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BARROCK LECTURE ON CRIMINAL LAW

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THE LEGITIMACY OF POLICE AMONG YOUNG AFRICAN-AMERICAN MEN

TRACEY MEARES*

Introduction by Dean Joseph D. Kearney

It is a privilege for me to introduce the George and Margaret Barrock Lecture. Permit me to begin by saying a few words about the individuals in whose memory this lecture stands. While I would do this in any event, it is especially appropriate to do so this year, for this is the inaugural Barrock Lecture.

George Barrock was a Marquette lawyer, from our class of 1931. George's parents were from Lebanon, coming over to the United States on a cattle boat. Like so many immigrants, they both modeled a strong work ethic and stressed to their children the importance of education.

Upon George's graduation from law school, he started his own firm in his native Milwaukee. He was primarily a family-law lawyer, although he is said to have always tried to help his client reconcile with his or her spouse rather than divorce, if possible. In all events, George Barrock was fortunate in his own marriage: his wife, Margaret, was not only his partner for life but also worked with him at the firm, on administrative matters. A bequest to support an occasional distinguished lecture in George and Margaret Barrock's memory was provided by their daughter, Mary Bonfield.

This is that lecture, which we have determined to associate with the area of criminal law. While this was not George Barrock's specialty, it is consistent not only with his daughter's bequest (to be sure) but with his own practice, which served individual citizens with their everyday legal problems. Moreover, criminal law is an

* Walton Hale Hamilton Professor, Yale Law School. This lecture was edited for publication.

historic strength of Marquette University Law School, certainly insofar as our teaching and our graduates' practices are concerned. I am thus very pleased that this lecture series will occur in the area of criminal law.

And how fortunate we are that Tracey Meares, the Walton Hale Hamilton Professor at Yale Law School, has accepted the invitation, which Associate Dean Michael O'Hear extended on our behalf, to join us to deliver this inaugural Barrock Lecture. Professor Meares is among the nation's most innovative and influential criminal law scholars. Her work focuses on the immensely difficult and important problem of high crime rates in poor, urban, minority neighborhoods. Professor Meares's writings on this topic exemplify the very best of interdisciplinary legal scholarship, bringing to bear a deep understanding of sociological theory in an effort to help develop constructive, practical proposals for improving both legal doctrine and police practices.

In particular, Professor Meares has called for a more flexible approach to constitutional rights that would give local communities more power to address their own crime problems, and she has called for police to develop different ways of engaging with the communities they serve. Her work thus defies categorization based on the simplistic, partisan labels that mark much of the public discourse on criminal procedure, such as "pro-defendant" or "pro-police." Indeed, it does nothing less than invite us to rethink our positions about crime and policing in the inner-city and to be open to innovative crime-control strategies that move beyond traditional deterrence-based approaches.

Please join me in welcoming, to Marquette University Law School and Milwaukee, Professor Tracey Meares.

Thank you, Dean Kearney, for your very generous introduction, and thank you, Professor O'Hear, for the Law School's invitation. I am so pleased to see all of you here. It is a pleasure to come to a city where there is such a diverse crowd interested in this very important issue. I am especially honored to be the first person asked to give the George and Margaret Barrock Lecture.

Let me begin with Bill Bratton, chief of the Los Angeles Police Department: he believes that police are the solution to the problem of race in America. Admittedly, this is a bit of an overstatement, but not much. In an interview with *Playboy* magazine in 2008, Bratton stated, "If we don't solve the race issue, we'll never solve the other issues. The police have traditionally been the flash point for so many of America's racial problems."¹

Many, if not most, of you would agree with the last part of Chief Bratton's statement. However, I'd like to engage with his first sentence: "If we don't solve the race issue, we'll never solve the other issues."² The "we" Bratton

1. Joe Domanick, *Saving Los Angeles*, PLAYBOY, Feb. 2008, at 71, 72.

2. *Id.*

was referring to in his statement is the police, and I'm quite sure that Bratton believes that policing agencies ought to set themselves to this task. I think he also believes that policing agencies have a good shot at making headway.

The question for this lecture is whether he is correct. Or, incorrect. Or, simply out there. In this inaugural George and Margaret Barrock Lecture, I plan to explore the answers to this question.

Here is a sketch of my argument: I shall begin with a description of the group at the heart of the matter—young, poorly educated, urban-dwelling African-American men. I will describe their entanglement in the various criminal justice systems of this nation, and I will discuss their prospects for succeeding in life along dimensions that most people would commonly agree constitute success. At the end of this section, I will suggest that the prevalence and intensity of criminal justice involvement among this group are relevant to—indeed, the very reasons why—Chief Bratton's assertion might, paradoxically, make some sense.

