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URBAN CRIME: ITS CAUSES AND CONTROL

by William A. Stanmeyer

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On July 2, 1972, four-year-old Joyce Ann Huff, a beautiful little girl, to judge by the newspaper photos, happily went out to play in the yard of her home in Los Angeles county. She played awhile, her mother occasionally glancing out at her from the kitchen a few feet away. Joyce Ann was an innocent child, full of love and promise and expectation on this bright summer day. Her parents were hardworking citizens with no enemies in the world.

Neither Joyce Ann Huff nor her mother noticed a yellow 1966 Chevrolet carrying three men roll up the street and pause while a man in the back seat, took aim with a shotgun at the little girl. But they heard a thunderous explosion as the shotgun drove 42 pellets into Joyce Ann's body and drove her soul forever from the face of this earth. Spattered with blood, Joyce Ann died within five minutes in the arms of her sobbing mother.

Witness identification enabled the police to arrest the three. The prime suspect had previously been arrested for: attempted murder, assault with a deadly weapon, robbery, burglary, arson, and narcotics charges. The motive this time appeared to be, "for the thrill of it," and the UPI wireservice story was entitled, "Police Arrest 3 for Shotgun 'Joy' Killing of Girl, 4."1

What, if anything, under our present system of criminal justice, will happen to the murderers? One may ask, What happened to Charles Manson? What happened to Richard Speck? What happened to Sirhan Sirhan? What would happen in the United States, if the murders at the Munich Olympics happened here, rather than in Germany?

The answer is that the accused murderers will be given highly motivated and sometimes high priced defense attorneys, who can: spend weeks picking a jury, demand venue changes because of adverse publicity, exclude reliable and probative evidence such as the murder weapon itself if police failed to meet technical rules of search and seizure which no other civilized country has, exclude voluntary confessions if the complex Miranda warnings were even inadvertently omitted, and so on. There may be a circus trial, lasting - once it finally starts - two or three months, draining the judiciary and prosecutor's office of manpower and the taxpayer of money. If the defense counsel is eager to earn a reputation for "never losing a case," he may resort to courtroom outbursts, ac-cusations of judicial bias, news conferences for a sympathetic TV camera. And if despite this gauntlet the prosecution obtains a conviction, there will be endless appeals as defendant and his counsel purport to discover new "constitutional rights" that were not part of the Anglo-American system of law for the 700 years that preceded the crime and apprehension of the suspect, but which allegedly were "violated" by a legal system which, despite the efforts to induce amnesia, still dimly remembers that the purpose of a trial is not to score points

im•pri•mis (Ĭm-pri[']mĬs) adv. In the first place. Middle English, from Latin in primis, among the first (things). . .

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against the police, but to discover the truth and achieve a measure of justice. And if all the appeals, briefs, and habeas corpus claims have been finally dismissed, the convicted murderers may finally begin their life sentence – but lest the parents of Joyce Ann Huff should temper their grief with the thought that, after all, at least these three sadists will never be able to destroy other four-year-old little girls, some parole board will find a way to free them once again.



During the ten year period, 1960 to 1970, our population increased by 13%, but serious crimes increased by 148%. This was also the period when the greatest prosperity in the world's history was accompanied by the greatest waves of shoplifting, drug abuse, and delinquency in the most prosperous areas, the suburbs – a fact that shatters the simplistic notion that poverty "causes" crime. It was a period when pundits made the phrase, "the Puritan Ethic," a term of opprobrium, and "intellectuals" extolled the virtues of young people who "do their own thing," whatever the harm to other citizens or to a Rule of Law. And it was a time that courts throughout the land, particularly the U.S. Supreme Court, embarked on a relentless pursuit of constitutional abstractions, whatever the cost in terms of outraged common sense or the suffering victims of crime.

Setting aside the very rare and statistically insignificant cases of crimes committed by persons who are truly insane, the common denominator of crime is a twofold loss of motivation to be responsible: a breakdown of internal morality and failure of external sanction.

