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TESTING *THE LIMITS OF LAW* *ENFORCEMENT*

James J. Fyfe*

THE LIMITS OF LAW ENFORCEMENT. By Hans Zeisel. Chicago and London: The University of Chicago Press. 1982. Pp. xvi, 245. \$20.

As Hans Zeisel reminds us early on, he is a scholar of no small repute. In 1966, he coauthored *The American Jury*,¹ a study that has, he notes in the second sentence of his latest book, “become the standard work on that institution which forms the final stage in the law enforcement process” (p. 3). Zeisel also wrote *Say It With Figures*,² an extremely popular and useful guide for those who wish to present statistical data in a manner comprehensible to readers who lack extensive quantitative skills.

According to Zeisel, *The Limits of Law Enforcement* “illuminates the twilight zone in which criminal cases are disposed of without trial,” and “is thus a companion volume to *The American Jury*” (p. 3). Exploring this twilight zone is important because the great majority of criminal cases terminate there, either by dismissal or by negotiated pleas of guilty before they reach the trial stage. Thus, when an accomplished scholar such as Zeisel obtains access to a large and rich set of data on this usually invisible process, the published results of his analyses are almost certain to be valuable. That is especially so because Zeisel adheres to the principles of *Say It With Figures* and presents his quantitative analyses in a non-technical manner directed at the widest possible audience.³

Zeisel analyzes two sets of original data collected by the Vera

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1. H. KALVEN & H. ZEISEL, *THE AMERICAN JURY* (1966).

2. H. ZEISEL, *SAY IT WITH FIGURES* (5th ed. 1968).

3. Such a non-technical approach to data analysis involves, of course, a trade-off. The bar graphs and simple tables presented by Zeisel are easily understood by lay readers, but each such figure or table can analyze relationships among only a small number of variables. As a result, use of these methods to analyze complex data requires many more figures and tables than is true of more sophisticated techniques capable of simultaneously analyzing relationships among greater numbers of variables. Included in the 245 pages of *The Limits of Law Enforcement*, for example, are 63 bar graph figures and seven tables. Given the audience at whom Zeisel directed *The Limits of Law Enforcement*, however, his decision to avoid “even statistical tables because tables make difficult reading,” and to include instead “figures which convey the statistical evidence without pain and perhaps even with pleasure,” p. 4, was wise.

Institute of Justice.⁴ The first includes records of a random sample of 1,888 felony arrests effected in four of New York City's five boroughs during 1971. The second includes records and interviews with principles in 369 cases involving arraignments on felony charges that were disposed of in New York City Criminal Court or New York City branches of the state supreme court during January through October 1973.⁵ Perhaps anticipating that many of the law enforcement policymakers and practitioners among those at whom he directs his book have neither the time nor the inclination to read it from cover to cover, Zeisel presents his "Summary and Reflections" in Chapter One. Here he assures us that his ten-year-old New York City data are generalizable to other times and places. He points out that the similarities between New York City and other places include more than arrest and clearance rates: almost half of the felony arrests in his study resulted in dismissals, a finding much like those reported by other studies in New York City in 1926, in Cleveland in 1919, and, more recently, in California, Oregon, New Orleans, and Washington, D.C. Further, he informs us, such surprisingly high dismissal rates are not uniquely American; he cites Austrian and German dismissal rates for robbery that are strikingly similar to the American felony dismissal rates he quotes (pp. 19-25).⁶

Before cases can reach court disposition, of course, the police must arrest. Zeisel presents arrest rate data for the seven Uniform Crime Report index felonies⁷ which show that, in New York City, as in other places, one of the major limits of law enforcement is its inability to solve more than a small fraction of the crimes that occur: only one in eight (twelve percent) of the index offenses reported to New York City police results in arrest (p. 30). Absent radical and "politically and financially improbable" expansion of the police,

4. These data are also analyzed by the Vera Institute of Justice in *FELONY ARRESTS* (rev. ed. 1981), which examines the "deterioration" of New York City felony cases between charges at arrest and final disposition.

5. In this instance, too, the data originated in four of New York's boroughs, and did not include cases from Staten Island, the smallest borough which, according to Zeisel, "generates only 2 percent of the city's felony arrests." P. 8. Further, as Zeisel notes, because these 369 cases include only those that reached final disposition in the criminal or supreme court, the sample excludes cases terminated by other means (for example, diverted to the family court; disposed of in the Complaint Room; dismissed by grand juries; grand juries failed to indict), or not reaching final disposition because defendants died or jumped bail. Pp. 10-11. The omission of these cases, of course, means that the dismissal percentages presented by Zeisel understate to some unknown degree the actual percentage of felony arrests that do not result in successful prosecutions or pleas of guilty.

