A NATION OF LIARS

*Mortgage fraud, ordinary people and the Great Recession*

A “flipped” home. All the lender saw is the front view. (FBI photo)

*By Julius (Jay) Wachtel.* Four to six billion dollars. That’s what mortgage fraud costs the U.S. each year. And it’s not just our pockets that are getting picked. Effects from America’s financial meltdown have rippled around the world, spreading pain at the speed of the Internet and turning the Great Recession into a global event.

*An analysis* of suspicious mortgage-related activities during 2008 revealed that 65 percent of suspected home purchase fraud and 54 percent of suspected refinance fraud was “for housing,” meaning that borrowers intended to live in the home and keep payments current. Purchasers actively furthered the fraud in 87 percent of these cases, usually by misrepresenting their income and liabilities and offering false documentation. *Stated income loans* made fudging easy. More popularly called liar’s loans, they carried high (subprime) rates but didn’t require proof of income.

Mortgage industry workers can increase their sales volume, thus their income by inflating the creditworthiness of marginal borrowers. It’s estimated that 63 percent of suspected “for housing” schemes involved brokers, and 23 percent appraisers. Indeed, when the market was hot financial firms pressed employees to make as many loans as possible. *A State’s attorney* who investigated the Ameriquest scandal put it succinctly: “The culture was to sell, sell, sell and do whatever it takes to sell, sell, sell.” A person who identified himself as a loan underwriter (verifies that loans conform to policy) posted this revealing comment on an Internet bulletin board:

Now...the initial [loan] application...was submitted [by the loan officer] as [an] unsigned telephone interview so that the gory REAL details of the borrower's data could be swept under the rug and compel the underwriter to approve the loan....I am an underwriter and caught this numerous times to the dismay of my
employers who wanted every loan approved. I was not their favorite underwriter...I caught on to the malfeasance...not appreciated. Did this happen on a regular basis, you betcha...every day.

We’ll get to why lenders would carelessly dole out cash in a moment. For now let’s turn to the other kind of mortgage fraud, “for profit.” There are many varieties (for an overview click here and go to page 13.) “Flipping,” the repetitive purchase and resale of a home by corrupt investors, is very popular. It often begins with a homeowner desperate to sell. Fraudsters inflate the home’s value with an exaggerated appraisal (see photo above), then get the seller to kick back the difference between the loan and the secretly agreed-to purchase price. They then put the property through a series of sham resales to straw buyers, at each step profiting from the income generated by ever-larger appraisals. Eventually the property is abandoned to foreclosure or sold to an unsuspecting mark. (Click here for a recent example.)

 Builders are often involved in scams. With a purchaser’s assent they may inflate the selling price and apply the excess loan amount as a pretend down payment, thus creating the illusion that the borrower has equity. Many buyers consider this a quasi-legitimate way to acquire a home with no money down. Of course, if they default the lender quickly discovers that a good chunk of the home’s “value” has vaporized.

Reports filed with the Treasury Department suggest that in 2008 sixty-one percent of “for profit” schemes involved buyer cooperation. Their participation was second only to brokers (62 percent) and far more frequent than appraisers (23 percent).

When real estate was hot the mortgage industry was more than happy to qualify the unqualified and look the other way as shady brokers and appraisers helped boost the paper value of already overpriced property. In an overheated, go-go atmosphere where home prices rose before lunch, few objected.

It’s not that the Feds didn’t know what was going on. As early as 2004 the FBI’s top criminal investigator warned that mortgage fraud “has the potential to be an epidemic.” One year later FBI’s Mortgage Fraud Report pointed out that “combating significant fraud in this area is a priority, because mortgage lending and the housing market have a significant overall effect on the nation's economy.”

And it’s not that they lacked legal tools. Mortgage applicants complete a standard form that warns false statements are crimes. Thanks to the interstate commerce clause and the government’s insuring of financial institutions and backing of loans, virtually every shady move is a violation of Federal law. Among the applicable statutes are 18 USC 1341, mail fraud; 18 USC 1343, wire fraud; and 18 USC 1014, false statements
in loans and credit applications (click here for an example of a charging document in a Federal prosecution.)

Yet as the real-estate bubble grew the number of investigators overseeing the loan industry fell sharply. In the wake of 9/11 the FBI reassigned 2,400 agents from criminal duties to chasing Al Qaeda; by 2007, as the bubble was set to pop, a mere 100 agents were working mortgage fraud. As a retired supervisor said, “we knew that the mortgage-brokerage industry was corrupt....But the agents with the expertise had been diverted to counterterrorism.”

Once the nation started slipping into recession the FBI had second thoughts. Many agents were brought back to fight white-collar crime. Their return was welcome. Naturally, much of the damage was already done.

Really, mortgage shenanigans were the worst-kept secret in the financial industry. Why did lenders encourage unqualified borrowers to sign on the dotted line? Why didn’t they challenge exaggerated appraisals? Because when times were good churning out loans regardless of quality paid rich dividends. Risk was passed along. Mortgages – including the many stinkers – were sold by smaller lenders to the larger, then bundled by the latter into securities that were peddled throughout the world. As long as homeowners paid their debts, investors got their dividends. If a few borrowers defaulted it hardly mattered.

Except that when the bubble burst the cash stopped flowing, fast. Firms that had purchased highly-rated mortgage-backed securities (yes, the ratings agencies were in on it too) turned on the Wall Street firms that got them into the fix. In the end Uncle Sam decided that some financial houses were “too big to fail” and propped them up with taxpayer cash. Soon the big fish were again making money hand over fist and vacationing in the Hamptons. (Click here for an entertaining slide show that tracks the mortgage debacle.)

Dreams of home ownership and, yes, profit led many upwardly mobile members of the middle class to take out subprime loans and buy homes that were well beyond their means. Encouraged by brokers and loan officers, ordinary individuals gambled that rising prices would give them enough equity to refinance before teaser rates expired. Holding their noses, they exaggerated their income, minimized their liabilities and dove in. Then the economy collapsed, taking home values with it. Unemployment soared. But like ticking time-bombs the mortgages were still there, their interest rates resetting to stratospheric highs. Without equity getting a new loan was impossible. Jobless or underemployed, owing far more than their properties were worth, millions walked away or were driven from their homes. Once-manicured neighborhoods fell to blight, becoming breeding grounds for crime and disorder.
There’s plenty of blame to go around. By all means, point the finger at greedy lenders who peddled loans for which a schnauzer could have qualified. Lock up the crooks who took advantage of the wild-west atmosphere to line their pockets. Go after the financial giants who ignored warning signs and recklessly marketed mortgage-based securities for the sake of a buck. But don’t forget that it couldn’t have happened without help from the many borrowers who decided that the time was ripe to get theirs, and that if all it took was a few white lies and a little bit of imagination, why that was perfectly acceptable.

After all, things could only go up!
A TALE OF THREE CITIES

Declines in manufacturing are associated with crime

By Julius (Jay) Wachtel. “The drug economy is the economy.” So said New Jersey prosecutor Joshua Ottenberg as he bemoaned the sad state of affairs in Camden, where stretches of its once-thriving downtown resemble the hollowed, bombed-out cities of World War II. Bucking a national trend of decreasing violence, with America’s three leading metropolitan areas, New York, Chicago and Los Angeles enjoying record-low homicide rates, the city of less than 80,000 suffered forty-five murders in 2007, thirteen more than in the previous year. (If anyone’s counting, that’s a forty-one percent increase.) The surge came despite a declining population. Census figures reveal that between 1990-2006, Camden lost nearly nine percent of its residents, while a stunning thirty-six percent -- more than one-third -- lived below the poverty level.

It’s a similar story in Baltimore, where murders soared from 133 in 2006 to 155 in 2007, a gain of seventeen percent. Ohio’s capital has also lost residents in less dramatic ways. Between 1990-2006 it endured a 14 percent population decline. Nearly twenty percent of its citizens live under the poverty level.

What about Philadelphia? Glad you asked. In the city made famous by cream cheese, murders rose from 185 to 203, a gain of “only” ten percent. Between 1990-2006 its population dropped nearly nine percent, with a full twenty-five percent living below poverty level.

There seem to be as many explanations for the causes of crime as there are those studying it. Much of the attention has been focused on poverty and its correlates, including broken families, lousy public education, weak social and familial controls, deviant subcultures and the ready availability of guns and drugs. While most poor people are law-abiding, if poverty is a critical antecedent of crime and violence it seems reasonable to look for ways to increase income.

But it’s awfully hard to do it when the only jobs available are at McDonald’s. Good-paying manufacturing jobs, the one-time universal entrée to the middle class, have been disappearing at a rapid clip: more than 18 percent were lost between 2001-2007, a span of only six years.
Total number of U.S. manufacturing employees -- all company sizes

America’s industrial belt took the biggest hit. Nine of the twelve States suffering a decline in manufacturing positions between 1992 and 1997 were in the Northeast. Among these were New Jersey (9.7 percent lost), Maryland (3.4 percent lost) and Pennsylvania (.8 percent lost). Note that statewide figures may significantly understate losses in hard-hit urban areas. During the four decades ending in 1990 Baltimore lost a whopping sixty-six percent of manufacturing jobs; Philadelphia, seventy percent, drops that according to Fannie Mae clearly “contributed to the cycle of decline in inner-city neighborhoods.” Recent figures reveal that the crisis continues. As recently as 2007 manufacturing employment in the Northeast had the highest average monthly drop (.3 percent) and yearly drop (2.0 percent) of U.S. regions.

Can a shortage of decent-paying jobs be blamed for inner-city violence? When reporters asked Camden’s police chief what could be done to curb his city’s abysmal homicide rate he answered, “it would be great to get a manufacturing plant.” He might be on to something. A recent study concluded that the industrial shift that stripped manufacturing jobs from America’s inner cities significantly increased the homicide rate of black males (“Industrial Shift, Polarized Labor Markets and Urban Violence,” Criminology, August 2004).

How do we defeat poverty? The fix isn’t in more McJobs. Neither is it to improve academically-oriented education, as worthy as that goal may be for other reasons. We desperately need to create good-paying work for the majority of the male population that isn’t -- and never will be -- interested in math, science and social studies, no matter how many Jaime Escalantes we throw at them. One step might be to immerse secondary-school students who eschew academics in intensive vocational programs.
Another might be to create incentives for keeping manufacturing at home -- or disincentives for sending it overseas.

A country that helped rebuild Europe after the war has no excuse for not instituting a Marshall Plan to pull its own beleaguered cities from what threatens to become an irreversible decline. If we don’t stop bleeding jobs, our young men will keep bleeding buckets.

Count on it.
AN ILLUSION OF CONTROL

Can dangerous out-of-State parolees be adequately supervised?

Where once stood a young (16) year old misguided fool, who's (sic) own life he was unable to rule. Now stands a 27 year old man, who has learned through 'the school of hard knocks' to appreciate and respect the rights of others. And who has in the midst of the harsh reality of prison life developed the necessary skills to stand along (sic) and not follow a multitude to do evil, as I did as a 16 year old child.

By Julius (Jay) Wachtel. Maurice Clemmons was eleven years into a ninety-five year sentence for armed robbery, burglary and other crimes when his words stirred former Arkansas Governor and one-time Presidential candidate Mike Huckabee to grant him clemency. Convicted when only seventeen, Clemmons was paroled against the advice of prosecutors who feared that the explosively violent youth was still dangerous. “Mr. Huckabee made him parole-eligible twenty-one years before he would have been,” Larry Jegley, the current D.A. said in a recent interview. “Otherwise, he'd [still] be cooling his heels in the Department of Corrections.” Clemmons certainly wouldn’t have been in position to murder four Lakewood (Wash.) police officers last week. But he was, and he did.

It took less than a year for Clemmons to break his promise to the Governor. In July 2001 the supposedly reformed man landed back in prison for robbery. He wound up doing three years for parole violation, while the robbery charge was dismissed because of an administrative blunder. Clemmons was released in 2004 and his supervision was transferred to the State of Washington.
Shortly before relocating Clemmons reportedly robbed a man at gunpoint but wasn’t charged because the victim stopped cooperating with police. His criminal ways continued. In 2005 the Feds linked Clemmons, then living in Tacoma, to an interstate drug trafficking ring. He then apparently took up armed robbery; a composite drawing bearing an uncanny resemblance makes him a prime suspect in a string of holdups between April 2008 and April 2009. But in May 2009 his luck ran out. Arrested on a variety of charges ranging from punching a Sheriff’s deputy to raping a 12-year old relative, he faced a third strike. Arkansas promptly issued a no-bail warrant. It seemed that the incorrigible offender’s get-out-of-jail-free card was finally revoked.

Clemmons was detained for a mental evaluation. Despite outbursts, threats to kill jail workers and self-reported hallucinatory episodes about “people drinking blood and people eating babies, and lawless on the streets, like people were canibals” a judge ultimately declared him competent to stand trial and set bail at $190,000. On November 24, 2009 Clemmons and his friends forked over a tidy ten percent to a bail agent and he was let go. He would kill the officers five days later.

What about the parole warrant? Despite Washington’s protests, Arkansas dropped the no-bail provision. They later explained their decision (which saved them having to pay for their ward’s return) as being motivated, in part, by the fact that Washington seemed so blasé about Clemmons that it had him on unsupervised status before his arrest.

To find another parole transfer that went horribly wrong we need look no further than Phillip Garrido. In 1977 Garrido drew a 50-year Federal term for kidnapping and a concurrent five years to life in Nevada for rape. Twenty-two years later, after serving eleven years in Federal and Nevada prisons and another eleven on Federal parole, his supervision was transferred to Nevada. A few months later, in June 1999, it was transferred to California.

What authorities didn’t know was that Garrido had kidnapped an eleven-year old girl eight years earlier and, helped by his wife, was holding the teen and the two daughters he fathered
with her as captives. And that’s where things were in August 2009 when a suspicious cop who saw Garrido with the children ran his name and discovered he was a registered sex offender. Parole agents detained Garrido, then released him with instructions to return the next day. Amazingly he did so, bringing along his wife, the kidnap victim and the two kids. Both women lied their heads off – the kidnap victim said she was an abused wife on the run – and had it not been for the intercession of a local officer who got Garrido to admit the truth the fiend would still likely be free.

How is it that a registered sex offender who kept a young woman and two children penned up in a shack could avoid being caught for a decade? A recent State investigative report suggests that California had little interest in the man. Only five months after his arrival agents began trying to get Nevada to release him from supervision. Ignoring the many red flags in his thick Federal parole file, they inexplicably construed Garrido’s most serious offense (kidnapping) as “non-sexual.” Categorized as a low-risk offender, Garrido was only visited once to three times per year, a clear violation of even the most permissive rules. Even in 2008, when Garrido’s status was upgraded and he was fitted with a GPS, a lack of concern persisted, and alerts about his unauthorized wanderings and the device being repeatedly turned off were ignored.

Disinterest in Garrido was evident on the few occasions when agents actually visited. Not only did they miss the utility wires that ran to the shed where the kidnapped teen and the children lived, but when they encountered one of the kids in the house they took Garrido’s word that she was his brother’s daughter. Had agents checked with neighbors they would have learned that one had spoken with the kidnap victim through the fence. Had they bothered to compare notes with local police they would have discovered that an officer was called to the residence in 2006 by a neighbor who said that Garrido was a sex addict and had children living in tents in his backyard.

But they didn’t.

It’s impossible to draw conclusions from a sample of two. Still, considering how poorly these indisputably serious offenders were “supervised” one can’t help but be skeptical of parole oversight in general and of out-of-State offenders in particular. A 1998 study of the compact governing interstate parole faulted receiving and sending States, the former for being slow to report misconduct and the latter for their reluctance in retaking violators. One frustrated manager complained that savvy offenders took advantage of the situation, “[making] supervision a waste of time and a mockery to the criminal justice system as a whole.” Serious problems were reported
for high-risk parolees and particularly sex offenders, for whom special transfer policies and controls did not exist.

To address these and other issues a new Interstate Compact was put into place in 2000. Did things change for the better? A 2008 “compliance issues survey” lists “failure to retake an offender” as agents’ third most frequent complaint.

For lovers distance might make the heart grow fonder, but in the criminal justice system it mostly breeds contempt. Parole agencies are primarily concerned with their own clients, who after all constitute their funding base. Legal differences between jurisdictions and uncooperative judges can make it difficult to keep problematic out-of-State parolees locked up long enough to sort out the means of their return. Even agents who want to do the right thing are hampered by information gaps and the pressures of everyday business. Really, in times of diminishing resources transferring supervision of dangerous offenders to distant jurisdictions with different laws, procedures and priorities flies in the face of reason. It’s just another recipe for disaster.
BE CAREFUL WHAT YOU BRAG ABOUT (PART I)

_Is the Big Apple’s extended crime drop all it seems to be?_

_by Julius (Jay) Wachtel_. Remember the “Great Crime Drop” of the nineties? _Observers trace its origin_ to the end of a decade-long crack epidemic that burdened America’s poverty-stricken inner cities with unprecedented levels of violence. Once the crack wars subsided the gunplay and body count eased. But the news didn’t remain positive everywhere. In “Location, Location, Location” we identified a number of less-prosperous burgs (e.g., Chicago, St. Louis, Baltimore, Detroit, Newark, Cleveland and Oakland) that have experienced recent increases in violence. _Murder in Chicago_, for example, soared from 422 to 771 between 2013-2016 (it backed off a bit last year, but only to 650.)

In some lucky places, though, the crime drop continued. Few have crowed about it as much as _New York City_, which happily reports that its streets keep getting safer even as _lawsuits and Federal intervention_ have forced cops to curtail the use of aggressive crime-fighting strategies such as stop-and-frisk.

Indeed, _New York City’s numbers_ look very good. As the above graph shows, its 2016 murder rate of 5.7 per 100,000 pop. was the lowest of America’s five largest cities and
just a tick above the U.S. composite rate of 5.3. (Los Angeles was in second place at 7.3. Then came Houston, at 12.9 and Philadelphia, at 18.1. Chicago, with a deplorable 765 murders, brought up the end at 28.1.) Even better, it’s not only killings that are down in the Big Apple: *every* major crime category has been on a downtrend, reaching levels substantially lower – some far lower – than at the turn of the century:

<table>
<thead>
<tr>
<th>MAJOR CRIME IN NEW YORK CITY</th>
<th>2000</th>
<th>rate/100K</th>
<th>2016</th>
<th>rate/100K</th>
<th>% Chg</th>
</tr>
</thead>
<tbody>
<tr>
<td>MURDER &amp; NON-NEGL. MANSLAUGHT.</td>
<td>673</td>
<td>8.4</td>
<td>335</td>
<td>3.9</td>
<td>-53</td>
</tr>
<tr>
<td>RAPE</td>
<td>2068</td>
<td>25.8</td>
<td>1438</td>
<td>16.8</td>
<td>-35</td>
</tr>
<tr>
<td>ROBBERY</td>
<td>32562</td>
<td>406.6</td>
<td>15500</td>
<td>181.5</td>
<td>-55</td>
</tr>
<tr>
<td>FELONY ASSAULT</td>
<td>25924</td>
<td>323.7</td>
<td>20847</td>
<td>244.2</td>
<td>-25</td>
</tr>
<tr>
<td>BURGLARY</td>
<td>38352</td>
<td>478.9</td>
<td>12990</td>
<td>152.1</td>
<td>-68</td>
</tr>
<tr>
<td>GRAND LARCENY</td>
<td>49631</td>
<td>619.7</td>
<td>44279</td>
<td>518.6</td>
<td>-16</td>
</tr>
<tr>
<td>GRAND LARCENY MOTOR VEH.</td>
<td>35442</td>
<td>442.6</td>
<td>6327</td>
<td>74.1</td>
<td>-83</td>
</tr>
<tr>
<td>TOTAL SEVEN</td>
<td>184652</td>
<td>2305.8</td>
<td>101716</td>
<td>1191.4</td>
<td>-48</td>
</tr>
</tbody>
</table>

Year 2016 precinct crime rates were computed using population estimates on the NYPD precinct map. Year 2000 crime rates were computed by adjusting for estimated population changes in each Borough. For population data sources click [here](#) and [here](#).

What’s responsible for the persistent progress? New York City’s freshly-reelected Mayor and his police commissioner credit innovative law enforcement strategies and improved community relations. But in a recent interview, Franklin Zimring, whose 2011 book “The City That Became Safe” praised NYPD for reducing crime, called the reasons for its continued decline “utterly mysterious.”

Causes aside, when it comes to measuring crime, complications abound. Even “winners” may not be all that they seem. As we discussed in “Cooking the Books” and “Liars Figure,” lots of agencies – yes, including NYPD – managed to look good, or better than they should, by creating crime drops with tricks such as downgrading aggravated assaults (which appear in yearly FBI statistics) to simple assaults (which don’t). That problem has apparently not gone away.
This graph uses the NYPD’s own data to display 2000-2016 felony assault trends in three highly crime-impacted precincts, the 40th., 41st. and 42nd., all in the Bronx. Just look at that pronounced “U” curve. Soon after cops outed NYPD for fudging stat’s (that happened in 2010) each precinct’s trends reversed. But the 41st.’s return to presumably more accurate reporting was only brief. Between 2013 and 2014 felony assaults in “Fort Apache” plunged from 732 to 353, an inexplicable one-year drop of fifty-two percent. And the good news kept coming, with 347 felony assaults in 2015, 293 in 2016 and a measly 265 in 2017.

There is plenty of reason to be wary of NYPD’s numbers. Still, assuming that the 41st.’s recent shenanigans are unusual – we couldn’t find another example nearly as extreme – the city’s post-2000 gains against crime seem compelling. But assuming that they’re (mostly) true, how have they been distributed? Has every citizen of the Big Apple been a winner? Let the quest begin!

NYPD has seventy-six precincts. Our main data source was NYPD’s 2000-2016 online crime report. (We excluded precincts #14, Times Square and #22, Central Park, for methodological reasons, and #41 because its recent numbers seem untrustworthy.) We also coded each precinct for its official poverty rate by overlaying the city’s 2011-2015 poverty map on NYPD’s precinct map. (For how NYC measures poverty click here.)

We’ll start with the total major crime category, which combines the seven major offenses. Its 2016 rate per 100,000 pop. ranged from 3.1 (123rd. pct.) to 45.6 (18th. pct., Broadway/show district.) Comparing the means for total major crime of the ten lowest-rate districts (6.25) with the means of the ten highest-rate districts (24.13) yields a
statistically significant difference ($t$=-7.36, sig .000). So these groups’ total major crime levels are different. But their proportion of residents living in poverty is not substantially dissimilar. Actually, the raw results were opposite to what one might expect: the mean poverty rate was higher in the low major crime than the high major crime precincts (19.3 & 15.9, difference statistically non-significant.)

Similar results were obtained when comparing the 2000-2016 change in the major crime rate of the ten most improved precincts (mean reduction, 62.05%) with the ten least improved precincts (mean reduction, 14.69%). While the magnitude of these groups’ crime decline was significantly different ($t$=14.37, sig .000), the difference between the proportion of their residents who lived in poverty was slight and statistically non-significant (poverty mean for most improved, 19.28 pct.; for least improved, 21.31 pct.)

We then (by this point, somewhat unsteadily) ran the numbers the other way, comparing total major crime and its improvement over time between the ten high and ten low poverty precincts. Our central finding didn’t change: poverty wasn’t a significant factor. With all seventy-three precincts in the mix we also tested for relationships between total major crime rate and poverty, and between 2000-2016 changes in the major crime rate and poverty, using the $r$ coefficient. Again, neither total major crime nor its change over time seemed significantly related to poverty.

So poverty doesn’t matter? New Yorkers are equally likely to benefit from the crime drop – or not – regardless of their place on the pecking order? As it turns out, not exactly. But that’s enough for now. We’ll deliver “the rest of the story” in Part II!
BE CAREFUL WHAT YOU BRAG ABOUT (PART II)

Citywide crime statistics are ripe for misuse

By Julius (Jay) Wachtel. Part I ended on a perhaps surprising note. Poverty and crime may be deeply interconnected, but our analysis of New York City crime data revealed that neither the city’s 2016 total major crime rate nor its change since 2000 were significantly related to the proportion of residents living in poverty.

NYPD tracks seven categories of major crime: murder, rape, robbery, felony assault, grand larceny, and grand larceny of motor vehicle. Their sum yields an eight measure, “total major crime.” (See table in Part I, below. NYPD reports yearly frequencies and percentage changes. Instead of raw numbers we used population data to generate rates per 100,000 residents.)

When total major crime didn’t yield the anticipated results we turned to one of its components, felony assault. Its 2016 rate per 100,000 pop. ranged from 0.5 (112th. and 123rd. precincts) to 8.1 (40th. pct.) (Precincts 14, 22 and 41 were excluded from analysis. See Part I). As expected, the mean rates of the ten lowest-felony assault rate districts (0.7) and the ten highest-rate districts (5.8) were significantly different (t=-4.9, p <.001). They also differed markedly as to poverty. That difference was in the expected direction: persons living in poverty comprise 15.8 percent of the population in low felony assault districts and 26 percent in the high rate districts (t=-3.7, p <.002, statistically significant).

Correlation analysis was used to test the aggregate relationship between felony assault and poverty for all 73 precincts in this study. That revealed a statistically significant relationship in the “positive” direction, meaning that poverty and felony assault increased and decreased in unison (r=.54, p <.000). Here’s the graph (each precinct is a dot):
Statistically significant findings were also produced when we tested the relationships between poverty and the remaining violent crimes: robbery ($r=.53, p < .000$), rape ($r=.46, p < .000$) and murder ($r=.48, p < .000$). Poverty and all forms of violent crime went up and down together. There was also a significant positive relationship, of slightly lesser magnitude, between poverty and grand larceny of a motor vehicle ($r=.31, p < .007$; see comment below). In contrast, ordinary grand larceny (not of a vehicle) had a “negative” relationship with poverty: as one increased, the other decreased ($r=-.43, p < .000$, statistically significant). Here’s that graph:
We concluded that this was the reason why there was no observable relationship between total major crime and poverty. In New York, larceny of the “grand” kind requires a loss exceeding $1,000. These are presumably more common in affluent areas. As by far the most common form of serious crime, grand larceny’s strong negative relationship with poverty apparently countered the influence of the other factors. (Incidentally, the positive relationship between grand theft of a motor vehicle and poverty is likely caused by the fact that in New York, the theft of any vehicle valued at $100 or more – that’s two zeroes – is “grand.”)

Clearly, aggregate measures such as total major crime should be used with great caution. Fine. So, just how were the benefits of New York City’s crime drop distributed? Let’s compare crime rates for the ten poorest and ten most well-off precincts at two points in time: 2000 and 2016. (Precincts #14 and #22 were excluded for methodological reasons, and #41 for trustworthiness. See Part I.) We’ll begin with felony assault:
These graphs dramatically depict income’s differential effects. In 2016 the mean felony assault rate in the high-poverty precincts was nearly three times that of their well-off counterparts (474.5 v. 162.4, t=4.3, p < .001, a statistically significant difference.) Note that in both sets of precincts, scores clustered in observable groups. Felony assault rates in all but one of the low-poverty precincts topped out at 235.5. Add nearly two-hundred points to that and you’ll reach the lowest score (425.7) in a group of eight high-poverty precincts.

Poverty-stricken precincts had more lousy news. Excluding the besieged 40th., where the felony assault rate increased 15.8 percent between 2000-2016, its group’s mean decrease of 19.2 percent was less than half the 41.4 percent decrease enjoyed by the low-poverty group. That old saw about “the rich getting richer” seems to apply to felony assaults in the Big Apple.

Let’s look at the graphs for robbery:
In 2016 the mean robbery rate of the high-poverty precincts was slightly more than twice that of their low-poverty counterparts (333.4 v. 154.1, $t=3.5$, $p < .003$, difference statistically significant.) Except for the 18th. (rate=301.5) low-poverty precincts clustered at the lower end of the scale, topping out with the 9th.’s 198.8. One-hundred points later we encounter the trailing edge of a loose group of eight high-poverty precincts, with rates ranging from the 52nd.’s 325.9 to the 40th.’s skyscraper-worthy 580.3.
Between 2000-2016 robbery rates declined 66.9 percent overall in low-poverty precincts and 44.5 percent in the high-poverty group. While both trends seem substantial, so was their difference ($t=-4.2$, $p < .001$, statistically significant). Rates were also distinctly dispersed: narrowly within low poverty (range 53.8 to 77.6 percent) and broadly within high poverty (19.9 to 66.8 percent.) Why this difference between differences we don’t know, but such volatility inevitably reminds us of tendencies at NYPD and elsewhere to fudge the numbers (see Part I).

And then we arrive at murder. This time we’ll begin with the high-poverty precincts:

Let’s skip rates and talk actual counts. In 2016 the range for the high-poverty group was from one murder in the 66th. to twenty-three in the 75th. These two precincts also had the extreme scores in 2000, when there were three killings in the 66th. and forty in the 75th. By 2016 murder receded in all high-poverty precincts but two, the 40th. and 73rd. In both killings ticked up a bit, going from thirteen to fourteen. Murders otherwise fell, most markedly in the 44th. (25-13), the 46th. (23-14), and especially, the 52nd., which plunged from twenty-five in 2000 to only three in 2016. (However, this precinct had twelve murders each in 2013 and 2015, so its numbers are volatile.)

We won’t sweat the details: for lots (but not all) poor New Yorkers, the murder news seems at least somewhat favorable. Now consider the horrors the wealthier set faced:
Six of the ten low-poverty precincts had zero murders (thus, zero rates) in 2016. Scores for the other four ranged from one killing in the 24th. to five in the 9th. Only two precincts, the 6th. and 78th., scored zero murders in 2000. Others ranged from one killing in the 18th. to four in the 76th. (note that a relatively low population of 43,643 lends its rate an inflated appearance.) Murders during the 2000-2016 period increased in only one low poverty precinct, the 9th., which went from three to four.

Glancing at the charts, does it seem that the rich get to ride up front, crime-wise, while the poor are consigned to the caboose? If so, that’s hardly unique to Gotham. Consider Los Angeles. In “Location, Location, Location” we mused about our hometown. Between 2002-2015 murders fell from 656 (rate=17.3 per 100,000) to 279 (rate=7.3), a stunning drop of fifty-seven percent. Now consider two of the dozens of communities that comprise the “City of Angels”: poverty-stricken Florence, pop. 49,001, and upscale Westwood, pop. 51,485. During 2002-2015 murder in Florence dropped from an appalling twenty-five killings (rate=51.0/100,000) to a merely deplorable eighteen (rate=36.7). Kind of like...New York City’s 44th.! Meanwhile murder in Westwood went up: from zero in 2002 to (yawn) one in 2015, a rate of 1.9. And that resembles...NYC’s 24th!

Back to New York. Our chart in Part I indicates that between 2000-2016 murders in Gotham fell from 673 (rate 8.4/100,000 pop.) to 335 (rate 3.9.) But let’s look within. In both the downtrodden 40th. (2016 pop. 79,762, poverty 28.2 percent) and the equally challenged 73rd. (pop. 86,468, poverty 28.6 pct.) killings ticked up from twelve to thirteen, yielding rates of 15.3 and 16.2, four times the citywide rate. Meanwhile, in the
affluent 18th. (pop. 54,066, poverty 10.3 pct.), murders declined from one to zero (rate of zero) while in the large and fabulously rich 19th. (pop. 208,259, poverty 7.1 pct.) they fell from three to two, generating a rate of, um, one.

That’s our “point.” New Yorks’ citywide poverty rate is 19.9 percent. As long as it has a sufficient proportion of well-off residents, it can use summary statistics to brag about “great crime drops” until the cows come home. Except that unlike citywide numbers, people aren’t composites. Can we assume that residents of the 40th. and 73rd. precincts feel – or truly are – as well served as those who live in the more fortunate 18th. and 19th.? What do poorer citizens think when they hear Mayor de Blasio boast that his administration has turned crime around? Are they as reassured about things as their wealthier cousins?

As we suggested in “Location,” it really is about neighborhoods. Aggregating seventy-six precincts because they’re located within a single political boundary, then acting as though the total truly reflects the sum of its parts, is intrinsically deceptive. Actually, when it comes to measuring crime and figuring out what to do about it, the 40th., the 73rd. and a host of other New York City precincts really aren’t in the Big Apple. They’re a part of that other America – you know, the one where the inhabitants of L.A.’s beleaguered Florence district also reside.


CAN YOU “ENFORCE” WITHOUT “FORCE”?

Decriminalizing illegal immigration would have serious consequences

For Police Issues by Julius (Jay) Wachtel. Given a belt-busting load of twenty candidates and only four hours air time, we didn’t expect that the Democratic debates of June 26 and 27 would dive into crime and justice in any depth. And for the most part we weren’t surprised. What’s more, the “arguments” that did take place seemed so fine-tuned to avoid offending ideological sensibilities – in this case, of the “blue” persuasion – that we were unsure whether the owners of those lips knew that should their quest prove successful they would be Constitutionally bound to faithfully execute the laws that already exist.

That takes us to immigration. (We’ll be referring to debate transcripts published by the New York Times. Click here for a transcript of the first debate and here for the second.) Title 8, U.S.C., Sec. 1325, “improper entry by alien,” makes it a crime to sneak in. First offenders can draw six months in prison, and repeaters can get two years. That’s essentially how the law has read since 1950, when its text used the terms “misdemeanor” and “felony” to distinguish between penalties.

In all, the debaters seemed opposed to treating illegal entry as a crime. During the first round, former H.U.D. Secretary Julián Castro advanced perhaps the most extreme view. First, he called for repealing section 1325 and making immigration a strictly civil matter. While that drew nearly unanimous approval – Senator Cory Booker, Newark’s former mayor, promptly interjected “I already have” – Castro cranked it up by explicitly calling for the Government to establish pathways to citizenship for potentially “millions” of otherwise law-abiding illegal immigrants already in the U.S. And as a back-handed concession to worry-warts, Castro also championed a new “Marshall plan” that would enable citizens of Central American countries to “find safety and opportunity” – meaning, of the economic kind – “at home instead of coming to the United States to seek it.”

That’s a bold approach, and not everyone was sold. Instead, most of his colleagues tried to navigate around cost and ideology by specifically tailoring their remarks to families escaping violence. Among them was former Representative Beto O’Rourke. Even then, he apparently felt compelled to address the expense of admitting immigrants fleeing “the deadliest countries on the face of the planet” by suggesting that potentially
impacted communities adopt his supposedly cost-effective “family case management” approach.

Of course, laying out a welcome mat has all kinds of consequences. When it became obvious that the debaters were avoiding a key issue, NBC moderator Savannah Guthrie stepped in. Here are brief extracts from her tangles with Senator Amy Klobuchar and Representative Tim Ryan:

GUTHRIE: He [Castro] wants to no longer have it be a crime to illegally cross the border. Do you support that? Do you think it should be a civil offense only? And if so, do you worry about potentially incentivizing people to come here?

KLOBUCHAR: Immigrants, they do not diminish America. They are in America and I am happy to look at his proposal but I do think you want to make sure that you have provisions in place that allow you to go after traffickers and allow you to go after people who are violating the law. What I really think we need to step back and talk about is the economic imperative here and that is that seventy of our Fortune five hundred companies are headed up by people that came from other countries....

GUTHRIE: Congressman Ryan, same question. Should it be a crime to illegally cross the border or should it be a civil offense only?

RYAN: Well I—I agree with Secretary Castro. I think there are other provisions in the law that will allow you to prosecute people for coming over here if they are dealing in drugs and other things. That is already established in the law. So there is no need to repeat it and I think it’s a bore it we are talking about this father who got killed with his daughter and the issues here....

Guthrie soon gave up trying to get a direct answer. On the next evening, NBC anchor Jose Diaz-Balart brought up decriminalization:

DIAZ-BALART: If—if you would be so kind raise your hand if you think it should be a civil offense rather than a crime to cross the border without documentation? Can we keep the hands up so we can see them?

According to the New York Times, eight candidates put up their hands, while a ninth, former V.P. Joe Biden, “raised a finger.” During follow-up questions, all, including Biden, focused on their humanitarian obligation to help families fleeing violence and disorder:
BIDEN: The first thing I would do is unite families. I would surge immediately billions of dollars’ worth of help to the region the immediately...second thing we have to do, the law now requires the reuniting of those families. We would reunite those families period and if not we would put those children in a circumstance where they were safe until we could find their parents....

Here’s a bit of what Senator Bernie Sanders had to say:

SANDERS: ...picking up on the point that Joe made, we got a look at the root causes. And you have a situation where Honduras, among other things, is a failing state, massive corruption. You got gangs who are telling families that if a 10-year-old does not join their gang, their family is going to be killed....

And here’s an extract from Representative Eric Swalwell’s reply:

SWALWELL: Day one for me, families are reunited. This president, though, for immigrants, there is nothing he will not do two separate a family, cage a child, or erase their existence by weaponizing the census. And there is nothing that we cannot do in the courts and that I will not do as president to reverse that and to make sure that families always belong together....

No one ventured into dangerous turf. And they really didn’t have to. Unlike his more probing colleague, Diaz-Balart didn’t probe the possible effects of creating incentives. Needless to say, none of the guests volunteered.

One might think that for those, like Border Patrol agents, who must personally deal with the problem, creating incentives that generate even more illegal crossings might be the last straw. But it gets worse. Much worse. Should illegal immigration be decriminalized the issue of incentives would take a back seat to a more fundamental concern. As every border agent – indeed, as all cops well know – physical force is an intrinsic aspect of catching those who run away. But your blogger, who’s been there a few times, knows of no legal or procedural precedent that authorizes forcefully detaining someone who is neither a criminal suspect nor dangerously mentally ill. Given current controversies, allowing, let alone encouraging the use of force when no crime has been committed and no one is at risk of physical harm seems a non-starter. Indeed, it would likely require a new body of law.

Bottom line: should section 1325 be repealed and illegal immigration ceases being a crime, all that Border Patrol agents will be able to do is beg for compliance. Well, good luck with that. Trump’s walls would have to go up. (Good luck with that, too.) There is one possible workaround. Section 1325 includes a provision that prohibits eluding
“examination or inspection by immigration officers.” If that aspect remains a crime, illegal entry might be compared to, say, traffic enforcement. Doing forty in a twenty-five mile an hour zone isn’t a criminal offense. But if you don’t stop for the cop, the running away is. (It’s not a perfect analogy, as the high speeds and dangerous maneuvers intrinsic to getting away are crimes. But it’s as close as we can get.)

And there’s yet another vexing issue. Even the staunchest anti-immigration types concede that most illegal immigrants aren’t criminals but are fleeing poverty and violence. Yet as we’ve pointed out, good intentions can’t always make up for a lack of income, skills and education:

Imprisonment data reveals that third-generation Hispanic males are more than twice as likely to be incarcerated as non-Hispanic whites. Why is that? Many illegal immigrants are unskilled, poorly educated and reside in poverty-stricken, crime-ridden areas. This might expose their descendants to role models and behaviors that the grandchildren of legal migrants can’t begin to imagine.

America’s crime-ridden inner cities offer a uniquely poor landing spot. Yet where else would the immigrants whom the panelists are so eager to welcome go? We might be more upbeat had our President followed through on his campaign promise to invest in and revitalize our poverty-stricken urban areas. But, gee, he didn’t. So until that “New Deal” really happens (we’re not holding our breath) encouraging immigrants to flee their own troubled neighborhoods to find relief in America seems at best a false promise, and at worst, foolish.

But don’t take that from your blogger. Take it from a long-retired Fed who got (legally) dragged from South America to the U.S. when he was ten. His name – which he’s sorry to have changed – was “Julio.” Oops, that’s me! Oh, well...
CARONA FIVE, FEDS ONE (BUT THE FEDS WON)

Convicted of corruption, Orange County’s ex-Sheriff breathes a sigh of relief

By Julius (Jay) Wachtel. Getting convicted of a felony is hardly a reason to rejoice. But after being tried for one count of conspiracy, three counts of mail fraud by depriving the public of the honest services of a public official, and two counts of witness tampering, charges that could have landed him in prison for decades, it’s easy to see why his acquittal nine days ago of everything but a single count of witness tampering left ex-Orange County Sheriff Mike Carona feeling “beyond vindicated.”

Carona was originally elected in 1998, then re-elected in 2002 and 2006. His travails date back to his first term, when he appointed two friends to top positions in the Sheriff’s Department. George Jaramillo, a lawyer and ex-Garden Grove cop (he left the department over a bitter personnel dispute) was installed as chief of operations, while Don Haidl, a wealthy businessman with no law enforcement background took charge of the reserves.

Jaramillo and Haidl would stumble badly. In 2004 Jaramillo was charged in State court for misusing deputies, patrol cars and a helicopter to promote a vehicle immobilizing device for a private firm. Incensed at Carona’s lack of support (the Sheriff promptly fired him) Jaramillo eventually pled no contest to felony conflict of interest and served six months. That same year Haidl’s son was charged in a gang rape. Carona again proved of little help. The boy was convicted and imprisoned and an embittered Haidl resigned.

The Feds seized on the opening. In March 2007 Haidl and Jaramillo were secretly indicted on tax charges, Haidl for not declaring business funds he spent on his son’s defense, and Jaramillo for failing to disclose cash and other gifts he got from Haidl. Seeking leniency, and perhaps revenge, they ratted on Carona, accusing him of selling his office by accepting cash and gifts from Haidl and doling out badges and gun permits to contributors. In October 2007 a Federal Grand Jury returned a multi-count indictment against Carona, his wife Deborah Carona and his mistress Debra Hoffman.

