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Publication Date

2000

CRIME CONTROL POLICY IN CALIFORNIA

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I. Introduction

What to do about crime is a matter of heated debate: popular, political, and academic. Partly because trial and sentencing are court processes, legal scholars have had a disproportionate role in that debate, which therefore tends to focus on those court processes and to take rights as its central topic, the rights of victims being seen as in tension with the rights of the accused. (Whether the interests involved are best represented in rights language perhaps deserves more discussion than it has had.)

Alternatively, one might treat crime control as an ordinary policy issue, like transportation or the control of pollution, in which policies are to be judged by their outcomes, including their costs. That approach would focus attention on the naïve question, "What actually controls crime, and at what costs in money and suffering?" That will be the approach of this paper.

Accompanying that practical bias is a guardedly optimistic conclusion: that, if we shape our policies to what is known about offending, we could enjoy both lower rates of crime and lower rates of incarceration than we now have. The optimism is guarded more because of doubts that new policies can be adopted and implemented under existing political and administrative conditions than because of any doubts that significantly better policies, with substantially better outcomes, are available for adoption and implementation.

It should be said at once that many things besides the agencies of law enforcement and criminal justice potentially control crime; there is evidence that phenomena as diverse as higher wages for low-skill jobs, increased rates of religious observance, and intellectual stimulation for very young children can all reduce the rate of criminal activity¹ These findings seem to support the familiar idea that crime must be attacked at its "root causes." But such indirect crime control approaches tend to have four characteristics in common that limit their relevance to the immediate problem of crime control: current capacity to bring them about is limited; the extent of the impact on crime is disputable; crime control is unlikely to play an important role in their design or execution, both because of the institutions involved and because their crime control benefits represent only a small fraction of the values at stake in deciding about them; and the gap

* The author would like to thank Sarah Prehoda for her able research assistance on this project.

¹ Jeffrey Grogger, "Market Wages and Youth Crime," National Bureau of Economic Research, Inc. Working Paper 5983. Cambridge, MA. March 1997. John J. DiIulio, Jr., "In America's Cities. The Lord's Work: The Church and the Civil Sector," *The Brookings Review*. The Brookings Institution, Washington, D.C. Fall 1997, Vol 15 No. 4 pp. 27-35. J.R. Berrueta-Clement, Schweinhart, Barnett, Epstein, and Weikert, "Changed Lives: The Effects of the Perry Preschool Project on Youths Through Age 19." (Ypsilanti, MI: High/Scope Educational Research Foundation, 1984.)

in time between adopting new policies and seeing substantial impacts on crime control is likely to be very long.² That does not mean that such indirect policies ought to be ignored; some of the findings on early childhood education are profoundly exciting, and deserve to be followed up both scientifically and practically.³

This essay will concentrate on those policies and agencies most directly aimed at crime control, the ones dealing with the processes of arrest and punishment. After a review of recent trends and budgets and an argument for the importance of crime control as a policy objective, it will explore three sets of conceptual issues about crime control and their practical implications for policing and corrections.

II. Recent Trends and Budgets

Crime rates, in California as elsewhere in the country, have been falling steadily throughout the 1990s, yet they remain at levels that cause substantial social damage. Crime remains, and will likely continue to remain, a key issue on California's policy agenda.

Many of the challenges California faces are shared by the rest of the nation: a core of serious, repeat offenders, overcrowded prisons and rising prison budgets, and a community corrections (probation and parole) system that fails to provide an adequate alternative to incarceration. California's crime control landscape also has several special features, including repeat-offender laws (typified by "Three Strikes") of unusual scope and severity, and a recent rash of well-publicized abuses by officers of the state prison system and the largest local police force.

Since 1993, California's crime rates, like those of the rest of the nation, have steadily declined. California, in fact, has outperformed the rest of the country. From 1993 to 1998, the California Crime Index (CCI) rate decreased 38.5 percent, while the national rate decreased 10 percent. In the past five years, violent crime in California has fallen 35 percent, compared with 15 percent for the nation as a whole.⁴ Yet despite these numbers, per capita measured crimes are still at twice the levels of the 1950s, and California's violent crime rates per capita are still significantly higher than per capita rates nationwide.⁵ As a nation and as a state, we also imprison more people than ever. In 1998, California incarcerated over 240,000 offenders, an

² But see P.W. Greenwood, K.E. Model, C.P. Rydell, and J. Chiesa, *Diverting Children from a Life of Crime: Measuring Costs and Benefit*. (Santa Monica, CA: RAND Corporation, 1996.), for evidence that certain efforts, such as graduation and parenting incentives, are more cost-effective than prison building in controlling crime, even in the short run.

³ The famous Perry Preschool project noted above seems to have reduced criminal activity in a group of "high-risk" children by about one third, a spectacular achievement even compared to the costs: the equivalent, in money of current purchasing power, of about \$15,000 per child. Whether such programs would have equivalent benefits if operated at national scale is the \$64,000 question in long-term crime prevention.

⁴ California Department of Justice, Division of Criminal Justice Information Services, *Crime and Delinquency in California, 1998, Advance Release*. Sacramento, 1998. Federal Bureau of Investigation, U.S. Department of Justice, *Uniform Crime Reports 1997*.

⁵ *Uniform Crime Reports 1997*.

increase of 35 percent since 1993, and a per capita rate slightly higher than that of the nation as a whole.⁶

Crime statistics overstate the true gains in public safety in two ways. First, the fear of crime drives the huge, largely unmeasured costs of crime avoidance.⁷ Fear has been increasing, even as the measured crime rate has been falling.⁸ This fear reflects in part the increasing level of crime depicted on television, both in entertainment and in local television news. Whatever its origin, the continuing high level of fear means that the costs of crime avoidance – arming, guarding, locking up, staying in, shutting down, and moving – have not fallen as much as the rate of completed crime. Second, the flow of population from high-crime to lower-crime areas creates a downward bias in overall crime rates; if crime rates in each area were to remain constant, but population were flowing (as it has been) from high-crime to low-crime areas, the nation as a whole would show a decrease in crime even though no individual jurisdiction or neighborhood had actually become safer.

Various explanations have been offered for falling crime rates. The importance of random events, magnified by the dynamics of crime and punishment, should not be neglected. To some extent uptrends and downtrends in crime tend to be self-sustaining; enforcement resources, which are spread more and more thinly as crime rates rise, become more and more adequate as crime rates fall. As a result, the risk of apprehension and punishment tends to fall as crime rates rise and rise as crime rates fall; insofar as deterrence works, those effects will tend to give crime rates an inertia of motion.⁹

Demography, perhaps because no one can claim credit for it, has attracted less attention. Over the recent past, demographic trends have been favorable, with the number of persons in the most crime-prone age groups at much lower levels than was the case during the 1960s and 1970s. But those trends are now beginning to turn the other way as the echo baby boomers come into their high-crime years. If age-specific crime rates, or, worse, age-and-ethnicity-specific crime rates, were to remain at current levels, overall crime rates would rise sharply over the next decade.

