

## By Richard G. Kleindienst

More than 2,000 years ago Cato the Elder, one of the chief statesmen of the Roman Republic, told the judges: "Those who do not prevent crimes when they might, encourage them." Today, we who are associated with the criminal justice system in the United States believe we are doing everything we can to prevent crime. The last thing we would believe is that we are encouraging it. Certainly Cato's admonition could not be aimed at us.

But could it? Let me cite some representative cases which may sound familiar to many of you. A recent report by the police department in one of our major cities gave some examples of defendants who were making a game out of the court system, who were involved in a continuing cycle of arrest and bail.

For seventeen months, a burglary suspect had been arrested and freed on bail eleven times, without standing trial.

Over a period of thirty months a suspected thief and forger was arrested and released on bail seventeen times—again, without coming to trial.

This same major police department cited other cases of similar magnitude and added that its study showed that "Time and time again we have documented cases where persons were freed on five, seven and nine bonds awaiting trial." This city is not unique. Where data are available they usually show similar or even worse abuses of the court system in other major American cities.

Could these crimes have been prevented? If so, by whom? And may we not invoke Cato's indictment that those who could have prevented these crimes are guilty of encouraging them? We are all aware of the clamor that is abroad today for court reform. We do not hear much, however, about prosecutive reform, and I, for one, feel that we prosecutors ought to resent the oversight. It is almost as though our operations were not important enough to need reforming.

I believe that much of the abuse in the criminal justice process can be mitigated by decisive action on the part of the prosecutor. And I believe we prosecutors are on solid ground in demanding our right to have a reform

movement all our own. What has been the chief cause of the movement calling for change in the way criminal cases are handled in this country? Mainly it has been the overweening delay in such cases.

There are many reasons for trial delay, not the least of which are brought about by the defense. The experienced defendant who knows he is guilty has everything to gain from delay. He will start by choosing an overworked defense attorney whose appearance is required in many courts and whose enforced absence will be a repeated cause for continuances. And many a veteran defense counsel has a whole bagful of pretrial motions, many of them simply designed to delay. For as we know, delay erodes the prosecution's case. Where the delay moves from months to years, evidence is lost and witnesses disappear or suffer loss of memory. Meanwhile, if the defendant is out on bail, he may be preying on the community.

On the other hand, there can be many other causes of delay not due to the defense. And if the defendant stays in jail, either because he cannot raise bail or is charged with a non-bailable offense, then there is a clear injustice to him in any protracted delay before he is proven guilty or innocent.

I am not advocating pure speed for its own sake, at the expense of justice. Some judges have dismissed charges arbitrarily after a certain lapse of time or a certain number of continuances, thus in my opinion aggravating the problem, rather than solving it, by giving criminals a new hunting license against society. If anything, the threat to society in this instance is even worse than in cases where the defendant is released pending trial, since the defendant whose case is arbitrarily dismissed is not only freed physically but is freed of any respect for the law whatever.

The criminal justice system in the United States is falling far short of its job. It must make drastic reforms to restore itself as the foundation stone of American democracy. In those reforms the prosecutor can and must play a crucial role.

*Richard G. Kleindienst, the Attorney General, made these remarks before the National District Attorneys Association.*