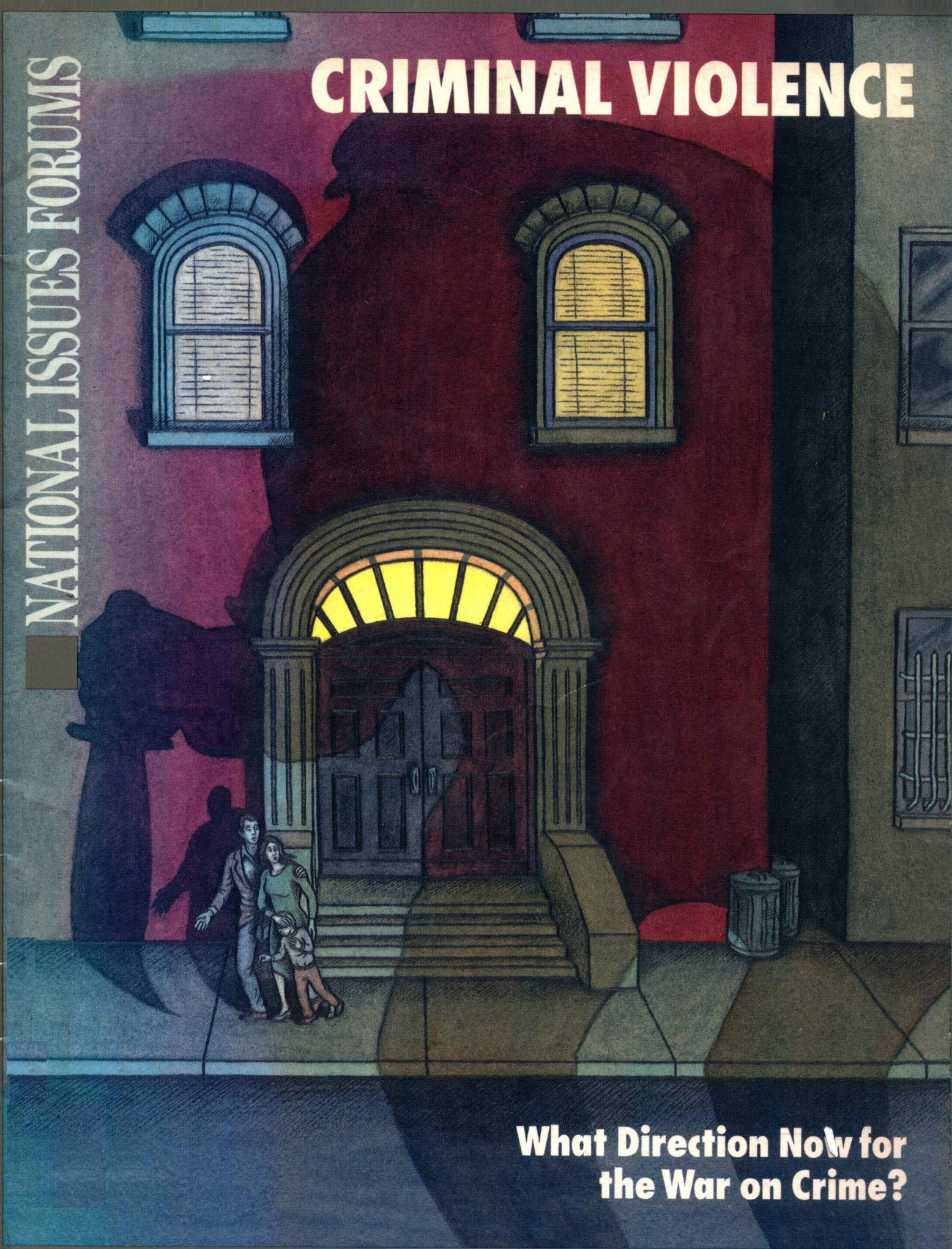


NATIONAL ISSUES FORUMS

# CRIMINAL VIOLENCE



**What Direction Now for  
the War on Crime?**



# NATIONAL ISSUES FORUMS

**E**lected officials and candidates for public office are never so attentive to the public's concerns as during a presidential election season. As pollsters probed public attitudes in 1992, one issue came out near the top of almost every list of public concerns. The American public is clearly worried about crime and wondering what should be done about it.

According to a recent ABC news poll, almost 6 in 10 Americans say they often worry that their children, their spouses, or they themselves will be a victim of violent crime. Throughout the country, according to a poll conducted for the National Victim Center, a majority says that crime is more of a problem in their community than it was a decade ago. It comes as no surprise that, in a survey conducted for the Conference Board, almost 8 in 10 people agreed that crime is one of the nation's most serious issues.

As Senator Bill Bradley said, in remarks delivered to the Senate in March 1992, "If you were to select the one thing that has changed in the cities since the 1960s, it would be fear. No place in the city seems safe." Indeed, fear of violent crime is now felt in many American communities, whatever their size.

While there is widespread support for doing more to combat crime, no consensus exists about what course of action is most promising. Different ideas about what to do have been clearly apparent in the debate over a comprehensive anti-crime package in Congress. At the basis of that contentious debate are fundamental questions about the causes of violent crime, the uses of incarceration, the promise and practicality of new sentencing alternatives, and the rules that apply to police as they obtain evidence and apprehend criminals. Our purpose is to examine these questions, to encourage public debate about them, and seek common ground about which approach is most promising as a way of stemming the tide of criminal violence.

This book is intended to encourage the kind of public talk that is an indispensable ingredient in the democratic process — the kind of talk that is especially rare about so emotional a topic as crime. In a deliberative democracy, there must be occasions in which people come together to learn about pressing issues and engage in dialogue about matters of common concern. The National Issues Forums (NIF) — locally initiated forums and study circles in which citizens come together to learn about pressing issues and engage in dialogue about matters of common concern — provide a place for the practice of citizenship.

Each year, three issues are addressed in the Forums. Since productive discussion requires a common framework and a certain familiarity with the issues, books such as this one are prepared on each topic. By presenting several perspectives on each issue — we refer to these viewpoints as "choices" — these books are intended as a catalyst for discussion.

After the Forums convene each year, the NIF meets with policymakers to convey the outcome of the discussions. So that we can pass along your thoughts and feelings about crime and criminal justice, I urge you to fill out the ballots in the back of this book, and mail them to us. This book, like the others in this series, is a guide to one of the nation's pressing issues and an invitation to engage in public discussions about it.

---

**Managing Editor:** Keith Melville

**Writer:** Keith Melville

**Research:** Bill Carr

**Editor:** Betty Frecker

**Ballots:** Stephen Immerwahr,  
Steve Farkas, Randa Slim

**Production Manager:**

George Cavanaugh

**Designer:** Sundberg & Associates Inc

**Circulation Coordinator:**

Victoria Simpson

**Cover Illustration:** David Gothard

**Formatting:** Office Solutions

**Graphic Research:** Bill Carr

**Boxed Features:** Bill Carr

**Production Director:** Robert E. Daley

---

The books in this series are prepared jointly by the Public Agenda Foundation — a nonprofit, nonpartisan organization devoted to research and education about public issues — and by the Kettering Foundation. They are used by civic and educational organizations interested in addressing public issues.

In particular, they are used in local discussion groups that are part of a nationwide network, the National Issues Forums (NIF). The NIF consists of thousands of civic and educational organizations — colleges and universities, libraries, service clubs, and membership groups. Although each community group is locally controlled, NIF is a collaborative effort. Each year, convenors choose three issues and use common materials — issue books such as this one, and parallel audio and videotape materials.

Groups interested in using the NIF materials and adapting its approach as part of their own program are invited to write or call for further information: National Issues Forums, 100 Commons Road, Dayton, Ohio 45459-2777. Phone 1-800-433-7834.

This edition is published by McGraw-Hill, Inc., 1221 Avenue of the Americas, New York, New York 10020. For information or phone orders, call 1-800-338-3987. Four other titles are available in this series:

*The Health Care Crisis: Containing Costs, Expanding Coverage*

*Energy Options: Finding a Solution to the Power Predicament*

*The Boundaries of Free Speech: How Free Is Too Free?*

*America's Role in the World: New Risks, New Realities*

*Criminal Violence: What Direction Now for the War on Crime?*

Copyright © 1993 by McGraw-Hill, Inc.

