

Selected Papers • No. 37

The Businessman's Guide to Crime Control

By NORVAL R. MORRIS



GRADUATE SCHOOL OF BUSINESS
UNIVERSITY OF CHICAGO

NORVAL R. MORRIS is Julius Kreeger Professor of Law and Criminology and Director of the Center for Studies in Criminal Justice, The University of Chicago. He was born in Auckland, New Zealand, received his LL.B. and LL.M. degrees from Melbourne University, Australia, and his Ph.D. in Law and Criminology from London University, England. He was Senior Lecturer in Law at the University of Melbourne from 1950 to 1958, and Ezra Ripley Thayer Teaching Fellow at Harvard Law School in 1955-1956. He was Bonython Professor and Dean of the Faculty of Law, University of Adelaide, from 1958-1962. He was Visiting Professor at the Harvard Law School from 1961-1962, and was Director, United Nations Institute for the Prevention of Crime and Treatment of Offenders (Asia and Far East), Tokyo, Japan, from 1962-1964. He came to the Law School of The University of Chicago in 1964. As an authority on crime control and the treatment of offenders he has held a long list of appointments as member, director, and chairman of commissions, congresses, and committees of the United Nations, the United States, the American Bar Association, and the State of Illinois. He is Editor of *Journal of Research in Crime and Delinquency*, and on the International Board of the *Howard Journal of Penology*. He is the author of numerous books and articles on law and criminology, including *The Habitual Criminal* (London: Longmans, Green and Co., 1951), *Studies in Criminal Law* (Oxford: Clarendon Press, 1964), and *The Honest Politician's Guide to Crime Control* (Chicago: The University of Chicago Press, 1970). Professor Morris spoke on February 2, 1971, at an Executive Program Club Luncheon at the Conrad Hilton Hotel in Chicago. He was introduced by Sidney Davidson, Dean of the Graduate School of Business of The University of Chicago. Professor Morris' remarks on that occasion are the basis for this Selected Paper.

The Businessman's Guide to Crime Control

SIDNEY DAVIDSON'S OWN curriculum vitae and the one he related about me makes us both sound restless as hyenas. Probably we are. But I was a little shocked by one proposition in his introduction. Is it really true that in the business curriculum you do not advert to problems of crime? You don't think about the heavy electrical industries case of 1961? You don't reflect on corporate executives going to jail for price fixing? You ought to, you ought to. It is an interesting case—at least the law students enjoy it!

It is indeed a privilege and a challenge to be here. I am comforted in my difficult task by Chairman Daley's words to us at The University of Chicago when he last visited us. It was, admittedly, some time ago, but the words still ring in our ears. He urged us to bend unremitting efforts to achieve new levels of platitude; I think I'll probably succeed. I'll probably succeed because I am fairly skeptical about the possibility of avoiding platitudes in after-lunch speeches. It seems to me that many more than the Philistines have been slain by the jawbone of an ass; I suspect you have fallen bravely in the past and probably will in the future, if not today.

IT'S A DIFFICULT topic—"The Businessman's Guide to Crime Control." The title is not uninteresting to me, because it was obviously adapted from the book that Dean Davidson was kind enough to refer to, but you'll note the title has been amended. I must say, it

wasn't I who struck the "honest" from the title. I had suggested "The Honest Businessman's Guide to Crime Control." The Graduate School of Business deleted "honest." I do not understand. This problem does not affect politicians; all politicians who have read the book have found no difficulty in identifying with the honest group. It somewhat disturbs me that the same isn't true of the graduates of your business training program.

Though the subject is difficult, its relationship to the interests of businessmen is close. Businessmen, of all our varied national groups, are particularly concerned with the effective and efficient use of resources. I should expect you to be among the first to appreciate that your tax-supported machineries for the apprehension, trial, and treatment of criminals and for the prevention of crime and delinquency are overloaded and grossly inefficient.

