Perspectives on Crime and Justice: Selected speeches

Jeremy Travis
CUNY John Jay College

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Perspectives on Crime and Justice

Jeremy Travis
PERSPECTIVES ON CRIME AND JUSTICE

Selected Speeches

By Jeremy Travis

President, John Jay College of Criminal Justice
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Jeremy Travis is President of John Jay College of Criminal Justice at the City University of New York. Prior to his appointment, he served as a Senior Fellow in the Urban Institute’s Justice Policy Center, where he launched a national research program focused on prisoner reentry into society. From 1994-2000, Travis directed the National Institute of Justice, the research arm of the U.S. Department of Justice. Prior to his service in Washington, he was Deputy Commissioner for Legal Matters for the New York City Police Department (1990-1994), a Special Advisor to New York City Mayor Edward I. Koch (1986-89), and Special Counsel to the Police Commissioner of the NYPD (1984-86).

Introduction
David M. Kennedy

It is an honor to have been asked to reflect upon the papers by John Jay College of Criminal Justice President Jeremy Travis brought together in this volume. Jeremy is my president, a long-time colleague, and a very good friend. It made sense to me when I learned that as he thought about taking his leave from the College, he had chosen to mark that moment with a selection of his public speeches: anybody who knows Jeremy knows how serious he is about the issues he chooses to address, and about how he then addresses them. Having now had the pleasure of revisiting and reflecting upon the work included in this collection, it makes even more sense. I have been in Jeremy’s orbit as he went about creating this work, saw him take on these issues, was present for some of these talks, and had read nearly all of them previously. Seeing it and considering it as a whole, however, has been a very different experience: a lens through which to see how a serious man framed and acted upon the serious responsibility and opportunity that has been his presidency of the college. I think this volume is that, and that it is thus a genuinely fitting testament to Jeremy Travis’s time at John Jay.

The most remarkable fact about these talks is that they exist at all. College presidents have a great deal to do: they must bring in funding, develop and manage their faculties, see to the education of their students, set and meet budgets, do the political work that protects and advances their institutions, navigate campus cultural currents, build new building and manage old ones (as an aside, I’m assured that it is not true that Jeremy is stepping down because the escalators in Haaren Hall have finally been fixed), and manage crises. That is a lot, and for nearly all it is enough. I’m not aware of any college president who has—in addition—taken on the range of public issues Jeremy has, and that this volume (incompletely) represents; created this kind of public presence; worked to shape public discourse; driven real change in policy and practice; and—importantly indeed—made that orientation and action central to his vision for and his work within his college itself. I recognize a sampling problem here—I don’t know the profile of every college president in the country—but having been in this world a long time, this is deeply unusual, and quite likely unique.

That is because Jeremy Travis—at John Jay, and in any setting in which he finds himself—is what our mutual colleague Susan Ginsburg calls a
“policy artist.” It’s not a term to be found in any dictionary, or in fact in any school of government or public policy. It’s more of a calling, an orientation, than a discipline; its members can be found in government, in law, in communities, in nonprofits, in advocacy organizations, in education and scholarship. (Susan herself coined the term while fundamentally resetting federal gun crime policy, with the help of Travis and a few others, from her position in the Clinton Treasury Department.) What joins such together is a burning need to address critical issues in our public life; a recognition that any such real work requires respect for, and the tools of, government, law, communities, advocacy, scholarship, and all the rest; a deftness and flexibility with those worlds and those tools; a feel for strategy; and an adamantine relentlessness about producing real results in the world. The speeches in this volume are the record of a consummate policy artist operating from the remarkable platform that John Jay College of Criminal Justice was, and that he evolved it to be, during his tenure. “If you agree with me that the time for reform is now,” Travis put to a conference hosted by the Ford Foundation in the context of bringing college education to prisons, “then the question is how to make the convincing argument, how to mobilize the political forces that will make this dream a reality.”

It is, I think, the defining passage in this volume: because it is the question that Jeremy Travis asked himself, over and over, during his tenure as president of John Jay. These speeches represent his answers to that question. Taken together, they show a remarkable, creative, and consistent way of thinking both about the contours of that artistry.

Those contours begin with patriotism. These are American essays, the papers of a committed and engaged citizen—“you cannot do this in our name,” he says—grappling with his recognition that the nation he loves and honors has gone seriously astray. “As Americans, we should be deeply troubled by the current state of affairs,” he says at the celebration of the 25th Anniversary of The Sentencing Project. “In fact, I think we should consider our current level of imprisonment a stain on our national conscience.” These have not been easy years for anybody committed to criminal justice in America, with respect to incarceration and many other matters. For Travis, the recognition is explicitly of a failure of democracy, that “we are a better nation than this.”

1Ford Foundation, p. 5  
2Hoffinger 8  
3Sentencing Project 4
It is a recognition rooted in the history of the nation. “Students of American history know that the relationship between minority communities and our criminal justice system is characterized by deep distrust, patterns of overt discrimination, and occasional outbreaks of racial violence,” Travis wrote in his Marden Lecture. “Indelible images come to mind when we recall our history. Slave catching, the first experience of African Americans with law enforcement in the young America. Chain gangs in the South after the War of Emancipation. Police enforcing the written, and unwritten, laws of Jim Crow. All-white juries sitting in judgment of black defendants. The urban riots of the 1960s, typically sparked by the police shooting of a young black man. Police using dogs and fire hoses to stop lawful demonstrations for civil rights. Certain names invoke memories of the racial fault lines that permeate our justice system. Rodney King. O.J. Simpson. Abner Louima. Willie Horton. And today, Sean Bell.”

Repeatedly, Travis goes to history, to the unalterable facts of the arc of the nation, and to the way in which that history leads not only to where we are but to the moral imperative to recognize our collective accountability—“we are here because we have chosen to be here,” he says—and that as citizens we must own what we have wrought.

The sin here, and Travis’s commitment to naming it and addressing it, is profound: The repeated comparison is to apartheid-era South Africa, to the crying of that beloved country and now of this one. We find ourselves at a place where racial justice matters above all else. These papers are grounded in a deep respect for individuals, families and communities, and an outrage around what the nation has done and is doing to black Americans and, particularly, to young black men. These are not and should not be regarded as abstractions, as just another policy problem or research question: Travis urges us “to construct an understanding of the burdens of crime and the criminal sanction that do not rely solely on official statistics and are not constrained by the boxes of the diagrams of the criminal justice system,” and goes on to do so himself. In places he positively rings. “We have extended the reach of the punitive powers of the state far beyond anything reasonably required to achieve a legitimate social purpose and have imposed the weight of incarceration on a subgroup of our society set apart by race, class and educational attainment,” he writes. “We have wasted hun-
dreds of thousands of lives, subjected thousands of our fellow citizens to the inhumane treatment of solitary confinement, separated families in a modern version of the slave auction block, and consigned millions of Americans to a state of marginalized life, cut off from meaningful work, benefits, political participation and family support.”6 This is the arc of the nation, from the original American sin of slavery to the bureaucratic “criminal justice system” actors and actions that have produced mass incarceration, and naming it and addressing it is our “moral and historical imperative.”7

So that is Travis’s framing: history and the present day, and the need—especially—to do racial justice. How are we to do that, to produce real results in the world? “Science and passion,” he says repeatedly. We need research, in order to get the facts right, drive the discourse, and support action. We need to know for sure what the experience of young black men with the broad criminal justice system is, to know for sure that education improves outcomes for inmates, to know for sure that there are more effective ways to use the agencies of criminal justice to prevent crime than through locking people up, to know for sure a thousand other such things. And we need to do real work, to make the difference on the ground, driven by the kind of focus and commitment—indeed passion—these issues merit.

And to do those things, his answer has been to mobilize the power of the John Jay presidency, and the power of the College itself. This is Travis’s bridge between diagnosis and description, on the one hand, and on the other, real change. It is a fundamental vision for what he believed John Jay College could be, what he worked to make it, and how he envisioned the strategic potential of his presidency. Over and over, in areas these essays address and in many others, during his time at the College Travis saw vital issues in the life of the nation; framed them as such; and developed and deployed the College’s capacity to convene, research, and act upon them. His painstaking work chairing the National Research Council production of the seminal report “The Growth of Incarceration in the United States: Exploring Causes and Consequences”—with its central conclusion that the nation had lost its way—led to the creation of the Interdisciplinary Roundtable on Punitiveness in America that explored the historical and cultural antecedents to America’s reliance on punishment as a response to crime; to his broaching to the Department of Justice the idea for what became the DOJ’s

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6Sentencing Project
7Hoffinger 16
National Initiative for Building Community Trust and Justice, which is working in six cities to address procedural justice, implicit bias, and police/community reconciliation; and to his work with the office of the District Attorney of New York to launch the Institute for Innovation in Prosecution and an action-research agenda to reimagine the role of the prosecutor in the American justice landscape. With a commitment to continuing his groundbreaking work on the challenges facing people leaving prison, Travis launched the Prisoner Reentry Institute at John Jay; with an eye toward restoring higher education to prison, Travis and then-PRI Director Debbie Mukamal convened the Reentry Roundtable on Education in partnership with the Urban Institute; the roundtable issued a monograph, “From the Classroom to the Community: Exploring the Role of Education During Incarceration and Reentry”; and under the leadership of Ann Jacobs, PRI has become a hub for national advocacy on the issue and hands-on work in New York State with Professor Baz Dreisinger’s Prison-to-College Pipeline project. Concerned—and outraged—with the burden of the criminal justice system and its penetration into the lives of, especially, young black men, Travis worked with Professor Delores Jones-Brown to produce one of the first rigorous analyses of stop-and-frisk in New York City; presented the report and its recommendations at a forum at the New York City Bar Association; and thereby made a signal contribution to the framing and action around the issue in the city, and to the policy shifts at NYPD that have now reduced the practice by some 97%. Recognizing that stops had gotten virtually all the public attention but were but part of a larger problem—the idea of “burden” he introduced in his Mailman lecture—Travis moved on to the analysis of misdemeanor-level enforcement in New York City, which has revealed shocking levels both of enforcement as such and racial disproportion with that enforcement. That work, directed by Professor Preeti Chauhan, has grown into the seven-city Research Network on Misdemeanor Justice, funded by the Laura and John Arnold Foundation. His mapping of the public health framework onto thinking about prison and incarceration became the college’s Punishment to Public Health (P2PH) initiative, which is on the one hand pursuing foundational research and, on the other, deploying faculty and students for such things as replacing arrest with diversion and support for the New York City homeless population and to supporting inmates’ clemency applications. And so on and so on, over and over again.
In so doing he has made John Jay into a distinctive, and perhaps a unique, institution, one of national significance. CUNY is a fine university, and John Jay a fine college. There are many fine universities and colleges in America. In our world, there are many fine universities, colleges, and departments of criminology and criminal justice. But I think it is in fact true that there is none that is now so positioned to actually make a difference on the ground and in the world of policy and practice, and is in fact so doing. From its origins as a police college over 50 years ago, John Jay has always been about the real, critical, and often gritty work of public safety and justice. It still is; that insistence on real work is what I most love about it and why I am here. President Travis's vision for the school has expanded its reach and scope profoundly and modeled a distinctively John Jay approach to identifying vital issues; conducting critical research; convening key partners; and moving to action on the ground. The school, its home city, and the nation are the better for it.

Two final thoughts: These papers are part of, and tell, a singularly New York City story. Everybody who knows Jeremy Travis knows his deep love of his adopted hometown. (One of my fondest memories of my time at the College is driving to La Guardia Airport very early one morning with Jeremy and our friend Jimmy Peterson, a Brooklyn-born NYPD legend. I'd been in the city a relatively short while and found myself completely overwhelmed by the beauty of the city, block after block shining like jewels in the hour before dawn. “Do you ever get used to it?” I asked them. No, they said together. Not ever.) The city features prominently throughout these talks: the importance of New York's communities; the attention to the policing and the criminal justice they have, and the policing and the criminal justice they deserve; the connection of the city to the legal and correctional realities of New York State, and vice versa; and, especially, the history and practices of the New York Police Department. One of Travis's central aspirations at John Jay has been to be of service to the people and the criminal justice institutions of New York City, and I think it has to be said that he has done so. As one happy marker, I note the introduction in his Marden Lecture—delivered at the New York City Bar Association—of the idea that the New York City communities that had most borne the brunt of the burden of policing and criminal justice now deserved, in greatly safer times, a “peace dividend.” That idea would become a central motif of Bill Bratton's return to the NYPD, the reforms that he put in place, and a city that is safer yet and experienc-
ing a greatly reduced criminal justice burden: progress helped along in real ways by thinking, research, and practice originating at John Jay.

And finally: I began these thoughts with the observation that the most remarkable fact about them is that they exist at all. I end with the observation that perhaps the second most remarkable fact about them is that I am writing this introduction at all. Twenty-three years ago, Harvard professor Anne Piehl and I submitted a research proposal, to work with the Boston Police Department on gun homicide, to the DOJ’s National Institute of Justice, which Jeremy Travis was then directing. I was a complete unknown, and utterly justifiably so, with a passionate commitment to the neighborhoods devastated by the crack epidemic, but no formal training or standing of any kind. Our proposal was rooted in problem-oriented policing and said, in essence, we’ll try to figure out something to do. NIJ’s peer review process saw the lack of a powerful experimental design, and very understandably rejected it. Travis, as he tells the story, saw a Harvard partnership with BPD, a focus on a critical national issue, and the application of a new and potentially useful analytic framework. He approved the proposal. That decision led to the Boston Gun Project; to the first application of focused deterrence crime prevention in Boston’s Operation Ceasefire; to the whole spectrum of related work that has followed; to the creation at John Jay of the National Network for Safe Communities—another of Travis’s initiatives—which pursues this work nationally and now internationally; and even to our current attempts to pursue frank reconciliation between traumatized minority communities and the police. That work has defined my adult life. It has given it direction and purpose, introduced me to the finest people I could ever hope to meet, brought me friends and colleagues of inestimable value, and, more than ten years ago, brought me to John Jay. I do not know what life I would have had without Jeremy Travis’ policy artistry—his unique sense of what matters and how to facilitate it—but I know it would not have been this one. In this, given the scope of his life’s work, including the signal chapter at John Jay addressed in this volume, I am different from countless others in New York City and the nation only because I do know it.
"We must move beyond the traditional conversations about racial profiling and law enforcement abuses."

The annual Marden Lecture series, which commemorates a former president of the American Bar Association and trustee of the Vera Institute of Justice, has featured keynote speakers including U.S. Supreme Court Justice Lewis F. Powell Jr., New York State Chief Judge Judith Kaye, and former Governor Mario Cuomo. In his 2008 address, against a backdrop of mass incarceration, aggressive quality-of-life policing and allegations of racial profiling by the police, President Travis explores the phenomenon of the penetration of the justice system into communities of color.
Dear friends and colleagues:

Thank you, Fritz Schwarz, for that generous introduction and for your friendship and inspiration over many years.

I am deeply honored to be invited to deliver this year’s Orison S. Marden Memorial Lecture. I am humbled to be counted among a group of distinguished leaders of the Bar of our City who have delivered this lecture in the past—Judge Robert Katzmann, Louis Craco, Chief Judge Judith Kaye, Judge Jack Weinstein, and Governor Mario Cuomo. This is great company.

In coming together this evening, we honor the many contributions of Orison S. Marden, who was a champion for justice and the embodiment of the highest ethical standards in the legal profession. I am now triply indebted to the Marden legacy. Mr. Marden was a trustee of the Vera Institute of Justice from 1966 to 1975, and I count my six years at the Vera Institute as the formative chapter of my career in criminal justice. Later, after I graduated from law school and completed a clerkship with Ruth Bader Ginsburg, I returned to NYU Law School as the Marden and Marshall Fellow in Criminal Law. This wonderful opportunity provided an excuse to come back home to New York, saved me from a career in law practice in Washington, stimulated my intellectual interest in the role of empirical research in law and justice reform and, most importantly, brought me back to NYU where I met Susan. So, it’s nice to link these important life chapters, however indirectly, to the influence of Orison Marden.

My topic this evening is the intersection of race, crime, and justice, a topic I consider one of the most important challenges confronting our society. Much is at stake: our nation’s pursuit of racial justice; our commitment to full participation of all American citizens in the electoral process; our success in reducing crime and eliminating drug markets; our ability to reduce our reliance on imprisonment as a response to crime. Indeed, I believe the legitimacy of our system of justice depends on our progress toward unraveling the Gordian knot that we call the nexus between race, crime and justice.

Of course, this is not a new discussion in our country. Students of American history know that the relationship between minority communities and our criminal justice system is characterized by deep distrust, patterns of overt discrimination, and occasional outbreaks of racial violence. Indelible images come to mind when we recall our history. Slave catching, the first experience of African-Americans with law enforcement in the
young America. Chain gangs in the South after the War of Emancipation. Police enforcing the written, and unwritten, laws of Jim Crow. All-white juries sitting in judgment of black defendants. The urban riots of the 1960s, typically sparked by the police shooting of a young black man. Police using dogs and fire hoses to stop lawful demonstrations for civil rights. Certain names invoke memories of the racial fault lines that permeate our justice system. Rodney King. O.J. Simpson. Abner Louima. Willie Horton. And today, Sean Bell.

As we recall our history, we should also applaud the lawyers who have infused a sense of racial justice into our system of criminal justice. Certainly, Orison Marden deserves to be on this list. As President of the American Bar Association in the mid-1960s, he organized the Lawyers Committee for Civil Rights, which marshaled the volunteer efforts of lawyers from around the country, including Pete Eikenberry, who is with us tonight, to represent civil rights litigants in Mississippi and other southern states. Our courts have issued important rulings interpreting our Constitution to require representation of blacks on juries and to protect vulnerable defendants from abuse by the police. Members of the legal profession, working with other disciplines, have challenged the disproportionate representation of racial minority groups in our juvenile and criminal justice systems. Lawyers have brought civil rights actions under Section 1983 against police departments and have sued prisons for unconstitutional conditions of confinement.

In our lifetimes, we have witnessed enormous progress in reforming our justice system, yet we know that much remains to be done.¹ This evening I hope to persuade you of two propositions: First, that the journey toward racial justice in our criminal justice system has been made immensely more difficult by our high rates of incarceration, the growth of community supervision, and intrusive policing strategies. In short, I will argue that the day-to-day operations of our system of justice now penetrate so deeply into communities of color that we are at risk of undermining the basic respect for the rule of law. Second, that we cannot rely solely upon

¹After conducting a review of the research literature on race and justice, a report issued by the American Sociological Association offered this sobering conclusion: “Although overt discrimination has diminished in the criminal justice system over recent decades, at the beginning of the twenty-first century, we continue to grapple with the perceptions of and the reality of unfairness in our justice system. Racial and ethnic disparities persist in crime and criminal justice in the United States. Minorities remain overrepresented in delinquency, offending, victimization, and at all stages of the criminal justice process from arrest to pretrial detention, sentencing (including capital punishment), and confinement.” (Rosich, 2007).
the traditional legal construct of equal protection of the laws to achieve a justice system that is not racially divisive. In short, I will argue that we must ensure that our justice system is effective, not merely fair. We must pursue the goal of racial justice as aggressively as the goal of crime control. If you accept both arguments, then you will agree that we need to confront some of the fundamental assumptions that now determine policies on crime and justice.

We start by describing the magnitude of the incarceration phenomenon in the United States. The basic contours are well known to this audience. Since the early 1970s, we have more than quadrupled the per capita rate of incarceration in our country. The rise in the prison population has been unrelenting. In times of economic vitality, in times of economic recession; in times of war, in times of peace; when crime was going up, when crime was going down; every year since 1972, we have expanded our prison population.

About a month ago, the Center on the States of the Pew Charitable Trust released a report announcing a sobering milestone: for the first time, more than one in every 100 adults in America is confined in a jail or prison. Our penal system now holds 2.3 million adults. China—a country of 1.3 billion people—holds second place, with 1.5 million. Russia—a country of 142 million people—is a distant third with 890,000 people incarcerated. But most striking is the difference in the per capita rate of incarceration. Germany, for example, holds 93 people in its prisons and jails for every 100,000 population. In America, the rate is nearly eight times greater; we hold 750 per 100,000 population (The Pew Charitable Trust, 2008). Our country has the dubious distinction of the highest rates of incarceration in the world, and the rate continues to increase.

This fourfold increase in the rate of incarceration in America has not been spread evenly across the population. Rather, the increased number of individuals—mostly men—sent to our nation's prisons have come from—and return to—a small number of urban communities in America, mostly communities of color. According to the Pew analysis, 1 in 106 adult white men is behind bars; for Hispanics, the number is 1 in 36; for blacks, it is 1 in 15. For black men between the ages of 20 and 34, 1 in 9 is now behind bars (The Pew Charitable Trust, 2008). The Bureau of Justice Statistics characterizes the same racial disparities another way: assuming no change in
incarceration rates, nearly one in three African-American men—and one in six Hispanic men—will be sentenced to serve at least a year in prison at some point in their lives (Bonczar, 2003).

We should ask ourselves whether we want to live in a country in which a third of all African-American men—and one in six Hispanic men—have served prison time. We should try to imagine the impact that our incarceration policies will have, over the next generation, on the communities in which incarceration rates are highest—on family life, adolescent development, labor markets, family stability, intergenerational transfer of wealth, voting patterns, and civic participation.

We know the answers to some of these questions, and the answers are deeply disturbing. We know that time in prison reduces one's lifetime earnings by 10-30% (Western, 2007), so our rapid expansion of prisons has depressed the earnings power of whole neighborhoods where most of the men have done time. We know that prison places substantial financial burdens on extended families—they must make up for lost income, pay for collect phone calls from prison, and take long trips to prisons to visit their family members (Braman, 2004). We know that minority voting power is diminished, especially in those 10 states that deny felons the right to vote for life. In some of those states, up to a quarter of African-American men cannot vote for the rest of their lives (Manza & Uggen, 2006). We know that high rates of incarceration result in a significant “gender imbalance” (Braman, 2004), such that in high incarceration neighborhoods there are fewer than 62 men for every 100 women. We don't know the impact of the “gender imbalance” upon dating patterns, family formation, and the male identity. We know that when the rate of incarceration in a community rises above about 1.5%, it seems to produce more, not less, crime (Clear, 2007). We know that very high rates of arrest and incarceration can make going to prison seem normal and even normative, a rite of passage and a pathway to respect. We know that in high incarceration neighborhoods, such as East New York in Brooklyn, every year one in eight men between ages 18 and 45 is arrested and sent to prison or jail (Cadora, Swartz, and Gordon, 2003). We know that we pay a very high price for these policies: the taxpayers of New York pay over $1 million a year to incarcerate the young men who are arrested on these blocks. Finally, we have every reason to suspect that our criminal justice policies are undermining respect for the law, as we witness
the growth of a “stop snitching” culture in communities of color that pun-
ishes young people who cooperate with the police.2

Before offering some thoughts on how to reverse these trends, we
should discuss another dimension of the high rate of incarceration, namely
our nation’s increased reliance on parole supervision to oversee the people
who have left prison. Just as many more people are imprisoned in our coun-
try, so too we now place many more under parole supervision. In 1980,
there were 220,000 individuals under supervision by parole agencies in
this country. By 2000, that number had reached 725,000. We now release
approximately 700,000 individuals from our prisons each year and about
80% of them are placed on supervision, typically for three years (Travis &
Lawrence, 2002). Not only are we putting more people in prison, we have
also extended the reach of the state over an unprecedented number of our
fellow citizens. This new reality is felt most acutely in communities of color.

