Michigan Law Review

Volume 83 | Issue 4

1985

Some Enlightenment on Crime

Shirley S. Abrahamson
Wisconsin Supreme Court

Follow this and additional works at: <https://repository.law.umich.edu/mlr>

Part of the [Criminal Law Commons](#)

Recommended Citation

Shirley S. Abrahamson, *Some Enlightenment on Crime*, 83 MICH. L. REV. 1157 (1985).
Available at: <https://repository.law.umich.edu/mlr/vol83/iss4/52>

This Review is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

SOME ENLIGHTENMENT ON CRIME

Shirley S. Abrahamson*

ENCYCLOPEDIA OF CRIME AND JUSTICE. 4 volumes. Edited by *Sanford H. Kadish*. New York: The Free Press (Macmillan, Inc.). Pp. xxxvi, 1790. \$300.

According to *The New Yorker*, one of my favorite authorities, the age of the modern encyclopedia began in France in August of 1751 with the delivery of the first volume of the *Encyclopédie* to its subscribers.¹ The writers of the *Encyclopédie*, chosen for their expertise, reinvestigated their subjects and wrote about them, trying to encompass all things known, leaving out traditional hearsay and myth.²

Completed twenty-one years later, in 1772, the *Encyclopédie* consisted of seventeen volumes of text and eleven volumes of illustrations. By that time, however, several of the original editors and contributors had either resigned in disgust or had spent time in jail. Hans Konig, the *New Yorker* essayist, writes that "[o]n one occasion, some of the volumes were locked in the Bastille like criminals, and throughout those years police agents were running around Paris with orders to burn the manuscripts and impound the books. At one point, subscribers were instructed to hand in their sets at the nearest police post"³ (a promotion department's dream!).

The *Encyclopédie* survived, according to Voltaire (according to Konig), because, during a supper in the Trianon, Louis XV got into an argument over the composition of gunpowder, and Madame de Pompadour said she did not know how such things as silk stockings and face rouge were made. Konig writes: "The assembled company found that there was no way out but to have a servant chase down a copy of the banned *Encyclopédie*, which the King had never laid eyes on until that moment. After that evening, Louis was supposedly halfhearted about the proscription of the work"⁴

If 1751 was the beginning of the modern encyclopedia, the 1960's through 1980's appear to be the era of the specialized encyclopedias,

* Justice, Wisconsin Supreme Court. — Ed. The author would like to thank Diana Balio and Sharon Ruhly for editorial assistance in preparing this manuscript.

1. Konig, *Onward and Upward with the Arts: The Eleventh Edition*, THE NEW YORKER, Mar. 2, 1981, at 67.

2. The word "encyclopedia" is from the Greek *enkyklios paideia*, meaning "instruction in the circle of knowledge." *Id.* An encyclopedia assembles knowledge and wisdom, often on unfamiliar or inaccessible subjects, and furnishes the information to the reader in a distilled form.

3. *Id.*

4. *Id.*

The *Encyclopedia of Crime and Justice* joins the *International Encyclopedia of the Social Sciences*,⁵ the *Encyclopedia of Military History*,⁶ the *Encyclopedia of Philosophy*,⁷ and the *Encyclopedia of Bioethics*,⁸ among others. More are on the way. These encyclopedias will soon be joined, I am told, by an *Encyclopedia of the American Judicial System*.

The *Encyclopedia of Crime and Justice* seeks to encircle the ever-expanding knowledge in a "specialized field." According to its editor, Sanford H. Kadish, the *Encyclopedia* is

an attempt, the first of its kind, to draw together in one set of volumes all that is known about criminal behavior and the responses of societies to it. Since its subject is defined by a social phenomenon rather than by an academic discipline, its approach is necessarily interdisciplinary. The *Encyclopedia* covers all fields of knowledge that have a bearing on understanding the nature and causes of criminal behavior of various kinds, the prevention of crime, the punishment and treatment of offenders, the functioning of the institutions of criminal justice, and the bodies of law that define criminal behavior and govern the processes through which the criminal law is applied. [P. xxi.]

Just to have completed such a massive and ambitious undertaking is impressive, but the feat is even more impressive for having been carried out exceedingly well. Because it accomplishes its aims of making many aspects of criminal justice comprehensible to a diverse audience, I expect this encyclopedia to appear on the shelves of public libraries, of high school, college, and law libraries, and on the desks of many professionals working in, or interested in, criminal justice. Like the *Encyclopédie*, the *Encyclopedia of Crime and Justice* deserves to end up behind bars — in prison libraries⁹ — and in court — not royal, but state and federal. If the various audiences envisioned by the editors discover this encyclopedia, they will indeed find it a versatile reference tool.

Ben Seligman has described encyclopedias and the bewildering task of reviewing them as follows:

Elephantine conglomerations of knowledge, they are likely to leave one dazed after several perusals. Perusals rather than readings, for one does not read an encyclopedia; one studies an entry here, scans a section there; one nibbles away at the contents and tries to discover a prevailing viewpoint. Frequently, there is no viewpoint to discover at all, for many encyclopedias are simply collections of alphabetized articles lacking any

5. INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL SCIENCES (D. Sills ed. 1968).

6. ENCYCLOPEDIA OF MILITARY HISTORY (R. Dupuy & T. Dupuy eds. 1977).

7. THE ENCYCLOPEDIA OF PHILOSOPHY (P. Edwards ed. 1967).

8. ENCYCLOPEDIA OF BIOETHICS (W. Reich ed. 1978).

9. For a discussion of prisoners' rights, with a discussion of jailhouse lawyers but not prison libraries, see pp. 1190-97 (Krantz, *Prisoners, Legal Rights of*) and pp. 1218-25 (Jacobs, *Prisons: Prison Subculture*).

unity of outlook.¹⁰

This encyclopedia did not leave me “dazed after several perusals,” but one “nibble” at the contents soon had me sampling one article after another. I learned in Wayne A. Kerstetter’s *Terrorism* that one typology suggests that terrorists come in three categories: crusaders, criminals and “crazies” (p. 1532). That article made me curious about undercover agents, so I turned to Gary T. Marx’s *Police: Undercover Tactics*. There I learned that “Allan Pinkerton (1819-1884), who had left his native Scotland with a warrant out for his arrest, helped bring covert police practices to the United States. . . . [H]is detective agency tried unsuccessfully to infiltrate the Jesse James gang (the agent was killed). However, it successfully penetrated the Molly Maguires” (p. 1155). Intrigued with Pinkerton, I went to James B. Jacobs’ *Police: Private Police and Security Forces*, which recounts that Pinkerton’s is the oldest and largest American firm providing contract guard and investigative services; that, founded about seventy years before the FBI, it maintained the only national crime records in the United States for three quarters of a century; and that since the 1960’s, private police and security forces have experienced extraordinary growth (p. 1139).

Before proceeding, I want to add my disclaimer to those of Seligman and other reviewers of encyclopedias (who, remember, had the audacity to take the assignment in the first place) in pointing out the impossibility of examining hundreds of pages of text on diverse subject matter in order to determine the text’s usefulness and accuracy. My approach was not to read the *Encyclopedia* from beginning to end. Instead, I read *in* it, used it in my work as I used other reference works, and invited others to sample the volumes and offer their impressions. In the process I sought to answer three questions about the *Encyclopedia*: How well does it accomplish its aims? Is it easy to use? Can it be trusted?

I

The *Encyclopedia*’s aims, as explained by editor Kadish, are two-fold: the first is “to draw together in one set of volumes all that is known about criminal behavior and the responses of societies to it” (p. xxi); the second, to impart this knowledge to a diverse, wide audience.

