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THE PRESIDENT HAS SEEN.

THE WHITE HOUSE
WASHINGTON

TO: Don Rumsfeld

FROM: Robert A. Goldwin *RAC by mch*

COMMENTS: Here are Wilson's thoughts on crime, now in writing.

3/27/75

Most interesting & helpful.

Intellectuals do not wish to be caught saying uncomplimentary things about mankind.
But wicked people exist.

LOCK THEM UP AND OTHER THOUGHTS ON CRIME



Leonard Freed

By James Q. Wilson

As much as anything, our futile efforts to curb or even understand the dramatic and continuing rise in crime have been frustrated by our optimistic and unrealistic assumptions about human nature. Considering that our society is in the grip of a decade-old crime wave despite a decade-long period of prosperity, it is strange that we should persist in the view that we can find and alleviate the "causes" of crime, that serious criminals can be rehabilitated, that the police can somehow be

James Q. Wilson is Henry Lee Shattuck Professor of Government at Harvard. This article is adapted from his forthcoming book, "Thinking About Crime."

made to catch more criminals faster, and that prosecutors and judges have the wisdom to tailor sentences to fit the "needs" of the individual offender.

I argue for a sober view of man and his institutions that would permit reasonable things to be accomplished, foolish things abandoned, and utopian things forgotten. A sober view of man requires a modest definition of progress. A 20-per cent reduction in robbery would still leave us with the highest robbery rate of almost any Western nation but would prevent about 60,000 robberies a year. A small gain for society, a large one for the would-be victims. Yet a 20 per cent reduction is unlikely if we concentrate our efforts on dealing with the causes of crime or even if we concentrate on improving police efficiency. But were we to devote those resources to a strategy that is well within

our abilities — to incapacitating a larger fraction of the convicted serious robbers—then not only is a 20 per cent reduction possible, even larger ones are conceivable.

Most serious crime is committed by repeaters. What we do with first offenders is probably far less important than what we do with habitual offenders. A genuine first offender (and not merely a habitual offender caught for the first time) is in all likelihood a young person who, in the majority of cases, will stop stealing when he gets older. This is not to say we should forgive first offenses, for that would be to license the offense and erode the moral judgments that must underlie any society's attitude toward crime. The gravity of the offense must be appropriately impressed on the first offender, but the effort to devise ways of re-educating or uplifting him in order (Continued on Page 44)

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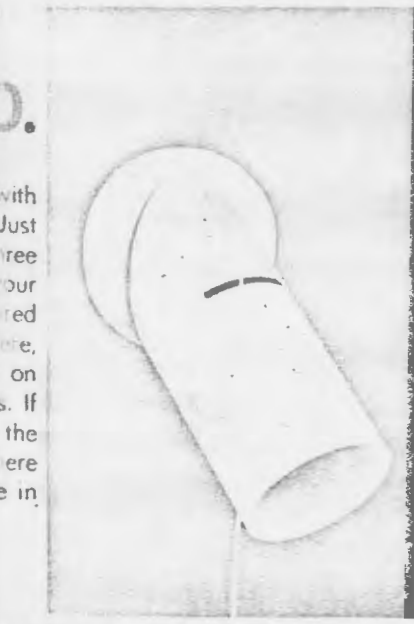
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Lock 'em up

Continued from Page 11

to insure that he does not steal again is likely to be wasted—both because we do not know how to re-educate or uplift and because most young delinquents seem to re-educate themselves no matter what society does.

After tracing the history of nearly 10,000 Philadelphia boys born in 1945, Marvin Wolfgang and his colleagues at the University of Pennsylvania found that more than one-third were picked up by the police for something more serious than a traffic offense but that 46 per cent of these delinquents had no further police contact after their first offense. Though one-third started on crime, nearly half seemed to stop spontaneously—a good thing, because otherwise the criminal justice system in that city, already sorely taxed, would in all likelihood have collapsed. Out of the 10,000 boys, however, there were 627—only 6 per cent—who committed five or more offenses before they were 18. Yet these few chronic offenders accounted for more than half of all the recorded delinquencies and about two-thirds of all the violent crimes committed by the entire cohort.

