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ABSTRACT

These papers share perspectives on crime and justice. The following lectures are included: (1) "Crime Control, the Police, and Culture Wars: Broken Windows and Cultural Pluralism" (George L. Kelling); (2) "Race, the Police, and 'Reasonable Suspicion'" (Randall Kennedy); (3) "The American Experience with Stimulants and Opiates" (David F. Musto); (4) "A Decade of Experimenting with Intermediate Sanctions: What Have We Learned" (Joan Petersilia); and (5) "The Epidemic of Youth Gun Violence" (Philip Cook). Each paper contains end notes. (SLD)

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# Perspectives on Crime and Justice: 1997-1998 Lecture Series

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**Perspectives on  
Crime and Justice:  
1997–1998 Lecture Series**

George L. Kelling  
Randall Kennedy  
David F. Musto  
Joan Petersilia  
Philip Cook

*November 1998*

NCJ 172851

# NIJ

Jeremy Travis  
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The Professional Conference Series of the National Institute of Justice supports a variety of live, researcher-practitioner exchanges, such as conferences, workshops, planning and development meetings, and similar support to the criminal justice field. The Research Forum publication series was designed to share information about this and other forums with a larger audience.

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# Preface

The issues of crime and justice loom large in our public discourse. Most people would agree that we suffer from too much of the former and enjoy too little of the latter. Nevertheless, forging a broad policy consensus on the public response to these twin challenges can be a daunting task. Too often, the national debate on crime and justice is dominated by the crime of the day, the solution of the moment, or the favorite criminological theory of the year. In this environment it is easy for fresh insights, common sense, and solid research to be trampled in the rough exchange of opposing ideologies and competing soundbites.

Proud as we are of our research and development projects to advance our understanding of crime—particularly its prevention and control—and to evaluate our society's attempts to achieve justice, NIJ recognizes that they too infrequently inform the larger effort within our society to develop policy directions that reflect the best thinking of the best minds. Other perspectives are needed to understand the larger movements and deeper currents in the flow of knowledge.

To promote informed rational discourse and provide brief respites from our daily preoccupations, the National Institute of Justice (NIJ) established the first Perspectives on Crime and Justice Lecture Series for 1996–1997. NIJ invited the Nation's most prominent academics to momentarily set aside their research

projects and to share their policy perspectives on crime and justice with an audience of policymakers, researchers, opinion leaders, congressional staff, Federal officials, journalists, and criminal justice professionals. We asked these great minds to challenge us to see the big picture and intellectually stimulate us.

Our inaugural series last year was a great success. We heard from James Q. Wilson on “What, If Anything, Can the Federal Government Do About Crime?,” Peter Reuter on “Why Can’t We Make Prohibition Work Better? Some Consequences of Ignoring the Unattractive,” Mark H. Moore on “The Legitimation of Criminal Justice Policies and Practices,” Cathy Spatz Widom on “Child Victims: In Search of Opportunities for Breaking the Cycle of Violence,” and Norval Morris on “Crime, the Media, and Our Public Discourse.” We have captured their lectures on individual videotapes and have released a published volume of all five lectures, as well. (See the inside back cover for ordering information.) As important as the lectures are, we also had lively question-and-answer periods after each lecture—and many of those discussions resonated in meetings and debates in Washington, D.C., and elsewhere throughout the year.

Encouraged by the success of that first lecture series, NIJ decided to host a second group of prominent speakers. The talks from the recently concluded Lecture Series for 1997–1998 are compiled in this volume. George L. Kelling reflected on the 15 years since the broken-windows thesis was first published. Randall Kennedy critiqued the explicit use of race in police practice. David F. Musto reminded us of our Nation’s history of drug use and abuse. Joan Petersilia assessed 20 years of the alternatives-to-incarceration movement. Philip Cook examined the epidemic of youth gun violence that swept the United States in recent years.

We hoped these lectures would shake us from the lethargy of our daily struggles with in-baskets, data sets, committee markups, agency budgets, and

other pressing matters and make us somewhat uncomfortable with our conventional wisdom. If one of the objectives in establishing this series was to foster a constructive debate that lasts far beyond a morning lecture, I think we have succeeded.

The next lecture series, which premieres in December 1998, promises equally stimulating presentations.

*Jeremy Travis*

*Director*

*National Institute of Justice*



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# Crime Control, the Police, and Culture Wars: Broken Windows and Cultural Pluralism

*Presentation by*

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*December 2, 1997*

*Washington, D.C.*

Since the 1982 publication of "Broken Windows" in the *Atlantic Monthly*, I have been closely identified with its ideas, along with James Q. Wilson, the first author and the originator of the metaphor.<sup>1</sup> I mention Professor Wilson here to acknowledge his senior and generous role in our past collaborations and to indicate that my current pursuits are mine alone and should not reflect on him.

Briefly, the theory of "Broken Windows" contends that a broken window left unfixed is a sign that nobody cares and leads to more damage; similarly, disorderly conditions and behaviors left untended are signs that nobody cares and lead to serious crime, abandonment of neighborhoods to criminals, and urban decay. The policy corollary is that minor problems warrant serious attention, a premise that challenges reigning criminal justice practice.

My pursuit of these ideas has been both practical and intellectual. I consulted in the implementation of programs addressing disorder and minor crime in New York City, both in its subways and with the city's "squeegee men"—street hustlers who, under the pretense of washing car windows, extort money from drivers. I also observed William Bratton implement assertive order-maintenance policies, first as Chief of the New York Transit Police and later as Commissioner of the New York City Police Department.

Like all metaphors that flourish, "broken windows" embeds ideas that appear simple. They are expressed allegorically, making them vivid, readily communicable, and comprehensible. While not exactly a household phrase, "broken windows" nonetheless communicates well to a broad lay audience and local politicians. More recently, criminal justice practitioners and academicians have been attracted to the idea as well.

But metaphors are tricky. As they become entrenched and everybody believes he or she knows what they mean, their underlying complexity drops out of sight. And, as I have written elsewhere, "Metaphors gain ideological power as their literary power fades. When metaphors lose their capacity to attract attention—when they become a linguistic habit—they become dangerous: A trick of language becomes an intellectual trap."<sup>2</sup> Finally, a metaphor may take on a life of its own—or even gain a meaning the exact opposite of its origin and intent.

There is ample evidence in criminal justice of metaphors as intellectual traps. The "criminal justice system," the "war on drugs," "white-collar crime," and the "thin blue line" all constrict thinking and distort crime control policy. Although "broken windows" has not become as universally known as these metaphors, it has become closely associated with the dramatic crime reductions in New York City. In addition, Catherine Coles' and my recent book, *Fixing Broken Windows: Restoring Order and Reducing Crime in Our*

*Communities*, has been widely disseminated and reviewed and is receiving, at times, critical attention.<sup>3</sup>

Not surprisingly, attacks on the theory of “broken windows” come mainly from the political left. “Broken windows” challenges many of the left’s axioms: To deal with crime one must deal with the social “causes” of crime—poverty, racism, and social injustice; minor offenses like prostitution and aggressive panhandling are victimless crimes; police order-maintenance activities constitute a “war against the poor and minorities”; behaviors called disorderly are really expressions of cultural diversity that challenge middle-class mores; and finally, individual rights eclipse community interests on virtually every dimension short of imminent violence. These axioms have been a part of mainstream criminology since the 1960s.

The political right “get tough” faction, on the other hand, is quite enthusiastic about restoring order. Indeed, it can get fervid about the idea. For the far right, zero tolerance has become the call to arms justifying “turning the police loose” sweeps that target youths in high-crime neighborhoods and arrest massive numbers of people in the name of restoring order.

Although both the far right and the far left have misinterpreted and misappropriated the ideas in “broken windows,” they have raised important issues. The first is the extent to which the original “Broken Windows” article invites police abuse or misinterpretation. The second is the extent to which the “root causes” theory continues to penetrate criminal justice thinking. The third and final issue concerns the current declines in crime and the role of order maintenance in those declines.

I believe that root-cause, liberty-interest zealots on the left and “lock ’em up” fanatics on the right have dominated criminal justice thinking and practice since the 1960s. Both the far left and the far right were more concerned with their constituencies than with what was occurring in urban communities. The

prevention of crime became synonymous with broad social and economic change and the practice of criminal justice became synonymous with processing offenders. Imprisonment soared, yet neighborhoods spun out of control. Some communities, often with a lot of help, are now reasserting control of their territory.

## Police Abuse of Citizens

Did Professor Wilson and I invite or foster police abuse of citizens in the original "Broken Windows"? Two paragraphs in the original article are vulnerable to suggestions that we did.

The first refers to the historic role of police in maintaining order in neighborhoods. We addressed the issue of how a neighborhood or a community reasserted control of its turf:

The police in this earlier period assisted in that reassertion of authority by acting, sometimes violently, on behalf of the community. Young toughs were roughed up, people were arrested "on suspicion" or for vagrancy, and prostitutes and petty thieves were routed. "Rights" were something enjoyed by decent folk and perhaps also by the serious professional criminal, who avoided violence and could afford a lawyer.<sup>4</sup>

The second refers to persistent gang activities in Chicago's Robert Taylor Homes and the residents' insistence that police do something about them (the "ass-kicking" paragraph):

But do what? Though the police can obviously make arrests whenever a gang member breaks the law, a gang can form, recruit, and congregate without breaking the law. And only a tiny fraction of gang-related crimes can be resolved by an arrest; thus, if an arrest is the only recourse for the

police, the residents' fears will go unassuaged. The police will soon feel helpless, and the residents will again believe that the police "do nothing." What the police in fact do is to chase known gang members out of the project. In the words of one officer, "We kick ass." Project residents both know and approve of this.<sup>5</sup>

I was indignant about the circumstances residents faced in the Robert Taylor Homes during the early 1980s. I recall one African-American woman in her forties whom I interviewed in her apartment while I was evaluating HUD's Urban Initiatives Anticrime Program. She had three sons: two in their early teens and one who had just turned 19 and joined the military. She had been raped several months earlier in the laundry room by two youths. After raping her, they hurled her down a flight of stairs, smashing her jaw. Her teeth were still wired together when we talked. During the interview, she pointed out one of the youths—out of jail on bail or recognizance—who was walking past her apartment four or five stories below. She did not think he was there to menace her in particular; the menacing swagger of gang members was simply life as usual in the Robert Taylor Homes.

She began to cry. I mistakenly assumed that she was upset about the rape, the assault, and the ongoing presence of her assailants. She explained, however, that for years her older son had protected her young sons from violence and being recruited into gangs. Now he was in the service. She saw no way she could save her young sons from gangs.

The police response to gangs had been to "send a car" to do "something." What they were to do was unclear. When the sergeant we wrote about in "Broken Windows" told me he "kicked ass," he was not conducting a war against the poor. He had been raised in Chicago's highrise public housing and was not prepared to walk away from its problems. Given police practice at that time, he did not know what else to do and was given little, if any, advice from the police department.

“Broken Windows” explored ideas: the relationship between disorder and fear; the persistent demand from citizens that police do something about disorder; the growing evidence that police and citizen priorities were “out of whack”; the role of citizens in crime control; the potential of police and other criminal justice agencies to prevent crime; and, most important, the source of police authority to restore and maintain order.

This final issue, the source of police authority to restore and maintain order, was a perplexing one, especially in light of then-current trends towards decriminalizing minor offenses and the potential for abuse inherent in loitering and vagrancy statutes. We fussed about this:

We inevitably ask, what constitutes an “undesirable person” and why should we “criminalize” vagrancy or drunkenness. A strong and commendable desire to see that people are treated fairly makes us worry about allowing the police to rout persons who are undesirable by some vague or parochial standard.<sup>6</sup>

And, in another example:

The concern about equity is . . . serious. We might agree that certain behavior makes one person more undesirable than another, but how do we ensure that age or skin color or national origin or harmless mannerisms will not also become the basis for distinguishing the undesirable from the desirable? How do we ensure, in short, that the police do not become the agents of neighborhood bigotry?

We can offer no wholly satisfactory answer to this important question. We are not confident that there is a satisfactory answer, except to hope that by their selection, training, and supervision the police will be inculcated with a clear sense of the outer limit of their discretionary authority.<sup>7</sup>

Other examples from the article could be given.

How could such inquiries have made it sound like we “unequivocally endorse the use of extralegal methods and the need to ‘kick ass’ to keep people in order”?<sup>8</sup> Because citizens give order high priority, did we propose a “heavy-handed, truncheon-wielding army of police officers descending on their neighborhood . . .”?<sup>9</sup> Is it true that “Broken Windows” is a “euphemism enabling cops to hassle anyone who offends the police sense of order . . .”?<sup>10</sup> In each case, it is not.

This does not suggest that random, arbitrary, and repressive policing has not been committed in the name of “broken windows.” It has. Claiming, however, that “broken windows” is the “seed” of brutal policing, as one retired chief of police has, is disingenuous.<sup>11</sup> This is tantamount to saying that anyone who supports criminal investigation supports torture, because we know that torture was “business as usual” among detectives for decades until the Supreme Court acted in the 1960s. Both criminal investigation and order maintenance are powerful tools that must be used wisely and humanely.

Moreover, no support exists for the claim of one criminologist that “this approach [‘broken windows’] has been discredited by the courts in America repeatedly.”<sup>12</sup> In fact, the legal basis for the maintenance of order is becoming increasingly firm as police, prosecutors, and city attorneys adapt civil law and nuisance abatement as well as misdemeanor ordinances to deal with disorder. As courts are becoming more exposed to communities and as communities’ interests become better articulated, a judicial shift toward a more balanced approach to individual rights versus community interests can be discerned. The recent California Supreme Court decision upholding the use of nuisance-abatement ordinances to restrain gang behavior is an example of this shift in legal thinking.<sup>13</sup> Begging and the extent to which it is a First Amendment free-speech issue has been the source of most litigation. No one has had the final word yet.



Abuses and corruption are inevitable in policing, whether they are the outcome of order maintenance, drug enforcement, arrests, or criminal investigation. Leadership and administrative processes, including holding people accountable when they become abusive, must be used to keep abuse to a minimum. Anechiarico and Jacobs, however, point out in their book, *The Pursuit of Absolute Integrity*, that pursuing the goal of absolute integrity is a certain path to organizational paralysis.<sup>14</sup>

The “broken windows” metaphor expresses complex and highly nuanced issues simply. It appeals strongly to citizens and reopens questions of public policy that many thought had been answered. But, its apparent simplicity makes it easy to be distorted by both the left and right. Nonetheless, a good share of the debate about order maintenance has been civil, and some has been thoughtful. New York City’s experience during the early 1990s, however, changed this. It became the front line of the culture wars. As Professor Wesley Skogan sardonically said to me at a recent meeting of the American Society of Criminology: “When the criminological war crimes trials begin, you and I are going to be the first two at the docket.” I suspect he was slightly wrong; Professor James Q. Wilson and former New York City Police Commissioner William Bratton, not to mention my wife and coauthor Catherine Coles, will be among the first as well.

## **The Failure of the “Root Causes” Theory**

The idea that social injustice, racism, and poverty are the root causes of crime received an enormous boost during the 1960s, especially by President Johnson’s Commission on Law Enforcement and Administration of Justice. I have little quarrel with the idea that links exist between these issues and crime; however, I am certain that they are complex and indirect. James K. “Chips” Stewart, a former director of the National Institute of Justice, was among the first to argue the inverse of the root-causes argument: Social

injustice and poverty are caused by crime. Disorder, fear, and crime undermine social and economic institutions to such an extent that families, schools, churches, commerce, and other institutions cannot function. I believe that we do not need to choose which comes first; crime and other social problems are intimately and complexly linked.

I also believe, however, that it is false to leap from the idea that these problems are linked to the idea that we must deal with "root causes" to reduce crime. Police entered the 1960s certain that they could control or reduce crime; it was only a question of enough personnel. Preventive patrol and rapid response to calls for service were self-evidently effective. Chief after chief testified that if only he could have so many new positions, he could reduce crime substantially. The number of police soared in many cities, along with crime.

By the late 1970s, the surge in nationwide crime rates and research findings on preventive patrol and rapid response ended such certainties. The idea that preventive patrol and rapid response didn't work was mixed in with the root-causes argument in a perverse logic: Crime is caused by poverty, racism, and social injustice; to deal with crime one must deal with these root causes; police and other criminal justice agencies have little to do with the root causes of crime; therefore, police and other criminal justice agencies can do little about crime. Police can push crime around from wealthier, better defended neighborhoods to poorer, less well-defended neighborhoods; however, this only increases social injustice.

This logic penetrated deeply into policing, in effect "depolicing" the crime problem. Many staunch advocates of the root-causes theory were associated with the development of community policing, which contributed to the misperception that community policing was not serious about crime and akin to "soft" policing, community relations, or social work. The idea that

community policing was “soft policing” was so ingrained that even the cautious and highly discretionary order-maintenance activities described in *Fixing Broken Windows* were too strong for some chiefs: “There is another war raging among and within the ranks of America’s police departments. The ‘Fixing Broken Windows’ philosophy is pitted against that of ‘Community Policing.’”<sup>15</sup>

While crime was spinning out of control in many communities, many advocates of the “broken windows” theory said, although they wanted to achieve social justice and end racism, there must be other approaches to crime control than massive social change and case processing. This raised fears and charges in many quarters that they were backing away from civil and human rights. One such charge regarding “broken windows” was: “Wilson and Kelling express little interest in developing mechanisms and agencies which may empower the poor and the powerless, and they seem even less interested in directing resources towards the disadvantaged and marginalized.” This charge is not only irrelevant to the issues Professor Wilson and I were exploring; it is untrue.

Mixing root-causes ideology with the case-processing model (police as the front end of the criminal justice system) left arresting offenders as the only police business. (For a good example of this model as it pertains to juveniles, see a 1964 publication of the International Association of Chiefs of Police, *Juvenile Delinquency and Youth Crime: The Police Role*.<sup>16</sup>) To the extent that police prevented crime, they did so merely through incarceration and primary and secondary deterrence linked to arrest, jailing, and imprisonment. (Departments may have had small crime-prevention units that met with neighborhood groups about locks and alarms, but they were part of the “empty holster” crowd. Real policing was arresting the bad guys.) Under this view, police tactics largely remained at the level of “sending a car,” alienating police from community residents: Police whisked in and out, seemingly “not getting it” or not caring. It also set the terms of the relationship between police and young

people: Police indiscriminately hassled youths, estranging many who desperately needed police protection and influence. Finally, “sending a car” poisoned the police culture, turning many good officers into “dirty workers,” doing what had to be done and “covering ass.” In the meantime, as Ed Davis, Chief of Police in Lowell, Massachusetts, points out, “Even when everybody does their job well—police make good arrests and investigations, prosecutors handle cases well, etc.—problems on the street get worse and worse.”

The experience in New York City during the late 1990s, with its abrupt decrease in crime, first in the subway system and later citywide, brought this simmering debate to a boil. Suddenly, pundits and the media discovered “New York style” policing. Zero tolerance and “broken windows” were equated. As complaints against the police rose and fell in New York City, their rise was evidence of police brutality and their fall was evidence of lack of citizen confidence in the complaint system. Police Commissioner Bratton must have been “cooking the books.” Root-causes theorists claimed that eliminating the squeegee scam was not problem solving; it didn’t deal with why people became squeegee men in the first place. Ideologues who persistently attribute crime to economics went so far as to pronounce, “We have analyzed all the economic variables that would explain New York’s drop in crime. None do. Therefore there are hidden economic variables that we have not yet discovered.”

The New York City experience exposed the fault lines in academic theories of criminal justice and criminology. “New York had not changed. Well, maybe it was different, but at the cost of suppressing the poor and minorities. Anyway, crime was just being pushed around.” However, New York City residents, former residents who visited the city, and other visitors did not need statistics: The city *was* different. And while criminologists debated “if” and “if, why?” not even Mayor Rudolph Giuliani’s political opponents ran against the New York City Police Department—even after the Abner Louima horror.<sup>17</sup>

Nonetheless, the root-causes credo must be protected by liberals. Their fear is that if control of crime is uncoupled from racism and social injustice, crime control will no longer be used to justify social and economic change. Frankly, I understand this concern. But holding crime control hostage to social and economic change increases the suffering and plight of the very populations that liberals are concerned about. In certain respects, the liberals had it right; the police can do little about social inequities. But the paucity of criminological and criminal justice imagination has left the poor and minorities unprotected in their neighborhoods and reduced public crime-control policy to "three strikes, you're out" and "truth in sentencing." Neither are bad ideas; but, as the mainstays of policy, they have created a social disaster that has resulted in the unnecessary incarceration of offenders, especially African-American men. The left, however, has as much to answer for this as the right. The equation of prevention with broad social change, coupled with the idea of police and criminal justice agencies as case processors, left no middle ground. Happily, we are at the end of the criminal justice processing paradigm.

## **Order Maintenance and the Current Declines in Crime**

The New York City story is complicated. Without diminishing the roles of Commissioner Bratton and Mayor Giuliani, I believe media accounts missed the story behind the story. Community groups had been organizing around crime prevention and pressing for policy changes for at least two decades. Business improvement districts reclaimed public spaces by providing both social services and security. Bryant Park was restored and Central Park was reclaimed. Graffiti were eliminated from the subway. Order was restored first in the subway, then in Grand Central Station, Penn Station, and the Port Authority Bus Terminal. Private security expanded and spread throughout the city. The Midtown Community Court was opened to concentrate on minor offenses. Plans were being made under former Commissioner Raymond Kelly to eliminate the squeegee scam. In other words, a widely shared consensus was

defining new standards of appropriate behavior in New York City and discovering the means to enforce those standards. The city was systematically reclaiming its turf—from parks, to subways, to city streets.