The first aim is substantial. It is therefore not surprising that “[t]he first and most basic task of the Editorial Board was to reach agreement on precisely what subjects came within the scope of the *Encyclopedia*” (p. xxiii). The agreement resulted in the production of four volumes containing 286 signed articles that range in length from 1000 to 10,000 words and that cover subjects alphabetically arranged

10. Seligman, *The State of Social Science*, COMMENTARY, Oct. 1968, at 76, 76.

from *Abortion* to *Youth Gangs and Groups*. According to the editor (p. xxiii), the articles fall into seven broad subject matter categories: Substantive Criminal Law — General and Special,¹¹ Criminal Procedure,¹² Criminal Justice Systems,¹³ Causes of Crime,¹⁴ Criminal Behavior,¹⁵ and Social Responses (“a large category that include[s] prevention, punishment, and treatment of crime” (p. xxiii)).¹⁶

After testing the *Encyclopedia's* Table of Contents and the General Index against the issues raised in the criminal cases I have encountered in nine years as a state court judge, against texts and treatises on criminal law and criminology, against other encyclopedias, against five volumes of *Crime and Justice: An Annual Review of Research*, and against indices to legal literature, I conclude that the subject matter coverage of the *Encyclopedia* is indeed far-reaching.

One aspect of the *Encyclopedia's* broad coverage lies in its interdisciplinary approach. The authors draw on knowledge from the fields of anthropology, law, criminology, biology, medicine, the physical sciences, economics, sociology, literature, history, philosophy, psychology, and political science. An illustration of the *Encyclopedia's* multifaceted approach is a series of articles that draw a relationship between a particular topic and crime: *Age and Crime*, *Alcohol and Crime*, *Class and Crime*, *Drugs and Crime*, *Education and Crime*, *Intelligence and Crime*, *Literature and Crime*, *Mass Media and Crime*,

11. See, e.g., pp. 23-24 (Slovenko, *Adultery and Fornication*); pp. 114-15 (Levy, *Bigamy*); pp. 162-70 (Cohen, *Causation*); pp. 679-83 (Russell, *Economic Crime: Antitrust Offenses*); pp. 683-88 (Duke, *Economic Crime: Tax Offenses*); pp. 724-29 (Fletcher, *Excuse: Theory*); pp. 729-33 (Levine, *Excuse: Duress*); pp. 735-42 (Goldstein, *Excuse: Insanity*); pp. 742-45 (Fingarette & Hasse, *Excuse: Intoxication*); pp. 745-49 (Duke, *Excuse: Superior Orders*); pp. 1028-41 (Edgar, *Mens Rea*); pp. 1356-64 (Field, *Rape: Legal Aspects*).

12. See, e.g., pp. 62-67 (LaFave, *Appeal*); pp. 67-71 (White, *Arraignment*); pp. 99-107 (LaFave, *Bail: The Right to Bail*); pp. 107-11 (Foote, *Bail: Bail Reform*); pp. 125-29 (Underwood, *Burden of Proof*); pp. 922-26 (George, *Jurisdiction*); pp. 1595-97 (George, *Venue*).

13. This category includes nine articles on *Police*, six articles on *Prisons*, four on *Probation and Parole*, and four on *Prosecution*.

14. See, e.g., six articles on *Crime Causation*: pp. 307-08 (Glaser, *The Field*); pp. 308-16 (Pollock, Mednick & Gabrielli, *Biological Theories*); pp. 316-23 (Witte, *Economic Theories*); pp. 323-30 (Pepinsky, *Political Theories*); pp. 330-42 (Quay, *Psychological Theories*); pp. 342-53 (Cohen, *Sociological Theories*).

15. See, e.g., articles on the behavioral aspects of particular crimes: pp. 76-80 (Inciardi, *Arson*); pp. 785-89 (Klockars, *Fencing and Receiving Stolen Goods: The Professional Fence*); discussion of the influence of alcohol and drugs: pp. 35-44 (Room, *Alcohol and Crime: Behavioral Aspects*); pp. 636-43 (Anglin, *Drugs and Crime: Behavioral Aspects*); and analyses of *Criminal Careers*: pp. 403-08 (Greenwood, *Ordinary Offenders*); pp. 408-13 (Inciardi, *Specialized Offenders*).

16. This category contains no less than ten articles on *Sentencing*, including Tonry, *Allocation of Authority*, pp. 1432-40; Clarke, *Determinate Sentencing*, pp. 1440-49; Aspen, *Judicial Function*, pp. 1460-65; Newman, *Mandatory Minimum Prison Sentences*, pp. 1466-72; Perlman, *Procedural Protection*, pp. 1476-83; Tonry, *Sentencing Councils*, pp. 1483-85; three articles on victims: Geis, *Victim and Witness Assistance Programs*, pp. 1600-04; Geis, *Victim Compensation and Restitution*, pp. 1604-08; Viano, *Victimology*, pp. 1611-16; and articles on the research and study of crime.

Political Process and Crime, Public Opinion and Crime, Race and Crime, War and Violent Crime, and Women and Crime.

The attention given to comparative law, international criminal justice, historical developments, and contemporary problems also provides breadth. A few articles focus on foreign criminal justice systems¹⁷ or international crime.¹⁸ A vast number of articles are "primarily American in emphasis" (p. xxii), but many give a comparative law perspective. Mirjan Damaska, for example, contrasts Anglo-American and continental criminal procedures in the *Adversary System* (pp. 24-30), and Hugo Adam Bedau explores *Capital Punishment Abroad* (pp. 133-43).

A few articles focus solely on historical development,¹⁹ while many others emphasizing the present give an historical perspective to their topic. Francis Barry McCarthy, for example, traces vagrancy and disorderly conduct as a punishable offense from ancient Athens to modern American legislation (pp. 1589-95). James B. White traces the subject of *Search and Seizure* in English law and American colonial law (pp. 1415-21). John Phillips Conrad's *Correctional Treatment* (pp. 266-78) emphasizes the history of correctional programs. In *Gambling* (pp. 799-810), Jerome H. Skolnick tells us that "English noblemen gambled often and heavily. . . . To discourage heavy gambling, the Puritans enacted legislation in 1657 allowing losers in gambling transactions to sue for the recovery of twice the sum lost" (p. 802). The government-sponsored lottery first appeared in seventeenth-century England, for the same reason that the lottery is used today — as an expedient to meet government's financial needs (p. 803).

Lest we are tempted to draw too heavily on our past experience, however, Joseph R. Gusfield reminds us that the predictive value of historical experience cannot be compared with the predictive value of a hypothesis that has been scientifically tested:

The Prohibition "experiment" is periodically cited as a test of the legal control of moral behavior. Implications are then drawn for other areas of morals legislation such as drug use, prostitution, abortion, and gambling. . . . Prohibition was not undertaken or opposed in the spirit of experiment, nor was it administered as a controlled test of a hypothesis. [P. 48]

Currently controversial problems are also discussed, as for example in Susan Frelich Appleton's piece on *Abortion* (pp. 1-9), James

17. See, e.g., pp. 182-93 (Lubman, *Comparative Criminal Law and Enforcement: China*); pp. 193-200 (Forte, *Comparative Criminal Law and Enforcement: Islam*); pp. 207-15 (Berman, *Comparative Criminal Law and Enforcement: Soviet Union*).

18. See, e.g., pp. 895-901 (Ferencz, *International Crimes against the Peace*); pp. 901-10 (Bassiouni, *International Criminal Law*); pp. 910-13 (Fooner, *Interpol*); pp. 1645-52 (Friedman, *War Crimes*).

19. See, e.g., pp. 392-403 (Ferdinand, *Crime Statistics: Historical Trends in Western Society*); pp. 1286-90 (Goldstein, *Prosecution: History of the Public Prosecutor*).

