

## A Journalist Looks at Crime

*Criminal Violence, Criminal Justice.* By Charles E. Silberman. New York: Random House, 1978. Pp. xviii, 540. \$15.00.

Reviewed by J. Michael Keating, Jr.†

Charles Silberman's *Criminal Violence, Criminal Justice*<sup>1</sup> will provide both delight and a nagging sense of frustration to thoughtful veterans of the criminal justice maze. The delight stems largely from Silberman's journalistic craftsmanship; he transforms another potentially arid criminological survey into a literary tour de force. Nonetheless, there is an element of superficiality in the final product that will leave frustrated those who have been led to believe that this book might be the most thought-provoking work on the causes and treatment of crime to appear in a generation.

The scope of the work is ambitious. Silberman discusses all the components of the criminal justice system, including the police, the courts, and juvenile and adult corrections. In addition to these systemic concerns, Silberman considers the nature and causes of crime. He has leavened the fragmented reports that dot the landscape of criminal justice research with his own informal study and pieced together a composite that is sometimes provocative, frequently iconoclastic, and always eminently readable. That last achievement may be Silberman's most formidable: finally, here is a comprehensive study of criminal justice that key people—legislators, judges, lawyers, bureaucrats, citizens—may actually read.

Criminal law expresses society's concern about who should be blamed for wrongful acts. In the exercise of their discipline, criminologists sometimes transfer that same inquiry to the criminal justice system by seeking to determine who is responsible for uncontrolled crime. Silberman takes such a tack and assumes the role of an academic sleuth, sorting through possible culprits. The suspects include offenders themselves, the police, the courts, correctional institutions, and the juvenile

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1. C. SILBERMAN, *CRIMINAL VIOLENCE, CRIMINAL JUSTICE* (1978) [hereinafter cited by page number only].

justice structure. All, however, appear to be mere accessories to the real perpetrator, economic privation.

Silberman prefaces his investigation with two lengthy exculpatory caveats: crime, especially violent crime, has nearly always been a part of American life, and unethical conduct currently is pervasive at all levels of our society.<sup>2</sup> Although neither observation offers much comfort to a public obsessed with a fear of street crime,<sup>3</sup> each helps us to place in historical perspective America's enduring romance with crime.

When he finally turns to the causes of crime, Silberman emerges as an unabashed determinist. He emphasizes the hostile environmental factors of poverty and racism, virtually excluding considerations of individual culpability from his discussion. In this era of renewed faith in retribution, an analysis of the contribution of poverty and racism to crime is a healthy reminder of the fundamental role of environment in shaping criminal activity.

Silberman lends new meaning to the proposition that urban poverty habituates its youthful victims to a criminal way of life by painting an insightful portrait of the modern career criminal as a hustling jack of all illicit trades. Conditioned economically, socially, and psychologically to failure and inadequacy, the budding criminal cannot afford to delay gratification, because every delay threatens a total denial of gratification. In Silberman's view, the continuing demographic bulge of young, poor, urban minorities portends escalating, not waning, street crime.

Silberman addresses the impact of race on crime as forthrightly as he discusses poverty. He documents in detail the greater propensity of young black males than of their white counterparts to commit violent crimes, a situation he attributes in large measure to the blacks' legacy of 350 years of humiliation and abuse<sup>4</sup>—culminating in a hatred that revels in the newly discovered capacity of blacks to scare the hell out of whites. However, Silberman's analysis presents both practical and logical problems that he fails to consider. In the current political and economic climate, Silberman's prescription for a vigorous national effort to eliminate poverty may well be irrelevant. In view of the non-availability of the author's prescribed remedy, what posture should the public adopt? Should it focus on providing rehabilitative opportunities for offenders through the criminal justice system until the broader society is reformed, or should it fashion a tough and punitive interim regime? Silberman offers no answer to these questions. Moreover, it is

2. Pp. 21-47.

3. Pp. 3-20.

4. Pp. 117-65.

not clear that the removal of economic disparity, even if it were accomplished, would eradicate the legacy of racial hatred.