6. I needed no convincing as to the similarities between the performance of New York City's criminal justice system and those of other places. I am a former New York City police officer and, like many who have practiced and studied law enforcement in New York City, I have long held the view that the major difference between it and other, smaller jurisdictions is the speed with which data sets large enough for meaningful quantitative analysis accumulate.

7. Murder/non-negligent manslaughter; rape; aggravated assault; robbery; burglary; larceny; auto larceny.

Zeisel argues, this relatively low rate of success⁸ is not likely to increase significantly (p. 34), because most arrests for index crimes occur during police responses to citizens' telephone reports that crimes are in progress. Thus, the probability of arrest is largely a function of prompt citizen reporting and of police speed, luck, and skill.⁹ In cases in which arrests are not effected by responding patrol officers, Zeisel indicates, solution is unlikely because, despite the most intensive investigative efforts, it is usually impossible to identify and locate unknown offenders once they have fled the crime scenes (pp. 29, 31).

The major reason for the New York City dismissals, according to Zeisel, is "evidence insufficiency," primarily involving the loss of the cooperation of the crimes' victims (pp. 25-28). Zeisel's data also indicate that exclusion of evidence because of illegal searches is a relatively minor factor in prosecutorial failure in New York City: six cases (9.1 percent of the sixty-six dismissals for which he was able to ascertain the reasons for failure) were dismissed because "possession or ownership [was] difficult to prove" (p. 111). Motions to suppress evidence on grounds of illegal search were made in two of the twenty-four weapons cases among Zeisel's sample of 369, and both were denied (pp. 190-92). This pattern, too, is similar to those reported in other places and times,¹⁰ and also suggests that the procedural safeguards of the exclusionary rule only slightly weaken prosecutors' chances for success.

Zeisel reports that pleas of guilty account for ninety-eight percent of the convictions in the cases studied (p. 34), another pattern not

8. As Zeisel observes, not all of these offenses are reported to the police, so that "the ratio of arrests to the number of *committed* crimes is considerably lower" than twelve percent. P. 31 (emphasis in original).

9. The police literature of the 1960's and early 1970's generally placed great emphasis on police response time as an effective means of solving crimes, and urged police agencies to reduce response time to an absolute minimum. See, e.g., INSTITUTE FOR DEFENSE ANALYSES, PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: SCIENCE AND TECHNOLOGY 71-72 (1967); NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS, TASK FORCE ON POLICE, REPORT ON POLICE 193 (1973). More recent work, however, suggests that these recommendations were based upon incomplete definitions of response time. Police have generally defined and measured response time in terms of the period between their receipt of a crime report and the arrival of the officers on the scene, and have assumed that citizens promptly report offenses. Research in Kansas City and elsewhere indicates that this assumption is unfounded, and that crime victims often notify family and friends before calling the police, often for as long as an hour after they have been victimized. See 3 U.S. DEPARTMENT OF JUSTICE, NATIONAL INSTITUTE OF JUSTICE, RESPONSE TIME ANALYSIS, PART II CRIME ANALYSIS 1-9 (1978). The implications of these findings, of course, are that the relationship between response time (as traditionally defined) and probability of arrest is even more haphazard than Zeisel suggests, and that efforts to reduce response time should focus more heavily on educating citizens to report crimes as quickly as possible.

10. See, e.g., NATIONAL INSTITUTE OF JUSTICE, THE EFFECTS OF THE EXCLUSIONARY RULE: A STUDY IN CALIFORNIA (1982); see also Wicker, *Exploding a Myth*, N.Y. Times, May 10, 1983, at A25, col. 5.

unique to New York City.¹¹ There are several reasons for this mode of disposing of cases. Prosecutors, concerned with heavy caseloads and with the difficulty of proving cases in which police officers have booked arrestees for "the reasonable maximum" from among a variety of feasible charges (p. 195), prefer to devote their attention and efforts to trying cases of the greatest severity and with the highest potential for obtaining convictions. Defendants and their attorneys, of course, have different interests. They are generally not concerned with such systemic matters, but rather seek the best possible disposition of their individual cases and plead guilty to avoid severe sentences and the inclusion of felony convictions on the defendant's record.¹²

