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ARTICLE

TOO MANY STICKS, NOT
ENOUGH CARROTS:

LIMITS AND NEW OPPORTUNITIES
IN AMERICAN CRIME POLICY

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I. INTRODUCTION

When the subject of alternatives to incarceration arises, most people immediately begin thinking about the sentencing phase of the criminal justice system—specifically about community-based sentencing alternatives to imprisonment. If the basic goal is to keep people out of prison, however, it is important to broaden our perspective and consider policies and programs related to all phases of the criminal justice system. Additionally, it is important to rethink the goals underlying different policies and programs.

The most effective way to reduce incarceration is to reduce criminal behavior in the first instance. Unfortunately, the American criminal justice system relies entirely too heavily on policies and programs designed to threaten people into law-abiding behavior—in short, “sticks.” In this Article I argue that law-abiding behavior is more likely to be achieved through positive reinforcements—referred to as “carrots” in this Article. This Article examines the evidence related to the limitations of the various “sticks,” which include policies based on the theories of deterrence and incapacitation. It also examines the relatively new evidence on the positive effects of the “carrots”—the programs and policies designed to encourage law-abiding behavior.

The basic question is, how do we get people to obey the law? There is considerable misunderstanding about how various criminal justice policies and programs relate to the issue of crime prevention. Policy debates and academic research have traditionally posited a duality between “enforcement” and “prevention” policies. Policing, most sentencing, and many corrections programs fall in the enforcement category, while community-based

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corrections dominate the prevention area. As the landmark 1997 report *Preventing Crime* explains, however, all criminal justice policies are fundamentally crime prevention.¹ They simply use different means to that end. Police patrol, for example, is designed primarily to prevent crime, through deterrence, and not just to enforce the law through arrest. Similarly, many if not most sentencing policies are designed to prevent crime—either through deterrence or incapacitation—and not simply to punish offenders. Recognition of the basic crime prevention role of virtually all criminal justice policies guides the discussion of crime prevention policies in this Article.

II. THE ADMINISTRATION OF CRIMINAL JUSTICE

To understand the evidence on the limits of deterrence and incapacitation-oriented crime policies and the promising new strategies, it is necessary to describe some of the dominant features of the administration of criminal justice in the United States.²

A. Basic Considerations

The fundamental insight of social science research on the administration of criminal justice in the United States is that there is a gap between the law on the books and the law in action. This sociological perspective originated with pioneering field research conducted by the American Bar Foundation Survey in the mid-1950s. The project developed a paradigm of the criminal justice system that has dominated research and policymaking for the past half-century.³

This dominant paradigm holds that on a practical day-to-day basis the administration of justice is affected by numerous factors: institutional, political, personal, situational, and so forth. The result is that the outcome of any situation—a potential arrest or the prosecution of a criminal case—may have little to do with either the formal law or the stated intent of official policy. Officials exercise enormous discretion in making decisions, and there is a pervasive pattern of mitigation of punishment: arrests are not made, charges are dismissed, sentences are suspended, and so on.⁴

1. Lawrence W. Sherman et al., *Preventing Crime: What Works, What Doesn't, What's Promising*, <http://www.ncjrs.gov/works> (accessed Sept. 7, 2006).

2. The argument here is developed at greater length in Samuel Walker, *Sense and Nonsense about Crime and Drugs: A Policy Guide* (6th ed., Thomson Wadsworth 2006). The final section of this article on the promising new strategies represents a further development of ideas first expressed in Chapter 14. *Id.* at 293.

3. On the origins of the systems perspective, see Samuel Walker, *Origins of the Contemporary Criminal Justice Paradigm: The American Bar Foundation Survey, 1953–1969*, 9 *Just. Q.* 47, 47–76 (1992). The most famous and influential product of the ABF Survey is Wayne R. LaFare, *Arrest: The Decision to Take a Suspect into Custody* (Frank J. Remington ed., Little, Brown & Co. 1965). Also important was Donald J. Newman, *Conviction: The Determination of Guilt or Innocence without Trial* (Frank J. Remington ed., Little, Brown & Co. 1966).

4. Michael R. Gottfredson & Don M. Gottfredson, *Decision Making in Criminal Justice: Toward the Rational Exercise of Discretion* (2d ed., Plenum Press 1988). On the subject of discre-

This view of the administration of justice has enormous implications for the crime control policies discussed in this Article. Most important, the intent of any given policy will not necessarily be achieved in practice. The policy may have only a marginal effect, no effect at all, or produce unintended consequences that are contrary to the official intent of the policy.⁵ As we shall see, deterrence and incapacitation-oriented crime policies generally prove to be very limited in practice.

B. Policing

Police activities designed to prevent crime consist of several different activities. The most important of these are described in the next section.

i. Routine Patrol

The core police function, routine patrol, is designed to prevent crime through deterrence.

The idea that a visible police presence deters crime originated with Robert Peel and the creation of the London Metropolitan Police in 1829.⁶ The corollary principle is that the addition of more police or variations in patrol tactics will increase the deterrent effect. Patrol remains the basic police operation today, despite the many innovations in community policing and problem-oriented policing over the past twenty-five years. The majority of police officers and the majority of a department's budget are devoted to patrol, and patrol operations involve the bulk of police contact with citizens.⁷

The idea that patrol deters crime was accepted as self-evident for nearly 150 years. It was finally subject to scientific testing with the Kansas City Preventive Patrol Experiment (1972–1973), one of the most important research projects in the history of the police.⁸ The experiment undermined the basic assumptions about the deterrent effect of patrol. It found that changing the level of patrol has no effect on either crime or citizen's perceptions and fear of crime.⁹ Crime did not increase in those patrol beats in Kansas City where the level of patrol was reduced and did not decline in beats where patrol was increased. Moreover, citizens did not seem to notice

tion generally, see Samuel Walker, *Taming the System: The Control of Discretion in Criminal Justice 1950–1990* (Oxford U. Press 1993).

5. This is one of the major themes developed in Walker, *supra* n. 2.

6. Samuel Walker, *Popular Justice: A History of American Criminal Justice* 53 (2d ed., Oxford U. Press 1998).

7. *Fairness and Effectiveness in Policing: The Evidence* (Wesley Skogan & Kathleen Frdyl eds., The Natl. Acad. Press 2004) [hereinafter *Skogan & Frydl Report*]; Samuel Walker & Charles M. Katz, *The Police in America: An Introduction* (5th ed., McGraw-Hill 2005).

8. George L. Kelling et al., *The Kansas City Preventive Patrol Experiment: A Summary Report* (Police Found. 1974). On the broader implications of the study, see *Skogan & Frydl Report*, *supra* n. 7 at 217–51.

9. Kelling et al., *supra* n. 8.

differences in the level of patrol. People did not feel safer in beats with more patrol and were not more fearful about crime in beats with less patrol. The subsequent Newark Foot Patrol Experiment produced similar findings. Increasing the number of foot patrol officers in particular beats did not reduce the incidence of crime in those areas.¹⁰

The two patrol experiments did not, however, prove that police patrol has no effect whatsoever on crime. Some limited amount of visible police patrol undoubtedly has some effect on crime. No experiment has tested the effect of eliminating patrol altogether (although police strikes have represented natural experiments in this regard). Nonetheless, the Kansas City experiment provided persuasive evidence that increasing the level of routine patrol provides no additional deterrent effect on criminal behavior.

Although the findings of the Kansas City Experiment fly in the face of the deep-seated popular demand for more cops on the street, those demands remain strong. Those demands underpinned the federal government's enormous community policing initiative in the 1990s. The 1994 Violent Crime Control Act provided about \$9 billion in federal funds for what it advertised as one hundred thousand additional police officers.¹¹ In the end, an estimated 70,000 new officers were actually added to state and local police departments. A national, cross-city evaluation of the program found that between 1994 and 1999 it did have some crime reduction effect in cities with ten thousand or more people. Basically one dollar in grant funding per city resident (that is, \$350,000 in a city of three hundred-fifty thousand people) for hiring officers resulted in a decline of 5.26 violent crimes per one hundred thousand people (about eighteen violent crimes in that same city of three hundred-fifty thousand people). A cost-benefit analysis, however, puts these findings in a different perspective. In that hypothetical city of three hundred-fifty thousand people, the reduction of eighteen violent crimes would cost \$19,400 per crime. Let's assume that the city is Omaha, Nebraska (2000 population: 390,000). In 2003 Omaha had 2,627 reported violent crimes. The \$350,000 would have purchased less than a 1 percent reduction in violent crime (0.68%, to be exact).¹² In short, this research suggests that substantial spending for more officers is not a cost-effective way to produce significant reductions in crime.

10. The Police Found., *The Newark Foot Patrol Experiment* (Police Found. 1981).

11. It is important to note, however, that the idea of more officers on the street was part of the political marketing strategy of the COPS program. In operation, the program put considerable emphasis on stimulating police departments to adopt community policing and other innovations.