Mayor Giuliani recognized this shift in New York City's ethos. In fact, he recruited a police commissioner who had links to the turnaround in the subway, William Bratton. Giuliani and Bratton were as much shaped by the city as they subsequently helped shape it. Bratton inherited a police department that had been sapped of its vitality by overwrought and overzealous preoccupation with control, especially control of police corruption and abuse. The result was an organization paralyzed by a "stay out of trouble" mentality and still riddled with corruption and abuse. Bratton gave the New York City Police Department a new vision of its capabilities and the administrative means of implementing it. The meaningful involvement of the police in the city's life achieved a tipping point: Police restored order, citizen fear of crime dropped, the rate of crime dropped for many offenses from farebeating to murder, and the quality of life improved. A community reasserted control over itself and its most unruly citizens. Did youngsters learn from their older brothers' experiences? I hope and believe so. Did imprisoning many youths help? Probably, but there was no lack of youths in New York City—their percentage of the population increased during the early 1990s. Were drug use patterns changing? Maybe, but there was no evidence of this at the time.<sup>18</sup> The point is, the search for *an* explanation or *the* explanation—great man, broken windows, younger brothers, youths imprisoned, changing economy, and others—misses the point. Many factors worked together to enable New York City to reassert control over its public spaces.

The experiences of New York City were not unique. Aside from the seemingly inevitable growth of the suburbs, consider what was done to our cities during the 1950s, 1960s, and 1970s. In the name of urban renewal, entire inner-city neighborhoods were torn apart. No provisions were made for displaced

residents, so naturally they moved into adjacent neighborhoods. Because many of those displaced were African-Americans, real estate blockbusters followed them, undercutting property values and scaring other residents into moving. In the renewal areas, concrete blocks of multistory public housing were built, often, as in Chicago, with unsecured external elevators. This was the housing of last resort for the most troubled and troublesome families. Expanded tenant "rights," however, made it virtually impossible to evict troublemakers regard less of their behavior or capacity for mayhem. Expressway construction followed and cut wide swaths through communities, displacing entire neighborhoods and dividing others. Neighborhood schools were abandoned and students were bused throughout the city. Mental hospitals emptied patients onto city streets and drunkenness was decriminalized. The mentally ill and alcohol and drug abusers drifted into urban centers. In the name of their "liberty interests" and to forestall family and governmental abuse, parental and governmental authority over youths was reduced. To ensure that children would not be stigmatized, we abandoned the idea of early identification of predelinquents. Meanwhile, in the name of efficiency and improved emergency response, police were withdrawn from public spaces into cars and became remote law enforcers. As "root causes" depoliced the crime problem, the use of police as an emergency response system depoliced public spaces.

Jane Jacobs saw virtually all of this coming in 1961 and anticipated its consequences when she wrote *The Death and Life of Great American Cities*.<sup>19</sup> What more could have been done to destroy the cohesion and "small change" (daily civilities) of neighborhood life? From physical destruction, to tower block construction, to busing, to single-use zoning, to deinstitutionalization, to decriminalization, to "freeing" youth, to withdrawing police—the very underpinnings of urban life were destroyed or withdrawn. Although many of the social ends that we were attempting to achieve were lofty, their costs in terms of urban life were great.

As I go from community to community, I am struck by the extraordinary levels of activities that residents engage in (and their rich and diverse mix) to reassert influence over their communities. The list is extensive: business improvement districts, extended school days, new behavior standards in public housing, community organizing, religious programs, crime prevention through environmental design, neighborhood youth offender panels, private-sector involvement, situational crime prevention, monitoring to encourage responsible landlords, enforcement of truancy laws, advocating for new ordinances against panhandling, neighborhood police stations, park reclamation, and drug courts. The list could go on and on.

As I have observed in monitoring the Bureau of Justice Assistance's Comprehensive Communities Program (as well as other programs in which I have worked), the extent and richness of activities and the breadth of collaborations in many communities is far greater than it was just a few years previously. Moreover, the origins of the collaborations are diverse. They can start with virtually anyone: a leader of a neighborhood organization, a mayor, a district attorney, a police chief, a housing administrator, or a transportation official.

Probably no individual program had great impact, but as citizen, private-sector, and government efforts accumulated and interacted, citizens believed in their efficacy. Their evolving success then was reflected increasingly in official statistics. The evaluation and interpretation of these programs, of necessity, lagged well behind their implementation. Suggesting, however, that reassertion of community control should await the development of a proper evaluation design—if one were possible in such circumstances—is unrealistic. Besides, I doubt that what happened in New York City or San Diego is replicable. Each community reasserted control in its own way. This does not suggest that communities cannot learn from each other. They can, but adopted innovations must fit within a particular context.



The old role of police as discussed in “Broken Windows”—roughing up “undesirables”—is now unacceptable to police as well as citizens. The new role of police and other criminal justice agencies is to back up the activities of citizens and social institutions, reminding citizens of their obligations and holding them accountable when they do not live within broad definitions of acceptable behaviors.

A key to police and criminal justice officials making major gains in neighborhood reclamation and crime reduction is “talking to them”—talking to offenders, would-be offenders, and citizens. When analyzing the order-maintenance activities in Newark that Professor Wilson and I described in “Broken Windows,” the police activities in New York’s subways to end farebeating, or the current antigun violence effort now under way in Boston, a common thread emerges: communication. Officials negotiate and define new thresholds of acceptable behavior. They then let people know what the thresholds are, that they are serious about enforcing them, that they have the capability to enforce them, that they *will* enforce them, and finally, that they *have* enforced them. The purpose of “talking to them” is to get offenders and would-be offenders to change their behavior. It is not that we want to arrest “in-your-face panhandlers”; we want panhandlers to stay out of peoples’ faces. We do not want to arrest farebeaters; we want people to pay their fares. We do not want to arrest murderers; we want them not to murder.

The emphasis on changing behavior does not mean that police and criminal justice officials will forego cracking down on offenders who will not listen. As in the current Boston effort, however, it is important that police and other criminal justice agencies continue to explain their crackdowns to “wannabes” (would-be offenders) and other troubled and troublesome persons. “Talking to them” ought not to be considered a program or a special effort; it is a core activity of police, prosecutors, courts, and corrections. Such communication develops neighborhood norms, establishes the limits of what can be accomplished, and sets expectations for citizens, neighborhood interests, and authorities.

Many police are now committed to communities and actively work with them to reassert neighborhood standards. Many prosecutors at all levels, from city to U.S. Attorneys, are awakening to their responsibility to prevent crime. Although most courts are generally lagging behind, drug courts and community courts like the Midtown Community Court in New York City are leading the way. (But judges will wake up; most are closet politicians and underestimate the power of popular ideas.) Some corrections agencies are making changes as well. Prosecutors, courts, and corrections will have to go through the same painful adjustments in their organizations and cultures as police have. But, as more success stories accumulate in cities such as San Diego; Boston and Lowell, Massachusetts; Richmond, California,<sup>20</sup> and many other places, more and more police departments and criminal justice agencies will be forced out of "business as usual."

## Creating a Mainstream

I have argued that the "broken windows" metaphor has been seriously distorted by both political extremes: the far left and the far right. Each imputed to the "broken windows" theory its own agenda: the left, the ravages of uncontrolled police; the right, zero tolerance. Such interpretations of either the original article or of Dr. Coles' and my updating of the ideas in *Fixing Broken Windows* cannot be justified. For three decades two models of crime control have been driven largely by ideology: broad social change and more certain and longer prison sentences. A middle ground of crime prevention is currently breaking through the culture war. Mainstream liberals and conservatives are finding not only that it works, but also that it contains many elements about which they can agree. These include:

1. Achieving justice is as important as controlling crime for police and criminal justice agencies.

2. Policing and criminal justice practice must be legal and constitutional.
3. Citizens, neighborhoods, and communities must play a central role in defining neighborhood problems, establishing priorities, and crafting solutions.
4. A central mission of police and criminal justice agencies is to prevent crime—that is, to solve problems that weaken the capacity of a neighborhood to defend itself against predators.
5. New forms of collaboration among police organizations, criminal justice agencies, other government agencies, service agencies, the private sector, and religious communities are required to control fear, crime, and disorder.
6. The unique contribution of police and other criminal justice agencies is their capacity to use force to solve problems—the “or else” when miscreants do not control their behavior.
7. The case-processing model of law enforcement continues to be an important crime control method, especially for repeat violent offenders.
8. Police should continue to ensure that the needy, disturbed, and homeless are referred to social and other services.
9. Police and other criminal justice agencies should not do for people what they can and should do for themselves or fulfill needs for which other social and governmental agencies are chartered.
10. Police and criminal justice agencies must bridge gaps in social and governmental services during periods of crisis or emergency.

The last decade has seen enormous advances in our ability to think about preventing crime. We understand the tragic consequences of depolicing city streets—and the crime problem. Communities are recapturing public spaces from miscreants and predators. Police and criminal justice agencies are redis-

covering their basic roles in maintaining order and preventing crime, not just processing cases. The results have been better than we expected, and we have not seen the best yet.

## Question-and-Answer Session

**Roger Connor, Executive Director, American Alliance for Rights and Responsibilities, Washington, D.C.:** What do we do about the loitering youths in Chicago that the neighbors want the police to round up and drive from the streets? Chicago police, as you know, arrested 45,000 young people in the last 2 years under a law that said it was illegal to loiter with a gang member. The Illinois Supreme Court just said that these arrests are unconstitutional. What do we do about the problem of loitering gang members, as an example? It seems that it is present in almost every community where I go and talk to people.

**G.K.:** I don't know. But that was the same answer I gave when they asked me what to do about the New York subway. I really didn't know. They asked, "What should we do?" And I said, "Why don't you bring together a group of about six patrol officers who work in the subways and do the line work. Give me a couple of sergeants and at least one chief (because at times, we need some authority). But primarily give me line people and then bring in some from the civilian side. First of all, let's figure out what the problem is. (Everyone thought the problem was homelessness, but it wasn't.)

It is with great amusement that I watch what is happening in San Francisco now as Willie Brown inherits the situation out there. They still have the problem wrong: They think "disorder and homelessness," rather than "disorder

and crime.” It took us a year to think through what the problem was in the subway and do something about it. My guess is that it would probably take about that long to figure out what to do in public housing, too. But I’m very confident about the process. The gun project in Boston developed in the same way. They pondered for 15 months and wondered if they would find anything. They went through the systematic planning, the diagnosis, a very rigorous problem-solving method, and finally started to figure it out.

I really mean it when I say, “I don’t know.” But I have enormous faith in the process, starting with the Kansas City experiment. (The Kansas City experiment was not my idea; it was the idea of people like Charlie Brown who said, “Preventive patrol doesn’t prevent anything—we’re kidding ourselves.”) A task force created the Kansas City experiment. In event after event in which I’ve been involved, we sit down with people who do the work, bring them the research, and go through it with them. We figure things out. There are people in this room who could sit down with people from Chicago or some other community and figure out what is going on with violence and intimidation and then deal with it.

**Jolene Herson, Writer/Editor, National Institute of Justice, U.S. Department of Justice, Washington, D.C.:** I would appreciate any insights or observations you have about the problems we have here in Washington, D.C.

**G.K.:** Crime control gets mixed up with race and ideology. That’s what I’ve been talking about. I think that has happened here in Washington, D.C. As I understand it—and I’m not an expert in this—you have had the same trouble in Washington that we had for a long time in Boston, which kept the police department in despair. That is, the politicians couldn’t keep their hands out of the internal workings of the department. When Mayor Menino finally allowed Paul Evans to structure the department to be in sync with the community, the department flourished. I understand you’ve had a fair amount of political manipulation of your department; I don’t know whether that’s over. It would

seem to me that a lot could be accomplished here. You have a lot of cops in the area; I hope they are starting to work together. I also understand that the U.S. Attorney's Office is very interested in working with the police and forming collaborations.

My guess is that, like Boston, you couldn't move very far unless at one level or another you have the support of the faith communities. Although the churches in Boston did not help devise the antigun violence effort, they were generally supportive of the department. They had a strong commitment from the faith community (the Nation of Islam, the Methodists, the synagogues, etc.) to endorse what the police were going to do. The police and the faith community agreed: "Yes, these youths who are going to go away for a long time need to and deserve to, and there are no alternatives." It seems to me that they had a very serious problem that was associated with the historic divisions around race but also with equating the attempt to control crime as somehow harassing minorities. We must get beyond that.

Again, it wasn't just from police officers that I learned about "broken windows." Everywhere I went—in the toughest neighborhoods in Chicago (Robert Taylor Homes) or New Haven—poor citizens demanded order. I didn't learn about this from wealthy citizens in suburbs. I learned about it from poor citizens who were suffering and demanding that police do something about it and who were constantly frustrated by the police whisking in and whisking out. That is a social disaster, how we have turned police into an emergency response system. It was at the cost, as I have said, of depolicing our cities.

That's not a very good answer, but you know it's a loaded question.

**Mark Engman, Special Assistant to the Chief of Staff, U.S. Department of Housing and Urban Development, Washington, D.C.:** I am very interested in some of the comments you made recently about order management and a community's desire for order. I see that myself. But on the other hand, I see

communities where the people just don't trust the police. It seems like you can't have order management without that trust. My question is, how do departments get that trust so they can move on to do the jobs they need to do?

**G.K.:** Well, citizens don't trust the police with good reason. Fortunately, the officer that I described in the Robert Taylor Homes was born and lived in the Ida B. Wells Homes. (I understand there was a TV special, a Frederick Wiseman film about that, that I'm eager to see.) The police are scared to go into these areas; they only go in to respond to calls. In Chicago, when kids were harassing people and they wanted cops to come, they would say, "Man with a gun," and they'd get 13 cars up on the lawn. At least that's the way it was; I don't want to reflect on Chicago now. I don't think we understand the extent to which the fear of citizens and neighborhoods leads the police to preemptive intimidating tactics, which alienate good citizens who are desperate for control. I've seen it happen time and time again. You put officers in tough circumstances, introduce them to some citizens, leave them there, and things simply happen. Remember Newark in the mid-1970s? That was where our cities were going.

I was criticized for working in "easy" cities like Kansas City and Dallas, so I decided to work in a tough city, Newark. Police could gain the trust of citizens, but it took time. There were some neighborhoods, frankly, where, if I were chief of police and decided to have officers go on foot patrol, I would tell their commanders to go with them and ask citizens to patrol with them as well, at least for several weeks. This makes two statements: (1) I'm here to help protect and support the officers. (2) I'm also here to control the officers because the amount of countercontrol that citizens have when officers are exposed on the streets is very great and very desirable in penetrating this "police culture" that we got stuck with when we isolated police in cars (which we deliberately did for control reasons). That is why I used strong terms I may have to answer for later when I talked about overwrought and overzealous concern for control.

One can argue that police strategies are primarily oriented to controlling officers rather than dealing with problems in communities. That's a nice, honest police machine to have in town. But, how can it be that it is worth doing something well if it isn't worth doing at all?

**Peggy Burke, Senior Associate, Center for Effective Public Policy, Silver Spring, Maryland:** You spoke earlier about the pitfalls of metaphors and the extremes of case processing on the one hand and social change on the other. Have you given thought to the metaphor that you might use to describe that middle ground? You listed 10 items. When you are having a public discussion about crime prevention and control, it's helpful I think to have language, a metaphor or whatever, to characterize it easily.

**G.K.:** No, I don't have a metaphor for the middle ground. I wish I did, but 15 years from now, I'd probably get burned by it again. Actually, Professor Wilson was the person who had used that metaphor and placed it in the article. That is something I acknowledge in the book and I appreciate his generous support. When it comes to creating metaphors, I'm not that good.

**Ruth Davis, President and CEO, The Pymatuning Group, Alexandria, Virginia:** It might be a minor point, but it was brought to my attention because of your lack of reference to it. There has been a lot of attention in the media lately to one of the instruments of community law: the curfew. Will you offer your feelings or comments?

**G.K.:** I think curfews are not a bad idea, but I am not terribly enthusiastic about them. (This is something that I haven't thought through.) In using curfews, we set up a situation in which all youths are restrained as a consequence of the actions of a few. We had a conversation last night at [NIJ Director] Jeremy Travis's house about what we have done with juvenile laws. I believe we have effectively reduced both parental authority and governmental authority over youths, and we have to think again about how we reinstitute



some of that authority. We have extended enormous liberties to youths who don't have the capacity to handle them. I would want to think a lot about how curfews fit into that and rethink laws that protect children, and secondly (as Frank Zimring talked about), we want the laws to give them a license to experiment (but also to reassure, influence, and protect them).

I am struck by how much we, including the police, have stopped talking to our children. I am going to steal a story from my colleague and wife, Catherine Coles. There was a problem with youths hanging around in the subway and everyone was positioned to roust them. A district attorney went and talked to them and found out they were there because a lot of police officers were there—it was a safe place to be. But previously, nobody had talked to them to find this out. Although they “woof” and make a lot of noise, many youths are seeking protection, influence, and help in controlling their own behaviors. I think when we stopped talking to them we made a big, big mistake. And when we decided that they should have the same liberties as young adults, it was also a mistake.

**Jean O'Neil, Director, Research and Policy, National Crime Prevention Council, Washington, D.C.:** How do we judge the effectiveness of these things? If you were going to talk to the evaluation community about new lenses they had to put on to see the picture differently, what would you say?

**G.K.:** I think this is a very troublesome issue. I am aware that there is hardly an aggregate statistic that you can't interpret either way you want to. When civil libertarians say that an increase in complaints reflects an increase in brutality and a decrease in complaints reflects a lack of faith in the complaint process, they are telling it both ways. And we can do that with reported crime. If, for example, the number of rapes increases, it's a sign of more rapes—or it's a sign of more women reporting rapes. With aggregate statistics, I have no trouble playing with the data and turning them to their opposite meanings!

If I am right and each community will do it in a different way because each community has different problems, the indicators of success are going to be different from community to community. Some of you know that I have tried to collect indicators. I mentioned one to you: the first homecoming in 20 years. Other indicators include the delivery of pizza in the Eau Claire housing development in Columbia, South Carolina; the creation of a homebuyers' club in the Boyd Booth neighborhood of Baltimore, where people were walking away from houses; the removal of the grates that covered shops by local merchants in East Boston because they sent the wrong message. These are indicators that say a whole lot more about what is happening in those neighborhoods than aggregate statistics do.

But, I think we have to use the aggregate statistics and we have to hound the police to make sure they are relatively accurate. We have to break the figures down and immerse ourselves in the complaint statistics to see whether the nature of complaints is changing. Are we going from officers hitting people to officers smarting off? Has there been a change in reporting standards? You have to immerse yourself in those kinds of data to understand what they mean. So quick-and-dirty evaluations, I think, are a thing of the past. So many issues are local, and aggregate data have to be thoroughly explored to understand what they mean. It is a very tough problem.

When citizens say to me, "Things are different here," that's very powerful testimony. I'm serious. I do a lot of public speaking now. If I were followed around, I would be accused of bringing plants into the meeting because, in every meeting I'm at, one or two people from New York stand up and give a testimonial. "I hadn't been in New York since 1984; I said I was never going back. I eventually did go back to my old neighborhood—and I had to call my father to make sure I was at the right address. I couldn't believe it!" But we need to break the data down—disaggregate things and look at them closely. It's a difficult process, and I don't think we have any easy answers to it.

**William Earle, Assistant Director of Management/Chief Financial Officer, Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, Washington, D.C.:** I am a 1967 graduate of Rutgers in Newark. Last year, Professor Wilson came here and talked to us about the Federal role in reducing crime. He asked, "Although the Federal Government spends a lot of money, does it really have a role in reducing crime?" Could you comment on what you see as the Federal role in what you have talked about this morning?

**G.K.:** Well, I have published (or proposed that it be published) something about this. One of the fascinating things that is happening in the Comprehensive Communities Program (CCP) under the Bureau of Justice Assistance is that Government officials have "let good things happen." By that, I mean that there is no one "Comprehensive Communities Program" and there are no boundaries. When you go to one community, it is one thing; in another community, it is something else; and in a third community, it is something else again. The funds have been used to allow cities to carry out their own agendas. The cities that came into CCP with a strong agenda, vision, and leadership are really taking off. When you look at Boston, Columbia, Baltimore, Salt Lake City, the East Bay area in California, and other cities with CCP funds, very exciting things are happening—you wouldn't believe it. The Feds are letting good things happen.

The second thing is I wouldn't assume that the Federal Government has the good ideas—the ideas are on the ground with the people out there. We can help them develop those ideas, but basically they have to percolate up. The Federal Government can help by finding out about them, disseminating them, and sharing them. For the CCP people, I think they learned from the consultants, but they learned much more from themselves. As they were brought together, with opportunities to share experiences, they really learned a whole lot.

I think the Federal prosecutors are in a position, as in Boston with the Bureau of Alcohol, Tobacco and Firearms (ATF), to be in powerful collaborations with local police that don't assume leadership by the Federal Government. Those of you who have read *Fixing Broken Windows* know that [coauthor] Catherine Coles and I spent a good part of the introduction saying that most of the ideas that come from the Federal establishment haven't been terribly good. Important things have perked up from the ground. I think the ATF, Drug Enforcement Administration, and other organizations can assist communities, but they are minor partners. It's not like the old days with the FBI, where the FBI was the major partner. The Federal Government should be the minor partner. So, let good things happen, help support them, lend your authority, and help spread the good ideas. I can't go much beyond that except with a warning: Don't think that your ideas are the best.

