PRAG*matics*

The Journal of Community-Based Research

Being Supreme

On Criminal Justice

Does Our Criminal Justice System Work? 3
James P. Carey

Prison Industry in Illinois—
An Underutilized Resource? 6
Charles Fasano

Community Policing But Little Community Involvement 8
Warren Friedman

Turning the Tables—
The Safer Foundation's Youth Empowerment Program 11
Ron Tonn

The Death Penalty—Contemporary Debate 14
Christine Martin

PRAG*matics* is published by the Policy Research Action Group, a collaborative partnership between four Chicago-based universities (Chicago State University, DePaul University, Loyola University Chicago and the University of Illinois, Chicago) and more than twenty community organizations.

Winter 2000-01
Volume 3, Number 3

Message from Our Director

As we followed the twists and turns of the 2000 presidential election, significant issues related to the legitimacy of the American "democratic process" were raised. Was the battle to count ballots in Florida a matter of Gore interests versus Bush interests, as the TV pundits would have us believe, or was it more a matter of protecting the voting rights of all Americans who cast ballots in that or any other election? On the one hand, we were able to watch live TV coverage as judges squinted at ballots, turning them front, back, and sideways to look for hanging chads, one-corner chads, or dimpled chads. On the other hand, we saw elected officials make arbitrary decisions not to count ballots that might have favored political opponents. Americans have learned more about voting machine reliability, county election commission behavior, state versus federal court jurisdiction, and Constitutional provisions related to elections, than ever before in their lifetimes.

The uncertainty of the outcome of the presidential election moved from what looked like just a long night of watching the returns to long weeks of court cases, and terms like "Constitutional crisis," "legitimacy of the system," and "denial of civil rights" emerged in some analyses. Our nation, and indeed the world, watched as the very legitimacy of decision-making powers of state courts, state legislatures, and even the U.S. Supreme Court was challenged. And when placed under a magnifying glass, the electoral process in one of our 50 states revealed itself to be a less than legitimate system, corrupted by party interests, shaped by manipulation of vote counts, and willing to deny over one-third of its African-American male population the right to vote.

While this crisis of legitimacy was played out on nightly TV, another longer standing crisis of legitimacy raised by the authors in this issue of *PRAGmatics* has been playing out in American communities for years. The difference is that the parties involved do not live on expansive Texas ranches or in Vice Presidential residences. Rather, these Americans are youth, community leaders in low-income communities, African-Americans, Latinos, and others, who do not see a government or legal system that is working for them.

The disproportionate number of African-Americans convicted of capital crimes and waiting on death row has long created a crisis of legitimacy, particularly when low-income African-American families look at our legal system—from police actions to court rulings. As Ron Tonn of the Safer Foundation points out, from the perspective of youth, public school systems that do not educate and economies that cannot provide jobs create a crisis of legitimacy that leads to social disengagement. Warren Friedman cites a statistic that four out of ten Chicagoans think that police corruption is a problem in their communities. This undoubtedly could be replicated in other cities. Although it has not been given the headline attention of the Gore-Bush battle, the decline in the legitimacy of the U.S. criminal justice system is at crisis proportions.

The activists writing in *PRAGmatics* do have remedies for this crisis. These include the Safer Foundation's model efforts to re-engage youth and make the educational and job system work for them. The Chicago Alliance for Neighborhood Safety's (CANS) nationally recognized leadership in advocating for true community policing is another remedy. While Mayor Daley has supplanted CANS' grassroots model with a politically self-aggrandizing system directed by the police, the evidence that alternative community-driven models are highly successful is well established.

This issue of *PRAGmatics* is a counterpoint to trendy authors who today are pointing to the decline in civic engagement in American society. More often than not they blame individuals for not joining more groups, for not voting more, and for not volunteering. These analyses do not look at the ways in which American institutions might alienate and even attack some members of our society. When society's institutions are seen as unfair, unreasonable, and threatening, civic opposition is a more likely response. This can take the form of individual responses, such as dropping out of school, engaging in violent behavior, or participating in illegal gang activity. However, individual acts of opposition can also be organized into constructive efforts to improve those unresponsive institutions—whether these are police, schools, courts, or local government. It is the effort of CANS, the Safer Foundation, and other organizations working for a criminal justice system that is responsive to, and protective of, *all* parts of our communities. It is this effort that holds the real promise of bringing about greater civic engagement and justice in American society.

Phil Nyden

Editor
Maureen Hellwig

Managing Editor
Karen Ide

Design
Desktop Edit Shop, Inc.

Printer
Des Plaines Publishing

PRAG Journal Committee
Cynthia Milsap
The Night Ministry

Michael Maly
Roosevelt University

Clinton Stockwell
Chicago Metropolitan Center

Director
Philip Nyden

Program Coordinator
Maureen Hellwig

PRAG is grateful to its major funders, the John D. and Catherine T. MacArthur Foundation, the U.S. Deparment of Labor and Chicago Community Trust.

If you have any suggestions about the journal or want to respond to an article, please write, call, or e-mail PRAG
Loyola University Chicago
Lewis Towers, 10th Floor
820 N. Michigan Ave.
Chicago, IL 60611
312-915-8622 kide@luc.edu

Visit us at our web page at
www.luc.edu/depts/curl/prag

Vol.3 No. 3
Winter 2000-01

Does Our Criminal Justice System Work?
Liberal & Conservative Views

By James P. Carey, J. D.

Supreme Court Justice Harlan gave us a clue that we might use in thinking about our system of criminal justice. In In re Winship, the court held that the proof beyond reasonable doubt standard governed juvenile adjudication proceedings. Justice Harlan explained the reason for this high burden of proof:

> In a criminal case on the other hand we do not view the social disutility of convicting an innocent man as equivalent to the disutility of acquitting someone who is guilty.

The disutility of convicting the innocent is grave because the accused (and here Justice Harlan quotes from Justice Brennan) has at stake an interest of "transcending value"—his liberty.

The first objective of any system of criminal justice must be preservation of public safety through conviction and punishment of the guilty. Our system has an additional dimension, an objective—namely the vindication of certain rights, among which is the transcending value of liberty.

The first objective of any system of criminal justice must be preservation of public safety through conviction and punishment of the guilty.

Our system is thus a mixture of goals, and these goals can often seem to be at odds. Most criminal justice systems—certainly those of Western Europe—possess this same sort of mixture, this same tension between accurate adjudication and preservation of rights. Nowhere is it a matter of all or nothing. Rather it is a matter of balance. In thinking about any system of criminal justice it is useful therefore to ask whether the balance has been wisely struck.

Contemporary critique of our system comes from both ends of the spectrum, from what is sometimes called the left or liberal point of view, and from the right, or conservative point of view. The liberal critique, for example, points to racial bias. The conservative critique says our system protects the accused at the expense of the victims, their families, and society at large.

These different points of view clash over many questions concerning the operation of our system. To provide a flavor of the conflict, here are three such areas of conflict: claims of racial bias, the operation of the exclusionary rule, and trial procedures.

Racial Bias

An item in the August 30, 2000, edition of the Chicago Tribune describes a protest by a group of African-American lawyers against the Cook County Prosecutor's removal of several cases from an African-American judge. The protestors allege that the substitution of judge in these cases is racially motivated.

The Tribune article is a recent example of the persistent liberal critique, which alleges that the system is rife with bias against African-Americans and Hispanics. This critique points for example to bias in the imposition of the death penalty. In McCleskey v. Kemp, the Supreme Court rejected a claim that the Georgia death penalty statute was unconstitutionally biased against African-Americans. The court rejected a social science study which showed that a Georgia defendant is four times as likely to receive the death penalty if his victim is white, than if his victim is African-American.