Carona’s trial took place first. It was extensively reported by the Orange County Register so we won’t go into all the details. Here what we’re most interested in is why it fizzled out. The single conviction, for witness tampering, stemmed from a meeting between Carona and Haidl, who was wired up and working as an FBI stoolie.
Although Carona knew that the Feds were sniffing around, he still felt close to his former confidant, and when Haidl displayed a fictitious Grand Jury subpoena and asked what to do Carona suggested being evasive. But try as he might, Haidl couldn’t get Carona to admit he accepted cash or did favors for money. As far as the Sheriff was concerned, whatever gifts he received, including the mechanically-challenged boat he got from Haidl were tokens of friendship. Unable to confirm that Carona acted corruptly -- the reason for the investigation in the first place -- Haidl got so frustrated that once they parted he muttered “it's like f***ing pulling teeth.” And yes, the hidden microphone was still on.

Interviewed after the trial, the jury foreman said that most jurors disbelieved Haidl because of his cooperation agreement with the Feds. Aside from Haidl’s uncorroborated statements there was no evidence that Carona sold his office, hence citizens weren’t “cheated” of anything. Things might have gone differently had Jaramillo testified about the cash bribes, most of which supposedly passed through him. As it was, Jaramillo was never called to testify, an absence that one juror said cost the Government dearly: “It would have been different if Jaramillo was there, and that was the consensus of the group.”

Not everything went smoothly in the jury room. Before the ink on the verdict form was dry two jurors were already complaining that they were browbeaten into voting for acquittals on the more serious counts. One said that it was only through his persistence that Carona was convicted at all. “I’m the one who did that one [charge]. I think it was a miracle. It was the only one that had an absolutely good, unadulterated tape where nobody could say something contrary.” But the transcript has no smoking gun. Carona never flat-out told Haidl to lie. What he did say, though, was so crudely put (among other things, he boasted about his affairs and sexual prowess) that Federal prosecutors probably charged him with obstruction just for the sake of bringing the tape into court.

Carona is liable to a ten-year penalty. If the conviction holds -- there’s concern that it might not, as there was no proceeding to “obstruct” -- it’s likely that the judge will make him serve at least a token term behind bars. As a convicted felon, Carona will also lose many of his civil rights. He himself admits that his reputation is toast. Yet while there’s relief that a man with such a weak moral compass is no longer Sheriff, his trial ended with a whimper. Sure, Carona’s election, and re-elections, were probably tainted with campaign-law violations (due to the five-year statute of limitations, much of the evidence was inadmissible.) And like Sheriffs elsewhere -- Los Angeles County, for example -- he gave a bunch of wealthy, unqualified civilians badges and gun permits. But jurors didn’t equate these shenanigans with being a crooked cop. As one juror half-seriously suggested, “they should have given us a list
of all the women he didn’t sleep with, it would have been shorter. But that doesn’t matter. Having an affair isn’t illegal.”

If nothing else, Carona’s trial illustrated the foibles of American jurisprudence. Here are four lessons to carry away:

- **Good lawyers are everything.** Carona is by no means wealthy, yet he enjoyed the services of two top-notch, big-bucks lawyers, both partners in the renowned firm of Jones Day. Not only that, but they worked for free! What might his chances have otherwise been? Hmm, can you spell p-l-e-a?

- **Throw enough dirt and something will stick.** Propping up a thin case with muck (and with a character like Carona, there was plenty of that to go around) is a time-tested lawyer’s trick. But when the Government tries to get a target to incriminate themselves after the fact by sending in a secretly indicted good buddy with a fake Federal subpoena, desperation begins to show. Not even your loyal blogger, who worked undercover on and off for years, ever did anything that slimy (or would fess up to it if he did.) Which brings up the question of how far the good guys should go. Prosecutors have a greater obligation than to convict. Should they be bound to no higher an ethical standard than the defense?

- **Jurors may only be finders of fact, but they tend to view their roles more broadly, as their community’s moral agents.** Extraneous factors such as a defendant’s character are always in play. Prosecutors knew that Carona’s dalliance with at least three women other than his wife would be looked on poorly. At the same time, the Government’s greasy investigative techniques probably did its own cause harm. Balancing the defendant’s nauseating conduct against the FBI’s, jurors might have settled on guilty to a single, lesser count as a compromise. It’s the kind of decision-making that one sees time and again. And it’s not necessarily a bad thing.

- **Electing Sheriffs is a terrible idea.** Politicians who supported Carona for election and re-election now argue that they didn’t know the man behind the badge. (Well, they did know that Carona lacked any law enforcement experience other than as County Marshal, where he oversaw security and process service for the courts.) That, as this blog has pointed out, is why Sheriffs should be selected like police chiefs, competitively and only after extensive vetting.

Since Carona resigned while in office the Board of Supervisors had to select someone to complete his term. After a nationwide search, detailed background checks
and multiple interviews they chose Sandra Hutchens, formerly a division chief with the Los Angeles County Sheriff’s Department. While the outcome didn’t please CCW permit holders (she promptly revoked dozens of concealed-carry licenses that Carona issued) the process assured citizens that the County’s new top cop would be a well-regarded law enforcement professional. Of course, she will soon have to run for office, once again injecting a political spin into a process that, as events conclusively proved, should be completely removed from politics.
DID GEORGIA EXECUTE AN INNOCENT MAN? (PART I)

Deconstructing the murder of a Savannah police officer, with no axe to grind

By Julius (Jay) Wachtel. During the early morning hours of August 19, 1989 Savannah police officer Mark MacPhail was in uniform working an off-duty security job at a Burger King when he came to the aid of a citizen who was reportedly being mugged. Officer MacPhail was shot and killed.

Two years ago, in “With Some Mistakes There’s No Going Back,” we concluded that Troy Davis, the man whom Georgia authorities executed three days ago, was more likely than not responsible. Our less-than-ringing endorsement reflected a verdict whose factual basis had been eroded by a string of post-conviction witness recantations, including accusations that the man who fingered Davis later confessed to being the shooter.

Davis’ voluble throng of supporters, led by Amnesty International and the ACLU, never expressed any doubts. ACLU called the execution “unconscionable and unconstitutional,” and not just because they oppose the death penalty, a position with which we happen to agree. Davis, they insist, was at the very least a victim of mistaken identification. He was an innocent man.

In our criminal justice system what really counts is what the courts think. And none counts more than the Supreme Court. By 2009 Davis had been turned away by the Georgia Supreme Court and the Eleventh Circuit. His final option was to apply directly to the Supreme Court for a Writ of Habeas Corpus. Normally the justices brush off such applications. But this case was all but “normal.” Facing formidable national and international pressures to insure that justice was done, the high court punted. In what two dissenting justices (predictably, Scalia and Thomas) called an “extraordinary” move, the Court accepted the petition and assigned a trial judge to “receive testimony and make findings of fact as to whether evidence that could not have been obtained at the time of the trial clearly establishes [Troy Davis’] innocence.” Observers said no such step had been taken in fifty years.

Unraveling the merits of the petition fell to United States District Judge William Moore, sitting in Savannah. Prosecutors and Davis’ lawyers presented their evidence on June 23 and 24, 2010. (Click here and here for news accounts.) Two months later the judge filed his opinion. It ran a startling 172 pages. (Click here for Part I, and here for Part II). Davis, the judge ruled, hadn’t come close to meeting his burden. Calling him “not innocent” and slamming much of his evidence as “smoke and mirrors,” Judge Moore effectively sealed the man’s fate. Thirteen months later Davis lay on a table, poison coursing through his veins.

How did the judge reach his damning conclusion? We’ll start by summarizing Judge Moore’s account of the state’s case as told in police reports, the preliminary hearing and trial.
The incident began in a pool hall and spilled over into a Burger King parking lot. There is general agreement that it began with an argument between Sylvester Coles and Larry Young in the pool hall, and that as they moved outside they were joined by two of Coles’ associates, Troy Davis and Darrell Collins. That’s where Davis allegedly struck Larry Young with a gun butt. Young ran off and his yelling drew the attention of officer MacPhail, who came to intervene.

Larry Young told police that he had bought beers for himself and his girlfriend. A man demanded one of the beers, and when he refused the man kept arguing and followed him outside. Young was then accosted by two other men. One struck him on the head with a gun butt. Young ran for help. Several days later police showed him photo arrays. Young couldn’t identify his assailant. But he tentatively identified Davis as the man who demanded the beer. Three weeks later, at Davis’ preliminary hearing, Young said that man was actually Sylvester Coles. Young said that he couldn’t identify the man who struck him, but that he was wearing a white shirt with printing, black pants and a white baseball cap.

Sylvester Coles and his lawyer went to the police one day after the murder. Coles told officers that he was the one who argued with Young, and that Davis struck Young with a small, black gun with a wood handle. Darrell Collins was present but not otherwise involved. Coles said that Davis ran off when a police officer showed up, and that the cop chased him. Coles then heard a gunshot, saw the officer on the ground and fled. Coles admitted that he had been carrying a chrome long-barreled revolver, but said he left it behind while playing pool. Coles gave essentially the same account at Davis’ preliminary hearing.

Darrell Collins told police that on the day preceding the murder he, Davis and a friend Eric Ellison were at a party when rival gang members shouted slurs from a passing car. Davis pulled a small black gun and fired once. That evening they drove to a gas station. On arrival Davis walked to an adjacent pool hall to see Coles. An argument broke out between Coles and another man, and as it moved outside Davis “slapped” the man on the head. Collins was on his way to join them when a police officer appeared, so Collins returned to the car. He heard a gunshot and he and Ellison left. Collins said that Davis was wearing blue or black shorts and a white t-shirt with writing on the front. He didn’t testify at the preliminary hearing.

Many of Davis’ associates were interviewed. Jeffrey Sapp told police that Davis said he slapped a man who argued with Coles and then shot the cop who responded. Monty Holmes told police that Davis said he shot the officer in self-defense when he reached for his gun. Both Sapp and Holmes testified at Davis’ preliminary hearing. Two others spoke with police but didn’t testify at the hearing. Eric Ellison said that he didn’t see the shooting. Craig Young also said he saw nothing. However, he heard that Davis had shot at a vehicle and killed a cop.

There were nine citizen witnesses. Two, Harriet Murray (Young’s girlfriend) and Dorothy Ferrell testified at the preliminary hearing.

Harriet Murray told police that the gunman was wearing a white shirt and dark pants. Ms. Murray could not identify the gunman from the first photo lineup, but picked Davis from another lineup the next day. She also identified Coles as the one who argued with her boyfriend. At the hearing she said that Davis was the man who struck Young and shot officer MacPhail. Davis’ gun misfired the first time, and
when the officer reached for his gun Davis fired again, striking the officer’s face, then shot the officer two or three more times as he lay on the ground.

Dorothy Ferrell supposedly told police that she saw officer MacPhail order the gunman from the area hours earlier. She described the shooter as wearing a white t-shirt with writing, dark shorts and a white hat. Ms. Ferrell later said that she had seen Davis’ photo in a patrol car while speaking with an officer on an unrelated matter and told the officer that he was the gunman. She had seen Davis’ photo on TV and was eighty to ninety percent certain he was the one. She repeated this account at the preliminary hearing.

Witnesses Antoine Williams, Anthony Lolas, Matthew Hughes, Eric Riggins, Steven Hawkins, Steven Sanders and Robert Grizzard apparently didn’t testify at the hearing. Antoine Williams told police that the suspect on a wanted poster (Davis) was the one who “slapped” Young and shot the officer. He was apparently shown photographs and said he was “sixty percent sure” that Davis was the gunman.

Trials

Davis was charged with the murder of officer MacPhail and the wounding of Michael Cooper, an occupant of the vehicle that Davis allegedly fired on. Davis pled innocent to everything and was tried in August 1991.

Larry Young admitted his original mixup in identifying Davis. He reiterated that Coles was the man in the yellow shirt who demanded the beer, and that a man in a white shirt struck him on the head.

Sylvester Coles testified essentially as at the hearing. He admitted that he had been carrying a gun, but not when the shooting occurred, and said he didn’t see Davis shoot the officer.

Darrell Collins recanted his testimony about Davis shooting at the vehicle. He said that police pressured him to say so under threat of being charged as an accessory. Collins said that he didn’t see Davis with a gun that day, only in the past. As for the shooting of officer MacPhail, he saw Davis slap the man with whom Coles argued then saw the officer head in their direction. He heard gunshots and ran away. He said that Davis had been wearing a white shirt with writing and blue or black shorts. He also confirmed that Coles put his gun away before entering the pool hall.

Jeffrey Sapp testified that Davis told him he shot the officer but didn’t fire at the car. Sapp admitted that he had lied to police and at the preliminary hearing when he said that Davis went back to finish off the officer so he couldn’t be identified. Sapp said he had made that up to get back at Davis over an ongoing dispute.

Harriet Murray reprised her testimony from the hearing. She reaffirmed her identification of Davis as the shooter. Ms. Murray conceded that when she first picked Davis she said he was one of the three men, not specifically the gunman. She admitted giving inconsistent accounts of the shooter’s physical description.

Dorothy Ferrell testified to essentially the same effect as at the hearing. She identified Davis as the shooter in court. Ms. Ferrell said that she did not see pictures of Davis before spotting his photo in the
police car. Contrary to the police report, Ms. Ferrell said that she had only seen officer MacPhail run off someone who looked like Davis. Like Ms. Murray, she conceded giving conflicting descriptions of the shooter.

Three citizen witnesses who apparently didn’t testify at the hearing did so at trial. Antoine Williams said he saw the shooting. He confirmed his “sixty-percent certain” identification of Davis as the man who shot the officer and struck Young, but admitted that he had viewed a wanted poster. Steven Sanders said that he witnessed the shooting. Although he told police that he wouldn’t be able to identify the shooter he nonetheless identified Davis in court. Sanders conceded that he had seen Davis’ photo in the paper. Robert Grizzard testified that he saw the shooting but could not identify the gunman. However, he was sure that it was the same man who struck Young. He described the murder weapon as dark with a short barrel.

Cole’s sister, Valerie Coles Gordon, also testified. She said that she heard gunshots from her home. About fifteen to twenty minutes later her brother came in gasping for breath and changed out of his yellow shirt. He explained that someone was trying to kill him. Davis then arrived, shirtless. Coles gave him his shirt, which Davis donned. But Davis left without it.

Prosecutors called several witnesses to testify about the earlier shooting. Michael Cooper, the victim, said that he rode to a party in a vehicle driven by a friend. His friend got into an argument with rival gang members, Davis among them. When they left their vehicle came under fire and he was struck in the jaw. He didn’t know Davis or the man who fired the gun. Craig Young recanted a prior statement to police, that Davis told him he had argued with “Mike-Mike.” He said officers had pressured him and that he was also trying to get back at Davis over a disagreement. Eric Ellison confirmed that he saw Davis walking back from a direction where shots had just been fired. He said that Davis was wearing a white t-shirt with writing and dark shorts. Ellison testified that he later drove Davis, Collins and another man to the pool hall. He heard gunshots and drove away with Collins and the other passenger, leaving Davis behind.

And what would a case be without a jailhouse informer? Kevin McQueen, an inmate, said that Davis admitted killing officer MacPhail to avoid being arrested for the earlier shooting. McQueen admitted he had seen a news story about the events and discussed them with other inmates. He denied that his testimony could help him as he had already been sentenced.

In following weeks we’ll summarize Judge Moore’s account of the defense case and review the conclusions that placed Davis on the fast track to execution. It will then be up to readers to decide whether Georgia killed the wrong man.
DID GEORGIA EXECUTE AN INNOCENT MAN?
PART II – JUICING IT UP

Prosecutors wanted a slam-dunk case. They figured out how to get one.

By Julius (Jay) Wachtel. Jurors didn’t convict Troy Davis only for killing a cop. What’s been virtually ignored about this intriguing case is that the jury also found him guilty of aggravated assault in the wounding of a rival gangster a few hours earlier. How these incidents came to be tried together, and most importantly, why, we’ll get to in a moment.

As we mentioned in Part I, Davis and his homies went to a party several hours before officer MacPhail’s murder. Members of a rival gang were also present. While exactly what happened is muddled, a vehicle occupied by the rivals was later fired on. One round struck an occupant, Michael Cooper, in the jaw. Darrell Collins, an acquaintance of Davis, later told police that he, Eric Ellison and Davis had left the party and were on foot when the car drove past and its occupants shouted slurs. Davis pulled a small, black gun and fired. At Davis’ trial Collins recanted, saying that he wasn’t present at the shooting and that officers had pressured him to finger Davis. Ellison also denied being there; however, he did testify that he saw Davis walk back to the party from the direction of gunfire.

Cooper, the victim, also took the stand. He said he didn’t know Davis and had no idea who shot him, or why.

Evidence that Davis murdered officer MacPhail seemed far more substantial. Five eyewitnesses, Sylvester Coles, Harriet Murray, Dorothy Ferrell, Antoine Williams and Steven Sanders testified that they were in or near a Burger King parking lot where the incident happened and saw Davis shoot the officer.

Each account had its issues. Coles, the man who originally turned in Davis, was one of three gang members (the other two were Davis and Collins) connected with the incident, so his identification of Davis was an act of self-interest. On the other hand, Murray and Ferrell were ordinary bystanders. However, as we pointed out in Part I, their memories were far from impeccable. When Murray was first questioned by police she couldn’t identify Davis, and she later suggested it was Coles before correcting herself. Ferrell was positive of her identification, but she had seen Davis’ photo on the seat of a patrol car, so her memory was likely contaminated. Williams was only “sixty percent certain” that Davis was the shooter. And while Sanders was sure it was Davis, he had told officers that he wouldn’t be able to identify the shooter.

Two persons testified that Davis told them he killed the officer. One, Jeffrey Sapp, admitted that he and Davis had a falling out; the other, Kevin McQueen, was a jailhouse informer whose account was riddled with inconsistencies.

Considerable circumstantial evidence pointed to Davis. For example, the mugging victim was pistol-whipped, most likely by the same man who later shot the officer. The victim (he ran off before the
shooting) and several passers-by who saw the pistol-whipping but not the shooting said the assailant wore a white shirt and dark pants or shorts, attire that matched Davis but not Coles.

Last week we summarized the trial evidence. Now let’s turn to the defense case. As before, our source document is Judge William Moore’s ruling on Davis’ application for a Writ of Habeas Corpus. (For the pertinent section click here and go to page 74. For the full document see “Related Articles and Reports,” below.)

**Joseph Washington.** A local gangster, then in jail for robbery, Washington testified that he saw Davis at the party but not Coles. Washington said he later went to a location near the Burger King to meet his friend “Wally,” whose last name he couldn’t recall. While there he saw Coles and two other men arguing. Coles hit one of the others. A cop then appeared and Coles fired at him. Washington then returned to the party but didn’t say anything for fear of getting involved.

**Tayna Johnson.** She saw Davis and Coles at the party. After leaving she heard gunshots coming from the Burger King. She ran into Coles and a man named “Terry.” Coles was nervous and asked her to find out what had happened. She reported back that police were investigating a shooting. On cross-examination Johnson conceded that Coles didn’t act as though he had known. She also said that he was wearing a white shirt.

**Jeffery Sams.** He saw Davis at the party. He later went with Davis, Collins and Ellison to the pool room. Coles came by and put a shiny gun on the car’s front seat. Sams didn’t want the gun in the car so he placed it outside the pool room. After spending a short time in the pool room he returned to the car. He didn’t see Davis with a gun.

**Virginia Davis.** Davis’ mother said that her son wore a multicolored shirt to the party. He acted normally when she woke him for breakfast the next morning.

**Troy Davis.** The defendant testified that he was at the party for twenty or thirty minutes. On leaving he saw a speeding vehicle and heard a gunshot. He went home, changed from his pink and blue polo shirt into another garment (he didn’t specify its color) and accompanied Collins, Ellison and Sams to the pool hall. Coles was already there. Coles later tried to coerce a man into giving up one of his beers. Coles followed the man into the Burger King parking lot, threatened his life and slapped him on the head. The man ran off and Davis left. He then noticed that Collins was running from the area so he did, too. Davis saw a police officer walk into the Burger King parking lot. There was a gunshot, then several more. Coles ran by and didn’t respond when Davis called out.

Davis denied ever speaking with McQueen, the jailhouse informer.

It was a weak defense. Looking back to our first posting and considering the eyewitnesses and such, the prosecution’s case was on balance much stronger. But was it so compelling that a jury should be able to find Davis guilty in *two hours*? So yes, we’ve left something out. There was physical evidence. A forensic examiner – indeed, the director of the Georgia Crime lab – testified that bullets recovered from Michael Cooper’s head were similar to those taken from officer MacPhail’s body, and that cartridge casings recovered at both scenes were close to identical, thus strongly suggesting that the same weapon
was used in both crimes (for the pertinent section of Judge Moore’s opinion click here and go to page 162.) Here is a snippet from the State’s closing argument:

And then there are the silent witnesses in this case. Just as Davis, wearing a white shirt, pistol-whipped Larry and murdered Officer MacPhail, so also did Troy Anthony Davis, using the same gun, shoot Michael Cooper and murder Officer MacPhail.

You will recall the testimony of Roger Parian, director of the Crime Lab, when he was discussing the bullets. He was talking about the bullets from the parking lot of the Burger King and from the body of Officer MacPhail, and he was talking then about comparing that with the bullet from – that was recovered from Michael Cooper’s head when he’d been shot in the face. And what Roger Parian told you is that they were possibly shot from the same weapon. There were enough similarities in the bullets to say that the bullet that was shot in Cloverdale into Michael Cooper was shot – was possibly shot from the same gun that shot into the body of Officer MacPhail in the parking lot of the Burger King.

But he was even more certain about the shell casings. He was quite more certain about that, and he said in fact that the one that was recovered from the Trust Company Bank right across from the Burger King parking lot was fired from the same weapon that fired four other shell casings that were recovered in Cloverdale right down the street from the pool party, Cloverdale and Audubon.

By juicing things up prosecutors fashioned a whole that was considerably greater than the sum of its parts. Supposedly scientific testimony by a highly credible witness linked two frightening events, lending the impression that the accused had been on a murderous rampage and assuring that jurors returned the one verdict that anyone really cared about: murder in the first degree, with aggravating circumstances. That the panel did so in record time only proved the thesis.

Ballistics evidence also piggybacked a weak case on one that was far stronger. Without physical evidence it’s unlikely that the aggravated assault could have been charged. Still, considering the abundant (albeit, imperfect) witness testimony, the murder case would have undoubtedly gone forward and most likely been won.

Of course, a lot can change in two decades. In this series’ third and final post we’ll review what took place at last year’s evidentiary hearing and analyze Judge Moore’s decision to overlook the flaws and let the trial outcome stand.
DID GEORGIA EXECUTE AN INNOCENT MAN?
PART III – A QUESTION OF CERTAINTY

Controversial recantations and over-reliance on affidavits helped seal Troy Davis’ fate

By Julius (Jay) Wachtel. This much is certain. During the early morning hours of August 19, 1989, Sylvester Coles accosted Larry Young. Coles was soon joined by his gangster buddies Troy Davis and Darrell Collins. One of them hit Young, who ran off. Police officer Mark MacPhail soon arrived. Coles and several witnesses would later testify that Davis struck Young and shot officer MacPhail. Bullet evidence and witnesses also linked Davis with the wounding of a passenger in a vehicle some hours earlier. Both incidents were tried jointly. Davis was convicted of everything, sentenced to death and, ultimately, executed. (For details about the trial see Parts I and II of this series.)

Many notable individuals and organizations including former president Jimmy Carter and the NAACP argued on Davis’ behalf. Amnesty International held vigils on the eve of his execution and declared October 1, the day of his funeral, as a “Day of Remembrance.” Davis’ defenders insisted that he was innocent of everything and that Coles was the one who murdered officer MacPhail. Police were blasted for taking Coles at his word and pressuring witnesses to go along, while prosecutors were criticized for biasing the jury by tying the shootings together with shoddy ballistics evidence and refusing to concede that Davis was innocent even as witnesses began to recant.

Facing international pressures, the Supreme Court ordered an extraordinary Habeas hearing. It was conducted in Savannah on June 23 and 24, 2010 by U.S. District Judge William Moore. He delivered his decision two months later. Its first and most important section assessed the evidentiary value of purported recantations by seven witnesses who had testified at Davis’ trial. Four appeared at the Habeas hearing; Davis’ lawyers submitted affidavits for the others.

Witness recantations (pp. 125-59)

Larry Young. He testified at trial that Coles, who was wearing a yellow shirt, was the man with whom he argued, and that a man in a white shirt struck him. Other witnesses described the incident similarly. Young was on the petitioner’s list for the Habeas hearing but he wasn’t called to testify. His new version of events – that he actually saw nothing but that police had told him what to say – came in through an affidavit (pp. 147-49.)

Darrell Collins. He testified at the preliminary hearing that he saw Davis shoot at the vehicle. At trial he said that was a lie. However, he did concede that he saw Davis slap Young. But at the Habeas hearing he recanted everything and claimed that officers had coerced him to implicate Davis (pp. 136-39.)

Jeffrey Sapp. A friend of Davis, he testified at trial that Davis told him he shot the officer but didn’t fire at the car in an earlier incident. He recanted at the hearing, saying that his statement was coerced by police (pp. 133-36.)
Harriet Murray. Larry Young’s girlfriend gave police conflicting identifications of the killer. At the preliminary hearing and trial she settled on Davis as being both the slapper and shooter. She didn’t appear at the Habeas application hearing. Instead Davis’ lawyers presented an unnotarized affidavit in which she attested that the man who argued with Young, which everyone agrees was Coles, was the one who both slapped him and shot the officer (pp. 139-143.)

Dorothy Ferrell. She identified Davis at trial as the shooter. Although she showed up at the Habeas hearing she wasn’t called on to testify. Davis’ lawyers instead presented the Court with her affidavit. In the document she stated that her trial testimony had been coerced and that she didn’t see who shot officer MacPhail (pp. 143-46).

Antoine Williams. At trial he testified that the man who struck Larry Young was the shooter, and that he was “sixty percent certain” that this individual was Davis. But at the Habeas hearing he said he wasn’t sure who shot the officer, but that police pressured him to identify Davis. Under cross-examination he retracted the part about being pressured (pp. 127-30.)

Kevin McQueen. A jailhouse informer, he testified at trial that Davis confessed. McQueen recanted at the Habeas hearing. He said that he lied to get back at Davis over a fight, or in exchange for consideration on his charges, or both (pp. 130-32.) His was the only recantation that Judge Moore believed.

According to Judge Moore, none of the recantations absolved Davis. Young, Murray and Ferrell’s accounts came in through affidavits, a tactic that he criticized for making cross-examination (thus truth-finding) impossible. Every witness but Murray claimed that their accounts had been coerced by police, a notion that seemed implausible and which officers heatedly denied. Two witnesses who had been in the thick of things, Young and one of his assailants, Collins, now knew nothing. Neither, it seems, did Sapp or Williams. Judge Moore reserved special contempt for Sapp, whom he accused of lying to protect Davis, for example, by claiming to not know of his moniker “RAH”, which stood for “rough as hell.”

Judge Moore had other concerns. He wondered why Murray didn’t simply say she misidentified Davis. (For this and other reasons he dismissed her affidavit as “valueless.”) He had equally little regard for Ferrell’s recantation. Her claim of coercion made little sense as she was the one who first approached officers. And while she was present at the Habeas hearing Davis’ lawyers didn’t call her testify, suggesting that they feared her recantation wouldn’t survive cross-examination.

Other evidence (pp. 150-164)

Firearms. Concerns were raised at the Habeas hearing about questionable forensic evidence that the state presented at trial linking the same gun to both shootings. This issue, which we discussed at length in Part II, was pondered at length by Judge Moore, who ultimately decided that even if the evidence was mistaken it didn’t weigh against Davis’ guilt in the murder because there was abundant testimonial evidence that he killed officer MacPhail (decision p. 164.) Curiously, Judge Moore didn’t address what we thought was the obvious issue, that prosecutors attributed the earlier shooting to Davis so as to bias the jury against him.
Sylvester Coles as the shooter. Several individuals submitted affidavits linking Coles and firearms, which the judge found unsurprising insofar as many on the night of the shooting seemed to be packing a gun. (Coles had already conceded that he was carrying a gun that evening.) But perhaps the most startling new evidence were eyewitness accounts by two persons who said they saw Coles murder the officer, and by several who said that he confessed.

One man, Benjamin Gordon, tried to cover both bases. In 2008 he signed an affidavit in which he said that Coles told him “I shouldn’t ‘a did that shit.” At the Habeas hearing he testified for the first time that he saw Coles pull the trigger. Why didn’t he say so earlier? He was afraid of Coles. Judge Moore found him not credible (p. 158.)

A second witness, Joseph Washington, said through an affidavit that he saw Coles kill the officer. Washington, who testified to that effect at Davis’ trial (he was then in jail for armed robbery) was also thought not credible. According to Judge Moore his trial testimony had been “badly impeached” by evidence that he had been elsewhere when the shooting took place. Judge Moore surmised that Davis’ lawyers didn’t summon Washington to the Habeas hearing to avoid having him impeached once more.

Several witnesses said that Coles incriminated himself. One, Anthony Hargrove, testified that Coles told him that he was the killer. Three others submitted affidavits to the same effect. Judge Moore gave it all little credence, particularly as Coles didn’t testify.

Concluding comments (pp. 164-end)

Judge Moore found Davis’ “new evidence” unpersuasive. Nearly all the recantations were deeply flawed. Other than for the jailhouse informer, whose trial testimony Judge Moore called unbelievable in the first instance, the witnesses were simply not credible. Three “appeared” through affidavits and thus couldn’t be questioned. Coles’ alleged confessions, which came in as hearsay, were equally untestable, as Coles wasn’t there. Judge Moore was clearly peeved at Davis’ lawyers. Instead of asking the Court to have marshals serve Coles, defense attorneys waited until “the eleventh hour” to try (unsuccessfully) to serve him themselves. Judge Moore thought this was an obvious ploy to avoid having him appear at all, as there was nothing Coles was likely to say that would help Davis (decision p. 170.)

Judge Moore’s patience had worn thin:

Ultimately, while Mr. Davis’s new evidence casts some additional, minimal doubt on his conviction, it is largely smoke and mirrors. The vast majority of the evidence at trial remains intact, and the new evidence is largely not credible or lacking in probative value. After careful consideration, the Court finds that Mr. Davis has failed to make a showing of actual innocence that would entitle him to habeas relief in federal court. Accordingly, the Petition for a Writ of Habeas Corpus is DENIED.

Judge Moore undoubtedly called it as he saw it. Still, it was obvious that given the witnesses’ new slant on things, it would have been impossible to convict Davis had he been granted a new trial. All the pro-Davis publicity had had a devastating effect on the state’s case. Here’s what one of the trial jurors who originally found Davis guilty and voted for death now had to say:
I feel, emphatically, that Mr. Davis cannot be executed under these circumstances. To execute Mr. Davis in light of this evidence and testimony would be an injustice to the victim's family [and] to the jury who sentenced Mr. Davis.

Set Davis aside. It’s the sheer difficulty of retrying cases, let alone those twenty years old, that makes judges such as William Moore jealous about the finality of jury decisions. Yet when the state intends to kill, the moral if not legal calculus is different. To date seventeen death-row prisoners have been exonerated through DNA. It’s also widely accepted (though not by Texas) that one who wasn’t, Cameron Willingham, was wrongfully executed in 2004.

When a judge says “I thought it was a verdict that could go either way,” as one did after a recent conviction, he’s only stating the obvious: that some jury verdicts are close calls. Most citizens would probably agree that in such cases the death penalty is inappropriate. As former New York Governor Mario Cuomo, an opponent of capital punishment recently pointed out, in the real world of criminal justice there is no such thing as absolute certainty. That’s one reason why he favors the alternative of life imprisonment “with no possibility of parole under any circumstances.”

Would that penalty have satisfied the citizens of Savannah? Probably not. Indeed, many seem more convinced than ever that Davis got what he deserved. For example, check out this editorial in the Savannah News. And when you’re done be sure to peruse this self-serving but nonetheless fascinating commentary by Spencer Lawton, the prosecutor whose efforts may or may not have sent the right man to death.

As for your blogger, he thinks the same as two years ago, that it’s “more likely than not that Davis is guilty.” Of course, “more likely than not” isn’t enough to convict someone of jaywalking.
EXTREME MEASURES

Angry over Federal dithering, Arizona enacts its own immigration laws

By Julius (Jay) Wachtel. Sooner or later it was bound to happen. Frustrated by the Fed’s laissez-faire attitude about the effects of illegal immigration, the Grand Canyon State struck out on its own. Less than a month after the murder of a goodhearted Arizona rancher (police followed the suspect’s tracks to the border) Governor Jan Brewer signed into law a comprehensive measure that turns illegal aliens into state outlaws and encourages local police to seek them out and hand them over to the Feds.

Key provisions include the following:

- When practical, law enforcement officers who reasonably suspect that someone is an illegal alien must try to determine their immigration status. (Amended to apply only to persons lawfully “stopped, detained or arrested. Race can be used only as Constitutionally allowed.)

- Illegal aliens convicted of violating state or local laws including misdemeanors must be turned over to U.S. immigration officers, even if they were only fined.

- Illegal aliens and non-citizens over 18 not carrying a valid immigration card are guilty of a misdemeanor.

- Illegal aliens are prohibited from applying for a job, soliciting work or working either as an employee or independent contractor. Violations are misdemeanors. (Arizona law already prohibits employers from knowingly hiring illegal aliens.)

- Knowingly transporting or harboring illegal aliens or inducing them to come to Arizona is a misdemeanor; if ten or more illegal aliens are involved it’s a
felony.

- Private citizens are empowered to sue and collect damages from political subdivisions that restrict the “full enforcement” of Federal immigration laws.

According to the Department of Homeland Security Arizona has 460,000 illegal immigrants, the seventh most in the nation. As a proportion of the population their number lags only behind California, and then by a whisker (6.9 percent versus 7.0 percent.)

SCAAP, the State Criminal Alien Assistance Program, reimburses States and localities for part of the cost of confining illegal immigrants who are convicted of a felony or two misdemeanors and held for at least four days. (Illegal immigrants convicted of ordinary crimes are commonly called “criminal aliens.”) The GAO reported that in 2003 Arizona prisons housed 4,200 criminal aliens, costing state taxpayers $50 million. SCAAP reimbursed $7 million. Arizona placed fifth in numbers of incarcerated criminal aliens, behind California (30,200), Texas (11,200), New York (5,700) and Florida (5,200). But when adjusted for state population, Arizona’s share was second to California’s.

In 2003 the Maricopa County (Phoenix) jail system housed 4,300 criminal aliens, costing state taxpayers $15 million. Its reimbursement? $1 million. Only four jails, two in California, one in Texas and one in New York City held more. Adjusting for county and city size, Maricopa was in third place, just behind the California counties.

Another GAO report examined the backgrounds of 55,322 criminal aliens who were incarcerated for any offense in Federal and State prisons and county jails in December 2003. Eighty percent came from three states: California (58 percent), Texas (14 percent) and Arizona (eight percent.)

Arizona is one of the nation’s principal gateways for illegal entry, regularly placing first in border arrests and second only to Texas, a state with a population four times its size, in immigration prosecutions. It’s also a primary entry point for illegal drugs, with Federal drug prosecutions in Arizona increasing more than twofold during 2008-2010. And as we pointed out in a prior post, the state’s gun dealers are a major source of firearms for the Mexican cartels.

The consequences are obvious. Human, drug and gun trafficking tear at the social fabric, attracting unscrupulous characters, consuming prodigious criminal justice resources and setting the stage for other crimes. According to the Arizona Republic, Phoenix experienced an astounding 368 kidnappings for ransom in 2008, much of it ostensibly related to drug and cartel activity. What’s more, although its police chief
touts the city as “one of America’s safest large cities,” a 2008 survey of cities over 75,000 population ranked Phoenix 302 out of 393. It was well behind Los Angeles, which placed 240th. (higher numbers are worse). Phoenix’s problems are no surprise to your blogger, who as an ATF agent in Arizona during the seventies got to experience the troubled city first-hand.

Crunched by a tight economy, with a 2008 median household income two percent below the national mean, Arizona has struggled for decades to deal with the social and economic consequences of being on the border. But to many observers its current response seems an overreaction. Concerns that the law will drain scarce police resources, cause racial profiling and discourage crime victims from coming forward led the Arizona Police Chiefs Association to strongly oppose the measure. On the other hand many lower-ranking police officers, including presidents of police associations in Phoenix and Glendale favor it, in part because it would give officers more tools for combating crime.

It’s no surprise that political views about Arizona’s stern approach mirror Party affiliations. Senator John McCain (R-Ariz.) is for while President Obama, who warned that the Arizona bill would “undermine basic notions of fairness,” is against. Interestingly, his Secretary of Homeland Security, Janet Napolitano, a Democrat, repeatedly vetoed similar legislation when she was Arizona governor, in part because it would “overwhelm” police. Yet in 2005 she declared a “state of emergency” at the border, then sent the National Guard to help secure it.

Within a couple of years, though, the Feds decided that physical barriers and a much-ballyhooed “virtual” fence were preferable to a heavy human presence. But only last month Secretary Napolitano called a halt to the multi-billion dollar project because of questions about its effectiveness. Arizona’s senators have since proposed that the money be spent on – you guessed it – troops and additional border agents. Meanwhile the Department of Justice is getting set to challenge Arizona’s new immigrant-unfriendly laws in Federal Court.

That, in a nutshell, is America’s border “policy.” If you’re confused, join the crowd!
FASTER, CHEAPER, WORSE

Rehabilitation doesn’t lend itself to shortcuts. Neither does research and evaluation.


That’s exactly what Project Greenlight offered. Developed by the Vera Institute of Justice and conducted in New York between February 2003 and February 2004, it applied a “cognitive-behavioral” approach to mitigate personality traits associated with offending such as impulsivity, antisocial attitudes and drug use. Inmates would participate in therapeutic sessions, receive housing and employment assistance, and interact with parole agents and social workers before release. Ex-offenders would leave with detailed, step-by-step plans to help them successfully reintegrate into the community.

As usual, funding issues butted in. What was intended to be a three-year pilot project was cut back to one year. While that didn’t affect participants, to increase their numbers treatment was slashed to eight weeks from a design length of four to six months. Class sizes were also increased three-fold, from the recommended eight to ten participants to twenty-six. Just like elsewhere in government, notions of “faster, better, cheaper” had clearly taken hold.

Experiments normally include an experimental group and one or more control groups that are virtually identical in all respects but receive no treatment or “intervention.” Because the Department of Corrections intended to house the program in a male-only, minimum-security facility in New York City, Project Greenlight’s experimental group (GL) was comprised of 344 low-risk inmates who originated from (and would be released to) New York City. There were two control groups. One, TSP, included 278 low-risk inmates, also from New York City, who would be housed at the same facility and treated with the department’s five-week Transitional Services Program. A second control group, UPS, included 113 low-risk inmates from outside New York City who would be released from upstate prisons without benefit of a program.

To assure that any differences in outcomes between groups are not due to differences in their composition, experimental subjects are normally picked at random and assigned to groups one at a time. But that’s not what happened with Greenlight. According to the program’s published report correctional officials at first assigned inmates to GL and TSP in large batches, rather than one-by-one. While investigators eventually regained some control, in the end they conceded that the design was only quasi-experimental. However, they declared it was sufficiently robust to eliminate the possibility that the groups were systematically different from the start.
Outcomes were measured one year later. Surprisingly, GL participants seemed substantially worse off. Thirty-one percent of the experimental subjects had been rearrested, compared with 22 percent of TSP participants and 24 percent of those in the untreated UPS group. GL’s also “survived” for substantially briefer periods before arrest.

It’s well accepted that the best predictor of future offending is past offending. That’s consistent with Greenlight data, which indicated that the more serious one’s criminal record the greater the likelihood of arrest after release (coefficients with asterisks denote statistical significance, the more the greater.) But study group also seemed to matter, with Greenlight participants forty-one percent more likely to fail than those treated with TSP. (Similar though statistically non-significant results were reported when comparing GL to Upstate.)

Assuming that the groups were equivalent as to all important characteristics before treatment (we’ll come back to that later), investigators surmised that one or more aspects of Greenlight was making things worse. They speculated about a “mismatch” between the program, which was designed for high-risk offenders, and the low-risk nature of those actually treated. Other likely suspects include GL’s highly abbreviated format, its departure from the original design, poor implementation, and subpar performance by case managers.

Fast-forward to November 2011 when a Project Greenlight update reported outcomes after thirty months. Participants were coded for risk of recidivism, an index comprised of criminal history and other measures. While members of the experimental (GL) group did more poorly overall than those in TSP and UPS, the gap between GL and TSP was statistically insignificant and far outweighed by the gap between both programs and UPS, whose participants fared well while receiving no treatment at all. Low and medium-risk inmates did exceptionally well in UPS, while those at medium and high-risk did especially poorly in GL. Actually, low-risk inmates tended to succeed in each program, with those assigned to GL actually doing considerably better than participants in TSP but falling somewhat short of the untreated Upstate group.

Why did GL succeed with low-risk inmates? Researchers guessed that their personal characteristics (e.g., attention span, cognitive and social skills) were most compatible with the program’s intensity and its
As for the relative success of the untreated UPS sample, it might reflect the advantage of not unduly upsetting inmates by coercively transferring and programming them shortly before setting them free.

