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A Proposal for Considering Intoxication at Sentencing Hearings: Part I *Charles J. Felker*

Alcohol and Crime on the Reservation: A 10-Year Perspective *Darrell K. Mills*

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This Issue in Brief

A Proposal for Considering Intoxication at Sentencing Hearings: Part I.—What sentence should a judge impose on a convicted offender who was intoxicated at the time he committed the crime? The U.S. Sentencing Commission decided that an offender's intoxication is "not ordinarily relevant" to his sentence. Author Charles Felker proposes, instead, that intoxication is a relevant and important factor in determining an appropriate sentence. In Part I of this article, the author surveys current theories about the connection between alcohol and crime, the responsibility of alcohol abusers for their acts, and the way offender intoxication affects the purposes of sentencing. In Part II, the author will develop a specific proposal based on a survey of state laws and cases.

Alcohol and Crime on the Reservation: A 10-Year Perspective.— Author Darrell K. Mills examines the relationship between alcohol abuse and crime on the part of Indian felony defendants in the Federal District Court in Wyoming from 1978-88. The author characterizes the types of crime and typical defendant from the reservation and focuses on the history of alcoholism, treatment, and prior arrest of these defendants. The article also discusses the issue of alcoholic denial.

Practitioners' Views on AIDS in Probation and Detention.—The question of how to provide humane and effective supervision for HIV-positive offenders or offenders with AIDS is an important issue facing policy-makers in corrections. Author Arthur J. Lurigio reports on a survey of probation and detention personnel in Illinois conducted to examine views regarding AIDS and its impact on policies, procedures, and work behavior. Comparisons were made between probation and detention personnel. Survey results indicated that probation and detention respondents anticipate that the AIDS

health crisis invariably will affect their management of cases. Detention participants were more concerned about occupational risk and precautionary measures. Both groups recommended policy and procedural guidelines governing legal liability, confidentiality, mandatory testing, case contacts, and the education of offenders and staff.

CONTENTS

[A Proposal for Considering Intoxication at Sentencing Hearings: Part I Charles J. Felker	122274	3
[Alcohol and Crime on the Reservation: A 10-Year Perspective Darrell K. Mills	122275	12
[Practitioners' Views on AIDS in Probation and Detention Arthur J. Lurigio	122276	16
[Prison Visiting: Is It Time to Review the Rules? N.E. Schafer	122277	25
[Corrections: Out of Balance Thomas W. White	122278	31
[Crime in the 1990's: A Federal Perspective Magnus J. Seng Thomas M. Frost	122279	36
[Serial Murderers: Four Case Histories Faith H. Leibman	122280	41
[Florida's Sentencing Guidelines: Six Years Later David B. Griswold	122281	46
[The Effects of Intensive Treatment on Reducing the Criminal Recidivism of Addicted Offenders Gary Field	122282	51
Departments		
News of the Future		57
Looking at the Law		63
Reviews of Professional Periodicals		67
Your Bookshelf on Review		73
Letter to the Editor		82
It Has Come to Our Attention		83
Indexes of Articles and Book Reviews		85

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Crime in the 1990's: A Federal Perspective

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Introduction

DURING THE last decade, law enforcement appears to have both won and lost the battle against crime. In the 1980's we have seen significant success in the nation's fight against organized crime, yet it reappears, often with a complete new identity. Likewise, law enforcement agencies have launched a major attack on dangerous drugs, but drug proliferation continues to fester as a national plague.

Also in the 1980's, law enforcement enjoyed continued advances in technology, enhanced professionalism at all levels, and a more active, determined community effort. But at the same time crime continued to increase.

As we prepare to enter the next decade, we felt it prudent and necessary to engage in some preliminary examination of the variety and depth of crime we may anticipate over the next 10 years and to explore what must be done within the law enforcement community to successfully contain both old and new forms of criminal activity.

In general we wanted to take an anticipatory look at crime in the 1990's. As part of this effort we invited a Federal judge, a Federal prosecutor, and special agents from the Federal Bureau of Investigation (FBI) and the Drug Enforcement Administration (DEA) to independently develop and present their views of crime in the 1990's at a symposium on this topic held at Loyola University of Chicago in February 1989. Each of these men brought a wealth of knowledge and distinguished experience to this task.

They included the Honorable William Bauer, chief judge, Seventh U.S. Court of Appeals, Northern District of Illinois; Mr. Anton Valukas, U.S. attorney, Northern District of Illinois; Mr. James MacKenzie, agent-in-charge, Chicago Office, Federal Bureau of Investigation; and Mr. Luther Cooke, assistant special agent-in-charge, Chicago Field Division, Drug Enforcement Administration.

