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The New Policing

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The New Policing

Philip B. Heymann

Abstract

This article explores new forms of policing in New York, Chicago, and Boston. These cities developed new policing strategies that each involves a different combination of problem solving and new forms of "community policing". The article explores whether these developments resulted in crime reduction and changes in belief in the efficacy of policing. The article concludes by considering the costs of the resulting increased security - reduction in democratic control of policing and increased risk to civil liberties.

KEYWORDS: policing reform, crime reduction, New York policing, Boston policing, Chicago policing, problem-solving policing, community policing, broken windows policing

THE NEW POLICING

*Philip B. Heymann**

The purpose of this article is to examine a remarkable development in law enforcement: the exploration of new forms of policing by combinations of police leaders and academics. This examination focuses on three major cities—New York, Chicago, and Boston—that have developed three different combinations of problem-solving and new forms of relationships with neighborhoods that are often called "community policing." As a result of these immense undertakings, we have seen a change in belief in the efficacy of policing. But the changed attitudes towards police functions are accompanied by certain risks.

I. The Effectiveness of the New Policing

I will begin by describing the weaknesses and the strengths of the argument that new forms of policing have had a major effect on fear and safety in our cities and, through that, on the quality of life for millions of people. But wholly aside from the amount of evidence for this belief, it exists and that in turn has changed the attitudes toward policing of citizens and political leaders alike.

It is important to look at New York, Chicago, and Boston separately, for they represent somewhat different approaches based on different theories supported by different police leaders and scholars. Their apparent successes explain the change in attitude toward police, but the approaches differ along the two dimensions that many consider most important: reduction of crime and disorder and an increase in trust in the police.

I will describe generally the practices and theories of policing in each of these three cities and provide some evidence as to what each is doing better or worse. But then it is worth departing from the broad models, each of which may hide too much that is important and particular under a single theory that seems almost as copious as an ideology. We should look much harder at the underlying operations of each cities' police department. And, finally, we should consider the values affected by, and the risks associated with, the different forms of policing.

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A. The National Decline in Crime

Before turning to the changes in theory and practice of policing and their consequences, we should note the importance of the new belief that policing can make a big difference in the amount of violent crime, property crime, and troublesome disorder. In focusing on the new belief, I am not trying to raise doubts about the reduction in fear and the increase in safety that have occurred throughout the United States. There may be some questions as to the role of policing in bringing this about—though these questions do not trouble most of our politicians and citizens—but there is little doubt about the fact of these changes, particularly the actual and significant reduction in fear and increase in safety in most places throughout the United States and particularly in two of the cities which we will be examining.

Figures on reported crime and surveys of citizens tell identical stories. After a rapid increase during the 1960s, there was long-term stability in crime rates in the United States during the following quarter century.[1] That stability included a homicide rate in the United States that was three or four times as high as those of other Western democracies.[2] It was also widely believed that non-lethal violent crime greatly exceeded that of comparably advanced countries.[3]

Within this long-term trend, something dramatic first happened in the mid-1980s when the amount of youth violence, particularly killing, shot up dramatically, while violence by those over twenty-five was declining. Then, in the early 1990s, the direction of change reversed and for the rest of the twentieth century, crime, including violent crime, declined radically to levels we had not seen since the 1960s.[4] Arrests of males under age eighteen for violent crimes declined 26% between 1994 and 1999.[5] The trend has continued into

1. BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, HOMICIDE TRENDS IN THE UNITED STATES § 2 (2000), http://www.ojp.usdoj.gov/bjs/homicide/hmrt.htm [hereinafter HOMICIDE TRENDS].

2. OFFICE FOR DRUG CONTROL & CRIME PREVENTION, UNITED NATIONS, GLOBAL REPORT ON CRIME AND JUSTICE 312-14 (Grame Newman ed., 1999) (listing homicide rates for more than three dozen industrial countries as reported in five United Nations surveys between 1974 and 1993).

3. *Id.*

4. HOMICIDE TRENDS, *supra* note 1, at § 3.

5. Keith Bradsher, *Fear of Crime Trumps the Fear of Lost Youth*, N.Y. TIMES, Nov. 21, 1999, at D3.

the current year, although some major cities, including Boston, experienced an ominous spike in the first few months of 2000.[6]

Between 1993 and 1998, property crimes declined in the United States by 32% and violent crimes declined by 27%. The decline has been spectacular with regard to such non-violent crimes as motor vehicle theft or ordinary thefts of less than fifty dollars. Moreover, this decline has been about equally sharp for males and females, black and white, urban, suburban, and rural.[7]

One area of great public concern did not appear to follow this general course. Although the use of illicit drugs had peaked in the late 1970s, and the decline that followed in the mid-1980s was reversed by an epidemic of smokable crack cocaine, there was a great decline in overall use in the 1980s and, except for marijuana use, prevalence of use in the population continued at a relatively low level into the 1990s.[8] However, there is little, if any, indication that the price of illicit drugs has risen or that their purity has declined, nor is there any reason to think that their availability has lessened.[9] The crack cocaine epidemic has greatly abated; but that seems to have far more to do with the natural course of a drug epidemic, including the growing desire of young people to avoid the consequences they see in their addicted elders, than with any success in

6. *E.g.*, Tom Farmer, *Violent Crimes Plunge in U.S.*, BOSTON HERALD, Aug. 28, 2000, at 1 (noting that Boston had already surpassed its 1999 murder total, and that police had reported a 13% increase in shootings); Brett Martel, *Murder on Rise in Major Cities*, CHI. SUN-TIMES, June 23, 2000, at 26 (reporting that murders had increased over 1999 murder rates in Baltimore, Boston, Dallas, Los Angeles, New Orleans, New York, and Philadelphia); Don Terry, *In a Turn of the Tide, Bloodshed Rises in Los Angeles*, N.Y. TIMES, July 11, 2000, at A14 (reporting a 7.5% increase in violent crime over 1999 in Los Angeles, including more murders, rapes, and robberies, but noting that "with only a few exceptions, violent crime is down nationwide"). *But see, e.g.*, Eric Lipton, *Giuliani Pulls His Charts Out for a Review of New York*, N.Y. TIMES, Sept. 15, 2000, at B9 ("In the first six months of this year, crimes in the seven major categories fell 7.8%" in New York City).

7. BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, NATIONAL CRIME VICTIMIZATION SURVEY, CRIMINAL VICTIMIZATION 1998, CHANGES 1997-98 WITH TRENDS 1993-98, at 9 tbl.7, 11 tbl.8, http://www.ojp.usdoj.gov/bjs/pub/pdf/cv98.pdf (reporting sharp declines in property crimes and declines in violent crimes for specific demographic groups between 1993 and 1998) [hereinafter VICTIMIZATION SURVEY].

8. BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS 1997, at 245 tbl.3.83 (1998).

9. OFFICE OF NAT'L DRUG CONTROL POLICY, DRUG DATA SUMMARY 4 (1999) (explaining the increase in purity and decrease in price for four types of drugs between 1981 and 1998), *available at* http://www.whitehousedrugpolicy.gov/pdf./95253.pdf.

policing, despite mammoth increases since 1980 in expenditure and in rates and duration of imprisonment.[10]

Returning to the sudden reduction in violence, particularly in lethal violence, since the early 1990s, a number of consequences should be noted. Evidence ranging from the self-reports of mothers and children in Boston to the immense increase in optimism and tourism in New York documents the change in the quality of life that has been brought about by reduced violence, and perhaps also by reduced property crime and disorder. Leaders in cities as far away as Johannesburg, Moscow, and Buenos Aires want to learn whatever there is to learn about the relationship of new forms of policing to a wonderfully improved quality of life in many American neighborhoods and cities.

If policing really is making the difference, we should acknowledge that fact in terms of a variety of decisions about the expenditure of resources. Resources should be moving toward police from the immense human and dollar costs of the present rush towards ever longer sentences that have made us one of the world's two leaders in percentage of population behind bars.[11] At the same time, the general public may be willing to bear new personal costs associated with intrusive policing measures, if the benefits are as great as they seem. In Chicago, for example, tenants of housing projects have voted to authorize apartment searches without the prerequisites of the Fourth Amendment, a move rejected by a federal court.[12]

B. Are the Increase in Safety and the Reduction in Fear Results of the New Forms of Policing in the United States?

The accelerating reduction in violent and other crime beginning in the early 1990s plainly coincided with a series of major changes in policing. The three cities we are examining, New York, Chicago,

10. *E.g.*, Richard Curtis, Symposium, *The Improbable Transformation of Inner-City Neighborhoods: Crime, Violence, Drugs, and Youth in the 1990s*, 88 J. CRIM. L. & CRIMINOLOGY 1233, 1260 (1998) (stating that many African American youth throughout New York City have avoided heroin and crack in the 1990s because of such factors as the AIDS epidemic and the increased death toll from drug dealer turf wars).

11. HUMAN RIGHTS WATCH, HUMAN RIGHTS WATCH WORLD REPORT 1999, at 387 (1998); *see also* BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS 1996, at 528 tbl.6.30 (1997) (noting that the number of prisoners in custody of federal and state authorities was 1,037,686 in 1995).

12. Pratt v. Chicago Hous. Auth., 848 F. Supp. 792 (N.D. Ill. 1994); Tracey L. Meares & Dan M. Kahan, *When Rights Are Wrong*, BOSTON REV., Apr./May 1999, at 4 (providing an overview of the incident).

and Boston, all began new programs shortly before 1995. As we shall see, there are common-sense and theoretical reasons to believe that the forms of policing have made a difference; but before awarding the credit to policing, we should recognize the claims of other contenders in explaining reduced crime.

1. *Some Other Explanations for Declining Rates of Crime*

There are reasons to look for alternative explanations. Violent and other crime is decreasing in many cities throughout the United States, including in cities where policing strategies are very different from those of New York, Chicago, or Boston. New York and Boston have enjoyed remarkable rates of decline, but so have several other cities, which are implementing quite different approaches.[13] Moreover, other factors unrelated to policing, but highly correlated with the conditions we associate with crime, are changing at the same time. Teenage pregnancy has gone down steadily during the last six or seven years.[14] The decline in birth rates between 1991 and 1996 among black teens between the ages of fifteen and nineteen is particularly striking.[15] There seems to be no obvious relationship between policing and teenage pregnancies, although there has always been a close relationship among crime, violence, teen pregnancy, drug use, and other forms of social breakdown.[16] That suggests that an additional factor—other than policing—may be at work.

Several candidates seem obvious. First, the drop in crime could be tied to the sustained economic boom. Not only has poverty been declining since 1993 for juveniles under the age of eighteen, but the proportion of black juveniles (whose involvement in dangerous violence as victim or perpetrator has been much the highest) living in poverty has also been declining sharply during that

13. *Compare* BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, CRIMINAL VICTIMIZATION AND PERCEPTIONS OF COMMUNITY SAFETY IN 12 CITIES, 1998, at 9 (1999) (reporting that New York's murder rate fell 65.8% between 1990 and 1997) [hereinafter COMMUNITY SAFETY], *with id.* (reporting that San Diego's murder rate fell 53.3% during the same period), *and id.* (reporting that Los Angeles's murder rate fell 42.2% during the same period).

14. Marc Lacey, *Teen-Age Birth Rate in U.S. Falls Again*, N.Y. TIMES, Oct. 27, 1999, at A16.

15. Judith Havemann, *Birthrate Drops for Teens of All Races*, WASH. POST, May 1, 1998, at A1 (reporting a 20.6% drop for black teens during that period).

16. *E.g.*, JAN M. CHAIKEN & MARCIA R. CHAIKEN, VARIETIES OF CRIMINAL BEHAVIOR: SUMMARY AND POLICY IMPLICATIONS 25 (1982) (noting that "[d]rug use is one of the major factors associated with virtually every type of crime [ ] studied, and specific forms of drug use correlate strongly with crime types and rates").

period.[17] Unemployment is at near-record lows; and by 1996, 86% of black young adults were completing high school.[18]

There are a number of other available explanations, besides new forms of policing, which supporters would claim have led to the reduction of crime and the fear of crime. During the last few years, we have seen the end of the crack epidemic in most cities,[19] an epidemic which spawned drug-selling gangs and the varieties of violent crime that we associate with the Prohibition era of the 1920s. Drug markets have stabilized. Dealers in stabilized industries do not kill each other; thus, dealers in illicit drugs may be particularly violent only at the early stages of a rapidly expanding market.[20]

Just as the use of crack declined when successive generations witnessed the degrading experiences of older brothers and sisters, the same learning—but this time about guns—may have happened as a result of the violence of the late 1980s.[21] A very high percentage of young people in disadvantaged neighborhoods had friends who had been killed.[22]

Efforts of people other than the police to deal with youth violence also played a role. Prevention efforts by committed members of the community, including organizations such as churches and schools, increased immensely in response to the burst of youth violence, and helped make a difference.[23]

Another quite provocative explanation, recently advanced in a leading economics journal, is the rise of legalized abortion some

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17. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, U.S. CENSUS BUREAU HISTORICAL POVERTY TABLES—PEOPLE tbl.3, *available at* http://www.census.gov/hhes/poverty/histpov/hstpov3.html (current through Nov. 30, 2000).