The money costs of public crime control activity remain relatively modest: \$125 billion nationally, compared to twice that amount for national defense, about three times that amount for education, and five or six times that amount for public expenditure on health care.¹⁰ In 1998-

⁶ California Department of Corrections, *Corrections: Public Safety, Public Service*. www.cdc.state.ca.us, May 1, 1999. Bureau of Justice Statistics, U.S. Department of Justice, *Bureau of Justice Statistics Bulletin: Prisoners in 1998*. August 1999.

⁷ Philip J. Cook, "The Demand and Supply of Criminal Opportunities," in Michael Tonry & Norval Morris, eds., *Crime and Justice: A Review of Research*. (Chicago, University of Chicago Press, 1986.)

⁸ See Pamela Wilcox Rountree & Kenneth C. Land, "Burglary Victimization, Perceptions of Crime Risk, and Routine Activities: A Multilevel Analysis Across Seattle Neighborhoods and Census Tracts," *Journal of Research on Crime and Delinquency*, Vol 33, p. 147ff, 1996.

⁹ Mark A.R. Kleiman, "Enforcement Swamping: A Positive-Feedback Mechanism in Rates of Illicit Activity," *Mathematical & Computer Modeling*, January 1993. These models were also discussed in a December 1998 talk at the National Institute of Justice titled "Getting Deterrence Right: Applying Tipping Models and Behavioral Economics to the Problems of Crime Control."

¹⁰ *Statistical Abstract of the United States: 1998*, p. 308 tbl. 500, p.342 tbl. 543.

1999, law enforcement and criminal justice expenditures by the state of California and its counties and localities totaled approximately \$17 billion, out of a total budget of \$115 billion. The state's share of this was \$6.3 billion (\$4 billion for corrections alone), out of total general fund expenditures of \$64 billion. Thus criminal justice expenditures constitute approximately 10 percent of the state's general fund budget, compared to 44 percent for education and 26 percent for social services and health.¹¹

Although crime control spending is relatively modest, it is continually growing. Since 1992-93, the state's criminal justice budget has risen at an average rate of 8.3 percent per year; that rate of growth is expected to fall to 4 percent for the 1999-2000 budget year.

This growth creates political strain and leads to the perception that other social programs are losing out to the corrections system. In California in particular, a combination of factors, including a referendum-fixed minimum share of the state budget that must go for aid to local schools, has taken control of much of the state's budget away from the legislative process, leaving the prisons and higher education as the two largest discretionary items. From 1989 to 1994, the share of the state budget going to higher education fell from 13 percent to 10 percent, as corrections rose from 7 percent to 12 percent. This created a strong impression that money was being moved from universities to prisons. However, the share of corrections in the budget total has fallen back to its 1989 level, but the difference has not gone back into higher education, whose budget share has stayed just about constant since the mid-1990s.¹²

III. How Much is Crime Control Worth?

Even at current levels, crime remains a central social problem, especially in the lives of poor and working-class Californians whose neighborhoods are perpetual victims to the economic and social costs of crime, and who bear most of the human costs of enforcement and punishment. Californians, as do other Americans, continue to fear for their safety and to take costly measures to avoid being victimized. Crime, and the fear of crime, contribute to class and ethnic division.

The most convenient measure of the size of the crime problem is the rate of completed crime. But that rate depends on the behavior of potential victims as well as that of potential offenders.¹³ The costs of crime avoidance behavior – all the ways in which potential victims act to reduce the risks they face, from installing alarm systems to moving to safer neighborhoods – while largely unmeasured and less immediately obvious than the damage done to crime victims themselves, may well represent the larger half of the problem because so many more people incur costs to avoid crime than are actually victimized. These unmeasured costs of crime avoidance help explain, and at least partly justify, the political salience of the issue. (This salience would otherwise be hard to understand; automobile accidents, for example, far outweigh

¹¹ Legislative Analyst's Office, State of California, *1999-00 Budget: Perspectives and Issues*. Sacramento, 1999. p.70.

¹² LAO, *1999-00 Budget: Perspectives and Issues*, p. 72. LAO, State of California, *Judiciary and Criminal Justice Overview*, Sacramento, 1995.

¹³ Philip Jackson Cook, "The Supply and Demand for Criminal Opportunities," in Michael Tonry and Norval Morris (eds.), *Crime and Justice: An Annual Review of Research*, Vol 7, 1986.

crimes as contributors to death, injury, and property loss, and suicide is more common than homicide.)

The costs of victimization fall largely on victims. The costs of victimization-avoidance measures fall both on those who take them and on those who are inconvenienced (or worse) when the public life of street corners and parks withers because of fear of crime, when shops close early or move away, when businesses relocate, taking job opportunities with them, and when residential real estate is allowed to decay in the face of crime. Indeed, the widely-believed proposition that the key to crime control is improving economic opportunity for young people in poor neighborhoods might usefully be turned around. The key, or at least a key, to improving economic opportunity in poor neighborhoods is to reduce the criminal riskiness of low-income urban environments for potential employers, customers, and new neighbors.¹⁴

Suppose we accurately added to the costs of completed crime the costs of crime avoidance and the residual anxiety about potential victimization, and further added the strain put on the social and political fabric by the fear crime causes some Californians to feel about others, especially considering the racial and ethnic composition of that fear. Crime would then seem to more academic observers what it already seems to so many ordinary citizens: a truly society-threatening phenomenon, one that belongs near the top of the agenda for public action.

If the only reason for not building and filling more prisons were financial, and if there were no less expensive way to reach any given crime control goal, the argument for building them and filling them would be strong. As will be argued below, other approaches to crime control can do the same job at less expense. Moreover, imprisonment generates great suffering for prisoners and their intimates. These would seem to be the strong reasons for opposing the further expansion of incarceration; the budgetary argument, despite its political salience, is much weaker; the purely monetary costs of crime control, even not-very-efficient crime control, are tiny compared to its benefits.