12. Jihong "Solomon" Zhao, Matthew C. Scheider, & Quint Thurman, *Funding Community Policing to Reduce Crime: Have COPS Grants Made a Difference?* 2 *Crim. & Pub. Pol.* 7 (2002). The cost-benefit critique is in Walker, *supra* note 2, at 88-89.

ii. "Crackdowns"

Crackdowns, defined as brief and very intensive law enforcement efforts, represent another police tactic designed to reduce crime.¹³ Crackdowns have been most widely used in response to high levels of drug dealing or gang activity in particular neighborhoods. There is no persuasive evidence that crackdowns have any real impact on criminal behavior or drug dealing. In some of the highly-publicized cases, most of those arrested were quickly released, in large part because "sweep" arrests by their very nature are made on the basis of little individualized suspicion. One of the most highly-publicized crackdowns was Operation Pressure Point ("OPP") in New York City in the early 1980s. OPP targeted an open drug market on the city's Lower East Side that had been described as a "drug buyer's paradise." An additional 240 officers flooded the area, dispersing crowds, stopping and questioning suspected drug buyers and sellers, writing traffic tickets, and making a high volume of arrests. While it produced some short-term benefits with respect to drug dealing, there were a number of unanswered questions about the legality of some police tactics and the long-term effects. Most important, it completely failed to stop the surge in drug activity that occurred in the late 1980s.¹⁴ Crackdowns are largely theatrical events, undertaken by police departments to create an image of tough law enforcement.¹⁵

iii. Targeting Career Criminals

The police have also experimented with targeting known repeat offenders by keeping them under close surveillance and then arresting them when they commit a new crime. The Repeat Offender Project ("ROP" pronounced "rope") in the Washington, D.C. Police Department during the 1980s involved a special unit of sixty officers targeting suspects they believed were committing five or more Index crimes a week. They developed the list of suspects by compiling information from other units within the police department. An evaluation of Washington's ROP program revealed mixed results. Around-the-clock surveillance of suspects quickly proved to be "time-consuming, frustrating, and unproductive."¹⁶ ROP officers became

13. Lawrence W. Sherman, *Police Crackdowns: Initial and Residual Deterrence*, in *Crime and Justice: An Annual Review of Research* vol. 12, 1, 1-48 (Michael Tonry & Norval Morris eds., U. Chi. Press 1990); *Skogan & Frydl Report*, *supra* n. 7.

14. Lynn Zimmer, *Proactive Policing Against Street-Level Drug Trafficking*, 9 *Am. J. Police* 9, 43 (1990).

15. The Skogan & Frydl Report takes a more favorable view of the impact of crackdowns. See *Skogan & Frydl Report*, *supra* n. 7, at 236-237. On certain police activities as theater rather than as tactics with any probability of success, see Samuel Walker, *Police DNA 'Sweeps' Extremely Unproductive: A National Survey of Police DNA 'Sweeps'*, <http://www.policeaccountability.org/dnareport.pdf> (Sept. 2004).

16. Susan E. Martin & Lawrence W. Sherman, *Selective Apprehension: A Police Strategy for Repeat Offenders*, 24 *Criminology* 155, 158 (1986); see Susan E. Martin, *Policing Career*

bored just waiting and watching. Eventually, the unit shifted its emphasis to suspects with arrest warrants on file. Eventually, half of the unit's time was devoted to this activity. After a brief period of popularity in the early 1980s, programs to target career criminals disappeared.

iv. Drunk Driving Enforcement

Drunk driving enforcement is particularly interesting because it demonstrates not only the limits of deterrence-oriented, get-tough policies and crackdowns, but also that traffic fatalities can be substantially reduced by other social policies.¹⁷

Research suggests that deterrence-oriented, drunk-driving crackdowns have no long-term effect on either reducing drunk driving or alcohol-related traffic fatalities. Several reasons account for this absence of effect. The risk of arrest for drunk driving is extremely low, and the administration of justice often mitigates the intended effect of tough drunk driving laws. In the most famous studies of a crackdown, the data indicated a short-term effect, followed by a return to normal. Authors of the study attributed the initial decline to an "announcement effect:" people did alter their behavior because of the publicity surrounding the new law but soon returned to their old behavior.¹⁸

The long-term data on traffic fatalities is striking and particularly relevant to our discussion. The national traffic fatality rate, expressed in terms of fatalities per 100 million miles driven, has declined steadily since the 1920s. The fatality rate has fallen from 16.33 per 100 million miles driven in 1927, to 5.50 in 1966 and 1.44 in 2004.¹⁹ Despite the horror stories generated by anti-drunk driving activists, American roads have become safer with each passing decade. Studies of motor vehicle driving suggest that the long-term reduction in fatalities is the result of a number of changes that do not involve criminal law enforcement. The most important include the development of safer cars, improvements in highways, the introduction of seat belts, administrative license revocation procedures, and the development of other technologies such as "interlock" systems that prevent an impaired driver from operating a vehicle.

The success in reducing the traffic fatality rate has enormous implications for responding to serious crime. It not only supports the idea that deterrence-oriented programs have severe limits, but also that social problems

Criminals: An Examination of an Innovative Crime Control Program, 77 *J. Crim. L. & Criminology* 1159 (1986).

17. The two best surveys of the subject are H. Laurence Ross, *Confronting Drunk Driving: Social Policy for Saving Lives* (Yale U. Press 1992), and James B. Jacobs, *Drunk Driving: An American Dilemma* (U. Chi. Press 1989).

18. H. Laurence Ross, *Law, Science, and Accidents: The British Road Safety Act of 1967*, 2 *J. Leg. Stud.* 1 (1973).

19. Natl. Hwy. Traffic Safety Administration, *Traffic Safety Facts 2004* 15, <http://www-nrd.nhtsa.dot.gov/pdf/nrd-30/NCSA/TSFAnn/TSF2004.pdf> (accessed Sept. 14, 2006).

can be successfully addressed through a combination of non-criminal measures. The application of this principle to serious crime, with reference to other research and programs, is discussed in more detail in the final section of this Article. The negative findings about the impact of traditional patrol and crackdowns do not apply to some of the new police programs that have emerged in the past twenty years. These programs are innovative precisely because they involve a different set of assumptions and strategies about both crime and the control of crime. The final section of this Article examines the evidence on some innovative community policing and problem-oriented policing programs that have demonstrated their effectiveness.

C. Prosecution

Innovations in the area of prosecution over the past thirty years have generally been based on the same theories of deterrence and incapacitation that have driven policies in other areas of the criminal justice system. Some prosecutor's offices have created major crimes units designed to focus prosecutorial attention and effort on cases involving serious crimes and involving defendants with substantial prior records. Focused attention is designed in particular to avoid problems arising from a lack of continuity in handling particular cases and ensure that defendants do not avoid conviction and punishment through one or more loopholes in the system. Increasing the certainty of punishment is intended to both enhance the deterrent effect of the criminal law and ensure the incapacitation of serious offenders. Evaluations have consistently found that major crime units have no impact on case outcomes because prosecutors are generally tough on cases involving very serious crime and/or defendants with substantial prior records.²⁰

The idea that dangerous offenders routinely "beat the system" through various loopholes, including prosecutorial inattention, plea bargaining,²¹ the insanity defense,²² or "technicalities"—such as the exclusionary rule or the Miranda warning—is one of the harder myths in American criminal justice. Research on each and every one of these issues has shown that the alleged loophole does not result in a large number of offenders avoiding punishment for their crimes. The persistence of public belief in this idea is largely a result of "celebrated cases," the occasional case that receives a

20. E. Chelimsky & J. Dahmann, *Career Criminal Program National Evaluation: Final Report* (U.S. Govt. Printing Off. 1981); U.S. Dept. of Just., *The Major Violator Unit San Diego, California: An Exemplary Project* (U.S. Govt. Printing Off. 1980).

21. William F. McDonald, *Plea Bargaining: Critical Issues and Common Practices* (U.S. Govt. Printing Off. 1985).

22. Experts on the insanity defense are virtually unanimous in their view that while the purely legal aspects of the defense are extremely complex, actual use of the defense is a negligible aspect of the routine administration of justice. Norval Morris, *Madness and The Criminal Law* (U. Chi. Press 1982).

high level of media coverage (and does so precisely because it is such an unusual case).²³

Other reforms have involved developing guidelines for plea bargaining.²⁴ Abolishing plea bargaining was briefly a popular idea, but was found to be an impractical reform.²⁵ Most important have been prosecutorial policies forbidding charge bargaining for certain offenses, especially weapons, sex, and drug offenses. Requiring prosecution on the top charge is designed to ensure that once convicted the offender faces significant punishment, which usually means a mandatory prison sentence and a fairly long prison term. In this respect a ban on charge bargaining reflects an incapacitation strategy.

D. Sentencing

i. Routine Felony Sentencing

Between the mid-1970s and the present, the number of Americans in prison increased by over 80 percent.²⁶ This is one the most dramatic—indeed astonishing—developments in the history of American criminal justice, if not in all of domestic social policy. In no other area of American life has there been such a dramatic change. In economics, education, health, and other areas of life, change is generally gradual.²⁷ Along the same lines, the American incarceration rate far exceeds that of other industrialized countries.

The dramatic increase in the prison population is the result of a sweeping change in sentencing policies in the fifty states and the federal system. A variety of legislative changes and sentencing practices have resulted in more convicted offenders being sentenced to prison and for much longer prison terms. The changes include mandatory imprisonment, mandatory minimum sentences, longer maximum sentences, revision of “good time” provisions that deny or delay eligibility for parole, and changes in the sentencing practices of judges independent of formal legislative changes. Many criminal justice experts are appalled at the consequences of the trends in sentencing and incarceration, particularly the resulting racial disparities, but also the financial cost to society at the expense of other social programs.²⁸ Some observers associate these changes with sentencing guidelines, but that

23. This view of the criminal justice system is the central argument in Walker, *supra* n. 2.

24. McDonald, *supra* n. 21; see also Natl. Dist. Attys. Assn., *National Prosecution Standards* 190–99 (2d ed., Natl. Dist. Attys. Assn. 1991) (the standards related to plea bargaining).

25. Michael L. Rubinstein et al., *Alaska Bans Plea Bargaining* (U.S. Govt. Printing Off. 1980).

26. U.S. Bureau of Just. Statistics, *Sourcebook of Criminal Justice Statistics 2003*, <http://www.albany.edu/sourcebook> (accessed Sept. 15, 2006).

27. See the data in Marc Miringoff & Marque-Luisa Miringoff, *The Social Health of The Nation: How America is Really Doing* (Oxford U. Press 1999).