Lindgren and Franklin Zimring's *Guns, Regulation of* (pp. 836-41), and Alexander Morgan Capron's *Euthanasia* (pp. 709-15).

Other articles, such as Daniel McGillis's *Dispute Resolution Programs* (pp. 623-26), point to the future. Regrettably, the McGillis article provides little discussion of how these programs fit into the criminal justice system, or how they might be expanded in the future. McGillis explains that alternative dispute resolution systems are presently used for minor criminal offenses arising between persons with an ongoing relationship. Perhaps the use of an alternative system for these offenses illustrates that they are viewed more as wrongs against an individual (civil) than as offenses against the state (criminal), and that dispute resolution as presently practiced is an attempt to get at the genuine source of personal conflict. I would have been interested in reading a discussion of the relationship among alternative dispute resolution programs, the growing emphasis on victims' rights, intra-family disputes, the use of arrest, and the increased blurring of the distinction between criminal and civil law.²⁰

In *Prisons: Problems and Prospects*, Lee H. Bowker predicts that "government will respond to worsening economic conditions and increasing unemployment with harsher criminal justice policies and increasing expenditures for corrections" (p. 1233), and that nonviolent offenders will more often be placed in community corrections programs than in prisons. The violent offenders will populate the prisons, and power blocs of minorities will generate violence in competing for control of the prison society (p. 1233).

To say that the *Encyclopedia* has brought a broad range of subjects and approaches together is not to say that there are no errors of omission. For example, neither "lie detector" nor "polygraph" appears in the Table of Contents or General Index. *Lie Detector* appears as a blind entry in the text (p. 1006) with a cross-reference to *Criminalistics*, an article by Brian Parker.²¹ I could not find any discussion in the criminalistics article of the lie detector — an instrument that has become important to the public, the legislature, and the courts.

Although editor Kadish's introductory comments are excellent and enlightening, I would have welcomed a more extensive introduction or overview of the field of crime and justice in which the editors more fully explained their conceptualization of the project. Kadish says, "[T]he discipline of preparing an encyclopedia compels one to develop methods of organizing and structuring enormous bodies of knowledge. This endeavor itself can contribute to understanding by revealing relationships among diverse fields of learning" (p. xxi).

20. See pp. 295-96 (Hughes, *Crime: Concept of Crime*).

21. "The term *criminalistics* refers to the profession and scientific discipline that undertakes the recognition, identification, individualization, and evaluation of physical evidence by applying the findings of the natural sciences to the law." P. 429 (Parker, *Criminalistics*).

What is missing in Kadish's comments, however, is a description of the patterns that did emerge in these relationships, what Seligman may be referring to as "the prevailing viewpoint" of the work.²²

A discernible theme does recur throughout the articles — the theme that an understanding of crime necessitates an understanding of the individual and of society. While we know much about crime and the criminal justice system, we must learn more, and our learning is derived from many sources and disciplines. Doctrine is linked to practice, practice to doctrine. The articles, as senior project editor Linda J. Halvorson points out, are concerned with concepts, theories, principles, empirical research, and practical applications (p. xxv). No one area of study or approach has a monopoly on the contribution of insight to the field of crime and justice.

In addition to providing breadth of coverage, the *Encyclopedia* was designed to serve a wide audience: professionals, including lawyers, judges, law enforcement officers, social workers, probation and parole personnel, correctional administrators; students and teachers, not only in the fields of law, criminal justice, or criminology, but also in general education at the university, college, and high school levels; academics needing information in fields allied to their own; makers of public policy, such as legislators and government officials; journalists; and the interested general public (p. xxi). The pursuit of this broad market is understandable from a commercial standpoint, but involves the risk of satisfying no one.

My own perspectives coming to these four volumes were those of a lawyer, a judge, a law school instructor, a parent, and an occasional guest lecturer at colleges, secondary schools, professional meetings, and community groups — roles fairly typical of the audience the *Encyclopedia* is designed to reach.

As a lawyer and a judge, I expected to find the articles on substantive criminal law, criminal procedure, and the criminal justice system simplistic and unsatisfactory for the legal specialist. An 1800-page, four-volume work on crime and justice would have to be of limited worth, accustomed as lawyers are to referring to multi-volume works on a single topic.

My own experience and that of my law clerk and student interns in using the *Encyclopedia* suggest that this bias may be a common one in the law-trained audience. Although the *Encyclopedia* was on my desk, I plowed through piles of library materials on sentencing and sentencing guidelines in preparation for writing an opinion²³ — only later to discover that the *Encyclopedia* covers the subject in fifty-three pages encompassing ten succinct articles. Even after I imparted the lesson I

22. See note 10 *supra* and accompanying text.

23. In the *Matter of Judicial Administration: Felony Sentencing Guidelines*, 120 Wis. 2d 198, 353 N.W.2d 793 (1984).

had learned to my clerk and interns and recommended the *Encyclopedia* for its value in providing an overview and a starting point for research, they still started with the usual resource materials. Although they have been engaged in legal research for a relatively short time, the lawyer's habit of not using general reference works for detailed tasks is already established. Several examples of actual research tasks illustrate, however, that the *Encyclopedia* can assist lawyers in their research.

A case recently before the Wisconsin Supreme Court involved a conviction of burglary with intent to commit the felony of misconduct in public office, namely, an illegal entry and search of a dwelling by a law enforcement officer.²⁴ In studying the case I found that Floyd Feeney's *Burglary* (pp. 129-33) provided a more useful foundation than did well-known hornbook discussions of the crime. He discusses the history of the crime of burglary, the modern statutory and judicial expansions of the crime, and the criticisms of the modern extended versions of burglary. His reference to section 221.1 of the Model Penal Code (p. 130) proved especially helpful.

A lawyer researching a case on bind-over will find Gary L. Anderson's *Preliminary Hearing* (pp. 1177-83) useful in setting out the basic function of the hearing. The bibliography, while somewhat dated, would lead her to additional material. Naturally she would need to do extensive research on state statutory material and federal and state cases, but the text would set her on a correct course.²⁵ Similarly, a lawyer faced with a problem on vicarious liability should look at Alan Saltzman's *Vicarious Liability* (pp. 1597-1600) and the related articles on the issue of strict liability, Mark Kelman's *Strict Liability: An Unorthodox View* (pp. 1512-18) and Phillip E. Johnson's *Strict Liability: The Prevalent View* (pp. 1518-21).

One of the purposes of the *Encyclopedia* is to bring material which is available in a number of sources together in one place for easy use. The general overview that the *Encyclopedia* provides will not, of course, always prove helpful to the legal specialist. But in the in-

24. *State v. O'Neill*, 121 Wis. 2d 300, 308, 359 N.W.2d 906 (1984) (Abrahamson, J., concurring).

25. Kadish in his *Foreword* and Linda J. Halvorson, senior project editor, in her *Introduction* are silent about whether any editorial battles were fought in the war of pronoun gender. According to my spot-check of the *Encyclopedia*, the counsel, client, and criminal are always male. The subject of women and crime is covered in Simon, *Women and Crime*, pp. 1664-69; Nagi, *Violence in the Family: Child Abuse*, pp. 1624-29; Straus, *Violence in the Family: Wife Beating*, pp. 1629-34; and in Heffernan, *Prisons: Prisons for Women*, pp. 1212-18. Edward Sagarin, in his *Literature and Crime*, discusses the literature of the woman as sexual transgressor and as the victim of rape, seduction and betrayal. Pp. 1009-10. Employment of women and minorities in correctional institutions, as defense attorneys, and in probation and parole supervision is discussed in Duffee, *Careers in Criminal Justice: Corrections*, pp. 143-47; Reid & Keltner, *Careers in Criminal Justice: Law*, pp. 147-52; Treger, *Careers in Criminal Justice: Probation and Parole Supervision*, pp. 158-62. There are a number of women contributors. But see generally Engle & Futas, *Sexism in Adult Encyclopedias*, 23 RQ 29 (1983).

stances I mentioned, as in others, the *Encyclopedia* provided a good synopsis of the state of the field.