18. NAT'L CTR. FOR EDUC. STATISTICS, DIGEST OF EDUCATION STATISTICS 17 tbl.8 (1998).

19. *E.g.*, Alexandra Marks, *Teens Drive Decline of "Crack" Craze*, CHRISTIAN SCI. MONITOR, Jan. 6, 1999, at 1; Lance Williams, *Crime Drop Mirrors Falling Popularity of Crack Cocaine*, ST. LOUIS POST-DISPATCH, Nov. 29, 1998, at A14.

20. Fox Butterfield, *Drop in Homicide Rate Linked to Crack's Decline*, N.Y. TIMES, Oct. 27, 1997, at A12 (reporting on a Justice Department study finding that the "waning of the crack cocaine epidemic" was the "most important reason" for the drop in homicide rates through the 1990s).

21. *E.g.*, Fox Butterfield, *Scared Straight; The Wisdom of Children Who Have Known Too Much*, N.Y. TIMES, June 8, 1997, at D1 (discussing how inner-city youth are "recoil[ing] from the gun culture" because many have witnessed shootings or seen relatives or friends incarcerated).

22. *E.g.*, *id.*

23. *See generally* John Buntin, A Community Responds: Boston Confronts an Upsurge of Youth Violence (1999) (unpublished manuscript written for John F. Kennedy School of Government Case Program).

twenty years prior to the beginning of the decline in crime rates.[24] Indeed, the article attributes roughly half of the decrease in crime to the government's newfound protection of the right to choose.

Finally, there are those who would argue passionately, and persuasively, that the reduction in violent crime was traceable far less to policing and any increase in the numbers of arrests than to legislation and the longer prison sentences it imposed, along with the consequent prolonged incapacitation of violent offenders. A relatively small proportion of the people born in any given year is likely to commit a high percentage of the crimes and a very high percentage of the violent crimes. When we lock up a higher and higher proportion of the population for longer periods of time, a very high proportion of this particularly dangerous group is imprisoned because they offend and risk arrest so often. This reduces the level of violence on our streets, albeit at great cost. And, somewhat less plausibly, believers in increased deterrence resulting from the perceived threat of a very long sentence for those who are successfully caught and prosecuted have argued that the reductions in crime are directly traceable to that deterrent.[25]

2. *The Case for New Forms of Policing as a Major Cause of Reduced Crime*

With so many other explanations, why is there reason to believe that new forms of policing are playing a significant role in the reduction of violence and fear? For one thing, some of the sharpest reductions in crime have taken place in Boston and New York where the new forms of policing have been the most thoroughly explored and most enthusiastically implemented. For another, some of the connections between the new forms of policing and the reduction in violence are so plausible that it is hard to imagine that they have not had a major effect. Finally, some fairly rigorous evaluations of recent policing tactics support the hypothesis of effectiveness.

We know, for example, that the increase in youth homicide was almost entirely attributable to homicides with guns; there has been

24. John J. Donohue III & Steven D. Levitt, *Legalized Abortion and Crime*, 115 Q.J. ECON. (forthcoming 2000), *at* http://www.mitpress.mit.edu/journals/QJEC/forthcoming.html.

25. *See, e.g.*, Daniel Kessler & Steven D. Levitt, *Using Sentence Enhancements to Distinguish Between Deterrence and Incapacitation*, 42 J.L. & ECON. 343, 346 (1999) (employing a novel approach to separating incapacitation effects from deterrence effects, and finding that the latter had a "nontrivial" effect on a series of 1982 sentence enhancements in California).

no significant increase in homicide with other weapons.[26] And both trends have worked in reverse. As Professor Alfred Blumstein of Carnegie Mellon University and Professor Richard Rosenfeld of the University of Missouri-St. Louis have pointed out, the reduction in national homicides in the mid-1990s was very close to the reduction in the number of gun homicides, suggesting again that control of guns has been an important tactic.[27] We also know that many homicides occur because of quarrels and other events taking place on the streets. Policing strategies like those of New York that greatly increase the risk of arrest for carrying a gun on the street, particularly for gangs or other groups that have more frequently engaged in violence, should therefore lead to reduced homicides with guns. In fact, those are the homicides that have been declining rapidly.

Similarly, we have believed for centuries that certainty and swiftness of punishment are critical to the effectiveness of deterrence. In Boston, the police are using their powers in new ways to ensure that the deterrent threat to particularly dangerous individuals is very certain and prompt, targeted specifically to a particular type of conduct such as violence, and directly communicated to those most likely to use violence. To determine who is most likely to use violence, Boston police have analyzed data from reports or investigations and have used computers to compile information available by observation of associations on the street. Strategies, like those adopted in Boston, to assure that speed and certainty of punishment are known to those likely to engage in violence seem almost certain to reduce violence.

In both New York and Boston, creating social control and, relatedly, reducing fear, have been accomplished by using the powers of the police to take back the street from gangs. The Department of Justice's Office of Juvenile Justice and Delinquency Prevention estimates that, in 1996, almost 3000 homicides in large cities and suburban counties were attributed to gang members.[28] Reducing the apparent street power of gangs competing for status, turf, or drug profits seems likely to reduce gang homicides.

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26. Alfred Blumstein & Richard Rosenfeld, *Explaining Recent Trends in U.S. Homicide Rates*, 88 J. CRIM. L. & CRIMINOLOGY 1175, 1196 (1998); *see also id.* at 1194 fig.6b, 1195 fig.6c.

27. *Id.* at 1196.

28. OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, 1996 NATIONAL YOUTH GANG SURVEY 32 (1999).

3. *A Closer Look at What We Know About Police Tactics and Reduced Crime*

There is another way to look at developments in policing—one that does not rely so exclusively on the theories of a few academics and police commissioners. The broad models of policing in cities like Chicago, New York, and Boston, can be usefully disaggregated by first identifying the critical powers of the police and then analyzing the innovative ways these powers are being used. It is useful to begin with a reminder of the powers, legitimate and borderline legitimate, granted to the police in the United States. It is through the use of those powers in a particular set of tactics that street crime may be reduced, either by creating deterrence, gathering intelligence, or establishing a feeling of police or neighborhood control of the streets. What we know about the use of these powers to reduce crime should be reviewed, before turning to the broader and more complex strategies that have characterized policing in Chicago, New York, and Boston. The present powers of the police are relatively well known:

1. To arrest, search, or engage in electronic surveillance if there is probable cause to conclude that the person has committed a crime.[29]
2. To seek or give a suspect concessions in exchange for information or evidence useful against others.[30]
3. To "stop" if there is reasonable suspicion to believe that the person is about to commit a crime or has just committed a crime, and to frisk if there is reason to fear the person may be armed.[31]
4. To "stop" cars on the ground that they are being operated in any way, however minor, in violation of local ordinances or state laws.[32]
5. To seek consent to search the stopped car or, alternatively, to search without consent by either arresting the driver for a traffic violation or developing a reasonable suspicion that the driver might be armed.[33]
6. To take advantage of even obvious confusion by a suspect about whether he has a right to say "no" to a search of his

29. Dalia v. United States, 441 U.S. 238, 256 (1979).
30. United States v. Baldwin, 60 F.3d 363, 365 (7th Cir. 1995).
31. Terry v. Ohio, 392 U.S. 1, 24 (1968).
32. Maryland v. Wilson, 519 U.S. 408, 412 (1997).
33. Adams v. Williams, 407 U.S. 143, 147 (1972).

home, car, or person, or to refuse to answer questions when not formally under compulsion to remain.[34]

7. To imply, deceitfully, that they intend to exercise powers of arrest or restraint that they in fact do not have, in order to gain leverage to force a recalcitrant witness or suspect to cooperate.[35]
8. To suggest a possible use of force even though its use would be illegal.[36]
9. To engage in any of these activities in a way that is designed to interfere with the subject's personal or business relations.[37]
10. To analyze material obtained in reports or investigations of individual crimes and to gather useful intelligence from these reports.[38]

Police in the United States have long had a tool kit that includes at least the powers described above. Exceeding these considerable powers by imposing summary punishment, using unnecessary force to arrest, or disregarding someone's privacy and property rights without probable cause is generally a violation of local and federal law. To ignore the limitations on the use of these powers—even by actions that would not be criminal if carried out by ordinary citizens but which misuse the apparent powers and authority of the police—is an occasion for department discipline.

What do we know about the success of various tactics using these powers, reserving for later a discussion of the broad strategies that are a collection of tactics in Chicago, New York, and Boston? There is much guesswork in this. Fairly rigorous recent experiments clarify a good deal about what forms of policing actually reduce crime. A review of evaluations done by a team at the University of Maryland for Congress and the Department of Justice tells us a good deal about what "works."[39]

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34. Schneckloth v. Bustamonte, 412 U.S. 218, 224 (1973).

35. Green v. Scully, 850 F.2d 894, 903 (2d Cir. 1988).

36. *E.g.*, Payne v. Arkansas, 356 U.S. 560 (1958) (excluding a confession coerced with the threat of mob violence). *Contra* Green v. Scully, 850 F.2d 894 (2d Cir. 1988) (holding a confession voluntary even though the police officer threatened the suspect with the death penalty, which was not used in New York State at the time).

37. *See, e.g.*, Dalia v. United States, 441 U.S. 238, 248 n.8 (1979) (upholding electronic surveillance of all oral communications taking place within a suspect's place of business).

38. *E.g.*, United States v. McKinnon, 721 F.2d 19, 22-23 (1st Cir. 1983) (affirming a firearms conviction based on evidence obtained in a drug investigation).

39. Lawrence W. Sherman, *Policing for Crime Prevention*, *in* LAWRENCE W. SHERMAN ET AL., PREVENTING CRIME: WHAT WORKS, WHAT DOESN'T, WHAT'S PROMISING: A REPORT TO THE UNITED STATES CONGRESS (1997).

In *Policing for Crime Prevention*, Professor Lawrence W. Sherman of the University of Maryland analyzes the evaluations of policing strategy. He concludes first that, although the evidence is inconsistent, the more convincing studies show that an increase in the number of police causes reductions in crime in the following year, especially in larger cities with higher crime rates.[40] This is supported by the evidence of epidemics of crime when the police are on strike[41] and by the obvious logic that the presence of more police increases the risk that an individual committing a crime will be apprehended, resulting in both a deterrent and an incapacitative effect.

On the other hand, Sherman finds that rapid response to calls from victims does not have a significant effect on crime reduction, when measured against the resources it requires. Too many crimes are discovered after the fact and even a crime that is discovered promptly is not affected by rapid response if the time between the commission of the crime and the initial contact with the police exceeds nine minutes. Indeed, the average reporting time for such crimes was forty-one minutes later.[42] Nor did random patrol deter crime by creating a sense of police omnipresence. Among a group of studies, none of which Sherman deemed especially rigorous, the stronger studies suggest that there is no such effect.[43]

What does make a difference, careful evaluations show, is focusing patrol resources on places and times that have the most crime. The idea is supported by epidemiological research that has shown that crime tends to be very localized,[44] and by careful studies in Minneapolis suggesting that doubling the police presence led to a 50% decrease in crime in the hot spots, even when the police were not present.[45] It also often led to increased neighborhood calls for service in the "hot spot" areas.[46] As to curfews, not enough is

40. *Id.* at 8-1.

41. *E.g.*, SANFORD H. KADISH & STEPHEN J. SCHULHOFER, CRIMINAL LAW AND ITS PROCESSES 117 (6th ed. 1995) (noting the looting that followed a police strike in Liverpool in 1919).

42. Sherman, *supra* note 39, at 8-2.

43. *E.g.*, Robert Trojanowicz, *Evaluating a Neighborhood Foot Patrol Program: The Flint, Michigan Project*, *in* COMMUNITY CRIME PREVENTION: DOES IT WORK? (Dennis Rosenbaum ed. 1986), *cited by* Sherman, *supra* note 39, at 8-3.

44. Sherman, *supra* note 39, at 8-3 - 8-4 (citing epidemiological studies showing that crime is localized).

45. *Id.* at 8-15 (citing Lawrence W. Sherman & David A. Weisburd, *General Deterrence Effects of Police Patrol in Crime "Hot Spots": A Randomized, Controlled Trial*, 12 JUST. Q. 625 (1995)).

46. Sherman, *supra* note 39 (indicating that crime-related calls for service increased in hot spots as a result of increased police presence).

known yet to determine whether they are an effective way of reducing crime, particularly among juveniles.

In a related way, concentrating limited police resources on an identified band of particularly dangerous individuals or crimes also reduces crime. We know that a small fraction of a total birth cohort commits a very high percentage of crimes perpetrated by members of that cohort. Targeting the more dangerous people had the hoped-for effect of reducing crime in Washington and Phoenix.[47] The case is less clear with regard to targeting dangerous crimes, with two notable exceptions: seizing guns and drunk driving.[48] Efforts to detect and seize guns have proven to be immensely effective in Kansas City. When gun seizures in a target area rose by 60%, gun crime dropped by almost 50%.[49]

There are at least some positive short-term effects of focusing policing on activities that create a sense of disorder in a neighborhood—tending to support the "Broken Windows"[50] theory that is described later.[51] But, as in the case of making additional arrests for misdemeanors and for other crimes for which an individual might not previously have been arrested (even if caught in the act), the deterrent and incapacitative effects may be significantly offset by countervailing long-term effects. Studies show that recidivism of juveniles increases following arrest.[52] The same is true of some other categories of offenders, such as unemployed men guilty of domestic violence.[53] There is a reminder in all these statistics that the long-term effects of invoking the criminal justice system for relatively minor behavior can be to increase rather than reduce crime through its effect on the life prospects or psychology of the arrested individual.

