BOOK REVIEWS

TRIAL MANUAL FOR THE DEFENSE OF CRIMINAL CASES. By Anthony G. Amsterdam, Bernard L. Segal, and Martin K. Miller. Philadelphia: ALI-ABA Joint Committee on Continuing Legal Education, 1967. Pp. xxiii, 532. $35.00.

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Gideon v. Wainwright [1] created a tremendous need for lawyers to defend criminal clients who had theretofore gone without counsel. Those who had traditionally made up the criminal bar were far too few to meet this great need. Since 1963 thousands of lawyers have taken up the role of assigned counsel, either through individual court assignment or as members of public or private defender organizations. Realizing the need for the education and training of these lawyers for their most important function—responsibly and competently defending the life and liberty of their fellow men—the American Law Institute and American Bar Association's Joint Committee on Continuing Legal Education, the American College of Trial Lawyers, and the National Defender Project of the National Legal Aid and Defender Association joined forces to accomplish three objectives:

1. The publication of a trial manual that would enable even the novice defending a criminal case to defend his client properly.

2. The publication of a practitioner's guide to the defense of criminal cases. This is to be a multi-volume work treating the criminal law in depth, with detailed analysis of law, theory and strategy.

3. The organization of basic and advanced courses of instruction for lawyers throughout the country in general aspects of criminal law.

The present two-volume work represents the accomplishment of the first of these worthy objectives. Although aided by advisory committees and consultants, the real authors of the *Manual* are Anthony G. Amsterdam, Professor of Law at the University of Pennsylvania

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[1] 372 U.S. 335 (1963).

and two very able practitioners, Bernard L. Segal and Martin K. Miller, of the Philadelphia Bar.

Any lawyer defending a criminal case, be he an experienced and sophisticated specialist in the field or a civil lawyer making his first appearance in the criminal courts, will find something of value in the *Manual.* It begins with a general outline of the criminal process and a consideration of the roles of client, counsel and court.[2] This is followed by a detailed sequential analysis of the criminal process with attention not only to legal considerations, but to practical, ethical and tactical considerations as well.[3]

As the *Manual* points out, the initial interview with the accused is of crucial importance in instilling the confidence crucial to the attorney-client relationship. A client who feels his assigned (or retained) lawyer knows less about the criminal process than he will have little confidence in his advocate.[4] The first sections of the *Manual* advise the lawyer regarding his interview with his client even to the extent of providing a great many interview questions.[5] He is also told how to protect his client from continual police questioning, and how to advise his client about lineups, booking procedures, newspaper reporters and—what is most immediately important—how soon bail can be set.[6] The *Manual* discusses bail both from a theoretical viewpoint and (although necessarily in general terms) in terms of how, where, and when it may be set and made.

The period between arrest and preliminary examination is too often neglected by defense counsel, yet it is a fertile period for investigation and preparation. The *Manual* provides an excellent discussion of investigation, investigatory methods and dealing with the so-called prosecution witness.[7] A checklist is provided to cover this period from arrest to first court appearance, and I would recommend it heartily to even the experienced criminal lawyer.

One area treated only sketchily in other trial manuals is, realistically, one of the most important: negotiating and entering a guilty plea. The authors well realize that more cases result in guilty pleas than in trials and, consequently, counsel's relationship with police and prosecutor both before and during plea negotiations receives full treatment.[8]

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[2] A. AMSTERDAM, B. L. SEGAL, & M. MILLER, TRIAL MANUAL FOR THE DEFENSE OF CRIMINAL CASES 2-3 to -11 (1967) [hereinafter cited as MANUAL].

[3] *See, e.g.,* MANUAL § 79, at 2-47 to -48, discussing the establishment of the attorney-client relationship at the initial interview.

[4] This is justifiable. Law enforcement authorities will have little to fear from the young tyro who asks "What do I do now?"

[5] A detailed checklist for a model interview appears at MANUAL 2-53 to -67.

[6] *Id.* 2-31 to -46.

[7] *Id.* 2-77 to -86.