The Decline of Internal Ethic

Every person alive has a value scheme. It may be conscious and cohesive (as that of most clergymen); it may be inarticulated and internally somewhat inconsistent (as that of the crime syndicate boss who kills his rivals but insists that his daughter marry a "nice boy" - and in church). But each man's value scheme is in some form a set of principles by which he respects the rights of others. Whether apocryphal or not, the legends of George Washington telling the truth about the downed cherry tree, or Abraham Lincoln walking miles to return a few pennies already forgotten by their true owner, bespeak men with a highly conscious sense of honor, rightfulness, and inner morality. The Judeo-Christian worldview offers a value scheme with motive-for-goodness both transcendant (heaven or hell) and immanent (terrestial natural law sanction for wrong doing). The military code of "honor, duty, country," epitomizes a somewhat secularized but often equally successful version of guidelines for character.

Most persons of any character at all have experienced times when the only reason they did not shoplift from an open jewelry counter, or beat up their children, or take an empty car with ignition keys in plain view, or embezzle from the company expense-account, was their own personal conscience: it was wrong, whatever the immediate material benefits. So they chose to forego immediate personal gain for the sake of being able to live with themselves. Honor meant more than money or pleasure.

But today we have a populace morally adrift. The breakdown of the family, the erosion of traditional religious influence, the failure of the schools to offer a coherent value scheme to students suspicious of relativism but without an alternative – these and other factors render almost self-evident the gloomy judgment that we no longer produce many young people with a high code of honor and clear grasp ot duty.

There is an inverse proportion between declining internal morality and the need for external motivation. If a man does what is right because it's right, he needs no policeman peering over his shoulder. If a man does what is right only because



otherwise he might be caught, he needs that policeman. Or society does.

Motivation through External Sanction

No law can make people be good. But law can make being evil so costly that people decide the gain from dishonesty comes at a price too high to pay. In fact, as a segment of the population loses interest in "doing what's right just because it's right," it becomes more urgent to strengthen external motivations. For example, if the killers of Joyce Ann Huff knew that they too would be executed within a few weeks of their crime, it is likely they would never have murdered her.² Contrariwise, if there were no penalty at all for murder, they might have rumbled down the street shooting every little child in sight.

It comes to this: we do not harm others either because (a) we believe it is wrong or (b) we fear that we ourselves will be harmed in return. As (a) recedes as a motivation, then (b) the certainty of sanction, must be intensified. When a man discards his interest in living up to principle, he will be motivated to respect the rights of others only through self-interest. It then becomes even more essential for society to insist that he not "get away with it," essential, that is, that swift and just punishment be imposed on every convicted criminal, essential that every guilty criminal be convicted, and the law enforcement officials be allowed to introduce into trial all reliable and probative evidence of guilt.

A major reason that crime has gone up 11 times faster than population, that shoplifting is destroying retail business, that bus drivers no longer carry change, that drug abuse is leeching away the lives of 10% of our high school children, that airline passengers face daily risk of hijack, that a rape occurs every 15

minutes, that little girls like Joyce Ann Huff are not safe any more even in their yards - is that just when we need more effective law enforcement the courts have set out, generally, to render it impotent. Just when we most need to strengthen the certainty of sanction, we weaken it! We have seen to it that crime does pay. And the criminal knows it.

Because of strained legal interpretations, American criminal jurisprudence has lost the common sense flexibility that characterizes the British system, our legal forebear, and which, though somewhat diminished even in England, is likely to increase in their practice long before the law abiding citizens here at last insist that we leave the mountaintop of constitutional theory and return to the marketplace of plain reason.

Toward a Return of Common Sense

Sadly, we cannot restore Joyce Ann Huff to life or ease the terrible scar in her parents' hearts. But we can develop rules of criminal law which will both deter such atrocities in the future and insure that murderers do not get another chance to destroy innocent people. There follow ten recommendations that will help restore the potential victim's constitutional right to life, liberty, and a secure chance to pursue happiness. Some require court approval; others legislatures could enact. Most are the practice or the direction of reform in England. And all, if adopted, would intensify that external sanction so desperately needed as internal morality evaporates.