The death penalty is only one focus for the concern with bias. Courts have long wrestled with prosecutors' practice of excusing African-American prospective jurors through the use of peremptory challenges during jury selection. The Supreme Court finally struck down this practice in Batson v. Kentucky. Even though the court has extended this rule to criminal defendants (Edmondson v. Leesville Concrete Co.) and to civil cases (Georgia v. McCollum), it has at the same time created a standard of proof for those claiming bias which is difficult to meet (Purkett v. Elem).

In other settings the court's response to claims of bias has been conflicting. In Vasquez v. Hillary the court voided a conviction because of racial discrimination in the selection of the Grand Jury. The court created a rule of automatic reversal in such cases. But in United States v. Armstrong, in which the accused claimed selective prosecution of crack cocaine laws against African-Americans, the court required a high threshold showing of bias before plaintiffs could get discovery of the prosecutor's files.

Yet another focus for claims of racial discrimination in the operation of our system is "racial profiling." Racial profiling is an aspect of "Stop and Frisk" law. Police have the power temporarily to detain a person when they have an "articulable suspicion" that the person has committed or is about to commit a crime. The court announced this rule in Terry v. Ohio in 1968. Part of the rationale for the rule is protection of the public—especially minorities—against unwarranted intrusions into their liberty: police need suspicion in order to detain, even temporarily. Yet several later cases have arguably sapped this stop and frisk rule of its potency. For example, in Whren v. United States, the court held that a valid traffic stop supports a temporary detention even if the traffic stop is only a pretext, the real reason being some other, invidious basis—such as racial bias. This past year in Illinois v. Wardlow the court upheld a detention based in part upon the flight of the suspect following the appearance of the police. The dissenters in Wardlow expressed concern that to permit flight to serve as a basis for suspicion is to permit police broadly to detain, especially minorities.

The court is not unconcerned about racial bias in the operation of the system as Batson and Vasquez make clear. Yet the liberal critique of our system points to Whren and Armstrong as examples of the court's failure to go far enough to eliminate racial bias.

The Exclusionary Rule

The Exclusionary Rule is a distinctive feature of our system. The rule works to exclude evidence from the prosecution's case that is discovered through illegal means. The rule excludes all types of evidence including physical objects and confessions (but probably not testimony) from use in the prosecution case in chief. The rule excludes not only evidence seized at the time, but other evidence—called derivative evidence—seized later as a result of the original illegal seizure or discovery.

The conservative critique of the exclusionary rule is quite vigorous. It points to the loss of reliable evidence (and the possible termination of the prosecution) "merely" because police have violated a "technical" right of the suspect. Often there does appear to be a disproportion between the magnitude of the violation and the dramatic consequence of exclusion. Our exclusionary rule is an all or nothing proposition: we impose a kind of death penalty for illegally seized evidence.

Many other systems have some form of exclusionary rule, but they are likely to moderate its impact by requiring exclusion only where the violation is serious and the interests of justice require exclusion. Our exclusionary rule is court-created and is designed to deter police misconduct. Its all or nothing quality does, however, present an inviting target for criticism.

The "liberal" response to this critique points to two things. First, it points to the importance of the values protected by the rule, especially liberty and privacy. Second, it points to several Supreme Court cases that have effectively blunted the impact of the exclusionary rule. Some cases have created an exception to exclusion, called the "good faith" exception, under which the evidence will be admitted where the officer has relied in good faith upon a warrant issued by a magistrate or upon a statute, even though the warrant in fact lacked probable cause, or the statute was unconstitutional. Some cases have narrowed the concept of "standing", that is, they have limited the persons who can complain about a search to those whose privacy has been invaded by the search. Finally, some cases have permitted suppressed evidence to be used by the state to "impeach" the accused if he testifies, that is, to use the evidence to attack his credibility, not to prove his guilt directly. The effect of these various cases is to permit illegally seized evidence to be used frequently at trial. The social cost of the exclusionary rule—the loss of reliable evidence—is thereby reduced.

The give and take of these perspectives on the exclusionary rule echo the arguments about racial bias in the system. A sort of stasis seems to emerge from the conflicting views which makes it difficult to say whether the system works or not. Are the goals of accurate outcomes and vindication of rights fairly served?

The Trial

A final example is the trial itself. Unquestionably, our trial procedure is far more complex than those of France, Germany, Italy, and even in several respects, England. This complexity again arises out of our desire to serve two objectives: convict the guilty and acquit the innocent, but vindicate rights. An example of this complexity is the impact upon the trial of the 6th amendment right to counsel and right to confront witnesses. This right is designed to accord the accused a fair trial. How has it been interpreted to accomplish this end? Several principles have been developed. The accused has a right to counsel at every "critical stage" of the proceedings. The court has interpreted this to mean that the accused has a right to counsel at a post indictment line-up and at any interrogation that occurs after the commencement of the prosecution. If he has not been provided counsel nor waived his right to counsel, the exclusionary rule operates so as to exclude his statements and any line-up identifications from the prosecution case in chief.

The 6th Amendment has also been interpreted so as to require separate trials for co-defendants where one defendant has made a statement, which implicates another defendant. The 6th Amendment right to confront the witnesses has been interpreted so as to require the prosecution to show that evidence of out of court statements (hearsay) either meets a well recognized hearsay exception in the law of evidence, or possesses "particularized guarantees of trustworthiness."

Moreover, the 6th Amendment is one of the sources for the rule that the accused cannot be forced to testify first in his case in chief: he must have the option to testify when he wants to, in order to enjoy the benefit of counsel's strategic advice, thereby to vindicate his right to counsel.

The conservative critique of this kind of procedural maze is that we have over-proceduralized our trials, with the result that judicial error is inevitable. This error in turn leads to a proliferation of appeals and ultimately to a greater number of retrials. This greater number of retrials creates the risk of inaccurate acquittals because the passage of time during the appeal process may mean loss of eyewitness testimony.

In response to this critique the liberal rejoinder is a familiar refrain: these rules serve to provide the accused with the tools to challenge and test fairly the state's evidence. These tools are necessary to level the playing field in acknowledgment of the state's greater resources. This level playing field should produce accurate outcomes: proper guilty verdicts and proper acquittals. Moreover, the rights—such as the right to counsel and to confrontation—which complicate our scheme, derive from fundamental notions of liberty and autonomy. They are worth the price.

These three focuses, racial bias, the exclusionary rule, and trial procedures, exemplify the vulnerability of our system to critique from both so-called liberal and conservative points of view. Neither point of view thinks our system works, for the differing reasons listed above. Is there a possible middle perspective from which one might "objectively" assess whether our system works? I think not, because "objective" in this sense connotes absence of political perspective, yet no one can assess the penal system—the system that deprives a citizen of his liberty and perhaps his life—from any perspective other than a political one. As deTocqueville said, "The jury is, above all, a political institution and it must be regarded in this light in order to be duly appreciated. ...He who punishes the criminal is...the real master of society."

Who masters society is a question which vexes us today. The balance between liberty and security is perhaps always precarious in a democracy. This precarious balance can be both a weakness and a strength. Does our system of criminal justice work? Perhaps we can only be agnostic about such a question.

A provocative statistic, indicative of this ambiguity and perplexity is that the prison and jail population in our country is approaching two million people and a very high percentage of the incarcerated are African-American men. What is the relationship between our system of criminal justice and the ideal of social justice?