Only a tiny fraction of all serious crimes leads immediately to an arrest, and only a slightly larger fraction is ultimately "cleared" by an arrest, but this does not mean that the police function is meaningless. Because most serious crime is committed by repeaters, most criminals eventually get arrested. The Wolfgang findings and other studies

suggest that the chances of a persistent burglar or robber living out his life, or even going a year, with no arrest are quite small. Yet a large proportion of repeat offenders suffers little or no loss of freedom. Whether or not one believes that such a penalty, if inflicted, would act as a deterrent, it is obvious that it could serve to incapacitate these offenders, and thus, for the period of the incapacitation, prevent them from committing additional crimes.

We have a limited (and declining) supply of detention facilities, and many of those that exist are decrepit, unsafe, and overcrowded. But as important as expanding the supply and improving the decency of the facilities is the need to think seriously about how we wish to allocate those spaces that exist. At present, that allocation is hit or miss. A 1966 survey of more than 15 juvenile correctional institutions disclosed that about 30 per cent of the inmates were young persons who had been committed for conduct that would not have been judged criminal were it committed by adults. They were runaways, "stubborn children," or chronic truants—problem children, to be sure, but scarcely major threats to society. Using scarce detention space for them when in Los Angeles more than 90 per cent of burglars with a major prior record receive no state prison sentence seems, to put it mildly, anomalous.

In a joint study, Prof. Reuel Shinnar of City College of New York and his son Shlomo

have estimated the effect on crime rates in New York State of a judicial policy other than that that followed during the last decade or so. Given the present level of police efficiency and making some assumptions about how many crimes each offender commits per year, they conclude that the rate of serious crime would be only one-third what it is today if every person convicted of a serious offense were imprisoned for three years. This reduction would be less if it turned out (as seems unlikely) that most serious crime is committed by first-time offenders, and it would be much greater if the proportion of crimes resulting in an arrest and conviction were increased (as also seems unlikely). The reduction, it should be noted, would be solely the result of incapacitation, making no allowance for such additional reductions as might result from enhanced deterrence or rehabilitation.

The Shinnar estimates are based on uncertain data and involve assumptions that can be challenged. But even assuming they are overly optimistic by a factor of two, a sizable reduction in crime would still ensue. In other countries such a policy of greater incapacitation is in fact followed. A robber arrested in England, for example, is more than three times as likely as one arrested in New York to go to prison. That difference in sentencing does not account for all the difference between English and American crime rates, but it may well account for a substantial fraction of it.

That these gains are possible does not mean that society should adopt such a policy. One would first want to know the costs, in addition-



al prison space and judicial resources, of greater use of incapacitation. One would want to debate the propriety and humanity of a mandatory three-year term; perhaps, in order to accommodate differences in the character of criminals and their crimes, one would want to have a range of sentences from, say, one to five years. One would want to know what is likely to happen to the process of charging and pleading if every person arrested for a serious crime faced a mandatory minimum sentence, however mild. These and other difficult and important questions must first be confronted. But the central fact is that *these are reasonable questions*, around which facts can be gathered and intelligent arguments mustered. To discuss them requires us to make few optimistic assumptions about the malleability of human nature, the skills of officials who operate complex institutions, or the capacity of society to improve the fundamental aspects of familial and communal life.

Persons who criticize an emphasis on changing the police and courts to cope with crime are fond of saying that such measures cannot work so long as unemployment and poverty exist. We must acknowledge that we have not done very well at inducting young persons, especially but not only blacks, into the work force. Teen-age unemployment rates continue to exceed 20 per cent and show little sign of abating. Nor should we assume that declining birth rates will soon reduce either the youthful demand for jobs or the supply of young criminals. The birth rates are now very low; it will not be until the mid- or late-nineteen-eighties that these low rates will affect the proportion of the population that is entering the job-seeking and crime-prone ages of 16 through 26.

