

AN INDIVIDUAL FAILURE

by Clay M. Smith

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The criminal justice system is constantly measured, evaluated, and criticized on a quantitative basis. We track numbers of cases filed in various categories, cases per judicial officer, cases awaiting trial, cases resolved by plea, persons in jail, persons in state prison, etc. These statistics are valuable in assessing trends within society and the success or failure of programs, laws, and other actions. Nothing, however, drives home a feeling of success or failure as does an *individual* experience.

In July of 1998, I was assigned to the felony master calendar. Before going into this extremely busy courtroom, I

spent a few hours observing my predecessor, Judge Richard Behn, handle the calendar. On the afternoon of July 2, I sat in the jury box monitoring the proceedings. A case was called. I was stunned to hear the name of the case, *People v. Malewski*. It was a relatively unusual name, and several years earlier I had known a young man named Mark Malewski. The defendant and his attorney stood up in response to Judge Behn's call of the case. I quickly located the defendant. He was a young man of perhaps 22, tall and trim. I visually searched his face hoping that I would not recognize him, that he would not be the same Mark Malewski I had known. My fears, however, were realized. It was he.

Nine or 10 years earlier, Mark Malewski had been a young man of 12 or 13 who had joined the Boy Scout troop that I served as Scoutmaster. He had come into the troop with his cousin, Tim. As I listened to the proceedings, I reflected on the different paths that Tim's and Mark's lives had taken. Tim had continued in Scouting and achieved the rank of Eagle Scout. He had spent two years in missionary service for his church and was now attending college at one of the University of California campuses. Tim's life had purpose and meaning. His cousin, Mark, on the other hand, had dropped out of Scouting, had not pursued an education, had allowed the insidious plague of drugs to work its way into his life, and was now standing in Division Seven answering to a felony charge of possession for sale of a controlled substance.

As I listened to Mark enter a plea of guilty, answering a long series of questions, waiving rights and acknowledging his understanding of the consequences of the plea, I reflected on the divergence in the paths of Mark and Tim. What had caused that divergence? Could I have prevented it? What went wrong? Who went wrong? Of course, there was no single cause of Tim's success or Mark's difficulties. And although I obviously don't have the full answer to the questions that ran through my mind, my reflection, I feel, did lead to a little insight.

During their years in Scouting, Tim's parents always attended each event. His mother provided encouragement, transportation, and other support for Tim's Scouting, sports, and other activities. His father accompanied the troop on camping trips and other outings. Mark's parents, from my limited perception, were less involved in his activities; they permitted, but did not support, his involvement in Scouting and church activities. As Mark and Tim reached the middle teenage years, Mark dropped out of Scouting and disengaged from his prior church involvement. All aspects of human conduct and misconduct are complex. And I do not intend here to suggest simplistic causes or solutions. I firmly believe, however, that the key (but not sole) factor in the divergence of Mark's and Tim's life experiences was the degree of positive involvement of family—especially parents—in their lives when they were children.

Our society is replete with institutions devoted to helping, reaching, teaching, and redeeming people. We are grateful for these institutions and their positive effect in the lives of individuals. My experience with the *Malewski* and many other cases confirms to me that no institution even approaches the influence and impact that family in general and parents in particular have on us as people. If every child had loving, committed, capable parents, I would be out of a job—and gratefully so (or perhaps reassigned to a civil calendar!).

