North Dakota Law Review

Volume 50 | Number 4 Article 4

1973

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Recommended Citation

Nodland, Irvin (1973) "How to Identify Criminals and Other Citizens of North Dakota after July 1, 1965," *North Dakota Law Review*: Vol. 50 : No. 4 , Article 4.
Available at: https://commons.und.edu/ndlr/vol50/iss4/4

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HOW TO IDENTIFY CRIMINALS AND OTHER CITIZENS OF NORTH DAKOTA AFTER JULY 1, 1975

IRVIN NODLAND*

"Hippalyta — This is the silliest stuff that ever I heard.
Theseus — The best in this kind are but shadows; and the worst are no worst, if imagination amend them." (Shakespeare —A Midsummer Night's Dream).

North Dakota's amended criminal code is not so much the result of our state legislature's imagination as it is a reworking of a proposed federal act. In 1966 Congress established a National Commission on Reform of Federal Criminal Law,[1] and in 1971 that Committee presented a proposed Federal Act.[2] A draft of that proposed Federal Act has served as a model for our state's new criminal code. The present amendment deals primarily with those criminal laws now set out in Title 12 of the North Dakota Century Code. Study and revision are now underway to also change or amend the numerous criminal sanctions imposed for violations of other sections of the North Dakota Century Code.

Congressional authorization for the National Committee was a response to an era of great public concern with supposedly rising crime rates, an alleged breakdown of law and order, and what was claimed to be rampant criminal behavior in the streets. While the population was rising by thirteen per cent (13%) during the 1960's, the statistic keepers were claiming a one hundred forty eight per cent (148%) increase in major crime.[3]

In 1968 a Gallup poll found that Americans ranked crime as the most pressing domestic problem facing the nation.[4] Elections

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1. 18 U.S.C. § 1 (1971).
2. NATIONAL COMMISSION ON REFORM OF FEDERAL CRIMINAL LAWS, FINAL REPORT (1971).
3. U.S. NEWS AND WORLD REPORT, CRIME IN AMERICA, CAUSES AND CURES 13 (1972). Some recent studies have indicated that crime statistics have been the subject matter of gross manipulation. *See e.g.* S. Endleman, THE EXTENT OF CRIME: Official and Popular Perceptions of a Social Problem, in *Violence in the Streets* 197 (S. Endleman ed. 1968).
4. U.S. NEWS AND WORLD REPORT, *supra*, note 2, at ch. 1.

were won and lost on the issue and elected representatives felt great pressure to take some action.

To a politician the enactment or amendment of a criminal code is one of the lesser controversial political responses that can be made to public outcry for action. Code revision does not carry with it the thorny questions and conflicting opinions raised by legislative tampering with economic priorities, poverty, malnutrition, inequality, poor education, boredom and other causes of crime. Furthermore, there are few lobbyists or special interest groups harassing legislators on behalf of the "criminal."

State governments were encouraged through Law Enforcement Assistance Administration (LEAA) and other federal funding programs to improve or update their criminal codes.[5] North Dakota's Law Enforcement Council and Legislative Council took advantage of federal dollars and by the time the 1973 legislature met, had prepared for introduction a new, suggested criminal code based primarily upon the 1971 proposed federal act. Numerous hearings were held before Judiciary Committee "A" and some input from the general public and the bar was obtained in these hearings. The code breezed through the legislature with a minimum of fanfare, and an absence of controversy. Of the approximate thirty eight thousand words, only six or seven words were changed by amendment on the Senate floor.[6]

The new code is probably less repressive than the old. There appear to be more restrictions and limitations, for example, on the right of law enforcement personnel to shoot a fleeing felon.[7] The citizen's right to resist excessive police force is probably greater under the new law.[8] The recent practice of judges to require consent to a warrantless search as a condition of parole or deferrment appears curtailed in the new code so as to expressly limit this condition to parole officers rather than all law enforcement offi-

5. *See e.g.*, NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS, A NATIONAL STRATEGY TO REDUCE CRIME, ch. 8 (1973).

6. Reports of Standing Comms., N.D. S. Jour., 43rd Sess. 165 (1973). One of the amendments concerns the change of the word corporate "liability" to the word "responsibility" in the title to a section; and another change was the deletion of the words "interstate or foreign" from the definition of "wire communication" so as to make the statute applicable to state enforcement rather than federal enforcement as was intended in the proposed federal act. The only other change was in making assault on a police officer a "Class C felony" rather than a "Misdemeanor."

