

LIFE
6/19/72

LIFE has posed a set of questions to leaders of both parties on fundamental subjects that should be debated if the 1972 election is to matter. This is the first in the series. With it, the debate between the parties can be said to begin, for until now Democrats have been arguing with one another, while Republicans—with an incumbent President—hold their fire. The initial subject is law and justice. LIFE prepared the statement below and asked each side for comments. Richard Kleindienst, who is up for Senate confirmation as President Nixon's attorney general, replies on the next two pages. Then comes a Democratic response (p. 58) from presidential candidate George McGovern.



FACE TO FACE ON THE ISSUES

1. Law and Justice

One of the truest measures of a civilized society is the safety of its streets, its cities, its countryside. Yet crime, and fear of crime, is on the increase, and many Americans are going to unaccustomed lengths to barricade and safeguard their homes and apartments, and have really changed their way of living to avoid physical danger. All this amounts to a diminution of their rights and freedoms as citizens.

The nation's crime bill is immense—an estimated \$25 billion a year—and includes not only the costs spent on police, courts and jails, but on such private expenditures as security guards, household double locks and insurance rates.

Demands for law and order come up against cries that these are code words for racism, but is one of our troubles the liberal heresy of too much "making allowances"? The black factor in violent crime is too overwhelming to be ignored, and undoubtedly contributes to the resistance any black encounters in trying to move out of his ghetto and into other neighborhoods. Roy Wilkins thinks it high time that the Negro community begins to act against black criminals, and time "to cease trotting out the excuses customarily given for black wrongdoing: 'blighted childhood,' 'broken homes,' 'prejudice,' 'ghetto life,' 'slum housing,' 'inferior schools,' 'poverty,' 'joblessness,' ad infinitum."

For of course blacks are also the principal victims of crime. Demands for more law and order come up against something else—the prevalent feeling that there is something wrong at every step of the process—with police, with courts, with prisons—and that the machinery of restraining crime is an incubator of it.

→ ● There may be less police brutality than before, but venality seems commonplace and accepted, and law-abiding blacks and Puerto Ricans and Chicanos still don't feel that the police and the law are really on their side. Are they right, or if wrong, how can they be persuaded?

● Overcrowded courts postpone justice in most cases and deny it in many. Whether innocent or guilty, the poor who can't afford bail sometimes spend months in pretrial jails, where resentments against society are nursed by first offenders. Plea bargainings may be a way to speed disposition of cases, but the result is that hardly any criminal now pays the going rate for his crime. Could dockets be cleared if whole categories of offenses were no longer tried—ranging from no-fault insurance

to the so-called victimless crimes of drunkenness, prostitution and pot smoking?

● Prisons: Do they need rethinking as well as rebuilding? Are they for rehabilitation, isolation or punishment? If many criminals need isolating, can others be eased back into the community by rehabilitation, job training and other incentives to go straight? Teamster leader James Hoffa, whose sentence was commuted by President Nixon after 58 months in prison, is convinced that one reason two-fifths of all prisoners wind up back in jail is that the prison system makes them hostile and unfit to return to society.

Finally, inseparable from the rule of law is a citizenry persuaded that the law is administered evenhandedly. Instead, the impression is common that the rich and powerful can escape punishment for their crimes; that expensive lawyers effectively thwart justice; that business corruption permeates the system.

Respect for the law is further diminished by attempts to politicize it. This happens in two ways. One is minimal enforcement of some laws and selective prosecution of others. The second is the use of conspiracy charges to set up great show trials where unpopular advocates of unpopular causes are put on display. Showboating defense lawyers also create disrespect for the legal process—but so does the perverted use of conspiracy charges, which juries reject with increasing frequency. It would be fascinating someday to read how the FBI has allocated its funds, and its agents' time, in recent years; the correlation with serious crime in this country might prove quite tangential.

All of this suggests that there is now in the United States a widespread alarm about crime, and parallel to it a serious concern about the processes of justice. Some of the worries speak to deep discontents in contemporary society, but others should be capable of amelioration by those whose responsibility it is to govern. So LIFE asks:

1. How can crime be controlled and justice better served by means available to the President—by legislation, by allocation of money in new areas, by changes in administration (including the Justice Department and the prison system), by new programs?

2. And beyond such specific measures, how can the office of the President be used to shape public attitudes toward law and justice?