The California "Three Strikes" law, for example, is an extremely inefficient way of using imprisonment to fight crime. It leads to the long-term incarceration of so many people who would otherwise soon be *retired* offenders. (The age distribution of serious offenders resembles that of professional basketball players, except that serious offending starts younger.) Nevertheless, a RAND Corporation analysis of that law suggested that, if fully implemented – including building new prisons to hold all the additional prisoners – the law would have led to a reduction in serious crime in California of about one-quarter. This benefit would come at a cost of about \$5 billion per year, or something less than one percent of the aggregate personal incomes of Californians.¹⁵ Would Californians be better off, on balance, if they had one percent less to spend but faced a risk of serious victimization twenty-five percent smaller? Putting the political difficulty of raising taxes aside, it is hard to believe that the answer to that question is

¹⁴ Wesley G. Skogan, *Disorder and Decline: Crime and the Spiral of Decay in American Neighborhoods*, 1990.

¹⁵ Peter W. Greenwood, C. Peter Rydell, Allan F. Abrahamse, Jonathan Caulkins, James Chiesa, Karyn Model, and Stephen P. Klein, *Three Strikes and You're Out: Estimated Costs and Benefits of California's New Mandatory-Sentencing Law*, (Santa Monica, CA: The RAND Corporation, 1994.) The interpretation here is not that of the authors of the study, whose summary report is called "Three Strikes: Serious Flaws and a Big Price Tag."

“No.” *A fortiori*, less inefficient crime control measures are even more thoroughly worth their cost.

IV. The Importance and Imperfect Rationality of Persistent, Serious Offenders

There is a disconnect between current crime control policies and what is known about the behavior of offenders, and especially the high-volume, serious offenders who account for such a large proportion of the total damage done by offending.¹⁶ Compared with the hypothetical “rational actor” of economic theory – or even with the actual, more or less law-abiding people who make up the social surrounding of most decision-makers – offenders tend to respond much more strongly to immediate, as opposed to deferred, consequences, to certain rather than uncertain consequences (holding the overall probability-weighted threat constant), and to threats directly communicated rather than those that must be inferred from personal and vicarious experience.¹⁷ If offenders tend to lapse from rationality in specific ways, and if we keep passing laws and making policies as if offenders were perfectly rational, we wind up inflicting more punishment than is necessary for less crime control benefit than is possible.

In particular, increasing the severity if a threatened punishment whose actual delivery is uncertain and deferred would increase the deterrent effect of that threat as applied to a hypothetical offender whose behavior closely matched the economist’s model of perfect rationality. Deterring any given act would require only a severity great enough that the expected (i.e., probability-weighted), discounted (i.e., adjusted for the superior value of current over future gains and losses) value of the punishment outweighed the expected, discounted value of getting away with the crime in question. However, a reckless, impulsive offender – that is, an actual high-rate offender – is likely to be influenced far more profoundly by the probability of a punishment, and its closeness in time to the offense, than by its severity. He will tend to change his behavior only sluggishly as changes in policy change the severity of the uncertain, deferred punishments he faces.

It is not surprising that persistent offenders are reckless and impulsive. The severity of our current punishments, even discounting for delay and the relatively low probability of being caught and punished, is such that no one whose behavior came anywhere near conforming to the rational-actor model would consider a life of crime; McDonald’s pays much better. The average burglary, for example, generates about \$10 in revenue to the burglar per day spent behind bars, illustrating the old maxim that “The wages of sin are below the legal minimum.”

The importance of high-rate offenders can scarcely be overstated. Most serious offenses are committed by offenders with high personal crime rates who cycle through probation again and again, both before they go to prison for the first time and in-between prison terms. That is not because this is the most typical pattern of offending—most of those who offend have low

¹⁶ Mark H. Moore, Susan Estrich, Daniel McGillis, and William Spelman, *Dangerous Offenders: The Elusive Target of Justice*. (Cambridge, MA: Harvard University Press, 1984).

¹⁷ See generally James Q. Wilson and Richard Herrnstein, *Crime and Human Nature*, (New York: Simon and Schuster, 1985).

personal crime rates—but because of the overwhelming contribution of the “right-hand-tail” of the distribution of offenders, consisting of those with very high crime rates.¹⁸ In this, offending resembles the many other behaviors covered by “Pareto’s Law,” which holds that 80% of the volume of any given activity tends to be concentrated among 20% of the participants.¹⁹

In the RAND Inmate Survey,²⁰ the most criminally active 10% of those behind bars offended at an average rate 10 times the median for prisoners as a whole (themselves, especially in 1979 when the study was done, a select group of offenders). Offending is widespread, but persistent, serious offending is highly concentrated. Thus, if our current policies fail to reduce criminal activity among such offenders, they fail, period.²¹

One obvious approach is to identify very-high-rate offenders and lock them up for very long periods of time. This approach, under the title “selective incapacitation,” enjoyed a brief academic vogue²², and remains embodied in repeat-offender statutes, including those under the “Three Strikes” rubric. However, further analysis revealed two great barriers to employing such strategies effectively: 1) the difficulty of identification, and 2) the rapid turnover already noted in the population of high-rate offenders.

Criminal-history data reflect the actual level of offender criminality (as revealed, for example, by self-reports) so poorly that the selectivity of the process must at best be highly imperfect, with many low-rate offenders misidentified and sentenced to unnecessarily long terms and many high-rate offenders misidentified and let out much too soon. Actual legislation, which relies largely on conviction counts rather than rates of arrest over time, does much worse even than this imperfect ideal. The result is that career criminal statutes actually worsen the problem the selective-incapacitation proposal was designed to correct: that our prison population is, on average, several years older, and therefore on average less criminally active if free, than the population of offenders. It’s hard to control a crime problem consisting of the behavior of people under thirty by locking up people past the age of forty, even if they were very bad actors in their younger days. But by the time anyone is identified as a “career criminal” under statutes specifying numbers of felony convictions, he is likely to be past his crime-committing prime, and the one certain thing about a very long sentence is that the person serving will get substantially older before release.²³ (Note that this same problem – that increasing severity necessarily means increasing the time period involved – also limits the deterrent effect of greater severity; the last

¹⁸ Jan M. Chaiken & Marcia R. Chaiken, *Varieties of Criminal Behavior*. (Santa Monica, CA: The Rand Corporation, 1982).

¹⁹ Norris O. Johnson, “The Pareto Law,” *Rev. Econ. Stat.*, Feb. 1937, p. 20; D.H. Macgregor, “Pareto’s Law,” *Econ. J.*, Mar. 1936, p. 80.

²⁰ Chaiken and Chaiken, *Varieties of Criminal Behavior*.

²¹ As Daniel Nagin has pointed out, the severity of current sanctions helps account for the fact that serious, persistent offending is concentrated among the reckless and impulsive; who else would pursue a career as unrewarding as crime? Perhaps if our penalties were much less severe, the pool of offenders would be wider. Nevertheless, from where we now stand, the potential to further reduce crime by increasing severity is quite limited.

²² Peter W. Greenwood & Allan Abrahamse, *Selective Incapacitation* (Santa Monica, CA: The Rand Corporation, 1982).