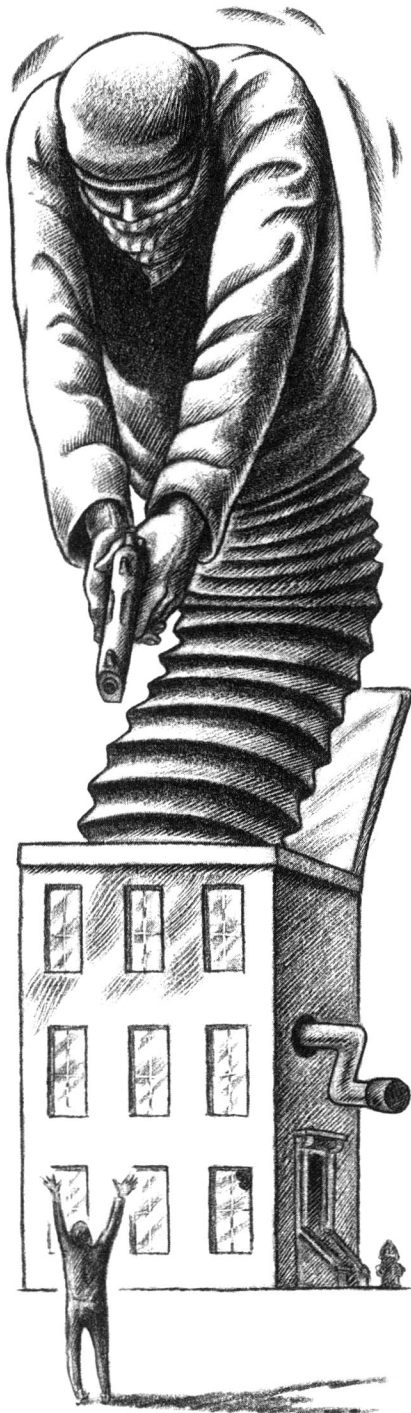
All rights reserved.

ISBN 0-07-051081-4

# CRIMINAL VIOLENCE: WHAT DIRECTION NOW FOR THE WAR ON CRIME?

PREPARED BY THE PUBLIC AGENDA FOUNDATION

## CONTENTS



### **Epidemic of Violence: New Ferment over Crime and Punishment**

4

At a time when fear of crime pervades American life, there is deep discontent with the criminal justice system and its inability to stem the tide of violence. But no consensus exists about the best way to come to grips with the problem.

### **Choice #1 Deterrent Strategy: Getting Tougher on Criminals**

11

Serious crime is committed more frequently today because many people believe they can get away with it, or get off easy. The most promising solution is to get tougher with all criminals, to make it clear that violent acts will not be tolerated.

### **Choice #2 Preventive Strategy: Attacking Crime at Its Roots**

21

To deal with crime, we must recognize its social roots. The harshness of American society provides a breeding ground for crime, and the corrections system does little to get offenders back on the right path. What is needed is a broad effort to prevent crime.

### **Choice #3 Selective Incapacitation Strategy: Targeting the Violent Few**

30

A large part of the crime problem is caused by a small number of repeat offenders. The best way to come to grips with violent crime is to focus enforcement efforts on career criminals, and impose harsh sentences to keep them from committing additional crimes.

### **Verdict on Crime Control: You Be the Judge**

38

A new consensus is needed about which strategy is most promising, what costs we are willing to pay, and what trade-offs we are willing to accept. Our response will determine whether American society becomes safer, or even more fearful and crime-ridden.

### **For Further Reading**

### **Acknowledgments**

### **National Issues Forums**

### **Ballots**



# EPIDEMIC OF VIOLENCE: NEW FERMENT OVER CRIME AND PUNISHMENT

“At a time when fear of crime pervades American life, there is deep discontent with the criminal justice system and its inability to stem the tide of violence. But no consensus exists about the best way to come to grips with the problem.”

**V**iolent crime — rape, robbery, assault, and homicide — is an all-too-familiar feature of American life, a staple item in newspapers and TV news. Day after day, the papers are filled with stories

about a teenager who stabs another over a pair of Nikes, or an innocent bystander who is killed by gunfire in a turf battle between drug dealers. No matter where you live in the United States, TV news shows routinely begin with live coverage from the scene of some crime — a brutal rape or an attack on a locally prominent figure who is robbed at gunpoint. The fact that so many of these incidents appear senseless and unpremeditated adds to our fear that they may be repeated, randomly and irrationally, even closer to home.

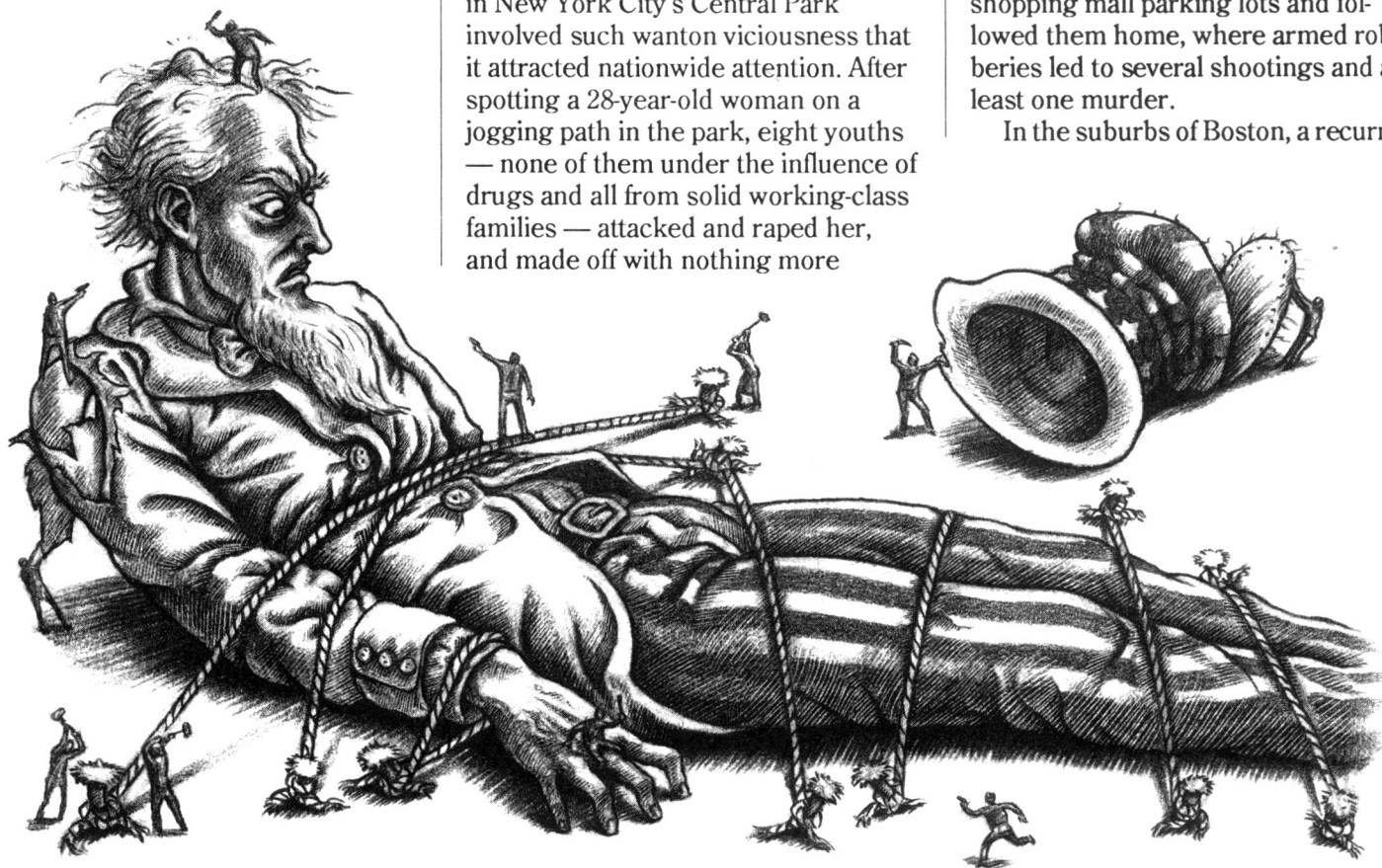
In 1989, an incident that took place in New York City's Central Park involved such wanton viciousness that it attracted nationwide attention. After spotting a 28-year-old woman on a jogging path in the park, eight youths — none of them under the influence of drugs and all from solid working-class families — attacked and raped her, and made off with nothing more

than the sandwich she was carrying. After bashing the woman with a rock and a 12-inch metal pipe, they left her for dead.

Although New York City has long had more than its share of violence, every region of the country has its tales of violent crime. Late in 1991, news accounts in Washington, D.C., featured the case of “Little Man” James, who was arrested for murder. On the night of the murder, James was driving along an inner-city street with friends, one of whom testified that James said he felt like “busting someone.” So he took out a gun, shot at a passing car, and killed a 36-year-old woman.

