

## Crime and Punishment in the New Decade

AS AMERICA MARCHES into a new year, our nation faces myriad challenges known to almost all of us and splashed across every news outlet. As we remake our health care system and confront the difficulties of a reeling economy, it's understandable that some of our longer-term challenges temporarily fade in comparison.

Receiving much less attention, for example, is that the year 2010 begins the fifth decade of an ongoing battle—in the street and in the academy—over how to fight crime in modern society. Our nation has changed in so many fundamental ways during this period, and at times the criminal justice system has struggled to keep pace with the changing environment. The difference between success and failure in these endeavors can come down to a particular observer's point of view, and the left/right, red state/blue state divide often creates points of view that are diametrically opposed to each other.

### Changing Times

In the turbulent 1960s, the United States experienced a rapid increase in crime that seemed to track the massive social change sweeping the country. Also during this period, the Warren Court led the charge to even the playing field for those accused of crimes, as decisions such as *Gideon v. Wainwright* and *Miranda v. Arizona* reflected the belief that government power over the accused needed to be checked.

So, just as criminal activity was skyrocketing to levels never seen in the past, law enforcement agencies were having to adjust their policies and procedures to fit new legal norms. Gone were the days of leaning on suspects until they confessed. Society was changing in the most basic ways and, in many respects, so was the nation's criminal justice system.

Against this backdrop, throughout the 1970s, major urban centers like New York City slid deeper and deeper under criminal control, and many commentators blamed (in part) our nation's lack of criminal justice resources, such as prison space and corrections officers. According to one of the arguments, without enough space for those convicted of

crimes, in many cases, the criminal justice system had no choice but to mete out light punishments or none at all. Such a situation, of course, is doubly bad—not only are communities denied the benefit of having criminals off the street during their incarceration, but also the system as a whole cannot perform its crucial function of deterrence.

Understandably, the dilemma described above led communities across the country to build more and more prisons. In addition, local, state, and federal authorities started directing funds to police departments to expand the number of police officers on the street. Partially as a result of these initiatives, beginning in the early 1990s, crime rates everywhere began to fall, and something of a renaissance swept through America's major metropolitan areas during this time.

And now we find ourselves at the dawn of a new decade. Although crime rates are lower than they were in the 1970s, we still lag behind most other Western nations in controlling crime. What's more, at any given moment, nearly 1 percent of our population is behind bars.

### Changing Views

So what do we make of these statistics? Even though a recent editorial in the *Washington Post* argued that the country may soon see “a degree of public safety not seen since the 1950's,” Mark Kleiman, in his new book, *When Brute Force Fails*, offers a very different assessment. Pointing out, as noted above, that almost 1 percent of our country's population is in jail, Kleiman argues that our crime rate is simply not low enough to justify such a high incarceration rate. To Kleiman, in order to be justified, the cost (the high incarceration rate) should yield a greater benefit (a lower crime rate). Furthermore, he argues that we can have lower crime without jailing so much of our population.

These two conflicting pieces reflect two very different points of view as to what is most valuable in a criminal justice system. The *Washington Post* editorial focuses primarily on the continued drop in national homicide rates, placing value almost exclusively in the prevalence of the most heinous of crimes. Kleiman, conversely, argues that severity in punishment is incompatible with swiftness and certainty, both of which (as any parent can attest) are much more important in achieving a long-term decrease in criminal behavior. As Kleiman puts it, our

current approach “leads to sporadic and delayed punishments as the system overloads.” What we are left with, then, are “great quantities of punishment, much of it severe, and effective control of nothing and no one except those actually behind bars.”

Of course, talking about crime rates and incarceration also raises unpleasant questions about race and class that often make frank, open discussions of already-difficult issues nearly impossible. Making matters more challenging, the scale of the problems currently facing our government officials practically ensures that we will not soon witness the next major step—whatever that may be—in the evolution of our criminal justice system.

### The Decade to Come

Nevertheless, even though the issue of crime control is a major one, time is not of the essence. This debate has been raging for five decades, and our system has greatly benefited from the slow percolation of ideas, along with the testing of those ideas in local “laboratories.” Change can and will come in this decade, but in this area at least, maybe we are better off allowing some local innovations to succeed or fail. **TFL**

*Nathan Brooks a member of The Federal Lawyer's Editorial Board.*

## Federal Bar Building Corporation Closes on FBA Offices



Friday, January 15, 2010, marked a very special day for the Federal Bar Association. The Federal Bar Building Corporation closed on the FBA offices and are now owners of the condominium offices. The FBA offices are located in Arlington, Va., just across the Potomac River from Washington, D.C. This closing concluded three years of special effort and guidance by the FBBC Board to ensure that the office needs of the FBA and its leadership and staff were met. The FBBC Board secured beautiful offices for the FBA headquarters that includes space for future growth. These efforts were led by former FBBC Presidents Hon. Dana E. McDonald and Robert C. Mueller and current FBBC President Alan C. Harnisch.

### FBBC Board Members

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**Federal Bar Building Corporation Closes on FBA Offices** —(top photo, l to r) Hon. Dana E. McDonald, treasurer; Alan C. Harnisch, president; and Robert C. Muller, vice president; (bottom photo, l to r) Hon. Dana E. McDonald; Robert C. Muller; Executive Director Jack D. Lockridge; and Alan C. Harnisch.