James P. Carey is a Professor at Loyola University Chicago School of Law. *Email: Jcarey@luc.edu*

Case Citations:

In re Winship, 397 U.S. 358 (1970)
McCleskey v. Kemp, 481 U.S. 279 (1987)
Batson v. Kentucky, 476 U.S. 79 (1986)
Edmondson v. Leesville Concrete Co., 500 U.S. 614 (1991)
Georgia v. McCollum, 505 U.S. 42 (1992)
Purkett v. Elem, 514 U.S. 765 (1995)
Vasquez v. Hillery, 474 U.S. 254 (1986)
United States v. Armstrong, 517 U.S. 456 (1996)
Terry v. Ohio, 392 U.S. 1 (1968)
Whren v. United States, 517 U.S. 806 (1996)
Illinois v. Wardlow, 528 U.S. (2000)
For more information:
Trials Without Truth, William T. Pizzi, New York University Press, 1999
A Theory of the Trial, Robert P. Burns, Princeton University Press, 1999

Criminal Justice Web Sites:

Death Penalty Information Center:
www.deathpenaltyinfo.org
The November Coalition (Stop the War on Drugs)
www.november.org
Texas Defender Service (Recent study completed)
A State of Denial: Texas Justice and the Death Penalty
www.texasdefender.org
The Sentencing Project:
www.sentencingproject.org
Northwestern University
www.centeronwrongfulconvictions.org
University of Chicago
Illinoisdeathpenalty.com
National Institute of Corrections
www.nicic.org
Illinois Criminal Justice Information Authority
www.icjia.state.il.us
Chicago Tribune Special Investigative Series
ChicagoTribune.com

Prison Industry in Illinois—An Underutilized Resource?

By Charles A. Fasano

During the past decade, Illinois prisons have been highlighted by controversy. The media has focused on gang influence in Illinois prisons, the lurid Richard Speck videotapes, and the release of 13 innocent men from death row leading to a moratorium on executions. The media has also reported on some of the responses to these problems, including construction of a controversial "super-max" state prison to control our most violent prisoners. Rarely has attention been paid to the more mundane aspects of corrections in Illinois, including prison industries and other work assignments.

Thousands of inmates in the Illinois Department of Corrections (IDOC) work in a variety of institutional jobs, in dietary services, laundries, groundskeeping and maintenance crews, clerical and other positions. These work assignments pay nominal wages typically ranging from $15 to $50 per month but are essential to prison operations and an important management tool in a system housing 43,000 adult inmates in facilities designed to hold 30,000. The good jobs in Illinois prisons, however, are in prison industries, where inmates can earn extra "good time" to reduce their sentences and a few of the most skilled inmate workers can make as much as $200 per month.

Illinois prison inmates produce more than 150 products, including office furniture, institutional supplies (e.g., mattresses, sheets, and uniforms for inmates and staff), cleaning and food products, and eyeglasses for inmates in prisons and other state institutions. A handful of service operations, including tire recycling, microfilming, and furniture refinishing, are also staffed by inmates.

Illinois Correctional Industries (ICI) is one of the few state programs that is self-supporting. The funds that pay wages to inmates and civilian employees and operational costs come from the sale of ICI products and services. A revolving fund has been established to hold the proceeds and make payments associated with ICI. In FY 1999 (July 1, 1998 - June 30, 1999), net sales for ICI products totaled slightly more than $50 million, resulting in a net income of $5.2 million for the program.

The opinions herein are those of the author and not necessarily those of the John Howard Association.

Illinois inmates also performed data entry for vehicle registrations for the Secretary of State until a 1998 news story led to the cancellation of this program. Although this program experienced no significant problems in 13 years of operation and saved taxpayers roughly $375,000 annually, concerns about inmate access to personal data such as names, addresses, and types of vehicles owned by Illinois citizens caused the termination of this contract.

Prison industries exist to reduce costs of incarceration, teach inmates marketable skills (that may reduce recidivism) while allowing them to earn money for themselves and their families, and as a management tool to reduce idle time and violence in prison. In addition to producing goods used in our adult and juvenile facilities, inmates working for ICI reimburse IDOC 3% of their monthly wages in excess of $25 per month. During FY 1999, IDOC received $57,818 from inmates working for ICI.[1]

In addition to the low wage level, the other reason for such negligible reimbursement is that only 1,700 inmates - less than 4% of IDOC's adult inmate population - currently work in prison industry. Even excluding those inmates considered too dangerous for such assignments, those who lack the minimal education needed, and those with prison terms too short to allow for training and a reasonable period of employment, it is clear that Illinois prison industries is failing to utilize an enormous labor pool.

What is more perplexing is that IDOC's adult population has increased enormously in recent years, but the number of prison industry jobs has remained constant or decreased. In addition to security concerns, some industries have been eliminated because they taught skills not readily marketable in the community and others because they consistently lost money.

Although the total number of ICI jobs has been pitifully few, IDOC has not been able to find enough inmates to keep all positions filled. During a three-year period (FY 1996 - FY 1998), an average of 10.5% of inmate jobs in ICI remained vacant. That so many jobs were vacant even though IDOC was using some inmates with lengthy or life sentences in some ICI jobs is bewildering.

Finding enough suitable inmates for ICI jobs isn't as easy as it might appear. To qualify, inmates must meet educational requirements (usually a G.E.D. certificate), maintain good behavior while incarcerated, and have some time, usually one year, remaining on their sentence before release.

Recent efforts to increase security in Illinois prisons, particularly our aging maximum-security facilities, have been necessary; however, they also resulted in fewer prison industry jobs for some inmates. During the past decade, some industry programs at Stateville, Menard, and Pontiac were marginal operations, largely due to prolonged lockdowns. Closing or transferring industry programs to other facilities reduced losses incurred by these programs and the availability of weapons and other contraband originating in these areas. These changes also removed an important management tool that provided job skills and a subsistence income for a few inmates in these volatile institutions.

By state law, prison industries in Illinois have a limited monopoly on sales of goods and services to state agencies. ICI is also allowed to sell to other units of government and not-for-profit corporations. Only a few state agencies purchase products from ICI, a significant impediment to success for prison industries in Illinois. This is perplexing, since legislation prohibits ICI from competing with private business.

This protection has done little to diminish resistance to prison industries from the private sector. A 1995 article in *Illinois Issues* described the position of some business and labor organizations that prison industries have an unfair competitive advantage, the basis for opposition to expansion of industries in fields that compete with the private sector, such as furniture and garments. The need to reduce prison costs, however, has become a more significant public policy concern over time.

Building and furnishing a new minimum or medium-security prison translates to a cost ranging from $25,000 to $50,000 for each double cell. A 1993 study by the National Council on Crime and Delinquency revealed that costs of new prison construction in Illinois increased the annual cost of incarcerating one inmate by nearly 50%, from $16,000 to more than $23,000. Were it not for use of prison industry goods, this staggering cost would be even higher. The proliferation of private companies involved in correctional equipment, furniture, and supplies attests to the profitability of this booming sector of the American economy.

Expansion of Illinois prison industries in areas that are not detrimental to the local economy has been and is still needed. The John Howard Association, a prison watchdog organization, recommended reforms and expansion of Illinois prison industries in 1985. An Illinois Task Force on Crime and Corrections recommended reform and expansion in 1993. These recommendations have not been heeded.

More recently, ICI has been criticized repeatedly for a variety of problems. In 1997 and 1999, the Auditor General of the State of Illinois issued reports critical of inefficiency and improprieties occurring in ICI. The 1997 audit report documented recurring losses in several industries and failure to measure recidivism and job placement rates for former inmates, despite statutory mandates to do so. The 1999 audit report contained more critical findings: hundreds of thousands of dollars of ICI-produced goods and services were distributed without charge; comparable amounts of state sales tax were not collected by ICI on sales to non-governmental entities; and, ICI reports distorted profits and losses. Despite these reports, IDOC still failed to measure job placement rates on ICI's former workers after release from prison.

Some of these problems are due to other problems in IDOC. The failure to track job placement and recidivism is more attributable to the fact that parole supervision in Illinois was virtually nonexistent until recently, when Governor Ryan decided to rehire parole agents whose positions had been eliminated some years ago. During these years, parole agents routinely had caseloads of more than 1,000 ex-offenders each. Under these circumstances, it was not surprising that the most information we usually had about parolees was whether they had been arrested since their release from prison.