[8] *Id.* 2-69 to -76.

The questions whether a reduced plea should be sought, what its consequences will be, what is the best possible plea and the timing of the negotiations are most competently discussed.[9] In fact, considerable emphasis is placed on all pretrial stages and procedures, including preparation of witnesses and pretrial motions. Of course, suppression of illegally obtained evidence receives extensive legal and tactical explanation.[10]

In their discusson of trial preparation and of the actual conduct of the trial, the authors do not merely give checklists of what to do, but, more valuably, set out the criteria upon which counsel must form his own judgment (whether, for example, to have the case heard by a judge or jury).[11] Realizing that a manual cannot try the lawyer's case, the authors throughout those sections dealing with jury selection, opening statement, evidence and closing argument, set forth the considerations that should be taken into account by a responsible lawyer before he makes decisions that may affect the life or liberty of his client. The authors do mention techniques of argument and examination, and counsel is invited to determine what will work in his case.

An example of the blending of technique and recent decisions is found in the section dealing with the identification witness:

> Any discrepancies between the defendant's appearance at trial and the description of the assailant given the police by the complainant should be labored. This can best be done by (1) asking whether the complainant described the assailant to the police; (2) asking on how many occasions descriptions were given; (3) asking what those descriptions were; (4) unless the complainant relates accurately the description in the police report, reading that description and asking whether that is not more like it; (5) exploring all details of discrepancy; and (6) asking whether the complainant's recollection was not better immediately after the offense than it is now. *Omission* in the description of salient characteristics of the defendant is significant. If the complainant has identified the defendant in a lineup or other police-staged identificaton, emphasis should be placed on (1) any circumstance in the identification situation that tended to "finger" the defendant (was he exhibited to the complainant alone; if in a lineup, was he dressed unlike the others; how much did they resemble him in gross characteristics); and (2) any circumstances pointing to police persuasion or suggestion. . . . Police-staged lineups and other pretrial confrontations for identification held in the absence of

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[9] *Id.* 2-143 to -157.

[10] *Id.* 2-161 to 192.

[11] *Id.* 2-245 to -249.

> defense counsel are unconstitutional . . . ; testimony of identifications made in the course of these confrontations may not be presented by the prosecution, *Gilbert* v. *California,* — U.S. —, 87 S.Ct. 1951 (1967); and once a showing has been made that such a confrontation was conducted with any witness, the witness's identification is also excludable unless the prosecution can establish that the courtroom identification is "based upon observations of the suspect other than the lineup identifications," *United States* v. *Wade,* — U.S. —, 87 S.Ct. 1926, 1939 (1967). In many jurisdictions, of course, testimony offered in the prosecution's case in chief that any person identified the defendant in a pretrial confrontation situation would also be objectionable as hearsay. Counsel should explore all of these matters in the jury's absence by anticipatory objection as soon as a witness is called who may have made a pretrial identification.[12]

Too many lawyers, experienced and inexperienced alike, handle a criminal defense by facing each obstacle as it occurs without regard to the overall theory of the case, which they develop (if ever) only in closing argument. A reasonably intelligent lawyer reading the sections of the *Manual* applicable to his case is forced early in the criminal procedure to develop a theory geared to the needs of his case. He will know early in the process if he must work toward a reduced plea and develop evidence of mitigation, rather than learn he has a hopeless case after the state's evidence has gone before a jury. He will know if his client's best chance is in an affirmative defense, and will make certain that the witnesses are prepared and available for trial. He will know if his client's only hope hinges on the illegality of a search and seizure, and will know how and when to present the issue.

In keeping with the academic quality of the *Manual* a selected bibliography of criminal law and an indexed list of cases supplement the theory and practice section. These sections will be of aid to even the most experienced criminal lawyer.

The authors have met their objective admirably. The two-volume *Manual* represents the very best, both academically and practically, in what have been called the "how to do its." Conscientious following of the guidelines set down in the *Manual* will not guarantee a highly competent defense—but it will certainly help.