28. Michael Tonry, *Sentencing Matters* (Oxford U. Press 1996).

is only partially correct. While the federal sentencing guidelines have the intent of harsher punishments, the Minnesota guidelines seek to limit imprisonment.²⁹

The increase in the severity of criminal sentences over the past thirty years has been underpinned by theories of both deterrence and incapacitation. Incapacitation was the great rage of the early 1980s.³⁰ It arose in large part from the new research on criminal careers and the finding that a small percentage of all offenders are responsible for an enormous percentage of all crimes committed by the entire cohort. Common sense suggested that identifying and incarcerating those offenders—and only them—would result in an enormous reduction in serious crime.³¹

Criminologists developed a variety of theoretical models attempting to demonstrate the crime reduction effect of various sentencing policies.³² With the benefit of hindsight we can make two observations. First, the models suffered from a number of serious problems. (In the most famous case, one model predicted the elimination of all serious crime by the mid-1980s!) Second, empirical research on actual imprisonment practices and crime rates by state has shown no clear connection. Criminologists developed a variety of theoretical models attempting to demonstrate the crime reduction effect of various sentencing policies.

With respect to the purpose of this Article, the question is whether the increase in imprisonment reduces crime. Many casual observers might assume that the increase in imprisonment was responsible for the great “crime drop” that began in the early 1990s.³³ As already noted, however, the prison population began its spectacular increase in the mid-1970s. This did not prevent the sudden increase in violent crimes in the mid-1980s, however. Moreover, that wave of criminal behavior involved the very class of people

29. Michael Tonry, *Malign Neglect – Race, Crime, and Punishment in America* 127 (Oxford U. Press 1996). The Minnesota Sentencing Guidelines and accompanying reports are available at Minnesota Sentencing Guidelines Commission, *Sentencing Guidelines and Commentary*, <http://www.msgc.state.mn.us> (last updated Aug. 1, 2006). The federal Sentencing Guidelines are available at United States Sentencing Commission, *Federal Sentencing Guidelines Manuals*, <http://www.ussc.gov/guidelin.htm> (last updated Sept. 12, 2006). See Robin L. Lubitz & Thomas W. Ross, *Sentencing & Corrections, Sentencing Guidelines: Reflections on the Future*, <http://www.ncjrs.gov/pdffiles1/nij/186480.pdf> (June 2001).

30. Franklin E. Zimring & Gordon Hawkins, *Incapacitation: Penal Confinement and the Restraint of Crime* 13–14 (Oxford U. Press 1995).

31. *Criminal Careers and “Career Criminals”* vol. 1, 109–54 (Alfred Blumstein et al. eds., Natl. Acad. Press 1986).

32. The most comprehensive proposal is Peter W. Greenwood, *Selective Incapacitation* (Rand 1982). But see the author’s second thoughts in Peter W. Greenwood & Susan Turner, *Selective Incapacitation Revisited: Why the High-Rate Offenders are Hard to Predict* (Rand 1987).

33. *The Crime Drop in America* 5 (Alfred Blumstein & Joel Wallman eds., Cambridge U. Press 2000); Jeremy Travis & Michelle Waul, *Reflections on the Crime Decline: Lessons for the Future?* <http://www.urban.org/publications/410546.html> (Aug. 12, 2002).

who were (and have been) the primary target of the imprisonment binge: young, African-American males.

The relationship between sentencing policies and imprisonment and criminal activity has been the subject of substantial research. Suffice it to say that the evidence is extremely mixed, with the consensus of opinion in the direction of an absence of effect. That is to say, there is no persuasive evidence indicating a direct relationship between an increase in imprisonment and a reduction in crime.³⁴

ii. *The Death Penalty*

In the minds of most of its supporters, the death penalty has a deterrent effect on crime. The debate over just this aspect of the death penalty—putting aside the moral and legal aspects—has a long history. No research has conclusively demonstrated a deterrent effect. The noted criminologist Thorsten Sellin compared neighboring states, two with and one without the death penalty. Ohio and Indiana, two death penalty states, did not have lower crime rates than Michigan, which does not have the death penalty.³⁵ Murder rates in all three states changed in roughly the same direction, decreasing from the 1930s to the early 1960s and then rising sharply. This suggests that broad social factors common to all states, rather than executions, were the primary causal factors in homicide rates. In the 1970s, economist Isaac Ehrlich attracted considerable attention with an article claiming to demonstrate that each execution saves eight lives.³⁶ Critics, however, found serious flaws with his methodology, and his article is now regarded as something of a historical curiosity.

E. *Corrections*

The corrections component of the criminal justice system has traditionally been the locus of major crime prevention programs. Correctional treatment programs, both within institutions and in the community, are designed to rehabilitate convicted offenders so that they will successfully reenter society and assume law-abiding lives. The following section examines both traditional corrections programs and a group of programs that are referred to as the “new intermediate sanctions.”

i. *Traditional Corrections Programs*

Traditional corrections programs are designed to provide the appropriate treatment to correct or rehabilitate convicted offenders. Such programs are

34. Zimring & Hawkins, *supra* n. 30 at 126–27; see also Barbara S. Meierhoefer, *The General Effect of Mandatory Minimum Prison Terms* 1–2 (Fed. Jud. Center).

35. Thorsten Sellin, *The Penalty of Death* ch. 8 (Sage Publications 1980); Raymond Paternoster, *Capital Punishment in America* 222 (Lexington Books 1991).

36. Isaac Ehrlich, *The Deterrent Effect of Capital Punishment: A Question of Life and Death*, 65 Am. Econ. Rev. 397 (1975).

delivered to offenders both within prisons and in community-based correctional programs. Treatment programs include basic education, vocational education, substance abuse treatment, mental health treatment, anger management, family skills, and training in techniques for finding jobs and being interviewed for openings.

The evidence on traditional corrections programs is extremely depressing. Offenders on both probation and parole recidivate at a fairly high rate. A Rand Corporation study of California felons on probation found that after about three years 65 percent had been rearrested for a new crime and 51 percent had been reconvicted.³⁷ One-third of those reconvicted, moreover, were reconvicted of a serious violent crime. Additionally, those probationers who were reconvicted of a violent crime committed their new crime after an average of only eight months on probation. The data on parolees are equally discouraging. In a national study, after three years, 62.3 percent of parolees were rearrested for either a felony or serious misdemeanor. (It is significant that the recidivism rates were so close in these two studies.) About 47 percent were convicted of a new offense, and 41 percent were imprisoned for a conviction or a technical violation of their conditions of release.³⁸

There are a number of reasons why traditional correctional programs suffer from such high recidivism rates. It is not clear that treatment programs deliver services that are likely to have an impact on offenders' behavior. There are several possible reasons for this. Correctional officials have traditionally complained that treatment programs have never received adequate funding. Thus, some critics argue that correctional programs have never been fully implemented. Other critics, however, argue that the notion of individualized treatment is inherently flawed. While correctional programs have been based on notions of individualized treatment since early in the twentieth century, in actual practice they have engaged in only the crudest forms of diagnosis and classification that have not been individualized in any meaningful way—and certainly not in the way that is practiced in modern medicine. Following the medical model, the treatments themselves—substance abuse counseling, job training, etc.—are not tailored to individuals in the way that medical treatments are.³⁹ In the last twenty-five years there has been a general erosion of funding for probation and parole services, with caseloads increasing dramatically. In fact, some “intensive”

37. Joan Petersilia et al., *Granting Felons Probation: Public Risks and Alternatives* 20–26 (Rand 1985).

38. Patrick A. Langan & David J. Levin, *Bureau of Justice Statistics, Recidivism of Prisoners Released in 1994* 1, <http://www.ojp.usdoj.gov/bjs/pub/pdf/rpr94.pdf> (June 2002).

39. Liberal and civil libertarian critiques of the medical model of rehabilitation in the early 1970s was one of the forces stimulating sentencing reform that, among other impacts, led to the development of sentencing guidelines. See the pivotal report, Am. Friends Serv. Comm., *Struggle for Justice: A Report on Crime and Punishment in America* ch. 3 (Hill & Wang 1971); see Walker, *supra* n. 6, at 217–21 (on the politics of sentencing reform).

supervision programs involve caseloads that do not meet the parole officer/client ratio standards of the 1960s.

ii. *The “New Intermediate Sanctions”*

The most important innovation in corrections over the past twenty years has been the development of the “new intermediate sanctions.” The movement was spurred in 1990, by the publication of Norval Morris and Michael Tonry’s highly influential book, *Between Prison and Probation*.⁴⁰ Morris and Tonry argued that criminal sentencing generally offered two stark alternatives: prison, which is inappropriately harsh for many offenders, and probation, which in practice generally offers little in the way of treatment or protection for the community. The high recidivism rates among probationers and parolees noted in the previous section are often attributed to the relatively meaningless supervision correction programs involve. In many cases, the offender meets with his or her probation or parole officer once a month for a routine meeting lasting less than an hour. In short, there is little if any treatment or supervision.

This resulted in the development of a number of intermediate sanctions. The most important include intensive probation or parole, supervision, boot camps, mandatory drug tests, curfews, and electronic monitoring. Typically, sentences include several of these programs. A convicted offender is placed on probation, subject to intensive supervision that includes mandatory drug tests and a curfew that is monitored electronically. As critics have pointed out, however, the new intermediate sanctions are almost entirely focused on the surveillance and control of offenders rather than on providing services designed to help offenders reintegrate into the community.⁴¹

iii. *Intensive Probation and Parole Supervision*

Intensive probation and parole supervision was one of the more popular of the new intermediate sanctions. The underlying assumption was (and is) that traditional programs did not provide adequate levels of supervision and that more contacts, up to several a week in some instances, would serve to reduce recidivism. Additional “intensity” often includes mandatory drug testing, curfews, and electronic monitoring of curfews—in short, a full package of new intermediate sanctions.⁴² Despite the excitement about intensive supervision in the 1990s, it was not a new idea at all, but had been developed in the late 1950s. The earlier intensive supervision programs had been evaluated and found wanting. Recidivism rates were no lower than

40. Norval Morris & Michael Tonry, *Between Prison and Probation: Intermediate Punishments in a Rational Sentencing System* (Oxford U. Press 1990).