With a state prison population of more than 43,000 adult inmates and a corrections budget exceeding $1 billion, it is high time to scrutinize any program that might affect recidivism rates and other factors contributing to the rate and costs of incarceration in Illinois. In simplest terms, we need to know what works and what doesn't. The public has a right and a responsibility to learn the facts about prison industries and the use of incarceration as our primary response to crime.

[1] Office of the Auditor General of Illinois; *Department of Corrections-General Office: Financial and Compliance Audit for the year ended June 30, 1999;* Springfield, March 15, 2000.

Charles Fasano has been Staff Associate since 1988 with the John Howard Association (JHA), a private, not-for-profit agency working for prison and jail reform. He monitors conditions throughout IDOC, Cook County Juvenile Temporary Detention Center, and Cook County Department of Corrections (CCDOC), which JHA monitors for the U. S. District Court in a class-action lawsuit on crowding and conditions of confinement that began in 1974. He has inspected jails, prisons and juvenile facilities in more than 20 states. Mr. Fasano also serves as a court-appointed expert in a federal class-action suit on mental health care at CCDOC.
For more information:
John Howard Association at 312-782-1901

Community Policing But Little Community Involvement

By Warren Friedman

Our nation hit the 21st century without deciding if police-community relations, especially in low-income neighborhoods, will be constructive or destructive. In Chicago and elsewhere, community policing was to be part of the answer to that question. Residents and police were supposed to get acquainted, develop trust and work together to solve neighborhood crime and disorder.

Traditional policing with cops in cars, responding to calls, taking reports and moving on will not work. It leaves officers out of touch, too busy to get to know the people or the area's problems. A police department that seriously wants to cooperate with residents must be reorganized so that officers can be responsive to them.

Perhaps because crime has been declining for the last eight years, reform seems less urgent to the public, and police department resistance to change less objectionable. Whatever the reasons though, there has been broad public acceptance of reform concepts while billions of federal dollars have been spent for police. According to one researcher, the pace of structural reform in police departments is "glacial,".[1] There has been "little substantial organizational . . . change . . . in American policing in recent years," say others.[2]

In the absence of serious change in organization, it is not surprising that one of the persistent problems with community policing is that there is very little community involvement. In 1994, the "most perplexing . . . [problem facing community policing] was the inability of police departments to organize and maintain active community involvement in the projects."[3] A 1998 Bureau of Justice Statistics survey of twelve cities found that only two percent of respondents who had contact with police in the previous year had worked with them to solve a problem.[4] In 1999, a national evaluation also found little progress. Researchers concluded that "true community partnerships—with shared power and shared decision making—are rare . . .".[5] After more than a decade, no city, not a single department, has embraced democratic participation in problem solving. At the same time that community policing is floundering, departments have been expanding the use of SWAT teams, street sweeps, loitering laws, zero tolerance and quality-of-life policing to compete for the hearts and minds of officers and the public.[6] Supporters of get-tough policing and longer prison sentences are vocal in claiming that their "war on crime" is responsible for reducing crime in America.

We hear less about community policing in recent years. But in 1994, national newspaper coverage was at its height and the Chicago Alternative Policing Strategy (CAPS) was in its prototype phase. Two leading criminal justice researchers characterized community policing then, as "the only form of policing available for anyone who seeks to improve police operations, management, or relations with the public."[7] In the same year, Congress passed and the President signed legislation to place 100,000 officers on the street, roughly one-out-of-seven officers in America, to implement "crime prevention," come up with "lasting solutions to problems," demonstrate "the importance of citizen involvement" and rebuild "the bond between citizens and government."[8]

Just two years after this commitment of billions of dollars, the Justice Department convened a symposium, "Police Integrity: Public Service with Honor." In a report following, Jeremy Travis, director of the National Institute of Justice, and Joseph Brann, head of the Office of Community-Oriented Policing Services (COPS) cited a list of police scandals and concluded that "events in the 1990s eroded public trust in the integrity of the police."[9] At about the same time, the names of Abner Louima and Amidou Diallo burst into the national spotlight. "Racial profiling" became the newest term for describing one aspect of America's deep racial troubles. L.A.'s Ramparts division scandal made headlines. In 1999, the U.S. Department of Justice convened another large meeting, "The Attorney General's Conference: Strengthening Police-Community Relationships." Like the symposium, the conference was addressed by Attorney General Reno. Unlike its predecessor, and indicative of the topic's growing urgency, President Clinton chaired a round table discussion and said with feeling that, "In this country no one should have to trade rights for safety."

At both Justice Department gatherings, there was clearly an understanding among participants that police misconduct threatened the viability of community-police cooperation and the possibility of community policing in America. Yet, in spite of this, 35,000-50,000 more police were in the 2000 federal budget as the next step towards community policing and a safer America.

Eroding belief in police integrity is not confined to L.A. and New York City. In Chicago, the press has been full of stories of police officials with connections to organized crime, tactical officers dealing drugs, suspects dying in police custody, inmates on death row because they were tortured to confess, unarmed motorists and homeless people shot to death, children framed for murder and immigrants shaken-down by police. These very public incidents occur against a background of daily, but invisible conflict and tension between police and community people.

According to a Northwestern University study, 28 percent of African Americans and 18 percent of Hispanics think police "physically or verbally abuse" people in their neighborhoods. In some police districts, over 60 percent of those asked think abuse is a problem in their neighborhoods. Nearly forty percent of Chicagoans think police corruption is a problem in their communities. Forty-four percent feel police treated them unfairly or impolitely in the past year.[10]

And these respondents were 18 and older. In spring of 2000, the Chicago Alliance for Neighborhood Safety (CANS) surveyed nearly 900 public high school students. Sixty-two percent of those with an opinion think there are problems between police and youth in their neighborhoods. Sixty-eight said they percent do not trust police. Eighty-four percent believe that police discriminate against youth. Seventy-one percent believe that police use excessive force in their communities and 68 percent believe that police don't really "care about what is good for [their] neighborhood."

But police misconduct and resistance to change by departments are not the only barriers to community participation. In Chicago, where there was considerable participation, it ran into a political wall. Independent grassroots activity and potential democracy were threatening. Organized pressure for community policing moved a reluctant mayor to try it. In the initial enthusiasm over CAPS, the city did what no other city did. It invested in independent community training and mobilization. And residents responded. Thirty-seven percent who took the training talked with their neighbors more frequently about community problems than before. Seventy-four percent invited others to participate. Sixty-three percent passed on to neighbors what they learned. [11]

This training, talking and teaching among neighbors generated action. Residents tried to solve 63 percent of the problems they identified, including drug dealing, vandalism, public drinking, loitering, theft, rape, homicide and gang problems.[12] Most who worked on problem solving participated in community-based organizations. The more organizations they were affiliated with, the more work they did. And their efforts paid off. According to evaluators, in four months these activists succeeded in solving or reducing over a quarter of the problems.[13]

Despite the program's promise though, the city's early enthusiasm evaporated quickly. In 1995, mayoral control came into conflict with community policing. CANS, the organization that led the coalition for what it then called neighborhood-oriented policing, released Young People and the Police, a study of teenagers' experience when stopped by Chicago police. Nine-hundred-sixty-eight public high school students were surveyed. Nearly three-quarters (71%) said they had been stopped at least once by police. Most felt they were treated with disrespect (63% of the Latinos, 62% of the African Americans and 59% of the Whites). Forty-four percent of those who felt disrespected feared the police as much or more than they feared gangs.[14]

When the report was released at a press conference conducted mainly by young people who worked with CANS, the mayor was infuriated.[15] The Alliance had a multi-million dollar city contract to train and mobilize community residents for their role in CAPS. CANS staff members were talking to people in neighborhoods around the city. They had a democratic vision of community policing, and they were being critical of police conduct. As quickly as he could, the mayor canceled the contract, but by then 18 months had passed and nearly 12,000 people had been trained.