Although each of the presenters, by virtue of his function, deals with crime and its effects at different points in the criminal justice process, all four made strikingly similar predictions about crime and law enforcement in the coming decade. Each in their own way, often with passion and eloquence, identi-

fied drugs as the central, most compelling, and most critical problem for law enforcement in the 1990's, and there was an air of pessimism in their comments which offered little hope that the drug problem in this nation would be solved even by the end of the next decade. There was frank and open admission that law enforcement has not and will not solve the drug problem through interdiction and that the emphasis has to shift to demand reduction.

They also agreed that the Federal effort against white collar crime and official corruption would see large-scale expansion in the 1990's. The greed and total disregard for ethical and lawful behavior by some prominent members of the private and public sectors, uncovered in the 1980's, simply must be stopped.

All four speakers also maintained that the single most significant development in law enforcement in the 1980's which would continue into the 1990's was real interagency cooperation among law enforcement agencies at all levels. Previously, cooperation and coordination among Federal, state, and local law enforcement agencies, while receiving rhetorical support, rarely emerged in practice. However, the intercity, interstate, and international dimensions of the drug trade in the 1980's have compelled such cooperation. As a result, law enforcement will become more unified in the coming decade.

This article elaborates on these (and other) points in the belief that the opinions expressed are vital and deserve a wider audience than was possible through symposium participation. Judge Bauer, Mr. Valukas, Mr. MacKenzie, and Mr. Cooke not only serve in one of the nation's more important jurisdictions (the Northern District of Illinois) but also bring years of outstanding law enforcement experience to bear on their predictions about crime in the 1990's.

It is not feasible, in this short format, to report all of the comments presented. Therefore, we have taken the liberty of selecting from the audiotape of the symposium proceedings those statements which we believe best reflect the views expressed on a particular topic. We have further deviated from the actual order of presentations by rearranging certain comments in order to maintain topical consistency. Finally, in a number of instances we have rephrased portions of specific comments for the pur-

pose of clarity. But in no instance have we changed the meaning of any statement.

Drugs in the 1990's

As noted earlier, all four of the symposium panelists identified drug proliferation as the most critical problem law enforcement will face in the coming decade. Their comments were passionate and unequivocal.

The single word that describes what drove law enforcement in the eighties and will also drive law enforcement in the nineties is DRUGS. (Mr. Valukas)

In the U.S. today approximately 23 million people used an illegal drug within the last month; 6 million use cocaine regularly; one-fourth of the babies born in one hospital in Chicago in 1988 were cocaine or heroin addicted at birth; two-thirds of the people arrested test positive for drugs. (Mr. Cooke)

The drug problem will not be solved in the early part of the nineties. If we are lucky as a nation, if we do everything that can be done and do it well... a total commitment...we may be able to address the drug problem by the end of the 1990's. (Mr. Valukas)

When a community feels threatened by crime it is more willing to act...The middle and upper class community in the U.S. is going to have to feel threatened by the drug traffic before it acts. (Judge Bauer)

The people who engage in the drug business (the drug cartels) have more money than the local law enforcement agencies which seek to combat it. This has forced us to change our approach. We can no longer simply look at investigations as "buy and bust" or as something that will have results in 6 months... now we must be prepared to commit resources for investigations where we anticipate results only in 2 or 3 years... a longterm and costly commitment of resources made well in advance. The "buy and bust" days are gone. (Mr. Valukas)

The only way to handle the drug problem is to take the profit out of it. (Judge Bauer)

We'll see an internationalization of law enforcement efforts devoted to the drug problem. Emphasis will be upon the drug organizations as organizations, not simply upon the top leaders or even those in between, but upon the whole organization and everyone involved in it. This will take time and resources but will characterize the federal effort in the nineties. (Mr. Valukas)

Over the past 4 or 5 years we have made admissions that I have never heard law enforcement officers make before...we have acknowledged that we cannot solve the drug problem. We have stood up and said our seizure of 5,000 pounds of cocaine should not lull us into the belief that we have solved the drug problem because we know that right behind that 5,000 pounds of coke is another 5,000 we will not succeed in seizing. (Mr. Valukas)

On November 3rd, 1981, Federal agents seized 10,000 pounds of hashish and felt pretty good about their efforts until they learned that on the same night 110,000 pounds got by undetected. One bust does not make a dent. We are not stopping much. As we got better, they got better, and shipments got bigger. As we became more sophisticated so did the opposition. They used to ship 350 pounds of drugs; now its into the tons. The quantities per shipment are enormous. Our seizing one enormous shipment now and then makes good press, but we must not lose sight of the fact that many other enormous shipments get through. (Mr. Cooke)