²³ Spelman, *Criminal Incapacitation*; Moore, Estrich, McGillis, and Spelman, *Dangerous Offenders*.

twenty years of a thirty-year sentence by definition start ten years from now, a time period likely to be outside the typical high-rate offender's planning horizon.)

Thus further escalating severity, while still a winner politically, is largely a dead end practically, both in terms of deterrence – because the offenders we most need to deter tend to react only weakly to uncertain, deferred threats – and in terms of incapacitation, because handing out longer sentences means imprisoning older offenders, when it's the younger offenders who do most of the crime.

V. Community Corrections

We need, then, to learn how to deliver punishments more predictably (as seen by actual and potential offenders) and more swiftly. We also need to communicate specific, credible threats to specific offenders, and to learn, or relearn, how to use the leverage a criminal conviction gives the state over the offender to reduce that offender's propensity to offend again. For all of these purposes, the community-corrections system – probation and parole – seems a more promising focus for investments of money and attention than further expansion of imprisonment.²⁴

The community-corrections system can, in principle, apply sanctions with greater certainty, because of the legal liability of probationers and parolees to intrusive surveillance, and with greater swiftness, because probationers and parolees lack the full panoply of rights accorded criminal defendants. Making those possibilities-in-principle into realities is the promise of the new community corrections.

Moreover, community-corrections officers can back up what would otherwise be merely good advice for someone planning and hoping to desist from criminality—advice about drug use, time management, the choice of associates, treatment for behavior problems, job seeking and job holding, and skills acquisition—with promises and threats of immediately pleasant and unpleasant consequences. It is a theorem of rational choice that perfectly rational persons cannot be made better off coercively, but as already noted there is reason to doubt that the clients of the community corrections system are well-described by pure rational-actor models.

VI. Rehabilitation

Among the purposes of punishment, deterrence, incapacitation, and retribution have always been considered the “tough” ones, while rehabilitation has the reputation of being “soft.” Moreover, the overinterpretation of a few studies from the 1970s, coming at a time when the national mood about crime and criminals was hardening, led to the too-hasty conclusion that “nothing works” when it comes to rehabilitating offenders.²⁵ The enormous gulf between prison

²⁴ Reinventing Probation Council, *"Broken Windows" Probation: The Next Step in Fighting Crime*. (New York: The Manhattan Institute, August 1999.)

²⁵ The findings, summarized in Robert Martinson, *Rehabilitation, Recidivism, and Research* (National Council on Crime and Delinquency, 1976) were that despite the wide range (not, necessarily, high quality) of rehabilitative services then being provided in prisons, offenders sent to prison were no less likely to reoffend than those not sent to prison, controlling for age, criminal history, and other potentially confounding factors. This was interpreted as

life and life in the community does constitute a great obstacle to realizing the benefits of in-prison rehabilitative programs. Whatever patterns of behavior offenders learn in prison will translate to the outside with difficulty, if at all; thus the importance of post-release follow-through.²⁶ The great exception here is literacy. Since reading is a skill rather than a habit – like riding a bicycle rather than like taking your vitamins – it crosses the prison barrier with little if any loss. By increasing the opportunity to find licit work, learning to read demonstrably and substantially reduces recidivism.²⁷ California's existing prison education programs do not come anywhere near to fully exploiting this opportunity to reduce crime.

Logically, rehabilitation ought to be a primary measure of correctional effectiveness, both for "inpatient" (institutional) and "outpatient" (community) corrections agencies. It is striking, and perhaps unfortunate, that correctional administrators have faced no counterpart to the widespread demand that school systems, principals, and even individual teachers be evaluated and rewarded according to the amount their students learn. The technical problems of measuring correctional performance are much less daunting than is the case for education. Perhaps the reason for this lack of demand is partly that public rage about crime has led to a reluctance to benefit criminals, even when that benefit takes the form of reducing their criminality.²⁸

The great rehabilitative opportunities are in the community corrections system, but that system is now seriously deficient in both resources and procedures. Probation officers, in particular, face caseloads measured in the hundreds, which makes any meaningful supervision impossible; many probationers on what are called "banked" caseloads are "supervised" by sending in postcards. It seems hard to believe that the two budgetary extremes now available in the California corrections system – prison at more than \$20,000 per offender per year, or probation corrections at a tenth of that or less – represent an adequate range of responses to the offenders who come before judges for sentencing. And it is hard to believe that it really makes sense to allow the 35% of the corrections population that is actually behind bars at any one moment to absorb 82% of total correctional spending.

VII. Changing Behavior

But it would be a mistake to imagine that the budget problem is the only, or even the fundamental, problem in community corrections management. Neither of the ideological stances that currently dominate the community corrections field – neither the social-work-oriented, services-driven, "rehabilitative" approach nor the enforcement-oriented, sanctions-driven, "lock 'em up" approach – adequately expresses the full range of public interest in the management of

meaning that the rehabilitative services had no beneficial effect. Alternative interpretations might have included: (1) that going to prison and being cut off from civilian life would naturally tend to increase recidivism rates, and that the rehabilitative programs just about made up for that effect; or (2) that, even controlling for the obvious confounding factors, judges were better than random at selecting dangerous people for incarceration, and that bringing the ex-prisoners down to the crime rates of those not sentenced to prison represented a substantial achievement.

²⁶ Joan Petersilia, "Probation in the United States," in Michael Tonry, ed., *Crime and Justice: A Review of Research*, Vol. 17, 1993.

²⁷ Anne Morrison Piehl, "Learning While Doing Time," (Working Paper, John F. Kennedy School of Government, 1992).

²⁸ This is not a new problem. George Bernard Shaw summed it up: "To punish a man, you must injure him. To reform a man, you must improve him. Men are not improved by injury." See also Plato, *Republic* 334d-335e.

persons on conditional-liberty status. The goal of community corrections needs to be clearly stated as requiring and helping probationers and parolees to develop and maintain patterns of law-abiding behavior in the community, using whatever mix of supervision, sanctions, and services is necessary to achieve that goal.

Such a program can be thought of as having four elements specific to the powers of community-corrections agencies, in addition to whatever services elements might be provided by those agencies or others: 1) the establishment of rules, 2) the detection of violations, 3) the imposition of sanctions for violations, and 4) the execution of those sanctions. The current system has too many rules and too little capacity to detect violations or impose and execute sanctions. Drug testing, electronic position monitoring, and the development of data links between community-corrections agencies and other public and private agencies that interact with probationers all constitute promising technologies for improved monitoring.

