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CRIME CONTROL IN NEW YORK: TWO STRATEGIES

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The New York City police continue to be confronted by the double helix of severe resource limitations and expanding levels of violent felony crime. The force is one-quarter smaller now than in 1975. In light of this dramatic shrinkage, it is not surprising that the FBI's index of major felony crime shows that in 1981 New York ranked twelfth on the list of major American cities, up from eighteenth in 1975, and, with respect to the crime of robbery, New York was third in 1981, up from fourth in 1975.¹ And yet, there are almost twice as many convicts in New York State prisons now than there were ten years ago.² Indeed, not only are our jails occupied to the absolute limit of their capacity, but every agency of our criminal justice system is strained to the margin of its resources. During the last two years, for example, our prosecutors have increased the felony indictment rate by almost thirty percent.³ But the volume of crime continues to outpace the capacity of the system to deal with it. In this maelstrom of institutional crisis, the huge preponderance (seventy-eight percent) of felony arrests made by police erode to misdemeanors or are dismissed outright in the arraignment and pre-indictment process.

In the face of this awful and tragic dilemma the police have adopted two crime control strategies. One approach seeks to augment arrest cases of career criminals. The other strategy seeks to stabilize neighborhoods with crime deterring patrols. In 1979 the New York police and District Attorneys undertook the design, testing and implementation of felony augmentation programs.

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¹ NEW YORK CITY POLICE DEPARTMENT, STATISTICAL REPORT: CRIME INDEX TRENDS (1981).

² NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES, ANNUAL REPORT (1981). For the first six months of 1982, however, the index felonies as a group declined by 5% and robberies declined by 9.2%.

³ NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES, ANNUAL REPORTS, NEW YORK STATE FELONY PROCESSING (1979 & 1981).

These felony augmentation programs are aimed at career criminals. Given its resource crisis, the Department cannot assign detectives to augment, or case-build, all or even most felony arrests. These arrests are usually made, *in media res*, by police officers whose primary function is not investigation, but patrol. Even if detectives could augment most felony cases, the beleaguered prosecutors and courts could not indict and try a substantially greater number of cases than they are now handling. And, of course, with no surplus jail space, even if the *average* felon, by whatever criteria one wished to define him or her, was routinely convicted of a felony, his or her incarceration for an appreciable period of time is not likely. The strategy of the Felony Augmentation Program, therefore, is to strengthen cases involving criminals who, because of their violent histories, most deserve to feel the focused and coordinated resources of both the police and the prosecutor. Through mutual definition by police and prosecutors of the target class of potential arrestees, indictment cases can be shaped in both pre- and post-arrest status to maximize evidentiary quality and ultimately secure more punitive sentences in both tried and plea bargained dispositions.

The central point of this policy is that the longer habitual felons are *in* prison, the fewer felonies they commit upon innocent citizens *in* society. The ultimate goal of the program is the strategic reduction of violent crime, over time, through the timely incarceration of persons who, by virtue of their criminal history, will predictably commit robberies or other crimes of violence while at liberty. Collectively, this class of career criminals, though a relatively small percentage of the criminal population, is thought to commit a disproportionately high percentage of violent street crime. Broad research in a number of quarters has validated this proposition. Marvin Wolfgang of the University of Pennsylvania, for example, studied a group of 10,000 men born in Philadelphia in 1945 who, at the time of his review, had committed 10,214 reported crimes. Slightly more than 600 (six percent) of this group had a record of five or more crimes each, and were responsible for fifty percent of all offenses.⁴ Furthermore, the Institute for Law and Social Research concluded in a study of Manhattan offenders that about six percent of the total offender population commits twenty-eight percent of felonies and serious misdemeanors. According to the Institute's analysis, 3,150 career criminals committed 107,000 of such offenses.⁵ The Rand Corporation studied a group of 624 inmates of California State prisons and found that one-quarter of the group reported committing fifty-eight percent of the group's armed robberies, sixty-five percent of its burglaries, and

⁴ Wolfgang, *Crime in a Birth Cohort*, 1973 ALDINE CRIME & JUST. ANN. 109.