The nature of supervision has also changed dramatically over the past
25 years. We now watch people more closely. We impose more conditions
on their liberty. We now use new technologies such as drug tests and elec-
tronic bracelets to keep tabs on people. We impose curfews more frequent-
ly. We take fewer risks with parolees and, as a consequence, are much more
likely to cite them for parole violations (Petersilia, 2003). Perhaps we would
think differently about this extended state control if we knew that it re-
duced crime, but a landmark study completed by the Urban Institute three
years ago concluded that parole supervision does not reduce recidivism
(Solomon, Kachnowski, and Bhati, 2005).

Finally, we are more likely to send our fellow citizens back to prison
for violating the conditions of their parole. We have, in essence, created a
system of “back-end sentencing” (Travis 2006). Consider these statistics:
in 1980, state prisons admitted approximately 27,000 parole violators; in
2000, those same states admitted approximately 203,000 parole violators, a
sevenfold increase. We now send as many people to prison—through the
back door—for violating parole as we sent to prison, through the front
door, in 1980 for all reasons.

I hope that, by now, you have the following image in your mind: in
the modern era, our system of incarceration, reentry, and supervision has

2 The “stop snitching” phenomenon has recently been described as “alive and well on Long Island”
and “is attributed to distrust of law enforcement,” “fear of retribution,” and “a troubled history with
the African-American community that has eroded faith in police departments dominated by white of-
ficers and marked by police shootings involving unarmed black civilians” (Newsday, March 16, 2008).
created a new and unprecedented social reality: In America’s poorest urban communities, typically communities of color, large numbers of men are each year arrested, sent off to prison, returned home, closely supervised, and then sent back to prison on new charges or for parole violations.

One defense of these policies might be that they have significantly reduced crime in these neighborhoods. The academic support for this proposition is decidedly mixed. According to some researchers, the prison build-up accounts for between 10 and 25 percent of our recent reduction in violent crime (Rosenfeld, 2000; Western, 2007). Yet the Urban Institute study I just mentioned showed that supervision does not reduce crime rates. And, as remarkable as this may sound, there is no empirical research on the impact of our parole revocation policies on crime rates. It is a sobering realization that we do not have a strong empirical foundation documenting the crime control effects of policies that cost billions of dollars and negatively affect millions of lives.

Rather than debate the crime control issue, I want us to focus on a different question, namely whether we believe that these high rates of incarceration, reentry, supervision and return to prison have enhanced, or undermined, the respect for the rule of law and community standards against crime in these neighborhoods. As we focus on this profound question, we should add another factor in our equation, namely some recent changes in law enforcement practices.

Over the past two decades, our City has experienced a significant increase in the number of arrests for the offense of criminal possession of marijuana in the fifth degree.3 This trend is part of a larger national rise in marijuana arrests, so pronounced that some commentators are saying our War on Drugs has become a War on Marijuana (Mauer & King, 2005). From 1980 to the early 1990s, the New York City Police Department made about 1,000 arrests for this offense each year.4 Starting in 1994, however, these arrests began to increase dramatically, reaching a peak of 51,000 in 2000, then dropping to levels around 40,000 per year. This is now the most common misdemeanor arrest in our City, accounting for 15% of all adult arrests. In the words of Prof. Harry Levine of Queens College, “in the last ten years New York City has arrested and jailed more people for possessing

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3 This is known as smoking marijuana in public view (221.10 NYPL).
4 It should be noted that there has been an increase in marijuana arrests across the country (Mauer & King, 2005).
marijuana than any city in the world” (Levine, 2007).

We should be particularly concerned about the demographic profile of these tens of thousands of defendants. According to an analysis of these cases published in the *Journal of Criminology and Public Policy*, this increase in arrest activity was concentrated in minority neighborhoods of New York. Slightly over half the arrests in 2000 (52%) involved African-American defendants, when the City’s population was 23% African-American. Thirty-two percent of the defendants were Hispanic, when the city was 25% Hispanic (Golub, Johnson, Dunlap, 2007).

Prof. Levine and his colleagues have provided another way of describing the racial impact of these policies: In the decade from 1987 to 1996, 23,000 blacks were arrested and charged with marijuana possession. In the next decade, from 1997-2006, that number had increased more than eightfold to 196,000. The number of Hispanics arrested increased from 9,000 to 108,000. The number of whites arrested also increased, from 5,000 to 52,000. Levine and his colleagues suggest yet a third way to look at the data: in 2006, blacks were arrested for marijuana at a rate of 9,750 per million; this is 7.8 times the arrest rate of whites.

Perhaps we could explain these enormous differentials if we had data showing that blacks used marijuana 7.8 times more than whites. However, the national survey of drug use among high school students shows that blacks used marijuana less frequently than both Hispanics and whites (Johnston et al., 2006). These differentials are also perplexing in light of the research findings that more white juveniles are reported selling drugs (all drugs, not just marijuana) than African American juveniles—17 percent and 13 percent respectively (Snyder & Sickmund, 2006). We clearly need a stronger empirical understanding of illegal drug activity in our City to engage in an informed policy discussion about these enforcement practices. But we do know that there has been an enormous shift in those practices and the people bearing the brunt of this policy shift are tens of thousands of young people of color.

We should add to this composite picture an understanding of the practice of stop-and-frisk in New York City. This practice was examined in an important study by then-Attorney General Spitzer (NYS Office of the Attorney General, 1999), and more recently in a study conducted for the Police Department by the RAND Corporation (2007). The methodology
of the RAND study has been the subject of academic debate, but I want to focus on some incontrovertible findings: according to this report, officers of the Police Department documented approximately half a million stops in New York City last year. Half a million.

We need to place this number in perspective. First, if we compare the RAND findings with results from a Bureau of Justice Statistics survey, we realize that the level of police stops in New York City is about double the national average (RAND). But the level of stop and frisk activity in New York City has not been constant. In 1998, according to the Spitzer report, there were approximately 140,000 stops per year. In 2003, the level of reported stop and frisks dropped to about 93,000 stops. Yet three years later, the RAND study documented a half a million stops, a five fold increase. And this increase occurred over a time period when crime was declining. We should ask ourselves why we have witnessed these swings of the enforcement pendulum?

For purposes of our discussion tonight, a third perspective is most telling: If these half a million stops were distributed evenly, we would experience six stops for every 100 daytime residents of New York City every year. But the stops are not distributed evenly. In two police precincts—the 73rd Precinct in Brownsville and the 28th Precinct in East Harlem, the rate of stops rises to well over 30 for every 100 residents, five times the citywide average. In five other precincts, all in minority neighborhoods, the rate of stops falls between 17 and 30 per 100 residents. We can only assume that if the number of stops is further disaggregated by gender and age, that the probability that a young, African-American male will be stopped by the police in these neighborhoods at least once a year approaches statistical certainty.

At this point in my talk, I hope that you have created a composite mental image that links the data on incarceration, reentry, community supervision and parole revocation with the data on marijuana arrests and stops and frisks. Taken together, these modern phenomena constitute what I call an unprecedented “penetration” of the criminal justice system into our nation’s communities of color. Never before have our systems of law enforcement, incarceration, and community supervision intruded so deeply into our country’s poorest urban neighborhoods. In my view, it is this new reality that poses the greatest obstacle to our quest to align our nation’s aspira-
tions for racial justice with our pursuit of criminal justice.\textsuperscript{5}

This new reality is undermining respect for the rule of law in communities of color. Young men with records have no reason to invest in their futures by finishing school, entering higher education, and taking entry-level jobs. A street culture forms in which getting arrested and going to jail and prison is expected and even status-enhancing. Most men have spent time in prison and half are under some form of criminal justice supervision. Many residents, particularly young people, have had hostile and unproductive contact with law enforcement. The burgeoning “stop snitching” standard codifies a very troubling standard of the streets: good people do not deal with the police. Across the country, our police are having greater difficulty solving homicides. Our prosecutors are discovering that more witnesses refuse to testify. We are facing the reality that more disputes are being defined as private, rather than public matters. If this trend continues, we will face a crisis of the legitimacy of our system of justice.

Before closing, I would like to comment on the limitations of our traditional response to allegations of racial injustice in the criminal justice arena. As lawyers and citizens, we hold in high regard our constitutional principle of equal protection of the laws, and the statutory expressions of this principle such as Title VII. Because we are steeped in this tradition, we often approach the issue of racial inequity in the criminal justice system using a Title VII framework. We ask whether the racial disparities in stop and frisk practices can be explained by some neutral analysis. Similarly, we ask whether racial disparities in prosecutions, convictions, and sentencing can be explained by variables such as prior criminal record, severity of the crime, or legal aspects of the case.

I do not mean to disparage this approach to the issues of racial disparities in the justice system. We should continue to ensure that the enormous discretion exercised by police officers, prosecutors, judges, parole boards and parole officers is not tainted by racial bias. But I ask you to conduct the following mind-exercise: if we constructed a system of law enforcement and criminal justice that operated just like today’s system, but we knew

\textsuperscript{5} In a recent speech, I proposed the creation of a “Community Justice Experience Survey” that would survey community residents, on a regular basis, to determine their contacts with law enforcement and criminal justice agencies over the past year (Travis, 2007). Just as the National Crime Victimization Survey provides an independent measure of crime rates, not reliant on police reporting, so too the Community Justice Experience Survey would allow us to measure objectively the interactions between citizens and the justice system without relying on official records.
beyond all doubt that every decision was made in a racially neutral way, would the resulting system of justice be one that would live up to the ideals of our country?

In my view, we cannot solely focus on whether the criminal justice system is fair; we must also ensure that it is effective at reducing crime and promoting racial justice. Allow me to illustrate my point. As you know, the United States Sentencing Commission recently decided to lower the disparities between sentences imposed for crack and powder cocaine. One of the strongest arguments for taking this step was that these disparities resulted in much higher levels of imprisonment for African-Americans, who constituted the overwhelming majority of defendants convicted of offenses involving crack cocaine. As welcome as these developments are, I would much rather ask two different questions: Are our current drug laws effective in reducing drug sales and drug use? And are these laws enforced in ways that promote positive relationships between the police and minority communities? Similarly, in thinking about the stop and frisk policies, rather than simply ask whether they are applied in a racially neutral fashion, we should ask whether they are effective (and here we should focus on the fact that only ten percent of all stops result in an arrest or a summons) and, as the RAND report recommends, whether these policies can be implemented in ways that promote better understanding between the police and the community.6

We must recognize that we have constructed a machinery of justice that will be difficult to dismantle. We are fortunate to live in times of declining crime rates, but this good news comes with a cost. It is nearly impossible to challenge these intrusive crime policies without hearing the retort, “This is why crime is so low.” When we say our incarceration rate is too high and should come down, we hear that “this is why crime is so low.” When we ask why we so aggressively supervise parolees, and send so many back to prison on parole revocations, we hear that “this is why crime is so low.” When we challenge the high level of misdemeanor marijuana arrests, or stops and frisks, we hear that “this is why crime is so low.”

I think we should start with a different framework. Paraphrasing Justice Blackmun, we should no longer “tinker with the machinery” of our current system of criminal justice. As we begin this important journey, we

6Marc Mauer has proposed that all new criminal justice legislation be examined through the lens of a “racial impact statement” (Mauer, 2007).
must move beyond the traditional conversations about racial profiling and law enforcement abuses. The new reality I have described is fundamentally about the unintended consequences of what was intended to be the legitimate enforcement of the law. We should assume that the arrests that lead a majority of young black men in some neighborhoods to have criminal records were legitimate arrests. Those arrests were most likely carried out in response to criminal behavior that damages communities. Those arrests probably had the effect of deterring other crimes and resulted in incapacitation that prevented yet more crimes. Yet, at the same time, those arrests, and the resulting high levels of incarceration, may do those individuals, their families, and their communities profound harm. This is the tragedy of our current policies: what we are doing in the name of protecting the community is in fact undermining the norms that support viable communal life and the rule of law that supports our democracy.

I wish to conclude by sharing a story of a crime policy innovation that, for me, points the way toward a new framework for our simultaneous pursuit of racial and criminal justice. For the past decade, I have been watching—and supporting—the work of David Kennedy, formerly of Harvard’s Kennedy School of Government and now a professor at John Jay College and Director of our Center on Crime Prevention and Control. David was the architect of the Boston Miracle, which brought about a stunning decline in youth gun violence in the mid-1990s. In retrospect, his strategy was disarmingly simple—working with the law enforcement agencies, he brought together the young people involved in the gang violence, representatives of federal, state and local law enforcement agencies, local community leaders and clergy, members of the young people’s families, and service providers, and everyone basically said to them, with one voice, “The violence must stop. If you agree to cease the violence, you may take advantage of a variety of services offered to you. If the violence continues, you and your fellow gang members are all vulnerable to strict enforcement, and we are ready to deliver on this threat.” This simple strategy has now been implemented in dozens of jurisdictions around the country, with similar effects—sharp and sustained reductions in violence.

Professor Kennedy has now tailored this strategy to apply to drug markets. The law enforcement team develops cases against all drug dealers in a certain neighborhood, calls the drug dealers into a meeting with their families, community leaders, and service providers. The same deal is of-
fered: if you get out of the drug business, we will offer you jobs and services, and we will not enforce these cases against you. The most powerful voice is the community voice, saying, this drug dealing is hurting our community and our families, and we want you to stop. In order to do this, Kennedy has found, it is essential to address the ways in which law enforcement and communities view one another. He has found this to be what can only be called transformational. Communities discover that law enforcement knows it is not winning the drug war, understands that incarcerating people has consequences for them and for their community, and is frustrated itself at not being more effective, but is not part of a racist conspiracy. Law enforcement discovers that the community is sick of the crime and full of purpose and moral strength, and that even gang members and drug dealers listen to community elders.

As Kennedy has implemented this strategy around the country, the results have been stunning. In Chicago, homicide was reduced nearly 40% in some of the city’s most dangerous neighborhoods. In Cincinnati, less than a year after beginning the Cincinnati Initiative to Reduce Violence, gang homicide is down almost 60%, and around 15% of the city’s identified gang members have signed up for social services. In High Point, North Carolina, where the drug strategy originated, there are no more overt neighborhood drug markets. In a replication of the High Point strategy in Providence, Rhode Island’s Lockwood neighborhood, drug calls are down over 80% and calls to disperse unruly groups down 86%.

But something else is happening in the jurisdictions experimenting with the High Point strategy. Every community has witnessed something akin to a racial reconciliation process between the police and the community. The police have realized that their drug enforcement strategy has basically been ineffective. The community has realized that it has lost control of some of its young people. They have come together to make a new deal, to find a way out of the machinery of our current cycle of law enforcement, incarceration, and reentry. These are profound changes. David and I hope to leverage these successes into a national effort by police and community leaders to build a new approach to violence and drug dealing, with an explicit focus on the process of racial reconciliation.

If we care about racial justice and the future of urban American, we need to rethink our approach to law enforcement and criminal justice. With crime rates at historically low levels, we have an opportunity to shift course.
But these low crime rates can lull us into a sense of complacency. Even though the same communities that experienced the ravages of the crime increases for twenty years are now enjoying remarkably low crime rates, they are still hurting, just in different ways. They are shouldering the burden of high rates of incarceration. They are taking on the social responsibility of reintegrating record numbers of men back into society after years in prison. They are caring for the children and parents of the two million people in jail or prison. They are witnessing a generation of young people who are distanced from the police, unwilling to report crimes or testify against perpetrators for fear of being called a “snitch.” They are bearing the brunt of a significant expansion of enforcement activity by the police, all in the name of keeping crime rates low.

These communities are entitled to a peace dividend, after years of fighting the war on crime. They are entitled to a new deal, one that addresses the problem of crime more creatively and with greater concern for ameliorating the racial disparities of our criminal justice system. They are entitled to an honest conversation about the failures of past policies, the racial dimensions of those failures, and the need for everyone to play different roles in the future. Working with these communities—and with a little bit of luck, and a lot of hard work—I am certain we can simultaneously reduce crime, reduce our prison population, and promote racial justice.

Thank you.
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“This is a ‘tough love’ talk—now is not the time to be self-congratulatory; now is the time to be ambitious.”

Maintaining that thinking about justice has been warped and rendered ineffectual by the undue influence of the 1967 President’s Commission report, President Travis calls for reconceptualizing the response to crime and the pursuit of justice, and identifies four challenges that must be met head-on. In this speech, he also outlines the work of the nascent National Network for Safe Communities that had recently been established at John Jay College of Criminal Justice.
I am honored to be invited to deliver this keynote lecture at this important conference on the future of community justice. The program that has been put together here at Marquette Law School is very impressive—it shows the range and depth of new thinking and innovative strategies that are making Milwaukee an important laboratory in the justice reform movement.

I am particularly pleased to be on the same program as my friend and colleague Tracey Meares. In my view, Prof. Meares is one of the most important voices in today’s national conversation on justice. Her work on legitimacy and community safety represents the cutting edge of the new vision of justice I wish to discuss today.

I also wish to underscore Milwaukee’s good fortune in having Ed Flynn as your new police chief. I have followed Ed’s career from his debut as a police executive in Chelsea, Massachusetts, to his tenure in Arlington Virginia, when my family and I lived across the river in Maryland, to his highly successful stint at Secretary for Public Safety in Massachusetts, later in Springfield, and now here in Milwaukee. A month ago I had the pleasure of meeting with him and some of his command staff to talk about a national initiative to address issues of violence and drug markets. From that meeting it was clear that he has charted a course for major police reform in Milwaukee, with community safety as his touchstone. He and his staff were justifiably proud that 2008 saw a 10% decline in violent crime and a stunning 32% drop in homicides in Milwaukee. Of course I take some pride in the fact that he is an alumnus of John Jay College. But putting those bragging rights aside, I can say, as someone who has worked in policing for 25 years, that it is wonderful to watch Ed Flynn take his place among the nation’s premier police leaders.

Our topic today is community justice. We should pause for a moment to reflect on these two words, “community” and “justice.” Years ago, I spoke with Ronnie Earle, the progressive district attorney in Austin Texas who campaigned on a platform of “community justice” and was regularly re-elected by considerable margins. I asked him what those words meant. With a twinkle in his eye, he said that the beauty of the phrase was that nobody could define either “community” or “justice”—both concepts are elastic and complex—but everyone had good associations with both words. By committing his office to the concept of “community justice,” he conveyed a break with the past, and a more positive vision of the future. And he got re-elected several times.
By campaigning on a platform of “community justice,” Ronnie Earle was making an important statement, a statement—the same statement made by the Community Justice Council of Milwaukee—that I will take as my starting point this afternoon. When we use the phrase “community justice,” we are often distinguishing it from our concept of “criminal justice.” We are trying to imagine a world in which matters of justice are treated differently. And, with the insertion of the word “community,” we are imagining a role for communities in the pursuit of justice that, arguably, is new and different. This afternoon, I would challenge us to ask these two questions: First, when we imagine “community justice,” how is that different from “criminal justice”; second, what is the role for communities in this vision? This is a “tough love” talk—now is not the time to be self-congratulatory; now is the time to be ambitious.

Forty-two years ago, the President’s Crime Commission, established by Lyndon Johnson following the urban race riots of the mid-1960s, issued a landmark report entitled “The Challenge of Crime in a Free Society.” The Commission made a number of important recommendations, including the creation of a national capacity to collect data on criminal victimization and to conduct research on crime and justice issues. But perhaps its most important contribution was to argue that the agencies of justice—the police, prosecutors and defenders, the courts, probation and corrections—working together, constitute a criminal justice “system.” The Commission actually prepared a graphic depiction of this “system”—a funnel-shaped chart that begins on the left with the number of crimes committed, then depicts those reported to the police (about half), then those resulting in an arrest (about 20%), then those moving to prosecution and conviction (about half), and finally those very few cases, compared to all crimes, resulting in sentences of imprisonment.

This image of the criminal justice “funnel” has dominated our thinking about issues of crime and justice for the past generation. We think of crimes as inputs on an assembly line, moving inexorably from the in-basket of one agency to that agency’s out-basket, then on to the in-basket of the next. This mechanical depiction of the criminal justice system has led us to view justice as an engineer would view a complicated public water system. We become fascinated with ways to improve the hydraulics of the system. Can we improve crime reporting? Can we improve the likelihood of an arrest? Can we improve the rate of successful prosecutions? Can we send more
people to prison? Can we send them to prison for longer terms?

And, when the public is dissatisfied with the levels of crime in their communities, public scrutiny is often focused on the inefficiencies in this system. Why are so many cases dismissed? Why are conviction rates less than 100%? Why are convicted felons not sent to prison? Why do the courts throw out evidence that has been seized illegally? And, a question now resonating in Wisconsin, why, when a judge sentences someone to ten years, is the person released from prison in six? If your experiences in the criminal justice system are like mine, we spent inordinate energy and time pointing fingers at each other, trying to assess blame for system failures, and hoping that the reforms undertaken by our agency will bolster the productivity of our stop on the assembly line of justice.

In my view, our thinking about justice has been warped by the influence of the 1967 President's Commission picture of justice. I call this phenomenon the “tyranny of the funnel.” Because our imagination has been stultified by this undue influence, we make four major errors in our thinking.

• First, we confuse the pursuit of justice with the successful adjudication of cases, without recognizing that justice can be achieved in ways that do not involve the justice system.

• Second, we too readily think that the proper response to crime is to improve the efficiency of the system of justice and the severity of system outcomes, without realizing that crime can be reduced in a variety of ways.

• Third, we believe that the only power of the agencies of our justice system is the power to arrest suspects, adjudicate cases, and sanction law violators, without recognizing the enormous moral authority these agencies hold.

• Fourth, we view this system—this funnel—as properly operating in a vacuum, that it should be far removed from the messy dynamics of interpersonal relationships and complex processes of community life.

My hope for the “community justice” movement—and for this conference—is that we can develop a new view of justice that will free us from the “tyranny of the funnel,” that we will be able to re-conceptualize our response to crime and our pursuit of justice. To do so, we must meet four challenges head-on.

**The First Challenge: Justice is about more than adjudication.**

Our understanding of justice needs to begin with the recognition that most
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crimes never see a courtroom. As I just mentioned, the “funnel” tells us that only half of all crimes are reported to the police and, of those, about 20 percent result in an arrest. So, if our concept of justice is limited to cases that appear in courtrooms, we have already written off the 90% of crimes that have no arrest. We need to expand our thinking and embrace the challenge of pursuing justice for the crimes that never make it to a courtroom.