Violations, and sanctions, should be regarded as routine events, to be handled within the community corrections system. But the current system creates a stark choice between no sanction at all other than a warning on the one hand and revocation of conditional-liberty status, leading to imprisonment or reimprisonment, on the other. Sanctions imposition, in order to be swift and predictable, should be freed from the necessity for judicial or parole-board processing and assigned to community corrections agencies. That will be tolerable only if the sanctions themselves are of limited severity: day reporting, unpaid labor (unfortunately euphemized as "community service"), and short-term (one or a few days) confinement, ideally not in jails but in specialized confinement facilities for community-corrections violators.²⁹

All of that would, of course, require increases in the current budgets of community corrections departments, and probably upgrading of the pay, training, and recruiting standards of the people working there. But money alone is no panacea, as the experiments in intensively supervised probation showed.³⁰ Adding more money to a fundamentally misconceived process is as likely to make it worse as to make it better. The combination of new goals, new capacities, and new resources could make community corrections into the most cost-effective element of the crime control system. No other reform holds out comparable hope of major crime reductions at such modest cost. However, the political, administrative, and ideological barriers cannot be ignored; the required changes are likely to necessitate strong-willed and persistent leadership at the Gubernatorial level.

VIII. Enforcement Swamping, Poly-Offending, and Group Crime

Even if offenders were perfectly rational, their decisions would be inter-dependent. The rational rate of offending by any one person depends in part on how many other people are committing the same offense in the same area. As long as enforcement and punishment capacities are scarce, punishment-per-crime tends to fall as the rate of offending rises. Therefore,

²⁹ See Mark A.R. Kleiman, "Community Corrections as the Front Line in Crime Control," *UCLA Law Review*, Vol. 46, No 6, August 1999.

³⁰ Joan Petersilia & Susan Turner, "Intensive Probation and Parole," in Michael Tonry, ed., *Crime And Justice: A Review of Research*, Vol 17, p. 281 (Chicago: University of Chicago Press, 1993).

some people who would not offend when offense rates are low will offend if offense rates are high; having lots of “competition” for enforcement attention reduces their individual chances of being caught and punished. That is the logical structure of a riot.³¹ This generates the problem of “enforcement swamping”: once violations are high enough to swamp the capacity of the enforcement system, increases in offense rates will feed on themselves.³²

That implies that spreading enforcement resources equally across criminal situations, whether defined as offenders or areas or crime types, may be an inefficient way of deploying them; concentration will tend to be better, if the concentration is great enough, and long-lasting enough, and well-enough communicated to the offenders, to “tip” the situation from a high-offending to a low-offending equilibrium.³³ A police department fighting a crime wave should no more spread its enforcement capacity evenly over all crimes than a fire company fighting a brushfire should spread its water evenly over the entire area in flames. The fire first has to be stopped, or extinguished, somewhere in particular. Crime “hot spots” – geographical, temporal, organizational, or individual – are no different; somewhere, almost anywhere, is a better place to start than everywhere.

Serious, high-rate, persistent offenders tend to commit a wide range of offenses, most of them not very serious. The same is true of members of poly-offending groups (“gangs”). The obvious enforcement opportunity here is to pay more attention to minor offenses by major problem offenders; the minor offenses tend to be easier to observe and prove, if only because they are so numerous. In the days when individual police officers were on long-term assignment to small geographic areas, the opportunities for such targeted enforcement were fairly widespread; as police “beats” got larger and police careers less tied to one assignment, those opportunities shrank, and came to require much greater centralization of information and decision-making. The Federal Organized Crime Strike Forces, in their relentless war on the Mafia, typified that approach.

More recently, local police and prosecutors have begun to keep formal lists of serious offenders targeted for special police and prosecutorial attention. Increasing concern about youth gangs has led to similar approaches. Anti-gang injunctions go so far as to criminalize otherwise non-criminal behavior if engaged in by members of identified poly-offending groups. It has been reported that the semi-formal operational objective of the CRASH anti-gang unit of the Los Angeles Police Department – some of whose members are at the heart of the latest corruption/brutality/perjury scandal – was “making the lives of the gangbangers as miserable as possible.”

³¹ This is an example of the “tipping” phenomenon analyzed in Thomas C. Schelling, *Micromotives and Macrobehavior*. (New York: W. W. Norton and Company, 1978.) As noted above, this works in both directions; part of the current decline in crime is the result of previous shrinkage in the crime rates leaving more enforcement resources per new offense.

³² Mark A. R. Kleiman, “Enforcement Swamping: A Positive-Feedback Mechanism in Rates of Illicit Activity,” *Mathematical and Computer Modeling*. Vol 17, No 2, (January 1993), pp.65-75.

³³ Mark A.R. Kleiman “Getting Deterrence Right: Applying Tipping Models and Behavioral Economics to the Problems of Crime Control,” *Perspectives on Crime and Justice*, 1999, (Washington, DC: National Institute of Justice, forthcoming.)

Such approaches – within, of course, the limits of the law – make sense for the very most problematic individuals and groups. But it is not necessarily the case that the size of that “most problematic” group is fixed, and the threat of such specially targeted enforcement can be as useful, properly employed, as the actual delivery. This is the approach described by David M. Kennedy as “pulling levers,” most famously exemplified by the Ceasefire project in Boston, credited for shrinking youth homicide by more than 70%. In the Boston case the target was about 65 small poly-offending youth gangs, and the approach was to warn the groups, as groups, that violence by any member would bring the entire weight of the criminal justice system – not only various local police units but also state and federal agencies, prosecutors at every level, probation officers, and truant officers – down on the entire group. The result was, not the dismantlement of the gangs themselves, but the virtual cessation of gunfire and other deadly violence among them. At the individual-offender level, Kennedy describes a project in Lowell, Massachusetts, where the police department took a list of identified chronic assailants and warned each person on it that one more offense would lead to his being targeted for maximum enforcement and prosecution.³⁴

Thus the poly-offending behavior of the worst groups and individuals, and the group context of gang activity, create levers for enforcement agencies to grasp. Similarly, the limited number of individuals and groups at the far right tail of the offending distribution makes it practical to deliver deterrence retail, and with specific warnings in advance, rather than wholesale and using actions alone to “send a message.”

IX. Targeted Zero Tolerance

The general enforcement strategy that comes out of this line of thinking might be called “Targeted Zero Tolerance.” It means deciding what it is that is not to be tolerated at all: certain offenses anywhere no matter who commits them, other offenses no matter who commits them in certain areas, any offense at all committed by individuals or groups that have deliberately crossed well-marked behavioral lines after being warned.

