"In this world, nothing can be said to be certain except death and taxes" — and presidential commissions. Proponents of any commission argue that an executive should launch a broad action program only on the basis of a prior independent study of all relevant factors.

In April of 1931, Calvin Coolidge said:

The use of fact-finding commissions is again being criticized. About twenty-five years ago agitation caused the Congress to prohibit spending public money for such purpose.

Some people are born with a complete set of ready-made opinions. Facts do not affect them. But no executive, from first selectman to President, can know everything necessary to discharge his office or be able to learn it from official sources. He must call on some body which can gather the information. Public duty requires it.

Critics of these bodies note acidly that a commission is a cynical creature of politics, a method of buying time, or a device for calming the public in matters where agitation and aggressive concern are truly appropriate. In the past few years numerous presidential commissions have filed their reports on subjects ranging from the assassination of a president to heart disease, cancer, and stroke.

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1 C. Van Doren, Benjamin Franklin 773 (1938).
2 N.Y. Herald Tribune, April 16, 1931, at 1, col. 2-3.
3 In 1929, one writer noted:
Washington has grown exceedingly cynical on the subject of special governmental commissions. Many such bodies have come into existence and passed away in recent years, leaving behind them voluminous unread reports and recommendations...

... The establishment of a special commission to investigate or consider some great question of the hour is a tried and reliable device which makes it possible for an administration to offer the appearance of great activity without making any definite decision...

... (N)ine times out of ten, when these conclusions and recommendations have been announced with all proper solemnity, that is the end of the subject...

Murphy, The Sphinx Commission, 10 Commonweal 249 (1929).

4 Use of the term "presidential commission" is circumscribed to include only ad hoc commissions appointed for a specific term by an Executive Order. Of course, the President is connected with many other kinds of study groups. In January of 1968, there existed 193 committees, commissions, task forces, study groups, advisory councils, and interagency committees with some degree of presidential involvement. Letter from Joseph Laitin, Assistant to the Director, Bureau of the Budget, to Henry S. Ruth, Jr., Jan. 12, 1968.

5 For a description of the goals, problems, and functions of commissions and other study groups, see Bell, Government by Commission, The Public Interest, Spring, 1966, at 3-9. For a description of the roles served by advisory committees in local government, see Schaller, Is the Citizen Advisory Committee a Threat to Representative Government?, 24 Pub. Admin. Rev. 175 (1964). For an analysis of presidential commissions from 1900 to 1940, see C. Marcy, Presidential Commissions (1945). For Marcy's analysis of the future role of the commission device, see id. at 102-06.
In fact, it is fair to say that no major national problem has been immune from study by a temporary commission. It is hardly surprising, then, that in the midst of a bitter national debate on crime and criminal justice, President Johnson appointed his Commission on Law Enforcement and Administration of Justice. The purpose of this Article is to discuss briefly the background of this national crime commission, its method of operation, and the plans for implementation of its recommendations.

During its work from July of 1965 to June of 1967, the Commission had a full-time staff of approximately forty professionals and utilized the services of about four hundred fifty consultants and advisers. Its publications include nine task force reports concerned with specific aspects of crime and criminal justice, five field survey reports, forty-one consultant papers, and a general report, *The Challenge of Crime in a Free Society*, which summarizes all the Commission’s conclusions and recommendations.

II. Background of the Commission

For various reasons, public concern about crime ascended rapidly during the first half of the 1960's. National crime rates during 1960-65 reflected an upward trend that was increasing faster than the previous long-term trend. The number of serious offenses known to the police per 100,000 population for these five years rose twenty-five percent for violent crimes and thirty-six percent for property crimes. The largest increases occurred in 1964, with

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6 The President's Commission on Heart Disease, Cancer and Stroke, A National Program to Conquer Heart Disease, Cancer and Stroke: Report to the President (1965).
8 The nine task force reports are entitled: The Police, The Courts, Corrections, Organized Crime, Science and Technology, Drunkenness, Narcotics and Drug Abuse, Juvenile Delinquency and Youth Crime, and Crime and Its Impact — An Assessment. All were published in 1967. [hereinafter the task force reports will be cited as, for example, TFR on the Police.]
9 The five field survey reports are authored and titled as follows: Bureau of Social Science Research, Field Survey I: Report on a Pilot Study in the District of Columbia on Victimization and Attitudes Toward Law Enforcement; National Opinion Research Center, Field Survey II: Criminal Victimization in the United States: A Report of a National Survey; University of Michigan Survey Research Center, Field Survey III: Studies in Crime and Law Enforcement in the Major Metropolitan Areas (volumes I and II); University of California at Berkeley, School of Criminology, Field Survey IV: The Police and the Community (volumes I and II); National Center on Police and Community Relations, School of Police Administration and Public Safety, Michigan State University, Field Survey V: A National Survey of Police and Community Relations. All the field surveys are dated 1967.
10 The forty-one consultant papers were published individually in June of 1967. Several other consultant papers were published as appendices in the task force reports.
12 Id.
forcible rape the leader among the violent crimes and motor vehicle theft the leader among property crimes.\textsuperscript{13} Other developments converged that year to heighten public interest and alarm. A wave of riots commenced in the summer of 1964 as disturbances erupted in New York City, Philadelphia, Chicago, Rochester, Paterson, Elizabeth, and Jersey City.\textsuperscript{14} The Republican presidential candidate, Barry Goldwater, was decrying lawlessness and crime in the streets during the summer and fall of 1964.\textsuperscript{15} A Gallup poll in 1963 revealed that many persons considered juvenile delinquency the second most important problem in their respective communities.\textsuperscript{16} A 1964 Harris survey showed that the factor most often cited by persons as causing increased crime in their neighborhoods was the existence of "disturbed and restless teenagers."\textsuperscript{17} Finally, those blaming restrictive court decisions for the rising crime rates acquired new fuel in June of 1964 with the Supreme Court's decision in \textit{Escobedo v. Illinois}.\textsuperscript{18} The mounting alarm mirrored a twofold concern: a belief by many that our system of criminal justice and law enforcement was not adequately performing its role and a public fear that criminality was a rapidly spreading force threatening basic public order and security.

The overwhelming involvement of the federal government in social betterment programs—a development that had created revolutionary changes in federal-state-city relationships during the past thirty or so years—had largely bypassed the problems of law enforcement and criminal justice. For Americans traditionally have desired hometown policing and hometown judicial systems with neither the appearance nor the reality of administrative control or influence from the higher levels of government. One need only mention the words "national police force" to reinforce this local law enforcement orientation.

But in the Fall of 1964 it became apparent in the United States Department of Justice that a suitable time for national action had arrived. All the factors cited above influenced the decision for action. To cite this decision as a political response to Barry Goldwater, as some may do, is to fall prey to a much over-simplified view of federal government operations. Such a view also does great injustice to the sincere, active, and abiding interest of the then Acting Attorney General, Nicholas Katzenbach, in creating an intelligent, informed public appraisal of the crime problem and in rescuing law enforcement and criminal justice from creaking concepts, machinery, procedures, and organization. Political considerations may properly be cited as a catalyst, but not as a founding father.