The neglected field of criminal practice has been enriched by the addition of this work. We who practice in this specialized field eagerly look forward to the accomplishment of step two of the joint project—the in-depth study of the criminal defense.

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[12] *Id.* 2-287 to -288.

PRIVATE OWNERSHIP AND OPERATION OF URANIUM ENRICHMENT FACILITIES. REPORT OF AN ATOMIC INDUSTRIAL FORUM STUDY COMMITTEE. New York: Atomic Industrial Forum, Inc., June 1968. Pp. vii, 58, and appendices. Members: $5.00. Non-Members: $10.00.

Bennett Boskey †

This short though somewhat ponderously written report contains much of interest to the general reader. Its subject is inherently complex, but the report considers questions of public policy in a controversial area where wise solutions will be important if we are to make the most effective use of resources in the nuclear age. For a quarter of a century, primarily on national security grounds reflected in the Atomic Energy Act, the development of atomic fuels has been wrapped up in intensive secrecy that is only now being gradually relaxed.

The report's brevity will commend it to everyone who has been compelled to wade through elaborate presentations in which verbosity masquerades as analysis and overdocumentation disguises as ideas. Here, on the contrary, knowledgeable individuals (the Study Committee of seven plus a consultant and a secretary, assisted by an Advisory Committee of over forty, all with impressive credentials) have articulated their viewpoint with conciseness and clarity. The report effectively communicates to the reader both the conclusions reached and the principal factors relied on for support.

A little background may help place the report in its proper setting. During World War II, the Manhattan Project aggressively explored several methods of enriching uranium. Enrichment, which makes it possible to sustain chain reactions, involves upgrading the uranium to achieve high concentrations of the isotope uranium-235 (an isotope which occurs only rarely in nature) by separating out the bulk of the far more plentiful isotope uranium-238. The most successful results were attained by the so-called gaseous diffusion method. During World War II the Government constructed a huge, costly gaseous diffusion plant at Oak Ridge, Tennessee. The plant was (and still is) capable of producing uranium of varying degrees of enrichment. Such enriched uranium—now known as a "special nuclear material" [1]—was the vital component around which certain types of nuclear weapons were designed. It also serves as the fuel in certain types of nuclear reactors.

After World War II, the increased amount of uranium-235 needed for nuclear weapons and power purposes led the Government to con-

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[1] 42 U.S.C. § 2014(y) (1964).

struct two additional uranium enrichment installations, both large, and located respectively at Paducah, Kentucky, and Portsmouth, Ohio. All three of the existing uranium enrichment facilities have, from the beginning, been operated by private industry under contract with the Government; direct government operation by an organization like the TVA has never been attempted.

The Forum Study Committee report examines the enormous growth in the size and number of nuclear power plants under construction and planned, and reaches the undisputable conclusion that such developments foreshadow a corresponding growth in the need for enriched uranium. The Committee estimates that domestic capacity for uranium enrichment will have to be expanded before 1980. Obviously, then—taking into account the time required to plan, design, construct and place in operation any large new facilities—it is none too early to address ourselves to the problem of how and when this should be undertaken.

The Study Committee thinks that the entire process of uranium enrichment should be transferred from government to private ownership. By this, the Study Committee not only means that any new enrichment facilities should be privately owned; it also means that the three existing facilities should be transferred from government ownership to private ownership by sales to the highest qualified bidders, and fairly promptly at that—by 1972, "if at all possible." [2] To provide a competitive environment, however, the Study Committee would insist that each of the three existing installations be acquired by an independent and competing owner-operator, and that no single interest be permitted to acquire an equity in more than one of the three plants.

Transfer of these immense government-owned facilities to private ownership would involve a major departure from the policies that have prevailed to date. It would require specific legislative changes by the Congress. Whatever conclusions may finally be reached, proposals for any such changes certainly should be scrutinized with care and circumspection.