This principle is illustrated by the New York Police Department’s crackdown on the “squeegee men”: practitioners of what was seen as a low-grade form of extortion, in which cars stopped at traffic lights were approached by men who wiped the windshields and then approached the drivers – stuck in their cars, unable to move – for payment. On the one hand, squeegeeing hardly counted as a significant problem in a city still experiencing several homicides a day. On the other, the activity was a source of annoyance and fear to the city’s residents, and helped communicate a message of a place that was out of control.³⁵ The police department’s announced intention to abolish squeegeeing was widely criticized as both Quixotic and as a squandering of large amounts of scarce resources on a low-priority goal. It turned out to be neither.

³⁴ See David M. Kennedy, “Pulling Levers: Chronic Offenders, High-Crime Settings, and a Theory of Prevention,” *Valparaiso University Law Review*, Vol. 31, No. 2, May 1997.

³⁵ For an argument that such phenomena can actually increase rates of serious crime, see James Q. Wilson and George L. Kelling, “Broken Windows: The Police and Neighborhood Safety” *The Atlantic Monthly*. Vol. 249, No 3, (March 1982) pp.29-38.

The population of active squeegee operators turned out to be only about 75, and the noisy announcement of the crackdown followed by a rather small amount of actual enforcement virtually eliminated the practice within a few weeks. As a result, the decision to eliminate squeegeeing – to make it a target of zero tolerance rather than dealing with it as a maintenance issue to be addressed only when the citizen outcry got too intense – actually resulted in the police devoting less attention, rather than more, to squeegeeing activity, even in the fairly short run.³⁶ Targeted zero tolerance has one great advantage over its better-known, untargeted, cousin: it can be made an actual practice, rather than a mere slogan.

X. Illegal Drugs and Alcohol

The recent decline in California's crime rate is typical of the states where crack cocaine appeared in the early-to-mid 1980s. While crack is not in fact cheaper than cocaine either per milligram or per hour of intoxication, the potency of smoking as a route of administration means that crack – which is simply cocaine prepared for smoking – democratized the cocaine experience. It created a retail distribution pattern conducive to violence and disorder, while also creating better illicit job prospects for young people from urban poverty areas at a time where licit-market prospects for those same people were badly deteriorating.³⁷

Part of the result seems to have been an upsurge in firearm ownership within poor young males in city after city, with a surge of deadly violence not far behind it.³⁸ Fortunately, it appears that the epidemic cycle for crack is relatively short; within a very few years after the introduction of the drug into a neighborhood, there are enough burned-out crackheads around to greatly depress initiation rates.³⁹ As the crack problem fades out, violence, and especially deadly youth violence, tends to fall. Thus California finds itself on the downslope of the youth violence problem even as much of the Upper Midwest is still on the upslope. Combined with a downtrend in deadly violence among adults reaching back to the 1970s, this is giving California some long-awaited relief from its historically (and still) high levels of violent crime. Neither methamphetamine nor heroin, whose use has been expanding, seems to pose any comparable threat in terms of non-drug crime, in part because neither is likely to match the sheer size of the crack market.

While “everyone knows” that there is a strong link between drugs and crime, the precise nature of the relationship, or rather relationships, is far from obvious. It varies from drug to drug, user type to user type, and situation to situation. This variability limits the practical value of the generalizations often heard about drugs and crime. Since most users of illicit drugs are low-dose, low-frequency users of cannabis (marijuana) alone, and since there is no established link

³⁶ The innovation, usually attributed to Commissioner William Bratton, was in fact – as Bratton points out – largely the work of his predecessor. See William Bratton with Peter Knobler, *Turnaround* (New York: Random House, 1998), pp 212-214.

³⁷ Jeff Grogger and Mike Willis, “The Introduction of Crack Cocaine and the Rise of Urban Crime Rates,” National Bureau of Economic Research, Inc. Working Paper 6353. Cambridge, MA. January 1998.

³⁸ Mark A.R. Kleiman, *Against Excess*. (New York: Basic Books, 1992), pp. 286-316.

³⁹ Timothy Eagan, “Crack’s Legacy: A Special Report; A Drug Ran its Course, Then Hid Within its Users,” *The New York Times*. September 19, 1999.

between occasional cannabis use and crime, generalizing about "drugs and crime" based on the cases of cocaine (including crack), heroin, and methamphetamine can lead to serious miscalculations.

The most commonly accepted account of drugs and crime posits three different links from the former to the latter: "pharmacological" crime (due to acute intoxication or chronic character change); "economic-compulsive" crime (income-producing crime committed to obtain money for drugs); and "systemic" crime (acts of violence rooted in the illicit nature of the distribution system).⁴⁰

Alcohol, alone or in combination, is present in about 40% of violent crime. It is thus associated with more "pharmacological" crime than all the illicit drugs combined,⁴¹ yet its legal status leads to its being omitted from many discussions of the drug-crime problem. The current tax on a "standard drink" (the amount of absolute alcohol, about 0.7 oz., contained in a twelve-ounce can of beer, a six-ounce glass of wine, or a 1.5 ounce shot of whiskey) averages about 10 cents, with wine taxed more lightly and whiskey much more heavily; taxation makes up about 10% of the total cost of drinking. Taxes of several times the current level would be justified by the damage drinking does to non-drinkers.⁴² At such levels, there would be significant reductions in the prevalence of drinking, especially among younger drinkers,⁴³ and thus in drunken crime, and particularly drunken violence.

Regulation can be used in addition to, or instead of, taxation as a way of addressing the problem of drunken violence. Current laws forbid the sales of alcohol to minors, and require those who sell or serve alcohol to verify the age-eligibility of buyers and drinkers, usually by inspecting a driver's license. But current laws permit the sale of alcohol to those who have previously been convicted, no matter how often, of drunken assault, drunken driving, or drunk and disorderly conduct.

An alternative scheme would, in effect, make drinking a licensed activity, as driving now is, where the license in question could be revoked for significant or persistent misconduct.

⁴⁰ Paul J. Goldstein, "The Drugs/Violence Nexus: A Tripartite Conceptual Framework," *Journal of Drug Issues* Vol. 14 No 4: pp.493-506. This account can be criticized on both conceptual and empirical grounds (See David Boyum and Mark A. R. Kleiman, "Alcohol and Other Drugs" in *Crime and Public Policy*, James Q. Wilson and Joan Petersilia (editors), Institute for Contemporary Studies, (San Francisco, CA: ICS Press, 1994) but the distinctions make intuitive sense.