In Houston, where victims of a series of attacks were chosen by the expensive watches they wore, news accounts were filled for months with details about the “Rolex Robberies.” Thieves picked out their victims in shopping mall parking lots and followed them home, where armed robberies led to several shootings and at least one murder.

In the suburbs of Boston, a recurring





news story features what police call "home invasions." Armed with automatic weapons and machetes, gangs of young Asians invade the homes of prominent Asian businessmen, terrorize them and their families, and rob them of cash and jewelry.

While violent crime has long been a feature of urban life in large cities such as New York, Washington, D.C., Houston, and Boston, according to FBI statistics it is increasing most rapidly in suburban areas and middle-sized cities. Austin, Texas, for example, was traumatized in 1991 by the "Yogurt Murder." During a robbery that took place in a frozen yogurt shop on December 6, 1991, four teenaged girls were shot and burned beyond recognition.

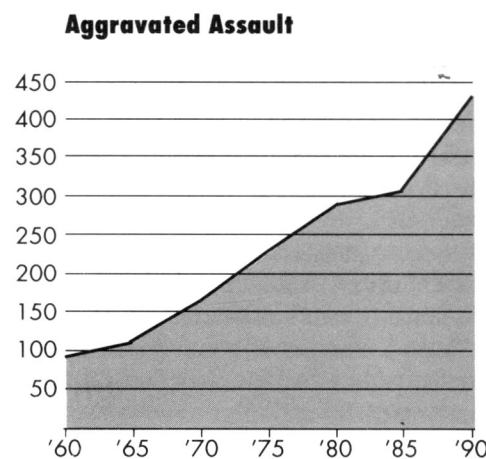
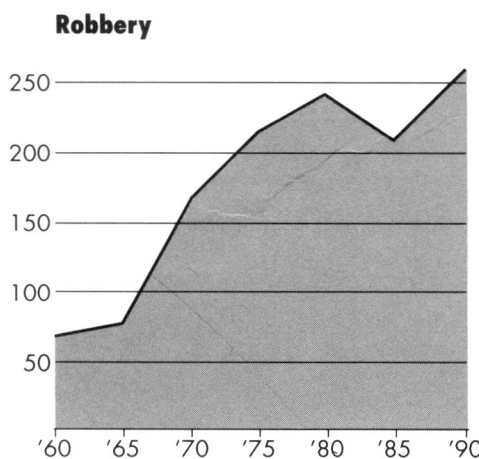
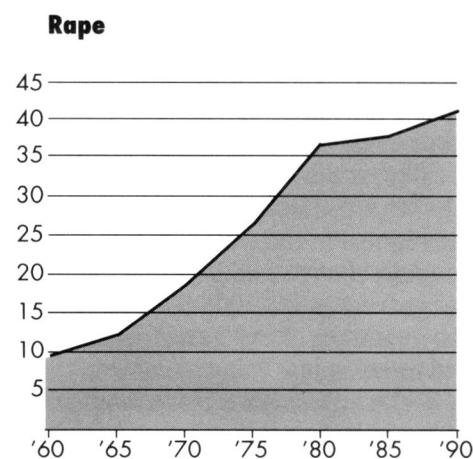
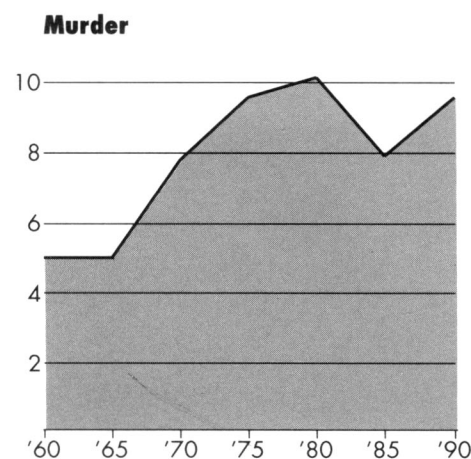
In Charlotte, North Carolina, a mid-sized city that until recently had a fairly low rate of violent crime, residents and city officials worry about the fact that 115 murders took place during 1991, a new record. For the first few months of 1992, Charlotte's homicide rate was higher still. "You wonder who's going to be next and how it's going to tear us apart," says Odell Beasley, an undertaker who buried several of the victims.

Among adolescents, this rash of violence has been particularly evident. Especially in urban America, teenagers often use knives or guns to settle disputes that not long ago were settled with insults and fists. Federal studies show that one high school student in five now carries a weapon — for status or for self-defense — and one in twenty carries a gun.

"Unless violent crime is checked, and checked soon," as former Attorney General Dick Thornburgh said in introductory remarks at a March 1991 "summit meeting" of U.S. law enforcement officials, "we may well jeopardize the first civil right of every American: the right to be free from fear in our homes, on our streets, and in our

## VIOLENT CRIME: HIGH AND RISING

Incidents per 100,000 Americans



Source: U.S. Department of Justice, Federal Bureau of Investigation, Uniform Crime Report

communities. The American people demand action to stop criminal violence, whatever its causes."

### VICTIMS OF VIOLENCE

Although the news media often pander to the public's fascination with violent crime and stoke fears unnecessarily, such widely publicized incidents illustrate a disturbing trend.

According to the FBI's Uniform Crime Report, since 1960 the number of violent crimes committed per capita in the United States has increased by more than 450 percent. Recent figures show that violence is still on the rise. The report's statistics for 1990 showed a 10 percent rise over the previous year in overall violent crime. As a March 1991 report from the Senate Judiciary Committee noted, "1990 was



the bloodiest year in modern U.S. history, with the murder toll jumping to an all-time record of 23,440." Unfortunately, that record didn't stand for long. Judging by preliminary tallies, over 24,000 murders took place in 1991.

The rate at which violent crime takes place in the United States is a startling and sobering reminder of who we are. The U.S. homicide rate is the highest in the world. In this country, about 10 killings take place per year for every 100,000 people; in vivid contrast, the rate in Britain is 5.5, and in Japan just 1.3.

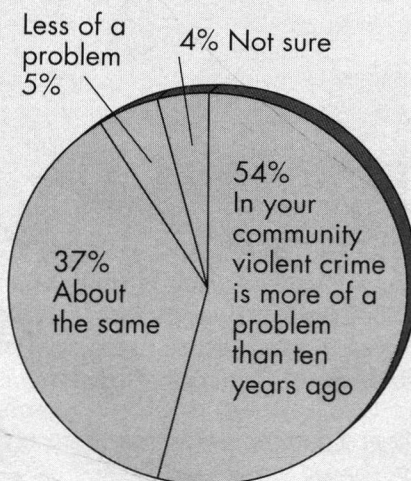
While killings take place most often in large cities such as Dallas and Washington, D.C., (both of which set new records for homicide in 1991), smaller cities such as San Antonio and Anchorage also registered more homicides than ever before in 1991. It is a sign of the times that the Federal Centers for Disease Control, whose task is to investigate the outbreak of disease, now regard murder as an epidemic.

It is no longer rare to be a victim of violent crime. According to the National Crime Victimization Survey, at least 1 member in about 4.5 million households — which represents 5 percent of the nation's households — was a victim of violent crime in 1990. Twenty percent of all Americans say they have been victimized at least once. Among blacks, who are more often involved in violent crime, as victims and as perpetrators, almost 30 percent have been victimized.

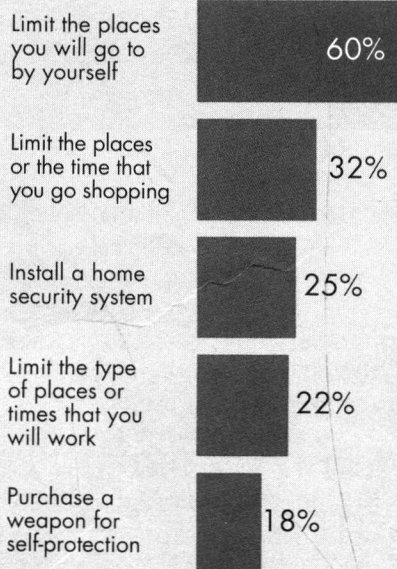
As startling as these statistics are, they tell only part of the story. They do not convey the sense of violation that most Americans feel, or the growing fear. Most Americans are convinced that the crime problem is getting worse. When the Louis Harris firm asked a nationwide sample in 1991 whether they feel that the crime rate in their community has been increasing,

## PUBLIC FEARS

Question: In your community (city), do you think that violent crime is more of a problem than it was ten years ago, less of a problem than it was ten years ago, or is it about the same?



Question: Has fear of crime caused you to...



