



**Summoning the Superheroes:  
Harnessing Science and Passion to Create  
A More Effective and Humane Response to Crime**

**Keynote Address**

**By**

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**On the Occasion of the  
Twenty-fifth Anniversary of  
The Sentencing Project**

October 11, 2011

The National Press Club,  
Washington, DC

Judge Hughes, Marc Mauer, dear friends: I am honored to have been invited to deliver this keynote address as we celebrate the 25<sup>th</sup> Anniversary of the Sentencing Project. For the last quarter century, the Sentencing Project has been a beacon of light beaming through the dark clouds of our nation's debates over crime policy. Under the inspired leadership of Marc Mauer, and Malcolm Young before him, the Sentencing Project has been able to achieve what few other organizations in the criminal justice policy world have achieved – to strike the right balance between hard-nosed, objective and trustworthy research, on the one hand, and principled, logical and strategic advocacy on the other.

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

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

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

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

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

**1. We must help crime victims rebuild their lives.**

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

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

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<sup>1</sup>Graham Farrell, Ken Pease, *Once Bitten, Twice Bitten: Repeat Victimization and its Implications for Crime Prevention* (Crime Prevention Unit Series Paper No. 46, Home Office Police Research Group, London, UK, 1993).

<sup>2</sup>Dean G. Kilpatrick, Ron Acierno, *Mental Health Needs of Crime Victims: Epidemiology and Outcomes* (Journal of Traumatic Stress, 16, no.2, 2003)

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

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

Finally, we have known for decades that most victims never see their cases go to court because most crimes do not result in an arrest.<sup>5</sup> In the small percentage of all reported crimes where an arrest is made – about 20% – most cases are resolved through plea bargains or result in dismissals, so victims play a minor role, if any. Even in cases that go to trial, where the crime victim may be a more active participant, the victim’s immediate and long-term needs are rarely addressed. Given this statistical reality, why have we focused so much attention on the role of victims in criminal proceedings, at the expense of devising a societal response to all victims, whether or not the offender is ever arrested and prosecuted? Where is our passion, our concern for human suffering, our sense of justice?

My thinking on this topic has been influenced, I hasten to acknowledge, by the work of my wife, Susan Herman, who developed the concept of Parallel Justice.<sup>6</sup> According to the principles of Parallel Justice, we should not conceptualize our response to crime victims simply as an act of charity, nor merely through the creation of rights in criminal proceedings. Rather, the concept of Parallel Justice requires that we respond to victims more effectively, and more humanely, because the pursuit of justice requires it.

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

## **2. We must pursue a focused and scientific crime prevention agenda.**

We are fortunate to be meeting at a time when the crime rates in America are at historic lows. There are two distinct narratives about crime trends in America. The story of violent crime is well known. After a decline in the early 1980s, rates of violence in America spiked upward

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<sup>4</sup>Cathy Spatz Widom, *The Cycle of Violence*, *Science* 244, no. 4901 (1989): 162.

<sup>5</sup>Jennifer L. Truman, *Criminal Victimization, 2010* (US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, September 2011).

<sup>6</sup>Susan Herman, *Parallel Justice for Victims of Crime* (National Center for Victims of Crime, 2010).

starting in the mid-1980s with the introduction of crack cocaine in America's cities.<sup>7</sup> Then, as that epidemic subsided, violent crime rates started a historic decline, dropping to rates lower than those seen in the 1960s, with another 12% decline from 2009 to 2010 reported last month by the FBI.<sup>8</sup> Less well known is the story of property crime, which has been in steady decline since the early 1970s. Our rates of property crime today are half their level when the decline started. These are remarkable stories. Who among us – particularly those working in this field for the past 25 years – would have thought we could stand in our nation's capital and say that crime rates are at their lowest levels in our professional lifetimes?

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

So, the crime scientists among us need to get to work, with appropriate funding from foundations and the federal government, to help us understand our own history of crime trends. And, looking forward, we need to develop a much more sophisticated data infrastructure to allow us to track crime trends in real time.<sup>9</sup> Think about this the next time you hear about a business report on television: If economists can tell us which sectors of the economy were growing or declining last month, certainly we can build a data infrastructure to help us understand crime trends last year.