In his effort to determine who is responsible for uncontrolled crime, Silberman the sleuth exonerates his first suspect, offenders themselves, and moves on to those institutions comprising the "criminal justice system." There is no acknowledgment in the book that this so-called criminal justice system is a relatively new concept. Prior to the establishment of the Law Enforcement Assistance Administration fifteen years ago, nobody referred to the police, courts, and corrections as a "system." The expression, used by educational administrators to rationalize academic departments and degree programs, is a misnomer. Anyone who works in the criminal justice "system" enjoys daily reminders that there is nothing "systemic" about his environment. Yet, unlike most contemporary critics, Silberman voices no protest over this disarray. He expresses concern that efforts to suppress discretion in one part of the system will result in increased discretion elsewhere, but, in doing so, he suggests a sense of managed adjustment by the components of a closely interrelated organism. That perception represents, at best, a half-truth; while the criminal justice process reacts systemically to stimulus, the so-called "system" is a hopelessly fragmented collection of special interests. Silberman displays no appreciation of the disjunctive nature of the functions and purposes of the enforcement, judicial, and correctional elements of the system and the impact of such disarray on the effectiveness of the overall process.

This flawed perspective, however, does not detract from the author's insights in analyzing the individual components of the criminal justice process. Unlike any other author in recent memory, Silberman subjects the findings of a vast body of research in criminal justice to critical scrutiny and offers an illuminating and provocative synthesis.

Criminal justice researchers characteristically promise more than they can deliver. Although social science methods were hailed in the 1960s as a definitive yardstick for evaluating policy suppositions and measuring program impact, social science research has in fact contributed mainly confusion, controversy, and increased skepticism. Our inability to understand human behavior, as well as the complexity and multiplicity of the variables in most criminal justice research, has proven to be an imposing obstacle. In addition, researchers have compounded the problem by failing to communicate to their administrative, legislative, and general audiences whatever insights they have managed to eke out and by producing instead vast quantities of reports that are thick, dull, and ignored.

The delight of *Criminal Violence, Criminal Justice* lies, in contrast, in the author's ability to sift through a forbidding mass of research and to organize results in a cohesive, persuasive format. Through the use of "ITEMs" (short anecdotes set off from the text and used to illustrate generalizations) and some extensive digressions (e.g., on police techniques or black culture), he imparts a unique pace and interest to his research summaries. Silberman is fundamentally a journalist and his work contains few startling revelations. Nonetheless, by bringing together and analyzing the major research findings in various criminal justice fields, he has performed an invaluable service. The public at large, including its legislative and executive officials, remains almost totally ignorant of recent social science research findings in criminal justice. One of Silberman's most important contributions may be the elimination of some of the folklore legislators traditionally spring on incredulous criminal justice practitioners at, for example, budget hearings. Even within the so-called criminal justice system itself there is a disturbing insularity: police, courts, and corrections practitioners tend to know little about what the others are doing.

More than any other attribute, it is the author's cautious handling of research that makes *Criminal Violence, Criminal Justice* a valuable contribution. Silberman seizes the strengths of research with uncanny accuracy and applies findings to identify what is not true and what does not work. For example, in his most effective chapter, that on police,<sup>5</sup> Silberman uses research findings to debunk the myth that increased manpower and better equipment are the necessary answers to lagging police effectiveness. For example, competent studies, such as the Kansas City preventive patrol experiment,<sup>6</sup> often undermine the beliefs on which longstanding police practices are based—in that instance, reliance on patrolling by police in fancy cars. But professional and public confidence in discredited practices dies hard, and police chiefs and political leaders still adhere to the belief that more men and better-equipped cars cruising the streets will improve crime prevention. To take another example, research indicates that the great police folk hero, the detective, contributes less to solving a crime than does a patrolman who arrives promptly after its commission and handles a stricken victim sensitively.<sup>7</sup> The solution of a crime, it turns out, hinges

5. Pp. 199-252.

6. See G. KELLING ET AL., THE KANSAS CITY PREVENTIVE PATROL EXPERIMENT: A SUMMARY REPORT (1974); G. KELLING ET AL., THE KANSAS CITY PATROL EXPERIMENTS: A TECHNICAL REPORT (1974).

7. Pp. 217-23; B. FORST ET AL., WHAT HAPPENS AFTER ARREST? (1977); P. GREENWOOD ET AL., THE CRIMINAL INVESTIGATION PROCESS 141-42, 226-27 (1977).