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47. *Id.* at 8-20 - 8-21 (citing Susan Martin & Lawrence W. Sherman, *Selective Apprehension: A Police Strategy for Repeat Offenders*, 24 CRIMINOLOGY 55 (1986); Allan F. Abrahamse et al., *An Experimental Evaluation of the Phoenix Repeat Offender Program*, 8 JUST. Q. 141 (1991)).

48. Sherman, *supra* note 39, at 8-24 (citing James W. Shaw, *Community Policing Against Crime: Violence and Firearms* (1994) (unpublished Ph.D. dissertation, University of Maryland (College Park)); Ross Homel, *Random Breath Testing and Random Stopping Programs in Australia*, *in* DRINKING AND DRIVING: ADVANCES IN RESEARCH AND PREVENTION (R.J. Wilson & R. E. Mann eds., 1990)).

49. Sherman, *supra* note 39, at 8-31 (citing LAWRENCE W. SHERMAN ET AL., NAT'L INST. OF JUSTICE, THE KANSAS CITY GUN EXPERIMENT (1995)).

50. James Q. Wilson & George L. Kelling, *The Police and Neighborhood Safety: Broken Windows*, ATLANTIC MONTHLY, Mar. 1982, at 29-38.

51. *Infra* Part III.A.2.

52. *E.g.*, Malcolm Klein, *Labeling Theory and Delinquency Policy: An Empirical Test*, 13 CRIM. J. & BEHAV. 47 (1986), *cited by* Sherman, *supra* note 39, at 8-16, 8-18.

53. Sherman, *supra* note 39, at 8-19 (citing several studies).

As to the specific crime-reduction benefits attributed to conscientious efforts to improve police relations with neighborhoods, Sherman explains: "Neighborhood watch" groups seem to be almost wholly ineffective, perhaps because cooperation is least likely to be found in high crime areas where distrust is widespread, although community meetings can help mobilize citizen participation in reducing crime. Police visits to citizens' homes are also helpful, at least among non-minority groups, because they facilitate intelligence gathering and otherwise elicit support for police. Providing information to the neighborhood rather than eliciting information from the neighborhood showed no sign of affecting or reducing crime when it was tried in Newark and Houston.[54] Finally, research consistently demonstrates that individuals who believe that the police treated them fairly and respectfully in their previous encounters are more likely to obey the law in the future.[55]

Such specific, fact-based arguments are more persuasive than exclusive reliance on the broader contentions that significant changes in violence *must* be attributable to changed policing simply because there were no parallel changes in social conditions that could explain the drop in violence. In fact, as we have seen, there have been dramatic changes in social and economic factors, from the availability of jobs to an end to the growth of the crack market, which could explain a rapid reduction in violent crime.

Moreover, even small changes in social conditions can result in dramatic differences in crime or other social phenomena when there is a contagion effect.[56] A small increase in the availability of guns, for example, could readily result in a geometric increase in the number of young people feeling they need guns, and these increases could in turn lead to still further geometric increases. We simply cannot assume that big changes in criminal behavior can only be brought about by dramatic changes of some other sort.

C. Changes in Public and Political Attitudes Toward Policing

However strong one may find the evidence that new forms of policing are far more successful in reducing crime of almost every sort, other than the sale of drugs, the case has been strong enough and made persuasively enough to create a very substantial change in expert, official, and public expectations about the crime-reduc-

54. *Id.* at 8-25 - 8-26.

55. *Id.* at 8-26, 8-29 (citing an unpublished study).

56. MALCOLM GLADWELL, THE TIPPING POINT: HOW LITTLE THINGS CAN MAKE A BIG DIFFERENCE (2000).

tion and other functions of policing. One way of illustrating that change is to examine the change in notions about the types of actions for which the police should be held accountable.

South Africa is one of many countries that measures the effectiveness of its police by their capacity to solve reported crimes and the speed with which police respond to calls.[57] South African police claim, unreliably, to have reduced response time to an average of a very few minutes.[58] They are now concentrating on improving what happens next: detective work relying extensively on questioning of witnesses and suspects and on forensics.[59] In this framework, it makes sense that, in late 1999, the South African police would only reluctantly take a report from my friend, a driver whose rear window had been smashed with a brick during an attempted carjacking. Enough time had passed to ensure that the perpetrators had fled, and my friend could not herself provide a useful description of the suspects. There was simply no way to solve such a crime, and, because the police in South Africa are considered accountable for solving all crimes that have been reported, the police were not interested in recording information about the crime.

Law enforcement officials in the United States have learned that most victims do not call police promptly enough to enable them to catch the perpetrator at the scene of the crime and that detective work cannot be relied on to solve the great mass of street crimes.[60] With that awareness, our policing strategies in the last decade have turned heavily towards prevention of crimes, using the help of those in a neighborhood and focusing on general problems rather than individual events.

Faced with a situation like the attempted carjacking in South Africa, a police department with a prevention-focused strategy would

57. *See, e.g.*, COMM'R OF THE S. AFR. POLICE, ANNUAL REPORT OF THE COMMISSIONER OF THE SOUTH AFRICAN POLICE 95 (1993) (employing percentage of crimes solved as the statistical gauge of police success).

58. *See, e.g.*, Averil Millard, *South Africa—Security Industry/CCTV*, NATIONAL TRADE DATA BANK MARKET REPS., Aug. 1, 1999, *available in* LEXIS, Middle East and Africa Stories ("Many South Africans have said that they feel the police are too slow in their response to calls, or they do not respond at all.").

59. *See, e.g.*, Marina Bidoli, *Scorpions' Hi-Tech Sting*, FIN. MAIL (S. Afr.), June 23, 2000, at 43 (reporting on new technology to help police officers streamline their efforts to track down suspects).

60. *E.g.*, WILLIAM SPELMAN & DALE K. BROWN, CALLING THE POLICE: CITIZEN REPORTING OF SERIOUS CRIME, at xxiv (1984) (reporting that, of those crimes in which fast response could make a difference, "only 54 percent . . . were likely to be made in time enough, that is within five minutes, to afford police a reasonable opportunity to make on-scene arrests").

want to record and analyze the information; together with information on recent and similar events at nearby locations, it would suggest a set of ways that the carjacking activity could be stopped. Some of these would be imaginative devices for making arrests and getting convictions, such as sending undercover operatives to the location or using leverage on people arrested for other crimes in that area to gather information. A problem-solving police department would also consider changing traffic patterns, eliminating the stop signs that make it possible to smash the window of a stopped car and immediately reach inside. It might also try to build a community's support for lawfulness, trust in the police, internal coherence, and "social capital"[61] to the point that bystanders in the neighborhood would help deal with the problem.

Problem-solving policing has received a great deal of credit for reduced crime. As this has happened, elected officials and the public have come to hold the police responsible for reducing crime, and particularly violence, by dealing with the problems that create the opportunity or temptation to safely commit crimes that are dangerous and create fear. In terms of accountability, we have come to assume that the work of the police can be measured by the crime rate, not the arrest or conviction rate. Both New York and Boston have met that standard of accountability remarkably.

If the police are indeed coming to be held accountable for reducing crime, there is disagreement with regard to another question: to whom are they accountable? The South African Constitution requires a national police force, accountable to the nation as a whole.[62] In the United States, city police departments are held accountable for the crime figures of cities as large as Boston, Chicago, and New York. But we also believe that they are accountable *to* local communities and *for* developing ways that local communities can impose social control themselves, assist the police, and focus the efforts of police and neighborhoods on issues that concern the neighborhood most. New York attempts to focus responsibility at the level of each of its seventy-five precincts. Chicago tries to devolve responsibility down to the level of a beat officer within a precinct. In short, we are coming to accept the fact that police are accountable to neighborhoods as well as to cities, and responsible

61. *E.g.*, ROBERT D. PUTNAM, BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY (2000) (describing social capital as the collective value of all social networks and the norms of reciprocity that arise from those networks).

62. S. AFR. CONST. ch. 14, § 214.

for providing what the neighborhood wants as well as for assuring reduced danger and fear in the city at large.

II. THE NEW POLICING STRATEGIES

All this is the setting for a more detailed exploration of what is changing in policing, with a particular focus on three major cities at the forefront of change: Chicago, New York, and Boston. Each has developed its own variation of the new strategies of policing. Each has claimed that its variation is best and deserves the most credit either in terms of reduced crime, increased public acceptability of the police, or reduced fear. I will explore each of these strategies and compare their effectiveness with contemporary developments in the United Kingdom.

A. Chicago and New York

Chicago and New York have taken dramatically different directions in policing. It is revealing that both would claim to be operating in the mode of "community policing," a claim that is required for a city is to get funds from the federal government to increase the number of its police.[63] Both cities' models of policing grow out of the same historical rejection of three approaches to policing that had taken on primary importance: random car patrol, rapid response to calls for assistance, and skilled investigation of individual crimes.[64] Both reject what had become the accepted measure of success: arrest rates.

Not everything about the older model of policing is, in fact, wrong. Rapid response is necessary when the danger of violent crime is continuing. Reactive policing and skilled detective work are, in fact, necessary if the same perpetrator is likely to attack the same or related victims again. One of the top priorities of policing is, in the language of Scotland Yard, "preventing repeat victimisation."[65] Some significant measure of success in solving dramatic crimes is important to maintaining social mores, public morale, and confidence in the police and government. Still, conceding all this, the limits of reactive policing, and particularly the failures of ran-

63. 42 U.S.C. § 3796dd (1994).

64. George L. Kelling & Mark H. Moore, *The Evolving Strategy of Policing*, PERSPS. ON POLICING, Nov. 1988, at 1, 7-9 (identifying these approaches as pillars of the "reform era," and explaining the reasons why they fell into disfavor in the 1960s and 1970s).

65. REPORT OF THE COMMISSIONER OF POLICE OF THE METROPOLIS 6 (1998-1999).

dom patrol, rapid response, and detective work to meet expectations required that new strategies be adopted.

I have traveled with the police rapid response team ("flying squad") in Johannesburg as it rushed from emergency call to emergency call, usually in response to reports of burglaries. There, as in the United States, the perpetrator was always gone by the time the few minutes it took the police to arrive was added to the few minutes it took the householder to call after the departure of the burglar. Just as the South African police could not use detective work to solve the attempted carjacking described *supra* in Part I.C., they could not use it to solve these burglaries, or, in fact, many other crimes. Therefore, a different approach to policing is needed.

In the United States, an understanding of the ineffectiveness of traditional modes of policing, which had been established by careful experiments,[66] came to be reflected in experiments in neighborhood-based crime control.[67] These neighborhood-based approaches also addressed the dangers of friction between police and youth in crime-infested areas, dangers that had exploded in riots in the late 1960s. The new movements were conceptualized in 1979 in a seminal article by Professor Herman Goldstein calling for the police to go beyond merely fighting crime and responding to emergency calls for help and assume the responsibility for finding solutions to help prevent and reduce a broad range of problems faced by the community.[68] Communities across the country began experimenting with various applications of problem-solving policing.

In the 1980s, three other scholarly developments encouraged the problem-solving aspect of what was to become the new policing: the development of clear evidence linking disorder to fear of crime, the concept of "situational prevention," and the notion of "hot spots." The first will be discussed *infra* in connection with New York. The concept of situational prevention, which originated in England, is that implementing measures, tailored to particular

66. *E.g.*, GEORGE L. KELLING ET AL., THE KANSAS CITY PREVENTIVE PATROL EXPERIMENT: A SUMMARY REPORT 1-3 (1974) (recounting an empirical study that demonstrated, contrary to conventional wisdom of the period, that changes in police patrol policy had no effect on crime).

67. This sense that traditional modes of policing were ineffective also coincided with the rise of privately funded security. The causal link between the former and the latter is certainly open to question, however, as privately funded security has grown inexorably for many years now. David A. Sklansky, *The Private Police*, 46 UCLA L. REV. 1165, 1175 (1999).

68. Herman Goldstein, *Improving Policing: A Problem-Oriented Approach*, 25 CRIME AND DELINQUENCY 236 (1979).

crimes and locations, that make the commission of the particular crime more difficult, risky, or less rewarding, will discourage the commission of that crime.[69]

The theory of hot spots developed from research and observations indicating that a disproportionate percentage of crime is usually concentrated in small geographical areas, even specific addresses or locations.[70] Identifying hot spots was found to have two benefits. First, identifying hot spots may allow police to apply the concept of situational prevention to increase the stakes for criminal or disorderly behavior in the hot spots, through increasing police presence in a particular area or increasing community efforts to watch an area. Second, identifying hot spots allows policing analysts to use computer technology that can combine the hot spot locations with detailed maps of the surrounding area to attempt identification of location features that may help explain the reason for the high rate of crime.[71]

Beginning in 1988, under the leadership and sponsorship of Professor Mark Moore and then-Attorney General Edwin Meese, a distinguished group of police chiefs, mayors, academics, and others met for five years and further developed the "twin poles of modern policing": (1) encouragement of the participation, at every stage and in almost every way, of the neighborhood being policed; and (2) addressing crime as a problem to be solved prospectively, not as an event to be explained historically by retrospective investigation and, to whatever extent possible, then remedied by trial and punishment.[72]

1. *Chicago*

The Chicago Alternative Policing Strategy ("CAPS") started operating in prototype districts in April 1993. Chicago emphasized the first pole—neighborhood involvement—more completely and enthusiastically than almost any other city. The immediate scholarly background for this neighborhood focus has been the work of

69. Ronald V. Clarke, *Situational Crime Prevention: Its Theoretical Basis and Practical Scope*, *in* 4 CRIME AND JUSTICE: AN ANNUAL REVIEW OF RESEARCH 225 (Michael Tonry & Norval Morris eds., 1983).