There were significant forerunners to a concentrated federal program in this area. The President's Committee on Juvenile Delinquency and Youth Crime

\textsuperscript{13} \textit{Id.}
\textsuperscript{14} \textit{TFR ON CRIME AND ITS IMPACT—AN ASSESSMENT} 118.
\textsuperscript{15} Candidate Goldwater, however, apparently did desire to suppress the racism and further public incendiaryism that would have been engendered by emphasizing the riots; he refused to authorize the showing of a film documentary, prepared by his staff, that depicted looting and rioting by Negroes. T. WHITE, \textit{THE MAKING OF THE PRESIDENT—1964}, at 236, 332 n.9 (1965).
\textsuperscript{16} \textit{CRIME REPORT} 49-50.
\textsuperscript{17} \textit{Id.} at 49.
\textsuperscript{18} 378 U.S. 478 (1964).
had been operating since 1961 and, through the Office of Juvenile Delinquency and Youth Development in the Department of Health, Education, and Welfare, was funding comprehensive, crime prevention-related programs in several major cities.\textsuperscript{19} The President's Advisory Commission on Narcotic and Drug Abuse completed its report in 1963.\textsuperscript{20} With impetus from the report of the Attorney General's Committee on Poverty and the Administration of Federal Criminal Justice,\textsuperscript{21} the Department of Justice and the Vera Foundation in 1964 sponsored a national conference on bail practices\textsuperscript{22} and appointed an executive board to assist in the development of bail programs in various states.\textsuperscript{23} In August of 1964, Attorney General Robert Kennedy created a small Office of Criminal Justice in the Department of Justice.\textsuperscript{24} One of the major functions of this office was to propose and aid in the implementation of reform measures in state and local criminal justice operations.

Thus, the stage was set when, in his January 1965 State of the Union message, President Johnson announced a forthcoming federal program touching upon all the problems of crime.\textsuperscript{25} Details of this program were revealed in his first message to Congress on crime in March of 1965.\textsuperscript{26} Included in the program were: proposed federal aid to state, local, and private criminal justice organizations; creation of a presidential commission on crime in the District of Columbia; and establishment of the President's Commission on Law Enforcement and Administration of Justice (National Crime Commission).\textsuperscript{27}

The presidential mandate to the National Crime Commission apparently ran to all problems, and all institutions related to crime in any way. The message to Congress, the Executive Order creating the Commission in July of 1965,\textsuperscript{28} and the President's remarks to the members at their first meeting in September

\textsuperscript{19} U.S. DEPT. OF HEALTH, EDUCATION, AND WELFARE, ANNUAL REP. 63-64 (1966). Both the Committee and the Office have since been abolished.

\textsuperscript{20} THE PRESIDENT'S ADVISORY COMMISSION ON NARCOTIC AND DRUG ABUSE, FINAL REPORT (1963).


\textsuperscript{22} NATIONAL CONFERENCE ON BAIL AND CRIMINAL JUSTICE, PROCEEDINGS AND INTERIM REPORT (1965).

\textsuperscript{23} Id. at xiv-xxxii. The Vera Foundation is now the Vera Institute of Justice.

\textsuperscript{24} The early planning for the National Crime Commission was undertaken by the Office of Criminal Justice. Four of the six members of the Office joined the Commission staff, including the executive director and deputy director of that staff.

\textsuperscript{25} I PUBLIC PAPERS OF THE PRESIDENT—LYNDON B. JOHNSON 1965, at 1 (1966). In the message, President Johnson stated: "I will soon assemble a panel of outstanding experts to search out answers to the national problem of crime and delinquency." Id. at 7.


\textsuperscript{27} The proposed federal aid program was passed by the Congress in September of 1965 and became the Law Enforcement Assistance Act of 1965, 18 U.S.C. Ch. 201 (Supp. 1966). The Program has been administered by the Office of Law Enforcement Assistance in the Department of Justice. See DEPT. OF JUSTICE, 2d ANN. REP. TO THE PRESIDENT AND THE CONGRESS ON ACTIVITIES UNDER THE LAW ENFORCEMENT ASSISTANCE ACT OF 1965 (1967).

\textsuperscript{28} The President's Commission on Crime in the District of Columbia was created in July 1965 to study all aspects of crime and criminal justice in the District. See Exec. Order No. 11234, 3 C.F.R. 326 (Comp. 1964-65). The Commission's report was forwarded to the President in December of 1966. It was entitled THE PRESIDENT'S COMMISSION ON CRIME IN THE DISTRICT OF COLUMBIA, REPORT AND APPENDIX (1966).
of 1965\textsuperscript{29} blanketed the spectrum from the causes of crime to crime prevention, criminal justice agencies, and rehabilitation of released offenders in the community. Factual findings, conclusions, and recommendations were to be delivered to the President during the course of the Commission's work, with a final report due not later than the end of January of 1967. It seems clear that the President's 1965 crime program represented a compromise. A proposal limited to the creation of study groups would certainly have been greeted with a massive public yawn, if not outright indignation. As one periodical stated: "Commissions come cheap in Washington, and most often their reports turn out to be vague and anticlimactic."\textsuperscript{30} And yet, the federal government and the public were probably not prepared for a massive, revolutionary program directed towards informed, truly responsible, and properly framed reform. Thus, the law enforcement assistance program was launched with a relatively small appropriations request. In a very meaningful sense, time was being bought, but more importantly a carefully formulated set of conclusions and recommendations, and opportunities for public education, were being created.

III. Prior National Crime Study

Any commission with a broad mandate and a short time limit does well at least to consider the adage that there is nothing new under the sun. Somewhere, at some time, persons have probably promulgated ideas, facts, theories, and proposals that collectively will form a major part of any commission's report. Existing enlightenment can be collected in a convincing package. A search for dramatic new concepts and proposals, for instant solutions, or for universal answers could, if a dominating factor, negate the utility and validity of any report. True creativity will necessarily be offered by a commission in only a few areas; its boldness and integrity is reflected primarily in its willingness to accept the existing ideas of progressive scholars and administrators who have been unable to influence or affect the existing system to any great degree.

In the discovery and sorting process, the past is not to be discounted. For example, in the 1880's, a Philadelphia police chief analyzed the crime problem in the following manner:

What makes criminals, and how to deal with them, are two of the most intricate problems of social science. Their own good should be considered as well as that of society . . . . My own views are founded less upon theory, I think, than upon observation. I have noticed that when a man is convicted of crime, especially of any crime against the rights of property, he usually commits another offence within a short period of his release from prison. He serves his term, is released, and goes back into the world . . . . Does he reform and lead an honest life? On the contrary, he returns to his old associates, if he had any; if not, he finds some, and it is not long till he re-enters the prison for the second time a convict. There-


\textsuperscript{30} The Reporter, Sept. 23, 1965, at 18.
fore I am brought to the conclusion that while existing prison systems are useful to society by keeping dangerous men where they can do no mischief, they are of little use to the criminal. I see that they restrain him; I cannot see that they reform him. Records kept in this office show as many as eight convictions of the same criminal . . . .

But philanthropy may long rack its brain in search for a cure for crime; it would find much more satisfactory results from studying the prevention of its many causes; such as defective training, evil companions, mental incapacity, bad temper, strong drink, grinding poverty, and, for persistency in crime, difficulty in retrieving lost character, which a somewhat extended observation has led me to name as some of the chief causes of crime. I might add to them two others, which I have found prolific in bad fruit: difficulty in obtaining employment, and carelessness: carelessness on the part of owners of property, who leave temptation in the way of the needy, from the housekeeper who leaves the day’s wash unguarded on the lines and the back gate open, to the board of bank directors who trust blindly their own property and that of others to the falsified books of some cashier, as needy in his way as the tramp that robbed the clothes line in his. To these causes I might add another: the opportunity to dispose of stolen goods, readily and without fear of detection or betrayal.31

Here is an early perception of today’s “new” trends: recognition of the failure of institutional confinement as a rehabilitative device; emphasis upon the problem of recidivism; recognition of poverty, ineffective family training, and lack of job opportunities as basic conditions of crime; recognition of the necessity to resurrect or create individual self-respect; a proposal to concentrate upon crime prevention programs; recognition of the problem of white collar crime; awareness of the importance of a study of victims’ contributions to crime (so-called victimology); and recognition of the need to explore the structured system for disposal of stolen goods.

In the search for answers to crime problems, the concept of a national study commission had precedent in President Hoover’s National Commission on Law Observance and Enforcement (popularly known as the Wickersham Commission). Despite unique factors surrounding the chaos of prohibition and its enforcement, there are remarkable similarities between the commissions of 1929 and 1965. Although the public in the prohibition era did not seem to be concerned about the broad problems of crime nearly as much as the President himself was, his short assessment of that period rings a still-familiar tune. In April of 1929, President Hoover stated:

What we are facing today is . . . the possibility that respect for law as law is fading from the sensibilities of our people. . . .

