

CRIME STATISTICS WE'D LIKE TO SEE

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The federal and state governments gather, correlate, publish, distribute, and publicize vast quantities of crime statistics each year. The FBI, for example, has prepared its Uniform Crime Reports for years, and during the last decade the Bureau of Justice Statistics in the U. S. Department of Justice has each year published a massive volume entitled "Sourcebook of Criminal Justice Statistics." BJS also puts out numerous crime statistics "Bulletins" every year.

As the criminal defense bar well knows, prosecutors and police make ample use of these and other government-compiled crime statistics to justify and defend whatever they do or say. For just about any activity they engage in or any position they assert, the law enforcement establishment can find some criminal justice statistic to back them up. These crime statistics are also used by politicians and legislators to support their proposals for crime legislation, much of it draconian, to enhance the power of the law enforcement establishment and to curtail the rights and remedies of criminal defendants. See generally Kamisar, "How to Use, Abuse--and Fight Back With--Crime Statistics," 25 Okla. L. Rev. 239 (1972).

What criminal defense lawyers must understand is that these crime statistics are one-sided and hence propagandistic. Government-compiled crime statistics are simply another way in which the law enforcement apparatus, in the guise of objectivity, advances its own agenda. The government collects and disseminates crime information that enhances its own image or supports its appetite for more funding and manpower, but totally ignores information that would be embarrassing or supportive of restrictions on the law enforcement power structure.

In the abstract, information about crimes (other than victimless crimes) committed in this country falls into three categories: (1) crimes or acts of violence committed by private citizens against other private citizens; (2) crimes or acts of violence committed by citizens against the police; and (3) crimes or acts of violence committed by the police against citizens. Government-compiled crime statistics focus entirely on the first two categories and furnish virtually no information on the third. The result is a system of crime statistics that is wholly one-sided; the information compiled may be accurate but it gives only half the picture and deprives the criminal defense bar--as well as citizens generally--of vital information needed to put the first two categories of crime statistics into perspective.

In short, the government's crime statistics tell us much about lawlessness by citizens against each other as well as about lawlessness by citizens against the police, but it tells us nothing about lawlessness in law enforcement. Insofar as these statistics are concerned, no policeman ever committed a crime or act of violence against an American: no citizen was shot and killed, or shot and wounded, or shot at, and none was subjected to a chokehold or fingerhold, or hit with a baton or flashlight, or bitten by a police dog, or killed or injured in a high-speed car chase, or maced, or shocked with a stun gun, or hog-tied; no policeman was ever convicted of committing a crime; no policeman was ever sued successfully for violating a citizen's rights; no policeman was ever fired or administratively disciplined for unlawful acts; no one ever died in police

custody; no policeman ever committed perjury; no prosecutor ever framed a defendant or otherwise violated the rights of a citizen; no court has ever found any prosecutorial abuse; no court ever found a confession to be unlawfully obtained; no search or electronic surveillance was ever committed unlawfully; no one's rights were ever violated; and no innocent persons were ever convicted of a crime.

As Steven D. Dillingham, Director of the Bureau of Justice Statistics told me in a letter dated July 5, 1991: data collected on crimes is not coded by profession of perpetrator; crimes committed by the police are grouped together with crimes committed by non-police for purposes of computing crime rates; crime victimization collected by the Bureau does not identify crimes committed by the police; and there is no common repository of information on complaints against the police, which information is maintained solely by individual police departments (!).

On the other hand, information on crimes committed by citizens against the police is available in excruciating detail in the government's crime statistics--for example, how many police are killed by citizens each year, as well as how many police are "assaulted" each year by citizens.

What is to be done about the lamentable state of governmental collection of crime statistics? Awareness is the first step in reform. When confronted by statistics presented in a criminal case by the prosecutor or police, the defense attorney should ask for the statistics which might work in his or her favor, and stress the inadequacy of the reasons given for its unavailability. Second, support should be given to proposals to take the job of collecting and reporting crime statistics away from law enforcement agencies (including the Department of Justice) and placing it in the hands of agencies who are not part of the law enforcement apparatus. It is hardly to be expected that police and prosecutorial agencies will decide to gather, or will keep accurately, information that will expose their improper acts or provide a basis for restricting their powers or even (horror of horrors!) assist the cause of the criminal defense bar in protecting the rights of suspects and controlling lawlessness in law enforcement.

Third, the criminal defense bar must insist that the one-sidedness in governmental crime statistics come to an end. It must demand that those statistics include full and comprehensive information on lawlessness in law enforcement. Here, for example, are just some of the yearly crime statistics which we would like see and which indeed we must see if governmental crime statistics are to be more than propaganda for the nation's increasingly huge and powerful law enforcement establishment:

- (1) The number of persons shot and killed, shot and wounded, or shot at by the police.
- (2) The number of persons who are killed by the police or who die while in police custody.
- (3) The total number of instances where police used the following techniques: (a) hit a citizen with a baton, nightstick, flashlight, or other blunt object; (b) used a stungun, stun grenade, tear gas, mace, or an explosive or pyrotechnic device; (c) used a police dog to bite or subdue a citizen; (d) killed or injured a citizen during or as a result of a high-speed automobile pursuit.
- (4) The number of police arrested, indicted, or convicted for violating the rights of citizens, or

for engaging in other criminal conduct occurring while on duty.

(5) The number of civil actions for damages brought against police or prosecutors in connection with their official behavior, and the final disposition of such civil actions, including information on the claims alleged by citizens and the amount of monetary damages, if any, awarded to citizens.

(6) The number of out-of-court settlements of civil actions for damages brought by citizens against police and prosecutors for acts under color of law, together with relevant information on the terms and conditions of such settlements.

(7) The number of administrative complaints filed, and administrative disciplinary proceedings brought, against police, together with the allegations made against the police in these proceedings and the disposition of such proceedings.

To paraphrase Clemenceau: the business of collecting and distributing crime statistics is too important to be left in the hands of law enforcement agencies.