But, you might ask, how can we achieve justice if we have not arrested, much less convicted, a defendant? My wife, Susan Herman, who now teaches at Pace University and is the former Executive Director of the National Center for Victims of Crime, has developed a concept called “Parallel Justice,” which envisions a pathway to justice for victims of crime that does not depend on the arrest of an offender. In this view, the commission of a crime typically affects two individuals, a victim and an offender, and society has an obligation to both. Regarding offenders, we believe we should arrest them and, where appropriate, prosecute them and, if appropriate, sanction them, and then support their reintegration into communal life, consistent with our constitutional values. Under Parallel Justice principles, the commission of a crime creates a distinct obligation—a parallel obligation—to help all victims of crime regain control of their lives. In this view, we should provide for their safety (particularly important given the high rates of repeat victimization), offer them a forum to describe what they need to recover from the crime, and support their reintegration into communal life. We have the same obligations to those victims whose cases are adjudicated, with the additional duty to provide them fair treatment in the justice system, and respect for their participatory rights.

This is a vision of justice that speaks to the needs of all victims of crime. It can form the basis for a national commitment to help victims rebuild their lives. Now being tested in communities around the country, the concept of Parallel Justice is an example of how we can re-conceptualize justice when we are freed from the tyranny of the funnel.

Even within our system of adjudication, we need not be wedded to the logic of the funnel. Over the years, justice reformers have developed many alternatives to traditional prosecutions that should be part of a multi-faceted approach to justice. Two powerful ideas stand at the top of this list. The first is mediation, and other forms of alternative dispute resolution. Years ago, when I worked at the Vera Institute of Justice, we launched an experiment testing the value of mediation in felony cases where the victim and
offender had a pre-existing relationship. We randomly assigned these cases; half were handled through traditional prosecution, the other half through mediation. The results were impressive: in the mediation cases, the parties had a much higher regard for the mediator, compared to the view of the judge in the traditional cases. In the mediation cases, the parties emerged with higher regard for each other, compared to traditional cases. In the mediation cases, the parties were able to restructure their relationships going forward, and the case outcomes involved much more restitution for the victims, compared to the traditional cases. Surprisingly, we found that the level of recurrence of conflict between the parties was no lower in the mediation cases, perhaps underscoring the complexity and volatility of these relationships.

Unfortunately, this experiment did not lead to full implementation of mediation for this category of cases. In Brooklyn, as in many communities, mediation is a service offered occasionally, rather than a core strategy for achieving justice. On the national level, we have never fully tapped the potential of mediation and alternative dispute resolution as part of our approach to justice. Yet imagine if we could obtain the results of our Brooklyn experiment in all eligible cases, in all jurisdictions around the country, with victims and defendants experiencing higher levels of satisfaction with the process, renegotiated relationships, and more respect for each other. Certainly, the quality of justice in the communities of America would be enhanced.

The second alternative to traditional prosecution—one supported creatively by Marquette Law School—is restorative justice, which seeks to address the harm caused by the crime and create more productive relationships between victim, offender, and other key stakeholders. Again, the research literature here shows enormous potential for enhancing respect for the process by all parties, improving victim-oriented outcomes, and reducing rates of re-offending. The restorative justice movement has taken hold in many other countries, yet only sporadically in America, and typically as a modest diversion program, not as a core justice strategy. I have been particularly impressed by the application of restorative principles to the reentry population in Milwaukee and the engagement of community members in the reintegration process.

If we put these reform ideas together, a very different approach to justice begins to take shape. We would pursue justice in response to all crimes,
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not just those resulting in an arrest, so that all victims—and by, extension, their families and communities—emerge from the crime with a sense that justice was achieved. For the small percentage of cases that come to court, we would apply alternative dispute resolution techniques, including mediation and restorative justice. Don’t misunderstand me: these techniques do not apply to all cases, but I hope you will agree we could be doing much more, and that doing more would enhance the quality of justice. The main reason we do not implement this vision is that we live under the tyranny of the funnel—these approaches do not fit nearly in the model of the assembly line leading from arrest to adjudication to sentencing. A community justice vision would recognize that justice must be pursued in a variety of ways, inside and outside the system of adjudication.

The Second Challenge: Preventing crime without relying on the criminal justice system. As our nation has reacted to rising crime rates over the years, the response of many elected officials has been to turn to the funnel as a crime control strategy. We are told that, in order to reduce crime, we should make more arrests, increase the rate of successful prosecutions, sentence more people to prison, and keep them in prison longer.

We have invested enormous sums of money in these crime control strategies, with profound consequences. We are making more arrests. The rate of incarceration per arrest has increased. Most strikingly, the national rate of incarceration has more than quadrupled over the past generation so that America now has the highest rate of incarceration in the world. There is general agreement among the academic experts that this investment has also resulted in lower crime rates. Putting a million more people in prison over the past 20 years—most of whom were involved in some level of criminal activity when they were arrested—has certainly had an incapacitation effect. Yet our reliance on the funnel of the criminal justice system as our major crime control strategy has also had enormous costs—both financial costs, and less tangible costs in the lives of those incarcerated, their families, and their communities impacted by high rates of incarceration and reentry.

A broader vision of justice would recognize that these investments represent opportunity costs. We should develop a menu of crime prevention strategies with proven effectiveness, and present them as alternatives to our current strategy of investing in a more efficient and harsher criminal
justice assembly line. There is a substantial body of research literature that assesses the relative costs and benefits of different investment strategies, ranging from early childhood education to drug treatment for individuals leaving prison. Our nation has not been able to sustain a serious policy discussion about competing crime prevention investment strategies, in part because we labor under the tyranny of the funnel. When the public—and our elected officials—think of ways to reduce crime, the reflexive reaction is to turn to the criminal justice system for the answers. It is my hope that the community justice movement can help our nation escape this tyranny, and think more broadly about our investment options.

In particular, in this time of fiscal crisis, I hope that some brave governor, following the lead of your former Governor Tommy Thompson who pledged to reduce welfare rolls, will commit his or her state to a multi-year plan to reduce the size of its prison population. The Justice Reinvestment concept—which envisions that savings from a smaller corrections budget would be returned to communities facing high crime rates—provides a framework for this political strategy. Perhaps Wisconsin can once again provide national leadership.

**The Third Challenge: Harnessing the moral authority, not just the legal power, of the agencies of justice.** In our understanding of the assembly line of justice, the role of the workers on the assembly line—the police, lawyers, judges and corrections officials—is to move cases along efficiently, keeping a professional and objective distance from the cases and the litigants, and dispensing justice impartially. In my opinion, by embracing this view of the dispassionate justice professional, we run the risk of losing something very important, namely the moral authority inherent in the roles of these public officials.

Fortunately, we are now witnessing, in a number of unrelated pockets of innovation, the emergence of a moral voice for justice that I find very exciting. One of the most powerful reform movements in our field these days is the problem-solving court movement, which began 20 years ago with the first drug court in Miami, Florida. Today we have a wide variety of problem-solving courts—mental health courts, domestic violence courts, community courts, gun courts, youth courts, and reentry courts. These courts have captured the imagination of both public and professional alike and are the leading edge of a very important idea, redefining the role of the courts in our response to crime.
These courts have many important attributes—they try to address underlying problems, not just adjudicate the legal issues in the case; they bring together a variety of services to assist offenders; they recognize the reality of relapse. But one of the most important dimensions of these courts is that they allow judges—and sometimes other professionals—to speak in a moral voice, without all the restraints of the assembly line. Judges speak to defendants as people; they speak openly to family members about the ways they can support the success of their loved ones; they recognize human weaknesses; they acknowledge the difficulty of the struggle with addiction; they applaud success and sanction failure; they talk about the importance of an individual defendant’s success to the well-being of the larger community.

A quick story: Years ago, I spent some time in a drug court in Seattle, Washington, and witnessed two remarkable moments. The judge was calling the docket when a woman entered the courtroom, and walked up to the bailiff with a big smile on her face, and asked if she could see the judge. The judge yelled out, “Of course.” The woman had come to the court to show the judge—and everyone in the courtroom—pictures of her recent reunion with her child. She had lost custody because of the arrest, but the judge, as part of the drug court process, had written a letter supporting their reunification. She and the judge exchanged hugs. It was quite a scene. Then the first case was called, and a young Native American woman came forward. The judge asked her whether she had been smoking marijuana. She said no; he asked again, and she said maybe; she said she had been with friends who had been smoking. Then he turned the computer screen so she could see the results of her drug test. He repeated his question. After a long silence, the court officer reached across the table, held her hand, and said, “Here, you can tell the truth.” The young woman then spoke of her relapse, her high level of anxiety, and asked whether the judge could write a letter on her behalf—like the one he had written in the case before—supporting her reunification with her tribe so she could get the support she needed. He said yes.

These interactions—which occur every day in problem-solving courts—happen only rarely in traditional courts, working on the assembly line of justice.

Here’s another example. In Brooklyn, NY, the District Attorney, Charles J. Hynes, has created a reentry program for prisoners returning
to his county, called COMAlert, for “community and law enforcement resources together”. He often addresses them personally, soon after they have come back home, and talks about his hopes for their future. His office coordinates services and job opportunities for them; he puts his reputation on the line, knowing that the risk of failure is high. Why does he do this? Their legal cases are long since completed; they are off the assembly line, as far as prosecution is concerned. But he has found a new voice, a voice of moral authority, one that resonates with the parolees, their families and the broader community, and elevates his standing as an official of the justice system.

The judges, prosecutors and other officials who are leading these important innovations have been freed from the tyranny of the funnel. Their programs are far removed from the cogs on the assembly line; they are anything but efficient; but I would argue that by speaking in this moral voice, these government officials are advancing the cause of justice in very powerful ways.

The Fourth Challenge: Connecting the agencies of justice with the dynamics of community life. In most American cities, courthouses are located “downtown,” far removed from neighborhoods. Most prosecutors’ offices are “downtown,” far away from the places where crimes occur. Most prisons are located far away from cities; most probation and parole offices are in central locations, not where probationers or parolees live. Even traditional service providers are usually centralized, city-wide agencies. The systems of justice are traditionally far removed from the places where crimes occur, where victims and offenders live, where prisoners return after serving their sentences.

When I was last in Milwaukee, I was thrilled to learn about your community prosecution program which involves the co-location of prosecutors in the city’s seven police districts. When I was General Counsel of the New York City Police Department, we developed a similar program, called the Civil Enforcement Initiative, that placed police lawyers in police precincts, working on nuisance abatement actions, asset forfeitures, and similar civil remedies to criminal and quality of life conditions. The notion of providing a “counsel to the district commander” is a very appealing notion because it brings the talents of our lawyers closer to the communities where the problems are most clearly identified, and the solutions are most often found.

In many other ways, your city has moved the processes of justice closer to communities, beginning with Chief Flynn’s strong focus of accountabil-
ity at the district level. By creating community accountability for probation, and parole, and assigning caseloads on a geographic basis, these important functions are moving closer to the communities they serve. The restorative justice circles being led by Professor Geske are engaging the messy dynamics of community life to assist returning prisoners establish productive new relationships when they return home.

The community justice movement holds great promise in this regard. We can imagine a world in which community courts are located close to the places where crime occur; where criminal defense services are provided on a local basis, as pioneered by the Harlem Neighborhood Defender Service in New York City; where the supervision of those on probation or parole occurs close to the community, so supervision officers are intimately familiar with the risks and opportunities; where the work of restorative justice and parallel justice initiatives draw upon the strengths of communities.

But beyond these innovations—important as they are—we need to take one more step in harnessing the dynamics of communities to our pursuit of justice. Even the vision I just described can be critiqued as merely decentralizing the criminal justice system, creating many “mini-funnels” at the neighborhood level. That begs the question: can we rethink the role of the justice agencies in ways that produce even greater crime reduction results, without putting more cases on the assembly line, while enhancing the legitimacy of the justice system in the eyes of the community?

In my view, among the most exciting developments in the world of justice reform are the innovative strategies developed by Prof. David Kennedy of John Jay College to address the issues of gang violence and drug markets. I know that Professor Kennedy has been here as your guest speaker on prior occasions, and am pleased to learn that Milwaukee has tested these strategies in some of your most challenging districts, Districts 2 and 5.

The call-in sessions (also called notification sessions or forums) that are the hallmark of David Kennedy’s work represent a fundamental departure from traditional practice, and reflect a direct challenge to the premises of the criminal justice funnel. In a typical session, representatives of law enforcement and criminal justice agencies meet with the individuals involved in gang violence, or overt drug markets. This fact, by itself is remarkable, as cops and prosecutors sit with known criminals. In many forums, they then say they have the power to arrest every offender in the room—they show tapes of undercover buys, or signed arrest warrants, or
potential parole or probation violations. But, they tell the offenders, they have chosen not to use that power, because they would prefer that the offenders stop the violence, stop the drug dealing, and choose more productive lives. Services and jobs are then offered for those who choose a way out. But the flip side of the message is also clear: if the violence and the drug dealing do not stop, all bets are off.

This scenario by itself is remarkable—the power to arrest and prosecute, the power to invoke the assembly line of justice, is held in abeyance to promote community safety. But the next part of the script is even more remarkable, and more powerful, as community voices reinforce the message that the community wants the violence and drug dealing to stop. Mothers and pastors, daughters and uncles, speak with a unified and passionate voice urging the offenders to change their behavior. The moral voice of the community is unleashed. These sessions often resemble processes of racial reconciliation, as the police acknowledge that the traditional way of responding to crime—by making lots of arrests, essentially invoking the power of the funnel—has not worked, and has in fact caused damage; the community then responds by acknowledging that they have failed to say clearly that the violence and drug dealing are unacceptable.

A month ago, we convened at two-day workshop at John Jay with two dozen leaders (including Tracey Meares) implementing these strategies around the country to design an initiative to bring these innovations to scale. We are calling this the National Network for Safe Communities. We have identified 75 jurisdictions that are testing these ideas—including Milwaukee—that will be invited to join the National Network in the next few weeks. We are moving beyond the “proof of concept” phase into a phase devoted to changing the way we approach the problems of gang violence and drug markets. We believe we are witnessing a transformative moment, a tipping point in the nation’s response to crime.

At the core of this innovation—and at the core of the community justice work underway here in Milwaukee—is a very different conception of justice, with communities as the focus of our efforts. We need to put our energies, talents, and resources where the safety needs are greatest, where respect for the rule of law is most threatened, where young people are at greatest risk, and where the impact of mass incarceration is most acute. These are the communities where the perceptions of injustice are most pervasive.
The people attending this important conference—and others of like mind around the country—believe we can leverage the power of community to achieve safety and advance the cause of justice. In my view, we can achieve this new vision only if we think creatively, and free ourselves from the constraints of the assembly line, the funnel, that dominates our vision. We have formidable challenges, but the energy behind this work is sufficiently powerful to meet them.

Congratulations on the impressive work you are doing. Don’t stop now. The nation needs your ideas, your commitment, and your success.
SUMMONING THE SUPERHEROES: 
HARNESSING SCIENCE AND PASSION TO 
CREATE A MORE EFFECTIVE AND 
HUMANE RESPONSE TO CRIME 

Keynote Address 
25th Anniversary of The Sentencing Project 
National Press Club 
Washington, D.C. 
October 11, 2011 

“We punish too much and heal too little.”

To mark its milestone anniversary, The Sentencing Project hosted a forum designed in part to envision what the criminal justice system and the nation’s approach to public safety should look like 25 years in the future, in the year 2036. Invited to deliver the keynote address at the forum, President Travis calls on science in the “quest for empirical truth” and passion for “the human impulse to seek justice.” These are the superheroes he summons to guide the way forward in pursuit of a crime policy that is both more effective and more humane.
Judge Hughes, Marc Mauer, dear friends: I am honored to have been invited to deliver this keynote address as we celebrate the 25th Anniversary of The Sentencing Project. For the last quarter century, The Sentencing Project has been a beacon of light beaming through the dark clouds of our nation’s debates over crime policy. Under the inspired leadership of Marc Mauer, and Malcolm Young before him, The Sentencing Project has been able to achieve what few other organizations in the criminal justice policy world have achieved—to strike the right balance between hard-nosed, objective and trustworthy research, on the one hand, and principled, logical and strategic advocacy on the other.

We can only marvel at the outsized impact of this feisty, small-budget organization. Consider just three examples from a larger portfolio: in large part because of The Sentencing Project, our country has reduced the racial disparities in sentencing for offenses involving crack cocaine, begun to roll back our felon disenfranchisement statues, and reversed many of the mandatory minimum sentencing schemes that needlessly put thousands of people in prison. What an impressive track record. We should be grateful for the work of The Sentencing Project, and wish them many more years of success. In very real ways, The Sentencing Project is helping us reclaim our position as a nation devoted to justice.

I have been given a challenging assignment today. While we are reflecting on the past quarter century, Marc has asked me to focus on the next quarter century—to envision the world of criminal justice policy in 2036. In taking on this assignment, one is tempted to paint a future world of peace and harmony, where lions and lambs lie together, our elected officials are all wise and enlightened, and debates over crime policy are resolved rationally, by referring to agreed upon principles, shared values and scientific evidence. I doubt this ideal world will exist in 2036. But we can still set lofty goals for ourselves. I hope we can agree that, in the next quarter century, we should aspire to create a crime policy that is both more effective, and more humane. By “more effective,” I mean that we should respond to crime in ways that produce socially desirable results—greater safety, less fear, less suffering, greater respect for the rule of law and less injustice—and that we do so efficiently, investing our precious financial and human resources in ways that maximize the results we desire. By “more humane,” I mean we should respond to crime in ways that recognize the humanity of those victimized by crime, those arrested and convicted of crime, and
others who experience the ripple effects of crime and our justice system. This affirmation of humanity, as I see it, incorporates values we hold dear in our democracy, such as equal protection of the laws, access to the rights guaranteed by our Constitution, and our fundamental belief in the dignity of the individual.

I need not detail for this audience the many ways our current reality falls short of these goals. Too many victims have difficulty getting their lives back on track. Too often, our police use excessive force, fail to follow legal dictates, and undermine respect for the rule of law. Our system of adjudication too often coerces defendants to act against their interests, and excludes victims from meaningful engagement. Our jails and prisons are frequently full beyond capacity and too often resemble human warehouses rather than humane places for reflection, rehabilitation and restoration. Our response to crime is marked by racial disparities that belie our commitment to equal protection of the laws. And we have become a society with a growing population of individuals with felony records, and prison experience, a population that we marginalize through legal barriers and social stigma.

If we want our response to crime to be more effective and more humane than this, we must summon the assistance of two powerful superheroes—two forces that, working together, can sweep away the cobwebs in our minds, clear the highest organizational hurdles and move political mountains. Our two superheroes are science—the quest for empirical truth—and passion—the human impulse to seek justice. People sometimes think that science and passion are opposite human endeavors, that they must be mutually exclusive. In my view, these superheroes are not rivals. In fact, the power of each is enhanced by the power of the other. To advance the cause of justice by 2036, we must be passionate about the importance of science, and must incorporate the lessons of science in our passionate advocacy for a more effective and humane response to crime.

So, let’s think about the challenges that we face to see how science and passion can work well together. I nominate, for your consideration, the following five great challenges for the next quarter century:

1. We must help crime victims rebuild their lives.

When a crime is committed, the social contract is broken. Our typical response to that event is to focus our resources and energy primarily on finding the offender, prosecuting him, and providing an appropriate criminal sanction if he is convicted. Why do we overlook the legitimate needs of the
victim? Why does our passion for justice not extend to those harmed by crime? What would science tell us about the experiences, needs, and life course of crime victims?

Let’s begin with the science. First, one of the most important criminological discoveries of the past two decades concerns the phenomenon of repeat victimization, the research finding that for some crimes, once someone is victimized, there is a high probability that the same individual will be victimized again.\(^1\) Indeed, the risk of re-victimization is highest in the period immediately following the first incident. In my view, this scientific finding, which applies to victims of burglary, sexual assault, and domestic violence, among other crimes, should create a social obligation to intervene to prevent the next crime. Second, science also tells us that for many crime victims, the crime causes long-term negative effects. Victims are more likely to experience mental illness, suicide and substance abuse than the general population.\(^2\) Victims of violent crimes suffer elevated levels of post-traumatic stress disorder (PTSD) and suffer from many PTSD symptoms, such as becoming fearful and withdrawn, and experiencing difficulties in professional, social and intimate relationships.\(^3\) Given these social harms, why do we not intervene to help mitigate the damage caused by crime?

Third, research also tells us that child abuse and neglect frequently create an intergenerational “cycle of violence,” to use a phrase coined by Cathy Spatz Widom.\(^4\) Children who suffer in this way are more likely than a comparable peer group to engage in delinquent and criminal acts when they grow up. Given this fact, how can we not provide special interventions for these, our most vulnerable, to help them secure a brighter future, while simultaneously preventing future crimes?

Finally, we have known for decades that most victims never see their cases go to court because most crimes do not result in an arrest.\(^5\) In the small percentage of all reported crimes where an arrest is made—about

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\(^3\) Michael B. First, Allan Tasma, eds., *Anxiety Disorders: Traumatic Stress Disorders*, in DSM-IV-TR Mental Disorders: Diagnosis, Etiology, and Treatment (West Sussex, UK: John Wiley & Sons, Ltd., 2004, 927-8).


20%—most cases are resolved through plea bargains or result in dismissals, so victims play a minor role, if any. Even in cases that go to trial, where the crime victim may be a more active participant, the victim's immediate and long-term needs are rarely addressed. Given this statistical reality, why have we focused so much attention on the role of victims in criminal proceedings, at the expense of devising a societal response to all victims, whether or not the offender is ever arrested and prosecuted? Where is our passion, our concern for human suffering, our sense of justice?

My thinking on this topic has been influenced, I hasten to acknowledge, by the work of my wife, Susan Herman, who developed the concept of Parallel Justice. According to the principles of Parallel Justice, we should not conceptualize our response to crime victims simply as an act of charity, nor merely through the creation of rights in criminal proceedings. Rather, the concept of Parallel Justice requires that we respond to victims more effectively, and more humanely, because the pursuit of justice requires it.

The science is clear. A more effective response to victims will reduce repeat victimization and future offending. It will prevent long-lasting social harms and repair the social fabric. We can hypothesize that a more humane response to crime victims would enhance their respect for the rule of law and would reduce the overall retributive mood in our country. So we need to ask ourselves why we have not taken the needs of crime victims seriously. Unfortunately, we have created a two-track world that sees the interests of victims and offenders as oppositional, that counts individuals as either victim advocates or justice reform advocates, that pits the suffering of prisoners against the suffering of victims. We are a better nation than this history suggests. Between today and 2036, we must expand our concept of justice to embrace a societal obligation to those harmed by crime. Our passion for justice, working in tandem with strong science, will lead the way.