Law enforcement has improved technology, videotape, sophisticated listening devices, even computers. But criminals will also increase their use of these tools. Hi-tech is available to both sides...drug dealers use instant worldwide commu-

nications, and they can and do wiretap at will. The war on crime is a real war, but only one side has to follow rules. (Judge Bauer)

Law enforcement must not give false assurances that we are dealing with the problem. Rather, we must become committed to and involved in making the public aware of the need to reduce demand because law enforcement has not been able to control supply. (Mr. Valukas)

The U.S. is not a large-scale drug producing nation, but it is a large scale drug consuming nation. Most of the drugs that are consumed are illegally imported, and the simple fact is that we can do little to stop this importation. The obvious point of attack is on consumption. (Mr. Cooke)

We keep on giving speeches about demand reduction, and we don't do anything about it. We need to get serious about drugs in the 1990's. We need to get the people to demand...reduction. (Mr. MacKenzie)

There is no such thing as recreational drug use. Whatever we call it, however we spell it, it's deadly. We must reduce demand, and we must understand that demand is related to attitude. Demand that started in the sixties, continued into the seventies, and now into the eighties, must stop dead in the nineties. (Mr. Cooke)

We have allowed our public schools to become distribution points for narcotics. That's ridiculous. It is the only place where hundreds of thousands of kids get together everyday, yet we have some kids wearing beepers and some selling drugs out of their lockers. This simply has to stop. Each parent has to say, "The school that my kid goes to must be drug free." We used to resent magnetometers at airports but now with awareness of terrorism the public expects and even demands security procedures. We need to develop the same attitudes about drugs in school. We need people to demand "walking magnetometers," i.e., dogs, to get rid of drugs on school property. (Mr. MacKenzie)

The average age at which drug consumption starts is 12. Trying to stop initial drug use by talking to high school kids is too late. We need to start in the elementary grades. We can talk to all the civic groups we want to, all the community groups and community leaders we want to. We can go to all the luncheons we want to, but if we don't get the message to the kids we're going to loose this battle. A significant number of drug dealers started dealing as young as 8 years old. We have to arouse the public's attitude. An 8-year-old selling drugs must be seen by everyone as abhorrent. (Mr. Cooke)

We need to get the public mad about the drug problem. (Judge Bauer)

There are some unmistakable trends in these comments. It is clear from these views that the drug problem in the United States is enormous and equally clear that these seasoned criminal justice practitioners do not believe that law enforcement either has or will solve this problem. Such public admission from law enforcement officials is both noteworthy and sobering. That this admission comes simultaneously from the judicial, prosecutorial, investigatory, and control levels as represented by these commentators is astounding.

If this view is indeed shared by law enforcement generally, the public should know. Otherwise we will feel safe or at least take some comfort in the illusion that law enforcement will eventually solve the problem. We somehow expect that the cavalry will arrive to save us. If they aren't coming--they had better let us know.

Another clear trend in these comments is the emphasis upon demand reduction and the allied idea that this is tied to attitudes. These commentators do not, however, spell out law enforcement's role in this aspect but they do identify some key directions the demand reduction approach must take. The first is to place great emphasis upon reducing consumption and distribution in the preteen population. The second and in our view perhaps the most effective method is to get the public sufficiently angry and motivated to destroy this plague.

White Collar Crime and Official Corruption

Federal investigations of white collar crime and official corruption have resulted in some spectacular cases in the latter part of the 1980's. Insider trading on Wall Street and illegal commodities trading in Chicago, nationwide mismanagement and fraud in the savings and loan industry, judicial misconduct in Illinois and Ohio, contract bribes and kick-back schemes in Chicago, New York, and other cities and states, and even illegal congressional and executive branch behavior represent just a few of the complex and comprehensive situations investigated.

The symposium presenters, particularly Judge Bauer and Mr. Valukas, left no doubt that white collar crime and official corruption will continue to receive very close attention in the 1990's.