Next, I shall outline a vision of the kind of policing necessary to achieve Bratton's goal. I believe that the form of policing that has the potential to solve the "race issue" emphasizes process rather than outcomes and moral engagement as opposed to notions of criminal deterrence. The most important aspect of this type of policing is the notion of legitimacy—a term about which I shall try to explicate in some detail below.

Finally, I will say a little bit about both the prospects of policing to take this new path as well as the likelihood that the target group will accept it. Increasingly, there are promising signs that make me hopeful about the prospects for change. It is my hope that you will also be hopeful at this lecture's end.

So we begin.

When Chief Bratton points to solving the "race issue," I think he means to emphasize the specific as opposed to the general. It is not news to say that police agencies across this country have had more difficulty in achieving high levels of trust and positive engagement with African-Americans as a group no matter their age, gender, or socioeconomic status, as compared to other racial groups. Survey evidence is crystal clear regarding the gap between the levels of confidence that minority group members and whites have in police and the courts,³ and research notably shows that the more negative opinions of people of color are durable without regard to group members' specific experiences with legal authorities.⁴ This point about specific experiences is, of course, a

3. See Richard R.W. Brooks & Haekyung Jeon-Slaughter, *Race, Income, and Perceptions of the U.S. Court System*, 19 BEHAV. SCI. & L. 249, 251 & n.7 (2001) (collecting cases).

4. Ronald Weitzer & Steven A. Tuch, *Race and Perceptions of Police Misconduct*, 51 SOC.

critical one, because contact with police is not randomly distributed. Men have more contact with police than women.⁵ The young have more contact with police than the old.⁶ The poor have more contact with police than the rich,⁷ and so on. But, whatever issue police have with African-Americans as a group, that issue is much more acute among the subgroup at risk of the most contact with police. No one is surprised to learn that black men have long faced a higher arrest probability than white men. What people might find surprising is the scale of that differential.

Recent research indicates that the likelihood of police contact (broadening the “contact” category to include stops) for African-American men in urban centers is much higher than for other groups.⁸ For example, Jeffrey Fagan and his colleagues have estimated that the probability of being stopped by police for African-American men ages eighteen to nineteen residing in New York City in 2006 was between 78% and 80%.⁹ For youth a bit older, between eighteen and twenty-four, the probability ranged from 50% to 70%.¹⁰ The corresponding probabilities for Hispanic males and non-Hispanic white males for the same time period were 35% and 45% and 10% and 13% respectively.¹¹ And in Los Angeles, my colleague Ian Ayres has found that per 10,000 residents per year, the black stop rate is 3,400 stops higher than the white stop rate.¹²

The disproportionate involvement of African-American men in the criminal justice system just starts with police, but it doesn’t end there. Anyone familiar with the Sentencing Project’s Reports has heard the following numbers: In 1994, almost one in three black men between the ages

PROBS. 305, 307–08, 316–20 (2004); *see also* Wesley G. Skogan, *Assymetry in the Impact of Encounters with Police*, 16 *POLICING & SOC’Y* 99, 101 (2006).

5. *See* FED. BUREAU OF INVESTIGATION, U.S. DEP’T OF JUSTICE, *CRIME IN THE UNITED STATES: 2007 tbl.8* (2008), *available at* <http://www.fbi.gov/ucr/cius2007/arrests/index.html>.

6. *See id.* at tbl.38.

7. *See generally, e.g.*, Douglas A. Smith, *The Neighborhood Context of Police Behavior*, 8 *CRIME & JUST.* 313 (1986) (explaining that police often have a more visible presence in poor neighborhoods than wealthier ones).

8. Jeffrey Fagan, Amanda Geller, Garth Davies & Valerie West, *Street Stops and Broken Windows Revisited: The Demography and Logic of Proactive Policing in a Safe and Changing City*, in *RACE, ETHNICITY AND POLICING* (Michael White & Steven Rice eds.) (forthcoming 2009) (manuscript at 25, on file with author).

9. *Id.* (manuscript at 25–26, 39 tbl.14.4a).

10. *Id.* (manuscript at 25–26, 39 tbl.14.4b).

11. *See id.* (manuscript at 25–26, 39 tbl.14.4c & tbl.14.4d). The estimate varies depending on assumptions about the number of persons stopped more than once, and the total number of stops that are repeat stops.

