

nal justice and penal rehabilitation as a series of connected events. We must see it as a convicted person does, as a total system. We must work to achieve clearly enunciated goals that work for the entire system. And we must do it from the point of view of the man or woman involved. We cannot talk of better criminal laws, or better police enforcement or more efficient penal systems, unless we look at it as the convict must. As Professor Julius Stone has written, we must study the broad area of the interaction between law and legal institutions, on the one hand, and the attitudes and activities of men and women governed by these rules on the other. We must analyze the effect of law on men and men on law.

We can no longer work only in our own sphere of activity, oblivious to the needs, achievements and reforms being made in adjacent areas of the legal process. For instance, the new Law Reform Commission of Canada, under Mr. Justice Patrick Hartt, will shortly be starting a review of the Criminal Code. Reform of the criminal law must now reflect the total criminal judicial process, including rehabilitation programs. What must be analyzed is the system as a whole and not just a component part. Only by adopting a systems approach to the criminal process and utilizing feedback analysis can we achieve what we hope from the completed process. In so doing, we will find that such an analysis forces us to think in terms of total impact upon the individual as a person, rather than in terms of a series of isolated problems that somehow involve individuals.

IMPORTANCE OF FIRST CONTACTS

It was this approach — the ultimate effect on the individual — that governed my thinking in the Bail Reform Bill, which has now received second reading in the House of Commons, and is now before the Standing Committee on Justice and Legal Affairs. The bill, if it becomes law, will bring about fundamental changes in the law relating to the powers of arrest and the release from custody before trial of accused persons. The attitudes of ordinary men and women in this country about our laws are based on the first contacts that they have with the local law enforcement authorities, with the local police force, or local criminal court. A prisoner's first impression of the law may determine whether he can be properly rehabilitated later. The Bail Reform Bill aims to make that first contact between citizens and the criminal judicial process less abrasive.

In this age of confrontation, law enforcement agencies the world over are required to deal with a complete spectrum of problems that run from so-called misdemeanors of petty crimes such as theft, assault and so on, through to new and sophisticated ranges of crimes that border on civil disobedience, all the way to violence and organized, syndicated crime. The law must give our police the flexibility they need to meet whatever particular situation is at hand

and to meet it, of course, with measures that are effective in preserving or restoring public order. Yet, these measures must not amount to overkill, which can destroy the *rapport*, public support and community identity, which police forces across Canada are striving, I believe, to achieve. This feeling of community identity between our law enforcement authorities and the people who entrust them with the preservation of freedom and order under law, is the only continuing basis for sustaining the rule of law in our country.

BELIEFS BEHIND BILL

The provisions which the Government has submitted to Parliament for its approval are based on the belief that the personal freedom of the individual should be interfered with by the state only where such interference can be proven by the state to be necessary to protect the larger interests of society as a collective whole.

I believe we must go farther than that. I believe that we have to give the courts and the police reasonable guidance on what we mean by the "public interest". I believe that we have to support legislation which will diminish personal freedom only when any restrictive measures will, in fact, result in protecting the public interest. In a free society, we have to strike a balance between the rights of the individual and rights of society. The most difficult decisions that police and magistrates have to make, particularly at the arrest-and-bail stage, involve testing the rights of the accused against the rights of the community. Striking the balance between liberty on the one hand and the security of the state or maintenance of public order on the other, requires the most difficult human judgment that men and women are called upon to make.

OBJECTS OF REFORM LEGISLATION

The objectives of the Bail Reform Bill are fourfold: First, to avoid unnecessary pretrial arrest and detention; second, to ensure that in cases where arrest with or without warrant has taken place, the person accused, whatever his means, is not unnecessarily held in custody until his trial; third, to ensure an early trial for those who have been detained in custody pending trial; fourth, to provide statutory guidelines for decision-making in this part of the criminal law process relating to arrest and bail. Underlying these four objectives is the hope that anyone ultimately found guilty and convicted will feel that at least he has been fairly treated. This may make a difference — later.

The provisions of the bill place an onus on police officers not to arrest a person where the public interest can be satisfied by less stringent measures. The other options available to the police officer are the summons procedure that is already in effect under the Criminal Code, as well as a new