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THE CALIFORNIA CRIME RISE

W. H. PARKER

The author was appointed Chief of Police for the City of Los Angeles in August, 1950, and during his term in office has continued to rise in prominence both for his outstanding administration and progressive police policies and for his active participation in various organizations interested in law enforcement throughout the country. Chief Parker has risen through the ranks in the Los Angeles Police Department and is a member of the California State Bar. During World War II he served in the Military Government Branch of the armed forces. His present paper is based upon an address given at the 36th Annual Conference of the Peace Officers Association of the State of California in May, 1956.—EDITOR.

During the first nine months of 1956 major crime increased in the City of Los Angeles more than 35% over the same period last year. A fluctuation as abrupt as this is bound to be the reflection of some radical change. When faced with such an alarming statistic it is the responsibility of the police administrator to immediately engage in a critical review of his own operation to first determine to what extent, if any, the police are responsible.

Perhaps the inability to recruit qualified police officers in sufficient numbers to fill existing vacancies is a factor. Los Angeles has employed every qualified male who has presented himself for police service since the close of hostilities in World War II. Nevertheless, we have fewer police officers today than were on the rolls on June 15, 1950. Since that time the population of the city has increased by more than one quarter of a million people, and a like number of automobiles have been added to those registered in the city. In weighing the personnel factor, the increase in days off and vacation time effective July 10, 1955 must also be considered. This granting of time off parity with other city employees resulted in an annual deficit of 57,664 man days of service based on the present size of the force. It is somewhat of a miracle that these depressant factors have been more than compensated for by increased efficiency resulting from refinements in organization, additional experience, and high morale. During 1954 individual production increased by fifteen per cent over 1953, even though the authorities in the field of business administration stated a two per cent increase was all that could be anticipated. Officers of our department accounted for an increase of 12½% in arrest bookings during 1955 as compared with 1954. From January 1 through May 6, 1956 arrests have increased an additional 12% over the comparable period last year.

From these statistics an obvious conclusion must be drawn. Individually, officers of the Los Angeles Police Department are doing more work than at any time during the previous history of the force. The production record is incontrovertible proof that the recent rise in crime is not due to any lack of diligence on the part of the police.

This inability to attract qualified people to the police service is a frightening threat to the security of society. Our local Civil Service Department state that their police

recruiting drives have resulted in contact with all eligible males in the Los Angeles area. Despite these efforts we have more than 100 vacancies although we were within four of our authorized strength six months ago. The dearth in eligible males will continue for several years to come by reason of the low birth rate immediately prior to World War II.

It would appear that elective officials in government who have any responsibility for the police establishment had better re-examine their position in matters affecting the size of their police force, the working conditions afforded its members, and the effect of the exclusionary rule on law enforcement. To ignore the situation might well constitute such officials as a target when an aroused populace attempts to fix the blame for the lack of security due to the tremendous rise in crime.

The public officials of Los Angeles have exhibited an awareness of the problem. While not fully agreeing with the results of a police and fire salary survey conducted by Griffenhagen and Associates, the City Administrative Officer has recommended the top pay for a policeman be increased to \$489.00 per month. While not departing from a prior statement to the effect that an efficient, experienced policeman in today's economy is worth \$600 per month, it must be pointed out that Los Angeles will set a police salary standard that the rest of the nation can well afford to emulate.

Another factor frequently highlighted during discussions dealing with increased crime is the parole system. At the National Conference on Parole held in Washington, D. C., in April, 1956, during the workshop discussions on "Criteria For Parole Selection" it became increasingly evident that there is a wide divergence between the professional parole people and the police. The ultimate objective of the parole group is an indefinite sentence in the case of every person committed to a state prison regardless of the offense for which the person was convicted. Every sentence would, in effect, be from zero to life, and no person would be released from a penitentiary except on parole. These visionaries do not seem to realize that experience has taught us that such absolute power cannot safely be granted to a handful of men without some checks and balances. Their idealistic approach seems to hold all parole boards as sacrosanct. Realistically, we know that this is not the case. Such absolute power over release from prison in the hands of a venal parole board could give rise to a tremendous racket at the expense of human misery.

Early in our workshop a uniform law was proposed that would make it mandatory to parole every prisoner immediately upon eligibility unless it could be established that:

1. The release would constitute a substantial risk to the community.
2. The release would depreciate the seriousness of the crime or promote disrespect for law.
3. The release would have a substantial adverse effect on prison discipline.
4. Continued treatment in the institution will enhance ability to rehabilitate the offender.