The experiment threatened to become the kind of shared power that criminal justice researchers had trouble finding anywhere in community policing. Rather than risk that, Mayor Daley launched his transformation of Chicago's program. Increasingly, police and other city workers aimed to dominate meetings. They keep people in line, boost the mayor, often support gentrifiers and push for "reforms," like the anti-gang loitering law. As one sergeant remarked on the state of CAPS, "the spark is gone." In May, 1999, evaluators said CAPS had "been at a standstill" for 18 months. "Key mid-level managers," they added, "are not well informed about the program, and do not feel responsible for ensuring its success."[16] Along with his attempt to neutralize the energy released by a grassroots victory on community policing, the mayor began energetically offering an alternative public safety strategy of crackdowns, sweeps and zero tolerance. As part of his "new" policing, he went before federal courts seeking relief from a 17 year-old consent decree that disbanded Chicago's notorious "red squad." He lost.

The mayor also lost in the courts on his "anti-gang loitering ordinance." After over 40,000 arrests and 40,000 dispersal orders, the Illinois Appellate Court found the law unconstitutional. It "smacked of police state tactics," the justices wrote. The Illinois Supreme Court also found it unconstitutional. The anti-gang loitering law granted "absolute discretion" to police, they concluded. In June, 1998, the U.S. Supreme Court also struck the law down and sent the city back to the drawing boards. Late in 1999, the City Council passed a new version of the law which aldermen, the mayor, and the police superintendent characterized as a tool of community policing. In July, 2000, the police department began enforcing the ordinance at selected "hot spots" that were kept secret from press and public.

Despite declining crime, "if it bleeds, it leads" still dominates the media. Fear still drives people's thinking about crime. Most people do not ask why police are not enforcing existing laws and working with the community to make streets safer and more civil. They are sick of being fearful in their neighborhoods and are often easily convinced to support the violation of others' rights.

In Chicago and across the country, we begin the century balanced between get-tough, police state populism on one hand and civil, self-regulating communities on the other. Because community policing provides an opportunity to bring neighbors together and mobilize them, it is valuable now as a safety and community-building strategy. For the same reasons, it is valuable as part of a longer-term strategy for moving the country to reduced dependence on police, prisons and bloated criminal justice budgets.

Building healthy, friendly neighborhoods, freer of crime and police abuse, requires increasing capacity in high crime communities to be self-regulating. As the problem-solving experience with CAPS indicates, self-regulation is supported by independent community organizations that stimulate and sustain volunteer efforts.

There have been billions of dollars spent for police, but little investment in the community role. In 1994, when community policing was major news, researchers had already noticed the inability of "police departments to organize and maintain active community involvement." It is time to learn from what is clear. If we are going to answer the question of whether police-community relations will be destructive or constructive¾if community policing is going to move forward¾instead of more police, we need community organizers in neighborhoods where crime and police misconduct are common, and trust is low. If we are going to create a version of community policing that helps rebuild communities and renew bonds between citizens and government, people must be organized. Strengthening community organizations is critical.

But local strength is not enough. Effectively representing neighborhoods requires a commitment to justice as well as safety or police state populism will win. Representing the well being of these neighborhoods also requires broad based coalitions that can exercise influence where policy-makers meet and resources are distributed.

Warren Friedman is the former director of CANS.

Endnotes:

[1]Mastrofski, Steve, Moore, Mark, Skogan, Wes, Travis, Jeremy (Moderator), "What Have We Learned about Policing in the Last Ten Years?" Panel at PERF Annual Meeting, San Francisco, April 30. 1999, Background Readings for COPS Dialog, August 28-29, 1999, section 3, p.3. Between 1987 and 1993, he argues, "there was very little change in the structure of police organizations. Really no change in the degree of centralization of decision making." Since 1993, he finds, there is "some change going on," but "changes are very, very, very small (Mastrofski, 1999: 3).

[2]Zhao, Jihong and Thurman, Quint, (1996) "The Nature of Community Policing Innovations: Do The Ends Justify the Means?", 1996, Background Readings for COPS Dialog, August 28-29, 1999, section 9, p.16.

[3]Grinc, Randolph, "Angels in Marble: Problems in Stimulating Community Involvement in Community Policing," *Crime and Delinquency*, July, 1994.

[4]Smith, Steven K., Steadman, Greg W., Minton, Todd D., Townsend, Meg (1998), *Criminal Victimization and Perceptions of Community Safety in 12 Citie*s, Bureau of Justice Statistics, 1998, P. 23

[5]Koper, Christopher S., Roehl, Jan, Roth Jeffrey and Ryan, Joseph , "Return on Investment: A National Evaluation of the COPS Program," Background Readings for COPS Dialog, August 28-29, 1999, Alexandria, Virginia, Section 1, unpaginated.

[6]Kraska, Peter B. and Kappeler, Victor E., "Militarizing American Police: The Rise and Normalization of Paramilitary Units," Social Problems, February 1997, passim.

[7]Rosenbaum, Dennis and Eck, John (1994), "Community Policing in Theory," *The Challenge of Community Policing*, ed. Dennis Rosenbaum, p.4.

[8]www.doj.gov/cops/news-info/default.htm, October, 2000. In the same year that funding for these officers became law, one study pointed out that the "one element common to all definitions [of community policing] is the idea that the police and the community must work in concert both to define and to develop solutions to problems affecting the community (Sadd and Grinc, 1994: 42)."

[9]Police Integrity: Public Service with Honor, January, 1997, National Institute of Justice and the Office of Community Oriented Policing Services, p. iii.

[10]Skogan, Wesley and Hartnett, Susan, *Community Policing in Chicago, Year four: An Interim Report*, 1997, p.19.

[11]Skogan, Wesley and Hartnett, Susan, *Community Policing in Chicago, Year Three: An Interim Report*, 1996, p. 52.

[12]Ibid., p. 29-30.

[13]Ibid., p. 52.

[14]Friedman, Warren and Hott, Marsha, *Young People and the Police: Respect, Fear and the Future of Community Policing in Chicag*o, 1995. p.17. These young people ranged in age from 14 to 19. They attended 18 Chicago high schools. Few had arrest records or gang affiliations. They were a mix of honor students (20 percent), regular students (77 percent) and special education and learning disabled students. Many filled the spaces of the open-ended questions, describing how they had been subjected to racial slurs and name-calling. They were sworn at, told to shut-up, threatened and shoved. Some felt they were treated like "a piece of trash," "like dirt," "like an animal," "like a slave."

[15]Bill Utter, the mayor's liaison to the Chicago Alternative Policing Strategy (CAPS) and Paul Vallas, then the mayor's budget director both told the author how outraged the mayor was at the report and press conference that released it.

[16]Skogan, Wesley and Hartnett, Susan, *Community Policing in Chicago, Years Five and Six: An Interim Report*, 1999, p.7.

Turning the Tables—

The Safer Foundation's Youth Empowerment Program

By Ron Tonn

D'arcy Collins was a street-gang member and a narcotics dealer from the time he was fourteen. He is fortunate to have reached the age of nineteen, having been shot five times in connection with his drug business. After being convicted of drug possession, serving a year and a half in an Illinois Department of Corrections facility, and being released to Electronic Detention, he passed the GED high school equivalency test and is now prospering as student in a DeVry Institute of Technology Electronics Technician certificate program.

Louisa Dent was convicted in the violent assault of her mother in a dispute over her mother's use of the money she receives for caring for Louisa's two children. She completed parole and is employed as a clerk at Malcolm X College. She is enrolled in vocational training and is pursuing the restoration of custody of her children.

Hector Fernandez was adjudicated as a juvenile for armed robbery. He served a month in the Juvenile Detention Center and was sentenced to five years of probation. Like the cases cited above, he entered Safer Foundation's Youth Empowerment Program and improved his reading and math performance by three grade-level equivalents in just two months. Despite his lack of job experience, he was reluctant to accept a job at a McDonald's. He derided it as a "low-life" job. He took the job anyway, and within a year became a night manager entrusted with bank transactions. He, too, passed the GED test and, in addition to maintaining his job, is attending classes to become a certified mechanic.