DEBATE

72



For the Republicans

RICHARD KLEINDIENST

Acting Attorney General

Compare with Nixon-Mitchell record agents in past six years

When Attorney General John Mitchell and the others who were to lead the Justice Department gathered in Washington early in 1969, our thinking was dominated by the kind of questions asked in LIFE's introduction. A crime wave had rolled across the country in the 1960s. Serious crime increased 147% in that decade and even the increase kept increasing. President Nixon had given us a mandate to mount a war on crime and restore respect for the law.

I believe we have responded to that mandate—not just in words but in vigorous actions. And we have done it in a manner consistent with constitutional guarantees. But I would be the last to say that the job is over.

Attack on the causes of crime

At the outset let me emphasize that I believe it a serious mistake to consider crime an isolated problem. Much of it is a consequence of the larger problems of poverty, disadvantage and discrimination. These, in turn, must be dealt with through massive, long-term commitments.

I am proud that the Nixon administration has pressed the attack on these national ills. Our priorities are obvious—43% of the 1973 budget is for development of human resources through such departments as HEW and HUD, compared to 32% for defense. Thus in three and a half years we have exactly reversed the percentage of allocations between human resources and defense that had existed in 1968.

I am also proud that where the Department of Justice has participated in this long-term effort—as in the battle against discrimination—it has moved decisively. Critics have tried to show, by citing selected instances, that we have cut back in civil rights activity. But our programs prove exactly the opposite. In virtually every civil rights category—education, employment, housing, voting and public accommodations—we have brought actions against more defendants in the same period of time than any previous administration.

Providing national leadership

At the same time I disagree with those who would concern themselves entirely with the causes of crime and turn their backs on the need for law enforcement. The most effective long-range program is little comfort to the victim of last night's mugging.

When President Nixon came to office the nation desperately needed a thorough overhaul of the entire criminal justice system. Under his leadership we have set in motion sweeping reforms in the federal programs against organized crime and narcotics, in the District of Columbia's court system and in the federal prison system.

But equally important, since most crimes are not federal crimes, has been the need for rejuvenation of enforcement, courts and corrections at the state and local levels. Here President Nixon has provided both national leadership and financial support. He has spoken out far more strongly than previous Presidents in support of the important role that police officers play in American life. While fully supporting free speech and peaceful demonstrations, he has drawn a clear line against those who threaten constitutional government by mob violence. He has called together the country's leadership to point the way for reforms in law enforcement, courts and corrections.

Nowhere has the President's leadership against crime been more dramatic than in Washington, D.C. From 1958 through 1969, the district's serious felonies per year increased almost 600%, but there was no corresponding rise in felony prosecutions. Criminals were undeterred by the law. Previous administrations had done little to reform the archaic criminal justice system in their own backyard.

Eleven days after taking the oath of office, President Nixon proposed an unprecedented reform of the district's criminal justice system. Court reforms requiring legislation from Congress finally went into effect in February 1971.

As a result, crime reported annually in the District of Columbia decreased a total of 18% between 1969 and 1971, and for the first quarter of 1972, crime was down more than 30% from the same period in 1971.

Besides leading to crime reduction, the reform measures also provided for a public defender and greatly improved the handling of juvenile offenses. They became a model for the states in minimizing delays and inequities in the justice process.

Financial aid to states and localities

The President's national leadership has been backed by massive federal financial aid to upgrade state and local law enforcement agencies throughout the country—more than \$1.5 billion so far, compared to less than \$34 million in the previous administration.

Contrary to assertions by our political opposition, the overwhelming majority of Law Enforcement Assistance Administration-funded programs throughout the country have been successful. They are helping to revitalize state and local programs for enforcement, courts and corrections, including many juvenile programs.

The crime which accelerated in the 1960s is now being decelerated in the 1970s. From a 17% rise in 1968, the annual increase was slowed to only 6% in 1971. We are continuing the drive to turn this curve downward, and this has already been done in one-third of the larger cities. Of the 156 American cities of more than 100,000 population, 17 showed a drop in

= 75%

crime in 1969, 22 in 1970 and 53 in 1971 (including such major cities as Chicago, Detroit, St. Louis, Baltimore, Houston and Washington, D.C.).

War on organized crime

We are making even more dramatic progress in attacking federal crimes.

Organized crime and racketeering drains billions of dollars each year from the pockets of Americans and holds countless victims in terror for their lives. But in the past it has been extremely difficult to get evidence against the bosses of the organized crime syndicates.