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# Race, the Police, and “Reasonable Suspicion”

*Presentation by*

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*Washington, D.C.*

Should police be allowed to consider race in determining whether someone has committed or is about to commit a crime? State and Federal police officials routinely use race as a marker for crime. For example, the U.S. Border Patrol has acknowledged that its agents in the Southwest scrutinize motorists who appear to be of Mexican ancestry more closely than others.<sup>1</sup> Officials of the Drug Enforcement Administration (DEA) have acknowledged that blackness is a factor that prompts them to question certain passengers leaving airplanes.<sup>2</sup> Police officers across the country have acknowledged that they scrutinize people who seem out of place racially or who seem incongruous, as when a black person is in a predominantly white neighborhood late at night.

Allow me to make the precise target of my inquiry more clear. First, I am not focusing primarily on instances in which police officers question, detain, or arrest someone *solely* on the basis of race. To be sure, such conduct occurs and merits attention; indeed, it figures into my analysis. That such conduct ought to be condemned, however, is uncontroversial. The great majority of police officers, lawyers, and judges would agree that acting *solely* on the basis of race would be wrong and is illegal. The controversial issue is whether police ought to be allowed to use race *at all* in determining suspicion.

Second, I am not focusing on instances in which race is an identifying feature of a suspect. I do not object, for example, if a robbery victim states the race of the perpetrator and the police use that information to pursue the criminal. Mentioning race as part of a detailed description of a robber is no different and no more objectionable than mentioning that the perpetrator had purple hair or a prominent scar.

The focus of my attention is the routine police use of racial generalizations to create a "profile" of likely suspects. Police do not have a specific suspect in mind; rather, they use race as part of an array of factors threaded together to create a net with which to go trawling for criminals.

## The Courts' Response

Most courts have broadly affirmed the constitutional legitimacy of this practice. Consider the case of *United States v. Weaver*.<sup>3</sup> A DEA officer stopped and questioned Arthur Weaver, who had just exited an airplane at the Kansas City, Kansas, airport. The officer said he questioned Weaver because he was "roughly dressed," young, black, and on a direct flight from Los Angeles, a source city for drugs. In addition, the DEA officer said he suspected Weaver because he walked rapidly from the airplane toward a cab, had two carry-on bags and no checked luggage, and appeared nervous. Although the young man, as it turned out, was carrying illicit drugs, he challenged the legality of the officer's intervention. The Eighth Circuit Court of Appeals upheld the officer's conduct and expressed no misgivings about it despite the fact that he admitted having taken race into account. Although the Eighth Circuit Court admitted that "large groups of our citizens should not be regarded by law enforcement officers as presumptively criminal based upon their race," the court explained its position in this way:

Facts are not to be ignored simply because they may be unpleasant—and the unpleasant fact in this case is that the [DEA agent] had knowledge,

based upon his own experience and upon the intelligence reports he had received from Los Angeles authorities, that young male members of the African-American Los Angeles gangs were flooding the Kansas City area with cocaine. To that extent then, race, when coupled with the other factors [the agent] relied upon, was a factor in the decision to approach and ultimately detain [the suspect]. We wish it were otherwise, but we take the facts as they are presented to us, not as we would wish them to be.<sup>4</sup>

Realism is the central theme of the court's response: "We take the facts as they are presented to us." Because the facts indicated that black gangs were exporting drugs to Kansas City, it seemed reasonable for officers to direct their attention to airline passengers fitting the profile of such gang members, a profile that included blackness among other factors. Judges and others who permit or champion the approach taken by the agent in *Weaver* emphasize its effectiveness. They assert that using race as a marker of a greater likelihood of criminal wrongdoing by an individual or group allows authorities to apprehend criminals and allocate resources more efficiently than would otherwise be possible. Proponents of this view might note that the man targeted in *Weaver* was a drug courier, just as the agent suspected.

The court also decided that the use of race in *Weaver* was not invidious or malicious because race was only one of several factors in the officer's calculation. It would have been wrong, the judges declared, had the officer cited only race as a basis for questioning Weaver. In the court's words, "We would not hesitate to hold that a solely race-based suspicion of drug courier status would not pass constitutional muster." But that is not what occurred; race was only one of several factors on which the officer relied.

In my view, however, as a matter of law and policy, it is wrong for officials to use race—even as only one of several factors arousing their suspicion, as in *Weaver*.



First, the officer engaged in racial discrimination when he used race as a factor in his suspicion of Arthur Weaver. Racial discrimination occurs whenever race is taken into account—even when it is taken into account only to a small degree and alongside other factors.

Second, use of racial distinctions in policing should be handled by policymakers and courts in the same way that racial distinctions are handled in other arenas of our society; officials should not use racial distinctions to reinforce their suspicions unless they can offer an extraordinary justification.

Unfortunately, many courts have demanded only good-faith reasonableness as a justification for race discrimination in policing. They argue it is a fact that people fitting certain profiles in which race is a factor are more likely to commit (or to have committed) certain crimes. They might point, for example, to jurisdictions where in 1997, 90 percent of the drug couriers were African-American men between the ages of 18 and 40. They contend that in such settings it makes good sense to use markers, including race, to direct attention to those people most likely to be drug traffickers. Proponents of this view might well quote my colleague Cornell West and declare that "race matters."

Frequently, however, police officials and courts lack a factual basis for concluding that race (in addition to other factors) correlates with a higher risk of criminal misconduct. Great care should be taken before reaching such a conclusion. But even if such a correlation can be decisively established, officials should be more attentive to the special historical significance of racial distinctions in American life. Racial discrimination is different from other types of discrimination. That is why courts typically insist, under the equal protection clause of the 14th amendment, that reasonableness is an insufficient justification for officials to discriminate by race. When officials discriminate on racial grounds, courts have increasingly demanded that such discrimination be subject to "strict scrutiny"—the most intense level of judicial review.

Under strict scrutiny, a racially discriminatory governmental action is upheld only if it can be supported by a compelling justification and if the government's racial distinction is narrowly tailored to advance the project at hand. In the context of affirmative action, courts and public opinion have become impatient with racial distinctions. The legality of racial distinctions in policing, however, has received conspicuously less attention, which is remarkable and troubling.

### Are Distinctions Ever Justified?

I do not want my objection to race discrimination in policing to stand or fall, however, on a point of constitutional law. Even if courts conclude that a practice is constitutional, it does not mean that the practice is wise. Routine police use of race as a marker of criminal behavior is profoundly unwise. Such a policy opens the door for officers to use racial discrimination as a means of racial harassment. My primary focus has been on good-faith efforts by Officer Friendly (as opposed to Officer Bigot) to use racial distinctions to make policing more efficient. An appreciable number of Officer Bigots, however, populate police forces. Because current policies allow officers too much leeway in making racial distinctions, these policies invite abuse. Bigoted officers can easily camouflage racial harassment with claims that race was only one of several factors causing them to act against a black or Hispanic suspect. For preventive reasons policymakers ought to insist that officers have not only a reason but also an extraordinary reason for using racial distinctions in policing.

In an emergency, police could properly take race into account when the situation is weighty, immediate, and cannot be addressed sensibly by other means. For example, police receive a credible tip that a black man armed with a bomb is somewhere in an office building. Upon entering the building, police examine black men more closely than those who are not black. Under such circumstances, no one can rightly feel aggrieved. After all, freedom from racial

discrimination is sometimes in tension with other freedoms. Care must be taken to ensure that the definition of exceptional emergency circumstances under which police are acting is clear and limited. When these precautions are taken in an emergency, the use of race should be viewed as an unpleasant necessity and not racial injustice. Police officials today use racial distinctions routinely and casually under circumstances that cannot plausibly be described as emergencies; this is racial injustice.

This situation nourishes the mistrust, resentment, and anger that many Americans of color feel toward the police. Nothing contributes more to these poisonous feelings than the knowledge that, as a matter of policy in many circumstances, the police view black or brown skin as a mark or signal that someone is suspicious and act accordingly. This is why journalist Don Wycliff speaks for many people when he asserts that, notwithstanding his middle-class status, he feels "an ambivalence tilting toward antipathy for the police." He feels that way, he explains, because "a dangerous, humiliating, sometimes fatal encounter with the police is almost a rite of passage for a black man in the United States."<sup>5</sup>

If the police may properly view race as a marker of suspicion, people of color are more vulnerable to routine questioning, traffic stops, and other unwanted attention from the police. It follows that people of color will have more reason than whites to fear the police, regardless of their compliance with the law. Racial minorities are on average more likely to be victimized by crime than whites, which only compounds the problem. The residents and communities most in need of police protection view the police with the most ambivalence. People who otherwise might be of assistance to the police avoid them, decline to cooperate with police investigations, assume bad faith or dishonesty on the part of police officers, and teach others that such reactions are prudent lessons of survival. In many locales, enhancing the effectiveness of the police requires the creation of better police-community relations. But in many places, better

police-community relations are possible only if people of color are confident that the police deal with them on the same basis as they deal with whites. That confidence cannot be created as long as police routinely view color as a signal that someone is suspicious.

## The Rationales and the Response

I will now address some anticipated criticisms of my position. First, some critics resist this reform on the grounds that so-called good-faith race discrimination in policing is too beneficial to give up. The rebuttal to this claim takes two forms. One involves its cost. Proponents of good-faith race discrimination in policing often greatly minimize the costs of this practice and point only to the instances in which such practices lead to capture of criminals. They often neglect to consider the cost (burden) to innocent people. They emphasize the brevity of the police intrusion and contend that that is a small price to pay for enhanced police protection. But the man who is pulled over for questioning in the Southwest by the Border Patrol in part because he appears to be of Mexican ancestry will be vulnerable not only to one stop but a lifetime of such stops. Nor do proponents of this type of policing sufficiently weigh the cumulative negative effects of this practice on policing itself. The resentment generated by race discrimination in policing, even in good faith, impedes law enforcement by eroding the cooperation and trust the police need to carry out their difficult tasks.

Second, proponents of good-faith race discrimination in policing often talk as if no sensible alternatives exist. But that is not so. Instead of placing a special burden on people of color, authorities could decide to hire more police officers to investigate the resulting larger pool of suspects. Or they could impose upon everyone nonracial schemes for dealing with criminality, such as random stopping or stopping everyone engaged in certain modes of transportation. Facts alone do not determine how we proceed; the way we proceed is a matter

of choice. The choice is whether to continue to place an extra burden on groups that historically have been oppressed or to burden everyone equally, regardless of race, paying the costs that a full and authentic embrace of racial justice sometimes exacts.

Third, some people respond to my argument with a shrug, saying that regardless of its merits, police will do what they think works best despite the formal rules that govern their behavior. Further, some people maintain that implementing my proposed prohibition of police use of race as a marker of suspicion will simply cause officers to lie. Instead of an agent saying candidly that race was one of several factors that prompted him to question someone like Arthur Weaver, the agent will continue to use race as a marker of suspicion but omit any reference to race when called upon to justify his conduct. The fear that officers will not stop using race as a marker of suspicion, however, is an insufficient basis for rejecting my argument. It is fair to assume that a substantial number of officers would obey the new rules even if they disagree with them. Moreover, even if these rules drive racial discrimination in policing underground, that is better than the current situation in which police are authorized and expected to use race to as a marker of suspicion. I admit that there is a danger in constructing a norm that likely will be underenforced to a substantial degree. Underenforcement will nourish further the cynicism of people of color who believe, understandably, that the criminal justice system habitually breaks its promises. The correct response to this danger, however, is not to promise less but to work harder to bring the actual conduct of officials in line with appropriate goals. Even when rightful rules are underenforced, they are worth fighting for because they set the standard for legitimacy, exerting moral force that affects peoples' conduct and expectations.

In conclusion, political leaders and police authorities ought to declare clearly that, except in extraordinary circumstances, officers in the field should not take race into account in determining whether individuals appear to be suspicious. Courts ought to prohibit police use of racial discrimination that is

justified merely because it is reasonable. Even if courts decline to invalidate such conduct, however, police should reject it themselves on the grounds that it is counterproductive.<sup>6</sup>

## Question-and-Answer Session

**Robert Wilkins, Specialist, Litigation Counsel, Public Defenders Service, Washington, D.C.:** Good morning, my name is Robert Wilkins and I'm one of Professor Kennedy's former students. A few years after graduating from law school, I became an innocent victim of exactly what Professor Kennedy is talking about this morning. I thought I'd share a personal experience and some statistics with you to show you the significance of this problem.

My family members and I were stopped by the Maryland State Police when returning home from a funeral. Rather than just write a speeding ticket, the officers detained us and tested us with a drug-sniffing dog—even though I explained to the officer the Supreme Court case that said he couldn't do this. We eventually sued and learned that the Maryland State Police had a written policy to focus on African-American males (especially young ones in rental cars registered in Virginia). That is exactly what we had: a rental car from Virginia. As part of the resolution of the lawsuit, we received a settlement in which the Maryland State Police must keep statistics on who they are stopping and searching. We have learned that they search and arrest African-Americans at five times the rate they search and arrest whites on Interstate 95. But they find drugs on African-Americans at a slightly lower rate than they do on whites. If you look at the absolute numbers, they search and arrest African-Americans for drugs at five times the rate that they search and arrest whites because they target African-Americans in the first place. It is a self-fulfilling prophecy.

I offer that more as a comment than a question. It is an example of how important it is to get behind these explanations and statistics. It's very rare that you get statistics like the ones that we have from this lawsuit, and I think it shows the cause of this problem.

**Adrian Curtis, Director of Budget Staff, Justice Management Division, U.S. Department of Justice, Washington, D.C.:** I think that people in the audience may not be asking questions because they are thinking about how you would implement or operationalize what you are saying in "the real world." I was thinking about the Drug Enforcement Administration agent at the Kansas City Airport. He had the information that it was black males who were bringing drugs in, and he had other reasons for suspicion. I don't know how, in his head, he could function without saying, "Well, there is a black male coming from Los Angeles and he looks suspicious for other reasons also." I don't know how he could leave race out of it. I can understand more what Mr. Wilkins was saying than the example you gave.

**R.K.:** The question of operationalizing this reform is a great question, and I don't have a comprehensive response. In a Nation where racial distinctions are so much a part of everyday life, how does one get rid of them? Over the past 30 or 40 years in other parts of our national life, such as the workplace, we have implemented exactly what I'm suggesting. When someone comes asking for a job, the race of the person is apparent in most instances. But we have a wide panoply of antidiscrimination norms that govern the workplace. In judging people for a job, an employer can't give a demerit because so-and-so appears to be a member of a racial minority.

There is a long list of empirically verifiable sociological facts that might lead an employer to prefer whites. But we don't allow it. We say that even if those facts are true, we think it is bad for our society when people engage in racial discrimination. And we tell employers: You can't discriminate on the basis of

race. We say that there are sanctions if you do. Does discrimination happen? Sure, we know it happens. But it also is clear that the incidence of it has gone down. Also, the fact that we tell people that this is illegitimate and the fact that we penalize people for doing it have had the effect of changing the mindset of some people.

Trying to operationalize antidiscrimination norms is a huge problem, but it is not insurmountable. Housing discrimination, employment discrimination, and discrimination with respect to schooling have been confronted, although not to anyone's satisfaction. Clearly, however, we have reason to believe that antidiscrimination norms taken seriously can have an effect on people's expectations and the ways in which they conduct themselves.

**Vincent Schiraldi, Executive Director, Center on Juvenile and Criminal Justice, Washington, D.C.:** I have done a number of studies, particularly in California, that talk about the overrepresentation of African-Americans in our criminal justice system. The somewhat universal response to the studies has been: It's discriminatory to say that we should somehow redress this because people in the black community are calling for this level of policing, this level of incarceration. To undo what we have achieved would jeopardize the good, honest, hard-working people in South Central Los Angeles, Anacostia, West Baltimore, and other black communities. I'd like to hear your response to that.

**R.K.:** In my book, *Race, Crime, and the Law*, I stated at the outset that I am a law enforcement enthusiast. I believe that perhaps the first duty of government is to protect members of society. So, certainly, it is important for everyone, especially poor people, to be well protected by the police. Rich people, after all, can hire private guards and personal body guards and live in gated communities. It's regular people and poor people—*especially* poor people—who most need police protection. Poor, minority communities are most ravaged by crime in its various forms. So, I certainly believe that it's important to keep in the



forefront the need for efficient, effective, vigilant law enforcement. We need to protect people against criminals—by all means.

Having said that, it seems to me that it should also be clear that one of the biggest impediments to effective, decent law enforcement is the feeling of resentment that many people in minority communities in particular feel toward law enforcement. There is a sort of schizophrenia: on one hand, we have to be protected against the criminals; on the other hand, like the quote I read from Don Wycliff, we feel ambivalent. Of course Wycliff doesn't want to be mugged, but when he is walking down the street, he wants the guardians of law and order to deal with him on the same basis as the white person who is walking with him. He is a tax-paying, good-doing, going-to-work, disciplined person. I am criticizing the policies that say it is legitimate to differentiate between those two people if they are both walking down the street late at night and both are engaging in somewhat ambiguous behavior, doing something that might raise the eyebrow of the police officer. But the police respect one and don't respect the other. The one that they act against is the person who has the black skin; that factor becomes the tie breaker. That factor prompts the police's question or detention. This feeling of resentment—I don't think one can overemphasize this—cuts across class divisions in minority communities and poses an impediment to police action.

It seems to me that if one is in favor of effective law enforcement, as one should be, one needs to do something about this sense of resentment. The newspapers were full of talk on precisely this point in the aftermath of the O.J. Simpson criminal trial; they discussed the counterproductive consequences of this feeling of resentment. That point needs to be kept in mind over the long haul.

**Lou Reedt, Senior Researcher, U.S. Sentencing Commission, Washington, D.C.:** I'm interested in your opinion on whether discrimination based on an individual's age and gender should merit the same special protections. Both

Mr. Weaver and Mr. Wilkins were young, which factored into the equation, as did their gender.

**R.K.** Age is an easy one for me. Yes, age should be factored in. Gender poses a more difficult question; I need to think more about it. Age and gender should be analyzed in a different way than race because our law currently views age and gender differently than race. That is perfectly proper, given the history and current dynamics of our society. The type of discrimination that we are properly worried about simply does not present itself in the same way with respect to age and gender as it does to race. For those sorts of distinctions, we should be attentive and willing to justify them. But our antennas should go up and should be more sensitized and more wary with respect to the race distinction than any other distinction in American life, based on our history.

**Mark Engman, Executive Assistant to the Assistant Secretary, Federal Housing Administration, U.S. Department of Housing and Urban Development, Washington, D.C.:** In the Kansas City case, if the law enforcement officer had seen a white person exhibit the exact same suspicious tendencies as the black person and did not search the white person, it is my opinion that that would have been bad law enforcement.

I also have a question. Do you find that law enforcement officers of color use the same risk factors as white officers?

**R.K.:** Certainly there are many examples in which law enforcement officers of color have acted the same way as Officer Friendly—using race as a marker of criminal misconduct. There are a good many officers of color who use this marker because there is a logic to its good-faith use; it's not that people are acting illogically. Yes, minority police officers use it, too. However, I think they are wrong to use it. In my view it does not matter who is using it. It doesn't matter if it is Officer Friendly White, Officer Friendly Black, or Officer Friendly Hispanic. I'm willing to grant full faith to these officers. I just think they are making a mistake in judgment.

**Mark Engman:** At the Department of Housing and Urban Development, we work with some of the most difficult communities in this country: public and assisted housing developments. Many times we find that, even in those crime-ridden communities, when the law enforcement officers are the same race as the residents, there is still distrust that prevents them from working together to solve crimes. I'd be interested to hear how we might address that problem.

**R.K.:** Again, I think that people on the street, members of the community, are well aware that, regardless of the individual officer, there is a policy that permits and encourages racial distinctions to be drawn among people. (There are other reasons people distrust police officers, regardless of their color, but that leads into another discussion.) One cannot overemphasize the extent to which use of racial policies has "poisoned the water."

**Melanie Sloan, Minority Counsel, House Judiciary Committee, U.S. House of Representatives, Washington, D.C.:** Representative John Conyers has tried to address this issue with a study. He has sponsored a bill to require selected police around the country to keep track of the race of the people they stop, their ages, and their other identifying characteristics and explain why they stopped the person, whether they instituted a search of the car, whether they found anything in the search, and whether an arrest was made or a citation was issued. This Traffic Stops Statistics Study was developed for the exact reasons you have discussed today. We wanted to require police around the country to do this; we've now been convinced to make it a study. We figure it will be helpful because currently we have mostly anecdotal evidence about the problems with traffic stops. There are statistics on Maryland (such as in Mr. Wilkins' case) and Florida, but it would be helpful to have those kinds of statistics from around the country to convince everyone that there is a problem. If nothing else, we would be able to help people with their lawsuits because they need overwhelming statistical evidence, which is hard to come by now. We hope that this will help provide it.

R.K.: Well, I'm all in favor of the legislation that you are talking about, but I would say this. You make it seem as though the problem is one of trying to get evidence that race discrimination in policing occurs. The fact of the matter is: we know it does. In many instances you do not need to do a big statistical study to determine whether in fact the police are taking race into account. The police say, "I promise to tell the truth." You ask, "Did you take race into account in determining suspicion?" They respond, "Oh, sure I did." The U.S. Border Patrol says, "Yes, we take race into account." Profiles have been challenged; we know that it happens. The question is whether we think use of race as a marker is justified or not. That, it seems to me, is the fight. And it is striking that, at the very moment when there is tremendous debate in the United States about all types of racial distinctions, this sort of racial distinction is *not* the subject of op-ed newspaper articles, legislation, or plebiscites. People might ask why, especially people who think that we should not make racial distinctions in American life except in an emergency. Here we have a racial distinction that is made day in and day out, but the political realm has been silent about this.

