Charles E. Silberman

CRIMINAL VIOLENCE, CRIMINAL JUSTICE

"ONE OF THE MOST THOROUGH AND PROVOCATIVE STUDIES EVER MADE OF CRIME IN AMERICA."—*Newsweek*

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For Arlene
Who paid the price
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Criminal Violence, Criminal Justice

Crisis in Black and White

Crisis in the Classroom

The Open Classroom Reader

Criminal Violence, Criminal Justice

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The Washington Post: Excerpt from July 7, 1976, Column by William Raspberry, entitled "Victimism."

Foreword

The only way to get through the newspaper each day, Russell Baker once wrote, is to ask, "Is this crisis really worth understanding?" Most of the time the answer is no; in the rush of daily journalism, it is difficult to distinguish the important from the merely urgent.

I have tried to make that distinction. Few social problems are more important—or more enduring—than that of criminal violence. Except for race, with which American criminal violence has always been intertwined, it is hard to think of a problem that evokes such intense and often ugly emotions or that is surrounded by so much misinformation and misunderstanding. As I discovered over and over again during my research, most of what is believed about crime and about the criminal justice system is false or irrelevant.

My goal is not simply to correct errors and clear up misunderstandings; it is to change the way Americans think about criminals and crime and about the operation of our system of criminal justice. This, in turn, means changing the way Americans think about race, ethnicity, poverty, and social class; about the police, juvenile and adult courts, and prisons and jails; and about such questions as justice, punishment, and deterrence. It would be feckless to expect everyone to agree with me; my hope is that all will find my meaning clear,

and that those who disagree will feel obliged to come to terms with what I have to say.

My use of the first person singular is deliberate; few publishing conventions are sillier, or more misleading, than the one whereby writers substitute "we" or "this writer" for the pronoun "I." As Joan Didion points out, writing is "the act of saying *I*, of imposing oneself upon other people, of saying *listen to me, see it my way, change your mind.*" Given that fact, readers are entitled to know who is speaking to them, and from what perspective; for objectivity is impossible. A writer must select what to write about, and that process of selection necessarily involves judgments about what does and does not matter. To seek total objectivity is to condemn oneself to Sisyphus' fate.

But if objectivity is beyond reach, honesty and fairness are not. To attain them, writers must be conscious of their own biases, and they must be as ruthless in puncturing their own pieties and preconceptions as they are in stripping away the cant of others. For me, it has also meant trying to avoid the trap into which all too many contemporary liberals have fallen in discussing crime and violence: that of becoming, as George Orwell wrote of Jonathan Swift, "one of those people who are driven into a sort of perverse Toryism by the follies of the progressive party of the moment." In that effort, I have been helped by the discovery that the follies of the right are at least as great as those of the left.

To say that this book is my personal statement is not to imply that I worked alone or unaided. My debts are many and profound. I could not have written this book without the generous support of the Ford Foundation. By creating and funding (and renewing and renewing) The Study of Law and Justice, the Foundation made it possible for me to devote more than six years to research and writing, with the help of an able and dedi-

cated research and administrative staff; for this I am deeply grateful. I am even more grateful to Mitchell Sviridoff, Vice President, National Affairs Division, and McGeorge Bundy, President of the Ford Foundation, for their unfailing encouragement, understanding, and moral support; for their tolerance of missed deadlines and their willingness to renew my grant more times than I (and I suspect they) care to remember; and most of all, for giving me complete freedom and autonomy to follow my scholarly and journalistic instincts wherever they took me. Nor is that all: Mr. Sviridoff was always available for advice and counsel; he provided assistance and extended friendship in countless ways. I owe appreciation as well to Sanford M. Jaffe, Officer in Charge, and R. Harcourt Dodds, Program Officer, Government and Law, for their continuing assistance and support, and to Helen Kecskemety and Arlene Feder of the Foundation's Division of National Affairs, for solving innumerable problems that would have loomed large without their sympathetic help.

