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## Review of "The Limits of Law Enforcement" by Hans Zeisel

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Katz nicely illustrates, however, how these different social mindsets lead to very different policies about the delivery of legal services. He does so by tracing the history of legal assistance in Chicago from its beginnings in the 1880s to the present, through cycles of law reform (1885-1920) to client service (1920-1965) and back to law reform. The transition from the "legal aid" client-aid service agencies that held sway until the late 1960s was a time of great tension between fundamentally different philosophies of poverty and of poor people's entitlement to legal services.

In recent years, as has been true across the country, legal aid lawyers in Chicago enjoyed apparently enormous success as Lyndon Johnson's War on Poverty combined with the activist judicial views of the Warren Court to announce seemingly overexpanding rights for poor people. As Katz takes pains to point out, however, the increasing entitlements for "the poor" has led to a systematic and comprehensive delineation of this category of persons in ways that set them apart from the working poor and the middle class. Katz advances the essentially Marxist idea (which, he acknowledges, is derived from Michel Foucault) that professionals historically have assisted the state in such ways toward comprehensive and systematic control of the poor.

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Hans Zeisel, *The Limits of Law Enforcement*. Chicago: University of Chicago Press, 1982. Pp. 245. \$17.50.

The problem of criminal violence endures. According to FBI statistics, the chance of being the victim of a major violent crime nearly tripled between 1960 and 1976. One American is murdered every twenty-three minutes; one is raped every six minutes; one is robbed every five seconds. Those who escape live in fear. Against this extraordinary background of violence, the assumption persists that more police, more jails, and tougher judges could lead to a dramatic reduction of crime. The truth is otherwise, writes Hans Zeisel in this important and insightful study of the criminal justice system. Contrary to popular mythology and demagoguery, "law enforcement," he concludes, "by itself is relatively powerless to control crime."

As he did in his celebrated study of the jury trial system, *The American Jury*, coauthored with the late Harry Kalven, Jr., Zeisel here combines statistical measurement with reasoned intuition to examine the hidden, complex, and often misunderstood processes of criminal adjudication. Employing a probability sample of 1,888 felony arrests representing the roughly 102,000 felony arrests in New York City in 1971, Zeisel tracks their development from arrest to disposition, collects biographical data for each defendant, and in 369 selected cases, interviews the *dramatis personae* of the criminal justice system—the judge, prosecutor, defense attorney, and defendant—to provide even deeper insights into this twilight zone of discretionary justice.

Zeisel's study and central thesis, needless to say, is disquieting, although not surprising to anyone familiar with the realities of law enforcement. One

chart, for example, depicts the diminishing stages of the risk a lawbreaker faces in avoiding detection or punishment. Of 1,000 felonies actually committed, only 540 were reported to the police, 65 resulted in arrests, 36 in convictions, and 20 in jail sentences, only 3 of which exceeded one year. More surprising is the consistency between the high rate of dismissals (45 percent of all felony arrests) and the dismissal rates over time (62 percent in New York in 1926 and 59 percent in Cleveland in 1919) and their similarity with other American jurisdictions (Washington, D.C., California, and New Orleans had dismissal rates of over 50 percent in 1973) and European jurisdictions (Austria's was 39 percent in 1973; Germany's was 53 percent in 1976).

On the whole, Zeisel's study largely confirms my own intuitive assessment formed when I was a prosecuting attorney operating at the same time and in the same courts as Zeisel's survey: the system operates close to capacity all the time, thereby increasing the incentive to avoid time-consuming trials by generous plea bargains as well as to abandon borderline prosecutions; the police, barring radical changes in the size and structure of the department, are unable to make many more, or much better, arrests than they already make; plea bargaining on a massive scale (95 percent of all convictions are the result of guilty pleas), with reduced charges and reduced sentences, is virtually indispensable to control the vast caseload as well as to dispense individualized justice.

To say that law enforcement has its limits is not to suggest that reforms would not help. More cooperation between prosecutors and police, early screening of cases, and more trial parts could reduce the number of dismissals, increase the number of felony trials, and ultimately enhance the number and length of prison sentences. But even though these reforms are being implemented, their impact is still marginal. Law enforcement begins to function after it has failed. Street crime cannot be "solved," as Judge David Bazelon observed, by police, courts, and prisons. To understand the roots of crime one has only to look at the slums and ghettos of our cities, the breeding grounds of crime, and to the endangered youngsters living there. Zeisel would attack the problem through the public school as the only institutional point of access society has to these youngsters. Schools must become cherished centers of the children's lives; only the best men and women should be appointed teachers; and persons like Hank Aaron and Willie Mays should be asked to become school principals. Zeisel's approach is most welcome, particularly in a era when public education is being assailed and virtually abandoned as a remedy for social ills.

The task of controlling criminal violence is formidable, perhaps insoluble. But we should not delude ourselves into thinking that the answer lies in better and tougher law enforcement. Zeisel's book makes this point dramatically clear.

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