2. We must pursue a focused and scientific crime prevention agenda.
We are fortunate to be meeting at a time when the crime rates in America are at historic lows. There are two distinct narratives about crime trends in America. The story of violent crime is well known. After a decline in the early 1980s, rates of violence in America spiked upward starting in the mid-1980s with the introduction of crack cocaine in America's cities. Then, as

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that epidemic subsided, violent crime rates started a historic decline, dropping to rates lower than those seen in the 1960s, with another 12% decline from 2009 to 2010 reported last month by the FBI. Less well known is the story of property crime, which has been in steady decline since the early 1970s. Our rates of property crime today are half their level when the decline started. These are remarkable stories. Who among us—particularly those working in this field for the past 25 years—would have thought we could stand in our nation’s capital and say that crime rates are at their lowest levels in our professional lifetimes?

I draw three lessons from this story. First, we need a much better understanding of why this happened. I can think of no stronger indictment of our field than this: we do not have a satisfactory, much less a sophisticated, understanding of the reasons that crime has increased and decreased so dramatically. Imagine we were meeting at a medical convention, noting that the incidence of one type of cancer had dropped in half since 1970, and another type of cancer devastated America’s inner cities, particularly its communities of color, for several years, then dropped precipitously. Would we not expect the medical research community to have a deep understanding of what happened, what treatments worked, what environmental factors influenced these results, and which strains of these cancers proved particularly resistant? Of course we would.

So, the crime scientists among us need to get to work, with appropriate funding from foundations and the federal government, to help us understand our own history of crime trends. And, looking forward, we need to develop a much more sophisticated data infrastructure to allow us to track crime trends in real time. Think about this the next time you hear about a business report on television: If economists can tell us which sectors of the economy were growing or declining last month, certainly we can build a data infrastructure to help us understand crime trends last year.

A second lesson: we need to rethink what we mean by “crime prevention.” Too often we narrowly define “crime prevention” only in terms of

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8Truman, 2011.

9At a minimum, a robust national data infrastructure to track crime trends would include: an expanded National Crime Victimization Survey (NCVS) so that the victimization trends could be tracked in the 75 largest cities of America; an expanded Arrestee Drug Abuse Monitoring (ADAM) system in those 75 cities, as proposed by the Department of Justice fifteen years ago, to track trends in drug use, gun use, intergroup violence and other variables among the arrestee population; and federally-administered annual recidivism reports for all 50 states to track arrest rates among those under community supervision.
programmatic investments in young people to help them lead more productive, pro-social lives. But clearly, over the past forty years, this historic decline in crime rates has not come about because we invested massively in programs that helped our young people avoid criminal activity. Other policy choices have also made a difference. Let me give one example: according to a provocative new book by Frank Zimring on the crime decline in New York City, that city’s auto theft rate in 2008 is 6 percent—six percent—of what it was in 1990.\textsuperscript{10} How were those crimes prevented? How much can be attributed to changes in safety practices and theft-prevention technologies developed by the auto industry, by new federal regulations requiring marking of auto parts to deter the operation of chop shops, and by more effective police investigations? My point is simple: a rigorous, scientific exploration of changes in crime rates will identify a broad set of practices that prevent crime, assign costs and benefits to those practices, and hopefully help us invest money and political capital in those crime prevention strategies that are proven to reduce harm. If we are passionate about reducing our crime rates even further by 2036, we will broaden our frame of reference and bring many more sectors of our society to the crime prevention table.

There’s a third, uncomfortable lesson of the great American crime decline: we have no reason to be complacent. The rates of lethal violence in America are still higher than in Europe, by a factor of five. (Our rates of property crime are, we should note, lower than in Europe.) And, if we were ruthless about our science, we must confront the reality that violent crime is highly concentrated in a small number of communities of color in urban America, and in those communities is concentrated among a small number of young men. These men are at high risk of being both victims of violence, and agents of violence.

Let me cite some data that make the point. A few years ago, John Klofas, a professor at the Rochester Institute of Technology, examined that city’s homicide data to determine who was at the highest risk of being killed.\textsuperscript{11} At the time of his research, the homicide rate for the nation as a whole was 8 per 100,000. Among those aged 15-19, it was nearly triple that: 22 per


Among males in that age group, it was more than quadruple the national rate, or 36 per 100,000. For African-American males aged 15-19 in Rochester, it was 264 per 100,000. Finally, for African-American males aged 15-19 in the “high-crime crescent,” the most dangerous neighborhood in Rochester, the homicide rate was 520 per 100,000, or 65 times the national rate.

More recently, Andrew Papachristos of the University of Massachusetts, Amherst, took this approach one step further. Using a database including all young men involved in criminally active groups in a high crime Chicago neighborhood, Dr. Papachristos calculated that the homicide rate within these groups was 3,000 per 100,000, or 375 times the national rate. This kind of social network analysis is not just about victimization rates. The 1,593 people included in Papachristos’ analysis were also responsible for 75% of the homicides in this neighborhood. This rate of killing constitutes a national crisis, yet we turn a blind eye to this reality, lulled into inaction by our self-congratulatory sense of progress and our collective unwillingness to get serious about the issue of violence in inner city communities of color.

To reduce rates of violence in America over the next quarter century, we must tackle this phenomenon head on. I strongly recommend that we embrace and replicate the focused deterrence strategies developed by David Kennedy, a Professor at John Jay College of Criminal Justice. First tested in Boston 15 years ago to address youth violence, then expanded to drug markets in High Point, North Carolina, and now being implemented in 70 cities across the country through the National Network for Safe Communities, these strategies have been proven highly effective at reducing group violence—typically by 40-50%—and virtually eliminating overt drug markets. These strategies have two other benefits—they reduce incarceration rates, and promote a process of racial reconciliation between police and communities of color. If we are serious about creating communities that are safer and more just, we will insist that these strategies are replicated nationwide.

A scientifically based crime prevention agenda would simultaneously

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14The National Network for Safe Communities, housed at John Jay College for Criminal Justice, is dedicated to working with jurisdictions to implement these focused deterrence strategies and to incorporating them into national practice. See www.nnscommunities.org.
expand our vision to incorporate the many ways crimes are prevented, while focusing laser-like on the neighborhoods and individuals at highest risk of the most extreme violence. On this latter point, strong science will direct us, but passionate advocacy is necessary to win the day. Unfortunately, American society is not sympathetic to the argument that, because young African-American men, many of them involved in crime themselves, are at greatest risk of being killed, we should therefore devote our greatest resources to preventing those crimes. To advance that agenda we must overcome barriers of racism, fear and stereotyping. But if our crime policy is to be more effective and more humane, we must bring all our tools—science and passion—to the task.

3. We must use science to develop professional standards for the justice system.
One of the most important recent developments in social policy generally—and in crime policy specifically—has been the embrace of the notion of “evidence-based practices.” The Office of Management and Budget has adopted this mantra with gusto. The Office of Justice Programs in the Justice Department has joined the chorus. George Mason University now hosts a Center for Evidence-based Crime Policy. With some reservations, I applaud this development. Rather than discuss my reservations, however, I would like to challenge us to imagine the world of 2036, when we hopefully will have much more evidence about what works and what doesn’t, and ask ourselves this question: How will we enforce the science of effectiveness? How do we ensure that practice follows research, and criminal justice agencies are held to evidence-based standards?

In imagining this new world, we are immediately confronted with the realities of our federal system in which the states are primarily responsible for criminal justice operations. Granted we have some national standards of practice imposed by federal courts through constitutional interpretations—think of the Miranda warnings, required of all police agencies. We have other standards imposed by federal oversight agencies—think of the FBI’s reporting guidelines for the Uniform Crime Reports. Yet, as a general matter, we shy away from federally imposed standards of practice. Must it always be so? Can we create a national framework in which certain standards of practice, validated by strong science, have equal force and effect across the country?
This dilemma was highlighted recently by a court ruling in New Jersey\textsuperscript{15} and a research report issued by the American Judicature Society.\textsuperscript{16} Both examined the same issue—the unreliability of eyewitness memory. As we know from hundreds of exonerations based on DNA analysis, errors attributable to faulty eyewitness memory can result in serious miscarriages of justice. Hundreds—perhaps thousands—of individuals have spent years in America’s prisons for crimes they did not commit. Some have been put to death. But we also know from strong scientific studies that eyewitness evidence can be gathered in a way that reduces the likelihood of error, without compromising our ability to identify the true suspect.\textsuperscript{17} This method is called “sequential, double-blind”, meaning that the witness sees possible suspects (either in lineups or in photos) one after another, and that the procedure is administered by someone with no connection to the investigation. The power of this method was conclusively demonstrated in the field experiment conducted by AJS.

But now we face a significant question: How do we, as a nation, ensure that all investigations involving eyewitness evidence are conducted according to this proven procedure? In the Henderson case, the New Jersey Supreme Court established standards for that state, with commendable reference to the strong scientific basis for those standards.\textsuperscript{18} Perhaps the United States Supreme Court will issue a similar, Miranda-like ruling, but let’s not count on this outcome. In the meantime, what should be the rule in states other than New Jersey? In those states, will we allow innocent defendants to be convicted and sentenced to prison terms based on faulty eyewitness identification as our sacrifice on the altar of federalism?

In less dramatic terms, we have faced this question before. To cite well-known examples, we continue to fund DARE, “scared straight” programs, and batterers’ interventions long after research has shown they are ineffective. On a broader scale, we fund programs of unknown effectiveness that have never been rigorously tested. And even when we have competent evaluations in hand, we care little about effect sizes (does the program make a big or small difference?) and even less about cost-benefit analy-

\textsuperscript{15}State v. Larry R. Henderson (A-8-08)(062218) (2011).
\textsuperscript{17}Elizabeth F. Loftus, James M. Doyle, Jennifer E. Dysart, Eyewitness Testimony: Civil and Criminal (Newark, NJ: Lexis Nexis, 2007).
\textsuperscript{18}State v. Larry R. Henderson (A-8-08)(062218) (2011).
sis (did the positive program effects more than offset the cost of the program?). In making the case for strong crime science, I turn again to the medical model for an analogy. Imagine that medical research had found an effective treatment of migraines. Wouldn’t we expect the entire medical profession to adopt that procedure? Wouldn’t we be shocked if a migraine patient in Washington was told that, even though the treatment is available in New Jersey, we will wait until we validate it in Washington? Imagine if the Washington doctor said something we hear too often in the criminal justice world: “Well, migraines in Washington are just different and anything they learn in New Jersey won’t work here.”

We cannot alter our federalist structure of government, but we can develop a robust concept of justice professionalism, in which policies and practices of proven effectiveness are adopted by police, prosecutors, judges, corrections, service and treatment providers. We need a professional ethic that views failure to adopt those proven policies and practices as a form of justice malpractice.19 As our science becomes stronger, and our evidence base becomes deeper, we need to be passionate about demanding that the agencies of justice follow the dictates of science.

4. We must rethink the role of the criminal sanction.
One of the great advances in our profession came nearly a half century ago when the President’s Commission on Law Enforcement and Administration of Justice specified, for the first time, the complex interactions of the agencies that comprise the “criminal justice system.”20 This system is now depicted in the famous chart, resembling a funnel, with the number of crimes committed on the left hand side, the operations of police, prosecutors and courts in the middle, and prisons and community corrections on the right hand side.

This portrayal of the criminal justice system may have clarified the working relationships of those agencies, but it created a new problem: the “case” has become our unit of analysis. We focus our attention on the cases that move down the assembly line of the justice system, from the outbox...
of one agency to the inbox of another. Over the past 20 years, another metaphor has emerged, one that stands in stark contrast to the image of the assembly line. In this metaphor, the agencies of the justice system are organized around a problem, not a case. Rather than the assembly line, this approach envisions a collaborative table at which the assets of various agencies are deployed to address an underlying problem, not just to determine the outcome in a criminal prosecution.

This new approach was first championed by the police, inspired by the pioneering work of Herman Goldstein, titled *Problem-Oriented Policing*. Prof. Goldstein said the unit of analysis for effective policing was a community problem, not a 911 call. This powerful insight led directly to the concept of “hot spots policing,” which focuses police resources on addressing crime problems that are spatially concentrated. In a broader sense, the problem-centered approach to crime lies at the heart of community policing, with its emphasis on community partnerships to address community problems.

A problem-oriented focus also led to the creation of the first drug courts in Miami in 1989, the first community court in Manhattan in 1993, and a generation of innovative problem-solving courts addressing issues such as mental health, domestic violence and drunk driving. This new way of thinking informs the work of David Kennedy, whose strategies were designed to address the problems of group violence and overt drug markets. It undergirds the premise of Project Hope, a highly successful project first launched in Hawaii designed to reduce drug use and crime among the community corrections population. It lies at the heart of the restorative justice movement, which convenes victims, offenders and other stakeholders to address harms and repair relationships. Finally, this pragmatic approach to problems, not cases, provides the framework for the reentry movement,

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which is bringing new partners to the table to address the challenges faced by individuals leaving prison.\textsuperscript{26}

In this new world, everyone’s role is changing. In the focused deterrence work, probation officers are part of a strategy designed with police, prosecutors and community members in which their supervisory authority is used to achieve certain behavioral outcomes for probationers. In drug courts, prosecutors and defense attorneys collaborate with judges to impose minor criminal penalties on participants who violate their treatment terms. In Project Hope, drug tests are used explicitly to prevent drug use and cut recidivism, only secondarily to detect drug levels.

These initiatives challenge conventional wisdom. They envision a very different system, one that is more collaborative than adversarial. But they are even more revolutionary than that. At their core, they envision a very different role for the criminal sanction and the relationship between the criminal sanction and individual behavior. If, as in the case of drug courts, the behavior of drug addicts changes because of the possibility of the imposition of a criminal sanction, why would we not defer more prosecutions and suspend more sentences? If, as in the case of the focused deterrence model, gang members and drug dealers no longer engage in violence (or drug dealing) because of the combination of peer pressure, community influence, and a credible threat that they will be arrested if the violence and drug dealing continues, why would we not package the criminal sanction this way more frequently?

I believe we are on the verge of a fundamental conceptual breakthrough. These problem-oriented innovations are showing us that if we apply the criminal sanction in a very parsimonious way, in combination with other interventions, we can reap enormous benefits in crime reduction and enhanced legitimacy of the justice system. These innovations, in turn, require us to reconsider our approach to sentencing, to become less rigid and less punitive. Finally, these problem-solving approaches show us how to engage more effectively the forces of informal social control—such as family, positive peer pressure, and community supports—so we can rely less on the forces of formal social control, such as arrest, prosecution and prison. In the future, if the science continues to support these interventions, and we are passionate about applying these lessons, the criminal

justice system, as a mechanical assembly line, may be a relic of our past.

5. **We must rethink a venerable American institution, the prison.**

Anyone who follows the work of The Sentencing Project knows the sobering facts. The rate of incarceration in America has nearly quadrupled between 1980 and 2009.\(^{27}\) America holds one-quarter of the world’s prisoners, even though we constitute only 5 percent of the world’s population.\(^{28}\) An African-American man faces a one-in-three lifetime chance of spending at least a year in prison.\(^{29}\) In 1972, there were 200,000 people in our nation’s prisons; we now have over 140,000 people serving life sentences alone.\(^{30}\) In California, 20% of the prison population is serving a life sentence.\(^{31}\) In 2007, we spent $44 billion on corrections, up from $10.6 billion in 1987.\(^{32}\) The number of people incarcerated in state prisons on drug offenses has increased at least by 550% over the past 20 years.\(^{33}\) This year, approximately 735,000 individuals will leave state and federal prison, compared to fewer than 200,000 in 1980.\(^{34}\)

We should quickly acknowledge that the era of prison growth in America might have ended. For the last three years, the prison population actually declined.\(^{35}\) In some states prison populations have actually declined substantially, led by California, Michigan, and New York, which have seen

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\(^{32}\)The Pew Charitable Trust Center, 2008.


declines of 4,257, 3,260, and 1,699 respectively between 2008 and 2009.\textsuperscript{36} We should also note that a number of states have significantly reduced their juvenile detention rates.\textsuperscript{37} But these slight decreases should not be a cause for celebration. We have a long way to go to bring our incarceration rate into line with other Western democracies, or even our own history.

As Americans, we should be deeply troubled by the current state of affairs. In fact, I think we should consider our current level of imprisonment a stain on our national conscience. We can certainly criticize our high rate of incarceration on any number of policy grounds: Prisons are a very expensive response to crime. As a crime control strategy, imprisonment is highly inefficient, requiring lots of resources for very little benefit in terms of crime control. They have become part of the national landscape—literally, scattered throughout the land—and have become embedded in local economies. They are supported by powerful unions, fueled by corporate interests and perpetuated by the reality that some elected officials have become dependent on the economic and political benefits of having prisons in their districts.

But I would hope that our critique of the American experiment with high rates of incarceration would begin with a consideration of the human cost—a recognition that we have wasted hundreds of thousands of lives, subjected thousands of our fellow citizens to the inhumane treatment of solitary confinement, separated families in a modern version of the slave auction block, and consigned millions of Americans to a state of marginalized life, cut off from meaningful work, benefits, political participation and family support. Many years ago, as the system of apartheid was just being installed in South Africa, Alan Paton, a white South African author, wrote a novel describing the racial realities in that society with the memorable and powerful title, \textit{Cry the Beloved Country}. When we look at our current imprisonment practices, we should have the same reaction: what has happened to our beloved country?

Turning around this quarter century experiment will take enormous help from our superheroes. We need strong science to show the impact of imprisonment on the people held in prisons, their families and the commu-

\textsuperscript{36}Ibid.
nities they left behind. We need strong science to demonstrate the effectiveness of alternatives to incarceration, in-prison programs, reentry initiatives, and new approaches to community supervision.

But this is a policy area where even the strongest science will not be enough. We need to call upon our second superhero, passion, to play a primary role in promoting a system that is more humane. We need to remind people that prisons hold people, that millions of children are growing up without their parents, that corrections officers also live in prisons and must endure challenging circumstances, and that victims are not helped if the person who harmed them is simply incarcerated and neither the victim's nor the offender's needs are addressed.

Of the five challenges I have offered this morning, this is the toughest. I would suggest that we start with a clean slate, asking the deepest philosophical and jurisprudential questions. Why should anyone be sent to prison? Under what circumstances is the state authorized to deprive someone of their liberty? How long is long enough? If we had fewer prisons, how could the money saved be better invested—to help victims recover, provide alternatives to incarceration, to fund the tougher work of solving the problems that give rise to crime? Our biggest challenge will require our greatest feat of imagination. It will require the very best of our two superheroes, science and passion. It will require deep and sustained political work to persuade our elected officials that we need to reverse course and abandon our over-reliance on prison as a response to crime.

The work that lies ahead builds on some sobering lessons from the past 25 years. We punish too much and heal too little. Too often, we isolate, rather than integrate, those who have caused harm. Too often, we neglect, rather than comfort, those who have been harmed. Our overreliance on the power of the state rather than the moral voice of family and community undermines the promise of our democracy. Yet, despite these realizations, we still face the next quarter century with hope—a fervent hope that in the next chapter of our history we can be more effective, and more humane, as we respond to crime; we can address the compelling problem of violence in our inner cities while reducing rates of incarceration and promoting racial reconciliation between the police and the policed; and we can return to rates of imprisonment that are consistent with our values as a nation. We have every reason to be optimistic about our future. In fact, when you think about it, the greatest reason for optimism is that so many Americans, like
the people in this room, working around the country with organizations like the Sentencing Project, are so fiercely committed to justice. Keep up the good work.

Thank you.
Nine years after President George W. Bush announced the Second Chance Act, and barely a month after the U.S. Departments of Education and Justice awarded nearly $1 million in grants for innovative correctional education programs, President Travis addressed a conference hosted by the Department of Education and the Ford Foundation, setting forth his belief that the nation was witnessing the beginnings of a movement leading to the restoration of college education in prisons. He outlined three reasons for optimism, and called for a mobilization of political will to make the dream a reality.

“An investment of $962 in academic education can save $5,306 in future criminal justice costs.”
Thank you for the kind introduction.

I was pleased to accept this invitation from Doug Wood to come to speak to you this morning. I am honored that you would ask me to deliver these opening remarks at this historic conference. I truly believe this conference is historic. If we step back from this day and take a longer view, we are now witnessing, I believe, the beginnings of a movement that will lead to the restoration of college education in our nation's prisons.

Before you dismiss this prediction as unfounded optimism, let me reassure you I am acutely aware of the obstacles ahead. I know there are many reasons to be cautious, even pessimistic, and to discount my assessment as viewing a near empty glass as almost full. Yes, I know it has been a long time since 1994 when the Violent Crime Control and Law Enforcement Act of that year eliminated Pell grants to support prison-based college education. For those of us who support such programs, these two decades have seemed like a lonely journey in the wilderness. Yes, I am acutely aware that, notwithstanding the best efforts of a generation of reformers, our nation has continued to build its prison population to record levels, now nearly five times the incarceration rate of 1972, the first year on the road to the reality that some scholars call “mass incarceration.”

Yes, I can also view our incarceration policies through the lens of race, agree with Michelle Alexander that our new reality of punishment resembles the New Jim Crow, and wonder whether, after our shameful experience with slavery, contract convict labor, Jim Crow, and residential segregation following the Great Migration, this latest chapter in racial exclusion under the color of law is merely a continuation of America’s version of original sin.

Yes, I recognize that, of all the prison-based services that have been defunded, inadequately funded, or outright banned, perhaps a college education for people convicted of serious crimes is the most difficult prison-based service for which to garner public and political support. Why, as our politicians remind us, should the people in prison get the benefit of a publicly funded education when those who have not violated the law have to pay tuition, and for our poorest young people the dream of college is not only deferred but beyond reach?

Yet, notwithstanding these solid grounds for caution, I think we have reasons to be optimistic—and even more, reasons to think the tide has turned and we will see college education restored to our prisons in the coming years. Let me try to convince you.
The most obvious evidence of momentum is the collection of people in this room. Let’s start with the philanthropic community. I had the honor of being invited to a meeting hosted by the Ford Foundation in September 2011 and was stunned by what I saw. In that room were the nation’s leading foundations in the education field, co-hosting, with the leading foundations in the justice reform field, a meeting of educators working in prisons—and the federal Department of Education, represented by an Assistant Secretary, Brenda Dann-Messier—to talk about the best way to mount a national demonstration project on prison-based college education. Our host, of course, was the Ford Foundation—led by an experienced expert in education reform, Doug Wood, joined by his colleague Darren Walker, with his deep knowledge about community development and workforce development, and inspired by Ford’s President, Luis Ubinas who told a moving story of the difficulty his brother faced in returning from prison.

Also in the room were other leaders in education reform—the Bill and Melinda Gates Foundation, the Lumina Foundation—who stated clearly that their mission to reach those Americans who were denied access to education would be incomplete if they did not find a way to reach those in prison. Also there was the Sunshine Lady Foundation, which has been a pioneer in supporting prison-based education programs. And rounding out the line-up was the Open Society Foundation, which has an impressive history of supporting innovative approaches to poverty, justice reform, and overcoming social exclusion. Finally, the experts they convened were the right experts—folks like Max Kenner at Bard Prison Initiative that has been doing inspirational work, Dean Todd Clear of Rutgers, and our New York colleague Vivian Nixon from the College and Community Fellowship who has an impressive track record of success with formerly incarcerated students that few can match.