Complex after-the-fact explanations are inherently untrustworthy. What if the presumed effects were artifacts of biased assignment? Indeed, the study's own data suggests that the groups were different from the start.

Each arrest and conviction variable was at its highest level in Greenlight and at its lowest in the untreated Upstate group, with TSP holding the middle ground. Some of the mean differences appear substantial. So the implications are clear: since the GL group had more hardheads, poor results were inevitable. On the other hand, as the authors pointed out, none of the differences between means reached significance (that's probably because sample sizes were so small and the fluctuations in scores, measured by standard deviation, so large.) In any event, when nonrandom methods are used to form groups, one cannot assume that participants come from the same population, so statistical significance is meaningless. A more parsimonious interpretation is that the GL group’s bias in the direction of more serious criminal records increased recidivism. Greenlighters seemed least amenable to treatment because they were the most criminally inclined. Upstaters fared relatively well because they were the least. Speculation that Greenlight itself had a criminogenic effect remains just that.

Alas, the conceit that short-term rehabilitative attempts can influence post-release outcomes is nothing new. No matter how carefully designed a program might be, convicts who spend years in prison learning all the wrong lessons are unlikely to be transformed in two months. Still, in an era of shrinking budgets there is a lot of pressure to devise solutions that are better and cheaper than simply locking people up. In “Economical Crime Control,” the lead article in the November/December 2011 ASC newsletter, Philip Cook and Jens Ludwig argue for reprogramming $12 billion a year from prisons to early childhood education and to initiatives that address the “social-cognitive skill deficits” of young persons in trouble with the law.

Effective community-based solutions, though, can be very expensive. Deinstitutionalization left us with the worst of both worlds: mentally ill persons who are untreated and homeless. To do better with criminal offenders would require far heavier investments in research and evaluation than bean-counters.
would likely tolerate. “Corrections” may not be a non-sequitur, but “economical” crime control most certainly is.
FROM BRADY TO THE CONFRONTATION CLAUSE

Continuing our roundup of Supreme Court criminal cases in a very busy term

By Julius (Jay) Wachtel. If you’re reading this, crime and justice are your bag. And if so, the Supreme Court’s current term, chock-full as it is of important criminal cases, should be of great interest.

Two months ago, in “From Eyewitnesses to GPS,” we prognosticated about five cases. One, Perry v. New Hampshire, was recently decided. Perry, a convicted thief, argued that eyewitness testimony is so unreliable that he should have been entitled to a pretrial hearing on its admissibility. As we predicted (well, not just us) the Supremes disagreed. Unless police purposefully bias the ID process – and in Perry there was no such evidence – it rightfully falls on the jury, not a judge, to determine how much weight an identification deserves.

So far we’re batting a thousand. Dizzy with success, we’ll offer predictions on two more pending cases. But first let’s review a new decision on a case that wasn’t on our radar.

Withholding evidence from the defense

Every law enforcement professional knows of Brady, a landmark Supreme Court case that says prosecutors must disclose potentially exculpatory evidence to the defense. In Smith v. Cain (decided 1/10/12) the Supremes reaffirmed the rule, striking down a murder conviction where the only evidence was testimony by a single eyewitness that the accused shot and killed five persons during a home invasion. Their reason wasn’t that evidence was lacking: it was because prosecutors withheld a detective’s notes quoting the witness as saying that he could not identify any of the intruders and “would not know them if [he] saw them.”

In their defense, prosecutors argued that that the witness’s well-founded fear of retaliation would have nullified the contradictory statement had it come to light. No sale. In a brief and pointed 8-1 opinion, the justices held that the state trampled the defendant’s due process rights as clearly articulated in Brady.

Now let’s turn to two cases still on the burner.

Police immunity to Federal lawsuits

Malley v. Briggs (1986) established the doctrine that police officers are only entitled to qualified immunity, not the absolute immunity that prosecutors and judges enjoy. When cops are sued in Federal court it’s up to the judge to examine the record and decide whether their actions were consistent with what reasonably well-trained officers would do. If the answer is “yes,” immunity is granted and the lawsuit is dismissed; if “no,” the case proceeds to trial.

Just how courts evaluate “reasonableness” is the central issue in Messerschmidt v. Millender. Officers protecting a woman who was moving out of a residence were called away on an emergency. While they
were gone the woman’s boyfriend allegedly chased and shot at her with an illegal pistol-grip shotgun. Detectives obtained a search warrant for all firearms and firearms-related materials and all indicia of gang membership (the subject was reportedly a hardcore gangster.)

SWAT then hit the house – hard. It was occupied by ten persons. An extensive, highly intrusive search turned up nothing other than a legal shotgun belonging to the owner of the residence, the boyfriend’s elderly foster mother. She and the others sued for search and seizure and due process violations. A Federal judge denied the police qualified immunity and the Ninth Circuit concurred. In its opinion, the warrant’s objective was overbroad, as there was no evidence that the boyfriend possessed anything of evidentiary value other than a single illegal firearm. Justices faulted the issuing judge for signing a warrant that was invalid on its face, and the officers for not using “their own reasonable professional judgment” when seeking permission to search.

In their appeal, the cops insisted that they acted appropriately, as both the judge and their superiors had approved the warrant.

What’s our call? To portray the officers’ actions as wildly inappropriate seems a stretch. We’re going with the two dissenters, who pointed out that it wasn’t unlike past situations in which police goofed but were still granted immunity. One suspects that the Supremes are likely to agree, that is, to overrule the Ninth, as what the cops did doesn’t seem to warrant crafting a possibly confusing cure that might be worse than the disease.

Right to confront one’s accusers

Just when we thought that the Supreme Court had made its feelings about the confrontation clause clear here comes Williams v. Illinois.

In this case, on appeal from the Illinois Supreme Court, a private laboratory (Cellmark) typed DNA from a rape kit while a state police laboratory typed the suspect’s blood. At trial a state police analyst testified that she compared the profile generated by Cellmark to the one generated by her lab and concluded they matched to a high certainty. Cellmark’s report was not introduced as evidence and no Cellmark employee testified. Williams protested that his sixth amendment rights had been violated because he didn’t have an opportunity to confront Cellmark about their methods and findings. But Illinois courts said there was no breach as Cellmark’s report was not offered “for the truth of the matter asserted” but only served as a basis for the analyst’s opinion.

Whew. That’s some awfully fine hair-splitting. What are the precedents? In Crawford v. Washington (2004) the Supreme Court ruled that the recorded statement of a wife who asserted the marital privilege was improperly introduced at trial. Whether or not they seem reliable, “testimonial statements” – those made with the understanding that they can be used in court – cannot be admitted unless defendants are afforded an opportunity to cross-examine their makers.

Exactly what is “testimonial” is a matter of controversy. Massachusetts prosecutors had taken to introducing laboratory reports instead of analyst testimony in drug cases. Not so fast, said the Supreme Court. In Melendez-Diaz v. Massachusetts (2009) justices ruled that such reports met the definition of “testimonial,” thus requiring that their authors be made available at trial.
And wait, there's more! In-between Crawford and Melendez-Diaz there was Bullcoming v. New Mexico. A lab analyst took the stand to introduce a blood-alcohol report that had been prepared by an absent colleague. Somewhat weakly, prosecutors asserted that the real examiner was only a “scrivener” who did little other than write down what a machine spat out. But the Supremes didn’t buy it. No examiner – no case.

Back to Williams. Tom Goldstein, publisher of the SCOTUS Blog, is skeptical about Illinois’ position. “As a practical matter,” he writes, “it is hard to say that the underlying DNA report is not being used for its truth.” That end-run is exactly what worried Justice Scalia. Here’s what he said during oral arguments:

Mr. Dreeben [amicus appearance for Illinois] that seems to me -- I mean, we have a Confrontation Clause which requires that the witnesses against the defendant appear and testify personally. And -- and the crucial evidence here is the testing of the semen found on the swab. That is -- that's the crux of this evidence. And you're telling me that this Confrontation Clause allows you to simply say, well, we're not going to bring in the person who did the test; we're simply going to say this is a reliable lab. I don't know how that complies with the Confrontation Clause.

Still, a lot of DNA is being typed by commercial firms. Bringing in analysts is expensive and disruptive. So Mr. Goldstein may be on to something when he says that Williams may “pass the end of the line to which five Justices are willing to extend the Confrontation Clause.”

But we’re of a different mind. Having come this far in support of the Clause, the Supreme Court is unlikely to pivot on such thin grounds. Williams really does feel like a distinction without a difference. So our money is on it being overturned.

Incidentally, two fascinating cases on the limits of punishment are also on the agenda. Miller v. Alabama and Jackson v. Hobbs, both set for oral argument on March 20, will decide whether sentencing 14-year old murderers to life without parole is cruel and unusual. Stay tuned!

¹ First reader to accurately attribute the “dizzy” comment gets an “attaboy” in the blog. For a hint, check out the title of your blogger’s forthcoming novel in the “About” section.
FROM EYEWITNESSES TO GPS

An unusually rich set of criminal cases land on the Supreme Court’s agenda

By Julius (Jay) Wachtel. Beginning last month, and continuing through April 2012, the Supreme Court is hearing oral arguments on cases accepted for the 2011-12 term. In this posting we’ll look at cases where arguments have already taken place, involving eyewitness identification, strip searches, ineffective assistance of counsel and warrantless GPS surveillance.

Witness identification. In Perry v. New Hampshire (Supreme Court, no. 10-8974) the Court will address growing concerns about witness misidentification, a leading cause of wrongful convictions. In this case a physically distant eyewitness to a vehicle burglary identified a man who was being questioned by officers as being the perpetrator. She couldn’t pick him out later from a photographic lineup or at trial. Her original identification was nonetheless admitted and the accused was convicted.

Defense lawyers appealed on due process grounds, arguing that the ID had been tainted since the man was observably in police custody. But the New Hampshire Supreme Court ruled there was no Constitutional violation because police didn’t purposely orchestrate what took place.

Perry’s lawyer disagreed. In arguments before the Supreme Court he insisted that eyewitness ID is so prone to error that defendants should be able challenge suggestive identifications before they are admitted as evidence whether police are to blame or not. That didn’t sit well with Justice Kagan, who said the Court has only excluded eyewitness evidence that was tainted by the authorities. Broadening the net of what is excludable worried Justice Kennedy, who thought it would infringe on the province of the jury, whose job it is to weigh competing explanations. But Perry’s lawyer insisted that normal procedures didn’t suffice for eyewitness testimony because it is unusually resistant to cross-examination.

Our call: Considering their reluctance to create new rules, the Justices are unlikely to let Perry off the hook.

Jail strip searches. In Florence v. Board of Freeholders (Supreme Court, no. 10-945) the Supreme Court will decide if a rule requiring that everyone booked into a jail be strip searched violates the Fourth Amendment.

It’s a nuanced issue. Florence was arrested on a bench warrant for not paying a fine, a trivial matter for which the State conceded he shouldn’t have been jailed in the first place. He was strip-searched twice, once when booked into city jail and again when transferred to the county. Florence claims that such intrusions require reasonable suspicion, and that the minor nature of his offense and lack of evidence that he might harbor contraband made the strip search unreasonable.

Florence sued for deprivation of his civil rights, and a Federal district court allowed his case to proceed. But by a vote of 2-1 the Third Circuit reversed. The prevailing justices were reluctant to dictate
how jails should be run. They also fretted that letting jailers decide whom to strip search would open up a Pandora's box of discrimination claims.

Their reasoning was echoed in the comments made by Supreme Court Justices during oral arguments. While the Justices were troubled by the fact that strip searches seldom uncover contraband, they considered Florence’s proposed “reasonable suspicion” standard impractical. If, as Florence’s lawyer argued, reasonable suspicion was implicit for those arrested for serious crimes, exactly where would one draw the line? Justice Sotomayor, who took on the practical aspects of building reasonable suspicion, noted that key facts about an arrestee’s criminal past might not be known for days. And like the Circuit court, Justice Kennedy was troubled by the discriminatory potential of having jail employees select who would be strip-searched.

Our call: Mandatory strip-search will survive.

**Ineffective assistance of counsel in plea bargaining.** There are two cases. *Lafler v. Cooper* (Supreme Court, no. 10-209) concerns a Michigan man (Cooper) who went to trial on attempted murder, felon with a firearm and other charges because his lawyer advised that repeatedly shooting a woman below the waist would not sustain an attempted murder conviction. In so choosing Cooper turned down a plea deal (he says, reluctantly) that would have resulted in a minimum sentence of four to seven years. As one might expect, he was convicted of everything and got fifteen to thirty.

Cooper hired a new lawyer. His appeal was brushed off by the Michigan courts. But a Federal judge held that the attorney’s abysmally poor advice violated Cooper’s Sixth Amendment rights, and that he should either be offered the original deal or let go. The Sixth Circuit affirmed. Michigan appealed.

In the other case, *Missouri v. Frye* (Supreme Court, no. 10-444) a repeat drunk driver (Frye) pled guilty and drew a three-year prison term. What he didn’t know was that his lawyer let a plea offer expire that would have reduced the charge to a misdemeanor and the penalty to ninety days in jail. Fry’s conviction was reversed on Sixth Amendment grounds by the state Court of Appeals. Missouri appealed.

In both cases the key issue is straightforward: does the right to counsel attach to the plea-bargaining phase? Lawyers representing Michigan and Missouri argued that it didn’t. That didn’t sit well with the Justices. During oral arguments in *Lafler* several tried to get Michigan’s lawyer to concede that plea bargaining is a critical phase of the adjudicative process. Recognizing the trap, the lawyer switched his assault to the defendant’s proposed remedy. That was essentially the tack his counterpart took in *Frye*. In effect, both said there was no remedy.

Our call: Not communicating a plea offer is an incredible blunder. What the remedy may be we’ll soon find out.

**Warrantless surveillance.** In “A Day Late, a Warrant Short” we examined the case of Antoine Jones, a D.C. nightclub owner who is serving a Federal life term for drug trafficking. A key item of evidence was a month’s worth of location data recorded by a GPS device that DEA agents surreptitiously attached to Jones’s vehicle (they had a warrant but it had expired, rendering it invalid.) At times DEA physically tailed Jones, and at other times not. In his appeal to the D.C. Circuit Jones argued that planting the device for such a long duration, without a valid warrant, violated the Fourth Amendment.
The justices agreed, finding that Jones had a reasonable expectation of privacy as to the intimate “mosaic” that was formed by secretly recording a month’s worth of movements. The Government appealed (U.S. v. Jones, Supreme Court, no. 10-1259).

In our post we suggested that the Supreme Court was likely to reverse, as the Circuit’s decision (it upheld the warrantless installation of the device, but not its use) would require judges to speculate about the relative intrusiveness of surveillance techniques. But the Supreme Court threw us a curve. In oral arguments several Justices agreed that GPS devices posed far greater risks to privacy than old-fashioned beepers, which according to precedent can be planted without a warrant. Here’s how Chief Justice Roberts compared the two:

That’s a lot of work to follow the car [with a beeper]. They’ve got to listen to the beeper; when they lose it they have got to call in the helicopter. Here they just sit back in the station and they -- they push a button whenever they want to find out where the car is. They look at data from a month and find out everywhere it’s been in the past month. That -- that seems to me dramatically different.

On the other hand, the Justices seemed unimpressed with the argument by Jones’s lawyer that the mere act of planting a device was an impermissible trespass. And that’s where things rest.

Our call: We’ll gamble and say that the Justices will find a way to require search warrants when using GPS.

In the next weeks, as more oral arguments take place, we’ll review Supreme Court cases that address other pressing criminal justice issues. Does the Confrontation clause requires that DNA analysts be made available for cross-examination? Is life without parole a permissible sentence for teens convicted of murder? Do prisoners have a right to replace their State-furnished Habeas counsel? Stay tuned!
GETTING OUT OF DODGE

For families caught in dangerous neighborhoods, there is one option

By Julius (Jay) Wachtel. Milwaukee’s “Sherman Park” is one of the city’s oldest residential districts. Google it, plop down your pedestrian and amble down the lavishly tree-lined streets. Admire the finely crafted homes, built during the early 1900s by prosperous German immigrants. Most still stand, though in truth, some just barely. Really, things don’t seem as well kept as one might wish. There sure is an awful lot of chain link! It turns out that in an area less than two miles square, more than thirty homes are in foreclosure.

But forget Sherman Park. Sadly, the years haven’t been kind to Milwaukee. Murder in 2015 soared to 152, a 69 percent increase from 2014 when 94 homicides were tallied. Blacks suffer disproportionately. In a city that is about forty percent black, seventy percent of murder victims in 2014 and eighty-four percent in 2015 were black. So far this year Milwaukee has recorded 76 murders. Seventy-six percent of the victims are black (13 percent were white, eight percent Hispanic and three percent of Asian descent.)

Milwaukee’s residents have many explanations for the chaos engulfing their neighborhoods:

Ask anyone in Milwaukee and they’ll have a different answer: Deep systemic problems of poverty, unemployment, segregation and education. Easy access to firearms. Lack of personal responsibility and the breakdown of the family. An ineffective criminal justice system. Lax sentencing. A pursuit policy critics say too often limits police chases. Too much policing. Not enough policing.

Edward Flynn, Milwaukee’s somewhat controversial police chief, explained the uptick in violence more simply, as an increased willingness to settle differences with a bullet:

Maintaining one’s status and credibility and honor, if you will, within that peer community is literally a matter of life and death. And that’s coupled with a very harsh reality, which is the mental calculation of those who live in that strata that it is more dangerous to get caught without their gun than to get caught with their gun.
Over the decades, as Sherman Park transitioned from upper-middle class, exclusively-white, to working class, majority-black, crime and disorder has taken an increasing toll. Still, as Sherman Park is only one troubled place out of many, no one outside Milwaukee paid attention. That dramatically changed on Saturday, August 13, when a police officer patrolling in Sherman Park shot and killed an armed man who fled on foot from a traffic stop. Sylville Smith, 23, had prior arrests for drug possession, robbery, a shooting and witness intimidation. His only conviction, though, was for misdemeanor carrying a concealed weapon, and it seems that he later obtained a concealed-carry permit. (The gun he possessed when shot had been reported stolen.)

Over the next two days, demonstrations and rioting rocked Sherman Park, and multiple businesses were looted and set on fire. Milwaukee Mayor Tom Barrett issued an impassioned plea for harmony:

We are asking every resident of this community to do everything they can to help us restore order. If you’re a mother who is watching this right now, and your young son or daughter is not home, and you think they’re in this area, get them home right now. This is a serious situation – and this is a neighborhood that has unfortunately been affected by violence in the past. There are a lot of really, really good people who live in this area, in the Sherman Park area, who can’t stand, like any of us, can’t stand this violence.

Sherman Park has an active community association. Two days after the shooting, a citizen posted this plea on their Facebook page. It was addressed to the local Alderman:

...Long before this weekend, many of my neighbors were afraid of “that part” of Milwaukee. They miss out on great things like the Fondy Farmers Mkt because of the perception of danger. They won’t stop for gas or groceries on their way home because they are afraid. I am asking you to condemn the criminals. The youth in that neighborhood are killing each other. They are robbing each other. They are burning down businesses that serve a neighborhood that is served by too few...Please stop burying the condemnation under a pile of misguided justification, or sadly, the families in your neighborhood will continue to bury Milwaukee's youth....

In this blog we’ve speculated plenty about the causes of crime and disorder. (Check out, for example, the “Crime and Punishment” topical area.) Most recently, in “Location, Location, Location,” we suggested that instead of obsessing about city crime rates, one ought to look to where the roots of violence actually lie, meaning neighborhoods. But this isn’t a post about the causes of crime, or how to fight it. It’s about equity. Lower-income areas of Milwaukee (and Chicago, Detroit, Baltimore, Newark...) can resemble
the Wild West. Where does that leave law-abiding families who may be economically unable to leave?

That was the core dilemma addressed during President Bill Clinton’s first term by an adventurous Federal experiment. Four-thousand-plus low-income families living in poverty-stricken areas of Baltimore, Boston, Chicago, Los Angeles and New York were enrolled in the “Moving to Opportunity” program (MTO). They were randomly assigned to one of three groups: an experimental group that received the usual, unrestricted “Section 8” housing vouchers; an experimental group that got vouchers restricted for use in areas where the poverty rate was ten percent or less; and a control group that received assistance but no voucher.

A study that compared effects on the voucher and control groups ten to fifteen years later paints a somewhat mixed picture. Forty-eight percent of the restricted group and sixty-three percent of the unrestricted Section 8 group actually used their vouchers. Their reasons seemed basically the same: to escape gangs and drugs and find better schools for their children. Families that used restricted vouchers ultimately wound up in areas where poverty hovered around twenty percent. That was twice the intended limit, but still about half the poverty rate of where the no-voucher controls lived, where poverty hovered around forty percent. Participants with unrestricted vouchers fell somewhere in-between. As one might expect, the lower-poverty areas were also somewhat less segregated (75 percent minority for the experimental groups versus 88 percent for the controls.) While statistically significant, the difference doesn’t seem all that compelling, leading one to wonder whether the subsidies were sufficiently large to create a pronounced effect.

Issues of dosage aside, how much of a difference was there between the subsidized and control groups? In several key areas, none. Economic self-sufficiency, employment/unemployment, youth “risky behavior” and youth educational achievement came out about the same. On the other hand, families with vouchers apparently did benefit in other ways. Adults in the voucher groups liked their neighbors better, were far less likely to see drugs being sold or used, and felt much safer. That’s consistent with official data, which revealed that they faced substantially lower levels of violent crime than the controls. Measures of health, including body mass, diabetes and psychological state were significantly better for adults in the voucher groups. Their subjective well-being (SWB) scores, which reflect overall experiences, were also much higher.

Still, the main reasons for using the vouchers had to do with kids, and their outcomes didn’t seem improved. (In fact, moving into “better” areas seemed to set boys back.) Two years after the official report, a team of Harvard researchers took another, more
intensive look at the MTO’s effects on children. They discovered that age seemed crucial. Children in the subsidized “experimental” groups who relocated before age 13 enjoyed significantly higher incomes as adults than the unsubsidized controls. They were more likely to go to college, to a better college, and to live in better neighborhoods, and less likely to become single parents. Relocating, though, had negative consequences for older children.

Baltimore’s participants in the MTO program got their own study, “Living Here has Changed My Whole Perspective: How Escaping Inner-City Poverty Shapes Neighborhood and Housing Choice” (Journal of Policy Analysis and Management, Spring 2014.) According to its authors, relocating to better neighborhoods greatly raised families’ expectations about what schools and neighborhoods should provide.

Unrestricted “Section 8” housing vouchers continue to be issued. However, funding is very limited. HUD’s fact sheet cautions that waiting lists may be long. What’s more, finances, work reasons, reluctance by landlords, a lack of preparedness, poor counseling and other factors can lead families who get vouchers to wind up living in areas that are far from desirable. According to the Center on Budget and Policy Priorities, 343,000 children in Section 8 households resided in “extremely poor neighborhoods” in 2014. Changes, starting with far more robust funding, seem definitely called for.

It’s been argued that the “toxic stress” of life in areas ridden by poverty and violence has grave effects on child development; even if families eventually relocate, improved life outcomes may be out of reach. What to do? With all due credit to the citizen-reformers who are hard at work in Sherman Park and like communities, their efforts won’t change the circumstances that kids who live in poverty faced yesterday, and will face again today and tomorrow. Your family, kind reader, and mine presumably live in “respectable” areas with good schools and minimal strife. Doing so, we know, requires a certain income. So it’s a matter of simple equity (not “charity”) to give children who would otherwise suffer the disadvantages of growing up in poverty the same opportunities we provide our own. While we wait (and wait, and wait) for improvements in police-community relations and such to yield their promised gains, helping families “Get out of Dodge” today – not tomorrow – seems a pressing imperative.

Of course, some would say that encouraging “good people” to leave only accelerates decay. There’s truth in that, all right. So here’s a corrective. Ask the skeptics to trade places with impacted families in, say, Sherman Park. It’s the least they could do.
HOLLYWOOD’S KILLING US

*Exposing impressionable youth to violent images for the sake of a buck*

By Julius (Jay) Wachtel. Two-hundred thirty-six murders. That’s six months’ worth of killings in the not-so-angelic City of Los Angeles, three months’ worth in Los Angeles County, and, according to an academic who spends his time keeping track of such things, one and one-half hours’ worth in “Rambo.” Rated R for “strong graphic bloody violence, sexual assaults, grisly images and language”, Sylvester Stallone’s newest vanity project depicts the sixty-one year old actor/director with the sagging pecs as a heroic Vietnam vet who sets out to rescue kidnapped missionaries. Sly’s newest project, reportedly the most violent general-distribution movie ever made, has received mixed reviews. Perhaps the most damning was the Philadelphia Inquirer’s, which called the film “action porn” and “an obscene gory game.”

But in Hollywood, where any publicity is good publicity, the words were music to Lions Gate’s ears. They didn’t release the film to benefit society -- they did it for one reason, and one only: to make lots of money. Expecting to recover more than one-third the film’s $50 million production cost during its opening weekend, Steve Rothenberg, the studio's domestic distribution guru, proudly remarked that “Rambo” was targeted at the immensely profitable 17-to-24 year-old demographic: “Hopefully, what our advertising has done is introduce ‘Rambo’ to a whole new generation of younger males.” Naturally, it won’t be long before twelve-year olds will be watching “Rambo” DVD’s and shelling out their parents’ hard-earned bucks for the first-person shooter game that’s certain to follow. Just listen to those cash registers jingle!

Sure, money’s dandy. Just don’t bother Sylvester, Steve and the other peddlers of pornographic violence with what some members of their target audience are doing with real guns and real bullets only blocks from Burbank’s soundstages. In 2006 seventeen-to-twenty four year olds were responsible for forty-three percent of murders in the U.S.; those in the most prolific segment, twenty to twenty-four, committed more than one in every four. With violence in many areas on the upswing, one can’t blame cities like Philadelphia from being dismayed by a plague of Hollywood shoot-‘em-ups that appeal to impressionable youth, and for all the wrong reasons.

Ah, but wait a minute, you say. Anyone who’s taken freshman research methods knows that correlation does not necessarily mean causation. There was violence before television, movies and video games; ergo, TV, movies and video games cannot be the cause.
If it were only that simple. Images are persuasive; if not, there would be no ad industry, no TV, and those pesky multi-color inserts in Sunday papers would be history (hmm...now there’s an idea!) Thanks to technology and the entertainment industry’s damn-the-consequences pursuit of the buck, grotesque visions of murder and mayhem have taken over the small and big screens and immersed video gamers in hypercharged environments where brutally dispatching one’s opponents isn’t one thing, it’s the only thing. Even well-regarded cinema critics have been inhaling. Consider the remarks of the L.A. Times’ Patrick Goldstein, who gushed that the “two leading best picture contenders -- "No Country [for Old Men]" and "There Will Be Blood" -- are brutal, nihilistic pictures that will be studied by film students for years but aren't the kind of pictures you can recommend to your Aunt Gladys in Des Moines.”

But there’s a big difference between watching and doing, you say. Does exposure to violent images really lead to violence? A recently published paper (L. Rowell Huesmann, “The Impact of Electronic Media Violence: Scientific Theory and Research,” Journal of Adolescent Health, vol. 41, 2007) says yes, definitely. Analyzing studies dating back to the sixties, the author concluded that TV, video games and the Internet have become classrooms of violence, arousing, “priming” and desensitizing young, malleable minds, and creating a public health threat second in magnitude only to smoking and lung cancer.

There was a day when the entertainment industry helped elevate society, rather than coarsen it. When the First Amendment presented an opportunity, not a shield behind which to hide. And when the measure of a man or woman was not what they earned, but what they contributed. Sylvester, Steve, Patrick...it’s not too late.

Repent!
HOW MANY LAWYERS DOES IT TAKE...

The weight of the Feds falls on a misguided Missouri mom

By Julius (Jay) Wachtel. How many lawyers does it take to convict someone of a misdemeanor? That’s what inquiring minds want to know. On November 26, after a five-day Federal court trial, a team of three prosecutors led by Thomas P. O’Brien, United States Attorney for the Central District of California convicted Lori Drew, 49 of three misdemeanor counts of accessing My Space computer servers without authorization.

Why did the Feds unleash three top guns on a middle-aged Missouri mom? Rewind to October 2006 when Megan Meier, a troubled 13-year old girl hung herself after receiving a My Space message from someone that she met online. That was the horrific outcome of a plot concocted by Drew to take revenge on Megan for spreading malicious online rumors about Drew’s own 13-year old daughter. Drew enlisted Ashley Grills, 18, to help. Grills created a My Space profile for a fictitious 16-year old boy and started sending Megan flirtatious messages. When Megan got infatuated and pressed to meet the boy Grills broke it off with a “the world would be a better place without you” message. That unexpectedly drove Megan, who was on anti-depressants, to commit suicide.

Unable to find a State or local law to fit the situation local authorities eventually declined to press charges, leaving the matter to be settled in the civil courts. That’s when the intrepid O’Brien came to the rescue, breathlessly announcing that he was stepping in to protect potential victims everywhere: “If you are going to attempt to annoy or go after a little girl and you’re going to use the Internet to do so, this office and others across the country will hold you responsible.”
How could an L.A. prosecutor criminalize nasty doings in Missouri? It so happens that My Space computer servers are physically located in L.A. County, bringing Drew’s use of the service within O’Brien’s jurisdiction. For the precise offense he turned to Title 18, Section 1030, a confusingly worded and complex statute that penalizes “fraud and related activity” in cyberspace.

Then things got curioser and curioser. Instead of letting his worker bees run with the ball, as is common practice in even the most serious crimes, the US Attorney personally injected himself into the case, going so far as to travel to Missouri to conduct interviews. Grills, who admitted she set up the My Space account and composed most messages got a sweet deal: immunity in exchange for testimony. Assured of a compliant witness, O’Brien had Drew indicted on conspiracy, a felony even if the object is a misdemeanor, and three instances of intentional, unauthorized access to a computer, charged as felonies under Sec. 1030(c)(2)(ii) because their alleged purpose was to commit a “tortious act,” meaning a harm under civil law.

Excoriated in the national media, in the bulls-eye of one of the most intensive Federal investigations in recent memory, with her husband out of work and her daughter in hiding, Lori Drew finally came to trial. And that’s when the Government’s house of cards began to crumble. After attentively listening to all the Government’s men and all the Government’s witnesses, jurors hung on the most serious charge, conspiracy. And while they did convict Drew on three counts of unauthorized access (under Federal law aiders and abettors are liable as principals) they chose the misdemeanor rather than felony variant.

There followed a groundswell of criticism, but not because the verdict was too lenient:

“What happened to Megan Meier was a tragedy, not a crime...This verdict is a loss for civil liberties and leaves all Internet users at risk of prosecution under federal law. It is a prime example of overcriminalization.” (Andrew Grossman, legal analyst, Heritage Foundation)

“This is troubling because it could have a chilling effect on free speech on the Internet. There is a long tradition of anonymous free speech in this country and the tech leaders on the Internet are trying to come up with some good way to balance anonymity with accountability.” (Sheldon Rampton, research director, Center for Media and Democracy)

“What they [Drew and Grills] did was cruel and incredible. A grown woman harassing a kid, for heaven's sake? But there's always been a problem, in my
view, of holding Drew legally responsible for an unintended consequence....”
(Barb Shelly, Kansas City Star columnist.)

“As a result of the prosecutor’s highly aggressive, if not unlawful, legal theory, it is now a crime to ‘obtain information’ from a Web site in violation of its terms of service. This cannot be what Congress meant when it enacted the law, but now you have it.” (Matthew L. Levine, former Federal prosecutor, now a defense lawyer.)

As one might expect, Drew’s lawyer, H. Dean Steward, delivered his own tongue-lashing, going so far as to accuse US Attorney O’Brien of “grandstanding” to enhance his chances of being reappointed under the new Administration. Steward’s not done. Federal Judge George Wu will soon be ruling on his motion to quash the verdicts because what made the intrusion unauthorized -- Drew’s failure to heed My Space’s terms of service -- couldn’t have been “intentional” as the statute specifically requires since she didn’t set up the website and never read the guidelines.

Legal technicalities aside, this case highlights a fundamental concern about the proper role of the criminal law. Would Lori Drew’s admittedly abominable acts have been better handled through the civil courts? People are always doing nasty things to each other, occasionally with catastrophic consequences, yet we rarely expect the Government to step in, preferring in a democracy to keep the State’s reach from becoming overbroad. When officials such as an all-powerful US Attorney manage through clever lawyering to invoke a statute clearly intended for a different purpose, we must be doubly cautious so that the fine line between the people’s interest and a zealous prosecutor’s self-interest isn’t breached.

And there’s another problem. Miscarriages of justice are far more likely to occur when resources are, as in this case, terribly imbalanced. Few of us have the means to hold off a Federal steamroller, and ganging up on a person of such modest means as Lori Drew with three high-powered prosecutors and a pack of Federal agents smells much more like persecution than prosecution. Even if she “deserved it” you’ve got to wonder: who’s next?
HUMAN RENEWAL

Despite redevelopment, South Bend poverty and crime remain locked in an embrace

For Police Issues by Julius (Jay) Wachtel. In 2013, one year into his first term, South Bend mayor Pete Buttigieg (yes, the Presidential candidate) released a plan to revitalize the city’s neighborhoods by tearing down or refurbishing 1,000 vacant and abandoned homes in 1,000 days. In the end, about sixty percent of these bedraggled properties fell to the wrecking ball. To be sure, many residents were pleased to have these drug dens and hangouts for ruffians and the homeless gone. A colorful brochure promised that “reuse strategies” would quickly transform these now-empty spaces into parks and community gardens.

Years later, vacant lots still abound. Still, Mayor Pete recently launched a program to help residents fund home remodels, and the city probably does look a bit prettier.

But our main concern is with crime. According to the FBI, South Bend changed reporting practices for the “violent crime” category in 2016, making reliable comparisons to prior years impossible. So we turn to murders. In 2010 South Bend had six homicides, yielding a not-so-bad rate of 5.8/100,000 pop., only one point worse than the national average of 4.8. Things, though, quickly deteriorated. South Bend closed out 2012, Mayor Pete’s first full year in office, with a depressing eighteen murders. That translated into a rate of 17.8, nearly four times the nation’s 4.7.

As the graph illustrates, South Bend’s numbers have since fluctuated. But the trend doesn’t seem particularly favorable. In 2017, the most recent year with reliable data, the city recorded sixteen murders. While a 14.7 rate seems somewhat of an
improvement, it was still far higher than the U.S. rate, which had **ticked up to 5.7**. Indeed, South Bend’s performance was so bad that it earned the city unwelcome recognition as 2017’s **twenty-ninth most murderous municipality**.

Still, as we recently preached in “**Repeat After Us**”, when it comes to crime there really is no “South Bend” any more than there is a “New York City,” a “Baltimore,” or a “Los Angeles.” If we’re interested in *causes*, **neighborhoods** are what really counts. South Bend has plenty of those. An impressive website, “**Neighborhood Resources Connection**” (NRC) identifies more than two dozen. Many are blessed with resident associations that seem to brim with activity and good will.

When it comes to building communities, though, poverty is a daunting obstacle. And South Bend’s numbers are alarming. According to the **Census**, 12.4 percent of individuals in the U.S. **fell below the poverty level** in 2000, and 14.6 percent in 2017. In South Bend the corresponding figures were **16.7%** in 2000 and **25.4%** - more than one in four – in 2017. For your area’s numbers go to **American Fact Finder**, enter city name or ZIP code and click on “poverty.” (Your writer did that. His predominantly working-class city came in at 15.8 percent, and the middle-class ZIP code where he resides returned a far more reassuring 4.3 percent.)

If South Bend follows the **well-known pattern**, prosperous neighborhoods will have less crime, particularly of the violent kind, than their less-fortunate peers. Unfortunately, South Bend doesn’t break down crime by neighborhood. Fortunately, the city has been tracking and posting data about “**criminally assaulted shootings**” since 2015. According to a local official, each entry represents a purposeful, criminal shooting that wounded or killed someone other than the gunslinger. Gun crimes only: no suicides.

There were 346 such shootings between January 2015 and December 2018. Turning to ZIP code as a stand-in for “neighborhood,” we were able to code all incidents but five with Google maps. We then used 2017 Census estimates to enter each ZIP code’s population and percent below poverty. Dividing assaultive shootings by number of residents, then multiplying by 100,000, yielded a cumulative, four-year shooting rate for each ZIP. These rates were then compared to percentage of residents under the poverty line. As poverty increased, what happened to the shooting rate?

Here’s the data, with ZIP codes arranged by percent of individuals below the poverty line. (ZIP code 46556, for the University of Notre Dame, was omitted for technical reasons. Also note that several ZIP codes include locations outside the city limits.)
Clearly, as percent of individuals below the poverty line goes up, so do the shooting rates. For the statistically-minded, the correlation was .688* (statistically significant,
with less than five chances in one-hundred that the coefficient was produced by chance.) Controlling for population only reduced the association slightly, to .676. We also tested other plausible relationships, such as between population size and shooting rates. None of the coefficients approached significance.

No, the measures aren’t in lock-step. After all, ZIP codes are imperfect surrogates for neighborhoods. Still, the results clearly support the notion that in South bend as elsewhere, poverty drives crime. Yet despite its evident problem, South Bend seems stuck in place. In a May 2018 op-ed about the city’s crime problems Mayor Buttigieg made absolutely no mention of its even more woeful economy. One year later the controversial police killing of a black resident would force him to return home during the Presidential campaign. Perhaps Hizzoner just couldn’t spare the attention. His conventional redevelopment initiatives are hardly the way to fight poverty. In fact, some fear they will lead to gentrification and adversely affect the city’s low-income residents.

What to do? “Mission Impossible?” pointed out that even the best policing can’t offer a lasting remedy for the crime and disorder that accompany poverty. So fix poverty! According to the Urban Institute, that calls for a truly comprehensive approach that includes child care, transportation, job training, apprenticeships and summer jobs. One example, Jobs-Plus, provides employment opportunities, job training and financial incentives to residents of public housing projects in thirteen States. (Alas, Indiana’s not on the list.)

Fortunately, not everyone in South Bend has a tin ear. Mr. Buttigieg is not running for re-election. In his campaign for the Democratic nomination, former mayoral candidate Jason Critchlow went well beyond traditional bricks-and-mortar redevelopment to promise that, as mayor, he would “lead an effort to create training and entrepreneurship programs in order to assist residents in creating economic opportunities within their own community.” (Critchlow earned the local newspaper’s endorsement. But he failed to get the voters’ nod.)

Again, look at those poverty numbers! We hope that whoever’s elected will focus on the disturbing fact that a great many of their constituents are, plainly speaking, poor. City leaders must go well beyond their evident preoccupation with the city’s physical decline and formulate a comprehensive plan for redeveloping South Bend’s human potential. Implement that and the consequences of poverty – rampant homelessness, poor health, unchecked crime and disorder – will disappear.

Guaranteed.
I DRINK, YOU LOSE

*Wine is still alcohol. And alcohol kills.*

*By Julius (Jay) Wachtel.* When’s the last time that someone in authority *encouraged* you to drink? For us that happy occasion took place on June 4, 2008 at the Beckman Center of the National Academy of Sciences, when Dr. Francisco Ayala, Bren Professor of Biological Sciences at U.C. Irvine lectured on “Elixir of Life: Wine and Health.” Enlivened by Power Point slides of ancient Egyptian wine jars, pretty grapes and the occasional statistical U-curve, Dr. Ayala’s talk was, as the Center’s website promised, all about the benefits of the fruity beverage: “Wine grapes are one of the major human food crops, and there is now *overwhelming* evidence that drinking wine in moderation is beneficial to human health” (emphasis added.)

Back home, we used online tools to check out the current literature. We found considerable but not “overwhelming” agreement that alcohol might benefit the cardiovascular system. Although Dr. Ayala contended that wine held a distinct advantage, a recent article concluded that once researchers controlled for the fattier diets of beer guzzlers the foamy brew offered as much of an advantage as wine.

What Dr. Ayala didn’t mention is that the *American Heart Association*, the nation’s go-to source on cardiovascular issues, “does not recommend drinking wine or any other form of alcohol to gain [cardiovascular] benefits.” Unlike Dr. Ayala, who encouraged consuming as many as four or five glasses of (preferably red) wine a day, the AHA discourages nondrinkers from getting started and cautions those who do to limit their intake to no more than two servings. It also questions the science. Since there have been no “direct comparison trials” -- administering controlled doses of alcohol to a randomly selected group over time, then comparing their health to an equivalent group of nondrinkers -- the reported effects of booze could be due to lifestyle or other factors.

Neither did Dr. Ayala reveal that drinking is frowned on by the *American Medical Association*. Why they’re such spoilsports is obvious. According to an article published in the authoritative *AMA Journal*, alcohol consumption was the third leading cause of death in the U.S. in 2000, following tobacco and poor diet/physical inactivity.

But let’s not quibble. Probably the most notable thing about Dr. Ayala’s address was what he left out. Extolling the virtues of drink for a full hour, he said virtually nothing about its downsides, and absolutely nothing about the effects of drinking on
For example, it’s well established that even small amounts of alcohol can impair judgment and motor skills, with deficiencies in cognition lingering even as BAC (blood alcohol concentration) decreases.

- It’s not just “drunk” drivers who are the problem. According to the California DMV, the chances of having an accident are five times higher after having only a single drink.

- A report by the National Highway Traffic Safety Administration (NHTSA) concluded that there is “strong evidence that impairment of some driving-related skills begins with any departure from zero BAC” (emphasis added).