Zeisel indicates that police charge arrestees with the maximum feasible offenses for two major reasons. First, they assume that the heaviest possible charges will increase prosecutors' leverage in subsequent plea bargaining. Second, officers' performance ratings (especially those of detectives and other investigators) are based in part upon the seriousness of the offenses they clear by arrest. A third and, according to Zeisel, less significant reason for charging the maximum is "the structure of overtime pay" (p. 196). Officers who effect arrests for misdemeanors may often do so quite quickly by issuing summonses at police facilities, a process that usually requires no further involvement on the part of police. During the period studied by Zeisel, however, officers who effected felony arrests were required to proceed to court with their arrestees, to assist in the drawing of complaints, and to be present at the initial appearances. In 1971, a felony arrest effected late on a busy Friday night might require the officer involved to spend several hours preparing paperwork and lodging his prisoner that evening. Early Saturday morning, he would then proceed with his prisoner to court, and take a place on a line of several hundred arresting officers waiting to have complaints drawn and to appear at their prisoners' initial appearances. Quite often, his case would not be reached on Saturday, so that he would have to resume his place in line again on Sunday (and, sometimes, again on Monday). Some unscrupulous officers learned to manipulate this

11. A. BLUMBERG, *CRIMINAL JUSTICE, ISSUES AND IRONIES* 169 (2d ed. 1979), summarizes data from a Georgetown University Institute of Criminal Law and Procedure study of plea bargaining. In 10 of the 24 jurisdictions for which data are presented, pleas of guilty accounted for more than 90 percent of the convictions of felony defendants.

12. See, for example, Donald J. Newman's excellent American Bar Foundation study of plea bargaining, *CONVICTION: THE DETERMINATION OF GUILT OR INNOCENCE WITHOUT TRIAL* (1966). However, a persuasive argument that criminal defense attorneys do not always intensely seek the best possible dispositions for individual defendants, but instead avoid heated negotiation with prosecutors and judges in order to preserve their good relationship and their future bargaining power with these officials is made by Abraham S. Blumberg in *The Practice of Law as Confidence Game: Organizational Cooptation of a Profession*, 1 *LAW & SOC. REV.* 15 (1967).

system by arresting and overcharging persons an hour or two before the end of their last tours of duty, so that their long weekend court waits (sometimes spent on folding lawn chairs kept in the trunks of their personal autos for such occasions) would result in two or three days of overtime pay.¹³

Until the 1975 New York City fiscal crisis, when the police department began to monitor officers' overtime closely, to hold local commanders accountable for reducing it, to streamline arrest procedures, and to reduce officers' charging discretion, "collars for dollars" were probably a far more significant influence on the arrest and charging process than Zeisel suggests. Further, Zeisel's findings that only seven percent of those who pleaded guilty were convicted of the offenses with which they were originally charged, and that the guilty pleas resulted in convictions of offenses that averaged 2.3 New York State Penal Law classes lower than original charges (p. 131) may also have been influenced by the low quality of some of the "collars for dollars" among the felony arrests he studied.

Zeisel conducts an interesting analysis of the relationship between the bail system and the guilty plea process. It has been frequently argued that those held without bail or unable to post bail suffer higher conviction rates than defendants released on bail because incarcerated defendants are unable to assist their attorneys in preparation of their defenses.¹⁴ Consequently, it is probable that incarcerated defendants are encouraged to plead guilty in order to avoid the convictions and long sentences that may follow upon a poorly prepared defense. Zeisel, however, reports "a more direct connection" (p. 48) between pretrial detention and pleas of guilty. Defense attorneys, he finds, frequently negotiate guilty pleas on the promise of sentences of "time [already] served" (p. 48) during pretrial detention. This usually occurs in cases of lesser felonies and, he notes, should not lessen criticism of the inequities of the money bail system, because it involves exertion upon incarcerated defendants of prosecutorial leverage not available in cases in which defendants are free pending trial (pp. 47-49).

Zeisel's observations make sense, but my experiences as an arresting officer in New York City suggest that the relationships among detention in lieu of bail, pleas of guilty, and sentences of time served are also directly and heavily influenced by another factor, and that this process is often not as one-sided as Zeisel suggests. The

13. In one case I know of, a patrol precinct commander found that his officers had effected three such "collars for dollars" within a few days. All three arrests involved apprehension of young men charged with felony auto larceny for removing parts from the same previously stolen and partially stripped automobile, which had been abandoned on the street and was awaiting removal by the city's sanitation department.

14. PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: THE COURTS 38 (1967).

guilty plea for time served often occurs in iron-clad prosecution cases against experienced defendants who offer to plead guilty after having spent relatively short periods of time in local detention facilities. In such cases, defendants are not without bargaining leverage. First, they appeal to prosecutors' and judges'¹⁵ concerns with the strained capacity of detention facilities. Second, they know that the time that passes during their pretrial detention is likely to weaken witnesses' and victims' memories and willingness to cooperate with prosecutors and, hence, will weaken the cases against them. Consequently, they are often successful in bargaining for release in less time than would have been true had they been free on bail and served their time after a guilty plea or jury conviction.

My impression is shared by most of my former colleagues. If we are correct, the question of the effects of the bail system on defendants' decisions to plead guilty is not adequately answered by correlating pretrial detention and likelihood of conviction. Instead, we also need to know whether those who plead guilty after pretrial confinement serve more time and suffer more deprivation — in terms of degree of isolation and loss of prior relationships — than is true of those free on bail or personal recognizance prior to conviction.¹⁶

Despite these criticisms, Zeisel's interpretations of his New York City data and his conclusion that there is relatively little that the police, prosecutors, and courts can do to lower significantly the level of crime (pp. 51-52) are generally quite sound. At other points, however, Zeisel is less than objective. Much of the book's first chapter, for example, is a discussion of deterrence. In it, he argues that there is no evidence that the death penalty serves as a deterrent to murder, or that it has any effect on homicide rates, and that those who suggest otherwise are off-base or even "arrogant" (p. 63). As one who opposes the death penalty, and who remains to be convinced that it has a deterrent effect or that errors can be avoided, I would like very much to agree with Zeisel's conclusion that his analyses show that execution is not a deterrent. They do not. Instead, like analyses that purport to show that capital punishment *does* deter,¹⁷ his analyses

15. Zeisel reports that judges took part in negotiations in 79 percent of the 586 guilty pleas in which defendants were promised specific sentences during plea negotiations. Pp. 133-34.

16. A variable worthy of examination in analysis of the relationships among the bail system, plea bargaining, and likelihood of conviction is conditions of incarceration in local detention facilities *vis-à-vis* those in state prisons. The defendant incarcerated prior to conviction is near home, better positioned to receive visits from friends and family, and more likely to find that his fellow inmates include friends from the outside than is the convict confined in a distant state prison. Despite the generally poor conditions that prevail in local facilities, persons I have arrested have told me that they would rather spend a year in Rikers Island (the major New York City jail and detention facility) hoping to "wear down" complaining witnesses over the course of frequent court dates and adjournments than plead guilty and risk two or three years in Attica Prison, which is located in a rural area approximately 450 miles from New York City.

17. See, e.g., Ehrlich, *The Deterrent Effect of Capital Punishment: A Question of Life and Death*, 65 AM. ECON. REV. 397 (1975).

show nothing.

At one point, Zeisel contrasts 1960-69 data which show that homicide rates in "states with executions" were higher than in "states without executions" (p. 61). So what? Such an analysis assumes that capital punishment is the *only* variable that influences homicide rates, ignoring the question of whether homicide rates in "states with execution" are attributable to social and cultural variables other than whether states have capital punishment statutes. Zeisel subsequently acknowledges that "the causes of crime have proved difficult to identify and are relatively broad in scope" (p. 72). How, then, do data showing that homicide rates in "execution states" were higher than in "non-execution states" support his conclusion that capital punishment is not a deterrent? These data say nothing about whether homicide rates in "execution states" would have been even higher if not for the existence of their capital punishment statutes.

There are more important problems with Zeisel's analysis of the question of the deterrent effect of capital punishment. First, rates of "homicide" and rates of "homicide *punishable by death*" are two very different things. The FBI homicide rates included in Zeisel's analysis include varieties of that broad legal category (such as non-negligent manslaughter) not punishable by death even in "execution states," and the frequency of such non-capital homicides is irrelevant to analysis of the deterrent effect of capital punishment: to what degree can we expect death penalty statutes to deter crimes not punishable by death under the authority of those statutes?