A second lesson: we need to rethink what we mean by "crime prevention." Too often we narrowly define "crime prevention" only in terms of programmatic investments in young people to help them lead more productive, pro-social lives. But clearly, over the past forty years, this historic decline in crime rates has not come about because we invested massively in programs that helped our young people avoid criminal activity. Other policy choices have also made a difference. Let me give one example: according to a provocative new book by Frank Zimring on the crime decline in New York City, that city's auto theft rate in 2008 is 6 percent – *six percent*–

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<sup>7</sup>Arthur S. Goldberger and Richard Rosenfeld, Editors, Committee on Understanding Crime Trends, *Understanding Crime Trends: Workshop Report*, (The National Research Council, 2008).

<sup>8</sup>Truman, 2011.

<sup>9</sup>At a minimum, a robust national data infrastructure to track crime trends would include: an expanded National Crime Victimization Survey (NCVS) so that the victimization trends could be tracked in the 75 largest cities of America; an expanded Arrestee Drug Abuse Monitoring (ADAM) system in those 75 cities, as proposed by the Department of Justice fifteen years ago, to track trends in drug use, gun use, intergroup violence and other variables among the arrestee population; and federally-administered annual recidivism reports for all 50 states to track arrest rates among those under community supervision.

of what it was in 1990.<sup>10</sup> How were those crimes prevented? How much can be attributed to changes in safety practices and theft-prevention technologies developed by the auto industry, by new federal regulations requiring marking of auto parts to deter the operation of chop shops, and by more effective police investigations? My point is simple: a rigorous, scientific exploration of changes in crime rates will identify a broad set of practices that prevent crime, assign costs and benefits to those practices, and hopefully help us invest money and political capital in those crime prevention strategies that are proven to reduce harm. If we are passionate about reducing our crime rates even further by 2036, we will broaden our frame of reference and bring many more sectors of our society to the crime prevention table.

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

Let me cite some data that make the point. A few years ago, John Klofas, a professor at the Rochester Institute of Technology, examined that city's homicide data to determine who was at the highest risk of being killed<sup>11</sup>. At the time of his research, the homicide rate for the nation as a whole was 8 per 100,000. Among those aged 15-19, it was nearly triple that: 22 per 100,000. Among males in that age group, it was more than quadruple the national rate, or 36 per 100,000. For African-American males aged 15-19 in Rochester, it was 264 per 100,000. Finally, for African-American males aged 15-19 in the "high-crime crescent," the most dangerous neighborhood in Rochester, the homicide rate was 520 per 100,000, or 65 times the national rate.

More recently, Andrew Papachristos of the University of Massachusetts, Amherst, took this approach one step further. Using a database including all young men involved in criminally active groups in a high crime Chicago neighborhood, Dr. Papachristos calculated that the homicide rate within these groups was 3,000 per 100,000, or 375 times the national rate.<sup>12</sup> This kind of social network analysis is not just about victimization rates. The 1,593 people included in Papachristos' analysis were also responsible for 75% of the homicides in this neighborhood. This rate of killing constitutes a national crisis, yet we turn a blind eye to this reality, lulled into inaction by our self-congratulatory sense of progress and our collective unwillingness to get serious about the issue of violence in inner city communities of color.

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<sup>10</sup>Franklin E. Zimring, *The City that Became Safe: New York and the Future of Crime Control* (Oxford: Oxford University Press, 2011).

<sup>11</sup>John M. Klofas, Christopher Delaney, Tisha Smith, *Strategic Approaches to Community Safety Initiative (SACSI) in Rochester, NY* (US Dept. of Justice, National Institute of Justice, 2005) as referenced in: Jeremy Travis, *New Strategies for Combating Violent Crime: Drawing Lessons from Recent Experience* (Testimony before the U.S. Senate Judiciary Committee, Washington DC, September 10, 2008).

<sup>12</sup>Andrew Papachristos, *The Small World of Murder* (retrieved from the World Wide Web on October 7, 2011: [http://www.papachristos.org/Small\\_World.html](http://www.papachristos.org/Small_World.html)).

To reduce rates of violence in America over the next quarter century, we must tackle this phenomenon head on. I strongly recommend that we embrace and replicate the focused deterrence strategies developed by David Kennedy, a Professor at John Jay College of Criminal Justice.<sup>13</sup> First tested in Boston 15 years ago to address youth violence, then expanded to drug markets in High Point, North Carolina, and now being implemented in 70 cities across the country through the National Network for Safe Communities, these strategies have been proven highly effective at reducing group violence – typically by 40-50% – and virtually eliminating overt drug markets. These strategies have two other benefits – they reduce incarceration rates, and promote a process of racial reconciliation between police and communities of color. If we are serious about creating communities that are safer and more just, we will insist that these strategies are replicated nationwide.<sup>14</sup>

A scientifically based crime prevention agenda would simultaneously expand our vision to incorporate the many ways crimes are prevented, while focusing laser-like on the neighborhoods and individuals at highest risk of the most extreme violence. On this latter point, strong science will direct us, but passionate advocacy is necessary to win the day. Unfortunately, American society is not sympathetic to the argument that, because young African-American men, many of them involved in crime themselves, are at greatest risk of being killed, we should therefore devote our greatest resources to preventing those crimes. To advance that agenda we must overcome barriers of racism, fear and stereotyping. But if our crime policy is to be more effective and more humane, we must bring all our tools – science and passion – to the task.