In the meantime, while anti-crime policies may be hampered by the failure of employment policies, it would be equally correct to say that so long as the criminal-justice system does not impede crime, efforts to reduce unemployment will not work. If legitimate opportunities for work are unavailable, many young persons will turn to crime; but if criminal opportunities are profitable, many young persons will not take those legitimate jobs that exist. The benefits of work and the costs of crime must be increased simultaneously; to increase one but not the other makes sense only if one assumes that young people are irrational.

One rejoinder to this view



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is the argument that if legitimate jobs are made absolutely more attractive than stealing, stealing will decline even without any increase in penalties for it. That may be true provided there is no practical limit on the amount that can be paid in wages. Since the average "take" from a burglary or mugging is quite small, it would seem easy to make the income from a job exceed the income from crime.

But this neglects the advantages of a criminal income: One works at crime at one's convenience, enjoys the esteem of colleagues who think a "straight" job is stupid and skill at stealing is commendable, looks forward to the occasional "big score" that may make further work unnecessary for weeks, and relishes the risk and adventure associated with theft. The money value of all these benefits—that is, what one who is not shocked by crime would want in cash to forgo crime—is hard to estimate but is almost certainly far larger than what either public or private employers could offer to unskilled or semiskilled young workers. The only alternative for society is so to increase the risks of theft that its value is depreciated below what society can afford to pay in legal wages, and then take whatever steps are necessary to insure that those legal wages are available.

Another rejoinder to the "attack poverty" approach to crime is this: The desire to reduce crime is the worst possible reason for reducing poverty. Most poor persons are not criminals; many are either retired or have regular jobs and lead conventional family lives. The elderly, the working poor, and the willing-to-work poor could benefit greatly from economic conditions and government programs that enhance their incomes without there being the slightest reduction in crime—indeed, if the experience of the nineteen-sixties is any guide, there might well be, through no fault of most such beneficiaries, an increase in crime. Reducing poverty and breaking up the ghettos are desirable policies in their own right, whatever their effects on crime. It is the duty of government to devise other measures to cope with crime: not only to permit anti-poverty programs to succeed without unfair competition from criminal opportunities, but also to insure that such programs do not inadvertently shift the costs of progress, in terms of higher crime rates, onto innocent parties, not the

least of whom are the poor themselves.

One cannot press this economic reasoning too far. Some persons will commit crimes whatever the risks; indeed, for some, the greater the risk, the greater the thrill, while others—the alcoholic wife beater, for example—are only dimly aware that there are any risks. But more important than the insensitivity of certain criminal offenders to changes in risks and benefits is the impropriety of casting the crime problem wholly in terms of a utilitarian calculus. The most serious offenses are crimes not simply because society finds them inconvenient, but because it regards them with moral horror. To steal, to rape, to rob, to assault—these acts are destructive of the very possibility of society and affronts to the humanity of their victims. It is my experience that parents do not instruct their children to be law-abiding merely by pointing to the risks of being caught, but by explaining that these acts are wrong whether or not one is caught. I conjecture that those parents who simply warn their offspring about the risks of crime produce a disproportionate number of young persons willing to take those risks.

Even the deterrent capacity of the criminal-justice system depends in no small part on its ability to evoke sentiments of shame in the accused. If all it evoked were a sense of being unlucky, crime rates would be even higher. James Fitzjames Stephens, the 19th-century British jurist, makes the point by analogy. To what extent, he asks, would a man be deterred from theft by the knowledge that by committing it he was exposing himself to 1 chance in 50 of catching a serious but not fatal illness—say, a bad fever? Rather little, we would imagine—indeed, all of us regularly take risks as great as or greater than that: when we drive after drinking, when we smoke cigarettes, when we go hunting in the woods. The criminal sanction, Stephens concludes, "operates not only on the fears of criminals, but upon the habitual sentiments of those who are not criminals. [A] great part of the general detestation of crime . . . arises from the fact that the commission of offenses is associated . . . with the solemn and deliberate infliction of punishment wherever crime is proved."

