEARS AGO the President's Commission on Law Enforcement and the Administration of Justice—generally known as the Crime Commission—reported the results of its two-year examination of crime and made more than 200 specific recommendations to overhaul our system of criminal justice.

The President promptly submitted to Congress proposed legislation that would provide funds to states and cities to carry out the commission's recommendations for change. Even those of us who had two years earlier been a bit cynical about the reasons for the commission's creation and doubtful about what it would accomplish were optimistic.

Yet five years later crime is unquestionably a far worse problem for the country than it was then, and our system of criminal justice—the police, courts, and correction agencies—seems less capable of coping with it. The Department of Justice consoles us with the assurance that although crime is still increasing, the rate of increase is slower. For former Attorney General John Mitchell, who made heavy use of crime statistics in the 1968 presidential campaign, the 30 per cent increase in the reported crime rate during the first three years of the Nixon administration must present a strategic puzzle as he plans the 1972 campaign.

In 1967 the Crime Commission could review the FBI reports of the seven "index" crimes—homicide, rape, aggravated assault, robbery, burglary, larceny (over \$50), and auto theft—for 1960-1965 and report increases for the five-year period of 36 per cent in crimes against property and 25 per cent in violent crime. This was troubling, to be sure, but hardly the uncontrolled rampage about which Sen. Barry Goldwater had warned in the 1964 campaign.

The commission noted that because of the post-World War II "baby boom," an unusually large part of the population was between 15 and 25 years of age. Since this group commits most of the serious crimes, about half of the 1960-1965 increase could be attributed to this temporary disproportion. The commission also suggested that some of the increase in crime might be the result of better reporting by or to the police. Generally, it counseled against overreaction.

Few Doubters Left

BUT THE FIGURES for the last five years of the Sixties have convinced all but the most skeptical that

something more ominous than population changes or reporting errors is involved. By 1970 the rate of crimes against property had increased 147 per cent for the decade and the rate of crimes of violence had increased 126 per cent. And the latest FBI figures show that during 1971, there were further increases of 9 per cent for violent crimes and 6 per cent for property crimes compared with 1970.

In the past five years self-protection has become the dominant concern of those in our cities and suburbs, evidenced by the rapid growth of a multi-billion-dollar private security industry and the emergence of the German shepherd as the second most popular breed of dog.

No one can say for sure what accounts for the enormous increase in the danger which Americans face from each other. We do know that those agencies on which we are accustomed to rely for crime control—police, courts, and corrections—seem less capable of that task today than they did five years ago, and many police chiefs, judges and prison officials openly acknowledge that there is nothing they can do to help. We also know that each year there are thousands of new drug addicts, most of whom are driven by their addiction and the nation's drug policy to prey on their fellow citizens in order to get money to buy heroin. And we have compelling evidence that during the past five years the frustration of poor people and minorities with continued denial of opportunities to improve their lives by lawful means has made reliance on crime an increasingly acceptable alternative.

Five years ago, the Crime Commission sought to show how police, courts, and correctional agencies could both reduce crime and treat people more decently. A review of where these criminal justice agencies stand today indicates virtually no progress on the first of these goals and only spotty progress on the second.

The Police

THE PRINCIPAL GAINS by the police in the past five years have been in lowering the level of hostility between the police and young people, particularly blacks. This progress has taken place despite the fact that President Nixon came into office after a campaign that invited the police and the public generally to blame crime on Supreme Court decisions designed to curb police abuses.

Improvement has been especially marked in cities such as Oakland and New York, where the chiefs have made it clear that decent treatment of citizens is a top priority and will be given

weight in promotion and assignments of officers. Many police departments now have their own legal offices and are getting advice from the inside on how to respect due process. The Brandeis University Center for the Study of Violence cites better training in community relations as one reason for the decline in disorders in the past five years. Increases in the number of minority-group police officers have also helped, although here the record is mixed. The nation's five largest cities in total have shown a 23 per cent increase in black officers in the past five years. Yet some departments, such as Cleveland's and Philadelphia's, have lost ground. Alabama and Mississippi

still bar blacks from their state police, and Massachusetts has only two on its 870-man force.

Changes which seem to have improved relations between citizens and the police in many cities have not been matched by new crime-reduction methods. Much of the federal aid to police has gone for such flashy items as helicopters, computerized communications systems and new weaponry. Yet these have not produced a significant impact on crime. Little progress has been made on commission proposals that police presence on the streets be increased by hiring civilians for clerical and administrative tasks. (New York City, with 32,000 policemen, has a maximum number of 3,500 on the street at one time.)