I have also had the privilege of working with an Advisory Commission chaired by Judge Shirley M. Hufstedler of the U.S. Court of Appeals and composed of other distinguished jurists, legal scholars and practitioners, sociologists, and experts on the police, courts, prisons, and corrections. The Commission convened as a formal body for two-day meetings with me and my research staff at several points during the study; Commission members also read and commented on various drafts of the book. By appointing a Commission with powers of advice but not consent, the Ford Foundation gave me the best of both worlds; I received all the benefits of the Commission members' wisdom and expertise, without any of the inhibitions and restraints inherent in writing a committee report. I am profoundly indebted

to Judge Hufstedler and the Commission members: the Honorable Barbara Babcock, Assistant Attorney General, Civil Division, and former Professor of Law, Stanford Law School; Paul Bator, Professor of Law and former Associate Dean, Harvard Law School; The Honorable George Crockett, Chief Judge, Recorder's Court, Detroit, Michigan; Alan Dershowitz, Professor of Law, Harvard Law School; Lolis Elie, Esquire, New Orleans; The Honorable Wilfred Feinberg, U.S. Court of Appeals; Richard Green, Esquire, Washington, D.C., former Deputy Director, Federal Judicial Center; the late Harry Kalven, Jr., Professor of Law, University of Chicago Law School; Reverend Dr. Pauli Murray, Virginia Theological Seminary, former Professor of Law, Brandeis University; Patrick V. Murphy, President, The Police Foundation, Washington, D.C., and former Police Commissioner, New York City, Detroit, Washington, D.C., and Syracuse, New York; William G. Nagel, Executive Vice President, The American Foundation, Inc., and Director, the American Foundation Institute of Corrections; Lee Rainwater, Professor of Sociology, Harvard University; The Honorable Cruz Reynoso, Associate Justice, California Court of Appeals and former Professor of Law, University of New Mexico Law School; Dr. Jonathan Rubinstein, Project Director, The Policy Sciences Center, Inc., New York City; Herman Schwartz, Esquire, Chief Counsel—Revenue Sharing, U.S. Department of the Treasury, and former New York State Commissioner of Corrections; and Melvin M. Tumin, Professor of Sociology, Princeton University, and former Cochairman, Task Force on Crimes of Violence, National Commission on the Causes and Prevention of Violence. I shall always be grateful to them for their collective friendship, criticisms, advice, and support.

I am even more indebted to Commission members as

individuals. Despite a mind-boggling schedule and unending demands on her time and energy, Shirley Hufstedler was always available for counsel and help. She prodded me when I needed prodding, encouraged me when I needed encouragement, and offered invaluable comments on every draft of every chapter. In addition, Judge Hufstedler chaired every Advisory Commission meeting with unerring grace and tact. Evoking the best in everyone, she turned an assemblage of individuals with diverse interests, backgrounds, personalities, and points of view into a closely knit group that became considerably more than the sum of its individual members. She gave unstintingly of her wisdom and insight and, most important, of her friendship. This book owes much to her and is far better because of her.

The book is better, too, because of Melvin Tumin's sociological imagination, editorial judgment, and friendship; his detailed critique of the first half led me to rearrange some chapters and modify my polemical stance. The book could not have taken its present shape without the friendship, counsel, and example of Herman Schwartz, William Nagel, and Lolis Elie, who shared their encyclopedic knowledge of courts, prisons, and prisoners and their passionate hatred of injustice in all its forms. Barbara Babcock and Cruz Reynoso provided important insights derived from their experience representing black, white, and Hispanic defendants in the East, West, and Southwest. Wilfred Feinberg, a faithful critic and good friend, contributed far more than his modesty permits him to acknowledge. I learned much, too, from Jonathan Rubinstein, who generously shared the fruits of his pioneering research on organized crime and political corruption, as well as his intimate knowledge of policing. My chapter on the police gained clarity and focus when Patrick Murphy criticized an earlier draft from the unique perspective he