⁵ INSTITUTE FOR LAW AND SOCIAL POLICY, CURBING THE REPEAT OFFENDER: A STRATEGY FOR PROSECUTORS (1977).

forty-six percent of its assaults. The study also revealed that the eight percent of the most criminally active committed over sixty crimes a year.⁶

It is surprising that New York City's criminal justice system did not earlier seize upon this plan to focus on career criminals as the only coherent and sensible response to rising crime and diminishing resources. Two accounts from the New York press illustrate this failure to deal with the career criminal problem. First, an article by Barbara Basler entitled, *Mugger's Tale: He Prowled Without Fear Through a Fearful City*,⁷ describes a boy named H.W. From the time H.W. was fifteen years old, he had made hundreds of dollars a night prowling the city streets from Times Square to the upper reaches of Park Avenue, robbing everyone from men with attache cases to clerks in small shops. The young man had little to fear, even though he was arrested eleven times and convicted five times. He was allowed to walk out of the court room again and again. He made it clear that while the city feared him, he had very little fear of the city or the massive system it had set up to deter, try and punish him. Second, Neal Hirschfeld wrote in *Turnstile Justice Aiding Subway Criminals?*,⁸ about A.S., one of a group of 500 offenders who City Transit Police feel are responsible for forty percent of all subway crime. In February, 1979 he had a record of sixty prior arrests. By October, 1980 he had been arrested nine more times. The stiffest sentence given to him within that year and a half was ninety days.

This is the environment in which the Department's Felony Augmentation Program has been developed. In March, 1980 a pilot project was established in Manhattan which created a special Career Criminal Command responsible for identification of career criminals currently at large in the community who, by virtue of their established criminal history records, were appropriate targets for the aggressive use of the concentrated resources of police and prosecutors.

The Career Criminal Command develops biographical files on individuals with serious prior robbery or violent crime histories. These files contain up-to-date criminal history records, prior arrest reports, modus operandi information, history of weapons use, or acts of violence and threat utterance. Upon arrest of a target, this file is transmitted to the District Attorney to assist in the prosecution of the current arrest, to help the court in shaping bail decisions, and to facilitate priority handling of the case. The Command is responsible for immediate post-arrest

⁶ M. PETERSON & H. BRAIKER, WHO COMMITS CRIMES: A SURVEY OF PRISON INMATES (1981).

⁷ Basler, *Mugger's Tale: He Prowled Without Fear Through a Fearful City*, N.Y. Times, Nov. 17, 1980, § II, at 1, col. 1.

⁸ Hirschfeld, *Turnstile Justice Aiding Subway Criminals?*, N.Y. Daily News, Oct. 20, 1980.

case building of arrested target cases, public surveillance and apprehension of selected targets, and post-arraignment investigations as needed or when the prosecutor requests assistance.

Furthermore, the Command provides for follow-up evaluations of the Program through routine daily interaction between the police detectives and the assistant prosecutors assigned to the Manhattan District Attorney's Career Criminal Bureau, and, periodically, through more formal evaluations. The effectiveness or deficiencies in the Program are measured by the number of successful prosecutions that ensue, coupled with meaningful periods of incarceration for those convicted.

A target list of 1,100 career criminals was established as the centerpiece of the Program. The criterion for inclusion on the list was either two arrests for robbery or arrests for one robbery and one other violent felony in Manhattan, within thirty-six months of each other. The age requirement for those on the list was sixteen to thirty-five. In the event of the routine arrest of any target by the patrol force, senior detectives immediately assume investigative responsibility for the case. These detectives are assigned round-the-clock at the Central Booking facility and within an hour of the arrest are seeking more witnesses, bringing forensic units to the scene, conducting searches, reviewing unsolved cases in light of the target's modus operandi, transmitting his biographical file to the District Attorney and conferring with police counsel to avoid legal flaws in the case. In addition to augmentation efforts which are reactive to a regular patrol unit's fortuitous arrests of targets, the Program also contains a proactive element, in that those on the list who are most dangerous are placed under police surveillance in order to apprehend them in the act of committing a violent crime.

A conference of police executives, prosecutors and judges assessed the results of the first nine months of the pilot project in March, 1981. Of the 1,100 targeted individuals, fifty-nine percent had been arrested.⁹ Of those cases resolved:

(1) the indictment rate was fifty-nine percent as compared to twenty percent citywide in all felony cases;

(2) felony convictions on disposed indictments were eighty-nine percent versus eighty percent citywide in all felony cases;

(3) there was an incarceration rate of ninety-four percent compared to seventy percent for all New York City felony cases;

(4) perhaps the most significant impact of the program is that the felony convictions the program secured were first convictions for fifty-six percent of the target cases, and that fifty percent of the convicted felons

⁹ NEW YORK CITY POLICE DEPARTMENT, FELONY AUGMENTATION PROGRAM (1981).

received their first jail sentence in their criminal careers.¹⁰

A criminal history review of the first 235 targets prosecuted reveals an average of twelve previous arrests per target (seven felonies and five misdemeanors) and an average prior conviction rate of .4 felony offenses and four misdemeanor offenses. The *aggregate* amount of time served for the average target, with twelve previous arrests, was less than three months. In the 235 Program cases under review, the jail sentences imposed in eighty-six percent of the cases exceeded all previous combined jail sentences imposed upon the defendant.¹¹

Based upon these preliminary findings, the Department in the fall of 1981 established felony augmentation units in all boroughs of the City. The Manhattan list of 1,100 has become a citywide list of almost 8,000. A computer system called C.A.T.C.H. (Computer Assisted Terminal Criminal Hunt) is programmed through a complex coding procedure to produce, from data in tens of thousands of arrest cases since 1978, patterns of behavior, crime situs, physical characteristics, type of victims, use of accomplices and a variety of other types of relevant information. This process facilitates the linking of listed targets to pending crime complaints where no arrests have been made.