- NHTSA data also revealed that in 2006 more persons died in alcohol-related crashes where a driver had been drinking but wasn’t legally drunk (17,602 deaths with BAC between .01 and .08) than where a driver was legally drunk (15,121 deaths with BAC of .08 and above).

Alcohol also turns out to be a crucial factor in crime, especially assaultive offenses. According to the Bureau of Justice Statistics, more than one-third of convicted offenders under supervision in 1996 were drinking when they committed their crimes.

Well, back to the lecture hall. After an hour’s hard work it was time for...you guessed it, a drink! Above and beyond the usual post-lecture fare of fruit, cheese and sweets the Academy was serving complimentary glasses of wine. Imagine a couple hundred seniors, many of whom can’t drive that well when sober, getting behind the wheel after a snort or two. Oh, did we mention it was in the evening? (Full disclosure: this writer’s pushing the big six-oh.)

Dr. Ayala informed his audience that he and his wife own a vineyard in Northern California and supply grapes to major wine producers. Perhaps that might explain why he at times seemed much more the cheerleader than the dispassionate scientist. And as much as we appreciated the disclosure, revealing a conflict of interest doesn’t really resolve it.

Perhaps in the future the good doctor might leave it to someone else to extoll the benefits of imbibing. And to the Academy: please -- no more free samples!
IGNORING THE OBVIOUS

Is incapacitation passé?

By Julius (Jay) Wachtel. In “Imprisonment and Crime: Can Both be Reduced?”, the lead essay in the current issue of Criminology & Public Policy, economists Steven Durlaf and Daniel Nagin suggest that the answer to their provocative question is a resounding “yes!”. We examined the thesis that certainty of punishment can work wonders last month. This time let’s revisit the one crime-fighting tool that they purposely left out:

...we note that our analysis does not address incapacitation effects, which constitute a logically independent way of reducing crime from deterrence. We recognize that the possibility that incapacitation effects are large represents a potential challenge to our objective of reducing crime and imprisonment....

What impelled them to skip over what is perhaps the most obvious approach to crime prevention? Simply, that it doesn’t fit their stated objective of reducing both crime and punishment:

...incapacitation, if strong enough, can lead to policy changes that reduce crime at the cost of greater imprisonment and so work against the spirit of our argument.

Softball commentaries on Durlaf and Nagin’s paper comprise most of the issue. Nearly all avoid substantial discussion of incapacitation. Two that don’t reprise the spirited debate between criminologists Alfred Blumstein and James Q. Wilson in their April 2008 Q & A for the Pew Trust.

Blumstein has long criticized what he calls America’s “incarceration binge.” In “Approaches to Reducing Both Imprisonment and Crime,” he disputes the notion that the crime drop of the past decades can be credited to the well-known increases in imprisonment and sentence severity (for a post on point click here.) As grist for his mill he points out that crime and imprisonment were both on the upswing well before 1993, the year when crime trends abruptly reversed. (He doesn’t address the possibility that the effect of punishment may have been lagged.) Although he concedes that incapacitation helped bring down the incidence of robbery and homicide, he insists that it wasn’t the only force at work, as though that somehow reduces its salience.

Wilson disagreed in the Pew Q & A (he said that “tough-on-crime laws” were an important factor in reducing crime) and here. As evidence for his position he contrasts the experiences of the U.S. and Great Britain:

In the 1980s and 1990s [as the severity of punishment in the U.S. increased] English criminal law became softer: A new law discouraged judges from sending all but the most serious offenders to prison and encouraged them to ignore prior convictions, again unless the offense was very serious. As a result the American prison population rose and the English one declined. By 1996 the two countries had changed places with respect to property crime. Using national crime
victimization surveys, the English robbery rate is one fourth higher, the auto theft rate one third higher, and the burglary rate twice as high as those in the United States.

Alas, that’s about as much support as punishment gets. In “Thoughts from Pennsylvania,” Mark Bergstrom mentions a study by his employer, the Pennsylvania Commission on Sentencing, which “found support for the use of incapacitation to address chronic and career criminals.” He nonetheless urges that long terms of imprisonment be sparingly imposed and carefully targeted. Actually, that’s not something that Durlaf and Nagin think possible: “To our knowledge, no proven ex-ante technology exists for the [pre-identification] of high-rate offenders with acceptable false-positive rates.” (What if anything might constitute an “acceptable” error rate they don’t say.)

Hostility to punishment infuses the essays. In “Challenges of Implementing Research-Based Policies,” Marc Mauer, a critic of mandatory sentencing, bemoans the difficulty of getting policy makers to listen to a “more nuanced” view of its costs and benefits, especially since locking up criminals offers the “intuitive appeal” (not to say, the factual certainty) of keeping them from victimizing innocent citizens. Elliott Currie’s “The Pitfalls of Spurious Prudence” goes so far as to chide Durlaf and Nagin for endorsing selective incapacitation in any form. Currie, you see, has found the matter settled:

But surely after decades of research and reams of findings, not to mention the damning evidence of 40 years worth of relentless prison growth, we no longer need to be so tentative about the relative ineffectiveness of mass incarceration as a strategy of crime control or about the potential attractiveness of alternatives.

Dr. Currie, meet Dr. Wilson.

Most everyone seems to accept Durlaf and Nagin’s deterrence-through-certainty thesis. But their suggestion that the best way to get there is through enhanced policing draws lots of skepticism.

Eric Baumer articulates the objections in “Uncertainty About Reduced Severity.” He points out that in an era of diminishing resources, with many cops already deployed in high-crime areas, further gains in deterrence would probably be marginal. Even if broad improvements were possible, cranking up enforcement is likely to provoke resentment. For an example one need look no further than NYPD, whose aggressive use of stop-and-frisk, one of the tactics that Durlaf and Nagin apparently favor, has exacerbated tensions between officers and minorities. (For a related post click here.)

Actually, since Durlaf and Nagin want to reduce crime and punishment, aggressive enforcement may prove problematic. Their retort, that “police might deter without actually apprehending criminals because their presence projects a threat of apprehension if a crime were to be committed,” is the breathtaking conceit that inspired “Having Your Cake.” As NYPD’s campaign demonstrates, in the real world the path to deterrence through policing will be littered lots of arrests, meaning more processing by the criminal justice system and, as Baumer points out, serious criminogenic consequences for those who get caught in the sweep.

Marie Gottschalk is another skeptic. In “Extraordinary Sentences and the Proposed Police Surge,” she argues that Durlaf and Nagin tailored their recommendations to the political climate. A critic of severe sentencing, but a realist about the possibilities for change, she argues instead for a “revitalization” of the
parole and commutation process “so that even people who have committed serious crimes get a chance to prove they are rehabilitated…”

Sans the crusader’s baggage, her approach forms the core of “Laudable Goals: Practical Hurdles,” Dick Thornburg’s brief but exceptionally enlightening essay. Here’s an excerpt from what the former Pennsylvania governor and U.S. Attorney General has to say:

I consistently have felt that one of the most fruitful areas for investment in the criminal justice system would be an upgraded and sophisticated probation and parole system. If the object is to maximize the chances for offenders to avoid becoming recidivists and to “graduate” into the role of “good citizens,” they must be provided with proper tools, rehabilitation, meaningful education and vocational training capabilities “behind the walls,” and similar services plus the necessary support and monitoring of post-release activities to maximize the opportunities for success.

Wherever one stands on incapacitation, that sounds like a great idea. After all, parole was supposed to be an extension of confinement, not the “get out of jail free card” that it’s become thanks to unconscionable caseloads. In this economy, funding criminal justice is a zero-sum game, so Durlaf and Nagin’s recommended shift of resources to the police would inevitably make parole and probation even less meaningful. (They make passing reference to better post-release supervision, but it’s far from what Gottschalk, Thornburg or your blogger have in mind.)

Well, we’ve come to the end of this post. But don’t fret – there soon will be more! In forthcoming weeks we’ll be scouring recent reports on criminal justice policy for more nuggets of wisdom. So stay tuned – and thanks for reading!
IS CRIME UP OR DOWN? WELL, IT DEPENDS...

*It depends on where one sits, when we compare, and on who counts*

*By Julius (Jay) Wachtel.* While browsing *The Crime Report’s* February 15 newsletter, its Top Story, “*New Crime Stats Run Counter to Trump's Dystopian View,*” caught our attention. So we clicked on it. As promised, or perhaps over-promised, the brief, two-paragraph account pointed to falling crime rates in San Diego, Rocky Mount, N.C., Lowell, Mass. and Battle Creek, Michigan as proof positive that it’s not crime but *President Trump’s evident obsession* with it that’s really out of control.

*The Crime Report* is not alone. Reassuring comments about crime pervade the media. San Diego police chief Shelley Zimmerman *boasted to the local paper* that the city’s near five-percent drop in violent crime during 2015-2016 (actually, 4.5 percent) “isn’t just a statistic or a random number” but “represents real people.” Her boss, Mayor Kevin Faulconer, bragged that “our city is safe because of the incredible partnerships forged between our community and our San Diego Police Department.” Natch, there’s always a fly in the ointment. Later on the article mentioned that yes, some forms of violence did increase, with twelve more homicides, six more rapes and nine more robberies in 2016 (each victim was presumably a “real” person as well.) Here’s the data from the *SFPD website*:

<table>
<thead>
<tr>
<th>Year</th>
<th>Population</th>
<th>Murder</th>
<th>Rape</th>
<th>Robbery</th>
<th>Aggr. Assault</th>
<th>Violent Crime</th>
<th>Burglary</th>
<th>Larceny</th>
<th>Vehicle Theft</th>
<th>Property Crime</th>
<th>Index Total</th>
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<tr>
<td>2016</td>
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<td>49</td>
<td>572</td>
<td>1,387</td>
<td>3,323</td>
<td>5,331</td>
<td>4,743</td>
<td>18,042</td>
<td>5,839</td>
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<tr>
<td>2015</td>
<td>1,368,061</td>
<td>37</td>
<td>566</td>
<td>1,376</td>
<td>3,601</td>
<td>5,582</td>
<td>5,129</td>
<td>18,933</td>
<td>5,096</td>
<td>29,158</td>
<td>34,740</td>
</tr>
</tbody>
</table>
San Diego’s decline in violence was driven by a 7.7 percent reduction in the number of aggravated assault reports – 278 fewer, to be exact. Without that, there would have been little to crow about. (We’ll have more to say about counting issues later.)

So is crime up or down? Just below the “Dystopian” piece a “READ NEXT” prompt directs readers to “More Big-City Murders: A Blip or an Ominous Trend?”. Although this brief article concedes that murder is going up in some places, it prominently features the reassuring comment of noted criminologist Alfred Blumstein, that “the national homicide rate is way below what it was in the 1970s, 1980s and 1990s.” That view is reinforced with a link to “Another Fact-Check of Crime Rates Find Trump is Wrong”, a summary of a Minneapolis Star-Tribune article that soft-pedals recent jumps in Chicago and elsewhere with graphs that display a multi-decade national downtrend in violent crime.

So far so good. But the same page in The Crime Report also featured a link to “Chicago Police Boss: ‘Enough is Enough’ After 3 Kids Killed,” a heart-rending piece that recapped a Chicago Tribune account about the shooting deaths of three Chicago children in four days. Indeed, even the most “liberal” media outlets are conceding that violent crime seems to be creeping up: “Though mostly far below their record levels in the 1980s and 1990s, homicides have jumped dramatically in some U.S. cities over the last two years, breaking from America’s decades-long decline in violent crime....” (Los Angeles Times, 1/4/17). While that story focuses on the usual suspects – Chicago, Baltimore, Milwaukee, etc. – it eventually allows that things aren’t perfect even at home: “Homicides also rose in Los Angeles in 2016, but by a much smaller amount: 5%. The city is still far less deadly than it was even a decade ago.”

Fast-forward six weeks. Here’s a sidebar from the February 19 Los Angeles Times website, just as it appeared at 4:38 pm:
Here’s the following day’s lead story:

One officer dead, another injured in shootout after report of traffic collision in Whittier

No “yes, but’s” there. After taking in the disturbing events of these successive and, believe it or not, randomly plucked days, would Times readers be more likely to agree that President Trump is “dystopian” or that the honorable Dr. Blumstein is a bit “Pollyannaish”?

Police report four categories of violent crime to the FBI: murder and non-negligent manslaughter, rape, robbery and aggravated assault. These comprise the “violent crime index,” or number of offenses per 100,000 population. Below are graphs depicting two trends since 1980, one for violent crime, and the other for its murder and non-negligent manslaughter component. Each was built using the FBI’s online tools (click here and here).
Both trends follow essentially the same pattern. If the data is correct, and excepting an uptick in the late 80’s and early 90’s that is often attributed to the crack cocaine epidemic, all forms of violence have been dropping since at least the eighties (1985 is often used as a start date since that’s as far back as the FBI reports crime trends for cities and counties).

If that’s as far back as we go – and most media accounts venture no earlier – the “Great Crime Drop” seems very real. But here’s the trend line going back to 1960:

At present, the U.S. murder rate is comparable to the sixties, while violent crime is substantially higher. Really, when compared with other supposedly modern societies, America’s always been in
dire straits. England and Wales (joint pop. about 58.2 million) had a combined 695 homicides during the 2015-2016 fiscal year. Their murder rate, 1.2, is less than one-quarter the 2015 U.S. rate (15,696 murders and non-negligent manslaughters, pop. 321,418,820, rate 4.9.) Meanwhile, neighborly Canada had 604 homicides country-wide in 2015, yielding a murder rate of 1.7. America’s ten most murderous cities in 2016 had murder rates ranging from Atlanta’s merely deplorable 23.9 to St. Louis’ jaw-dropping 59.3. As for sheer number of killings, England and Wales and Canada are easily outpaced by the City of Chicago alone, which closed out 2016 with a record 762 murders.

Let’s recap. Current violence rates seem a lot better when compared against 1980 than against 1960. Clearly, when is crucial. Where one sits is also important (and we don’t just mean which country.) A measly twenty miles separate the Los Angeles-area communities of Westwood (pop. 51,485, one murder in 2015) and Florence (pop. 49,001, 18 murders in 2015). Where would you rather live?

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IS POT LEGALIZATION COMING TO A HEAD?

Two states have approved its recreational use. What will the Feds do?

By Julius (Jay) Wachtel. Hang on to those joints! Last November voters in Washington and Colorado legalized the recreational use of marijuana for those over 21. And while Federal law continues to classify pot as a Schedule I drug (meaning no accepted therapeutic use), Attorney General Eric Holder, who long ago conceded the fight against medical marijuana, seems in no hurry to challenge states who cross what seems like the final line. During an April Congressional hearing he would only say that DOJ’s decision, when made, would place the needs of children first: “When it comes to these marijuana initiatives, I think among the kinds of things we will have to consider is the impact on children,” he said.

Holder’s approach undoubtedly reflects the views of his boss. Shortly after Washington and Colorado made their move, President Obama told Barbara Walters that “it would not make sense for us to see a top priority as going after recreational users in states that have determined that it’s legal.” Even so, as a Harvard-trained lawyer, our reluctant leader had to concede that sooner or later the conflict between Federal and State laws would have to be resolved. “I head up the executive branch; we’re supposed to be carrying out laws. And so what we’re going to need to have is a conversation about, how do you reconcile a federal law that still says marijuana is a federal offense and state laws that say that it’s legal?”

Of course, it’s more than just the law. Common sense indicates that legalizing marijuana would increase its use, including by youth. If the Attorney General’s decision will hinge on what’s best for kids, the Federal Government’s leading authority on the topic, the National Institute of Drug Abuse, offers some sobering thoughts:

A recent study of marijuana users who began using in adolescence revealed a profound deficit in connections between brain areas responsible for learning and memory. And a large prospective study showed that people who began smoking marijuana heavily in their teens lost as much as 8 points in IQ between age 13 and age 38; importantly, the lost cognitive abilities were not restored in those who quit smoking marijuana as adults.

Increases in marijuana use have led health authorities to raise a red flag. In a recent review of the health implications of legalization, researchers warned that brain scans of persons who regularly smoked pot before age 16 have shown evidence of reduced function in an area associated with impulsiveness: “The frontal cortex is the last part of the brain to come online,” said Dr. Staci Gruber, “and the most important. Early exposure perhaps changes the trajectory of brain development, such that ability to perform complex executive function tasks is compromised.”

Marijuana use raises serious health and safety concerns. In 2011 Harvard Health reported that pot use during adolescence is associated with an increased risk of serious mental disorders in early adulthood. In a recent study that tracked 2,000 American teens, scientists found that those who regularly smoked marijuana were twice as likely to develop psychosis or schizophrenia. Pot’s strength has also increased over time. According to NIDA’s potency monitoring program, the mean content of THC, marijuana’s
psychoactive ingredient, has gone up more than twofold, from 3.4% in 1993 to 8.8% in 2008. Many fear the consequences of unleashing this “new, improved” chemical on the public. Do we really need more learning-disabled teens? More addled drivers on the road? More smoking of any kind?

Until now legal and practical constraints have limited pot’s popularity. But with two states jumping on the legalization bandwagon, it seems only a matter of time before citizens everywhere start clamoring for the right to toke. Meanwhile a host of conflicting laws and policies leave State and Federal authorities unsure how to respond. Should DEA raid marijuana farms? Shut down retail outlets? Can local authorities help? Should they?

What the country needs most is leadership. If the President feels that smoking weed is no more consequential than having a drink, he needs to say so, and to submit legislation that would remove marijuana from Schedule I. If not, he needs to say that, too.

We’re waiting.
IS THE UCR BEING MUGGED?
AND IF SO, BY WHOM?

A mayors’ group blasts a publisher for ranking cities by their crime rates

By Julius (Jay) Wachtel. “A premeditated statistical mugging of America’s cities.” That’s how a press release from the influential U.S. Conference of Mayors described the yearly CQ Press ranking of America’s largest cities by their crime rates.

It’s not CQ’s methodology to which the mayors object. CQ gets its numbers from the UCR. It includes all Part I crimes excluding larceny-theft and arson (murder and non-negligent manslaughter, forcible rape, robbery, aggravated assault, burglary and motor vehicle theft) for metropolitan statistical areas and non-MSA cities with populations of 75,000 or more. CQ computes each locale’s difference from the national average for each type of crime, and then summarizes the results into a single score.

Well, that seems pretty straightforward. So what’s the problem? The mayors have three big gripes. One is that cities face unique circumstances so it’s unfair to rank them.

Cities differ in ways that have nothing to do with their crime risk, but that can greatly affect their ranking. Pure geographic happenstance – the location of the boundary line separating “city” and “suburb” – is one. Cities that are geographically small and that therefore do not include as many middle-class areas as larger cities get penalized, arbitrarily.

Cities do vary. Some are big, others are small; some are prosperous, others aren’t. And yes, many have low-crime suburbs. Los Angeles (243/400 on the list, with smaller being better) would probably look a lot better if its score included peaceful communities such as Simi Valley (16/400), where many cops choose to live. (Simi also happens to be the place where four LAPD officers accused of beating Rodney King were tried and acquitted, touching off major riots in, naturally, Los Angeles.)

Who’s “penalized” depends on whose ox is being gored. Whatever the reason for the L.A./Simi Valley demarcation line, families looking for a safe place to live in northern Los Angeles County might find CQ’s information very useful. Apparently so does Simi Valley police chief Mike Lewis, whose website message brags that his community “consistently ranks as one of the Safest Cities in America.”

Another argument is that city rankings can’t predict the risk of being victimized:

Knowing the city in which a person lives reveals next-to-nothing about his or her crime risk, especially when compared with genuine risk factors such as age, lifestyle, and the neighborhood within a given city where that person lives.

Leaving aside the obvious – that even residents of safe areas must travel outside their neighborhoods – it’s true that the risk of becoming a victim depends on many factors. West Los Angeles, for example, has far less crime than South or East L.A. Still, the effects of crime are felt citywide, straining the municipal
budget and impacting everything from libraries to street maintenance. Last July former mayor Richard Riordan predicted that without substantial additional reductions in expenditures (or without substantially increasing the property tax rate) the city could go broke in two years. While no aggregate statistic such as city crime rank can accurately predict whether a specific individual will get mugged, CQ's number is nonetheless a useful barometer of a city's overall health.

A third objection leaves behind the validity of the rankings to argue that the numbers used to create them are hopelessly unreliable:

Cities differ in the degree to which their citizens report crimes and in how crime is reported. How much of the difference between any two cities' crime ranks is real and how much reflects differences in measurement and reporting systems is not known.

Indeed, just during this past year anecdotal reports suggest that many police departments have undercounted crime and minimized its severity:

- **Baltimore**: Rapes are up twenty percent, to 112 from 94 for the same period last year. Why? Because the local paper blew the whistle on a police practice of ignoring sexual assaults. Police have also been accused of classifying shootings with multiple victims as a single crime. They also reportedly jiggled the value of stolen property to keep thefts from reaching the felony threshold.

- **Dallas**: Reporting guidelines that were overhauled in 2004, causing aggravated assaults to plunge, were justified by the police chief, who says he follows State, not FBI classification rules. Dallas also stopped reporting vehicle burglaries, supposedly to keep from counting phony reports. Meanwhile a newspaper investigation reveals that police are only reporting half the crimes called for by FBI rules.

- **Detroit**: In a strange twist, the police are claiming that recent threats to punish officers who “miscode” lesser crimes as burglaries are only intended to reduce over-reporting (who knew that was a problem?) It may or may not be related, but former Detroit police chief James Barren was fired in 2009 after his department and the medical examiner got caught classifying homicides as self-defense and suicide.

- **Memphis**: Police proudly report an 80 to 90-percent homicide clearance rate. But using FBI reporting standards it dips to 69.3 percent, only slightly better than the national average.

- **Miami**: A 2009 report by the Florida Department of Law Enforcement attributed chronic under-reporting by Miami police to “a self-imposed pressure that certain [officers] felt as a result of the implementation of Compstat.” One example was a carjacking that police downgraded to an “information report.”

- **Nashville**: Police are accused of clearing domestic violence crimes as unfounded to improve the department’s statistics and “[make] it look like crime has diminished.” Officers also accuse former chief Ronal Serpas (now at New Orleans) of using CompStat to “manipulate” statistics and make it appear that crime had declined.
• **New Orleans**: Police are reexamining 30 sexual assault reports from 2009 that may have been improperly downgraded to non-criminal incidents. 146 such write-downs were made in 2008, versus 97 recorded as criminal.

• **New York City**: Managers pressed by Compstat allegedly monkeyed with reports to keep theft losses under the FBI’s $1,000 threshold. To hold down the aggravated assault rate they also reportedly encouraged victims of violence to minimize what took place. A whistleblower complaint recently led to internal charges against five officers including a Deputy Inspector for suppressing crime reports in order to make their precinct look good.

• **St. Louis**: Police admit that at least some of the steep drop-off in crime was due to a change in reporting practices. They have also begun to report more assaults.

Fiddling with numbers may reflect a concern to not stand out during an era of falling crime rates. Undercounts may have other causes. As we’ve mentioned before, victims who reside in high-crime areas may be too scared to report crime. In Milwaukee, declines in patrol staffing that caused 911 response time to average three hours have so discouraged some residents and business owners that they simply stopped calling.

What does the FBI have to say about using the UCR to rank cities? In a word, “don’t”:

Since crime is a sociological phenomenon influenced by a variety of factors, the FBI discourages ranking the agencies and using the data as a measurement of law enforcement effectiveness.

A more elaborate statement to the same effect, “Caution Against Ranking,” pops up whenever users access the UCR. Yes, crime imposes unequal burdens. It’s probably unfair to use crime rankings to compare the performance of police departments. Keep in mind, though, that the UCR does more than pass on numbers. Its yearly reports, which are relied on for a wide range of purposes, aggregate and analyze crime statistics for the U.S. as a whole. That crime has dropped steadily for nearly two decades is accepted as gospel. Really, if we trust UCR data that much, why should its use to rank cities be any different? Because it embarrasses?

Of course, if we don’t trust the data – and there may be good reason not to – then we ought to be doing something more than just picking on the messenger.
IS TRUMP RIGHT ABOUT THE INNER CITIES?

*America’s low-income communities desperately need a New Deal*

*By Julius (Jay) Wachtel.* On the evening before Thanksgiving, as residents of Southern California prepared to celebrate the forthcoming holiday with family and friends, a 16-year old high school student was on the way home from church, riding in the family car, her dog on her lap.

Danah Rojo-Rivas didn’t survive the trip, and neither would the pooch. About 9:30 pm, as their vehicle drove through Lynwood, a low-income, predominantly minority city with a substantial violent crime problem, gunfire erupted. A bullet fired by gang members riding in one vehicle at gangsters riding in another pierced the car, striking Danah and instantly killing her.

Her mother and brother, who were also in the vehicle, weren’t hurt. Alas, the dog bolted and got run over.

Incredibly – or perhaps, not – this horrifying event received only modest attention. Other than an offer by the County Board of Supervisors of a $20,000 reward for information (later raised to $30,000), the deplorable specter of an innocent girl being viciously gunned down was treated as just another murder in a murderous place. A GoFundMe memorial page was set up by the family to cover funeral costs, and so far there haven’t been any arrests.

“You’re the only one that can get you out of this ghetto.” That was the message that Regina Bejarano, a 47-year old single mother of five, prayed would get through to her kids. With sixty-five homicides so far this year, violence-ridden San Bernardino, an eastern Los Angeles County community of 216,000, was decidedly chancy, and life in her gang-infested neighborhood particularly so. On the last day of August unknown hooligans walked up to their apartment and opened fire, wounding her 19-year-old son, a goddaughter and a family friend.

Fortunately, no one died. Neither was anyone arrested. Desperate to escape the treacherous city where she was raised, Ms. Bejarano began frantically searching for a safe, affordable place far from the mayhem. She was still looking on October 30 when Joseph, her 17-year old, left on a brief walk to visit his cousin. He never got there. Police
later arrested Miguel Cordova, 18, for shooting and killing Joseph in what authorities say was a gang-inspired murder.

Ms. Bejarano still intends for the family to relocate. And although it’s only a couple blocks away, she always drives to the spot where Joseph died. It’s far too dangerous to walk.

Danah Rojo-Rivas and Joseph Bejarano died in gang shootings; one by accident, the other on purpose. Shamefully, while many of our nation’s urban areas experience appalling levels of mayhem – St. Louis, Baltimore, Detroit, Newark, Cleveland, Oakland, Memphis and Chicago are only a few examples – President Obama has mostly kept mum.

Well, there is one exception. Three years ago, when inner-city gang members shot and killed Hadiya Pendleton, a 15-year old high school student, Michelle Obama attended the young woman’s funeral. Hadiya was special because she had performed, along with classmates, at the President’s second inauguration, in Chicago, the city where he was raised. President Obama later spoke of the tragedy in a speech and in his State of the Union address, both times while urging action on Federal gun laws. He’s otherwise fastidiously avoided addressing – or dealing with – the disastrous cycle of poverty and violence that besets America’s inner cities. That oversight has puzzled more than this observer. Here’s a recent assessment of the President’s legacy by someone whom your writer never thought he’d be quoting – the redoubtable Louis Farrakhan:

...Mr. President, you’re from Chicago, and so am I. I go out in the streets with the people. I visited the worst neighborhoods. I talked to the gangs. And while I was out there talking to them, they said “You know, Farrakhan, the president ain’t never come. Could you get him to come and look after us?” There’s your legacy, Mr. President. It’s in the streets with your suffering people, Mr. President. And if you can’t go and see about them, then don’t worry about your legacy ’cause the white people that you served so well, they’ll preserve your legacy...

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Many progressives consider the term “inner city” a needlessly cruel way to denote lower-income urban neighborhoods. Yet whatever one wishes to call these places – for Mr. Farrakhan, it’s “the streets” – that’s where violence takes its most shocking toll. Click on “Location, Location, Location” and look up “Vermont Square” on the Murder Rate graph. This was the place called home by the senior citizen who convinced city
fathers to help destigmatize notorious South-Central Los Angeles by dropping “Central” from its place name. Well, good luck with that. Crime in Southern California may have receded from its crack-fueled peak in the early 90s, but gross inequities in personal risk persist. Note, for example, that Vermont Square’s 2015 ghastly murder rate of 24.62 per 100,000 (44,662 residents, 11 homicides) is thirteen times that of Westwood, an upper-middle class area where the price of an ordinary home easily tops a million bucks (1 homicide/51,485 residents/rate 1.94).

It’s not just un La-La land. Life in poor areas anywhere can prove dangerous. That includes the President’s hometown. (For a new assessment of violence in inner-city Chicago, click here.)

What’s being done to address the pressing needs of inner cities? Considering their lamentable state, far from enough. Government funding for housing assistance, job training, education, child care and drug and alcohol treatment is grossly inadequate, constraining both direct action and heroic efforts by citizen groups and non-profits. (For the sobering experiences of a major public-private effort click here.) Meanwhile overtaxed, wary police and social workers provide what fleeting, temporary relief they can. And as we know, occasionally make things worse.

Really, for all the jawboning about “urban renewal” and such it seems that most of what gets renewed every four years is disinterest and neglect. So when then-candidate Donald Trump – a Republican – got on the soapbox about fighting urban blight and disorder, even a few Democrats found something to like. In an article published shortly before the election, award-winning New York Times reporter Nikole Hannah-Jones concluded, to her evident surprise, that Trump “was speaking more directly about the particular struggles of working-class black Americans and describing how the government should help them more than any presidential candidate in years.”

Was she exaggerating? Consider Trump’s expansive view about his responsibility to the denizens of inner-city Milwaukee:

Our job is to make life more comfortable for the African-American parent who wants their kids to be able to safely walk the streets. Or the senior citizen waiting for a bus, or the young child walking home from school. For every one violent protester, there are a hundred moms and dads and kids on the same city block who just want to be able to sleep safely at night.
Still, other than, say, paying for more cops, what would Trump actually do? A hint of his approach came during a Charlotte speech where he offered a “New Deal for Black America” that used tax holidays and other incentives to spur investment in the inner cities. His message resonated with the host of a local radio program, who complained that the black community had been ignored by the present Administration: “As an African-American, I haven’t seen anything that Obama has actually done.”

Well, one thing that the current President and his predecessors have done is build up America’s defense arsenal, creating lots of middle-class jobs and, not incidentally, helping make a gaggle of industrialists filthy rich. Consider, for example, Lockheed’s F-35 Joint Strike Fighter program. So far, it has cost taxpayers $100 billion, a stunning amount that’s raised a lot of eyebrows, from Senator John McCain (he called the situation a “scandal and a tragedy”) to the President-elect’s. Here’s his Tweet on point: “The F-35 program and cost is out of control. Billions of dollars can and will be saved on military (and other) purchases after January 20th.” He didn’t say, but there’s a special place where “billions” might do some good...

Alas, in his final end-of-year press conference on December 16, which your blogger listened to in its near-entirety (our local NPR station eventually cut away), President Obama was silent about urban America. Other than for briefly reassuring his flock that, yes, he worried every night about their economic well-being, it was all about the election and foreign policy. To be sure, the cities are in large part the responsibility of local and State officials, so it’s likely inevitable that the President would be preoccupied by matters that fall within his exclusive purview, such as the tragedy besetting the innocent citizens of Aleppo and Sudan. Yet one wonders whether our nation’s top elected official shouldn’t be equally determined to keep vulnerable residents of the U.S. from suffering a similar fate. The late Danah Rojo-Rivas, Joseph Bejarano and Hadiya Pendleton would have probably agreed.

Parsing campaign rhetoric is a fraught enterprise, and we’ll leave it for the reader to intuit the President-elect’s real intentions. His emphasis on the inner city, though, is refreshing. As long as it’s not all about bricks and mortar, his “New Deal” seems appealing. One-hundred billion bucks would be a good start.
IT’S GOOD TO BE RICH

When it comes to justice, there’s no substitute for money

By Julius (Jay) Wachtel. “Jury acquits Wesley Snipes of tax fraud.” That was the headline splashed across U.S. dailies after a Federal jury acquitted the action-movie star of felony tax evasion, instead finding him guilty on three misdemeanor counts of failing to file tax returns. Since 1997 the star of “White Men Can’t Jump” has avoided paying millions of dollars in taxes by claiming that the IRS was not a legitimate government agency and lacked the authority to tax domestic earnings. An accountant and a well-known tax protestor who had been counseling Snipes and were tried alongside him were less lucky; both were convicted of felonies and face substantial prison terms.

On the same date that Wesley dodged the big bullet a Boston appeals court affirmed the conviction of Richard Hatch for felony tax evasion. Best remembered as the relentless “Survivor” contestant whom everyone loved to hate, Hatch will have to serve out the four-year, three-month prison term imposed after jurors rejected his claim that the TV production company had agreed to pay the taxes on his million-dollar prize.

There the comparison ends. Although they were charged with the same crime, Snipes’ alleged conduct was infinitely more serious, involving far greater losses of revenue and requiring much more investigation and court time. True, Hatch might have angered the judge by allegedly lying on the stand (Snipes didn’t testify), but he didn’t challenge the tax system with loony arguments. And when signing his return, he didn’t change “under penalties of perjury” to “under no penalties of perjury,” like Snipes did in 2001.

Still, Hatch got hammered, while Snipes essentially walked. Why? Although in criminal trials the burden of proof is on the State, considering the imbalance between the resources available to the Government and those available to most defendants, raising reasonable doubt is no cinch even for the truly innocent. Hatch, who got involved in other mischief and squandered his winnings, was in no position to hire a big-bucks defense team with multiple lawyers, experts and investigators. Snipes was, and did.

Tax fraud is one thing; murder, another. Consider the case of Darryl Hunt. Arrested in a 1984 rape/murder, the youth had little money to mount a challenge against lying witnesses and a faulty identification. Once he was convicted the tables
turned, and it was now up to him to find the real killer or rot in prison. Although activists and lawyers worked tirelessly on Hunt’s behalf, it took nearly twenty years before DNA identified the right man, a parolee who had been jailed for attacking another woman not long before Hunt’s arrest. That information could have been discovered before trial had there been funds to hire investigators. Hunt didn’t have to do nineteen years for a crime he didn’t commit, but he did.

Now consider some famous acquittals. Football legend O.J. Simpson, accused of slicing up his ex-wife and her friend outside her Westside apartment. Pop star Michael Jackson, tried for molesting a child at his Santa Barbara ranch. Actor Richard Blake, arrested for shooting his wife to death outside an Italian eatery. Consider also the case of music producer Phil Spector, whose 2007 trial for murdering a restaurant hostess ended in a hung jury. Other than fame, what do these defendants have in common? Money, and lots of it. Spending millions of dollars on teams of top-notch lawyers, experts and investigators, each managed to plant enough “reasonable doubt” in juror minds to overcome what many observers thought was overwhelming evidence of their guilt.

What’s the moral to the story? If you’re not rich, think twice before going to trial. And if you do go to trial, are unjustly convicted, manage after five years to get a new trial, and the D.A. offers you time served for pleading guilty -- take the deal! Don’t stand on your high horse and go to trial again, just so you -- like Darryl Hunt -- can be wrongfully convicted twice!

A system that works to the advantage of the wealthy and promises for everyone else only as much justice as they can afford is nothing to admire. How to restore its balance is one of our democracy’s most important to-do’s for the twenty-first century.
LOCATION, LOCATION, LOCATION

Crime happens. To find out why, look to where.

By Julius (Jay) Wachtel. A few weeks ago we blogged about Chicago’s ongoing struggle with violent crime. And it’s not just the Windy City that’s been having a lousy year. Data gathered from sixty-three police departments and sheriff’s offices by the Major Chiefs Association reveals that half (31) experienced more homicides in the first quarter of 2016 than during the equivalent period in 2015. Some of the increases were substantial. Murders in Las Vegas went from 22 to 40, an 82 percent gain. Other winners (or, more properly, losers) include Dallas (26 to 45, +73 percent), Jacksonville (18 to 30, +67 percent), Newark (15 to 24, +60 percent), Memphis (31 to 48, +55 percent), Nashville (13 to 20, +54 percent), San Antonio (23 to 34, +48 percent), and Los Angeles (55 to 73, +33 percent).

Still, the trophy properly belongs to Chicago. Although its increase wasn’t the greatest percentage-wise – the Windy City came in third, at +70 – it dwarfed its competitors in raw numbers, going from 83 homicides during 1Q 2015 to a stunning 141 for 1Q 2016. Overall, more folks are meeting a violent demise in the City of Broad Shoulders (509 in 2012; 422 in 2013; 427 in 2014; 465 in 2015) than anywhere else in the U.S. (We’ll spare readers Chicago’s other nicknames. Perhaps these sobering facts might suggest one that’s more – um – contemporary.)

On the other hand, if we’re interested in murder rates Chicago is a distant contender. This graph uses data from the Brennan Center, St. Louis police, U.S. census and the UCR to compare murders per 100,000 population for thirteen major cities since 2002. (Our focus is on murder because felonious assault data seems far less trustworthy. For more on this see “Cooking the Books” and “Liars Figure”.)
And the winner (meaning, loser) is St. Louis! It earns the gold for 188 killings, which yielded a breath-taking rate of 59.6 murders per 100,000 population. Baltimore, at 55.2, got the silver and Detroit, at 43.8, the bronze. Chicago – its comparatively measly rate was 17.0 – only came in eighth.

Yet the news wasn’t all bad. During 2002-2014 New York City’s murder rate fell from 7.3 to 3.9. (It ticked up a bit in 2015, ending at 4.2.) Los Angeles wasn’t too far behind. Although it started out far higher, at 17.1, by 2013 its rate had dropped to 6.5. Murder rates have rebounded in the last couple of years, but L.A.’s uptick was relatively marginal, to 6.7 in 2014 and 7.2 in 2015.

So, New York is very safe, and Los Angeles isn’t far behind. Right?

Not so fast. Each release of the Uniform Crime Reports is accompanied by a prominent warning against using crime statistics to rank jurisdictions. Here’s the most recent:
Each year when Crime in the United States is published, many entities—news media, tourism agencies, and other groups with an interest in crime in our nation—use reported figures to compile rankings of cities and counties. These rankings, however, are merely a quick choice made by the data user; they provide no insight into the many variables that mold the crime in a particular town, city, county, state, region, or other jurisdiction. Consequently, these rankings lead to simplistic and/or incomplete analyses that often create misleading perceptions adversely affecting cities and counties, along with their residents.

“Simplistic” or not, once the stat’s come out there’s no holding back the media. In late 2015, only days after release of the UCR’s 2014 installment, the Detroit News prominently ranked the top ten murder cities, leaving any implications to the reader. Comparisons – essentially, rankings under another name – are commonplace. Two weeks ago, in an otherwise well-documented piece entitled “Homicide Rates Jump in Many Major U.S. Cities, New Data Shows,” the New York Times gloated that the Big Apple was nothing like Chicago:

Still, more than 50 people were shot in Chicago last weekend, making it among the most violent weekends in months. At the other end of the spectrum was New York City, where homicides fell in the first three months of the year to 68 from 85 in the same period last year.

Respectable police organizations also get in the game. True enough, the above-mentioned report published by the major cities police chiefs avoids direct comparisons by listing cities alphabetically and providing crime counts instead of rates. Except that the chiefs just couldn’t help themselves: jurisdictions where crime increased are highlighted in red.

What gets lost in the discord about ranking is that cities are political constructs. Crime, on the other hand, is a social phenomenon, with its roots in neighborhoods. Commenting on the recent upswing in murder, Professor Richard Berk makes the point succinctly:

Those homicides are not randomly distributed...Crime, like politics, is local. This stuff all occurs in neighborhoods on much more local levels....It’s not about a city as a whole, it’s about neighborhoods.

Alas, the professor’s enlightened comments were buried in an article that – you guessed it – was replete with rankings. Still, his concerns about place were echoed by Eddie Johnson, Chicago’s weary police commissioner, who attributed the increased
violence to a coterie of well-known criminals who were running amok in certain parts of the city.

That’s what another top cop had to say about his burg a few days ago. Interviewed about Los Angeles’s recent rebound in homicide, LAPD Chief Charlie Beck hastened to point out that only 427 Angelenos have been shot so far in 2016, while 1,400 were plugged during this period in...Chicago! But his analysis of L.A.’s increase seems much the same:

We took some extreme steps to address the four most violent divisions earlier in the year, and those steps are starting to have some effect. Although it's not over ‘til it’s over, obviously.

Your blogger spent his teens in a middle-class neighborhood on Los Angeles’ west side. His only experience with violence was what he heard on the radio or saw on T.V. Of course, he and his friends steered clear of notoriously violent areas such as South L.A. Two decades later, when your blogger returned to L.A. as an ATF supervisor, he got to experience South L.A.’s crime problems first-hand. He’ll always remember that early morning when one of the fed-up local residents walked up and thanked him as agents led a notorious evil-doer away.

What can we learn from neighborhoods? The Los Angeles Times has been mapping murders in the L.A. metropolitan area since 2000. This graph compares rates for neighborhoods in the incorporated areas of South Los Angeles during 2002-2015:
During 2002-2005, the aggregate neighborhood murder rate ("Total South L.A.") plunged 56 percent, from 46.2 to 20.2, while the rate for the City of Los Angeles fell 59 percent, from 17.8 to 7.3. L.A.'s starting rate was more than two points lower than South L.A.'s ending rate, and wound up being less than one-third South L.A.'s. Westwood, a trendy area where your blogger's family occasionally shopped and dined, had zero murders in 2012 and one in 2015. Your blogger's neighborhood, West Hollywood (2010 pop. 34,426), went from 2 murders in 2002 to one in 2015.