The most promising "new" crime-control idea for the police is New York Commissioner Patrick Murphy's neighborhood team system, a blend of the Crime Commission's teams of policemen with the traditional "cop on the beat." Simply stated, Murphy wants to decentralize responsibility so that each neighborhood has its own team of officers who would come to know its crime patterns, its residents and its potential offenders. The team would then be held responsible for reducing crime in the neighborhood. Murphy's crime prevention and anti-corruption strategies overlap, since the team's commanding officer would also be fully accountable (Murphy's favorite word) for any corruption among his men.

Murphy instituted his system in Detroit but left to become commissioner in New York before its results could be tested. He is adopting the same approach in New York; and Chief Jerry Wilson in Washington, Murphy's protege, believes his own form of this plan is responsible for some reductions in street crime in the nation's capital.

The neighborhood team has proba-

bly improved police-community relations in the cities where it is being used. It remains to be seen whether it will also result in significant reductions in crime or whether it will simply provide pressure for incomplete reporting of crimes to central headquarters, a time-honored practice in earlier days when a precinct captain's job depended on keeping a "clean beat."

The Prisons

THE COMMISSION'S 1967 report on corrections urged a shift from the use of prisons to community treatment of offenders. Its reasoning can be simply summarized: If we take a person whose criminal conduct shows he cannot manage his life, lock him up with others like himself, increase his frustrations and anger, and take away from him any responsibility for planning his life, he is almost certain to be more dangerous when he gets out than when he went in. On this basis, the commission urged that only the very dangerous should be held in prison. It called for the development of halfway houses, programs to send offenders home under intensive supervision, special school and employment programs, and other forms of nonprison treatment.

In a few places there has been progress in carrying out these recommendations. California has developed an extensive work-furlough program for prisoners and also offers a subsidy to counties, which helps keep the state prison population low by putting more offenders on probation. The number of state prisoners has declined from 28,000 to 21,000 in the past three years. Plans for new prisons have been scrapped and some of the existing ones are being closed.

The boldest approach is that of Jerome Miller, Massachusetts commissioner of youth services. Miller concluded that his institutions were doing juvenile offenders more harm than good at a per capita cost to the state of \$10,000 a year, enough, in his words, "to send a child to Harvard with a \$100-a-week allowance, a summer vacation in Europe and once-a-week psychotherapy." Within the next few months he plans to close all his institutions for committed offenders and move the inmates to community-based work and education programs. He estimates that only 30 of the 800 juveniles now incarcerated are dangerous enough to be locked up, and he eventually hopes to get these into private psychiatric facilities.

A few other states are moving more cautiously in the same direction. But as a whole the country has continued to place heavy emphasis on prisons. A

recent survey by the Center for Criminal Justice at Harvard Law School showed that there are residential facilities outside the walls of traditional prisons for less than 2 per cent of adult offenders—and that most of these facilities were set up in the first two years after the Crime Commission's report.

Ironically, the best hope for a move away from incarceration may lie in the system's reaction to the slaughter at Attica. In much the same way that the fear of city riots prodded police chiefs to develop community relations programs in the late Sixties, the fear of prison uprisings has forced officials to confront such questions as how many of the 1,200 inmates at Attica really had to be in prison.

It is sad but probably true that the fear of riots and the fiscal squeeze on the states are more likely to close down prisons than either a sense of humanity or a desire to prevent crime.

The Courts

WHILE THERE has been some overall improvement in the police in the past five years, and perhaps corrections has held its own, the quality of the adjudication process—the responsibility of the courts—seems clearly to have deteriorated over the same period. Many lower criminal courts look more like factories than halls of justice. More than half of the people in

jail in this country are there because they are awaiting trial, not because they have been convicted. Whatever deterrence of crime the threat of penal sanctions might exercise is undermined as thousands of defendants go free, not because they have been acquitted but because courts and prosecutors are too overwhelmed by their work load to consider their cases.

The total number of arrests, the source of the courts' business, increases about 5 per cent a year. More defendants are represented by lawyers who are asserting their rights in court, including rights relating to confessions and police searches spelled out by the Supreme Court during the 1960s.

The result is that a cumbersome process, which had managed to keep moving by herding large numbers of defendants through the courts on guilty pleas without consideration of possible defenses, has been further slowed. And delay begets delay. The only way prosecutors and judges can keep the glacier-like process moving at

all is to drop cases or offer concessions to defendants who will agree not to assert their rights. Often the best way for defense counsel to get these concessions is to make repeated motions, seek adjournments, and generally try to drag out the process as long as possible. Even lawyers who do not deliberately seek delay achieve the same result owing to their own overloaded schedules and the courts' inefficiency.

The rewards to defendants from this delay are enormous. In New York City last year 94,000 felony arrests resulted in only 550 trials. The other cases were dismissed or reduced to misdemeanors in return for guilty plea.

