From the Editor . . .

THE REACTION OF American lawyers to the social crises of our time provides a growing area of light on an otherwise gloomy societal canvas. Contrary to the expectations of many of its critics, the profession seems to be showing a keen awareness of the need for intelligent intervention to secure law and order through a more equitable administration of justice. Why this is happening is unclear. Economic interest, narrowly defined, might be expected to continue leading the most able lawyers directly from the law review office to Wall Street firms. Even when the path detours through Washington, there seems plenty of opportunity to use governmental positions to shore up the status quo. In fact, however, many bright young lawyers are opting for assignments in neighborhood law offices, social action organizations, and even Peace Corps billets. Even those whose career lines seem more conventional often moonlight in the ghetto, write socially radical policy recommendations into the reports of governmental commissions, and press their firms to represent underprivileged clients. Legal organizations reflect these interests in the resolutions of the American Bar Association and even the work of the National Conference of Commissioners on Uniform State Laws.

One is tempted to explain this phenomenon in terms of the ancient commitment of the profession to justice. The discrepancy between the operation of law and its ideals has been effectively demonstrated in many empirical studies. The legal profession, from the Supreme Court down, now seems to have taken cognizance of this gap. Reacting to the problem of violence in the ghetto, the Executive Board of the American Bar Association will recommend to its House of Delegates a resolution in which it is urged that law violation, while not condoned, be understood as resulting partially from the failure of the society generally, and the legal profession specifically, to provide redress to ghetto residents for long-standing social injustices.

Perhaps such an orientation represents simply an application of long-standing values to new circumstances. The forms of legal redress provided in common law arose in circumstances where it was deemed sufficient for the aggrieved individual to take his case to court. In a rural setting, it was easy for judges and lawyers to determine particularistic circumstances which deserved consideration in tempering specific

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decisions to fit the predominant social values. With the growth of multiple diverse groups in an urban setting, this method has proved increasingly inadequate. The efforts to provide judges with equivalent knowledge have not produced convincing results. The premise has been that professionals from other fields may be able to provide legally relevant information to condition judicial decisions. In most instances where this has been attempted, however, the experts complain that they are being asked questions that make no sense in the context of their professional knowledge, be it psychiatry, social work, medicine, sociology or even engineering.

The usual reaction is to suggest that the other professions be better apprised of legal requirements, that lawmen be educated in the mysteries of these other disciplines, and that legal procedures and substantive laws be altered to take into account the professional thinking in the relevant fields. All such steps are based on the assumption that these professsions can act as satisfactory mediators for the population groups in question.

In many instances, however, this assumption is extremely dubious. None of the professions seems to be sufficiently in touch with the underprivileged of our society to have anticipated the unrest of recent years or even to tell us definitively what must now be done to ease the tensions which now threaten to explode our social order. Within any given social action profession, opinions vary widely as to proper policy. Such variation may result from diverse experience, initial training, and professional ideology. Whatever their origins, such differences among supposedly knowledgeable professionals must necessarily disappoint those of the legal profession who hope to find ready-made legally relevant wisdom in the other disciplines.

To maximize its utility for legal policy, knowledge must often be gathered with that objective in view. That requirement was convincingly illustrated in the background study recently prepared by Robert Levy for the Committee on Marriage and Divorce Law of the National Conference of Commissioners for Uniform State Laws. A lawyer by profession, Levy is one of a new cadre of law professors who are determined to draw to the extent possible on the accumulated wisdom of social science for whatever it can tell us about the formulation of wise legal policy in his chosen area. After a year's intensive reading, consultation, and collaboration, he has drafted a report that says he can find very little in social science literature that compels him one way or the other on such issues as whether a finding of "guilt" is needed, how to structure the disposition of property, or what rules should guide the award of custody. Instead of leading him

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away from the social sciences, however, this experience moves him instead to urge that legal institutions be structured in such a way as to improve the information available on divorce cases so that aggregated, time-series data can be obtained that will permit systematic studies of the effects of given policies.

This same approach is being called for in a number of areas. The Coleman report, reviewed extensively in Vol. II, No. 1 of this *Review*, was undertaken under a specific provision of the Civil Rights Act of 1964 which directed that a systematic appraisal be made of the progress of school integration programs. The Community Action Programs, Head Start, and other activities of the War on Poverty are likewise subject to systematic continuing evaluation. Senators Mondale and Harris have been pressing for comprehensive legislation extending this requirement to all federal social policies.

Evaluation of policies is no simple matter. To agree upon criteria of effectiveness and obtain reliable, valid measures of these criteria is a difficult business. As Peter Blau reported in *Dynamics of Bureaucracy*, the mere request for statistics by the legislature can modify the administration of a policy being appraised. When people want to prove a point or promote a policy (whether they are administrators, clients, or researchers), Heisenberg effects arise to alter the evaluative results.

None the less, such evaluation seems a vital element in the construction of rational legal policy. If we build in multiple opportunities for appraising effects, some of the error may be controllable. Persistent gathering of data may unobtrusively yield us the kind of time-series information so nicely utilized by Campbell, Rose, and Glass in their articles in this issue of the *Review*. We should be ingenious in generating new kinds of information to supplement the archival records presently kept. Albert Riess' recent study observing police work in three cities ("Police Brutality—Answers to Key Question," *Transaction*, July-August, 1968) provides valuable data on the reactions of citizens to encounters with police. The value of continuous information sampling of this kind would seem likely to far outweigh the cost.

The value of systematic feedback information is well illustrated in a pair of studies done many years ago on the effect of psychiatric social work counselling in reducing delinquency. In the Cambridge-Somerville study, it was found that an experimental group of delinquency-prone boys who received counselling had slightly *more* boys who were subsequently delinquent than a control group who were left alone. One might have concluded that counselling did more harm than good—a

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conclusion which certainly was not taken seriously by the social work profession. Subsequently, however, Stuart Adams undertook an experiment which went into the matter more deeply. In the PICO project, he divided delinquent boys in a California institution into two groups, according to the diagnostic judgment of psychiatrists as to whether or not they were "amenable" to therapy or not. These two groups, amenables and non-amenables, he then divided randomly into experimental and control groups, giving social casework counselling to the former but not the latter. The treated amenables avoided recidivism far more than the non-amenables. The non-treated, amenable and non-amenable, did about the same. But the most interesting result was that the non-amenable treated group showed much more recidivism than the non-amenable untreated group. Thus, the Cambridge-Somerville failure appears to be explicable because this form of therapy was not limited to those for whom it was likely to be effective.

Many of our social policies, I believe, persist because of their partial success but fail because they are extended indiscriminately into areas where they do more harm than good. To maximize effectiveness, we need more precise knowledge as to the effects of our policies in varying circumstances that make a difference. By systematically gathering and intelligently analyzing follow-up data, we will put ourselves in a far better position to rationally shape legal policy. To do so will require close cooperation between policy-makers and evaluators. Many signs point to the readiness of professionals in the several concerned fields to undertake cooperation of this kind.

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