7. N.D. Sess. Laws, ch. 116, § 5 (1973); to be codified as N.D. CENT. CODE 12.1-05-07 (2)(d) (1975). The new code allows use of deadly force by an officer only if the subject has been involved in a felony involving violence or is attempting to escape with the use of a deadly weapon or has otherwise indicated he is likely to endanger a human life or inflict serious bodily injury. Under the old code, N.D. CENT. CODE § 12-26-03, force or violence on the person of another was not unlawful when necessarily committed by a public officer in the performance of his legal duty.

8. N.D. Sess. Laws, ch. 116 § 5 (1973) to be codified as N.D. CENT. CODE 12.1-05-03 (1975).

cials.[9] There are other somewhat subtle but significant changes of this sort sprinkled throughout the code.

Aside from the effort of those lawyers who labored with the Legislative Council and Judiciary Committee in preparing the code for legislative consideration, the members of the bar, generally, have been quite indifferent to this rather historic legislative feat. With one or two exceptions the lawyer imput into the Committee was primarily from lawyers whose experience was primarily as prosecutor or judge, and not as a defense lawyer.

The new code will provide grist for the judicial mills of North Dakota for years to come. An old Chinese saying has it:

> When a piece of paper blows into a law court, it may take a yoke of oxen to drag it out again.[10]

The new act should provide defense drayage for another century as the nuances of each of these thirty two hundred ninety seven lines contained in the ninety six pages of Senate Bill 2045 are field tested for vagueness, due process and other constitutional infirmities.

During the past thirty years criminal defense lawyers have focused largely upon procedural rights. Justice Frankfurter may have invited three decades of procedural challenge in 1943 when he said:

> "The history of liberty has largely been the history of observance of procedural safeguards."[11]

Concern for reform of "substantive" criminal law has not been great among the criminal defense bar these past thirty years. The great thrust of McNabb-Mallory-Mapp-Miranda-Escebedo-Gideon-Gault centered upon procedure. Concern is always great in any particular case as regards the specific wording of an applicable statute but the defense bar has not taken up the cause of "reform" through amendment, repeal or enactment of criminal statutes by legislatures. During the past few years there have been a few noteworthy examples of substantive change involving decriminalization of certain conduct and the repealing of criminal responsibility as a result of miscongeniation, suicide, poverty, vagrancy, public intoxication, etc. Responsibility for these "Reforms", however, have been more the result of agitation by Civil Rights or Social Welfare groups than defense lawyers.

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9. N.D. Sess. Laws, ch. 116, § 31 (1973) to be codified as N.D. CENT. CODE 12.1-32-07 (2)(6) (1975).
10. F. Lucas, *Style* 18 (1955).
11. McNabb v. United States, 318 U.S. 322, 347 (1943).

The apathetic response of defense lawyers may well have something to do with the role in which they see themselves and with the place of "substantive law" in our criminal justice system. The average lawyer involved in some amount of criminal defense work probably feels that in the main it really won't matter whether he reaches for the old code or the new. Through his office there will still pass about the same number of persons, in trouble accused of being "criminals", and under threat of fine and imprisonment.

Criminal justice in America is a composite of theory and folklore. It appears as a kind of mythology, partly true, mainly false. The reality of what is happening bears little relationship to the words being used to explain what is supposedly going on. As Professor Ryan observes in his book *Blaming the Victim,*

> . . . the activity of the police in arresting people — appears to be almost totally unrelated in practice to the apprehension and punishment of criminals who break the law.[12]

Criminal law is something like a stew—the interaction of the ingredients is little understood, even by those who prepare it.

Law enforcement personnel and defense lawyers both recognize that the words used to describe events transpiring frequently represent pure fiction. One noted philosopher has stated:

> The principals enunciated by courts as grounds of decision often represent nothing more objective than a resolution to use sanctified words wherever specific results are dictated by undisclosed determinants.[13]

The game of survival in the criminal courtroom is played out on a field where boundaries are marked by this fictitional semantic world. There is often an air of unreality in the courtroom during a criminal trial. The American Bar Association's standards relating to the prosecution and defense functions notes that "in the conduct of criminal cases the stakes are high, the tension so great that the zeal of an advocate can sweep him into actions which are still too easy to rationalize as being 'part of the game', justified by a result-oriented approach or a misguided environmental ethic."[14]

The process has often been compared to that of war. As in war, it is often the combatants, both defense and prosecution, who subscribe to the old cliche — that all, or at least almost all — is fair. A crime reporter once observed it well:

> Being the enemy, he (the criminal) has no rights worthy of

12. W. RYAN, BLAMING THE VICTIM, 207 (1971).
13. F. COHEN, ETHICAL SYSTEM AND LEGAL IDEALS 237 (rev. 1959).
14. ABA, STANDARDS RELATING TO THE PROSECUTION AND DEFENSE FUNCTIONS 14-15 (1971).