In addition to traditional legal topics, the *Encyclopedia* offers a wealth of information from the humanities and social sciences about which many of us who are law-trained neither know nor know how to research. By cultivating the *Encyclopedia* habit, judges, lawyers, and teachers and students of law could broaden their perspectives on crime and justice to include humanistic and sociological orientations. For example, Feeney's *Burglary* includes details about the characteristics of burglars.²⁶ Criminal characteristics, profiles of criminals, and statistics about criminal activity are important information for lawyers and judges.²⁷

The *Encyclopedia* is a treasure house of information not only for preparation of cases but also for public speaking. The articles supply basic information as well as a sense of the level at which to gear a presentation for a "lay" audience. Stanton Wheeler's *White-Collar Crime: History of an Idea* (pp. 1652-56), and its bibliography, would help a lawyer prepare to communicate with business people, accountants, and auditors.

The attention given to economics and crime in the last presidential election makes Daniel Glaser's perspective in *Unemployment and Crime* (pp. 1577-81) especially noteworthy. Surveying the research in the field and findings to date, he states that the perception that "crime is caused largely — perhaps even mostly — by unemployment. . . . is an oversimplified view. . . . [T]he linkages of unemployment to crime are both intricate and important" (p. 1577).

Anyone who has selected a jury or has served on a jury will relate to Shari S. Diamond and Hans Zeisel's discussion in *Jury: Jury Behavior* (pp. 926-32) about the role of the judge versus that of the jury and the search for juror qualities associated with verdict preferences. The article does not, however, discuss the implications of recent state statutes that increase the possibility that lawyers, judges, teachers, doctors, and other professionals will serve on juries.²⁸

Judges, lawyers, and corrections personnel who have discovered the insights that programs linking humanities and law afford will want to read Edward Sagarin's *Literature and Crime* (pp. 1006-13). Such

26. Nearly half of all burglars, for example, are under 18 years old. P. 132.

27. See, e.g., *State v. Rutchik*, 116 Wis. 2d 61, 88-89, 341 N.W.2d 639 (1984) (Abrahamson, J., dissenting); *State v. Wedgeworth*, 100 Wis. 2d 514, 542-47, 302 N.W.2d 810 (1981) (Abrahamson, J., dissenting).

28. I recently served on a jury in a petty theft case; the jury "hung" after some 10 hours of deliberation. Having a justice on the jury does not guarantee speedy justice, commented a local news story. "How persuasive is the Justice?" the reporter asked rhetorically. For a discussion of the relative persuasiveness of different types of jurors, see Saltzburg, Book Review, 83 MICH. L. REV. 1120 (1985) (in this issue). For a discussion of the unanimity requirement, see pp. 938-41 (Van Dyke, *Jury: Jury Trial*); Saltzburg, *supra*.

programs are springing up around the country: several law schools offer courses in legal history and law and literature; the Aspen Institute for Humanistic Studies sponsors Justice and Society seminars; Professor Saul Touster of Brandeis University conducts law and literature programs for judges in several states. In Wisconsin, humanities programs are offered for judges and their spouses by the Office of Judicial Education²⁹ and for corrections personnel and offenders by the Division of Corrections.³⁰

Sagarin explores crime as a central theme in literature, from the Scriptures to the classics, to the novel (picaresque, Gothic, mystery, detective and spy), to books about the plight of prisoners, to authors who use crime as a means of delving into human conditions. Even children's nursery rhymes and tales are replete with criminal deeds. "There is a portrait of desertion in 'Hansel and Gretel,' of arson and vandalism in 'The Three Little Pigs,' of trespass in 'Goldilocks and the Three Bears,' and of necrophilia in 'The Sleeping Beauty'; 'Who Killed Cock Robin?' is an inquiry into a murder" (p. 1006).

Sagarin concludes that major literary artists raise profound questions about the significance of crime to the individual, to society and civilization; about individual responsibility that overrides all excuses, justifications, and mitigations; about judgment, human choices, human dignity, right and wrong, and love and hate. Literary works "contain a reservoir of untapped source material for criminologists. The messages are profound, and the literary creations, whether modeled from case studies or developed out of the imagination, become bases for understanding the nature of evil and the potential for redemption" (p. 1012).³¹ Sagarin obviously appreciates the important role that literature, indeed the humanities, could play in the work of some participants in the criminal justice system, but I wish he had developed more fully the exciting potential of that role for lawyers, judges, corrections professionals, the general public, and offenders.³²

29. In conjunction with The Johnson Foundation, Inc., and the Wisconsin Humanities Committee, the Office has had two such judicial education conferences, entitled "Doing Justice: Law and Literature."

30. The Division, along with Edgewood College and the University of Wisconsin Center System, recently sponsored a conference funded by the Wisconsin Humanities Committee entitled "The Humanities and the Criminal Justice System" (Oct. 25-26, 1984, Madison, Wis.). Participants included ex-offenders, lawyers, judges, teachers, and administrators of correctional institutions.

31. Sagarin's Bibliography omits some works that may be of special interest to lawyers: R. WEISBERG, *THE FAILURE OF THE WORD* (1984); J. WHITE, *WHEN WORDS LOSE THEIR MEANING* (1984) (reviewed in this issue); J. WHITE, *THE LEGAL IMAGINATION* (1973); Papke, *Law and Literature: A Comment and Bibliography of Secondary Works*, 73 LAW LIBR. J. 421 (1980); Weisberg & Kretschman, *Wigmore's "Legal Novels" Expanded: A Collaborative Effort*, 50 N.Y. ST. B.J. 122 (1978); Wigmore, *A List of One Hundred Legal Novels*, 17 ILL. L. REV. 26 (1922); *Law and Literature: A Symposium*, 29 RUTGERS L. REV. 223 (1976).

32. See generally E. HEFFERNAN, *MAKING IT IN PRISON: THE SQUARE, THE COOL AND THE HIP* 51-52, 55, 138-39, 179-80 (1972); Lewis, *The Humanities in Prison*, 53 PRISON J. 26 (1973); McCullough, *Literature Belongs in Jail: An Academic Humanist Reflects on the Experi-*

In addition to such specific treatment of literature and crime, many contributors to the *Encyclopedia* show their awareness of the value of the humanities by illustrating their subjects with literary references. Discussing the historical transmittal of the notion of bribery from religious to secular law, John Noonan says, "The strongest teacher of the prohibition of bribery was literary. At the center of the European tradition stood Dante's *Divine Comedy*, in which bribery and simony constituted sins of fraud, more reprehensible than sins of violence because they involved misuse of man's intellect" (p. 120). Judge Lois G. Forer explores the background of incest, saying,

Instances of incest abound in legend and literature. . . . Greek legends involving incest include not only the story of Oedipus but also the marriage of Zeus with his sister Hera and of Uranus with Rhea, his sister/daughter. Throughout the history of Western literature, a number of recognized classics have been based on incestuous relationships, including Shelley's *The Cenci*, John Ford's *'Tis Pity She's a Whore*, and Herman Melville's *Pierre*. [Pp. 880-81.]

References to religious teaching also abound. In *Kidnapping*, Stephen Kanter reminds us: "'And he that stealeth a man, and selleth him, or if he be found in his hand, he shall surely be put to death' (Exod. 21:16)" (p. 993).