The key criterion for inclusion on the target list remains robbery arrests rather than robbery convictions. This will shortly change. The New York State Division of Criminal Justice Services is working with the Department to produce a conviction-based list. This is a complex task. During the last ten years, 110,748 persons were arrested at least once for robbery in New York City. Of these, 33,907 are convicted felons who are therefore subject, by statute, to mandatory sentences of increased severity if convicted of another felony. There are 22,108 in the two or more robbery arrest category (the Program's criterion), and 20,380 of these are convicted felons. In this universe of robbery arrestees, there are over one thousand individuals who have been arrested at least three times for robbery and have three or more robbery convictions. It is not yet clear how many of these potential targets are currently in prison, or in which age cohorts they are. Highly relevant juvenile history is not included because of legal constraints. When the target list is converted to a conviction base, potential severity of future sentences will be substantially strengthened.

Recognizing the value of the Felony Augmentation Program, the New York State Legislature in June 1981 provided \$16 million for police and prosecutors to begin institutionalizing such programs throughout the State. The Manhattan pilot project demonstrates that the Felony

¹⁰ *Id.*

¹¹ *Id.*

Augmentation Program is in theory and practice an effective operational construct for dealing with rampant violent crime in a period of severe resource constraints. The career criminal concept, upon which the Program is predicated, provides a viable and realistic standard against which the police, prosecutor and judges can measure the system's crime control effectiveness.

It is not yet possible to say whether the Program will be an effective device for the strategic reduction of crime over time. But, given the dramatically improved rate of survivorship of these felony cases as they proceed through the system, the comparatively more severe sanctions imposed after conviction, the limitation of grade slippage in plea bargaining, and the enhanced evidentiary quality detectives in the Program achieve, there is a clear indication that the experience of this pilot project should shape the crime control policies of the criminal justice system.

Beyond the critical necessity of building better cases where crimes have already been committed, the problem of how best to deploy patrol resources to deter crime before it happens is the enduring problem for police administrators. In 1978 the New York police established a formal program of neighborhood stabilizing foot patrols to supplement radio car patrols. As in most large cities, radio car patrols are dispatched by computer when the public notifies the police of emergencies. The Neighborhood Stabilization Units (N.S.U.'s) have reestablished visibility and human contact between officers and citizens in their homes, shops and on the street.

The Neighborhood Stabilization Unit patrol concept was introduced in the Department on April 13, 1978. The initial intent was to enhance the ability of the Department to prevent street crime and to provide a high-profile uniform presence in each community of our City. This was accomplished by the assignment of 670 re-hired police officers and ninety precinct anti-crime officers to nineteen N.S.U.'s citywide. Each unit was roughly congruent with and under the direction and control of borough commands. The N.S.U. officers, along with a sufficient number of experienced supervisors, performed uniform foot patrol to accomplish the twin goals of decreasing street crime and creating an atmosphere of safety in neighborhoods throughout the City. The nineteen new units ranged in size from nineteen to fifty-nine officers each and covered from three to six precincts in their respective boroughs. Community and business leaders immediately hailed the program for returning preventive foot patrols to the streets of New York.

In November, 1979 the Department hired its first class of *new* recruits since 1975. Until 1979 all hiring had been of seasoned police officers furloughed during the fiscal crisis, and the policy of placing them

in N.S.U.'s as replacements for incumbents posed no difficulties. With the return to a systematic recruit hiring and training program, the N.S.U.'s offered the Department the opportunity to provide additional training and field experience to the student officers under controlled conditions, while at the same time insuring these units a steady stream of youthful and energetic members. Each graduating class bumped the preceding class from N.S.U.'s to precinct assignment. Field Training Officers were assigned to each unit to train and evaluate the students' performance and probationary periods were lengthened to eighteen months. Through these and other modifications the original N.S.U. concept of directed foot patrol to prevent crime and provide police visibility was expanded to include that of a continuing educational experience for new officers under the watchful eye of training officers. Currently, there are 967 recruits assigned to the N.S.U.'s under the supervision of 239 Detective Field Training Officers, each unit now ranging in size from twenty-nine to eighty-five officers.