### **3. We must use science to develop professional standards for the justice system.**

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

In imagining this new world, we are immediately confronted with the realities of our federal system in which the states are primarily responsible for criminal justice operations. Granted we have some national standards of practice imposed by federal courts through constitutional interpretations – think of the Miranda warnings, required of all police agencies. We have other standards imposed by federal oversight agencies – think of the FBI’s reporting guidelines for the

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<sup>13</sup>David Kennedy, *Don’t Shoot: One Man, A Street Fellowship, and the End of Violence in Inner-City America* (New York: Bloombury USA, 2011).

<sup>14</sup>The National Network for Safe Communities, housed at John Jay College for Criminal Justice, is dedicated to working with jurisdictions to implement these focused deterrence strategies and to incorporating them into national practice. See [www.nnscommunities.org](http://www.nnscommunities.org).

Uniform Crime Reports. Yet, as a general matter, we shy away from federally imposed standards of practice. Must it always be so? Can we create a national framework in which certain standards of practice, validated by strong science, have equal force and effect across the country?

This dilemma was highlighted recently by a court ruling in New Jersey<sup>15</sup> and a research report issued by the American Judicature Society.<sup>16</sup> Both examined the same issue – the unreliability of eyewitness memory. As we know from hundreds of exonerations based on DNA analysis, errors attributable to faulty eyewitness memory can result in serious miscarriages of justice. Hundreds – perhaps thousands – of individuals have spent years in America’s prisons for crimes they did not commit. Some have been put to death. But we also know from strong scientific studies that eyewitness evidence can be gathered in a way that reduces the likelihood of error, without compromising our ability to identify the true suspect.<sup>17</sup> This method is called “sequential, double-blind”, meaning that the witness sees possible suspects (either in lineups or in photos) one after another, and that the procedure is administered by someone with no connection to the investigation. The power of this method was conclusively demonstrated in the field experiment conducted by AJS.

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

In less dramatic terms, we have faced this question before. To cite well-known examples, we continue to fund DARE, “scared straight” programs, and batterers’ interventions long after research has shown they are ineffective. On a broader scale, we fund programs of unknown effectiveness that have never been rigorously tested. And even when we have competent evaluations in hand, we care little about effect sizes (does the program make a big or small difference?) and even less about cost-benefit analysis (did the positive program effects more than offset the cost of the program?). In making the case for strong crime science, I turn again to the medical model for an analogy. Imagine that medical research had found an effective treatment of migraines. Wouldn’t we expect the entire medical profession to adopt that procedure? Wouldn’t we be shocked if a migraine patient in Washington was told that, even though the treatment is available in New Jersey, we will wait until we validate it in Washington? Imagine if the Washington doctor said something we hear too often in the criminal justice

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<sup>15</sup>*State v. Larry R. Henderson* (A-8-08)(062218) (2011).

<sup>16</sup>Gary L. Wells, Nancy K. Steblay, Jennifer Dysart, *A Test of the Simultaneous vs. Sequential Lineup Methods: An Initial Report of the AJS National Eyewitness Identification Field Studies* (American Judicature Society, 2011).

<sup>17</sup>Elizabeth F. Loftus, James M. Doyle, Jennifer E. Dysart, *Eyewitness Testimony: Civil and Criminal* (Newark, NJ: Lexis Nexis, 2007).

<sup>18</sup>*State v. Larry R. Henderson* (A-8-08)(062218) (2011).



world: “Well, migraines in Washington are just different and anything they learn in New Jersey won’t work here.”

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

#### **4. We must rethink the role of the criminal sanction.**

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

This portrayal of the criminal justice system may have clarified the working relationships of those agencies, but it created a new problem: the “case” has become our unit of analysis. We focus our attention on the cases that move down the assembly line of the justice system, from the outbox of one agency to the inbox of another.<sup>21</sup> Over the past twenty years, another metaphor has emerged, one that stands in stark contrast to the image of the assembly line. In this metaphor, the agencies of the justice system are organized around a problem, not a case. Rather than the assembly line, this approach envisions a collaborative table at which the assets of various agencies are deployed to address an underlying problem, not just to determine the outcome in a criminal prosecution.