You bear direct costs in the installation and maintenance of security devices and personnel, and costs hardly less direct in the policies of insurance by which you seek to protect yourselves against the diverse consequences of crime. I need not remind you of the concerns of all businesses in such matters as embezzlement, property loss by theft, arson, vandalism, and other crimes. These costs, affecting you in the conduct of your businesses, may be large, but they are overshadowed by the costs that affect you as citizens and suppliers of the monies by which our policemen, judges, and jailers are maintained. Crime now affects where and how people live, where and how they travel—it influences adversely the whole quality of life in America.

I need not belabor the point. I was once told that the man who discovered a way to save a dime on each automobile bumper could become an industrial hero; if I could show you how to save a tax dollar or an insurance dollar in the handling of crime, I'm sure I would be

in line for beatification. An unlikely fate, but let me try.

ON THE MATTER of crime-everyone is an expert in this field. Everyone knows by searching his own prejudices what should be done about crime. And this simple certainty makes scholarship difficult. You're always talking to experts; whereas the longer you spend studying, as distinct from prejudicing, in this field, the less you feel competent about-their expertise remains firm, yours declines sharply. One's supply of dogmatic advice is scant, and I have none to offer you today. What I will try to do is to offer a few ideas on two themes which I hope won't bore you: first, some general reflections on crime statistics, with a courageous prediction of future movements in index crime; then a brief commentary on one general liberating principle central to the achievement of rational crime control in this country. And I'll add, for extra measure, a few reflections on better planning for property protection available to the businessman.

First, on crime rates and the future. This morning's paper reported the comments of John Mitchell, the Attorney General, at ceremonies marking the implementation of court reform, organized crime, preventive detention, and no-knock legislation for the District of Columbia. The crime rates in Washington, said the Attorney General, had declined in 1970 by 5.2 percent, and he predicted, according to this report, that "just as the wave of crime is turned back here, it will be turned back in the nation."

I don't for a moment think he is right. I believe there probably will be a slowing of the increase in index crime rates for a few years and then another considerable increase of the nature that we have experienced between 1960 and 1970.

I am almost certain to be misunderstood on

this. Bear with me please; don't assume that I have finally taken leave of my senses. I hope index crimes increase. Increases may be associated with better crime control; in fact, I think they would be. Give me five minutes before you finally conclude that I am crazy.

FIRST, LET ME define index crime. It is the reported and recorded index of serious crime which J. Edgar Hoover collects in the Uniform Crime Reports, which is the best collection of statistics on crime that we have, though it is used by his organization primarily for budgetary purposes. Index crimes are willful homicide, forcible rape, aggravated assault, robbery, burglary, auto theft, and larceny over fifty dollars. Of course, I do not want behavior like that to increase, so don't think I'm in favor of it when I say I hope that the index crime rate goes up.

Let me make an international comparison and then a local comparison over time. Internationally, index crime rates in America are grossly higher than in Western European countries, indeed than in most countries. As a dramatic example, there are more murders and nonnegligent homicides in the Borough of Manhattan than in the United Kingdom. There are of course vastly more murders in the City of Chicago than in the United Kingdom, and you can do your own population rate comparisons. Crime involving violence to the person is running about seven to eight times as high in the United States as in most other industrialized countries. There are a few banana republics, and occasionally Ceylon, in great heat and turmoil, which have index rates of violent crime comparable to America, but it is a relatively rare phenomenon. This has been true certainly throughout this century, and led Hawkins and me in *The Honest Politician* to the treasonable reflection that, to the student of international criminal statistics, Amer-

ica may or may not be the Land of the Free, but she is most certainly the Home of the Brave.