To this proposal this writer raised the following objections:

1. Parole Boards have no right to use the law-abiding segments of society as a laboratory in which to test the ability of the criminal to resume his place in a free society and that parole should not be granted unless the parole board is first satisfied that the parolee is a good risk.

2. Such a law might give rise to legal action to compel parole unless the Board could support positive findings as numerated.

The workshop agreed to the first objection and changed the proposal to provide the prisoner should not be released on parole unless it is established that his release would not constitute a substantial risk to community welfare. In regard to the second objection, it was pointed out that the new law would deny to the courts the right to review the decisions of the parole board.

In an address during the morning session of April 10, Mr. J. Edgar Hoover, Director of the Federal Bureau of Investigation, well stated the viewpoint of law enforcement as not being opposed to a parole system but as objecting to loose parole practices that are bringing all parole into disrepute. He called attention to the fact that of the eighteen F.B.I. agents killed by criminals, eleven died at the hands of parolees.

In California 88% of the inmates leaving our penitentiaries do so on parole and more than 50% of those paroled in California are back in the prison within five years. Regardless of any opinion that you may possess concerning the efficacy of our parole system there has been no radical change in its administration that could account for the recent rise in crime. Therefore, the parole system must be eliminated as a major factor in the skyrocketing of the incidence of crime in California.

The authority of the prosecuting attorney to elect as to what prosecutions he will initiate is a powerful factor in law enforcement. The District Attorney of Los Angeles County was quoted in the public press on April 15, 1956 as follows, "Rejections were 47.6% of the total complaints sought in the 1955 period and 50.3% of this year." Regardless of the effect of this factor on the level of crimes committed, it is obvious that the variation between the 1955 rejection rate and that of 1956 is not substantial enough to give this factor any appreciable weight in the crime increase. While the 1955 rate as cited by the District Attorney should be separated into the periods before and after Cahan it may be assumed that any increase in the rejection rate was due to the Cahan decision rather than any change in philosophy on the part of the District Attorney.

It might be well at this point to dwell upon the plight of the police. It is this writer's conviction that the police are "the low men on the totem pole" of the machinery of criminal justice in the United States. Criminal justice consists of four primary steps as follows: (1) Arrest and incarceration, (2) Prosecution (trial), (3) Conviction or acquittal, and (4) Punishment.

Rarely does the machinery of criminal justice go into operation until an arrest is made by a police officer. Nevertheless, both the prosecuting attorney and the judge are, by judicial decree, exempt from civil redress for their official actions while the police officer is subject to civil suit for any error he may commit in the discharge of his official duties. A dangerous custom has arisen in America wherein the hapless police officer is a defenseless target for ridicule and abuse from every quarter. It is a dangerous custom because our society is destroying its ability to protect itself by discouraging those qualified from taking up the police service as a career and creating such an uncertainty in the mind of the police officer as to what is appropriate action to the extent that inaction may become the order of the day. This is a situation long sought by the Masters in the Kremlin. The bloody revolution, long the dream of the Comintern, cannot be accomplished in the face of a resolute police.

If there are inefficiencies in the administration of criminal justice, such conditions should be brought to public attention. A study by an objective and competent task force, such as the American Bar Foundation, of the attrition that occurs under our present system from crime to punishment is in order. Of the number of persons committing serious crimes, how many are apprehended? Of the number arrested, how many are charged through complaint or indictment? Of the number charged, how many are tried and convicted? Of the number convicted, how many are actually sentenced to prison? Of the number imprisoned, how many are released by parole or otherwise before completing the sentence prescribed by law? These are the facts the people must know before the criminal situation of this nation can be properly evaluated. We in the police service should welcome such a survey for without it the real truth of the contribution to the welfare of society by the local police force will not be known.

The welfare of the United States demands that the police assume a new and different relationship to our employers, the people. The future of America may well rest in the hands of the police service; a service composed of dedicated men who are possessed of an understanding of the truth; a body of men who full well realize that a great danger faces this country. That danger is the loss of a national conscience, for no nation without a conscience can long endure.

After full consideration of the various factors that might have contributed to the shocking increase in crime we are undergoing, the objective observer can only conclude that one single factor must bear the lion's share of the responsibility.