This new approach was first championed by the police, inspired by the pioneering work of Herman Goldstein, titled *Problem-Oriented Policing*.<sup>22</sup> Prof. Goldstein said the unit of analysis for effective policing was a community problem, not a 911 call. This powerful insight led directly to the concept of “hot spots policing,” which focuses police resources on addressing crime problems that are spatially concentrated.<sup>23</sup> In a broader sense, the problem-centered approach

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<sup>19</sup>Christopher Stone, Guggenheim Professor of Practice at Harvard’s Kennedy School of Government, and I outlined a similar approach to professionalism in policing. One of the cornerstones of this “new professionalism” is the emergence of a framework of “national coherence” in the work of police agencies. Christopher Stone, Jeremy Travis, *Toward a New Professionalism in Policing* (Harvard: Harvard Kennedy School of Government, 2011).

<sup>20</sup>The President’s Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (Washington, DC: Government Printing Office, February 1967).

<sup>21</sup>Jeremy Travis, *Building Communities with Justice: Overcoming the Tyranny of the Funnel* (Keynote address delivered at the Marquette Law School Public Service Conference on the Future of Community Justice in Wisconsin on February 20, 2009).

<sup>22</sup>Herman Goldstein, *Problem-Oriented Policing* (New York: McGraw-Hill, 1990).

<sup>23</sup>David Weisburd, Cody W. Telep, *Spatial Displacement and Diffusion of Crime Control Benefits Revisited: New Evidence on Why Crime Doesn’t Just Move Around The Corner* (book chapter in N. Tilley & G. Farrell (eds.), *The*

to crime lies at the heart of community policing, with its emphasis on community partnerships to address community problems.

A problem-oriented focus also led to the creation of the first drug courts in Miami in 1989, the first community court in Manhattan in 1993, and a generation of innovative problem-solving courts addressing issues such as mental health, domestic violence and drunk driving.<sup>24</sup> This new way of thinking informs the work of David Kennedy, whose strategies were designed to address the problems of group violence and overt drug markets. It undergirds the premise of Project Hope, a highly successful project first launched in Hawaii designed to reduce drug use and crime among the community corrections population.<sup>25</sup> It lies at the heart of the restorative justice movement, which convenes victims, offenders and other stakeholders to address harms and repair relationships. Finally, this pragmatic approach to problems, not cases, provides the framework for the reentry movement, which is bringing new partners to the table to address the challenges faced by individuals leaving prison.<sup>26</sup>

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

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

I believe we are on the verge of a fundamental conceptual breakthrough. These problem-oriented innovations are showing us that if we apply the criminal sanction in a very parsimonious way, in combination with other interventions, we can reap enormous benefits in crime reduction and enhanced legitimacy of the justice system. These innovations, in turn,

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reasoning criminologist: Essays in honor of Ronald V. Clarke, publication forthcoming, New York: Routledge). This body of research was highlighted at the 2010 Stockholm Criminology Symposium at which time Prof. David Weisburd received the Stockholm Prize in Criminology.

<sup>24</sup>For a discussion of the problem-solving court movement, see: *Good Courts: The Case for Problem-Solving Justice*, by Greg Berman and John Feinblatt (2005).

<sup>25</sup>Mark A.R.Kleiman, *When Brute Force Fails* (Princeton, NJ: Princeton University Press, 2009)

<sup>26</sup>Jeremy Travis, *Reflections on the Reentry Movement* (Federal Sentencing Reporter, 20, no. 2, 1-4, 2007).

require us to reconsider our approach to sentencing, to become less rigid and less punitive. Finally, these problem-solving approaches show us how to engage more effectively the forces of informal social control -- such as family, positive peer pressure, and community supports -- so we can rely less on the forces of formal social control, such as arrest, prosecution and prison. In the future, if the science continues to support these interventions, and we are passionate about applying these lessons, the criminal justice system, as a mechanical assembly line, may be a relic of our past.

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

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

We should quickly acknowledge that the era of prison growth in America might have ended. For the last three years, the prison population actually declined.<sup>35</sup> In some states prison populations have actually declined substantially, led by California, Michigan, and New York, which have seen

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<sup>27</sup>Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Incarceration rate 1980-2009* (retrieved from the World Wide Web on October 7, 2011: <http://bjs.ojp.usdoj.gov/content/glance/tables/incrttab.cfm>).