70. Lawrence W. Sherman et al., *Hot Spots of Predatory Crime: Routine Activities and the Criminology of Place*, 27 CRIMINOLOGY 1 (1989).

71. WESLEY G. SKOGAN ET AL., ON THE BEAT: POLICE AND COMMUNITY PROBLEM-SOLVING 16-18 (1999).

72. George L. Kelling, *Police and Communities: The Quiet Revolution*, PERSPS. ON POLICING, June 1988, at 1, 8 (describing the Executive Session on Policing and its members and noting a "quiet revolution" in American policing rooted, in part, in community involvement and prospective tactics).

Professor Wesley G. Skogan.[73] The more remote scholarly support is the Chicago criminological tradition of emphasizing the relation of the demographic and sociological conditions of a neighborhood to its rate of crime.[74]

Current studies by Robert J. Sampson and Felton Earls have added greatly to this tradition.[75] The studies show convincingly that the disparity in crime rates within areas of Chicago can be largely accounted for by measurable neighborhood differences, including, prominently, differences in those forms of social capital reflected by constructive involvement in the concerns of neighbors—particularly the willingness to assist in the upbringing of children. The development of social capital can be encouraged by working with neighborhood organizations or helping to develop them. It can be discouraged by allowing fear to force individuals to retreat into their own houses, away from groups and public places.

The form of policing in Chicago relies extensively on the neighborhood to define the focus of police activities as the police attempt to support social control. If the neighbors are most concerned about gangs gathering on the street or noise at night, then these should become police priorities. There is, of course, a risk that the concerns expressed by the neighbors are shaped by assumptions about what the police can and cannot do, including doubts about police capacity to reduce many forms of violence. Still, there is a powerful democratic claim that neighborhood concerns should be respected as well as an instrumentalist argument that respecting them empowers the neighborhood, building social capital and, with that, social control.

This has not been just philosophy. One of CAPS' unique characteristics was the extent to which there was actual, sustained police-community involvement in identifying problems of concern to the

73. *E.g.*, WESLEY G. SKOGAN & MICHAEL G. MAXFIELD, COPING WITH CRIME: INDIVIDUAL AND NEIGHBORHOOD REACTIONS (1981); WESLEY. G. SKOGAN, DISORDER AND DECLINE: CRIME AND THE SPIRAL OF DECAY IN AMERICAN NEIGHBORHOODS (1990).

74. *E.g.*, CLIFFORD R. SHAW & HENRY D. MCKAY, JUVENILE DELINQUENCY IN URBAN AREAS 108 (1942); Robert E. Park, *Human Ecology*, 42 AM. J. SOC. REV. 1 (1937); Ernest Burgess, *The Growth of the City: An Introduction to a Research Project*, *in* THE CITY 47 (Robert E. Park et al. eds., 1925).

75. R. J. Sampson et al., *Neighborhoods and Violent Crime: A Multilevel Study of Collective Efficacy*, SCIENCE, Aug. 15, 1997, at 918-24; R. J. Sampson et al., *Beyond Social Capital: Spatial Dynamics of Collective Efficacy For Children*, 64 AM. SOC. REV. 633 (1999).

community.[76] Community involvement took two forms. The most fundamental form of neighborhood involvement was the formal practice of regular meetings between residents and police officers in every police "beat."[77] The practice of regular neighborhood meetings was taken far more seriously in Chicago than in most cities with community policing, where public meetings were limited mostly to initial, kick-off meetings and occasional, poorly-attended successors.[78]

Beat meetings, designed to identify problems of concern to the particular community and formulate solutions, generally were held once a month in church basements and park buildings.[79] The CAPS program encouraged participation of neighborhood organizations such as block clubs, community organizations, client-serving organizations, churches, and merchants' associations in the monthly beat meetings, as well as participation by individual residents. Research on the CAPS program indicates that different communities do, in fact, have different priorities and concerns.[80] Communities also differed significantly in their willingness to become engaged with the CAPS efforts.[81]

Another way CAPS attempted to use the community to identify problems, define priorities, identify resources and solutions, and evaluate the effectiveness of local CAPS efforts was through establishment of district advisory committees.[82] In addition to meeting with district commanders and staff on a monthly basis, committees were intended to establish subcommittees to help with the identification and evaluation roles of the committees, concentrating on

76. In the CAPS model, a "problem" is understood as a recurring situation or series of related incidents (unlikely to be resolved on their own) that affect a significant portion of the community and can possibly be affected by the resources of the community and the police. SKOGAN ET AL., *supra* note 71, at 35.

77. For CAPS purposes, the city's twenty-five police districts were divided into 279 beats, with nine to fifteen beats per district. In 1990, the average beat included 3600 households, or about 9500 residents. *Id.* at 58.

78. WESLEY G. SKOGAN & ELIZABETH M. HARTNETT, COMMUNITY POLICING, CHICAGO STYLE 113 (1997).

79. *Id.* at 55.

80. SKOGAN ET AL., *supra* note 71, at 30.

> Latinos were distinctly concerned about gangs and poor people about the physical decay of their neighborhoods. Concern about social disorder was highest in the middle of the income distribution—above the neighborhoods that were blighted by drugs and gangs but below the best-off places, which had fewer problems of all kinds to report.

Id.

81. *Id.* at 30-31.

82. *Id.* at 29.

specific needs or areas. In keeping with the flexible, community-tailored focus of the CAPS vision of community policing, the makeup of the committees was not established centrally. Rather, committees were established by district commanders, based on their view of the most appropriate membership for the district. Committee members included those active in neighborhood schools, businesses, churches, and other institutions active in each neighborhood. Procedural guidelines such as those governing selection of officers, term limits, and voting rights, however, were established by the CAPS management team.

There are organizational implications of emphasizing accountability to neighborhoods. The Chicago policing pushes much of the responsibility in the organization down to the beat officer, with an expectation that other department resources and personnel will assist beat officers in their new role.[83] One of the first responsibilities of the "beat team"[84] is to collect beat-specific information, known as a "beat profile," that is compiled as a tool for problem-solving and new officer orientation. A beat profile includes information on community organizations and resources; descriptions of problem areas and abandoned buildings; identification of twenty-four hour businesses, bars, banks, and schools; and other relevant information gathered from specialized units, such as special gang units, with knowledge of the beat.[85]

Another new responsibility shared by a beat team is documenting in a "beat plan" the three or four key problems they will concentrate on in a particular beat. This focuses attention on the issues until they are resolved, as well as the officers' plans for solving the problems.[86] In formulating the beat plans, officers are expected to consider resident input that the officers gather from attendance at beat meetings (another new responsibility). Although the advantages of the beat focus are obvious, one great disadvantage, when compared to the New York system, is that resources at the beat officer's disposal may be too limited to address a crime problem that may be much larger than a single beat.

At the same time, the Chicago approach invites the police to address non-crime problems as well as crime. The beat officer and his

83. TOGETHER WE CAN: A STRATEGIC PLAN FOR REINVENTING THE CHICAGO POLICE DEPARTMENT 17 (1993); SKOGAN ET AL., *supra* note 71, at 59.

84. Beat teams consist of the officers who work in the same beat covering all three, eight-hour shifts. Each team has roughly nine officers. SKOGAN ET AL., *supra* note 71, at 60.

85. *Id.*

86. *Id.* at 41, 47.

superiors focus on problem-solving, including community problems that are not initially the responsibility of the police, but are within the control of the city government. The police officer is akin to an ambassador from the central government of Chicago, able to call on other parts of the government for a variety of services that can improve the quality of life in the neighborhood and build social capital at the same time.[87]

This notion of problem-solving, which is addressed to a wide range of problems of the neighborhood as defined by those living there, contrasts importantly with a strong emphasis on rates of crime. A broader focus would likely have a less dramatic effect on violent crime rates, but more satisfactory effects in terms of community acceptance and, through that, on rates of fear. However, evidence measuring acceptance by the community and the effectiveness of the CAPS program is mixed. Wesley G. Skogan led a research effort to evaluate the CAPS program, focusing on fifteen of the 279 police beats.[88] In terms of implementation of problem-solving, the overall assessment by the evaluation team determined that of the fifteen beats, "four were doing an excellent job, five were fielding reasonable programs, two were struggling to make the grade and four failed to implement much problem solving at all."[89] The reasons for relative success or failure seem inextricably connected to factors such as the personalities, enthusiasm, and leadership capabilities of the officers.

The variations between the attitudes and efforts of the officers in the "worst" and "best" beats, in terms of implementation of problem-solving, are dramatic. The officers and sergeant in the beat that the evaluation labeled as the "best" actively participated in beat team and community meetings; developed, implemented, and followed through with problem-solving strategies; utilized CAPS procedures and city resources; and responded to community priorities. Interestingly, this beat's population ranked last of all the beats in terms of being supportive of the police.[90] In great contrast, the "worst" beat team's sergeant and officers had negative or apathetic perspectives on their capacity to effect change, the role of community beat meetings (seeing them as a forum for complaining about the police), CAPS paperwork requirements, and community policing in general (viewing it as public relations). Participation

87. *See id.* at 36.
88. *Id.* at 30.
89. *Id.* at 191.
90. *Id.* at 192–94.

and attendance at beat team meetings were sparse and unproductive; and the officers and sergeant did not utilize the resources available to them, and utilized CAPS procedures only nominally, if at all.[91] These patterns are consistent with the other "best" and "worst" beats.[92] Other evidence of citizen reactions is discussed after describing New York's new policing strategies.

2. *New York*

Wesley G. Skogan also had played an important role as an intellectual father of one of the three central characteristics of New York's policing. It was his argument in the 1990 book *Disorder and Decline*[93] that gave credibility to a groundbreaking article by James Q. Wilson and George L. Kelling, *The Police and Neighborhood Safety: Broken Windows*, published in the *Atlantic Monthly* almost two decades ago.[94] The central argument of *Broken Windows* was that disorderly conduct on public streets, something which the police certainly can control, can undermine social control by frightening, or otherwise discouraging, responsible citizens from being in public places and, at the same time, can encourage criminals to believe that crime would be safe because "obviously, no one at the scene of disorder cares."[95] The exaggerated perceptions of danger created by disorder were, in themselves, a costly source of fear that disturbed urban living.

As a matter that was secondary in theory but, perhaps, primary in practice, "Broken Windows" policing also justified very large numbers of "frisks" and misdemeanor arrests, which had the twin benefits of making the illegal carrying of guns far more risky and increasing stops of dangerous people who were wanted for other reasons. The case for Broken Windows policing thus relies on *both* the fact that disorder creates fear and fear eliminates social control, inviting activities that may only take place in the absence of social control, *and* the fact that focusing on disorderly offenses allows and invites aggressive street policing.

This model is a form of problem-solving policing, intended to build social control as well as to use the capacities that the police already have to deal with dangerous people. At the same time, it is unlike the Chicago plan in its lack of dependence on any form of

91. *Id.* at 194–95.
92. *See id.* at 195–205.
93. SKOGAN ET AL., *supra* note 71.
94. Wilson & Kelling, *supra* note 50.
95. *Id.*

fact-finding to determine a neighborhood's definition of problems or any major effort to encourage community participation in their solution. The New York style of policing involves far more independent problem-solving by the police than Chicago's policing, although one of its pillars is the belief, deeply embedded in the Broken Windows theory, that disorder is a major concern of most responsible people in any neighborhood.[96]

While the Broken Windows theory that undergirds this strand of New York's strategy has won nearly universal acclaim among scholars,[97] it has not been without detractors. One especially effective critic has been Professor Bernard E. Harcourt. In a 1998 article in the *Michigan Law Review*, Harcourt replicated Skogan's analysis and took issue with many of his conclusions. Specifically, he found that certain types of crimes, including rape, purse snatching, and pickpocketing, are simply not significantly related to levels of disorder.[98] Moreover, most other types of crime were not related at a statistically significant level when poverty, stability, and race were held constant.[99] Harcourt similarly took issue with other empirical evidence cited by proponents of the Broken Windows theory,[100] concluding that the data simply do not support the hypothesis.[101]

A second major strand in New York's policing strategies is the energetic, imaginative use of the full range of police powers and

96. *E.g.*, Randy Kennedy & Alan Feuer, *Watchful vs. Worried; Crime Evokes City's Bad Old Days, But Not Old Fears*, N.Y. TIMES, May 28, 2000, § 1, at 27 (noting that the Broken Windows theory, which posits a close link between crime and low-level civic disorder, has been a "big influence on the style of policing that evolved under [Mayor Rudolph] Giuliani").

97. Bernard E. Harcourt, *Reflecting on the Subject: A Critique of the Social Influence Conception of Deterrence, The Broken Windows Theory, and Order-Maintenance Policing New York Style*, 97 MICH. L. REV. 291, 293 (1998) (stating that "it is today practically impossible to find a single scholarly article that takes issue with the quality-of-life initiative. It stands, in essence, uncontested—even in the legal academy").

98. *Id.* at 327.

99. *Id.* at 327-28 (finding no significant relationship between disorder and both burglary and physical assault). Indeed, robbery was the only crime significantly related to disorder, once poverty, race, and stability were held constant. But, when Harcourt removed a cluster of five Newark neighborhoods from the data, and held poverty, race, and stability constant, he found no relationship between disorder and robbery victimization. *Id.* at 328-29.

