BOOK REVIEW — *ESCAPE OF THE GUILTY*: WHAT A WISCONSIN TRIAL JUDGE THINKS ABOUT THE CRIMINAL JUSTICE SYSTEM

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Escape of the Guilty,[1] by Milwaukee County Circuit Judge Ralph Adam Fine, promises to tell "the untold story" that the criminal justice system is not doing its job. In the author's words, "it seems more intent on finding reasons to let admittedly guilty criminals escape punishment than in doing justice for society."[2] Judge Fine's premise is that there has been a tremendous recent increase in crime, caused primarily by lenient treatment of young offenders, by letting the guilty escape punishment on technicalities and by compromising with those who are held accountable for violating the law. Judge Fine uses examples from his own experience and notorious cases from around the country to illustrate the problems he sees in current practice. He offers suggestions for addressing some of those problems.

Judge Fine's book has generated considerable spirited debate in Wisconsin and across the nation. It is difficult to review only the book, ignoring the public statements made by the author and those who disagree with him. The media reports of the book's contents and of the author's positions often state them more extremely than does the text itself. But one must assume that the words in the book control and state the author's true and considered position. In the interest of clarity, this review will first try to summarize the book's contents in impartial terms and then evaluate the positions advanced by the text.

The first five chapters of *Escape of the Guilty* provide background and historical information intended to illustrate that

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1. R.A. FINE, ESCAPE OF THE GUILTY (1986).
2. *Id.* at xii (1986).

excessive reliance on plea bargaining is the primary reason for the failure of the criminal justice system. Plea bargaining is characterized as a "compromise with crime" based on expediency. These compromises make the work of judges and lawyers easier, but hurt everyone else because the public interest is not served by a system that gives deals to criminals. Bargaining prevents successful deterrence because it obscures the connection between illegal activity and its sanction. It teaches the criminal that some violations will go unpunished and that most can be discounted. It so separates the "pain signal" of punishment from the criminal act that the system loses its credibility. Even when the defendant really is not getting a good deal, he thinks he is — and that is just as bad.

The primary basis for the criticism of plea bargaining is that it harms society and gives criminals an undeserved break. However, Judge Fine includes a chapter that points out that a system based on plea bargaining hurts defendants as well. Relying on the United States Supreme Court decision in *Bordenkircher v. Hayes*,[3] Judge Fine points out that plea bargaining has great potential for coercing pleas from the innocent or punishing defendants for the exercise of their constitutional right to a trial. He reemphasizes his belief that the only reason for plea bargaining is that it makes things easier for everyone.

Chapter Five, "The Paml Shade," takes its attention-getting title from the author's experience with a public television auction. One of the to-be-auctioned items was identified as a "paml shade" and was the subject of considerable bidding and eventual sale. It was not until after the bidding had been completed that Judge Fine pointed out to the others that the exotic "paml shade" was just a mistyped "lamp shade." The judge uses this analogy to illustrate how people who are too close to something or too familiar with details may lose sight of the broader picture. Thus, judges and lawyers fail to realize that there is no history to support the practice of plea bargaining and that it is not necessary as a practical matter. He says

3. 434 U.S. 357 (1978). In *Bordenkircher*, the United States Supreme Court held that the due process clause is not violated when the prosecutor carries out a threat made during plea negotiations to reindict the defendant on a habitual criminal charge carrying a mandatory life sentence if he does not plead guilty to a five year felony based on the uttering of an $88 forged check.

that the United States Supreme Court decisions[4] that explicitly recognize the value of the practice are simply wrong, and he points to the banning of plea bargaining in Alaska as evidence that the practice can be successfully abolished without bringing ruin and breakdown to the system.[5]

Chapters Six and Seven of *Escape of the Guilty* condemn the *Miranda*[6] rule and the exclusionary rule of the fourth amendment. *Miranda* is called a "cataclysmic" change that has bred a series of hypertechnical rules that let the guilty go free while depriving the courts of trustworthy evidence.[7] Judge Fine's preference is first identified as a return to voluntariness as the sole criterion for judging the admission of confessions. However, later on, the author says he would keep the *Miranda* rule if it were his choice, though he feels that its scope should be narrowed and applied "with common sense and restraint."

Judge Fine's analysis of the fourth amendment exclusionary rule is much like his *Miranda* critique. *Mapp v. Ohio*[8] is characterized as a close case which was an unwise decision with terrible consequences. Judge Fine believes that the criminal should not go free when the constable blunders, and cites the standard arguments in support of that view. However, as with *Miranda*, Judge Fine admits that if it were up to him, he would probably keep the fourth amendment exclusionary rule but apply it with common sense.