Every student of our law-enforcement mechanism knows full well that it is in need of vigorous reorganization; that its procedure unduly favors the criminal; . . . that justice must be more swift and sure. In our desire to be merciful the pendulum has swung in favor of the prisoner and far away from the protection of society. The sympathetic mind of the American people in its over-concern about those who are in difficulties has swung

31 SPROGLE, THE PHILADELPHIA POLICE, 270-71 (1887).
During the presidential campaign of 1928 Mr. Hoover promised that, if elected, he would appoint a law enforcement commission. Its broad mandate was to carry beyond the problems of prohibition, although this fact was not readily apparent in either the Congressional authorization or the President's Inaugural Address in March of 1929.

The eleven-member Commission, with the exception of the president of Radcliffe College, was composed of lawyers and judges. Drawn from ten states, its membership included Dean Roscoe Pound of the Harvard Law School; Newton Baker, a former Secretary of War; and a former Attorney General of the United States, chairman George W. Wickersham. Public comment upon appointment of the Commission in May of 1929 reflected the seeming ambivalence of its mandate. Political motives were attributed to the President, and the ensuing emphasis by the Administration upon a broad crime study was ascribed by some to a desire to submerge the prohibition question.

The President's address to the first meeting of the Commission in May of 1929 did not even mention prohibition. Chairman Wickersham later observed that the most explicit definition of the Commission's undertaking appeared in the President's annual message to Congress in December of that year. In that message the President declared:

Under the authority of Congress I have appointed a National Committee on Law Observance and Enforcement for an exhaustive study of the entire problem of the enforcement of our laws and the improvement of our judicial system, including the special problems and abuses growing out of prohibition.
the prohibition laws. The commission has been invited to make the widest inquiry into the shortcomings of the administration of justice and into the causes and remedies for them.\textsuperscript{41}

Whatever the President's intentions might have been, Chairman Wickersham never doubted the existence of a broad mandate.

Similarities in the background and work of the 1929 and 1965 commissions are striking. As with the origin of the 1929 Commission, professional concern about improving the framework and procedures of criminal justice produced important studies that preceded the appointment of the 1965 Commission. In the 1960's the American Law Institute had completed its Model Penal Code\textsuperscript{42} and was constructing a Model Code of Pre-Arraignment Procedure.\textsuperscript{43} The American Bar Association had launched a three-year project to develop minimum standards for criminal justice.\textsuperscript{44} The International Association of Chiefs of Police was completing its Model Police Standards Council Act.\textsuperscript{45} A federally-funded, three-year study of correctional manpower and training needs was just commencing.\textsuperscript{46} The American Bar Foundation was completing a then fourteen-year-old project, Survey of the Administration of Criminal Justice in the United States, for detailed factual observation and analysis of police, court, and correctional procedures.\textsuperscript{47} In 1930, Mr. Wickersham commented:

Constant assertion has led to general acceptance of the statement that there are radical defects in our laws and their administration, especially in our criminal law and procedure. Within the last decade, Judicial Councils have been established in some nineteen (19) states; official Crime Commissions in thirteen (13) and unofficial Crime Commissions in at least two states and three cities; surveys of judicial establishments and the administration of criminal justice have been made and published in not less than five states and several cities. The American Law Institute . . . has been . . . preparing a model code of criminal procedure.\textsuperscript{48}

\begin{thebibliography}{99}
\bibitem{footnote1} 72 Cong. Rec. 21, 27 (1929).
\bibitem{footnote2} MODEL PENAL CODE (Proposed Official Draft 1962).
\bibitem{footnote3} THE MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE (Tent. Draft No. 1, 1966) was in the drafting process when the National Commission commenced its work.
\bibitem{footnote4} AMERICAN BAR ASSOCIATION, PROJECT ON MINIMUM STANDARDS FOR THE ADMINISTRATION OF CRIMINAL JUSTICE. The project's committees, staff, and reporters were most cooperative with the National Crime Commission staff. Minimum Standard Project publications include to date: FAIR TRIAL AND FREE PRESS, POST-CONVICTION REMEDIES, PLEAS OF GUILTY, APPELLATE REVIEW OF SENTENCES, SPEEDY TRIAL, PROVIDING DEFENSE SERVICES, JOINDER AND SEVERANCE, SENTENCING ALTERNATIVES AND PROCEDURES, and PRETRIAL RELEASE. All are tentative drafts, and all but the first (which was published in 1966) were published in 1967.
\bibitem{footnote5} This project was completed in 1966 by the Advisory Council on Police Training and Education and the Professional Standards Division of the International Association of Chiefs of Police. The Model Police Standards Council Act represents proposed state legislation to establish a regulatory council that would create and administer standards for recruitment and training of local police. The act is reprinted in TFR ON THE POLICE 219-20.
\bibitem{footnote6} The three-year Joint Commission on Correctional Manpower and Training was funded pursuant to the Correctional Rehabilitation Study Act, 29 USC § 42 (Supp. II, 1965-66), amending 29 U.S.C. § 42 (1964), and will make its report in 1968.
\bibitem{footnote7} Raw material and drafts of chapters from the Survey Project were made available to the National Crime Commission by the American Bar Foundation. Survey publications to date include: LAFAVE, ARREST (1965); NEWMAN, CONVICTION (1966); and TIFFANY, MCINTYRE AND ROTTENBERG, DETECTION OF CRIME (1967). Forthcoming publications will deal with prosecution and sentencing.
\bibitem{footnote8} Wickersham, supra note 36, at 656.
\end{thebibliography}
Both commissions were also beset by an initial lack of real progress and by funding problems. Both utilized full-time staffs and drew upon renowned scholars and practitioners as consultants and advisers. The broad areas of study were substantially similar. However the Wickersham Commission completed more comprehensive surveys of matters such as lawlessness in law enforcement and court processing of cases. The National Crime Commission’s surveys, on the other hand, included a much broader range of subjects and reflected the improvements in methodology.

The Wickersham Commission filed fourteen reports during 1930 and 1931: two on prohibition; one each on prosecution, criminal procedure, the federal courts (progress report only), lawlessness in law enforcement, police, criminal statistics, cost of crime, penal institutions-probation-parole, causes of crime, crime and the foreign born, enforcement of the deportation laws, and the child offender in the federal system of justice. In most cases, each report contained findings and the recommendations of the Commission itself, followed by findings and conclusions of advisory committees and individual consultants. There was no comprehensive general report such as that produced by the 1965 Commission. As one might surmise from the titles, the 1929 Commission concentrated to a much greater degree than the 1965 Commission on federal problems and procedures — prohibition enforcement and the eighteenth amendment, the federal court system, and children processed in the federal system. In addition, a report on crime and the foreign born was appropriate only because of the social conditions of that earlier time.

49 Chairman Wickersham wrote:

Progress in our work at the outset was slow, because of the difficulty in securing men and women to do the necessary work of research and inquiry. By the end of the fiscal year 1930, we had some forty-five men and women, besides the regular paid office force, more or less engaged in work for us, none of whom were receiving compensation from the Commission!

In addition, we have had the assistance of a few regularly paid scholars. In some cases, we were indebted to colleges and universities for the services of members of their regular staff. Wickersham, supra note 36, at 657.

Although the Wickersham Commission had received a $250,000 appropriation at the beginning of its study in 1929, the unpopular prohibition report which it published in January of 1930 led to a move in Congress to withhold funds after June 1930. Id. at 654. The President then made a public statement on June 27, 1930:

This deleted part of the appropriation is that devoted to investigation into the cause and remedy for crime in general and for the determination of the reform needed in our judicial and administrative machinery. . . .