In presenting its supporting reasons, the Study Committee expresses the general view that private ownership and operation of uranium enrichment installations is preferable because the existence of a profit incentive will enhance the advancement of technology, improve efficiency, and reduce costs. The Study Committee maintains that, technically and economically, the three plants can feasibly be operated as three independent units. It says that the Government can expect to elicit a sufficient number of responsible and competitive bids to sell the plants at prices fair to the Government—by which the Study Committee apparently means prices that reasonably approximate depreciated book

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2 ATOMIC INDUSTRIAL FORUM STUDY COMMITTEE, REPORT ON PRIVATE OWNERSHIP AND OPERATION OF URANIUM ENRICHMENT FACILITIES 38 (June 1968) [hereinafter cited as STUDY COMMITTEE REPORT].

values.[3] The Study Committee also recommends that each purchaser of a plant be required to accept certain price controls (a specified ceiling charge per unit of work, subject to escalation caused by increased costs) in order to protect utilities and others needing enrichment services that they now obtain from the Government. On these, and on a host of subsidiary and collateral issues, the Study Committee thoughtfully sets forth its conclusions and the grounds on which it relies.

Despite the vigor with which the Study Committee asserts its position, this report must be only the beginning rather than the end of the inquiry. For one thing, the report pays insufficient attention to testing its own basic premise. One can be satisfied that, as a general matter, in the United States private enterprise is preferable to public ownership; yet the applicability of that generalization to the circumstances of this very special case may not be obvious. Congressman Chet Holifield, Chairman of the powerful Congressional Joint Committee on Atomic Energy, has already expressed his opposition to the Study Committee's proposal. The congressman's view seems to be that if the Government turned the installations over to private interests, the situation would be ripe for monopolistic control, and the transfer would result in sharp rate increases for electric energy users and a significant boost in the Government's costs for developing atomic weapons.[4]

The Government's investment of money, technology and effort in the three uranium enrichment installations has been vast and long-continued; the benefits that the public has realized and is realizing from that investment have been noteworthy. A heavy burden of proof accordingly confronts those who would change the modus operandi which, by and large, has proved so successful. Here may be another instance where, in Holmes's apt phrase, "a page of history is worth a volume of logic." [5] Indeed, before accepting the Study Committee's conclusion, one would look for reasonable certainty—not merely a fair possibility—that the Government's sale of the uranium enrichment plants to private interests would produce a decisive balance of advantages over disadvantages.

On specific points the Study Committee seems to shy away from major difficulties that must be assessed most carefully. For example, the alternative of first selling only the Paducah and Portsmouth plants, and retaining the Oak Ridge plant for an interim period of five to ten years, is adverted to, but rejected by a majority of the Study Committee.[6] Yet virtually no consideration is given to the possibility that if two of the plants were to be sold, the third should be retained indefinitely

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[3] STUDY COMMITTEE REPORT 28-31.

[4] Interview with Congressman Holifield, reported in the Sacramento Bee, Jan. 4, 1969, substantially reproduced in NUCLEAR INDUSTRY, Jan. 1969, at 12.

[5] New York Trust Co. v. Eisner, 256 U.S. 345, 349 (1921).

[6] STUDY COMMITTEE REPORT 38-39.

by the Government both to provide a yardstick to protect the consumer, and to keep the Government actively involved in an industry where, at least to date, it has been exceptionally effective in advancing the art.

Questions have been raised whether the report is correct in concluding [7] that it would be sensible for the three existing plants to be operated independently. It should be noted that so far, the Atomic Energy Commission has done just the opposite—it has operated them as an interrelated complex. If the Study Committee's conclusion on this aspect turns out to be unsound—whether on economic grounds or for other reasons—then the remainder of the report will be in need of major surgery.

Serious doubts are raised by the Study Committee's suggestion that it would be fair to the Government to sell these plants for approximately their depreciated book values. It is by no means clear that the depreciation which the Atomic Energy Commission has been recording should be taken seriously in judging the fair market value of these plants. But apart from this, consideration must be given to the tremendous increases in construction costs which have occurred since these plants were built. It would be hard to conclude that a real justification exists for selling the plants at their depreciated book value. Yet various economic estimates in the report appear to be based on prospective purchasers acquiring the plants at prices not higher than such a value.