100. *Id.* at 329-31 (finding inconclusive a similar study on the relationship between crime and disorder) (citing Robert J. Sampson & Jacqueline Cohen, *Deterrent Effects of the Police on Crime: A Replication and Theoretical Extension*, 22 L. & SOC. REV. 163 (1988)); Harcourt, *supra* note 97, at 331-39 (suggesting a number of factors, as alternatives to the quality of life initiative, that explain the decline in New York City's crime rates).

101. Harcourt, *supra* note 97, at 331.

capacities to deal with crime problems as they arise. Deputy Commissioner Jack Maple described the four crucial steps of an effective police strategy as accurate and timely intelligence, rapid deployment, effective tactics, and relentless follow-up and assessment.[102] A crime problem might be solved by moving more officers into the area, by addressing its causes, by putting pressure on people subject to arrest and conviction to provide evidence, by reducing safe opportunities for crime, or in any of a dozen other ways. The object of this second strand of New York policing is to ensure that every alternative use of every available police capacity is considered in order to promptly address what has been identified as a significant crime problem.

The third notable strand of New York policing is the much admired and, in fact, remarkable system of management by results called Compstat.[103] To ensure the conditions of the second strand—early identification of the problems, careful and imaginative review of tactics involving all police capacities, and very prompt response—requires assisting precinct commanders with ideas and, in the New York strategy, powerfully motivating them with the risk of embarrassment or, worse, loss of the command of a precinct. Both of these objectives are accomplished by requiring each of the seventy-five precinct commanders to appear at a very large meeting of headquarters staff, other precinct commanders, and prosecutors and be prepared to be examined on any adverse change in crime statistics in the precinct and to discuss what is being done about it.[104] The pressure is substantial, and may be unnecessary.[105] Part of New York's message may be simply that the precinct commander should take steps to release and encourage the natural inclinations of the police officers to go after crime aggressively.

Although close cooperation with neighborhood groups and reliance on neighborhood leadership has not been a focus of the new policing in New York, there occasionally have been experiments in these areas. Even at its most responsive to communities, however,

102. Jack Maple, Editorial, *Brutality Isn't Part of New Tactics*, N.Y. TIMES, Sept. 21, 1997, § 13, at 17.

103. David C. Anderson, *Crime Stoppers*, N.Y. TIMES MAG., Feb. 9, 1997, at 47 (describing how each precinct's crime statistics are electronically inputted into the Compstat system each week, allowing senior officials to analyze police and criminal activity throughout the city in a timely fashion).

104. *Id.*

105. Boston's management system examines what is happening and what could be done in a far less confrontational way.

it has never approached the aims or practices of Chicago's CAPS program.

3. *Results in New York and Chicago*

What do we know about the results in New York and Chicago? The experiences in both cases remind us that results on the street may depart from strategies. Sometimes Chicago could not develop neighborhood policing in one beat, although it was successful in an adjacent beat. New York has experienced a number of very dramatic and inflammatory instances of police abuse, which were certainly not planned as part of its strategy,[106] and its efforts at developing creative community relations in the 75th Precinct also seem exceptional and far from integral to its core strategies.[107] Moreover, in each case, the studies evaluating each city's new policing approach were conducted within a very few years of the initiation of the strategy; that may be too soon to know the long-term consequences. But it is important to look at what we know now about two dimensions: effectiveness in reducing crime and the ability of the police to develop trust within the community being policed.

In 1998, two arms of the Department of Justice (the Office of Community-Oriented Policing Services and the Bureau of Justice Statistics) produced a groundbreaking victimization survey of residents of twelve cities, including Chicago and New York.[108] Questions went both to the level of crime, fear, and disorder and to the attitudes of citizens toward the police.

New York had more serious crime problems than Chicago but was making more progress in dealing with them. In 1998, Chicago

106. *E.g.*, Jeffrey Rosen, *Excessive Force*, THE NEW REPUBLIC, Apr. 10, 2000, at 2427 (suggesting that defenders of the zero tolerance policy against crime believe that it has an inevitable side effect of aggressive policing); George L. Kelling, *Policing Under Fire*, WALL ST. J., Mar. 23, 1999, at 22 (suggesting that "root-cause liberals" feel that police perhaps can reduce crime, but only at a cost of abusing citizens); Jack Newfield, *Rudy, It's Time to Listen to This Voice of Reason*, N.Y. POST, Feb. 16, 1999, at 20 (quoting Urban League President Dennis Walcott as saying that "there needs to be a balance between aggressive police work and respect for civil liberties and dignity of the people who get stopped and searched"); Liza Mundy, *Broken Windows*, WASH. POST MAG., June 11, 2000, at 4 (commenting that ordinary citizens are appalled at how aggressive policing led to the shooting deaths of two unarmed black men).

107. Harvey Simon & John Buntin, The East New York Urban Youth Corps and Community Policing: A New Initiative in the "Dead Zone" (1999) (unpublished manuscript written for John F. Kennedy School of Government Case Program); John Buntin, The Community Security Initiative Gets Underway (1998) (unpublished manuscript written for John F. Kennedy School of Government Case Program).

108. COMMUNITY SAFETY, *supra* note 13.

had 68 violent victimizations per 1000 residents twelve-years-old or older; in New York, there were far more, with a rate of 85 per 1000.[109] The black violent victimization rate in Chicago in 1998 was 50 per 1000 citizens for violent crime; in New York it was 123 per 1000.[110] A violent victimization in New York was almost twice as likely to involve a weapon.[111] But during the period 1993-97, homicides in Chicago decreased by about 10%.[112] In New York, homicides declined by more than 60% from 26.5 per 100,000 to 10.5 per 100,000.[113]

In both Chicago and New York in 1998, residents were far more likely to fear crime in their city than in their neighborhood or on their street.[114] Obviously, the likelihood fears are exaggerated increases as firsthand evidence declines. Both in respondents' neighborhoods and in their cities, there was slightly more fear in Chicago than in New York.[115] Moreover, 25% of the respondents in Chicago said they were more frightened than they had been a few years earlier while only 15% in New York were more frightened.[116]

As might be expected with Broken Windows policing, a slightly smaller percentage of the population in New York reported public drinking or drug use, public drug sales, vandalism, graffiti, prostitution, and panhandling in their neighborhood.[117] In Chicago, 36% of the residents said that conditions of disorder or activities of the sort I have just described made them feel less safe.[118] This was true of only 29% in New York.[119]

Meanwhile, 74% of the residents in Chicago reported themselves either very or somewhat fearful of crime in their city.[120] Only a somewhat smaller figure, 68%, reported the same in New York.[121] While most people in both cities felt that their fear had not

109. *Id.* at iv.
110. *Id.* at 3 tbl.1.
111. *Id.* at 5 tbl.5.
112. *Id.* at 9.
113. *Id.*
114. *Id.* at 10.
115. *Id.*
116. *Id.* at 12 tbl.10.
117. *Id.* at 15 tbl.16.
118. *Id.* at 16 tbl.17.
119. *Id.*
120. *Id.* at 18 tbl.20.
121. *Id.*

changed much, there was a somewhat greater percentage of those who felt reduced fear in New York.[122]

Reports on trust-building relations with the police were also revealing, but cut the other way: 67% of residents in Chicago and only 51% of New York residents said the police were doing community policing.[123] Perhaps relatedly, 38% of Chicagoans, compared to 23% of New Yorkers, had heard about a meeting concerning crime in their neighborhood in 1998.[124] Along all the following dimensions, a somewhat higher percentage of those from Chicago, than from New York, had contact with the police: casual conversation, calling the police for service, providing information to the police, reporting a crime to the police, asking for advice from the police, and participating in community activity with the police.[125] A significantly higher percentage of New York residents felt there was an increased police presence in their neighborhood; it just took a different form.[126]

The Chicago police elicited more satisfied reactions from the victims of violent crimes than New York police and a significantly higher percentage of Chicago residents said that the police were doing a lot of work with the neighborhood residents to prevent crime and safety problems.[127] This is far more at the heart of the Chicago strategy than the New York strategy. In Chicago, 73% of city residents were familiar with the term "community policing,"[128] as compared to just 50% of New Yorkers, a revealing fact in itself.[129]

One survey question combined concern about crime and concern about the police. Residents in both cities were very satisfied with local police.[130] Not surprisingly, blacks in both Chicago and New York were less satisfied with the local police than were whites.[131] But despite several notorious incidents of police brutality in New York, blacks there were more satisfied with the local police than were blacks in Chicago, by a margin of 77% to 69%.[132]

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122. *Id.*
123. *Id.* at 28.
124. *Id.* at 22 tbl.26.
125. *Id.* at 23 tbl.20.
126. *Id.* at 24 tbl.31.
127. *Id.* at 24 tbl.32.
128. *Id.*
129. *Id.*
130. BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS 1998, at 110 tbl.2.27 (1999).
131. *Id.*
132. COMMUNITY SAFETY, *supra* note 13, at 25 tbl.34.

B. Boston

Boston was not part of the Department of Justice survey of twelve cities. Its strategies are different from those of both New York and Chicago—different not only in attempting to combine parts of the strategies of each other city, but also in making very different use of problem-solving than New York and a very different use of neighborhood cooperation than Chicago. The rate of homicide reduction in Boston in the 1990s was nearly as dramatic as that in New York.[133]

It is worth reviewing the events that led Boston to embrace the community-policing model. Already widely criticized for overly aggressive street patrols, in the late 1980s the Boston Police Department encountered public outrage when it was revealed that officers, faced with the sudden emergence of crack cocaine, were indiscriminately stopping and searching young black men. The "stop and frisk" scandal came to a head in the fall of 1989, when, based on widespread suspicion that police routinely used unconstitutional searches and seizures, a Dorchester judge suppressed evidence he believed had been obtained improperly.[134]

That same year, Carol Stuart, a pregnant white woman, was murdered near a largely African American part of Boston.[135] Her husband Charles, a witness to the crime, reported that an African American male committed the murder. Based on this account, the Boston Police Department aggressively pursued suspects from the area, eventually eliciting witness statements that incriminated a local black resident. These charges were shown to be false when Charles Stuart was later implicated as the murderer. Stuart killed himself before the investigation could be completed. The widespread reports of police abuse, coupled with the appearance of racism within the department, exacerbated public hostility towards the police, particularly within the African American community.

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133. Fox Butterfield, *Cities Reduce Crime and Conflict Without New York-Style Hardball*, N.Y. TIMES, Mar. 4, 2000, at A1 (noting that, according to Professor Blumstein, New York's homicide rate fell 70.6% from 1991 to 1998, while Boston's rate fell 69.3% during the same period).

134. *E.g.*, Doris Sue Wong, *Search-on-Sight Judged Illegal*, BOSTON GLOBE, Aug. 30, 1989, at B1 (reporting that Suffolk Superior Court Judge Cortland A. Mathers dismissed weapons possession indictments against two suspected gang members, because the evidence seized pursuant to the search-on-sight policy had been illegally obtained).

135. *E.g.*, Michael Rezendes, *Mayor's Reputation as Racial Healer Gets Some Tarnish*, BOSTON GLOBE, Sept. 10, 1991, at 1.

Recognizing that it needed approaches that were more effective and less divisive, the Boston Police Department implemented a variety of problem-solving and community-policing strategies. The most notable problem-solving strategy in Boston is what David Kennedy, of Harvard University's John F. Kennedy School of Government, has called "Pulling Levers."[136] In contrast to Broken Windows, it has not made misdemeanor arrests or stop and frisks a key to reduced homicides by increasing the risks of carrying guns, the most lethal weapon. Pulling Levers is instead based on a form of deterrence that is new and yet grounded in a very old theory.

For some centuries, it has been accepted that certainty and swiftness of punishment are more likely to be effective in changing conduct than longer penalties imposed without certainty or speed. This may be particularly true for youthful, violent offenders who are likely to discount sharply both the chance of getting caught and the costs of future punishment and who may know little about actual punishments. Working with the Boston police, Kennedy found, from a careful review of homicide files, that violence in Boston was heavily concentrated, on both the perpetrator's and the victim's side, in gang members and among those with long arrest records.[137] Kennedy also found, not surprisingly, that the identities of youth with these characteristics were well-known to the police.[138] (In fact, police in many cities believe that the number of dangerous perpetrators is relatively small and that their identities are known.)

The Boston police discovered that youth in the dangerous categories potentially were subject to a large number of sanctions and inconveniences of one sort or another. In Kennedy's words:

> The Boston Gun Project Working Group observed that gangs and gang members left themselves open to an enormous range of sanctions, exactly because they were so highly criminal. Gang members committed large numbers of crimes that were open to ready police enforcement: they sold drugs on the street and they committed large numbers of disorder offenses like drinking and using drugs in public, trespassing, and the like. Gangs and gang members were often the subject of longer-term enforcement attention, such as undercover drug investigations. . . . They were frequently on probation, sometimes on parole, and they routinely violated their conditions of probation and parole, which

136. David M. Kennedy, *Pulling Levers: Chronic Offenders, High-Crime Settings, and a Theory of Prevention*, 31 VAL. U. L. REV. 449 (1997).
137. *Id.* at 452.
138. *Id.*

> could include curfews, area restrictions, restrictions on how many and which people they could associate with, abstinence from alcohol and other drugs, and the like. They were often out on bail awaiting trial or sentencing, with similar conditions which were similarly frequently violated. Juvenile offenders were often under formal Department of Youth Services (DYS) supervision but still living in the community. And gangs and gang members were often implicated in large numbers of "cold" cases such as unsolved assaults and homicides.[139]

Therefore, the threat of swift and certain sanctions could be conveyed in person to the individuals whose conduct had to be changed. Absent evidence of a serious crime, which could be difficult to find, the police otherwise might not be able to prevent all the anti-social or criminal conduct of an individual specifically warned of the amount of attention and the range of sanctions to which he would be subject. But the sanctions proved adequate to prevent any particular type of conduct, for example, violence. Indeed, violence often may be something that young people would like to avoid if it would be possible to do so without losing face. In any event, violent activity was less important and more easily abandoned than profit-making activities, which would be threatened by police attention.