In 1968 Congress approved court-authorized wiretapping, but the previous administration refused to use it. One of President Nixon's first steps was to direct his new attorney general, John Mitchell, to use this tool. The President also marshaled all federal investigative agencies and strengthened their effectiveness against racketeering. And he asked for and obtained from Congress the Organized Crime Control Act of 1970, which provided further weapons in the battle.

As a result, we have mounted a far more effective drive against organized crime than had been possible before. In 1971 we obtained indictments against more than 2,600 members or associates of organized crime syndicates—more than triple the number indicted in 1968. Convictions of such persons in 1971 nearly doubled the number in 1968. In New York, Chicago and many other cities we have torn big gaps in the ranks of the top gangland bosses.

Fighting the drug traffic

We Duke jobs.

A serious part of the crime problem has been the drug traffic that became a growing threat to the physical, mental and spiritual health of Americans in the 1960s.

President Nixon's answer was to mount the nation's first full-scale war against drug trafficking and addiction. He proposed and obtained from Congress a tough drug-control law, greatly strengthened the agencies charged with combating traffickers, and gave overall direction to previously uncoordinated efforts in drug treatment, research, education and enforcement.

For the first time, federal agents are carrying the war to the highest echelons of organized crime, and a number of major dope rings have been smashed. In 1971 federal authorities removed from the world market about five times as much heroin or equivalent opium derivatives as were removed in 1968.

Also for the first time, the President focused every appropriate arm of government to seek cooperation from the nations that have been the main sources of narcotics. The governments of Turkey, France, Thailand, Laos and Mexico are either attacking or completely halting the production of illicit drugs, and are cracking down on traffickers with the help of American equipment and agents.

Results of all this effort are already showing up in unprecedented shortages of heroin in a number of cities, particularly New York and Washington. And we will keep pressing this attack on all fronts to bring addiction under control and drive the traffickers out of business.

Pioneering in prison reform

I firmly believe that prison reform is imperative, not only for the salvage of human lives, but also as another front in the war on crime. It does little good to perfect the machinery of justice if, at the end of the process, we harden criminals instead of correcting them.

When President Nixon came to office he called for a 13-point program of prison reform. The resulting ten-year federal program is the comprehensive approach that reformers have advocated for more than a century.

The Bureau of Prisons has launched the largest construction program in its history, with buildings designed not in the old fortress concept but to help the offender prepare for his return to the community. For the first time, substantial federal funds (nearly \$250 million in LEAA programs for 1972 alone) are being applied in a coordinated effort to bring American corrections into the 20th century. Using such innovations as halfway houses and work-release programs, both the LEAA and the Federal Bureau of Prisons programs are aimed at returning the offender to a useful and meaningful life. Much remains to be done, but we have the blueprint, the resources and the will to complete this reform in the name of humanity and the American conscience.

The reign of justice

While improving enforcement and fostering the rule of law, the Nixon administration has been accused of repression by its political opponents.

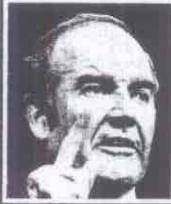
We have been condemned for using wiretaps, when in fact the wiretapping provided by Congress requires court authorization and supervision, and is more carefully hedged by legal restrictions than the traditional search warrant. The United States Supreme Court has clearly recognized that wiretapping with appropriate judicial safeguards complies with the guarantees of the Constitution and its Bill of Rights.

We have been accused of "going easy" on corporate business offenders, whereas we have acted more aggressively and effectively than our predecessors.

In the antitrust field, for example, the previous administration could not find a way to use existing law against the alarming rise of conglomerate mergers in the 1960s, but the Nixon administration has brought cases that have successfully halted this anticompetitive threat. In pollution control, where previous administrations had not probed the possibility of using the Refuse Act of 1899 to bring civil injunctive suits, we pioneered the use of this weapon and so far have filed 115 suits against alleged polluters.

In short, we are second to none in our respect for constitutional rights and the equal application of the law. We believe that controlling crime is not incompatible with serving justice. On the contrary, if crime is not controlled, justice cannot survive. Just as no one has rights in a land without law, so the maintenance of law is a prerequisite not only of human progress, but of human liberty. And we believe that our record since 1969 amply proves that we can continue building an America that will live without fear and live by the law.