⁴¹ As shown by prison inmate self-reports: see *Profile of Jail Inmates, 1989*. Special Report NCJ-129097. (Washington, D.C.: U.S. Department of Justice, April, 1991.) Those reports involve only drinking by the perpetrator; alcohol use among victims is also an important issue. Alcohol seems to be especially prevalent in domestic violence (including domestic homicide) and in acquaintance rape and "hate crime." Alcohol is also the only drug consistently shown in laboratory experiments to increase aggression (See Albert J. Reiss Jr., and Jeffrey A. Roth, eds. *Understanding and Preventing Violence*. Washington, D.C.: National Academy Press. 1993. How much of the violence attributed to the illicit stimulants cocaine and methamphetamine is actually due to the heavy drinking that often accompanies the use of these drugs remains an open question, but the pharmacology suggests that the proportion is large.

⁴² As argued in detail in Kleiman, *Against Excess*, pp. 245-249.

⁴³ See Philip Cook and George Tauchen, "The Effect of Liquor Taxes on Heavy Drinking," *Bell Journal of Economics* Vol 13 (1982).

Again, the burden would have to be on sellers, using the driver's license, to verify eligibility to drink. Those whose drinking licenses had been revoked for alcohol-related crimes would receive driver's licenses with different markings, indicating their ineligibility to drink. (Conveniently, California now issues, to drivers not old enough to legally drink, driver's licenses with the bearer's photograph in profile rather than full face, sparing the bartender or package-goods clerk the need to compute age from date of birth; under the proposed system, a picture in profile might mark all of those ineligible to drink, whether due to age or due to previous conduct.) Such a scheme would require that everyone, not only those of youthful appearance, be "carded" when buying a drink. This seems a rather minor inconvenience when compared to the problem of intoxicated crime.⁴⁴

For the illicit drugs, intoxication itself appears to be a much less important source of crime than the need for funds (generating income-producing crime among heavy users) and the illicit markets (generating violence among dealers). Despite the fact that most illicit drug users are occasional, low-volume users, the bulk of the volume in those markets is sold to (and the bulk of the revenues thus contributed by) a much smaller number of frequent, high-dose users. (Pareto's law again.⁴⁵) Reducing the total number of illicit-drug users is therefore far less important than reducing the number, or the consumption levels, of the high-dose, frequent users of the expensive "hard" drugs heroin, cocaine, and methamphetamine: a population of about 200,000 persons at any one time in California.⁴⁶

Thus not all parts of the anti-drug-abuse effort are equally useful in reducing crime. Prevention, in particular, even if it were more effective than it has in fact been shown to be, and even if it were effective in reducing use of "hard" drugs and progression to addiction (a question rarely asked in prevention studies, which tend to look at the use of "gateway drugs" in early adolescence), would have little short-term effect on crime levels. There is a long lag from first the initiation of illicit drug use to sustained, heavy use.⁴⁷

Drug treatment, by contrast, has immediate and substantial impacts on drug consumption, and specifically on drug consumption by heavy users. This tends to shrink their criminal activity, even if drug consumption is not eliminated completely or permanently, and to shrink the revenues of the illicit markets and thus their contribution to violent crime. Thus even a treatment "failure," leading to a total relapse, is often a successful crime-prevention effort, with benefits far in excess of costs.⁴⁸ Compared to incarceration for a user/property offender, a treatment program

⁴⁴ For a detailed argument, see Kleiman, *Against Excess*, pp. 249-252.

⁴⁵ See the calculation in Kleiman, "Coerced Abstinence: A Neo-Paternalistic Drug Policy Initiative," in Lawrence A. Mead, ed., *The New Paternalism*, (Washington, D.C.: Brookings Institution Press, 1997.)

⁴⁶ Kleiman, "Controlling Drug Use and Crime Among California's Drug-Involved Offenders: Testing, Sanctions, and Treatment," *California Policy Options 1998*, The School of Public Policy and Social Research, University of California, and the University of California Anderson Forecast, 1998.

⁴⁷ For a careful review of the prevention-evaluation literature, see Jonathan P. Caulkins, C. Peter Rydell, Susan S. Everingham, James Chiesa, and Shawn Bushway, *An Ounce of Prevention, a Pound of Uncertainty: The Cost-Effectiveness of School-Based Drug Prevention Programs* (Santa Monica, CA: RAND Drug Policy Research Center, 1999).

⁴⁸ This is explicitly modeled in C. Peter Rydell and Susan S. Everingham, *Controlling Cocaine: Supply Versus Demand Programs*. (Santa Monica, CA, The RAND Corporation, 1994). This central analytic point does not

of average effectiveness produces about two-thirds of the crime control benefits of incarceration – reductions in criminal activity and illicit-drug spending by that user – at about one-seventh of the cost.

XI. Treatment Versus Law Enforcement?

Whether drug treatment is more or less cost-effective than drug law enforcement is a topic that has generated heated debate, but the policy relevance of that debate is far from clear. Drug law enforcement gets more resources than drug treatment not because the law enforcement sector is better financed than the health-care sector, but because law enforcement devotes a very large fraction – something like one quarter – of its rather modest budget to dealing with drug trafficking. The health care system in contrast devotes a tiny fraction – no more than a few percent – of total expenditures several times as large to diagnosing and treating substance abuse. If, as seems clear, the benefits of expanding drug treatment for drug-involved offenders would greatly exceed the costs, it does not follow that money ought to be moved out of law enforcement into the (much more heavily funded) health care system in order to accommodate that need. Perhaps the necessary resources ought to be found within current budgets for health care. The larger problem is how to get individual health care providers and the larger institutions and systems that employ them, train them, evaluate their performance, and pay them, and the insurance and managed care entities that finance the process, to elevate the status of substance abuse treatment. That will be more work, and less fun, for the advocates of drug treatment than complaining about how much money drug law enforcement receives. But it might be more productive.

The great difficulty is to get user/offenders to enter treatment and remain in treatment, and to get treatment programs to serve user/offenders rather than other, easier-to-treat clients. Coercion is one approach: offenders are offered the choice of treatment or prison, as in drug courts and diversion programs. A less expensive alternative to coerced treatment as a condition for staying out of prison would be the use of probationary sentences with very frequent drug testing. There would be immediate and automatic sanctions of modest severity (perhaps 48 hours' confinement) for every missed testing appointment or incident of detected drug use. Treatment could be or required of, those who repeatedly fail under testing-and-sanctions alone. It has been asserted that this alone could shrink California's hard-drug problem by some 40% at gross cost of about \$720 million per year, much of which cost would be offset by reductions in the cost of incarceration.⁴⁹

XII. Redesigning Drug Law Enforcement

The bulk of current anti-drug expenditures, in California as across the country, goes to law enforcement, including incarceration. But current drug law enforcement efforts are nowhere

depend on the overall accuracy of their modeling effort, and in particular the controversial cost-effectiveness comparison with enforcement. For a perhaps unduly harsh critique of that comparison, see Charles F. Manski, John V. Pepper, and Yonette F. Thomas, eds., *Assessment of Two Cost-Effectiveness Studies on Cocaine Control Policy*, (Washington, DC: The National Academy Press, 1999.)