Thus, the overall strategy is clear and persuasive. If, as was true in Boston, an identifiable group of individuals is known or reasonably believed to be responsible for a large percentage of a particular type of crime, and if they are individually subject to a wide range of sanctions, then it should be possible to prevent them from engaging in any type of criminal behavior that is not of central importance to them by making clear, in face-to-face contact, that all available sanctions will be brought to bear if they engage in the prohibited conduct. Violent youth fall within that category, as do the crimes of violence that Boston was determined to stop. The strategy would work so long as the critical neighborhoods—those that were home to the youth subject to highly specific and threatening orders to give up violence—were supportive and did not regard the policing strategy as unfair or discriminatory. Finding that support, which New York had done much less well, was one of the objectives of the other, neighborhood-based, part of Boston's policing strategy.

Crucial to Boston's efforts to develop community support was the police department's partnership with the Ten Point Coalition

139. *Id.* at 461 (citation omitted).

(the "Coalition"), a prominent group of local black clergy, members of which had made a name for themselves by taking their ministries to Boston's most dangerous streets.[140] Despite historically tense relations, the two groups began to work together once they recognized their mutual need: the ministers' attempts to reach at-risk youth were undermined by committed offenders who continued to run the streets, while the police department's plans to implement community-based strategies depended on the participation and acceptance of community members who did not trust them. Much of Boston's success in lowering crime and developing community support arises from the credibility the department developed by virtue of its association with the Coalition. This credibility has endured in large part because the Coalition, while cooperative, has remained a distinct entity not afraid to criticize police action.[141] As a community watchdog, the Coalition has helped keep the police accountable and deterred abuses akin to those that have plagued New York in recent years.

The community-based activities, which are an integral part of Boston's strategy, can be illustrated by practices in the Dorchester neighborhood, a policing precinct of which the Boston police are particularly proud. They take two forms: (1) modes of serious and continuous consultation with citizens; and (2) demonstrations of concern for the well-being of young people getting in trouble, instead of just recrimination.

Serious consultation began with citywide strategic planning with local priorities to be set by teams in each police district that were led by the district commander, but the membership of which was divided between police and concerned, involved citizens. Real power was devolved from headquarters so that the district commander could work in close association with citizen stakeholders. In the Dorchester district, for example, Captain Robert Dunford gives his neighborhood advisory council significant influence, even over budget allocations and patrol plans.[142] Within each district,

140. *E.g.*, Charles A. Radin & Jamal E. Watson, *Activists Revisit Gang Strategy: Some See Complacency As Youth Violence Increases In Boston*, BOSTON GLOBE, Sep. 5, 2000, at A1.

141. *E.g.*, Judy Rakowsky, *Black Leaders Assail Martin, Urge Tougher Hate-Crimes Efforts; DA Defends Office's Record, Rebuts Report*, BOSTON GLOBE, June 14, 2000, at B3 (explaining that Coalition member Rev. Eugene Rivers criticized police for a 1997 change of policy in classifying hate crimes).

142. The two paragraphs that follow draw on Evan S. Reynolds, Neighborhood Policing in Boston: A Dorchester Case Study 9-13, 23-36 (Apr. 30, 1999) (unpublished manuscript, on file with author).

"team leaders" are assigned specific responsibility for the unique problems of a particular beat.

The neighborhood orientation in Dorchester is maintained on a daily basis by four community service officers, each of whom is assigned to interact with neighborhood groups in a particular beat—explaining, learning, relaying concerns, and recruiting participation in a shared "Project Safeguard" to provide neighborhood safety. Finally, even prosecution is made subject to community influence in still another program, the Dorchester Safe Neighborhood Initiative, which is counseled in part by an advisory board consisting of local residents as well as police and prosecutors.

The second strand of Boston's strategy is a demonstrated concern for the well-being of youth already getting into trouble. What the Boston police avoid is a sense that they are the dangerous enemies of all but the well-behaved among youth in struggling neighborhoods. Adopting the mixed concerns of relatives of youth who form much of the community, the police are determined to make the life of salvageable youth better, not harder. Thus, Commissioner Paul Evans uses a federal block grant to pay for clinical social workers, who are attached to police districts such as Dorchester, to advise, support, and introduce to useful programs those youth who have been referred to them by police.[143] They maintain confidentiality and appear in court for the youth where this seems appropriate to the case. Districts like Dorchester also have juvenile justice "roundtables" that involve the police, district attorney, schools, social services, and others in regular discussions of what is happening in the lives of certain troubled youth in an effort to find help for them and to coordinate governmental responses.[144]

The Boston strategy had organizational implications. While some New York precinct commanders found Compstat meetings harsh and threatening, Commissioner Evans expected district commanders in Boston to carry out *their* plans in highly decentralized ways, and that was communicated through meetings that were less confrontational than those in New York.[145] His role was to decide whether to approve a plan and then support and monitor it.

143. *Id.* at 14-15.

144. *Id.* at 20-23.

145. *Id.* at 3 (reporting that Commissioner Evans pursued decentralization as an avenue toward accountability).

In sum, by taking a hard line against those individuals who commit most crime, and working in tandem with critical neighborhoods, Boston was able to achieve dramatic crime reductions.

C. England and Wales

One final strategy, distinct but related to those I have described, deserves attention as well, for it combines central elements of all three strategies discussed thus far. Like Chicago's strategy, the crime legislation introduced by British Prime Minister Tony Blair's Labour Party relies powerfully on the wishes of neighborhood residents and depends upon them to initiate action.[146] Like New York, Britian focuses attention on disorderly and fear-generating actions that are threatening to individuals; but instead of using statutes that broadly prohibit a type of conduct (such as drinking alcoholic beverages on the street), Britain has turned to far more specific requirements that are addressed only to certain named individuals.[147] Like Boston's strategy, the new provisions specifically target troublesome individuals who are not subject to present prosecution because of lack of evidence of an immediate crime.[148] But the British prohibitions include efforts to deter behavior far less serious than the lethal violence that was the target of Boston's strategy.[149]

England and Wales' Crime and Disorder Act of 1998[150] creates something called an "anti-social behavior order." Either the police or the local government can apply for such an order from a magistrate's court. The defendant does not have to be present at the proceedings, which are civil rather than criminal and operate under a preponderance of the evidence rule. If the defendant is found to have acted "in a manner that caused, or was likely to cause harassment, or alarm, or distress to one or more persons not of the same household as himself" and if the defendant cannot establish that his or her behavior was reasonable in the circumstances, a court order to protect the people in the local government area for a mini-

146. Andrew Rutherford, *An Elephant on the Doorstep: Criminal Policy Without Crime in New Labour's Britian*, *in* CRIMINAL POLICY IN TRANSITION 36, 64 (P. Green & A. Rutherford eds., forthcoming 2000).

147. *Id.* at 37.

148. *Id.* at 66-67.

149. *E.g.*, Russell Jenkins, *Peeping Tom Jailed Under New Law*, TIMES (London), June 23, 2000, at 7 (describing a mandatory jail sentence for subsequent crimes committed by sex offenders, who are required by the Crime and Disorder Act to register with law enforcement).

150. Crime and Disorder Act 1998, Royal Assent 27 (1999).

mum of two years (with no maximum) is to be issued, prohibiting the individual from doing anything or being anywhere described in the order. Violating the order without a reasonable excuse is an indictable offense, which carries as much as a five-year prison term.

There is no requirement that the defendant have intended to harass or to cause alarm and distress. Nor is there any requirement that the alarm or distress be "serious." Moreover, the activities giving rise to the order are intended to be broader than the acts prohibited by the criminal law. In effect, a magistrate's court can deal with people it determines to be engaged in frightening behavior by developing an injunctive law of its own, a violation of which is punishable criminally. The primary explanation for bypassing general requirements of the criminal law in this way is that there are courses of conduct that involve an accumulation of events, none of which is itself criminal but which together warrant severe measures.[151] The resulting deterrence is even more specific and focused than Boston's Pulling Levers.

III. The Problem of Legitimacy

How could anyone complain about such imaginative and apparently successful policing as has taken place, for example, in New York? The answer is that, in exchange for quite remarkable improvements in personal security, we are accepting reductions in democratic control and thus the legitimacy of the purposes for which the powers of the police can be used. We are endorsing significant reductions in control over the discretion of the police in choosing specific targets. We are moving toward a regime of policing where the notions of equal protection have limited force on the ground. We also increasingly are finding that probable cause and reasonable suspicion as predicates for detention and search are being eroded, and that the very determination of what conduct will be permitted and what form of disorder is subject to prompt sanctions is left in far larger part to the police. Therefore, this evaluation must count the costs as well as the considerable benefits of the new policing.

A. The Problem of the Democratic Legitimacy of the Goals for which Police Powers are Used

In describing the successes of the new policing, I have implicitly assumed that its goal was to reduce serious crime on a citywide

151. Rutherford, *supra* note 146, at 63.

basis. It is time to examine whether this is, in fact, accepted as the goal of the new policing and, if not, what is? Indeed, a prior question remains unanswered: who is to set the goals?

1. *The Inevitability of Discretion*

To be clear at the start, the police have many responsibilities beyond reducing crime. They prevent fights, regulate demonstrations, enforce traffic regulations, engage in rescue or other assistance, and much more. I have focused on the crime reduction benefits of the new policing and the neighborhood trust that it can induce because these have been the major subjects of attention in bringing about the changes that have occurred since 1990, not because they are the only significant functions of a modern, urban police department. Second, unavoidably there are critical choices to be made as to goals, even in the more limited area of dealing with the effects of crime on continuing danger, public fear, social control in neighborhoods, and public resentment of disorder.

Governments of civil law countries from Argentina to France and Germany sometimes act as if there is not a serious question as to the purposes for which police powers like those described above can be used, contending that the police officer is obligated to arrest *whenever* he sees a crime and then to take investigative steps at the order of a judge whom the officer, carrying out another legal obligation, must notify immediately of the crime and the suspect.[152] Thus, in 1999, Klaus Hubmann, the senior public prosecutor in Nuremberg, Germany, explained that he had no choice but to investigate a failed attempt fifty-three years earlier by two Jewish survivors of the Holocaust to poison members of Adolf Hitler's SS.[153] Hubmann explained that political or moral aspects could play no part in the decision. Civil law countries deny that their police have the discretion, so readily accepted in the United States, not only to decline to arrest in very sympathetic situations but also to develop imaginative uses of police powers for such purposes as reducing disorder, preventing violence, building social control, and

152. *E.g.*, Richard S. Frase & Thomas Weigend, *German Criminal Justice as a Guide to American Law Reform: Similar Problems, Better Solutions?*, 18 B.C. INT'L & COMP. L. REV. 317, 337 n.135 (1995) (noting that "German police have no legal discretion to drop or to refrain from investigating arguably criminal cases").

153. Louise Potterton, *Germany Pursues Holocaust Avengers,* SUN. TELEGRAPH (London), Oct. 10, 1999, at 7.

carrying out whatever are the wishes of members of a community.[154]

This denial of discretion is surely a fiction in almost every country in the world. The police officer is forced to decide on what occasions he or she should use these powers for two major reasons. First, in *every* country, what crimes an officer will be in a position to act upon depend upon where the officer is and what he or she is looking for, and this involves discretion. Second, if the officer comes upon a minor matter that is criminal, he has to decide whether it is worth his time, and the time of prosecutors and judicial officials, to process the matter. In the United States, we are very frank about such uses of judgment or discretion by individual police officers or, sometimes, by the police department in the form of directives to officers.

In short, it is wholly implausible to assume that the goal in the United States is to enforce all the criminal statutes enacted by state and federal legislatures. The larger part of violations of the law by 270 million Americans must be ignored by the fewer than one million police, who do not have time to investigate matters they consider unimportant.[155] Moreover, these officers know that prosecutors and judges will lack the capacity to try cases if all the small matters are brought to court, and that juries are likely to reject as excessive the use of the criminal law in those cases. We have come to assume that even statutes recently passed by a concerned legislature will be applied with discretion as to their use.[156]

2. *Traditional Understandings and New Choices*

It is how this discretion is used—not any novelty or recognition of the need for it—that has taken new shape as policing has

154. *E.g.*, Richard S. Frase, *Comparative Criminal Justice as a Guide to American Law Reform: How Do the French Do It, How Can We Find Out, and Why Should We Care?*, 78 CAL. L. REV. 542, 555-57 (1990) (noting that France requires "supervisory-level approval" for certain creative uses of police power "which American law generally permits *any* police officer to undertake on his or her own").

