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### Norval Toward a Rational Drug Policy

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# The University of Chicago LEGAL FORUM

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## ARTICLES

### Norval

*Albert W. Alschuler*†

A description of Norval Morris's adventures reads like an Australian edition of *Ripley's Believe It or Not*. You might have spotted Morris in an exploit or two — perhaps piloting a small aircraft (his landings produce a marvelous rush of adrenaline in a passenger); discussing casting with a filmmaker seeking to produce a picture improbably titled *The Brothel Boy*; fighting World War II in the Pacific as a member of the Australian armed forces; purchasing and publishing a weekly newspaper in Castine, Maine, so that he could have an outlet for subversive editorials; competing more fiercely at tennis than a gentleman should; writing the first work of new fiction ever published by the Oxford University Press; playing chess by mail with people around the world; managing a police department, a prison, a mental hospital, and a law school or two—all of them operated on the same principles;<sup>1</sup> prompting a luggage alert by a drug-detecting dog;<sup>2</sup> appearing in court as a barrister in Victoria or a special master in the Northern District of Illinois; facing accusations of fraud for passing off a counterfeit manuscript as George Orwell's; teaching

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† Wilson-Dickinson Professor of Law and Arnold and Frieda Shure Scholar, The University of Chicago.

<sup>1</sup> See Norval Morris, *Law Schools and Other Reformatories*, 6 Dalhousie L J 213 (1980).

<sup>2</sup> He says that he wasn't carrying anything at the time and that the customs people never found it.

a seminar on law to inmates of the Stateville Penitentiary; co-teaching a seminar in the Rockies with a Supreme Court Justice;<sup>3</sup> discovering after being tapped for high office by President Carter that the ever-alert National Rifle Association possessed sufficient influence to keep him where he belonged (and where he always will belong—at the University of Chicago); or, at almost the age of mandatory retirement, leading three rugged young men on bicycle journeys through Europe at a relentless pace. This scapegrace has spent many days and nights in prison (he claims that the inmates open up to him more when he sleeps over), and he alone among the members of the University of Chicago Law School faculty has been awarded the Japanese Order of the Sacred Treasure, Third Class.

Morris, like Indiana Jones, is primarily an academic. From Chicago to Cape Town to Calcutta, many people are convinced that he is the world's preeminent criminal justice scholar. He has been a member of the University of Chicago Law School faculty for thirty years, and he has also at various times held academic posts at the London School of Economics, New York University, Harvard University, and the universities of Adelaide, Colorado, Melbourne, and Utah. He was founding director of the United Nations Institute for the Prevention of Crime and Treatment of Offenders. He has served as a law school dean on two continents (at the University of Adelaide in South Australia from 1958 to 1961, and at the University of Chicago from 1975 through 1979). Neither was the continent where he obtained his advanced degree (a Ph.D. in Law and Criminology from the London School of Economics).<sup>4</sup>

The man is a master of the podium and the page. Beware, for he *charms* you. No sensible speaker ever knowingly follows him on a program. This praelector beguiles partly with humor. For example, in a recent address in Blackpool, he was too polite to accuse Great Britain's Home Secretary, Michael Howard, of bending crime statistics to Howard's own repressive ends. Before ending his speech, however, he claimed that Howard had taken as his lodestar "commonsense unguided by knowledge" and that the Home Secretary "must have been born before his illustrious

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<sup>3</sup> Harry A. Blackmun and Morris have taught a seminar on Justice and Society at the Aspen Institute every summer for the last sixteen years, and they plan to keep doing it.

<sup>4</sup> I exclude from consideration four other doctoral degrees, honorary ones, awarded by Villanova University, Oklahoma City University, the William Mitchell College of Law, and the John Jay College of Criminal Justice of the City University of New York.

forbear, [the eighteenth-century penal reformer] John Howard.” Morris has captivated hundreds of audiences and thousands of listeners. Despite his unflinching success, however, he is nervous before every public appearance. Experienced law enforcement officers recognize this phenomenon as a sign of guilty knowledge.

In 1982, Morris created a new art form, the law review thriller. Long before storytelling became fashionable in the academy, he recounted tales of a magistrate in colonial Burma named Blair. Morris’s own service in the 1950s as Chairman of the Commission of Inquiry on Capital Punishment in Ceylon may have enabled him to invest his tales with a certain veraswamilitude; the tales provide engaging, down-to-earth, and often moving examinations of the most troubling ethical and legal issues of our time. Although commentary describing the relevant legal, empirical, and philosophic literature accompanies Morris’s stories, this commentary cannot remedy the tales’ obvious deficiency: purportedly the work of a scholar, they contain no footnotes whatsoever.<sup>5</sup>