One more point: we don't need to have legislation about this. One of the reasons I am happy to have this forum is that I get to speak face-to-face with people who are in a position to affect policy without legislation or court opinions. This is a matter of policy. Police chiefs can change this! Presidents of the United States can change this. You don't have to wait. There are people who make policy and do not have to wait for any other agency of government to act.

If people who are in charge of policing policy believe that using race as a marker of criminal misconduct is counterproductive, they should go along with this reform. If they don't, I'd like them to speak up so that I can confront their objections.

**Michael Gough, Director, Division of School Security, Montgomery County Schools, Rockville, Maryland:** I am a member of a community relations task force appointed by the Montgomery County [Maryland] police chief to investigate race-based complaints against officers of the police department.

When I entered law enforcement 32 years ago, there was an "us versus them" mentality. Unfortunately, I hear that it still is present in law enforcement today, even in some training academies. How much of this us-versus-them mentality drives racial discrimination in decisions made by officers? And what can police chiefs do to turn that around?

**R.K.:** I think it exists quite a lot. To get back to the operational point, it is an important problem. I want to double back to Mr. Wilkins' comment, too. Certainly, in an appreciable number of cases, we are dealing with racial harassment, pure and simple. I don't want to soft-pedal that part of this story; it needs to be addressed.

I think, however, that there is an even larger part of the story. That is why I emphasize and take very seriously my hypothesized Officer Friendly. There are a good number of police officers who want to provide good, effective police enforcement to their communities. They want people on the street to be safe, and I believe them. In facing such a person, the thing to do is to acknowledge their good faith. "I understand what you are trying to do. I really do. I understand you think that it makes your job easier to take race into account in making your decision. You have a thousand and one people passing by; you can't pay attention to everybody. You obviously have to figure out ways to focus your attention on some people as opposed to other people." I would say, too: "Listen; we are the inheritors of a problem. We have a pervasive racial problem in the United States, and we have to do something about it. It's messing up everything, including policing. One of the ways in which we have got to try to fix this is to treat everybody in the same manner. I understand

that there are reasons why you think it makes sense to use race as a shortcut, a marker, to focus more attention on this sort of person as opposed to that sort of person. I understand the logic of it; it is not irrational—it is reasonable in certain contexts. But, over the long haul, it is going to be counterproductive. So we are going to bend over backwards, if necessary, to treat all people in the same way in our law enforcement policy and in reality.”

The police officer is the extension of the state and the court on the street. Before the bar of justice, all people should receive equal treatment. We need to state that over and over and explain to people, acknowledging their good faith, that this is a reform whose time has come. That is one of the things (and I am sure there are a lot of other things) that need to be done. It is a big problem; there needs to be a first step. As things are now, in many places, there has been no first step.

**Christopher Stone, Director, Vera Institute of Justice, New York, New York:** I want you to talk about the incongruity cases, which you haven't mentioned. Police are accountable to the courts, and you have talked about the role of the courts in advancing your principle. Police are also accountable to their own departments, and you have talked about the independent obligations of police chiefs to advance your principle. But these days, police are also accountable to communities. Indeed, a lot of the people in this room are engaged in advancing community policing and direct relationships between the police and their communities.

I can imagine how a DEA agent or someone writing a highway profile would eliminate race from that, maybe by stopping more people of all races, which may have the same (or less) effect. At least then they would comply with your principle. But officers in some communities believe, rationally, that when black men come into their neighborhood, it is a sign of crime. Only a very sophisticated police officer would say in a community meeting, “I believe that when black men come into the community, there is a higher risk of crime than

when others do. But I've decided I'm not going to take different action against them because that would unfairly burden them in this community."

Making community policing work is on the minds of many people. I think it is true that one reason the American Bar Association Race Committee and others endorsed community policing early on was precisely because they hoped this kind of dialogue would come from closer connections between the police and the community. So I'd like you to talk about the police and these incongruity cases.

**R.K.:** Let me begin by recounting a story. I was talking with a black friend in the Boston area who recently moved into a predominantly white neighborhood. We were talking about schools and other things. My friend said one of the first things he did when he moved into this area was to go to the local precinct station to show who he was. He was essentially saying, "I live in this neighborhood. Here I am. I have funny hours, so when I come home at 11 at night and you pull me over (and I know you will), you'll know who I am. You'll say 'Oh, I made a mistake this time. You can go.'"

Now, I can imagine a good number of people who, knowing the situation, would say, "It's a really nice neighborhood with certain advantages. If all things were equal, I would like to live there; but I'm not going to live there because I don't want to be pulled over at 11 at night three times a year. I don't want to live in a community where I pay the same taxes as everybody else, I put out my trash just like everybody else; I do the same things as everybody else, but my skin color hangs over me whenever I jog or whenever I leave with my youngster to go to school. So, I'm not going to live in that community. I'm going to go someplace else."

That is one of the other banes of our society: residential separation by race. Race discrimination in policing is one of many things that buttress residential racial separation. People decide, "I'm not going to live in a place where I don't

belong." Isn't it a terrible thing that Americans would say, "I don't belong in this neighborhood"?

Getting back to your point, I would advise the police officer who wants to proceed with the reform I've described to take a look at that community meeting. Let's suppose it's a predominantly white group, and there are a few people who appear to be of Mexican ancestry and one or two black people. Under those circumstances, I would advise the officer to say to the speaker who challenges him: "Do you know Mr. So-And-So, your neighbor, the black guy over there? Do you think he is entitled to the same treatment you receive? Should he be the same in my eyes, as an officer of the state?"

I can imagine a person who might say, "Yes, I believe that person is entitled to the same treatment. I'm white; if I lived in a predominantly black neighborhood, I would expect similar treatment. I would expect to get stopped three or four times a year." Certainly the courts might agree. In response to that, I would ask, "Do you want to be condemned to live in a society where such racial distinctions are part of our existence? If you think that's the best we can do, I understand your point. I just disagree with you." I would appeal to those who want a different definition of community, a definition of community without "them and us" and without invisible fences all around. I'd like a definition of community in which we think of ourselves as neighbors, regardless of race.

**Jeffrey Roth, Director of Crime Control Policy Studies, The Urban Institute, Washington, D.C.:** I think part of the support for your argument comes from the fact that such traffic stops are frequent and that they burden members of a segment of society who are already burdened in lots of other ways. But what about the situation where the person is part of a privileged group in society? I'm thinking about a situation where it is late at night, near a drug market in a minority community. There's a guy waiting in a car with the



engine idling. Many people would argue that the fact he's white increases the chance that he's there to take part in illegal activity. I'm curious about whether and how that changes your argument.

**R.K.:** It doesn't change my general argument; my bottom line is the same. Only some of the details of the argument would be different. My basic point would be that discrimination by race is not a good thing.

Regarding the white person who's thinking about living in a community that happens to be predominantly black, I think it's a bad thing for us to have a set of policies that prompt a person to say, "I better not live in that community, because if I do, about four times a year the police are going to stop me and say, 'You stick out here; what are you doing here?'" That is bad and, again, but-tresses residential racial segmentation.

In the past few years, I have asked my students to take part in an exercise when we come to this section of the course on race relations law. I say, "Please stand if you have been stopped by police officers and think that race had something to do with it?" (It's not foolproof; sometimes people think things and they happen to be mistaken. But it provides some degree of evidence.) Every year for the past 5 years, *every* black male student has stood—every one. Over the past few years, there also have been an appreciable number of white students who stood. I ask the white students, "What's your story?" They typically have two stories. One is that they are in their second or third year of law school, doing clinical work. They are in a predominantly black part of town, let's say Roxbury, Massachusetts, and visiting with a client. It's 8 p.m. on a dark winter night, and the police pull them over on suspicion of buying or selling drugs. That has been the most common scenario.

There is another scenario, though. This one always gets a laugh in class, but (as with many jokes) there is a bitter irony to it. A number of whites who said they had been pulled over were told by the police officer, "I pulled you over

because I figured you must be lost, and frankly I'm fearful for your safety. I want to escort you out."

**Clarence Edwards, President, National Organization of Black Law Enforcement Executives (NOBLE), Washington, D.C.:** Someone once said that there is no right way to do something that's wrong. If that statement is true, my question is, "Is it ethical to discriminate on the basis of race at any time?"

**R.K.:** I would say yes. Although our society says, "People should not kill," we have adopted the concepts of self-defense and "just" wars and other circumstances in which killing is justified. I think the proposition, "We should not draw racial distinctions," is also true. But that, too, is a principle that should have a stopping point. That's why I say, "Don't draw racial distinctions, except under extraordinary circumstances." Are there circumstances in which I think it would be justifiable for officials to draw racial distinctions? Yes, I do. But we should say that, if you are going to draw racial distinctions, you ought to give more than just a "reasonable justification that is based on a hunch." No! There ought to be an extraordinary justification that is limited in time and only used under what people would conceive of as an absolute emergency.

We have to be attentive to what we consider an absolute emergency. Probably the foremost instance of drawing racial distinctions in American history was justified on the basis of a supposed emergency (although it was not one). It was the rounding up and detention of Japanese-Americans in World War II. That experience ought to make us think twice, even in the face of something justified as an emergency. So I can understand why you would be anxious about using this emergency "out." I think there ought to be such an out. But I think that it ought to be guarded very, very carefully.

## Notes

1. *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976).
2. *United States v. Weaver*, 966 F.2d 391 (8<sup>th</sup> Cir. 1992), cert. denied, 506 U.S. 1040 (1992).
3. *Id.*
4. *Id.* at 394.
5. Wycliff, Don, "Blacks and Blue Power," *New York Times*, February 8, 1987.
6. See generally Kennedy, Randall, *Race, Crime, and the Law*, New York: Random House, 1997.

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# The American Experience With Stimulants and Opiates

*Presentation by*

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*Washington, D.C.*

The history of drugs in America is a large subject. To make it more manageable I would like to look first at shifting attitudes toward—and consumption of—alcohol. Following the same pattern of looking at attitudes and consumption, I'll also discuss opiates and stimulants, including cocaine and amphetamines.

Alcohol is a drug that has been used throughout the entire history of the United States. We have experienced cycles of high as well as low consumption. These swings in alcohol consumption roughly reflect the use of other drugs such as cocaine and opiates. Although most of these drugs were not familiar products early in the 19th century when the first great temperance movement swept America, they figured in the second temperance movement, which culminated in national Prohibition from 1920 through 1933. We may well be in the first stage of a third temperance movement, which began about 1980. The changing pattern of alcohol use reflects not just a fundamental change in our attitude toward alcohol, but also changes in our attitudes toward food, exercise, the protection of our bodies, the purification of our environment, and the role of government in the creation of a healthier society.

## **Alcohol: Attitudes and Consumption From 1790 to 1995**

The past 200 years have seen three distinct eras of alcohol consumption. In the early Republic, an extremely high level of alcohol consumption (chiefly, distilled spirits) peaked in the 1830s at more than 7 gallons per adult. A rapid decline followed and reached a low in the 1850s, coinciding with the first temperance movement and widespread State prohibition in the mid-1850s. We have never again come close to the high levels of consumption of the early 19th century. Consumption rose again until about 1910 to 2.8 gallons per adult, when a second decline began. The level of alcohol use at the end of Prohibition was the lowest in American history. Another rise began in 1934 and reached its peak in 1980 at 2.8 gallons per adult. It took 50 years after Prohibition for alcohol consumption to rise again to its previous high levels. We now are, once again, in a time of declining alcohol consumption.<sup>1</sup>

These declines in alcohol consumption and parallel changes in attitude toward alcohol eventually have been expressed in legal restrictions. The first change in attitude is a transformation from viewing alcohol as a valuable tool and an instrument of health, healing, inspiration, or cheer, to viewing it as a poison. This radical shift has occurred more than once in American history. The concept of a safe upper limit of use is erased gradually. As this process continues, the harm done by alcohol increasingly dominates discussion and finally outweighs its claims as a medicine or a tonic. Moderation evolves to abstinence. Two examples illustrate the beginning and end of this evolution. Dr. Benjamin Rush, signer of the Declaration of Independence, surgeon in the Revolutionary War, and professor at the Nation's first medical school in Pennsylvania, saw life differently from most of his contemporaries. He fought for education of African-Americans, abolition of slavery, education of women, prison reform, an end to capital punishment—and abstinence from distilled spirits. His reform ideas, however, were far better than his medical theories, which implied that the only effective remedies were strong laxatives and bleeding. Rush blamed high-proof alcohol for causing illness, moral degeneration, poverty, and crime.

Rush approved of beer and wine in moderation but believed that distilled spirits started a person on the downhill path. He likened dependence on alcohol to a disease, and some say he was the first to do so. Rush typified the early days of a temperance movement. He had a vision that few shared in his own time, but it became one of the great reform movements in American history a generation after his death. Interestingly, Rush's antialcohol position was staked out as the Nation started on an extraordinary binge that did not peak until 1830.

Rush invoked two powerful forces that are typically American: scientific research and voluntary organization. By encouraging the public to cooperate with what he saw as medical insights into the dangers of distilled spirits, he hoped to improve society. He espoused another very American trait—"logical reformism," in which the dangers of alcohol from distilled spirits were gradually extended to their logical conclusion, the dangers of alcohol from all alcoholic beverages. Compare this with the British experience: In Britain during the gin epidemic of the 18th century, reformers attacked distilled spirits. Gin drinkers were urged to return to the traditional British ale and beer; they were not urged to give up alcohol. But the American approach was different. If distilled spirits were dangerous because they contained alcohol, then all alcoholic beverages were dangerous. Although some, like beer, were considered mild, they nevertheless could lead to addiction and a desire for stronger drinks. There was no safe threshold of alcohol use.

Lyman Beecher, perhaps the most popular preacher in pre-Civil War America, insisted on this final formulation of the first temperance movement. About a decade after Rush's death, Beecher demanded total abstinence from all alcohol—beer as well as rum and wine as well as whiskey. His only concession was to grant that beer "enables the victim to come down to his grave, by a course somewhat more dilatory, and with more of the good-natured stupidity of the idiot and less of the demoniac fury of the madman." He had no

sympathy for what is now called "responsible drinking" and what in his day was called "prudent use." "It is not enough," he wrote, "to erect the flag ahead, to mark the spot where the drunkard dies. It must be planted at the entrance of his course, proclaiming in waving capitals: THIS IS THE WAY TO DEATH!! Over the whole territory of 'prudent use' it must wave and warn."<sup>2</sup>

By 1855 about a third of the United States and all of New England were under State prohibition laws, with a number of other States close to approving this ultimate control as well.<sup>3</sup> What had happened since the freely flowing spirits of 1830 when alcohol consumption was three times the current per adult rate? A deep, tenacious new conviction had slowly gripped Americans and reversed their image of alcohol. Abraham Lincoln expressed it best in a temperance lecture he gave in Springfield, Illinois, in 1842. Back when alcohol was seen positively, Lincoln said, the damage done was thought to arise "from the *abuse* of a *very good thing*," but now, he said, we know that "the injury arose from the *use* of a *bad thing*."<sup>4</sup>

Alcohol's altered image is all the more remarkable because for many Americans alcohol was, and is, an everyday consumable and a part of religious ceremonies. These factors contributed to the failure to sustain Prohibition indefinitely. When Prohibition lost, it lost so completely that the opposing side simply swept away the other point of view. Both sides were fueled by emotions and had few facts to back up their positions. People did not want to hear that liver cirrhosis deaths were cut in half during Prohibition because they could not believe that anything good came from Prohibition.<sup>5</sup> That kind of censorship can be seen with drugs and alcohol. The peaks of Prohibition in the 1850s and 1920s ended in frustration for the antialcohol forces. The backlash to Prohibition added to their regrets; for decades any realistic discussion of alcohol and its problems was nearly impossible.

The prohibition of alcohol was not integrated into our society because too large a fraction of the public did not regard alcohol as a poison. In addition,

Prohibition was viewed as an anti-Catholic, anti-immigrant measure.<sup>6</sup> The only two States not to ratify the 18th Amendment were Connecticut and Rhode Island, the two States with the highest Catholic voting populations. At the peak of hostility to alcohol, the prohibition forces did not have more than 60 percent of the public on their side. In contrast, cocaine and opiates came under similar control with almost no opposition: I estimate popular hostility to cocaine and heroin at 95 percent or higher. Alcohol prohibition illustrates that in some of these crusades for health or temperance, reform may go further than can be sustained.

The target of reform during the first temperance movement was not restricted to alcohol; poor health and poor eating habits were attacked as well during this and all other reform movements throughout American history. In that first temperance movement, Sylvester Graham, who advocated fresh vegetables, whole-grain flour (graham flour), water (not alcohol), exercise, and no fried foods, was representative. (His memory lives today in the graham cracker.)<sup>7</sup> The second temperance movement, led by the Anti-Saloon League and the Woman's Christian Temperance Union, also saw a revival of health campaigns out of which came corn flakes and yogurt. Accompanying the current temperance movement is a new health campaign: jogging, whole grains, no red meat, and lots of tofu.

### **Opiates: Opium, Morphine, and Heroin**

In addition to the rise and fall of alcohol consumption and its resulting political and social movements, consider opium and its derivatives. Customs records of the then-legal product reveal the pattern of use from 1840 until 1915, when the Harrison Narcotic Act brought opium and opiates under control and the amount smuggled had to be estimated.



Opioid consumption rose until the 1890s and then declined. By 1914 when the Harrison Act was passed, per capita consumption had fallen to that of 1870. The smoking of opium slowly increased throughout the period; data on it end with the Smoking Opium Exclusion Act of 1909. The decline in the use of opioids coincided with the public's growing fear of addiction and the rise of State laws restricting their availability to a physician's prescription.<sup>8</sup>

During the 19th century and before these State controls, the United States was the only major Western nation to allow unlimited distribution, sale, and promotion of narcotics. The result was not surprising: the use of opium and morphine and, later, cocaine and heroin was extensive. (Heroin was introduced by the Bayer Company in 1898 as a powerful cough suppressant. The firm's ads read, "Aspirin for joint pains. Heroin for coughs.") In the 1890s consumption of opium and its active ingredient, morphine, peaked with an estimated one-quarter of a million addicts. Since the U.S. population in 1890 was 60 million—about a quarter of the current population—a million people would be addicted to opiates now if the same rate applied. Although both past and current numbers are estimates, it is reasonable to assume that the last opiate epidemic at its height was fairly extensive.

The late 19th-century opioid epidemic lasted several decades and continued with many years of easy availability. Eventually, although more slowly than concerned Americans wished, it went away. The broad outline of the earlier wave of drug use and its eventual decline raises questions. Was the decline a result of a shutoff of the drug supply or of Americans' disgust with and fear of drugs? As with the alcohol epidemics, our loss of memory for the earlier drug epidemic contributed to even greater similarities between the two waves of drug use, then and now. In each instance, drugs entered American society surrounded by fantasies that would only gradually be replaced by the reality of drug use.

Antidrug laws were in place when the current drug wave hit the United States in the 1960s. Why were there no laws against drug availability in the 19th century? To understand why a free market existed, it is helpful to look at circumstances unrelated to drugs. First, unlike European nations, the United States did not have strong national organizations of pharmacists and physicians until this century. Organizations with names suggesting such breadth did exist (for example, the American Medical Association, established in 1847), but only a fraction of practicing health professionals were members. Furthermore, licensing of professionals was rare in the mid-19th century; anyone could claim to be a physician or pharmacist. Without a national organization or licensing, control over the practice of the health professions was practically nonexistent.

An early obstacle to national control was separation of Federal from State power in the U.S. Constitution. Strictly interpreted separation between Federal and State powers prevailed during the 19th century. Therefore, police powers over the regulation of medical practice were reserved for the States. Few people today question the Drug Enforcement Administration's right to register physicians and pharmacists and control what drugs they can prescribe and dispense. In the 19th century, this would have been an unthinkable Federal invasion of States' rights.

Nineteenth-century America permitted an open market in narcotics. Some current advocates of legalizing drugs have not considered that both our fear of drugs and our first antidrug laws were consequences of unrestricted drug use. Easy access to drugs did not create a peaceful integration of morphine and cocaine into American habits; rather, widespread use of drugs led to the fear of their effects on the individual, the family, and society. History also shows that extensive use of a drug at one time does not mean that such a high rate will continue indefinitely; the drug may fade in esteem and usage, even to the vanishing point. Reasonable national drug policies must take into account the

long-term perspective. We should neither hastily surrender in defeat at a time of extensive use nor declare final victory after a long and deep decline in drug use.

The rising use of opium and morphine in the late 19th century prompted some States to enact laws restricting access to opiates to a physician's prescription—unless the opiates were contained in patent medicines. The major difficulty for proponents of a national antinarcotic law—the constitutional separation of powers—was resolved only with great effort. The Pure Food and Drug Act of 1906 required that makers of patent medicines state on the label the amount of any narcotic ingredient they contained, but the law set no ceiling on how much the product could contain. Later, the Harrison Act, in contrast, severely limited the amount of opioids in any remedy sold without a prescription. Although the Harrison Act became law in 1914, the Supreme Court did not interpret it to restrict the reasons for which a physician could provide addicting drugs to patients until 1919.

These laws reflected a nationwide consensus that had been growing for several decades against drugs, particularly opiates and cocaine. Although attitudes toward alcohol were more divided, national Prohibition was achieved through the elaborate process of adopting the 18th Amendment to the Constitution. Opiates and cocaine, however, were so despised and feared by the early years of this century that a similar prohibition was instituted much more simply by a statute and Supreme Court interpretation. This fear of narcotics is painfully portrayed in Eugene O'Neill's *Long Day's Journey into Night*, set in August 1912. Arguably the greatest drama by an American, the play centers on the impact of morphine addiction on a family.