> the name. He is to be met by the weapons of war. Individual rights, including those of non-combatants, are subject to invasion like the rights of non-combatants in wartime. The policeman, is a peace-time soldier. If bullets go astray, if civilians are inconvenienced, if civil rights are suspended, those are accidents inherent in a warfare that is waged in crowded cities. Criminologists of the humanitarian class are to be scorned, because they are the pacifists in this war. Defense attorneys are to be frustrated and outwitted because they are the enemies diplomatic corps. Citizens who would make objection to the excess of authority indulged in for the protection of the public are giving aid and comfort to the enemy. If the Constitution forbids internal war, then the Constitution is technical and pettifogging, and for its own good it must be protected against itself. Its makers in any case could not have forseen the pass to which this war has come. The law of war is the law of necessity. There are certain rules of war, but they do not strictly bind, and atrocities are only to be depreciated because they may become public and hurt the cause — not because the enemy is entitled to the least consideration.[15]

To the defense lawyer the process often appears accidental, arbitrary and hypocritical—a game of chance in which large blocks of discretion have been delegated to numerous persons of varying temperament, intelligence and competence. There is the policeman on the beat who decides whom to arrest; the magistrate at appearance who decides whether to incarcerate; the prosecutor who decides whether to dismiss, pursue, or bargain; the probable cause judge at the preliminary hearing who decides whether to bind over; the jury that decides whether to convict; the judge who decides whether to defer; the parole officer or board who decides whether to release or revoke.

Undoubtedly the most significant exercise of discretion comes in the form of broad policy decisions made in each community by its social and political structure concerning what is to be emphasized as criminal and what is to be ignored. This emphasis bears little relationship to the statutes but is felt throughout city government, police commissioners, police chiefs, and on down to the policeman on the beat. The emphasis affects the manner in which the policeman spends his time. As an illustration, a city may decide as a matter of policy or by absence of city ordinance that possession of marijuana will not be prosecuted in its municipal court. The task is left to the county states attorney in the state court. Nevertheless, a major emphasis may very well be placed by the municipal police on the detection and apprehension of drug offend-

15. E. HOPKINS, OUR LAWLESS POLICE: A STUDY OF THE UNLAWFUL ENFORCEMENT OF THE LAW 319 (1931).

ers. The city policemen and detectives are sent to special schools to assist in the effort. Applications are made to government agencies for special surveillance equipment with which to see in the dark, monitor telephone calls, bug the bodies of undercover agents, take pictures, etc. At the same time as the city police are concerning themselves with this particular type of crime, no similar type effort is made to get funding to pay the salary of a special agent to be in charge of detecting other, equally prevalent forms of crime in the community, but which are also not prosecuted in city court, such as consumer fraud, tax evasion, false advertising, price fixing, or gambling in the service clubs. The policeman undoubtedly takes his cue from his bosses, and the heads of city government probably take their cue from what they feel their political constituents want.

The criminal defense lawyer finds himself swimming around in this sea of discretion. He finds it difficult to determine the basis upon which one form of life in the pool is being labeled fish and the other is not. The difference between persons who come into his office with problems as "defendants" as against those who are non-defendants is probably more than a hair's width, but is still often only a hair's length. The line between criminal and non-criminal becomes exceedingly blurred. If the lawyer remains reasonably alert throughout his ordinary day the "good" people making up his "civil" practice present to him almost as many instances of crimes committed or about to be committed as those who come in already labeled as criminal defendants. It may be in the form of an innocent "request" to notarize out of the presence of the signators; it may be a request to backdate a document or a deed for some unique tax advantage; it may be a request for establishment of a "strawman" to hold title to property for purposes that in fact constitute fraud and deception. It may have to do with the preparation of an exaggerated insurance claim. It may be related to the use of information that has been gathered by a client or by an investigator through private wiretap or unlawful surveillance in a divorce or child custody proceeding. But for the rules of confidentiality every perceptive and active lawyer could produce his own long list of crimes not charged which he has had the opportunity or misfortune of observing in the day to day conduct of his business. Sometimes the lawyer, through sophisticated rationalization is able to function on the periphery of illegal conduct by exonerating his own conscience with a claim that he really doesn't know the true facts and must rely on what his client is telling him.