With growing crime of all kinds and with insistent recommendations from every bar association and public body concerned that we should have an accurate study of the reforms necessary . . . , that we should have some constructive program for decrease and control of crime as a whole, I cannot abandon the question for one moment or allow the work of this Commission to cease. I have asked the Commission to proceed with its full program of work and it has consented to do so.

MYERS AND NEWTON, supra note 32, at 444-45.

Six days later, Congress appropriated an additional $250,000 for the Commission for use until June 30, 1931. Act of July 3, 1930, ch. 846, 46 Stat. 862. See also, Foreword, Reports on Law Enforcement, 30 Mich. L. Rev. 1, n.3 (1931); C. Marcy, supra note 4, at 18-19.

50 Report No. 1 consists of a Preliminary Report on Observance and Enforcement of Prohibition (Nov. 21, 1929) and an undated supplement thereto. H.R. Doc. No. 252, 71st Cong., 2d Sess. 5-25 (1930). The study of the federal courts was completed by the American Law Institute. ALL, A STUDY OF THE BUSINESS OF THE FEDERAL COURTS, PARTS I, II (1934).
In the areas where the two commissions overlapped the preceding one created paths that the 1965 Commission either repeated, expanded, or carried forward. In many areas the same theoretical and philosophical orientation prevailed. The studies and analyses of economic and social factors as conditions of crime are thus strikingly similar in the reports of both commissions. However, President Hoover's Commission did not follow through with recommendations on many of these matters as did the Johnson Commission. In other areas, though, the two commissions did make similar recommendations, such as those with respect to: the need for a national inventory of the costs of crime; the need for centralized criminal statistics; the need for centralized prosecution systems at the state level; the need for improved communications, coordination between departments, education, training, minority group representation, and crime prevention in the police world; the failure of prisons, the need to strengthen probation and parole, and the assumption that community treatment for offenders is the appropriate disposition unless proved otherwise in individual cases; the emphasis upon improving the discretionary, invisible administrative processing of offenders in the criminal justice system, and the recognition that most offenders in the system are processed through without trial; the shocking conditions in the lower courts and the need for the same procedures and services there that are found in the felony courts; the need for counsel for all defendants facing more than the very lightest penalties; the use of other procedures as alternatives to custodial arrest; the appropriateness of indeterminate, as opposed to mandatory minimum, sentences.

In general, then, it can be stated fairly that both commissions emphasized the same broad needs, i.e., crime prevention activities, development of alternative ways to deal with offenders, elimination of unfairness and injustices, the need for greatly improved personnel and other resources in the criminal justice system, and the recognition that most offenders in the system are processed through without trial; the shocking conditions in the lower courts and the need for the same procedures and services there that are found in the felony courts; the need for counsel for all defendants facing more than the very lightest penalties; the use of other procedures as alternatives to custodial arrest; the appropriateness of indeterminate, as opposed to mandatory minimum, sentences.

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51 For example, the findings of Shaw and McKay in the 1929 Commission's Report on the Causes of Crime (vol. II) received great emphasis in TFR on CRIME AND ITS IMPACT - AN ASSESSMENT 60-76. Professor McKay also edited and wrote parts of a consultant paper for the 1965 Commission: SUBSEQUENT ARRESTS, CONVICTIONS, AND COMMITMENTS AMONG FORMER JUVENILE DELINQUENTS (McKay ed. 1967).

52 NATIONAL COMMISSION ON LAW OBSERVANCE AND ENFORCEMENT [hereinafter WICKERSHAM COMM’N], REPORT ON THE COST OF CRIME 449-53 (1931). TFR on CRIME AND ITS IMPACT - AN ASSESSMENT 42-59. In its recommendations, the 1931 report was somewhat narrow in stressing primarily the need to determine the cost factors of the nation’s criminal justice machinery. The later commission placed additional emphasis upon ascertaining with some degree of precision various other cost impacts of crime.

53 WICKERSHAM COMM’N, REPORT ON CRIMINAL STATISTICS 5-18; TFR on CRIME AND ITS IMPACT - AN ASSESSMENT 123-37.

54 WICKERSHAM COMM’N, REPORT ON PROSECUTIONS 37-38; CRIME REPORT 147-49.

55 WICKERSHAM COMM’N, REPORT ON POLICE 1-10; CRIME REPORT 91-125.

56 WICKERSHAM COMM’N, REPORT ON PENAL INSTITUTIONS PROBATION AND PAROLE 170-74; CRIME REPORT 159-87.

57 WICKERSHAM COMM’N, REPORT ON PROSECUTION 6-29; TFR on THE COURTS 4-13.

58 WICKERSHAM COMM’N, REPORT ON PROSECUTIONS 59-73, 186-221; CRIME REPORT 130-31.

59 WICKERSHAM COMM’N, REPORT ON CRIMINAL PROCEDURE 46; WICKERSHAM COMM’N, REPORT ON PROSECUTIONS 45-221; CRIME REPORT 128-30.

60 WICKERSHAM COMM’N, REPORT ON PROSECUTIONS 27-33; CRIME REPORT 149-53.

61 WICKERSHAM COMM’N, REPORT ON CRIMINAL PROCEDURE 47; CRIME REPORT 132-33.

62 WICKERSHAM COMM’N, REPORT ON PENAL INSTITUTIONS PROBATION AND PAROLE 141-45; CRIME REPORT 142.
and detailed requirements for research to fill massive gaps in the current state of knowledge and information.

One can detect progress during the years between the two commissions. For example, at the time of the Wickersham report, police training was a virtually new phenomenon.\textsuperscript{63} The third degree was said to be commonplace.\textsuperscript{64} Probation and parole for adults lacked program content.\textsuperscript{65} Community treatment alternatives that included elements of both regulation and community activity for the offender had not commenced to any noticeable extent. Government programs to aid those living in poverty areas were non-existent. Criminal code reform had not commenced. The procedural revolution of the Supreme Court as to police practices was yet to begin. Thus, a 1929 Commission member looking at all these things today would detect improvement.

On the negative side, it is also clear that major recommendations of the Wickersham Commission have never been implemented. The lack of individualized justice by the police, prosecutor, judge, and correctional officer is probably more of a problem today than it was in 1931. The lower courts looked the same in 1965 as they did then.\textsuperscript{66} The decrepit prisons, condemned by the 1931 report, in many instances were merely thirty-four years older in 1965.\textsuperscript{67} Jurisdictional fractionalization of police departments, prosecutive offices, courts, and corrections has persisted and created increasingly severe problems because of intervening social change. Public attitudes still concentrate upon a perceived moral decay, lack of respect for law, uncontrolled lawlessness, and criminal propensities allegedly related to race. We have no national inventory of the costs of crime and no national collection of statistics as to every stage of the criminal process. Administrative processing of offenders by police and prosecutors still represents an invisible anarchy suffering from lack of manpower, resources, information about offenders, and policy guidance.

Of course, an exhaustive comparison of the two commissions, and of the crime and criminal justice processes of their times, cannot be attempted here. Nor may absolute comparisons be appropriate. For progress connotes not only improvement in the way of doing things, but also an elevation of expectations and ideals. A prisoner not physically abused by the police in the 1930's would probably attribute improved fairness to the system then; today's concerns about fairness center around counsel in the police station and politeness and lack of compulsion during on-the-street questioning. But the Wickersham Commission

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\footnote{63} WICKERSHAM COMM'N, REPORT ON POLICE 4, 70-71.
\footnote{64} WICKERSHAM COMM'N, REPORT ON LAWLESSNESS IN LAW ENFORCEMENT 1-6.
\footnote{65} WICKERSHAM COMM'N, REPORT ON PENAL INSTITUTIONS PROBATION AND PAROLE 135-36, 167-68. In U.S. BUREAU OF PRISONS, THIRTY YEARS OF PRISON PROGRESS: 1930-1960, Hearings Before the Subcomm. on National Penitentiaries of the Senate Comm. on the Judiciary, 86th Cong., 2d Sess. 142, 144-45 (1964), the statement is made that when the Federal Bureau of Prisons took jurisdiction over the U.S. Probation Service in 1930, there were 4,280 probationers and eight probation officers.
\footnote{66} See TFR ON THE COURTS 29-33, 120-38.
\footnote{67} "Forty-three state penitentiaries or prisons, seven reformatories for men, and one institution for women that were opened between 1805 and 1900 still stand and are still in use in 36 states." MACCORMICK, ADULT CORRECTIONAL INSTITUTIONS IN THE UNITED STATES 7 (Consultant Paper 1967). The author points out that the design and construction of these institutions make mass treatment almost inevitable. \textit{Id.} at 62-63.
\end{footnotes}
did perceive many goals of their tomorrow and, for much of their guidance, that tomorrow has not yet appeared.