(1) End Endless Appeals. Presently we have a system wherein "The State court first tries the defendant, and then the defendant tries the State court in the post-conviction procedure. He can now, under some recent decisions of the Federal Courts, go into court a third time and try his lawyer."³ Every system of law must have finality, a time when the decision is fixed. We should require that most constitutional objections be adjudicated by the appropriate appellate court within two weeks of their assertion, while the trial court recesses, instead of waiting till a lengthy trial is long finished. It makes little sense for an appellate court in 1971 to reverse a 1968 conviction and order a retrial to occur in 1972: witnesses have forgotten and evidence has been lost. Also, since perjury or outright lying is rampant in habeas corpus petitions, we should add, for every instance of proved perjury in habeas corpus petitions, a mandatory five year sentence, to be served consecutively, not concurrently, with the given sentence for the principal crime.⁴

(2) Permit All Voluntary Statements. Under the present rigid Miranda rule, courts often reverse the conviction of a person whose guilt is indisputable, simply because the police failed to warn him of his rights before he voluntarily confessed. Such a practice borders on madness, since it mocks the criminal justice system, does manifest injustice, and utterly neglects to protect the next victim from the released criminal's next depredation. A better rule would be that all suspects should be warned of their rights, but that trial judges would be permitted to admit otherwise untainted confessions in the interest of justice when the failure to give the correct warnings was inadvertent, or could otherwise be explained. Indeed, the British Criminal Law Revision Committee has gone further and recommended that police no longer be required to caution suspects that they have a right to remain silent, but rather simply give the accused a written notice advising him to mention any fact on which he intends to rely in his defense and warning him that failure to do so might adversely affect his trial. 5

(3) Permit Prosecutor to Comment on Accused's Refusal to

Testify. The privilege against self-incrimination was never meant to be expanded into a privilege to keep the jury ignorant that one refuses to testify, or to prevent common sense inferences from this silence being called to the court's attention. In everyday life if one is accused of wrongdoing he is normally eager to explain himself and rebut the accusation. Common sense naturally infers that the man who prefers to sit silent rather than defend his reputation has something to hide. Both the prosecutor (and defense counsel, needless to say) should be free to comment on this silence and urge upon the jury their interpretation thereof. If there is a bona fide explanation for silence, let the contending attorneys argue what weight the jury should give it. Why must we leave common sense at the courtroom door and attempt to play a game in the court that people in real life would find artificial?

(4) Let the Judge Choose the Jury. In many European systems of justice the judge takes an active role in jury selection. The process takes at most a couple days per trial. There is no evidence that this approach results in more biased juries than ours, which motivates both prosecution and defense to seek a jury that is as biased as possible toward his own viewpoint. And it avoids the scandal to layman and Bar member alike, of jury selection dragging on 6 or 8 weeks or more, as in the Speck and Manson trials, while newspaper publicity endangers a fair trial. If "Justice delayed is justice denied," then our present jury-selection process comes perilously close to institutionalized injustice. The public has a right to speedy trial too.

(5) Limit Continuances; Punish Delayers. From Traffic Court to Felony Court, complaining witnesses are aghast at the price in time and inconvenience they must pay to get a chance to tell their story in court. Prosecutor and Defense Counsel should be required to notify the clerk or court of any delay they will cause, so that he can telephone that fact to the witnesses at least 48 hours in advance, under pain of the party causing delay pay that witness damages, say \$100 for his inconvenience in coming to court only to find the case continued. No more than one continuance should be allowed save for "just cause," defined narrowly to include only such unforeseen and unavoidable emergencies as accident or sickness. Defense Counsel who seek continuances "because of the press of other work" should be penalized. Prosecutors who seek continuances "because unprepared" should be required to "contract out" the case to court-appointed "Special Prosecutors" from the civil Bar. Statutes should empower courts to order general circulation newspapers to publish the names of Counsel who cause unjustified continuances, so the public will know who is delaying justice.

(6) Require Non-Unanimous Juries. The Supreme Court has recognized that it is unreasonable to insist on unanimity among 12 persons and thereby give one who is stubborn or eccentric a veto over the responsible judgement of the other 11. Yet to my knowledge probably only about 6 States permit a non-unanimous jury. Within the guidelines of the Court's ruling, States should quickly permit juries to convict on the vote of a 10-2 majority.

(7) Impose Mandatory No-Parole Five-Year Sentence for Any Crime – Related Conduct Committed With A Gun. "Crime-Related Conduct"

means conduct which leads to prosecution for a crime, even if the accused is ultimately released on the principal charge. For example, X may be arrested for bank robbery but ultimately acquitted because of the rigidities of the Miranda and Mapp

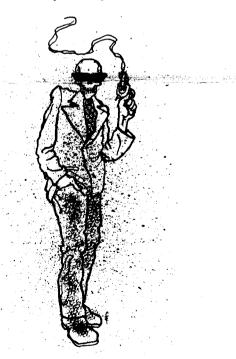
(exclusionary) rules. At the trial for the separate offense of "Using a Gun in Crime – Related Conduct," the fact of the bank robbery prosecution must, of course, be admissible, as should the acquittal and reason therefor. The other reforms outlined in this essay should be liberally applied in prosecutions for this offense. All sentences for convicted gun-users must be consecutive, not concurrent, to any sentence for other crimes. A "gun" should be defined to include unloaded real guns or any device that the perpetrator leads unlookers reasonably to believe is a real gun, such as certain toys.

