WHO ARE THE DANGEROUS?*

by

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My purpose here is to pose the question, "Who are the dangerous?" It is not to pose the answer. Nor is it to explore in any great depth the characteristics of dangerous offenders as received and as dealt with by the criminal law and the criminal justice system. The issue of dangerousness is one on which the legal and behavioral science literature and research produces very little agreement. It is a subject which police, prosecutors, judges and corrections face daily – with little guidance from the professions and disciplines which claim to know the most about how to diagnose, to understand, and to change behavior.

While we have not with much certainty defined dangerousness for sentencing purposes, our courts do sentence to institutions nondangerous persons by the hundreds of thousands as though they were dangerous. The problem of identifying, diagnosing and sentencing persons who are dangerous probably represents the greatest unresolved problem the criminal justice system faces. Consider some of the current consequences of our inability to identify and to sentence accurately the dangerous offender.

Our justice system pursues the myth of public protection by selecting for imprisonment mostly the poor, the unskilled, the undereducated and the minorities at the same time it selects a wide range of alternatives to prison for offenders of high social status. Criteria for dangerousness play no part in the selection process. We imprison for moral and social health problems more often than for problems of violent and dangerous behavior. Consider if you will the entire subject of so-called victimless crime, offenders who hurt no others than themselves by behavior which is labeled criminal. While we state, in terms of national policy that we as a nation are committed to the reduction of crime, we still allocate most of the money, manpower and energy of our criminal justice system to the arresting and processing of noncriminal behavior.

Our political leaders know the public's fear of violent crime and the public's expectation that appropriate steps will be taken by those with authority to reduce and control such crime. Unfortunately, however, the public officials have sought to tailor their remedies to what they sense the public wants rather than to what the public needs. Thus a confused and frustrated public is being promised simplistic remedies such as mandatory sentences, longer sentences and even the penalty of death – all of which have been tried and have failed in the past. Those to whom the public looks to for leadership in effect insist that an uninformed but fearful public prescribe its own solutions.

During the year 1972 a National Advisory Commission on Criminal Justice Standards and Goals worked to produce from all past studies, research and empirical knowledge a series of recommendations by which high-fear crimes might be reduced by 50 percent within the next decade. The reports of this Commission will be published by the federal government in July and August of 1973. However, before they are in print, the federal and most state administrations are recommending legislation for solutions contrary to those of the National Commission and of the Presidential Commissions of the late 1960's.

The National Commission on Violence recommended that the $4.5 billion annual public expenditures for criminal justice services in 1967 would have to be doubled before America could attain the system required to contend with crime. The National Advisory Commission found that criminal justice costs were in excess of nine billion dollars in 1972. The effectiveness of the system had not doubled with the expenditures during the five year period. The forthcoming recommendations that the annual criminal justice costs should total as much as 30

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billion dollars by 1983 must be considered with caution. Is there an overreliance on criminal justice as the system expected to reduce crime in America? Does the present poorly planned and poorly administered system, or nonsystem as it is so often called, merit further infusion of massive public funds without first meeting the tests of rigorous assessment and research? Will the lawyers, psychiatrists and other disciplines upon which effective criminal justice must ultimately depend offer and coordinate their leadership and knowledge to divert all persons possible from the system? If not, the changes attained will perforce continue the arresting, sentencing, and confining of an even greater number of people than at present in hopes that the net will include the few whom the public fears – the truly dangerous offender.

There is no better example of what the future offers in the way of waste and unplanned change than the current corrections' response to the call for prison reform. Rather than first revise the juvenile and criminal codes to thin out the huge volume by decriminalization and diversion, and before maximizing the expansion of tested alternatives to assure the use of security detention and correction institutions for only the dangerous offenders, corrections have requested allocations for new jails and institutions which total nearly three billion dollars.

Only a tiny fraction of that amount has been requested for the alternative noninstitutional services. Institutions already absorb 80 percent of corrections' general funds and close to 90 percent of its manpower – to confine and control less than one third of the sentenced offenders. Few query whether the new institutions can be more successful than the old. The haphazard search for the dangerous offender is costly and promises to be more so – both in terms of the destruction of the nondangerous, and the waste of funds which could be reallocated to more effective community services.

The federal government's role should be one of leadership to provide technical assistance, standards and research to help upgrade state and local corrections for all offenders. Instead, with the federal courts using few pretrial alternatives to detention and but half the probation and noninstitution alternatives of some state courts, the Federal Bureau of Prisons is determined to spend hundreds of millions of dollars on new detention and corrections institutions during the 1970's.