Second, Zeisel's analysis fails to take into account the fact that the mere existence of a statute authorizing capital punishment for a few forms of homicide has not meant that capital punishment is actually available to the state when persons are convicted of those offenses. Zeisel presents and analyzes homicide data from 1960-1979 (pp. 60-63), a period that he notes included "a decade [1967-1977] during which the death penalty was in limbo" (p. 60). How then can he argue that we may distinguish between "states with execution" and "states without execution" during those years? In fact, for half of the period Zeisel analyzes, there were no "states with execution." Further, while Zeisel notes that "the latest surge in the homicide rate begins at about the time [1977] we began executing again" (p. 60), he fails to acknowledge that the data he presents also show a far greater surge in homicide rates between 1967 and 1968, when "execution states" stopped executing.¹⁸

18. See p. 61. Zeisel asserts that the 1977 execution of Gary Gilmore was a "most dramatic shift to a more severe sentence [that] failed to deter." P. 63. Despite the great publicity and drama that accompanied this event, it is doubtful that strident supporters of capital punishment would regard the Gilmore execution as an appropriate starting point from which to test their theory that capital punishment deters. Much of the controversy over Gilmore's exe-

Zeisel's discussion of deterrence of non-capital offenses is often equally unconvincing and, like those who propose stiff legislation on the ground that it deters, he confuses the existence of a law with the will or capacity to enforce it. He points out that the severe penalties for possession and sale of heroin enacted by New York State in 1973¹⁹ have apparently had little or no effect on heroin trafficking or use, and that "[s]erious property crime of the sort often associated with heroin users increased sharply between 1973 and 1975; the rise in New York was similar to increases in nearby states" (p. 64).²⁰ Those statements are correct, but Zeisel's explanations of the reasons for the penalties' ineffectiveness are not.

Even before they were enacted, it was predictable that the revised New York State drug laws would have little effect on drug offenses or drug trafficking because the stiffer penalties they provided applied to only a very limited number of upper-level drug offenders. Furthermore, despite the promises of those who proposed and enacted these laws, there was no way in which they could deter "property crime of the sort often associated with heroin use": the new laws simply failed to address property crimes in *any* significant manner.

In addition, in his discussion of the drug law revisions, he does not address the question of whether the new statutes had any real effects on law enforcement or on sentencing of those few drug offenders they affect. The fact is that they did not. The new laws did not increase the capacity of the police to apprehend greater numbers of violators. Nor, apparently because prosecutors and judges were "unenthusiastic" about the new laws, were violators who were apprehended more likely to serve time than was previously true.²¹

cution concerned his own expressed wish to die at the state's hands. It is not likely, therefore, that more typical potential murderers (who presumably wish to avoid execution) would view his death as a signal that their own contemplated acts might end in execution. Further, the Gilmore execution hardly marked the resumption of regular and frequent executions in the United States (at least not during the years studied by Zeisel). Only three murderers (including Gilmore) were executed during the three years that followed the resumption of capital punishment and the end of the period covered by the data Zeisel presents. Two of these murderers (Gilmore and Jesse Bishop, who was executed by Nevada in 1978) literally demanded their own deaths. Only one (John Spengelink, who was executed by Florida in 1979) actively participated in attempts to prevent his execution.

19. The New York State drug laws were modified in 1973 to allow for minimum prison sentences of 15 to 25 years for possession of more than two ounces or sale of more than one ounce of heroin. Act of May 8, 1973, ch. 276, § 9(3)(a)(i), 1973 N.Y. Laws 1040, 1045, 1052-53 (codified as amended at N.Y. PENAL LAW §§ 70.00(3)(a)(i), 220.21, 220.43 (McKinney 1975 & Supp. 1983)). Here again, Zeisel apparently overlooks the fact that these laws deal with only a very limited category of "drug-related crime" and, even if enforced as written, would have little or no deterrent effect on lesser drug crimes and on drug-related property crimes.

20. Summarizing findings of the Joint Committee on New York Drug Law Evaluation of the Association of the Bar of New York City, NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE, THE NATION'S TOUGHEST DRUG LAW: EVALUATING THE NEW YORK EXPERIENCE (Final Report 1978).

21. *Id.* at 23. The report further notes that

New York City suffered from heavy congestion of its court system prior to the enactment

Thus, the revised New York drug laws were not much more than paper changes that had little or no effect on the certainty of punishment, and that increased the severity of punishment for only a handful of offenders. Consequently, they do not provide a basis for Zeisel's conclusion that more severe punishment does not deter serious offenders.