This is a much more sensible approach to "gun control" than making innocent people register their guns. For this proposal deals with the abuse of guns by the criminal, not their use by the law-abiding.

(8) Restore the Death Penalty for Heinous Crimes. These should be defined to include: murder, aggravated kidnapping, aggravated battery to a minor through torture or sadistic abuse, placing a "live" bomb where it can endanger human life, and air hijacking.

One may say of capital punishment what Churchill noted of democracy: it is the "least worst" approach - here, to deterrence.⁶ It is also the only way to protect the innocent from the incorrigible killer. For what will motivate the man who already has received one or two "life" sentences for murder, not to murder again? Why should he not attempt to escape from prison by killing the guards? Why should he not enrich himself by kidnapping children, burying them alive, and threatening to let them suffocate unless a city pays a huge ransom, as did the sadist killer in the movie Dirty Harry ...? What will stop snipers who kill policemen in cold blood? Why not hijack an airliner, even though it endanger's a hundred lives? Why not bomb the math building at University of Wisconsin to express one's perverted "protest"? Why not shotgun four-year-old girls to death for the thrill of it, or methodically execute a whole group of innocent people, as did Manson and Speck?

I do not say that the possibility of death would deter each



of these crimes in every case; but I do say that "life imprisonment" cannot. For once a man has received one "life sentence," there is nothing more society can do to him. This means that no matter what crimes he subsequently commits, there will be no punishment. And considering parole board solicitude for prisoners, "life" often means only a few years on confined welfare.

Thus, even as the individual loses internal motivation, society withdraws all external incentive to respect the rights of others. For to remove the death penalty is to repeal the criminal code for "repeaters" – and make life infinitely more dangerous for the lawabiding citizens, whose lives are deemed unimportant by a society unwilling permanently to remove from their midst the torturer and the terrorist.

(9) Liberalize the Exclusionary Rule. The rule prevents the prosecution from using reliable, probative evidence if it is the result of a search or seizure which was offensive to the "constitutional rights" of the defendant. It results in "a pervasive system of calculated non-use of evidence that astounds the lawyers of other countries."⁷ To see the absurdity of the rule as presently applied, consider these cases:

(a) One night police officers visited the apartment of Donald Painten and George Ash, strongly suspecting them of a string of armed robberies. When the officers knocked, the two threw a bag containing their guns onto the fire escape, then asked the police in. A detective watching outside saw this, retrieved the guns, and arrested the two. The U.S. Court of Appeals (1st Cir.) overturned Painten's conviction on the ground that the guns were illegally obtained. The court's reasoning was that the officers intended to conduct an illegal search, and this illegal intent caused the robbers to toss their guns out the window! Under this rationale (?), the guns should have been excluded at trial.⁸

(b) James Beck was riding his bicycle along a road in Phoenix shortly after 3:00 a.m. on October 18, 1967, when a Cadillac pulled alongside him and forced him off the road. Several assailants emerged from the car, grabbed Beck around the neck and body, forced him into an irrigation ditch, and robbed him of his watch, wallet, checkbook, money and keys: The victim called the police and an emergency bulletin was sent out on the police radio.

At 3:18 a.m. the Cadillac was seen and stopped by the police. The defendants were taken into custody and the car garaged. About half an hour after the defendants were arrested, the vehicle was searched and the stolen items found. But the court held that the warrantless search of the auto was not justified and reversed the conviction! [State v. Madden, 465 P. 2d 363 (Aug. 1970).]

