

The Cost of Injustice

Recalling hearings in June 1972 on government lawlessness, Rep. Ronald Dellums (D-Calif.) of the congressional Black Caucus said recently that he believed Washington was "the crime capital of America." He explained that he didn't mean this the way Richard Nixon meant it in the campaign of 1968 when he tried to expose Democrats who couldn't keep the streets of Washington safe. Dellums was going beyond the crimes of robbers and muggers to the crimes of the officials of government, abuses of law much more dangerous because they were committed by those who had sworn to be the upholders of the law.

Because the FBI crime statistics cover the acts of common criminals and not governmental criminals, Dellums' statement cannot be factually examined. (Newark or Baltimore might be fair rivals to Washington. What can be examined, though, is the amount of money, time and anguish a few citizens have spent trying to get their government to obey the law. These people long ago hardened themselves to the brittle truth that the government is no longer of, by or for the people but in too many cases—all totally exclusive of Watergate—is run either in conscious defiance of laws or in unconscious belief that those who govern are beyond accountability to the governed.

The citizens who have attempted in recent years to bring the government to justice are of two groupings, the poor and the middle class.

The latter is often represented by Washington attorneys like Bruce Terris. His most recent involvement against government lawbreaking was his work for environmentalists in a suit that saw a U.S. district court require the Forest Service to begin obeying the Organic Act of 1897. "That case cost about \$15,000," says Terris, "but another recent ruling against the Forest Service, in California, cost between \$40,000 and \$50,000." Terris says the money is unrecoverable, even though he represented citizens who merely wanted the law to be enforced and

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were not asking the government to provide leadership, wisdom or anything else a citizen, in saner times, might expect. "There seems to be a

general rule," Terris believes, "that the government can commit the most lawless act, be taken to court by the citizens, lose the case but not even have to pay attorneys' fees or the costs of the suit, as would apply in litigation between private parties." The startling irony is clear: citizens pay taxes for the salaries of government lawyers who then fight against private lawyers hired by citizens who can't get the government to obey the law in the first place. The costs of justice must be paid three times: first, to support a Congress to protect the public weal through passage of laws, then to pay the salaries of officials who break or defy the law and, third, to pay for private lawyers to have the law obeyed. A solution to this would be remedial congressional legislation, but it would be ludicrous: passing a new law to force the government to obey the old laws. And what would it be called? The 1974 Law Obedience Law?

Much government lawlessness involves cave-ins to private-interest lobbyists, such as violations against the Freedom of Information act in which a citizen is denied facts freely provided special interests. Occasionally, though, the law is broken not from slipperiness but from amazing incompetence. A recent example, in which hundreds of thousands of dollars were wasted, involved the Food and Drug Administration. A U.S. appeals court ruled that the FDA broke the law in banning the growth hormone DES from cattle

feed. The court avoided discussing the cancer potential of DES—the meat-eating consumer is on his own once again—but said the FDA acted illegally by not holding a hearing before the ban. The court likened the crime to "a patchwork of legal theory that is sewn in a confusion inconsistent with responsible review." A consultant to the House Intergovernmental Relations subcommittee said the FDA "bungled it horribly," a statement agreed with even by an FDA official. In the background of this case is a large amount of time and money originally spent by environmental groups to legally move the FDA to act. The agency delayed and hedged. Then, when it did decide it had a case against DES, the FDA lawyers could not bring it off. In the annals of government lawlessness, the case may be unique: an agency suc-

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cessfully enforces one section of a law (the Food, Drug and Cosmetics Act) while simultaneously breaking another section of the same law. Hesitancy before the decision was matched by incompetence after it. Perhaps more astonishing, Dr. Charles C. Edwards, the man who was running the FDA throughout this period leading to lawlessness and was closely involved with the DES case, later received a promotion, moving on to still greater power as the government's chief health officer.

The middle class, however, much victimized, still has enough comforts and distractions to buffer many of the results of government lawlessness. It is different for the poor. When an agency acts illegally and refuses to face a problem like lead paint removal—as HUD did in January when it submitted a say-nothing report to Congress two years after a law required it—children continue to die and suffer. When the Rural Housing Alliance spends much of its time and money in court getting federal housing authorities to free money impounded by the administration, it means the misery of homeless migrant workers continues.

In the recent debate on the new legal services corporation, enemies of the program were alarmed by the poverty lawyers' record of successful legal challenges against the government. Apparently it is permissible for the lawyers of the poor to attack a private slumlord, but when the slumlord is the U.S. government, this is something else. The poor are unpatriotically attacking their government, though never mind the government's strange patriotism in first attacking the poor by not providing heat, by not removing the rats or not getting rid of the lead paint. Many of those who most oppose the legal services program are also the strongest in supporting the notion that we need less governmental power. This abstraction about the new federalism—diffusing Washington's power and returning it to the people—becomes threatening, however, when live people like the poor actually begin using the power, via such programs as legal services. Now that the poor have some small measure of power, and are using it against the lawlessness of their government, it is suddenly seen as "revolutionary," the latest version of the "uppity" thesis.

Meanwhile, whether the poor or the middle class are victimized, immense costs are being paid—and only to require the government not to subvert the law, and forget any wild ideas that it might champion it. What is worse for a people: to suffer its government's lawlessness or to endure its hypocrisy? The national production of cynics must never have been higher than in the last six years, a period of lawlessness (even excluding Watergate) occurring under an administration that began with a cry of "law and order."