N.S.U. patrol differs from precinct assignment in several ways. Being under the direction and control of a Zone Inspector, the units represent a highly mobile reserve, either individually or in combination, which may be utilized to respond to emergency situations without affecting precinct operations. Since the officers are still under the direct supervision of an experienced training officer, they gain confidence more rapidly and mistakes are corrected on the spot. Tenure in N.S.U.'s is strictly limited to the interim period between one graduating class and another, providing a steady stream of officers unjaded by the routine of patrol. The enthusiasm and trim, professional appearance of such officers create a most favorable public impression.

Productivity, as measured by the usual yardsticks of arrests, summonses and aided cases, cannot adequately reflect the total effect these officers produce. The program emphasizes learning, crime prevention and generating a positive feeling of security on our streets for the citizenry. The wide acceptance of these units, within and without the Department, confirms the program's worth. The Police Academy values the units as a superb training vehicle and patrol commanders are pleased to have available a mobile reserve not tied directly to emergency computer dispatched service calls. Operationally, these officers provide the non-emergency police functions often neglected in patrol precincts because of manpower shortages. Most importantly, these officers make clear to the public the Department's commitment to restoring a feeling of safety and security to all the streets of the City.

But crime on the streets of our neighborhoods can be reduced only through a partnership of police and residents. The cruelest aspect of urban crime is its devastating and disproportionate impact upon the

poor and the minority citizens who are the most vulnerable, emotionally and economically, to the social and personal disruptions of endemic criminal behavior. A preponderance of the major offenses in our cities occur in what we euphemistically call the "inner city."

The problem of inner city crime is graphically evident when one looks at the geography of violent crime in New York. In 1980, the five police precincts in the City with the highest homicide rates were located in Bedford-Stuyvesant or its environs, Harlem and the South Bronx. The five police precincts with the highest rates of forcible rape were located in Bedford-Stuyvesant or its environs, the South Bronx and South Jamaica.

Four of the five precincts with the highest felonious assault rates were located in Bedford-Stuyvesant or its environs and the South Bronx. The three precincts in Bedford-Stuyvesant or its environs were in second through fourth place on the robbery list. If the two precincts in the Times Square area are excluded as *sui generis*, three of the five precincts with the highest overall felony rate covered some of the City's worst ghetto or marginal neighborhoods. These statistics become even more distressing when one recognizes the widespread tendency, born of despair, not to report crimes in these areas.

In Harlem's 32nd Precinct, a recent study showed that over a five-year period 430 men, women and children had been shot, stabbed or beaten to death. In one twelve-month period, a single street corner, 147th Street and Eighth Avenue, was the scene of fifty shootings and eighteen murders. The handgun, of course, is everywhere—in the hands of children barely into their teens, under the counters of terrified grocery and candy store owners and in the pockets and belts of gunmen who plunder the meager resources of these neighborhoods and the marginal lives of those who live there.

Heroin addiction is a primary scourge of these beleaguered neighborhoods, scarred by the enduring dispensations of the street pusher as ubiquitous and regular as the gas lamp lighter of the nineteenth century, with terrible injury done to families and children in his wake. This enemy within, this not so invisible fifth column at the street level, posted at blazing trash baskets in the cold of winter and on any random corner in the sunshine of summer, is the death of these communities.

Central to the success of crime control efforts is the development of solidarity between the residents of such neighborhoods and the police officers who patrol their streets. This is the indispensable element that leads people to report crime when it occurs, inspires them to support the police in the investigation and arrest of those responsible for crime, and encourages them to be public witnesses in the prolonged proceedings

which formally follow an arrest. More significantly, solidarity between policeman and citizen in these precincts generates pride in the community, hope for rescue and deliverance and confident support in conditions that are sometimes terrifying and almost always depressing. Solidarity dissipates suspicion and augments trust. It blurs racial and social differences in the face of common danger. It enlists the best instincts of civilian and officer in the joint service of human values and their preservation at the most fundamental level.

Survival is at stake for the people who suffer so grievously, and for the police officer who will almost surely be fired upon by the desperate felon seeking to make good his escape after victimizing a child, an old woman or a shopkeeper. How truly sad it is, and indeed strange, that such officers are often seen, and sometimes see themselves, as cadres of occupation, conducting alien patrols in hostile environments. Under such conditions, a garrison mentality can and does spring up, and renders hoped for solidarity between police and citizenry an illusion of good intentions and a casualty of fear and danger. As a consequence, the criminal becomes emboldened, racial animosities intensify and conditions in these neighborhoods worsen.

Faced with the suffering and despair of so many who have experienced violent crime, what should our policy be? Our policy, public and private, must foster those human qualities which alone can redeem our neighbors from the desperate condition in which they find themselves: solidarity, courage and resourcefulness. The policeman on the beat and the citizen on the street, or in his or her home, cannot be safe without each other. The one cannot secure justice without the other. Each, alone, is weak and vulnerable, but together they are a force to be reckoned with.