To be sure, Morris has written some conventionally footnoted books and articles. A list of the titles of his scholarly publications runs eighteen single-spaced pages and, apart from a dozen books, includes slightly more than two hundred papers. This slim product has been remarkably influential. For example, Morris’s 1974 Cooley Lectures at the University of Michigan offered a rare scholarly vision of prison reform and described how an ideal prison for serious offenders might be structured.<sup>6</sup> The proposal seemed harmless enough at the time, just the usual professor’s pie-in-the-sky palaver. Morris’s model, however, was implemented almost instantly. The Federal Bureau of Prisons followed his blueprint in constructing, staffing, and devising programs for its new penitentiary at Butner, North Carolina, and later at other prisons. As a result, countless malefactors have been subject to humane conditions of confinement. The “Butner model” appears to be one of the truly rare success stories in the annals of criminology.

When one of Morris’s books called for abolition of the special defense of insanity,<sup>7</sup> its publication marked the end of 800 years of expansion of the insanity defense and the commencement of a period of judicial and legislative restriction. Although Morris’s

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<sup>5</sup> Unlike, say, this paper.

<sup>6</sup> Norval Morris, *The Future of Imprisonment* (University of Chicago Press, 1974).

<sup>7</sup> Norval Morris, *Madness and the Criminal Law* (University of Chicago Press, 1982).

scholarship was often cited (and mis-cited) by opponents of the defense, his work influenced the course of the law no more than some shots fired by John Hinckley, whose acquittal on grounds of insanity came shortly after Morris's scholarly criticism.

Perhaps the most cited scholarly work in criminal justice today is a book that Morris published with Michael Tonry in 1990, *Between Prison and Probation: Intermediate Punishments in a Rational Sentencing System*.<sup>8</sup> With prison populations doubling each decade—without producing any observable effect on crime rates—everyone seems to be invoking the wisdom of Morris and his colleague.

On the largest of criminal justice issues, however, Morris's work remains unfashionable. He contends that keeping one and one-quarter million Americans behind bars every day, creating more capital crimes, and waging a fourteen-billion-dollar-per-year drug war is a formula for producing vast human misery while curing nothing. Morris recently quoted a European on the lesson that Americans draw from their drug wars: "When all the king's horses and all the king's men cannot put Humpty Dumpty together again, *by God we need more horses and men!*" To be even modestly successful, a war on crime must begin to address the conditions of despair and hopelessness that, for many, make drug use, drug dealing, and other crime the least awful option and the only apparent escape.

There appears to be no present danger that Americans will endorse this message or act on it. Indeed, the proportion of the electorate receptive to Morris's position appears to have diminished during the decades that he has championed it. Capable though the man is on the podium, he is evidently no match for Senator Phil Gramm.

Morris's writings emphasize the value of the factual, and this theme of his scholarship has dominated his institution-building. Unwilling to credit intuitions, he believes in measuring and evaluating everything and in funding the work of empirical social scientists. During his ten years as founding director of the University of Chicago Center for Studies in Criminal Justice, he goaded, prodded, planned, wheedled, consulted, taught, begged, and criticized. Under his leadership, the Center generated information of lasting importance about guns, homicide, juvenile justice, deterrence, incapacitation, family violence, jury instructions,

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<sup>8</sup> Norval Morris and Michael Tonry, *Between Prison and Probation: Intermediate Punishments in a Rational Sentencing System* (Oxford University Press, 1990).

plea bargaining, policing, jail conditions, delay in court, and other inadequately studied topics in criminal justice. Furthermore, as founding editor (with Michael Tonry) of *Crime and Justice: An Annual Review of Research*,<sup>9</sup> he presented each year eight to ten papers assessing the state of empirical knowledge on a plethora of subjects as diverse as hypnosis, polygraphs, youth gangs, day fines, neuropsychology, school violence, gender and crime, and the prediction of dangerousness.

Morris has not acted alone. His documented co-conspirators include Gordon Hawkins—insightful, witty, cheerful, gentlemanly, and mild-mannered, at least by day. Morris and Hawkins co-authored a number of significant works, most notably *The Honest Politician's Guide to Crime Control*.<sup>10</sup> This engaging book was written at a time when its title was not clearly an oxymoron. The decade was the 1960s, and the authors optimistically presented a cure for crime in fifty-two “ukases.”

Morris's inner circle also included the late Hans Mattick, who began as a juvenile thief, then in succession became a hobo, a master sergeant, a jail warden, and ultimately sank to the position of co-director of the Center for Studies in Criminal Justice. This great, kind bear of a man ensured that the Center's work was never far removed from the gritty realities of the street, the courtroom, and the jail.