IV. Operations of the National Crime Commission

As with any presidential commission, the membership of the National Crime Commission was chosen by the President and his White House staff with the aid of suggestions from many private and governmental sources. If labels are desirable or have any validity, the membership reflected a somewhat conservative orientation, with an average age of over fifty years. Those who cry for public bodies to "tell it like it is" hardly anticipated a radical document from a present and former U. S. Attorney General, the then president and two former presidents of the American Bar Association, a former president of the American College of Trial Lawyers, a police chief, a prosecutor, a state attorney general, a former mayor of New York City, a former state secretary of internal affairs, a newspaper publisher, and three judges. The four remaining members were the president of the League of Women Voters of the United States, the executive director of the National Urban League, the president of Yale University, and a distinguished law school professor who is co-reporter for the Model Penal Code. President Johnson appointed Attorney General Katzenbach as chairman of the Commission and James Vorenberg, a professor from Harvard Law School and director of the Office of Criminal Justice, as the executive director.

Aside from complicated and difficult administrative problems, the first task facing the Commission was to build a staff and to outline the full scope of the intended study. Although the Commission was created in July of 1965, appropriations were not available until the following November, and a full staff was not assembled until December. By then, six of the eighteen months allotted to the Commission had passed. During this time, however, task forces were established to deal with the subjects of police, courts, corrections, and assessment of the crime problem. Later, other working groups were established to deal with juvenile delinquency, organized crime, narcotics and drug abuse, and drunkenness. Categorical subdivisions of study based upon less conventional lines were devised but abandoned as unworkable in light of time and cost factors. Early in 1966, the Institute for Defense Analyses was chosen to conduct broad

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68 For biographical information about each Commission member, see Crime Report 309-11. Attorney General Katzenbach became Undersecretary of State in September of 1966 but continued as chairman of the crime commission.
69 For a summary of Commission operations, see Crime Report 311-12. The cost of the Commission can be set at approximately two million dollars. About one million dollars came from the joint appropriation for the national and District of Columbia commissions. One and one-half million dollars was authorized for the two commissions. S.J. Res. 102, Pub. L. No. 89-196, 79 Stat. 827 (1965). The combined appropriation for the two commissions was $900,000 for fiscal year 1966. Act of Oct. 31, 1965, Pub. L. No. 89-309, 79 Stat. 1151. And $550,000 was appropriated for fiscal year 1967. Act of Nov. 8, 1966, Pub. L. No. 89-797, 80 Stat. 1502. The remaining one million dollars consisted primarily of services and personnel loaned to the Commission by other agencies and research grants awarded to others by the Office of Law Enforcement Assistance for projects of mutual benefit to the Commission and to the Department of Justice. The greatest amounts of money were expended in the areas of assessment of the crime problem, science and technology, and the police; least money was expended upon drunkenness and organized crime.
to work closely with one or two of the particular task forces. The Commission then approved and added to work plans for each area of study at its first two meetings in September of 1965 and January of 1966. The young staff (two-thirds of whom were under thirty-eight years of age), with suggestions from Commission members and other sources, recruited consultants and advisers from every relevant discipline and agency to assist in the work. The staff itself included lawyers, police officials, correctional personnel, prosecutors, sociologists, psychologists, systems analysts, juvenile delinquency prevention planners, and professional writers and editors. Federal, state, and local agencies loaned personnel for appropriate part-time or full-time endeavors.

Much of the output of any study proceeds naturally from the fundamental precepts that form its base. For many reasons, the Commission and its staff primarily offered analysis and recommendations built upon existing foundations of criminal law and its enforcement. Primary emphasis was not placed upon studies of the appropriateness of the criminal sanction or of the traditional division of responsibility among entities broadly categorized as police, prosecutor, court, and corrections. Aside from the recommendation to remove drunkenness per se as a crime, the subject of overcriminalization produced only a general recommendation that states should reconsider their criminal laws pertaining to personal status and social morality.  

Other issues, critical in the eyes of many, also failed to receive primary attention: capital punishment, civilian review boards, a perceived decline in religion and traditional morality, the effect of court decisions upon crime and law enforcement, violence and the mass media, crime and pornography, the anatomy of riots, and electronic surveillance. Although all these subjects did receive attention, they did not receive primary attention and study. Some rose to the level of recommendations wherein the generality of context makes evident the underlying emotionalism and compromise. Others were dismissed as having no basis in fact or as simplified, emotional cloud-cover for complex questions. Lack of time and data also precluded productive analysis of some of these problems.

I do not think it appropriate for me, as a former staff participant in the Commission, to defend or condemn the approach taken. There are compelling reasons for and against the decisions not to carry many of these issues to definitive conclusions in a broad commission study. It should be recognized, however, that these decisions were not made by default or through lack of recognition.

70 The recommendation to remove drunkenness in itself as a criminal offense is found in Crime Report 236. The recommendations on dangerous drugs and marijuana stated only the need for research upon which a framework of regulatory law could be based. Id. at 216, 225. There was no recommendation as to the substantive crimes connected with narcotics. But see the separate statement of four Commissioners. Id. at 302-03. As to gambling, abortion, vagrancy, disorderly conduct, and minor sexual offenses, the Commission said only that when states institute the recommended general criminal code reform, the kinds of behavior to be defined as criminal should be weighed carefully. Id. at 126-27. The whole problem of substantive law reform was considered in TFR on the Courts 97-107. See also, J. Skolnick, Coercion to Virtue: A Sociological Discussion of the Enforcement of Morals (Consultant Paper 1967); TFR on Organized Crime 114-26. A study of gambling and possible ramifications of its legalization was commenced but could not be completed in time.
Proper attention and heat were present in the decision-making process. Others must judge whether the gaps remaining after the Commission concluded its work doomed its study to failure or formed a prerequisite to the probability of positive achievement. Those who looked to the Commission for detailed pronouncements about the enforcement of individual and public morality through criminalization were profoundly disappointed. Those, too, who sought confirmation of moral indignation at the state of lawlessness or desired immediate solutions or yearned for the reassertion of a punishment philosophy or expected identification of single-track, remediable causes of crime, must have written off the Commission's work as avoiding the real issues at hand.


I could hardly come now either to praise it or to bury it. Still, it may be said that the controversial character of these issues, and the need to achieve consensus among nineteen Commissioners of highly differing backgrounds and orientation, quite understandably required some reduction in scope and muting in tone and conclusion of my original draft. I note this not in complaint. Indeed, that these distinguished citizens, who, as a group, can scarcely be charged with being immoderate or visionary, were prepared to raise substantial reservations concerning the overextension of the criminal law is itself an event of significance. Kadish, The Crisis of Overcriminalization, 374 ANNALS 157 (1967).

As to legalized gambling, my own view is that if a Commission device were to be used, a study devoted exclusively to that subject is necessary. Current writing and suggestions by scholars, practitioners, and public officials are extremely narrow, simplistic, naive, and unsophisticated.

72 Columnist James J. Kilpatrick wrote:

What matters to the average citizen is not so much the abstract of statistical problems, or even the sociologists' long-range solution. His concern goes to the mugger, the rapist, the dope-crazed thief, the arrogant young punks who infest his streets. What can be done about them now? One of the commission's answers is to provide textbooks for slum schools that are written in slum English. Okay, okay. But what can be done tomorrow, next week, next month, to lock up the hoods and thieves?