155. *Cf.* U.S. CENSUS BUREAU, *Population Clocks*, http://www.census.gov/population/www (providing the population of the United States as 276,351,651) (current through Dec. 19, 2000); U.S. CENSUS BUREAU, SURVEY OF PUBLIC EMPLOYMENT AND PAYROLL 1999, U.S. SUMMARY TABLE (providing the total number of police in the United States), http://www.census.gov/govs/www/apesst/99.html.

156. *E.g.*, Task Force on Federalization of Criminal Law, *The Federalization of Criminal Law*, 11 FED. SENTENCING REP. 194, 194 (Jan./Feb. 1999) ("[The Task Force] looked systematically at whether new federal criminal laws, which were popular when enacted, are being enforced. It determined, based on obvious data, that in many instances they are not.").

changed. Until a few decades ago, it was understood that police discretion—use of limited police resources—would be rationed by the seriousness of the conduct that was being investigated. This seriousness was in turn dictated by the people's representatives in the legislature, who used sentencing levels to express their relative disapproval of criminal conduct. The assumption, in other words, was that there was a direct correlation between the sentence imposed and the citizenry's view (as expressed through its elected representatives) of the relative seriousness of the conduct. As long as police relied upon sentences as guidelines to seriousness—and, for the most part, they did—there was a strong democratic component to their enforcement decisions. Thus, police ignored minor, regulatory offenses or left them underpoliced and, therefore, underdetected. The measures of police performance we developed, focusing on FBI statistics as to a few serious crimes, also reflected that judgment. In recent decades, the focus has come to include, besides punishing individual crimes, incapacitating dangerous criminal groups ranging from organized crime to terrorists to street gangs. But what qualified a group for attention was still the seriousness of the conduct in which it engaged: political violence, organized street violence, corruption of officials, intimidation, and extortion.

Both traditional assumptions about the goals or ends of policing and assumptions about how the available means or powers will be used to accomplish whatever goals are chosen have been brought into question by the new policing. Leaving changes in assumptions about means until later, we should focus first on the question of legitimacy of goals.

Consider the issues presented by problem-solving policing. What problems should be given priority? The menu of possible "problems" of street crime the police might decide to address includes:

1. Forms of particularly harmful violence such as homicides, rape, or regular intimidation by organized crime, gangs, or individuals;
2. All violence;
3. Activities that create fear in many people or otherwise discourage social control, such as the disorder coming from open-air drug markets;
4. All forms of drug trafficking; or
5. The security of property against even non-violent theft.

Moreover, these and perhaps other categories of crime are more or less important, depending on the place, time, and victims of the crime. So, the choice is among at least five categories of crime with at least three variations of each. In fact, after some discussion, one might well want to increase the number of choices to well beyond these fifteen variations.

3. *Whose Views Should Priorities Reflect?*

With these reasonable contenders for priority in policing, a critical question becomes: whose views of the importance of each category should control? Again, there are a number of alternatives. Whatever category the police leadership considers most important might be critical. To set limits on acceptable goals, we might want to forbid decisions that seem intended to favor or disfavor the interests of an identifiable group or class, such as failing to investigate powerful political figures or concentrating police effort in wealthy neighborhoods and failing to provide adequate policing in poor neighborhoods, or—a contentious issue—projecting the views of the police, without any popular basis for the choice, as to such issues as fear of crime or what suppressing disorder requires.

A second alternative is the prioritization of categories of crime according to whatever the police think that the majority of the citizens of the city want addressed, regardless of the views of the people in the immediate neighborhood where the problem exists and the policing is to occur. A closely related alternative is that priority should go to whatever problems the mayor wants addressed, for he or she is the duly elected supervisor of the police.

Another alternative is to give priority to whatever problems the police believe the people *in the particular neighborhood* want addressed. This could be defined in several different ways: "the respectable leadership of the neighborhood" (where the definition of respectable may amount to police selection of acceptable behavior); those in the neighborhood who volunteer to work with the police; or the majority of residents of the neighborhood, although there is generally no available process for determining majority views in a neighborhood.

Some of these ways of setting priorities are more democratic than others, either in the effort by the police to decide whose concerns are to be valued or in the making of the actual choice by one or another of different groups. But even in the more democratic methods, deep problems lurk. For example, the police may not be

very good at determining the views of the majority of the public, however we define the relevant public.

As always, the size of the constituency also matters. We know from surveys that people generally believe their own neighborhoods to be far safer than they believe the entire city to be.[157] The people outside a neighborhood area are thus more likely to be influenced by fear, even if exaggerated, and by the immense effect of rare but dramatic crimes as described by the media. Neighborhood majorities are likely to have different attitudes than majorities of a far larger, citywide jurisdiction.

Even if the decision is made to focus on the views of local communities that are smaller than entire cities, the result is likely to depend on how one defines a neighborhood. But the hardest problem is deciding whose views matter. The fact is that different groups want different things. The young and the old are likely to have different attitudes toward disorder. Minorities in a city are likely to have different attitudes than majorities. Most dramatically, the problem can be illustrated by the question: what value should be given to the concerns of rebellious minority youth in an urban slum? Some have treated this group as entitled to concern; others have regarded this group as the object, not the beneficiary, of policing.

In sum, problem-solving policing, whether or not it takes its goals from those living in a particular neighborhood, requires choice among a variety of goals. Even assuming that the objective is to choose goals democratically, so that the police are acting in the name of those affected by their policing, there is no agreed-upon definition of whose concerns are to be valued, how they are to be determined, and what is to be done when those affected have inconsistent concerns.

It may not be possible to resolve these questions persuasively in terms of some political philosophy. But it is certainly dangerous, in terms of democratic values, to leave these questions unaddressed. That is a dangerous characteristic of the new policing.

B. The Risk of Misuse of Police Powers

For many people, the police represent not only protection against the predatory conduct of one's neighbor, but also a source of fear themselves. The fear may be of brutality by the only legitimate armed force in the community or of the embarrassment of

157. COMMUNITY SAFETY, *supra* note 13, at 18, 25.

being treated, particularly in public, without dignity or respect by members of an organization that represents the authority and the power of the state. Or the fear may be of intrusiveness into areas of privacy that one prefers to reserve for oneself and intimates. Because of these fears, we have come to expect more from the police than effectiveness in pursuing even carefully chosen goals.

We expect, *first*, a concern about maintaining a healthy relationship between the citizen and the authority and power of the state; in other words, a respect for the liberty and privacy of individuals. *Second*, we demand an absence of bias in the use of the powers I have described, for assertions of police authority and force that are systematically biased against a racial, religious, or ethnic group convey a powerful message of second-class citizenship. Bias against political opponents of the police or their political supervisors is also a terrible threat to a vital democracy. We expect, *third* and most broadly, to be accorded the respect that a citizen deserves in a citizen-ruled democracy—respect displayed in the way individuals are addressed and handled, particularly in front of others. To protect all these expectations, we depend on the visibility and reviewability of significant decisions by police officers.

In some conflict with these three expectations, the new policing, in many of its manifestations, involves tactics and strategies which are likely to: increase the power of the state at the expense of the capacity of citizens to avoid or resist that power; invite the use of discretion in ways that are more likely to reveal bias than the older forms of policing; and increase the likelihood of particular groups of people being subjected to embarrassment, and treated without respect on the streets. At the same time, the new forms of policing almost are designed to be carried out beneath the radar of visibility on which accountability depends. Thus, there is a price to be paid for the great potential of the new forms of policing, but the price can be reduced by carefully addressing issues of accountability.

1. *Citizen and State: Civil Liberties*

Consider the effect of the new policing on the efforts of the last half-century to control the relationship of the state to the individual and, in particular, of a police officer to a citizen. The specific fears during that period focused on police abuse of the powers to search, arrest, and interrogate. In the 1960s, the United States Supreme Court insisted that all of these powers, even when exercised by local police officers, must satisfy specific conditions—probable cause or reasonable suspicion and the *Miranda* rules—or else any

evidence flowing from the action would be excluded from trial.[158] The assumption was that there would be little incentive to violate the Court's rules if the information could not be used at trial. A somewhat more lenient standard was sufficient to justify a stop or frisk of an individual (reasonable and articulable suspicion),[159] and a somewhat stricter standard was applicable to electronic surveillance.[160]

Because these standards required the police to show that, before acting, they had evidence of a crime (and since the focus of policing was on very serious crimes), there has been practically no use of the Equal Protection Clause to guarantee that minorities are not treated differently; after all, citizens could not be subject to these police powers at all unless there was an adequate basis to believe they had committed what was generally a serious crime. And there was a final protection of which we were very proud: the police could not arrest or search at all if the basis for that activity—the definition of the criminal conduct of which the police needed evidence—was so general and encompassing in its coverage or so vague in what it forbade that it left the police officer with the widest discretion in deciding whose conduct and what conduct should be made the basis of arrest and, perhaps, trial.[161]

It is true and important that these efforts to limit the powers of the police and regulate the relations between citizen and state in a way that respects the primacy of the citizen were based on two suppositions that were, at least, shaky. The first was that police conduct on the street would largely be motivated by the desire to gather evidence for trial, and thus could be regulated by excluding evidence obtained in violation of the restrictions on police behav-

158. Mapp v. Ohio, 367 U.S. 643, 655 (1961). The later Burger and Rehnquist Courts hedged the exclusionary rules crafted by the Warren Court in the 1960s. For example, evidence seized in violation of the Fourth Amendment or the *Miranda* rules can be introduced at trial to impeach a defendant's testimony. *E.g.*, United States v. Havens, 446 U.S. 620 (1980) (permitting impeachment with evidence seized in violation of the Fourth Amendment); Harris v. New York, 401 U.S. 222 (1971) (permitting impeachment with a confession obtained in violation of *Miranda*). Such evidence is also admissible in proceedings outside the context of the criminal trial. *E.g.*, United States v. Calandra, 414 U.S. 338 (1974) (grand jury proceedings); United States v. Janis, 428 U.S. 433 (1976) (civil tax proceedings). The Court has reasoned that the rule of exclusion is grounded in a policy of deterrence, which is satisfied by the exclusion in the prosecution's case-in-chief, and should not be applied where principles of deterrence will not be furthered. *E.g.*, United States v. Ceccolini, 435 U.S. 268, 279-80 (1978); United States v. Leon, 468 U.S. 897, 906 (1984).

159. United States v. Sokolow, 490 U.S. 1, 6 (1989).

160. Katz v. United States, 389 U.S. 347, 354-59 (1967).

161. Papachristou v. City of Jacksonville, 405 U.S. 156, 162 (1972).

ior. Second, and equally important, the rules did not provide protection against, or regulate in any significant way, some very powerful investigative techniques: informants; grand jury powers to compel testimony prior to trial; offers by police to engage in illegal transactions in order to develop evidence; various types of physical surveillance; a variety of techniques for eliciting "consent" to a form of detention or search; threats to prosecute an individual who has committed a crime in order to get evidence; and, perhaps most dramatically, the constitutional power to arrest some individuals, and not others, for minor offenses in order to take advantage of the power to search, within a limited area, in connection with an arrest.[162] Seeking greater freedom of action, a police officer or department could emphasize these unregulated powers. Even the regulated powers could be violated without much fear of consequences if the purpose was not to suppress evidence.

The new policing is intended, in many instances, to greatly increase the effectiveness of these unregulated powers and to find ways to avoid judicial enforcement by the exclusionary rule of even such regulated powers as stop and frisk. Findings by the attorney general of the State of New York suggest that there has not been an adequate effort by the New York police to restrict frisks or stops to the situations where the Constitution permits them.[163] The result of many tens of thousands of such stops has undoubtedly been a sizeable reduction in the carrying of guns and thereby of homicides, but there is a price for abandoning this part of the system of accountability for detentions and searches. A rapid increase in misdemeanor arrests or the use of a variety of other formal or informal sanctions in situations where the average citizen would not be subjected to that police power recreates the very capacity to target specific individuals, gangs and other groups—particularly minority youth—that the Supreme Court had tried to forbid by outlawing the use of vague statutes.

In a number of situations in a number of cities, a major component of the new policing strategy is to rely more and more on that set of police powers that are substantially unregulated by law and to take advantage of the inability of courts to hold the police accountable by recourse to the exclusion of evidence—all in order to

162. United States v. Robinson, 414 U.S. 218, 226 (1973).

163. CIVIL RIGHTS BUREAU, OFFICE OF THE ATTORNEY GEN. OF THE STATE OF N.Y., THE NEW YORK CITY POLICE DEPARTMENT'S "STOP & FRISK" PRACTICES: A REPORT TO THE PEOPLE OF THE STATE OF NEW YORK FROM THE OFFICE OF THE ATTORNEY GENERAL, 69–72, 160–74 (Dec. 1, 1999) [hereinafter OAG REPORT].

focus unreviewable police discretion on those forms of conduct and those individuals that the police somehow determine are most dangerous. This conscious use of the weaknesses in the control system built up since 1950 has had dramatic and beneficial results in handling crime, but not without significant risks of changing the relationship of the citizen to the state, and of the police to individuals on the street. It may well be that most people in most neighborhoods regard the tradeoff as highly favorable to the new policing.[164] It is nonetheless dangerous to democratic values.