It must also be noted that a majority of the Study Committee (on this phase, one member registers his doubts) [8] seem to approach the problem of competition with a lack of sophistication that will not add to the acceptability of the report. It is too easily assumed that effective competition will emerge if the three plants are promptly sold to three different operations. As a result, the Study Committee has unduly minimized the need that any sale of the plants be accompanied by a strong government program instituting and maintaining a genuinely effective set of regulatory controls to protect the public interest.

Because of some of its failings, the Study Committee's report may prove to have its chief value as a stimulus to further exploration and discussion. By now such a process is well under way. In October 1968, the Congressional Joint Committee on Atomic Energy, which is charged with initial legislative responsibility in connection with our atomic energy laws, formally asked the Attorney General to furnish by July 1969 a report reviewing the subject of uranium enrichment from an antitrust standpoint, in order to assist the Joint Committee in considering "the likelihood of effective price competition in what, at least at the outset and in all probability for some time, will be a highly concentrated industry." At the same time the Joint Committee asked the Comptroller General to review the Atomic Energy Commission's accounting records to determine whether the amount recorded as the

[7] *Id.* 21-23.

[8] *Id.* 54-58 (comment by William M. Capron).

Government's actual investment "properly reflects all of the monies spent for plant, equipment and related items, including research and development and improvements." In addition, the Joint Committee invited the Comptroller General to include in his report the General Accounting Office's comments on many other economic aspects of the enrichment facilities. Subsequently, in March 1969, the Atomic Energy Commission itself issued a staff report covering many aspects of the subject and inviting comments from interested parties.

It is evident that we can look forward to lively congressional hearings on this matter, probably at some time before the end of 1969. Whatever policy is ultimately adopted by the Congress, the subject seems destined to receive the searching examination that it so clearly requires.

THE LIMITS OF THE CRIMINAL SANCTION. By HERBERT L. PACKER. Stanford, California: Stanford University Press, 1968. Pp. xi, 385. $8.95.

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It is always refreshing to read the work of Herbert L. Packer. One may quarrel with him over details, take issue perhaps with some of his conceptual formulations, or even question the validity of his assumptions and methodology. However, a person reading this book is never in doubt that it is the product of a seminal scholar who has endeavored to articulate a sense of order and meaning out of the foul quagmire that constitutes the criminal side of our legal system. Professor Packer is too modest when he refers to his work as an "essay rather than a treatise." On the contrary, in this single volume anyone interested in a rather remarkable summary of the intellectual and ideological underpinnings of our system of criminal justice—including lucid discussions of the rationales of punishment, the vagaries of criminal responsibility, and numerous issues ranging from abortion to stop-and-frisk—will be hard put to find its equal. Throughout the book the author poses the dilemmas presented by most of the traditional, and by now well-worn debates of the criminal process in clinically dispassionate terms, frequently interlarding these with his own suggestions for their resolution.

Almost a third of the book is devoted to an exposition of Packer's familiar paradigm of the criminal process—the Crime Control Model versus the Due Process Model. In essence, it will be recalled, the Crime Control Model operates in an organizational environment of limited resources that must deal with large numbers of clients. Its emphasis is on production, efficiency, and the establishment of factual guilt with a minimum of ceremonial niceties. Implicit in its operation is a presumption of guilt that moves a case along quickly to its final disposition, either conviction or a finding of innocence, which removes the client from the system. The Due Process Model, in scant supply like good medical services or breathable air, involves many quality inputs and controls, and is time consuming, expensive, and ultimately concerned with the needs and rights of the individual served rather than the needs of the bureaucracy that processes him. Packer reluctantly concludes that our criminal process in most cases tends to approximate the Crime Control Model, rather than the official ideology of the Due Process Model as pronounced in our appellate courts. But he does see an ultimate shift toward the Due Process Model.