The Washington Evening Star, Feb. 21, 1967, at 23, col. 4. An Anderson, South Carolina, newspaper wrote in an editorial:

Those who were under the impression that the National Crime Commission was established to afford direction and support to immediate practical steps to curb crime must now be having second thoughts.

Can you imagine even a nervous shoplifter, much less hardened killer-rapists, crumbling under the threat of a set of "meaningful statistics"?

Hardly!

Anderson Independent, March 11, 1966. The editorial was entitled: "If You Hoped for a Real Attack on Crime, Just Forget About It."

The lack of recommendations for immediate reduction in street crime probably caused the greater public disappointment in the Commission's work. Although implementation of many recommendations of the Commission could have been commenced without cost the day after the report appeared, none of them would have caused immediate crime reduction. As to the long-range nature of the report, an urban affairs expert commented:

The lay reader might respond, "yes, of course, but what do we do tomorrow morning that will reduce the chance of my wife having her purse snatched by some punk on the way to the supermarket?"


Reactions to the report, of course, depended a great deal upon the preconceptions, attitudes, and knowledge that the particular reader possessed before examining the documents. For example, Wilson stated that the great majority of the over two hundred recommendations seemed rather obvious and not very illuminating. Id. On the other hand, Congressman Rarick (D., La.) termed the National Crime Commission "the new anti-law-and-order front ... against just about everything American. ... Without any experience or testing of their revolutionary theories, they would destroy overnight 190 years of proven record." 113 CONG. REC. A2532 (daily ed. May 23, 1967).
What the Commission primarily concentrated upon was the measure of crime in our society today, the current responses thereto, and the formulation of directions for change. The reports had to be geared to serve divergent interests and levels of knowledge. Public education considerations required documents attractive to, and comprehensible by, the layman. Reform considerations required a presentation that would be persuasive to public officials and practitioners alike. The requirements of research in the future dictated goals of servicing the academic community and creating a useful educational tool for students. Integrity required that matters be presented as perceived despite what practical or political considerations might otherwise imply. An impossible task indeed, but one that required each person to concentrate upon this impossible possibility. No one could honestly claim in the end that compromises were not made.

Urban crime received the most intensive treatment. But the most difficult, as well as the most unmanageable, part of the study was crime prevention. As the general report states:

Warring on poverty, inadequate housing and unemployment, is warring on crime. A civil rights law is a law against crime. Money for schools is money against crime. Medical, psychiatric, and family-counseling services are services against crime. More broadly and most importantly every effort to improve life in America’s “inner cities” is an effort against crime. The Commission’s study thus became concerned with practically every social program and every social service provided by the various branches of government. The most vexing problem centered around the degree of specificity that was necessary and practical in formulating findings and recommendations concerning schools, jobs, welfare, and community and family services. Consultants were requested to study the relationship between each of these problems and crime: crime and the inner city, crime and employment, crime and the family, and crime and the school. Examples of promising social programs were requested. The scarcity of ideas for direct deterrent and apprehension methods in controlling crime in the streets led to the science and technology study. This later broadened to include the entire criminal justice system. Emphasis was also placed upon gathering information that would demonstrate the diversity, complexity, and universality of crime in our society.

Extensive field studies were conducted in each area. Only a few can be mentioned here. In assessing the crime problem, the first national survey of unreported crime and a detailed three-city survey of law enforcement practices were completed. In the police task force, a survey of promising new procedures in 2,200 police departments was initiated. A nationwide survey and an

73 CRIME REPORT 6.
74 NATIONAL OPINION RESEARCH CENTER, FIELD SURVEY II, CRIMINAL VICTIMIZATION IN THE UNITED STATES (1967).
75 UNIVERSITY OF MICHIGAN SURVEY RESEARCH CENTER, FIELD SURVEY III, STUDIES IN CRIME AND LAW ENFORCEMENT IN THE MAJOR METROPOLITAN AREAS (1967).
76 POLICE PROCEEDURES ADVISORY GROUP, REPORT ON POLICE FIELD PROCEDURES (Consultant Paper 1967). Responses from the various police departments offered astoundingly few ideas or programs geared to increased apprehension or deterrence.
77 NATIONAL CENTER ON POLICE AND COMMUNITY RELATIONS, FIELD SURVEY V: A
intensive two-city study\textsuperscript{78} of police-community relations were completed. A national survey of corrections was conducted by the National Council on Crime and Delinquency.\textsuperscript{79} Detailed observations of selected lower courts in various areas of the country were conducted.\textsuperscript{80} A national juvenile court survey was conducted by the Department of Health, Education, and Welfare in conjunction with the Commission.\textsuperscript{81} Information was collected from various agencies on organized crime, court processing of offenders, delinquency prevention programs, enforcement of drunkenness laws, and enforcement and other programs in the narcotics field. Federal departments made available extensive data. The science and technology study included the collection and analysis of data on the police apprehension process, the administration of court systems, police communications, command, and control, programmed learning in corrections, and various criminal justice information systems.\textsuperscript{82} The four hundred individual consultants and advisers produced facts as well as ideas.

The reports of the Commission reflect this literal mountain of data. But even so, in many areas the members and staff had to rely on initial samplings or traditional measuring devices as bases for conclusions. This naturally had a bearing on the accuracy of these conclusions. For example, there is much more crime than is reported to the police, but how accurate is a public sampling device for this purpose?\textsuperscript{83} If there are twenty instances of excessive use of force by police in 5,339 police-citizen encounters observed in three cities, what nationwide projections can be made as to the extent of such brutality? If an experimental community program in California for youth offenders reduced the rate of recidivism further than that of a prison control group, what general conclusions are justifiable in formulating a corrections philosophy? Is there any correlation between the number of convictions of organized crime figures and society's degree of control over the influence of organized crime? If police response time to calls in one city separates out as the crucial factor in eventual solution of crime there, does this afford a basis for prime emphasis in recommended improvements in police procedures? Again, these are merely examples of the data problems. The collection of data as to each facet of crime and criminal justice was burdened by a fundamental lack of information, research, and statistics.

Also to be met were the untested assumptions: A college-educated policeman is better than an uneducated one. Police corruption has decreased con-

\textsuperscript{78} \textit{University of California at Berkeley, School of Criminology, Field Survey IV: The Police and the Community (1967).}

\textsuperscript{79} \textit{National Council on Crime and Delinquency, Correction in the United States, TFR on Corrections 115.}

\textsuperscript{80} \textit{TFR on the Courts 120.}

\textsuperscript{81} \textit{TFR on Juvenile Delinquency and Youth Crime 77.}

\textsuperscript{82} These studies are printed as appendices in \textit{TFR on Science and Technology 83.}

considerably, and corruption is not a major problem in court and correctional systems. The degree of criminal activity in a society varies inversely with the strength of the threat of apprehension. More jobs and better schools will decrease crime rather than create new forms of criminality. The FBI crime index measures the most serious crimes rather than the ones about which information is most readily available.

Some of these assumptions were altered by the Commission; others were preserved pending further research and study. Lack of knowledge created a further gap in the Commission's work. For example, there is no accurate account of the amount and costs of criminality among the various classes of people who wield political, economic, and moral power in America.

The work of the staff proceeded simultaneously, by necessity, on both the general report and the individual task force reports. Consultant papers were completed at various times and integrated into the staff work. Several leading scholars worked full-time as part of the staff during the summer of 1966. With a few notable exceptions, the writing of the reports was accomplished by the staff utilizing the assembled data and many ideas from the consultant papers. Drafts were submitted to Commission members prior to their meetings. They met a total of seven times, two or three days per session. Changes and ideas offered by Commission members at full sessions, in individual communication, and in task force meetings were incorporated into the reports. The members probably received over two and one-half million words of material.