Many L.A. neighborhoods have always been safe, others not so much. Although homicide seems to be on the decline, places such as Broadway-Manchester, Central-...
Alameda, Florence, Vermont Knolls, Vermont Slauson, and Vermont Square are stubbornly resisting the trend. Each is likely to have counterparts elsewhere, and for the same reasons. Say, Chicago.

Cops and criminologists know that place matters. “Hot-spots” policing, the popular strategy that targets locations in need of special attention, is a computerized version of last century’s old-fashioned pin maps. Sociological interest in neighborhoods dates back to at least the “Chicago School.” And inquiries into place continue. In a compelling new study, researchers sampled census blocks in ten cities to investigate the effects of voluntary organizations on neighborhood crime rates. Their report appears in the current issue of *Criminology*.

What’s important is to escape the trap of the usual suspect: poverty. Really, most poor people aren’t crooks. Geographically coding crimes and potentially enlightening variables – for example, the presence of violent cliques – might help explain why some disadvantaged neighborhoods fare worse than others. Unfortunately, that’s where movement lags. At present, thirty-three states participate in the National Incident-Based Reporting System. A joint effort of the FBI and Bureau of Justice Statistics, it supplants the stodgy old UCR, which mostly aggregates numbers of offenses and arrests. Unfortunately, while the NIBRS captures information about place, crime locations are only coded by type (e.g., residence, bar, office building).

To help agencies take the next step, the National Institute of Justice offers a comprehensive set of mapping and analytical tools. Some departments have been geocoding incidents, publishing maps and even making data available online (click here for Philadelphia PD’s version.) Geocoded crime data is also offered by private firms and public organizations (the L.A. Times “Homicide Report” was used for this piece.) And while its coverage is somewhat dated, the National Archive of Criminal Justice Data offers data that can be drilled down to ZIP codes, census tracts and block groups.

Hopefully one day all crime will be geocoded. Until then, we should keep in mind that political subdivisions like Los Angeles and Chicago are mostly creatures of the imagination. Just like in real estate, it really is all about location.
LOCK ‘EM UP (AND SEND THE BILL TO VENEZUELA)

How mandatory sentencing victimizes the public

By Julius (Jay) Wachtel. Governor Schwarzenegger’s in a fix. A $14.5 billion fix. Thanks to weak tax collections caused by a soft economy and crashing home values, that’s how much the California budget is in the hole. State agencies have already been told to figure on a ten-percent hit.

Start digging!

Trouble is, some departments spend money like drunken sailors. While most “normal” States expend two or three times more on colleges than prisons, California’s $10 billion corrections budget is just shy of the $12 billion that higher education gets, and if trends hold will surpass it in a few years. The Golden State runs the nation’s largest prison system, housing more than 170,000 inmates. It also imprisons a large share of its population, with a rate of 47.5 per 10,000 in contrast with New York’s far more moderate 32.6. And while New York’s prison population decreased 2.2 percent between 2000-2006, California’s increased by .9 percent (but a much larger 2.8 percent between 2005 and 2006).

Locking up people is expensive -- very expensive. A recently approved $7.4 billion prison bond issue will eventually cost California taxpayers more than $300 million per year in interest alone. California is also under expensive Federal mandates to improve prison health and mental care. For example, this June the court-appointed receiver who controls the prison system’s $1.5 billion medical budget issued a blistering critique warning that it could take as many as ten years to bring things up to snuff. As a side note he also remarked that he would be spending an extra $158 million this year for staff and capital improvements. And there’s more.

- Only three months ago the Governor issued an executive order clearing the way to transfer as many as 5,000 prisoners to other States. Naturally, that’s only a speck, but since tens of thousands are sleeping in gyms and dining halls any relief is welcome. What this will cost hasn’t been revealed, but one can bet that it’s going to be expensive.

- Thanks to politicians in bed with the powerful guards’ union, corrections pay scales are extremely generous, with experienced officers making $70,000 or more plus full peace officer retirement benefits (90 percent of salary after 30
years).

- California’s severe three-strikes law keeps prisoners in longer. And those who are let out soon return. California’s practice of placing nearly all releasees on parole, then promptly revoking most for violations such as drug use and failure to report is phenomenally expensive. The figures are striking. In 2000 nearly seventy percent of new California inmates were parole violators. (In 1980 the proportion was just twenty percent.) Stunned researchers estimated that if California recommitted only a third of parolees instead of more than two-thirds it could save $500 million per year.

Five-hundred million? That’s big bucks even for the Guv. In a recent proposal, Governor Schwarzenegger suggested releasing non-violent inmates with less than 20 months left on their terms, then not actively supervising them. Many others already on parole would also be shifted to non-supervised status, subject to search but not revocation for technical reasons. By slicing 22,000 from the inmate population (13 percent) and reducing 1,700 corrections positions, taxpayers could save a whopping $350 million per year.

But wait a minute. How does freeing criminals make us safer? Won’t these so-called “savings” be offset by increased victimization? Again, contrast New York and California. Although New York imprisons a substantially smaller proportion of its population, its 2006 violent crime rate of 434.9 per 100,000 was nearly twenty percent lower than California’s 532.5. New York’s rate also dropped 2.1% from 2005 (444.4), while California’s increased 1.2% (526.0).

Well, maybe California’s criminals are more violent and intractable than New York’s. We’ve already noted that L.A. is more thinly policed than New York City -- perhaps bad guys here have more opportunities! But in 2000 nearly six out of every ten new California inmates weren’t crazed gunmen -- they were technical parole violators. Our prisons are bursting at the seams because thousands of parolees are constantly cycling through, doing a few months here and there for lapses such as flunking drug tests and not cooperating with agents.

Draconian laws, misguided practices and an unholy alliance between the guard’s union and legislators (and at least one former Governor) have transformed California’s penal system into an ever-expanding perpetual motion machine. That’s undeniably good news for the corrections industry, but is it a sustainable policy for the State?
LOOKING BEYOND THE GUN BARREL

*Trying to draw lessons from a wave of senseless shootings*

By Julius (Jay) Wachtel. Only yesterday Pittsburgh (Penn.) police officers responded to a 911 call of a domestic disturbance. Richard Poplawski, 22, was lying in wait, armed with a rifle and handgun and wearing an armor vest. As soon as police entered he opened up with a barrage of fire, killing three officers and wounding a fourth. During the ensuing standoff Poplawski, a gun enthusiast, called a friend and told him that his rights were being infringed on by “the Obama gun ban that's on the way.” Hostage negotiators eventually talked Poplawski into surrendering. That’s when his frightened grandmother (she’s the one who called police) came out of the basement.

One day earlier, in the quiet enclave of Binghamton (NY), Jiverly Wong, 41, donned his own set of body armor, grabbed two pistols and a rucksack stuffed with ammunition and drove to an immigrant service center. Blocking the rear exit with his car, he barged in, guns blazing. Within moments fourteen lay dead, including himself. Acquaintances said that the middle-aged Vietnamese man, who was taking English lessons at the center, was angry about losing his job and despaired of his language skills.

What causes such tragedies? What can be done to protect officers and citizens from armed madmen? Searching this website’s news archive for similar incidents we found eleven multiple-victim shootings since January 2008 that lacked a traditional criminal motive. We just mentioned two. Here are the rest:

- In March 2009 Robert Stewart, 45, walked into the North Carolina nursing home where his estranged wife worked. Drawing two pistols, he killed seven
elderly patients and a nurse and wounded three others, including a police officer. Stewart’s wife escaped injury. Stewart was shot by police and arrested.

- Two weeks earlier Michael McLendon, 28, an unemployed Alabama man with a “life-long fascination with guns” armed himself with two assault rifles, a handgun and shotgun. Before the day was done he had killed his mother, seven relatives and two bystanders, wounded six others, including two officers, and committed suicide. Survivalist gear and armored vests were found in his residence. McLendon, who had quit a job for no apparent reason, was estranged from his family. He once wanted to be a cop but flunked out during his first day in the academy.

- In September 2008 Isaac Zamora, a seriously mentally ill 28-year old Washington State parolee with an extensive criminal record went on an armed rampage. He killed six, including a deputy sheriff, before he was arrested. His motive? “I kill for God.” Zamorra’s been declared incompetent. Neighbors knew that he had rifles and pistols but apparently told no one.

- In July 2008 Jim Adkisson, 58, walked into a Kingston Pike (Tenn.) church service and blasted away with a sawed-off shotgun, killing two parishioners and wounding six before he was wrestled to the floor. An unemployed mechanic, he had written a manifesto railing against the “liberalism that’s destroying America” and vowing to kill Democrats “til the cops kill me.”

- In June 2008, soon after an argument with his supervisor got him booted from a Kentucky plastics factory, Wesley Higdon, 25, called his girlfriend and said he was going to kill himself. But first he returned to the plant with a .45 cal. pistol and shot and killed his boss and four coworkers. Then he committed suicide.

- In March 2008 Virginia Beach (VA) apartment dweller William Smith, 52, opened fire with two assault rifles, killing a 32-year old woman and an elderly man and wounding three others, one critically. He then killed himself. Smith was upset that he was being evicted for acting weird and banging on the walls. One of the residents had thought to call police about Smith’s increasingly aberrant behavior but never did.

- Also in March a Palm Beach (Fla.) handyman opened fire in a Wendy’s restaurant with a 9mm. pistol, killing a paramedic and wounding four other patrons before turning the gun on himself. Detectives learned that the shooter, Alburn Blake, 60, was ill and had been behaving oddly. Why the restaurant?
It’s where he and his estranged wife used to dine and argue.

- In February 2008 Charles Thornton, 52, walked up to a police officer guarding a meeting of the Kirkwood (Mo.) city council, pulled a large-caliber revolver and shot him dead. Taking the officer’s weapon, Thornton killed a second policeman, a councilwoman and two officials, and seriously wounded the Mayor and another person. Responding officers then shot him dead. Thornton, a local businessman, had been embroiled in disputes with local officials. He reportedly told his brother that he was “going to war.”

- Also in February a veteran LAPD SWAT officer was killed and another was wounded by a mentally ill man armed with a handgun and shotgun. Officers entered the home after Edwin Rivera, 20, called 911 to report, as it turns out correctly, that he had killed his father and two brothers. Rivera was shot dead by a police sniper.

Reducing these episodes to numbers, here’s what we learned:

A total of sixty-six persons died of gunshot wounds, including five shooters who committed suicide and two who were shot by police. Fifty-nine innocents also lost their lives. Among them were seven police officers, eleven family members, five coworkers and 36 outsiders (persons unconnected with the shooter.) The number of dead per episode ranged from three (all police officers) to fourteen (thirteen outsiders plus the shooter.)

Five incidents started out or were influenced by family disputes. Five shooters professed political or social agendas.

There was a pronounced split in shooter age. Six were over 40, with four over 50. The other five were all in their twenties.

The shooters led uniformly bleak lives. As far as is known, none was living with a spouse. Seven, perhaps eight were unmarried; three were divorced or estranged. Not counting the one who came back to kill after being fired, only two were gainfully employed. Four had documented mental problems; two had mental problems plus serious criminal records (each wound up killing a police officer.)

Nine shooters were armed with handguns, four had rifles, three had shotguns, and three a combination. Three wore body armor. One, Jiverly Wong, whom a criminologist aptly described as a “pseudo-commando,” was responsible for the largest toll, killing thirteen. Another, McLendon, a gun enthusiast, was the second
most prolific killer, killing ten and wounding six, including two officers. The third, Poplawski, also a gun enthusiast, murdered three officers.

Can such tragedies be prevented? It’s unlikely. Families and friends described the shooters as angry men, displeased with their personal circumstances and mad at a system that they thought had failed them. That generalization is probably applicable to many fans of talk radio. Given just how much nuttiness there is, to say nothing of the ready availability of firearms, keeping lunatics from acting out their deranged fantasies seems hopeless.

CBS News: America’s Mass Shooting Trend

Well, there is something that might prove useful. We left out the recent murder of four Oakland officers from the list because that shooter had what he considered a “rational” reason: he didn’t want to go back to prison. Cornered in an apartment after shooting two officers at a traffic stop, he fired again when police stormed in. Two more officers fell dead. SWAT said they didn’t wait because they couldn’t readily evacuate the building where the shooter took refuge. It’s a decision that will surely be under the microscope for a long, long time.

After the Columbine high-school massacre police across the country resolved to move in quickly to keep citizens from being harmed. Academies now train patrol officers to form impromptu entry teams. Taking immediate action seems reasonable when facing expressive shooters like Wong, McLendon and Poplawski, whose commitment to redress real and imagined grievances poses a grave risk to anyone they might come across. But for criminals less concerned with making a statement the traditional “surround and call out” strategy may be more appropriate. It’s something to consider before the next time police face the unthinkable.
(MERRILY) SLIPPIN’ DOWN THE SLOPE

First out the gate with medical marijuana,
California considers legalizing its recreational use

By Julius (Jay) Wachtel. Pitchfork in hand, a robust, bearded man poses proudly amidst his crop. Close to his side, a statuesque blonde gazes into the distance. Her full lips, painted a bright cherry, frame a knowing smile.

No, they’re not farmers, at least not in the conventional sense. Steve Soltis, an artist, has come to the rural Northern California paradise known as “Life is Art” to help founder Kirsha Kaechele bring in the harvest. Cannabis, that is. Marijuana. Pot. Grown for resale to medical collectives, its proceeds support several resident artists and help fund art programs in Ms. Kaechele’s hometown of New Orleans.

First in the nation, California’s medical marijuana law, enacted in 1996, allows physicians to prescribe the drug for a wide range of illnesses, both real and, as many would argue, imagined. Here is how Los Angeles Times columnist Steve Lopez, who was seeking relief from back pain, described his visit to one of the Southland’s numerous clinics:

Now I’m not saying it was strange for a doctor to have an office with no medical equipment in it, but I did take note of that fact. And when I described the pain, the doctor waved me off, saying he knew nothing about back problems. “I’m a gynecologist,” he said, and then he wrote me a recommendation making it legal for me to buy medicinal marijuana. The fee for my visit was $150.

Medical marijuana “clinics” started blanketing California within days of the law’s passage. The state now hosts a freewheeling pot marketplace that includes a cadre of compassionate M.D.’s who happily issue marijuana cards to anyone who is twenty-one and willing to go through the motions of being “examined.” Many cities are besieged by dispensaries. In 2007 Los Angeles imposed a moratorium and required that the nearly two-hundred then in existence register with authorities. That apparently didn’t work so well, as earlier this year the city ordered 439 unregistered clinics to close.

To date fourteen states and the District of Columbia have legalized medical marijuana. Like measures are pending in eight states. Yet cannabis is a Schedule I controlled substance, thus illegal for any use under both Federal law and international treaty. That didn’t keep Attorney General Eric Holder from issuing a densely worded memo in October 2009 that essentially prohibited DEA from interfering in medical marijuana operations that were in “unambiguous compliance” with state laws. Now that a critical mass of states are in the medical pot corner the window of opportunity to challenge medical marijuana under the Supremacy Clause has effectively passed.

Inevitably, the slope has continued to slip, and once again California is leading by a head (pun not originally intended.) Next month’s ballot features an initiative, Proposition 19, that legalizes the recreational use of pot. Anyone 21 and older could possess and cultivate marijuana for their own
enjoyment. Commercial production and sale would be regulated and taxed, supposedly generating, according to the law’s backers, “billions” in revenue. Support for the measure comes from the ubiquitous marijuana lobby, a handful of retired law enforcement executives, a former Surgeon General, and, surprisingly, the influential Service Employees International Union. Police organizations, D.A.’s, Mothers Against Drunk Driving and the Federal drug czar have lined up in opposition. (Click here for the official arguments pro and con.)

Oh, yes, Attorney General Holder is also against. In a letter directed to retired drug agents, he said that DOJ “strongly opposes” the measure, in part because it would “greatly complicate” federal drug enforcement. Given the manufacturing and distribution infrastructure that medical marijuana built while DOJ snoozed, he’s already right. Meanwhile, Los Angeles County Sheriff Lee Baca has angrily vowed to ignore the proposition altogether, calling it unconstitutional and “null and void and dead on arrival.” It’s anticipated that the Feds will request an injunction citing the Supremacy Clause should the proposition pass.

Pot is supposedly illegal because of health concerns. For example, our previous post reported disturbing evidence about marijuana’s effects on cognition. Yet as election day nears we’ve heard preciously little from the medical community. Finally the liberally-minded Los Angeles Times stepped in. Two weeks after publishing a surprising editorial that harshly criticized Proposition 19 because it conflicts with Federal law and could make workplaces unsafe, it ran a piece addressing marijuana’s health hazards. One expert, a psychiatrist who chairs the California Society of Addiction Medicine (CASM), estimated that 17 percent of 14 and 15 year olds who take up pot will become dependent within two years. “Marijuana is not devastating in the same way that alcohol is. But to an adolescent, it can impact their life permanently. When you take a vacation from development in school for five years, you just don’t get to the same endpoint that was available to you earlier in life.”

But will legalization really draw more people to the drug? While advocates of marijuana say no – after all, it’s already widely available – some experts estimate that breaking down legal barriers will increase the number of users by 50 percent. Last year California tax collectors put forward their own, somewhat lower estimate of 40 percent. Whatever the actual numbers, most CASM members agree that many of these new users will be adolescents, the group with perhaps the most to lose.

So here’s a question for readers: what percentage of parents would want their kids to figure in the increase?
MISSION IMPOSSIBLE?

*Inner-city violence calls for a lot more than cops.*
*Is America up to the task?*

*For Police Issues by Julius (Jay) Wachtel.* On April 3 the *Chicago Sun-Times* trumpeted some very good news for residents of the city’s embattled Tenth precinct. Officially known as the Ogden District, the area comprises two neighborhoods, North Lawndale and South Lawndale (aka “Little Village”), which have suffered from far more than their share of violence. But things may be getting better in the dangerous Tenth. Compared to the forty-three shootings and eight deaths that its denizens endured during the first quarter of 2018, this year’s toll of twenty-one shootings and three fatalities, an improvement of over fifty percent, is substantially steeper than Chicago’s citywide decline, from 461 shootings and 117 deaths in FQ 2018 to 391 shootings and 93 deaths this year.

What’s behind the Tenth’s improvement? Most of the comments in the *Sun-Times* news piece credit the cops. According to a police captain, the gains are a product of “partnerships between police and community leaders, predictive analytics, the operational strategy…and the execution of that plan by the district’s officers.” A local alderman happily concurred. “They [officers] are out here with outdoor roll calls in the summer. They’re at block clubs. They’re doing the things that the community wants to see and the reason that the numbers are down is because of them.”

Time to celebrate? Maybe not, cautioned the *Los Angeles Times*. On the one hand, violence in Chicago has abated somewhat, with murders falling from 770 in 2016 to 660 in 2017 and 561 in 2018 (FBI counts are 765 in 2016 and 653 in 2017). More cops, a sharp increase in gun seizures, and the use of gunshot-detection sensors and data-driven analytics that predict where crime is likely to occur may have contributed to the drop. Chicago’s inner-city neighborhoods, though, experienced proportionately few benefits. In 2017, even as violence was down citywide, the Tenth nonetheless posted an appalling 44 homicides. Its murder rate of 28.3/100,000 pop. (see note below) was considerably higher than Chicago’s (653 murders, pop. 2,706,171, rate 24.1), which was (and remains) in far worse shape than the relatively peaceful burg’s of Los Angeles (281 murders, pop. 4,007,147, rate 7.0) and New York City (292 murders, pop. 8,616,333, rate 3.4).
And the Tenth wasn’t the worst example. Consider Chicago’s notorious Seventh police district, aka “Englewood.” In 2017 its homicide rate (48 murders, pop. 42,969, rate 111.7) was four times the Tenth’s. (In 2016, at the peak of the violence, the Seventh’s 86 homicides yielded a truly astronomical rate of 200.1.) At present the Seventh is again heading in the wrong direction, with ten killings during the first quarter of 2019 in comparison with eight last year.

Of course, not all of Chicago is in dire straits. Consider, for example, its wealthy North Center area, pop. 30,493, with zero homicides in 2016 and 2017. (For the ten best neighborhoods in Chicago, click here).

In “Location, Location, Location” we argued that it really is all about neighborhoods. Thanks to a surfeit of the poor, high-violence kind, the Windy City regularly produces more killings than Los Angeles and New York City combined. That’s not to say that Hollywoodland and Gotham should be popping corks. While their overall crime rates are consistently lower than Chicago’s, each has its own intractably violent areas as well. (For more about that click here and here.)

So where does one go from here? First, we must abandon the notion that fine-tuning the police response or “cranking things up” can solve the problems created by crime and violence. Even the most sophisticated law enforcement strategies can only go so far. LAPD’s “Chronic Offender” program massaged data to identify supposedly dangerous characters, then placed officers on their tail. Unfortunately, the real world intruded, and seventy percent of the time the allegedly active evil-doers were nowhere to be found (p. 18). And there was another problem. As our posts (most recently, “Driven to Fail”) have warned, the interplay between poverty, race and ethnicity means that aggressive strategies such as stop-and-frisk inevitably produce buckets-full of “false positives” in minority-rich areas. That, as LAPD learned, can lead to a lot of anger and discord. It’s why the program recently collapsed.

Well, how does one truly “fix” places like the Tenth, the Seventh, South L.A. and the Bronx? That’s what the renowned Urban Institute addressed in a landmark study, “Tackling Persistent Poverty in Distressed Urban Neighborhoods.” Its authors issued recommendations in five areas:

- Education and child care: quality education, quality child care, enrichment opportunities, summertime activities

- Crime and violence: less of both!
- Personal and environmental health: physical and mental health services, affordable, quality food, safe play areas and public spaces

- Neighborhood efficacy: supportive neighborhood environment, including caring for each other’s children, collective ability to lobby and secure external resources

- Expanded economic opportunities: job training, apprenticeships, adult education, summer jobs, transportation to opportunities elsewhere

Let’s focus on our favorite: economic opportunities. What would it take to improve the poor’s access to legitimate sources of income? In brief, an awful lot. Jobs-Plus is perhaps the best known national example. A partnership between the Feds and major private foundations, the program provides employment opportunities, job training and financial incentives to residents of public housing projects in thirteen States. Its goal: to create “a culture of work.” Its cost: since 2015, $63 million from HUD. (Jobs-Plus initiatives are funded by multiple public and private sources. Click here for a current list.)

We could go on, but the point’s been made. Truly reforming Chicago’s Tenth, or the Seventh, or South Los Angeles or the Bronx would require massive infusions of time, labor and capital. Such as our President “trump-eted” during his campaign (remember his promise of a “New Deal for black America?”). That nothing happened is no surprise. In addition to their cost and complexity, programs that seek to substantially improve the quality of life in our afflicted inner cities carry a lot of ideological baggage. Where, for example, should one draw the line between “help” and “handout”? It’s no surprise that despite well-meaning efforts such as LBJ’s “Great Society” the promises of urban renewal have always far outweighed their reality.

As our Strategy and Tactics posts demonstrate, Police Issues is definitely not of the mind that law enforcement can’t (or shouldn’t be) improved. Really, when compared to initiatives such as Jobs-Plus, fine-tuning the police seems like a cakewalk. That may explain why we habitually dump society’s problems on the cops. And why our grandkids’ grandkids will still be dealing with the poverty and violence of our inner cities.

Unless, of course, climate change gets us first. Oops, sorry. Wrong pulpit!
MORE CRIMINALS (ON THE STREET), LESS CRIME?

Debating the virtues of a less punitive agenda

By Julius (Jay) Wachtel. During the early 1970s New York’s “Rockefeller laws” sought to quell rampant drug dealing and drug-related violence by imposing mandatory prison sentences on persons caught selling or possessing modest quantities of heroin, cocaine and other illegal drugs. In 2009 the state changed course. Many so-called “low-level” drug offenders – meaning possessors and dealers whose involvement was modest and who lacked a prior conviction for a violent crime – could escape incarceration by completing a course of treatment. Six years later the Vera Institute announced the outcome of a study that compared matched samples of offenders processed under both schemes. The results seemed encouraging. Fifty-four percent of those sentenced under the old, punitive Rockefeller laws were rearrested within two years of release or discharge, six percent for a violent offense. For those diverted to treatment under the new laws, the outcomes were thirty-six percent and three percent, respectively.

New York isn’t alone. Last year we blogged about California’s Proposition 47, which reduced penalties from felonies to misdemeanors for grand theft, shoplifting, receiving stolen property, writing bad checks, and check forgery when losses were under $950. Possessing drugs also became a misdemeanor. A similar approach was adopted by the Feds. In 2014 the U.S. Sentencing Commission relaxed Federal drug sentencing guidelines, enabling as many as 6,000 inmates to seek immediate release, and up to 40,000 more in the not-so-distant future.

Financial pressures and prison crowding prompted states and the Federal government to ease up on punishment. Approaches include releasing prisoners, amending penal codes to reduce sentence length and downgrade some felonies to misdemeanors, and instituting or expanding the use of diversion and treatment.

That doesn’t mean that offending is being completely forgiven. Misdemeanors are still crimes. But shifting away from imprisonment increased the burden on parole and probation offices and local lockups. These, in turn, accommodated the influx by freeing jail inmates and limiting the length and intensity of post-release supervision. Unlike penal revisions, though, tweaks pulled off at lower levels aren’t necessarily enshrined in codebooks. There is no obvious cost, until there is. In a notorious 2013 example, California authorities repeatedly reinstated a habitual parole violator until the man, a convicted sex offender, murdered a 76-year old woman and chopped up her body.

While the outcomes of going easy aren’t always so stark, the consequences of the new normal may in time prove profound. “Now, you can get away with it” bragged a chronic offender, who admitted he began stealing bicycles when California raised the felony theft threshold to $750. Even better, he could still use drugs because nothing happens when he fails to show up for drug rehab. L.A. County Sheriff Jim McDonnell said that’s to be expected. “We’ve removed the disincentive, but we haven’t created a meaningful incentive.”
To help make their approach more palatable, advocates of leniency point to the crime drop that we’ve enjoyed since the madness of the eighties and early nineties. If crime is falling, why not experiment? However, as we mentioned in prior posts (click here and here), one likely reason for the “great crime drop” was that increased punishment deterred those who could be deterred while incapacitating the rest.

There are now disquieting signs that violence is again on the rise. As of August 2015, the murder rate in New York City was nine percent higher than at the same point in 2014. Dallas, Kansas City, Chicago and New Orleans have reported moderate upticks ranging from 17 to 22 percent, and substantial increases were recorded in Washington, D.C. (44 percent), Baltimore (56 percent), St. Louis (60 percent), and Milwaukee (76 percent). Property crime has also gone up in many areas; most recently, with “double-digit” increases in Los Angeles.

Some argue that the threat is overblown, as only drug possessors and other nonviolent offenders are in line for a break. First, as we pointed out in “Rewarding the Naughty,” that’s not necessarily true. As long as a California inmate’s most recent offense didn’t involve the use of significant force, those with past convictions short of murder are just as eligible for relief under the new laws as anyone else. What’s more, the oft-repeated screed that a majority of inmates are there for drug possession doesn’t hold up. According to the Bureau of Justice Statistics, only 3.6 percent of state prisoners in 2013 were locked up for drug possession. Fifty-three percent were serving time for a violent crime and 10.5 percent for burglary. In 2014, 96.6 percent of Federal drug convictions were for drug trafficking, and only 0.9 percent for simple possession.

Secondly, and perhaps more importantly, citizens are far more concerned about the quantity of crime than the characteristics of its perpetrators. To claim that some offenders are somewhat less likely to be recidivists is little comfort when crime is on the rise. Still, this is not a call to “lock ’em up and throw away the key”. Excessive punishment drains resources while consigning human beings – for that’s what convicted criminals are – to needlessly prolonged misery. Your writer would be delighted to arbitrarily halve or even quarter prison terms if adequate resources were provided to help former convicts successfully integrate into conventional society. Naturally, there would have to be vast improvements in the delivery of education, counseling, housing and job training services. To help former inmates become self-sufficient, it would probably be necessary to provide financial incentives to potential employers. But as we know from the failed deinstitutionalization movement, which promised great savings and more humane outcomes by shifting the mentally ill from state sanatoria to community treatment, successful remedies are expensive. Instead of making the necessary investments, we transformed street cops into orderlies and city jails into mental wards.

Unless we dig deep into our pockets, these are precisely the results that we will get by deinstitutionalizing criminal offenders. Count on it!
PHYSICIAN, HEAL THYSELF

Pharmaceuticals are America’s new scourge. So who’s been writing the prescriptions?

By Julius (Jay) Wachtel. Did Michael Jackson commit suicide? Improbable as it might seem, that’s essentially the theory being advanced by the legal team representing Dr. Conrad Murray, the physician who awaits trial for allegedly causing the pop star’s untimely demise. Jackson, they suggest, was so distraught about money problems that he guzzled a lethal dose of propofol from the beaker while his doctor wasn’t looking.

A surgical anesthetic, propofol quickly induces sleep and, once consciousness returns, an euphoric state. Its effects are presumably why Michael Jackson repeatedly prevailed on Dr. Murray to inject him with the powerful sedative. The final instance was on June 25, 2009, when the physician, who said that Jackson suffered from chronic insomnia, administered a dose intended to help the entertainer rest up for a busy rehearsal schedule.

Except that this time Jackson didn’t wake up. At Dr. Murray’s preliminary hearing earlier this year a Los Angeles County coroner’s investigator testified that she found a dozen full bottles of propofol in Jackson’s closet, and an empty bottle along with seven vials of prescription sedatives by his bed. Autopsy results confirmed that Jackson’s death was caused by a combination of propofol and other drugs. Prosecutors charge that Dr. Murray had recklessly prescribed and administered them to his patient.

Last month the California Medical Board rebuked Dr. Murray, but not in connection with Michael Jackson’s death. He was instead censured for not disclosing on medical license renewal applications that he was behind on child support. Other than being barred from administering heavy sedatives, Dr. Murray’s California, Texas and Nevada medical licenses remain valid. A Los Angeles judge (but not the medical board) did order him to stop practicing medicine in California until the trial is done. It’s now scheduled for this fall.

“...This is a completely profit-driven operation that has no medical regard for anyone. These clinics have nothing to do with the welfare of the community.” DEA Special Agent in Charge Mark R. Trouville was referring to the six South Florida “pain management clinics” that the Feds raided in February for allegedly dispensing powerful prescription painkillers to anyone who had the cash.

What the clinics were doing was hardly a secret. Addicts routinely camped out awaiting opening time. Over the course of a year Trouville’s agents paid more than two-hundred visits, going through the motions of being “examined,” getting prescriptions and having them filled. One of the most popular pharmaceutical dispensed at the clinics was oxycodone, the most frequently abused synthetic opiate in the U.S.
When the hammer fell the Feds arrested five doctors and seventeen other employees for illegally prescribing and dispensing controlled substances and covering their tracks with bogus and misinterpreted medical tests. This was the opening strike in “Pill Nation,” an ongoing inquiry into forty-plus Florida “pill mills” that had been dispensing restricted drugs on a cash-only basis, no checks or insurance cards, please. More than sixty doctors are suspected of improprieties. So far fifty-plus have reportedly surrendered their licenses.

Business was generated through word of mouth and the Internet. And the money was good. Agents seized $2.2 million in cash, several homes and dozens of luxury vehicles including Lamborghini and a Rolls-Royce from Vinnie Colangelo, the owner of the clinics.

With an estimated 850 pain clinics, the Sunshine State attracts prescription drug addicts from much of the U.S. Florida has become such a big draw that clients of a Jacksonville clinic were being transported from Ohio in tour buses. Florida physicians are gaining nationwide notoriety. A Florida doctor will soon go on trial in Kentucky for illegally dispensing pills to as many as 500 residents of that state.

Clinics aren’t the only problem. A week ago Palm Beach officers arrested a physician for furnishing women Oxycodone, Valium and other prescription drugs in exchange for sex. He had once worked at one of the raided clinics and was planning to open his own.

When we think drug abuse, cocaine and heroin normally come to mind. Think again. By 2007 drug overdoses – mostly involving prescription drugs – were killing more people in Ohio than car crashes. In hard-struck Scioto County nearly ten percent of babies born in 2010 tested positive for drugs. Portsmouth, the county seat, has experienced everything from teenagers smuggling painkillers into school to a grisly double murder committed by an addict desperate for his next pill. According to a public health nurse, “around here, everyone has a kid who’s addicted. It doesn’t matter if you’re a police chief, a judge or a Baptist preacher. It’s kind of like a rite of passage.”

Law enforcement is struggling to keep up. State agents recently raided a Portsmouth medical practice suspected of illegally dispensing drugs. Meanwhile a Portsmouth physician is on trial on those charges in Cleveland. While the city has enacted a moratorium on new pain clinics, Police Chief Charles Horner says he lacks the resources to wage a meaningful fight. “We’re raising third and fourth generations of prescription drug abusers now. We should all be outraged. It should be a number one priority.”

It’s not just crooked doctors. In the last three years more than 3,000 pharmacies from Maine to California have been hit by robbers seeking painkillers and sedatives for personal use, and with increasing frequency, for resale. Oxycodone (OxyContin), hydrocodone (Vicodin) and alprazolam (Xanax) are the most popular. Frightened pharmacists have responded by turning their businesses into virtual fortresses, elevating counters and installing bulletproof glass. Things got so bad in Maine that the U.S. Attorney agreed to prosecute pharmacy heists under Federal laws that carry especially stiff sentences. Meanwhile a bill in Washington State seeks to raise the minimum incarceration time for robbery when no weapon is shown from three months to three years.
Law enforcement, of course, is just a band-aid. For a more lasting solution one could ask drug manufacturers to reduce their output. Just like gun makers, they crank out far larger quantities of product than could ever be legitimately used. Well, good luck with that. Another tack might be to prevail on doctors to pay more attention to their Hippocratic oaths and less to their colleagues’ Ferraris. Considering the many physicians who churn out medical marijuana prescriptions for a host of ailments real and imagined, good luck with that, too. Think that’s too gloomy a portrait? Here’s how Los Angeles Times columnist Steve Lopez described his “exam”:

Now I’m not saying it was strange for a doctor to have an office with no medical equipment in it, but I did take note of that fact. And when I described the pain, the doctor waved me off, saying he knew nothing about back problems. “I’m a gynecologist,” he said, and then he wrote me a recommendation making it legal for me to buy medicinal marijuana. The fee for my visit was $150.

Perhaps the key is to attract the right kinds of people into medicine. Recently the medical profession took a (very) tentative step in this direction by recommending that the medical school application process (AMCAS) require that candidates supply information which can be used to evaluate their “integrity and service orientation.”

That’s nice. Until that’s fully implemented, though, keep passing the band-aids.
REFORM AND BLOWBACK

A bad economy spurs more lenient sentencing. And warnings about its consequences.

By Julius (Jay) Wachtel. As governments reel from sharp declines in revenue they have increasingly turned to progressively-minded prescriptions that promise to maintain and even enhance public safety for a lot less dough. Last month we described recommendations by two economists that aggressive law-enforcement practices such as hot-spots policing can scare criminals straight without incurring the expenses of incarceration or, in many cases, the need to make an arrest.

Of course, there are always those who refuse to be deterred. Three reports released this year – one from the National Summit on Justice Reinvestment and Public Safety, the others from the Smart on Crime Coalition and the Pew Center – suggest how we can deal with pesky evildoers in a way that won’t break the bank. Smart on Crime’s remarks pretty well summarize the reformist agenda:

There is no doubt that our enormous prison populations are driven in large measure by our sentencing policies, which favor incarceration over community-based alternatives or rehabilitation. We spend enormous amounts of money keeping people in prison; money that in many cases would be better spent treating addiction or funding community-based programs to reduce recidivism.

Indeed, there’s no doubt that sentencing has grown harsher during the past decades. Between 1990 and 2006 the imprisonment rate climbed from 447 to 503 per 100,000. During this period the time actually served behind bars also increased, 29 percent for property crime and 39 percent for violent crime. Meanwhile crime plunged, by about one-third.

Whether more punishment “caused” the crime drop is a matter of endless contention (for our earlier discussions click here and here.) On one side are traditionalists, including prosecutors, police and many economists, who say that imprisonment deserves much of the credit. On the other side are reformers who insist that the relationship between punishment and crime is mostly spurious. Even the few who concede the value of incarceration point out that imprisonment has been cranked up as far as it can go, and that budgetary constraints make current levels impossible to maintain over the long term.

Sustainability looms large in the National Summit report. But it’s not all about saving money:

Despite the dramatic increase in corrections spending over the past two decades, reincarceration rates for people released from prison remain unchanged. By some measures, they have worsened. National data show that about 40 percent of released individuals are re-incarcerated within three years. And in some states, recidivism levels have actually increased during the past decade.

Experts argue that our present system fails badly at preventing recidivism. To get there, and do so affordably, the National Summit recommends several approaches. One, “risk assessment,” seeks to identify the subset of criminals most likely to reoffend, thus making it economically feasible to provide them the supervision, counseling and other services they need. Another, “justice reinvestment,” proposes
to shift spending from prisons to communities. A frequently-given example is Texas, which slashed the costs of imprisonment by reducing sentence length. To enhance oversight parole caseloads were also capped, supposedly leading revocations to plunge a steep 29 percent. Perhaps Texas’ way of watching over parolees is a smashing success. Or perhaps the steep decline is due to other, less measurable factors, such as internal pressures to avoid revoking parolees in the first place.

Like other reform organizations, Pew seizes on the lever of economics to press its agenda. On the one hand it concedes that imprisonment might work. (It cites William Spellman, the reluctant punisher who estimated that prison expansion cut violence by 27 percent.) On the other it argues that there are cheaper ways to get to the same place:

Finally, if prisons helped cut crime by at most one-third, then other factors and efforts must account for the remaining two-thirds of the reduction. And because prisons are the most expensive option available, there are more cost-effective policies and programs. For example, it costs an average of $78.95 per day to keep an inmate locked up, more than 20 times the cost of a day on probation.

First, considering just how much crime there is – 1,318,398 violent offenses were reported to the FBI in 2009 – preventing up to one-third of offending (659,199 violent crimes, calculated from a projected 1,977,597) sure seems like a worthy accomplishment. Pew may also be comparing apples and oranges. Prisons are expensive and popular precisely because they offer the ultimate form of deterrence – incapacitation. One cannot compare its cost-effectiveness vis-à-vis say, probation without including that certainty in the calculation.

It’s in measures of effectiveness where much of the difficulty in the reformist agenda lies. “Evidence-based” strategies, that new pot of gold at the end of the criminological rainbow, virtually demand that researchers measure the immeasurable. For example, the National Summit report buttresses its conclusions by citing a meta-analysis of adult and juvenile justice programs in the state of Washington. Their cost-effectiveness (programs ran the gamut from prison-based education to post-release family counseling) was calculated by reducing injuries and deaths to dollar amounts. Whether doing so was appropriate was quickly glossed over:

Some victims lose their lives; others suffer direct, out-of-pocket personal or property losses. Psychological consequences also occur to crime victims, including feeling less secure in society. The magnitude of victim costs is very difficult – and in some cases impossible – to quantify. National studies, however, have taken significant steps in estimating crime victim costs...In [one] study [its measures were adopted by this article] the quality of life victim costs were computed from jury awards for pain, suffering, and lost quality of life; for murders, the victim quality of life value was estimated from the amount people spend to reduce risks of death.

Keeping people locked up is expensive. But as these recent examples demonstrate, predicting who deserves lenient treatment is fraught with risk:

- California: A registered sex offender who was kept on parole despite a host of “technical” violations went on to rape and murder a teen. Her killing has led to harsher sentencing measures.
Illinois: The State corrections chief resigned after an early-release program saved money but saw many prisoners quickly return to crime.

Massachusetts: A paroled murderer, 60, killed a convenience store clerk, just like he did the first time around. Another, released after serving three “life” terms, shot and killed a police officer while fleeing from a department store robbery (see above video clip.) That led to the firing of all members of the parole board.

New Jersey: The arrest of two released inmates for murder led the governor to move to repeal a recently enacted law that offered “worthy” inmates a six-month early out.

Washington: A three-time loser doing time for a drug conviction was released early thanks to good time credits. Two years later he murdered a State trooper.

One could go on and on. What reformers miss is that their calculus of costs and benefits may be fundamentally flawed, if not methodologically, then from a public policy perspective. Failure to identify a dangerous person, what would in science be called a Type 2 error, carries far more weighty political implications than its reciprocal, the Type 1 error of overestimation. Bottom line – politicians, police and the public can tolerate a lot of surplus incarceration for the sake of saving one innocent life. And that’s a reality that’s sure to continue.
REPEAT AFTER US: “CITY” IS MEANINGLESS

When it comes to crime, it’s neighborhoods that count

For Police Issues by Julius (Jay) Wachtel. There we were, wondering what to spout off about when our sleep-deprived Prez came to the rescue with yet another tweetstorm.

What set him on the warpath? Ten days earlier, Rep. Elijah Cummings (D – Md.), chair of the House Committee on Oversight and Reform, had berated DHS Acting Chief Kevin McAleenan about the unconscionable treatment of illegal immigrants. After repeatedly interrupting McAleenan, the good Rep. blasted him with this:

I’m talking about human beings. I’m not talking about people that come from, as the president said, shitholes. These are human beings. Human beings. Just trying to live a better life.