⁴⁹ Kleiman, "Controlling Drug Use and Crime Among California's Drug-Involved Offenders: Testing, Sanctions, and Treatment," *California Policy Options* 1998.

near optimally designed in terms of their impact on non-drug crime. Illicit drugs are dealt in markets, which follow the logic of markets despite the laws. In this drug dealing is utterly unlike predatory crime.⁵⁰ The two great facts about market crimes are 1) replacement and 2) adaptation. Until those facts are incorporated into drug enforcement planning, it will be impossible to develop optimal policies.

Much discussion of drug law enforcement implicitly assumes that arresting and imprisoning a drug dealer has the same sort effect on the drug market that arresting and imprisoning a burglar has on the rate of housebreaking. But the two situations are quite unlike in terms of their economic logic. A dealer taken out of action by confinement creates a market niche (in the form of "orphaned" customers) for another dealer to expand his activity or a new person to join the dealing workforce. By contrast, the confinement of a burglar has no analogous effect on the opportunities of other burglars; whatever burglaries that person would have committed will be prevented by his incapacitation. This difference may help explain why the explosion of imprisonment in the United States has been accompanied by falling rates of predatory crime, but the even larger explosion of imprisonment for drug dealing has not succeeded in reducing the availability or increasing the prices of cocaine and heroin.

Accepting the limits of drug enforcement effectiveness in shrinking the volume of illicit drugs does not mean giving up on drug enforcement. The volume of crime related to drug dealing depends on factors other than the volume of drug dealing itself, and drug law enforcement can be designed to manipulate those other factors. It can take advantage of the phenomenon of adaptation, as traffickers and trafficking organizations deliberately adapt to reduce their vulnerability to the enforcement tactics they observe.

Holding volume constant, a drug market will create more non-drug crime if the transactions are flagrant (either in public spaces or in "dedicated" locations such as crack houses), if juveniles are employed, and if participants use violence to settle disputes or merely acquire weapons with the proceeds of the trade. All of these market characteristics can be influenced by well-designed enforcement. Flagrancy, the use of juveniles, and violence will all respond to the targeting routines of drug law enforcement units.

The current approach of most agencies is based on a combination of informally estimated transaction volumes – "going after Mr. Big" – and tactical considerations such as the availability of cooperative informants. If the control of non-drug crime were recognized as a primary goal of drug law enforcement, other considerations would loom larger. Dealers known to use violence, or to employ juveniles, or to support neighborhood-disrupting flagrant activity would receive attention out of proportion to the mere quantity of drugs they handled. That would change the conduct of the overall industry both by shortening the operating lives of the more noxious organizations and by providing an incentive for traffickers to eschew violence, the use of juveniles, and flagrant activity in order to avoid being targeted. The higher the enforcement pressure on especially violent dealers compared to the pressure on less-violent dealers in the same markets, the greater will be the level of competitive disadvantage generated by using

⁵⁰ In making the distinction between market and predatory crime, I do not wish to be understood as embracing the idea that violations of the drug laws are somehow "victimless" and therefore less culpable than violations of other laws. The point here is technical, not moral.

violence. By locking up selectively the most violent dealers, drug law enforcement can increase the value of drug-related imprisonment in incapacitating violent crime.

Flagrant drug markets generate criminality directly – their vulnerability to robbery and extortion encourages participants to arm themselves – and indirectly through the creation of the sort of disorder that advertises an area as a safe place to commit crimes (the “broken windows” effect). Where there are flagrant drug markets, the goal of enforcement should be to break them up, using as little enforcement and punishment resources as is necessary to complete the task. This is an area where the value of concentration is especially great; the same level of enforcement effort that fails to dent five drug market areas might be sufficient to drive any two of them out of existence.

The existence of an active drug market requires a kind of tacit agreement among buyers and sellers; consequently, it is not necessarily the case that a market disrupted by enforcement activity will quickly reform elsewhere. Disrupting a market requires careful analysis of the factors currently making the market location an attractive one for drug activity, and the identification of actions – including, but by no means limited to, massive arrests – that can be taken by the police and other public and private agencies to make the location less hospitable to the traffic. This may involve measures as simple as changing the direction of traffic flow to be less convenient for drug buyers, or cutting back underbrush that provides cover for dealing activity.⁵¹ The ingenious suggestion of David M. Kennedy that blanketing a dealing area with leaflets promising intensive enforcement action starting at some near-future date might greatly facilitate the process of market disruption while economizing on the need for actual arrests deserves to be tried out. A logical corollary of this approach is to establish, announce, and maintain a policy of refusing to let markets redevelop where once they have been uprooted. This approach is an extension of the “Cleaning It and Meaning It” campaign that largely eliminated subway graffiti in New York.⁵²

Sentencing laws focused on the drug involved and the quantity handled reinforce the enforcement tendency to downplay the non-quantitative characteristics that distinguish one dealer or organization from another. Moreover, a dealer already facing a very long mandatory or guideline-based sentence based on his volume has little incentive to change the conduct of his business to avoid enhanced sentences for the employment of violence or juveniles. These considerations, combined with the phenomenon of replacement, argue for reducing the prison time now served by those whose only offense is drug dealing, and redirecting prison cells toward dealers who use guns or teenagers in their business and toward those convicted of non-drug crimes.

⁵¹ Mark A.R. Kleiman and Rebecca M. Young, "The Factors of Production in Retail Drug Dealing," *Urban Affairs Review* (formerly the *Urban Affairs Quarterly*), Vol. 30, No. 5, May 1995.

⁵² George Kelling and Mary Alice Sloan-Hewitt "Subway Graffiti in New York City", in Ronald V. Clarke, ed, *Situational Crime Prevention: Successful Case Studies*, (New York: Harrow and Heston, 1992).

XIII. Conclusion

California has, and will have, a serious crime problem. Public concern, and public impatience with vague maunderings about “root causes” as a substitute for serious thought and action to control crime, are thoroughly justified. The money costs of crime control are small compared to the costs of uncontrolled crime. Even the suffering generated by current levels of incarceration might be tolerable if that capacity, and the rest of the capacity of the state, were being put to their best crime-control use. But in fact our current crime control policies are doing much less good than they might, and inflicting far more harm than is necessary.

Right now, the crime situation is getting better. There is reason to hope that it may continue to do so, but there are also reasons – largely demographic – to fear that the growth of crime may resume. The current respite in crime would be a good time to rethink policies in the light of our current knowledge, and to create new policies likely to have better practical outcomes. “Tough” and “smart” need not be mutually exclusive.