Naturally, most of the work was performed by staff and consultants; theirs was the job of educating and persuading Commission members as well as each other. But in the end, the general report was that of the members themselves. In it, they are saying as a body to the President and to the American people: this is the way we feel about the crime problem and this is what we think our nation ought to do about it. A consensus among nineteen prominent persons to whom all kinds of approaches have been presented balances the general and the specific, the radical and the conservative, the ideal and the practical, the long-term and the short-term considerations. The National Crime Commission clearly made this choice of consensus. An already polarized society would not receive a polarized report. The separate statements by Commission members on religion, police and court procedures, and narcotics bespeak little conflict with most of the broad sweep of the reports.84

Again, evaluation must be left to others. I do believe firmly, however, that if the American public and its government officials achieved the same level of knowledge and attitudinal response created in the Commission and its staff by

84 Crime Report 302-08. Short of writing a book filled with specific examples, it is difficult to convey the bustling flavor that precedes the development of a consensus—the frustrations, the in-fighting, the evolution of a reconciliation of polarized views among both staff and commission members, the educational process that induces genuine changes in perception and beliefs. The only expressed major disagreement in the body of the report pertained to wiretapping and electronic surveillance. Although the Commission agreed upon a recommendation that federal law in this area should be clarified and that use of such devices should be outlawed, only a majority of the members agreed that an exception should be made for law enforcement officers' use of such surveillance under stringent, carefully-prescribed limitations. Id. at 203. It became clear during the course of the Commission's work that the Johnson Administration earnestly disagreed with the majority position.
two years of study, the nation would be launching significant, progressive steps on a wide basis in every field of crime prevention and criminal justice. If the reports can be said to reflect the bases for this belief, the goals that the Commission set for itself will have been accomplished. Criticism should be focused upon the validity of these goals in light of all the given factors surrounding the Commission and its work. It should be noted that criticism of this type would be particularly valuable to the establishment and work of future commissions studying any subject.

V. Implementation of the Commission's Proposals

Other sections of this symposium will explore individual proposals and directions set by the Commission. The theme of the general report is stated therein:

The Commission finds, first, that America must translate its well-founded alarm about crime into social action that will prevent crime. It has no doubt whatever that the most significant action that can be taken against crime is action designed to eliminate slums and ghettos, to improve education, to provide jobs, to make sure that every American is given the opportunities and the freedoms that will enable him to assume his responsibilities. . . . To speak of controlling crime only in terms of the work of the police, the courts and the correctional apparatus, is to refuse to face the fact that widespread crime implies a widespread failure by society as a whole.

The Commission finds, second, that America must translate its alarm about crime into action that will give the criminal justice system the wherewithal to do the job it is charged with doing. Every part of the system is undernourished. There is too little manpower and what there is is not well enough trained or well enough paid. Facilities and equipment are inadequate. Research programs that could lead to greater knowledge about crime and justice, and therefore to more effective operations, are almost non-existent. To lament the increase in crime and at the same time to starve the agencies of law enforcement and justice is to whistle in the wind.

The Commission finds, third, that the officials of the criminal justice system itself must stop operating, as all too many do, by tradition or by rote. They must re-examine what they do. They must be honest about the system's shortcomings with the public and with themselves. They must be willing to take risks in order to make advances. They must be bold.

Those three things are what this report is about.85

Inherent in these directions is a belief that the degree of crime in a society may not bear close relation to the effectiveness or ineffectiveness of the criminal justice system. The core concepts of crime prevention and reintegration of the offender into an acceptable social framework depend upon social and individual factors to which the criminal justice system merely contributes rather than
controls. Prevailing social conditions and society's failures to acknowledge and meet them form the most significant starting point in crime control. Thus, the Commission made clear their belief that crime would continue to rise during the next decade no matter what changes or reforms were instituted by police, courts, and correctional officials. There were no immediate solutions compatible with the competing values of our society.

Two basic themes pervaded a great majority of the Commission's recommendations as to the criminal justice system. First is the philosophy that the criminal label and the complete, formal criminal process should be reserved for offenders involved in the most serious crimes or in repeated criminal conduct. This orientation guided specific recommendations for the exercise of police discretion, diversion of arrested persons by the prosecutor out of the court system, development of alternative tracks for such persons to services in the community, diversion of juveniles at the intake stage away from the adjudicatory process, full use of community services at the disposition and correction stages. Such an approach led to specific needs in the agencies themselves: new career patterns and a greater variety of skills in police departments, improved information gathering and processing by the prosecutor and the court, and flexibility and community treatment in the corrections field. A more discriminating use of the full panoply of the criminal justice system would permit more effective processing of those offenders whose criminal conduct interferes most severely with public order and individual security.

The second basic theme revolves around the need to inject into the criminal justice system positive programs for juveniles, misdemeanants, and for offenders who have had the original charge against them reduced from a felony to a misdemeanor. Prosecutors, judges, and correction officers have been devoting most of their time, concern, resources, and procedural fairness to offenders processed in the felony courts; yet these are the offenders who probably have already developed criminal careers and for whom diversion away from future criminal activities is least hopeful. Increased emphasis upon the minor and first offenders led to many of the above recommendations and to others: the need for defense counsel, pre-sentence reports, and individualized discretion by the prosecutor in the lower courts; informed and consistent sentencing practices; massive infusion of resources into juvenile aftercare; the introduction of procedural fairness into the juvenile court process; the need for probation and parole supervision, with available community services and youth service bureaus, for those processed by the juvenile and lower courts; reorganization of court, prosecutive, and correctional structures; the need to remove drunkenness offenders from the criminal process. The Commission called for a development of individual justice, processing, and treatment in every agency to replace the mass justice of this and preceding eras. Throughout the reports one can detect a sense of futility in improvement of the police apprehension process without a concomitant, or perhaps preceding, reform in the court and correctional process.

The general report was released by the President in February of 1967 and the nine task force reports were released seriatim during April-June of that year. The consultant papers were published at the end of June.
VI. Implementation of Recommendations

Implementation had been a concern of the Commission and the staff from the very beginning. The initial thrust in this area was devoted to one of the principal purposes of the Commission, public education. A former magazine and TV news writer was hired for public information purposes and was named an assistant director of the staff. Members and staff spoke throughout the country about crime and the Commission's study. Numerous articles appeared in the mass media. An unprecedented ninety-minute presentation of the network television show, "Meet the Press," featured five Commission members and the executive director of the staff immediately after the release of the general report. Newspaper, television, and magazine coverage of the Commission's reports was quite extensive from February through June of 1967.

Of course, this was merely an ephemeral phase of the implementation task. Through the course of the Commission's work, many conferences were held in cooperation with other agencies and organizations not only to gather ideas but also to lay the groundwork for acceptance of the recommendations. A symposium on science and criminal justice was sponsored to acquaint industry with law enforcement needs. A conference on legal manpower needs explored the implications for the Bar in extending the right to counsel to virtually every legal proceeding involving possible loss of freedom. In March of 1966, the Attorney General invited each governor to establish a state criminal justice committee to cooperate with the National Commission and to implement Commission recommendations through statewide programs when the National Commission had completed its work. A resolution of the National Governors' Conference urged each governor to create such a committee. In October of 1966, the President's Commission sponsored a conference for governors' representatives from each state; the work of the Commission and the directions thereof were discussed. A massive federal aid program for criminal justice reform was formulated by the Commission and its staff and became the basis for President Johnson's proposed Crime Control Act. The involvement of so many practitioners in the Commission's study created a base of experts who understood and for the most part advocated the Commission's recommendations. In March of 1967, a two-day conference of seven hundred representatives from federal, state, local, and private agencies.