Although the Nation's drug use rises and falls, human physiology remains the same. For many, the initial encounter with drugs is attractive; the negative attitude toward drugs is learned from experience.

Another trend often accompanying the Nation's rejection of drug use is less constructive—the increasing fear of and anger at the drug user. Anger and fear more and more characterize American attitudes after several decades of watching drugs ravage families, the social order, and personal health.

The American Medical Association had originally supported the Harrison Act: Health workers were as upset about the drug problem as the public. One target of the national laws in the early 20th century was the mercenary physician or pharmacist who irresponsibly prescribed or dispensed narcotics. At times this campaign against health professionals, supported so strongly by the public and government officials, went too far, creating an atmosphere that made health professionals extremely wary of prescribing or dispensing narcotics for pain control, although only a minority had been irresponsible. The effect of their extra caution, however, sometimes led to inadequate pain management, and many patients had to endure unnecessary discomfort. Among health professionals and patients, the fear of addiction reached extreme levels in the decline phase of the earlier opiate and cocaine epidemic. This concern and hesitation over pain medication can still be seen among physicians and patients today.<sup>9</sup>

Although U.S. drug policy is powerfully affected by domestic issues, several foreign influences also bear on narcotic-control measures: the great amount of drugs coming from abroad, the study by Americans of other nations' experiences with drug control, and the prevailing national mood regarding the presence or absence of threats from abroad. Prior to World War I, the United States had faith in international treaties and promoted many having to do with arbitration of disputes and other matters. The Hague Opium Treaty of 1912 was only one of America's efforts to gain international cooperation. All this optimism changed after the war, when the United States distrusted attempts at international cooperation, marked most notably by U.S. refusal to join the League of Nations. Officials no longer spoke of the inordinate Ameri-

can demand for drugs but instead of the evil intentions of countries that supplied them. These very different attitudes regarding drugs and foreign nations in the decades before and after World War I had an enormous impact on drug policies.<sup>10</sup>

As the epidemic declined, both government and the larger society espoused strategies familiar to any parent worried about a child's decision to risk a dangerous action. Parents do not wish their children to take a chance on their lives even once. They cannot approve "experimenting" with drunken driving or any other dangerous activity available to young people. One method of restraining people from taking unwise actions had been put in place by government: the threat of severe punishment. Two other strategies also were developed.

One strategy was well-intentioned exaggeration. For example, Captain Richmond Pearson Hobson, an American Naval hero and an active leader against alcohol, opiates, cocaine, and marijuana, declared in the mid-1920s that one ingestion of heroin on, for example, an ice cream cone, could addict a child. He warned that heroin might have been incorporated into face powder and that heroin not only addicted users but positively drove them to commit crimes whether they needed money or not.<sup>11</sup> In the 1930s marijuana likewise was luridly described with the hope, narcotics commissioner Harry Anslinger explained, that no child would be tempted to try it once.<sup>12</sup>

The other strategy was silence. Under strong pressure from major religious groups, the motion picture industry adopted a policy of never showing narcotic drug use. Enforcement of this policy was approved in 1934 by the Motion Picture Association of America, which comprised the major studios. In addition, the National Board of Film Review could not give its seal of approval to a motion picture that showed narcotic trafficking. Without this approval, a picture would have its viewing opportunities severely restricted and be unprof-

itable. Until a slight loosening in 1946 to permit showing antidrug activities, this prohibition remained effective until the 1950s.

The radio networks were equally cooperative. On the other hand, the print media published sensational stories about drug arrests. Public fear was large, but the number of people impaired by cocaine, heroin, or marijuana in the 1930s and 1940s was small when compared with today's problem or that evident around 1910.

Paradoxically, success in reducing drug use may have been an obstacle in the long run to maintaining an accurate and effective antidrug campaign. During the 1920s requirements to teach about narcotics in schools spread throughout the States. By 1933, for example, Massachusetts had developed a syllabus for teaching about alcohol, stimulants, and narcotics for grades 1 through 12.<sup>13</sup> Importantly, information about drugs was presented as an integral part of health education, not just as a program against narcotics. As the problem declined, however, silence itself was assumed to be a good policy. By the 1960s, fewer than half the States retained a requirement that the effects of narcotics be taught; by then the information was conveyed by teachers who had little practical knowledge and who allotted little time for the subject. With only a small drug problem confronting American schools in the 1940s and 1950s, resources went elsewhere.

The long-range result in the 1960s was a generation with no protective knowledge about the seductive claims and physiological effects of dangerous drugs or with exaggerated expectations for immediate and dire consequences of drug use. When the generation of the 1960s began to experiment with drugs, the contrast between the truth of their own experience and what they heard from authorities caused them to utterly discount the warnings.

Scientific research on the effects and mechanisms of drug use is easy to overlook in the great contest between users and those combating them. Research

into the biological mechanisms of addiction appears to rise and fall depending on the public's anxiety level over drugs and whether the medical/therapeutic approach is in vogue. In the first epidemic, medical treatment approaches eventually gave way to an almost exclusive reliance on law enforcement, and sustained scientific research fell steeply. Once a strict antidrug policy had been established, both the public's and policymakers' curiosity about the details of a drug's biological effects faded. Federal scientists also feared their research findings might conflict with official policies, so they avoided some areas of investigation.

## **Stimulants: Cocaine and Amphetamines**

For more than a century, Americans have alternately praised stimulants and condemned them as the most fearful of all dangerous drugs. Stimulants are popular initially because they offer a shortcut to goals that are admired as typically American: the ability to work without tiring, the alertness to solve problems, and cheerfulness regardless of the situation. A person can stay up later to follow the international markets or drive farther to cover more miles in one stretch without sleepiness. Faster, more, and longer are promised by stimulants. Energy and efficiency are available simply by taking a substance, a substance that can be cheap as well as energizing.

Alexis de Tocqueville noted this American trait in the 1830s, decades before cocaine was developed as the first powerful stimulant. "It is odd to watch," he wrote, "with what feverish ardor the Americans pursue prosperity and how they are ever tormented by the shadowy suspicion that they may not have chosen the shortest route to get it."<sup>14</sup> For some Americans the shortest route has meant using stimulants, and this helps explain why at the beginning of a stimulant epidemic the drugs are favored by so many of those who are goal oriented—those who are trying to do their job better or working toward some achievement. When a new product promises to give them an edge, they are tempted to improve their chances with the help of chemical engineering.

The current concern over methamphetamine and cocaine might lead some to conclude that this epidemic is America's first wave of stimulant abuse. It is the second. Although during the first epidemic cocaine was widely used and legal at the beginning, the epidemic did come to an end. Its closure was so complete that when Americans witnessed the rise of cocaine in the 1970s, they thought it was a new phenomenon, and as it flourished they despaired of it ever ending.

The isolation of cocaine from coca leaves took place in the 1860s. But it was not until the 1880s that substantial quantities of cocaine were produced. This allowed the first widespread use of powerful stimulants with the introduction of pure cocaine to the American market.<sup>15</sup>

Coca leaf extracts that contained varying amounts of cocaine and were taken by mouth prepared the way for pure cocaine. The most famous of these was Vin Mariani, a combination of French red wine and coca leaf extract. Angelo Mariani's wine was popular as a tonic and stimulant in Europe and America. Mariani offered a discount to the clergy—Pope Leo XIII gave Mariani a gold medal—and he offered a further discount to orphanages. Famous people on both sides of the Atlantic allowed their names and faces to be used for Mariani's publicity—quite famous people, including Jules Verne, Charles Gounod, Frédéric Bartholdi (the sculptor of the Statue of Liberty), cardinals, cabinet officers, explorers, and even Thomas Edison. Coca wine was touted as an antidote for melancholy and also as an invigorating stimulant for the healthy.<sup>16</sup>

In what is now the *New England Journal of Medicine*, Dr. Archie Stockwell wrote in 1877:

Coca causes increased arterial action, stimulates the alimentary secretions and peristaltic action, diminishes weariness, strengthens the pulse, calms nervous excitement, retards waste, facilitates repair, alleviates



spasms, and increases mental activity; in fact, it is an economizer of vital energy and an effective aid to nutrition. It invariably contributes to mental cheerfulness, and withal not infrequently causes unequivocal aphrodisia.<sup>17</sup>

An American competitor to Vin Mariani, Metcalf's Coca Wine, advertised in the 1880s that it was a valuable tonic for "public speakers, singers, and actors." Furthermore, "Athletes . . . and baseball players have found by practical experience that a steady course of coca taken both before and after any trial of strength or endurance will impart energy to every movement."<sup>18</sup> This use of coca as a tonic was so popular that J.S. Pemberton of Atlanta, Georgia, concocted what he called a French Coca Wine in 1885. In 1886 he brought forth another coca drink, took out the controversial drug alcohol, and called it Coca-Cola. In its early years (before the cocaine was eliminated), Coca-Cola was described as "the ideal brain tonic."<sup>19</sup> Thus "the pause that refreshes" has an interesting ancestry that testifies to the public's high regard for coca drinks.

If Coca-Cola and Vin Mariani had been the full extent of the public's exposure to coca, we might never have had the intense furor over cocaine that erupted in the decades after 1890 or recurred during our present drug epidemic. Credit—or blame—must be given to organic chemistry, which first produced cocaine, and also to the pharmaceutical industry, which was able to manufacture and distribute the drug in large amounts. As in the 1970s, cocaine a century earlier was initially expensive and restricted to the wealthy; later, it became much cheaper and more widely used.<sup>20</sup>

Also paralleling the current wave of cocaine use were the initial descriptions of the substance as harmless and nonaddicting. Sigmund Freud first wrote about and promoted cocaine with enthusiasm.<sup>21</sup> Even the wise Sherlock Holmes used cocaine in the first years after its introduction, although later he abandoned the practice.<sup>22</sup> Within a year of its American introduction, Parke,

Davis & Company offered cocaine in 15 different forms. Describing its remarkable new technology in 1885, the firm claimed cocaine to be

a drug which, through its stimulant properties, can supply the place of food, make the coward brave, the silent eloquent, free the victims of the alcohol and opium habits from their bondage, and, as an anesthetic, render the sufferer insensitive to pain. . . .<sup>23</sup>

Several years later the U.S. Hay Fever Association announced that it had chosen cocaine to be its official remedy.<sup>24</sup> Although by then some physicians had issued serious warnings about cocaine's dangers, the power of its attraction submerged criticism as its use spread to everything from soda pop to headache remedies. After all, how bad can something be if it makes you feel good?

In the early stages of a stimulant epidemic, even experts can be misled. Dr. William A. Hammond, one of the Nation's leading neurologists and a professor at medical schools, wrote extensively about the brain in the 1880s. His expert opinion on cocaine was very positive: He liked it, he recommended it, and he took it. He even made his own wine-cocaine mixture, which he boasted was stronger and more reliable than Vin Mariani. He rejected fearful stories about cocaine that had appeared in newspapers and medical journals. Dr. Hammond "did not believe there was a single instance of a well-pronounced cocaine habit, the patient being able to stop it at any time, if he chose to do so." Even when presented with detailed accounts of cocaine's disastrous effects, he did not waiver in his belief that cocaine addiction was no more than the equivalent of a coffee or tea habit. Dr. Hammond illustrates that experts can become uncritical in their enthusiasm for a drug, especially if they like the effects of the drug on themselves.<sup>25</sup>

This benign view of cocaine could not last. Within 15 years the positive image of cocaine evolved into a very negative image, as threatening as the earlier was hopeful. Another parallel with the current cocaine problem can be seen

when comparing cocaine's portrayal in 1970 as a safe and benign stimulant with its aura of extreme danger in the mid-1980s.

There are, however, differences between the first and second stimulant epidemics. Cocaine entered the marketplace in 1884 as a fully available substance with no restrictions. The laws and regulations did not come about until the public demanded them. Only as a drug came to be seen as a menace were restrictions enacted—initially at the State or local level. As a result, we have experienced whatever advantages a free economy in drugs might offer during much of the past century. Eventually, the fear of drugs grew so great that the traditional separation of Federal from State powers was breached to allow, for the first time, Federal control of prescribing practices over cocaine and opiates.

As a first step toward controlling cocaine, its distribution was put into the hands of the health professions. For example, in 1902 the State of Georgia made it illegal to provide cocaine in any amount or in any form without a doctor's prescription. In 1906 Al Smith introduced a bill in the New York State Assembly to limit cocaine availability to a doctor's prescription. As with opioids, when local control fell short, Congress enacted the 1914 Harrison antinarcotic law.<sup>26</sup> The measure imposed rules and regulations on the health professions that made the use of an opiate or cocaine a serious matter requiring a tax stamp and careful recordkeeping.

There was a reason behind the laws' increasing restraints. Cocaine started out as an all-American drug, useful to everyone who wanted to gain a step in the race of life—from athletes to clergy to orphans. By 1900, however, it had been transformed into the very image of evil and failure. Propelling this transformation was the appearance and behavior of those who had become hooked. In contrast to the opiate user—dulled and nodding—the heavy cocaine user was often paranoid, violent, and irresponsible. Fear of cocaine intensified. In 1910, President Taft sent to Congress a message in which cocaine was described as “more appalling in its effects than any other habit-forming drug used in the

United States" and as "the most threatening of the drug habits that have ever appeared in this country."<sup>27</sup>

The important difference between addiction to a stimulant and addiction to an opiate such as morphine can be seen in the heroic life of the father of American surgery, Dr. William Stewart Halsted. Dr. Halsted was among those investigators who worked with the early batches of cocaine in the 1880s. Not knowing about the mental derangement that cocaine could cause, Halsted, who had repeatedly injected himself to learn about cocaine's ability to block pain, became addicted. His mind was confused, and he felt a constant craving for more and more. When he was sought to be the first surgeon-in-chief at the new Johns Hopkins Hospital, his friends helped him get off cocaine through close observation, sea voyages, and even admission to a mental hospital. Finally, apparently cured, he became the head of surgery at Hopkins.<sup>28</sup>

Only when his own doctor's secret diary was opened in the 1960s was it discovered that after he stopped using cocaine, Halsted took morphine and was addicted to it for the rest of his life. Halsted had a difficult time with morphine but still was able to achieve a great deal, something he could never have done if he had remained on a stimulant.<sup>29</sup> It is important to keep in mind this distinction between stimulants and opioids. Maintenance is possible, although difficult, with morphine, but giving more stimulant to a person with a stimulant problem only makes him more anxious and hyperactive. This is why stimulants are more feared than opiates and why stimulant users seek another substance, like heroin or methadone, to lessen their nervousness.

The mental distortion caused by stimulants probably accounts for another difference from opioids. Opioid epidemics tend to decline less and be longer compared with stimulant epidemics, which tend to fall further and be relatively brief. The last cocaine epidemic almost disappeared, but the number of opiate users never declined to such an extent. The first cocaine epidemic lasted about 40 years—from 1890 to 1930. The current cocaine epidemic

began in the 1970s; therefore, if history is a guide, more than an additional decade of changing attitudes may help to reduce cocaine's use. A broad public consensus existed against drugs in the decline phase of the previous epidemic—broader, I believe, than is evident today. The rise and fall of a drug epidemic is not an independent phenomenon like the return of a comet. Citizens' attitudes toward drug use are crucial in determining consumption or rejection. An uninformed public eagerly searching for shortcuts sets the stage for a rise in drug use; a public that has seen the unfortunate consequences of drug use is more protected against the extravagant claims for a new drug.

In America the cocaine problem tends to be enmeshed with other social fears of the time. Around 1900 the fear of cocaine became linked with blacks living chiefly in the South. Blacks were accused of heavy cocaine use that led to violence. Because this era marked the peak of lynchings and the disenfranchisement of blacks, it is easy to see how these accusations could serve other purposes. At one point the U.S. Opium Commissioner was encouraging newspapers in the South to repeat these accusations as a way of obtaining Southern support for a national anticocaine law.<sup>30</sup> The attachment of drugs to other social fears arises from the enormous symbolic power that drugs possess in this society. Too often drugs are cited as the whole explanation for social problems, obscuring other and deeper causes. They can be cited as a reason for not helping inner cities because so many people falsely believe that the inner cities are populated predominantly by drug users. The history of drugs in America illustrates these repeated misperceptions. The question remains: Does knowing the history help curb these flights of fear and accusation?

As cocaine use declined in the 1930s, a new stimulant, amphetamine, appeared. Although it had been synthesized long before, only in 1932 was it introduced to the United States as Benzedrine. By the end of the 1930s, Benzedrine was promoted as a treatment for hay fever, melancholy, and lack of energy. Amphetamines got off to a slow start in the 1930s, but their use

became common around World War II, when they were prescribed for fighter pilots and others who had to stay awake and alert. (Again, note the use of stimulants in the role of technology for the mind.) After the war, however, amphetamine use by long-haul drivers was implicated in trucking accidents. Amphetamines also played a role in an infamous kidnaping and murder case in the Midwest in 1953. The explosion in use, however, occurred in the 1960s, when amphetamine and methamphetamine ("speed") became popular among some youths, most notoriously in the Haight-Ashbury district of San Francisco. Methamphetamine use has remained popular on the West Coast and recently spread to the Midwest.<sup>31</sup>

The history of stimulants in America reveals that the past wave of use faded under broad popular condemnation, and it is hoped that the current one will do so also. The saddest impact of a stimulant epidemic is the damage done to users who sought chemical help with life's problems and soon found themselves in a morass of anxiety, hyperstimulation, and paranoia. However, a substantial learning process must take place before we reject a drug that promises joy and accomplishment.

By the time drug use had ceased being a major problem in 1940, society's anger and fear had become so overwhelming that the story of the past use of drugs was simply repressed. Policies were developed that increased punishment rather than treatment, preferred silence to education, and described drugs in extreme terms that bore little relation to reality. This strategy was not a problem when drugs were declining in use and their effects were fresh in memory, but the long-term impact was to leave the Nation ignorant of drugs. By the time the 1960s arrived, the negative conditions that had been established in the 19th century were re-created. A struggle with drugs lasting more than 50 years and the practical wisdom painfully gained over those years had been erased from public memory.

The extensive history of drugs in America is not fodder for a simple party platform for one side or another; it is embedded in the broad and complex life of the Nation, domestically and internationally. It is a frustrating history because it does not confirm the belief that there is a simple answer to this social problem. These observations can be drawn from the past: First, the timeline of a wave of drug use is quite long, well more than half an average lifespan. Second, at the beginning phase of a drug epidemic, we are filled with hopeful fantasies about drugs; in the decline phase, we are caught up in anger, scapegoating, and excessive punishment. Finally, it is likely that neither the hopeful nor the angry partisans will be persuaded by contrary information from a historian.

### Question-and-Answer Session

**James Boden, Policy Analyst, Office of Management and Budget, Executive Office of the President, Washington, D.C.:** It seems that one of your contentions is that as drug use declines, the problem goes away. In today's case, where we have such an institutionalized process and infrastructure for dealing with this problem, is it likely that you would see the same level of decrease in the response?

**D.M.:** Institutional momentum is very real and can persist even when the initial justification for it has declined. It is also a relatively new feature of Federal antinarcotic endeavors. In the 1920s the U.S. Public Health Service (PHS) had one principal drug expert, Dr. Lawrence Kolb, Sr., who employed one secretary and one half-time clerical assistant. In the 1930s, PHS opened two combination prison/treatment centers—one in Lexington, Kentucky, and the other in Fort Worth, Texas. The Bureau of Narcotics' annual budget from 1930 to 1960 ranged between \$2 and \$4 million per year.

Since about 1970, the Federal drug abuse control apparatus has become huge, and its tendency toward self-perpetuation is a legitimate concern. In order to counteract this tendency, it is very important to have an independent control mechanism. The Drug Use Forecasting (DUF) program, now called the Arrestee Drug Abuse Monitoring (ADAM) program, contributes significantly to that control function. Under this system, booked arrestees participate in interviews and voluntarily provide urine samples for testing. In this way, ADAM provides a valuable independent measure that can serve as a counterweight to the vested interests that exist on all sides of the drug issue.

**George Kanuck, Public Health Analyst, Center for Substance Abuse Treatment, U.S. Department of Health and Human Services, Washington, D.C.:** Despite all the studies, controversy continues over the use of methadone for opiate addiction. There is currently a movement to simplify regulations governing the use of methadone and place more decisionmaking power in the hands of the physician. There continue to be significant concerns about that in the criminal justice community. Are we approaching a new phase that will permit methadone or other types of pharmacotherapies to be used in the future if they continue to be useful?

**D.M.:** I think that is a very good question that addresses two somewhat contradictory forces. One is a growing desire for drug-free treatment. Some States have made it illegal for a patient to use methadone for more than a year or so. Those sorts of restrictions put methadone maintenance in jeopardy. I think methadone can be very useful in some cases, but certainly not for people who are not addicted to opiates—for example, cocaine users who believe that methadone will relieve the discomfort of “coming down” from a cocaine high. It is a complicated issue; while there is good use for methadone, I think many people would prefer therapy that did not involve substituting one addictive substance for another.



I have seen a lot of antagonism toward methadone. As you know, the idea of maintaining dependence on an addictive substance runs contrary to our historical antidrug position as established in 1919 by the Supreme Court. In this country, abstinence has always been the goal of treatment, and it was discovered that many people who were maintained on heroin or morphine did not achieve that goal. This appears to be just as true of methadone maintenance—which casts doubt on the future of methadone programs, especially at the State level. This is unfortunate because methadone is an effective long-term treatment for some people.