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I would suggest that this conclusion flies in the face of the evidence as it has developed in recent studies published in the various behavioral science journals in connection with the police, prosecution and courts, and the prison, probation and parole systems. There is a veritable mountain of material, ranging from pilot and case studies to hardnosed survey data, which tends to confirm that, like some of our other urban social institutions, our legal institutions are beginning to come apart at the seams.

The major theme of the book is in reality one proclaimed time and again by sociologists: moral entrepreneurs are outraged by behavior they perceive as odious, and thereupon invoke the righteous indignation of legislators who enact penal statutes calculated to inhibit, deter, or punish the behavior complained of (fornication, vagrancy, drunkenness, gambling, adultery, sodomy, lewdness, lascivious carriage, abortion, homosexuality, *et cetera ad nauseam*). Thus penal codes attempt to regulate areas of human conduct that would require the installation of a telescreen in every bedroom if the statutes were to be fully enforced. The sweep of the criminal sanction has become so great, that administrative enforcement of some of our laws—for example, our vehicle and traffic laws—has become a joke. How many of the 50,000 automobile deaths each year are really not accidents, but homicides? Each year there are over 4,000,000 auto injuries. How many of these are in reality attempted homicides, or felonious assaults with the automobile as the weapon? Consumer frauds involving shady credit practices as well as outright larceny, involve an annual "take" far in excess of all robberies and burglaries combined. Nevertheless, much of the administrative time and resources of our criminal process is devoted to areas not appropriate for the criminal process, and which instead simply clog the channels of enforcement, relegating more serious conduct to a secondary priority. Surely the removal of abortion, vagrancy, disorderly conduct, prostitution, drug usage, and most so-called "sex offenses" from the criminal process would not only free the system for more urgent crime control, but would help speed the development of more humane alternatives to many of the problems we have conveniently shunted into the criminal arena—mainly because it is cheap and makes us feel so morally righteous and secure.

The harsh fact is that our criminal process, especially at the initial stages of enforcement, is primarily oriented to bureaucratic goals of "efficiency" and "production" rather than any humanistic goals of the rule of law. Those persons and modes of conduct that are most visible, most opprobrious because they offend the dearly held values of dominant social groups, and readily susceptible to a labelling process because of their social vulnerability become suitable subjects for labelling as deviant and criminal by the nature of our lavish criminal sanctions. As a consequence, the annual edition of the FBI's Uniform Crime Reports consistently indicates that the very young, the black, urban, poor, and

largely male group constitutes the American crime problem. We know this to be an absurdity, but we go on appropriating vast sums in support of an enforcement apparatus that produces the same result for our money year after year.

Criminologists with an interest in history are quick to recognize that ours is not the best of times nor the worst of times in producing criminals, assorted villains, social deviants, grim deeds of violence, murder, and genocide. While the technology available for inflicting harm upon others has undergone a radical growth, it is probably safer to walk the streets of an American city today than those of medieval Florence or Manhattan a century ago.

We owe an everlasting intellectual debt to the sociologist Emile Durkheim for his insightful notion that crime is an inevitable feature of social structure: "crime is normal because a society exempt from it is utterly impossible." Durkheim's classic formulation provides us with a timeless sense of perspective in contemplating the meaning and pervasiveness of crime and deviance in the human situation, which transcend the recurring hysteria epitomized by the current catch-all political slogans of "crime in the streets" and "law and order". It is abundantly clear that Durkheim's analysis is confirmed, *inter alia*, by compelling historical evidence, and it should therefore not surprise us that most or all of us have violated legal norms on more than one occasion without being labelled or officially adjudicated as delinquents or criminals.

No matter what version of the official crime statistics one accepts, it is evident that very few of us are brought to book—that is, apprehended, processed in the official enforcement and judicial machinery, and adjudicated criminal or delinquent. Any society that committed the energy, resources and personnel necessary to root out and punish all "wrongdoers" would create enough mass paranoia, violent conflict and savage repression that it would become a charnel house, and pass into oblivion. On the other hand, every society tends to produce its quotient of crime and deviance and an accompanying apparatus to sort out those malefactors deemed most suitable for processing—usually those persons and kinds of behavior readily vulnerable to a successful labelling and adjudication process.