I'm suggesting that crime in America in this century at least has been endemic, and that it cannot be regarded as a crisis phenomenon. Let me make some slightly more sophisticated propositions about the 1960 to 1970 gross and rate increases in reported index crimes, of the nature of who the criminals are, where they are, and how those facts connect with likely future index crime rates. Who are the criminals? How old are index criminals? A few of you within the room might be within the crime-prone years (apart from the electrical heavy industry type of case), but unhappily, not many of us. Index criminals are aged between about 15 and 24. They always have been and are, in all countries. Last year three-fourths of all arrests for index crime were of people under 25. Essentially then, that ten-year group grossly, disproportionately accounts for index crime.

Well, what happened to the 15- to 24-year-olds in the decade 1960-1970? The 15- to 19-year-olds increased by 45 percent, the 20- to 24-year-olds increased by 56 percent. There was a total increase in these age groups in this decade of over 50 percent, at the time of a much lower national increase of total population. If you think of population as rising evenly with all the age groups, you miss the point. You have to think of the age structure of population if you wish to understand crime problems, turmoil-in-university problems, the increasing turmoil in many of our schools, and much else about our society. The National Crime Commission in 1967 was of the view that 50 percent of the increase in index crime over the 1960-1967 period was accounted for by this fact alone—the changing age structure of the population.

Where are the criminals? They have always

been in the same areas, the cities, particularly the inner city areas, no matter what racial groups migrated to, lived in, and moved out of those areas. Index criminals remain disproportionately in city areas, though the greatest rates of increase are now to be found in suburban areas. There are other reasons for that. Between a town of 20,000 and a city of a quarter of a million, you expect factorial differences of ten or more in index crime rates. Or put in another way, last year, out of nearly 4.5 million index crimes known to the police, over 4 million occurred in what are categorized as cities.

The greatest migration that I suppose the world has ever seen took place in America, did it not, throughout the first 70 years of this century, changing the country from a balanced, rural-urban to an urban economy. The cities-the inner cities-have always produced higher crime rates. The larger we build the cities, the more people we keep in them, without any change in human behavior-assuming constancy in human behavior-the higher our index crime rates.

NOW ALL of these figures are about reported and recorded index crime. They're not about index crime in its totality. That's a central point. The reporting of crime may be a function of fear of crime. And fear of crime is a function not of rate but of the incidence of known criminal events in your neighborhood. Let me try to make this more concrete. If we had to spend a week in this room-I promise not to talk that long-there might be amongst us, despite the excellence of this audience, two or three curmudgeons, unattractive chaps that would be annoying to be near; there might even be one or two a bit on the violent side. And we would have a curmudgeon rate. Well if, God forbid, the total number of us were doubled and we had to spend a week here, the

curmudgeon rate of X would probably remain constant, but this would be a much more miserable place to live in for that week. As you increase the number of people in a neighborhood, and communications about events of crime in the neighborhood pass through that neighborhood, so fear increases. Incidence of crime, particularly locally known criminal events, and not rates, determines the fear of crime.

Our best information, and it is quite hard data, is that less than 50 percent of all index crime is reported to, or known by and recorded by, the police. That is, less than half of the serious crime we are talking about. For some crimes and in some places the figures are, of course, even lower; in Woodlawn, for example, it is reasonably clear that fewer than one in three of all knife woundings are reported to the police. Index crime rates thus are at least in large part a function of community expectation, of community confidence in our agencies for catching and processing criminals. So those of us working in the criminal justice system face this dilemma: *The better we do, the more likely we are to have people relying on us, and the higher will be reported index crime rates.*

All I can conclude from a statement that crime in Washington has dropped by 5.2 percent is that it may or may not have; there are too many confounding variables that we do not know about. But index crime rates probably measure community attitudes toward law enforcement more than the incidence of crime itself.

Insurance is said to have somewhat of a confounding effect on crime rates, as does inflation. Of course if you are insured, you will report a burglary, assuming that it has occurred—you might even if it hasn't—but if you're covered, you'll report it. So it may be that as we extend insurance coverage, and I

hope we do, we'll tend to increase reporting, and while crime may not be worse, it will appear worse.