On the other hand, the impact of AIDS has legitimized a number of measures that appear to be the contrary of drug-free therapy—for example, the distribution of syringes and needles to intravenous drug users. In this spirit of employing any measure that keeps drug users away from dirty needles, there have been efforts to make oral methadone more accessible, and I don't know how this is going to turn out. To me, the success or failure of this sort of approach will be an indication of the strength of this point of view, as opposed to drug-free methods.

**Ted Gest, Senior Editor, U.S. News & World Report, Washington, D.C.:**

Given that it is difficult to single out the effectiveness of one particular antidrug measure, can you give us your view of the effectiveness of the Drug Abuse Resistance Education (D.A.R.E.<sup>®</sup>) program or similar in-school programs in recent years? Also, how do you rate the effectiveness of the broadcast advertisements urging young people not to use drugs—either the “Just Say No” campaign of the 1980s or the current one?

**D.M.:** The D.A.R.E.<sup>®</sup> program and other school-based programs are time-bound classroom experiences that are only one of many influences on a young person's life—and rather brief ones at that. Although the D.A.R.E.<sup>®</sup> program has the great advantage of bringing police officers into direct contact with young people in a positive way, its long-term effects have been difficult to

establish. Richard Clayton of the University of Kentucky (someone I greatly respect) has studied the D.A.R.E.<sup>®</sup> program and has not been able to find much significant change in youthful behavior several years after program completion. The D.A.R.E.<sup>®</sup> people reply that they have changed their syllabus, and the new program has not been measured. The fact remains that D.A.R.E.<sup>®</sup> is in 70 percent of the school districts in the United States, and when you see it in action, it is hard to believe that it does not help at all.

Project STAR (Students Taught Awareness and Resistance), a nationwide program begun in Kansas City and aimed at seventh and eighth graders, also has been studied, and there is some evidence that it works better than the D.A.R.E.<sup>®</sup> program.

With regard to your second question, I think advertising has become very sophisticated. The first modern attempts at antidrug advertising began around 1971, when the Nixon administration undertook major drug abuse control initiatives under the direction of Dr. Jerome Jaffe and Egil Krogh, a special assistant to the President. Initial media efforts were so unsuccessful that in 1973, a 6-month moratorium on dissemination of new materials was declared during which Federal drug information materials were reevaluated. More recent efforts, such as those of the Partnership for a Drug-Free America, are very well thought out and are largely directed at supporting younger children who live in difficult situations. I am very impressed with some of the things they have done. Of course, the one that everyone remembers is the egg in the frying pan. I guess any campaign that people remember 10 years later must be successful.

**Peter Eide, Manager of Labor Law Policy, U.S. Chamber of Commerce, Washington, D.C.:** You have the historical perspective and the medical perspective, and you know what's going on today. In 25 words or less, what's the "fix" to the drug problem?

**D.M.:** The drug problem has deep roots in our society, and its tenacity is very upsetting to us. Americans have great difficulty tolerating ambiguity; things have to be either *this* way, or they have to be *that* way. There's tremendous pressure for us to direct all our energies toward one pole or the other. The two extremes in the current debate about possible solutions to the drug problem are legalization and wholesale incarceration of drug offenders. Legalization is politically unworkable because a great majority of Americans are frightened by the prospect of making psychoactive substances easily and widely available. On the other hand, there is no way we can put many more people in jail than are already there.

We have to understand that waves of drug use subside gradually. There is no quick fix. At present we are witnessing a gradual decline (except among 12- to 17-year-olds) that is mostly driven by changes in people's minds and hearts. Many of the things we are doing now are the best we can do.

Certainly there are some changes that can be made for the better, particularly in the way antidrug laws are administered. The disparity between sentences for offenses involving crack cocaine versus those involving powder cocaine—estimated at 100 to 1—are a case in point. It has been difficult to modify that ratio because of the symbolic power of the issue and the concern among some members of Congress that a vote for modification would be interpreted as capitulation in the "war on drugs." The political symbolism of the issue makes any change slow and difficult. The only realistic approach is to recognize that any solutions will be the result of patient and incremental efforts over 10 or 20 years.

**Mary Bernstein, Director, Office of Drug and Alcohol Policy and Compliance, U.S. Department of Transportation, Washington, D.C.:** Given what you have said, particularly about waiting out the problem, what do you see as a good use of Federal resources during this time?

**D.M.:** Scientific research on addiction is one very important focus of Federal funding—and such research is being supported. It is amazing how much has been learned in the past 10 years. For example, we know that addiction changes something in the brain, but we don't know what the mechanism is. Since it appears that we are now in a decline phase of drug use when people are more likely to make up their minds about the issue and become less curious, there is some danger that funding for research will come under hostile scrutiny just as we close in on the answers to some very significant questions. If there is to be any hope of research contributing to a long-term resolution of the problem of drug abuse, funding support must also be for the long term.

Law enforcement has an important role to play, too. The late law professor Alex Bickel thought that many professionals had become so sophisticated that they “knew” that laws didn't make a difference. But I think laws do make a difference to the extent that they codify and make understandable the ethical underpinnings of society. To some extent the law tells us what we want our society to be and provides us with an organizing principle for our civic life. It is essential that laws be shaped by rationality and reason.

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Gusfield writes, "Temperance issues have served as symbols around which groups of divergent morals and values have opposed each other. On the side of Temperance there has been the rural, orthodox Protestant, agricultural, native American. On the side of drinking there has been the immigrant, the Catholic, the industrial worker and the secularized middle class. In more recent years the clash has pitted the modernist and the urbanized cosmopolitans against the traditionalists and the localities, the new middle class against the old.

"When Temperance forces were culturally dominant, the confrontation was that of the social superior. He sought to convert the weaker members of the society through persuasion backed by his dominance of the major institutions. Where the dominance of the society is in doubt, then the need for positive governmental and institutional action is greater. The need for symbolic vindication and deference is channeled into political action. What is at stake is not so much the action of men, whether or not they drink, but their ideals, the moralities to which they owe public allegiance."

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# A Decade of Experimenting With Intermediate Sanctions: What Have We Learned?

*Presentation by*

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**M**y purpose in presenting this paper is to review what has been learned during the past 10 to 15 years about the restrictions and costs of intermediate sanctions, those midrange punishments that lie somewhere between prison and routine probation. Various intermediate sanctions programs (ISPs) that incorporate intensive supervision, home confinement, community service, boot camps, and day fines have been developed in recent years.

For those of us whose research has focused primarily on community corrections, the end of the 1990s marks an important landmark. We have witnessed the natural progression of ISPs, beginning in the mid-1980s with the media's enthusiastic portrayal of them as the panacea of corrections; through program design and implementation; to evaluation and testing; and finally to institutionalization, redesign, or abandonment. It is critical for scholars, policymakers, and practitioners to look back and reflect upon what has been learned during these years.



When looking at ISPs, there are three important questions to consider: First, what did the ISP experiment consist of—who did what, with whom, and for what purpose? Second, how did ISPs affect program costs, recidivism, and prison crowding? And, perhaps most important, how is the knowledge gained from this experience influencing current practice?

Several conclusions can be drawn from the evaluations of ISPs:

- In terms of sheer numbers and investments, the overall ISP experiment was more symbolic in its achievements than substantive.
- Specific components must be in place for these programs to work.
- Research findings currently influence the design of corrections programs and, more important, contribute to an emerging community justice model that promises to create a major paradigm shift in community corrections.

## **The ISP Experiment Begins**

In the mid-1980s, a broad-based consensus emerged on the desirability of developing midrange punishments for offenders for whom incarceration was unnecessarily severe and ordinary probation was inappropriately light. Three converging conditions and events drove the development of this consensus.

**1. Crowded Southern prisons and a poor economy.** First, prison crowding in the Southern United States, coupled with a poor regional economy, created early pressures for tough community-based options. Federal courts found several overcrowded prisons in the South to be in violation of the Eighth Amendment prohibition against cruel and unusual punishment and mandated that these States either build new facilities or find some other way to punish offenders. Because these States did not have the funds to build new prisons (as other States experiencing prison population growth initially did), judicial pressure created an incentive for them to develop tough but inexpensive

sentences, specifically those that did not require a prison cell. Because the voters were not about to endorse “soft” social programs, the new programs were presented to the public as punitive rather than rehabilitative. In fact, some of the older, first-generation intensive supervision programs (which provided intensive rehabilitation services) changed their names to “intensive surveillance” programs, while programs originally called “alternatives to incarceration” were renamed “intermediate punishments.”

The State of Georgia developed the first well-publicized intensive supervision program, the hallmark of which was the assignment of 25 offenders to a supervision team of two probation officers. The team comprised a surveillance officer, whose main responsibility was to monitor the offender closely, and a probation officer, who provided counseling and had legal authority over the case. While on intermediate sanction, each probationer was seen five times a week, performed community service, paid a supervision fee, and had to be employed or in an educational program.

Georgia’s self-evaluation showed that ISP participants had extremely low recidivism rates (less than 5 percent) and most offenders maintained employment and paid restitution to victims. In addition, the monthly supervision fee made the program self-supporting. In 1985, Georgia Corrections Commissioner David Evans claimed the ISP had saved the State the cost of building two new prisons.

A great deal of national publicity followed. The *Washington Post* and the *New York Times* ran major stories touting the program’s success and called Georgia’s program “the future of American corrections.” Proponents suggested that intermediate punishments could relieve prison crowding, enhance public safety, and rehabilitate offenders—all at a cost saving. Probation staffs were also enthusiastic, saying intermediate sanctions programs gave them an opportunity to “do probation work the way it ought to be done.”

Illinois, Massachusetts, New Jersey, and Florida, among other States, quickly followed suit, and the intermediate sanctions movement was born. It is important to be clear about the initial motivation: modern ISPs were developed in direct response to prison crowding, and without that pressure, we would not be here today reviewing their performance.

**2. First indepth study of U.S. felony probation.** Research evidence produced at that time showed that the existing felony probation system was a failure in large urban areas. This evidence helped convince California and other large States that had not yet faced severe prison crowding that there were public safety risks in placing felons on routine probation. In 1983, the National Institute of Justice (NIJ) awarded a grant to the RAND Corporation to conduct the first indepth study of felony probation in the United States. The final report, *Granting Felons Probation: Public Risks and Alternatives*, documented the fact that serious felons were being granted probation. Furthermore, because of limited (and often declining) community corrections resources, these offenders were ineffectively supervised, and the public safety consequences were severe. Two-thirds of the nearly 2,000 felony probationers who were tracked during this study were rearrested within 3 years, and more than half were reconvicted of serious offenses.<sup>1</sup>

The study also generated a great deal of public attention because it clearly showed that overburdened probation staff were often unable to closely supervise felons or hold them accountable for their crimes. The researchers, however, did not call for the abandonment of probation for felons or their incarceration in the future but rather something in-between:

The justice system needs an alternative, intermediate form of punishment for those offenders who are too antisocial for the relative freedom that probation now offers but not so seriously criminal as to require imprisonment. A sanction is needed that would impose intensive surveillance, coupled with substantial community service and restitution.

The study concluded that midrange punishments—such as those instituted in Georgia—were needed not only to relieve prison crowding but to relieve probation crowding as well. The dissemination of the NIJ-RAND study became the second event to increase the acceptance of ISPs.

**3. Morris and Tonry's book on the polarization of sentencing.** The third event that was critical in creating the impetus for the ISP movement was the publication of an influential book in 1990 by Norval Morris and Michael Tonry entitled *Between Prison and Probation: Intermediate Punishments in a Rational Sentencing System*.<sup>2</sup> Written by two of the Nation's leading criminologists, this study acknowledged that U.S. judges faced a polarized choice between prison and probation, with a near vacuum of punishment options between these extremes. The study provided the needed conceptual framework for a more graduated sanctioning system that relied upon a range of sentences, including fines, community service, house arrest, intensive probation, and electronic monitoring. Morris and Tonry argued that rigorously enforced intermediate punishments better serve victims and the justice system. A continuum that matches offenders to sanctions based on the seriousness of their crime is essential—regardless of any prison-crowding concerns—in creating a rational sentencing system, they wrote.

### The ISP Concept Gains Strong Support

What existed, then, were program models that appeared to work, research to show that without these programs the public was at serious risk, and a compelling theoretical justification for moving forward. A groundswell of support emerged for intermediate sanctions and, as one article noted about this period, "State legislators were virtually falling over each other" in an effort to sponsor legislation to implement these programs.<sup>3</sup>

The U.S. Department of Justice (DOJ) and several private organizations, particularly the Edna McConnell Clark Foundation, was a catalyst

in focusing this energy. In 1990, NIJ sponsored a national conference that brought together more than 300 Federal, State, and local criminal justice administrators to explore the state of intermediate sanctions and their potential. In his keynote address, Attorney General Dick Thornburgh emphasized the strong bipartisan support for developing intermediate sanctions. The Bureau of Justice Assistance (the "action" arm of DOJ) solicited agencies across the country to participate in a demonstration to test the costs and benefits of various types of ISPs. In addition, NIJ and the National Institute of Corrections (NIC) provided technical assistance, training, and research for a number of projects.

The 10 years between 1985 and 1995 could best be described as the period of ISP implementation and evaluation. Hundreds of programs were started, often with a great deal of ceremony. During this period, virtually every large probation or parole agency developed programs of intensive surveillance, electronic monitoring, house arrest, drug testing and, to a lesser extent, boot camps and day reporting centers.

### **A Closer Look Reveals Low ISP Participation and Shallow Funding**

Most important, very few offenders, relatively speaking, participated in intermediate sanctions programs, and few dollars were spent on new ISP initiatives. Today, virtually every State and the Federal Government report having intensive supervision programs, but fewer than 6 percent of the 2.7 million adult probationers and parolees in the United States are estimated to be participating in them. (This number is, however, higher than anytime in the past.<sup>4</sup>) All 50 States report using electronic monitoring and, despite what has often been characterized as explosive growth, the number of probationers and parolees monitored electronically is now at its highest level ever—about 1 percent.<sup>5</sup> Although 35 States report operating boot camps, the combined daily census has never exceeded 10,000 participants.<sup>6</sup> Finally, although nearly 125

day reporting centers operate in the United States, their combined daily population is less than 15,000.<sup>7</sup>

It appears that, at most, 10 percent of adult probationers and parolees participate in intermediate sanctions programs—a figure that is probably higher than at any time in the past. It is safe to say that the ISP experiment has not touched the bulk of those for whom it might be appropriate, such as felons with increasingly serious prior records and a history of substance abuse who are granted probation.

Moreover, when offenders were assigned to ISPs, the intensity of services and surveillance fell short of what the initial program models prescribed—most likely because sufficient dollars were not invested. As best as can be calculated, less than \$10 million was invested by the Federal Government in ISP research and demonstration projects between 1985 and 1995. This can be compared to the \$10 million the Federal Government invests in evaluations of community oriented policing each year.

In no way is this intended to offend those responsible for making these funding decisions. The boom in intermediate sanctions programs took place in 1994—the same time that the DOJ and NIJ budgets for research and demonstration programs were declining to a 20-year low. Competition for those scarce dollars was fierce, and corrections research—particularly community corrections research—never has attracted major financial support. Fortunately, Congress has increased funding to the Bureau of Justice Assistance (BJA), the Bureau of Justice Statistics (BJS), and NIJ, and corrections research has again found support.

## Local ISP Experiments Were Flawed

It is beyond the scope of this presentation to fully describe the nature of intermediate sanctions programs or their evaluations. For those interested

in such details, the recently published University of Maryland report entitled *Preventing Crime: What Works, What Doesn't, What's Promising* is recommended.<sup>8</sup> However, I will briefly summarize the specifics of the more popular programs.

As mentioned earlier, intensive supervision programs were the first—and still remain—the cornerstone of the intermediate sanctions movement. ISPs initially were developed as a way to divert low-risk prisoners to the community or to place more restrictions on higher risk probationers whose probation officers have smaller caseloads. Concurrent with the emergence of ISPs was the development of technology that permits greater surveillance of offenders. As the Cold War wound down, the defense industry, along with the developing computer and electronics industries, saw the community corrections industry as a natural growth market. Electronic monitoring, voice verification systems, inexpensive onsite drug testing, and breath analysis conducted via the telephone provided community corrections officials with the option of becoming more surveillance-oriented and using the offender's home as a place of incarceration.

Jurisdictions could choose from a number of options, including surveillance and services. For many jurisdictions, the goal was to develop a "tough looking" program. Jurisdictions adopted the ISP components they wanted and could afford and applied such programs so haphazardly that eventually the term "ISP" lost most of its meaning. Today, the term simply means "more than the sentence offenders in a jurisdiction would have received in the absence of intermediate sanctions."

As noted earlier, most of the programs implemented were much less intensive than the original Georgia model, which called for caseloads of 25 probationers to 2 probation officers, and 2 to 5 face-to-face contacts per week. I know of no large urban probation department that is able to sustain this level of caseload size and this level of contact for its felony probationers. Even pro-

grams that began with multiweek visits tend to regress to only one or two visits per month per client. For participating offenders, the service and surveillance they received fell below desired levels.

Moreover, failure to comply with ISP conditions did not mean that an offender would be found in violation of probation.<sup>9</sup> Patrick Langan of BJS studied a nationally representative sample of adult probationers and discovered that nearly half were discharged from probation without fully complying with their court-ordered sanctions. More than a third of offenders were successfully discharged from probation without completing court-ordered drug treatment, drug testing, house arrest, or day reporting programs. Forty percent of discharged probationers had not paid their victim restitution or supervision fees. He concluded that “intermediate sanctions are not rigorously enforced.”

Still, something different did happen in those communities that implemented ISPs and conducted sound evaluations.

### **Program Costs, Recidivism, and Prison Crowding**

Relative to the investment made, a tremendous amount was learned from these programs. Despite differences in the programs, the agencies that implemented them, and the characteristics of offenders who participated in them, three major findings are very consistent.

*First*, ISP participants, by and large, were not prison-bound but rather were high-risk probationers. In State after State, well-meaning program developers wrote guidelines for prison “diversions.” Well-meaning judges and prosecutors ignored them and filled the programs with high-risk probationers. From the perspective of those who created these programs to save money and prison space, judges “misused” intermediate sanctions. From the perspective of judges, they had endorsed the concept of a continuum of sanctions and preferred to



use these options to increase supervision and accountability for felony probationers. The ISP experiment was definitely “net widening,” but given the laxity of current supervision of serious felons on probation, it is more accurate to characterize it as “net repairing.”

*Second*, ISP offenders were watched more closely, but ISP supervision did not decrease subsequent arrests or overall justice system costs. Technical violations, however, increased. Offenders within programs incorporating intermediate sanctions, electronic monitoring, boot camps, day fines, and drug testing were watched more closely—as evidenced by a greater number of contacts—but the programs did not reduce new arrests.

For example, the ISP national demonstration evaluated by Susan Turner and me, which involved 14 counties in 9 States, found no difference in arrests after 1 year (38 percent for ISP participants and 36 percent for routine probationers), more ISP than control offenders with technical violations (70 percent and 40 percent, respectively) and, as a result, more ISP than control offenders returning to prison or jail by the end of 1 year (27 percent and 19 percent, respectively).<sup>10</sup>

Because it is doubtful that ISP offenders committed more violations, close surveillance probably uncovered more technical violations. Whenever this happened, many ISP managers took punitive action—often revocation to prison—to maintain the program’s credibility in the eyes of the judiciary and the community. Programs that were started primarily to save money and avoid the costs of prison often cost their counties more over the long term.

These results call into question two basic premises of intermediate sanctions, i.e., that increased surveillance acts as a constraint on the offender and that the likelihood of detection acts as a deterrent to crime. The University of Maryland project, which summarized evaluations across the full range of intermediate sanctions, concluded: “Except in a few instances, there is no

evidence that these programs are effective in reducing crime as measured by official record data.”<sup>11</sup>

*Third*, an important and tantalizing finding—consistent across all the evaluations regardless of program design—points to the importance of combining surveillance and drug treatment program participation. In the RAND ISP demonstration, offenders who participated in treatment, community service, and employment programs—prosocial activities—had recidivism rates 10 to 20 percent below that of those who did not participate in such additional activities.

Researchers have found similar results in Massachusetts, Oregon, and Ohio, and a recent metaanalysis of 175 evaluations of intermediate sanctions programs concluded that the combination of surveillance and treatment is associated with reduced recidivism.<sup>12</sup> Paul Gendreau and Tracy Little conclude in that study, “In essence, the supervision of high-risk probationers and parolees must be structured, [be] intensive, maintain firm accountability for program participation, and connect the offender with prosocial networks and activities.”

The empirical evidence regarding intermediate sanctions is decisive: Without a rehabilitation component, reductions in recidivism are elusive. In sum, the ISP evaluations show that programs were seldom used for prison diversion but rather to increase accountability and supervision of serious offenders on probation. In addition, programs did not reduce new crimes, but instead increased the discovery of technical violations and ultimately increased incarceration rates and system costs. However, programs that provided treatment and additional services obtained some reductions in recidivism, particularly for high-risk offenders, and drug offenders more specifically.

## **Influencing Current Practice**

How do ISP evaluations influence current practice? This is the most important of the three original questions because the ultimate goal of producing knowledge is to effect positive action. Still to be addressed are the same issues that motivated the intermediate sanctions movement—prison overcrowding, probation overload, insufficient resources, and public demand for accountability and punishment. How can this evidence be used to answer the central question, “If not prison, what?”

Researchers and policymakers cannot plead ignorance or abstain from the debate—because they know what is useful. Although they do not have all the answers, they have an obligation to engage in the debate and interject the known evidence because policy is made on these matters every day. It appears that this is happening in quiet but significant ways that may well result in a major paradigm shift for community corrections in the United States.