White collar crime is not really the subject of public fear. Nobody ever felt threatened by someone embezzling a bank. We will need to get the public mad about white collar crime, as well. (Judge Bauer)

I think, or at least I hope, there is a growing intolerance with official corruption. It is no longer thought of as something cute or quaint or something that's okay and not real crime. The present Attorney General doesn't see it that way and we can expect strong emphasis on prosecution of official corruption. (Mr. Valukas)

In the 1990's there will be a greater recognition that white collar crime is not something that should be envied. (Judge Bauer)

There have been more bank failures in the past 4 years than occurred throughout all the years of the depression. A significant difference between the bank and savings and loan failures that are occurring today and those that occurred during the depression is this: there were virtually no failures during the depression which were due to misconduct by bank officers or those associated with them. The majority of bank and savings and loan failures that have occurred over the last 4 or 5 years are the result of misconduct by bank officials or those associated with them. White collar crime cases require extremely sophisticated, labor intensive investigations which in turn will require significant resources on a long-term basis well into the nineties. (Mr. Valukas)

We can anticipate more private and public sector cooperation in the 1990's. For example, it is possible that in bank fraud cases the banks may do the investigations, and the FBI may take the cases to court. (Mr. MacKenzie)

I anticipate an extension of the statute of limitations on bank fraud cases in the nineties. (Mr. Valukas)

The white collar criminal responds about equally to 2 months in jail or 2 years in prison, provided you take all of his money away. (Judge Bauer)

This is not simply a law enforcement problem but one that affects all of us. The amount of money involved in white collar crime is immense. (Mr. Valukas)

Again we note some themes in these comments. The idea that the public must become angry about white collar crime and official corruption emerges just as it did for drugs. The need for unequivocal public support is clear from these remarks. The unvoiced admonition in Judge Bauer's comment that "no one ever felt threatened by someone embezzling a bank" is that we should all feel threatened. The nature of white collar crime is that the public eventually ends up paying the bill.

Another theme, also mentioned in regard to drugs, was that investigations of white collar crime and official corruption cases are long-term, very complex, and costly. Similar to drug cases, they require commitment of significant resources well in advance of results that may be years away. One measure of public support for the effort required in the 1990's is the degree to which new dollars are allocated to Federal law enforcement despite Federal budget reductions. On Monday, May 16, 1989, President Bush announced specific plans to address this nation's crime problem and included, among many other things, recommendations for significant increases in the number of FBI agents and Federal prosecutors. It remains to be seen whether the public through its elected representatives will provide the necessary funding.

Interagency Cooperation

Speaking with refreshing candor, the symposium presenters clearly acknowledged that law enforcement was not particularly well served by interagency cooperation in the past. Federal agencies in particular were aloof and unwilling to share information with local agencies and sometimes even with each other. But the war on drugs has dramatically changed all that as the following remarks demonstrate.

All this (drug proliferation) has compelled a spirit of cooperation among law enforcement agencies that never existed before. Drugs in one city come to other cities... drugs that enter this country in New York wind up in Chicago and vice versa. We are all in this together. It is no longer possible for the FBI to take the position that when they uncover a state crime they fail to tell the state officials of it, yet they want state officials to tell them of uncovered federal crimes. One-way communication between agencies is simply no longer possible. (Judge Bauer)

Within this country drug proliferation has led to real federal, state, and local cooperation. In many instances we have integrated the command. In order to do this, each agency has had to give up some semblance of control. That way, all law enforcement agencies can work together. It's the only way we

can combat drugs. Nothing generates cooperation like giving money to each other. The Chicago Police Department makes a drug arrest; the Feds seize the house under the Federal Forfeiture Statute, then sell it and return the proceeds to Chicago. We didn't work with the Chicago Police Department in the seventies. The Department of Justice contacted the Chicago Police Department in the seventies when we were holding Christmas parties, and they contacted us to invite us to the annual ball. Today there isn't a significant case in this area where we don't work together on a day-to-day basis. (Mr. Valukas)

Law enforcement agencies now really do more than cooperate with each other...we collaborate. We decide together how we will attack a problem. Science and technology are essential and important but they cannot replace quality people at all levels. (Mr. MacKenzie)

One of the more dramatic changes in interagency relationships is that they are now international. Investigations that in the seventies began within the state now begin not only in other states but in other countries. A recent seizure of 5,200 pounds of cocaine in Chicago was due to law enforcement cooperation and relationships which began in Peru, then Columbia, the Caribbean Islands, Panama, and Miami. To detect, track, and eventually seize this load required intensive cooperation of Federal and local law enforcement agencies in various countries. Such cooperation, while limited in the seventies, became the norm in the eighties and will continue in the nineties. (Mr. Valukas)

Law enforcement is one single team. (Judge Bauer)

There is really only one central theme here, but it is an important one. Drug proliferation has compelled law enforcement, kicking and screaming, to do something long overdue. Born of necessity and enticed by dollar rewards, as Mr. Valukas notes, law enforcement is finally putting the job before individual agency pride. These comments also confirm that, like so much in society today, crime has become international. The world has shrunk economically, and crime simply followed the trend. Law enforcement has finally recognized that in unity there is strength.