The selection of suitable candidates for the adjudication process is not a version of roulette, but has fairly well-defined limits that traditionally have been imposed by our society's system of stratification. The clients served by our enforcement, court, prison, parole, and other "rehabilitation" systems are overwhelmingly drawn from the lower classes.

Modern crime may be said to exist at three broadly distinct levels of occurrence, each seeming to phase into and at times interlocked with the others. The most profitable, which also involves the least amount of risk, is *Upperworld* crime. It is the least susceptible to official enforcement machinery and is only rarely represented in the Uniform Crime Reports. *Upperworld* crime is planned like a military campaign

in the walnut panelled executive suites of corporations, in state houses, and in country clubs. Quite often the criminal venture is thought of by the participants as simply a shrewd business strategy calculated to produce a profit or to perform a "service" for the consumer, the voter, or some other constituency—usually at the constituent's expense. "The Great Electrical Conspiracy," involving among others General Electric and Westinghouse; the peculations of Billie Sol Estes and the activities of the corporate and federal officials without whose help he could not have succeeded in stealing millions; the activities of Bobby Baker; the frauds and larceny connected with the federal highway program, and the drug scandals are but a few of the more recent illustrations of the exorbitantly profitable criminal activities that take place at the *Upperworld* level. Traditional enforcement agencies—the Food and Drug Agency, the Anti-Trust Division, and others—are feeble and ineffectual in dealing with the social harm ultimately inflicted by these activities. Criminal prosecution of this level of violators is an unusual occurrence. We need not include in this connection those "gray areas" that may also possibly be criminal—usurious credit practices, the sale and use of harmful drugs and pesticides, household improvement rackets, auto warranties that do not warrant, TV radiation hazards, injuries to consumers by faulty automobiles and other mechanical items.

Related to *Upperworld* crime, especially at the level of the political machine, is Organized Crime. The local political machines that ordinarily control local police and court officials provide the protection organized crime requires in order to function. Its activities cut across state lines and national boundaries, and range from legitimate enterprises such as labor unions to activities catering to appetites forbidden by penal codes—gambling, drugs, pornography and prostitution. Quite frankly, very little is actually known about organized crime and organized criminals except that they are seldom grist for the mill of the conventional police, prosecution and court processes.

The third and least honorific level of crime is also the least remunerative, least protected, and most readily available to the lower strata of persons because of their limited range of skills and circumscribed options for action. Except for the activities of some confidence men and other career criminals, whose pursuits may bring them into the upper two levels of crime, crime at this level is of the commonplace variety ranging from shoplifting to armed robbery and homicide. It is usually the most visible sort of criminal activity and therefore the most vulnerable to the official instruments of law enforcement. For example, one third of all arrests in America are for some variation of the prosaic charge of "drunkenness" or "public intoxication," such as being an "intoxicated driver," "drunk in a public place," "drunk and disorderly," or an old favorite, "drunk and resisting arrest." Violations at this level of criminal activity constitute the great bulk of crimes that are duly reported in the Uniform Crime Reports in any given year.

Our penal sanctions and our law enforcement and court bureaucracies that administer them are in large measure organized and geared to detecting, sorting out and adjudicating the kinds of crimes and delinquencies most often and most visibly engaged in by the socially marginal strata—and that fact produces some rather serious consequences for the criminal justice system in America and those who are unfortunate enough to be caught up in it. The system of criminal justice of this nation is symptomatic of the impoverishment of the quality of life in America today. The grievances of the minority poor in our nation's urban slums, which precipitate civil disorders and riots, are often exacerbated by the very governmental institutions intended to ameliorate them. Nor can the rest of us be smug about this, for the very same functionaries and adjudication agencies not infrequently subject members of the vast middle strata of America to strikingly similar treatment. The enforcement and adjudication process boils down to this: intolerably large numbers of defendants in our criminal justice system, who must be disposed of in an organizational context of limited resources, encourage police, prosecution, and court personnel to be concerned largely with strategies that lead to a guilty plea.