## **Program Redesign**

First, the body of ISP evidence is being used to redesign programs that integrate surveillance with treatment opportunities. This is particularly true with juvenile justice programs but also with programs for adults, particularly drug offenders. The Office of Juvenile Justice and Delinquency Prevention (OJJDP) Comprehensive Strategy for Youth endorses graduated sanctions and incorporates two principal components: increasingly strict supervision and a continuum of treatment alternatives.<sup>13</sup> Many States have adopted the Comprehensive Strategy. The California Legislature, for example, recently allocated \$50 million to fund probation programs for delinquent youth and, drawing upon the evidence reviewed earlier, required that both surveillance and treatment be part of any funded program.

Other programs also have moved away from a singular focus on surveillance. Several boot camps, for example, are enhancing the therapeutic parts of their programs and shifting away from total reliance on physical, militaristic programming. UCLA's Mark Kleiman has proposed major funding for a national initiative labeled "coerced abstinence," which at its core will provide drug testing (a main ingredient in surveillance programs), plus treatment in and out of prison, followed by intensive aftercare upon release. A key component of his program is swift and certain response to drug-use violations.

One of the major recommendations of the recently published report by the Governor's Task Force on Sentencing and Corrections in Wisconsin, which draws heavily upon ISP experiences, calls for the elimination of probation for felons.<sup>14</sup> The task force recommends that felony probation be replaced with an arrangement named "community confinement and control" (CCC), which mandates electronic monitoring, urine testing, work or community service, and 18 to 20 contacts a month with a probation officer who has a caseload of no more than 17 offenders. CCC officers carry out "community-oriented probation" (similar to community-oriented policing), in which they provide active as opposed to passive supervision. They are required to engage the offender's family, employer, and neighborhood to create a support and supervision network. The Wisconsin Legislature has allocated the necessary resources to pilot-test the task force recommendation in two jurisdictions.

These are just a few of the ways in which ISP research results directly influence the design of future programs. It is safe to say that most corrections professionals are keenly aware of these findings. In terms of contributing to a cumulative body of knowledge about correctional programming, the IPS experiment can be considered a success.

## Neighborhood Probation

The legacy of the intermediate sanctions experiment is likely to be far more important than simply the redesign of individual programs. Intermediate sanctions programs have set the stage for an emerging model of community probation (also called community justice and neighborhood probation) in which probation officers partner with the police and community members to reduce public safety threats posed by offenders in their midst. Under this model, probation officers take an active role in community building and not just offender restraint. The probation and parole officers who are involved in ISP supervision programs are emerging as key players.

Interestingly, as community corrections officers move toward a tougher form of probation, which some liken to police work, police officers are embracing community-based policing, which some liken to probation or social work. Probation and police officers are getting out from behind their desks and out of their cars and into the community. "In your face" probation includes visiting the offender's home and work site and working with community agencies to develop and supervise community service obligations—a much more active type of probation.

Police, too, are getting out into communities, holding neighborhood meetings, and taking the pulse of neighborhoods they serve through comparatively well-funded community policing programs. One of the key goals of community policing is getting to know the people on the beat—offenders as well as law-abiding citizens. Police have heard repeatedly about residents' fear of offenders and the lack of justice and accountability for people who were arrested and placed on probation or released on parole. Victims felt crime was trivialized by a justice system that simply slapped the wrist of criminals and sent them home or imposed conditions that were not monitored. Repeat victimization was common, and the community wanted criminals who had committed serious offenses taken off its streets. Once that was done, community residents wanted programs to help the next generation become responsible citizens.

The police came to realize that to significantly reduce crime they had to get out in front of the problem and not merely react to reports of crime. They needed to be proactive rather than simply reactive. To be proactive, the police needed a variety of sources of information. Much of that information and—as it turns out—legal authority exist in the minds of the officers who operate intensive supervision programs in probation departments. Historically, there has been animosity between police and probation officers. The police believe that they catch criminals and that probation lets them out. This new community justice model, however, creates a three-way collaboration among the police, probation, and members of the community.

**Operation Night Light.** Part of a formal police-probation partnership in Boston, Operation Night Light illustrates such a collaboration. President Clinton praised this program in his 1998 State of the Union Message and called for its expansion nationwide. Such a mention of probation in a national address, surely a rare occurrence, is important because probation supervises two-thirds of all correctional clients in the United States. Few people, however, understand this wide-ranging role of probation. The originators of the Boston project describe it in *Community Corrections: Probation, Parole, and Intermediate Sanctions*.<sup>15</sup>

Community meetings organized by community policing officers in Boston revealed that, as a result of ISP experiments and other local corrections programs, probation officers knew a lot about high-risk offenders and locations in their neighborhoods, as well as community resources and programs. Moreover, these neighborhood discussions revealed that many of these lawbreakers were already on probation or parole, but probation officers simply did not have the resources to monitor them, serve warrants, locate absconders, or secure treatment and other programs that these offenders needed. Because these offenders were on probation, their movements in the community could be limited by court order as a condition of probation. In fact, many of them

were under court-ordered conditions—for example, nighttime curfews and weapons restrictions—that, if enforced, could be extremely useful in reducing the community's fear.

Admittedly, police and probation partnerships in the past usually began as a way to increase surveillance of high-risk offenders in the community. There was such a partnership in Long Beach, California, as early as 1987. The new community justice partnerships look and feel different from earlier efforts. For example, the Boston project has expanded to include clergy, youth workers, school personnel, and parents. In addition, interesting trends have developed. Judges are expressing greater confidence that probation terms such as curfews and geographical restrictions might be enforced. Police now have information on conditions of probation and feel they can count on the probation system to hold offenders accountable when they violate those terms. Finally, because warrants are being served, police are reporting violations to probation officers.

By combining police and probation resources, probation supervision has become a 24-hour-a-day, highly accountable reality. What was impossible for probation to do alone (even in the most intensive ISPs) has become possible under the partnership between the police and the community.

This effort has required a lot of cooperation and coordination. Initially, probation officers were reluctant to partner with the police, and the police did not want to connect with "social workers." Over time, however, each group began to realize that everyone has something to gain from the other. Police are learning from community corrections officers and others about community resources such as employment and school truancy prevention programs.

Boston police officers attend joint training seminars, participate in strategic planning sessions with other organizations, and jointly participate in research projects. The police, probation, clergy, and lay people now attend monthly community meetings. Most recently, gang members and community mental health workers began to attend these meetings as well. The Boston program is

expanding to incorporate new initiatives that employ the team approach. For example, police now help probation officers monitor high-risk, volatile domestic cases to reduce violence and school programs to reduce truancy. Probation absconders receive priority arrest status by police. The program has spread from Boston to a dozen other probation jurisdictions throughout Massachusetts.

Similar partnerships, now spreading across the Nation, could not have been so easily forged without the ISP experiments of the past decade and the gradual acceptance by probation and parole staff of surveillance activities. Police and probation officers were moving in the same direction but did not realize it. Probation officers were getting out of their offices and monitoring offenders where they lived. Police officers were getting out of their cars and walking their beats, which allowed them to work with community members to identify problems and problem people. They stumbled onto each other; the collaborative prospects are exciting.

These programs are more than just surveillance, although admittedly surveillance plays a major rôle in some of them. Study after study has shown that probation and police officers, once they become familiar with individual communities and the people who live there, tend to develop less hardened attitudes. The following anecdote illustrates this concept.

**Washington's SMART partnership.** The Washington State Supervision Management and Recidivist Tracking (SMART) Partnership for police and community corrections shares some of the characteristics of the Boston program.<sup>16</sup> One former director of corrections visited the community corrections field offices throughout the State annually to discuss priorities for the coming year. Each year, one particular field chief asked the director when probation officers would receive permission to carry weapons. This field chief complained at length about the personal risks he faced when making home visits to dangerous places and how drug use made offenders' behavior increasingly unpredictable and violent. However, the last time the former director saw this



man, who had become an active participant in the SMART program, he said he did not need guns but needed more government funds to subsidize jobs for probationers. Clearly, a greater degree of community engagement occurs in these programs.

## **No Agency Is an Island**

The ultimate legacy of a decade of experimenting with intermediate sanctions is the strong message that no one program—surveillance or rehabilitation alone—and no one agency—police, probation, mental health, or schools alone—nor any of these agencies without the community can reduce crime or fear of crime on its own. Crime is a complex, multifaceted problem that will not be overcome by simplistic, singularly focused solutions—whether they be boot camps, electronic monitoring, or intensive probation. Workable, long-term solutions must come from the community and be embraced and actively supported by the community.

This message of community support and involvement is a lesson we learn repeatedly. If the ISP evidence lends any scientific support or credibility to that message or to practitioners and researchers who are involved in this experiment, the money invested in intermediate sanctions will have been exceedingly well spent.

## **Question-and-Answer Session**

**Lou Cordia, President, Cordia Companies, Alexandria, Virginia:** What was the reduction in the recidivism rate when surveillance and treatment were combined?

**JP:** The overall reductions were 10 to 20 percent. Reductions of as much as 30 percent were achieved when programs targeted particular risks and needs. The overall average was 10 to 20 percent for offenders who received both treatment and surveillance (meaning more contacts).

**Lou Cordia, President, Cordia Companies, Alexandria, Virginia:** Could you address the metaanalysis of the 175 evaluations you mentioned in your presentation?

**JP:** Metaanalysis is a technique that combines results from all the evaluations of intensive supervision (many of which had small sample sizes) and looks at the overall impact. The metaanalysis of the 175 evaluations found that intensive surveillance produced a reduction of 20 to 25 percent, and if the program was more targeted, a reduction of up to 30 percent.

**Eric Sterling, President, Criminal Justice Policy Foundation, Washington, D.C.:** Which offenses are amenable to this kind of intervention? That is, for which offenses might this intervention *not* be the most appropriate response?

**JP:** That is an excellent question. The programs combined with a treatment component worked fairly well for people who were drug- and alcohol-involved, but not for those who were seriously drug- and alcohol-dependent and violent. There is evidence that these programs worked very well for "emerging drug offenders" and for the huge drunk-driver population.

There is a problem with this approach. House arrest and electronic monitoring is a wonderful sanction for drunk drivers. They are kept in their homes and out of their cars. Mothers Against Drunk Driving (MADD) and other groups claim that house arrest is not punitive enough, and they have generated a great deal of controversy over the issue. Research has shown that in the minds of offenders, intermediate sanctions can be much more punitive than a stint in jail or prison. In a number of surveys offenders were asked whether they would

prefer to serve a 6-month stay in jail or prison or 2 years in an intensive supervision program. Even when the length of house arrest was reduced and the program (a full-time job, drug testing once a week, random home visits, and regular contact with a probation officer) was described to offenders, more than 50 percent chose the prison or jail term.

Legislation that mandates lengthy prison and jail terms is being passed because we are trying to "get tough on crime." We could get much tougher on crime by getting much tougher in the community—at much lower cost and with better benefits. It is very important that we get this message out.

**Samuel Dash, Professor, Georgetown University Law Center, Washington, D.C.:** In your historical account of the origins of this kind of community punishment, did you come across the fact that, in the 1980s, as soon as he became Chief Justice of the Supreme Court, William Rehnquist made his first State of Justice report to the American Bar Association, which focused on the failure of the prison corrections system and the need for community corrections? By the end of the 1980s or so, he announced that community corrections was a failure and that we needed to emphasize retribution and prison. When the Chief Justice made the first statement, it encouraged communities and legislatures to move forward. When he made the second statement, there appeared to be a major cutback on the kinds of programs you are talking about. You explained why, in your opinion, ISPs were major failures: the resources were not there, intensive supervision was not there, the combination of programs was not there. It seems that what the Chief Justice said in the beginning was true and what followed was not what he thought would happen.

**J.P.:** You are absolutely right. I recently conducted a historical review on probation. There has never been any national report—starting with those from the President's Crime Commission in 1967—that did not endorse the

expansion of community-based options. It has been endorsed by every Presidential and national panel. That is why I said at first that community corrections has always carried a lot of symbolic weight but not much substance. We have not followed through. Part of the reason I chose this topic is to get the word out that we did not carry out the original promise of ISPs. People are ready to "throw the baby out with the bath water." We invested very little. Most probation departments that started these new programs never received any new funding. Selected national demonstration sites were funded, but *every* probation department in the Nation felt it had to implement these kinds of programs. Most of them received no new resources to do it. You get what you pay for.

**Marie Ragghianti, Chief of Staff, U.S. Parole Commission, Chevy Chase, Maryland:** Do you define drug testing as treatment? If not, would you distinguish between drug testing and treatment? Many quarters of the criminal justice community consider drug testing to be treatment.

**J.P.:** Drug testing is surveillance, not treatment. If you do not combine testing with a referral to some program that addresses the underlying problem, it cannot be considered treatment. Testing is simply a way to uncover drug use. Successful programs combine drug testing with a referral to effective treatment.

We did a lot of drug testing in the ISP experiment (in fact, that was the single most frequent activity), but we delivered almost no drug treatment. I wish we had the opportunity to do a second-stage testing of the ISP concept.

**Jack Riley, Director, Arrestee Drug Abuse Monitoring (ADAM) Program, National Institute of Justice, U.S. Department of Justice, Washington, D.C.:** Following up on Eric Sterling's question, where would you put the marginal research dollars at this point? There are two directions that we might focus on: matching treatment and ISP needs to individual client

characteristics or looking more broadly at program expansion. Maybe there are other paths, but I am curious how you would direct research.

**J.P.:** That is also a good question. I answer it knowing where the dollars are now going—juvenile justice programming. If someone asks, “Where would you invest the next dollar?”, I would say in the adult offender who is just becoming a “career criminal.” We do almost nothing for that first-time serious misdemeanant who is going down that predictable path. The system has lost its deterrent value. We often talk about rehabilitation and surveillance but forget about deterrence.

One of the reasons the intermediate sanctions movement is so attractive conceptually is that it envisions a “ladder” of dispositions for which the sanction delivered is a little tougher and a little more restrictive each time the offender comes back to the system. The goal is not just to be punitive but to ensure public safety. I would invest not in youth (a lot is already going to them) but in offenders who have been convicted of their third or fourth serious misdemeanor or first felony. Right now, they get routine probation. We just encourage the crime cycle.

**Wayne Miller, Chief, Strategic Planning Office, Bureau of Alcohol, Tobacco and Firearms (ATF), U.S. Department of the Treasury, Washington, D.C.:** Would you address the Federal role of the ATF, the Drug Enforcement Administration (DEA), and the Federal Bureau of Investigation (FBI) in the Boston community partnership?

**J.P.:** It was a very close partnership. It started out as an experiment for gang members. Initially, the Federal role was large, but the project has since developed into primarily a community/county-level program. Probation and parole never have had the resources to invest seriously in programs they could have done well all along. Similarly, IBM did not invent the personal computer, but the company had the money to take its development to the next step when

the early entrants could not. This seems to be what police and law enforcement do. Community corrections is an idea that probation and parole came up with years ago, but they never had the dollars and could not get the attention of the police to do it. Now, community policing comes in with well-funded programs, they partner with probation, and the programs seem to work. The SMART program in Seattle is doing wonderful things. These coordinated partnerships among Federal, State, police, and probation agencies will make the difference.

**Elizabeth Latham, Coordinator, Volunteer Maryland, Governor's Office of Crime Control and Prevention, Baltimore, Maryland:** I am a volunteer coordinator working with the Maryland HotSpot Communities initiative. We have community probation and policing as well. I am working to bring community members on board with police officers and parole, probation, and juvenile justice agents. Have you seen examples in your research of programs bringing community members formally on board?

**J.P.:** That is really going to be the challenge. I too am working with a program in Ventura County, California, to bring community members into a more active role in the justice system. To be honest, we are having a difficult time. If we get community members at large, we are more successful. If we try to get victims to come to the table and meet their particular offender, we have more difficulties, and it is a challenge. As policymakers, we often think of these good ideas. Restorative justice projects will be the test for bringing community members and victims to the table. We certainly have probation and law enforcement involvement, but we have not figured out how to effectively involve the community.

**Victor Stone, Special Counsel, Office of Enforcement Operations, Criminal Division, U.S. Department of Justice, Washington, D.C.:** Has your research or the research you have looked at led you to any conclusions about a possible structural problem? Judges talk about these same issues, and yet they do not

want probation officers to become investigators or trial witnesses. They do not want probation officers to admit failure by revoking individuals. In addition, judges do not want to lose their independence to a strict ladder of graduated sanctions. They want the freedom to sentence as they wish, and they don't want us to tell them where to put their dollars. It seems there is a structural problem.

This initiative and even the COPS (community-oriented policing) initiative says, "Okay, we'll take it from the other end. We'll take the investigator and make him into more of a community agent or rehabilitative agent or job search agent." From the executive point of view, we can tell him what to do. Therefore, we can foster cooperation without having the friction of prerogatives between the judicial and executive branches. Have you drawn some conclusions about these issues?

**J.P.:** My experience suggests that judges are the key to successful intermediate sanctions programs. In the communities that I have worked with, judges can either make or break a program. They not only do the initial sanctioning; they also do the revocation of parole or probation. If the guy tests positive and the judge refuses to allocate that jail bed to the violator, the program loses credibility very quickly. Word gets out to offenders immediately that the intermediate sanctions program has no teeth.

In retrospect, we should have spent more time working with judges through the whole intermediate sanctions experiment. I have had judges tell me, "Okay, I'm ready to sentence to intermediate sanctions." However, we now have a new problem—mandatory sentencing. We have the programs out there and the judges are willing to use intermediate sanctions, but judges tell me, "I can't hand down intermediate sanctions because of all the mandatory sentencing provisions that now tie my hands." The problem is not only with the structure of the judiciary but also with the kinds of laws that are on the books. Even if judges wanted to use graduated sanctions, often they cannot.

**Tiberiu Dianu, Graduate Student, The American University College of Law, Washington, D.C.:** Which of the various intermediate sanctions programs seems to work best?

**J.P.:** From the research evidence, the particular type of program almost does not matter. ISPs work best when there is a heavy dose of surveillance (and you can get that by imposing house arrest with electronic monitoring or regular home visits) with at least two contacts per week. I have yet to see in the evaluation literature any program that reduces recidivism that does not have at least two face-to-face contacts and one drug test per week. I would suggest electronic monitoring for weekend and nighttime curfews at a minimum. It does not matter whether you call it house arrest, electronic monitoring, or intensive supervision; these are the components that make a program successful.

Mix surveillance with "treatment." I do not mean only the usual psychological or substance abuse counseling but the treatment of community service, employment, and work training. Provide a heavy dose of surveillance and community service or employment and work training, and at a minimum, you should enjoy a reduction in recidivism of about 20 percent.

**Peter Eide, Manager of Labor Law Policy, U.S. Chamber of Commerce, Washington, D.C.:** Unemployment levels are the lowest they have been in decades. That raises the issue of employment opportunities for people on probation, especially with regard to the private sector. How do we get more information on how that is arranged and how those programs are working?

**J.P.:** It is a huge missing link in criminology. It is still extremely difficult for probationers and parolees to get a job. I don't have a lot of information; I've only heard anecdotes. I know of no large-scale study looking at employment opportunities or incentives for parolees or probationers. We need to create incentives for employers and provide them some guarantees for the risks they



take. My sense is probationers and parolees face the same employment problems they have always faced.

**Peter Eide, Manager of Labor Law Policy, U.S. Chamber of Commerce, Washington, D.C.:** Now is the time to move. Employers are desperate for employees, whether they are probationers or not. Now is the time to look into this issue and get something going.

**J.P.:** I agree.

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# The Epidemic of Youth Gun Violence

*Presentation by*

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**A**n epidemic of youth gun violence has swept the United States in recent years. The increase in youth homicide, which began in the mid-1980s and peaked in 1993, was unusual, large, abrupt, and unprecedented. Although it is now 5 years past the peak, great uncertainty remains about its causes and what can be done to head off the next epidemic.

During the early 1980s, violent crime rates in the United States were generally headed down from a previous recordbreaking peak in 1980. But in 1985, this positive trend reversed—not for everyone, but for demographic groups with the highest prevalence of perpetrators and victims of violent crime. While homicide rates for older adults continued to decline, adolescents and young adults in minority communities increasingly resorted to gunplay and suffered its deadly consequences.

My objective is to describe this epidemic of youth gun violence and consider two prominent explanations of the problem that have influenced policy over the past 7 or 8 years. One school of thought explains the epidemic in terms of the *character* of the youths involved. Other researchers see the problem in terms of the *context* in which the youths operate. In my opinion, the evidence favors context over character.

A focused response to this epidemic was slow in coming, but in recent years a number of law enforcement innovations designed to separate kids from guns have been implemented around the country. Although the research results are not yet in, many of these efforts may have helped turn the corner in reducing homicide rates.

## Measures of the Epidemic

When John Laub and I began our investigation,<sup>1</sup> we focused on homicides because the data are more plentiful and reliable than the data for assault, rape, or robbery. In addition, homicide is the most important and grave of the violent crimes, and arguably a good indicator of overall trends in violence.

Youth homicide victimization rates increased more than other measured violent crime rates during the epidemic. During the years of increase in the epidemic cycle (1985 to 1993), the homicide victimization rate for 15- to 24-year-olds doubled. For 25- to 34-year-olds, the rate increased by just 18 percent, and for those older than 34, the rate actually fell.<sup>2</sup>

The epidemic of youth homicide was almost entirely confined to minorities—Hispanics to some extent but more so for blacks. Within the minority groups, males were affected much more than females. The homicide rate for victims and perpetrators among non-Hispanic white youths, both male and female, remained virtually unchanged from 1985 to 1993. By 1993, young black men were 20 times more likely to be involved in a homicide than young white men of the same age.<sup>3</sup>

What was the experience of the group that was most caught up in this epidemic? The homicide victimization rate for black male victims ages 13 to 17 more than tripled, and the rate at which black males in this age group committed homicides more than quadrupled.<sup>4</sup> The proportional increases for black males ages 18 to 24 were almost as large—and started from a higher baseline.