Source: Survey by Schulman Ronca Bucuvalas for the National Victim Center, March 8-17, 1991

decreasing, or whether it has remained the same, 55 percent of the respondents said it is increasing while just 5 percent said it is decreasing.

The fear of violent crime pervades American life, causing subtle and dramatic changes in the way people live. Fearful of being victimized, many people no longer exercise outdoors. They refrain from wearing jewelry and using cash machines after dark. According to a 1991 survey for the National Victim Center, because of fear of crime, 60 percent of the respondents said they limit the places they go by themselves. Taking their safety into their own hands, a quarter of all families have installed home security systems.

The most dramatic indication of a loss of faith in the criminal justice system is that almost one in five Americans has purchased a weapon for self-protection. Gun sales, which doubled in the United States between 1950 and 1970, doubled again between 1970 and 1990, according to the Federal Bureau of Alcohol, Tobacco, and Firearms.

Many people have concluded that the only way to protect themselves against a growing threat is to be prepared to use violence in self-defense. In Houston, where a record 671 murders took place in 1991, Jan Selbst, a travel agent who works in the suburbs, bought a gun in self-defense. "Knowing what they may do to you if you don't protect yourself," she says, "I've decided that I'm going to shoot them so dead they won't get up. I am determined to take charge of my daily life." Sue King, a Houston firearms instructor who offers self-defense classes for women, says that many people no longer feel protected by the police and the justice system. "The criminal justice system has cratered," she says, "and you and I pay the price in lack of personal security."

Judging by recent surveys of the public's confidence in the criminal



“As startling as crime statistics are, they do not convey the sense of violation that most Americans feel, or the growing fear.”

justice system, that sentiment is widely shared. A 1991 study conducted for the National Victim Center found that the police get relatively high grades. Two-thirds of the respondents said that the police deserve a rating of good or excellent. Still, of those who have been victimized by crime, only 15 percent say that the crime was reported and an arrest made. Fewer than a third give the prisons high marks for their role in the criminal justice system. Parole boards came in dead last, with only 22 percent saying they ensure that appropriate sentences are applied and enforced.

At a time when violent crime is a worrisome feature of everyday life for many Americans, the public has little confidence in the system intended to deter crime, to deal with criminals, and to protect the public safety.

## GET-TOUGH POLICIES

It is especially disturbing that violent crime has increased despite a concerted effort to deter it. Beginning in the mid-1970s and accelerating with the election of Ronald Reagan in 1980, the United States embarked on a program of more severe punishment for individuals convicted of serious crimes. Speaking to the convention of the International Association of Chiefs of Police in 1981, President Reagan reiterated the premise of that experiment, that crime is pervasive in the United States because the justice system is too lenient on criminals. “The war on crime,” said Reagan, “will only be won when an attitude of mind and a change of heart take place in America — when certain truths hold again. Truths like: right and wrong matter. Individuals are responsible for their actions. Retribution should be swift and sure for those who prey upon the innocent.”



Learning how to use guns in self-defense at an Atlanta gun shop.

Throughout the 1980s, the nation resorted to tougher measures to combat crime. In response to the perception that judges and prosecutors frequently let criminals off easy while ignoring the public's right to protection, legislators in many states reduced judicial discretion by mandating prison terms for criminals convicted of some crimes, allowing little or no opportunity for parole.

The clearest evidence of America's get-tough campaign on crime is that more prisoners have been put behind bars for longer terms. As a consequence, the size of the nation's prison population doubled during the 1980s and is still growing rapidly. Today, more than a million Americans are held in prisons and jails. Add to that some three million criminals who are under correctional supervision such as probation or parole, and the courts control four million people — a population larger than the city of Chicago.

The immediate concern is where to find room for the swelling prison population. Because the prison population is growing at a rate that requires 250

new cells per day, corrections is the fastest-growing item in many state budgets. Law enforcement officials estimate that \$5 billion per year is needed for construction of new facilities — a sum that puts a severe strain on state budgets. In deficit-plagued California, prison officials project that more than 50,000 additional prison beds will be needed by 1995, which will boost state spending by \$1 billion a year.

Currently, because prison construction is not keeping up with need, prisons and jails are filled to overflowing, and wardens in many states have hung out “no vacancy” signs. One-half of the nation's largest jails and prisons have been ordered by courts either to expand their capacity or reduce the number of inmates. Bulging prison populations have led to a reassessment of sentencing practices.

While there is a growing sense of alarm about violent crime and widespread discontent with the criminal justice system, no consensus exists about what should be done or what approach would work better. As a recent *New York Times* editorial put it, “There is extraordinary ferment in the justice system. On one side are calls for lock-'em-up justice. On the other are growing concerns about the devastating cost and questionable long-term results of a historic leap in imprisonment.”

A lack of consensus about what to do is evident in many discussions about crime and punishment. If you doubt this, attend a city council meeting on the police budget, a legislative debate on criminal laws, or a convention of judges discussing sentencing. Fundamental differences exist about the purpose of incarceration and about what principle — deterrence, retribution, rehabilitation, or prevention of



## IT'S A SERIOUS PROBLEM, BUT IS IT GETTING WORSE?

*Jack Webb, who starred as Sergeant Joe Friday in "Dragnet," one of the most popular crime shows on television in the 1950s and 1960s, was famous for the words he spoke to witnesses: "Just the facts, ma'am." As important as it is to determine whether the crime problem is becoming more serious, getting the facts straight is harder than it appears.*

**Q: I get the impression from watching TV and reading the newspapers that violent crime is much worse today than it was a decade or two ago. Is that accurate?**

**A:** Violent crime is a serious problem in the United States. But the extent of the problem is exaggerated by the media. By focusing on violent crime, the media offer a seriously distorted view of the likelihood that individuals will be crime victims.

**Q: What sources of information about violent crime are more reliable?**

**A:** The two most reliable measures of violent crime, administered by the Department of Justice, are the Uniform Crime Report (UCR) and the National Crime Survey (NCS).

Drawing on crimes reported to local law enforcement agencies across the country, the Uniform Crime Report provides a crime count for the nation as a whole, as well as for specific regions. Its chief limitation is that, since most crimes are *not* reported, the UCR underestimates the number of crimes committed. It is important to note that a rise in reported robberies, assaults, or rapes, may reflect the fact that enforcement agencies are recording a greater percentage of the crimes that take place. It does not necessarily mean that actual incidents of violence increased at that rate.

Since 1973, the National Crime Survey has collected detailed information

on the frequency and nature of violent crimes, as well as crimes against property. It is based on interviews with a nationally representative sample, in which people are asked about crimes suffered by themselves and members of their households, whether or not the crimes were reported to the police.

The victim survey is generally acknowledged to be the most reliable measure of the extent of violent crime. However, the survey is limited in several ways: respondents may either forget about a particular crime or choose for personal reasons not to mention it. Instances of domestic violence, for example, are seriously underreported.

**Q: Based on information from these sources, can't we conclude that violent crime has gotten significantly worse in recent years?**

**A:** One fact about violent crime is indisputable. The U.S. is much more violent than other major industrial nations. Our murder rate, for instance, is far higher than in Canada, Western Europe, or Japan.

While statistics on other types of violent crimes are less reliable, it is clear that the United States has more rapes, robberies, and assaults per capita than other affluent nations. But this is nothing new. America has long been a peculiarly violent nation.

Depending on the source you consult, you get a different impression of whether violent crime has increased significantly over the past two decades. While the Uniform Crime Report shows a clear increase in violent crime rates over the past 20 years, the NCS suggests that the rate at which robbery or assault take place today is not much different from the rates of the mid-1970s, when the survey was first conducted.

After examining trends from the NCS, sociologist Christopher Jencks con-

cludes that "While America is more violent today than at many times in its past, it is no more violent than it was during most of the 1970s, and there is no reason for thinking that chaos is just around the corner."

**Q: Why are so many people convinced that violent crime is much worse today than it used to be?**

**A:** Again, the media play an important role. When crime rates decline, as they did in the early 1980s, the trend attracts little attention. But when crime rates increase, as they did in the late 1980s, it is headline news and considered a harbinger of things to come.

Also, most reports refer to the *number* of crimes committed, rather than the *rate* at which they are committed. Since the U.S. population is growing, we can expect more incidents of criminal violence.

**Q: You've been talking about crime rates for the nation as a whole. Aren't some people more likely to be victims of crime than others?**

**A:** Definitely. Your chance of being a victim of violent crime depends on several factors, such as where you live. Compared to residents of large cities, individuals who live in the suburbs and in small towns are less likely to be crime victims. According to the 1990 NCS, the rate of violent crimes per 1,000 people in central cities was 41. In suburban areas the rate was 25, while in rural areas the rate was 23.