(c) A woman who lived alone was awakened in her bedroom by the defendant, who threatened her with a knife, robbed her, and raped her while she was forced to lie on her stomach with a pillow over her head. With the aid of a night light she saw the knife and also noticed that the defendant was wearing leather boots. As soon as he left, she

called the police. They searched the area and found boot tracks outside her house. They traced the tracks to the vicinity of defendant's house. After knocking and entering, the officers observed defendant standing with his boots on. He was questioned and told to go outside and place his boots in the tracks. Later, the boots were confiscated and defendant taken before a magistrate. One of the officers returned to his house, conducted a warrantless search and found the knife used in the rape. But defendant's rape conviction was reversed with the court holding that the arrest and search, without a warrant, were illegal. [Woods v. State, 466 S.W. 2d 741 (Texas 1971).]

In every case – and a dozen others I could cite if there were space – reliable, probative evidence is excluded, to "punish" the police for their errors. But since manifestly guilty persons are let loose to seek other victims, the only one punished is society. Of the logic of such a practice, John Henry Wigmore, the authority on evidence law, observed by way of parable:

Titus, you have been found guilty of a crime; Flavius, you have confessedly violated the Constitution. Titus ought to suffer imprisonment for crime, and Flavius for contempt. But no! We shall let you both go free. We shall do so by reversing Titus' conviction. This is our way of teaching people like Flavius to behave, and of teaching people like Titus to behave, and incidentally of securing respect for the Constitution. Our way of upholding the Constitution is not to strike at the man who breaks it, but to let off somebody else who broke something else.⁹

"The basic premise of modern theories of justice is that a man's guilt or innocence should be decided by weighing the evidence; that if all evidence is produced in court, it can be rationally weighed, and the decisions of the court will come as close to the truth as is humanly possible. The exclusionary rule runs counter to this basic premise; a criminal, who may have committed a terrible crime and is a danger to the public is now released, not because he is innocent, but because long after the arrest, a court disagrees with the peace officer and the trial judge on the manner in which the evidence supporting the conviction was obtained."¹⁰

The practical basis for the rigid exclusionary rule is that it is supposed to deter police abuse in search and seizure. We now know that this assumption is invalid. "As a device for directly deterring illegal searches and seizures by the police, the exclusionary rule is a failure."¹¹ It should be drastically changed, if not ultimately abolished; and presently it should be applied only to willful, flagrant, and substantial violations of search/seizure rights. For "Only a system with limitless patience with irrationality could tolerate the fact thatwhere there have been two wrongs, the defendant's and the officer's, both will go free."¹²

(10) Publish the Later History of Accused Felons, and (with permission) the Felons' Victims and Families of Victims. The most forgotten person in the world is the victim. Perhaps second most forgotten is the person who harmed the victim. To rouse public concern for the victim and public insistence that trials have the benefit of all reliable evidence, and that convictions do "stick", we should publish, periodically, case histories of representative victims of crime and criminals. We may be shocked to discover how long it takes a victim, if he survives his assailant, to reassemble his life - and how quickly the assailant is back on the streets.

Many factors generate crime. That "inner morality" necessary to resist the temptation to rape, rob, or kill weakens in an environment of broken homes, systemic poverty, ethical relativism, religious decline. Poverty "causes" crime in general in the same way that pornography causes sex crimes and television violence causes violence by children: it is a predispositive condition. The "underlying causes" of crime are spiritual as often as economic, psychological as often as material. If we could strengthen family life, raise the living standard, instill character values, and convert the citizenary to a religious outlook we would doubtless lower the crime rate. But these improvements take years. And experience shows that in these areas government action is singularly ineffective.

But the cause of crime, as opposed to helpful conditions, is the criminal's judgment that he can get away with what he's doing, that what he's likely to gain is worth risking what he is (under today's practice) unlikely to lose. And here government can change the criminal's mind. As long as crime does "pay," there will be crimes. Thus our job for the near future is to make sure not only that crime does not pay, but that it hurts. We must develop a system that convinces the would-be criminal, by his own very practical calculus of pain versus pleasure, that he will risk – and lose – much, to gain little.

The more we lower the penalities for conviction through "probation" and "suspended sentences," the more we make it hard if not impossible to obtain convictions through the archaic exclusionary rule and the hyper-rigid Miranda requirements and a host of other artificialities turn a trial into an exercise of gamesmanship instead of a search for truth, the more we imbalance the pain-versus-pleasure calculus in favor of the criminal. For the more likely the amoral man is to "get.away with it," the more willing is he to try it. Though some would-be criminals might misjudge their own best interests even under a pleasure/pain calculus that overbalanced grave evil with quick and severe punishment, it is likely that premeditated heinous crimes would decline. For it is hard to believe that the killer of four-year-old Joyce Ann Huff would have acted that tragic day last July, if he had moral certainty that by the end of August, say, he too would be dead because of his crime.