12. Ian Ayres, *Racial Profiling in L.A.: The Numbers Don’t Lie*, *L.A. TIMES*, Oct. 23, 2008, at A27.

of twenty and twenty-nine was under correctional supervision (prison, jail, probation, or parole), up from fewer than one in four in 1990.¹³ The African-American rate is more than four times that of similarly aged white men.¹⁴ Drilling down, the numbers become even more shocking. Bruce Western, a sociologist at Harvard University, has calculated the likelihood that men from different demographic groups would go to prison by age thirty-five. Focusing on men without a high school degree, Western demonstrates that one in nine white men born between 1965 and 1969 would go to prison by age thirty-five.¹⁵ That's not a small number, and it is a definite marker of the trend toward expanding the scope of imprisonment in the United States. Still, the number is significantly less than the rate black male high school dropouts in the same cohort faced at the end of the 1990s. A black male high school dropout born between 1965 and 1969 had nearly a 60% chance of going to prison by the end of the last decade.¹⁶

This means that for certain men—black men without a high school degree—imprisonment is *modal* in statistical terms. In everyday language, it is *normal*. For these men, going to prison is an ordinary life experience along one's life course trajectory, just like graduation, marriage, a first job, or having children is for everybody else.¹⁷

Note my emphasis on “certain men.” Western claims that the racial disparity of imprisonment hasn't changed over the last thirty years. What has changed is the profound increase in imprisonment among a certain group of black men—those without a high school education.¹⁸ It should go without saying that if imprisonment is modal among this group, then so contact with the police must be.

Chief Bratton's statement—or challenge, if you will—is relevant to these dismal figures. At base, Bratton argues that the police have a unique opportunity to make a difference in the lives of the young men I've just spoken about, and I think he is right. Police officers are members of the government agency with which poorly educated, young African-American men as a group of people are likely to have the most contact outside of public school officials.¹⁹ It is true that police officers provide young African-

13. MARC MAUER & TRACY HULING, *YOUNG BLACK AMERICANS AND THE CRIMINAL JUSTICE SYSTEM: FIVE YEARS LATER* 3 (1995).

14. *Id.*

15. BRUCE WESTERN, *PUNISHMENT AND INEQUALITY IN AMERICA* 26 (2006).

16. *Id.*

17. *Id.* at 28.

18. Interview by Elizabeth Henderson with Bruce Western (Dec. 5, 2006) (transcript available at <http://www.prospect.org/cs/articles?articleId=12277>).

19. Recall that by definition we are talking about people who are disengaged from schools.

American men with many (perhaps too many) opportunities to shape negative opinions of law enforcement. However, this observation leads to the prospect of its opposite. Police officers as state officials have more opportunities than most state agents to make a positive difference.

It is easy to criticize this point by relying on the many instances in which police have not gotten it right and have made situations worse. Examples are legion, and the fact that they can be referenced by name underscores the point.²⁰ I am heartened, however, by the research highlighted in a recent paper by my colleagues and coauthors, Tom Tyler and Jeffrey Fagan.²¹ Tyler and Fagan's research contradicts that of other prominent police researchers such as Wesley Skogan, who claims that negative experiences that folks have with the police hurt public evaluations of police a great deal, while positive experiences do little to improve them.²² There is nothing surprising about Skogan's first conclusion; rather, it is the second that the Tyler and Fagan work undermines.

Tyler and Fagan demonstrate, through a very clever research design that allows them to determine causal connections between the experiences that people have with the police and their later judgments of police legitimacy, that positive experiences do indeed lead to positive evaluations of police legitimacy at a later date.²³ Importantly, their findings hold even when the relevant experience the respondent had with the police led to a negative outcome.²⁴

It might seem strange, or even bizarre, to say that one could have both a positive experience and a negative outcome, but there is a psychological theory that helps to make the point more clear. That theory is centered on the notion of legitimacy, and to explain what it means, it is useful to ask the following question: Why do people obey the law?

Many people believe that people obey the law because they fear the consequences of failing to do so. The theory is simple and lies in deterrence theory. Deterrence theorists believe that people rationally maximize their utility and shape their behavior in response to incentives and penalties in the criminal code.²⁵ If the cost of breaking the law becomes high enough because

20. Consider Rodney King, Abner Louima, Amadou Diallo, and Sean Bell.

21. Tom R. Tyler & Jeffrey Fagan, *Legitimacy and Cooperation: Why Do People Help the Police Fight Crime in their Communities?*, 6 OHIO ST. J. CRIM. L. 231 (2008).

22. Wesley G. Skogan, *Assymetry in the Impact of Encounters with Police*, 16 POLICING & SOC'Y 99, 100 (2008).

23. Tyler & Fagan, *supra* note 21, at 255–56.

24. *Id.* at 256.