These names are fictional, but their stories are fact. They are not atypical of the stories of one hundred or so clients served each year by the Youth Empowerment Program at Safer Foundation's headquarters on Chicago's near-west side. This classroom program for juvenile and youth parolees and probationers defies every common expectation about young offenders, and, for that matter, about classrooms themselves. The first impression is not that of a classroom, but of a workplace with the continuous hum of people engaged in collective or individual tasks, but with the absence at first glance of—a teacher. These are only the first surprises.

As the nation's largest, private service provider for an exclusively offender clientele, the Safer Foundation has been helping parolees and probationers find jobs, overcome adjustment barriers, and beat recidivism since 1972. The service array has since increased in response to the changing needs of the thousands of former offenders who voluntarily seek Safer's services each year. Education became part of that array in 1976, beginning an experiment in pedagogy that continues today.

We, at Safer, have observed that academic deficiencies are common in offender populations. The breakdown in social belonging that characterizes the developmental course for many offenders begins with their failure, at a young age, to prosper in school. As children, many were unprepared and overwhelmed by the demands of school. Some were simply the products of teaching failure. Still others, the clever ones, were bored by the tedium and authoritarianism of some classrooms and sought diversion through mischief and rebellious acts. Their estrangement from the mainstream continued in stages from maladjustment through anti-social behavior, to delinquent and criminal acts. By getting *off track* in school, students acquire gaps in knowledge and skill. These gaps are further compounded by an accompanying breakdown in the social integration that is a by-product of the school experience.

Many young offenders, linked in a peer-endorsed value system, proclaim disdain for school culture and academic success. Some conceal their academic talents from peers to gain acceptance. At the same time, most are embarrassed by their deficiencies and apprehensive about their abilities to learn. They may resist instruction to avoid the possibility of confronting more failure. They don't lack self-esteem; they have instead established different criteria for their self-worth. Educators who ignore these realities and view education as merely a transmission of information miss a crucial point. Psychological barriers to learning must be addressed as an integrated part of any instructional plan. These barriers are built on self-image, and resolving them can have profound implications for the learner. Education is a *metamorphic* process: not an additive one. A learner must continually relinquish one self-image in

exchange for a new one that encompasses the possession of new skills and knowledge. To learn is to become another person.

We have designed the Safer Foundation's educational programs for youth and juveniles in light of these realities. Inherent in the tactical methods of the Youth Empowerment Program is an awareness of the characteristics typical of an offender clientele: their high need for stimulation, their low tolerance for routine tedium, their hostility toward institutions, their conflicts with self-image, their fears of failure and their apprehensions about success. Their past failures in school have inclined them to devalue educational goals. Safer's tactics show them how to succeed in learning and re-value education without denying their experiences or resurrecting their embarrassments and fears. Since the inception of the program, our ground rule has been, "Try everything; keep what works." The result is a coherent methodology that has produced significant outcomes in academic growth, successful transition to employment, and reduced recidivism for adult, youth and juvenile offender populations in community-based and institutional settings.

YEP. . .succeeds through active engagement. We strictly avoid instructional approaches that impose a passive, spectator role on learners. Peer teaching (known elsewhere as Cooperative Education) is an important vehicle. Quite simply, lesser-skilled clients learn from class peers who possess a superior command of skills that they lack.

The Youth Empowerment Program is but one incarnation of this methodology. It is a community-based program for juvenile parolees, aged sixteen through twenty-one, supported by a consortium of public and private funding sources. Clients participate in the program voluntarily, without mandates or sanctions to compel them.

YEP, as its clients know the program, succeeds through active engagement. We strictly avoid instructional approaches that impose a passive, spectator role on learners. Peer teaching (known elsewhere as Cooperative Education) is an important vehicle. Quite simply, lesser-skilled clients learn from class peers who possess a superior command of skills that they lack. The client who is proficient at dividing fractions teaches those who are not, while other clients in small groups are so engaged in other learning tasks. In this way, clients at a variety of skill levels can be productively engaged, while the instructors (referred to as facilitators) are freed to address the individual needs of other clients. Clients seem to be more receptive to assistance rendered by peers than from instructors whom they may regard as authority figures. This process also aids in the individualization of instruction, permitting clients to focus attention on their own personal deficiencies. Facilitators become less the focus of group attention and function more as resource persons for the client working groups.

An interesting concurrent benefit is that the role of facilitators working in this mode more resembles that of a production foreman than that of a conventional classroom teacher, and the training environment becomes a model of values and practices common to the workplace. Learners in this simulated work environment unconsciously learn job-related habits and values while they consciously attend to problems in reading, writing, and mathematics. This is a critical step in pre-employment training for a clientele that possesses little in the way of positive work experience. For young men and women who grew up in homes without a working breadwinner or whose entire peer group is composed of the unemployed or the never-employed, the nature of working may seem remote and alien. In a subculture where the wage earner is regarded as a "chump", a "mark", or a "lunch bucket", the value and necessity of working may be obscured.

Incarceration further instills values that contradict those of the workplace. Indifference to authority, disdain for productive effort, and suspicion of others are reinforced by the confinement experience and by the delinquent and criminal subculture in the free world. Stigmatized ex-offenders become isolated in this value system and risk permanent estrangement from the working world.

The YEP classroom methodology endeavors to provide experiences that will enable young offender participants to better acclimate themselves to the interpersonal environment of the workplace. The basic habits and values associated with working for a living are instilled through the application of these principles in the academic classroom and in group discussion sessions that focus on these issues. By understanding the motivations, values, and behavioral determinants of its participants, the program staff succeeds in diminishing barriers, anticipating obstacles, and building rationales for success.

This program has also pioneered an *inductive* approach to academic skill training. The course of learning moves from specific case to general principle. This means that facilitators are more likely to instruct with questions than with explanations, and clients are not denied the authentic sense of discovery when correct answers are found. In this process we hope to stimulate original thinking on the part of clients and to build strong, multiple associations

between knowledge and experience for each client. This network of associations is the key to retention and recall of information and skill in the application of knowledge.

We maintain a lively, improvisational character in the classroom through the process of Spontaneous Composition. This is an instructional process in which facilitators create learning tasks on the spot in the presence of clients. These tasks could include math computation tasks, contextual math problems, expository writing topics, logic puzzles, or any other task that can be performed in a classroom y small groups or individuals. As a strategy for mitigating barriers to learning, this process has many advantages.

- It encourages greater familiarity among clients and facilitators. The intimacy of the process allows facilitatorsto develop greater insight into the temperament and learning style of each client. It enables us to know ourclients better than we otherwise would.

- It compels facilitator involvement with clients on a close working level. Facilitators cannot pawn clients off on some anonymous task and forget about them. They must stay engaged. It also alleviates facilitator boredom. Facilitators create everyday, and the opportunity for novelty is always present. It's not the same worksheet, class after class.

- It empowers facilitators to control the content of instruction at will. Points that need attention are addressed without pause, interruption or delay. Strategic opportunism becomes possible. Flexibility is infinite.

- It permits portion control. Work tasks can easily be tailored to the limits of each client's span of attention and concentration.

- It compels facilitators to invest energy and active thought into client interactions. A bond of trust is more easily formed with clients when they can see the effort that facilitators invest in their interest.

- It provides facilitators an opportunity to demonstrate their abilities. Their assured command of intellectual domains secures client confidence in the facilitator's ability to help them.

- It casts facilitators in an active role. The process permits facilitators to serve as dynamic, productive role models who are continually engaged in creative endeavors.

- It eliminates client barriers to scrutiny. Provided with workbooks, textbooks, etc., clients frequently employ them as shields against accountability in an attempt to conceal learning difficulties or lack of effort.
- It permits facilitators to dictate through their action the tempo of training. Facilitators can stimulate clients to greater levels of concentration and task engagement by setting a brisk working pace themselves.