Frank Zimring was the first of many intellectual protégés whom Morris groomed for careers as criminal justice scholars. Zimring—too brilliant for his own good or for anyone else to understand his jokes—is intense, a gambler, a generator of at least two breathtaking studies per month, and as caring, loyal, and supportive a friend as Morris (or I) has ever had. Other protégés prepped by Morris at the University of Chicago and utterly devoted to him include Jim Jacobs (now at the New York University Law School), Dick Frase (at the University of Minnesota Law School), Wayne Kerstetter (at the Criminal Justice Department of the University of Illinois at Chicago), Bill Geller (at the Police Executive Research Forum), and Marc Miller (at the Emory University Law School).

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<sup>9</sup> Norval Morris and Michael Tonry, eds, *Crime and Justice: An Annual Review of Research* (University of Chicago Press, 1979 to present). Michael Tonry continues to edit this journal.

<sup>10</sup> Norval Morris and Gordon Hawkins, *The Honest Politician's Guide to Crime Control* (University of Chicago Press, 1970).

Morris, moreover, does not deny that he gave me my first job at the University of Chicago, a research fellowship in the Center for Studies in Criminal Justice in 1967. Insofar as my career depends upon the abhorrent practice of plea bargaining, I owe it all to him. I have been constantly blessed by Morris's camaraderie, his support, his loyalty, his insight, and his usually gentle correction. Of course, fate sometimes rescues Morris from doubtful judgments. For example, President Reagan offered a cushy governmental sinecure to a fellow named Scalia whom Morris, as dean, had persuaded to join the law faculty. No one, however, has offered any such sinecure to me.

One other Norval Morris protégé has seen him through endless storms, conferences, spicy foods, business ventures, government grants, and Lake Wobegon winters. Some years ago, Michael Tonry bid a farewell to the pressures of academic life in favor of the peace and repose of a small town in Maine. Some years later, possibly overwhelmed by the pressures of small-town Maine (a busy law practice, management of a major criminal justice research corporation, and an unending barrage of Norval projects), he yielded to his fate and accepted appointment as the Marvin Sonosky Professor at the University of Minnesota Law School. The continuing association of Morris and Tonry has enhanced our knowledge of crime and justice in many ways. Their collaboration surely ranks with that of George and Ira, Fred and Ginger, and perhaps even Bonnie and Clyde.

Finally, Morris's inner circle includes one phenomenally good-humored and certifiably sane person. Her name is Elaine, and I have no idea what she is doing in a wild story like this one. Always gracious, unfailingly upbeat, charming, tireless, and eternally patient (as of course she would have to be), she has cared for Morris, their three sons, and all of the aforementioned miscreants. I can explain it in only one way: she is in love with our adventurer, as he certainly is with her.

At the end of 1993, Norval Morris, Julius Kreeger Professor of Law and Criminology at the University of Chicago Law School, became Julius Kreeger Professor Emeritus. What the university did to him is now forbidden by law, and Morris apparently will be the last member of the University of Chicago Law School faculty to be ceremoniously (very ceremoniously) drummed from full-time service for the involuntary status offense of becoming 70.<sup>11</sup> Morris may be the best walking (and running) argument

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<sup>11</sup> Despite his formal mustering out, Morris will teach "Parables of the Law" in the fall of 1994.

since Mae West for the view now enshrined in the United States Code that mandatory retirement is silly. Yet this victim of age discrimination illustrates the depth of the false consciousness of his class by reporting that he prefers things that way; he says that at least the dean won't get to tell him that he's batty. Morris concedes, however, that the ax came a moment or two too soon. He still thinks of himself as a promising young man.

Phil Neal, Morris's predecessor as dean at Chicago, has remarked that Morris has never been and will never be the retiring type. Speeches, symposia, lectures, and seminars continue to fill his frequent-flyer accounts with the credits needed to transport him and Elaine to visits with friends and family on the far side of the world. We hope to read the further tales of Blair, Veraswami, and U Tin Hlang, and we strongly suspect they're coming. Morris is laboring at his most recent assignment from the federal judiciary. Having brought the protective custody unit of the Stateville Penitentiary into compliance with the Constitution, he now must do it for Illinois' state mental hospitals. His current project with Michael Tonry, the editorship of a series of books called *Studies in Crime and Public Policy* for the Oxford University Press, is well underway, and the editors appear to have good reason to be excited about it.

The recent change in Morris's title marks only a small transition and appears to have only one redeeming virtue. It affords a few of the many beneficiaries of his wisdom, loyalty, and generosity an opportunity to say thank you. The editors of *The University of Chicago Legal Forum* have done so by dedicating to Morris this symposium on an issue that he has addressed with humanity, grace, and great good sense. Norval Morris at seventy is the person whom many of us hope to become. It would be enough, in fact, to bring to life's adventures half of his zest, and to our profession even a portion of his insight, energy, idealism, and devotion.