With regard to differences between the sexes, men are more likely to be victims of assault, robbery, and murder than women. As for race, nonwhites are far more likely to be victims of violent crime than whites. In 1989, while the homicide rate among whites was 4.9 per 100,000, the corresponding rate among nonwhites was 28.

crimes by locking up criminals most likely to be high-rate offenders — should guide the sentencing decision. Some people advocate stiffer sentences, the denial of parole, or other measures intended to segregate criminals from the law-abiding majority. Others favor increased efforts to reintegrate offenders into the community by providing drug treatment or job training.

Differing ideas about what to do were clearly apparent in the debate over a comprehensive anti-crime package that was introduced into Congress as the Crime Control Act of 1990 and then taken up again in the 102nd Congress. The package included a variety of measures intended to make the streets safer, to deter crime, to control the sale of guns, and to deal with repeat offenders.

"The public is impatient with sociological explanations of crime when the likelihood that they are going to get knocked on the head is rising every year," says Will Marshall, president of the Progressive Policy Institute. "The



But some members of Congress are convinced that we have relied too much on harsh punishment. The anti-crime package introduced by House Democratic leaders in July 1991 was an attempt to redefine the debate on law and order by focusing more attention on prevention. Among other measures, the bill calls for expanded drug treatment for prisoners. It would also provide more money for police officers to walk their beats, thus staying in closer touch with their communities than officers who ride in patrol cars. "We've spent a decade punishing people for crimes," says Representative Charles E. Schumer of Brooklyn, "and we've totally ignored preventing crimes from occurring."

"There is a pervasive sense," Currie concludes, "that older ways of thinking about crime have lost their usefulness and credibility. But no convincing alternatives have been put forward to take their place. Our policies toward



crime and punishment have simply lost a sense of purpose."

We are faced with fundamental questions about the causes of violent crime, about sentencing alternatives, and about the rules that govern what police are permitted to do in obtaining evidence and apprehending criminals. Fundamental questions have also been raised about the purpose and justification of criminal sanctions. Should judges aim first to mete out equal justice, imposing similar sentences for similar crimes? Or should they give priority to preventing further crime by warehousing individuals thought to be dangerous, tailoring sentences to the offender rather than to the offense? Should the rehabilitation of criminals be a major concern? Or is it more realistic and more consistent with our principles of criminal justice to hold up deterrence as the chief goal of sentencing — that is, making the judgment so harsh that it sets a stern example for other would-be criminals?

Overflowing prisons raise basic issues about the usefulness and the necessity of long prison sentences for many crimes. The question is whether sentencing alternatives would protect the community and help to integrate convicted individuals into community life, while bringing down the cost of the criminal justice system.

In discussions about crime and criminal justice, the objective is to see whether we can reach agreement on a coherent and workable anti-crime strategy that reflects the importance most Americans attach to civil liberties as well as the importance of stopping violent crime. In the course of this discussion, we will consider evidence about what has worked and what has *not* worked. Do stiffer prison sentences deter crime? Do job programs and drug treatment help to keep first offenders from becoming repeat

offenders? Can those who commit violent crimes be rehabilitated?

With regard to each of these questions, criminologists and law enforcement experts have something to tell us. Fundamentally, however, this is not a debate that will be resolved by expert testimony. The fundamental question is what should be done over the next few years about violent crime. That decision must be informed by a sense of what is right — which is a matter of judgment that requires collective deliberation.

If we are to move beyond a bitter and visceral response that expresses our frustration with violence more than our considered judgment about how to reduce such acts, we will have to engage in coherent discussion about crime, its causes and remedies.

## THREE COURSES OF ACTION

No brief discussion can address more than a part of the crime problem. This issue book is not a comprehensive treatment on crime in its various manifestations. Setting aside other types of crime such as white-collar and organized crime, which are different phenomena and may not respond to the same remedies, our focus here is on violent crime.

At the heart of the debate are three different perspectives about why people commit violent crime, whether deterrence works and rehabilitation is realistic, what parts of the criminal justice system need to be improved, and how criminals should be sentenced.

From the perspective of our first choice, the underlying problem is that American society is too lenient with those who break the laws, thereby encouraging lawlessness. Accordingly, the most promising solution is to get tougher with *all* criminals, to step up enforcement efforts, appoint tougher justices, impose longer jail and prison

sentences, and build more prisons.

Advocates of a second choice place their emphasis on dealing with the causes of crime rather than treating the symptoms. From this perspective, unless we recognize the corrosive social and economic forces that lead to criminality and take serious measures to address the causes of crime, we are unlikely to lower the rate of violent crime. While agreeing that dangerous criminals must be locked up, advocates of this view emphasize that alternatives to incarceration must be expanded to deal with the causes of criminal behavior, such as drug addiction and a lack of skills needed for gainful employment.

From the perspective of our third choice, efforts to deal with violent crime must begin by identifying the relatively small group of high-rate offenders, and acknowledging that they are unlikely to be rehabilitated or deterred by the threat of harsh prison sentences. The only realistic way to deal with high-rate criminals is to recognize that they are incorrigible. Considering the threat they pose to society, they must be locked up indefinitely.

Each of these perspectives begins with a distinctive explanation of why people commit crimes. No prescription for the nation's criminal justice system is likely to be effective if it is based on an inaccurate diagnosis. If the diagnosis is wrong, we end up at best treating symptoms, not causes. So this is where the discussion begins, with an exchange of views about why people commit crimes.

But it is important that public debate about violent crime not end there. This is chiefly a discussion about what should be done to combat violent crime. If we are to build a society that is less dangerous, less fearful, less torn by violence, what should be done? That is the topic of these Forums.■

## CHOICE #1 DETERRENT STRATEGY: GETTING TOUGHER ON CRIMINALS

“Serious crime is committed more frequently today because many people believe they can get away with it, or get off easy. The most promising solution is to get tougher with all criminals, to make it clear that violent acts will not be tolerated.”

**W**hen the Justice Department announced that violent crime increased in 1990 by 10 percent over the previous year, Dan Eramian, a spokesman for the Attorney General, said the figures were “further evidence of the need to pass a crime bill that is tough on criminals.”

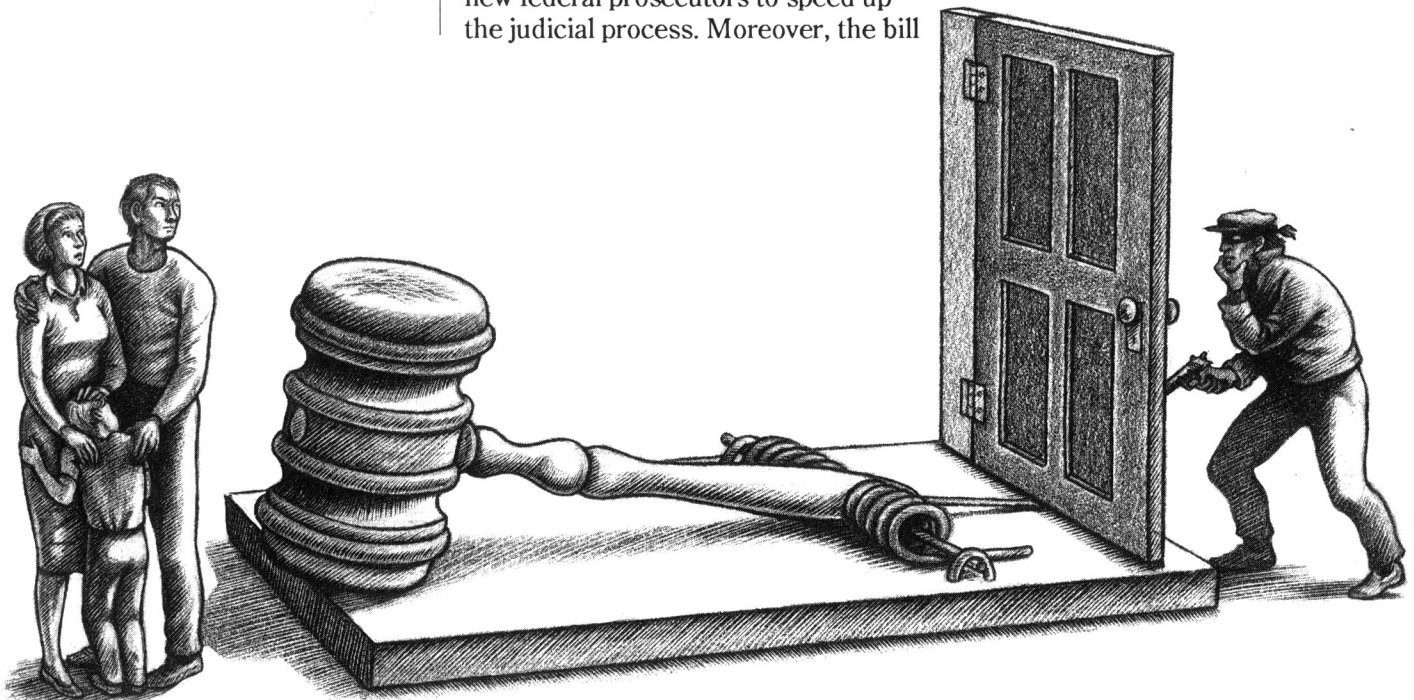
That was the theme of comments by administration spokesmen in defense of a new anti-crime bill sent by the White House to Congress in May 1991. Speaking in Washington to an audience of uniformed police and the families of slain officers, President Bush said the measures contained in the proposal would help to stop crime. As the president put it, the proposal aims to “take back the streets by taking criminals off the streets.”