WHAT I AM really saying is that I doubt that uniform crime statistics are a particularly sound measure of changes in human behavior. I think what is more likely to be the case is that human criminal behavior in America is much the same as it has been throughout the century. Does that say it is not a serious problem? I certainly don't mean to be saying that. I think it is a more serious problem than it has been in the past. Let me briefly say why. I believe fear is increasing; I believe community expectations are increasing. We are promising more; we had better deliver. I think there is increasing political polarization, increasing racial conflict. When you blend these increasing social tensions with our traditionally high crime rates, you have what seems to me a volatile mixture, and we face a problem that is not capable of any quick or easy resolution.

I suppose the first part of wisdom is to realize that we are not going to make any dramatic breakthrough. I am going to be arguing later—not too much later, you will be relieved to learn—that our greatest lack in this area is in the skills that America claims, I think more than any other country, namely, efficiency and business know-how. Perhaps the leading characteristic of our approach to crime and the criminal is its inefficiency, its lack of systems planning.

I'll try to develop that, but I would submit to you as a second major point that we've known what to do about crime for a long time. The Wickersham Commission of 1931 was an excellent commission and gave wise guidance which has been ignored, It was virtually repeated by the Katzenbach Commission of 1967, and several of the major themes of the

Katzenbach Commission were repeated in the Kerner Commission and in the Eisenhower Commission on riots and violence, respectively.

There is one central, liberating principle that will do more than anything else to improve the criminal justice system in America. I don't think it is a side wind, though it may at first appear so to you. I think the questions we should constantly ask are: "What is the criminal law good for? What are police, courts, and corrections good at?" At present we give them a great deal too much to do. We persevere in using the criminal law, not for its major purposes, not to protect us against violence or the threats of violence, nor to protect our property against major depredations, nor to protect governmental processes (that is about all I think the criminal law is good for), but we keep using it for a whole lot of what might be called salvation schemes.

LET ME PUT that another way: There are about six million arrests per year in America; I think three million of them should not take place. They are a complete waste of government money and time, and achieve no community protection. The areas I have in mind are public drunkenness, much of the control of narcotics and drug abuse, most gambling, much disorderly conduct and vagrancy, a swath of sexual crimes, and about half of the juvenile court's jurisdiction, particularly over neglect, truancy, incorrigibility and other noncriminal behavior of youth.

As a general rule, whenever the criminal law goes into the salvation business, it is inept. It seems to me that an adult, at least so far as the criminal law is concerned, has an inalienable right to go to hell in his own way, and whenever the criminal law seeks to deny that inalienable right, we pay huge collateral costs. The statutes of this country, with its very high crime rate, seek to prohibit more human be-

havior than any list of criminal prohibitions since Calvin exercised some control in Geneva.

Let me offer some reasons why I think we are unwise in this. First, our criminal prohibitions are ineffective; I do not believe there is a larger proportion of saints and a lesser proportion of sinners in American society than in any other. My experience, for what it is worth, is that the mixture is about the same in every country.

I don't think sexual behavior has been rendered more confined and circumspect in America by virtue of our extensive criminal sanctions on bedroom behavior. It would surprise me indeed if there were much less gambling in America than in other countries that do not prohibit gambling. By and large, the prohibitions are ineffective; they don't make much difference except for the question of who will take the profits of gambling.

WHAT WE ARE really discussing in the three million arrests, in many of them at least, is the creation of a black market. Whenever we create a black market, somewhat the same processes follow. In the supply of goods or services—like narcotics, gambling, prostitution—criminal law operates as a crime tariff; it makes the supply of such goods and services more profitable, drives up prices, and tends to keep out decent competitors, such as the state in running a lottery. It gives rise to large-scale organized criminal activities.