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4. Judge Fine refers to Santobello v. New York, 404 U.S. 257 (1971); North Carolina v. Alford, 400 U.S. 25 (1970); Brady v. United States, 397 U.S. 742 (1970).

5. The Alaska initiative is described in M. RUBINSTEIN, S. CLARK & T. WHITE, ALASKA BANS PLEA BARGAINING (National Institute of Justice 1980) [hereinafter M. RUBINSTEIN].

6. Miranda v. Arizona, 384 U.S. 436 (1966).

7. The *Miranda* discussion includes reference to an unusual case of which I was not aware. It was a California case where the defendant's statement was suppressed on a four-to-three vote of the California Supreme Court. The defendant's attorney, who had been successful in the state courts, wrote to the United States Supreme Court to protest the "illogic of it all" and to protest the reduced protection his family now had as a result of rules like these that freed criminals. Justice was ultimately served in this unusual case when the defendant confessed again on television's *60 Minutes* and that confession was used against him in a later trial. This is intended to show that even lawyers who "win" under these technical rules are bothered by the results. R.A. FINE, *supra* note 1, at 137-40.

8. 367 U.S. 643 (1961). *Mapp* made the fourth amendment exclusionary rule applicable to state practice.

Chapters Eight and Nine return to the theme developed in the plea bargaining discussion. The juvenile justice system is brought to task for treating young people too leniently when they are first exposed to the justice system. The judge feels very strongly that this leniency teaches young people that they can get away with breaking the law. Judge Fine would prefer a return to the *"parens patriae"*[9] juvenile justice system which was less formal and not governed by the criminal due process rules. He feels that the adversary model does not fit the needs of juvenile offenders and that it was a mistake to apply it to the juvenile court. He looks back, apparently with approval, to the days when it was assumed that young people were entirely responsible for their actions, using the example of a twelve-year-old who was executed for murder in 1820. Judge Fine feels that prompt and significant punishment is "essential to civilize our children" and cites a number of examples from his one-year stint in the juvenile court in Milwaukee County where lenient treatment led to a series of criminal violations that escalated in seriousness.[10] In a few instances he spells out in great detail his inability to obtain cooperation in getting tough with juvenile offenders. Prosecutors, defense counsel, social workers, probation officers, and psychologists are all criticized for resisting efforts to hold young people responsible for their criminal acts.

Chapters Ten and Eleven are devoted to exposing the fallibility of psychiatry and psychology, at least as those disciplines are applied in the criminal courtroom. He argues that "mind science" is not a science at all, that mental health professionals cannot agree on diagnoses and cannot tell the mentally ill from the sane, that "projective" tests like the "Rohrschach" are not reliable,[11] and that dangerousness or other future behavior cannot be predicted. Judge Fine provides a readable and informative history of the insanity defense and criticizes the broadening of its coverage as another

9. *Parens patriae* is a Latin phrase meaning "father of the country." Under this doctine, the judge acts as a substitute father. R.A. FINE, *supra* note 1, at 169.

10. *Id.* at 175-91.

11. Projective tests "make the patient or subject 'project' his or her subconscious emotion." The Rohrschach "inkblot" test is a projective test. "[T]he patient is asked to describe how he or she perceives various abstract forms." R.A. FINE, *supra* note 1, at 210.

example of judicial legislation, one that starts on the road to excusing all crime as determined by factors other than personal blameworthiness. The ALI test,[12] the most widely used in current practice, is criticized as letting juries play "expert roulette" with society's safety. The procedures governing the release of persons found to be not responsible are also criticized. The critique concludes, however, with a recognition that the insanity defense should be preserved but that its administration and the release of those found not guilty by reason of insanity require a balance between the defendant's right of freedom and the public's right to safety. Judge Fine feels more weight has to be given to the rights of the public.