Ticking off the bill’s main provisions, the president proposed to expand federal prisons to provide space for an additional 24,000 inmates at a cost of \$1 billion. If passed into law, he said, the bill would permit hiring 1,600 new federal prosecutors to speed up the judicial process. Moreover, the bill

would impose stricter penalties for many crimes. It would expand the number of federal crimes punishable by the death penalty and impose mandatory sentences on repeat felons who use guns.

In another provision, the bill proposed to lift certain restrictions on the kinds of evidence that can be considered in criminal trials, in order to prosecute more criminals. “For too long,” the president said, “the scales of justice have been tipped in favor of criminals instead of law-abiding Americans.”

The underlying theme of the administration’s proposal was that by upping the ante on crime, significant progress could be made in deterring would-be criminals. In the words of White House aide Roger Porter, who helped to write the bill, “The people who are committing these crimes are not dumb. They know what the chances are of getting caught and getting sent to prison. As we increase those odds, we can change their behavior.”





This approach to crime is based on a diagnosis of the problem that to many people is both obvious and compelling. Serious crime is committed more frequently today because many people figure they can get away with it. Crime has become worse, from this perspective, because American culture has become more permissive and the criminal justice system more lenient. Because the courts and the prison system are overburdened, many criminals who deserve stiff sentences get off easy.

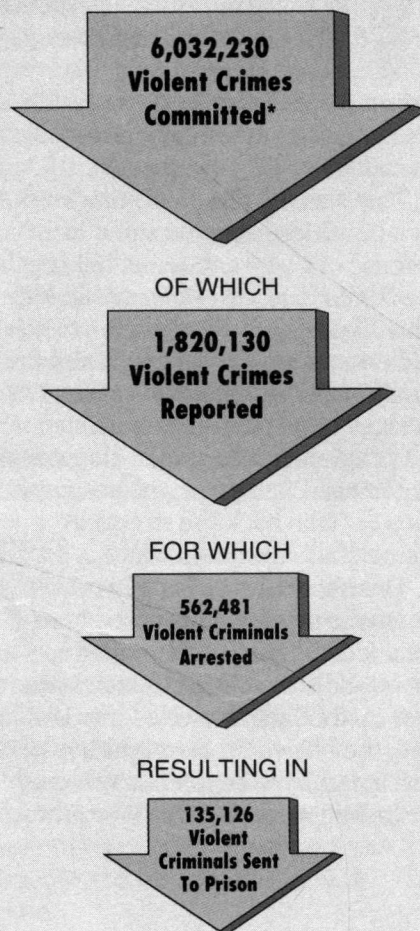
This sentiment is widely shared. Surveys conducted over the past few years by the National Opinion Research Center have found that eight in ten Americans are convinced that the courts do not deal harshly enough with criminals. As a result, justice suffers.

At a time when violent offenders are often able to get away with serious crimes, advocates of this view are convinced that our first priority must be to bolster the system so that criminals are apprehended and given punishment that is swift, certain, and appropriately severe. Unpleasant sanctions teach a useful lesson. They underline the importance of law-abiding behavior, and they deter other would-be criminals. Especially for serious offenders, prison terms — in many cases, long prison terms — are necessary, to teach a lesson both to convicted criminals and would-be criminals. In brief, this perspective on crime and criminal justice rests on the twin pillars of deterrence and retribution.

### CALCULATING CRIMINALS

Criminals, from this perspective, are much the same as other people. Like the rest of us, their behavior is governed by the expectation of risks and rewards. In this sense, choosing to commit crime is like choosing a line of work. A substantial number of people examine the

### A VIOLENT CRIMINAL'S CHANCES OF BEING SENT TO PRISON IN 1990



\*Figures are four major categories of violent crime: murder, rape, robbery and aggravated assault.  
Sources: U.S. Department of Justice, Bureau of Justice Statistics and Federal Bureau of Investigation

world around them and conclude that crime is a better bet than a "straight" career. To recall Roger Porter's words, people who commit crime "know what the chances are of getting caught and getting sent to prison," and adjust their behavior accordingly.

Most law-abiding citizens — whose view of the justice system is colored by

television portrayals of intrepid detectives who generally discover who committed the crime, and courtroom dramas in which juries reach a verdict and justice is done — overestimate both the chances of getting caught and the severity of sentences. But most criminals have more accurate sources of information about the likelihood of apprehension.

As political scientist James Q. Wilson points out, most criminals depend on the accounts of others who have recently had "a run-in with the police and the courts and who, therefore, can supply to their colleagues a crudely accurate rule of thumb. The 'heat is on' or 'the heat is off.' Judge Bruce MacDonald is either 'Maximum Mac' or 'Turn 'em Loose Bruce.'"

Though advocates of this view acknowledge that some crime is impulsive, they believe that most criminal acts involve an element of calculation, as perpetrators weigh benefits against anticipated costs. This applies even to kids involved in crime. Several years ago, anthropologist Sally Engle Merry talked to youthful offenders in an urban neighborhood and observed them over a period of months. She found that even inexperienced offenders operate according to rules of thumb about risks they are likely to encounter. Like most criminals, the youngsters she studied wanted something — money, power, attention, respect — and regarded criminal activity as a direct way of getting it. In choosing their targets, they calculated the odds. They spoke knowledgeably about the likelihood of getting caught in one part of the district rather than another. They talked about which kinds of citizens are most likely to report a crime to the police, and which offenses are most likely to lead to arrest and prosecution. They also talked about what kinds of stories would be believed by judges and juries, in case they are apprehended. While some of

"Accountability under the rule of law is our only real assurance of public safety."

— Dick Thornburgh

their crimes seemed to result from spur-of-the-moment decisions, these youngsters were not indifferent to the consequences.

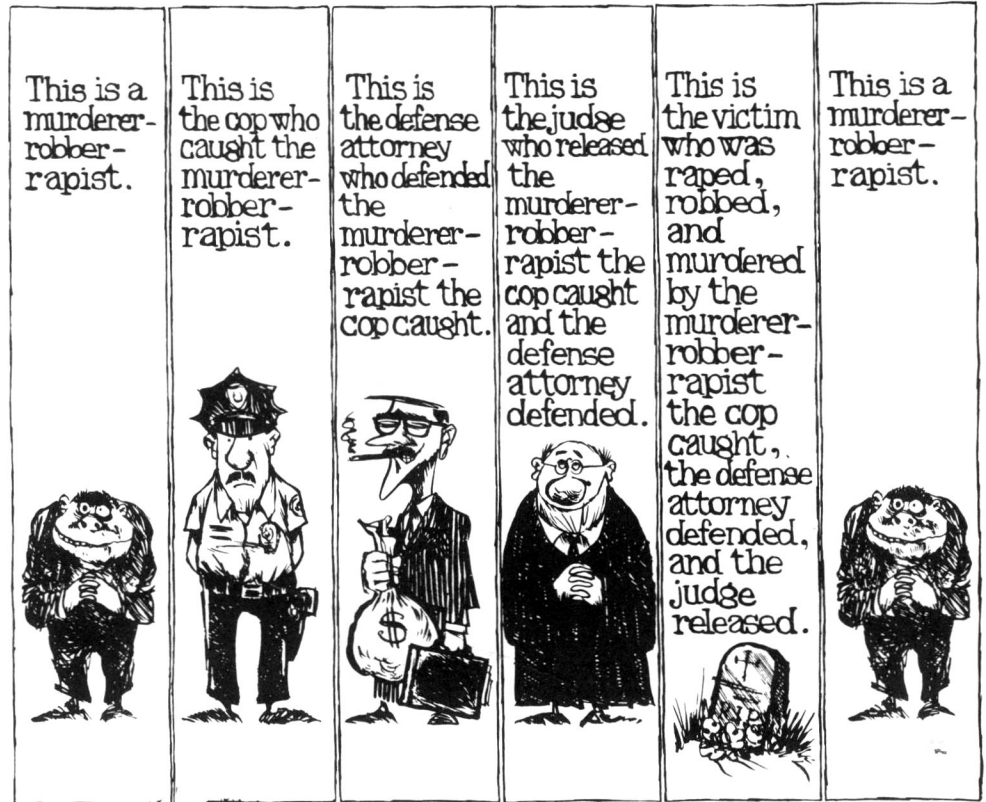
To advocates of this first perspective on criminal justice, since criminals are calculators, everything possible should be done to ensure that they are apprehended, that justice is swift, and punishment certain. In the words of Dick Thornburgh, speaking to a group of law enforcement officials in March 1991, "Accountability under the rule of law is our only real assurance of public safety."