Further, it is impossible to regulate behavior that you *prohibit*. You can only regulate behavior that you seek to license and control; prohibition precludes regulation. Also, one of the effects of our insistence upon using the criminal law as a moral reclamation-salvation mechanism is to bring great corruptive pressures to bear on politicians and on the police. I am, as you will have recognized already, a person of great moral virtue and strength of

character. Despite these sterling qualities, I have concluded that, certainly in my younger years, it would have been unwise to leave me on a vice squad for any period in excess of a year. I may have succumbed. And you would have too; you would have too. Because, you see, you may not share the view of the law that much of the behavior that you were seeking to regulate was socially harmful. You would probably have thought it was not as important as other things you had to do, such as protecting people's persons and their property, and you would know that you couldn't enforce all this law, you could only enforce it partially. Given that you could only enforce it partially, why not do it discriminatingly? I had better not develop the argument any further; I'm in enough trouble already.

There are collateral difficulties, of a constitutional nature. In this area of law there is no citizen saying, "I have been injured-protect me." There is no complainant. Absent a complainant, the police work and the work in the court is very much more difficult; hence most of our constitutional problems of search and seizure have turned on this area of "victimless" crime.

Also, this use of criminal law is on a racial basis. One statistic should be enough. Last year, as a rate, for every white arrested for gambling, 24.86 blacks were arrested for gambling. Does anyone think that figure measures the difference in gambling behavior between blacks and whites? It appears that we don't object to gambling, but to certain types of gambling, by certain types of people, in ways of which we disapprove.

THIS APPROACH to the problems of crime is irrelevant; it is a cop-out in the language which some of the students use when I can understand them. This is not the crime that people fear. It is crime in the streets and in

their houses that people fear. And if you are not really prepared to do much about crime in the streets and in the houses, why not launch an attack of gambling? Mount a war on smut? A march against marijuana? These are admirable things to do politically and both political parties do them. I'm not making a partisan political point, and I hope that you don't think I'm saying that gambling, drugs, and public drunkenness are not important. They are, but the criminal law is a futile instrument to deal with them, and they distract us from the central questions: Can you walk safely in the street? How much must you pay to protect your premises?

I have another theme to develop fairly briefly, I promise you. It is this question of efficiency. Suppose that we liberate criminal justice, free the police, the courts, and the correctional system from this clutter of irrelevance? It is beginning in such areas as abortion and gambling; and New York, St. Louis, and Washington are doing some interesting experiments with the nonpolice handling of public drunkenness. There is movement; it is possible that within a decade we will have got much or most of this irrelevant mass out of the criminal law.

Now what does the rest of the system look like? Well, let me try to give you some pictorial feeling from the Eisenhower Commission on violence. Assume index crime-and you know what that is-is 100 in America. I've already told you, and it is a hard figure at best we can get, we record 50 of the 100 index crimes. How many do you think we arrest? I don't want to play a guessing game: Twelve. How many do we convict? Six. How many do we send as a punishment to prison or jail? One point five. In this country we send people to prison for a long time-when **we catch** and convict them. But we don't catch and convict very many. The system's leading

characteristic is its inefficiency. Not severity nor leniency, which are the usual arguments. It is inefficiency. We so rarely do any system planning in this field.

At the present moment, grossly unbalanced monies are going to the police area. Now I think that the police are by far the most important players in the criminal justice system; I think nothing could be more important than improving their training, their conditions of service, their organizational structure, providing for lateral entry, and many other very important developments, but the hard fact of the matter is that we can't efficiently process the number of cases that they are catching now. The blockages lie in the courts, jails, and correctional processes. And until we start realizing that this system has interfaces-which is old stuff to you people, I know, but doesn't seem to be recognized in criminal justice-we can't plan very rationally. Lawyers spend a great deal of their time turning their attention-and I'm glad they do-to protection of individual liberties against the police power of the state, criticizing police and state institutions. The fact of the matter is that our legal charity should begin within our own bailiwick, which is the city courts of first instance. In many cities there is a year's delay in a felony trial. Think about that! A delay of a year on a felony trial!