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far more on the ability and willingness of a victim or witness to identify the culprit than on forensic technology.

The impact of such findings is—or at least should be—staggering. They suggest that police should focus on activities that they now shun, such as the delivery of more sensitive victim and witness services and the development of community ties that will encourage people to supply information to the police. This would require the police to revise substantially their self-image and to recognize that “Florence Nightingale” duties<sup>8</sup> are not only intrinsically important, but also ultimately contribute more to solving crimes than do fleets of mobile laboratories. This kind of attitudinal revision cannot be legislatively ordained; it must be fostered by police leaders who understand current research and are willing to explore its implications.

Much of Silberman’s critique of the criminal justice system follows in this vein, weaving a tapestry of disquieting implications from research already accepted by informed professionals. For example, in his treatment of juvenile justice, Silberman joins the attack against abuse of status offenses, pushes just deserts and progressive sentencing as embodied in the American Bar Association/Institute of Judicial Administration standards,<sup>9</sup> endorses the Goldstein, Freud, Solnit thesis that the juvenile courts’ application of “the best interests of the child” standard is often disastrous,<sup>10</sup> and urges development of a wide assortment of alternative dispositions for juvenile offenders. Juvenile justice professionals may dismiss this catalog as a belaboring of the obvious, but in so doing they would be overlooking their own isolation. The general public and experts in other criminal justice fields know little about these issues; for them the marshaling of such an ensemble of conclusions provides a thought-provoking spectacle.

There is a traditional, discernible rhythm in the development of trends and movements in criminal justice. Frequently, a new idea, whether it embraces a startling innovation or consists merely of opposition to a prevailing myth, is initiated by a little-known coterie of opinion-shapers, who characteristically are former practitioners who have retired to academia. Researchers submit ideas of the opinion-

8. P. 205 (borrowing the phrase from Bittner, *Florence Nightingale in Pursuit of Willie Sutton: A Theory of the Police*, reprinted in *THE POTENTIAL FOR REFORM OF THE CRIMINAL JUSTICE SYSTEM* (H. Jacob ed. 1974)).

9. See INSTITUTE OF JUDICIAL ADMINISTRATION/AMERICAN BAR ASSOCIATION JUVENILE JUSTICE STANDARDS PROJECT, *STANDARDS RELATING TO JUVENILE DELINQUENCY AND SANCTIONS* (1977) (tentative draft).

10. J. GOLDSTEIN, A. FREUD, & A. SOLNIT, *BEYOND THE BEST INTERESTS OF THE CHILD* (1973).

shapers to a testing process, which involves a period of conceptual refinement, preliminary data gathering, and a campaign to persuade a courageous administrator to implement the proposed strategy to provide a concrete test. Depending on the complexity of the concept, initial implementation and research may require from five to twenty years. The task of popularizing new ideas in criminal justice is slow and laborious because criminal justice institutions are especially resistant to change. In the name of independence and security, police and correctional officials have erected barriers to public review of their operations that have only recently begun to crumble.

An illustration of this developmental rhythm is provided by the recent decline of the rehabilitative ideal. As the dysfunctional aspects of the "treatment" model of confinement became increasingly evident in the mid-1960s, commentators began to question the suppositions underlying rehabilitation.<sup>11</sup> By the early 1970s, legal scholars and researchers were mounting critical attacks.<sup>12</sup> As a result of the effort, the case against rehabilitation was rapidly disseminated among criminal justice professionals and began to have broad practical impact. However, legislative reevaluation of rehabilitation is still years away.

An understanding of this developmental rhythm and the pace at which it moves is essential to evaluate properly the dimensions of Silberman's accomplishment. Most of the ideas that appear in *Criminal Violence, Criminal Justice* have been researched; some have been tried in a few locales and validated, at least negatively; all need popularization, a function Silberman serves with distinction. One hopes that, as a result of his work, the next time a police chief argues that he needs more and better communications equipment to prevent crime, an astute budgetmaker will know that such equipment contributes little to the prevention of crime.