The final chapter summarizes Judge Fine's view that the present administration of criminal justice is tainted with practices based on expediency, the rigid application of technical rules, and inappropriate leniency. Additional examples emphasize the need for change and a final argument is made for the proposition that punishment and retribution have a legitimate function in criminal justice and that crime can be reduced if we increase the certainty and severity of punishment. The necessary changes are: eliminate plea bargaining; modify — if not eliminate — the exclusionary rules that suppress highly probative evidence; eliminate the distorted application of the insanity defense; and restore an equilibrium to community values through the "expiation and catharsis of punishment." Two "practical suggestions" are added to this general prescription: members of the public should join or form court watch groups to monitor and publicize what the lawyers and judges are doing; and, members of the public should contact

12. Section 971.15 of the Wisconsin Statutes (1985-86) adopts a standard based on the model found in the American Law Institute's (ALI) Model Penal Code:

> Mental responsibility of defendant. (1) A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacked substantial capacity either to appreciate the wrongfulness of his conduct or conform his conduct to the requirements of law.
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> (2) As used in this chapter, the terms "mental disease or defect" do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.
>
> (3) Mental disease or defect excluding responsibility is an affirmative defense which the defendant must establish to a reasonable certainty by the greater weight of the credible evidence.

WIS. STAT. § 971.15 (1985-86).

their legislators when they believe that the laws of the state should be changed.

How effective is *Escape of the Guilty* in telling "the untold story" of the failure of the criminal justice system? Answering this question requires considering two issues. First, is the present system accurately described? Second, are solutions offered to the problems that exist? As to the first issue, Judge Fine's reliance on anecdotes and "horror stories" has great potential for misleading the reader about how the present criminal justice system operates. As to the second, nothing new is offered as a solution beyond a cry to "get tough" and "use common sense." These solutions are inadequate given the complexity of the problems. To represent them as effective solutions is unfair to those who try to achieve justice in the present system, especially given the relish with which past problem cases are described. These general themes are reflected in different degrees by the discussion of each issue.

The chapters devoted to plea bargaining are the strongest in the book.[13] The material is successful in getting the reader (even one who is familiar with the system) to take a close look at the emphasis the system places on bargaining in criminal cases. Judge Fine believes that bargaining and compromise inevitably lead criminals to believe that they can get away with something and that the first of their crimes will be "free." He convincingly argues that routine charge reductions depreciate the seriousness of the offense that was really committed. Burglaries become receipts of stolen property; robberies become thefts from a person; sexual assaults become disorderly conduct. Twenty separate crimes are charged as two, which in turn are reduced. This pattern not only lets the criminal avoid responsibility for what he has already done, but also disguises his real record which misleads judges and prosecutors when he comes into contact with the system again. Judge Fine asserts that judges should follow his practice which he characterizes as not participating in the plea bargaining process. He tells defendants that he will not be bound by the prosecutor's agreement. Most judges include this as part of the plea acceptance colloquy in Wisconsin,[14] but apparently

13. Chapters one through five are devoted to the plea bargaining discussion.
14. *See Wis JI-Criminal* SM-32 (1985).

Judge Fine impresses upon the parties that he really means it. He follows the admirable practice of telling defendants that they should not plead guilty unless they are guilty and that he will not accept pleas from defendants who claim they are innocent. The latter practice is especially commendable, as it appears that few criminal defendants in Wisconsin enter pleas of "guilty" anymore: pleas of "no contest" and "*Alford*"[15] are becoming the rule rather than the exception in the state. Whether present Wisconsin practice relies too heavily on plea bargaining in light of the costs that are incurred is a question that all prosecutors, defense lawyers, and judges ought to carefully consider.

However, the plea bargaining chapters are not without flaws. First, Judge Fine flatly states that the primary reason for plea bargaining is that it is easier for lawyers than going to trial. While some prosecutors and some defense lawyers may be lazy, basing the argument against plea bargaining almost exclusively on that assumption lessens its impact. The enormous criminal court caseload presently faced by most prosecutors and defenders is a very serious problem which must be acknowledged in any attempt to analyze the deficiencies of the system.[16] To recognize that heavy caseloads may encourage plea bargaining is quite different from concluding that plea bargaining is caused by lazy lawyers and judges. Some readers may also feel that there is an over-reliance on "horror stories," examples where it is clear in retrospect that someone made an unwise decision or took a gamble that backfired. These "mistakes" can result from good faith decisions that are not attributable to laziness or misplaced inclinations to leni-

15. The *Alford* plea takes its name from the decision in North Carolina v. Alford, 400 U.S. 25 (1970), where the United States Supreme Court held that a guilty plea may be accepted from a defendant who asserts innocence but nevertheless wishes to plead guilty. In *Alford*, the defendant's plea to second degree murder allowed him to escape the death penalty that might have been imposed if he had been convicted of first degree murder after a trial. The legitimacy of the plea in Wisconsin practice (where the death penalty is not a factor) has been recognized. *See* State v. Johnson, 105 Wis. 2d 657, 314 N.W.2d 897 (Ct. App. 1981).