In a four to three decision in the case of *People vs. Cahan* the Supreme Court of California, on April 27, 1955, for the first time in California's history, invoked the exclusionary rule upon the courts of this state. This case involved the same Charles Cahan who has since been convicted of assault, bookmaking, and robbery, and who was the recipient of six bullets in a barroom brawl on March 10, 1956. It is always difficult to discuss a complicated legal subject in terms that can be easily understood. The rule purports to protect constitutional guarantees by rendering evidence inadmissible in any criminal proceedings in this state which, in the opinion of the court, has been seized in violation of the fourth amendment to the United States Constitution. The purpose of the Court's action is to discourage certain police conduct by turning the criminal free if the evidence necessary to convict has been obtained by the police in a search deemed by the court to be unreasonable. When this decision was handed down this writer believed it his responsibility to inform the people of this city that a substantial increase in crime would be the inevitable result. Almost immediately his position was misunderstood and misinterpreted. His statements were erroneously classified as political in connotation. The very persons who proclaimed support of the rule on the basis of constitutional guarantees were the first to deny freedom of speech to the police. All the writer was trying to say was that the rule is extremely harmful to the law-abiding segment of society; that the only one who really benefits is the criminal; that, as a lawyer, he realizes the decisions of the Supreme Court must be respected and obeyed, but that he disagreed with their definition of unreasonable search. During all of these years that California has been a state, our legislature has been in a position to invoke the rule if it deemed conditions required its adoption, but it has not done so.

The Los Angeles Police obey the law as they understand the law to be. Wiretapping has never been permitted because it is forbidden by state law. Although there is a state law that purports to permit the installation of dictographic equipment by the police, this practice was stopped when the United States Supreme Court indicated that such action might be a violation of the Federal Civil Rights Act. We will meticulously abide by the California Supreme Court's decision in the Cahan case and subsequent cases dealing with the exclusionary rule. The criminal will continue to benefit, and the law-abiding public will continue to pay the bill. To those who may be critical of a police officer daring to be articulate, may they recall that the exclusionary rule could leave as it entered, *by a four to three decision*.

Unfortunately, the prophecy has come true. While major crime in Los Angeles decreased fifteen per cent during that portion of 1955 prior to the Cahan decision, it increased 5½% during the remainder of 1955. December of that year was next to the worst crime month in the history of Los Angeles exceeded only by January and March, 1956. During the period from January first through October 6, 1956, major crime in Los Angeles increased 35% over the same period last year. The exponents of the exclusionary rule refuse to look at these statistics. They seem to have adopted the philosophy that if they close their eyes crime will go away.

Many men of distinction in the juridicial field share this opinion in this matter. One of the outspoken critics of the rule is John Barker Waite, retired University of Michigan Law Professor and former editor of *The Michigan Law Review*. Writing in the *American Mercury*, January, 1956 issue in an article entitled "Why Do Our Courts Protect Criminals", he closes with the following comment:

"How are we to halt this travesty on justice, make the guilty pay for their crimes, and bolster the public safety? One way would be for the informed and incensed public, through letters and telegrams, through the pulpit and the press, through public forums, radio and television, to cry out against each and every miscarriage of justice and against every criminal turned loose on a mere flyspeck of technicality. An outpouring of indignation sooner or later would be heard by the courts, despite their paper buttresses of precedent, and they would cease to encourage criminals and criminality at the expense of the public safety, public decency and public good."

In an address delivered in San Francisco on March 1, 1956, Assistant Attorney General Clarence A. Linn was critical of the exclusionary rule. In commenting on the plight of the prosecutor he had this to say,

"There is a school of thought that regards a criminal proceeding as something akin to a game of golf in which the defendant is to be given a generous handicap, allowed to lift the ball out of traps, permitted to scream at his opponent when he is about to sink a putt, occasionally interfere with his opponent's ball, and last but not least, is to be furnished with a pencil with a large eraser when he adds up the score in his closing argument. This same school of thought would require the prosecution to be penalized at least once on every hole, maintain a discreet silence when he catches his opponent cheating, and finally buy everyone a drink at the 19th hole."

At one point in his address Mr. Linn suggests, "that in our present controversy we have forgotten our history." He follows that with,

"These British statesmen and the Founding Fathers had no quarrel with the local law enforcement agencies. Their verbal denunciations were directed to the Special Messengers of the King. They had no argument with the local constabulary. Murder, arson, rape, gambling and narcotics were no concern of theirs. . . . Political oppression by the crown was the motivating force behind the movement which pressed for the adoption of the Fourth Amendment. The ordinary law enforcement agencies of the colonies were not involved in the controversy."