It is in his discussion of the courts that Silberman departs most radically from the conclusions of other critics of the criminal justice process. Again, Silberman extracts from available research a series of negative assertions: the exclusionary rule rarely prevents conviction;<sup>13</sup>

11. See, e.g., F. ALLEN, *Legal Values and the Rehabilitative Ideal*, in *THE BORDERLAND OF CRIMINAL JUSTICE* 25 (1964).

12. Not only has the rehabilitation goal come under attack from scholars and researchers, but from judges and study commissions as well. See, e.g., A. DERSHOWITZ, *FAIR AND CERTAIN PUNISHMENT* 3-14, 89-100 (1976) (criticizing indeterminate sentencing, which a background paper traces to rise of rehabilitation goal); M. FRANKEL, *CRIMINAL SENTENCES* (1973) (misgivings about sentencing goals and processes, expressed by federal district judge); A. VON HIRSCH, *DOING JUSTICE* (1976) (research and recommendations of Committee for the Study of Incarceration) (proposals for sentences linked to concept of "just desert").

13. Pp. 201, 254, 262-65.

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courts are not more lenient than they used to be;<sup>14</sup> disparate sentences are not as prevalent as supposed;<sup>15</sup> plea bargaining is not new and is not a major source of unfairness;<sup>16</sup> and the guilty rarely escape conviction and punishment.<sup>17</sup> Evidence exists to support each of these statements, although the verdicts on them are less clear than the author suggests.<sup>18</sup> Silberman's conclusion, however, is startling:

What this means is that the courts are fulfilling their crime-control function remarkably well: they are punishing most of those who should be punished. They are doing so, moreover, in a far more equitable way than is generally thought; the sentences offenders receive tend to be proportionate to the seriousness of their offense, the nature of their prior record, and the degree of their culpability.<sup>19</sup>

Silberman's defense of that conclusion begins with the destruction of a statistical monstrosity spawned by the 1967 Crime Commission.<sup>20</sup> To illustrate the inefficacy of the criminal justice system, the Commission prepared a graph that contrasted the number of crimes reported with the number of prison sentences imposed in 1965.<sup>21</sup> Conclusions drawn from that funnel-shaped graph, including the assertion that only two percent of those arrested are ever imprisoned, have been a stock part of commentators' repertoires for a decade. Silberman exposes the fundamental flaw in the graph: it includes juvenile and misdemeanor of-

14. Pp. 254, 257-65.

15. Pp. 254-55, 285-96.

16. Pp. 255, 277-85.

17. Pp. 255, 264-77.

18. See E. VAN DEN HAAG, *PUNISHING CRIMINALS* 157-58, 160-73 (1975).

19. P. 285. Silberman explains the contrast between his result and that of other observers of courts, see, e.g., E. VAN DEN HAAG, *supra* note 18, as follows:

Most criminal courts *do* do justice; almost none of them *appears* to do justice. Instead, they convey an aura of injustice that undermines respect for the law and belief in its legitimacy.

P. 255 (emphasis in original). This aura is created by the operating style of the typical criminal court:

Most criminal courts undermine respect for law—not by their results, but by the shabby, haphazard way in which they are run. Files are misplaced; jailed defendants are brought to court on the wrong day; victims and witnesses are not notified of the date on which they are to appear (and when they are notified, they arrive in court to find that the case has been postponed); prosecutors and defense lawyers are badly prepared, hastily leafing through their files for the first time as the case is being called; the whole atmosphere makes it difficult for anyone—defendants, judges, prosecutors, defense attorneys, victims, and witnesses alike—to avoid developing a protective veneer of cynicism and boredom.

P. 256.

20. PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND THE ADMINISTRATION OF JUSTICE, *TASK FORCE REPORT: SCIENCE AND TECHNOLOGY* 61 (1967).

21. *Id.*

fenses in the figures on reported crime while excluding persons punished for those crimes from the figures on prison sentences. Careful analysis of the graph's statistics leads Silberman to conclude that forty percent of those arrested, fifty-five percent of those charged, and fifty-eight percent of those convicted were actually incarcerated.<sup>22</sup> The criminal justice system does a better job of punishing criminals than is generally believed.