25. See WESTERN, *supra* note 15, at 177–79.

sentences are long, or because the likelihood of getting caught increases, then, the theory goes, people will choose to obey rather than break the law.²⁶

Social psychologists have offered a different view—one that will likely resonate with people. Social psychologists point to normative bases for compliance rather than instrumental ones, and they have connected voluntary compliance with the law to the fact that individuals believe that the law is “just” or that the authority enforcing the law has the right to do so.²⁷ These factors are considered normative; individuals respond to them differently from the way they respond to rewards and punishments.²⁸ In contrast to the individual who complies with the law because she is responding to externally imposed punishments, the individual who complies for normative reasons does so because she feels an *internal* obligation.²⁹ It is “[t]he suggestion that citizens will voluntarily act against their self-interest [that] is the key to the social value of normative influences.”³⁰

Compliance that flows from one’s belief that a law is just is different from compliance that follows a belief that authorities have the right to dictate proper behavior, even though both of these categories for compliance are normative.³¹ Psychologist Tom Tyler refers to reasons for compliance situated within the former category as morality-based, and he calls the latter category of reasons for compliance legitimacy-based.³² Although research suggests morality to be the more powerful of the normative reasons for compliance,³³ I focus here on legitimacy for three reasons. First, legitimacy, an amalgamation of perceptions that individuals hold regarding the law and authorities that enforce it, is in the government’s control in contrast to the development of personal morality.³⁴ Second, there are legal constraints on what may be the most effective methods for government to utilize in shaping personal morality of citizens.³⁵ Third, and perhaps most important, legitimacy

26. *See id.*

27. *See, e.g.,* TOM R. TYLER, WHY PEOPLE OBEY THE LAW 3–4 (1990).

28. *Id.* at 24.

29. *Id.*

30. *Id.*

31. *See id.* at 4.

32. *See id.*

33. *See id.* at 57–64 (showing that regression analyses indicate that among deterrence, peer disapproval, personal morality, and legitimacy, personal morality is most strongly correlated with compliance).

34. This is not to say that governmental authorities have no influence over the development of an individual’s morality, and schools are an obvious location of government-based influence on the development of childhood and adolescent morality.

35. For example, one potentially very effective state inculcation of morality (that also happens to favor the state) could be the codification of *Romans* 13:1–2, which states:

is a more stable basis for voluntary compliance than is personal morality—at least from the government’s perspective. While greater legitimacy translates into more compliance whether or not compliance is in the personal interest of an individual, one’s personal moral schedule may or may not be in line with authoritative dictates.³⁶

The next logical question is to ask what it means to say that people will comply because they believe an authority has the right to dictate to them proper behavior. This is the essence of legitimacy. Social psychologists have helpfully tied together an explanation of governmental legitimacy to thought processes that people undertake when evaluating official behavior and actions.³⁷ For example, Allan Lind and Tom Tyler argue that processes that lead up to an outcome are important indicators to individuals about how the authority in question views the group to which the evaluator perceives herself belonging.³⁸ Procedures that all parties regard as fair facilitate positive relations among group members and preserve the fabric of society even in the face of conflicts of interest that exist in any group whose members have different preference structures and different beliefs concerning how the group should manage its affairs.³⁹ Putting this point another way, procedures might be considered more “trait-like”⁴⁰ than outcomes, which are variable, or which may be extremely indeterminate in a particular case. While it may not be obvious how a particular case should come out, it is almost always clear how parties should proceed and be treated in that particular case.

Everyone must submit himself to the governing authorities, for there is no authority except that which God has established. The authorities that exist have been established by God. Consequently, he who rebels against the authority is rebelling against what God has instituted, and those who do so will bring judgment on themselves.

This move would obviously contradict the strictures against state establishment of religion found in the First Amendment to the United States Constitution.

36. See TYLER, *supra* note 27, at 4 (using the example of the war in Vietnam and explaining that those who believed in the legitimacy of government fought in the war regardless of their beliefs in favor of or against the conflict, while others who did not believe in the morality of the war illegally dodged the draft).

37. See E. ALLAN LIND & TOM R. TYLER, *THE SOCIAL PSYCHOLOGY OF PROCEDURAL JUSTICE* 230–41 (1988) (developing the group value model to explain instances in which people confer legitimacy even when outcomes do not accrue to their benefit).

38. See *id.*

39. See *id.*

40. See Joel Brockner & Phyllis Siegel, *Understanding the Interaction Between Procedural and Distributive Justice: The Role of Trust*, in *TRUST IN ORGANIZATIONS: FRONTIERS OF THEORY AND RESEARCH* 390, 404 (Roderick M. Kramer & Tom R. Tyler eds., 1995).