In dealing with the adverse effect of the exclusionary rule on law enforcement, Mr. Linn has this to say,

"We cannot conclude a discussion of the *Cahan* case without a reference to the damage this case and some other cases have done to those organizations which are devoted to law enforcement. In *Cahan*, the court said: 'Today, one of the foremost public concerns is the police state, and recent history has demonstrated all too clearly how short the step is from lawless although efficient enforcement of the law to the stamping out of human rights.' Contemporary history does not support the implication contained in the quoted sentence from the *Cahan* case. The activities of the local law enforcement officers have never been a factor in setting up a police state. Political upheavals have resulted in dictators who have in turn set up their political police who, when they do not entirely supplant the local police, work separate and apart from them. Little wonder then that adolescents will attack the police when they attempt to enforce the law. Perhaps they think they are resisting the efforts of the 'police state' to enslave them.

"The almost positive implication to be drawn from the *Cahan* case is that the activities of the police are a greater social menace than are the activities of the criminal. This, even as a suggestion, is terrifying. Has our democracy failed? Have the executive and legislative branches of the government so far neglected their constitutional duties that the judiciary must enact a new rule of evidence for the purpose of indirectly punishing law enforcement officers? The suggestion that the police are lawless persons who continually engage in activities so likely to endanger the liberties of a free people that the courts cannot wait for the processes of legislation to correct the evil is unfair to a large body of men and women. These public servants walk the streets of our cities in the daytime and in the night time. They do not knock on your door at midnight and carry you from the bosom of your family, throw you into a jail, and finally lead you out to be executed at the whim of a dictator. They are not the agents of a police state. They make mistakes—but they are not alone in that. . . . If we consider the number of policemen, sheriffs, constables, and their deputies and the number of arrests made, we will find a percentage of error so low that other governmental agencies might well envy them. . . . The British Commonwealth and approximately 29 States of the Union still follow the old rule and are without the protection provided by . . . *Cahan*. We submit that none of these jurisdictions exhibit any of the symptoms of the police state or totalitarianism."

There is another aspect of the exclusionary rule which the proponents thereof choose to publicly ignore. It is touched upon by Clarence Linn when he says, "Illinois has for some years operated under the exclusionary rule. During this period the crime capital of the country has moved from New York, and its environs, where the non-exclusionary rule prevails in the New York and New Jersey jurisdictions, to Chicago."

Edward L. Barrett, Jr., Professor of Law, University of California, Berkeley,

writing in the October, 1955 issue of the *California Law Review* treats this aspect of the exclusionary rule as follows:

"In the first place it should be emphasized that excluding evidence and freeing criminals does not punish 'evil' policemen. The exclusionary rule cannot be expected to improve a police force which is generally corrupt, inefficient, and lawless. It is not a magic wand which will solve the complex problems which constitute the 'police problem' in so many of our communities. The police problem is far broader than the question of illegal searches and seizures; problems of police lawlessness are inextricably bound up with the more general problems of police organization, governmental corruption, and modern crime. The fundamental problem, of course, is the general public morality of the community in which the police serve. If the public tolerates a graft-ridden political administration, if the public really does not want adequate law enforcement but prefers to keep the lid off (or even tilted) for gambling, prostitution, liquor violations, and the like, then the police department will reflect this attitude. Characteristically, the corrupt police department is the lawless police department. The deterioration of morality which results from the acceptance of pay-offs and the preferment of officers who 'play the game' results in police brutality, petty graft and blackmail, and intolerance of citizens' rights generally. Such police abuses which are unrelated to conscientious efforts to curb crime cannot be controlled by judicial decision. The threat of excluding evidence illegally obtained has no impact upon the officer who is planning blackmail rather than prosecution, nor upon the police administrator who is seeking to 'regulate' vice rather than suppress it. In fact, there is some evidence that the rule assists a corrupt police department in making a false public impression of its attempts to enforce the law. One way to extend protection to favored criminals is to make periodic raids and arrests, knowing that the prosecution will be quashed after a successful motion to exclude the evidence thus obtained. The failure of the exclusionary rule as a means of coping with the lawless activities of the corrupt police department is best demonstrated by the situation in Illinois. Despite the fact that the exclusionary rule has long been enforced in a most rigorous fashion in that state, a journalistic surveyor of the police problem reported recently that he was prepared to accept the widely held opinion that the Chicago police force is by far the most demoralized, graft-ridden, and inefficient among our larger cities."

In this connection it is interesting to note that in the April, 1945 issue of the *Atlantic Monthly* appeared an article entitled "Case Dismissed" denouncing the exclusionary rule and written by Virgil W. Peterson, member of the Illinois Bar, for twelve years a special agent of the Federal Bureau of Investigation and, since April, 1942, the Operating Director of the Chicago Crime Commission.