- And not least, it introduces elements of suspense and unpredictability, alleviating boredom.

Acknowledging the life circumstances of our clients and their need for rapid transitions into stable situations, we have intentionally compacted the program to an eight-week time frame. Our clients readily grasp the accelerated intensity of this time scale, and liken it to their image of an athlete in training. At the conclusion of training, graduates are transitioned to the caseload of a staff member we call a lifeguard. The lifeguard manages client transitions into mainstream settings, intervening when circumstances threaten retention of jobs or tempt clients to resume criminal careers.

The results of all these activities are recorded in multiple parameters. We employ rigorous, objective testing to validate the academic performance improvements that clients experience. Official practice versions of the general Educational Development Test are administered to all YEP participants at the beginning, middle and conclusion of training, and mean improvements in GED Standard Scores of 15 to 16% are routinely documented (this corresponds to gains of 2.0 to 2.5 grade-level equivalents on conventional norm referenced achievement tests). Nearly half of all participants pass the certified High School Equivalency Test on their first or second attempt after eight weeks of training. The training completion rate for YEP participants is over 80%, and 78% of all participants in the last three years were placed in jobs or vocational training through the efforts of another staff member, the transition counselor. Most significant, in light of the Safer Foundation's mission of reducing recidivism, is the fact that YEP participants are 53% less likely than the average juvenile parolee in Illinois to be convicted of a new crime within three years after their participation in the program.

Yet our staff probably takes its greatest satisfaction from an unsolicited remark that they have heard from hundreds of YEP clients: "If *real* school had been like this, I never would have dropped out".

Ron Tonn is Associate Vice President of Safer Foundation
For information: 312-913-5783 or Web site: www.safer-fnd.org

Thanks to YEP Manager Michael Cesarek for case histories.
(Portions of this article appeared in the February 1999 issue of Corrections Today, the official publication of the American Correctional Association.)

The Death Penalty—Contemporary Debate

By Christine Martin

Inciting discourse concerning the existence of racial disparity in capital punishment and the use of empirical data as evidence of racial bias in homicide sentencing was quelled by the U.S. Supreme Court's decision made in the 1987 McCleskey v. Kemp case. But by the late 1990s, debate over the death penalty had not only rekindled but has erupted into one of the leading social issues facing the U.S. in the new millennium. Illinois has been one of the locations at the forefront of this contemporary debate, which was staged outside of the criminal justice community with players that were different from the typical group of lawyers, judges and lawmakers. The new debate included the news media, law and journalism students and teachers, and wrongfully accused defendants. It was propelled from the local arena, as an issue faced within individual U.S. states, to the national and international communities. Former President Clinton pondered the idea of a stay in federal executions just as Italian clothes designer, Benetton, used advertising to give voice to the abolishment of the death penalty in the U.S.

In February 1997 the American Bar Association (ABA) called for a moratorium on the death penalty because of its concern in three primary areas: inadequate counsel for the defendant, barriers to meaningful judicial review and failure to confront racial bias (ABA Network, 1998). In November 1999 U.S. Senator Russ Feingold publicly called for the abolition of the federal death penalty (BRC-NEWS, 1999). Feingold's main reason was because of the alarming number of innocent people who have been sentenced to death. According to Feingold, since the reinstatement of the death penalty, 79 people have been released from federal Death Row because they were innocent. Racial disparity was another reason he cited because death was imposed more for defendants with white victims than those with black victims and a disproportionate number of minorities were sentenced to Death Row.

These attempts by criminal justice practitioners, such as Feingold and the ABA, and the subsequent call for a moratorium on Illinois' death penalty to rectify the problem of racial disparity and the innocent being convicted, were largely influenced by two sensational cases of wrongful conviction in Illinois that were uncovered by Northwestern University law and journalism teachers and their students. In May 1995, in a case dubbed the Ford Heights Four, four innocent African-American men were freed from Death Row after nearly 20 years, with the help of journalism professor David Protess. In November 1995, Rolando Cruz was exonerated and freed, thanks to the help of law school professor Lawrence Marshall, after spending more than 11 years on Death Row. Prosecutors in both of these cases were held accountable in a way not seen before, for their roles in the wrongful convictions. Not only were the wrongfully accused men compensated with money, the prosecutors and police officers involved in the Cruz case were brought to trial on criminal charges for railroading the defendant onto Death Row. Although they were acquitted, this was the first time, at least in Illinois, that prosecutors had been brought up on criminal charges and given more than what amounts to a slap on the hand for misconduct.

The more I learn, the more I know, the more troubled I become. . . There'll be no individuals executed in Illinois until we get it right.

—Gov. George H. Ryan of Illinois

In October 1998, the same professors organized the first National Conference on Wrongful Convictions and the Death Penalty where the wrongfully accused met with lawyers, activists, politicians, celebrities and actors to discuss the future of the death penalty. Suggested initiatives to combat the problem included: a proposed network of law schools throughout the U.S. organized to work on behalf of those wrongfully convicted; litigation to ensure media access to inmates; and a project to create a centralized database for recording allegations of official misconduct (Pat Tremmel, 1998). As a result of the conference, the Northwestern Center on Wrongful Convictions was created to continue the work started by the teachers and students of identifying and rectifying wrongful convictions. Relentless efforts by professors, criminal justice practitioners and the news media, coupled with the innocence of several condemned men, culminated in the January 2000 death penalty moratorium declared by Illinois Governor George Ryan. Illinois became the first U.S. state to suspend executions. Ryan's courageous though not apolitical decision was partly based on a January 1999 Chicago Tribune investigative series that examined all of Illinois' 285 capital cases. This report exposed flagrant bias and error on the part of prosecutors and incompetence on the part of the defense in these cases. It also exposed the lack of meaningful punitive sanctions leveled against prosecutors engaged in misconduct. In fact, many of the prosecutors who mishandled capital cases were eventually promoted to judgeships. The kinds of prosecutorial misconduct that was documented in the Tribune report included lying or allowing a witness to lie, withholding evidence that could exonerate the defendant and discriminating against African-Americans during jury selection. Governor Ryan's decision for the moratorium was also based on 13 wrongful convictions that had been made since Illinois reinstated the death penalty in 1977 (Armstrong and Mills, 2000), nine of which were exposed by the work of Marshall and Protess.

Not only did Governor Ryan place a moratorium on the Illinois death penalty, he also commissioned a task force of judges, lawyers and legislators, including former senator, Paul Simon, to investigate the death penalty. Some of the areas that are being addressed by the task force are: misconduct by police and prosecutors, incompetence and under-funding of defense attorneys, and unreliable testimony of jailhouse informants (Raoul Mowatt, 2000). Task force findings and recommendations will be presented in a final report that is scheduled to be completed sometime this fall. Five other states— Nebraska, Arizona, North Carolina, Maryland and Indiana—have also launched studies looking at issues ranging from the quality of defense lawyers to the overall functioning of the death penalty (Death Penalty Information Center, 2001).

To address the issue of inadequate defense in capital cases, the Illinois legislature created the Capital Crimes Litigation Act (725ILCS124) that appropriates funds to the State Treasurer to provide compensation for the defense of indigent defendants in capital cases. Appropriations were made available January 1,

2000. Other recent attempts to address the issues of unfair imposition and racial disparity in capital punishment include newly proposed legislation which could include a moratorium on the death penalty at federal and state levels, and investigations into the flawed capital punishment system in Texas, which has the highest execution rate in the country.

More than a decade after McCleskey, new legislation has been introduced that may have more of a chance at passing than any other legislation that has been proposed since the reinstatement of the death penalty. Recent bills introduced to Congress concerning the death penalty include The Truth Act (HR3233/S1700), The Innocence Protection Act (HR4167/S2690) and The National Death Penalty Moratorium Act (HR5237/S2463). All of these bills attempt to reduce the possibility of an innocent person being wrongfully convicted.