Lind and Tyler call this approach the group value model of procedural justice,⁴¹ and the approach is a central aspect of their view of legitimacy-based compliance. They also offer views regarding how people connect their treatment by government officials to assessments of social value. Individuals focus on three factors: standing, neutrality, and trust.⁴² By *standing*, researchers are referring to indications that the authority recognizes an individual's status and membership in a valued group, such as polite treatment and treatment that accords dignity and respect, such as concern for rights.⁴³ *Neutrality* refers to indications to the perceiver that she is not being made to feel less worthy than others because an authority's bias, discrimination, or incompetence.⁴⁴ And *trust* refers to the extent to which a perceiver believes that the authority in question will act fairly and benevolently in the future.⁴⁵ Of course, individuals making assessments do not disaggregate them in terms of these factors; rather, they come to conclusions regarding authorities by considering information that is *relevant* to these factors.

Importantly—indeed, critically—for our purposes, the empirical evidence is quite persuasive: These legitimacy factors matter more toward compliance than instrumental factors, such as sanctions imposed by authorities on individuals who fail to follow the law or private rules.⁴⁶ For example, in a study designed to test compliance directly, Tyler used regression analyses to test the relative impact on the compliance of respondents of legitimacy, public deterrence, peer disapproval, and personal morality.⁴⁷ He found that the regression estimate for legitimacy on compliance was about five times greater than the estimate for deterrence.⁴⁸ Other studies exploring the relationship between legitimacy and behavior related to compliance, such as acceptance of arbitration awards⁴⁹ and decision acceptance and rule following in business settings,⁵⁰ have found that legitimacy has a profound impact on behavior.

41. See LIND & TYLER, *supra* note 37, at 230–41.

42. Tom R. Tyler & E. Allan Lind, *A Relational Model of Authority in Groups*, 25 *ADVANCES IN EXPERIMENTAL SOC. PSYCHOL.* 115, 158–59 (1992).

43. See *id.* at 153 (collecting studies); see also Tom R. Tyler, *What Is Procedural Justice?: Criteria Used By Citizens to Assess the Fairness of Legal Procedures*, 22 *LAW & SOC'Y REV.* 103, 129 (1988) (discussing the importance of recognition of citizen's rights).

44. Tyler & Lind, *supra* note 42, at 157.

45. See Tom R. Tyler, *Trust and Democratic Governance*, in *TRUST AND GOVERNANCE* 269, 269–70 (Valerie Braithwaite & Margaret Levi eds., 1998).

46. TYLER, *supra* note 27, at 4.

47. *Id.* at 59 tbl.5.1.

48. Specifically, the regression estimates are .11** for legitimacy and .02 (not significant) for deterrence. *Id.* Both of these estimates of reliability were adjusted. To put these estimates in perspective, note that the estimates for the impact of age and sex on compliance are .24*** and .26***, respectively. *Id.*

49. See generally ROBERT J. MACCOUN, E. ALLAN LIND, DEBORAH R. HENSLER, DAVID L.

It is also important (and critical) to see that the research does *not* imply that instrumental means of producing compliance have no effect. In each of the studies cited here, deterrence or outcome-based judgments influenced compliance or related behavior in some way. Still, the work suggests that legitimacy is typically more important to compliance than instrumental reasons. It should be clear, then, that a legitimacy-based law enforcement policy necessarily will make relevant those who are typically considered law breakers, as well as those who are not. A legitimacy-based program of law enforcement will focus more on persuasion than it will focus on punishment. And to achieve persuasion, authorities will have to pay attention to the creation of the necessary social capital that engenders trust relationships between governors and the governed. Such trust cannot be created simply by emphasizing rewards and punishments, for those strategies assume that all individuals care about is the “bottom line”—an assumption that is contrary to the theory of procedural justice and much empirical evidence. In fact, an assumption that compliance is typically created only by threats of coercion backed up with punishment is fundamentally inconsistent with trust, for such a stance assumes that individuals cannot be counted to defer. This approach emphasizes a space rather than a bond between the state and its citizens.

I would like to point to two examples of law enforcement policy to motivate this theory. The first example is more of a re-entry strategy than it is a policing approach, but it is still instructive. The second example is more squarely policing, but it, too, involves multiple agencies. Notably, both strategies feature what I have called moral engagement as opposed to notions of criminal deterrence. And, both heavily implicate governmental legitimacy.