Natch, the President noticed. Displayed above is his second rapid-fire tweet. Here’s the first:

Rep. Elijah Cummings has been a brutal bully, shouting and screaming at the great men & women of Border Patrol about conditions at the Southern Border, when actually his Baltimore district is FAR WORSE and more dangerous. His district is considered the Worst in the USA.

Here’s the third, (temporarily) ending the salvo:

Why is so much money sent to the Elijah Cummings district when it is considered the worst run and most dangerous anywhere in the United States. No human
being would want to live there. Where is all this money going? How much is stolen? Investigate this corrupt mess immediately!

Rep. Cummings, who’s based in Baltimore, promptly swiped back. And as one might expect, the “fake media” took his side. In a news piece defiantly entitled “Baltimore to Trump: Knocking Our City Is Our Job, Not Yours” the liberally-inclined New York Times proclaimed that despite the city’s reputation for violence, “it so happens that many human beings do want to live in Baltimore.” That lukewarm endorsement was the story’s exact title in the paper’s July 29th. National edition, which lands somewhere on our driveway each morning.

We’ll let the antagonists fight it out. Their squabble proved useful, though, as it illustrates one of our pet peeves: mindlessly comparing crime rates. Location, Location, Location” tracked murders for thirteen major cities during 2002-2015. St. Louis, the indisputable champ, closed things out with a mind-boggling 59.6 killings per 100,000 pop. Nipping on its heels, Baltimore posted a deplorable 55.2. At the other, far safer end, our burg. of Los Angeles (7.2) and the Trumpster’s New York City (4.2) returned the lowest scores.

We’ve since used the latest full UCR release to assess murder rates in 2017. St. Louis (66.1) and Baltimore (55.8) managed to get worse. Los Angeles (7.0) held steady, while New York City (3.4) improved. Baltimore’s homicide rate turned out sixteen times worse than the Big Apple’s. The raw numbers are stunning. New York City had 292 murders; Baltimore, whose population is one fourteenth the size, suffered 342. Even the Times had to concede that Rep. Cummings’ constituents aren’t in a happy place, crime-wise:

Few denied that Baltimore is struggling, especially with violent crime — the city has recorded 32 more murders this year than New York, despite being about one-fourteenth the size.

Mayor Bill de Blasio’s boast that New York City is “the safest big city in America” seems right on the money. Meanwhile, Baltimore is still in the doghouse. Trump’s no paragon of accuracy, but this time he nailed it.

Right?

Well, not exactly. Our President’s most recent domicile in the Big Apple was an ultra-lux apartment in Manhattan’s fashionable Upper East Side (pop. 226,000, poverty ratio 7%, lowest in the city.) But there’s a lot more to New York than Fifth Avenue. It’s a really, really big place, with more than one-hundred distinct communities. Mayor de
Blasio aside, the city’s own data reveals that these neighborhoods are by no means uniformly prosperous. Some are phenomenally (absurdly?) wealthy’ others are chronically poor.

Just follow the arrow. Jump across the East river. Venture deep into Brooklyn and you’ll find the Brownsville area (pop. 86,000, poverty ratio 28%, one of the worst in the city.) That’s where a few days ago, on July 27th, a gang member opened fire as folks gathered for an annual celebration. Twelve were shot, one fatally.

While such extreme events are rare, Brownsville is indeed a very tough place:

- Its police precinct, the 73rd., recorded thirteen murders during 2018. (Far larger Manhattan had but one.)
- Brownsville’s 2013-2017 homicide rate, 16.9, was worst in the city. To compare, the Upper East Side was tied for best at 0.4. Yes, that’s zero point four. (For a detailed view of major crimes by precinct, click here.)

What’s our point? Neighborhoods in Los Angeles and New York (above and in “Be Careful What You Brag About”) vary considerably as to violence. Where economic indicators are favorable, violent crime is low. Where they’re not: fasten seat belts! Both cities, though, are blessed with a lot of affluence, keeping their overall homicide numbers at bay. If we wish to meaningfully compare murder across geographic space, we must go beyond abstract political boundaries. To that end, there really is no “Los Angeles” or “New York.” What there is, is neighborhoods. Crime is about the conditions
under which people live. Control for factors such as poverty, unemployment rates and educational attainment and you’re all set!

In our measly opinion, that caveat applies everywhere. Still, as data compiled by the Baltimore Sun demonstrates (see table), nearly every area in the struggling city is bedeviled by violence, some more than others. Rep. Cummings clearly has his work cut out.

But if our Prez wants to rattle cages, we suggest he pick on New York City’s de Blasio. Here’s a recommended broadside: “How does it make you feel, your honor, that your city’s Brownsville neighborhood is saddled with a murder rate more than forty times worse than the Upper East Side? And how do you intend to improve things?”

Um, we’re waiting!
REWARDING THE NAUGHTY

*A California ballot measure would reduce many felonies to misdemeanors*

*By Julius (Jay) Wachtel.* According to its proponents, California Proposition 47, enticingly entitled “The Safe Neighborhoods and Schools Act,” will *increase* public safety by *reducing* punishment. This extract from arguments in favor of the measure explains how its seemingly counterintuitive approach will work:

- Prioritizes Serious and Violent Crime: Stops wasting prison space on petty crimes and focuses law enforcement resources on violent and serious crime by changing low-level nonviolent crimes such as simple drug possession and petty theft from felonies to misdemeanors.
- Keeps Dangerous Criminals Locked Up: Authorizes felonies for registered sex offenders and anyone with a prior conviction for rape, murder or child molestation.
- Saves Hundreds of Millions of Dollars: Stops wasting money on warehousing people in prisons for nonviolent petty crimes, saving hundreds of millions of taxpayer funds every year.
- Funds Schools and Crime Prevention: Dedicates the massive savings to crime prevention strategies in K—12 schools, assistance for victims of crime, and mental health treatment and drug treatment to stop the cycle of crime.

Proposition 47 reduces penalties from felonies to misdemeanors for six “non-serious, nonviolent” crimes which, depending on severity and the offender’s prior record, can presently be charged as felonies. Five – grand theft, shoplifting, receiving stolen property, writing bad checks, and check forgery – would only be chargeable as misdemeanors as long as the loss is $950 or less. Possession of illegal drugs would also be a mandatory misdemeanor (the change would not affect marijuana possession, already a petty offense.) Persons already serving felony sentences for such convictions would be eligible for resentencing and early release from custody or supervision. To provide reassurance, the measure explicitly forbids giving breaks to persons who have been convicted of murder, rape and child molestation.

There are influential voices on both sides. The measure’s sponsors include the current San Francisco D.A. and the former police chief of San Diego. Opponents include the presidents of the California Police Chiefs Association and the California District Attorneys Association. One of the big quarrels is over the consequences of releasing as many as 10,000 prisoners should the initiative pass. Opponents claim it could cause a public safety disaster. Proponents say not to worry, as the text of the proposed law forbids resentencing prisoners whose criminal record suggests they present an “unreasonable risk of danger to public safety.”
Exactly what does “unreasonable risk” mean? Section 14 of the measure defines it as a prior conviction for an offense enumerated in Penal Code section 667(e)(2)(c)(iv). Here is the subsection in full:

(I) A "sexually violent offense" as defined in subdivision (b) of Section 6600 of the Welfare and Institutions Code.

(II) Oral copulation with a child who is under 14 years of age, and who is more than 10 years younger than he or she as defined by Section 288a, sodomy with another person who is under 14 years of age and more than 10 years younger than he or she as defined by Section 286, or sexual penetration with another person who is under 14 years of age, and who is more than 10 years younger than he or she, as defined by Section 289.

(III) A lewd or lascivious act involving a child under 14 years of age, in violation of Section 288.

(IV) Any homicide offense, including any attempted homicide offense, defined in Sections 187 to 191.5, inclusive.

(V) Solicitation to commit murder as defined in Section 653f.

(VI) Assault with a machine gun on a peace officer or firefighter, as defined in paragraph (3) of subdivision (d) of Section 245.

(VII) Possession of a weapon of mass destruction, as defined in paragraph (1) of subdivision (a) of Section 11418.

(VIII) Any serious and/or violent felony offense punishable in California by life imprisonment or death.

Senator Diane Feinstein, an avowed liberal who opposes the measure, pointed out that serious crimes such as burglary, armed robbery and aggravated assault are not on the list. Accordingly, should Proposition 47 pass, persons with prior convictions for such crimes would indeed be eligible for early release.

Proposition 47 may also reward the wrong people. According to the nonpartisan Legislative Analyst, nearly all offenders who stand to gain from the proposition received prison terms not because of what they actually did, but due to their prior record:

A relatively small portion—about one-tenth—of offenders of the above crimes are currently sent to state prison (generally, because they had a prior serious or violent conviction). Under this measure, none of these offenders would be sent to state prison. Instead, they would serve lesser sentences at the county level.

Another concern relates to negotiated pleas, which account for at least ninety percent of adjudications. For example, burglars frequently plead to grand theft, and dope dealers to drug possession. If Proposition 47 passes many defendants stand to benefit twice: first from a plea
deal, then from mandatory misdemeanor sentencing. (Our system’s dependence on plea deals makes withholding them highly unlikely.)

Recalibrating punishment may be a good idea. But if the measure’s objective is to improve public safety, offender criminal histories must not be glossed over or, even worse, ignored. Neither should the proposition become an invitation to keep committing “minor” crimes. Under Proposition 47 stealing an object valued at $950 or less – say, an iPad, or an iPhone – is a misdemeanor, period. That’s true even if the thief is a repeat offender or has a prior conviction for, say, burglary, armed robbery or grand theft. Indeed, Proposition 47 seems almost an invitation for pickpockets, shoplifters and common thieves to go “pro.”

Imprisonment is a crude tool, but it works, if only by incapacitating offenders so they cannot strike while locked up. We might hate to admit it, but incarceration undoubtedly helped break the crime wave of the 80s and early 90s. Now that society seems eager to ease up, it must be done transparently, based on relevant and clearly articulated criteria. Efforts such as Proposition 47, which tinker with a ridiculously complex system (read the initiative, and be sure to have aspirin on hand) are likely to be ineffective, with consequences that we will all regret.
SAFE AT HOME -- NOT!

*The presence of guns can instigate violence*

By Julius (Jay) Wachtel. On February 5, 2008 a 20-year old San Fernando Valley man with mental problems and a history of violence shot and killed his father and two brothers at the home they shared, called 911 to let the police know, then killed a SWAT officer and seriously wounded his partner when officers, thinking there were victims to rescue, rushed in. The assailant, who was armed with a shotgun and a handgun, was shot dead.

Less than three weeks later, in a prosperous Orange County community about forty miles away, a 41-year old man shotgunned his family, killing his wife, their two girls, ages 8 and 9, their 5-year old boy, and finally himself. A sixth victim, a 14-year old son, was also wounded but is recovering. Police were alerted by neighbors who heard gunfire. The couple had separated in the past and were apparently having financial problems.

Two days later, in a working class L.A. suburb about sixteen miles away, a 28-year old man with mental problems used a handgun to shoot and kill his mother. He then broke into the house next door, killed a woman and her child and wounded two other children, one critically. He was arrested by police while standing on the street with the gun in his hands.

It’s not just California. Consider Tennessee. On February 27, in a rural town that prominently bills itself “a good place to live,” a romantically distraught 26-year old man armed with a .45 pistol visited his ex-girlfriend’s apartment under a pretext. He shot and killed the young woman’s mother, a current boyfriend and two other adults, then fled and committed suicide as police closed in.

Eleven days later, officers responding to a call by a concerned relative discovered six persons -- two men, two women and two children under five -- shot dead in a Memphis home. Two other children and an infant were found in extremely critical condition. The shootings, which police said occurred hours earlier, were overheard by neighbors but ignored as gunfire was not uncommon. On March 8 police arrested one of the occupant’s brothers, who had just been released from prison after serving a term for murder. Authorities said that the slayings were motivated by an argument.

What’s to be done? Online gun retailer Eric Thompson, who sold ammo magazines to N.I.U. shooter Steven Kazmierczak and a pistol to Virginia Tech killer
Seung-Hui Cho, has a ready solution: guns for everyone! But would the N.R.A.’s main prescription for domestic tranquility really help? Shootings in public places, such as on school grounds, usually take place quickly and with no forewarning. If a madman suddenly strikes, would armed citizens have the opportunity let alone the skill and presence of mind to engage the shooter effectively, and without placing innocents at risk? Preventing massacres in private residences seems well-nigh impossible. Must mom, dad, the kids, everyone down to the family dog pack a gun while watching T.V.? (“Honey,” she says, a thin smile crossing her lips, “please don’t change the channel!”)

In December 1791, when the Second Amendment went into effect, a “handgun” wasn’t a .40 caliber Glock with a fifteen-round magazine. It was a bulky, muzzle-loading single-shot flintlock that could take nearly a minute to prepare for a second round. Such weapons, even those newly manufactured, aren’t considered to be firearms under Federal law (18 USC 921[a][3] and [16]). No matter the N.R.A.’s glib assertions, the combination of gun lethality and human fallibility make the idea of a ubiquitously armed citizenry intolerable. Exactly how many incidents of road rage with a gun -- or any rage with a gun -- are we willing to accept?

Academic studies have demonstrated that exposure to violence can lead to aggressive behavior. Is it too far a stretch to suggest that guns might do the same? That they’re not merely instruments of violence, but can actually instigate it? Anyone who’s spent time on the streets knows that firearms create their own atmosphere. It’s another kind of climate change we’d be smart to avoid.
SANCTUARY CITIES, SANCTUARY STATES (PART I)

*What happens when communities turn their backs on immigration enforcement?*

By Julius (Jay) Wachtel. By now the term “sanctuary city” has become such a familiar part of the lexicon that defining it might seem superfluous. But for the record let’s recap what it means to the Feds. According to a May 2016 memorandum from the Department of Justice the label applies to jurisdictions that, due to law, regulation or policy, either refuse to accept detainers from ICE or don’t promptly inform ICE of aliens they arrest or intend to release.

Memoranda do not carry the force of law. A 1996 Federal law, 8 USC 1373, stipulates that “a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.” In plain language, neither Hizzoner the Mayor nor any other official can legally order police to keep quiet about the arrest (or simply the whereabouts) of an illegal immigrant.

Of course, that doesn’t require that ICE be tipped off. Yet until recently such notifications were routine. Indeed, many police and sheriff’s departments used to have ICE train and deputize their officers under section 287-g of the Immigration and Nationality Act so they could enforce Federal immigration laws on the street. At one point the number of participating agencies exceeded seventy.

In time, a growing political divide and instances of excessive anti-immigrant zeal (see, for example, the saga of former Sheriff Joe Arpaio) led many communities to abandon the program. In 2016 ICE dropped the street enforcement aspect and now restricts cross-designated officers to making immigration checks only of persons detained for other crimes in local jails. After a recent drive ICE proudly reported that the number of jurisdictions participating in this modified program stands at sixty. However, nearly all are Sheriff’s offices in the South, with a large chunk in Texas.

At present neither Los Angeles, nor New York, Chicago or virtually any other city of size except Las Vegas participates in the 287-g program. In Blue America objections to immigration enforcement run so deep that many communities have taken affirmative steps to frustrate the Feds. Some don’t let ICE officers review jail records to gather information about arrestees (what jurisdictions participating in the 287-g program do
with their own cops.) Others don’t inform ICE, or only do so selectively, when national criminal warrants checks reveal that an arrestee was previously deported or has an active criminal or civil warrant for an immigration offense. And many either ignore detainers (written requests that specific, named arrestees be held for up to 48 hours beyond their release time) or fail to provide timely notice about the impending release of persons wanted by ICE.

Why the resistance? Here’s how Montgomery County, Maryland police chief Tom Manger, president of the Major Cities Chiefs Association, explained it to Congress in 2015:

To do our job we must have the trust and respect of the communities we serve. We fail if the public fears their police and will not come forward when we need them. Whether we seek to stop child predators, drug dealers, rapists or robbers – we need the full cooperation of victims and witness. Cooperation is not forthcoming from persons who see their police as immigration agents. When immigrants come to view their local police and sheriffs with distrust because they fear deportation, it creates conditions that encourage criminals to prey upon victims and witnesses alike.

Although Chief Manger’s agency does not participate in 287-g, it routinely informs ICE of all arrests so that the Feds can, if they wish, follow up. But Chief Manger refuses to accept so-called “civil” detainers, such as those issued when illegal immigrants fail to appear at an ICE hearing, because they are not based on probable cause that a crime was committed. (In contrast, re-entry after formal deportation is a Federal crime, and in Montgomery County such detainers are honored when accompanied by an arrest warrant.) Chief Manger’s position has been adopted as the official policy of his influential group.

Maps compiled by the Center for Immigration Studies and ICE Weekly Declined Detainer Reports (WDDR’s) indicate that most law enforcement agencies outside the South and Northwest ignore civil detainers. Section III of the WDDR’s identifies the agencies by name. (ICE recently pulled WDDR’s from the Internet. The three most recent are archived here, here and here.) For example, during the January 28-February 3 reporting period, Chief Manger’s Montgomery County domain released a person charged with assault because the detainer was only supported by a civil warrant.

According to ICE, many localities impose much stiffer conditions. Baltimore, whose 2015 violence rate was eight times worse than Montgomery County’s, supposedly refuses to honor all detainers (WDDR p. 8). (In defense, its chief insists they comply
with “criminal arrest” warrants, however Baltimore might define them.) As crime-ridden metropolitan areas go, Baltimore’s approach is hardly unique:

- **Newark** (p. 31) and **New York City** (p. 32) reportedly refuse all detainers
- **Boston** (p. 25) and **Los Angeles County** (p. 13) only honor those accompanied by criminal arrest warrants
- **Chicago** (p. 32) requires either a criminal arrest warrant, identification as a “known gang member,” a felony conviction, or active felony charges
- **Philadelphia PD** (p. 23) refuses to honor detainers or notify ICE of impending releases unless “the alien has a prior conviction for a first or second degree felony offense involving violence and the detainer is accompanied by a judicial arrest warrant”
- **Washington, D.C.** (p. 32) requires a “written agreement from ICE reimbursing costs in honoring detainer” and that an immigrant was either released from prison within the past five years or convicted within the past ten years, in both cases of homicide or another “dangerous” or violent crime.

What were the criminal backgrounds of those named in ICE detainers? A hand tally of 206 detainers declined between January 28 and February 3, 2017 reveals that twenty-six of the named immigrants had been convicted of domestic violence. Twenty-three others had convictions for DUI, fourteen for assault, eight for burglary, robbery or arson, seven for a drug offense, six for a sex crime, four for resisting or weapons offenses, and four for forgery or fraud. Dozens more had been charged with but not convicted of crimes, including twenty for assault, seventeen for burglary and robbery, sixteen for sex crimes, eleven for domestic violence, and one each for kidnapping and murder.

ICE can, of course, track down subjects itself. However, serving civil and criminal process in the field carries risks for both officers and immigrants. But why should the Feds even bother? After all, as we reported in “Ideology Trumps Reason,” research demonstrates that, overall, immigrants are substantially more law-abiding than ordinary folks.

But there’s a catch. Unlike ethnicity, immigration status isn’t systematically captured by criminal history repositories. So whether illegal immigrants are more likely to commit crimes than those legally in the U.S. is unknown. (One might think so after
reviewing the above list, but these examples may not fairly represent illegal immigrants in general.) Still, the list of troubling anecdotes keeps growing. In December 2016 Denver ignored a detainer and let go a known gang member who had been jailed for multiple offenses, including weapons, auto theft and eluding police. Within two months Ever Valles, 19 was back in jail after he and an associate allegedly committed a brutal robbery-murder. Criminal misconduct by illegal immigrants has even caught the attention of the liberally-inclined New York Times. (For a running compendium in an anti-illegal immigration website click here.)

There’s another important “if.” As our table in “Ideology Trumps Reason” suggests, legal status aside, the advantage of being foreign-born doesn’t necessarily carry over to subsequent generations. Imprisonment data reveals that third-generation Hispanic males are more than twice as likely to be incarcerated as non-Hispanic whites. Why is that? Many illegal immigrants are unskilled, poorly educated and reside in poverty-stricken, crime-ridden areas. This might expose their descendants to role models and behaviors that the grandchildren of legal migrants can’t begin to imagine.

It’s clear that competing ideologies and selectively interpreted “facts” have complicated the relationship between police and the Feds. During his career as an ATF agent your blogger worked closely with local police and detectives, and he suspects that most ICE officers and street cops still get along. Even so, policies have consequences. While it seems petty and self-defeating to kick out law-abiding, hard-working persons, refusing to honor detainers can obviously imperil the law-abiding.

On the other hand, concerns that police involvement in immigration matters can erode trust with the Hispanic community are not easily dismissed. A somewhat dated study provides ammunition for both sides of the debate. In 2008 Prince William County, Maryland mandated that police “investigate the citizenship or immigration status of all persons who are arrested for a violation of a state law or county ordinance.” Two years later university scholars and the Police Executive Research Forum produced a detailed report assessing the policy’s effects. As one might expect, illegal immigration decreased. So did aggravated assault, hit-and-run accidents and some forms of public disorder. However, “a palpable chill” fell over relations between Hispanics and police. Fortunately, in time the wound mostly healed, and within two years goodwill was largely (but not completely) restored.

So was the policy a good idea? Here is what the study’s authors think: “Despite our mixed findings, the current version of the policy, which mandates immigration checks only for arrestees, appears to be a reasonable way of targeting illegal immigrants who
commit criminal violations. There is fairly broad agreement on this as a goal for law enforcement.”

Whatever the “facts,” both sides remain dug in. LAPD Chief Charlie Beck, whose agency typically refuses to honor detainers, concedes that illegal immigrants who have been convicted of violent felonies should be deported once they’ve done their time. But he’s in favor of granting illegal immigrants driver licenses and insists that helping ICE deport them “is not our job, nor will I make it our job.” Angrily rejecting such views, Attorney General Jeff Sessions recently announced that DOJ will withhold “Byrne” grants unless jurisdictions “comply with federal law, allow federal immigration access to detention facilities, and provide 48 hours notice before they release an illegal alien wanted by federal authorities.”

Take that, L.A., New York, Chicago...

Well, that’s enough for now. In Part II we’ll discuss the possible consequences of the Federal-state split in marijuana enforcement. And as always, stay tuned!
SANCTUARY CITIES, SANCTUARY STATES (II)

Should states legalize recreational pot?

By Julius (Jay) Wachtel. In Part I we explored what happens when local jurisdictions resist or impede the enforcement of Federal immigration laws. Here we’ll discuss the intensifying struggle between the Feds and the states over marijuana’s legal status, and particularly its recreational use.

Before we begin please note that we’ve argued against pot’s full legalization on three separate occasions, most recently four years ago (see links below). But with California taking that fateful step it seems appropriate to revisit the issue. What of consequence has been learned since our last put-down of the “evil weed”? Should the Feds be more flexible? Is the recreational use of marijuana really as harmless as its boosters claim?

Let’s start with chemistry. Marijuana’s active ingredient, THC (tetrahydrocannabinol) alters the senses and creates a pleasurable “high” by overstimulating chemical receptors that help the brain function and develop. And yes, there are consequences. NIDA’s latest Drug Facts (August 2017 revision) warns that, among other things, THC interferes with thinking and problem solving and that high doses can bring on hallucinations and trigger psychotic reactions. Perhaps the most important concern is over pot’s consequences for the developing mind:

When people begin using marijuana as teenagers, the drug may impair thinking, memory, and learning functions and affect how the brain builds connections between the areas necessary for these functions.

Could such effects prove permanent? Apparently the jury’s still out. But there is some unsettling research. According to a 2012 paper (footnote 5 in NIDA’s posting) heavy pot use by teens costs a staggering eight IQ points by middle age, and discontinuing doesn’t fully right the ship.

To marijuana enthusiasts NIDA’s warnings might ring a bit hollow. After all, it’s the National Institute of Drug Abuse, right? Well, if more “facts” are useful, the knowledge community has come to the rescue! In January 2017 the most authoritative scientific source in the U.S., the National Academy of Sciences released a massive report that summarizes and evaluates decades of marijuana research. Ten chapters are devoted to its reportedly problematic effects:
Cancer
Cardiac risk
Respiratory diseases
Impairment of the immune system
Role in workplace and vehicle accidents
Risks to infants and the unborn
Psychosocial effects, including cognition and academic achievement
Severe mental health problems, including schizophrenia, depression and suicide
Problem marijuana use
Links between marijuana and other substance abuse

Overall findings in each area are rated as to their certainty: conclusive, substantial, moderate, limited, none or insufficient. We’ll focus on pot’s role in vehicle accidents, its consequences on cognition and academic achievement, and its effects on mental health.

**Vehicle accidents:** A previous meta-analysis of 21 studies in thirteen countries found that vehicle crashes were twenty to thirty percent more likely for drivers who either self-reported marijuana use or had THC in their bodily fluids (p. 228). Driving simulators have also revealed that driving skills decrease as cannabis dosage increases (p. 230). NAS concludes that “there is substantial evidence of a statistical association between cannabis use and increased risk of motor vehicle crashes” (p. 230).

**Cognition:** Prior studies found that marijuana use “acutely” interferes with memory, learning and attention. Whether such effects endure after pot use ends is uncertain (pp. 274-5). NAS concludes that “there is moderate evidence of a statistical association between acute cannabis use and impairment in the cognitive domains of learning, memory, and attention” but only “limited evidence” that impairment continues after a “sustained abstinence.”

**Academic achievement:** A prior “systematic review” of sixteen “high-quality” studies concluded that marijuana use “was consistently related to negative educational outcomes” (p. 276). Another study suggested that dosage was important. However, marijuana use is associated with a host of factors, including intelligence, use of other substances, parental education, socioeconomic status, and so on, each of which may also influence academic achievement. Absent a major study that “controls” for each important variable, parceling out marijuana’s unique contribution remains out of reach. NAS concludes that there is “limited evidence of a statistical association between cannabis use and impaired academic achievement and education outcomes” (p. 279).

**Mental health:** A review of ten studies found a strong link between marijuana use, psychoses and schizophrenia; a “pooled analysis” of thirty-two studies found an
increased likelihood of psychosis, with risk increasing along with frequency of use (pp. 291-3). Research involving psychiatric patients paints an equally gloomy picture. A study that compared first psychotic episode patients with non-patients revealed that the former “were more likely to have lifetime cannabis use, more likely to use cannabis every day, and to mostly use high-potency cannabis as compared to the controls” (p. 294). Reviewers concluded that there was “substantial evidence” that marijuana use could cause schizophrenia and lead to other psychoses, “with the highest risk among the most frequent users” (p. 295).

Marijuana does have some medical benefits. NAS found “substantial evidence” that pot is effective for chronic pain (p. 90) and “conclusive evidence” that it can reduce or eliminate nausea and vomiting caused by chemotherapy (p. 94). NORML, the nation’s leading pro-marijuana organization, prominently touts pot’s beneficial aspects. In “Marijuana: A Primer” Paul Armentano, the organization’s deputy director, glows about THC’s safety, “particularly when compared to other therapeutically active substances.” Yet his discussion also cautions that “cannabis should not necessarily be viewed as a ‘harmless’ substance”:

Consuming cannabis will alter mood, influence emotions, and temporarily alter perception, so consumers are best advised to pay particular attention to their set (emotional state) and setting (environment) prior to using it. It should not be consumed immediately prior to driving or prior to engaging in tasks that require certain learning skills, such as the retention of new information. Further, there may be some populations that are susceptible to increased risks from the use of cannabis, such as adolescents, pregnant or nursing mothers, and patients with or who have a family history of mental illness.

Other than for Mr. Armentano’s paragraph, which is buried in a longer piece, NORML’s consistent position is that marijuana is harmless, even for youths. For example, a post on its website approvingly reports that, according to a new study, the substantial IQ decline noted for teen-age marijuana users is caused by “family background factors” (one of the confounding variables cited in the NAS report) rather than by pot. NORML also consistently rejects the notion that legalizing marijuana might increase its use by youths (for one such post click here).

Federal law (Title 21, United States Code, Section 812) places marijuana in Schedule I, reserved for substances that have a “high potential for abuse”, “no currently accepted medical use” and are deemed unsafe to use even under medical supervision. Manufacturing and possessing Schedule I drugs is illegal except when authorized for research purposes. In 1996, when California authorized medical marijuana, it became
the first state to ignore the Feds and chart its own course. Other states have since joined in, and at present medical pot is legal in twenty-nine states plus D.C. and the territories (a handful of additional states allow the use of marijuana oil but not THC.)

According to the NAS, marijuana has some medical use. So why is it stuck in Schedule I? Officially, it’s because there supposedly hasn’t been enough research to demonstrate that pot’s benefits outweigh its risks. Unofficially, we suspect that the Feds fear any endorsement could open the floodgates to diversion and ultimately lead to full legalization.

Are such concerns valid? To be sure, medical marijuana has probably encouraged the timid to partake, for both good reasons and bad. But showing ID, signing forms and forking over a lot of dough for a small dose has little appeal for the recreationally-minded, who can readily source cheap pot (admittedly, of varying quality) on the street. On the other hand, that feared “slippery slope” to full legalization has been partly realized. Recreational pot laws are now on the books in eight states – Alaska, California, Colorado, Maine, Massachusetts, Nevada, Oregon and Washington – and have passed (but remain Congressionally unauthorized) in the District of Columbia. With capitalists scrambling to get in the mix, competitively-priced, certified “safe” marijuana may soon become as available and affordable as a bottle of beer.

Pot’s freshly scrubbed image has set off worries about an explosion of use, particularly by youths. While marijuana boosters are nonplussed – as we cited earlier, NORML claims that marijuana use by teens has declined – a recent report suggests abundant reason for alarm. “Association of State Recreational Marijuana Laws With Adolescent Marijuana Use” (JAMA Pediatrics, 2017) reports the findings of national surveys administered to high school students between 2010-2015 about their use of marijuana and perceptions of its risk. Researchers discovered that after Washington legalized recreational pot its teens became significantly more likely than peers in other states (whose self-reported use slightly declined) to use pot and downplay its harmfulness. No such differences were reported for youths in Colorado after that state legalized recreational pot. (However, there is evidence that pot use by Colorado teens had already increased, in 2009, when that state enacted highly permissive medical marijuana laws.)

Colorado’s Department of Public Health issues yearly reports about marijuana’s impact on health. While its 2016 version strives to reassure (e.g., marijuana use hasn’t changed since legalization; it’s also used less than alcohol) there are bombshells everywhere (e.g., “one in four adults age 18-25 reported past month marijuana use, and
one in eight use daily or near-daily”). Its assessment of marijuana’s health consequences for “adolescents and young adults” seems particularly damning:

The committee reviewed the relationships between adolescent and young adult marijuana use and cognitive abilities, academic performance, mental health and future substance use. Weekly marijuana use by adolescents is associated with impaired learning, memory, math and reading, even 28 days after last use. Weekly use is also associated with failure to graduate from high school. Adolescents and young adults who use marijuana are more likely to experience psychotic symptoms as adults, such as hallucinations, paranoia, delusional beliefs and feeling emotionally unresponsive.

In fact, the report (from a pot-friendly state, no less) contains so much negative stuff that a Mother Jones contributor who admits he enjoys the occasional toke was openly dismayed.

Marijuana legalization is proving problematic for relations between the states and the new Administration. Since 2014 Congressional spending bills have prohibited the Feds from spending money to fight medical marijuana in states where it’s legal (for the 2017 bill click here and scroll to p. 231). Even so, in February Attorney General Jeff Sessions testily announced his firm opposition to pot’s broad use:

...I don’t think America is going to be a better place when more people of all ages and particularly young people start smoking pot. I believe it’s an unhealthy practice and current levels of THC in marijuana are very high compared to what they were a few years ago...States they can pass the laws they choose. I would just say it does remain a violation of federal law to distribute marijuana throughout any place in the United States, whether a state legalizes it or not.

Sessions’ comments signal a dramatic shift from the permissive tone his agency adopted in 2013, when it announced that it would defer to state recreational use laws based on “assurances that those states will impose an appropriately strict regulatory system.” A detailed policy pronouncement limits Federal enforcers to tasks such as keeping pot away from minors and preventing its distribution to states where marijuana is completely illegal. To back up the A.G., then-Press Secretary Sean Spicer made clear that the President saw “a big difference” between medical marijuana and its recreational use. In Blue California, where smoking pot for fun becomes legal in January 2018, that “difference” has been characterized as a potential “flashpoint” in state-Federal relations. Meanwhile Lt. Gov. Gavin Newsom, who vigorously (and successfully) backed recreational pot, urged the Feds to get over their pique and help the Golden State (no pun intended) “wipe out the black market in pot.”
As if.

*Police Issues* isn’t overly fond of analogies, but here we can’t resist. Americans can thank their ready access to a cornucopia of highly lethal guns, and the inevitable consequences, to the profit-driven firearms industry, a huge cadre of gun enthusiasts, and the efforts of gun-friendly politicians, many of the ideologically “Red” persuasion. For the coming young-stoner culture, and its inevitable consequences, we’ll one day thank the profit-driven marijuana industry, its ever-expanding cadre of tokers, and the efforts of pot-friendly politicians, many of the ideologically “Blue” persuasion.

A distinction? Maybe. A difference? You be the judge.
SOMETIMES YOU HAVE TO THROW AWAY THE KEY

Violence by the young is still violence

“...it is perverse to condemn a minor to prison for life [without the possibility of parole] for committing a crime that he or she might find unthinkable on reaching adulthood.”

By Julius (Jay) Wachtel. So said the Los Angeles Times in an editorial calling on the California Legislature to exempt 16 and 17-year olds from being sentenced to mandatory life without parole should they be convicted of murder with special circumstances (e.g., killing witnesses and law enforcement officers, murders for financial gain or during the commission of a violent felony, using an explosive, being especially cruel, lying in wait, in furtherance of gang activity, etc.)

There are two threads to the Times’ argument. First, the comparative. Sentencing kids to life without parole isn’t done in any other country, so it’s by definition outrageous. Secondly, the empirical. According to science the brain region that controls impulsive behavior isn’t fully developed until one’s early twenties, so throwing away the keys needlessly “discards” correctible lives.

And it’s not just the Times. Two days later the Miami Herald reported on Florida’s practice of remanding kids who kill to adult court, where they face possible life sentences. Among those currently at risk are a 12-year old who beat his infant cousin to death with a baseball bat, and a 14-year old who stabbed his best friend. According to a criminologist, prosecutors are catering to a public that demands they “deep-six” children who kill: “...no matter how much they can be rehabilitated -- people want 10 or 15 years out of the kid's life, maybe more.”

Why is that? Perhaps the answer lies in what the Herald’s article didn’t say. In 1999 Lionel Tate, a 12-year old Florida boy, viciously stomped a 6-year old girl to death. After his police officer mother refused a plea bargain Lionel was convicted of murder and received life without parole. Although the judge described the killing as incredibly brutal, the sentence drew widespread condemnation and Lionel was eventually placed on probation. Well, he apparently didn’t learn his lesson. Lionel’s problems with the law continued, and in 2006 the now nineteen-year old got ten years for the armed robbery of a pizza deliveryman.

What’s the difference between armed robbery and murder? Five pounds of trigger pull, maybe less with a semi-auto.
Most Americans favor putting murderers to death -- nearly seven out of ten according to the latest Gallup poll. Half, though, would settle for life “absolutely without” parole, a wording made necessary due to skepticism that “without” really means that. In any event, prison is now the only option for younger offenders, as in 2005 the Supreme Court (Roper v. Simmons, no. 03-633), barred the execution of those under 18. Interestingly, the Court’s reasons -- that evolving standards make executing young people a cruel and unusual practice, and particularly so given their immaturity -- were the same as the Times’ more recent objections for imposing life sentences.

Watch your step! The slope’s getting slick!

This writer is personally against the death penalty. So he is naturally concerned when well-intentioned folks like the Times’ editors threaten the only alternative that the American public seems willing to accept: life without parole. Europeans may feel differently, but given the easy availability of guns and our absurdly high levels of violence it is perfectly reasonable to demand the certainty and reassurance that only permanent incapacitation can provide. There really is no other satisfactory solution. Consider the dilemma faced by Presidential contender Mike Huckabee, who finagled the 1999 parole of a violent rapist only to have the man rape and murder at least one and possibly two women a few months later.

But young people are by definition immature. Should they really get no “second chance”? On January 17 two youths, one 17, the other 19, were arrested in the shooting deaths of a 16-year old Southland resident and her 18-year old boyfriend. Police think that the killings were done strictly for thrill as there was no evidence of a robbery and one suspect had blogged about the joys of “killing at random”. Although the Times' proposed guidelines would not help these two, as both are just over the magical threshold of 18, one can assume that neither boy’s conscience was completely formed. If they’re not to be executed, when should they be released?

Murder is not a phenomenon of the very young. In 2006 more than three in four persons arrested for murder were over 22, with about half older than 24. Apparently fully developed brains are not enough to keep people from killing each other. Fortunately, the rates decline markedly by the time that men (that’s the gender to worry about) are in their forties, so fifty seems like a good bet for release.

OK, we’re on board. Release all violent offenders when they’re fifty, and send me the clippings of those who kill again. That should make for some interesting posts.
THE BAIL CONUNDRUM

Bail obviously disadvantages the poor. What are the alternatives?

By Julius (Jay) Wachtel. On September 19, 2017 Mickey Rivera walked out of jail, a free man. Well, relatively free. Unable to post $35,000 bail, he had been locked up for more than two years awaiting trial for his role in the 2015 gang-related killing of a Boston man. In August 2017, though, the Massachusetts Supreme Court ruled in Brangan v. Commonwealth, an unrelated case, that absent specifically documented reasons, cash bail must not outstrip a defendant’s ability to pay. After all, bail isn’t intended as punishment but “to provide the necessary security for [a defendant’s] appearance at trial.” Given that decision, Rivera’s lawyers appealed. Despite his substantial criminal record, Rivera’s bail was reduced to $1,000. He paid up, was outfitted with a tracking device and let go. That, a legal expert told the Boston Globe, was perfectly appropriate:

Nancy Gertner, a retired federal judge and a senior lecturer at Harvard Law School, defended McGuire’s decision to reduce bail, saying he was following a state court decision that is part of a national bail reform effort to prevent people from being jailed before trial simply because they are poor. “What the judge did is exactly right,” Gertner said.

Real life tends to muddy things, and this case is no exception. In June 2018, nine months after being set loose, Rivera was arrested for drunk driving. Although he was still awaiting a criminal trial, Rivera was released without bail (his driver license was suspended.) One month later, on July 28, Massachusetts cops observed him speeding and driving erratically. Rivera took off, with cops in pursuit. The chase ended when Rivera slammed head-on into another vehicle, killing a man who had just visited his wife and newborn daughter in the hospital. Rivera was also killed, and a passenger in his vehicle died the following day.

As one might expect, Rivera’s case led to considerable recrimination and finger-pointing. Lots of criticism was directed at the judges who reduced Rivera’s bail in the killing to a token amount and, much later, let him walk on the DUI. Both were blamed for not making the effort to articulate the need to set a substantial bail amount, even beyond Rivera’s ability to pay, as state law and the court decision allow. Of course, the judges had a built-in excuse: despite his many run-ins with the police, Rivera had always shown up.
Showing up? Is that what bail is all about? Apparently, the answer is yes. Bail’s only mention in the Constitution is in the Eight Amendment, which stipulates that “excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” While these few words don’t address bail’s purpose, Stack v. Boyle (342 U.S. 1, 1951), the leading Supreme Court case on point, prohibits setting bail “at a figure higher than an amount reasonably calculated to fulfill the purpose of assuring the presence of the defendant....” Here is how Justice Robert H. Jackson suggested that be determined:

Each accused is entitled to any benefits due to his good record, and misdeeds or a bad record should prejudice only those who are guilty of them. The question when application for bail is made relates to each one’s trustworthiness to appear for trial and what security will supply reasonable assurance of his appearance...This is not to say that every defendant is entitled to such bail as he can provide, but he is entitled to an opportunity to make it in a reasonable amount.

Wait a minute. Doesn’t a suspect’s dangerousness also matter? Unfortunately, the underlying offense in Doyle was nonviolent so that concern didn’t come up. For a clue we return to Brangan, the Massachusetts case. There the crime was armed robbery, so the justices had no option but to address dangerousness. And their answer, as far as bail is concerned, was “no”:

...a judge may not consider a defendant’s alleged dangerousness in setting the amount of bail, although a defendant’s dangerousness may be considered as a factor in setting other conditions of release. Using unattainable bail to detain a defendant because he is dangerous is improper....(emphasis ours)

That doesn’t mean that the nature of a crime is irrelevant. After all, serious crimes carry serious punishment, and that might make an accused more likely to flee. In fact, Brangan and its precedents require that factors such as the nature of an offense, community ties, mental condition, criminal record and failures to appear (FTA) be considered when setting bail, but only to evaluate the risk of flight. And there are limits. After all, bail inherently discriminates against the poor. Here’s another extract from Brangan:

A bail that is set without any regard to whether a defendant is a pauper or a plutocrat runs the risk of being excessive and unfair. A $250 cash bail will have little impact on the well-to-do, for whom it is less than the cost of a night’s stay in a downtown Boston hotel, but it will probably result in detention for a homeless person whose entire earthly belongings can be carried in a cart.
That argument parallels the views of justice activists who have called for the elimination of bail altogether. Here, for example, is an extract from the ACLU “Smart Justice” website:

...bail was supposed to make sure people return to court to face charges against them. But instead, the money bail system has morphed into widespread wealth-based incarceration. Poorer Americans and people of color often can’t afford to come up with money for bail, leaving them stuck in jail awaiting trial, sometimes for months or years. Meanwhile, wealthy people accused of the same crime can buy their freedom and return home.