The Truth Act would amend the Federal Rules of Criminal Procedure allowing a defendant to motion for DNA testing which is not currently available at the trial (The Sentencing Project, 2000). The Innocence Protection Act allows Death Row prisoners to request DNA testing on current cases, gives all defendants access to experienced lawyers and requires judges to inform juries of the option to sentence defendants to life without parole (The Justice Project, 2000). The National Death Penalty Moratorium Act proposes a moratorium on the imposition of the death penalty at the federal and state levels in lieu of findings from a, to be created, National Commission on the Death Penalty, concerning its use and policies insuring its fairness (Sentencing Project, 2000). The modern debate on racial disparity in capital punishment has engendered a push for the kind of empirical research that lost its place in the debate after the 1987 McCleskey decision. The new call for research is much like that presented in McCleskey, in that the intent is to discern whether or not a significant and consistent pattern of racial discrimination in the imposition of the death penalty exists. At the time of the McCleskey decision, the U.S. Supreme Court required that the research show specific indications that McCleskey was discriminated against, which is akin to the kinds of evidence required in workforce allegations of racial discrimination. A recently conducted Justice Department study found stark racial and geographic disparities in federal death penalty prosecutions. Despite these findings, former Attorney General Janet Reno chose not to recommend a moratorium on federal executions (Mike Dorning, 2000).

An extensive report by the Texas Defender Service released in October 2000 on the criminal justice system in Texas has revealed serious flaws at every level. Some of the flaws cited include incompetent defense lawyers, misconduct by prosecutors at trial and meaningless review of cases by appellate courts (Steve Mills, 2000). The report affirms the presence of racism in the way prosecutors seek the death penalty and in their selection of juries, which are made up mostly of whites. It states that prosecutors are more likely to seek the death penalty against defendants with white victims than they are with defendants of black victims. This report comes just three months after the execution of Gary Graham in that state, a 36 year-old African-American man, placed on Death Row at 17, who swore he was innocent to the end. It's findings are uncannily similar to those found in the Baldus study that was used, to no avail, as part of the defense in McCleskey.

In Florida, the *St. Petersburg Times*, in a recent editorial, stated that it believes Florida needs a moratorium on the death penalty. It quotes former Florida Chief Justice Gerald Kogan as saying that "if [Jeb] Bush believes Illinois' problems are unique, 'he does not have an understanding of what is happening in the Florida system.' Kogan asserts that Florida probably executed 'two or three' innocent men during his 12 years on the high court. . ."

According to a February 12 article by the *Associated Press*, "On Feb. 5 the Virginia Senate unanimously backed legislation that would wipe out the 21-day limit it places on condemned. . . inmates to present new evidence of their innocence. The measure is before the House of Delegates." Virginia legislators are apparently taking a closer look at the death penalty. Since 1976, 81 people have been executed in Virginia, which is second only to 243 having been executed in Texas.

Many questions not only beg to be asked about the death penalty—they demand it. If racial disparity exists in capital punishment cases, it stands to reason that some of the African-Americans and other minorities that have been executed were innocent. How often have prosecutors and the criminal justice system gotten away with murder? Will investigations be made into the wrongful killings of innocent defendants? Of the disproportionate numbers of African-American men who are wasting away in prisons across the country for lesser crimes than homicide, how many have been wrongfully convicted? What will be done in terms of restitution and accountability of the criminal justice system for those who are unjustly accused, convicted and punished because of their race or the race of their victim? What steps can be taken to openly acknowledge and begin to break the cycle of racial discrimination and unequal punishment by the criminal justice system?

And, if ending a human life is treated with so little significance to many in the criminal justice system, what value do the same participants place on citizens accused of lesser crimes as they pass through the system? Hopefully, the inaction that was characteristic in the past has been replaced with a new sense of urgency that guarantees these problems will no longer be ignored.

This article is an excerpt of a longer paper written by Ms Martin.
For more information: E-mail: cmartin@icjia.state.il.ns

Resources:

American Bar Association. *Before We Take a Life, Give Justice,*Division of Media Relations and Public Affairs, http:// www.abanet.org/crimjust/home.html. Dec. 16, 1998.

Armstrong, Ken and Steve Mills. Ryan: *Until I Can Be Sure Illinois Is First State to Suspend Death Penalty*, Chicago Tribune, Feb. 1, 2000.

Baldus, David, George Woodworth and Charles Pulaski, Jr. 1983a. *Discrimination and Arbitrariness in Georgia's Charging and Sentencing System.* A preliminary report (unpublished manuscript, College of Law, University of Iowa).

Equal Justice and the Death Penalty: A Legal and Empirical Analysis. Boston: Northeastern University Press, 1990.

BRC-NEWS. *Feingold calls for Abolition of Federal Death Penalty*, http://www.blackradicalcongress.org, Nov. 15, 1999.

Death Penalty Information Center, http://www.deathpenaltyinfo.org.

Dorning, Mike. *Reno Won't Delay U.S. Executions*, Chicago Tribune, Dec. 12, 2000.

Furman v. Georgia (408 US 238 [1972]).

Gregg v. Georgia (428 US 153, 179-80 [1976]).

Gross, Samuel R. and Robert Mauro. 1989. *Death & Discrimination: Racial Disparities in Capital Sentencing.* Northeastern University Press, Boston.

The Justice Project. The Innocence Protection Act, http://justice.policy.net/, website accessed Oct. 24, 2000.

McCleskey v. Kemp (107 S. Ct. 1756 [1987]).

Mills, Steve. *Texas Criticized on Death Penalty*, Chicago Tribune, Oct. 18, 2000.

Mowatt, Raoul V. *Reform Suggestions Months Away for Panel Studying Death Penalty*, Chicago Tribune, Oct. 18, 2000.

The Sentencing Project News and Updates. Other Recent Death Penalty Developments, http://www.sentencingproject.org/, website accessed Oct. 24, 2000.

Tremmel, Pat. *Unprecedented Conference Features Scores of Former Death-Row Inmates and Experts Concerned with Wrongful Convictions*, Northwestern News, Oct. 5, 1998.

Policy Research Action Group
Loyola University Chicago
Lewis Towers, 10th Floor
820 N. Michigan Avenue
Chicago IL 60611

Nonprofit
U.S. Postage
PAID
Permit No.5539
Nonprofit
Chicago IL
60611

Read about Faith-Based Initiatives in Chicago

See the Fall 1998 Issue of PRAGmatics on our Web Page
or Phone Us for a Copy

Visit PRAG's Web Page at www.luc.edu/depts/curl/prag

PRAG
Core Advisory Group:

Stephen Alexander *Center for Urban Politics & Policy Chicago State University*
Brian Banks/Maureen Hellwig/Martin Mercado/*PRAG*
Mary Ann Bolton *Bolton Consulting*
Johnny Cole *Community Workshop on Economic Development*
Jennifer Connors *Uptown Community Development Corp.*
William Howard *West Humboldt Park Family & Community Development Center*
Katy Jacob *Woodstock Institute*
Claire Kohrman *West Side Health Authority*
John Lukehart *Leadership Council for Metropolitan Open Communities*
Art Lyons *Center for Economic Policy Analysis*
Mike Maly *Roosevelt University*
Cynthia Milsap/*The Night Ministry*
Sylvia Nebel *West Town Leadership United*
Phil Nyden/Lin Von Dreele *Center for Urban Research & Learning Loyola University*
Bill Peterman *Neighborhood Assistance Center Chicago State University*
Kim Richardson *Westside Business Improvement Association*
Alfred Saucedo *Citizens Information Service*
Janet Smith *College of Urban Planning and Public Affairs University of Illinois Chicago*
Clinton Stockwell *Chicago Metropolitan Center*
Bernice Taylor *Egan Urban Center DePaul University*