Parents may enjoy reading (then again, maybe they will not) another of Sagarin's articles, this one written with Allan Shore, entitled *Children, Criminal Activities of*. The authors tell us that "little study has been made of crime committed by pubescent or prepubescent children" (p. 172), and conclude:

Although preteen children are not likely to lose their historical protection from the harshest of punishments, increased institutional time may well begin to replace alternative dispositions, such as probation. Some will argue that this is desirable since it eliminates the putative mollycoddling of past practices. But the findings of cohort studies, in conjunction with fiscal frugality and a widespread pessimism about rehabilitative efforts, suggest that these criminal children may well carry the stigma of the public's vengeance into their later careers of crime. [P. 174.]

Joan McCord's *Family Relationships and Crimes* quotes the statement of the Athenian in Plato's *Laws* that "[t]he most important part of education . . . is right training in the nursery" (p. 759).

As a law-trained person I felt comfortable exploring the *Encyclopedia's* potential for the legal audience and concluding that it can be a valuable resource for legal professionals performing a variety of roles. I was not confident, however, that I could predict with accuracy the response of other targeted audiences. To test the *Encyclopedia's* ap-

peal, I asked several potential users to read selected articles. The responses were unanimously favorable.

A young lawyer, who worked as a staff counsel to the Director of the Wisconsin Division of Corrections after serving as my law clerk and who now teaches legal writing (using criminal law problems), read numerous articles relating to corrections, including the six articles on *Prisons*, Joan Mullen's *Pretrial Diversion* (pp. 1184-90), Sheldon Krantz's *Prisoners: Legal Rights of* (pp. 1190-97), and Rita James Simon's *Women and Crime* (pp. 1664-69). The lawyer remembers well being a "lay" person in the field of corrections, hunting for basic materials on corrections to orient herself to her new job. She had learned little or nothing about corrections in law school, and as a clerk had encountered only a few cases dealing with prisons and probation and parole. The *Encyclopedia* articles, she said, should be required reading for newcomers to the area of corrections. She found Joan Mullen's *Pretrial Diversion* an excellent, fast-reading piece, although she disagreed with the impression it leaves that the pretrial diversion movement is over.

A third-year college student, who had researched the historical relation of punishment and the status of the victim, found Laura Nader's *Preliterate Societies* (pp. 200-07) (a subtopic of *Comparative Criminal Law and Enforcement*) an excellent summary of material he had spent weeks digging out. He regretted not having the Bibliography several months ago.

A junior in high school, who had recently written a paper on obscenity and pornography for classes in advanced writing and social issues, read the two *Obscenity and Pornography* articles — Berl Kutchinsky's *Behavioral Aspects* (pp. 1077-86) and Frederick Schauer's *Legal Aspects* (pp. 1086-91). He reported that these articles gave excellent overviews of the subject. They presented the material more clearly, in greater depth, and in a more useful manner than the encyclopedic material his instructors had furnished. He liked the separate discussions of the behavioral and legal aspects,³³ as well as the historical and comparative analyses in both pieces.

A professor of sociology, who teaches criminology at a liberal arts college, was impressed with the volumes, noting the good mix of law and other disciplines. He intended to assign his undergraduates to read certain articles. In his reading of select articles he found no gross errors — unusual, he said — and no pervading bias in the choice of contributors or in the substance of the pieces. He thought the authors

33. Separate articles on the behavioral and legal aspects of the subject matter topic are a recurring pattern in the *Encyclopedia*. See, e.g., Inciardi & Binder, *Arson: Behavioral and Economic Aspects*, pp. 76-80; Horning, *Employee Theft: Behavioral Aspects*, pp. 698-704; Wolfgang & Zahn, *Homicide: Behavioral Aspects*, pp. 849-55; Weinreb, *Homicide: Legal Aspects*, pp. 855-66; Meier, *Shoplifting: Behavioral and Economic Aspects*, pp. 1497-1500; Frankel, *Shoplifting: Legal Aspects*, pp. 1500-02.

of the article on homosexuality (Anthony Russo and Laud Humphreys) adopted too readily the language of the gay rights movement, but he did not disagree with the substance of the article. He gave high marks, as I do, to *Criminology: Modern Controversies* (pp. 556-66), by James F. Short, Jr. Although brief, it is a good summary and raises provocative questions.

A professor of English at a major university³⁴ reviewed several pieces on women and crime. After reading the articles, she asked whether she could use the *Encyclopedia* to prepare a speech for a conference on the Humanities and the Criminal Justice System.³⁵ She was looking for a psychological profile of prisoners in order to draw a connection between the skills that can be taught through interpretation of poetry and those personal skills that are conducive to stable citizen conduct. The various articles in the *Encyclopedia* addressing prisoner profiles did not have the precise information she was seeking, but she gave the *Encyclopedia* high marks anyway. (The sociology professor had already told me that in his opinion Don Gibbons' piece on typologies of criminal behavior (pp. 1572-76) was too condensed and that this subject deserved a longer piece.)³⁶

A Japanese scholar working in the field of Japanese and American criminal justice and visiting Madison reported that he found the *Encyclopedia* helpful in his work.

A librarian at the Criminal Justice Library of the University of Wisconsin Law School commented that numerous undergraduates come searching for encyclopedic treatment of facets of crime and justice, and she was glad to have the *Encyclopedia* available. It apparently was filling a need.

A journalist who covers the state courts for a Madison newspaper liked Geoffrey C. Hazard, Jr.'s *Criminal Justice System: Overview* (pp. 450-70). The article acknowledges the complexities and contradictions of the system and shows an understanding that "what happens" is not always the same as what the statutes say should happen. The journalist gave Hazard high marks for his discussion of the roles of police discretion³⁷ and community values in setting priorities for ar-

34. She has served as Executive Director of the Governor's Employment and Training Office which funded a Postsecondary Re-Entry Education Program (PREP) for Wisconsin prisoners and has taught selected poems of Robert Frost, Adrienne Rich, and W.H. Auden to prisoners in a program funded through PREP and the Wisconsin Humanities Committee.

35. See note 30 *supra*.

36. The English professor located the material she wanted in an article by Daniel Glaser entitled *A Review of Crime — Causation Theory and Its Application*, in 1 CRIME AND JUSTICE: AN ANNUAL REVIEW OF RESEARCH 203 (N. Morris & M. Tonry eds. 1979). Professor Glaser wrote the prefatory piece on *Crime Causation* appearing in the *Encyclopedia*, pp. 307-08, and is cited several times in the bibliographies accompanying the causation articles.

37. See also, e.g., p. 1129 (Goldstein, *Police: Administration*); p. 1361 (Field, *Rape: Legal Aspects*). Other articles also discuss the disparity between "theory" and "practice." See, e.g., pp. 712, 714 (Capron, *Euthanasia*).

rests and prosecutions, and she liked his evenhanded approach — neither pro- nor anti-police, prosecution, or defense.

The journalist also read Feeney's *Burglary*, because burglary is a frequent and recurring crime, and, for information about an up-and-coming crime, Stein Schjolberg and Donn B. Parker's *Computer Crime* (pp. 218-23). She appreciated, in the former, the explanation of the prosecutor's difficulty in proving burglary and the relationship of the crime of possessing burglars' tools to burglary. In the latter, she liked the use of computer lingo — "salami technique," "logic bomb," and "Trojan horse method," to name some examples. When asked whether she would recommend the *Encyclopedia* to a new reporter covering the courts, she said yes, as long as the reporter supplemented the readings with the Wisconsin criminal code.

The readers and I agreed that the contributors, for the most part, are gifted writers able to express their views. The literary quality is quite high. The writing is not arid, pedantic, or colorless. Contributors take on controversial issues and express their opinions. All the readers expressed surprise and delight that the articles were written in clear and understandable English; they were grateful that they were *not* in legalese, a style for which they showed unmasked disdain. While the writing styles of numerous contributors and the approaches to the various subjects differ from article to article, the editors have succeeded in making a conglomeration of articles cohesive without forcing each piece into a preconceived mold.