About 75 percent of Texas' prison population would be better candidates for probation – if such services were available. Yet Texas is seeking funds to construct 4,000 more cells in ten regional institutions before a statewide probation system is developed.

Washington, D.C., where the crime rate is reported to be decreasing, is planning 4,000 more cells at the Lorton complex. Connecticut has appropriated 50 million dollars for new institutions. Almost every state and most cities are planning new institutions and jails to meet the public's expectation for prison reform – and for better protection from dangerous offenders.

Somehow and soon both law and psychiatry must respond to the need and the demand better than either have in the past. Criminal code revision and sentencing must be based on empirical knowledge and research rather than uninformed opinion and emotional response to the fear of crime. A moratorium on institution construction must be called with your help if we are to obtain the funds and manpower for community resources for the great majority of offenders who don't require confinement. When this is accomplished we shall find that there are already more cells than are needed for those who are indeed dangerous.

Toward this end the National Council on Crime and Delinquency has recently published a revision of our Model Sentencing Act. The Model Act represents an effort to merge the knowledge of law and of the behavioral sciences for a more rational and scientific approach to sentencing. The Act defines for sentencing purposes the categories of dangerous offenders. It limits the length of sentence for the nondangerous while enabling the extension of terms of the dangerous. It would avoid sentences by class and grade and would do much to negate the evils of plea bargaining.

Under the Model Sentencing Act the accused first would be convicted of the felony offense

for which he was charged. There then would be a hearing on the sentence with all the protections of due process. The convicted offender would have a right to question witnesses. He would have a right to confront those submitting evidence to the court of his dangerousness. The judge in sentencing would have to enter his reasons for giving the sentence. A person found to be a dangerous offender could then be given an extended term of up to 30 years. Capital offenders could receive life terms.

The criteria for dangerousness would include: A person who inflicted or attempted to inflict serious bodily harm; *or* who seriously endangered the life or safety of another *and* was previously convicted of one or more felonies. For either of these criteria the court would have to have a report from a diagnostic facility finding that the defendant suffered from severe mental or emotional disorder indicating a propensity toward continuing dangerous criminal activity. To require objectivity the propensity for further crime would have to be supported by the man's past criminal record. A third criterion for dangerousness specifies in considerable detail those offenders involved in organized criminal activity in concert with others.

All other offenses for whom the court could not enter a finding of dangerousness could receive a sentence of no more than five years. No minimum sentence would be given either for the dangerous or nondangerous, again focusing on the need for behavioral science input in determining the best time for release by the parole authority.

The State of Oregon has been the first to adopt the Model Sentencing Act. The American Bar Association's Criminal Justice Standards adopted most provisions of the Act and the National Advisory Commission on Criminal Justice Standards and Goals recommends the Model Act provisions for every state.

The Model Sentencing Act brings law and psychiatry together in the search for sentences related to dangerousness as no other proposed criminal code has to date. But it is only the beginning with much research and experimentation to be done. While it is essential that the criteria be as uncomplicated as possible, they may still require more specificity. While propensity for committing further dangerous offenses would have to be supported by the history of past offenses, is that viable evidence? An offense is behavior motivated by many variables and researchers disagree as to the reliability of predictive instruments. Is psychiatry sufficiently satisfied with its ability to diagnose severe mental and emotional disorders and to identify such disorders as indicators of future crimes?

Another basic question is, with the amount of empirical evidence in support of shorter sentences, why does the Model Sentencing Act provide for a five year maximum for nondangerous offenders? Certainly a two year maximum should be sufficient. To counteract the unavoidable damage of confinement the Model Act should provide also for a mandatory period of release to the open community after every five or six months of incarceration. No criminal code has addressed this need.

A beginning has been made in the search for criteria by which the courts can screen out the dangerous offenders for sentencing and confinement purposes. Politicians and legislators have been much more confident than lawyers, psychiatrists and behavioral scientists in their ability to define and predict dangerous behavior. The lag in research and knowledge development promises continuing serious consequences in the unnecessary and damaging confinement of hundreds of thousands of nondangerous offenders annually and the commitment of huge sums for new institutions to confine even more. The support and leadership of the American Academy of Law and Psychiatry is necessary now both for reducing the consequences from the lack of knowledge and for promoting research to produce the answer to the question: "Who are the dangerous?"