I have been around the foundation world for many years and have never been to a meeting like this before. I have worked, with some success, to raise money for research on prisons and prisoner reentry and know how skittish the foundation world has been to fund this kind of work. But that day was different. And the results are impressive. A consortium of foundations has now supported the Pathways From Prison to Post Secondary Education demonstration project, to be managed by my good friend Fred

Patrick at the Vera Institute of Justice, in New Jersey, North Carolina, and a third state to be named soon. Now I recognize that people might think this demonstration program is inadequately funded, that there should be more participating states, and I speak for my colleagues from New York when I say I wish we had been chosen. But the larger point is this: we are now witnessing a policy conversation we have not seen before at the national level, centered on this question: “What does it take to implement college education programs in our prisons?” And this powerful idea will now be discussed in foundation board rooms, governors’ offices, meetings of corrections commissioners, editorial boards, legislative oversight committees, and other influential public and private forums. Let’s celebrate the role our foundation colleagues have played in bringing a powerful idea back into our public discourse. Their backing speaks volumes about a shift in the public receptivity to our mission.

A second reason to be optimistic is the active leadership of the federal government. Those of us who have been engaged in these issues for a long time know that leadership has not been lacking here—on the contrary, John Linton, the Director of the Office of Correctional Services at the Department of Education, has been a hero for many of us in his persistence and expertise. But what is different now is the breadth and depth of the federal role. Last fall the Department of Education hosted a “summit” on correctional education, with attendees from across the spectrum of education, reentry and corrections. These participants engaged in cross-sector, solutions-oriented discussions on juvenile and adult correctional education. Following the summit, the Vera Institute of Justice has committed to convene follow up meetings with leaders interested in adult educational issues. Last year, the Department of Education released a publication entitled A Reentry Education Model,\(^2\) then released two RFP’s to support reentry-focused educational programs. Earlier this month, the DOE office hosted a webinar bringing together experts from the field and local practitioners to discuss several emerging community college correctional and reentry education models. We should be grateful for the leadership of Education Secretary Arne Duncan, and in particular Assistant Secretary Brenda Dann-Messier, in placing the Department of Education at the cutting edge of this movement.

Over my career I have had occasion to watch carefully the power of the federal government to shift the nation’s thinking on difficult issues. We are of course aware of the government’s influence through federal grants, and through regulatory reform, and of course through legislation and executive orders. But in many ways the most powerful role the government plays is by supporting new ideas—or, in this case, giving support for the re-engagement of an old idea. With four years ahead, and a solid record in the four years past, this administration has the potential to change the conversation, to re-frame the question. Now we ask, “Why should we offer college education to those incarcerated?” Our goal should be to ask a new question: “Given our country’s values—our belief in the autonomy of the individual, the power of the American dream, the transformative potential of learning, and the possibility of a second chance for those who have violated the law—on what basis would we NOT offer college education to those incarcerated?”

The third reason to be optimistic is that the ground has shifted on the larger issue of the role of prisons in our society. As I talk with policy makers, criminal justice practitioners, elected officials, academics and informed citizens, I get a sense—and perhaps you share this experience—that, as a nation, we now realize that something is profoundly amiss with our approach to imprisonment as a response to crime. Certainly the fiscal crisis following the recession has focused the mind of government leaders and many states are struggling to find ways to reduce prison costs. Certainly the low crime rates we now enjoy have taken crime issues off the front burner in our electoral politics. But I think there is a larger, deeper, more profound shift occurring now. I think we are now coming to terms with the enormity of what we have done—the harms we have caused—by quintupling the rate of incarceration in the past generation.

Michelle Alexander’s book, The New Jim Crow, is a harbinger of this new awareness. When in our lifetime have we seen a serious, scholarly book on criminal justice policy make the best-seller list of the New York Times and stay there for 57 weeks? Professor Alexander’s book has sold 255,000 copies! Most academics would be over the moon with book sales over 2,000. On a deeper level, the policy ground has shifted. We now have a group of serious conservative policy experts—including Grover Norquist,
William Bennett and Marc Levin—who have created a group called “Right on Crime” that argues, among other things, that our current expenditures on prisons cannot be justified in terms of cost-effectiveness. Conservative columnist George Will recently wrote a powerful piece opposing solitary confinement because it violated conservative prohibitions against excessive government control.\(^4\) And just this week I read that David Keene, President of the National Rifle Association, has thrown his support behind proposals developed by the Oregon Public Safety Commission to reduce the prison population and reform mandatory minimum sentences. If the NRA supports these ideas then the ground has truly shifted.\(^5\)

Other forces have contributed to this new national stance on incarceration. The Supreme Court decision in \textit{Plata} holding that conditions in California’s prisons violated the Constitution and the court-ordered sharp decrease in that state’s prison population—without the feared crime wave—has shown that we can reverse course. The frequent news of yet another innocent person released from prison by the efforts of Barry Scheck and Peter Neufeld of the Innocence Project reminds the public that this system we have created is highly imperfect.

I am not objective on this matter, but I would assert that the 15 years of the reentry movement has also contributed to this new national stance on our penal policies. Launched by Attorney General Janet Reno in 1999, framed by President George W. Bush in his eloquent 2004 State of the Union Address and embodied in the historic Second Chance Act with its remarkable bipartisan support, the reentry movement has demonstrated how leadership at the national level can focus attention on the compelling life challenges faced by our fellow citizens who have been held in our nation’s prisons only to return home.\(^6\) This movement has been given an impressive jolt of energy with the strong leadership of Attorney General Eric Holder, the impressive commitment of other Cabinet secretaries who participate in the Federal Interagency Reentry Council, and the expert coordination of Amy Solomon of the Office of Justice Programs.

This federal leadership is indispensable to our efforts to turn the tide. At the most profound level, the reentry movement has allowed the country to reframe an age-old challenge to our justice system—how do we prepare people for the inevitable return home? Embracing this challenge elevates our discourse as we pursue a justice system that is simply more humane, more focused on the individual and more respectful of the dreams and challenges experienced by formerly incarcerated individuals, their families and their communities. By requiring us to confront these issues, the reentry movement raises deep questions about the wisdom of our decision to incarcerate someone in the first place, or our decision to deprive a fellow citizen of his liberty for so long.

If you agree with me that the time for reform is now, and that we are poised to garner unprecedented federal support for college education programs in prison, then the question is how to make the convincing argument, how to mobilize the political forces that will make this dream a reality. You may be surprised to learn that I recommend we NOT rely solely on criminal justice arguments to make our case. Of course it is important that we cite research showing that participation in education programs has been associated with reductions in recidivism ranging from 7 percent to 46 percent.\(^7\) We should also point out that an investment of $962 in academic education can save $5,306 in future criminal justice costs.\(^8\) Of course we should also point out that a restoration of Pell grants for incarcerated students does not represent a significant federal investment. When Pell grants for prisoners were eliminated in 1994, this funding was only $34 million, representing less than 1/10 of 1 percent of all Pell grants, which then totaled $5.3 billion.\(^9\) So, on a pragmatic level, the arguments for college education as a low-cost program that could enhance public safety are very strong. (I have developed these arguments more fully in a 2011 speech at the Graduate Center of the City University of New York.)\(^10\) But these arguments have


\(^10\) Jeremy Travis, (2010). Rethinking Prison Education in the Era of Mass Incarceration. (Keynote address delivered at the University Faculty Senate conference on Higher Education in the Prisons, The Graduate Center, City University of New York).
not carried the day—and, I believe, will not carry the day.

But to close the deal—to take advantage of this unique moment in our history—I would like to suggest that we develop a robust independent argument for restoration of Pell grants and other government support for higher education in prisons. This argument must be based in the classic American value that our society benefits from an educated citizenry capable of making contributions to our economy and our democracy. In essence, we must extend our argument for public education to include those denied an education because they are in prison. How would we construct such an argument? We would begin by noting that, in the words of a 2004 report of the Department of Education, “the most educationally disadvantaged population in the United States resides in our nation’s prisons.”

The next building block in the argument is to note the paucity of educational programs in those prisons, particularly at the college level. Then, using the power of the reentry framework, we add the observation that large numbers of people leave prison without adequate educational opportunities to address those deficits. Then we add the long-term perspective, noting that we are living in a country with a larger number of people who have served time in prison, a group of our fellow citizens who face a high risk of marginalization, low contributions to their families and communities, and enduring stigma. Let’s call this a public education argument with a reentry twist. We then ask, “Is this reality consistent with our nation’s values?”

In constructing this argument I don’t mean to overlook the difficult challenges we face in program implementation. We must figure out the linkages between the award of academic credits for prison-based courses and a continuous program of study back in the community. In this respect I applaud the work of my colleagues at John Jay—Ann Jacobs, Baz Dreisinger, and Bianca van Heydoorn—and our Prison-to-College Pipeline project for explicitly embracing this challenge. We must also ensure that the front door to our nation’s universities is a welcoming, open door, not a hostile, closed door when a student with a criminal record comes to enroll. Similarly, we must figure out how to harness the power of technology to increase both the quality and accessibility of prison-based education. But these are simple problems compared to the tougher challenge of marshaling political

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11 Steven Klein, Michelle Tolbert, Rosio Bugarin, Emily Forrest Cataldi, Gina Tauschek (2004). *Correctional Education: Assessing the status of prison programs and information needs.* (Department of Education, Office of Safe and Drug-Free Schools).
support to reverse course.

In thinking about the larger argument I propose, we must quickly recognize that there is a missing link in our logic chain. We should be able to argue—but can't now because of a paucity of evidence—that the introduction of college-level education will significantly and demonstrably enhance the individual contributions of the formerly incarcerated to our society. We have a general empirical understanding of the value of an education—to enhance earnings, promote civic engagement, support strong families—but we do not have a research base on those dimensions of prison-based education. If we want to downplay research on recidivism—which I argue we should—we need to elevate research documenting the inherent value of education to the meaning of citizenship in our society. This gap in our knowledge presents a real challenge to the research community and those who fund their research. The national demonstration projects will help fill this gap, but much more research must be done. And I predict that this research will show that the level of educational attainment—and impact on the life-course—measured among incarcerated students will far outweigh any other group of students.

In closing, I am suggesting that our policy argument, and political strategy, be grounded in an educational vision for our country. To make this argument we need the community represented in this room—the community of educators—to argue that we must include incarcerated students among our student populations. In particular, we need public universities to include funding for incarcerated students in their budget proposals to state legislatures. We are fortunate that prominent national foundations, the U.S. Department of Education, and the Federal Interagency Reentry Council, now so clearly view prison-based college programs as part of the nation's education agenda. The more we argue that an educated citizenry is important for the future of our country, and include our fellow citizens who are sentenced to prison in that statement, the stronger the chance that we will see funding for these programs restored. But we need your help in building a compelling argument. In short, now is the time to get to work, now is the time for this conference to get started.

I am so pleased to be with you this morning, to share the sense of momentum that you and others have created. I wish you a successful conference, and a successful movement.
“Our current system for reporting crime...measures an event—the criminal act—not the consequences of the event.”

In 2013, John Jay College and the Mailman School of Public Health, working with other partners, created the Punishment to Public Health (P2PH) initiative, a collaboration intended to research and develop innovative and effective public policies at the intersection of public health and public safety. President Travis’s address, part of a speaker’s series on mass incarceration, focused on looking at crime and the response to crime using a public health conceptual framework based on the “burden of disease.” This approach, he argued, presented new opportunities to advance public safety and justice at the individual and community level.
Dean Fried; colleagues:
I thank you for the invitation to speak with you today and am honored to be included in a speaker series with luminaries in the public health and criminal justice fields such as Ernest Drucker, Homer Venters, Becky Pettit and Marc Mauer. This is good company, and I know they have set a high bar for those of us who follow.

But I hasten to point out this is not just a typical speaking invitation. We are also gathered together today to celebrate an evolving collaboration between John Jay College of Criminal Justice, the institution I am privileged to lead, and the Mailman School of Public Health. Over the past several months we have gotten to know each other well. We have realized that both institutions are committed to open intellectual inquiry on some of the critical issues facing our society and that the scholarly perspectives of each institution bring unique strengths to those inquiries.

I am also very excited about the larger initiative—called the Punishment to Public Health (P2PH) partnership—that we have created, bringing together medical schools, schools of public health, government agencies, universities and nonprofit organizations to explore the intersection between the public health and public safety perspectives. This collaboration holds enormous potential for interdisciplinary research and the development of innovative and effective public policies. I thank Dean Linda Fried, Dr. Ernest Drucker, the faculty and the entire team here at the Mailman School of Public Health for your commitment to these important ideas.

In particular, I commend the Mailman School of Public Health for its institutional commitment to exploring the public health perspective on mass incarceration, and the launch of this speaker series. I have a deep concern about the path our country has chosen regarding the use of prison as a response to crime and applaud the Mailman community for bringing your unique talents and perspectives to the table.

Over my years in public life I have found great value in the public health perspective on criminal justice issues. Let me give three quick examples. First, when I was Deputy Commissioner for Legal Matters in the New York City Police Department, hired by the new Police Commissioner, Lee Brown, I was thrown off balance when he started talking about violence as a public health problem. This was not the traditional perspective of a law enforcement chief executive. But he forced us to think deeply about the community and societal Preconditions for the epidemic of violence that
was then sweeping our City, and to develop new strategies for addressing the issue of violence. Out of that examination came a new focus on the sources of illegal guns in New York City and a new task force between the NYPD and the Bureau of Alcohol, Tobacco and Firearms investigating the phenomenon of interstate gun-running.¹

A second example is also related to gun violence. Early in 1993, soon after the election of President Bill Clinton, I was invited to a small White House workshop on public safety, convened by William Galston, then The Saul Stern Professor and Acting Dean at the School of Public Policy, University of Maryland. One of the presenters was a public health researcher who demonstrated vividly the impact of gun violence on young African-American men. With dramatic flair, he unfolded a chart comparing the probability of death by firearm for young black men to probabilities for other demographic groups. He stood in the circle of advisors to our new President as the chart illustrating these probabilities grew, and grew, and grew some more until it spread across the room. There were audible gasps of shock. He made his point.

The third example is closer to the topic at hand. In my research on prisons and prisoner reentry, I have been strongly influenced by the work of Dr. Robert Greifinger and his seminal article, published in 1993 with his co-author Jordan Glaser, entitled “Correctional Health Care: A Public Health Opportunity.”² The authors argued that our correctional institutions present an opportunity to meet “broad public health imperatives through treatment and prevention of highly prevalent diseases. Without such attention, these diseases will pose a risk to the communities to which the inmates return.”³ They then documented the high levels of disease—particularly communicable diseases—in our nation’s prisons and jails and argued, persuasively, that we should leverage the unfortunate reality of high rates of incarceration, and the inevitability of reentry, to address the challenges of these health conditions in the community, as well as in the institutions. This way of thinking had a profound influence on the reentry movement as it gained steam in the early years of this century. Indeed, in the new era of the Affordable Care Act, with its emphasis on linking health

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care systems on both sides of the prison walls, this public health perspective will revolutionize our approach to providing health care for incarcerated populations.4

So as I stand here today I wish to acknowledge my debt to the public health perspective on my thinking—and on public policy—as we deal with the challenges of crime and the administration of justice.

For the topic of my talk I have intentionally chosen NOT to address the issue of “mass incarceration.” That decision is in part dictated by the reality that I now chair the consensus panel convened by the National Academy of Sciences to explore the “causes and consequences of high rates of incarceration in the U.S.” and have studiously avoided public comments on this topic in advance of the release of our report later this year. But I also confess that I have been thinking about a different set of questions that are related to the topic of mass incarceration and would like to use this speech, and the discussion that will follow, to explore the value of a public health perspective in unpacking those questions.

Let me be more specific. In the world of criminal justice policy, we often focus our attention on two distinct metrics—the incidence of crime and the incidence of incarceration. So, for example, we calculate and report with great frequency the latest changes in the crime rate—in New York City, in different neighborhoods, in the country and, more recently, in comparison with other countries.5 We celebrate the fact that crime rates have declined sharply since the early 1990s. In this political season we expect our candidates for elective office to promise to bring those crime rates even lower. At the same time, we calculate and report the rates of incarceration—in our city, our state, our country and in comparison with other countries. We note with deep concern that the rates of incarceration in the U.S. increased more than fourfold between 1972 and 2011.6 We note that the incarceration rates in the US are five to ten times higher than in Europe.7 With some pride we point to the fact that prison rates in New York State have come down by

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5 The Economist, “Where have all the burglars gone?” (July 20th, 2013).
6 The 1972 incarceration rate is calculated from counts of the prison and jail population reported in the Sourcebook of Criminal Justice Statistics 1976, Tables 6.1, 6.43. The 2011 prison and jail incarceration and the incarcerated population is reported in the 2012 Sourcebook of Criminal Justice Statistics, Table 6.13.2011.
7 Ibid.
24% between 1999 and 2013.\textsuperscript{8}

Our policy discussion gets confounded, however, when we try to link these two phenomena. Some observers claim that these two trends are causally linked—that we have low crime rates because we have high incarceration rates. Some academics have attempted to quantify the impact of high incarceration rates on crime rates and arrive at estimates falling within a relatively large range.\textsuperscript{9} Still others argue that even exploring this causal connection is starting with the wrong framework— that we should examine the appropriateness of prisons as a matter of sentencing jurisprudence and social values rather than as a vehicle for crime control.

In the midst of this larger debate in the criminal justice policy world, we New Yorkers have been having a separate debate—about the practice we now call “stop and frisk.” We have been debating whether the practice is constitutional. (As you certainly know, Judge Shira Scheindlin has ruled that the current NYPD practices regarding stop and frisk violate the Fourth and Fourteenth Amendments to the Constitution.)\textsuperscript{10} We have heard arguments that the practice is effective because it has resulted in historically low crime rates in New York City. Indeed, its proponents, most notably Mayor Bloomberg and Police Commissioner Kelly, have explicitly argued that the practice has saved thousands of lives, particularly, lives of New Yorkers living in high crime minority neighborhoods.\textsuperscript{11} On the other hand, we have seen the data showing high concentrations of stop and frisk in those same neighborhoods, the low yield rates in terms of arrests and weapons seized, and have calculated the high probabilities that a young man of color in those neighborhoods will be stopped. Critics of the practice argue that this is undermining the respect for the rule of law and the relationship between the police and those communities.\textsuperscript{12}

\textsuperscript{8} Andrew M. Cuomo, Governor and Anthony J. Annucci, Acting Commissioner, Press Release: “New York State Department of Corrections and Community Supervision announces prison reforms that will save taxpayers over $30 million annually following decline in crime rate and inmate population” (July 26, 2013).


\textsuperscript{12} Following the delivery of this lecture, the Vera Institute published a report documenting the experiences of young people who had been stopped by the police in high crime neighborhoods. Jennifer Fratello, Andres F. Rengifo and Jennifer Trone. “Coming of Age with Stop and Frisk: Experiences, Self-Perceptions, and Public Safety Implications” (September 2013). This survey underscores the value of empirical assessments of the experience of interactions with the justice system.
As I have watched this debate unfold—and shared my concerns about the practice—I have been struck by the way the discourse on stop and frisk, and the discourse on the connection between incarceration rates and crime rates, have—unwittingly—opened a window on a larger issue, namely the impact of our enforcement policies on the communities that are putative-ly the beneficiaries of those policies. In both instances, we are caught in a paradigm that seeks to weigh the costs of enforcement against the asserted benefits of a reduction in crime. So I have been wondering whether it is possible to construct a calculation that assesses costs and benefits in ways that could help us break this logjam? Can we develop an analytical approach that allows us to examine separately yet simultaneously the incidence of crime and the realities of law enforcement and the criminal sanction, without getting tangled up in the complex questions regarding a causal relationship between crime rates and the operations of the criminal justice system?

In trying to come to grips with this analytical challenge, I have found myself constructing a conceptual framework that borrows heavily from the public health literature that explores the concept of the “burden” of disease. So I would like to play with this concept, apply it to the challenges of crime and the criminal sanction, and see whether it might offer some new ways of thinking about a research and policy agenda for our collaboration. I recognize at the outset that I am treading on the intellectual terrain of my audience, so I must immediately beg for your understanding—and your tolerance of a visitor in your house.

The Concept of the “Burden of Disease”
This audience is undoubtedly familiar with the Global Burden of Disease (GBD) Project. For more than two decades, the Institute for Health Metrics and Evaluation has published periodic studies designed, in their words, to provide “a consistent and comparative description of the burden of diseases and injuries and the risk factors that cause them” around the world. The first GBD study, analyzing data from 1990, looked at the health effects of more than 100 diseases and injuries for eight regions of the world. This study introduced a new metric—the Disability-Adjusted Life Year (DALY)—as a single measure presenting the burden of disease, injuries and risk factors. Since then, GBD reports have been released for the period 2000-2002, examining 26 global risk factors, and for 2010, providing regional estimates for deaths and DALYs. The 2010 report produced comparative metrics for
291 different causes of death and disability across 187 countries, 20 age
groups, and both sexes. This report, which recalculate the metrics for
1990, 2004 and 2010 using the same methodology, documented signifi-
cant changes in health patterns around the world. According to this analy-
sis, many countries have witnessed significant progress in reducing child
death and extending the lifespan of their citizens.13

From a criminal justice perspective, the conceptual framework of the
“burden” is very attractive, for several reasons. First, it allows us to set aside
traditional measures of crime and examine instead the impact of crime
upon the health of individuals and, by extension, their communities. Sec-
ond, it allows us to examine the impact of our response to crime—what I
will refer to as the imposition of the criminal sanction, which ranges from
enforcement policies to incarceration policies—in terms of the experiences
of those individuals and communities. Of course the use of the “burden”
framework does not solve the complex issues of causality—that requires
a separate methodological discussion—but it does reframe the calculate
of costs and benefits in ways that recognize the complexity of the human
experience with crime and the criminal sanction. Let’s turn next to some
implications of the “burden” metaphor for our understanding of these two
phenomena.

Applying the Concept of “Burden” to Our Understanding
of Crime
In my view, we can use the concept of “burden” to sharpen our focus on
the community-level indicators that should matter when we think about
crime and safety. If we were to pursue this analytical approach, we would
view the “health” of the community as our ultimate metric, not just the level
of crimes reported to the police. Our current system for reporting crime is
limited in several important ways. First, we look at crime in its legal mean-
ing. On a very simplistic level, a robbery is more important than a larceny
because the law says so. Robberies are deemed more significant, and there-
fore the punishments that may be meted out are more severe, even though
the consequences of a larceny may be more damaging, the losses more
substantial, and the psychological harm more devastating. Compare, for
example, a robbery that involves the theft of a MetroCard from a teenager

13“About the Global Burden of Disease (GBD) project,” World Health Organization accessed September
who is threatened by another teenager to the loss of an elderly person’s lifetime earnings through identity theft. The “burdens” of crime experienced by these two victims are quite different from each other, but our traditional crime reporting system does not allow us to capture these important differences.