The extent to which lawyers allow themselves to become involved directly in "criminal" activities undoubtedly varies across a broad spectrum. The point to be made, however, is that the

frequency of occasions in which such questions come up in any lawyer's practice is necessarily high as the very foundation of legal practice remains predicated at least in part upon hope and notion that lawyers will give advice to prevent "unlawful" conduct in the ordinary course of human affairs. In this setting it is difficult for any perceptive lawyer to maintain notions of a world made up of "good guys" and "bad guys". Assuming a high standard of conduct and advice by the bar, the difference between the law abiding citizens and those who are not is frequently proportional to their respective financial ability to buy and pay for legal advice concerning their private and business affairs.

Notwithstanding the difficulties a defense lawyer may have with trying to work out his own definition of who is a criminal and who is not, the justice system does operate on a notion, usually unexpressed, that the community is divided between "them that does and them that doesn't". To the defense lawyer these absolutist notions of a world comprised of good people and bad people seem to crumble daily in the courtroom as he watches jurors, almost routinely, perjure themselves on voir dire to assure their staying or leaving, depending on their private predispositions and schedules; as he hears law enforcement witnesses give testimony over and over again from case to case in the same words and phrases in order to satisfy minimum requirements for search or arrest; and as his own clients lean over to him and whisper changes in their version of what has happened in order to counteract the prosecutor's facts unfolding.

Regardless of what theory may say, in practice our criminal justice system does operate not in living color, but rather on the black and white premises that the "peace forces", including the good people of the community and the law enforcement agencies, stand in opposition to the "criminal forces". The roots of this system go deep into history to draw their essential juices from a time when man's metaphysical underpinnings rested on a black and white spiritual and physical world constructed of absolutes. Aristotle's world was basically one of absolutes starting with a shove by some "prime mover" and reverberating down through the course of history as a cause and effect reaction. Centuries later Newton modified these metaphysics but still retained a basically absolutist philosophy. He observed the universe and thought he saw a perfect harmony spreading from the smallest particle to the far reaches of the cosmos. Like Darwin he saw the world as understandable through classification, mapping, diagramming and cataloging until all of the pieces had been identified and a pattern made to emerge.

Today, however, we live in a world that speaks off contingency physics, quantum theories, theories of probability and situation ethics.

In the humanities we study game theories of social dynamics and at least one contemporary writer has made a best seller of his description of the games people play in their daily encounters with each other. Scientists of the 20th century tell us that at least insofar as the "physical" world is concerned they have found, not a perfect Lamarkian clockwork universe that can be observed and understood like some giant machine, but instead an apparent unpredicability and uncertainty at the very base of nature. The strongest arguments do not seem to favor a world of absolutes. We are told that the course and velocity of the atom, the very building block of nature, cannot be charted with absolute certainty as it appears to respond with some inherent unpredicability. Numerous other physical and metaphysical concepts thought absolute in the past have been relegated to the dustbin of history these past fifty years.[16]

In a rather gross oversimplification, man's scientific metaphysics from Aristotle to Newton to Einstein might be illustrated in the discussion of three baseball umpires as they sit in the locker room following the game and discuss the philosophy by which they determine a ball from a strike.

> *First Umpire*: I sit there behind the plate and I watch the ball come down the groove and I call it what it really is.
>
> *Second Umpire*: I can't do that, the best that I can do is watch its pattern and call it as I see it.
>
> *Third Umpire*: It ain't nothin till I call it.

The 20th Century relativistic and contingent world of the third umpire is the one with which the criminal law has not come to grips. The prosecutorial part of the system operates under the influence and direction of the first umpire. Like balls and strikes people are either in the groove or they are not. Judges and juries often appear to operate under the influence and direction of the second umpire as homage is paid to the great historical charge of responsibility to listen to all of the evidence before making up their minds. To the defense lawyer, however, it most often appears that in reality it is the world of the third umpire that most accurately describes what in fact is happening.

Pascal, who is credited with inventing the theory of probability, observed this relativistic and contingent world of law:

> Fundamental laws change! Right has its epochs! Truth on this side of the Pyrenees may be heresy on the other.[17]

16. For one short summarized discussion see *The Idea of A Contingent Universe*, Preface to WEINER, THE HUMAN USE OF HUMAN BEINGS, CYBERNETICS AND SOCIETY 1-12 (1954).
17. Blaise Pascal, *Pensees*, ch. 7 (I. Taylor transl. 1901).