16. Recent reports indicate that average misdemeanor caseloads for staff public defenders are as high as 492 cases per year. Milw. J., Apr. 28, 1987, at B1, col. 1. Felony caseloads are proportionately high. *See also* Phelps, *Mounting Stress on Wisconsin's Justice System*, 60 WIS. B. BULL. No. 3, 32-34 (Mar. 1987).

ency. They are inherent in any system that relies on the judgment of individuals.

A second flaw in the plea bargaining discussion is the implicit assumption that if plea bargaining is abolished at the in-court level, it will truly go away. Every attempt to limit the exercise of discretion at one stage of the criminal process inevitably leads to its reappearing at another usually less visible point. Saying "there will be no charge reductions in this court" will not automatically eliminate all plea negotiation at earlier stages. The Alaska "no plea bargaining" experiment, recommended as a cure by Judge Fine, has been extensively studied. The conclusion was that it stopped overt sentence bargaining between the prosecutor and the public defender. But it was also concluded that while there was a substantial increase in the number of trials, actual practice and sentencing changed very little, except that harsher sentences were imposed for minor offenses and drug-related crimes.[17]

The portion of the book criticizing *Miranda* and *Mapp* is the weakest in the book.[18] The author's technique is to criticize the cases as judicial legislation, point out that they were decided by a five-to-four vote, and quote from the strongest parts of the dissenting opinion to show the errors in the majority position. Chief Justice Warren, the author of *Miranda*, is even criticized for not writing his own opinions.[19] *The Brethren*[20] is cited as authority for the proposition that the Chief Justice's law clerks were given great responsibility of opinion-writing. Then a few examples are used to illustrate just how nonsensical some courts have been in applying the ill-advised rules. Some of the examples seem to be stretching things a bit. *Brewer v. Williams*[21] is used as an example of the ridiculous results that can follow from *Miranda*. That case, of course, was not a *Miranda* case but was decided in its first appearance before the United States Supreme Court on the basis of a violation of the defendant's sixth amendment right

17. M. RUBINSTEIN, *supra* note 5, at vii-viii.

18. Chapters six and seven review the Supreme Court decisions of *Miranda* and *Mapp*.

19. R.A. FINE, *supra* note 1, at 120.

20. R. WOODWARD & S. ARMSTRONG, THE BRETHREN (1979).

21. 430 U.S. 387 (1977).

to counsel.[22] Proper identification of the case probably would not detract from the author's basic point about the effects of hypertechnical rules, but it is important to be cautious and not misrepresent what the courts have done especially when writing for a non-lawyer audience. On a similar note, *North Carolina v. Butler*[23] has been ridiculed because a guilty defendant *almost* got away on a technicality.

The discussion of the fourth amendment exclusionary rule overstates the impact of *Mapp* on criminal practice. Judge Fine fails to mention that Wisconsin, like many states, had applied the exclusionary rule to state practice long before the United States Supreme Court required that it be extended to the states in *Mapp*.[24] In light of that, it seems unfair to characterize the *Mapp* decision as a quirky five-to-four decision that caused serious problems for state courts.

Whatever symbolic importance they have, the practical impact of *Miranda* and the exclusionary rule should not be exaggerated. Law enforcement agencies have not only learned to live with these restrictions, but many feel that the professionalism of the police and the moral force of the law are

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22. *Brewer v. Williams* has been before the United States Supreme Court on two occasions. Williams was arrested on a warrant in Davenport, Iowa, and charged with abducting a 10 year old girl. He was to be transported to Des Moines, Iowa, a trip of about 160 miles. Although he was represented by counsel in Davenport and in Des Moines, neither lawyer was allowed to make the trip with the police and Williams. During the trip, apparently spurred on by the "Christian Burial Speech" of a detective, Williams made statements that helped police find the little girl's body. At the time, *Brewer* was touted as the case that would overrule *Miranda*. However, the Court held that "there is no need to review in this case the doctrine of *Miranda* . . . [f]or it is clear that the judgment before us must in any event be affirmed upon the ground that Williams was deprived of a different constitutional right — the right to the assistance of counsel." *Brewer*, 430 U.S. at 397-98. The sixth amendment precludes questions deliberately elicited in the absence of counsel, after the right to counsel has attached. Thus Williams' statements and the evidence flowing from them were suppressed.