The second limitation of our crime reporting system is that we rely on the police to tell us the level of crime in our communities. All official data on crime in New York City comes from the agency that holds itself responsible for reducing crime rates. This creates two distinct problems. First, this reporting system creates an incentive to downplay the seriousness of the crimes reported by victims, or to fail to record those crime reports in the first instance. Second, even if the current system operated properly, it would not record those crimes that victims choose not to report to the police. According to national data from the National Crime Victimization Survey, based on a household survey of crime victims, approximately half of all crimes are not reported to the police, and therefore are not reflected in the official records. I imagine the public health equivalent of this state of affairs would be a measure of disease in a community by recording only those individuals who present themselves at local emergency rooms. Certainly for a city the size of New York, we should be able to conduct regular victimization surveys that would record the true level of crime in our neighborhoods, both to accurately measure the “burden of crime” and to counterbalance the institutional incentive of the police to downplay the true level of crime.

The third limitation of our current system for reporting crime is that it measures an event—the criminal act—not the consequences of the event. We know that crime has significant consequences for individuals, families and communities, yet we do not routinely measure the harms caused by crime. A robust set of measures would examine the medical costs of

\[14\] Crimes are reported to the NYPD either through 911 calls or direct reports to precincts. These crime reports are then tallied and ultimately reported to the FBI through the Uniform Crime Reporting (UCR) system. Since the early 1990s, the NYPD has made these numbers public prior to the official reports from the FBI.

\[15\] According to recent research, the institutional incentives to keep crime rates low has created pressure on managers in the NYPD to falsify official records, either by recording less serious crimes than those reported, or by failing to report the crime at all. Eli B. Silverman, and John Eterno, The Crime Numbers Game: Management By Manipulation, (Boca Raton: CRC Press, 2012). See also, Graham A. Rayman, “The NYPD Tapes: A Shocking System of Cops, Cover-Ups, and Courage,” (New York: Palgrave MacMillan, 2013).

injuries, the psychological damage associated with all types of crime, the 
lost wages incurred by crime victims, the increased feelings of insecurity 
and fear of going outside, the loss of trust in one's neighbors, and the loss of 
confidence in the agencies of government.

So let’s imagine a set of measures, regularly implemented, that would 
allow us to quantify the concept of the “burden of crime.” We would conduct 
annual household surveys, using the methodology of the National Crime 
Victimization Survey, to assess the level of crime in our city. This would 
allow us to compare these results with the official reports of the NYPD. We 
would augment this survey with in-depth questions about the experience 
of victimization—the costs incurred by crime victims, the changes in their 
behavior following the crime, and any shifts, positive or negative, in their 
assessments of the police and other government agencies.

Very importantly, of course, we would map these individual metrics of 
the crime burden at a community level so that we could assess the overall 
impact of crime. We would also examine the burden of crime upon certain 
demographic groups. It is this type of analysis that led my colleague John 
Klofas from the Rochester Institute of Technology to describe the risk of 
homicides in Rochester in an eye-opening way. In 2001, the homicide rate 
among 15-to-19-year olds was nearly triple the rate of the nation as a whole: 
22 per 100,000. Among males in that age group, it was more than quadruple the national rate, or 36 per 100,000. For African-American males aged 
15-19 in Rochester, it was 264 per 100,000. Finally, for African-American 
males aged 15-19 in the “high-crime crescent,” the most dangerous neighbor-
hood in Rochester, the homicide rate was 520 per 100,000, or 65 times the national rate. This analysis opens an important policy discussion: given 
this elevated risk, are we devoting resources proportionate to the risk?

But this is more than a mere analytical exercise. Use of these metrics 
would also allow us to imagine a set of interventions that would reduce 
the burden of crime. In the first instance, our focus would be on victims 
of crime. Our goal, in the words of Susan Herman, the Pace University 
professor who developed the concept of Parallel Justice, would be to “help 
crime victims rebuild their lives.” For example, we might design programs

17 John M. Klofas, Ph.D., Christopher Delaney, Trisha Smith, “Strategic Approaches to Community 
Safety Initiative (SACSI) in Rochester, NY,” Department of Criminal Justice, Rochester Institute of 
Technology, (November 2007).
18 Susan Herman, Parallel Justice for Victims of Crime, (Washington, DC: The National Center For 
that would work with mental health professionals to address the trauma experienced by crime victims, to help victims overcome their fear of public places, to work with employers to ensure that crime victims do not suffer lost wages because they must attend court proceedings. In constructing these interventions, we would rely heavily on the creativity of our public health colleagues. And we would use these metrics to measure the effectiveness of our interventions. For example, if we were successful in intervening to reduce retaliatory acts of violence, we would measure the impact of that strategy by estimating the reduced health expenditures.

I see enormous benefits in adopting this framework for understanding crime and the effectiveness of our interventions. In my view, we have been saddled by a highly inadequate measure of crime and its impact, and a burden framework can free us from this intellectual straitjacket.

**Applying the Concept of “Burden” to Our Understanding of the Criminal Sanction**

We next examine whether the concept of “burden” as developed in the public health literature can help us unpack the impact of the criminal sanction on individuals and communities. I acknowledge at the outset that it may seem strange to talk about the “burden” of public policies. Indeed, there may be no direct public health analogy here—would one, for example, calculate the “burden” of an immunization program? Probably not, but bear with me and I hope you will agree that the burden concept is extraordinarily valuable in helping us think about the intersection between the apparatus of the justice system and the same communities most directly affected by the burden of crime.

Let’s start by discussing the theme of this lecture series: the burden of “mass incarceration.” It is by now a common observation that the burden of incarceration has increased significantly over the past forty years, that the burden has fallen disproportionately on young men of color, particularly those living in high crime neighborhoods. The net result of the rise in incarceration in America can be expressed in startling statistics. The Bureau of Justice Statistics reports that an African-American man living in the US has a one-in-three lifetime probability of serving at least a year in prison.19 Our colleagues Bruce Western and Becky Pettit have added another variable to

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this analysis, the level of education: they have calculated that an African-American man who did not complete high school has a 70 percent chance of serving time in prison.\textsuperscript{20}

Startling though these statistics might be, I think you will agree that they do not capture the whole story of the workings of the criminal justice system in modern America. The interactions with the criminal justice system extend far beyond the realities of incarceration in prison and jail. At a minimum, we need to add to our calculation of the “burden” of the criminal sanction an assessment of the realities of community supervision. This would include all forms of supervision—parole, probation and pretrial supervision. We would certainly include supervision of juveniles as well as adults, federal as well as state supervision. These realities of supervision constitute an important dimension of the burden of the criminal sanction.

Let’s look at some of the data for New York City. What data would we need? We would begin by calculating all the New York City residents who are incarcerated on a given day—in state prison, local jail, federal prison, juvenile detention. Because we are so locked into our system-centric view of the world, rather than a community well-being view of the world, we never calculate incarceration rates this way. Then we would add the data on the number of New Yorkers under parole supervision, probation supervision (state and federal), and pretrial release supervision.

We never think of the community burden this way because we are so focused on the working of the agencies of the justice system. We would then present these data at a community level and further disaggregate the data by age, gender, and race to fully understand the burden of incarceration and supervision. Allow me to share one analytical framework that presents the notion of “burden” in provocative ways. When my colleagues at the Urban Institute and I sought to present the impact of incarceration from a community perspective, we calculated the number of years spent in prisons for the reentry cohorts returning to the six high incarceration neighborhoods. In 2001, for example, the cohort of individuals returning from prison to Austin had spent a total of 1,961 years in prison. Other neighborhoods had also experienced significant loss of human capital: Humboldt Park (939 years), North Lawndale (761 years), West Englewood (741 years),

\textsuperscript{20} Bruce Western, and Becky Pettit, “Incarceration & Social Inequality,” Daedalus 139, (3), (Summer 2010): 8-19.
\textsuperscript{21} Travis, But They All Come Back, 285.
Englewood (598 years), and East Garfield Park (464 years). This is a thought-provoking and unconventional way of assessing the burden of incarceration on a community.21

A “burden” framework would require that we combine all these counts into one single metric reflecting the combined burden of incarceration and criminal justice supervision in our city. This would be very straightforward, but to my knowledge has never been done. I would hope that our colleagues here at the Mailman School would be willing to work with us to assess this reality in our city. Using these data, we would then start to explore the differential impact of these phenomena on our fellow citizens. We would disaggregate that number by gender, race, age, geography and schooling. We would conduct surveys to determine the lifetime probability of experiencing this form of criminal justice contact. We would then gather data on the consequences of these contacts—lost days of work, impact on families, diminished employment prospects, changing attitudes toward government. In particular, we would be concerned about their perspectives regarding the agencies of the justice system and the rule of law—allowing us to measure what scholars call “legal cynicism.”22

In many ways, the approach suggested here is simply an extension of our analysis of the impact of incarceration to include the distinct phenomenon of community supervision. Yet it is noteworthy that we rarely combine these two analyses into a single calculation. Why not? I think we are too constrained by our fascination with the agencies of the criminal justice system, so count separately those incarcerated and those on community supervision without linking them under the same conceptual umbrella as related forms of state control. So I hope we get on with this project of creating these linkages.

But before we get started on that assignment, I would like to expand our inquiry one more step. In the title of my talk, I use the phrase the “criminal sanction” to describe the phenomenon we hope to measure and understand. In the strict meaning of that term, this describes any punishment that is meted out upon a finding of a violation of the criminal law. But for

22 “Legal cynicism refers to a cultural orientation in which the law and the agents of its enforcement are viewed as illegitimate, unresponsive, and ill equipped to ensure public safety. Crime might flourish in neighborhoods characterized by legal cynicism because individuals who view the law as illegitimate are less likely to comply with it; yet because of legal cynicism, these crimes might go unreported and therefore unsanctioned.” David S. Kirk, Mauri Matsuda, “Legal Cynicism, Collective Efficacy, And The Ecology Of Arrest,” Criminology, no. 49 (2011): 443–472. doi: 10.1111/j.1745-9125.2011.00226.x.
purposes of analysis of the “burden” I prefer a broader definition, namely “any exercise of state power under the auspices of the criminal law.” This broader definition allows us to include pretrial detention in jails, and pretrial supervision in the community as components of the burden imposed by the criminal justice system.

This broader definition allows us to look at another phenomenon that, in my view, also constitutes part of the “burden” of the criminal justice system, namely the exercise of the police powers to arrest, summons, issue citations, and stop (and sometimes frisk) citizens. These interactions between citizen and state are in many ways the retail operations of the justice system. They are high volume, often fly below the radar of judicial and prosecutorial review, are highly discretionary, and are frequently the sources of irritation between the residents of our city and the police department of our city. And, as I hope to demonstrate, this aspect of the criminal justice apparatus has changed in important ways over the past two decades, with relatively little public discussion. If we include these phenomena in our assessment of the “burden of the criminal sanction,” the composite picture of the interaction between our fellow citizens and our system of laws becomes even more troubling.

Allow me to specify some ways that the realities of low-level law enforcement have changed in our city over the past two decades.

Let’s begin with the exercise of the police power to stop and frisk individuals they encounter on the street. The number of stops recorded by the NYPD increased substantially from 2003, when 160,851 were recorded to 2011, when the number reached 685,724.23 (We should note that the level of stops has declined sharply in recent months; for the first quarter of 2013, the number dropped by 51 percent to 99,788 compared to the same time period in 2012).24

These practices can be viewed through many different lenses. Some critics point out the low percent of stops that result in an arrest or the issuance of a summons, or the low percentage that result in confiscation of a gun or other contraband. But looking at the practice through the lens of the burden of the criminal sanction would require a different analysis. We

24 Raymond W. Kelly, Police Commissioner, “New York City Police Department Stop Question & Frisk Activity,” New York City Administrative Code Chapter 1 Title 14, Section 14-150, (Reports prepared during the period January 1, 2013 through March 31, 2013).
would be very interested in the geographic and demographic distribution of this type of police activity. In particular, we would assess the frequency of stops within different demographic groups. For example, we would want to know the number of times over a year that a young man of color living in a high crime community is stopped. One particularly noteworthy study took this approach. The Center for Court Innovation, in surveying young men living in East New York found that they were stopped, on average, five times a year (in 2010) by the police.\(^{25}\)

By examining the phenomenon of stop and frisk through this lens, we can better assess the impact of the practice. We can begin to ask those most frequently stopped about their views on the police, the impact of these stops on their behavior, their willingness to cooperate with the police in the future, and their assessment of the legitimacy of the criminal justice system. This analysis would help us better understand the true costs (and benefits) of this practice.

But we should expand our sights beyond stop and frisk and include other low-level enforcement activity as well. Let’s take a closer look at misdemeanor arrests. In 2003, there were approximately 189,878 misdemeanor arrests in New York city\(^{26}\); by 2012, that number had risen to 236,839, a 20 percent increase. This is a significant shift in the exercise of the law enforcement power in our city, yet it has gone largely unnoticed. Some commentators have examined the phenomenon of the rise in marijuana arrests, which have increased substantially.

For example, in 1990 the NYPD made 2,000 misdemeanor arrests for marijuana possession, while in 2012 the number of arrests had increased to 50,000\(^{27}\). But I would submit that this is not just about marijuana, rather that we are witnessing a substantial expansion of the power of the state to regulate behavior by using the criminal law—the lowest severity level of the criminal law. Rather than simply presenting this phenomenon in terms of cases and arrests we should be examining this phenomenon from the perspective of the individuals who live in communities that are experiencing this expansive use of the power of the police. In other words, we should be

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\(^{27}\) Andrew M. Cuomo, Governor, Press Release: Governor Cuomo Announces Legislation to Bring Consistency and Fairness to the State’s Penal Law and Save Thousands of New Yorkers from Unnecessary Misdemeanor Charges (Albany, NY June 4, 2012).
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using the concept of “burden” to describe the experience of being policed.

I submit that if we combined these two perspectives on the burden of the criminal sanction—the high rates of incarceration and supervision; and the high rates of low level enforcement activity such as stop and frisk and misdemeanor arrests—we will construct a deeply disturbing picture of the experience of growing up in New York City, particularly if one is a young man of color growing up in a high crime neighborhood. We could then include in our calculation all the summonses that are issued in New York City for violations such as riding a bike on the sidewalk or taking two seats on the subway. Then, if we were to add to this composite the experience of the police in our public schools, and the ways that traditional school discipline has been replaced by law enforcement and adjudication, we will have a picture that would be especially disconcerting. Finally, if we were to add to this understanding of the new era a full assessment of the consequences of low level arrests and enforcement activity, our concerns might well be heightened further. Consider the warrants that are issued when people do not appear in summons courts, the days lost from work to keep court dates, the jobs that are lost because someone gets a misdemeanor conviction for marijuana possession, the alienation that comes from trying to navigate a justice system that is impersonal and unforgiving.

It is my hope that we can harness all the intellectual firepower in our two institutions—and that found throughout the city—to construct an understanding of the burdens of crime and the criminal sanction that do not rely solely on official statistics and are not constrained by the boxes of the diagrams of the criminal justice system. These realities touch the lives of real people, their families and their communities. We need to find ways, as researchers, to understand crime and the criminal sanction from the ground up, beginning with the perspectives of the people most directly affected. To make this conceptual shift we need some new data and some new survey tools. That is the easy part. More difficult will be the challenge of developing a new framework that will allow us to think more creatively—and more critically—about the twin challenges of crime and the administration of justice. In my current thinking, the concept of “burden”—borrowed explicitly from the public health literature—is a liberating concept that can allow us to think differently. This is the important first step; everything else will follow.

Thank you.
The release in April 2014 of the landmark National Research Council report “The Growth of Incarceration in the United States: Exploring Causes and Consequences” shone a spotlight on this nation’s dubious distinction as the world’s leader in incarceration, with nearly 1 out of 100 American adults in prison or jail. President Travis, as chair of the NRC Committee on Law and Justice and chair of the consensus panel that produced the report, addressed the Hoffinger Colloquium to explore in detail the report’s conclusions and implications of its findings. He acknowledged that his natural optimism was challenged by the prospects for finding an exit strategy from the era of mass incarceration.
Dear Friends:

I am truly honored to be invited to deliver this lecture as part of the Hoffinger Colloquium at New York University School of Law. The list of scholars who have stood at this podium is impressive and, frankly somewhat intimidating. I am humbled to be in their company.

Our topic tonight is the phenomenon of “mass incarceration”—the reality that our country has increased the rate of incarceration more than four-fold over the past generation. The topic of mass incarceration is a scholar’s delight. Historians, political scientists and legal scholars are deeply engaged in shedding light on how we got here. Economists, sociologists, and public health academics are helping us understand the realities of this unprecedented level of imprisonment of our fellow citizens. Criminologists, economists and philosophers are assessing the impact of this level of imprisonment on public safety, the national economy and civic participation. Yet before we dive in, I must confess that maintaining scholarly objectivity is difficult for me. I think this is one of the most important moral challenges facing our democracy. Stated bluntly, if this level of incarceration, or anything close to it, becomes our new normal, I am concerned for the future of our democratic experiment, our notion of limited government, and our pursuit of racial justice.

A second admission: although I am an optimist by nature, I am not optimistic that we can figure this out. I fear that the dynamics that led us to this moment are so deeply ingrained in the American psyche, so embedded in our political realities and so central to our discourse on crime, punishment, and race that it is hard for me to imagine an exit strategy. I come to this conclusion in full recognition of the remarkable political consensus,
including miraculous right-left coalitions, that we must reduce our reliance on prison as a response to crime. I also come to this with profound respect for the many individuals, advocacy organizations and foundations that are committed to that goal. Stated differently, and bluntly, I believe that reversing course will require something much more profound than our current reform strategies. What is required is a deep cultural change. Tonight I will sketch the outlines of the transformation in our culture that I think will be required.

I. The Consensus Report of the National Academy of Sciences

We start tonight’s exploration of the phenomenon of incarceration in America by reviewing the findings of the report published last year by The National Academy of Sciences (NAS)\(^1\). This report reflects the deliberations of a consensus panel of 20 prominent scholars convened by the National Research Council to assess the evidence on the “causes and consequences of high rates of incarceration in the United States.” I was honored to be asked to serve as chair, and very fortunate that Harvard Sociologist Bruce Western was named as vice chair. For me, the NAS report provides the foundation for a discussion of our future. Tonight, I will not dwell on the findings of the NAS report in depth, but call your attention to the printed materials that have been distributed. Instead, I will use the key findings to create a narrative of the nation’s increased reliance on prison as a response to crime. Before we construct a new narrative for the exit, we must understand our own history.

These are the five key findings of the NAS report:

1. **We have never been here before, and we stand apart from the rest of the world.**

From the 1920s to the early 1970s, our country experienced very stable rates of incarceration (here measured by the state and federal prison population), averaging about 110 per 100,000.

Then the incarceration rate took off, increasing every year until 2009, rising more than fourfold.

The incarceration rate in Europe (here including prisons and jails) is much lower, ranging from 67 per 100,000 in Sweden to 148 per 100,000 in the United Kingdom. By comparison, the U.S. rate, here including prisons and jails, is over 700 per 100,000, five to ten times higher than those in Europe.
The punchy taglines used to capture this reality are well known. Today, nearly 1 in 100 adults in the United States is in prison or jail. We are home to 5 percent of the world’s population, but 25 percent of the world’s prison population. No country has a higher incarceration rate. Our committee captured this reality with our first conclusion: “The growth in incarceration rates in the United States over the past 40 years is historically unprecedented and internationally unique.”

2. We are here because we chose to be here.

How did this happen? How did our democracy embark on a policy journey that has left us so far outside of both our own historical experience and the mainstream of other democratic societies? Our committee had a clear bottom line answer to this question: we are here because we chose to be here. Our high incarceration rates are the result of our policy choices, made on our behalf and in our name by our elected officials. After reviewing the evidence, we concluded that our incarceration rates are only indirectly tied to crime rates. Over the period of the relentless growth in prison populations, crime went up and went down. Yet crime did play an important role in the prison build-up.

The rapid increase in crime rates in the 1960s and 1970s, which occurred in a period of social upheaval, racial strife and political unrest, changed the politics of crime in America. “Tough on crime” strategies became winning political platforms, for district attorneys, judges and most importantly for legislators. The balance of power between the branches of government on matters of punishment shifted as legislatures exerted more control, judicial discretion was weakened, and executive branch agencies such as parole boards were stripped of power.
As a result, our state and federal legislators, who ran on “tough on crime” platforms, delivered on their campaign promises by enacting “tough on crime” sentencing legislation. In our report (see chapter 3), we document decade by decade the changes in sentencing policy, all of which had the result of putting more people in prison, and keeping them in prison longer.

We found that the increase in incarceration rates is roughly equally divided between two drivers—the increase in incarceration rates per arrest, basically through mandatory minimums, and the imposition of long sentences, mostly for people already sentenced to prison. Of all crime categories, the increase was greatest for drug offenses. For these crimes, the rate of incarceration increased ten-fold. An important theme running through our report is the far-reaching impact of the war on drugs, particularly on racial minorities.

3. **The public safety benefits of the prison build-up are, at best, modest.** Can we say that the ramp-up of prison has had a significant public safety benefit? After all, if our elected officials promised lower crime rates by putting more people in prison and holding them longer, and we observe a significant decline in crime rates, then hasn't the promise been kept? Can
we justify the means of mass incarceration as having delivered the ends of public safety? Isn't this a criminal justice program that worked?

Our committee recognized that answering this question presents nearly insurmountable methodological challenges. Put simply, we concluded that there were too many other things going on during this four decade period to isolate the effect of the prison build-up on crime rates. Having noted this inevitable lack of scientific precision, we reviewed the studies that have tried to answer this question.

Most of those studies show that increased incarceration rates may have reduced crime, but that the aggregate effect is likely to have been small. We were more definitive in our assessment of the evidence on the public safety benefits of the principle drivers of the incarceration boom. The research on the impact of long sentences is quite clear: either through incapacitation or deterrence, these sentences likely had only modest impact on public safety. Similarly, the literature on mandatory minimum sentences shows that this use of prison yields very little public safety benefit. Finally, we looked at the literature in the drug policy area. The country does not have a measure of drug offending rates, but we do track the price of drugs and the levels of drug use. Neither of these indicators moved in the expected directions. Drug prices have generally dropped not increased, and drug use has remained relatively constant as the punishments for drug offenses skyrocketed. Thus, our committee found after a review of the evidence that the public safety benefit of this enormous investment of money, and this unprecedented deprivation of human liberty, has been modest at best.