While the judicial umpires argue the philosophy by which a ball is separated from a strike, a criminal from a non-criminal, we all appear to take our periodic turn at bat. An independent survey cited by a recent Presidential Commission on Law Enforcement and Administration of Justice found that ninety one per cent (91%) of the persons interviewed admitted they had committed acts for which they might have received a jail or prison sentence.[18] The Commission reported:

> Many Americans take comfort in the view that crime is the vice of a handful of people. This view is inaccurate.[19]

Numerous reports suggest that forty to sixty million Americans have experimented with the use of prohibited drugs. Approximately twenty million persons are estimated to engage in prohibited wagering on any particular football weekend. Statistics indicate most Americans become lawbreakers in their automobiles.[20] It is estimated that forty billion dollars in income goes unreported on tax returns submitted by Americans each year.[21] A study of seventy of the nation's corporations found that every one of the companies had been convicted of a violation of law during the first half of the 20th century. The average number of convictions was fourteen, and ninety-eight per cent (98%) of the firms had at least four convictions.[22] A study of crime by U. S. News and World Report set the cost of crime in 1970 at nearly fifty one billion dollars. Thirteen billion of that was attributed to crime against business and the single biggest item in that category was estimated at five billion dollars for kickbacks.[23]

In spite of all of this the finger always points outward.

> Thou canst not say I did it
> Never shake thy gory locks at me (Macbeth)

To the defense lawyer, then, the question is not nearly so much "what does the criminal code say is criminal" as it is "whom is it out of this unanimously criminal population of ours, that is selected for processing through the criminal justice system and why?"

If approached from this viewpoint certain answers come to the forefront immediately. There are the poor and the minorities—first

18. PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY, at v (1967).
19. *Id.*
20. CRIME IN AMERICA, CAUSES AND CURES, *supra* note 2 at 32.
21. *Id.* at 37.
22. *Id.* at 38.
23. *Id.* at 47.

and foremost and one long walk down the corridors of our own state penitentiary provides about all the statistical gathering needed in support of this proposition. Most certainly it is not sufficient to say that the poor and the minority commit more crime. None of the statistics bear this out and most certainly the largest losses sustained by society come not from the crimes committed by the poor or the minority defendant but from what is commonly denominated "white collar crime". Obsession with the minority and the poor as candidates for processing in this system is an observable phenomena. It is only part of the phenomena however. One recent analyst, considering allegations of extensive crime in high places of government, wrote:

> most of the American people are themselves too often guilty of shortcutting or ingoring the law and ethics; and that while they demand punishment for those who are too openly and violently criminal or who threaten them, they do not want to punish those who like themselves—retain a facade of respectibility and legality . . . what is sought and what was preserved . . . is a stern veneer and corrupt core, so that one can get away with as much as possible, while righteously punishing those who get away with too much too openly. The sins of commission must be made on the sly, secretly or vicariously, while the exhortations to decency are made in the piety of public places.[24]

One prominent American psychiatrist, Karl Menninger, has said he arrived at "the inescapable conclusion . . . that society secretly *wants* crime, *needs* crime and gains definite satisfaction from the present mishandling of it. . . ."[25] Dr. Menninger appears to see the criminal process in part as a scapegoat device.

> Them we can punish! At them we can all cry 'stone her' or 'crucify him'. We can throw mud at the fellow in the stocks; he has been caught; he has been identified; he has been labeled, and he has been proven guilty of the dreadful thing. Now he is eligible for punishment and will be getting only what he deserves.[26]

Dr. Menninger also observes that the particular criminal statute under discussion may not be determinative:

> Hence, crowds of people will always join in the cry for punishment. Often their only interest in the particular victim is the fact that he is labeled villain, and the extermination of villains is a 'righteous act'. The definition of villainy does

24. H. Stein, *The Silent Complicity at Watergate*, AM. SCHOLAR, Winter 1973-74, at 24-5.
25. K. MENNINGER, THE CRIME OF PUNISHMENT 153 (1968).
26. *Id.* at 153-54.