Chicago has recently experienced a steep drop in homicide and other violent crime since 1999. Indeed, if one examines the highest crime communities on the city’s high-poverty west side, one would observe a 37% drop in the quarterly homicide rate between 1999 and 2006.⁵¹ While

BRYANT & PATRICIA A. EBENER, ALTERNATIVE ADJUDICATION: AN EVALUATION OF THE NEW JERSEY AUTOMOBILE ARBITRATION PROGRAM (1988) (finding that the probability of litigants in cases involving auto claims in New Jersey courts accepting arbitrators’ awards correlated with legitimacy and outcome favorability); E. Allan Lind, Carol T. Kulik, Maureen Ambrose & Maria deVera Park, *Outcome and Process Concerns in Organizational Dispute Resolution* (Am. Bar Found., Working Paper No. 9109, 1991) (finding that the decisions of parties to accept or reject arbitration awards were strongly related to procedural justice (legitimacy) judgments and that outcome favorability judgments operated only through procedural justice judgments).

50. See generally P. Christopher Earley & E. Allan Lind, *Procedural Justice and Participation in Task Selection: The Role of Control in Mediating Justice Judgments*, 52 J. PERSONALITY & SOC. PSYCHOL. 1148 (1987) (examining the influence of the fairness of task assignment procedures on individual’s acceptance of assignments and finding acceptance influenced by procedural justice measures).

51. See Andrew V. Papachristos, Tracey L. Meares & Jeffrey Fagan, *Attention Felons:*

researchers are beginning to examine several competing and complementary factors responsible for the drop in Chicago's murder rate, one influential program, Project Safe Neighborhoods (PSN), may be a major contributing factor.

PSN is a billion-dollar federal program designed to promote innovative gun-crime reduction strategies throughout the nation.⁵² In Chicago, PSN has meant the formation of a multiagency task force that includes members from law enforcement and local community agencies.⁵³ Since May 2002, the PSN task force has met on a monthly basis to devise gun violence reduction strategies for targeted police districts with high rates of gun violence.⁵⁴ PSN Chicago utilizes several coordinated strategies that rely on traditional law enforcement as well as recent developments in the realms of restorative and procedural justice.⁵⁵ This essay focuses on one strategy—Offender Notification Forums (Forums).

The PSN team also believed, consistent with theories of legitimacy detailed above, that the key to changing patterns of gun crime lies in altering the normative beliefs of gun users themselves.⁵⁶ Keeping these principles in mind and considering other successful programs implemented in Boston,⁵⁷ the PSN team crafted its most innovative strategy, the Forums.⁵⁸ Offenders in the target neighborhood with a history of gun violence and gang participation who were recently assigned to parole or probation are requested to attend a Forum hosted by the PSN team.⁵⁹ The Forums are hour-long, round-table style meetings in which approximately twenty offenders sit around a table with representatives from state and local law enforcement, community

Evaluating Project Safe Neighborhoods in Chicago, 4 J. EMP. L. STUD. 223, 254 (2007). Much of the material following this note is taken from this article.

52. *Id.* at 225.

53. "Participating members include representatives from the Chicago Police Department, the Cook County State's Attorney's Office, the Illinois Department of Correction, the Cook County Department of Probation, the U.S. Attorney's Office for the Northern District of Illinois, the City of Chicago Corporation Counsel, the Chicago Alternative Policing Strategy, the Chicago Crime Commission, and more than 12 community-based organizations." *Id.* at 229.

54. *Id.*

55. *Id.* at 230–31. Other Chicago PSN strategies include: multiagency case review, specialized federal and local gun enforcement teams, school based gun-violence education programs, media outreach efforts, and officer training programs. For a review of these and other PSN initiatives, see *id.* at 231–33.

56. *See id.* at 237.

57. *See* Anthony A. Braga, David M. Kennedy, Elin J. Waring & Anne Morrison Piehl, *Problem-Oriented Policing, Deterrence, and Youth Violence: An Evaluation of Boston's Operation Ceasefire*, 38 J. RES. CRIME & DELINQ. 195, 198, 220 (2000).

58. Papachristos, Meares & Fagan, *supra* note 51, at 231.

59. *Id.*

representatives, and various service providers.⁶⁰ Informal conversations with attendees after the conclusion of meetings often last an additional hour and lead to more intimate follow-up and service provision.⁶¹ The meetings take place in a location of civic importance (such as a local park, library, or school) and are designed to be egalitarian in nature, meaning that offenders sit at the same table as all other Forum participants, rather than as passive audience members.⁶²