Another interesting aspect of the effect of the exclusionary rule is treated in an editorial appearing in the February 25, 1956 edition of the *Hollywood Citizen News*. The editorial reads in part as follows:

"The Cahan decision deters unlawful enforcement of the law, however, by making it clear to officers that they will not be allowed to profit by their own violations of the Constitutional provisions, but must obey the law like everybody else. In the use of the expression 'officers . . . will not be allowed to profit' the Court has raised the question in the public mind as to who profits when a criminal is apprehended. Heretofore the public has believed that *it* profited with the apprehension of criminals. It never con-

sidered that officers profited any more than any individual citizen profited. Possibly what the Court meant was that the public could not be permitted to profit from the illegal acts of its servants who are trying to prevent crime. Only the criminal should profit, the opinion implies, if the officers made a mistake. The criminal is just as much of a criminal whether the evidence against him is obtained in one way or another, but the laws says that he is to profit if the officers make a mistake. Some of the Court's recent decisions were split, five to two, but majority rules. There is no penalty when judges make mistakes in their opinions. It is to be hoped that the officers will continue to catch the criminals and leave to the courts the responsibility of turning them loose."

It is estimated by experienced officers that about fifty per cent of major crime involves the use of narcotics. The average narcotic user cannot legitimately support the habit and must resort to thefts and other illegal acts to obtain sufficient money to buy the drug. One of our chief complaints is that the exclusionary rule has seriously hampered our efforts in the suppression of the illicit narcotic trade. In this connection it is interesting to note that the special committee of Cabinet officers appointed by President Eisenhower to study the narcotic problem recommended among other things: "Action by Congress and State Legislatures to remove obstacles imposed by court decisions on enforcement officers in obtaining and presenting evidence in narcotic cases, to provide 'the optimum in law enforcement'." In this same area the Subcommittee on Improvements in The Federal Criminal Code, of the Committee on the Judiciary, United States Senate, in its Preliminary Findings and Recommendations reports as follows: "Judicial interpretations of constitutional search and seizure safeguards have resulted in major narcotic traffickers escaping trial."

If the exclusionary rule "is not a command of the Fourth Amendment but is a judicially created rule of evidence which Congress might negate" as stated by Mr. Justice Black, then does it not necessarily follow that the Supreme Court of California created a judicial rule of evidence in the Cahan decision which the California legislature might negate? The creation of rules of evidence is the historic responsibility of the legislative branch of government and some believe that the usurpation of this power by the courts is an intrusion upon the legislative function. In an article by John L. Flynn, "The State Exclusionary Rule as a Deterrent Against Unreasonable Search and Seizure", the following statement appears:¹

"Justification for the rule demands a choice between individual and public security. Some difficulty in law enforcement is the price which must admittedly be paid for the right of privacy. To justify its continuance and extension, therefore, the rule must be shown to be more beneficial to the individual than it is harmful to society."

The statistical history of crime in Los Angeles since the imposition of the exclusionary rule clearly demonstrates that it *is* more harmful to society than beneficial to the individual. Therefore, the continuation of the rule is unjustified, and immediate legislative remedy is in order. While the complete abolition of the rule through legislative action is justified, it would appear that the least the Legislature of California should do is to adopt the rule of law enacted by another great state of this

¹ This Journal, Vol. 45, No. 6 (Mar.-Apr. 1955)

country. As a result of an unhappy experience with the exclusionary rule, the State of Michigan took affirmative action to modify it. By popular vote, first in 1935, and again in 1952, the people of that state amended their constitution to prohibit the barring of evidence in criminal proceedings when the evidence consists of dangerous weapons or narcotics seized by a peace officer outside the curtilage of any dwelling house in the state.

As long as the exclusionary rule is the law of California, the police will respect it and operate to the best of their ability within the framework of limitations imposed by that rule. We feel obligated to present the case against this rule of evidence, to gather and print the statistics of its cost in public security, to speak of how it affects our ability to protect the people against the criminal army. We would do the same and the public would expect the same if, instead of police officers, we were medical doctors, attorneys, or engineers discussing a law that affected efficient performance in any of those tasks.

The body politic have trained us, encouraged us to build an honorable profession, paid a considerable cost to bring some ability and proficiency to law enforcement. And so we believe we have a solemn duty to respond by being articulate in matters affecting the return of their investment in professional police work.