> not have to be a matter of common agreement or scientific investigation. It is enough that someone has been 'fingered', accused, arraigned, sentenced. 'He' not I, is the purveyor of evil, the agent of violence. Crucify him! Burn him! Hang him! Punish him![27]

In his book, *The Urge to Punish,* Henry Weihofen gives a somewhat more direct and uncomfortable suggestion:

> 'Distrust', said Nietzche, 'all in whom the impulse to punish is strong'. No one is more ferocious in demanding that the murderer or the rapist 'pay' for his crime than the man who has felt strong impulses in the same direction. No one is more bitter in condemning the 'loose' woman than the 'good' women who have on occasion guiltily enjoyed some purple dreams themselves. It is never he who is without sin who casts the first stone.[28]

When a defense lawyer becomes involved in the defense of an accused it is often necessary that he spend long hours in interviews, conferences and consultation. If the trial is of any length the long hours and close association, laboring in an emotionally charged atmosphere, for a common goal, causes increasing identification between lawyer and client. The lawyer may recall warnings of his ethics professor to maintain professional detachment but by the time the trial is concluded he is more apt to listen to John Donne, than to his teachers:

> Every man is a piece of the continent
> A part of the main,
> If a clod be washed away from the sea Europe is the less . . .
> Any man's death diminishes me, because I am
> Involved in mankind.
> And therefore never send to know for whom the bell tolls,
> it tolls for thee. (John Donne — Devotions)

Defense lawyers are often asked, "How can you defend someone you know is guilty?" There is a desire to cry out at that point, "Where can I find someone to defend who is innocent?"

The draftsman of a criminal code undoubtedly do their thinking in other than first person terms.

"These laws shall apply to those people who do this act."

John Dean for a time was an assistant director to the National Committee on Reform of Federal Criminal Law. It is doubtful he foresaw the threat of the criminal laws with which he worked in

27. *Id.* at 154.
28. H. WEIHOFEN, THE URGE TO PUNISH 138 (1956) quoted in Menninger, *supra* note 24, at 196.

first person terms. North Dakota's new code is based upon the work of the same National Committee and this new code, like the old, takes its metaphysics more from the philosophy represented by John Dean than the poems of John Donne.

In the criminal law the tolling of the bells does not appear to be related directly to the wording of the statutes. The bell is rung rather by other forces loose in society. To list a few:

1. Race
2. Financial Condition
3. Age
4. Sex
5. Length of residency in the area
6. Clothing
7. Hair
8. Extent to which the accused is courteous
9. Time of day event happens
10. Place or building in which event occurs, i.e. church, service club, park, corporate board room, basement apartment, Indian reservation, rock concert, etc.

It is a schizophrenic process in which the codification of criminal responsibility simply does not deal with the real determinants.

As a mental process the drafting of a criminal code is akin to the manufacturing of a sieve to be used later by a jury to separate the wheat from the chaff. As the sieve is placed into use, however, as Anacharsis observed, it becomes a cobweb where the small flies are caught and the great break through.[29]

Perhaps at some basic level there is some common agreement that there does exist in society a type of person that has, by his conduct, clearly set himself aside from the rest of us and who has demonstrated a failure to accompany the majority of mankind in its long march out of the jungle. Perhaps. Visions of the Manson murders, the "Berserk Sniper", the Boston Strangler, the "Zebra" killers and similar dark pages in our social history initially seem to compel such an acknowledgement.

On the other hand, what first appears so clearly and drastically deviant may seem so only because of the sophistication with which we have come to accept and rationalize death, mass cruelty, and even murder on a greater scale. Our flight from responsibility and our attempt to diminish our own liability by trying to lose ourselves in the mass of two hundred twenty million persons *may not* all that clearly separate us from the Charles Mansons or the Boston Stranglers. In this global village the distinction could certainly have

29. Quoted in Menninger, *supra* note 24, at 28.

no relevance whatsoever in the mind of a napalmed child, a starving Biafran, or a parent of Kent State.

The criminal trial of Charles Manson may be but a microscope with which each of us may look more deeply into the darker recesses of his own soul. And if it were possible to measure the quantum of misery inflicted upon society by all of the robbers and burglars, rapists and thieves, it may just be possible that it does not begin to equal the quantity of pain inflicted by human beings upon each other in the context of political apathy, broken marriages, alcoholism, parent-child relationships, and other seemingly routine settings.

> But this I know, that every Law
> That men have made for Man,
> Since first Man took his brother's life,
> And the sad world began,
> But straws the wheat and saves the chaff
> With a most evil fan.
> (The Ballad of Reading Goal—Oscar Wilde)

And all of this is not by way of criticism of the new code or of its draftsmen. It is intended to point out that in our processing of fellow human beings through the criminal codes and courts we now see dimly only through the glass and until we are able to see more clearly, face to mirror, we need not self righteously send to know for whom the code is written. It is written for thee, and me.