41. Walker, *supra* n. 2, at 231–37.

42. Joan Petersilia & Susan Turner, *Intensive Supervision for High-Risk Probationers: Findings from Three California Experiments* 10–22 (Rand 1990).

with traditional supervision. One reason was the flawed assumption that merely increasing the number of contacts would alter offenders' behavior. The new versions are different from the old versions because they incorporate drug testing and curfews, and electronic monitoring.

iv. Boot Camps

The great fad in corrections in the 1990s involved the intermediate sanction called "boot camps." While there are many variations of the concept, a boot camp is a program consisting of a short period of incarceration (typically three to six months) in a separate facility with a militaristic program that includes rigorous physical discipline. Boot camps are designed for young first-time offenders, and the program generally includes educational and substance abuse treatment programs with a post-release period of intensive supervision in the community.⁴³

Boot camps were wildly popular for a few years. The imagery of military style discipline appealed to popular demands for getting tough with offenders (especially in contrast to the "soft" approach of traditional probation). Research on boot camps, however, quickly found that they were no more effective than either traditional probation or imprisonment. The most hopeful finding was that the more successful outcomes were associated with greater emphasis on post-release aftercare and less emphasis on the purely militaristic features of marching and calisthenics.⁴⁴

There is some evidence that the surveillance and control functions of boot camps do in fact result in greater punishment of offenders than the less intensive forms of community-based corrections they replace. Mandatory drug testing may well deter many probationers from using drugs or alcohol, but it also catches many violators—whose violations would not be detected under traditional probation. Some of these offenders will have their probation revoked as a result and will be sentenced to prison.

F. Summary: "Bigger Sticks and Harder Blows"

The major thrust of crime policies from the 1970s onward may be characterized as "bigger sticks and harder blows." Across the justice system, new policies imposed harsher punishments, emphasizing deterrence and incapacitation. One might also characterize these policies in terms of old wine with a bitter new taste.

43. Doris Layton MacKenzie et al., *Boot Camp Prisons and Recidivism in Eight States*, 33 *Criminology* 327 (1995); Dale G. Parent, *National Institute of Justice: Research for Practice, Correctional Boot Camps: Lessons from a Decade of Research* 2, <http://www.ncjrs.gov/pdffiles1/nij/197018.pdf> (June 2003).

44. Parent, *supra* n. 43, at 2.

III. UNDERSTANDING DETERRENCE AND INCAPACITATION

A. *Deterrence in Theory and in Practice*

Despite the fact that deterrence is one of the main underpinnings of American criminal justice, there is abundant social science evidence that deterrence has severe limits in practice. The following section examines, first, deterrence theory, and then the evidence on its effectiveness.

The theory of deterrence has a basic intuitive appeal. People will choose to avoid unpleasant experiences. Thus, punishment will deter crime. More to the point, the harsher the punishment the greater the deterrent effect.⁴⁵

In actual practice, deterrence does not necessarily work as intended. At some very general level the criminal law does have a deterrent effect. It defines the boundaries of acceptable behavior and specifies the consequences of unacceptable behavior. To a greater extent than is generally appreciated, this process works. Most of us do *not* commit serious crimes. We do not murder or rob. To be sure, we may engage in frequent minor violations such as speeding or fudging on our income tax, but we do not commit the major crimes that harm the fabric of society. Criminologist Daniel Nagin, in a comprehensive review of the subject, argues that "the collective actions of the criminal justice system exert a very substantial deterrent effect."⁴⁶ What is really at issue among policy makers, however is whether a policy change increases the deterrent effect among people who already have criminal records or are likely to become criminals.

Deterrence is essentially an exercise in social psychology. It depends on what people believe and how those beliefs affect their actions. The process involves five separate elements. First, a potential offender has to be *aware* of the penalty for a particular crime. If someone does not know that a new law imposes a mandatory one-year prison term for a first-offense drunk driving conviction, the new law will not have any deterrent effect. Second, the potential offender has to *perceive* the consequences of breaking the law as *unpleasant* and something to be avoided. Third, the potential offender has to weigh the respective costs and benefits of crime and the punishment: having a good time drinking versus a year in prison. The potential offender also has to weigh the risk of punishment, including the risk of arrest, of prosecution, of conviction, and finally of receiving the advertised punishment. Finally, and perhaps most important, deterrence theory assumes that

45. The best treatment of the subject is still Franklin E. Zimring & Gordon J. Hawkins, *Deterrence: The Legal Threat in Crime Control* 93 (U. Chi. Press 1973).

46. The most comprehensive recent survey of the evidence is Daniel S. Nagin, *Criminal Deterrence Research at the Outset of the Twenty-First Century*, in *Crime and Justice: A Review of Research* vol. 23, 1, 3 (Michael Tonry ed., U. Chi. Press 1998).

the potential offender is a *rational actor* who will weigh the above two factors and make conscious decisions about the best course of action.⁴⁷

There are two basic forms of deterrence, depending on the intended audience. *Specific* deterrence is directed at individual potential offenders. The punishment is intended to teach that person right and wrong, that criminal activity leads to unpleasant consequences. *General* deterrence is directed at the society as a whole. Punishing a few criminals communicates a message to the larger audience.⁴⁸

Despite the centrality of deterrence theory to many criminal justice policies, there is a surprising lack of research on deterrence in operation. Most of the published research involves college undergraduates—as is the case with much research in the field of social psychology—and hypothetical scenarios related to relatively minor offenses (cheating on tests). One critic derides this body of literature as “the science of sophomores.”⁴⁹

Nagin offers four reasons for skepticism about the effectiveness of deterrence-oriented policies.⁵⁰ First, there is very little research on the long-term effects of various policies. Some critics have suggested that if arrest and imprisonment become common experiences among a particular social group, the stigmatizing and deterrent effects are very likely to erode. And in our highest crime neighborhoods, among young African American males, arrest and imprisonment have in fact become common experiences.

Second, there is little research on how perceptions of risk are formed, and how that process may operate for different groups of people. As indicated, much of the research involves college students as subjects. We do not know how perceptions of risk of punishment vary by race, ethnicity, gender, age, social class, and so on.

Third, as I have discussed above, the administration of justice involves many factors that modify, weaken or even nullify the intended impact of criminal justice policies. Theory in action is not at all the same as theory on the books. There are many examples from the history of criminal justice illustrating the point that deterrence-oriented policies are not implemented as intended. There is a long history of evading mandatory imprisonment provisions through plea bargaining. Because of lengthy appeals, sentences of death are neither certain nor swift. Research on the highly-publicized “three strikes” laws has found that they are simply ignored in most states and in all parts of California except for Los Angeles.⁵¹ Past research has

47. Zimring & Hawkins, *supra* n. 45, at ch. 3.

48. *Id.* at 92–248.

49. Raymond Paternoster, *The Deterrent Effect of the Perceived Certainty and Severity of Punishment: A Review of the Evidence and Issues* vol. 4, no. 2, 173, 173 (Acad. of Crim. Just. Scis. 1987).

50. Nagin, *supra* n. 44, at 4–6.

51. See *Three Strikes and You're Out: Vengeance as Public Policy* (David Shichor & Dale K. Sechrest eds., Sage Publications 1996) [hereinafter *Three Strikes*].

established that police officers do not make arrests in about half of all suspected felony crimes where probable cause exists, and we are not sure whether officers fully comply with mandatory arrest laws and policies with respect to domestic violence.⁵²

In the end, those who are most likely to be deterred by punishments are citizens who have already been socialized into law-abiding behavior. Those who are not effectively socialized, and who are the real targets of “get-tough,” deterrence-oriented policies are among the least likely to be deterred by threatened harsh punishment.

B. *Incapacitation and the Administration of Justice*

Incapacitation also fails as a result of factors related to the administration of justice. In theory, incapacitation has a compelling appeal: identify and incarcerate high rate offenders and the result will be an enormous reduction in crime. The theory is derived from Marvin Wolfgang’s pioneering research finding that a very small percentage of any cohort of young men are responsible for a large percentage of all the crime committed by the cohort.⁵³

In practice, however, incapacitation has not worked out as expected. The most serious problem is the inability to identify the few high rate offenders from the mass of other felons. The prediction problem has bedeviled policy-makers since they began wrestling with it in the 1920s in an effort to enhance parole release decisions. The inability to identify the high rate offenders generally leads to gross, rather than selective, incapacitation with judges sentencing large numbers of offenders to prison. Gross incapacitation, in fact, is an apt characterization of American sentencing practices since the mid-1970s. The result is not only high imprisonment rates but the incarceration of many offenders whom incapacitation theory says do not need to be incarcerated for long terms, if at all.⁵⁴ For some offenses, meanwhile, there is a replacement effect. When drug dealers are arrested and incarcerated, other individuals take their place.

The most extreme form of incapacitation took the form of so-called “three strikes” laws that sentence offenders to long (in some cases, lifetime) prison terms for a third felony conviction. Three strikes laws were an intense but brief fad in the mid-1990s. The national enthusiasm quickly waned, however. Research has consistently found that most such laws are ignored by local prosecutors (with the exception of Los Angeles, however).

52. Donald Black, *The Manners and Customs of the Police* 92–95 (Academic Press 1980).

53. Marvin E. Wolfgang, Robert M. Figlio & Thorsten Sellin, *Delinquency in a Birth Cohort* ch. 5 (U. Chi. Press 1972); see also Walker, *supra* n. 2, at ch. 4 (discussing the impact of this research on public policy in the 1970s and 1980s).