## GETTING AWAY WITH IT

In this light, the fact that 91 percent of all violent crimes do not result in arrest is a fatal flaw in the system and an inducement to criminal activity. The most important thing to notice about the criminal justice system, from this perspective, is how seriously flawed it is at every stage from apprehension to sentencing.

At the first step, people often do get away with serious crimes. A Rand Corporation study shows that the chance of being arrested for any given robbery is only about one in ten. Even those who engage in armed robbery, a more serious felony, manage to escape apprehension seven out of eight times. There are various reasons why the chances of being caught for a particular crime are so low, among them the fact that more than two-thirds of all major crimes are never reported to the police.

Even when suspects are arrested, they often go free. In roughly half of all arrests, charges are dismissed. In some cases, problems result from a failure to find sufficient evidence linking the defendant to the offense. In other cases, problems arise when witnesses fail to appear or when they give inconsistent testimony. When a



prior relationship exists between the victim and the defendant, it is not uncommon for witnesses to decide not to testify.

Finally, as proponents of this view point out, cases are often dismissed because of due process problems. Both police and prosecutors drop cases based on improperly seized evidence. Many advocates of this view are convinced that legal technicalities often take precedence over justice. In the words of Attorney General William Barr, speaking in defense of the administration's proposal to permit evidence in criminal trials seized without search warrants but in good faith, "The system is riddled with loopholes and technicalities that render punishment neither swift nor certain."

In theory, the criminal trial is at the heart of the law enforcement system. In fact, only a small minority of the individuals who are arrested and charged with serious crimes are sub-

jected to trial by jury. This, too, is a concern to those who feel that the justice system offers no sufficient deterrent to criminals.

What actually happens in many cases is that judges and prosecutors rely on plea bargaining. Under this arrangement, the defendant pleads guilty to a lesser charge than is warranted by the facts. Plea bargaining is justified on two grounds. It saves the time and money involved in arranging a trial. Since it results in shorter sentences than those prescribed for the crime committed, plea bargaining helps to ease pressure on overcrowded prisons.

Resorting to plea bargaining may be expedient in the short-run, as advocates of more effective deterrents acknowledge. But they insist that it is unjust for pleas to be "copped" to relatively trivial offenses, especially when

JOE WILSON FOR THE WALL STREET JOURNAL



## DELICATE BALANCE: INDIVIDUAL RIGHTS VS. SOCIETY'S RIGHT TO PROTECTION

Just before he was confirmed as Attorney General in 1991, William P. Barr expressed his frustration with procedural restraints in the justice system in an editorial that appeared in the *New York Times*. "The system," said Barr, "is riddled with loopholes and technicalities that render punishment neither swift nor certain." Barr's comment — and the efforts of some members of Congress to restrict criminal appeals and to give police more freedom as they seek evidence of criminal wrongdoing — represent the latest volleys in a long dispute over procedural rules that apply to the criminal justice system.

The debate over these rules illustrates the difficulty of achieving a balance between two objectives: protecting individual rights and protecting society by enforcing the laws.

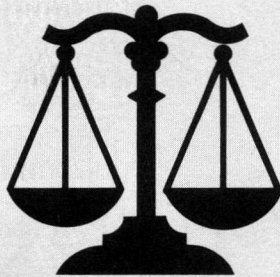
At issue is the interpretation of the Constitution — particularly the Fourth and Fifth Amendments. By guaranteeing due process of law, these Amendments protect individual rights against arbitrary state power.

In recent years, the debate over procedural rules has focused on three issues: what police are permitted to do in extracting confessions from suspects; what police are permitted to do in carrying out searches; and what rights criminals have to appeal their convictions.

### SELF-INCRIMINATION

The Fifth Amendment applies at the time of arrest. It protects suspects from being forced to say something that might be self-incriminating. In 1966, in the case of *Miranda v. Arizona*, the Supreme Court ruled that, prior to questioning, police must inform suspects of their right to remain silent and to have an attorney.

In many cases, police may suspect that a particular individual committed a crime, but no one witnessed the crime and no compelling circumstantial evidence is available. In such cases, if the suspect chooses not to confess, police are not permitted to extract a confession. As critics of the *Miranda* ruling see it, this restriction on police interrogation of suspects deprives enforcement officials of the suspect's help in solving the crime.



DANIEL PELAVIN

Civil libertarians regard the *Miranda* warning as a modest safeguard against police coercion. Due process begins with the insistence that individuals are innocent until proven guilty. Safeguards of this sort are a way of protecting innocent people against police coercion that may lead to false but self-incriminating statements.

### LIMITS ON POLICE SEARCHES

The Fourth Amendment spells out Americans' right to be "secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." As a general rule, in the United States, police are not allowed to enter and search a home without a warrant signed by a judicial officer and issued on "probable cause" that evidence of criminal wrongdoing can be found there. Evidence gained through unauthorized searches cannot be used in court.

To many people, the exclusionary rule symbolizes what has gone wrong with a criminal justice system that seems to care more about individual rights and legal niceties than about bringing criminals to justice. To give the police more latitude, the Bush administration favors changing the laws to permit evidence obtained in warrantless searches conducted in "good faith" to be introduced

in criminal trials.

Others oppose such measures on the grounds that they invite abuses of police powers. As civil libertarians see it, weakening the exclusionary rule would encourage abuses of justice while doing little to get dangerous criminals off the street. In support of this claim, the federal government's General Accounting Office notes in a recent report that the exclusionary rule is the reason for throwing out evidence in less than 2 percent of all cases.

### THE RIGHT TO APPEAL

Article III of the Constitution ensures that no innocent person will be wrongfully detained. It guarantees anyone convicted of a crime the right to appeal. Some people feel, however, that *habeas corpus* is frequently abused. Because defendants are permitted to pursue an almost endless series of appeals to their cases, the judgment of the criminal justice system is repeatedly called into question.

For deterrence to be effective as a crime-fighting strategy, say those who would limit *habeas corpus*, punishment must be swift and certain.

Accordingly, many people favor restricting prisoners' right to appeal convictions. One version of the anti-crime bill under consideration in the House would bar successive *habeas corpus* petitions unless new facts emerge that could not have been included in a prior petition.

Civil libertarians hold a decidedly different view of the right to challenge a conviction. The absence of finality in sentencing, as they see it, is not a flaw but a virtue of the American judicial system since it recognizes human fallibility. In the words of Samuel Walker, "Protection of individual rights requires recognition of the possibility of error in the criminal justice process."

“Eight in ten Americans are convinced that the courts do not deal harshly enough with criminals. As a result, justice suffers.”

it is almost certain that people who do so are guilty of more serious crimes. For the accused, writes legal scholar Richard E. Morgan, “the plea-bargaining process becomes a sordid crapshoot (albeit with the dice loaded in his favor) rather than a solemn accounting before the community of his guilt or innocence.” If we wanted to tell would-be criminals that the court system is prepared to wink at wrongdoers and bargain over their punishment, we could hardly do better than the plea-bargaining process.

At the stage of sentencing, no firm connection exists between the seriousness of the crime and the severity of the sentence. In fact, only about 25 percent of those convicted of violent offenses are sent to prison. The rest are released on probation. Often, it is the number of cells available, not the seriousness of the crime, that determines which defendants will serve what amounts of time.

Even when longer prison terms are specified, they are rarely served. A 1988 report from the Justice Department found that the average murderer spends just six and one-half years behind bars. As prisons become increasingly overcrowded, the average

prison term per robbery has declined — from 57 months in 1986 to 38 months in 1988. “We are incarcerating more people,” observes criminologist Lyle Shannon, “but most get out before very long.”