By design, offense severity and prior record strongly influence bail setting and pretrial detention. Research has also revealed that in comparison to white arrestees, blacks and Hispanics are less able to afford bail and less likely to be released without posting bail, thus more likely to remain in pretrial custody. For example, see “Sentenced to Pretrial Detention: A Study of Bail Decisions and Outcomes” (a review of recent New Jersey data) and “Recommended for release on recognizance: Factors affecting pretrial release recommendations” (an earlier review in Toledo.)

Concerns about extralegal disparities led New Jersey to implement a statewide “risk assessment” system in 2017. Pre-trial investigators collect information to help courts determine whether releasing defendants through “non-monetary means” would unduly risk their flight or imperil public safety. Cash bail remains an option but its use is heavily discouraged. As one might expect, the bail industry balked. So far, though, the statute has survived legal challenges.

Determined not to be left out, liberal-minded California recently enacted an even more sweeping measure that, as of October 2019, does away with bail altogether. Other than under exceptional circumstances, persons arrested for misdemeanors will be summarily released. Like in New Jersey, arrestees charged with more serious crimes would be evaluated by pretrial services, which could release those who pose a low-to-moderate risk to public safety or of nonappearance. Other defendants could thereafter be released by the courts, which could impose only non-monetary conditions. Characters who seems so likely to flee, or pose such an extreme threat to public safety that releasing them under any conditions seems unwise, would be subject to preventive detention. As one would expect, this involves substantial due-process safeguards, including a hearing. Other states (e.g., New Jersey, Massachusetts) have similar provisions.

One might think that minimizing the use of bail or, as in California, eliminating it altogether would satisfy activists. But according to a recent article in Politico one would
be wrong: “Social justice advocates that had once championed the initiative to abolish cash bail mobilized against the final iteration of the [California] bill, which they saw as having morphed from righteous to dangerous.” What’s so “dangerous” about risk assessment and, as a last resort, preventive detention? Given the presumption of innocence, apparently everything: “In critics’ eyes, that means California will continue to give local judges the sweeping authority to keep people incarcerated before they’re convicted of anything.” Similar concerns have arisen in New Jersey and elsewhere.

Law enforcement officers must deal with the consequences of poor release decisions, so they usually favor a short leash. Four months after New Jersey’s provisions took effect, Jules Black, an ex-con, was arrested for having a gun. Assessed as low-risk, he was released without bail. Within hours Black allegedly cornered one of his enemies and shot him dead. According to a local jailer (he’s also president of the police union) career criminals are taking advantage of the reforms: “I’m seeing the same exact people every week. I’m just seeing them come in with new charges. It’s more work for officers. It’s a lot more work for them.” Concerns that the new procedures were proving too lax were seconded in an NorthJersey.com editorial:

In particular, officers say the new law’s risk assessment, or Public Safety Assessment, leaves too much to chance and is allowing, in some instances, violent-prone individuals to be back out on the street shortly after their court appearances. This, they say, is also bringing more pressure and stress to officers on patrol.

Is assessment a solution? Newfangled protocols supposedly let authorities assign applicants for release to the appropriate risk pool. To be sure, paying specialists to make distinctions will produce...distinctions. But whether these yield groups with markedly different, real-world propensities to engage in misconduct is something else altogether.

Neither is bail a guarantor of good outcomes. “Googling” instantly turned up a recent, troubling anecdote. On May 13, a Wisconsin man with an extensive criminal record that includes “bail jumping” was out on $7,500 cash bond for a string of crimes when an officer tried to pull him over for a traffic violation. After a pursuit (a cop wound up getting dragged a short distance by the suspect’s car) the man was arrested on multiple charges.

This time he was detained without bail, right? Wrong. Cash bond was set at $1,000.

Pre-trial release, on bail and otherwise, is ubiquitous and surprisingly permissive. A recent study of eleven major California counties tracked more than one and one-half million bookings (1,563,837) between October 2011 and October 2015. Forty-one
percent of the arrestees were released before trial, split about 60/40 percent between misdemeanors and felonies. Of these, a bit more than a quarter (27.8 percent) had to post bail, most often for a felony offense. About seven percent of the bookings (112,445) were for FTA on a prior charge. Thirty-eight percent of these defendants (43,029) were again let go. A previous study, of persons released from Dallas County jail in 2008, suggested that failure to appear is frequent. Including misdemeanors and felonies, the rate ranged from 23 percent of those released on bail to 39 percent of those who were simply cleared by pretrial services (N=29,416). Another, “An Experiment in the Law: Studying a Technique to Reduce Failure to Appear in Court,” about individuals released on misdemeanor charges in Nebraska during 2009-10, yielded a control group FTA rate of 12.6 percent (N=7,865).

FTA isn’t the only issue. Released persons must often comply with other conditions; for example, wear an ankle monitor, keep away from certain persons and places, and so on. But public safety agencies have limited resources, and their practitioners can only do so much. Whether it’s old-fashioned cash bail or a newfangled assessment, the sheer magnitude of pre-trial release, the uncertainties of evaluating applicants, and the frailties of human nature inevitably create error, and along with it a substantial threat to the public and police. At a certain point – and from the flub-ups, we’ve probably reached it – trying to fine-tune outcomes becomes an exercise in wishful thinking. Release more, and there will be more news headlines and more cause for essays like this. That’s the one certainty we’ll never escape.
THE BLAME GAME

Inmates are “realigned” from state to county supervision. Then a cop gets killed.

By Julius (Jay) Wachtel. Cops would worry less if their workplace was more forgiving. But it’s not. Legal rules and enforcement practices often seem out of sync with the “real world.” There are never enough resources to consistently do a good job. Accurate information is frequently lacking, and there is often little chance to seek it out. Citizens and suspects are unpredictable and dangerous. That’s why cops want evildoers behind bars. Big bars. Throw away the key: problem solved.

What officers want isn’t necessarily what they get. California’s cops got their first taste of the “new normal” in 2011. Two years after Federal judges imposed a cap on the state’s overflowing prisons, legislators passed AB 109, the “Public Safety Realignment Act,” shifting confinement and post-release supervision of “non-serious, non-violent [and] non-sex” offenders from state prisons to county jails and probation departments. Three years later Proposition 47 reduced many felony drug crimes and all theft and stolen property cases with losses under $950 to misdemeanors. And two years after that, Proposition 57, the “Public Safety and Rehabilitation Act of 2016,” made it easier for inmates to earn release credits and for “nonviolent” offenders sentenced on multiple charges to win early parole.

Prosecutors and police opposed “realigning” prisoner populations and facilitating early release. They lost. After all, weren’t crime rates way down from their peaks? With
reformers howling and politicians reluctant to pay for more prisons, all three measures remain on the books.

No, the sky hasn’t fallen. But change always carries consequences. During the first year of realignment, as the state prison population dropped by twenty-six thousand, jail populations surged by over 8,500. County lockups were quickly swamped, forcing authorities to release arrestees whom police wanted to keep in custody. Sentences were waived or cut short, and parolees whose supervision was shifted to the counties remained on the streets despite repeated violations. One, Sidney DeAvila, a sex offender, used his freedom to rape and murder his grandmother and cut her into pieces. A Democratic legislator bemoaned things. “It’s justice by Nerf ball. We designed a system that doesn’t work.”

The above graph is from FBI data. While the nation’s violent crime rate remained fairly steady between 2011-2016 (it fell two-tenths of one percent, from 387.1 to 386.3), California’s violent crime rate climbed 7.7 percent, from 411.1 to 445.3.

In late 2016, with violent crime in California up for a third consecutive year, a columnist for the Sacramento Bee, the newspaper serving the state capital, wondered “whether releasing tens of thousands of criminals who otherwise would have been behind bars is having a negative effect.” His concern paralleled those of the public safety community, which was convinced that re-alignment was at fault for the increase.

Not everyone was so pessimistic. A September 2016 report by the Center on Criminal and Juvenile Justice (its mission is “to reduce society’s reliance on incarceration as a solution to social problems”) examined whether realignment contributed to the uptick in crime during 2014-15. Conceding that there was a lot of variation in the data, and that some counties did go the other way, investigators concluded that reducing the number of persons in jail did not cause the overall increase in crime.

In the same month, the influential Public Policy Institute of California used two-year old (2014) crime data to conclude that realignment was a success. (However, it did note that preliminary 2015 statistics were somewhat troubling.) One year later the institute conceded that realignment “had modest [adverse] effects on recidivism”; particularly, that parolees whose sentences were cut short and had their supervision turned over to county probation officers were more likely to reoffend.

That’s what happened with Michael Mejia. After serving a three-year prison term for a 2010 robbery, the heavily tattooed Los Angeles gang member stole a car and got two years for auto theft. Thanks to AB 109, he was released early, in April 2016, into the supervision of a local P.O. Mejia promptly amassed a string of violations and served
brief stretches in jail. On February 20, 2017, nine days after his last release, he went off the deep end. Mejia murdered a cousin, stole a car, and when confronted chose to shoot it out, killing Whittier, Calif. officer Keith Boyer and seriously wounding his partner.

Mejia’s foul deed energized anti-realignment forces. A coalition of police organizations, prosecutors and victims’ rights groups is presently seeking to place the “Reducing Crime and Keeping California Safe Act of 2018,” an initiative that substantially rolls back the provisions of AB 109 and Propositions 47 and 57, on the November ballot.

Meanwhile, pro-realignment forces have pulled out all the stops. The Marshall Project, a “nonpartisan, nonprofit news organization that seeks to create and sustain a sense of national urgency about the U.S. criminal justice system” and the Los Angeles Times recently released an analysis that blames officer Boyer’s death on judges and probation staff who mistakenly let Mejia into the program, then gave him too many breaks. (Click here and here.)

We won’t parse the arguments pro and con in detail. What strikes us, though, is just how much is expected from those who must implement realignment’s provisions in the “real world.” The Marshall Project and Times insist (of course, with the benefit of hindsight) that Mejia’s poor conduct while under supervision required that his probation be revoked. But had they reviewed the innumerable examples of probation supervision that don’t end with the killing of a police officer, they would have discovered that Mejia’s behavior, which lacked “red flags” such as weapons or violence, was really quite ordinary.

In brief, he was your typical no-goodnik — until he wasn’t.

That’s not to say that Mejia should have been on the street. Still, if all who behaved similarly were reincarcerated, the correctional system would collapse. With confinement out of favor, prisons at capacity and local resources hard-pressed, thanks in part to realignment, prosecutors, P.O.’s and judges are under immense pressure to keep no-goodnicks on the street. While that’s not what cops would prefer, they’re not calling the shots. At least, not until November.
THE CHURCH, ABSOLVED

Victims of sexual abuse by Catholic clergy scream “whitewash” over John Jay’s report

Predictably and conveniently, the bishops have funded a report that tells them precisely what they want to hear: it was all unforeseeable, long ago, wasn’t that bad and wasn’t their fault.

*By Julius (Jay) Wachtel.* Sexual abuse victims have voiced dismay at a suggestion by researchers at the John Jay College of Criminal Justice that the scandal in the Catholic church wasn’t so much its fault as a product of the social upheaval of the 1960s. Reactions in the media have ranged from disbelief to mockery. Here’s what two major newspapers had to say about the so-called “Woodstock defense”:

- **New York Times:** “...a new study of the abuse problem...cites the sexual and social turmoil of the 1960s as a possible factor in priests’ crimes. This is a rather bizarre stab at sociological rationalization and, in any case, beside the point that church officials went into denial and protected abusers.”

- **Los Angeles Times:** “A study commissioned by Roman Catholic bishops ties abuse by Roman Catholic priests in the U.S. to the sexual revolution, not celibacy or homosexuality, and says it’s been largely resolved.”

To be fair, John Jay’s scholars don’t articulate their conclusions quite so neatly. Yet from the very start the report conveys the unmistakable impression that the Church was also a victim, caught up in forces beyond its control:

- “Social movements, such as the sexual revolution and development of understanding about sexual victimization and harm, necessarily had an influence on those within organizations just as they did on those in the general society” (p. 7)

- “The representation of sexuality was contested in print, film, and photographic media, and increased openness about the depiction of sexuality emerged as sexual acts became more loosely associated with reproduction. These changes were termed ‘sexual liberation,’ and sexual behavior
among young people became more open and diverse” (p. 36)

- “The documented rise in cases of abuse in the 1960s and 1970s is similar to the rise in other types of “deviant” behavior in society, and coincides with social change during this time period” (p. 46)

To illustrate the connection John Jay’s authors graphed sexual misconduct complaints received by the Church between 1950-2002. Their data reveals a steady increase during the 1950’s and 60’s, peaking at between 800 and 1,000 per year between 1978 and 1981. The trend then reversed; by the mid-eighties complaints plunged fifty percent. By the mid-nineties less than one-hundred were being filed each year.

To demonstrate that the decline was part of a larger trend the authors cite data from the National Incidence of Child Abuse and Neglect. This survey measured child abuse in the U.S. in four waves: NIS-1 (1979-80), NIS-2 (1986), NIS-3 (1993) and NIS-4 (2005-06). Applying the rigorous “Harm” standard, which requires “that an act or omission result in demonstrable harm,” the physical abuse of children decreased 15 percent from NIS-3 to NIS-4, while sexual abuse fell 38 percent. (No significant change was evident under the looser “Endangerment” standard.)

However, once we move away from the extreme right tail of the distribution of complaints to the Church, the concordance with national child abuse statistics evaporates. Between 1980 (NIS-1) and 1993 (NIS-3), a period when complaints of abusive priests were already plunging, the national rate of physical abuse of children doubled. Sexual abuse jumped four-fold. (See chart on the right. Rates for NIS-1, 2 and 3 are from the NSPCC; rates for NIS-4 were calculated by the author. All are based on the “Harm” standard.)
Child abuse is a secretive crime. Reporting depends on intervention by teachers, caseworkers and police. One explanation for its sharp rise in past years is that society may have started taking better notice of the problem. NIS-3 surmises that better recognition did lead to more reporting. But it was thought unlikely that child abuse rates would have climbed as steeply unless the actual incidence of abuse had also increased. As a contributing factor NIS-3’s authors suggest the catastrophic effect of the drug epidemic of the 1980’s, particularly as drug abuse was frequently cited in the study’s data collection forms.

While the NIS report didn’t mention crime rates, they are assumedly linked with problems of social disorganization. Clearly, the trends are similar. Crime increased in tandem with child abuse. And when the well-known “great crime drop” of the 90s got underway, child abuse in the U.S. also plunged.

Could crime and drug use help explain why priests sexually abuse children? First, there is no known theoretical connection. Why would they be more likely to abuse children when crime is on the increase, or less likely when it’s falling? What’s more, the downturn in complaints against priests preceded the great crime drop, like it preceded the drop in the national incidence of child abuse, by a full decade.

If it’s not drugs and crime what about the Woodstock defense? Alas, that seems equally far-fetched. Your blogger, who was a teen in the sixties, doesn’t remember that it was ever OK to sexually experiment on children. Why would priests think otherwise? If there is data to support that odd notion we’d sure like to see it.

On the other hand, pedophiles don’t need to be told that abusing children is OK. Was the Catholic Church admitting large numbers of sexual predators into its ranks? Was it ignoring signs of abuse? If so, the problem wouldn’t lie with society but with the selection, training and supervision of priests. John Jay’s authors, though, take pains to demonstrate that clergy are no more likely to be afflicted with pedophilia than the general population: “Less than 5 percent of the priests with allegations of abuse exhibited behavior consistent with a diagnosis of pedophilia (a psychiatric disorder that is characterized by recurrent fantasies, urges, and behaviors about prepubescent children)” (p. 3).

John Jay’s report includes a table that depicts the distribution of child victims of priest sexual abuse by age and gender. “Prepubescent,” defined by the authors as age 10 and under, constitutes 18 percent (1,880) of the 10,293 victims in the sample. (The authors also cite a 22 percent figure, but we’ll stick with the...
Either way, if only about one in five victims are prepubescent, the notion that abusive priests are predominantly pedophiles seems misplaced.

And here’s where we come to a real head-scratcher. What John Jay’s authors don’t reveal is that the controlling description of pedophilia, as set out in the APA’s DSM-IV, a source they repeatedly cite, defines prepubescence differently:

The paraphilic focus of Pedophilia involves sexual activity with a prepubescent child (generally age 13 years or younger). The individual with Pedophilia must be age 16 years or older and at least 5 years older than the child...Those attracted to females usually prefer 8- to 10-year-olds, whereas those attracted to males usually prefer slightly older children.

DSM’s definition of prepubescent as 13-and under would land a majority (probably, most) of John Jay’s abusive priests in the pedophile camp. Naturally, that seriously undermines the Church’s position that it wasn’t aware that pedophilia was a problem. With so many afflicted priests, how could it not know?

The startling age-range discrepancy, which has been noted by the *New York Times* and other sources, brings the scholarship of John Jay’s report into question. When an academic study is financed nearly exclusively by those with a stake in its outcome (indeed, the Catholic conference holds the report’s copyright), any hints of bias can easily destroy its credibility.

What steps should John Jay’s authors take? First, they must reexamine their assertion that changing social mores were somehow responsible. It seems far more likely that sexual abuse by Catholic clergy has always been a serious issue, and that reporting went up because of heightened awareness, brought on in part by episodes such as Boston. Really, if the authors are sincerely convinced that pedophilia among priests is rare they ought to prove it fair and square. Instead of massaging (some might say, twisting) data beyond recognition, they might interview former priests. Here’s what one had to say:

Pedophilia is a major problem that is sweeping the church. They’ve been trying to muzzle any information about its happening but it’s causing the priesthood to be destroyed.

If they’re feeling a bit adventurous they might also review examples of abuse by Catholic clergy in Europe, Asia and elsewhere. These are an excellent basis for comparison as they were unlikely to have been influenced by Woodstock. As for the rest of us, a good starting point is the Oscar-nominated documentary “Deliver Us From Evil.” Thanks to its producers’ generosity, all that’s required is to click on the image at the top of this post. But be sure to do it on an empty stomach.
THE GREAT DEBATE (PART II)

Violence is the problem. Is harsh sentencing the solution?

“The three-strikes law sponsor is the correctional officers’ union and that is sick!”

By Julius (Jay) Wachtel. Who said that? Here are three possibilities: (1) the ACLU president, (2) the ACLU executive director, or (3) Supreme Court Associate Justice Anthony M. Kennedy, addressing a gathering of lawyers on February 3, 2009 at Pepperdine University’s Odell McConnell Law Center, perched high on a spectacular bluff overlooking the shores of the Pacific.

Hmm...let’s see...

For someone who’s supposed to keep an open mind Justice Kennedy’s words may seem intemperate. Yet those familiar with his concerns aren’t a bit surprised. A staunch supporter of the police, the third-most senior member of the Court (he joined in 1988) is also a long-standing prison reformist. Justice Kennedy has frequently spoken out against overcrowding and excessively long sentences, which he likes to point out are on the average eight times longer than the European norm.

Justice Kennedy’s ire last week was directed at California’s three-strikes law, widely considered to be the toughest in the nation. We’ve already described its two most salient features. First, it’s both a two-strikes and three-strikes law. Persons who are convicted of a new felony after being convicted for a violent or serious felony get their terms doubled; two such priors draw a mandatory 25 years to life. Note that the triggering offense – the new charge, or “strike” – can be any felony, including drugs and theft.
It’s no secret that sentencing has become substantially harsher. According to the Bureau of Justice Statistics, 447 per 100,000 adults (18+) were sentenced for felonies in State court in 1990. In 2006 the rate was 503 per 100,000, an increase of 13 percent. More importantly, those sentenced to State prison were serving considerably lengthier terms. Between 1993-2005 the average time served in State prison (all offenses) went up from 21 months to 29, an increase of 38 percent. For violent crimes the increase was from 36 months to 50 (39 percent); for property crimes it was from 17 months to 22 (29 percent).

Harsh sentencing goes back several decades. According to the Statistical Abstract of the U.S. the U.S. imprisonment rate (persons in State or Federal custody and sentenced to one year or more, per 100,000 population) was 96 in 1970. It took off four years later and never looked back. By 1980 it had reached 139; in 1990 it was 296 and still climbing. The historical high, a mind-boggling 756 per 100,000 population came in 2007. In that year 2,298,041 persons – nearly one out of every one-hundred Americans – were locked up doing a year or more. (In 2008 the rate dropped ever so slightly, to 754.)

As the good justice implied, when it comes to imprisoning its citizens the U.S. is on top (or the bottom, depending on one’s point of view.) According to the authoritative World Prison Population List, our 2007 incarceration rate of 756 was by far the highest on the planet, five times greater than the world rate of 145 per 100,000 and eight times that of Southern and Western Europe’s measly 95. Way behind in second place was Russia, with a barely respectable 629. Other pleasant places like Cuba (531) and Belarus (468) weren’t even in contention.

Our chart depicts historical and contemporary violent crime and imprisonment rates per 100,000 population from 1970 to 2008. Comparing the trend lines we see that the well-known surge in violent crime that began in the mid-1970’s substantially outpaced the imprisonment rate until the late 1980’s. It’s generally agreed that by then a punitive mindset had formed, which persisted even as violent crime tumbled. In 1991, as the mayhem reached its zenith, there were 1,911,767 violent crimes, yielding a rate of 758.2 per 100,000. By 2000 the violent crime rate (based on 1,425,486 offenses) was a full one-third lower, at 506.5. A moderate downtrend still persists; 2008’s rate, 454.5, amounts to an additional reduction of ten percent.

So here’s the million dollar question: was it punishment that turned things around? While it’s common sense that incapacitating offenders prevents crime, just how much additional value was produced by imprisoning more persons for longer terms? In his conservatively entitled “The Limited Importance of Prison Expansion,” statistician extraordinaire William Spellman estimates that increased imprisonment cut violence twenty-seven percent, a seemingly modest figure until one remembers that there were
nearly two million violent crimes at the height of the madness. His endorsement of stiffer sanctions, though, seems half-hearted.

One may conclude, with considerable conviction, that the prison buildup was an important contributing factor to the violent-crime drop of the past few years. America would be a much more violent place had billions of dollars not been invested in prison beds; violent crime would not have dropped as far and as fast as it has. Nevertheless, violent crime would have dropped a lot anyway. Most of the responsibility for the crime drop rests with improvements in the economy, changes in the age structure, or other social factors. Whether the key to further reductions lies in further prison expansions, or (more likely) in further improvements in these other factors remains an open question.

What could really harsh stuff like three-strikes accomplish? Methodological issues make it difficult to figure out its unique effects. Three recent studies arrive at varying conclusions. In a survey of U.S. three-strikes laws Chen reported slight but statistically significant associations between three-strikes and declines in crime. Notably, California’s law, the harshest of the lot, didn’t fare better than the others. On the other hand, Kovandzic, Sloan and Vieraities found that three-strikes had no impact. (One possibility they cite is that in cases where three-strikes applies, its added sanctions aren’t of sufficient magnitude to stand out.) Finally, Helland and Tabarrok estimate that California’s three-strikes law reduced felony arrests for those with two existing strikes by 17-20 percent. They nonetheless suggested that the money spent on three-strikes is better used elsewhere.

Money is a central issue. Thanks to liberalizations brought on by the economic downturn, imprisonment rates in a majority of States stood still or went down between 2007-2008, with reductions of as much as thirty-one prisoners per 100,000 population in Texas and Massachusetts. Still, harsh treatment is unlikely to disappear, and for the most practical of reasons: as we said last week citizens aren’t “averages” – they’re victimized one at a time. If, as Dr. Spellman conceded, stiff sentencing cuts violence by one-fourth, hundreds of thousands could be saved from becoming victims each year.

Indeed, a push-back is already underway. In California a jail inmate let go under a new early-release policy then promptly re-arrested for sexual assault became the new poster-child for victim-right groups, while in Oregon the release of a violent inmate who went on to reoffend spurred reassessment of a law expanding good-time credits. Speakers at a recent national conference cautioned against letting financial considerations dictate sentencing. A public-policy expert opposed releasing prisoners just to “return to policies that don’t make sense,” while a State senator called a recent
triple murder by a parolee a sharp reminder that he and others hadn’t been taking the threat of violence “as seriously as we should have been.”

There’s nothing new about horrible crimes being committed by persons released on bail, or by probationers and parolees. Sure, it’s always possible to tune up the release system, but in the end predicting individual dangerousness is well-nigh impossible. So what about changing people? Well, we can’t force anyone to age out of crime any faster, and as far as making humans kinder and gentler – forget it!

But we can throw away the key.
THE GREAT DEBATE (PART I)

Who should go to prison? For how long?

By Julius (Jay) Wachtel. On December 6, 2009 police in Culver City, a Los Angeles suburb, confronted Boneetio Washington, a transient on felony probation, on a complaint that he tried to break into a home. Officers didn’t feel there was enough evidence and let him go. His freedom didn’t last long. Two days later LAPD officers arrested Washington moments after he allegedly forced his way into an apartment and raped and murdered its occupant, a woman pregnant with twins.

Washington’s prior conviction had also been for breaking into a woman’s apartment. Confined to jail and a mental hospital for a year awaiting trial, he pled guilty and was sentenced to time served and three years probation. By then the 22-year old had amassed a record of similar crimes, including arrests and at least one conviction for breaking and entering, larceny and assault in his native Rhode Island and, as recently as 2006, in North Carolina.

Considering Washington’s criminal history why had California authorities dealt with him so leniently? Unnamed sources told the Los Angeles Times that there was “nothing in his past that appeared to show a predisposition to the kind of violence he is now accused of committing.”

Here’s another L.A. story. In 2006 Charles Samuel snuck into the residence of the man who was dating Samuel’s estranged wife. He confronted and beat up the man and stole some small things. Already a two-time loser (he had served six years for a 1986 incident in which he kidnapped an elderly man to get him to withdraw cash from an ATM, resulting in convictions for residential burglary and robbery) Samuel was nonetheless allowed to plead guilty to felony theft. Although that lapse was attributed to a “clerical error,” Samuel had told a probation officer that the bargain avoided his
being charged with a third strike, which in California generally calls for a mandatory 25-to-life (P.C. 667e).

Samuel was paroled to a drug rehab facility after two years. On July 24, 2009 he got permission to go to the downtown DMV office. A 17-year old high school senior, Lily Burk, was also downtown, running an errand for her lawyer mother. Her mutilated body was later found in the family Volvo. In a horrific incident that parallels his earlier crime, Samuel has been charged with kidnapping Burk to get her to withdraw money from an ATM, then in a rage slashing her to death with a broken bottle.

Forty years ago prison sentences were indeterminate, with the actual number of years to be served set by parole boards and commissions after the fact. While penalties looked stiff on paper, felony offenders sentenced to prison wound up serving, on average, only 38 percent of the top end of the range imposed by a judge (for violent offenders, it was 46 percent; for property offenders, 34 percent.)

During the 1970’s and 80’s inner-city violence, much of it related to a booming crack trade, led to calls for “getting tough on crime.” Spurred by Federal grants, State legislatures responded with “truth in sentencing” laws that constricted sentencing ranges and cut back on good-time and other credits, narrowing the gap between what judges imposed and what was actually served. By the early nineties a majority of States and the District of Columbia required that prisoners serve at least 85 percent of their terms before release.

In 1994 violent felons served, on average, less than one half their terms; by 2004 it was two thirds. More defendants were also being convicted and incarcerated. There were 893,630 felony convictions in State courts in 1990. By 2006 the figure was 1,132,290; adjusted for population growth, it represented a net increase of 13 percent. Yet the toughening wasn’t as severe as it might seem. While the number of convictions was up, and the disparity between sentencing and actual time served was reduced, penalties under the new determinate sentencing model were also lower, meaning that inmates wound up serving about the same amount of time as before.

How much time do offenders serve? Keeping in mind differences between States, in 2006, the most recent year with full data, slightly more than half (54 percent) of violent offenders went to prison. Not including life terms, their sentences averaged 96 months. Minus fifteen-percent good-time credit that comes to 81.6 months, or nearly seven years. Terms for aggravated assault were substantially lower, for robbery and sex crimes somewhat higher, and for murder much higher.

But citizens aren’t “averages.” They’re victimized one at a time.
On October 1, 1993, Petaluma (Calif.) resident Polly Klaas, 12, was kidnapped and brutally murdered. A parolee, Richard Allen Davis, was quickly arrested for the crime. He admitted killing the girl and police collected abundant evidence of his guilt. Davis was tried, convicted and sentenced to death. He’s still on death row.

Polly’s murder shocked the nation. Citizens were particularly roiled by the killer’s record, which included a 1974 conviction for multiple burglaries (he got six months to 15 years and served two years), a 1976 conviction for kidnapping and assault (he got one to 25 years and did six), and a 1985 conviction for robbery and extortion (he got 16 years and did eight.)

How could someone like that have been released at all, let alone after only serving half his term?

The anger was quickly transformed into legislation. Enacted in 1994 by popular vote, Proposition 184, the “Three Strikes and You’re Out” initiative provides enhanced penalties for persons convicted of any felony, including property and drug crimes, if they have been previously convicted of a violent or “serious” felony (examples of the latter include burglary of an occupied dwelling and robbery). Those with a single such past conviction get their new term doubled (PC 667[e] [1]), while those with two or more qualifying convictions get a minimum of 25 to life (PC 667[e] [2] [A]). There is one exception: prosecutors can, “in the interests of justice,” choose to ignore prior “strikes” when accepting pleas to new crimes.

Polly Klaas was murdered before three-strikes. But what about the two killers mentioned at the top of this post? Boneetio Washington had only one “strike” before he murdered the pregnant woman, so three-strikes would not have kept him off the street. Samuel, on the other hand, had at least one and possibly two strikes when he pled guilty to felony theft, yet prosecutors for some reason chose not to charge the priors, so he was freed well before Lily Burk ran her fateful errand.

Next week we’ll examine three-strikes in greater detail. Stay tuned!
THE NEW NORMAL

In the industrial belt, poverty and violence are no joke

“The Mayor of Newark, New Jersey wants to set up a citywide program to improve residents’ health. The health care program would consist of a bus ticket out of Newark.”

By Julius (Jay) Wachtel. NBC Tonight Show host Conan O’Brien’s little joke brought on a You-Tube scolding by Newark Mayor Cory Booker, who banned the talk show host from the Newark airport. His move precipitated a series of back-and-forths that culminated in the mayor’s October 16 appearance on O’Brien’s show. More on that later.

Booker, then 37, was elected in 2006 over an obscure rival after the boss of the local Democratic machine, mayor Sharpe James announced his departure from politics. (One year later James stood convicted of corruption.) Their earlier match-up in 2002, which Booker lost by a hair, was depicted in “Street Fight”, an acclaimed documentary about the youngish Stanford grad’s passionate though unsuccessful campaign.

Quickly moving to improve city services, Booker brought in a new police director to rejuvenate what many considered a moribund department. A renewed emphasis on fighting crime and reducing the city’s appalling murder rate have earned plaudits from residents and business owners.
Yet not everything is well. Historical declines in manufacturing and now, the recession have devastated the old cities of the Northeast, with unemployment reaching 14.7 percent in Newark, an eye-popping 17 percent in Camden and 11.1 percent in Baltimore.

Does unemployment breed violent crime? Judging by these communities one might think so. According to the Uniform Crime Reports Newark, pop. 279,788, had 67 homicides in 2008, yielding a rate of 23.9, nearly four times New York City’s (pop. 8,345,075, 523 homicides, rate 6.3). Camden, pop. 76,182, had a startling 54 homicides. Its rate, 70.9, was three times Newark’s and more than eleven times New York City’s. Baltimore’s homicide rate, 36.9, was one and one-half times Newark’s and an appalling six times New York City’s.

Differences in how localities count aggravated assault, robbery and rape make those figures less comparable. Keeping that limitation in mind, in 2008 Newark’s violent rate of 950.7 (an amalgam of homicide plus the other three) was sixty-four percent greater than New York City’s 580.3, while Camden’s 2332.6 was four times its size. Baltimore fell in the middle of the pack; at 1588.5 its rate was two and three-quarters larger than the Big Apple’s.
Back to Newark. As Mayor Booker likes to claim, crime *has* dropped during his tenure. Now it’s merely terrible. And there are disturbing signs that violence may be on the upswing. According to statistics just posted on the Newark PD website three of four violent crime categories are up from 2008: robbery, by thirteen percent; homicide, eleven percent; and rape, two percent. Aggravated assaults are down five percent.

Newark (and Camden, and Baltimore) have suffered for a long time. But no matter how bad their problems are, we -- meaning those of us who don’t live there -- accept them with hardly a shrug. Conditions that should sicken and move us to act become “the new normal,” to be set aside until they’re dragged out as comedic fodder, to be laughed about and forgotten about all over again.

Left, the Jokester’s $10.5 million Brentwood Paradise. Right, Newark public housing.

Your blogger originally intended to write some really nasty things about rich white guys with no social conscience. Then the redoubtable Bob Herbert came to the rescue. In an excellent column he set out all the right reasons why we should care about places like Newark. He even held out hope that by bringing the situation to everyone’s attention Conan the Jokester’s nasty little quip might actually prove beneficial.

That’s not quite the end of the story. As we mentioned earlier Mayor Booker appeared as a guest on the Tonight Show. By all accounts O’Brien behaved well. He even set himself up to take one on the chin:

“Many jokes are made about Newark by comedians. You honed in on me like a cruise missile. Why me, Mayor Booker?”

“When there’s a herd going after you, you have to sort of look at the weakest gazelle.”

O’Brien then did what comes natural to a rich guy caught with his jammies down: he paid his way out, in this case by pledging $100,000 to a Newark charity. Hmm, let’s see. One-hundred G’s is about seven-tenths of one percent of O’Brien’s yearly $14 million hosting salary. Actually, if Conan itemizes his deductions, as one assumes
he must, he’s out chump change: $65,000, or one-half of one percent of his annual take for smirking on TV. By way of comparison, it’s also twice Newark’s median 2007 household income of $34,452, and four times its per capita income of $16,782.

That, if you didn’t realize, was the punch line.
THEY DID THEIR JOBS

Jurors freed Michael Jackson for a reason

By Julius (Jay) Wachtel. When is a jury always wrong? When they find a celebrity innocent. After attentively sitting through four months of sordid, contradictory and often mind-numbing testimony, twelve citizens upended the wishes of innumerable pundits, media personalities and columnists, who made it clear throughout the whole ordeal that nothing short of a conviction would do.

Now that Michael Jackson has been set free the conundrum continues, most recently with a suggestion in the editorial pages of the Los Angeles Times that jurors should have avoided applying their “personal feelings” and concentrated on the “facts”. But how is it possible to decide between competing versions of events without injecting “feelings”? That is why standard California juror instructions expressly direct panelists to use their common sense:

- Consider carefully, and with an open mind, all the evidence presented during the trial. It will be up to you to decide how much or little you will believe and rely upon the testimony of any witness. You may believe some, none or all of it.

- Use the same common sense that you use every day in deciding whether people know what they are talking about and whether they are telling the truth.

- Did the witness seem honest? Is there any reason why the witness would not be telling the truth?

Jurors must hesitate to accept even the most plausible circumstances as fact. In October 2001 Efren Cruz, 27, was freed after serving four years for a murder he did not commit. Three years earlier, in a secretly recorded conversation, a gang member admitted he was the triggerman and absolved Cruz. But Santa Barbara County D.A. Tom Sneddon – the same prosecutor who hammered Jackson – tried to block judicial review of the conviction. Earlier this year Santa Barbara County settled a multi-million dollar lawsuit alleging that Sneddon and police violated Cruz’s civil rights.

Sex crime cases are particularly tricky to prosecute. Reports of sexual assault are often so delayed that no evidence is left other than testimony. And testimony can prove unreliable:

“He grabbed my hair and then he started pulling me. And that's when I screamed. I tried to go away, and then my friends were trying to help me, and that's when he
started choking me.” In January 2004, as Garden Grove transient Eric Nordmark sat on trial for molesting three girls, he was convinced that his accuser had been assaulted by someone. But he was wrong. In jail since May 2003, Nordmark was freed after the girls admitted they concocted the tale to avoid being punished for coming home late.

Perhaps the best known example of the fallibility of child witnesses is the 1984 McMartin scandal, where false memories of sex abuse were implanted into scores of children who attended a Huntington Beach day-care. The case soon fell apart. Of the seven employees indicted, only two were tried and both were acquitted. (Stanley Katz, the psychologist who examined Jackson’s alleged victim, was an executive of the firm that helped conduct the McMartin interviews.)

Another instance from the same era had a particularly tragic outcome. In May 2004 a Kern County judge declared John Stoll innocent after he served eighteen years for allegedly leading a cabal of child molesters. The last of forty-six defendants in a string of put-up cases, Stoll’s luck turned during two tearful, in-court recantations, including one by a 26-year old man whose false statements as a youth sent his mother to prison for six years.

Pedophiles may be particularly vulnerable to false accusations. In 1986 Nassau County, N.Y. police charged Arnold Friedman, an admitted past abuser, and his son Jesse for molesting children during group computer classes. Facing highly graphic tales of forced sex, both eventually confessed. Arnold Friedman committed suicide in prison, while his son served thirteen years. Police conceded that no one had complained until they went calling. One parent, whose child insisted that nothing happened, reported that detectives pressured his son to say otherwise.

We should all celebrate the outcome of the Jackson case, not for the sake of the accused, who will be ultimately judged by a higher order, but as an affirmation of a process that, however imperfect, has no suitable replacement. As in so many other things, those who now scream the loudest would probably be the first to demand the same right afforded to Jackson – a jury of twelve decent, thoughtful persons who would not hesitate to apply their “feelings” in court.
TINKERING WITH THE MACHINERY OF DEATH

Academics prove that the death penalty works. And that it doesn’t.

By Julius (Jay) Wachtel. When ASC members opened the November 2009 issues of the society’s two publications, stodgy old Criminology and the supposedly more real-world Criminology and Public Policy, they must have felt dizzied. Criminology’s lead piece, “The Short-Term Effects of Executions on Homicide,” by Land, Teske and Zheng, concludes that capital punishment works, at least in Texas, preventing .5 to 2.5 homicides per execution. Meanwhile, in Criminology & Public Policy, Kovandzic, Vieraitis and Boots answer the question posed by their article, “Does the Death Penalty Save Lives?” with a resounding no, that it doesn’t.

Indeed, the differences in opinion seem unusually sharp, with C&PP Senior Editor John Donohue flat-out asserting in his introductory remarks that “no credible evidence exists” that the death penalty deters homicide. Whoa – it’s not that simple! Decades of research have produced findings supporting both sides of the debate. Some of the squabbling can be attributed to differences between disciplines. Economists, who believe that criminal behavior is influenced by cost-benefit analyses, tend to favor the death penalty, while traditional criminologists, preferring to think that they take a broader, more nuanced view, often come out against.

Either way, crunching the numbers presents a major challenge. While executions are exceedingly few, homicide is plentiful and influenced by many factors, so teasing out the unique effects (if any) of the former on the latter stretches the statistical arts, some would say to the breaking point. As far back as 1978 a book-length report commissioned by the National Academy of Sciences panned death-penalty studies for, among other things, making “implausible” assumptions about the data for the sake of applying sophisticated statistical techniques. (For a skeptic’s more recent review of death penalty research click here and scroll to page 4.)
Alas, concerns about over-reaching haven’t slowed investigators down. On reading these pieces one quickly encounters methodological complexities that are impenetrable to all but trained statisticians. Forgive the pun, but the impression is of a mathematical duel to the death. Writing in the same issue of *Criminology and Public Policy* that published the article favoring the death penalty (*Criminology* doesn’t include opposing views) here is what Emory University economist Paul Rubin had to say:

In sum, Kovandzic et al. (2009) change the model specification, estimation method, as well as both the dependent and independent variables used by earlier death penalty studies that report deterrence, and they find no deterrence....To prove their assertions, Kovandzic et al. instead should have established, with rigor, that their results are derived from more appropriate statistical models and must, therefore, be the correct one. Moreover, their statistical methods are unjustified and, at times, inappropriate. Their assertion about the lack of a deterrent effect is, therefore, unwarranted given their evidence. (p. 858)

After finishing off his enemy with a slide rule, Dr. Rubin goes on to suggest that (horrors!) human bias is likely at work:

Most murders occur in poor neighborhoods and among relatively uneducated persons, often with risky lifestyles. An element of elitism may be present in academic recommendations for abolishing the death penalty, because others will bear the costs. (p. 858)

Yes, where one stands undoubtedly influences what one sees. But as the frailty of the adjudicative system has become well recognized, minds have changed for the best of reasons. In Texas, the hang ‘em high State that hosts nearly half of America’s executions, one barometer of the public mood, the *Dallas Morning News*, recently came out against the death penalty. It used to strongly favor it:

It's hard to imagine that, at the start of this decade, it was legal to execute people for crimes they committed as children, to execute the mentally retarded and to bring racial biases into jury-selection processes. The Supreme Court righted those wrongs and, for the first time, established that post-conviction DNA evidence could be considered in the appeals process. And in Texas, life without parole – or ‘death by prison,’ as we like to call it – finally became an option for juries. These are all signs that courts, prosecutors, politicians and the public are recognizing the problems in our imperfect system of justice. This newspaper feels more strongly than ever that those flaws are sufficiently
widespread that the justice system cannot be trusted to impose irreversible sentences of death...