54. This critique of incapacitation is developed in detail in Walker, *supra* n. 2.

Research has also found that the laws have no evident impact on crime rates.⁵⁵

IV. GROWING MORE CARROTS: PROMISING NEW ALTERNATIVES TO CRIMINAL JUSTICE POLICY

The evidence on the severe limits of deterrence and incapacitation oriented policies is very strong. While such policies may have some basic effect, our capacity to increase their crime control effect is very limited. Nonetheless, a number of alternative-crime control strategies have appeared in recent years. These strategies emphasize reinforcing law-abiding behavior ("growing carrots") as opposed to trying to coerce good behavior through the threat of punishment. Additionally, even though the specific programs and policies employing these strategies developed independently, they are united by several common assumptions. These assumptions are discussed below.

The first assumption underlying the new crime control strategies is that no single crime policy holds the key to crime reduction. Effective crime prevention requires the simultaneous application of several different policies.⁵⁶ This idea represents an important departure from traditional criminal justice policy making. For the most part, advocates of particular policies have focused very narrowly on one component of the criminal justice system. Thus, police specialists concentrate on policing, sentencing experts focus only on sentencing policies, and so on. The result is that policy recommendations are isolated from policies in other areas.

A second assumption is the importance of community and specific geographic areas. Among criminologists, there is a growing recognition of the community context with respect to both criminal behavior and crime control policies, whether it be community policing, community prosecution, or the delivery of prisoner reentry services in particular neighborhoods. Because of its importance, the community focus is discussed in greater detail below.

A third assumption, closely related to the first, is the importance of partnerships among agencies. As is explained in detail later, the development of working relationships among different criminal justice agencies and also between criminal justice and non-criminal justice agencies is one of the core operating principles of problem-oriented policing, community prosecution, and offender reentry programs. Recognition of the importance of partnerships is due in large part to the community policing movement. It originated in the early 1980s with a new understanding, based on a body of substantial research, that the police cannot control crime by themselves but

55. *Three Strikes*, *supra* n. 51; see Zimring & Hawkins, *supra* n. 30, at ch. 6.

56. Travis & Waul, *supra* n. 33, at 23-5.

need the cooperation of citizens and neighborhood groups.⁵⁷ Problem-oriented policing expanded the idea of police cooperation with non-criminal justice agencies.⁵⁸ Housing code enforcement agencies, for example, can help deal with apartments that are centers of drug trafficking; sanitation departments can clean up neighborhoods and eliminate the signs of disorder and neglect (the “broken windows” that invite law-breaking).⁵⁹ In the area of corrections, Faye S. Taxman, one of the leading experts on offender reentry programs explains that “[t]he underlying premise of the reentry partnership is that each component of the criminal justice system . . . plays a role” in dealing with released offenders and also that “criminal justice agencies cannot do this alone, and must engage family, community-based service providers, the faith community and other sources of formal and informal support in reintegrating offenders.”⁶⁰

Fourth, many of the new policies utilize non-criminal law remedies to control anti-social behavior. This development is particularly strong in problem-oriented policing where programs have included efforts to improve street lighting and sanitation services as part of a program to improve the quality of life in a neighborhood.⁶¹ The lessons from traffic enforcement discussed earlier in this article are particularly relevant in this regard. The steady and significant reduction in traffic fatalities has resulted not from enhanced enforcement (especially short-term “crackdowns”) but a variety of changes that include improved roads, safer vehicles, seat belts, and so on.⁶²

A. *The New Community Focus*

Because the new emphasis on communities and/or geographic areas is so important to the new crime control strategies, it deserves extended discussion. In the area of theoretical criminology, sociologist Robert J. Sampson, arguably the most influential scholar on this subject, argues that “[c]ommunity” now reigns as the modern elixir for much of what allegedly

57. The findings of the Kansas City Preventive Patrol Experiment on the limits of routine patrol played a particularly important role in stimulating this line of thinking. Kelling et al., *supra* n. 8, at 1; see also *supra* sec. II, pt. B (discussing policing strategies).

58. John E. Eck & William Spelman, *Problem-Solving: Problem-Oriented Policing in Newport News* 5 (Police Exec. Research Forum 1987).

59. One of the most influential articles in this regard was James Q. Wilson & George L. Kelling, *Broken Windows*, 249 *Atlantic Mthly.* 29 (1982).

60. Faye S. Taxman et al., *From Prison Safety to Public Safety: Innovations in Offender Reentry* 1 (2002) (available at http://www.bgr.umd.edu/pdf/May_2003_From_Prison.pdf#search=%22%22innovations%20in%20offender%20reentry%22%22). Reports of this type can be found at either the U.S. Department of Justice website, <http://www.usdoj.gov/>, or the University of Maryland Bureau of Government Research website, <http://www.bgr.umd.edu/publication.html>.

61. See *infra* sec. V, pt. A (discussing problem-oriented policing).

62. See *supra* sec. II, pt. B (discussing police activities designed to prevent crime).

ails American society.”⁶³ The community focus includes, first, the belief that community factors play a major role in contributing to crime. This represents a major shift from the long tradition in criminology emphasizing demographic factors, including primarily age, income, gender, and race and ethnicity. Second, it includes the belief that effective crime control requires addressing factors related to community characteristics. More specifically, there is a new recognition that the “quality of life” in a neighborhood involved not just serious crime but small problems of disorder. Some criminologists argue that small disorder problems—what are referred to as “broken windows” —are the genesis of serious crime problems.⁶⁴

The new community emphasis is the product of several developments: a new theoretical perspective in criminology, research on criminal behavior, the community policing movement, and applications of community policing principles to courts and corrections. As criminologist Joan Petersilia argues, “[r]esearch has long documented how the social organization of neighborhoods—particularly poverty, ethnic composition, and residential stability— influences crime.”⁶⁵ One of the great breakthroughs in thinking about police effectiveness was the recognition that in any metropolitan area there are certain areas where crime and disorder are concentrated—what are now referred to as “hot spots.”⁶⁶ The problem with traditional police patrol is that it is unfocused and fails to concentrate on these “hot spots” that exist even within neighborhoods that are generally considered high crime areas.

One of the most important community characteristics, according to Sampson, is the concept of collective efficacy, which includes trust among residents in a neighborhood and their shared feelings about their capacity to exert some control over their neighborhood.⁶⁷ The role of citizens in controlling crime represents a radical shift away from the traditional approach that placed primary, if not sole responsibility on criminal justice agencies: on police patrol to deter crime, on the courts to convict and punish offenders, on sentencing policy to incapacitate career criminals. The recognition that citizens are “co-producers” of crime control was one of the early insights underpinning the community policing movement.

The concept of collective efficacy is supported by empirical research. Sampson’s work is based on the Chicago Project on Human Development

63. Robert J. Sampson, *Transcending Tradition: New Directions in Community Research, Chicago Style*, 40 *Criminology* 213, 213 (2002).

64. Kelling et al., *supra* n. 8, at 26.

65. Joan Petersilia, *California Policy Research Center Brief Series, Challenges of Prisoner Reentry and Parole in California 1*, <http://www.ucop.edu/cprc/parole.html> (June 2000); *see also* Joan Petersilia, *When Prisoners Come Home: Parole and Prisoner Reentry* (Oxford U. Press 2003) [hereinafter Petersilia, *Prisoners*].

66. Lawrence W. Sherman et al., *Hot Spots of Predatory Crime: Routine Activities and the Criminology of Place*, 27 *Criminology* 27, 27 (1989).

67. Robert J. Sampson & Steven W. Raudenbush, *Systematic Social Observation of Public Spaces: A New Look at Disorder in Urban Neighborhoods*, 105 *Am. J. Soc.* 603, 612 (1999).

in Chicago Neighborhoods (PHDCN). It studied seven cohorts of children and their families, and included about 6,500 children.⁶⁸ The project also involved systematic observation of conditions in neighborhoods, including the videotaping and rating of over 23,000 different “street segments” in Chicago. Measures of social and physical disorder were developed and applied to 196 neighborhoods. Finally, more than 3,500 area residents were surveyed. Collective efficacy was measured in terms of residents working together on neighborhood problems (for example, to get street lights or broken park equipment repaired) and whether they felt they could do something about problems such as street corners or parks (for example, by calling the police to get rid of drug dealers).⁶⁹

Criminologists Robert J. Sampson and Stephen W. Raudenbush found less crime and neighborhood disorder in areas where there was a higher level of collective efficacy—even after controlling for the economic conditions of neighborhoods.⁷⁰ That is to say, poverty alone does not determine crime rates. Within limits, residents have some impact on the level of crime. Collective efficacy emphasizes what citizens believe and do, and how that can affect neighborhood quality. Traditional crime policies assign almost complete responsibility for crime control to criminal justice agencies. Another study found that rates of domestic violence were lower in neighborhoods where there were higher levels of collective efficacy. It concluded “[c]ollective efficacy also increases the likelihood that women will disclose conflict in their relationships to various potential sources of support.”⁷¹ A study in Detroit, meanwhile, found collective efficacy associated with lower burglary rates in Detroit. “Neighborhoods with active community organizations and a politically active citizenry were better able to control crime.”⁷²

The growing recognition of the importance of collective efficacy and the role of neighborhood residents in crime control has powerful implications for other reforms programs. Community policing and/or problem-oriented policing programs can strengthen the sense of collective efficacy by empowering residents. The willingness of residents to work with the police in joint efforts, meanwhile, is contingent upon the reduction of police misconduct and improved community attitudes toward the police. This point leads into a consideration of the growing recognition of the concept of legitimacy in criminal justice.

68. Sampson, *supra* n. 63, at 217.

69. Jeffrey D. Morenoff et al., *Neighborhood Inequality, Collective Efficacy, and the Spatial Dynamics of Urban Violence*, 39 *Criminology* 517, 520 (2001).

70. Sampson & Raudenbush, *supra* n. 67, at 603.

71. Christopher R. Browning, *The Span of Collective Efficacy: Extending Social Disorganization Theory to Partner Violence*, 64 *J. Mar. & Fam.* 833, 833 (2002).