Much is made today of the fact that the criminal-justice system "stigmatizes" those caught up in it, and thus unfairly marks such persons and

perhaps even furthers their criminal careers by having "labeled" them as criminals. Whether the labeling process operates in this way is as yet unproved, but it would indeed be unfortunate if society treated a convicted offender in such a way that he had no reasonable alternative but to make crime a career. To prevent this, society ought to insure that one can "pay one's debt" without suffering permanent loss of civil rights, the continuing and pointless indignity of parole supervision, and frustration in being unable to find a job. But doing these things is very different from eliminating the "stigma" from crime. To destigmatize crime would be to lift from it the weight of moral judgment and to make crime simply a particular occupation or avocation which society has chosen to reward less (or perhaps more!) than other pursuits. If there is no stigma attached to an activity, then society has no business making it a crime. Indeed, before the invention of the prison in the late 18th and early 19th centuries, the stigma attached to criminals was the major deterrent to and principal form of protection from criminal activity. The purpose of the criminal-justice system is not to expose would-be criminals to a lottery in which they either win or lose, but to expose them in addition and more importantly to the solemn condemnation of the community should they yield to temptation.

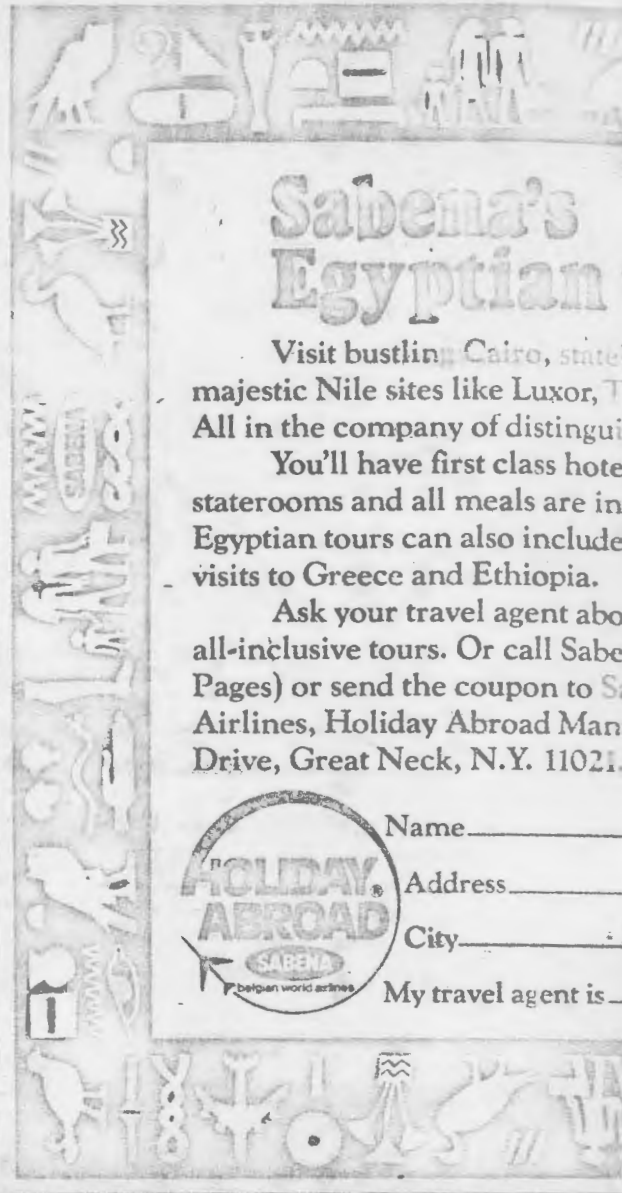
Anyone familiar with the police stations, jails and courts of some of our larger cities is keenly aware that accused persons caught up in the system are exposed to very little that involves either judgment or solemnity. They are instead processed through a bureaucratic maze in which a bargain is offered and a haggle ensues at every turn—over the amount of bail, the degree of the charged offense and the nature of the plea. Much of what observers find objectionable about this process could be alleviated by devoting many more resources to it, so that an ample supply of prosecutors, defense attorneys and judges was available. That we do not devote those additional resources in a country obsessed with the crime problem is one of the more interesting illustrations of the maxim, familiar to all political scientists, that one cannot predict public policy simply from knowing popular attitudes. Whatever the cause, it remains the case that in New York County (Manhattan) there were, in 1973, 31,093 felony