Although constrained by space limitations, several articles nevertheless give the lay reader first-hand experience with reading basic resource material, such as excerpts from statutory language, cases, and research articles. Statutory language from a "typical" state statute³⁸ or from the Model Penal Code³⁹ is occasionally quoted at length. Several authors remind the readers that today the state, not the federal government, governs much of the substantive and procedural criminal law, that statute, not case law, is predominant, and that there is variation from state to state.⁴⁰ The *Encyclopedia* cannot, however, present a fifty-state study. The American Law Institute's Model Penal Code is used throughout the volumes to bring a single uniform legislative proposal to the reader. This use of the Code is justified because the Code was one of "the most important reform projects" in the second half of the twentieth century, "upon which numerous state reforms were modeled."⁴¹

38. See, e.g., p. 221 (setting forth California's computer crime law).

39. See, e.g., p. 1092 (obstruction of justice).

40. See, e.g., p. 81 (Binder, *Arson: Legal Aspects*); pp. 1356-64 (Field, *Rape: Legal Aspects*). The significance of state courts, of federalism, and of the interplay of the federal and state constitutions in the criminal justice system is discussed in, among others, Burkoff, *Exclusionary Rules*, p. 716; Hazard, *Criminal Justice System: Overview*, pp. 464-65.

41. P. 513 (Schwartz, *Criminal Law Reform: Current Issues in the United States*).

Authors also use other resources to illustrate their points. Peter B. Hoffman includes the Federal Parole Commission guidelines matrix with examples (p. 1235); Fred Cohen includes the New York form for the imposition of special conditions of parole (pp. 1243-44). Other authors use "hypotheticals" as a way of organizing and explaining the materials.⁴² As a proponent of the case and problem methods of teaching, I find these effective writing techniques.

Editor Kadish says that the contributors were "to direct their writing to the educated lay person who was not a specialist in the field, taking particular care to provide adequate background as well as clear conceptual frameworks for their discussions. Technical terms were to be defined and concepts explicated in language as plain as the material permitted" (p. xxii). The contributors have followed Kadish's directions. As a result, all the audiences are well served: the legal audience may take advantage of clearly expressed overviews of their own specialized areas of interest enhanced by the perspectives of the social sciences and the humanities; the nonlegal "specialist" audience will find the legal materials stated in understandable form and also may draw upon articles in their specialized fields and related areas.

In sum, I conclude that the articles can be read and understood by diverse readers, each one bringing her or his own knowledge and background to the pieces and "understanding" the articles at different levels.

II

In addition to making the articles understandable, the editors had to plan and organize the *Encyclopedia* for usability.

Design and typography have been well chosen. The text runs in two columns of type that is mercifully large (10 point) on letter-size, glare-free paper. Margins are wide; space between the lines is comfortable. True to the publisher's claim, the pages lie flat when a volume lies open.

The boldfaced subheadings within the articles guide the reader who is scanning the articles for overall content and organization. The text is footnote-free; there are citations within the text, but these are not distracting.

The editors have used several typical "encyclopedic tools" that make the *Encyclopedia* easy to use. There are two basic guides to the location of articles, a Contents section at the beginning of volume one and a General Index at the end of volume four. Typically the *Encyclopedia* shows the tension between an alphabetical arrangement and a topical or systematical arrangement. The alphabetical arrangement is modified to achieve systematic and multidisciplinary coherence among

42. P. 168 (Cohen, *Causation*).

related topics by grouping under one title articles that share a general subject matter. For example, *Riots* has four separate articles: *Behavioral Aspects*; *Legal Aspects*; *Enforcement and Control*; and *Prison Riots*. A list of cross-references to related articles in the *Encyclopedia* follows each article. As a result of the alphabetical listing of subjects and the cross-references, the volumes are essentially self-indexed. Whatever may have been omitted in cross-references seems to have been included in the General Index.

Also at the end of volume four is the Legal Index, composed of the Table of Cases and a table of Legal Documents. The Table of Cases lists cases alphabetically and provides references to page numbers. Approximately 1100 cases are in the index, mostly United States Supreme Court cases. It is important to remember, however, that the authors do not attempt case analyses in their articles. The number of cases is appropriately small.

The Legal Documents section uses an alphabetical arrangement by subject to index materials such as statutes, acts, and constitutions. The index may be troublesome for the user who may want to track a particular legal document: in order to find the document the user must guess the topic (from *Abduction* to *Wiretapping and Eavesdropping*) into which the editors slotted it.

The *Encyclopedia* cites fewer legal documents than it does cases. The traditional emphasis our legal education system places on cases rather than on statutes may be the explanation; more probably, this kind of work seeks to emphasize a national overview rather than the law of specific jurisdictions. The United States Supreme Court cases govern the entire system; state statutes govern only a particular jurisdiction.

The General Index is alphabetical and easy to use. It lists topics, from "AA, see Alcoholics Anonymous," to "Zuckerman, Marvin, 802." At page 802 we are told that "Marvin Zuckerman contends that people who search out high sensation have a biological need for it." Needless to say, I read on — I was in the midst of Jerome H. Skolnick's discussion of gambling and personality. Despite the reference to Zuckerman (and to many other persons in the General Index), a reader interested in a particular person may have trouble tracking down that name in the *Encyclopedia*. There is no separate index for individuals. Individuals are included in the General Index only when they are contributors, or when there is a substantial reference to them or a substantial question by them. Individuals are not included just because their work is listed in one of the bibliographies.

The *Encyclopedia* does not give separate biographies of significant persons, although biographical material does appear within the articles. The legacy of Edwin Sutherland, for example, is discussed by Albert K. Cohen, in *Crime Causation: Sociological Theories* (pp. 344-

45) and by Stanton Wheeler in *White-Collar Crime: History of an Idea* (pp. 1652-53), as well as elsewhere.

In addition to the indices, there are several special aids. Richard Greenbaum's *Guide to Legal Citations* at the beginning of volume one (pp. xxvii-xxxvi) explains the abbreviations and citations to cases and statutes. The clearly written *Guide* should prove helpful both to persons not trained in law and to American law students and lawyers unfamiliar with foreign legal materials cited in the *Encyclopedia*.

At the end of the fourth volume is a Glossary of terms. Although the contributors shun "inscrutable legalisms" (p. xxii), as well as the jargon of other disciplines, and the language is not forbidding, the Glossary is helpful in filling the gaps. It includes legal terms, from "abandonment" (for which the Glossary provides three definitions) to "writ of error coram nobis," as well as brief explanations of terms from other disciplines, such as "atavism," "aversive therapy," "behavior modification," "differential association theory," "folk crime," and "learning theory." In the text, however, there is no typographical signal (italic or boldface) that the Glossary defines a particular word or phrase.

A third aid is the bibliographies which appear at the end of each article. These vary in their usefulness and completeness. Some seem outdated. Reference to an entire text without page citations unfortunately occurs frequently in bibliographies. Annotations would have been helpful.

III

Finally, I reach the question of whether the *Encyclopedia* can be trusted.

The *Encyclopedia* was brought together under the direction of Sanford H. Kadish,⁴³ the editor-in-chief, and an editorial board made up of Francis A. Allen,⁴⁴ Daniel Glaser,⁴⁵ Wayne R. LaFave,⁴⁶ Lloyd E.

43. Morrison Professor of Law and former Dean of the School of Law of the University of California at Berkeley. He has served on various governmental commissions on criminal justice, including the President's Commission on Law Enforcement (1966) and the California Legislative Penal Code Project (1964-1968), and is the author of *THE CRIMINAL LAW AND ITS PROCESSES* (4th ed. 1983), among other books and articles.