The content of the meeting is designed to stress to offenders the *consequences*, should they choose to pick up a gun, as well as the *choices* they have to make to ensure that they do not reoffend.⁶³ The meeting is divided into three different segments.⁶⁴ First, law enforcement agencies openly discuss the targeted PSN enforcement efforts, giving examples of cases that have occurred *within* the offenders' neighborhoods.⁶⁵ Many times, the Forum attendees are familiar with the defendants.⁶⁶ The point of the first segment is to explain in very specific terms the consequences of gun offending for both the individual and his neighborhood.⁶⁷ The second segment of the Forum entails a presentation by an ex-offender who has successfully stayed away from a life of offending for several years.⁶⁸ The ex-offender talks about how he has been able to stay away from a life of crime using poignant examples from his own experiences.⁶⁹ The speaker's message stresses the seriousness of the current levels of violence in the community, the problems of intraracial violence, the truth about gang life (including its meager financial rewards to most of its gang members), the troubles offenders face when looking for work, and the seriousness of the PSN enforcement efforts.⁷⁰ The final segment of the Forum stresses the choices offenders can make to avoid reoffending.⁷¹ This entails a series of conversations with service providers, community agencies, and employers from the offenders' own neighborhoods.⁷² "Programs include substance abuse assistance, temporary shelter, job training, mentorship and union training, education and GED

60. *Id.* at 231–32.

61. *Id.* at 232.

62. *Id.* at 237.

63. *Id.* at 231–32.

64. *Id.* at 231.

65. *Id.* at 231–32.

66. *Id.* at 232.

67. *See id.* at 231–32.

68. *Id.* at 232.

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

courses, and behavior counseling.”⁷³ Often several local employers attend and instruct attendees on the necessary steps to gain employment with their firms.⁷⁴

We used a quasi-experimental design to evaluate the impact of PSN strategies on neighborhood-level crime rates and individual rates of reoffending.⁷⁵ PSN appears to have been remarkably effective in reducing neighborhood crime rates. There were dramatic reductions in homicide in the PSN districts as compared to control areas and the city as a whole. More specifically, there was an approximately 37% decrease in monthly homicide rate after the start of the program as compared to the preceding three years.⁷⁶ Furthermore, that decrease is significantly larger than the city as a whole—in fact, if one considers the PSN areas separately from the city, nearly all of the decline in the city’s homicide can be associated with the drop in the PSN areas.⁷⁷

Neighborhood-level analysis also demonstrates the relative impact of the various PSN enforcement and community efforts. Increased federal prosecutions and the number of guns recovered by the gun teams were correlated with declining neighborhood-level homicide rates—namely, more federal prosecutions and getting more guns off of the street are associated with a small portion of the observed drop in homicides in the PSN neighborhoods.⁷⁸

The PSN program with the greatest effect on declining neighborhood level homicide was the Offender Notification Forums.⁷⁹ In short, the greater the proportion of offenders who attend the Forums, the greater the decline in neighborhood levels of homicide.

Analyses of recidivism rates give further support of the efficacy of the PSN Forums. To summarize, individuals who attended a PSN Forum were almost 30% less likely to return to prison as compared to similar individuals in the same neighborhood who did not attend a forum.⁸⁰ Individuals in the PSN treatment group tended to desist from criminal involvement and to “survive” on the street longer periods of time as compared to individuals in

73. *Id.*

74. *Id.*

75. *Id.* at 224.

76. *Id.* at 254.

77. *Id.* at 255.

78. *Id.* at 257–59.

79. *Id.*

80. See Jeffrey Fagan, Andrew Papachristos, Danielle Wallace & Tracey Meares, *Desistance and Legitimacy: Effect Heterogeneity in a Field Experiment on High Risk Groups* (Nov. 2008) (unpublished research, on file with author).

the control group.⁸¹ By the third year after release from prison, approximately half of all non-PSN group members have re-offended and been incarcerated, as compared to about 25% of the PSN treatment group.⁸² Furthermore, the program appears to diminish levels of recidivism and reincarceration among gang *and* non-gang members, and appears to be particularly effective for first-time offenders, those individuals who have been convicted of only a single prior offense.⁸³

There is a second notable strategy that some might consider more relevant to legitimacy in policing than the PSN example that I just offered. The strategy is colloquially referred to as the “High Point Model,” after High Point, North Carolina, where it was implemented. The High Point Model gained some fame after it was highlighted in a *Wall Street Journal* piece penned by journalist Mark Schoofs.⁸⁴ The process worked this way: police officers investigated dealers and other personnel central to the operation of an open-air drug market in the West End neighborhood of High Point.⁸⁵ A critical aspect of this investigation was police videotape of the drug market in action and the relevant personnel.⁸⁶ After putting together complete cases on twelve people involved in the market, High Point police called them into the station and promised them that they would not be arrested—at least that night.⁸⁷ There, nine of the twelve⁸⁸ invited faced family members, social workers, community members, and clergy members, who confronted them about their activities and implored them to stop dealing drugs and engaging in violence.⁸⁹ After this first session, the nine traveled to another room where a multiagency law enforcement group was waiting for them.⁹⁰ The law enforcement officials were clear. The men had a choice. They could either stop dealing, or they could go to jail.⁹¹ To the extent that the message did not immediately sink in, the men were presented with the complete case against them, including videotape.⁹²

81. *See id.*

82. *See id.*

83. *See id.*

84. Mark Schoofs, *New Intervention: Novel Police Tactic Puts Drug Markets Out of Business*, WALL ST. J., Sept. 27, 2006, at A1.