If, as most criminologists believe, punishment deters, then it’s probably true that fear of being put to death has prevented some murders. But that presumed benefit alone isn’t dispositive. State-sanctioned killing is a political and moral issue that goes to the heart of the relationship between the people and their government. Capital punishment is also replete with racial and socioeconomic disparities. Simply put, if you can’t afford a good lawyer, better break open that Bible. What’s more, it’s become painfully clear that the justice system does goof, sometimes in a big way. According to the Death Penalty Information Center, 139 death-row prisoners have been exonerated since 1973. To date the Innocence Project reports 249 DNA-based exonerations, including seventeen on death row.

It’s likely that our contemporary justice system has executed innocent persons. (For an example, click here.) Surely, such blunders are unforgivable. Yet as the article in Criminology suggests, enjoying Texas-sized benefits requires ramping up the threat of execution to Texas-size levels. Naturally, that might increase the frequency of tragic mistakes. To what extent is impossible to estimate. Dead men tell no tales, and since we don’t track miscarriages of justice until they’re officially acknowledged, the error rate remains a cipher. (It’s analogous to the problem that plagues deterrence research. We don’t know who’s deterred, so how can we be sure how or if deterrence works?)

Considering its problems one would be hard-pressed to support the death penalty just because of its reported effects in Texas. But what if the benefits could be extended to the rest of the country? In 2009 the Lone Star State (pop. 24,782,302) put twenty-four persons to death, or approximately one per million. Applying that ratio to the U.S. (pop. 307,006,550) calls for about 300 executions per year. Using the benefit range reported by Kovandzic et al. that would save from 150 to 750 lives, yielding, based on 16,272 murders reported in 2008, an overall reduction in homicide from .9 to 4.6 percent.

Hmm. Executing two dozen persons each month might not be a problem in China or North Korea, but could we stomach that in the U.S.A.? Keep in mind that according to the deterrence paradox we can’t know whose lives are saved, so stirring up public support might be problematic. Really, given the controversies about its fairness, doubts about its effectiveness, and the likelihood of wrongful executions, expanding the use of the death penalty seems unlikely and unwise. With fifteen States and D.C. having already abolished capital punishment, it may be time for the U.S. to quit “tinkering” and join the E.U. and the rest of the civilized world in doing away with this throwback to the Dark Ages altogether.
* Adapted from Justice Blackmun’s famous words in Callins v. James (1994): “From this day forward, I no longer will tinker with the machinery of death.”
TOOKIE’S FATE IS THE WRONG DEBATE

Capital punishment isn’t just wrong: it’s un-American

Jay Wachtel

By Julius (Jay) Wachtel. Whether Stanley Tookie Williams lives or dies is not my concern. He chose the gangster life and now stands a good chance of reaping its rewards. Actually, the criminal justice system probably prolonged his existence. Had he not been in prison, Williams would likely be dead, a victim of the power struggles that have consumed many of his gangbanging peers.

Killing him, though, is something else again. If the co-founder of the Crips had met his end on the street, few would have blinked twice. But now that the government proposes to do the deed, the liberal crowd has worked itself into a frenzy. And that’s not a bad thing.

Don’t get me wrong; I like the idea of punishment. Letting evildoers run amok terrorizes the law-abiding. But now that life without parole is a universal fact, the shooting, electrocution or poisoning of criminals subject to permanent custody has become an exceedingly burdensome artifact.

One must be cold-blooded to be unaffected by the idea of capital punishment. No matter how tidy we try to make the act of killing, dropping the hammer on someone strapped to a gurney is an inherently troubling business. Executions also run counter to the principle that those in government custody should come to no further harm.

We judiciously keep condemned prisoners alive for as long as it takes, create massive paper trails and spend countless sums fighting appeals so that at some point we might win the game and kill them. Along the way, a few savvy inmates manage to achieve a degree of notoriety and public support, causing survivors even more grief.

Speeding up the process is hardly a solution. Advances in DNA technology confirm that innocent people have been convicted, with some condemned to die. According to the Death Penalty Information Center, 122 death row inmates have been freed since 1973. In an imperfect system, in which the accused are often too poor to mount an effective defense, it seems inevitable that innocent people will occasionally be executed.
Among those who have apparently suffered this miserable fate was Texas inmate Ruben Cantu, who a recent investigation by the Houston Chronicle strongly indicates was wrongfully put to death in August 1993. Once we add the risk of occasionally killing the wrong person to the costs of running death rows, funding endless appeals and putting up with flak from liberals, there better be a good reason to continue what many consider a barbaric practice.

Perhaps the best argument is that only capital punishment can bring the closure that victims and survivors of horrific crimes deserve. Maybe so, but 12 states, the District of Columbia and most of the civilized world have willingly given it up.

With few exceptions, capital punishment seems to be a characteristic of totalitarian and authoritarian regimes, among them such happy places as Cuba, Belarus and Libya. European democracies have outlawed executions, as has most of South America (a few countries make exceptions for war crimes). Even Russia, which during the Soviet era embraced shooting people in the back of the head as the ultimate measure of social control, stopped executions in 1999.

I recently spent a week consulting with police in Ukraine. This is not a place that is soft on crime. Still, Ukraine abolished the death penalty in 1999. One month before Williams became an international celebrity, my hosts wanted to know why the world's leading democracy continued to put people to death. I told them that although a majority of Americans support the death penalty, an increasing number have come to believe that more killing is not the answer.

Now that Williams' future is in the governor's hands, let him base his decision on what's best for California, not for a has-been gangster. And however long Williams lives, let him and his misguided cheering section shut up.

JAY WACHTEL, a retired federal law enforcement officer, is a lecturer in the politics, administration and justice division at Cal State Fullerton.
THE TRAGEDY OF JESSICA’S LAW

Sex offender hysteria drains resources

“These costs are likely to be in the several tens of millions of dollars annually within a few years [and] would grow to about $100 million annually after ten years, with costs continuing to increase significantly in subsequent years.”

By Julius (Jay) Wachtel. That paragraph was lifted from the official voter information guide for Proposition 83, also known as Jessica’s Law, overwhelmingly approved by California voters in 1996. It addresses the fiscal impact of just one of the law’s provisions, requiring that certain sex offenders wear GPS tracking devices not just while on parole but for the rest of their natural lives. Proposition 83 also expanded the definition of sex crimes, increased punishment and limited where sex offenders can live. These requirements were expected to raise state prison costs “tens of millions of dollars annually once fully implemented,” referral and commitment costs “low tens of millions of dollars annually” and state hospital costs “$100 million annually within a decade.”

Where is the money coming from? How do we pay to track as many as 3,000 or more new offenders per year, ad infinitum? Ah...the law was silent on funding. It was also silent about its, um, practicality. Just think, within ten years we’ll be tracking thirty-thousand offenders; within twenty, sixty-thousand. Here’s what Richard Word, the president of the California Police Chief’s association recently told the Los Angeles Times:

"I don't know of any agency that has the resources to track and monitor [so many people] in real time...You'll need an air traffic controller to track these folks."

California parole agents currently monitor 1,000 high-risk sex offenders with GPS. To increase that thirty-fold would require spending untold millions on brigades of agents and untold millions more on support staff, offices and equipment. Facing a $10 billion budget deficit, the state suggested that local governments bear the costs of tracking ex-cons not on parole. Jerry Powers, chief probation officer for Stanislaus County, told the Times that will never happen:

“Powers told his colleagues that it would be ‘ludicrous’ to think that local agencies would voluntarily monitor all sex offenders by satellite. ‘It would bankrupt any of our systems very quickly,’ he said.”
Jessica’s Law was an initiative, meaning that a special-interest coalition bypassed the Legislature and asked citizens to vote it in. Seventy percent said “yes.” Why? Because the Governor, the police, the sheriffs, the prosecutors -- everyone said it was a great thing. Here’s a snippet from the state police chiefs’ arguments, as printed in the official ballot information guide:

“Don’t be fooled by the false arguments the group of lawyers against Proposition 83 is making. They represent criminal defense attorneys who make their living defending criminals. Of course they don’t want tougher laws!...EVERY major POLICE, SHERIFF, and DISTRICT ATTORNEY organization in California strongly supports Jessica’s Law...Your YES vote on Proposition 83—Jessica’s Law—will give law enforcement the tools they need to stop sexual predators before they strike again.”

What do the law’s boosters say now? A representative of the state police chiefs, Woodland PD Chief Carey Sullivan, admits that “we would have been far better off with lifetime parole or probation than...with lifetime GPS.”

Too late! Jessica’s Law is on the books. Go enforce it!

Legal crusades inevitably distort the system. Are we O.K. that parole agents can’t watch gang members because they’re too busy chasing perverts? In a zero-sum economy like California’s ramping up the fight in one area requires that we pull resources from another. How can we even choose if police executives -- those who should know better -- are too cowardly to sound the alarms before it’s too late?

And it’s not only about money. Another aspect of Jessica’s Law prohibits registered sex offenders from residing within a third of a mile of a mile of a school or park. That has kept many ex-cons from moving into supportive environments with family or friends. Instead they’re in a shell game, with parole agents hustling them from one temporary lodging to the next. Some wind up camping in cars or public land, making their monitoring all the more difficult. How this enhances their prospects for rehabilitation -- and our prospects for living in a safe society -- is hard to say.

The sheriffs, police chiefs and politicians who jumped on the Jessica’s Law bandwagon can brag all they want about being on the side of angels. At least we now know the truth.
WHAT REALLY WENT ON AT NEVERLAND?

Distrustful of the State’s witnesses, jurors could only wonder: was Michael Jackson’s home a pedophile’s lair?

By Julius (Jay) Wachtel. In 2004, one year after appearing in the documentary, the 13-year old who snuggled with Michael Jackson was testifying before the Santa Barbara County (Calif.) grand jury:

Q. All right. Tell the ladies and gentlemen of the Grand Jury the conversation? Lean into the microphone and tell them about it.
A. We were laying on the bed and he told -- he told me that men have to masturbate -- well, males have to masturbate or else they won’t be able to like - - like be normal....
Q. All right, what happened after that?
A. He told me if I knew how.
Q. And what did you say?
A. I said no.
Q. All right. What happened next?
A. He told me that he wanted to teach me.
Q. Say that again?
A. He told me that he wanted to teach me.
Q. All right. Tell us what happened.
A. So we were laying in the bed, and then he started rubbing me.
Q. Rubbing you how?
A. He put his hands down my pants and he started rubbing me.
Q. What part of your body was he touching?
A. My private area.
More than a decade earlier, in 1993, another 13-year old boy had told a similar story:

“Physical contact between Michael Jackson and myself increased gradually. The first step was simply Michael Jackson hugging me. The next step was for him to give me a brief kiss on the cheek. He then started kissing me on the lips, first briefly and then for a longer period of time. He would kiss me while we were in bed together....”

This excerpt (it turns very graphic) isn’t from a criminal case. It’s from an affidavit in a civil lawsuit accusing Jackson of having sex with the victim at Neverland and a string of motels. Jackson quickly settled the matter for a cool $15 million. Criminal charges were never filed, supposedly because the victim wouldn’t cooperate with police.

In 2003, beset by heavy debt and litigation, with his career stalled, Michael Jackson agreed to be in a documentary. Released in 2003, Martin Bashir’s “Living With Michael Jackson” didn’t have the effect that the singer intended. Depicted enjoying the high life in Neverland, his rococo Santa Barbara estate, and in Las Vegas and Berlin, where he dangled his surrogate newborn out a window, the troubled pop star came across as a profligate spender, hopeless narcissist and questionable parent. Questions about his upbringing unleashed a torrent of self-pity, replete with chilling tales of ghastly physical and emotional abuse by a brutal, domineering father. Seen in that light, Jackson’s peccadilloes, including his preference for the company of children, made a certain sense. And that’s where things would have ended had the filmmaker not decided, at the last moment, to confront Jackson about certain nasty rumors.

Michael Jackson was not the iconic figure that reactions to his passing now suggest. His eccentricities had alienated many fans. Carried on prime-time TV, the accounts of sleep-overs and his hand-holding intimacy with the boy caused a scandal, forcing authorities to investigate. Jackson fought back with a rebuttal video in which the boy and his family gave glowing accounts of the performer’s character and good works. It was during this time that the molestations allegedly occurred. (His mother, Janet Arvizo, testified that Jackson was so determined to keep the family away from police that he forced them to remain in Neverland, warned that “killers” were on their trail and even offered to relocate everyone to Brazil.)

Jackson was charged in a ten-count indictment. Count one accused him and unnamed staff members with child abduction, false imprisonment and extortion. There were also four counts of committing lewd acts on a child under the age of fourteen; one count of attempting to have the victim commit a lewd act on Jackson;
and four counts of administering liquor to facilitate the commission of these crimes. His conviction seemed a foregone conclusion.

Yet the State’s case was shaky from the start. Defense lawyers gathered receipts proving that instead of being held incommunicado, as she claimed, Mrs. Arvizo was shopping up a storm using Neverland credit cards. Defense investigators dredged up evidence that injuries she supposedly sustained years earlier, when a son was caught shoplifting, weren’t caused by brutal store detectives but by her former husband. (J.C. Penney’s gave her a large cash settlement and dropped charges.) She was also facing allegations (later, charges) of welfare fraud, which in a memorable moment led her to take the Fifth. Jay Leno even took the stand to say he had turned her away from The Tonight Show when it seemed that she was obsessed with money.

Prosecutors were allowed to buttress their case with evidence that Jackson had molested other children. Unfortunately the victim/millionaire whose affidavit is quoted above slipped off to Europe, where he remained for the trial’s duration. But another man, the son of a former maid, gave compelling testimony of being molested by Jackson when he was ten. His family, though, had also benefited from a civil settlement, to the reported tune of $2 million. One of Jackson’s former security guards testified that funny things went on between his boss and several kids, including Macaulay Culkin. But when Culkin took the stand he only had good things to say about Jackson: the sleepovers, he insisted, were perfectly innocent.

The victim’s testimony had mixed results. He did say that Jackson masturbated him twice. But he conceded telling his friends and teachers, out of shame, that nothing happened. His testimony that only his mother seemed troubled about living in Neverland badly weakened the prosecution’s “abduction” theory. More curiously, he also said that his grandmother told him that men need to masturbate, the same comment he earlier attributed to Jackson.

After four months and 140 witnesses the case went to the jury. A week later they returned their verdict: innocent on all counts. Jurors were of two minds. First and foremost, they loathed Ms. Arvizó. “What mother in her right mind would allow that to happen?” asked a female juror, referring to the sleepovers. They also thought the evidence thin. “We expected better evidence, something that was a little more convincing. It just wasn’t there.” Yet there was no appetite for simply declaring Jackson innocent. Indeed, one juror, Raymond Hultman, went so far as to suggest the opposite. “I think that Michael Jackson probably has molested boys. But that doesn’t make him guilty of the charges in this case.”

Blowback was severe. Pundits and mainstream media ridiculed the verdicts and questioned the jury’s competency. In a stinging rebuke, the Los Angeles Times huffed
about Jackson’s “weirdness” and “unpalatable taste for the tawdry.” (It later compared his acquittal to those of O.J. Simpson and Robert Blake, attributing them to the vagaries of juror personalities.) In the midst of the furor two jurors went public, suggesting they were now of a mind to convict Jackson. One was Juror Hultman.

Fast-forward four years. Heavily indebted, with his beloved Neverland on the chopping block, Michael Jackson was yesterday’s news. But then he did something really outrageous: he died. A media frenzy broke out, the likes of which we haven’t experienced since a skinny black guy with a nice smile became Prez. Here’s what Los Angeles Times media columnist Timothy Rutten is trying to figure out:

...Yet on cable TV and on newspaper websites, it was all Michael, all the time. So, how did a pop singer heavily in debt and desperately hoping for a comeback, one who hadn't really sold any music for years, one who was best known for his bizarre life, obsession with cosmetic surgery and for the allegations of pedophilia against him, become in death the most beloved media figure since JFK?

Beats me.
WHAT’S THE GUVERNATOR BEEN SMOKING?

Legalizing marijuana shouldn’t just rest on economics

...Well, I think it’s not time for [legalizing pot] but I think it’s time for a debate. I think all of those ideas of creating extra revenues, I’m always for an open debate on it...

By Julius (Jay) Wachtel. Governor Schwarzenegger isn’t alone. Fifty-six percent of California voters surveyed in the April 2009 Field Poll said they favored legalizing and taxing pot. Truth be told, the Golden State always had a soft spot for marijuana. Its Compassionate Use Act was the first, in 1996, to allow physicians to prescribe pot for treating a wide range of maladies including “cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief” (emphasis added). Twelve more States from Hawaii to Rhode Island have since followed suit.

It’s not just about medical use. Support for complete decriminalization has been on the rise throughout the U.S. Four decades ago the split was twelve percent for and eighty-four percent against. By late 2005 the gap had narrowed to thirty-four yes versus sixty no, with younger men mostly in favor and women and older men largely opposed. As might be expected, attitudes vary by region. There’s far more support for pot on the East and West coasts than in the more conservative South and Midwest.
In 2008 the World Health Organization surveyed alcohol and drug use around the globe. Its findings were a bit surprising. The Netherlands only placed third. Despite their permissive drug laws, just twenty percent of the Dutch said they had ever used cannabis. Second place went to New Zealand, with a far higher 41.9 percent. Taking the crown was the good old U.S.A., where 42.4 percent admitted inhaling at least once. (Incidentally, we were also number one for ever using tobacco, 73.6 percent, and cocaine, 16.2 percent).

Surveys by the National Institute of Drug Abuse confirm that marijuana is the most popular illicit drug in the U.S. Parents won’t like it but in 2008 nearly one-fourth of 10th-graders and one-third of 12th-graders admitted smoking pot at least once during the preceding twelve months.

Marijuana’s proponents claim that it’s a harmless mood elevator, no worse than alcohol or tobacco. Many scientists disagree. Smoking pot is believed to pose a host of significant health risks, including cancer and diseases of the lungs and respiratory tract. Because they tend to inhale deeply and hold smoke for a prolonged period, pot smokers are likely worse off than those who only use tobacco. And it doesn’t stop there. There is good reason why popular culture pokes fun at potheads. Marijuana’s active ingredient, THC (tetra-hydro-cannabinol) affects key brain functions including memory and learning. Pot has been linked with poor performance at school and work, and even low dosages can seriously impair judgment and motor skills, making it dangerous to use machinery and drive a car.

THC does have therapeutic qualities. It’s in anti-nausea medications used by chemotherapy patients. Marijuana, a powerful appetite stimulant, is of value for those suffering from AIDS and other wasting illnesses. Of course, it’s these benefits (and not pot’s recreational potential) that justified medical use laws in the first place.

Yet, as well intentioned as the compassionate use statutes may be, their application leaves something to be desired. California’s permissive approach (physicians need only give verbal approval) lets unscrupulous clinics sell pot under the flakiest of pretenses. About the best that can be said of these profitable centers of stoner culture is that they don’t sell to children. Calling the situation “Looney Tunes,” LAPD Chief Bratton strongly criticized the lack of oversight: “They pass a law, then they have no regulations as to how to enforce the darn thing and, as a result, we have hundreds of these locations selling drugs to every Tom, Dick and Harry.”

The good Chief hasn’t seen anything yet. Tom Ammiano (D-San Francisco) has introduced California State Assembly bill 390, which legalizes pot for everyone 21 and over. Although the measure includes detailed provisions for licensing producers and retailers, growing marijuana and making reefers is ridiculously simple, so
combating illicit manufacture, collecting taxes, preventing sales to minors and controlling purity and potency could easily drain away a good chunk of the $1.3 billion a year that the law would reportedly generate. (Naturally, it’s all contingent on the Feds allowing it. But that’s a story for another day.)

There’s little doubt that letting buyers get weed from medical marijuana clinics instead of slimy street dealers has expanded sales. Whatever the gain, it’s nothing compared to the staggering forty percent increase in consumption that State tax authorities estimate Assemblyman Ammiano’s bill would yield. So is that what we really want? Given what’s known and suspected about pot’s effects on health, does it make sense to encourage young people to take on a habit that can cause cognitive disorders and life-threatening medical conditions? That’s to say nothing, of course, of having even more Toms, Dicks and Harrys driving around in a drug-induced haze.

After all the jawboning about obesity, unhealthy food in the schools and the evils of alcohol and tobacco, it’s now proposed that we do an attitudinal U-turn and embrace a mind-altering drug, and all for the sake of a buck.

Heck, it could make one want to light up!
WHO DESERVES A BREAK?
AND HOW WOULD WE KNOW?

A Sheriff’s lieutenant urges cops to consider the individual before making an arrest

“Are you really going to put a felony on this guy? Here is a kid that could have been planning on going into the military, being a cop or fireman, and/or just being a guy with a career.”

By Julius (Jay) Wachtel. When Los Angeles County Sheriff’s Lieutenant Bill Evans issued an instructional memo setting out a fictional encounter between a deputy and a Christian college student with a switchblade (it’s described as an “illegal folding pocket knife”) he didn’t expect that the document would ricochet around the country at the speed of the Internet.

But it did. Now everybody from Maine to Montana to this blogger wants to weigh in. (Well, not everyone. At last check the President’s stayed out of it.) Not all the reaction has been positive. Hubert Williams, president of the Police Foundation and former chief in Newark didn’t think that focusing on the youth’s character was appropriate. “The moment you start saying ‘take the individual into account’ you’ve opened the door to allow bias into the decision-making process.” Merrick Bobb, southern California’s famous police watchdog, had another concern:

What if the same kid was a black student with long dreadlocks at Dorsey High? What if the same kid was a Latino and undocumented? A single parent with a young child at home? I would hope the same ability to empathize and exercise compassionate discretion would be triggered in those instances also.

Discretion is an inescapable part of policing. Agencies choose how and where to deploy cops and which crimes to emphasize, while individual officers decide whom to stop and what to do with them afterwards. Cops, of course, can’t simply act how they please. Some laws – domestic violence comes to mind – require an arrest when there’s sufficient evidence. Even if not mandated by law, it would be unthinkable for cops not to arrest an armed robber or a violent criminal. Police discretion is bounded in other ways. As James Q. Wilson pointed out, communities influence the police, and conduct that may lead to an arrest in one city may not in another.

So what should a cop do about a college student with a switchblade? Seeking guidance from the LAPD manual (regrettably, the LASD’s isn’t online) we come across section 1/508, “Police Action Based on Legal Justification.” It advises that
what’s appropriate varies with the situation. Hmm. Then there’s section 1/512, “Alternatives to Physical Arrest, Booking or Continued Detention,” which warns that if an arrest is legally justifiable, the decision to invoke a less serious alternative must be based on fact alone:

Once a violator has been identified, it is the function of the Department to initiate the criminal process; however, there are circumstances when a crime may occur and the Department will not make a physical arrest. There may be a report written and an application for a complaint made; or in some cases, when the offense is of a minor nature, a verbal warning or other direction may be given. The decision not to make an arrest will be guided by Department policy and the factual situation involved, not by the personal feelings of the officer.

That’s all well and good if there is an applicable policy and there are plentiful “facts.” Yet the paradox is that policies governing the exercise of discretion tend to lack detail precisely because these “facts” are often nonexistent or too ambiguous or politically incorrect to articulate, let alone put into writing. To be sure, one could draft a policy that gives a break to youths carrying switchblades that they don’t intend to misuse. But on what “facts” would cops be expected to rely? (For New Haven PD’s exceptionally detailed policy, which applies only to order-maintenance situations, click here.)

Lieutenant Evans knows that officers often exercise leniency. Perhaps he’d like the practice to increase. Yet encouraging them to do so in weapons cases seems questionable. Decisions to arrest are influenced by perceptions of a suspect’s dangerousness, and it so happens that weapons possession is its most salient indicator. Criminal record, gang involvement and suspect demeanor are also important. All are demonstrable “facts,” so if an agency wishes to regulate the use of discretion each could probably be part of a defensible policy.

On the other hand, turning to extrinsic factors such as religiosity or which college one attends invites fatuous distinctions. Decisions to let someone go shouldn’t rest on idle speculation. That’s probably what spurred a Sheriff’s station commander to suggest that it would have been better to share the memo at a meeting where the “subtleties” of police decision-making could be properly addressed.

There’s no question but that the lieutenant was well intended. Where, he asks, would some of us be had we run into a “hard-line cop” when doing “crazy stuff” in our younger years? Fair enough, but as we mentioned in Before JetBlue it’s precisely the overlooking of crazy stuff that has allowed ticking time-bombs to become police officers. It goes without saying that everyone benefits when characters who may have a penchant for violence are formally rather than informally processed. Sure, be
compassionate, but when it comes to carrying a switchblade (incidentally, it’s a misdemeanor under P.C. 653k) being Christian seems like an awfully flimsy excuse.
WHY THE DROP?

Crime has been falling. Does anyone know why?

“...There will continue to be crimes of passion and anger. And it is important to note that crime in Los Angeles has dropped precipitously in the last decade. Even with the increase in homicides, management of violent crime is moving in the right direction...”

By Julius (Jay) Wachtel. Continuing its love-fest with LAPD Chief “Hollywood” Bill Bratton, that’s how the L.A. Times explained away the murders of eleven persons over a single weekend, with nine shot dead, at least six in gang-related incidents. And remember last month’s six shootings in six hours?

Recent events aside, homicide does seem to be on a downward trajectory. Preliminary FBI data indicates that in 2007 Los Angeles had 390 murders, a 19 percent reduction from 2006 when 480 were recorded. If this figure holds up there were 40 percent fewer murders in 2007 than in 2000, when killings reached a decade-high peak of 654 (statistics derived from UCR Table 8.)

And wait, there’s more! Between 1999 and 2007, a period when L.A.’s population increased by more than two-hundred thousand, the number of violent crimes fell by 41 percent, from 46840 to 27801. Using the 2001 peak of 52243 as a base, that works out to a stunning reduction of 47 percent.

Now if only we knew why. The following charts compare changes in homicide and violent crime rates per 100,000 population for the three largest California cities -- Los Angeles, San Diego and San Francisco -- with rates in New York City and the U.S. as a whole.
As America’s gang capital, L.A.’s been beset by criminality, but in the last decade its murder and violent crime rates have plunged, actually landing below San Francisco’s. What’s the reason? The Times knows: it’s that we’re doing a better job “managing” crime. Unfortunately their explanation stops there, but it’s safe to say that the miracle is largely attributed to Chief Bratton, and particularly his much-ballyhooed Compstat program, a computerized pin-map that uses current data to alert commanders to crime trends and hot spots.

Bratton was appointed in October 2002, replacing Bernard Parks, a man who was viewed as so heavy-handed in administering discipline that many officers reportedly gave up interacting with thugs for fear of being punished. A cop’s cop, the new chief is far more popular among the rank and file. Could it be that a renewed sense of mission invigorated officers and got them working again?
It’s an appealing thought. But while the fall in murder coincided with the change in leadership, the violent crime rate was already going down when Bratton came on the job. In truth, L.A. may simply have too few cops to proactively battle violence. As these pages have reported, compared to New York, the city is dramatically under-policed, with half the ratio of officers to population and, given the much higher population density in the Big Apple, a far smaller visible presence.

Other than Compstat and better leadership, what else could account for L.A.’s “success”?

- Crime’s been on a prolonged downtrend in most areas, with a recent moderate leveling. Check out New York, whose overall drop in violent crime is nearly the same as L.A.’s, though perhaps not as dramatic.

- Although there is controversy about the long-range benefits of harsh sentencing, there’s no question but that California’s mandatory minimums and three-strikes laws have incapacitated offenders for longer periods. If that was the main reason for the disparity, though, we would expect drops in San Diego and San Francisco as well.

- During the past decades the racial composition of South Los Angeles has dramatically changed, from predominantly African-American to mostly Hispanic. It’s reported that many Black gang members have moved to Antelope Valley and parts East (Riverside, San Bernardino). If it’s true, as some claim, that they are the more violent, their absence may account for some of the drop.

- FBI and DEA have been applying racketeering statutes against L.A. gangs, sending many top “shot-callers” to long stays in the Federal big house. But without conducting a study, whether that’s had an effect on homicides and violence is impossible to say.

- National crime stats come from the police, the same agencies whose effectiveness the data supposedly measures. Many reporting problems have surfaced over the years. Bookkeeping errors (unsurprisingly, usually leading to undercounts), differences in categorization, even purposeful jiggling -- they’ve all taken place. Suffice it to say that cooking the books is eminently possible, and no one’s watching.

Do you have any ideas? Please pass them on!
WITH SOME MISTAKES THERE’S NO GOING BACK

In capital cases finality of the process must take a back seat

The majority of the affidavits support the defense’s theory that, after Coles raced to the police station to implicate Davis, the police directed all of their energy towards building a case against Davis, failing to investigate the possibility that Coles himself was the actual murderer. For example, none of the photospreads shown to eyewitnesses even included a picture of Coles. Additionally, three affiants now state that Coles confessed to the killing. To execute Davis, in the face of a significant amount of proffered evidence that may establish his actual innocence, is unconscionable and unconstitutional.

By Julius (Jay) Wachtel. These aren’t the words of a crusading reporter or ACLU lawyer. They’re from the minority opinion in a recent decision by the U.S. Eleventh Circuit Court of Appeals rejecting a petition by Troy Davis to file a Writ of Habeas Corpus.

Roll back twenty years. During the early morning hours of August 19, 1989 Davis, Coles and a juvenile named Collins asked a homeless man for some of his beer. When the man refused he was struck in the head with a gun butt. Savannah police officer Mark MacPhail chased Davis and Coles. During the encounter he was shot and killed. Later that morning Coles went to police and fingered Davis.

The case was tried two years later. The facts seemed compelling. Four eyewitnesses, including Coles, testified that Davis was the shooter. Two others said that Davis confessed. The homeless man identified Davis as his assailant. What’s more, ballistics matched the fatal rounds to bullets from a shooting that took place
hours earlier (that victim survived.) Davis, the State suggested, was responsible for not one shooting but two.

There was no physical evidence other than bullets. Davis was convicted of the officer’s murder and sentenced to death.

In time Davis’ new defense team poked holes in the case. Two of the four eyewitnesses said they never got a good look at the shooter but were pressed by police to identify Davis. Both witnesses who said that Davis confessed took it back. Defense investigators also dredged up three new witnesses, each of whom gave affidavits swearing that Coles admitted killing the officer.

Coles and an eyewitness named Steve Sanders held firm. Only problem is, Sanders originally told police that he couldn’t ID the killer, so he was never shown the photospread and only picked out Davis at the trial. By then, of course, the defendant was well known.

In March 2008 the Georgia Supreme Court refused to grant Davis an evidentiary hearing. Justices were badly split, with four against and three in favor. Those who prevailed felt that on balance the trial testimony was more credible, particularly as the recanters didn’t actually say that Davis was innocent. The losing side’s views were summarized by Chief Justice Lea Ward Sears:

While the majority wisely decides to look beyond bare legal principles and seeks to consider the strength of Davis’s new evidence, I believe that it has weighed that evidence too lightly. In this case, nearly every witness who identified Davis as the shooter at trial has now disclaimed his or her ability to do so reliably. Three persons have stated that Sylvester Coles confessed to being the shooter...Perhaps these witnesses’ testimony would prove incredible if a hearing were held...But the collective effect of all of Davis’s new testimony, if it were to be found credible by the trial court in a hearing, would show the probability that a new jury would find reasonable doubt of Davis’s guilt or at least sufficient residual doubt to decline to impose the death penalty.
Once there’s a conviction the burden of proof shifts to the defendant. To justify a post-conviction evidentiary hearing Georgia law requires that “the new evidence [must] be so material that it would probably produce a different verdict.” By the slimmest of margins, the judges thought not. Davis appealed their decision to the US Supreme Court (it agreed to review the matter only two hours before his scheduled execution.) Having done so, it too declined to intervene. Davis then applied to the Eleventh Circuit for leave to file a Writ of Habeas Corpus. In a 2-1 decision against Davis the prevailing justices disparaged the merits of his case:

All told, the testimony by [eyewitnesses] Murray and Sanders remains; the two other eyewitnesses do not now implicate anyone, much less Coles; Coles continues to implicate Davis; and the testimony of Larry Young [homeless man] and Valerie Coles [Coles’ sister] still collides with Davis’s. When we view all of this evidence as a whole, we cannot honestly say that Davis can establish by clear and convincing evidence that a jury would not have found him guilty of Officer MacPhail’s murder...As the record shows, both the state trial court and the Supreme Court of Georgia have painstakingly reviewed, and rejected, Davis’s claim of innocence. Likewise, Georgia’s State Board of Pardons and Paroles thoroughly reviewed, and rejected, his claim, even conducting further research and bringing in witnesses to hear their recantations in person....

As a last ditch effort, on May 19, 2009 Davis filed for a Writ of Habeas Corpus with the US Supreme Court. And that’s where his case stands.

State and Federal courts have ruled that Davis isn’t entitled to an evidentiary hearing because his new evidence would not, in their opinions, have affected his trial’s outcome. Yet it’s precisely in capital cases where referring to long-past judgments by admittedly fallible juries is morally unsatisfying. Actually, many prosecutors would probably agree. Only problem is, when physical evidence is lacking the passage of time can seriously erode the State’s ability to present a compelling case, let alone counter new claims. It’s not an idle concern. Based on the
public record and his own experiences, the blogger thinks it more likely than not that Davis is guilty. He also believes that Davis stands an excellent chance of being acquitted if retried.

On the other hand, maybe Davis really is innocent. Yet on retrial he could be convicted anew. Georgia’s Chief Justice, who clearly thinks him innocent, suggested that a new jury might at least spare his execution, if not grant an outright acquittal. It’s a nice thought, but not something on which a genuinely innocent person would want to rest their hopes.

If the death penalty is to be retained, how can we help assure that it’s justly applied?

- There were plenty of witnesses against Davis but no DNA. A rule might forbid imposition of the death penalty in the absence of compelling physical evidence.
- Evidentiary hearings could be required before death sentences are carried out. Depending on the strength of the defendant’s arguments, judges could remand cases for a new trial or reduce the penalty to life without parole.

We depend on police, prosecutors and the courts to protect the innocent, deter potential violators and provide a sense of closure to victims and families. Yet the law has become an impossibly complex insider’s game that can obscure if not displace the greater moral values it’s meant to uphold. Fears that the legal process rather than facts are driving Davis’s execution explain why his pleadings have, rightly or not, drawn such extraordinary international support. It’s something that America, which offers itself as a model of enlightened justice, can’t afford to ignore.
YOU THINK YOU’RE UPSET?

Criminologists demand that kingpins be held criminally liable for the financial mess

By Julius (Jay) Wachtel. “White-Collar Criminology and the Wall Street Occupy Movement,” Henry Pontell and William Black’s sharp-tongued missive in the current issue of The Criminologist, accuses the criminal justice system of an inexcusable failure to hold top financial executives accountable for the current mess:

The global meltdown of 2008 was influenced by flawed financial policies, law-breaking, greed, irresponsibility, and not an inconsiderable amount of concerted ignorance and outright stupidity...Control fraud [fraud by executives] has played an integral part...In the end control fraud will persist as long as the kleptocratic corporate culture remains entrenched...This [arresting and denigrating Wall Street protesters] stands in stark contrast to the virtual absence of indignation, moral outrage and effective law enforcement that would have stopped those whose real crimes have led many law-abiding citizens around the world into the streets.

Henry and William are in good company. Here’s what President Obama recently had to say:

Too often, we’ve seen Wall Street firms violating major antifraud laws because the penalties are too weak and there’s no price for being a repeat offender. No more. I’ll be calling for legislation that makes those penalties count so that firms don’t see punishment for breaking the law as just the price of doing business.

Well, the barn door’s been open for a while. More than 1,000 savings and loan institutions collapsed during the S & L crisis of the 1980’s and early 1990’s. Then the worst financial calamity since the Great Depression, it cost taxpayers a cool $124 billion to resolve. Studies place much of the blame on risky investment strategies, inadequate regulation and poor oversight, factors that now seem depressingly familiar. Whether crime played a significant role is a matter of debate; the FDIC and many economists said no, while Pontell and Black said yes. Regardless, the Feds staged a massive law enforcement response. According to the New York Times 839 persons were ultimately convicted for their roles in the debacle.

Most of those brought to account were relatively low-level employees. But a few top executives also got hammered. Perhaps the best known is Charles Keating. A wealthy banker and real-estate developer, Keating had five U.S. Senators in his pocket. While “The Keating Five” did their best to hold regulators at bay, their generous friend eventually earned ten years in a California prison for selling worthless bonds to ordinary folks. But his conviction was thrown out before the term was half up. A Federal appeals court later ruled there was no proof that Keating, who never had personal contact with buyers, knew that the representations made by his sales force were false.

Irate, the Feds then tried and convicted Keating for fraud and racketeering. Once again the conviction was reversed, this time because jurors had taken the state conviction into account. A civil judgment that
ordered the septuagenarian to recompense the Government to the tune of $4.3 billion was also reversed. Knowing that the Feds were determined to bring him down whatever the cost, in 1999 Keating pled guilty to four counts of fraud in exchange for time served. A parallel case against his son was also dropped. The Justice Department nonetheless declared victory. “What we get out of this is, Keating admits for the first time criminal culpability.”

It’s true, as Pontell and Black point out, that the current crisis has spawned far fewer prosecutions than the old. But the time is still young, and the FBI says that it has 3,000 investigations underway. In “Fighting the Wall Street Mob” we looked into the case of Raj Rajaratnam, a hedge fund magnate whose success was all but guaranteed by a steady flow of tips from corporate insiders. Rajaratnam, who pled guilty and got eleven years, was part of a web of collusion involving tipsters, traders, and so-called “research” firms that brought those who knew and those who wished to know together. The most recent target to come out of that case, former Goldman Sachs director Rajat Gupta, is the 56th. Wall Streeter charged with insider trading in the past two years. A remarkable fifty-one have been convicted.

What’s really remarkable is that it happened at all. Unlike ordinary crimes, white-collar offenses typically require proof that a defendant knew or suspected that what they were doing was illegal. Mens rea is seldom an obstacle when going after the little fish. Corrupt mortgage brokers who flip homes using straw buyers and pocket the proceeds – a crime that was commonplace during both crises – leave such a trail of slime that once their shenanigans are discovered all they can do is plead guilty. Such cases are relatively easy to investigate (straw buyers are themselves easy to “flip”) and yield multiple defendants, promising the obsessively numbers-oriented Feds bragging rights on the cheap.

On the other hand, there’s precious little to distinguish legal from illegal trading. When a friendly someone passes on a tidbit from a boardroom meeting, who’s to know? Rajaratnam and his buds would still be up to their old tricks had a wily FBI agent not turned to the tool that helped neuter the mob. Thousands of hours’ worth of wiretaps produced a bounty of mens rea, with enough crook talk to satisfy the most demanding juror.

Rajaratnam and Gupta (who is still to be tried) were fairly high up in the food chain. Still, they were more opportunists than shot-callers, and while their self-serving acts gave them an unfair advantage it didn’t threaten to bring down the house. What Pontell and Black are really screaming for is the head of a Keating, someone whose skullduggery cost ordinary citizens real money.

The Feds almost got two. In 2007 several Bear Sterns hedge funds that invested in mortgage-backed securities collapsed, costing investors a tidy $1.6 billion. In what was considered a “slam dunk” case Federal prosecutors charged managers Ralph Cioffi and Matthew Tannin with holding back news that the ship was sinking, effectively throwing their clients’ life preservers overboard. As proof the Government offered e-mail exchanges between the two. One, which said “the entire subprime market is toast,” was followed up days later with a cheery “we’re very comfortable” note to investors. But the managers also speculated that since prices had tanked maybe it really was a good time to buy. “There was a reasonable doubt on every charge,” a juror explained. “We just didn’t feel that the case had been proven.”

In January 2011 the Justice Department announced they would not be prosecuting Angelo Mozilo, former kingpin of Countrywide Financial, the mortgage lender whose spectacular belly-flop helped propel the meltdown. Like his lesser counterparts at Bear Sterns, Mozilo also penned facially incriminating e-
mails. Here’s how he privately described a bundle of unsecured subprime mortgages that Countrywide was offering for sale: “In all my years in the business, I have never seen a more toxic product.” Yet the prospective buyers were all highly sophisticated investors, and if they thought the product viable, who’s to say that it wasn’t? (Mozilo did pay about $70 million in civil penalties and restitution, chump change considering what taxpayers have shelled out.)

Well, if not Mozilo, who? In 2001 the U.S. Senate formally referred Goldman Sachs, the poster child of the recession and its top cheese Lloyd Blankfein to the Justice Department for prosecution. Should that really happen – and most observers would bet heavily against it – the Government will need to prove beyond a reasonable doubt that Blankfein knew his firm, which remains in business, was a house of cards. Well, good luck with that.

Cioffi and Tannin are the only major-firm financial denizens to be prosecuted in connection with the recent meltdown. It’s for such reasons that Pontell, Black and others smell a conspiracy to let kingpins skate. But when a jury of ordinary people turns away an opportunity for revenge, we ought to pay attention. Our system requires proof that white-collar defendants have evil in their hearts. But the big boys’ distance from corrupt transactions and the ambiguities and contradictions of the market can make it impossible to demonstrate their state of mind to the necessary certainty.

Of course, if we’re displeased with the present way of doing things because it gives culpable one-percenters a free pass we could always change the law. Then when we get in trouble it’s a cinch that Mozilo and Blankfein would send us their lawyers to help out.

Right?

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