86 NATIONAL BROADCASTING COMPANY, MEET THE PRESS (1967).
87 Of the hundreds of editorials appearing in newspapers throughout the nation, the consensus as to the general report was favorable. Most newspapers and magazines termed the report a call for a needed massive infusion of resources.
88 See PROCEEDINGS OF THE NATIONAL SYMPOSIUM ON SCIENCE AND CRIMINAL JUSTICE (1966). The symposium was sponsored by the National Crime Commission, the President's Office of Science and Technology, and the Office of Law Enforcement Assistance, U.S. Dept. of Justice. The Illinois Institute of Technology plans to hold annual symposiums on the subject of law enforcement, science, and technology. The first was held in March of 1967. Papers presented thereto are reprinted in LAW ENFORCEMENT, SCIENCE AND TECHNOLOGY (A. Yefsky ed. 1967).
90 39 STATE Gov. 204 (1966).
agencies, organizations, and institutions served in part to explain and discuss the Commission's findings and recommendations.²

At the conclusion of the two-year study, approximately one hundred thousand of the various reports were distributed at government expense, including forty thousand copies of the general report.³ They were sent to persons in the criminal justice field; to scholars and educators; to mayors, city managers, and legislators at all levels; to governors, businessmen, and other community leaders. Copies of the reports are sold by the Government Printing Office at modest expense, and by December of 1967, over one hundred eighty thousand of the various reports had been purchased by individuals, organizations, and agencies. The general report was the subject of about one-third of these purchases. Each of the reports has been reprinted several times, and the demand continues.⁴

What of the future? Does all this motion lead to progress? Attorney General Ramsey Clark stated recently:

Now we are engaged in a great renaissance in crime control. President Johnson's Crime Commission has just completed the most comprehensive study of crime, its cause and cures, ever undertaken. This is the easy part. Implementation, as always, is the major task.

It is an appropriate time to recall an earlier study of crime only a generation ago; a time of comparative simplicity.

In 1931 the Wickersham Commission . . . concluded, in these words, "that the present prison system is antiquated and inefficient. It does not reform the criminal. It fails to protect society." The Commission added that if the system as then comprised were unable to rehabilitate, then it should be "so reshaped as to insure a larger measure of success." America failed to accept the challenge and 36 years later . . . (i)t is not surprising that the challenge unheeded in 1931 is resurrected in 1967. Our reaction to the challenge will be crucial to the control of crime in America, to the quality of our lives and those of our children.⁵

The implementation failures following the Wickersham Commission are evident. The reasons therefore are manifold. Certainly two of the principal problems were its publication at the heart of the Great Depression and its loss of credibility and respectability in public and legislative eyes by reason of ambivalent and unpopular recommendations on the issue of prohibition.⁶ A com-

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² See PROCEEDINGS, FIRST NATIONAL CONFERENCE ON CRIME CONTROL (1967).
³ This was part of the dissemination program of the Office of Law Enforcement Assistance, U.S. Dept. of Justice.
⁴ Letter from Rowland E. Darling, Deputy Supt. of Doc., U.S. Gov. Printing Office, to Henry S. Ruth, Jr., December 29, 1967. Of the nine task force reports, those relating to the police, organized crime, and the courts have been requested in greatest volume. The three volumes account for approximately fifty thousand of the one hundred ten thousand task force reports sold. Id.
⁶ The judiciary and the Bar probably took greatest note of the Wickersham Commission's work. And, undoubtedly, reforms in police interrogation practices and criminal procedure did receive impetus from the Commission's reports. However, the public, legislators, and other public officials apparently disregarded the findings and recommendations for the most part. The following are merely illustrations of the reaction:

The public and the press, in their disappointment at the Commission's failure to
mission can serve only as a catalyst to national reform. Many other factors in society dominate the extent of that catalytic influence. It is doubtful if anyone can truly assess the effect of a commission's work in such a broad field as crime and crime control. No matter what the state of readiness for reform in the practitioners' world of criminal justice, they can move forward only if public opinion and elected officials permit them to do so.

There are discouraging factors: riots in over one hundred cities in the summer of 1967, an apparent hardening in police and public attitudes, the failure in the recent session of Congress to pass the President's crime control bill, a presidential campaign in 1968 that promises to feature the simplistic "lawlessness" cries of 1928 and 1964.

Identity itself squarely with one side or the other of the prohibition controversy, have manifested a disposition to brush aside its work with a wave of the hand and a few disparaging remarks. Foreword, Reports of the National Commission on Law Observance and Enforcement, 30 Minn. L. Rev. 1, 3 (1931).


"In Congress, the report (as to prohibition) was received with a mixture of adverse criticism and ridicule." Wolf, The United States, 33 Cur. Hist. 911 (1931).

In McNamur, Unhappy Warrior: A Portrait of George W. Wickersham, 156 Outlook 85, 116 (1930), the author stated that among Washington, D.C. correspondents there was a unanimous indifference to the Commission's work.

As to the prohibition report, an editorial in 133 Cath. World 99 (1931) stated: "Seriously and solemnly they reported that conditions are very bad and recommended that nothing be done about it."

As to the Wickersham Commission, one periodical advised that the best possible course for the Commission members was to go home quietly and quickly. 155 Outlook 374 (1930).

In 1934, the Attorney General of the United States called a conference of six hundred representatives of states, cities, and professional organizations to discuss all problems of crime and criminal justice and particularly to discuss the Department of Justice's role in helping state and local law enforcement. H. Cummings and C. McFarland, Federal Justice 476-85 (1937). At the conference, the Attorney General and President Roosevelt made no mention of the Wickersham Commission in their addresses to conference delegates. Proceedings of the Attorney General's Conference on Crime 3-8, 17-20, 456-61 (1935). The then president of the American Bar Association stated at the conference:

Consider the Wickersham Commission, which made one of the most thorough investigations of law observance and enforcement of our time. The thirteen (sic) volumes of that report are now gathering dust on the shelves of college libraries, and copies of most of them are no longer available. Id. at 198, 199-200.

The work of the Commission received very little mention during the course of the 1934 conference.

A full appraisal and description of the implementation of the Wickersham Commission reports will be published in the Spring of 1968 by the Institute of Criminal Law and Procedure of the Georgetown University Law Center. Unfortunately, that material is not available at the time of the writing of this article.

97 A version of this bill may have been passed in the second session of the Ninetieth Congress by the time this article appears. See S. 917 and H.R. 5037, 90th Cong., 1st Sess. (1967).

98 Richard Nixon wrote recently:

Far from being a great society, ours is becoming a lawless society. First, there is the permissiveness toward violation of the law and public order by those who agree with the cause in question. Second, there is the indulgence of crime because of sympathy for the past grievances of those who have become criminals.

Our opinion-makers have gone too far in promoting the doctrine that when a law is broken, society, not the criminal, is to blame. Our teachers, preachers and politicians have gone too far in advocating the idea that each individual should determine what laws are good and what laws are bad, and that he then should obey the law he likes and disobey the law he dislikes.

On the other hand, there are encouraging factors as well. Many professional organizations have utilized the Commission’s reports as an added impetus for recommended change. Governors’ crime committees have adopted Commission recommendations for action within several states. Many police departments have implemented some key proposals of the Commission. Federal agencies, such as the Department of Housing and Urban Development and the Office of Economic Opportunity, have awarded grants to urban communities for experimental programs that adopt particular recommendations of the Commission.

Directions for the future hang in the balance. Other commissions have already commenced or are completing their work: The National Advisory Commission on Civil Disorders, The National Commission on Reform of Federal Criminal Laws, and a presidential commission on obscenity, pornography, and crime. But anyone who appreciates the use of power by various branches of government realizes all too well that a commission is not a power device. The course of crime control lies with each public official’s choice between expediency and responsibility in this time of great national crisis. Upon these factors also depend the epitaph that historians will place upon the National Crime Commission’s reports.

York Times Editorial commenced this way

One of the biggest applause-getters in this fading year has been the get-tough speech against crime in the streets. Public officials and prospective candidates on all levels have found it especially successful in areas where civil rights demonstrations have taken violent turns.


99 The report of the National Advisory Commission on Civil Disorders should have been published by the time this article appears. The National Commission on Reform of Federal Criminal Laws will submit its final report in November 1969. The obscenity commission report is due in January 1970.