arrests to be handled by only 125 prosecutors, 119 public defenders and 59 Criminal-Court judges. The result was predictable: Of those arrested, only 4,130 pleaded guilty to or were convicted on a felony charge; 81 per cent of the felony arrests were disposed of by pleading guilty to a misdemeanor or by discharging the case.

One wonders whether the stigma properly associated with crime retains much deterrent or educative value. My strong inclination is to resist explanations for rising crime that are based on the alleged moral breakdown of society, the community or the family. I resist in part because most of the families and communities I know have not broken down, and in part because, had they broken down, I cannot imagine any collective action we could take consistent with our civil liberties that would restore a moral consensus, and yet the facts are hard to ignore. Take the family: More than one-third of all black children and 1 in 14 of all white children live in single-parent families. More than two million children live in single-parent households (usually the father absent), almost double the number of 10 years ago. In 1950, 18 per cent of black families were headed by females; in 1969 the proportion had risen to 27 per cent; by 1973 it exceeded 35 per cent. The average income for a single-parent family with children under 6 years of age was, in 1970, only \$3,100, well below the official "poverty line."

Studies done in the late nineteen-fifties and the early nineteen-sixties showed that children from broken homes were more likely than others to become delinquent. In New York State, 58 per cent of the variation in pupil achievement in 300 schools could be predicted by but three variables—broken homes, overcrowded housing and parental educational level. Family disorganization, writes Prof. Urie Bronfenbrenner of Cornell University, has been shown in thousands of studies to be an "omnipresent overriding factor" in behavior disorders and social pathology. And that disorganization is increasing.


These facts may explain some elements of the rising crime rate that cannot be attributed to the increased number of young persons, high teen-age unemployment or changed judicial policies. The age of persons arrested has been declining for more



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than 15 years and the median age of convicted defendants (in jurisdictions for which data are available) has been declining for the last six years. Apparently, the age at which persons begin to commit serious crime has been falling. For some young people, thus, whatever forces weaken their resistance to criminal activity have been increasing in magnitude, and these forces may well include the continued disorganization of the family and the continued deterioration of the social structure of inner-city communities.

One wants to be objective, if not optimistic. Perhaps single-parent families today are less disorganized—or have a different significance—than such families in the past. Perhaps the relationship between family structure and social pathology will change. After all, for at least a brief while, the heroin epidemic on the East Coast showed signs of abating as law enforcement reduced the supply of narcotics, treatment programs took many addicts off the streets and popular revulsion against addiction mounted. Perhaps other aspects of the relationship among family, personality and crime will change. Perhaps. But even as this is being written, and after the book from which it is taken went to press, there have appeared ominous signs that the East Coast heroin shortage may be ending and the use of heroin once again increasing.

No one can say how much of crime results from its increased profitability and how much from its decreased shamefulness. But one or both factors must be at work, for population changes alone simply cannot account for the increases. Crime in our cities has increased far faster than the number of young people, or poor people, or black people, or just plain people who live in those cities. In short, objective conditions alone, whether demographic or economic, cannot account for the crime increases; ideas, attitudes, values have played a great part, though in ways hard to define and impossible to measure. An assessment of the effect of these changes on crime would provide a partial understanding of changes in the moral structure of our society.