DEBATE
72



For the Democrats

GEORGE McGOVERN

Senator from South Dakota

The recent attempt on the life of Governor Wallace is another shocking reminder of how far we Americans have still to go in achieving a society free of violence and terror. Often it must seem even to the most optimistic nature that this great nation bears a kind of curse which condemns it to live eternally under the shadow of the gunman with no one ever safe—not the presidential candidate from the assassin, not the ordinary citizen from the mugger, not the woman from the rapist, nor even the child from the narcotics pusher. A reading of the daily newspaper with its depressing reports of crime, especially in our big cities, sometimes calls to mind the Hobbesian definition of the state of nature where human life was "nasty, brutish and short."

Still I would urge those who are tempted to despair of our society, particularly those who would recommend a diminution of our freedom in order to gain a climate of so-called law and order, not to give up too soon.

I would urge them to keep a sense of balance in analyzing the admittedly grave problem of crime and lawlessness, and to remember that for all the problem's gravity, the vast mass of the American people are profoundly law-abiding. Only a tiny percentage of our population fails to meet Edmund Burke's qualifications for civil liberty.

"Men are [so] qualified," Burke said, "in exact proportion to their disposition to put moral chains on their appetites. . . . It is ordained in the eternal constitution of things that men of intemperate minds cannot be free. Their passions form their fetters."

Since most of us are guided by these standards and thus earn the right to be free men and women, any governmental response to the lawless minority which would reduce our freedom is patently unjust and excessive. The teacher does not discipline the entire class when one or two pupils misbehave. A government of free men does not—or should not—buy discipline and public order with the precious coin of individual liberty.

If I am elected President I will do everything in my power to reduce crime and to enhance the public tranquillity. I have no doubt but what this can be accomplished without impinging on the constitutional rights of the American citizen.

Why do people commit crimes? It is not necessarily that we are a violent society. Neither would I suggest that the deaths of John Kennedy, Robert Kennedy, Martin Luther King Jr. and the shooting of Governor Wallace are symptomatic of a sick, berserk society. They were individual acts of violence, unrelated, in every case, to any identifiable social or political force at work within this society.

If the assassin's crime is often motiveless, street crime is not. The purse-snatcher, the mugger and the car-stripper want money. They want money because they often have no other means of getting it. When Willie Sutton was asked why he robbed banks, he said, "Because that's where the money is."

That's no justification, of course, but the dismal fact remains that the street criminal is almost always the product of poverty and alienation.

To deplore street crime and not deplore the conditions that provoke it is senseless. And yet those who rail against such crime are the first to rail against the expenditure of public funds to alleviate poverty and frustration.

And this cynicism—a crime itself—is compounded by the corruption and the mismanagement of far too many of the funds government does allocate to the economic ghettos and the *barrios*. There are too many layers of patronage between the appropriation and those it is meant to serve.

As President, I would appoint a Secretary of Health, Education and Welfare whose first charge from me would be to slash through the bureaucratic jumble—federal, state and local—and see to it that the dollar earmarked for impoverished areas gets there without political deductions along the way.

But the failure and waste inherent in much of our antipoverty effort is too apparent for me to belabor the point. It's enough to say that we are doing a miserable job of combating those conditions that produce crime.

What of our courts? They are clearly the victims of a "litigation explosion," which results in unconscionably long delays in bringing offenders to trial. Never before in our history has there been greater congestion in our federal courts. Nearly a third of all federal criminal cases have been pending for more than a year. The case overload in most state and local courts is even more onerous. Everyone suffers—not just the accused and the accuser, but the taxpayer who must bear the cost of interminable incarceration of the offender.

We need a 'Policeman's Bill of Rights'

The President, of course, has jurisdiction only on the federal level. I pledge that U.S. attorneys and federal judges will be appointed in a McGovern administration solely on merit and without regard to political sponsorship or pressures. I frankly don't think the answer to court congestion is more federal judgeships. The answer is more efficient management of the courts we already have. I support the recommendation of the American Law Institute for an intensive review of the jurisdiction of the federal courts; the application of the most modern managerial techniques in processing the case load, and the creation of extrajudicial occupations that would relieve judges and federal attorneys of the paper work they now have to contend with.

I would ask Congress to enact a strict timetable for the trial

and appeal of federal cases, to allow no more than 60 days to elapse between arrest and trial.

Complementing this, I would recommend more stringent control of defendants who are freed pending trial. For example, any defendant charged with a new offense while awaiting trial or while on probation or parole, would automatically be reincarcerated. At the same time, those who do not violate their release should be given help in finding work to sustain themselves until they come to trial.

What of the peace officer? Again, "law and order" rhetoric has done nothing to relieve the peace officer of either the danger or frustration of his work.