To blame the Supreme Court or defense lawyers who seek their clients' best interests is rather like blaming highway congestion on those who set speed limits and on drivers themselves. If we want the criminal system to be able to handle the present volume of traffic, we must double and triple the number of courtrooms, judges, prosecutors, and defense counsels—and be ready to keep on increasing the number in the future. And even with such increases the system will depend heavily on bargaining for pleas of guilty.

Barriers to Reform

FOR THE PAST five years crime has been a major national issue. More than \$1.5 billion in new federal money has been appropriated for the nation's criminal justice system. One may fairly ask why there has been so little progress.

Much of the answer lies in the inevitable hostility to change in any large bureaucracy. Proposals to substitute halfway houses for high-security prisons and computers for court docket clerks, or to establish new educational requirements for police officers, threaten job security and challenge the propriety and worth of what is being done. When Commissioner

Miller in Massachusetts abolished punishment cells and allowed inmates to have long hair, some staff members permitted a series of escapes designed to discredit his new administration.

City dwellers have learned recently about the "blue flu" that often afflicts police officers who are suspicious of proposed changes. Commissioner Russell Oswald's apparent sense that he had to cater to the views of the guards at Attica—even at the risk of scores of deaths—suggests how powerfully existing values now hold those working in

the system. Strong and militant police and correctional officers' unions in the past few years have provided an organization which can mobilize this opposition to change.

Not all of the opposition to reform comes from within the bureaucracy. Many state and city legislative bodies tend to be wary of changes, particularly those that may seem "soft" on criminals or that cost money. And some changes—such as attempts to establish halfway houses or drug-treatment centers in residential neighborhoods—have evoked enormous hostility from private citizens.

Blowing A Billion

IN 1968 CONGRESS, after a delay of more than a year, finally passed the Safe Streets and Crime Control Act to provide aid to cities and states. As originally proposed, the act would have given the Justice Department the power to dispense funds directly to criminal justice agencies which carried out the changes such as those recommended by the Crime Commission. But Attorney General Ramsey Clark became embroiled with Congress over Sen. John McClellan's insistence that the act provide authorization for wire-tapping and bugging. When the smoke had cleared, the administration had settled for legislation which not only authorized electronic surveillance but which also substituted "block grants" of federal funds to the states for the broad grant-making authority in the Justice Department.

The seriousness of this legislative defeat soon became clear. The principal justification for federal aid was that it would provide an incentive for cities and states to make changes in criminal justice agencies. But with block grants the federal government cannot directly push for reform. It simply gives a lump sum to each state to be distributed in accordance with the state's own written plan. These plans are the products of large new state bureaucracies, many of which are controlled by old-line representatives of the state and local police departments, courts, prosecutors and correctional agencies that need to be changed. Since the state plans are rather general and require only superficial changes in the agencies, much of the money has been spent to preserve the status quo.

Thus, except for a few states where the planning agencies have insisted on substantial changes as a condition of

funding, there is little to show for the almost \$1 billion that has been spent. Some of the early funds were wasted on military equipment for riot control. In one state a congressional committee found federal funds had been used to send families of law-enforcement officials to college.

Unquestionably some of the problems are those attendant on any new federal grant program. Some result from the highly political nature of the crime issue. It has been suggested that the eight "high-impact" cities, each of which will receive \$25 million in the next 2½ years, were picked with at least one eye on the 1972 election.

Perhaps the most fundamental defect in terms of crime control is the lack of research. Largely because Rep. John Rooney (D-N.Y.), the chairman of the key subcommittee of the House Appropriations Committee, is suspicious of research, there has been a five-year drought in funds for the research authorized by the original act. Thus, not much more is known about specific techniques of crime prevention today than was known five years ago, and the prospect for new answers in the next few years is bleak.

Heroin Maintenance

EVEN IF every change the commission called for in police, courts, and correctional agencies had been made, the resulting reduction in crime would probably have been more than offset by increases resulting from the enormous spread of drug addiction.

The best present estimate is that there are 250,000 addicts in the United States, of whom between one-third and one-half live in New York City. Research has shown that the same young people at the bottom of the social and economic ladder who commit the bulk of predatory crime are most likely to become addicts. (Five out of every six addicts in New York City are black; about half are under 22.)

Their addiction adds to the already great likelihood of their committing crimes the need to raise \$25 to \$100 each day to buy heroin. The results have been explosive. Some cities are reporting that almost half of those in jail are addicts. One judge in Washington found that 75 per cent of the defendants brought into court on felony charges were addicts.