has acquired as police commissioner in four cities and now as a national leader in the movement for experimentation and reform. Pauli Murray offered a unique perspective of another kind, gained from her varied career as community organizer, civil-rights activist, feminist, poet, practicing lawyer, legal scholar, and now Episcopal priest. Paul Bator and Alan Dershowitz forced me to confront questions I would have preferred to duck. George Crockett and Richard Green shared their intimate knowledge of the judicial process. Before his untimely death, Harry Kalven, Jr., graced Advisory Commission meetings with his presence, as well as through his wide-ranging knowledge of the law; what made his scholarship so significant was that it grew out of his qualities as a human being. Everyone who worked with Harry was enriched by the experience and is the poorer for his absence.

Although not formally members of the Advisory Commission, David and Ellen Silberman, members of the District of Columbia Bar, attended all meetings and served as de facto members as well as unpaid research associates. Despite the grueling pressure of law school and law review, clerkships, and law practice, they commented on every progress report to the Commission and every draft of the book with wit, wisdom, and imagination, together with painstaking attention to detail. They corrected errors of tone and substance, uncovered repetitions and contradictions, called my attention to innumerable articles from law reviews and other scholarly journals, and conducted a running dialogue on a number of major issues discussed in the book. Their thoughtfulness, erudition, and good judgment, as well as their filial love and devotion, are evident on every page.

I could not have written this book without the help of my colleagues on The Study of Law and Justice. For

three and a half years, my wife, Arlene Silberman, put aside her own career as a writer to serve as Chief of Research, at great personal sacrifice. Her insistence on seeing live human beings behind labels such as juvenile delinquent, status offender, probation officer, guard, and judge; her ability to establish rapport with people individually and in groups, within institutions and without, and in positions of authority and subordination; and her insight into how institutions operate (as opposed to how they are supposed to operate) and how they affect the people (especially the young people) caught up in them helped shape the direction of the research and the tone and emphasis of the book. Her contribution is most direct in Chapters 4, 9, and 10. I am deeply indebted as well to Richard D. Van Wagenen, Esquire, a wise, resourceful, and indefatigable Research Associate. His analyses of the scholarly literature on the operation of the criminal justice system and on the relationship between drug addiction and crime added breadth and depth to the book; his field studies of the police, prosecutors' offices, public defender services and the private bar, plea bargaining, and the judicial process were even more valuable and formed the basis for Chapters 7 and 8. Given the range of help Mr. Van Wagenen and Mrs. Silberman provided, identifying each specific contribution would have made my prose awkward or unduly cluttered with footnotes. Since their research has been filtered through my consciousness and in some instances used for conclusions they did not reach or for arguments with which they may not agree, I have merged their voices with mine. In addition to this general expression of gratitude, therefore, I have acknowledged their assistance at the beginning of each chapter in which their research played a significant role.

None of us worked in a vacuum; what we accom-

plished was due, in good measure, to the fact that my administrative assistant, Doris Preisick, smoothed so many paths for us. She organized and coordinated Advisory Commission meetings and ran the office, which meant, among other tasks, locating out-of-print publications, borrowing books and periodicals from libraries throughout the metropolitan area, and ordering (and keeping track of) subscriptions to countless journals, Ms. Preisick also kept the books and husbanded our funds with meticulous care, and prepared detailed quarterly financial reports to the Ford Foundation. In addition, she performed the prodigious task of simultaneously typing three progress reports and countless drafts of the book with great accuracy and speed while correcting my spelling, grammar, and syntax and calling my attention to contradictions, repetitions, and obscure or garbled passages. I was able to finish the book because Norma Wolbert, my present administrative assistant, learned with astonishing speed how to decipher my partially typed, partially handwritten, and wholly illegible copy. She typed the final draft quickly and accurately, and assumed responsibility for a host of administrative chores with unfailing good humor and aplomb.

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This book is dedicated to my wife, Arlene Silberman,