A key but much-maligned element in the courts' relative success is plea bargaining. Silberman argues persuasively that, contrary to popular suspicion, decisions not to prosecute seldom stem from prosecutorial softheartedness. Rather, such decisions rest on genuine doubts about a defendant's guilt, absence of sufficient evidence, or a judgment that the crime is not serious enough to merit the imposition of sanctions.<sup>23</sup>

Nonetheless, a stark realization of the discretion left to the prosecutor in our criminal process emerges from Silberman's argument. Here and elsewhere in his analysis of the judicial system, Silberman is disturbingly complacent about the prevalence of discretion. He may view, whether or not consciously, such discretion as a necessary counterweight to the draconian rigor of emerging sentencing patterns. Some readers, however, familiar with the political posturing that frequently accompanies prosecutorial decisions, will not share the author's confidence in the even-handedness of prosecutors. In fact, Silberman's suggested safeguard against the abuse of such discretion, the right to trial, is accompanied by a horror story that highlights the potential for abuse and the inadequacy of the suggested safeguards.<sup>24</sup>

In his discussion of current sentencing practices,<sup>25</sup> Silberman relies largely on research of sentencing guidelines in rejecting allegations of wide disparity in sentencing. Disparate sentences appear to derive from the differing social values of geographically separate communities. Moreover, he argues, some of the apparent disparity in sentencing by judges arises from consideration of the actual harm suffered by the victim, as opposed to the technical offense with which the defendant is

22. Pp. 257-61.

23. Pp. 264-77.

24. Pp. 282-84. Silberman is discussing *Bordenkircher v. Hayes*, 434 U.S. 357 (1978). The case involved a defendant charged with forging an \$88.30 check who was offered a five-year term for a guilty plea and was warned that a request for trial would result in his being charged as a "habitual offender." The defendant requested a trial, was convicted as a habitual offender, and received the mandatory life sentence required under Kentucky law. After reversal by the United States Court of Appeals for the Sixth Circuit, the Supreme Court upheld the prosecutor's actions, finding that they did not violate the defendant's rights under the due process clause.

25. Pp. 285-96.



charged. Finally, he sees the parole structure as a counterweight to any actual instances of injustice in sentencing. Silberman's confidence in the ability of judges and parole board members to make such judgments fairly echoes his belief that prosecutors can distinguish fairly and accurately "real" from "garbage" crimes in deciding whether to drop or reduce charges.<sup>26</sup> This confidence lies at the heart of Silberman's dispute with both opponents of plea bargaining and advocates of sentencing reform, who want prosecutorial and judicial discretion curbed.

Silberman's overall endorsement of the criminal judicial process is surprising. He argues that the problems associated with plea bargaining, disparate sentencing, and the parole structure, can best be corrected with minor reforms, such as improved victim and witness services, better prosecutorial screening, the adoption of sentencing guidelines, and the provision of more effective criminal defense representation.<sup>27</sup> Although these are worthwhile reforms, they represent merely the massaging of a system pronounced fundamentally healthy. This diagnosis will deeply disappoint those who advocate substantial sentencing reform, the elimination of plea bargaining and parole, and broader revamping of the administration of the court system.

Silberman's treatment of corrections<sup>28</sup> is the least satisfying part of his dissection of the criminal justice system. Because of the dearth of useful corrections research, which has become obsessed with the issue of recidivism, Silberman can present only a sociological narrative of institutional life.<sup>29</sup> He portrays exceptionally well the routinization of social rejection and condemnation that characterizes prisoners' lives: the institutional experience is sterile and destructive; violence and rape are ubiquitous. The fundamental task of institutional corrections, as Silberman observes, is to punish without brutalizing.

Although the disease afflicting institutional corrections is evident, no cure is in sight. Guards, who feel betrayed by the courts and administrators, seek secure tenure on the walls and in the towers; befuddled administrators struggle to reconcile civil rights and control; overcrowding is rampant; legislators inflate sentences and curtail correctional ap-

26. P. 265.

27. Pp. 204-05, 298-308.

28. Pp. 371-423.

29. Pp. 382-416. In the entire chapter on corrections, there is not one ITEM based on Silberman's own experiences. The author uses ITEMS, which describe relevant, personal experiences, to enhance readability and indirectly to boost his own credibility. The absence of the device in the corrections chapter suggests that the author had less direct exposure to the correctional environment.

propriations; judges fulminate against abuses that correctional administrators have neither the knowledge nor the resources to eradicate; and the public simply does not care. Although a new breed of administrators has been able to initiate reforms in a few institutions,<sup>30</sup> the changes occur at a glacial pace, amidst buffeting from a myriad of constituencies.