44. Edson R. Sunderland Professor of Law and former Dean of the University of Michigan Law School. His publications include *THE CRIMES OF POLITICS* (1974); *THE DECLINE OF THE REHABILITATIVE IDEAL* (1981); and *LAW, INTELLECT AND EDUCATION* (1979). He was drafting chairman of the Illinois Criminal Code of 1961.

45. A sociologist, Glaser is past President of the American Society of Criminology and the Illinois Academy of Criminology. He teaches at the University of Southern California. His many publications include *THE EFFECTIVENESS OF A PRISON AND PAROLE SYSTEM* (1964) and *STRATEGIC CRIMINAL JUSTICE PLANNING* (1975).

46. David C. Baum Professor of Law and Professor in the Center for Advanced Study at the University of Illinois Law School, where he teaches criminal law and criminal procedure. He is the author of several well-known treatises and casebooks, including *SEARCH AND SEIZURE* (1978), a three-volume work on the fourth amendment.

Ohlin,⁴⁷ and Franklin E. Zimring.⁴⁸ The *Encyclopedia* does not tell us anything about these men, other than their present titles. The usual biographical sources will reassure anyone who does not recognize their names that their credentials in the field of crime and justice are outstanding.

The contributors are highly proficient specialists, stars in their fields, whether criminal law, criminology, sociology, psychology, political science, corrections, or law enforcement administration. They have done the original research and authored the major texts or papers on the subjects of their articles. A few titans are missing from the roster, but clearly it would have been hard to have assembled a better group.

I am sorry that the *Encyclopedia* was not more generous in crediting the contributors and supplying some background information about each one. Only in the Contents section are the contributors named, under their respective articles, and then they are identified only by professional title. Although many of the contributors will be familiar to professionals and specialists, all of them are not familiar to all professionals and they are not well known to the lay person. A reader is naturally and legitimately curious about the writers and their fields of research, writing, and teaching, and the readers, as well as the writers, deserve whatever amount of space such a listing would occupy.

The ability and renown of the editors and contributors do not necessarily ensure reliability of content, but they are good indicators. Nevertheless, the articles are uneven, as one might expect, ranging from excellent to passing, with more of high quality than low.

The best articles are accurate summaries of the state of knowledge, concise enough to be manageable and deep enough to be useful. Kent Greenawalt's theoretical article on the concept of legal punishment and how theories justifying punishment relate to substantive and procedural law (pp. 1336-46) is excellent. Theories of punishment and models of sentencing are discussed in numerous other articles in the *Encyclopedia*.⁴⁹ Similarly, biology and crime are discussed in *Crimi-*

47. Touroff-Glueck Professor of Criminal Justice, Emeritus, at Harvard Law School. He has served as Associate Director of the President's Commission on Law Enforcement and the Administration of Justice (1965-1967). His publications include *DELINQUENCY AND OPPORTUNITY* (1960) and *PRISONERS IN AMERICA* (1973).

48. Karl N. Llewellyn Professor of Jurisprudence and director of the Center for Studies in Criminal Justice at the University of Chicago Law School. He is co-author of *FIREARMS AND VIOLENCE IN AMERICAN LIFE* (1969) and *PERSPECTIVES ON DETERRENCE* (1973), and co-editor of *THE PURSUIT OF CRIMINAL JUSTICE: ESSAYS FROM THE CHICAGO CENTER* (G. Hawkins & F. Zimring eds. 1984). See also Zimring, Book Review, 83 MICH. L. REV. 954 (1985) (in this issue).

49. See, e.g., pp. 1432-40 (Tonry, *Sentencing: Allocation of Authority*); pp. 1440-49 (Clarke, *Sentencing: Determinate Sentencing*); pp. 1449-55 (Zenoff, *Sentencing: Disparity*); pp. 518, 520-22 (Schwartz, *Criminal Law Reform: Current Issues in the United States*). Indeed, the subject of

nology: *Modern Controversies* (pp. 556-66) and in *Crime Causation: Biological Theories* (pp. 308-16). Multiple references to subjects serve as an internal check on accuracy.⁵⁰

The contributors themselves recognize potential problems of accuracy that may arise. They frequently remind the reader that their articles do not present the final word on the subject. Many articles state that further research and study are needed or that the issue has not been decided by the courts.

The contributors do not adopt a pose of neutrality. Indeed they were free to express their views, propose solutions, and look into their crystal balls for future developments. As editor Kadish writes:

Authorial bias was another inescapable problem. Questions of crime and justice are inextricably bound up with moral and political judgments. People take sides, even — indeed, notably — those who know most about the subject. Therefore, it seemed to us to be mistaken and ultimately misleading to expect a value-free detachment from our authors. But while personal points of view were not out of bounds, we tried to assure that their presentations were evenhanded or at least that all sides of controversial issues were fairly presented to the reader. [P. xxii.]

Many authors are careful to delineate the boundaries of controversy on their topic. Donald J. Newman, for example, explains that all sentencing options have supporters and detractors and lays out the arguments for and against mandatory minimum sentences. He concludes by writing:

Perhaps the major argument for retaining or adopting mandatory minimum sentences, particularly those that foreclose the possibility of probation or other community-based sentences, is that of general deterrence. . . . Mandatory sentences have also been popular as incapacitory devices, particularly in response to sex crimes and violent criminal behavior. It is a researchable question, of course, whether such laws do indeed deter the kinds of conduct, or effectively incapacitate the type of offenders, that they are designed to control. [P. 1471.]

John E. Nowak presents his values as part of an interesting discussion in *Criminal Procedure: Constitutional Aspects* (pp. 527-36). He divides the criminal procedure rulings of the United States Supreme Court into four eras — pre-1937, 1937-1960, 1961-1969, and post-1969 — and identifies the Court's three basic tasks: ensuring the accu-

sentencing is discussed in so many places that if I were trying to illustrate overlap and duplication in the *Encyclopedia* I would start with that topic.

50. Interestingly, however, inconsistency can occur in different articles by the same author. For example, Gilbert Geis writes in *Victim and Witness Assistance Programs* that "[t]here are no victim compensation programs in about half of the states," p. 1600, while he writes in *Victim Compensation and Restitution* that "[m]ore than half of the jurisdictions in the United States operate victim compensation programs." P. 1606. The usual figure given in 1984 is that 39 states have victim compensation programs. Anderson & Woodard, *Victim and Witness Assistance: New State Laws and the System's Response*, 68 JUDICATURE 221, 222 (1985).

racy and fairness of the factual process by which guilt or innocence is determined, ascertaining the degree of respect for individual dignity, and resolving the problem of federalism. Within this format he furnishes an historical viewpoint, a look into the future, and his view of the values that are to guide the Supreme Court in its decisions, values the reader need not accept (p. 536).

Yes, I conclude, the *Encyclopedia* can be trusted. But for how long? Criminal justice is a fast-growing field in terms of legal developments and empirical research and theory. I do not know whether the publisher has plans for revising and updating the *Encyclopedia*. The crisis in publishing today means that a reference work may be out of date the moment it leaves the printer. And new hardcover encyclopedias are appearing at the same time the popular media run articles about computer encyclopedias.⁵¹ I must admit that one of the first things I looked for was the familiar slit in the back cover of law books for future pocket part supplements. There is none.

Editor Kadish in his *Foreword* comments on the problem of change as follows:

As all encyclopedists must, we had to deal with the problem of change. We have done this by trying to present articles which emphasize the stable continuities in the field rather than matters of transitory import, and which view knowledge and understanding as continually evolving. Even a subject like the constitutional limits of police conduct, which changes with almost every term of the Supreme Court, may be presented as an enduring grappling with fundamental issues. [P. xxii.]