ONE OF THE HOPES for the future is the considerable leadership that Chief Justice Warren Burger is now manifesting in trying to turn lawyers to court reform and to efficient judicial administration. But we've got to start developing understanding of data analysis, of feedback, of planning for an overall system.

I think that in these matters we shall require the skills of the businessman, and possibly some reordering of the tax allocations from the businessman, if we are to succeed.

Let me now turn to the matter of the cost of crime. There is a lot of loose talk in this area. The estimates are wild. The range runs from 100 million dollars to 22 billion dollars; the latter is the FBI's estimate, you will not be surprised to know. It means nothing. It adds together a whole host of incommensurable costs. It aggregates such costs as the fees paid for illegal abortions, potential earnings of prisoners, actual earnings of policemen, money spent on burglar alarms, value of property stolen, moneys gambled, and so on and on. Of course, the property still exists; we should be concentrating on system and transfer costs. Theft, after all, is just another way of distributing property. And I'm not sure it always represents a loss to the community. We are so unsophisticated, so moralistic when we assess the costs of crime. One clear cost, however, is what the crime control system costs us; another is how much private enterprise spends on private protection. On that I'd like to quote the Chief Justice, that "American citizens and businesses spend more than 2 billion dollars a year on private security and crime control." He comments, "Aside from the ominous implications of private policing in a free society, just think what 2 billion dollars could do for public programs to prevent crime and enforce laws." And he says, "That's where such support belongs." Well, that is worth thinking about.

THE QUESTION IS, how much of our effort in better protection of citizens should be handled through governmental collective processes and how much privately? My own view is that we do not spend enough in collective protection, and we tolerate administratively Balkanized public protection at a very unwise level. For example, there are over 40,000 federal, state, and local police forces in America. From where you now sit, draw a circle of 50-mile radius,

a lot of which is lake; within that circle there are 120 police forces independently functioning. If you want, we'll argue about how many there should be, but certainly there shouldn't be 120. Nor 40,000 in the country at large.

Then one wonders, how much private money should be put into private protection? In that connection, a recent experiment might interest you. In Cedar Rapids, Iowa, monies have been put into allowing the police to use burglar alarm systems, not to protect the premises at the choice of the businessman who invests in the equipment, but rather at the police choice with the purpose of catching burglars. Protecting premises and catching burglars are quite different purposes. Instead of buying burglar alarm equipment to ring or summon when the premises are broken into—which is perfectly legitimate—larger firms might find it economically wiser to put funds into supporting police stake-outs. In Cedar Rapids the police were allowed to choose the establishments to be protected, silently, and these turned out to be gas stations, taverns, groceries, and small stores that might not otherwise be covered by alarm systems, or at least by good ones. They arrested more burglars in Cedar Rapids last year than in the four previous years combined. In quite a brief time, catching more burglars proved to be more effective protection of premises.

I don't want to make any big case on this experience, but it seems to demonstrate that we need more systems-analysis planning in this area. It had been hoped that the Law Enforcements Systems Administration, with 500 million dollars last year and 700 million under the next budget, could contribute to this. I still have hopes they may. But I must say that there has been inefficiency. There has been an excessive investment in police at the cost of courts and corrections, and there have been other imbalances. But I do have hope. I

am encouraged by the observable movements towards reducing the role of the criminal law -to concentrate its force on what is socially important. And I am encouraged by some initiatives in allocating funds, federal and state, towards better systems planning for crime control.

Crime is significant to life in this country, particularly in our burgeoning cities and suburbs. Of course, in a cosmic sense, it doesn't matter very much. People have great capacity for suffering. We all have great ability to endure the sufferings of others. But if it be desired to reduce suffering from crime, the path is reasonably clear. Relying on the work of many others, *The Honest Politician's Guide to Crime Control* charts some of the courses to be followed. And an application of the traditional American virtues of efficiency, human decency, and business know-how would greatly expedite the journey.