72. David Martin, *Spatial Patterns in Residential Burglary: Assessing the Effect of Neighborhood Social Capital*, 18 *J. Contemp. Crim. Just.* 132, 144 (2002).

B. *Legitimacy: Building Trust in the Criminal Justice System*

A major new area of research in criminal justice, with important implications for crime prevention, involves the concept of legitimacy. The Skogan & Frydl Report on policing makes an important distinction between *lawfulness* and *legitimacy*.⁷³ Lawfulness refers to the actual behavior of criminal justice agencies, as best it can be measured. Legitimacy, on the other hand, refers to public perception of official conduct. Thus, it is entirely possible, for example, that a prosecutor's office handles plea bargains in a fair and evenhanded manner, but that because of the secrecy surrounding plea negotiations many people believe them to be unfair and unreasonable. Similarly, a police department may conduct traffic stops in a completely non-discriminatory manner but because of one or two high profile incidents people believe there is a pattern of race discrimination.

An understanding of legitimacy arises from the field of procedural justice and the work of Tom R. Tyler in particular. Following the discussion in the previous paragraph about traffic stops, the procedural justice perspective holds that people will have a sense of justice if they perceive the process to be fair, independent of the substantive outcome. A sense of fairness, in turn, will be enhanced if a person is given an explanation for the outcome and has an opportunity to explain his or her point of view.

Tyler's research indicates that a sense of procedural justice is likely to enhance law-abiding behavior. His book *Why People Obey the Law*⁷⁴ is based on interviews with 1,575 Chicago residents, 804 of whom were re-interviewed a year later. Respondents were asked about their own law breaking (e.g., speeding, littering, shoplifting), and their perceptions of and experience with the police and the courts. The latter questions were designed to determine respondents' sense of the legitimacy of the justice system. Tyler concluded: "[c]itizens who view legal authority as legitimate are generally more likely to comply with the law."⁷⁵

In another study, Jonathan D. Casper, Tom Tyler, and Bonnie Fisher found that among several hundred male felony defendants in three cities, procedural justice issues were associated with their evaluation of their experience in criminal court.⁷⁶ Particularly important was how they felt they were treated by the police (e.g., did the officer "treat you in a businesslike manner?" or "use disrespectful language?") and the amount of time their lawyer spent with them. Interestingly, defendants' evaluations were not affected by whether they had a private attorney or a public defender, or whether they pled guilty or went to trial. In short, how they felt they were

73. See Skogan & Frydl Report, *supra* n. 7, at 252-90 (discussing lawfulness), 291-326 (discussing legitimacy).

74. Tom R. Tyler, *Why People Obey the Law* 4-5 (Yale U. Press 1990).

75. *Id.* at 62.

76. Jonathan D. Casper et al., *Procedural Justice in Felony Cases*, 22 L. & Socy. Rev. 483, 487 (1988).

treated shaped their level of satisfaction with the system. Finally, a reanalysis of the Milwaukee Domestic Violence Experiment, meanwhile, found that aspects of procedural justice were associated with lower recidivism rates. Arrestees who felt they were treated in a procedurally fair manner had recidivism rates that were as low as the rates for those given a more favorable outcome (e.g., warned but not arrested).⁷⁷

The concept of legitimacy has important implications for crime prevention. I have argued that Tyler's findings suggest that it is possible for criminal justice agencies to undertake reforms that are likely to enhance law abiding behavior.⁷⁸ With respect to the police, such steps would include the reduction of use of excessive force by officers, the development of open and accessible citizen complaint procedures, and greater openness and transparency. Enhancing procedural justice does not mean leniency in law enforcement. It is possible for police departments to engage in tough anti-crime tactics while ensuring that all contacts between police and citizens are conducted in a respectful and evenhanded manner. With respect to the courts, reforms to enhance procedural justice would include greater openness and transparency, including keeping all parties to a case (especially victims) informed of the current status and eventual outcome.⁷⁹

The concept of legitimacy is illustrated with respect to traffic stops and the national controversy over racial profiling. Many police experts argue that drivers who are upset about traffic stops are more angered by how officers treat them than about the reasons for the stop itself. That is to say, they are willing to concede that they were speeding but do not like the rude behavior of the officer (often including his or failure to answer their questions). To address this problem the Police Executive Research Forum (PERF) report on racial profiling offers a model policy for traffic stops that emphasizes respectful behavior on the part of officers. It recommends that officers introduce themselves, explain the basis for the stop, and offer an apology if the person has been mistakenly stopped.⁸⁰

An important policy implication of collective efficacy is people need to have trust in local criminal justice agencies. Sampson argues that if people do not trust the police it will be impossible to develop effective neighborhood crime prevention policies.⁸¹ The same point holds true for the justice system as a whole. Tom R. Tyler's research on procedural justice

77. Raymond Paternoster et al., *Do Fair Procedures Matter? The Effect of Procedural Justice on Spouse Assault*, 31 L. & Socy. Rev. 163, 163 (1997).

78. Samuel Walker, *The New World of Police Accountability* 20–38 (Sage 2005) (describing such reforms in detail).

79. For the last thirty years the victims' rights movement has pursued, and to a great extent achieved reforms designed to give victims a direct voice in criminal proceedings. See Walker, *supra* n. 2, at 179–91.

80. Lorie Fridell et al., *Racially Biased Policing: A Principled Response* 52–53 (Police Exec. Research Forum 2001).

81. Sampson, *supra* n. 63, at 222.

indicates that distrust of the justice system increases peoples' tendency to break the law.⁸² The concept of collective efficacy suggests that if people trust the police and other agencies they will be more likely to cooperate with the police and their neighbors in programs to control crime. With respect to attitudes toward the police, Sampson challenges the prevalent stereotype that entire the African American community distrusts the police. Forty years of public opinion poll data consistently show that while African Americans are more likely to distrust the police, a majority nonetheless have a positive attitude.⁸³ This evidence suggests that there is a vast resource that police departments can tap into and develop effective crime prevention programs.⁸⁴

V. INNOVATIVE CRIME PREVENTION PROGRAMS

The past two decades have been a period of great experimentation and innovation in American criminal justice. David H. Bayley argues that it is of the most innovative periods in American police history. The combination of creative thinking among experts about both broad goals and specific programs, substantial federal funding for experimentation and research, and the development of a research community committed to high standards of scientific research has produced not only a number of innovative programs but also persuasive evidence about their effectiveness.⁸⁵ The most important are discussed in the following section.

A. *Community Policing / Problem Oriented Policing*

The most extensively researched innovations involve community policing and its cousin, problem-oriented policing. The two concepts overlap in important respects. Community policing is a broad philosophy of policing. Individual programs, however, vary considerably with respect to how that philosophy is implemented.⁸⁶ Problem-oriented policing is a more specific process for how police departments can and should address crime and disorder.⁸⁷ The National Academy of Sciences report on policing concluded that, while still preliminary, there is "a strong body of evidence suggest[ing] that taking a focused geographic approach to crime problems can increase

82. Tyler, *supra* n. 74, at 163–70.

83. Samuel Walker & Charles M. Katz, *The Police in America: An Introduction* 391–93 (5th ed., McGraw-Hill 2005).

84. David H. Bayley, *Police for the Future* 101 (Oxford U. Press 1994).

85. See Skogan & Frydl Report, *supra* n. 7, at 46.

86. Jack R. Greene, *Community Policing in America: Changing the Nature, Structure, and Function of the Police, in Criminal Justice 2000: Policies, Processes, and Decisions of the Criminal Justice System* 299 (Nat'l. Inst. Just. 2000).

87. Mike Scott *Problem-Oriented Policing: Reflections on the First 20 Years* 20 (U.S. Dept. Just. 2000); Herman Goldstein *Problem-Oriented Policing* 32–49 (Temple U. Press 1990).

the effectiveness of policing.”⁸⁸ The following section examines some of the more important programs.

i. The Boston Gun Project Paradigm

The highly publicized Boston Gun Project serves as a paradigm for much of the new approach to crime policy.⁸⁹ In the 1980s, Boston experienced an alarming surge in gun homicides, particularly among young African American males. Officials responded by bringing together a coalition of criminal justice agencies, neighborhood leaders, and academic experts for the purpose of developing a new and more effective response. In the end, they developed a comprehensive set of programs that resulted in a dramatic decline in youth homicides.⁹⁰

Operation Ceasefire, the core element of the Boston Gun Project, was a highly focused effort, concentrating on a particular problem—youth gun violence—on particular neighborhoods, and ultimately on particular offenders. This approach contrasts sharply with traditional approaches that purport to attack “crime” in a global sense. Since research indicated that much of the gun violence was associated with particular gangs, those gangs and their leaders were targeted for special attention. This kind of focused effort was quite different from the traditional police “crackdowns,” which have generally been unfocused and which often involve indiscriminate mass arrests.

Second, reflecting the new emphasis on partnerships, the Boston Gun Project was a multi-agency effort, involving close working relationships among police and correctional agencies and also among local and federal criminal justice agencies. In addition, the Boston Police Department made a special effort to develop good relationships with community leaders, notably the Ten Point Coalition representing the African American clergy.⁹¹

Third, the Working Group developed a series of innovative strategies and tactics, rejecting the traditional approach of unfocused arrests, prosecution, and imprisonment. Some of the most important innovations were characterized as “pulling levers,” defined as using a variety of legally available sanctions against gang leaders.⁹² Gang members with outstanding warrants, for example, were arrested; those whose drivers’ licenses had been suspended had their cars impounded. In Operation Night Light probation and parole officers made home visits to gang members and enforced violations of the conditions of release. Gang members under the supervision of the

88. Skogan & Frydel Report, *supra* n. 7, at 235.

89. See David M. Kennedy et al., *Reducing Gun Violence: The Boston Gun Project's Operation Ceasefire 7* (U.S. Dept. Just. 2001) (available at <http://www.ncjrs.org>, NCJ 188741).