4. **The financial and social costs of the prison build-up are likely significant.**

The investment in the expansion of the nation’s prisons has been enormous,
now reaching approximately $53.2 billion a year for state prisons and close to $90 billion a year if jails and federal prisons are included (see chapter 11). Given this enormous policy shift and the investment of billions of taxpayer dollars, one might expect a proportionate investment in research to assess the impact of this undertaking. Our panel was struck by the paucity of research on the consequences of the prison build-up.

Yet the early findings are troubling. We devoted two chapters to the impact of our policy choices on those incarcerated in the nation's prisons. The nation clearly did not build enough prisons to accommodate our policy choices as our prisons are now much more overcrowded. The psychological consequences of prolonged incarceration, particularly in solitary confinement, can be devastating. Nor did we invest commensurate resources in programs and services. We have also extended the reach of prisons to a new generation of children who have a parent behind bars and the evidence points to increased levels of family instability and adverse developmental outcomes for those children. The post-release employment prospects for those sent to prison are poor: compared to others like them, formerly incarcerated individuals experience lower wages and higher rates of unemployment. Finally, the high rates of incarceration are concentrated in a small number of poor neighborhoods, mostly communities of color, that are already struggling with poor schools, housing shortages, high crime and high rates of unemployment. Now these communities are also bearing the brunt of society’s unprecedented policy choice to send more of their residents to prison than ever before, keep them in prison for longer than ever before, in more crowded conditions, provide fewer programs and prepare them less well for their eventual return home.

By definition, our ability to assess the long term impact of a fourfold increase in incarceration rates will take more than a generation. Hopefully
20 or 30 years from now, the body of research reviewed by our successor NAS panel will be much more robust. But our committee strongly urged the federal government, the nation’s universities and private funders of research to start now to support research so we can better understand the life inside our nation’s prisons, the individual experience of being incarcerated, and the ripple effects through families and communities who are feeling the after-shocks of our nation’s decision to incarcerate so many people. If this were any other policy domain, we would know so much more about the human, financial and social consequences of our choices.

Based on our assessment of the evidence, our committee reached this conclusion:

The United States has gone past the point where the numbers of people in prison can be justified by any potential benefits.

5. We have lost sight of important normative principles.

Notwithstanding the power of our conclusion that the public safety benefit is likely modest and the costs are likely significant, the NAS committee did NOT view an assessment of the growth of incarceration in America solely as a simple matter of cost-benefit calculation. We recognized that sentencing policy—or more broadly, the policy response to crime—necessarily involves normative questions. We concluded that the public discourse of the past generation paid insufficient attention to certain normative principles and, going forward, we recommended that these principles should guide our nation’s deliberations regarding the use of prison as a response to crime.

Chapter 12 (if you read only one chapter of our report, this is the one) traces the intellectual lineage of four principles that are relevant to these policy deliberations. Each recognizes that the forcible deprivation of liberty
through incarceration is an awesome state power that should be exercised with care.

The first two principles limit that power. The principle of proportionality, well known to every law school student, holds that sentences should be proportionate to the seriousness of the crime. The second, the principle of parsimony, my favorite of these, holds that the state is not authorized, in our name, to impose pain on a member of our society beyond that required to achieve a legitimate purpose. Law school students will also recognize this as the “least restrictive alternative” principle of the Model Penal Code. In our committee’s view, in our country’s rush to be tough on crime—by enacting statutes that made long sentences longer, imposed mandatory minimums for minor offenses, and launched the war on drugs—these principles failed to serve as constraints on the reach of state power.

The third principle recognizes an aspiration that we should respect the human dignity of individuals sent to prison and the conditions of confinement should not be so severe as to violate their status as members of our society when they return. This value statement is reflected in the Eighth Amendment jurisprudence of the Supreme Court, the mission statement of corrections professionals, and the declarations of international human rights organizations. Finally, our panel traced the literature of the principle of social justice and recommended that our society view prisons as pillars of justice, as public institutions that promote the broader well-being of our society. Stated differently, prisons should not serve to diminish the status of a particular segment of our society. More specifically, our panel recommended that prisons be opened to public inquiry and accountability for results, including access for journalists, researchers, and legislative oversight, consistent with the operational requirements of the institution. In short,
our panel strongly advocated that we recognize that policies that result in deprivation of liberty should be informed, and guided by, a normative framework and subjected to independent inquiry.

With these guiding principles in hand, and reflecting our assessment of the evidence, our panel then recommended that the United States should reduce incarceration rates. Specifically, we recommended reforms to the policies that drove the prison-build up, mandatory minimums, long sentences, and drug enforcement. We also recommended that the nation improve conditions for those incarcerated and reduce the harms experienced by their families and communities. Finally we took a broad look and recommended that the country recognize that with fewer people in prison there would be an increase in service needs in those communities.

II. Looking Beyond the National Academy of Sciences Report

Now, let's switch gears, gaze into our collective crystal ball, and ask ourselves whether we can reasonably expect that these reforms will happen. I have already previewed my answer to this question, but let me explain. Certainly there are reasons to be optimistic. The rate of incarceration has been dropped slightly over the past few years. We are seeing a new left-right coalition that has embraced the common goal of reducing the size of the prison population. The emergence of a new organization—cleverly called Right on Crime—with signatories that include Grover Norquist, Newt Gingrich, Jeb Bush and Pat Nolan—is making waves all across the country by advocating sentencing reform. ² Solidly conservative states such as

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² Right on Crime; (retrieved from the World Wide Web on February 20, 2015: http://rightoncrime.com/the-conservative-case-for-reform/).
Perspectives on Crime and Justice

Texas, Georgia, Mississippi and Alabama, with Republican governors and Republican legislatures, have taken steps to cut back on their prison populations. An impressive array of major national foundations—including the Open Society Foundation, the Laura and John Arnold Foundation, the MacArthur Foundation, the Koch Brothers, Pew Charitable Trusts, the Public Welfare Foundation and the Ford Foundation—have taken dead aim at reducing our reliance on incarceration.

In recent years, a number of organizations and individuals have embraced a specific goal of reducing the prison population by half. Elsewhere, I have written that the time is ripe for a “brave governor” who will step forward to embrace the goal of cutting the prison population in half.\(^3\) Glenn Martin, the visionary founder of JustLeadershipUSA, has cleverly coined the phrase “50 by 30,” setting his sights on 2030\(^4\). The American Civil Liberties Union has received $50 million in funding to achieve this goal by 2020\(^5\); Van Jones of Rebuild the Dream has provided his support for a 50 percent reduction in 10 years.\(^6\) Just last month, Dannell Malloy, the Democratic Governor in Connecticut, called the prison build-up a “failed experiment” and pledged to reduce his state’s prison population.\(^7\) Bruce Rauner, the new Republican Governor of Illinois, set a specific goal of reducing his state’s incarceration rate by 25 percent by 2025, sounding much like a “brave governor.”\(^8\) Add to this the fact that states like New York have experienced significant prison declines and one can understandably become not just optimistic but positively giddy about the prospects for reducing our prison population.

3 The “brave governor” idea holds that, with crime rates at record lows, prison costs straining state budgets, and a new consensus that we must reverse course on sentencing policy, now is the time for a brave governor to step forward and pledge to enact legislation that will reduce his or her state’s prison population by half in ten years. I first framed this concept in a speech in Milwaukee in 2009, and again in an article in Criminology and Public Policy. Jeremy Travis, Building Communities with Justice: Overcoming the Tyranny of the Funnel (Keynote address delivered at the Marquette Law School Public Service Conference on the Future of Community Justice in Wisconsin on February 20, 2009). Travis, J. (2014). Assessing the State of Mass Incarceration: Tipping Point or the New Normal? Criminology & Public Policy, 13: 567–577. doi: 10.1111/1745-9133.12101

4 About Mission Statement, JustLeadershipUSA (retrieved from the World Wide Web on February 20, 2015: https://www.justleadershipusa.org/about-us/)

5 American Civil Liberties Union, “ACLU Awarded $50 Million by Open Society Foundations to End Mass Incarceration” (November 7, 2014).

6 The Dream Corps, “Sacramento Bee: Finally, a Movement to Roll Back the Prison Industry” (February 12, 2015).


Reflections on the NAS Report

So why the pessimism? In my assessment, the euphoria occasioned by the slight downturn in incarceration rates is premature and the reforms that we celebrate are nibbling around the edges. The nation’s prison population has remained high. Much of the recent decline can be attributed to the court-ordered population reductions in California. Marc Mauer of The Sentencing Project calculated that based on the three-year prison decline through 2012, it would take 88 years to get back to the prison population level (number, not rate) of 1980. Even the recent decline may be illusory. The Pew Charitable Trust has in fact predicted that the incarceration rate is expected to rise 3 percent by 2018.

This sobering realization should not surprise us. As Michael Tonry points out in the most recent issue of Criminology and Public Policy, “No state has repealed a three-strikes, truth-insentencing, or LWOP [life without parole] law…. No statutory changes have fundamentally altered the laws and policies that created the existing American sentencing system, mass incarceration, and the human, social, and economic costs they engendered.” Is it possible that mass incarceration is the new normal?

Recall the first finding of the NAS report: We are here because we chose to be here. The fourfold increase in incarceration rates was caused by long sentences made longer, mandatory minimums, and the war on drugs. Which politician is willing to stand up to say that prison terms for violent offenders should be cut back, or that people now sentenced to mandatory minimums should no longer go to prison, or that severe punishments for drug sales should be cut back? Which prosecutor or judge running for office will take a principled stand saying that we have too many people in prison? If tough-on-crime rhetoric has been so successful, and the public believes that high incarceration rates have produced record low crime rates, why would anyone running for office undo this winning formula? And if one of the arguments for reducing the prison population is the damage being done to the minority communities of our country, how will that argument play to the majority who will have the strongest voice in selecting our political leaders?

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9 Huffington Post, “Can We Wait 88 Years to End Mass Incarceration”, (December 20, 2013).
Some have urged me to be more patient, saying that our democracy will self-correct. I have my doubts, but I would like to imagine a different future for our country when we do not lead the world in the rate of incarcerating our fellow citizens. To get there, we must attack the breeding grounds of the political reality that brought us to this current situation. I think of this in terms of cultural change, which is a necessary precondition to political change. So for the remainder of this talk I would like to imagine a different world. I will set aside my pessimistic analysis and once again look at our glass as half-full.

In my view, achieving this cultural change will require five interrelated activities.

1. Understanding American Punitiveness.
The NAS report traced the origin of the prison build-up to the turbulence of the 1960s and 1970s when rising crime rates, combined with social and racial unrest, provided fertile ground for the “tough on crime” political strategies. But the panel could not answer a deeper question: Why did America become so punitive? Why did our democracy respond to the fears and panic of that era with such an expensive and inhumane policy prescription that ultimately led to a million more people in prison? I think we need to look beyond criminal justice policy—and beyond traditional political and historical analysis—to answer this question.

We need to recognize that this punitive reflex has been evident in other policy domains as well, not just sentencing policy. In our schools, we have substituted school disciplinary processes with criminal proceedings for juvenile misconduct. In our immigration policy, we have decided to detain millions of undocumented immigrants in a network of prisons not counted in our measures of incarceration. In our response to the threats of terrorism, we have enacted policies that significantly constrain the liberty of all Americans and have subjected Muslim-Americans to special scrutiny. We have also seen the evidence of our punitive attitudes in the recent debate on stop-and-frisk policies in New York City when the excessive use of this legitimate police power was justified as necessary to keep crime down.

In my view, our efforts to reduce mass incarceration will require a deep exploration of why our country embarked on this aberrational experiment in the massive deprivation of liberty. This inquiry will necessarily require us to confront the racial dimensions of mass incarceration and the thread that connects this era with the nation’s unresolved struggle for equal protec-
tion of its laws. In that connection, I am pleased to note that, with financial support from the MacArthur Foundation, my John Jay colleagues David Green, Maria Hartwig, and I will soon be convening an Interdisciplinary Roundtable on Punitiveness in America. We will bring together philosophers, theologians, psychologists, political scientists, criminologists and historians, from America and Europe, for a far-reaching two-day exploration of this topic. In addition to an edited scholarly journal, we will also publish a general reader monograph from the proceedings of the Roundtable. I hope that we find enough fertile ground to continue this discussion and to share our findings with a broader audience of scholars, practitioners and policy-makers.

2. Imagining a Different Future.
One of the missing ingredients in the current debate over mass incarceration is that we do not have an alternate vision for our future. We are so focused on the tactical challenges of coalition building, the hand-to-hand combat of legislative reform, and the concern about short-term victories that we do not take the time to say, simply, it need not be so. I think the new rhetoric of the movement to reduce mass incarceration is powerfully positive: “Let’s cut the prison population in half!” Though this rhetoric is welcome, it is not sufficient to overcome the political forces that sustain the status quo.

What might be more effective? For starters I would point to the recent success of Proposition 47 in California, which reclassifies offenses in the penal code for the specific goals of reducing incarceration; takes and reallocates money from corrections budgets; and, provides large-scale opportunity for people convicted of low-level felonies to have these felonies removed from their old records.¹² Many lessons can be drawn from this success. First, the campaign, brilliantly conceived by a group called Californians for Safety and Justice, led with the voices of crime victims—everyday Californians who said that the current system, with its long sentences, did not deliver the justice that they sought.¹³ These victims would rather have seen a system that dealt with the conditions that led to the crime—the underlying mental illness, drug addiction, or poor lighting. They would have preferred a sys-

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tem that paid attention to their need to recover from their crimes. Second, the campaign specified alternative investments of the money now spent on prisons. The referendum said that the savings would be re-invested in mental health and drug treatment (65%), K-12 school programs for at-risk youth (25%), and trauma recovery services for crime victims (10%). Finally, because of the unique California ballot initiative process, the campaign was able to bypass the legislative process and directly reflect the will of the people. On November 4, Proposition 47 passed with 60 percent of the vote. Among your handouts you will find a flyer announcing that Californians for Safety and Justice Executive Director Lenore Anderson and New York Times journalist Erik Eckholm will be speaking about Proposition 47 at John Jay tomorrow. I invite you to join that conversation.

Only a few states provide for sentencing reform by referendum. So we need other ways to paint a different vision for the future. In recent conversations with colleagues in New York, I have promoted the idea of a community-level conversation that provides direct input into a new vision for justice. Let’s imagine that a community with a high rate of incarceration were presented with data on the cost of imprisonment. They would see that for some blocks in their neighborhood we now spend over a million dollars a year to incarcerate the individuals, mostly men, from a single block.\textsuperscript{14} We would then provide these community leaders with a statistical model showing that, for specified reduction in long sentences those people are serving, hundreds of thousands of dollars could be reinvested. We would then ask them, how should those dollars be reinvested? More importantly, we would ask them, for the crimes leading to those incarcerations, how could our society have responded better? Imagine then that this conversation includes prosecutors, legislators, police officials, service providers, and the community residents then asked their government and civic leaders to find ways to implement this alternate vision. If we were to carry out this exercise at the modest level of a 50 percent reduction in incarceration, we would free up millions and millions of dollars for other public purposes, including promoting lower rates of crime and providing more effective support for victims.

\textsuperscript{14}The work of Eric Cadora of the Justice Mapping Center in documenting the phenomenon of “million dollar blocks” represents one of the most important conceptual and rhetorical breakthroughs in our public discourse on incarceration policy (retrieved from the World Wide Web on February 20, 2015: http://www.justicemapping.org/archive/26/multi-%E2%80%98million-dollar%E2%80%99-blocks-of-brownsville/).
A third idea for creating a different vision for the future involves comparison with the prison systems of other countries. We Americans are notoriously parochial and the frequent response to the systems of other countries is: Well, that would never work here. Or, our criminals are worse than their criminals. Or, our social safety net does not provide sufficient benefits for people involved in criminal activity. Or, we have many more guns and too much gun violence. Or, our racial divide is deeper. Or, ….

I think we need to break through these intellectual blinders and look carefully at the prison systems of other countries. I applaud the Vera Institute of Justice for its decision to take a second group of American policy makers and thought leaders to Europe to study its prisons. Hopefully, this will become a steady flow of American experts trying to understand different approaches. It is ironic that early in our nation’s history, Europeans came to the U.S. to learn about progressive sentencing and prison policies. Today, we need to repay the compliment.


The NAS study reached important conclusions about the nexus between our high rates of incarceration and crime rates—first, that the prison build-up was only indirectly caused by crime increases, and second that high rates of incarceration yielded, at best, only modest benefits in terms of public safety. Yet every time we talk about reducing prison populations, that proposition is still cast in terms of public safety. “Look”, we say, “the incarceration rate of a specific state has gone down, without an increase in crime.” I understand the political imperative for making this statement. But even in political terms, it’s problematic: what if crime rates go up a few percentage points, should we halt the prison reduction program? But more importantly, it is analytically problematic. After all, it was the promise that more prison would bring about less crime that got us into this mess in the first place. So we are only repeating a false premise if we couch a prison reduction strategy as possible only if crime does not go up.

At the same time that we break the crime-prison nexus, we need to develop other reasons for reducing the number of people in prison. The efforts to reduce mass incarceration are often based in financial imperatives—we simply can’t afford this anymore. That works to some extent, but beware the return of healthy state economies. I am heartened by the arguments of libertarians that our current prison population represents an unwarranted intrusion of the state on individual freedoms. I resonate with the
argument of small government conservatives who point to mass incarceration as a striking example of a government experiment that failed. I value the arguments of constitutional scholars who say that the current conditions of confinement violate the Eighth Amendment’s prohibition against cruel and unusual punishment. Utilitarian arguments that we need to be cautious to ensure that we do not jeopardize public safety as we reduce the prison population only reinforce the view that we needed to put all these people in prison to produce public safety.

But, to be credible, advocates for reductions in the prison population need to have a position on public safety. It is the height of irony, to say the least, that we have so many people in prison precisely at a time when we have developed a very sophisticated portfolio of effective crime prevention strategies. We are now in a position to question the premise of mass incarceration itself and to ask, “Why do we need to use prison so extensively to reduce crime? Why not put the intellectual energy and tax payer resources into effective strategies?”

4. Rethinking the Role of the Criminal Sanction.
This is a challenge to the orthodoxy of the legal community, so it’s appropriate I raise this challenge in a law school setting. In my view, we have a golden opportunity to reframe crime policy in terms of new ideas about the role of the criminal sanction in producing public safety. Nothing would be a more powerful antidote to the prison-centric realities of our current crime policy than the design and implementation of a suite of effective crime prevention policies that minimize the use of prison. For the past 20 years, I have been an avid proponent of the concept of focused deterrence developed by my John Jay colleague, David Kennedy. This concept envisions the criminal sanction—including arrest, prosecution, and incarceration—as part of a larger strategy designed to address specific crime conditions. The concept has been successfully implemented to address gang violence, overt drug markets, and domestic violence. Today, over 50 jurisdictions have joined the National Network for Safe Communities, the vehicle for implementing focused deterrence strategies around the country.15

One of the principles of the National Network is to reduce the unnecessary use of incarceration while reducing crime. This formulation represents

the embodiment of the principle of parsimony. For focused deterrence work, the instruments of formal social control are used only in connection with explicit invocation of the instruments of informal social control, including the moral voice of communities, the persuasion of family members, and the positive examples of formerly incarcerated individuals. Police officers, prosecutors, defense lawyers, probation officers, judges and corrections officials are not accustomed to such an embrace of informal social control that is so explicit and so strategic. They find themselves in unfamiliar terrain, experiencing a form of professional vertigo. We need to learn from these experiences and follow these lessons wherever they lead. These experiences require a rethinking of the role of the law in influencing behavior.16

These innovations are conceptually important for what they teach us about deterrence. They are operationally important for what they can deliver in terms of public safety. But they are also politically important because they undercut the notion that we need long prison sentences to produce public safety. But they sit uncomfortably in the orthodoxy of the laws of criminal sentencing and traditional notions of the adversarial process. Consequently, a challenge of the first order for the law schools and legal academics of the country is to take seriously these advances in theory and practice and develop a set of legal principles that reflect their success. This will, in turn, provide policy makers with a counter-argument to those who say we need so many people in prison to keep us safe.

5. Pursuing Racial Reconciliation.
Perhaps the most important task we need to undertake is to come to terms with the implications of mass incarceration for our country’s pursuit of racial justice. We should not be surprised with the finding of the NAS report that the increase in incarceration rates over four decades was highly concentrated among specific sub-populations. In fact, we found that most

16 The principles of focused deterrence have been applied in other settings. The success of Project HOPE in Hawaii is based on similar principles, and also involves minimal use of the criminal sanction. Angela Hawken and Mark Kleiman. Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawaii’s HOPE. S.l.: U.S. Department of Justice, 2009. In Chicago, the Project Safe Neighborhoods initiative applied focused deterrence ideas with a group of individuals returning from prison, with a 37 percent reduction in homicides during the observation. Tracy L. Meares, Andrew V. Papachristos, and Jeffrey Fagan. Project Safe Neighborhoods in Chicago—Review of Research. In Homicide and Gun Violence in Chicago: Evaluation and Summary of the Project Safe Neighborhoods Program, 2009.
of the increase came from one subpopulation: minority male high school dropouts. This finding is very sobering. Let me illustrate it this way.

For African-American high school dropouts born between 1945 and 1949, the likelihood that they would serve at least a year in prison before age 34 was 14.7 percent.

For those born a generation later between 1975 and 1979, who came of age during the prison boom, the risk of imprisonment is now a staggering 68 percent. Think about it. This analysis does not reflect the probability of arrest, spending time in police lock up, being on probation, being suspended from school, or spending time in jail. This analysis isolates the most severe interaction between African-American male high school dropouts: being sent to prison. For this group of our fellow citizens, there is a 68 percent probability of spending at least a year in prison. If we add the likelihood of other, less severe interactions with the justice system, we recognize that it would be rare for a male African-American high school dropout to be untouched by the enforcement apparatus of the state.

Remember our earlier conclusion: We have these high rates of imprisonment because we chose them, because we elected officials who responded to crime by increasing the use of prison. Against that backdrop, how can
we explain to ourselves that we have chosen to create a reality in which an African-American man who drops out of high school faces a 68 percent chance of going to prison before he turns 35? Certainly we can’t place the total blame on these men. Do we have evidence that the offending rate of this group of our fellow Americans has increased more than four-fold over forty years? Absolutely not. On the contrary, we know that we have witnessed a historic decline in crime rates in all communities, including inner city African-American communities. I am not saying that these communities do not have crime problems.

Rather I point out the simple statistical fact that the crime decline has been a widely shared benefit. But this creates a conundrum: In light of the historic good news of low crime rates, how can we reconcile ourselves to the historic high rates of imprisonment—with all the attendant damage for individuals, families and communities? How can we conclude this this state of affairs represents our aspirations for justice?