We expect the policeman to carry out his functions with the skill and wisdom of lawyer and judge, usually without the benefit of more than token education in law. And we continue to pay him a salary grossly out of line with the risks and responsibility of his profession.

In March of 1971, I proposed that we create a "Policeman's Bill of Rights," modeled somewhat on the GI Bill of Rights. It would provide the peace officer with additional education while remaining on full salary with his department. Many recent court decisions affecting evidence, search and seizure and defendants' rights are so complex that a lawyer has difficulty understanding them, yet the police officer is expected to apply them without error on a street corner and, often, in highly dangerous circumstances.

The additional police education I propose would include a study of such new complexities in the law, and it would greatly strengthen law enforcement as a profession.

We come, finally, to our system of penology. It is, generally, a failure, and the percentage of recidivism proves it. Most of our prisons are nothing more than warehouses where the offender serves out his time and walks out the gate—only to return a month or a year later.

The fact is that we do little or nothing to prepare the felon for a productive life outside the prison. There aren't many jute mills or license plate fabricators in the outside world. And when we do teach the prisoner a skill, it very often is obsolete by the time he has a chance to use it or requires a union card in a trade where many union members are already out of work.

I believe we have to apply to our prisons the same guidelines we use in vocational schools; the anticipation of skills that will be in demand five and ten years from now. At the moment, we are training most prisoners to be unemployable.

It is also clear that we put too many people in prison. Ohio estimates that it could free 40% of its prison population tomorrow without danger or violence to its citizens. Other states put the figure at 75%.

The nonviolent offender—the forger or bigamist, for instance—does not belong behind walls for long periods of time. He is certainly no physical risk to society, and most unlikely to commit another offense under strict parole supervision.

Steps should also be taken to provide less variance in the sentencing of convicts in different courts. It is a source of great resentment and anguish to men in prison that for similar crimes one man may be sentenced to 20 years in jail while his cellmate who has committed an almost identical offense may be sentenced to five years.

It might be well for every judge to begin his career on the bench by living inside a prison for ten or 15 days so that he better understands what his sentences mean in human terms.

Our prisons are, without doubt, overcrowded. And this is responsible for much of the violence that occurs within their walls. Most of our prison population would be better served and ultimately better able to rejoin society if confinement were limited to small, community-based units, in which the inmate would have greater contact with his family and greater opportunity to obtain employment in advance of his release.

If we stop the warehousing, we have gone a long way toward eliminating confinement as the incubator of crime. Certainly this is true of the first offender. Our present policies virtually assure his return to prison at a later date—and usually for the commission of a more serious crime.

The terrible attack on Governor Wallace has once again emphasized the need for measures to control, if not ban altogether, the sale of handguns. I am a country man from South Dakota and I am aware of the justification in rural areas and among sportsmen, for the ownership of long guns. But I see no justification for the snub-nosed handgun or "Saturday night special" which—let us face it—are designed for threatening or killing people. I think this kind of handgun should be limited to the possession of law-enforcement officers in this country and I would press for the enactment of legislation to bring this about.

In 1970 handguns were responsible for the death of 500 persons in New York City while in Tokyo—strict gun control being in effect in Japan—the death toll from handguns was three. It is time that this country learned that handguns are used by the fanatic, the robber, the angry man, simply because they are available. It is time to make them unavailable.

Every judge should spend 10 or 15 days in jail

I think we must also examine, more closely, our attitudes toward the drug offender. As a starter, the 20-year-old marijuana smoker certainly does not belong in the same institution with the rapist or kidnapper. In fact he doesn't belong in prison at all unless he is a supplier, for profit, to others.

In the area of hard drugs, I am impressed with the system put into effect in California under Governor Pat Brown. The California plan for the heroin-user provides for a system of civil commitment for the nonviolent addict. The addict himself, his family or a court commits him to a therapeutic institution for a period of seven years. But the addict is eligible for release after one year if the institution determines that he is ready to return to his home. Naline testing and strict parole supervision have been remarkably successful in keeping such "outpatients" free of drugs. The rate of parole success has been spectacularly higher than that for addicts released from conventional prisons.

It's a cliché, obviously, to say that those who lead us set the moral tone of our society—that disrespect for the law grows in proportion to the disrespect we have for the actions and the credibility of our leaders.

But I do believe that a government which can lie blandly to the people; which uses its influence to protect its friends from criminal prosecution and which openly announces it has no intention of enforcing a decision of the Supreme Court, is not manifesting respect for law in this country.