90. Current details about the program are available at <http://www.bostonstrategy.com>.

91. Anthony A. Braga & Christopher Winship, *Creating an Effective Foundation to Prevent Youth Violence: Lessons Learned from Boston in the 1990s 2* (Rappaport Inst. for Greater Boston 2005).

92. David M. Kennedy, *Pulling Levers: Chronic Offenders, High-Crime Settings, and a Theory of Prevention*, 31 Val. U. L. Rev. 449, 468–79 (1997).

Department of Youth Services were arrested and taken off the street. And in another innovative approach, gang members were summoned to meetings and directly told about the enforcement effort and that there would be no deals if they were arrested.

Academic experts, meanwhile, not only brought expert knowledge to the program but also evaluated its impact. Scholars from Harvard University's Kennedy School of Government were actively involved in planning the project, bringing their expertise on problem-oriented policing, gangs and gun violence, and evaluating the impact of the project.

The evaluation found that the Boston Gun Project had a significant impact on gun crimes. A rigorous evaluation found a 63 percent decrease in youth homicides per month; a 32 percent decrease in the number of calls to the police regarding shots fired; a 25 percent decrease in gun assaults per month; and a 44 percent decline in youth gun assaults in the district with the highest levels of violence. The evaluation controlled for other factors that might explain these results, including changes in the employment rate, the relative percentage of youths in the population, violent crimes in the entire city, homicides among older people, and the level of drug activity. Finally, because the entire country was experiencing a decline in violent crime, they compared Boston's trends with those in other cities. The reduction in violent crime in Boston was greater than in the U.S. generally and in other New England cities.⁹³

A Justice Department report on an Operation Cease Fire program in Los Angeles, modeled after Boston's, defined "pulling levers" as "[a] crime deterrence strategy that attempts to prevent violent behavior by using a targeted individual or group's vulnerability to law enforcement as a means of gaining their compliance."⁹⁴

ii. *Jersey City and Oakland*

A major problem-oriented policing experiment in Jersey City, New Jersey, employed the principles of "hot spots" focus, partnerships, and non-criminal justice remedies. To control crime, drugs, and disorder the police employed twenty-eight different strategies in the experimental areas (which were paired with comparable areas that received traditional police services). While they engaged in some traditional police tactics in the experimental areas—such as aggressive order maintenance and drug enforcement—they also used non-traditional, non-criminal law enforcement tactics. In fact, eight of the twelve most commonly used strategies were non-traditional: requiring store owners to clean their store fronts, getting the Public Works

93. Kennedy et al., *supra* n. 89, at 4; Anthony A. Braga & Glenn L. Pierce, *Disrupting Illegal Firearms Markets in Boston: The Effects of Operation Ceasefire on the Supply of New Handguns to Criminals*, 4 *Criminology & Pub. Policy* 717 (2005).

94. George E. Tita et al., *Reducing Gun Violence: Operation Ceasefire in Los Angeles 4* (Nat'l. Inst. Just. 2005) (available at <http://www.ncjrs.org>, NCJ 192378).

Department to remove trash from the street, getting more lighting for certain areas. The latter two, of course, involved partnerships with other city agencies.

An evaluation found that the POP program reduced both violent and property crime in the treatment areas compared with their paired control areas. Through direct observation, the evaluation found that observed disorderly behavior declined in ten of the twelve treatment areas. Signs of physical disorder (like uncollected trash and graffiti) also declined in ten treatment areas and disorder in the experimental areas and did not displace them to neighboring areas.⁹⁵

The SMART (Specialized Multi-Agency Response Team) program to reduce drug-related crime and disorder in Oakland, California, also embodied a “hot spots” approach, partnerships among the police and other non-criminal justice agencies (notably, housing authorities), non-criminal justice remedies, such as housing code enforcement, and citizen co-production (through education programs for landlords). Not only did the program reduce crime and disorder in the targeted areas but it did not displace crime to neighboring areas, and in fact even “diffused” the benefits to these areas.⁹⁶

B. Community Prosecution

One innovative prosecutorial program is known as community prosecution. The American Prosecutors Research Institute (“APRI”) defines community prosecution as “a long-term, proactive partnership among the prosecutor’s office, law enforcement, the community and public and private organizations, whereby the authority of the prosecutor’s office is used to solve problems, improve public safety and enhance the quality of life of community members.”⁹⁷ This definition includes the same concepts of community, partnerships, problem-solving, and quality of life that are found in problem-oriented policing. The goals of community prosecution, according to the APRI, include crime prevention as well as traditional conviction and punishment.

Community prosecution programs are sometimes referred to as “problem-solving courts.”

The basic elements include a focus on less serious “disorder” offenses, which often get lost in traditional criminal courts, the use of community

95. Anthony A. Braga et al., *Problem-Oriented Policing in Violent Crime Places: A Randomized Controlled Experiment*, 37 *Criminology* 541, 566 (1999). Focused problem-oriented programs such as the one in Jersey City and Oakland received a strong endorsement in *Skogan & Frydl Report*, *supra* n. 7, at 235–51.

96. Lorraine Green, *Cleaning Up Drug Hot Spots in Oakland, California: The Displacement and Diffusion Effects*, 12 *Just. Q.* 737, 752 (1995).

97. Am. Prosecutors Research Inst., *What is Community Prosecution?* http://www.ndaa-apri.org/apri/programs/community_pros/what_is_community_prosecution.html (accessed Sept. 9, 2006).

service and other alternatives to incarceration, strict monitoring of sentence conditions, rapid imposition of sentences (to communicate the message that crime has consequences), close relations with community groups, and a goal of improving the quality of life in the immediate neighborhood.⁹⁸

The Midtown Community Court (MCC) in New York City pioneered community prosecution in 1993. The MCC targeted “quality-of-life misdemeanors” such as prostitution, illegal vending, graffiti, shoplifting, fare-beating (not paying subway fares) and vandalism.⁹⁹ Local officials were frustrated with the failure of the traditional criminal courts to deal effectively with low-level crime. Offenders were often not punished or punished severely, and there were often no consequences of any sort for committing quality of life offenses. Some offenders might have spent a few days in jail, but there was typically no punishment at all. Court officials and community residents shared the same frustration. A major part of the problem—which affects courts all across the country—is that courts are swamped with major cases and do not have the time or resources to deal with minor crimes.

In the MCC, convicted offenders are often required to repay the neighborhood through community service, such as painting over graffiti. While performing such work, offenders wear bright blue vests, designed to “make justice visible” and communicate the message that crime has consequences. To “make justice swift,” offenders begin performing their community service within 24 hours of being sentenced. The “Engaging New Partners” aspect of the MCC involves partnerships with local businesses and agencies in job training, services for the homeless, and so on. Additionally, the MCC provides drug treatment, job training, and other services for convicted offenders. Finally, “Providing Better Information” involves a computerized MIS to provide judges with better information about offenders to help them develop individualized sentences, and also feedback to police officers about the outcomes of their arrests.

The impact of the MCC was mixed, however. An evaluation by the National Center for State Courts found the MCC achieved some of its goals. Sentences involving community service were twice as frequent at the MCC compared with the traditional downtown court. Jail sentences were also less common (9 percent compared with 18 percent in the downtown court). This resulted in a reduction of 27,000 jail-days over a three-year period, and a significant savings in jail costs. Interestingly, there was some “feedback effect,” as downtown court sentences became closer to the MCC’s, sug-

98. Pamela M. Casey & David B. Rottman, *Problem-Solving Courts: Models and Trends 3* (Nat'l. Ctr. St. Cts. (2004) (available at <http://www.ncsconline.org>); Robert V. Wolf & John L. Worrall, *Lessons from the Field: Ten Community Prosecution Leadership Profiles* (Am. Prosecutors Research Inst. 2004) (available at <http://www.ndaa-apri.org>); M. Elaine Nugent *The Changing Nature of Prosecution: Community Prosecution vs. Traditional Prosecution Approaches 7–13* (Am. Prosecutors Research Inst. 2004).

99. John Feinblatt et al., *Neighborhood Justice: Lessons from the Midtown Community Court 2* (Ctr. for Ct. Innovation 1998) (available at <http://www.courtinnovation.org>).

gesting that the innovations impressed officials in the other courts. Court processing also sped up, with an average arrest-to-arraignment time of 18.9 hours, compared with 29.2 hours in the downtown court. There was also a modest increase in dispositions at the arraignment stage, resulting in both time and cost savings.¹⁰⁰

The exact impact of the MCC on crime and disorder is difficult to determine. The innovative court began operating at precisely the moment the crime rate began a decade-long decline, in New York City and across the nation. There is much controversy over what factors were responsible for the great “crime drop.”¹⁰¹ In New York City, the police department added thousands of officers and launched an aggressive “zero tolerance” campaign against minor offenses. The economy experienced tremendous growth. Many criminologists believe that the upsurge of violent crime in the 1980s was associated with the rise of crack cocaine and that the crime drop in the 1990s was closely related to the decline in crack consumption. In this context, it is difficult to specify the impact of the MCC.

C. *Offender Reentry: The 1960s Redux?*

In the area of corrections, the most important new initiative involves offender reentry programs. As a result of the soaring use of imprisonment in the United States, an estimated 600,000 adults leave prison and return home every year (this represents about 1,600 a day). This has prompted new attention to reintegrating those offenders into their communities and into law-abiding lives. Joan Petersilia, one of the leading experts on the subject, regards the reintegration of released prisoners as “[o]ne of the most profound challenges facing American society” today.¹⁰² The steady flood of returning prisoners has particular relevance for community focused crime policy. As Petersilia points out it results in “[t]he concentration of ex-prisoners in already fragile communities.”¹⁰³ The effects are numerous. The concentration of ex-offenders alters the peer culture of the neighborhood, adding one more risk factor to already at-risk young men.