For me, these data lead to only one conclusion: our incarceration policies—and, more broadly, our criminal justice policies—have done enormous harm. For young men growing up today who are living in our inner cities, in communities that are struggling with poor school systems, poor housing, poor health care, who are not able to complete high school, their life course most likely includes time in prison. What have we wrought? How can we possibly justify this large scale deprivation of human liberty? In whose name have these policies been adopted? Given that we have the lowest crime rates in a generation, shouldn’t the residents of communities struggling with the consequences of mass incarceration be entitled to demand a peace dividend? Can this really be the new normal for our democracy, that large numbers of our fellow citizens will be confined to a permanently diminished status, long after they pose any elevated risk of criminal behavior, but still earn less, vote less, suffer the trauma of incarceration, at higher risk of morbidity, while too often alienated from family and friends? At this point in my thinking I hear in my mind the echo of Alan Paton’s book about apartheid in South Africa, *Cry, the Beloved Country*.17

So when I said at the outset that I feel a moral obligation to find ways to reduce mass incarceration, it is because of this reality. We can nibble around the edges, work with politicians to change sentencing laws, deep-

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en our understanding of punitiveness in America, even adopt new crime prevention strategies, but one imperative—a moral and historical imperative—remains: We need to come to terms with the racial damage caused by the era of mass incarceration. We need to imagine and then carry out a program of racial reconciliation. We need to admit our government—acting in our name—has done great harm. We need to accept responsibility for that harm, and find ways to alleviate the consequences.

I do not pretend to know the way forward toward reconciliation. Yet I am heartened by the decision of the Department of Justice, under the inspired leadership of Attorney General Holder, to provide funding for the creation of a National Initiative for Building Community Trust and Justice, to be led by a consortium including John Jay College, Yale Law School, UCLA and the Urban Institute. One of the key activities of the National Initiative will be to work with five pilot sites across the country to explore the pathway toward reconciliation, with a focus on the police and communities of color. We will soon convene at John Jay a group of national and international experts who have experience with reconciliation processes in other contexts and cultures. Perhaps we will find a way to apply these lessons to the phenomenon of mass incarceration. What I do know is that we must find the way, and must find it together. So the road ahead is long. In my pessimistic moments, I fear we may never be able to find an exit strategy from the era of mass incarceration. But the optimist in me says we have a chance of success—if we dig deep, look in the mirror, recognize the damage we have done, and commit ourselves to doing the truly hard work of our democracy: ensuring that our society lives up to its ideals.

Thank you.

18 Eric Holder, Attorney General, Press Release: Justice Department Announces National Effort to Build Trust Between Law Enforcement and the Communities They Serve (September 18, 2014).
In another address exploring the 2014 NRC report, President Travis presented an in-depth look at two issues attendant to a discussion of mass incarceration: its impact on children with incarcerated parents, and its relevance to societal aspirations for racial justice. The speech had additional poignancy coming against the backdrop of the deaths of two black men at the hands of police the previous summer: Eric Garner in New York, and Michael Brown in Ferguson, Mo. Also serving as precursor, and offering President Travis basis for renewed hope, was the Justice Department’s creation of the National Initiative for Building Community Trust and Justice, housed at John Jay.
I am deeply grateful for this opportunity to speak with you about an issue close to my heart, namely the far-reaching impact of our nation’s decision to embark on a policy choice that has led us to a reality we now call the era of mass incarceration. In my view, there are few issues as important to the future of our democracy. So I welcome the opportunity to speak with you, hopefully to give you some tools and perspectives that will help you think about this challenge to our national aspirations to be an inclusive, just and humane country. Whenever I receive invitations to speak with students—college students or law students—I try to accept because I believe that your generation has the power to reverse the damaging course we have embarked upon as we decided to put a million more people in prison. So your interest in this topic is inspirational and gives me hope for our future. I also admire your decision to focus our attention this afternoon on the impact of mass incarceration on children, and to examine this question critically through the lens of race. As I will set forth in a moment, I think this focus on children provides an opportunity to expand the conversation about mass incarceration to allow us to consider the far-reaching consequences of our policy choices.

Over the past several months I have been focusing my attention on two complex and challenging questions—why has our democracy embarked on this unprecedented policy journey that has resulted in a fourfold increase in our rate of incarceration? And what will it take for us to reverse course and reduce the number of people in prison? These are profound questions with no easy answers. Today, you have provided me a welcome excuse to step back from those two questions and to examine two related questions of equal importance: what are the short and long term consequences of high incarceration rates on the families and children of those incarcerated? Second, recognizing that this lecture is sponsored by the Center for the Study of Race and Race Relations, I will also offer some thoughts about the impact of the prison build-up on our nation’s pursuit of racial justice.

Thanks for giving me easy questions as a topic for this lecture!

Let’s begin by establishing some facts. It is important that we have a shared understanding of the magnitude of the reality of mass incarceration and the causes of this expansion of prison as a response to crime.

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In illustrating these points I draw up on the findings of the Committee on the Causes and Consequences of High Rates of Incarceration.¹ This committee of 20 leading scholars and national experts was convened by the National Academy of Sciences to review the evidence on—as its title suggests—the causes and consequences of the fourfold increase incarceration rates. I was privileged to be asked to chair this committee and am enormously grateful for the contributions of my colleagues to this landmark report that was released just a year ago.

The first key finding of our report is sobering: When we consider today’s realities of mass incarceration, we must come to terms with the fact that our country has never been here before, and we stand apart from the rest of the world.

From the 1920s to the early 1970s, our country experienced a very stable rate of incarceration (here measured by the state and federal prison population) averaging about 110 people incarcerated per 100,000 population.

Then in the early 1970s, the incarceration rate took off, increasing every year until 2009, rising more than fourfold in the space of a generation. When we compare ourselves to other Western democracies, the differences are stark.

The incarceration rate in Europe (here including prisons and jails) is much lower, ranging from 67 per 100,000 in Sweden to 148 per 100,000 in the United Kingdom. By comparison, the US rate, here including prisons and jails, is over 700 per 100,000, five to ten times higher than those in Europe.
The Committee of the National Academy of Sciences captured this reality with the first conclusion in our report: “The growth in incarceration rates in the United States over the past 40 years is historically unprecedented and internationally unique.” Other phrases used in our discourse express the same conclusion. We note, using an analysis first done by the Pew Charitable Trust, that today, nearly 1 in 100 adults in the United States is in prison or jail.² Or we point out that the United States is home to 5 percent of the world’s population, but 25 percent of the world’s prison population. Or, we state that we have the highest incarceration rate of any country in the world, having surpassed Russia and South Africa for this distinction.

However you say it, we must face a stark reality: something profound has happened in our country. We have never been here before. Never in our history have we held such a high percentage of our fellow citizens behind bars. In my hopeful moments, I take solace in the fact that we are just now, albeit belatedly, starting to come to grips with the implications of this new reality. It is indeed enormously gratifying to come to conferences such as this one to see the new awareness about mass incarceration that is emerging on the college campuses of our country. We have reason to believe that the next generation is committed to changing the course of our country on criminal justice policy generally. Just recall the marches for racial justice in policing practices after the deaths of Michael Brown and Eric Garner and on the overuse of prison specifically. Note the outpouring of support on college campuses for Michelle Alexander following publication of The New Jim Crow.³ The younger generation gives us reasons to be hopeful.

Yet in my more realistic moments I come face to face with the daunting challenges that lie ahead if we are ever to reverse course and significantly reduce our incarceration rates. Sometimes I think we are at a tipping point. There is an undeniable national focus on the issue of mass incarceration. Even the phrase “mass incarceration” is now a useful shorthand that describes the reality that too many people are in prison, for too long. At the same time, we are witnessing the emergence of remarkable left-right coalitions devoted to reducing the prison population. The Koch Brothers, Newt Gingrich and a cleverly titled group called Right on Crime has made

common cause with the Open Society Foundation of George Soros and the American Civil Liberties Union.¹ Have the lions and the lambs actually lain down together? If you listen carefully, we can also sense the deep realization that America has gone off course, that something is wrong with this reality, something inconsistent with our founding principles. So perhaps these dynamics will coalesce to produce a political movement that rolls back our harsh sentencing statutes. Yet, at other times, I fear that we have reached a new normal, where mass incarceration is baked in to the American political reality. I fear that we might find a way to live comfortably with the fact that so many of our fellow citizens are consigned to spending part of their lives in prison.

In struggling to imagine a path forward that leads to significant reductions in mass incarceration, I always come back to another key finding of the National Academy of Sciences report. I paraphrase here, but the NAS report basically said, “We are here because we chose to be here.” Stated differently we could say, “We have mass incarceration because we wanted mass incarceration.” Let me unpack this to make sure we understand the power of this statement. The NAS report found there were three drivers of mass incarceration: (1) we chose to make long sentences longer; (2) we chose to enact statutes requiring mandatory minimum prison sentences for offenders who would otherwise have been subjected to community sanctions; and (3) we launched a war on drugs in response to public concerns about drug-related crimes and related behaviors. These were all policy choices, enacted by our elected officials who ran for office on tough-on-crime platforms and, once in office, delivered on their promises. Hence the bottom line: We are here because we chose to be here.

The corollary of this finding is also clear, and challenging. If our democracy brought us to this reality, we must turn to our democracy to bring us to a new reality with fewer people in prison. This realization, in turn, requires us to ask which political strategies—which arguments to our elected officials, opinion leaders, and community activists—will create a different climate so that deep reform is possible.

It is in this context that I ask you to consider whether the two topics I will address today—the impact of mass incarceration on children and on our aspirations for racial justice—provide hope for changing the political

¹ Right on Crime; (retrieved from the World Wide Web on April 1, 2015: http://rightoncrime.com/the-conservative-case-for-reform/).
dynamics of our democracy.

Let’s talk first about the children. One well-known tactic for building broad political coalitions is to show the effects of a particular public policy on children. It has worked for health insurance coverage. Recall that President Obama first extended the benefits of the Affordable Care Act to young people under the age of 26. It has worked on the movement to reduce smoking. Recall the TV commercials showing the effects of second-hand smoke on the children of smokers. It has worked in the struggle for marriage equality. Recall the advocacy on behalf of the children of gay and lesbian parents who simply wanted to live with their parents. I ask you to reflect on this question: Can a similar argument help broaden the conversation about the damaging effects of mass incarceration? If we highlighted the ripple effects of prison on the children of the imprisoned, would American society, which is otherwise generally not open to arguments about reducing the level of imprisonment, be more open?

I think this argument has enormous potential for shifting the ground. First, let’s consider the sheer magnitude of the phenomenon. A mere 25 years ago, one in 125 children in America (under age 18) had a parent incarcerated. Today, that ratio is one in 28. This phenomenon can also be stated as a rate. Today, 3.6 percent of minor children have a parent incarcerated. And of course the racial disparities are striking. One in 9 African-American children (11.4 percent), one in 28 Hispanic children (3.5 percent) and one in 57 White children (1.8 percent) has an incarcerated parent today.

This is a dramatic growth—in a very short time—in the population of children affected by incarceration. It is hard to know how best to drive this point home. Try this: In 1980, there were about 350,000 children with an incarcerated parent; in two short decades, from 1980 to 2000, that number had grown to 2.1 million, then the number increased again to the most recent estimate of 2.7 million. The ripple effects of mass incarceration have reached deep into our most vulnerable population, our children, on a massive scale. Millions of children now experience the loss of a mother or father to prison who, in an earlier time, would not have suffered that loss.

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As we dig deeper into the data on the prison build-up, we come to a better understanding of the ways that mass incarceration has left its mark on children. For example, we know that the number of mothers incarcerated has grown at a faster pace than the number of fathers incarcerated. Between 1991 and 2007 the number of children with a mother in prison increased 131 percent, while the number of children with a father in prison increased at a slower pace, 77 percent.\(^8\) This is because the incarceration rate for women, which is lower than for men, grew faster than the rate for men. We also know that nearly two-thirds of mothers in state prisons were living with their child or children at the time they were incarcerated.\(^9\) Given the central role that women play in child-rearing in our society, we can readily conclude that the emotional, financial and developmental losses to those children exceed their raw numbers. Furthermore, we also know that putting a mother in prison will cause disruption in the child support network. In state prisons, mothers who are incarcerated are more likely to have come from single parent households (42 percent) than incarcerated fathers (17 percent).\(^10\) When we put all these statistics together, we come to a startling corollary conclusion. Not only has there been enormous growth in the number of children with a parent in prison, but there has been a more pronounced increase in incarcerated mothers. This trend, in turn, will have distinctive ripple effects because of the unique role of women as heads of households in America.

Yet beyond these descriptive data, we have very little empirical understanding of the consequences of this profound change for the children of America. It is really a national disgrace that our nation has not undertaken a series of major studies on the ripple effects of parental incarceration on the children. Yet we are not without a research base. The early signs, pieced together from small scale studies or larger research projects such as the Fragile Families and Child Wellbeing Study are very troubling. The research literature suggests, as summarized in the NAS report, that “incarceration is generally associated with weaker family bonds and lower levels of child well-being.”\(^11\) Men who have been incarcerated are less likely to marry or

\(^9\) NAS, page 274.
\(^10\) NAS, page 261.
\(^11\) NAS, page 262.
enter into a stable relationship compared to those who have not been incarcerated. And the children whose parents are incarcerated are more likely to experience adverse developmental outcomes, compared to other children whose parents have not been in prison. The picture on the impact of parental incarceration on school performance is mixed—some studies find that these children do less well in school, others find no difference. But even with these competing claims, the overall picture is very troubling.

Another perspective on this new reality is critically important. We must remind ourselves that the growth in incarceration is not spread evenly across the American population. On the contrary, it is highly concentrated—in a small number of communities, among men, predominantly in communities of color, and in particular among high school dropouts in those communities. We rarely consider the corollary to this finding: the children affected by the new realities of mass incarceration also live in those communities. So, even as we ask about the individual impact of parental incarceration on a son or daughter, we must also ask about the aggregate impact in communities of high incarceration. For example, we should be concerned about the new role played by urban schools that now must deal with larger numbers of students with parents who have been arrested, held for trial, incarcerated, and then released back home. How does this affect classroom performance, school counseling services and after-school programs? We should be concerned about the foster care systems that must deal with the larger number of children placed in the care of foster families because mothers or fathers are sent to prison. How have these systems helped these children deal with the loss of a parent to prison as the cause of their placement? We should wonder about the changing dynamics of adolescence—the all-important rituals of dating, forming friendships, developing peer networks, establishing individual identity—when so many young people are dealing with the loss of parents to prison.

We have very little empirical understanding of these new realities, but our colleagues who specialize in adolescent development would warn us that the consequences are likely quite negative. Likewise, our colleagues who study communities and collective efficacy have posited that the concentration of the negative effects of mass incarceration has so weakened the bonds of informal social control that the community’s capacity to self-

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regulate and to prevent crime has been weakened.\textsuperscript{13} We are only a decade or two into the era of mass incarceration and it will take another generation to fully assess the impact of this new reality, but the early signs are sufficiently negative that we have reason to worry about the long-term well-being of these communities. Stated differently, we should be concerned that they might not be healthy communities for the children who live there, even if the parents of a particular child never go to prison.

Let’s take a step back from the research and ask ourselves the larger question: How does this new reality fit into our understanding of the causes of the significant increase in incarceration in America? On one level, we must recognize the harsh irony of this reality. The severe sentencing statutes that were enacted by state and federal legislatures in our name were not intended to punish the children of the offenders. Yet that is what we have done; as is captured in the subtitle of this conference, their children are the “Collateral Victims of Crime.” When these elected officials ran for office, they never said that getting tough on crime included making life difficult for millions of children. Yet here we are, and we have every reason to believe that the long-term consequences of this choice will be detrimental, to them and to our society.

In light of this profound shift in the reach of American penal policy into the next generation of Americans, we should take special note of the efforts of a number of advocacy organizations and service providers to act on behalf of these children. There are many such efforts around the country, including the Mommy Reads program here and others documented in the Resource Guide published today by The Center for the Study of Race and Race Relations. But please allow me to highlight the work of the Osborne Association, a justice reform organization in my hometown, New York City.\textsuperscript{14} I have been very impressed with their work. They engage with a core group of children with incarcerated parents. They sponsor recreational group activities for the children, who are aged 5 to 12. These young people also come together to discuss topics such as the experience of being separated from a parent who is in prison or jail. They engage in role playing to work through their feelings, and write letters to their parents. The children can participate in day-trips to prisons to visit their parents. While the


children are participating in these activities, their mothers who are incarcerated participate in a 12-session parenting program at the correctional facilities. At the end of this time, a special visiting day is organized and the children are included in their mothers’ graduation ceremony. Particularly impressive is the televising program which enabled children with a mother at Albion Correctional Facility or a father at the Clinton-Annex correctional facilities to “video visit” with their incarcerated parent. This program is now being expanded to other correctional facilities and holds great promise for maintaining a connection between parent and child.

Other jurisdictions have launched similar efforts to maintain stronger connections between parents and children. In my view, we have an obligation to help the children of incarcerated parents deal with this confusing, complicated, and sometimes shameful reality in their lives. These efforts all around the country deserve our support. But today I want to keep our focus on the larger goal of reducing mass incarceration. Clearly the best way to help children of incarcerated parents is to have fewer parents in prison. Let’s ask, as our final question, whether the children have a role in spurring a larger movement to roll back the prison system in our country. For me, the emphatic answer to this question is yes.

Over the years, I have spent time with young people who have a father or mother in prison. I was energized and inspired by the young professionals who spoke on the previous panel. In the majority of cases, I have been struck by their devotion to their parent, their desire to understand the situation that led to the crime that led to prison and their honest and touching ambivalence about the day that their mother or father comes home from prison. I think we need to capture these voices, harness this energy, and put it to good use in building the argument to reduce the number of people in prison. Their voices can help our country put a human face on the consequences of our policy choices. They can bring to our elected officials the reality that prisons reach deeply into our communities. Their experiences can shed light on the inhumane realities of mass incarceration. Just as the children of gay and lesbian parents fought for the right to be in a family recognized by the laws of their states, just as the children of the mentally ill fought for better treatment for their parents, just as the children of smokers who lost their parents to cancer became advocates for smoking cessation programs, so too the children of incarcerated parents can become advocates for shorter prison sentences, more humane conditions of
confinement, better planning for reentry and family reunification, and less stringent conditions of parole.

One of the most inspiring examples of leadership has been provided by Emani Davis. When she was six years old, her father was sentenced to 107 years in prison. Emani and her mother, Liz Gaynes, the Director of the Osborne Association, decided to launch a movement on behalf of children of incarcerated parents. Their efforts contributed to the creation of the United Nations Convention for the Rights of the Child which now stipulates that children with parents in prison have certain rights. These include the right to know where their parent is being held, to maintain contact with their parent through telephone calls, letters and visits, to express their own thoughts and views when their parent is sentenced to prison, and to grow up in a supportive home if they cannot live with their mothers of fathers. The United Nations Convention affirms the human dignity of the children of incarcerated parents—and their parents. It recognizes the most basic human needs of all of us to affirm loving relationships with our family members. In recognition of their efforts, Emani and her mother received the World’s Children’s Honorary Award in 2004 “for their tireless struggle for children of prisoners.” Their work, which continues to this day, is inspirational. Emani captures her mission with a powerful phrase: “We are not children at risk, we are children of promise.”

As we are developing advocacy strategies that might move the nation in the direction of lower rates of incarceration, I would like to enlist your support for a frank discussion of the racial disparities of incarceration and an explicit call for racial reconciliation. I think one of the most important tasks we face is to come to terms with the implications of mass incarceration for our pursuit of racial justice.

It is a commonplace observation to note the disparate impact of high rates of incarceration on communities of color. But the NAS report was more precise: We noted that the impact was concentrated on young, African-American men who had dropped out of high school. Let me illustrate this finding by referring to two slides from the report.

As the top slide on the right illustrates, for African-American high school dropouts born between 1945 and 1949—the baby boom genera-
tion—the likelihood that they would serve at least a year in prison before age 34 was 14.7 percent. Now look at the next slide.

For those born a generation later—between 1975 and 1979—who came of age during the prison boom, the likelihood of imprisonment is now a staggering 68 percent.

I consider this a jaw-dropping finding. Our fellow citizens who are already struggling—African-American men growing up in a society riddled with racial discrimination, most likely living in poor communities, having difficulty in school—now face a two in three chance that they will spend at least a year in prison before they reach their mid-30’s.

We must combine this statistical finding with the first conclusion of the NAS report—we have mass incarceration because of policy choices, not because of crime increases—and the reality starts to sink in. We have extended the reach of the punitive powers of the state far beyond anything reasonably required to achieve a legitimate social purpose and have imposed the weight of incarceration on a subgroup of our society set apart by race, class and educational attainment.

When we ask about the collateral damage of mass incarceration, and
count the children of incarcerated parents among those suffering, we should not overlook the damage to our notions of racial equality. When I think about what we have done—what our elected officials, acting in our name, have done—I wonder what it would take to undo the damage. Clearly we need to reverse course and put fewer people in prison. I know that the people in this room are committed to that cause. But we also need to imagine a process of racial reconciliation. How does our country open up a dialogue about the ways that the justice system—from policing to incarceration to community supervision—has become an instrument of social control? How do we create a space where police leaders, prosecutors, legislators, judges, corrections officials can think critically about this new reality and recognize that the policies of the past have caused enormous damage, to individuals, communities, and our democracy?

I am heartened by the latest developments in this regard. We should applaud the recent statements by President Obama, Attorney General Holder, FBI Director Comey and, most recently, New York City Police Commissioner Bratton recognizing that the law enforcement agencies have often been on the wrong side of the struggle for racial justice. We should applaud the decision of the Department of Justice to create the National Initiative for Building Community Trust and Justice at John Jay College. Working with our colleagues from Yale Law School, UCLA and the Urban Institute we will be working in six cities around the country to tackle issues of implicit bias in policing, provide training on procedural justice, and open up processes of reconciliation. Other voices, including Van Jones, Bryan Stevenson and Michelle Alexander, have eloquently called for a national recognition of the need for acknowledgment of harm in the name of justice.

I hope you will add your voice to these voices. Certainly the Center for the Study of Race and Race Relations could provide a forum for these discussions. Certainly a college campus, full of young people who are convinced that the nation has lost its way and are equally committed to getting us back on track, will serve as fertile ground for this new movement. And this movement can be led by the children who have seen their parents taken away to prison. Who else has a stronger claim on the conscience of the country?

I look forward to the success of the movement you are about to lead.

17 Eric Holder, Attorney General, Press Release: Justice Department Announces National Effort to Build Trust Between Law Enforcement and the Communities They Serve (September 18, 2014).
Appendix

**Lectures, Speeches, Testimony**

Following is a complete list of President Travis’s presentations during his 13 years in office. For more information and links for follow-up, please visit: www.jjay.cuny.edu/president’s-speeches

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Perspectives on Crime and Justice


Acceptance speech on occasion of the receipt of The Maud Booth Correctional Services Award from the Volunteers of America in Denver, Colo. (2012).


“Rethinking Prison Education in the Era of Mass Incarceration.” Keynote address delivered at the University Faculty Senate Conference on Higher Education in the Prisons in New York, The Graduate Center (2011).


Perspectives on Crime and Justice

Jeremy Travis