But to understand is not to change. If few of the demographic factors contributing to crime are subject to planned change, virtually none of the subjective ones are. Though intellectually re-

warding, from a practical point of view it is a mistake to think about crime in terms of its "causes" and then to search for ways to alleviate those causes. We must think instead of what it is feasible for a government or a community to do, and then try to discover, by experimentation and observation, which of those things will produce, at acceptable costs, desirable changes in the level of criminal victimization.

There are, we now know, certain things we can change in accordance with our intentions, and certain ones we cannot. We cannot alter the number of juveniles who first experiment with minor crimes. We cannot lower the recidivism rate, though within reason we should keep trying. We are not yet certain whether we can increase significantly the police apprehension rate. We may be able to change the teen-age unemployment rate, though we have learned by painful trial and error that doing this is much more difficult than once supposed. We can probably reduce the time it takes to bring an arrested person to trial, even though we have as yet made few serious efforts to do so. We can certainly reduce the arbitrary and socially irrational exercise of prosecutorial discretion over whom to charge and whom to release, and we can most definitely stop pretending that judges know, any better than the rest of us, how to provide "individualized justice." We can confine a larger proportion of the serious offenders and repeaters and fewer of the common drunks and truant children. We know that confining criminals prevents them from harming society, and we have grounds for suspecting that some would-be criminals can be deterred by the confinement of others.

Above all, we can try to learn more about what works, and in the process abandon our ideological preconceptions about what ought to work. Nearly 10 years ago I wrote that the billions of dollars the Federal Government was then preparing to spend on crime control would be wasted and indeed might even make matters worse if they were merely pumped into the existing criminal-justice system. They were, and they have. In the next 10 years I hope we can learn to experiment rather than simply spend, to test our theories rather than fund our fears. This is advice, not simply or even primarily to gov-

ernment — for governments are run by men and women who are under irresistible pressures to pretend they know more than they do—but to my colleagues: academics, theoreticians, writers, advisers. We may feel ourselves under pressure to pretend we know things, but we are also under a positive obligation to admit what we do not know and to avoid cant and sloganizing. The Government agency, the Law Enforcement Assistance Administration, that has futilely spent those billions was created in consequence of an act passed by Congress on the advice of a Presidential commission staffed by academics, myself included.

It is easy and popular to criticize yesterday's empty hopes and mistaken beliefs, especially if they seemed supportive of law enforcement. It is harder, and certainly most unpopular, to criticize today's pieties and pretensions, especially if they are uttered in the name of progress and humanity. But if we were wrong in thinking that more money spent on the police would bring down crime rates, we are equally wrong in supposing that closing our prisons, emptying our jails and supporting "community-based" programs will do any better. Indeed, there is some evidence that these steps will make matters worse, and we ignore it at our peril.

Since the days of the crime commission we have learned a great deal, more than we are prepared to admit. Perhaps we fear to admit it because of a new-found modesty about the foundations of our knowledge, but perhaps also because the implications of that knowledge suggest an unflattering view of man. Intellectuals, although they often dislike the common person as an individual, do not wish to be caught saying uncomplimentary things about humankind. Nevertheless, some persons will shun crime even if we do nothing to deter them, while others will seek it out even if we do everything to reform them. Wicked people exist. Nothing avails except to set them apart from innocent people. And many people, neither wicked nor innocent, but watchful, dissembling and calculating of their opportunities, ponder our reaction to wickedness as a cue to what they might profitably do. We have trifled with the wicked, made sport of the innocent and encouraged the calculators. Justice suffers, and so do we all. ■

THE WHITE HOUSE

WASHINGTON

March 29, 1975

MEMORANDUM FOR:

ROBERT GOLDWIN

FROM:

JERRY H. JONES



Your note to Don Rumsfeld of March 27th and the Wilson article on crime have been returned in the President's outbox with the following notation:

-- Most interesting and helpful.

cc: Don Rumsfeld