

“tyranny of the funnel.”

My hope for the “community justice” movement—and for this conference—is that we can develop a new view of justice that will free us from the “tyranny of the funnel,” that we will be able to reconceptualize our response to crime and our pursuit of justice.

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

Fortunately, we are now witnessing, in a number of unrelated pockets of innovation, the emergence of a moral voice for justice that I find very exciting. One of the most powerful reform movements in our field these days is the problem-solving court movement, which began 20 years ago with the first drug court in Miami, Florida. Today we have a wide variety of problem-solving courts—mental health courts, domestic violence courts,

community courts, gun courts, youth courts, and reentry courts. These courts have captured the imagination of both public and professional alike and are the leading edge of a very important idea, redefining the role of the courts in our response to crime.

These courts have many important attributes—they try to address underlying problems, not just adjudicate the legal issues in the case; they bring together a variety of services to assist offenders; they recognize the reality of relapse. But one of the most important dimensions of these courts is that they allow judges—and sometimes other professionals—to speak in a moral voice, without all the restraints of the assembly line. Judges speak to defendants as people; they speak openly to family members about the ways they can support the success of their loved ones; they recognize human weaknesses; they acknowledge the difficulty of the struggle with addiction; they applaud success and sanction failure; they talk about the importance of an individual defendant’s success to the well-being of the larger community.

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

Barrock Lecture

A Path to Better Communities

Tracey S. Meares, Walton Hale Hamilton Professor at Yale Law School, delivered the 2009 Barrock Lecture on Criminal Law at Marquette University Law School. The text of the full lecture, “The Legitimacy of Police Among Young African-American Men,” can be found at 92 Marq. L. Rev. 651. This is an excerpt from the lecture.



I would like to point to a strategy that features what I have called moral engagement as opposed to notions of criminal deterrence.

Chicago has recently experienced a steep drop in homicide and other violent crime. Indeed, if one examines

the highest crime communities on the city’s high-poverty west side, one would observe a 37 percent drop in the quarterly homicide rate between 1999 and 2006. While researchers are beginning to examine several competing and complementary factors responsible for the drop in Chicago’s murder rate, one influential program, Project Safe Neighborhoods (PSN), may be a major contributing factor.

PSN is a billion-dollar federal program designed to promote innovative gun-crime reduction strategies throughout

the nation. In Chicago, PSN has meant the formation of a multiagency task force that includes members from law enforcement and local community agencies. PSN Chicago utilizes several coordinated strategies that rely on traditional law enforcement as well as recent developments in the realms of restorative and procedural justice.

The PSN team also believed, consistent with theories of legitimacy detailed above, that the key to changing patterns of gun crime lies in altering the normative beliefs of gun users themselves. Keeping these principles in mind and considering other successful programs implemented in Boston, the PSN team crafted its most innovative strategy, Open Offender Forums. Offenders in the target neighborhood with a history of gun violence and gang participation who were recently assigned to parole or probation are requested to attend a forum hosted by the PSN team.

The forums are hour-long, round-table style meetings in which approximately 20 offenders sit around a table with representatives from state and local law enforcement, community representatives, and various service providers. Informal conversations with attendees after the conclusion of meetings often last an additional hour and lead to more intimate follow-up and service provision. The meetings take place in a location of civic importance (such as a local park, library, or school) and are designed to be egalitarian in nature, meaning that offenders sit at the same table as all other forum participants, rather than as passive audience members. The content of the meeting is designed to stress to offenders the consequences, should they choose to pick up a gun, as well as the choices they have to make to ensure that they do not reoffend.

PSN appears to have been remarkably effective in reducing neighborhood crime rates. There were dramatic reductions in homicide in the PSN districts as compared to control areas and the city as a whole. More specifically, there was an approximately 37 percent decrease in the monthly homicide rate after the start of the program as compared to the preceding three years.

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

Analyses of recidivism rates give further support of the efficacy of the PSN Forums. To summarize, individuals who attended a PSN forum were almost 30 percent less likely to return to prison as compared to similar individuals in the same neighborhood who did not attend a forum.

Those who lead this new wave of law enforcement and community safety projects take them seriously. They understand that attempting to sustain neighborhood safety through a continuing commitment to carpet-bombing and locking up the next generation of young African-American men is doomed to failure. They understand that, despite an often crippling alienation between law enforcement and communities, police, community members, and offenders alike want the streets to be safe, residents to succeed, and for jail and prison to be a rare last resort. They are discovering—in practice, not just in theory—that a normative commitment to compliance is a sustainable and realistic approach to bringing crime down. When it does not work, law enforcement is still there, but it is used far less often and is seen as legitimate by the affected community.

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

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