Five years ago, the Crime Commission recognized addiction as a major source of crime, but, as four dissenting members of the commission noted, the majority was unwilling even to explore

alternatives to the present drug enforcement policy, which, by requiring addicts to get their heroin illicitly, puts enormous pressure on them to rob, steal, prostitute themselves, or sell drugs to raise money.

Recently, as an extension of this policy, we have negotiated with Turkey, France, Mexico and other drug-producing countries in an attempt to cut off the supply at the source. This has been combined with attempts to stop drugs

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at the borders of the United States. The most dramatic example was "Operation Intercept," aimed at persons bringing marijuana across the Mexican border; some experts think that the only result was a temporary increase in the price of marijuana in the United States and a switch by thousands of marijuana users to heroin. In any event, it is perfectly clear that heroin and other drugs are still plentiful and that federal law enforcement has served primarily to keep the price at a high level, with the resultant pressure on addicts to commit crimes to support their habits.

The most significant change in drug policy in the past five years is that at the same time that several agencies of the federal government are devoting enormous resources to the apparently futile effort to stop heroin traffic, the country has moved quietly to a policy of dispensing another addictive drug—methadone—on a maintenance basis.

It is now clear that many addicts take heroin and methadone (and other drugs) interchangeably. Both drugs are addictive; both can give a "high" if taken in large doses; and both can probably be given at sustaining dosages that would permit most addicts to lead more or less normal lives. The biggest difference between heroin and methadone is probably political rather than pharmacological—methadone does not have the history and the connotations that make it so difficult for heroin to be considered as a form of medical treatment.

Partly for the same reason, among addicts heroin is still clearly the "drug of choice." As long as it is available it is unlikely that even a massive methadone maintenance program open to all addicts would dramatically reduce the number of heroin users.

Concern about crime by heroin addicts has resulted in support for experimental heroin-maintenance programs

from unexpected sources. In recent weeks a special committee of the staid American Bar Association has called for such experiments. So have U.S. Attorney Whitney North Seymour Jr. and Police Commissioner Murphy in New York City and Sheriff John Buckley in Middlesex County, Mass.

Just as methadone is turning out to be no "magic bullet," so we would have to anticipate that many heroin addicts maintained at clinics would commit crimes. But by relieving the enormous economic pressure of addiction, it may be possible to offset partially the enormous increase in criminality accounted for by addiction.

Unless researchers find a nonaddictive substitute for heroin, we will probably soon see a few government-sponsored heroin maintenance experiments in the United States. And if the experience with methadone is any guide, it seems a fair, if somewhat gloomy, guess that five years from now public pressure to reduce crime will have forced acceptance of heroin maintenance as a generally available form of treatment.

Changing the Odds

NEITHER IMPROVING the criminal justice system nor relieving addicts of the additional economic pressure to commit crimes that their addiction imposes on them is likely to make much difference in crime rates if millions of people believe crime is their best route to a decent life.

Continuing denial of opportunity, combined with the anonymity of city life, is destroying the social pressure to abstain from crime. The riots of the mid-Sixties showed one possible outlet for the deep frustration and hatred felt by young blacks in the cities—the same group that is already responsible for a large proportion of serious crime.

It would be a tragic mistake to assume that we can look to the law-enforcement system to control crime if other restraints disappear. To understand this we need only look at the situation from the point of view of the potential criminal. The odds against the police catching the average burglar—either at the scene or later—are probably no better than 50 to 1. And if he is arrested, he has a good chance of having his case dropped or of being put on probation. A middle-class citizen with a reasonably comfortable life may be deterred by these odds; he has too much to lose. But 25 million people in the United States live below the officially defined poverty line. In a society where television commercials are constantly reminding us that every self-respecting American should be driving a new car and flying off for a

Caribbean vacation, crime may seem like the only good bet for those whose lives are little more than a struggle to survive.

Five years ago the Crime Commission, which included such staunch conservatives as William Rogers, currently Secretary of State, and Lewis Powell, one of President Nixon's most recent appointees to the Supreme Court, unanimously reported that the Commission "has no doubt whatever that the most significant action that can be taken against crime is action designed to eliminate slums and ghettos, to improve education, to provide jobs, to make sure that every American is given the opportunities and freedoms that will enable him to assume his responsibilities."

The country seems to be proceeding on the contrary assumption. In a two-year period when federal appropriations for the Law Enforcement Assistance Administration program increased from \$270 million to \$700 million, funds for the federal juvenile-delinquency programs were cut from \$15 to \$10 million. Against the background of the tremendous increase in crime committed by blacks, whatever notions of fiscal soundness or social justice are thought to underlie the administration's apparent acceptance of Daniel P. Moynihan's proposal for "benign neglect" of blacks, that policy seems almost certain to have disastrous effects on crime.