Some readers will find this essay distressing. They will allege that these recommendations make it easier to violate the rights of the innocent. My answer is that they make it much, much easier to convict the guilty and thereby protect the rights of the innocent. "Domestic tranquility" and a measure of personal safety are constitutional rights of all citizens. If there must be a trade-off, we should be more concerned about the civil liberties of little children than about those of accused murderers who alreadly had been arrested for six previous felonies and yet, incredibly, still roam the streets with their shotguns. We should be more concerned about the rights of law-abiding parents to raise their children in peace and safety than about the claimed right of a murderer not to be searched. Our nation has almost reached the point where the safest person in America is the man accused of a serious crime.

I look forward to seeing those who disagree with this essay come forth with a scheme to restore Joyce Ann Huff's civil liberties to her. I await better recommendations than these, to save other little girls from losing their liberties, as we enter the second decade of the Supreme Court's "criminal justice revolution" – facing the greatest crime wave in our history.

¹ See UPI story with this caption, dateline July 4, 1972, originating in Lakewood, California, CHICAGO TRIBUNE (7/4/72), p. 5.

² The possibility of the death penalty does deter heinous crimes in many cases. See "The Case for the Death Penalty," testimony by Frank G. Carrington, Executive Director of Americans for Effective Law Enforcement, before the House Judiciary Committee, (3/16/72), reprinted in HUMAN EVENTS (4/22/72), p. 12, citing numerous cases where felons chose not to carry or use guns in committing felonies, out of fear of capital punishment.

³ Senator Sam J. Ervin, Jr., quoted by Fred P. Graham, THE SELF-INFLICTED WOUND (1970), p. 109.

⁴ Perjury is a serious crime, as it strikes at the very heart of public morality (necessity of truth-telling) and the legal system (necessity of finding truth as a precondition to justice). In Illinois the penalty is a fine up to \$1,000 to jail up to a year, or imprisonment in the penitentiary from one to 14 years or both. Thus depending on the facts, it is a misdemeanor or a felony. Considering the gravity of lying in a habeas, corpus petition — the legal process is undercut, the given convict may mistakenly be released to prey on society, and others are similarly motivated – a five-year sentence is not excessive.

⁵ "Tougher Trials for Criminals – A British Plan," U.S. NEWS & WORLD REPORT (7/10/72), p. 45.

- ⁶ See Note 2, supra.
- ¹ Graham, p. 132.
- ⁸ Ibid., p. 163.
- ⁹ Ibid., p. 140.

¹⁰ "Exclusionary Rule Task Force Committee Report," COURT REFORM BLUE RIBBON COMMITTEE REPORT (Subtitle, "Delegate Recommendations to the California Conference on the Judiciary, 1972), p.9.

¹¹ Dallin H. Oakes, "Studying the Exclusionary Rule in Search and Seizure", 37 U. of CHI. L. REV. 665 (1970).

¹² Ibid, p. 755.

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enter for constructive alternatives projects are simply make-work schemes. I didn't expect

The first CCA program at Hillsdale College, **Recycling** the City: Alternatives to Decay, is now behind us. The position papers, panel discussions, debates, and classroom lectures will soon be published in an attractive paper-back edition. The symposium was an unquestioned success. Students, faculty, and guest scholars were all involved in a variety of stimulating formats and discussions.

Dr. Will Herberg, graduate professor of philosophy and culture at Drew University, one of the participants, had this to say about the week, "I have known hundreds of college programs and most of them can go down the drain without any efforts to retrieve them. Most college projects are simply make-work schemes. I didn't expect much here, but to my delight this turned out to be an excellent seminar. I found Hillsdale College to be one of the best liberal arts colleges that I have ever visited, and I have seen over 500 campuses in the United States and Canada."

Dr. Edward Banfield, another participant in the first program and professor of Urban government at the University of Pennsylvania, added that, "The CCA is off to a very good start. If the important problems that you have on the agenda are to be in any sense solved, they are to be solved by reasonable discussion under the circumstances that have been offered here: an attentative, intelligent, serious-minded and critical audience that put very challenging questions to me. All I might add under very delightful physical circumstances. I congratulate you."

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