Zeisel's analysis of the deterrent effects of the New York drug laws (and his analysis of capital punishment statutes) would be very valuable if they exposed the fraudulent and overblown predictions of those who propose and enact such laws. Instead, he proceeds as though capital punishment laws and stiff drug laws were fully implemented and actually did make things worse for more than a very few offenders, and concludes that sentence increases have "dubious deterrent power" against serious crimes (p. 64).

In doing so, he overlooks the fact that statutes authorizing heavy sentences for serious offenses are of dubious deterrent value because they rarely effect a difference on practice and because serious offenders perceive as almost nil the probability of suffering severe penalties. As Zeisel points out, few serious offenders are apprehended, and few of those apprehended suffer the maximum allowable penalties for their offenses. That is so because we lack the capacity and the will to enforce the laws defining and authorizing punishment for many serious offenses. That has not been so where lesser offenses — which have been deterred by more severe punishments — are concerned.

Speeding, parking violations, and drunk driving are relatively easy to detect and to punish as heavily as the laws allow without strain on either the capacity or the conscience of our law enforcement apparatus. Two officers with a radar gun can deter virtually everyone using a major highway from committing speeding offenses. When their prevention efforts fail, the officers can quickly and efficiently cite violators; when those violators appear in court, judges who order maximum penalties do not strain the system or drain its resources. To the contrary, they increase its revenues. Further, it is

of the 1973 law. In any state or city suffering from similar court congestion, it would make little difference whether laws like New York's were passed or not. If enacted, such statutes would be likely to founder in the implementation process; the major result would probably be an increase in the amount of money spent. . . .

The key lesson to be drawn from the experience with the 1973 drug law is that passing a new law is not enough. What criminal statutes say matters a great deal, but the efficiency, morale, and capacity of the criminal justice system is even more of a factor in determining whether the law is effectively implemented. Whatever hope there is that statutes like the 1973 revision can deter antisocial behavior must rest upon swift and sure enforcement and a dramatic increase in the odds that violators will in fact be punished. Until New York's criminal justice process is reformed so that it can do its work with reasonable speed and reasonable certainty, the Legislature does not in reality have serious policy options to choose from. Without implementation there is no policy; there are only words.

Id. at 25.

likely that severe penalties deter lesser offenses because most of those they affect stand to gain little, but lose much, by their offenses. The speeder's offense, for example, gains him only a few minutes, but involves the risk of a delay on the spot, a day in court, a fine, a license suspension, and insurance premium increases or cancellation.

Most of the serious offenders studied by Zeisel face a different cost-benefit analysis. As he points out, serious crime is predominantly an activity of young males at "the bottom of the socioeconomic scale" (p. 81). Crime thrives "in the slums and ghettos of the city" (p. 83), where the young too often have little to lose, and too often learn early of law enforcement's ineffectiveness in preventing, detecting, and punishing the serious criminal acts by which they might gain money and prestige.

The conditions of the ghetto and the cost-benefit analysis they generate are the bottom line of Zeisel's book: he knows, as does anyone who has thought about or studied crime, that the ghettos are, and have been for generations, the breeding ground for much of the violence and theft that affects us all. Even though his reasoning is sometimes lacking in depth and objectivity, in his final analysis, Zeisel is correct: unless we officially recognize and make serious attempts to ameliorate the terrible conditions of the ghetto, we are fighting a losing battle against crime.

Crime, suggests Zeisel, is much like physical disease (pp. 84-85). He is right: like the causes of cancer, the causes of crime are statistical and complex, and not everybody exposed to those causes becomes afflicted. We have long demanded that the medical establishment attempt to identify and remedy carcinogenic conditions. Because we seek to protect future generations from becoming afflicted with cancer, we would be dissatisfied with a medical establishment that merely attempted to identify and treat those already afflicted. We have not gotten that message where crime is concerned: we have a good idea of what the major causes of crime are, and where to find them, but we ignore them. Instead, we persist in fighting crime only by assigning our law enforcement establishment the impossible task of attempting to identify and treat those already afflicted.

Zeisel's book is a demonstration of the limits of that approach. Like the cancer victim, the individual afflicted by criminogenic conditions is often identified only after it is too late for treatment. Unlike the cancer victim, however, the criminal does not volunteer himself for treatment. Instead, he resists identification and, while we search for him, he victimizes others. Zeisel correctly insists that we must take a cue from the medical establishment, and attempt to remedy the criminogenic conditions in which so many of our people live.

If we do not heed him, we fail not only ourselves, but future generations as well.