To understand the extent of the problem, the reader need only juxtapose Kadish's statement with the article on *Search and Seizure* (pp. 1415-22), which includes a lengthy discussion of United States Supreme Court decisions on the fourth amendment. The *Spinelli* decision⁵² to which it refers is already outdated. The discussion of the exclusionary rule ends with a warning that "the ultimate constitutionality of these judicial and legislative efforts [to adopt a good faith exception] remains to be determined" (p. 723). The United States Supreme Court has, within a year of the publication, approved a good faith exception.⁵³ Discussions of pornography do not include the recent movement attacking pornography through civil law. To the extent that the articles deal with historical matters and broad doctrines, however, they will remain useful, as Kadish said.

51. Students are beginning to short-circuit reference books and tap into on-screen encyclopedias. See Grieves, *Short-Circuiting Reference Books*, TIME, June 13, 1983, at 76. This "Race Against the Acceleration of Civilization" has led one wag to suggest an Extelopedia which contains information about history as it is going to happen. See Lem, *Offering: Vestrand's Extelopedia in 44 Magnetomes: Vestrand Books Company, New York — London — Melbourne* MMXI, THE NEW YORKER, Apr. 2, 1984, at 38.

52. *Spinelli v. United States*, 393 U.S. 410 (1969). The *Spinelli* rule was significantly modified by *Illinois v. Gates*, 103 S. Ct. 2317 (1983).

53. *United States v. Leon*, 104 S. Ct. 3405 (1984).

IV

Crime is a subject of great interest to the public and to policymakers. We cannot pick up a newspaper or magazine without reading about crime or about national or state action to combat crime. We are told — and we know — that crime is not something that happens to someone else; it is something that can happen to any one of us. Each year more than 41 million crimes are committed and almost a third of the households in America are victimized by violence or theft.⁵⁴ Fear of crime is prevalent,⁵⁵ in communities large and small.⁵⁶ Front doors of many homes greet callers with the “Neighborhood Watch Warning” that these crime-conscious occupants have marked their valuables for prompt recovery by law enforcement agencies.

Kadish recognizes the phenomenon of fear of crime and its challenge to our society.⁵⁷ He writes that the *Encyclopedia* was conceived as a contribution to understanding and responding to the challenge of crime “which sometimes seems to threaten the stability of social life” (p. xxi).

The citizen questions whether the criminal justice system is failing in its efforts to produce just results for society, offender, and victim. To many citizens, the courts appear to penalize the victim.⁵⁸ The citizen is concerned about the prisons; to some they are country clubs, to others they are dangerous institutions that harden the prisoners, not rehabilitate them. The citizen reads that many crimes go unreported, that arrests are made in less than twenty percent of reported crimes, that domestic violence is increasing,⁵⁹ that guilty people are released

54. Moran, *More Crime and Less Punishment*, NEWSWEEK, May 7, 1984, at 22. Moran's figures come from U.S. DEPT. OF JUSTICE, BUREAU OF JUSTICE STATISTICS, REPORT TO THE NATION ON CRIME AND JUSTICE: THE DATA 7 (Oct. 1983). For a discussion of media portrayals of crime and criminal justice, see pp. 1325-33 (Shapiro, *Publicity in Criminal Cases*); pp. 1021-27 (Ball-Rokeach & DeFleur, *Mass Media and Crime*).

For a discussion of the post-World War II crime wave, see pp. 392-403 (Ferdinand, *Crime Statistics: Historical Trends in Western Society*). The popular view is that crime is burgeoning and overwhelming the police, the courts, and the prisons. Ted Robert Gurr's analysis of the historical sweep of interpersonal violence in several Western societies, however, concludes that the incidence of criminal violence has been steadily declining for several centuries with occasional, not greatly disturbing upturns in the declining curve. Gurr, *Historical Trends in Violent Crimes: A Critical Review of Evidence*, in 3 CRIME & JUST.: AN ANNUAL REVIEW OF RESEARCH 295, 340-46 (N. Morris & M. Tonry eds. 1981).

55. “Victimization surveys since 1972 show that about 45% of the urban population feel ‘somewhat’ or ‘very’ unsafe or afraid to walk at night in their neighborhood.” P. 765 (Liska & Baccaglini, *Fear of Crime*) (citations omitted).

56. See generally pp. 1403-07 (Carter, *Rural Crime*); pp. 1582-87 (Friday, *Urban Crime*).

57. For a discussion of the social cost accounting framework of crime, see pp. 373-78 (Cook, *Crime Statistics: Costs of Crime*).

58. For a discussion of victims, see pp. 1600-04 (Geis, *Victim and Witness Assistance Programs*); pp. 1604-08 (Geis, *Victim Compensation and Restitution*); pp. 1611-16 (Viano, *Victimology*).

59. As one might expect, violence is a repeated theme in many of the articles. Kenneth E. Moyer's *Violence*, pp. 1618-24, defines “violence” and the classes and causes of violence. There

on "technicalities," and that offenders on parole commit crimes.⁶⁰ The citizen does not always understand the tension inherent in our system of criminal justice, a tension between the criminal justice system as society's protector from those who prey on others and the criminal justice system as the accused's protector from a vengeful public or overzealous police, prosecutors or judges.

The public cannot look to any one unit of government to get results. The complicated process of criminal justice is divided into different parts, responsibility for which is vested in different participants — the legislative, the executive, and the judicial branches of government; city, county, state, and federal officials; police, prosecutors, defense counsel, judges (trial and appellate, federal and state), and corrections officers. Each has a specific, critical role to play in providing the protection which is the community's due. Each has different clientele, different techniques. All interact with and review one another. The citizen — and sometimes the agencies themselves — may all too frequently find not a smooth functioning system of criminal justice but fragmentation and sometimes hostility among the agencies of justice.

The level of public anxiety compels our leaders to react to demands that something be done to make our streets and homes safe. "Crime and the political process are linked on many levels. . . . The symbols of crime, law, and order shape political rhetoric and public expectation."⁶¹

Proposals for reforms in the criminal justice system should be realistically evaluated. By what standard will the proposal be judged? The public asks, what effect will the proposal have on crime in the street? Some reforms may reduce the crime rate. Many will not. Nevertheless, reconsideration and reform of the administration of our criminal justice system must be continued so that "we, the punishers, can believe that we are rendering justice as well as possible and that our system is worthy of our own respect."⁶²

The *Encyclopedia* is an important resource for anyone interested in understanding current controversies in penal law reform. By explicating theories, concepts, principles, and empirical and legal research on the entire continuum of criminal justice issues, the scholars and practitioners have contributed to the public policy debates. I would suggest that service clubs, community groups, and professional groups use the *Encyclopedia* as a basis for a series of seminars or discussions on crime

are three articles on violence in the family: Nagi, *Child Abuse*, pp. 1624-29; Straus, *Wife Beating*, pp. 1629-34; and Block, *Abuse of the Elderly*, pp. 1635-39.

60. "The prediction of criminal behavior is ubiquitous in the legal system." P. 1170 (Monahan, *Prediction of Crime and Recidivism*).

61. P. 1169 (Feeley, *Political Process and Crime*).

62. P. 526 (Schwartz, *Criminal Law Reform: Current Issues in the United States*).

and justice. The *Encyclopedia* can be an important instrument of adult education, a tool for creating a sounder and more informed public opinion on major issues in crime and justice.

Gauging the *Encyclopedia* by the goals the editors have set for it, it has scored a success. It accomplishes to an unexpected degree the basic objectives of the editors. It is not the ultimate research tool. It serves as a resource-of-first-resort for the specialist or generalist who seeks a multidisciplinary approach to the criminal justice system. If looking things up is either a habit or an obsession, you will enjoy the *Encyclopedia of Crime and Justice*.