<sup>28</sup>The Pew Charitable Trust Center, *1 in 100: Behind Bars in America 2008*. (Retrieved from the World Wide Web on October 7, 2011: [http://www.pewcenteronthestates.org/uploadedFiles/8015PCTS\\_Prison08\\_FINAL\\_2-1-1\\_FORWEB.pdf](http://www.pewcenteronthestates.org/uploadedFiles/8015PCTS_Prison08_FINAL_2-1-1_FORWEB.pdf)).

<sup>29</sup>Thomas P. Bonczar, Allen J. Beck, *Prevalence of Imprisonment in the U.S. Population, 1974-2001*. Washington DC: U.S. Department of Justice; Office of Justice Programs; Bureau of Justice Statistics Special Report, 2003).

<sup>30</sup>Ashley Nellis, Ryan S. King, *No Exit: The Expanding Use of Life Sentences in America* (The Sentencing Project, 2009, retrieved from the World Wide Web on October 7, 2011: [http://www.sentencingproject.org/doc/publications/publications/inc\\_noexitseptember2009.pdf](http://www.sentencingproject.org/doc/publications/publications/inc_noexitseptember2009.pdf)).

<sup>31</sup>Robert Weisberg, Debbie A. Mukamal and Jordan D. Segall, *Life in Limbo: An Examination of Parole Release for Prisoners Serving Life Sentences with the Possibility of Parole in California* (Stanford Law Criminal Justice Center, retrieved from the World Wide Web on October 7, 2011: [http://blogs.law.stanford.edu/newsfeed/files/2011/09/SCJC\\_report\\_Parole\\_Release\\_for\\_Lifers.pdf](http://blogs.law.stanford.edu/newsfeed/files/2011/09/SCJC_report_Parole_Release_for_Lifers.pdf)).

<sup>32</sup>The Pew Charitable Trust Center, 2008.

<sup>33</sup>Amanda Petteruti, Nastassia Walsh, Tracy Velázquez, *Pruning Prisons: How Cutting Corrections Can Save Money and Protect Public Safety* (Justice Policy Institute, May 2009, retrieved from the World Wide Web on October 7, 2011: [http://www.justicepolicy.org/images/upload/09\\_05\\_REP\\_PruningPrisons\\_AC\\_PS.pdf](http://www.justicepolicy.org/images/upload/09_05_REP_PruningPrisons_AC_PS.pdf)).

<sup>34</sup>The National Reentry Resource Center, Reentry Facts (Retrieved from the world wide web on October 7, 2011: [http://www.nationalreentryresourcecenter.org/facts#foot\\_3](http://www.nationalreentryresourcecenter.org/facts#foot_3)).

<sup>35</sup>The Pew Center on the States, *Prison Count 2010: State Population Declines for the First Time in 38 Years* (The Pew Research Center, retrieved from the world wide web on October 7, 2011: [http://www.pewtrusts.org/uploadedFiles/Prison\\_Count\\_2010.pdf](http://www.pewtrusts.org/uploadedFiles/Prison_Count_2010.pdf)).

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

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

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

Turning around this quarter century experiment will take enormous help from our superheroes. We need strong science to show the impact of imprisonment on the people held in prisons, their families and the communities they left behind. We need strong science to demonstrate the effectiveness of alternatives to incarceration, in-prison programs, reentry initiatives, and new approaches to community supervision.

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

Of the five challenges I have offered this morning, this is the toughest. I would suggest that we start with a clean slate, asking the deepest philosophical and jurisprudential questions. Why should anyone be sent to prison? Under what circumstances is the state authorized to deprive someone of their liberty? How long is long enough? If we had fewer prisons, how could the

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<sup>36</sup>Ibid.

<sup>37</sup>Jeffrey A. Butts, Douglas N. Evans, *Resolution, Reinvestment, and Realignment: Three Strategies for Changing Juvenile Justice* (John Jay College of Criminal Justice Research and Evaluation Center, September 2011).

money saved be better invested -- to help victims recover, provide alternatives to incarceration, to fund the tougher work of solving the problems that give rise to crime? Our biggest challenge will require our greatest feat of imagination. It will require the very best of our two superheroes, science and passion. It will require deep and sustained political work to persuade our elected officials that we need to reverse course and abandon our over-reliance on prison as a response to crime.

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

Thank you.