Additional Observations

A number of important comments and observations about crime in the 1990's do not fit neatly under the topic areas so far discussed. However, they reflect the perceptions and wisdom of the symposium speakers and are reported below.

The wave of the future in criminal activities includes continued trafficking in drugs, terrorism, computer crime, and new weapons. We have to take advantage of every possible advancement in science, every possible device that is available to law enforcement, and the law should permit their use. The '90's will present a threat but also a challenge to get us all working together in fighting crime. (Judge Bauer)

We see the civil seizure as a significant part of law enforcement's effort today, totally different from the '70's, and think it will become the trend that we will see in the next decade. There will be an increased use of other professionals in law enforcement...accountants, computer specialists, noncriminal lawyers. We are just now learning how to deal with computer crime. During the 1990's there will be increased application of discoveries in basic science research to law enforcement—for example, use of laser technology for fingerprint identification from surfaces untestable before (wood, human bodies,

styrofoam cups), DNA research applied to genetic identification in criminal cases, and use of artificial intelligence computers in violent crime pattern identification. (Mr. MacKenzie)

We can no longer afford the luxury of thinking that we don't have to worry about somebody else's problems, because the problems that the world faces today in terms of the assaults by criminals, by the terrorists, by the drug dealers, affect all of us adversely and we have to work together to solve them. (Judge Bauer)

These comments make reference to new types of crime and new technologies that emerged in the 1980's, which will be the focus of scientific law enforcement in the next 10 years. They reflect law enforcement's realization that to modernize means we must use the most advanced tools we have, and Judge Bauer encourages legal flexibility in allowing their use. But Judge Bauer's other remarks in this section as well as those of Mr. Valukas, Mr. MacKenzie, and Mr. Cooke call attention to the central point which is that in the long run, people—both the public at large and law enforcement personnel—are the key to winning the fight against crime.

Summary Comments

This brief article has reported on the views about crime in the 1990's expressed by four very knowledgeable, experienced, and respected professionals. Their message is simple, straightforward, and urgent: The drug problem in this nation is beyond the control of law enforcement. Unless and until there is a dramatic reduction in demand, supply will continue to outstrip law enforcement's ability to deal with it.

Demand reduction, of course, starts with attitudinal change. As a nation we must rise up and in unmistakable terms "Say NO to drugs." But we must all say no: not just junkies or school kids or ghetto dwellers but account executives and lawyers and doctors and butchers and bakers and candlestick makers. All of us at all levels of society should say no to drugs and mean it.

This will require the complete commitment of every segment of society as well as: law enforcement in all its dimensions--police, courts, and corrections; education--all the way from elementary to graduate school; business--beginning with top management to the lowest position within the corporation or foundation. The message in the business community must be zero tolerance.

Because of its potent influence the entertainment industry, including the advertising segment of that industry, must seriously engage in deglamorizing substance abuse in all its forms. In addition, the print and broadcast media must lend their consider-

able weight to this effort. Religious and political and community organizations should continue to work against drug proliferation. Finally, treatment programs and drug treatment research must be sharply increased, and we must be willing to pay for both.

We really have no choice. Unless we deal effectively with the drug problem in this nation, our criminal justice system, which is already in serious trouble, will simply collapse.

The need for attitude change was really the common element in the remarks presented by all four panelists and is clearly the key in the war on drugs. It is also important in terms of white collar crime and official corruption. The public, i.e., all of us, must recognize that white collar crime affects everyone in our society because we eventually pay for it through higher prices and/or higher taxes. Therefore, we should recognize that the ramifications of some financial scam in New York are not limited to New York but are national and even international. These crimes involve enormous sums of money and eventually impact financial institutions and business enterprises throughout the country. We are all being ripped off, and as Judge Bauer said, the public has to get mad about white

collar crime as well.

On a perhaps more meaningful level, there has to be a change in or greater emphasis upon ethical values. Crimes involving official corruption, such as white collar crimes, are committed by individuals who, in varying degrees, are bearers of the public trust. Such individuals must develop and maintain a personal ethic which abhors the violation of public trust. Although there will be increased Federal emphasis on official corruption and white collar crimes in the 1990's, investigations in these areas are complex and lengthy. Therefore, we are not as likely to significantly curb such crimes. For that, we will need public support, and, ultimately, it will come down to individual ethics.

The fact of genuine interagency coordination within the law enforcement community is also attitudinal. There is a new spirit of cooperation. Law enforcement is becoming more unified and beginning to like it that way.

When all is said and done, the central message presented at this symposium by these men is that crime in the 1990's will be influenced not only by what we do but by what we think—by public attitude and action.