The national homicide rates in 1993 for both victims and perpetrators from these groups had no precedent in the 20th century.

Homicide victimization rates in some cities were as high as or higher than the death rates among combat troops during the Vietnam War. Black youths in Washington, D.C., who turned 18 in 1989 had a 1-in-24 chance of being killed by 1995. This was the highest rate in the Nation but not that far out of line with the rates in other cities.<sup>5</sup>

Youths are even more likely to kill than be killed. My calculations suggest that if the national rates of 1993 had been sustained, the chance of a black male *killing* someone before age 25 would have been 2.5 percent, compared with a 1.5-percent chance of *being killed*.<sup>6</sup>

The epidemic reached a peak in 1993 for reasons that are as obscure as those that explain its onset. There has been a rapid decline in the homicide rate for victims and perpetrators since then, especially among blacks.

### Character vs. Context: Seeking an Explanation

It is only natural to seek an explanation for such an unprecedented and compelling pattern. There are several reasons to study this problem. First, there is a scientific motivation: we suspect that the increase in violence cannot be explained by textbook criminological theory. What mechanism could have caused such a large and abrupt change? How can we explain why, over a 6-year period, the homicide victimization rate for young black men in Washington, D.C., increased by a factor of 10? A number of criminologists are exploring positive feedback processes in an effort to explain such a rapid change. For example, violence may be "contagious" under some circumstances, such as an adolescent's decision to carry a gun or adopt a confrontational style, causing others to do the same.<sup>7</sup> Alternatively, the positive reinforcement may come from "resource swamping," where an initial increase in violence dilutes the capacity of the neighborhood and the police.

In any event, more important than extending the textbooks is preventing this epidemic from recurring. What have we learned from this crisis that is useful to policymakers? Are any of the policy innovations implemented in the past few years helping?

The “superpredator” interpretation of this epidemic, which attributes the increase in violence to character changes in youths, has received considerable attention. Others believe instead that the proximate cause of the epidemic must be found in the changing context, or environment, in which youths interacted with one another.

### **The Superpredator Theory**

The inner-city, minority children who became adolescents during the 1980s grew up in neighborhoods where the high levels of violence reached in the late 1960s had become the norm. These children were also severely affected by broader demographic and economic trends, including the increase in illegitimacy and single-parent households, lack of adult supervision, the increasing geographic concentration of poverty, and the falling wage rates and reduced economic opportunities for those who lacked a college degree.<sup>8</sup> Coincidentally, these children grew up at a time when the popular media provided a perverse education that encouraged violent solutions to everyday problems. It should not be surprising that children growing up in such circumstances were more violence prone than in earlier days.

William Bennett, John DiIulio, and John Walters argued this point most vividly, referring to the new generation of juvenile criminals as “superpredators.” They stated that “today’s bad boys are far worse than yesteryear’s, and tomorrow’s will be even worse than today’s.”<sup>9</sup> The result is that “America is now home to thicker ranks of juvenile ‘superpredators’—radically impulsive, brutally remorseless youngsters, including ever more preteenage boys who murder, assault, rob, burglarize, deal deadly drugs, join

gun-toting gangs, and create serious communal disorders.” The underlying cause of the superpredator phenomenon, they asserted, is “moral poverty—children growing up without love, care, and guidance from responsible adults.”

From this perspective, the youth homicide epidemic is the result of a change in character. This explanation is appealing because we suspect they are right about the lack of a healthy adult presence in these children’s lives. It seems to fit some of the facts, and it fits our intuition: If we measure character by behavior, the increase in homicides “proves” the increasing prevalence of killers, and (to close the loop in this circular reasoning) the increasing prevalence of killers then “explains” the increase in homicides.

The “moral poverty” explanation, however, does not fit some key facts about the epidemic. The increase in violence was sudden and large, whereas trends in family life and media content tend to be gradual. Furthermore, increasing “moral poverty” is not evident in youth property crime rates, which have held steady or even declined since 1974.<sup>10</sup> “During this period, the youth arrest rate for property crime barely changed, and, according to the National Crime Victimization Survey, the property crime rate declined substantially during the epidemic period. Even with respect to homicide, *domestic* homicide involving youths did not increase despite the explosion in other forms of youth homicide.”<sup>11</sup>

### Change in Context

Bennett, DiIulio, and Walters’ explanation attributes the youth homicide epidemic to what demographers call a “cohort effect,” as opposed to a “period effect.” The homicide data, however, suggest that it is the period, or context, rather than the ever-more-vicious cohorts, that is to blame. Consider the cohort of nonwhite males ages 15 to 19 in 1990, which, given its very high homicide rate in that year, does indeed appear exceptionally vicious. In 1985, this same cohort (then ages 10 to 14) experienced a homicide victimization

rate that was the lowest for any cohort in that age group since the 1960s. In 1990 an older cohort, ages 20 to 24, followed the same pattern, with relatively low rates in its younger years. These cohorts do not exhibit a sustained high level of lethal violence, but rather their homicide rates moved up together from ordinary levels for their respective ages in 1985 to extraordinarily high levels in 1990.<sup>12</sup>

It is almost as if these rather normal cohorts were suddenly drafted into a war. Before attempting to define the nature of this war, let me point out that the moral-poverty explanation has been widely accepted and increasingly reflected in our laws. Many States have changed the rules governing processing and sentencing of serious juvenile offenders partly in the belief that these youths deserve harsh retribution for their actions and that they cannot be reached through rehabilitation. Between 1992 and 1995, 47 States and the District of Columbia toughened their juvenile justice systems through changes in the jurisdiction of the adult court, sentencing procedures for juveniles, confidentiality rules, or a combination of all three.<sup>13</sup> The Violent and Repeat Juvenile Offender Act of 1997 (U.S. Senate bill 10), sponsored by Senator Orrin Hatch, embodies this new perspective and encourages the States to still further exempt serious, violent juvenile offenders from the features of the traditional juvenile court. This is how the superpredator notion is woven into policy and action. But it fails as an explanation for the epidemic in youth violence.

## **Kids and Guns**

Data on the increase in youth homicides provide one important clue to the nature of the epidemic—the entire increase was in gun homicide. (The homicide rate not involving guns remained essentially constant during this period.) Among male killers ages 13 to 24, gun use increased from 55 percent to 72 percent when the years 1982 to 1985 are compared with the years 1990 to 1992. There was a comparable increase in gun use in every circumstance, from everyday arguments and fights to gang slayings.<sup>14</sup>



Similarly, during this time, young people used guns to commit robberies and suicide and were arrested for gun violations in sharply higher numbers. The increase in gun prevalence among minority youth is also evident in suicide statistics. For young black men ages 15 to 24 the percentage of suicides committed with guns increased sharply—from 53 percent in the years 1982 to 1985 to 78 percent in the years 1992 to 1993. For other young males, the increase was just 7 percent during this period.<sup>15</sup> Furthermore, for older males ages 25 to 34 the percentage of suicides committed with guns changed very little among blacks or other groups, remaining at a lower level than that for younger cohorts.<sup>16</sup>

The increase in gun involvement was a proximate cause of the epidemic. When guns replace fists and knives to settle disputes or commit robbery, the chance of a fatality increases many times. Overall levels of violence do not appear to have increased nearly as much as homicides during this period. Assaults became more deadly, as would be expected from the increase in gun use.<sup>17</sup>

## Supply or Demand?

Guns are clearly part of the explanation. But that answer suggests a number of more specific questions. What could explain the increase in gun use by minority youths? Was the increase in gun use the result of greater availability? Why was there not a similar increase in gun use by white youths or by older people or an increase in the perceived value of possessing a gun? Why was the increase limited to minority youth?

Alfred Blumstein<sup>18</sup> and others have suggested that the demand for guns among young minority males increased sharply during the mid-1980s when crack was introduced in one large city after another. Unlike heroin and powder cocaine, crack markets provided employment, albeit risky employment, for many adolescents, who thereby had both the cash and the motive to arm

themselves. The guns usually were acquired through illegal sources, including outlaw dealers, gun runners, friends, drug customers, and theft. Many transactions may have been facilitated by lax Federal regulation of gun dealing during this period. Federal licenses were handed out to almost anyone with \$30 who applied for one, and the licensee-inspection capacity of the Bureau of Alcohol, Tobacco and Firearms (ATF) was curtailed by Congress.

Homicide rates for victims and perpetrators continued to increase rapidly long after crack markets were well established. As guns became more widespread they became easier to obtain from friends or fellow gang members. The initial influx of guns led to an increased supply on the secondary market, and supply may have created demand. For some individuals, carrying and using a gun became a matter of status and survival. Thomas Ross, a resident of Benning Terrace, a public housing complex in Washington, D.C., recently told a *Washington Post* reporter, "It's like the wild, wild West but the sheriff stays in his office. A dude comes bustin' for you, he's going to have a gun, so you better be carrying [one], too."<sup>19</sup> It is interesting to speculate why 1950s' urban youth gangs—such as those from the "West Side Story" era—used guns so infrequently in their fights, thereby suffering so few fatalities. By what process were the "fair fight" rules of engagement enforced and sustained in that era?

What broke the vicious cycle of gun violence? Some have suggested that it turned around for reasons that have to do with the internal dynamic of the epidemic. Younger cohorts, witnessing the damage guns inflict, may have turned away from them. Researchers offer an analogous explanation for why heroin and then crack lost favor among users. However, innovative efforts in law enforcement, both in the regulation of gun markets and in policing against gun carrying and misuse, may deserve much of the credit.

## Law Enforcement Response

As the youth gun violence problem became more intense, legislatures and law enforcement agencies began to respond with efforts targeted specifically at gun markets and gun crimes. The responses can be classified as supply- or demand-oriented. Supply measures focus on reducing gun availability; demand measures increase the legal threat to those who carry them illegally or use them in crime.

The Federal Government has taken the lead to control supply. The Brady Law, implemented in 1994, discourages individuals with a criminal record from buying handguns from licensed dealers by requiring a 5-day waiting period. This law also raised the dealer license fee from \$30 to \$200, which, together with a more careful ATF review of applications begun in 1993, has reduced the number of legal dealers from 284,000 to 100,000. The dealers who remain can be more closely monitored by ATF and probably include fewer flagrant violators. ATF has greatly expanded its gun-tracing operations and uses data from them to support its dealer investigations. The agency also provides trace information and guidance to local law enforcement agencies on how to police local black-market dealers. These and other measures have no doubt reduced sales by licensed dealers to gun runners, youths, and customers with a serious criminal record.

At the local level, several cities have launched demand-side crackdowns on gun carrying and misuse. The Boston Gun Project is the best known of these and one of the most elaborate.<sup>20</sup> This program to deter gangs from using guns was almost completely successful in ending juvenile homicides, which had been running at about 15 deaths a year. A number of cities have used aggressive patrol tactics against gun carrying. Kansas City evaluated this approach and documented a reduction in gun crimes.<sup>21</sup>

## Conclusions

The lessons learned from a review of the history of this epidemic of youth gun violence include the following:

- “Root cause” explanations in general, and the “superpredator” explanation in particular, fail to account for the epidemic. Context rather than character must be the basis for explaining this tragic history.
- Guns played a major role in the epidemic of youth violence. Finding ways to separate violent kids from their guns has been and will continue to be part of the solution. Guns greatly increase the stakes of youth combat and do not reflect on the character of young people so much as on the opportunity and context in which they deal with others. Prevention, in the form of making guns scarce and gun use legally risky, is possible and potentially effective.
- A multipronged effort to reduce criminal use of guns is warranted. Using all available options to reduce the attraction to urban youths of carrying or using a gun is suggested. Regulatory efforts, which are relatively inexpensive, can be coupled with the relatively costly “retail” approach of patrolling against gun carrying, as well as the intermediate approach of investigating local markets and tracking down illicit street sources.

The epidemic of youth violence has engendered a variety of law enforcement responses, and it appears that something is working. Evaluating these efforts is essential preparation for the next time they are needed.

## Question-and-Answer Session

**James Boden, Policy Analyst, Office of Management and Budget, Executive Office of the President, Washington, D.C.:** Since 1993, the economy has changed somewhat. Is there any difference since then in employment patterns for people in those cities or areas where most of the gun violence has taken place?

**P.C.:** The economy has been booming. The timing is about right to account for the end of the epidemic—the economy turned the corner in about late 1991 or 1992. There have been sharp reductions in the welfare rolls in recent years. About half of that reduction, interestingly enough, is not people moving to jobs but simply people who take advantage of the fact that there is more money in the community in some general sense. They are better off as a result. It is inescapable, given the coincidence of the timing and improved opportunities (more to live for, perhaps), that there is a connection.

On the other hand (as economists are wont to say), look at previous business cycles before accepting a macroeconomic explanation for the end of the violence epidemic. I reviewed the past nine business cycles and in each case examined the crime rates from the lowest point to the highest point and from the highest point to the lowest point again. Homicide rates tended not to decrease as the economy improved. In fact, historically, homicide seems to be immune to the condition of the economy.

**Jeffrey Butts, Senior Research Associate, Urban Institute, Washington, D.C.:** If it is not simple access to weapons, what other factors do you believe have increased the presence and desirability of weapons?

**P.C.:** I have to agree with those who think the increased prevalence of weapons began with the demand-side shift. The adolescents and young adults,

including those who worked in the drug trade, simply needed and had the wherewithal to obtain guns. This, in turn, may have created an interest on the part of other kids who were not involved in the drug trade in carrying guns and increased the general prevalence of weapons. Guns are redistributed in the illicit market, which has traditionally been entirely unpoliced.

I conducted a study in the Triangle area in North Carolina. We talked with a captain in the Raleigh Police Department and asked him what he knew about the illicit gun markets. "Nothing," he said. "Do you question people whom you arrest about their guns, as you would somebody who was carrying drugs?" I asked him. "No, that isn't part of our routine here," he answered. There was no intelligence-gathering operation going on there. At the end of the conversation, though, he said, "This sounds like a great idea, something we should do." Since then, the ATF and the Bureau of Justice Assistance have begun providing technical support to local police departments to encourage them to gather the information needed to interdict those markets. In the 1980s that didn't happen.

**John Calhoun, Executive Director, National Crime Prevention Council, Washington, D.C.:** If I got your next-to-the-last comment right, you said we must "separate violent kids from guns." Could you explore that a little bit? I was curious why you said "violent kids from guns"—as opposed to "kids from guns," because the term "violent kids" doesn't quite explain Paducah, Kentucky, or Jonesboro, Arkansas, or Edinboro, Pennsylvania. Nor am I sure how to define "a violent kid."

**P.C.:** Part of the problem is defining the word "kid." The epidemic included people from 12 to 24 years old, and sometimes I am too casual in referring to all young people as "kids." Separating nonviolent users (those who don't have a record) from their guns is impossible, especially for the older end of that spectrum. It may not even be desirable. Despite what happened in Jonesboro,

we may have gotten the gun laws about right. Currently, it is illegal to transfer a handgun to a 15-year-old, and adolescents can use a gun only when they are under adult supervision. If those boys in Jonesboro had been under adult supervision, presumably the incident would not have occurred. They allegedly stole a number of weapons from a grandparent and a father and then turned them on their classmates.

We need a different approach. We also must find a practical way to keep the kids from unauthorized use of guns. One alternative is to strengthen the regulations on gun storage. Another intriguing possibility, for the long term, is a technological fix in this area—personalizing guns. Colt is developing a handgun that will fire only when the user is wearing a special ring. Weapons of this sort, that only respond when the user has the right “fingerprint,” will eliminate the usefulness of stolen guns. Such weapons would help prevent incidents like Jonesboro and, over the longer term, the flow of 500,000 guns per year into the black market from burglary and theft from vehicles.<sup>22</sup> The goal is to control adolescent access to weapons without depriving them of the chance to occasionally go out with dad and shoot tin cans.

**Earl Cook, Assistant Chief, Alexandria Police Department, Alexandria, Virginia:** Have the community policing efforts of the past 15 years (the Federal and local law enforcement and government partnerships that have repackaged and updated how we approach police work) changed the circumstances in which urban youth live? Have modern-day community policing methods helped to increase or decrease youth violence?

**P.C.:** There is no question that the success of community policing depends upon the community. Community policing is manifested differently from city to city. Not all of these efforts have been effective, but the concept is a move in the right direction—that is, to improve the relationships and communication between law enforcement officers and the communities they serve. The community is the primary source of information for law enforcement. A good working relationship with the community is obviously essential.

**Ted Gest, Senior Editor, U.S. News & World Report, Washington, D.C.:**

Could you comment on two unrelated deterrence theories that have been advanced for the decline in youth violence? First, does the threat of increased incarceration under laws like “three strikes and you’re out” work? Second, many States have made it easier for law-abiding people to obtain concealed weapons permits for self-defense. What role do either or both of those developments play in the recent decline in youth violence?

**P.C.:** In terms of the three-strikes legislation, you are talking about a group, particularly with adolescents, who are not directly affected because they have not accumulated the first “two strikes” at this stage of their lives. These laws probably would be more effective for an older group of offenders than the ones we are looking at. The groups that experienced the largest increase in homicides, proportionately speaking, are not particularly affected by the big increase in incarceration rates in this period.

To summarize the evidence on concealed-carry permits, a number of States in the last decade or so introduced “shall issue” laws that required local officials to issue these permits to everyone who applied for them—unless they were explicitly prohibited because of a criminal record or they were underage. Some of these States left it at that; other States required applicants to take a training course and pay a substantial fee, for example, \$80. These legal changes made concealed-carry permits more readily available to people than they had been previously. In many States, these permits were issued at the discretion of the local sheriff.

John Lott, a University of Chicago economist, evaluated the effect that the changes in these laws had on different types of crime in States that passed them.<sup>23</sup> He concluded that the laws were remarkably effective in reducing different types of crime, including homicide, and if every State would adopt such legislation, thousands of lives would be saved every year. He claims this would provide a low-cost intervention that has the capacity to dramatically



change the homicide picture in this country. He doesn't end there, of course. If you follow his career, you'll find a recent op-ed piece by him in the *Wall Street Journal* about how we should arm teachers as a solution to Jonesboro-type problems and so forth.<sup>24</sup>

These proposals strike many to be perverse and dangerous. The empirical evidence in this area is no better than mixed. Lott has his results; there have been similar studies—some using exactly the same data—that have reached contradictory conclusions. The work I like best was done by Jens Ludwig. He used what amounts to a natural control group.<sup>25</sup> No State allows anyone under 18 to obtain a concealed-weapon permit. Ludwig found that adolescents under 18 (who presumably receive no protection from these laws) have experienced the same sorts of declining homicide rates as adults over 21 during the same time period.

Lott's findings do not add up empirically. What is the common-sense analysis of this situation? Basically, you start with a situation in which 5 to 10 percent of the adult population already carries guns without benefit of State law or a permit. You create a permit system, and who shows up? The answer, at least in North Carolina where we have done some analysis, is less than 1 percent of the adult public, and those are primarily middle-age whites. Some of them were presumably already carrying guns, but now the change in law makes it legal. So in my estimation the plausible effect of such laws, especially on the homicide victimization rate for minority youths, is likely to be negligible.

**Gerald Neill, Sergeant, Metropolitan Police Department, District Heights, Maryland:** How do you think gangs and youth offenders will be affected? They have their own culture, their own sources of income. How do you think gang members leaving the prison system and returning to the street affect youth violence?

**P.C.:** Because of the numbers of people locked up in prison these days, the ethnographers say, the street culture has become increasingly influenced by

prison life. Some gang members continue their operations in prison. It sounds like a perverse arrangement at best. We must take these concerns into account when we evaluate the use of imprisonment. There may be costs in terms of the culture of a particular community that extend beyond the enormous financial costs and costs of deprivation of liberty incurred by incarceration. There may also be a cost of redefining deviance. When a high percentage of a particular group, such as young black men, end up in the justice system, then going to prison is no longer stigmatized. If 30 or 40 percent of the members of a community have that kind of experience, it is difficult to preserve the stigma that deters people from crime.

**William Christenson, Consultant, Silver Spring, Maryland:** Young black men, but not all young black men, are involved in more homicides than are other groups. I recently spent some time in Harlem, the Bronx, and Boston visiting barber shops and other local businesses. It was not exactly a scientific sample, but in New York, clearly, I got a sense that guys were working and doing their thing but were targeted by the police because they were young black men. In Boston, however, young black men would say, "No, they don't bother me. The police are doing a good job making sure those guys aren't doing what they shouldn't be doing." Do you have information on young black men who are not involved in the homicides? Isn't the problem even more concentrated within the group of young black men?

**P.C.:** Yes, that is an interesting question. To some extent, I'm a hostage of the available data, and the data that are most readily available are simply demographic and don't take the next step and ask, "Who are they really?" There have been special studies done, particularly in Boston, on just that question. David Kennedy, Anne Piehl, and Anthony Braga spent time talking to law enforcement agencies.<sup>26</sup> Police officers told the researchers they almost always knew the kids who were getting killed, because they are almost always the ones with whom the police had contact. But Kennedy wasn't inclined to believe it without more evidence. He systematically studied the prior records of those

being killed. He found that 70 percent or more of them did have a record—and many a very substantial record. He concluded exactly what I think you are saying—that this “canyon” through which the flood was rushing was even narrower than suggested by the demographic data. To a large extent, the epidemic was restricted to kids who were involved in that criminal life.

## Notes

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