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.* Only nine of the twelve invited showed up at the station.

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

According to High Point officials and associated researchers, the open-air drug market in the West End neighborhood closed that day and has not yet reopened.⁹³ Violence is down substantially. People in the neighborhood report feeling much more positive about their community and, importantly, more positive about their relationships with police.⁹⁴ This last point should bring to mind the theories of legitimacy that I explored earlier in this lecture. It is the engagement by police officers with relevant community members and offenders in a way that accords both groups dignity that is one key to legitimacy and one feature of both the PSN program in Chicago and the High Point Model that I've just described.

There are differences, to be sure, between High Point and Chicago PSN, but both share a number of critical features. Each site implemented a process that emphasizes direct moral engagement of offenders by a group of law enforcement agents, community service providers, and, critically, members of the community—often street workers or former offenders (sometimes one and the same)—who discuss the importance of turning away from activities that harm communities, such as violence and drug selling.

At each location, the sessions are not designed to scare the participants straight, nor are they preachy. Instead, they are intended to promote the individual agency of offenders to make good choices rather than bad ones by stressing to participants the profound need of the community for safety and security, the eagerness of the partners to help offenders change their lives, and the consequences should they choose to engage in gun crime or drug dealing. And, at each location legitimacy is critical. Whether in Chicago or High Point, Cincinnati, or the host of other cities that have seen this approach succeed,⁹⁵ those who lead this new wave of law enforcement and community safety projects take them seriously. They understand that attempting to sustain neighborhood safety through a continuing commitment to carpet-bombing and locking up the next generation of young African-American men is doomed to failure. They understand that, despite an often crippling alienation between law enforcement and communities, police, community members, and offenders alike want the streets to be safe, residents to succeed, and for jail and prison to be a rare last resort. They are discovering—in practice, not just in theory—that a normative commitment to compliance is a

93. David Kennedy, *Drugs, Race and Common Ground: Reflections on the High Point Intervention*, NAT'L INST. JUST. J., Mar. 2009, at 12, 18.

94. *Id.*

95. David Kennedy and Jeremy Travis have counted seventy-five cities. See Jeremy Travis, Keynote Address at the Marquette University Law School Public Service Conference: Building Communities with Justice: Overcoming the Tyranny of the Funnel 7 (Feb. 20, 2009) (transcript available at http://www.jjay.cuny.edu/web_images/Marquette_Law_School.pdf).

sustainable and realistic approach to bringing crime down. When it does not work, law enforcement is still there, but it is used far less often and is seen as legitimate by the affected community.

It is this last point that makes me hopeful about the third issue I am scheduled to address in this lecture: the potential for young African-American men, many of whom are involved in the criminal justice system, to accept the new path of policing. I do not want to be Pollyannaish about this issue. The challenges are severe, and the stakes are high. What we can see is that policing agencies *are* changing practices and methods that reflect the theories I have discussed here. Indeed, Milwaukee's Chief Ed Flynn is a leading member of this new vanguard. The other thing we can see is that these new strategies are leading to lower crime rates, just as the theory would suggest. My own research demonstrates that offenders are just as likely as nonoffenders to believe in the legitimacy of law—a finding that might surprise some.⁹⁶ However, those same offenders still remain deeply skeptical of police.⁹⁷

I suspect it is a matter of time. The reality may be that we shall never convince those who offend to fully trust the police, but we will be much better off in a world in which the demographic group that is the most likely to be entangled in the system does not automatically presume that the police behave antagonistically toward them. And, moreover, the existence of social networks among groups means that African-Americans as a group also will be better off. This is so because crime is likely to be lower in communities that are committed to this approach, but also because crime reduction is not the only goal of these new approaches. Helping communities help themselves get things done for the long term is a critical larger objective. Legitimacy in law enforcement is not just a nascent strategy. It is a movement. It is movement with the potential to transform the way this nation does law enforcement, achieves community safety, and heals longstanding rifts between police and minority communities. It is, in short, about nothing less than ensuring domestic tranquility.

96. See Tracey L. Meares & Andrew Papachristos, *Policing Gun Crime Without Guns* (Working Paper, 2009), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1326932.

97. See *id.*