The case returned to the United States Supreme Court in 1984. The Court held that the evidence need not be suppressed because it "would inevitably have been discovered without reference to the police error or misconduct." Nix v. Williams, 467 U.S. 431, 448 (1984).

23. In North Carolina v. Butler, 441 U.S. 369, 373 (1979), the Court held that an express waiver of *Miranda* rights is not required. In a proper case, waiver can be implied from the actions and words of the suspect.

24. State v. Kriegbaum, 194 Wis. 229, 215 N.W. 896 (1927); Hoyer v. State, 180 Wis. 407, 193 N.W. 89 (1923).

greatly improved by the rules.[25] Recent studies indicate that the costs of the exclusion of illegally seized evidence have been greatly overestimated.[26] Decisions of the present Supreme Court are putting considerable flexibility into the rules.[27] Judge Fine notes some of these developments with approval in his text. But it must come as a surprise to those who have heard reports about the book to find out that Judge Fine concludes that if it were his choice he would keep both *Miranda* and the fourth amendment exclusionary rule. His conclusion is that they serve a useful purpose, but should be applied "with common sense and restraint."[28] That is good advice in any situation, but it rings hollow in comparison to the intensity of the criticism heaped on those rules in the text.

The critique of the juvenile justice system emphasizes the same themes found in the discussion of plea bargaining. While Judge Fine seems to have an extremely pessimistic view of the nature of young children[29] he raises an important question: What is the most effective response when a young person first commits a criminal act? His answer is to "get tough with delinquents early," and he cites authority supporting the propo-

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25. The earliest comment in this regard was a law review article by J. Edgar Hoover cited in the *Miranda* opinion. Hoover, *Civil Liberties and Law Enforcement: The Role of the FBI*, 37 IOWA L. REV. 175 (1952) (*cited in* Miranda v. Arizona, 384 U.S. 436, 483 n.54 (1966)).

26. A number of studies on the effect of the exclusionary rules have been cited by persons on both sides of the debate over whether the rules should be continued. Two of the most complete discussions of these studies are Davies, *A Hard Look at What We Know (and Still Need to Learn) About the "Costs" of the Exclusionary Rule: The NIJ Study and Other Studies of "Lost" Arrests*, 1983 AM. B. FOUND. RES. J. 611-90; Nardulli, *The Societal Cost of the Exclusionary Rule: An Empirical Assessment*, 1983 AM. B. FOUND. RES. J. 585-609.

27. *See, e.g.*, Oregon v. Elstad, 470 U.S. 298 (1985) (statement obtained in violation of *Miranda* does not automatically preclude the admissibility of a later statement that is voluntary and follows proper *Miranda* advice); United States v. Leon, 468 U.S. 897 (1984); Massachusetts v. Sheppard, 468 U.S. 981 (1984) ("good faith exception" to fourth amendment exclusionary rule in search warrant cases); Segura v. United States, 468 U.S. 796 (1984) ("independent source exception" to the fourth amendment exclusionary rule); New York v. Quarles, 467 U.S. 649 (1984) ("public safety exception" to *Miranda*); Nix v. Williams, 467 U.S. 431 (1984) ("inevitable discovery exception" to the sixth amendment exclusionary rule).

28. R.A. FINE, *supra* note 1, at 158-59 (1986).

29. For example, Judge Fine quotes psychiatrist Manfred S. Guttmucher in stating that children are " 'amoral' " when born. He then refers to William Golding's *Lord of the Flies* when commenting that they "quickly degenerate into manipulative savages" if left alone. *Id.* at 173 (1986).

sition that early punishment does deter young people from committing future crimes.[30] But the prescription for juvenile court success is not spelled out in detail. The basic message is to send the person to reform school as soon as possible.

The discussion of the insanity defense is strong when it discusses policy and reform. Judge Fine has to go quite far afield (the "*Durham*" rule[31] of the 1960's) to support the claim that the trend is toward broadening the insanity defense to excuse persons from responsibility for their criminal acts. John Hinckley's attempted assassination of President Reagan is criticized as the "most notorious example" of this trend, one that caused a complete change in insanity defense practice (referring to the change in federal law that followed the Hinckley verdict). The text does not explain why the Hinckley case is such a notorious example of an abuse of the system. Granted, there could not have been a more prominent victim or more visible crime, but Judge Fine does not argue that Hinckley is not insane. Assuming Hinckley is truly insane, it is not the definition of the standard or the burden of proof that should be criticized, but rather the continued viability of the entire insanity defense which ought to be open to question. But the author does not recommend total abolition of this longstanding doctrine. Rather, like the *Miranda* discussion, this critique concludes that the insanity defense should be preserved but that more weight has to be given to the rights of the public. Does this say any more than that the decisions relating to mentally ill defendants are, like decisions to charge or reduce charges and decisions to suppress evidence, exceedingly difficult ones?