2. *Equal Protection: Civil Rights*

There has been only extremely rare use of the Equal Protection Clause to regulate police conduct, on the theory that important intrusions such as arrest and search are adequately regulated by the requirements of probable cause and that minor intrusions, which have not been regulated by the Constitution or statute, hardly deserve special attention. But the second part of this judgment has proven to be inadequate in a number of ways. Stopping more blacks and Hispanics than non-Hispanic whites either without the justification of reasonable suspicion or with the justification of having observed a violation of the law—albeit one that is generally ignored in the case of others—may have relatively minor immediate effects on an individual, but immense importance in what it says about the place of black or Hispanic Americans in society and in terms of the felt reality of the promise of equal protection of the laws that they have been given by the U.S. Constitution. Moreover, it may be the embarrassment and resentment of being singled out as a suspect, far more than the intrusion on one's privacy, that needs protection, as Chief Justice Earl Warren recognized in writing the opinion in *Terry v. Ohio* sustaining stop and frisk.[165] Finally, what may be a minor intrusion, if it occurs on a single occasion, may be a major problem if it occurs regularly enough to fuel the fears and affect the conduct of members of a suspect class (for example, minority youth in a high-crime area).

Beyond the costs of these largely unreviewable uses of powers against those the police believe, often correctly, to be more likely to be engaged in a particular type of crime, there is the problem of spillover to clear violations of the rules with respect to arrest, search, or interrogation. The brutality and excessive force dis-

164. Tracey L. Meares & Dan M. Kahan, *Laws and (Norms of) Order in the Inner City*, 32 L. & SOC'Y REV. 805, 830 (1998).

165. Terry v. Ohio, 392 U.S. 1, 15, 24-26 (1968).

played in the Abner Louima and Amadou Diallo cases in New York City bolster African Americans' sense of insecurity, as well as their reluctance to enjoy the basic civil liberties accorded to all citizens.[166]

To the extent that the new policing encourages the police to focus investigative attention on the earliest signs of criminal behavior or even on disorder alone, it invites using even weak evidence as a basis for finding reasonable suspicion and for the invocation of powers that do not ordinarily require any justification or form of accountability. Thus, a review by New York State Attorney General Eliot Spitzer of 175,000 forms detailing stop and frisk activity in New York City showed that even police records reflect about nine stops of blacks and Hispanics and eight stops of whites for each resulting arrest.[167] In its focus on problem-solving, the new policing also emphasizes the steps that can be taken against an individual without *any* individualized basis in fact. A common example is stopping a driver and searching his or her car for drugs under the pretext of concern that the car's taillight is not working or that its speed is excessive and that the car is thus being operated in violation of a local ordinance. Such forms of policing allow and encourage the use of guesses and probabilities that are far less dependent on evidence, compared to what has traditionally been required for a stop, an arrest, or a search to gather information.

Weaker requirements of justification for police action almost invariably invite more bias. The Spitzer study showed that "even when crime is accounted for statistically, minorities still were being 'stopped' at a higher rate than whites;" blacks were 23% more likely and Hispanics 39% more likely than white non-Hispanics to be stopped by police.[168] Generalizations about the greater likelihood that a particular group will be involved in a particular criminal activity, such as dealing crack cocaine, are now more likely to be made the basis for substantial disparities in treatment than they were before strategic emphasis was put on the unregulated areas of police conduct.[169] Then, even if members of a hypothetical group

166. *See* Joseph P. Fried & Blaine Harden, *The Louima Case: The Overview—Officer is Guilty in Torture of Louima*, N.Y. TIMES, June 9, 1999, at A1; *see also* Jane Fritsch, *The Diallo Verdict: The Overview—4 Officers in Diallo Shooting Are Acquitted of All Charges*, N.Y. TIMES, Feb. 26, 2000, at A1.

167. OAG REPORT, *supra* note 163, at 111.

168. *Id.* at 119, 123.

169. *E.g.*, Dan Weikel, *War on Crack Targets Minorities Over Whites*, L.A. TIMES, May 21, 1995, at A1 (reporting that evidence in southern California and throughout the U.S. indicates that the vast majority of crack offenders prosecuted in federal court

X were more likely than others to be selling crack cocaine, the likelihood of any particular member of X being engaged in that conduct is generally so small that it could not satisfy probable cause or reasonable suspicion standards.

Questioning someone (for example, a Hispanic youth) on a corner in a way that suggests he is not free to leave, which the Supreme Court has allowed,[170] or searching a car, or making a street stop of a pedestrian are all likely to be based, to some extent, on the racial or ethnic characteristics that the police believe more frequently accompany crimes of concern.[171] A focus on types of dangerous or criminal behavior, rather than on the behavior of specific individuals, invites these generalizations. It is also at the heart of much of the new policing. It is in this context that we should understand the debate about racial profiling.

3. *Respect and Civility*

Sara Stoutland argues, on the basis of an ethnographic study of the reactions of youth and their older family members in Boston, that neighborhoods subjected to the new policing in Boston are pleased with the safety it has provided but concerned about the absence of respect shown to the citizens it confronts.[172] One also can detect this disparity in the review of attitudes towards policing in New York and Chicago.

This issue is related to, but different from, concerns about equal protection and legally defined civil liberties. An absence of respect may be the source of much of the offense given by a failure to treat certain stigmatized groups of citizens equally with other groups; but the issue of respect is broader and is applicable to police interactions with any group of citizens. The difference in treatment between groups may be attributable to differences in political clout, as the influence of one group may elicit respectful handling by the police while the absence of such influence may invite less respectful relations for the other. Ethnic or racial bias may not be the

are non-white people), *cited by* Symposium, *Is Our Drug Policy Effective? Are There Alternatives?*, 28 FORDHAM URB. L.J. 3, 79-83 (2000) (discussing the disproportionate impact on African Americans and Hispanics of the disparity in length of prison terms imposed for crack cocaine offenses versus those imposed for powder cocaine offenses for like amounts of those drugs).

170. *E.g.*, Florida v. Bostick, 501 U.S. 429 (1991); Florida v. Royer, 460 U.S. 491 (1983); United States v. Mendenhall, 446 U.S. 544 (1980).

171. United States v. Weaver, 966 F.2d 391, 394 (8th Cir. 1992).

172. Sara Stoutland, Trust, Legitimacy, and Efforts to Reduce Youth Violent Crime: Community Perspectives from Boston 26 (March 1, 2000) (unpublished manuscript, on file with author).

issue. An absence of respect also often reflects a sense that the individual is without rights against the state. But here, too, there is a difference. An officer making a stop and then frisking a citizen on a crowded street may be acting well within the parameters of reasonable suspicion that the law imposes, yet the way the stop is made may convey humiliating contempt for the suspect.

It is becoming very clear that the cause of much violence by youth against other youth is a sense of being treated without respect. The resulting attack is a distorted form of insistence on being treated with dignity and as an important person. Distinguished police commissioners, such as Commissioner Evans in Boston, contend that even forcible encounters like a stop or arrest can, in most cases, be handled in a way that reflects respect for the suspect.[173] Police officers in the housing projects of Chicago report that they can make arrests without danger to themselves or others if they treat the suspect with respect.[174] All these beliefs are practical reasons, from the point of view of law enforcement, for insisting on at least the appearance of a respectful attitude toward those who are confronted with real or apparent powers of the police.

The issue is at least equally important from the point of view of many law-abiding residents in a neighborhood for whom a continuing question is whether the police are there to support them or to protect people in other areas from them or their children. Citizens who feel themselves and their children the object of policing intended to protect others and who feel that the steps taken reflect a lack of respect for them as citizens and individuals are made to feel like second-class citizens, used rather than valued. They are also taught to fear the police rather than to value their services, an attitude that creates sympathy for youth in revolt and frustration for their elders who need protection but insist on respect.

Some significant forms of the new policing involve dealing with individuals through implicit coercion. In New York, signaling that it is the police who control the streets by zero tolerance policing, claiming to decide what is acceptable conduct and what is disorderly behavior, and gathering information by "leaning on" those who are vulnerable to revocation of parole or probation—all these

173. *First Safety, Then Civility: Boston and New York*, ECONOMIST, May 1, 1999, at 25 (citing Commissioner Evans' statement that many of the problems associated with the stop and search of suspects disappear when "there is mutual respect" and "the police explain why the search is being done").

174. *E.g.*, Jerry Lawrence, *Officers' Class Focused on Race Relations*, CHI. TRIB., June 19, 2000, at 1 (describing a seminar offered by a former police officer on the need to treat citizens, especially racial and ethnic minorities, with respect).

may be extremely useful steps in creating security but extremely costly in denying respect. In Boston, the gathering of information by relatively coercive questioning on the streets, accompanied by conveying some notion of the power of computerized retrieval of such information, can have the same beneficial and harmful effects.

All these activities are designed to take place beneath the radar of judicial review, another consequence that Chief Justice Warren anticipated when reviewing powers to stop and frisk. The effects on the citizens in the neighborhood and on their attitudes towards the police are captured in the statistical assessments of policing in Chicago and New York.[175]

4. *The Task of the Future: Maintaining the Security Advantages of the New Policing while Reducing its Risks to Civil Liberties*

There is every reason to believe that the great majority of people in almost every city and the clear majority of those in the neighborhoods most threatened by both insecurity and the risks to civil liberties would, if forced to choose, prefer the new forms of policing. The advantages of personal security are that great. Indeed, as noted above, a majority of the residents of some Chicago housing projects were prepared to give up their right to refuse to have their apartments searched without probable cause in the interests of greater personal security.[176]

But the choice should not be so stark. Uses of discretion that are beneath the level of visibility to courts could be the subject of departmental regulation. The reliance on the exclusionary rule as a primary sanction need not mean that it is the exclusive sanction. What we need, in short, is a regulatory system with other sanctions and new rules. We must find ways to have both civil liberties and security.

Consider some examples of new forms of regulation. The problem of changed relationships between the citizen and the state, between the resident and the police officer, could be addressed, in part, by requiring the police to make clear when they are asserting authority and when they are simply making a request to stop or submit to a search. The Supreme Court has ruled that this is not required by the Constitution.[177] But the practice of taking advantage of a citizen's ignorance of constitutional rights or his un-

175. *Supra* Part II.A.3.

176. *See* Meares & Kahan, *supra* note 12.

177. Florida v. Bostick, 501 U.S. 429 (1991); Schneckloth v. Bustamonte, 412 U.S. 218 (1973).

founded fears remains subject to political review and it is unwise in light of an increasing emphasis on control of the streets and the gathering of information by informal means. Efforts to keep track of the percentage of black, Hispanic, and white, non-Hispanic drivers of cars that are stopped and to make those figures available publicly are regulatory steps that can have major consequences on a sense of discrimination.[178] Keeping track of the number of complaints against any officer for disrespectful behavior can be an important step in encouraging respect, particularly if it is accompanied by appropriate remedial training.

Most rules require some sanctions if they are to be taken seriously. For behavior that is not generally designed to elicit evidence for criminal trials—the situation with regard to much of the new policing—the exclusionary rule is plainly an inadequate sanction. Nor is there much promise in the form of civil lawsuits, which are likely to be much too costly for remedying the risks to civil liberties in the multitude of low visibility occurrences that are at issue. Administrative discipline under rules that are more manageable is one likely solution.

Regulatory schemes require credibility and credibility often requires some form of external oversight, not of individual administrative determinations but of the adequacy of the functioning of the administrative system, as New York's "Mollen Commission" suggested some years ago.[179] In the past decade, independent partnerships like that between the Boston Police Department and the Ten Point Coalition have benefited both the organizations and the city as a whole. By blending criticism with approval, the Coalition has helped cultivate the police programs that are responsible for Boston's remarkable success. Significantly, the fruits of this effort—the drop in youth homicide, drug use, and overall crime—are nowhere more apparent than on the streets of Dorchester and Roxbury, where furor over police abuse first erupted.

Relationships like this one help fill the void left by the erosion of judicial oversight. They are, however, comparatively rare. An unfortunate series of events, coupled with an unprecedented willing-

178. *Police Tactics in Question: 'Stop and Frisk' in New York*, N.Y. TIMES, Dec. 4, 1999, at A16.

179. CITY OF N.Y. COMM'N TO INVESTIGATE ALLEGATIONS OF POLICE CORRUPTION & THE ANTI-CORRUPTION PROCEDURES OF THE POLICE DEP'T, REPORT OF NEW YORK COMMISSION TO INVESTIGATE ALLEGATIONS OF POLICE CORRUPTION AND THE ANTI-CORRUPTION PROCEDURES OF THE POLICE DEPARTMENT (1994). The Commission is popularly known as the "Mollen Commission," after its chair, the Hon. Milton Mollen.

ness by Boston's police chiefs and black ministers to work together, brought about this unlikely partnership. Its enduring nature testifies to their commitment and mutual dependence. As in other cities, there are still tensions between officers and the minority residents whom the Coalition represents. This friction assures each organization's independence. What remains to be seen is whether cities like New York, in the wake of outrage over assaults like those on Abner Louima and Amadou Diallo, will be willing to reach out as Boston did following the Carol Stuart murder and the stop and frisk scandal in the early 1990s.

These suggestions are meant to be illustrative, and they are far from comprehensive. The central idea is that new rules are required to regulate the new policing and that these cannot take the form of judicial review of the admissibility of evidence. They probably cannot depend primarily on any form of judicial sanctions for violations of the rules, both because the rules will be developed administratively and because they will regulate forms of behavior that have long been considered too subtle to justify judicial review. What we need is the acceptance of new forms of responsibility for civil liberties by police agencies involved in the forms of new policing. Credible oversight must involve those outside of the police but it should be of processes and structures, not of individual cases.