The principal deficiency in Silberman's treatment of corrections is his exclusive emphasis on institutional corrections. He dismisses community corrections in a paragraph<sup>31</sup> and considers neither the correctional field services of probation and parole, nor the problems of pre-trial detention. These are not minor oversights. There are more Americans on probation than there are in federal and state prisons.<sup>32</sup> On any given day another 150,000 adults are confined in our state, local, and municipal jails; over a million people pass through these institutions each year.<sup>33</sup> Even among the imprisoned, fewer than one-third are residents of maximum security facilities.

By skewing this view of corrections so badly, Silberman misses the opportunity to share a number of hopeful developments in the area of alternatives to incarceration. For example, early research on the operation of the Minnesota and Oregon community corrections statutes,<sup>34</sup> which coordinate state and local planning and funding, is encouraging.<sup>35</sup> The application of improved management techniques in probation and parole has resulted in substantially increased effectiveness and efficiency in such progressive jurisdictions as San Diego and Seattle.<sup>36</sup> The Des Moines Project, which featured the pooling of resources to develop both pre- and post-trial local community programs as an alternative to the construction of a new jail, has had a decade of success and has been emulated widely.<sup>37</sup> The work of the Vera Institute in establishing and documenting innovative, cost-efficient work release programs in New York City shows enormous promise, especially in this era of reduced local budgets for public works.<sup>38</sup> The phenomenal na-

30. See, e.g., pp. 417-23 (discussing work of Vernon Housewright, former warden of Vienna (Ill.) Correctional Center).

31. Pp. 373-74.

32. See SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS—1977 at 598, 633 (M. Gottfredson, M. Hindelang & N. Parisi eds. 1978).

33. See R. GOLDFARB, JAILS: THE ULTIMATE GHETTO 13-14 (1975).

34. MINN. STAT. ANN. §§ 241.31-32 (West Supp. 1979); OR. REV. STAT. §§ 423.500-560 (1977).

35. See Schoen, *The Community Corrections Act*, 24 CRIME & DELINQUENCY 458 (1978) (examining Minnesota statute).

36. See E. NELSON, H. OHMART, & N. HARLOW, PROMISING STRATEGIES IN PROBATION AND PAROLE (1978).

37. See P. VENEZIA & R. STEGGERDA, RESIDENTIAL CORRECTIONS: AN ALTERNATIVE TO INCARCERATION (1973).

38. See H. ALLEN ET AL., HALFWAY HOUSES (1978).

tionwide growth of restitution projects is evidence of keen popular and judicial interest in the development of new approaches to corrections.<sup>39</sup> Sufficient experimentation has occurred to demonstrate the feasibility of these alternative strategies. What is needed now is an effective effort to make broadly available to administrators, legislators, executives, and the public knowledge about these developments, a function Silberman might have performed admirably.

As a laborer in the fields of criminal justice, I am ambivalent about Charles Silberman's *Criminal Violence, Criminal Justice*. I want to greet it with unrestrained enthusiasm because here, for once, is an articulate, well-researched overview that will provide general readers a lucid introduction to criminal justice. Moreover, those who read carefully Silberman's work will not accept unquestioningly the folklore of crime prevention and treatment. Even for professionals in criminal justice, the book's unceasing probing, questioning, and undermining make it highly provocative.

On the other hand, there are serious deficiencies in the book. Silberman informs brilliantly, but he fails to address some fundamental questions. What are the objectives of the criminal process? How responsible are offenders for their criminal activities? How do we reconcile individual liberty and collective safety in an increasingly violent society? How do we prevent a criminal justice process dominated by discretion from being held captive by shifting public moods? How do we resolve the tension between broad discretion and the concept of equal justice under law?

Silberman's work is going to be—and already is—profoundly influential. That very fact concerns me, because this book truly excels only as an introductory word on criminal justice. Unfortunately, for many readers—both within and without the ranks of criminal justice practitioners—Silberman's work may well be the last word.

39. See OFFENDER RESTITUTION IN THEORY AND ACTION (B. Galaway & J. Hudson eds. 1978).