Beginning in the early 2000s, the U.S. Justice Department embraced the concept of offender reentry and invested substantial funds in research and policy development. The resulting research has provided a detailed picture of the circumstances of returning prisoners. The Urban Institute studied 400 prisoners returning to Chicago.¹⁰⁴ Eighty-three percent were African

100. Michele Sviridoff et al., *Dispensing Justice Locally: The Impacts, Cost and Benefits of The Midtown Community Court* 3–4, 11, http://www.ncsconline.org/WC/Publications/Res_CtComm_MidtownExecSumPub.pdf (accessed Sept. 21, 2006).

101. See Travis & Waul, *supra* n. 33, at 19.

102. Petersilia, *Prisoners*, *supra* n. 65, at 3.

103. *Id.* at 8.

104. Nancy G. La Vigne et al., *Chicago Prisoners' Experiences Returning Home*, <http://www.urban.org/publications/311115.html> (Dec. 08, 2004).

American and they were concentrated in a few neighborhoods that suffered from both social and economic disadvantage. Interestingly, however, slightly less than half (about 45 percent) returned to their old neighborhood. Not surprisingly, the study found that returning offenders suffered from numerous disabilities: lack of education, histories of substance abuse, limited or negligible work histories, and medical problems. Prior to release, most offenders expressed a strong desire to change their behavior and improve their lives. Most (87 percent) participated in pre-release programs related to such practical matters as finding a job, obtaining a photo ID, and finding housing. In practice, however, few were able to access needed services. Only 25 percent received an actual referral to a job; only 15 percent received a referral to a substance abuse treatment program; and only 22 percent contacted a community program based on a referral from the pre-release program. In short, facilitating the reentry of most former prisoners and helping them establish productive law-abiding lives is a daunting challenge (and one that the recidivism data cited earlier indicates that traditional parole programs have failed to meet).¹⁰⁵

While a promising concept, offender reentry programs face a number of serious programmatic and political hurdles. One of the major obstacles is the array of federal and state laws placing restrictions on convicted offenders. An Urban Institute report refers to these obstacles as “brick walls,” creating enormous obstacles for the recently released offender.¹⁰⁶ Joan Petersilia provides the most comprehensive survey of these restrictions in her book, *When Prisoners Come Home*. Chapter Six is entitled “How We Hinder: Legal and Practical Barriers to Reintegration.”¹⁰⁷ Barriers to the employment of convicted offenders in various occupations are numerous and have been steadily increasing in recent years. California bars convicted felons from working in law, real estate, medicine, nursing, physical therapy, and education. Six states permanently deny public employment to felons. This means that a parolee cannot hold the most menial city or county job. All states prohibit convicted felons from working as barbers, beauticians, or nurses. In one absurdity, hair care vocational programs are the most popular programs in the New York City Reformatory despite the fact that graduates will be ineligible for lawful employment in that area.¹⁰⁸

There are a number of special restrictions on persons convicted of drug offenses. A 1992 federal law requires states to revoke the drivers’ licenses

105. See *id.* Reports on offenders in other cities are available on the Urban Institute’s web site, <http://www.urban.org>.

106. Faye Taxeman, *Brick Walls Facing Reentering Offenders*, in *Prisoner Reentry and Community Policing: Strategies for Enhancing Public Safety I* (Urban Inst. 2004) (available at <http://www.urban.org/publications/900743.html>).

107. Petersilia, *Prisoners*, *supra* n. 65, at 105-37; see also Off. Pardon Atty., *Civil Disabilities of Convicted Felons: A State-by-State Survey* (U.S. Dept. Just. 1996) (available at http://www.usdoj.gov/pardon/forms/state_survey.pdf).

108. Petersilia, *Prisoners*, *supra* n. 65, at 114.

of convicted drug offenders or lose 10 percent of their federal highway funds.¹⁰⁹ The 1988 Anti-Drug Abuse Act provides that anyone convicted of a first offense drug possession in either federal or state court, can, at the discretion of the judge, receive one or more of the following sentences: (1) be ineligible for any or all federal benefits for up to one year, (2) be required to successfully complete an approved drug treatment program that includes periodic testing, or (3) be required to perform community service.¹¹⁰ For a second offense he or she would be ineligible for all federal benefits for up to five years. The law explicitly grants the judge discretion in applying these provisions, and there is good reason to think they are not using the law. At the end of 2001, there were a total of 6,938 cases in the Denial of Federal Benefits database, and only 765 had been added in that year.¹¹¹

Laws also limit the housing options of ex-felons. Public housing agencies are required to deny housing to certain categories of offenders, including primarily persons convicted of drug or sex offenses. The 1994 welfare reform law (officially the Personal Responsibility and Work Opportunity Reconciliation Act), meanwhile, requires states to permanently bar drug offenders from receiving federal welfare or public assistance funds. (Nine states, however, have opted out of this requirement, and 10 make it available to offenders who participate in treatment programs).

Criminal records are increasingly available to the public, with as yet uncertain consequences. Twenty-five states, at last count, make them available on the internet. Virtually every state has a law requiring sex offenders to register with local officials and provide public notification of their residence. Such laws are designed to protect the public by informing families of the residence of offenders so that they may take self-protective measures. At the same time, however, the laws further stigmatize offenders in ways that inhibit reintegration, and also expose offenders to possible harassment and vigilante action.

Finally, one of the most serious disabilities is the denial of voting rights to convicted offenders. Every state has some form of voting denial. The Sentencing Project estimates that 4.7 million Americans cannot vote because of a criminal record.¹¹² This includes 1.4 million African American males,¹¹³ an estimated 7 percent of all African Americans. Denying people the right to vote is perhaps the most dramatic way of telling people that they

109. *Id.* at 115.

110. Pub. L. No. 100-690, §5301(b)(1) (Nov. 18, 1988).

111. Bureau Just. Assistance, *Denial of Federal Benefits Program and Clearinghouse* 4 (U.S. Dept. Just. 2002) (available at <http://www.ncjrs.org>, NCJ 193770).

112. The Sentencing Project, *Felony Disenfranchisement Laws in the United States* 1 (2005) (available at http://www.righttovote.org/dynamic/textitems/ItemURL_505.pdf).

113. *Id.*

are outcasts in American society, and an excellent way of keeping them from fully reintegrating into their local communities.¹¹⁴

The political hurdles facing reentry programs are particularly serious. For all practical purposes, the idea of reentry is nothing more than the standard package of rehabilitation-oriented programs that dominated criminal justice thinking in the 1960s.¹¹⁵ The inescapable fact is, however, that the rationale underlying these programs was swept aside by the tide of conservative, punishment oriented thinking that arrived in the mid-1970s. Advocates of offender reentry need to address—and have largely failed to address—the question of why that occurred. The existing literature on offender reentry does not address the question of how changes in public attitudes about crime and crime prevention are to be brought about.

Effective offender reentry is crucial to the success of the other crime prevention programs discussed here. One of the features of high-crime neighborhoods is the return from prison of many offenders. These individuals are likely to affect the quality of life in neighborhoods in two important ways. First, if as individuals they return to criminal offending, they increase levels of both victimization and fear of crime. Second, to the extent that several individuals act in concert, whether through organized gangs or through informal association, their negative impact will only be intensified. Such effects obviously increase the obstacles to a sense of collective efficacy among neighborhood residents and the likely success of both innovative policing programs and problem-solving courts.

D. Solutions: The Seeds for Growing Bigger Carrots

As indicated earlier, one of the major assumptions of the new approach to crime prevention is that no single crime policy is likely to be effective. The following scenario outlines how the various issues and programs discussed above relate to and reinforce each other. This scenario begins with a hypothetical neighborhood with problems of crime and disorder.

- 1) Citizens who are committed to their neighborhood and believe they can make a difference are likely to help reduce crime.
- 2) Those crime reduction efforts are likely to be effective when they work closely with the police and other criminal justice and non-criminal justice agencies.
- 3) These partnerships require an on-going commitment to problem-oriented policing by the police.

114. See Jamie Fellner & Marc Mauer, *Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States* 14–17 (Human Rights Watch & The Senten. Project 1998) (available at <http://www.sentencingproject.org/pdfs/9080.pdf>). Current data and other materials are available on the website of Right to Vote, <http://www.righttovote.org>.

115. The classic statement of these programs the report by the U.S. President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (U.S. Govt. Printing Off. 1967).

- 4) Similar partnerships are possible through problem-solving courts, which in turn can address disorder problems in neighborhoods.
- 5) The quality of life in neighborhoods will be enhanced when effective offender reentry programs help people returning from prison establish productive law-abiding lives and not harm their neighborhoods by slipping back into lives of crime.
- 6) Cooperation between the police and citizens will be enhanced when citizens have trust and confidence in the police and the courts.
- 7) Trust and confidence in the police requires a strong commitment to reduce officer misconduct and a degree of transparency that causes people to believe that such a commitment is genuine.
- 8) Openness and transparency on the part of problem-solving courts can further enhance the legitimacy of the criminal justice system.

VI. CONCLUSION

There are a number of uncertainties and unanswered questions about the scenario outlined above. The strongest evidence involves the impact of problem-oriented police policies. They also do not seem to be affected by adverse political considerations. The evidence on the impact of problem-solving courts is much weaker, and more evidence about their effectiveness is needed. The evidence on offender reentry programs is clearly very weak, and the political obstacles appear to be quite strong. The question of whether enhanced legitimacy of the police and courts translates into actual reductions of serious crime (as opposed to minor violations). Much more research is needed on this issue. Additionally, there is the question of whether actual reductions in police officer misconduct and greater openness on the part of police and courts translates into greater legitimacy and more effective working relationships between criminal justice agencies and citizens.

Nonetheless, there is cause for cautious optimism. The principal "carrot" is a general sense of well-being about the society one lives in. This includes a sense of empowerment about one's neighborhood and a sense of trust and confidence in local criminal justice agencies. To too great an extent, American criminal justice policy has relied on "sticks," designed to threaten or beat people into law-abiding behavior.