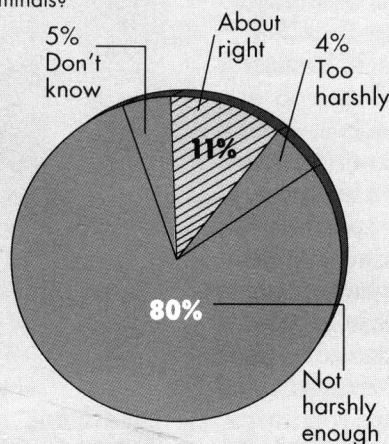
Reports of juveniles engaged in criminal activity suggest that they are vividly aware that the penalty for illegal activities — even for violent crime — is often light. In Austin, Texas, older gang members call the younger members “minutemen” because they’re likely to be in jail only briefly, then released.

Morgan O. Reynolds, an economist at Texas A&M University, who recently completed a study of serious crime and punishment over the past four decades, says the main reason for the nation’s high crime rate is that the likelihood of serious punishment is

## PUNISHING CRIMINALS

Most Americans feel that the courts are too lenient.

■ In general, do you think the courts deal too harshly or not harshly enough with criminals?



Source: National Opinion Research Center, General Social Surveys, Feb. - April, 1991

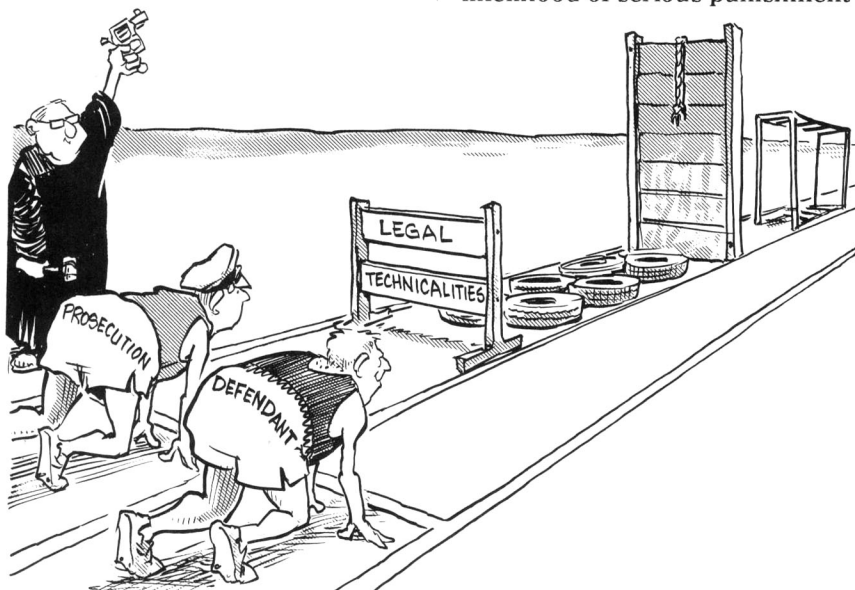
lower than it used to be. Consequently, criminals conclude that crime pays. Reynolds’ study, conducted at the Dallas-based National Center for Policy Analysis, shows that despite the surge in imprisonment in recent years, the probability of doing time for criminal activity today is less than half what it was during the 1950s.

Overall, as advocates of stiffer deterrents see it, the American criminal justice system is deeply flawed. Its

message to would-be criminals is that even if you are caught for a serious crime, you can probably get away rather easily. “Many people,” writes James Q. Wilson, who are “watchful, dissembling, and calculating of their chances, ponder our reaction to wickedness as a clue to what they might profitably do. Our actions speak louder than our words. When we profess to believe in deterrence and to value justice, but refuse to spend the energy and money required to produce either, we are sending a clear signal that we think safe streets can be had on the cheap. We thereby trifle with the wicked, make sport of the innocent, and encourage the calculators. Justice suffers, and so do we all.”

## WHAT SHOULD BE DONE

To proponents of this view of the crime problem, it is clear what should be done. A higher percentage of criminals must be apprehended and given punishments that reflect the seriousness of the crimes they com-





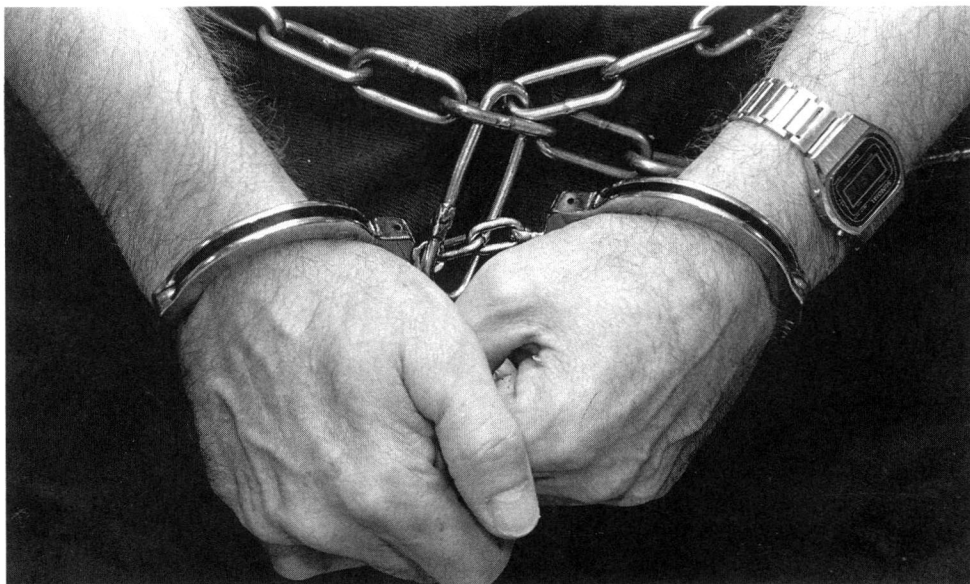
mit. Immediate steps must be taken to increase the certainty that those who commit serious crimes are apprehended, found guilty, and punished severely enough to deter other would-be criminals.

It is not in anyone's interest to let criminals off easy, even on their first offense. But as things stand, because of overcrowding, many offenders — particularly juvenile offenders — are arrested and convicted several times before they serve a prison sentence. It is essential, from this perspective, that first offenders be impressed with the seriousness of what they have done. Accordingly, says federal Judge Frank Easterbrook, criminals should be punished the first time they're caught, not let off with a warning and a reprimand. In his words: "If you raise the price of rutabagas, people will buy fewer rutabagas."

As a second step, criminal court procedures should be changed to close legal loopholes such as plea bargaining, the insanity defense, and the exclusionary rule. If such loopholes were closed, punishment would be more certain — and as a result more people would be deterred from crime.

Most of all, say advocates of this perspective, sentencing should be stricter and mandatory sentences should be imposed for many serious crimes. For years, judges were given considerable discretion in sentencing, and sentences tended to be neither fair nor consistent. Under indeterminate sentencing, a defendant might receive a 1 to 25-year sentence, with the understanding that a parole board could decide when the defendant is sufficiently rehabilitated to be released.

Advocates of stringent deterrents to crime oppose indeterminate sentencing and reject the principle of rehabilitation on which such sentences are based. Since the main principles guid-



ing sentencing should be deterrence and retribution rather than rehabilitation, the public is better served by mandatory sentences — fixed sentences for specific crimes, imposed automatically.

Since the 1970s, sentencing laws have been changed in many states, and mandatory sentences are now far more common. In New York State, sentencing procedures put into effect in the 1970s require prison terms for individuals convicted of violent felonies and for those convicted of a second felony.

The premise of mandatory guidelines is that sentencing should not vary from one judge to another. Justice is carried out when all criminals who commit similar crimes receive similar sentences. In its pending crime bill, Congress is considering a proposal to extend mandatory minimums for various crimes.

In 1984, the Federation of New York Judges declared that American society is threatened by "robbers, rapists, and felons of every kind" and recommended an ambitious program of prison construction, because "swift and severe punishment is the only defense against predators." Since then,

the capacity of America's prison system has expanded." As advocates of this choice see it, it is necessary to expand penal institutions still further, for the same reason.

Over the past decade, the United States has made a large investment in prisons. An estimated \$30 billion has been spent in construction, to double the system's capacity. This has led to what proponents of this position regard as a notable payoff: Americans are safer because more violent criminals are locked up.

Eugene Methvin, a reporter who has covered the criminal justice system for 40 years, points out that the experience of two states — California and Texas — teaches an important lesson. In California, almost \$4 billion has been spent since 1982 to expand the prison system. Throughout the 1980s, the state's inmate population quadrupled. By 1990, says Methvin, "murder, rape, and burglary rates fell by a whopping 24 to 37 percent from their peaks in 1980 to 1982 — which translates as an annual reduction of nearly a thousand murders, 16,000 robberies, and a quarter of a million burglaries."