Escape of the Guilty should be commended for its attempt to stimulate the general public's interest in the success or failure of the criminal justice system. But it is a challenge to ar-

30. The text mentions two studies in support of the thesis that locking up children deters future crime, while social welfare intervention breeds it. One was a study of the Cambridge-Somerville (Massachusetts) Youth Project. The other was an unspecified study from the late 1970's of the American Institutes for Research. *Id.* at 164-65.

31. Durham v. United States, 214 F.2d 862 (D.C. Cir. 1954), adopted a test excusing a person from criminal responsibility if the unlawful conduct was a "product" of mental disease or defect. That broader test was intended to allow criminal courts to take advantage of advances in mental health sciences. It has since been repudiated in the District of Columbia (U.S. v. Brawner, 471 F.2d 969 (D.C. Cir. 1972)) and in one state (Maine) that had adopted it.

rive at the proper tone and approach for such an effort. On the one hand, it should not be so technical, detailed, and full of lawyer-like hedging that readers lose interest. On the other hand, over-emphasizing the problems, unfairly criticizing those who presently work in the system, and oversimplifying the solutions achieves nothing of lasting value. Judge Fine has not been entirely successful in walking this difficult line.

Regardless of one's judgment of the book as a whole, one should appreciate the fact that a judge has invested the time and effort necessary to describe his insights and reflect on his experience. Trial judges have great responsibility for assuring that proper procedures are followed in criminal cases and yet they are often placed in a relatively passive role as far as affecting the nature of those procedures is concerned. As Judge Fine points out in his Preface, judges have the right, even the duty, to speak out on matters affecting the administration of justice.[32] Our able and experienced trial judges should take more opportunities to exercise that right.

My own view of Judge Fine's effort is that if the book's only purpose is to call attention to problems in the present administration of justice and provide a historical background for them, it is successful. To stimulate the interest of those who normally do not pay attention to criminal justice is to accomplish a great deal. And while the book is not specifically directed to persons with a professional interest in criminal justice, it will serve another purpose if it causes people to reexamine accepted practices. But if *Escape of the Guilty* has the more ambitious goal of advancing solutions to problems, it falls short of achieving it. In the final analysis, Judge Fine would not abolish the insanity defense, the fourth amendment exclusionary rule, or the requirements of *Miranda*. So his proposed solutions to the "escape of the guilty" boil down to eliminating uncalled-for plea bargaining and getting tough with offenders, especially young ones, when they first violate

32. The author refers to the Code of Judicial Conduct of the American Bar Association and Wisconsin's Code of Judicial Ethics which encourage judges to express their views about the law and the administration of justice. R.A. FINE, *supra* note 1, at xii (1986). For example, the Wisconsin Code of Judicial Ethics provides: "A judge should contribute to the public interest by advising, suggesting and supporting rules and legislation which, from his or her judicial observation and experience, will improve the administration of justice." WISCONSIN CODE OF JUDICIAL ETHICS SCR 60.01(14) (1986).

the law. That these tactics will reduce crime is unproven. For example, recent reports from the Bureau of Justice Statistics show that for the 1980-86 period, Alaska had the fastest growing prison population of any state (a whopping 191.9%). If the ban on plea bargaining instituted in 1975 in Alaska was intended to teach people that they would not get a bargain in the courts and thus was to deter criminal activity, it does not appear to have succeeded.

Advocating common sense application of legal rules and harsher punishment for those who really deserve it is a platform that is hard to criticize, but it is one that lacks depth and detail. How society should deal with the tremendous amount of crime that is committed and how the criminal justice system should function at a time of overwhelming caseloads are exceedingly important questions. They cannot be answered simply by imposing mechanical limits on prosecutorial charging decisions or requiring harsher sentences for younger offenders. To improve the criminal justice system requires that careful attention be paid to attracting competent people to work in the system and giving them the support they need to do their jobs well. Thanks to *Escape of the Guilty*, some of the problems with our current system are exposed. Despite Judge Fine's efforts, we must continue to look for truly effective solutions.