

THE CRIMINAL JUSTICE SYSTEM

SUPPLEMENTAL READER

FALL 2005

NORTHERN ILLINOIS UNIVERSITY



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READING #1

THE NATION'S TWO CRIME MEASURES

U.S. DEPARTMENT OF JUSTICE

NOVEMBER 1995, NCJ-122705

The U.S. Department of Justice administers two statistical programs to measure the magnitude, nature, and impact of crime in the Nation: the Uniform Crime Reporting (UCR) Program and the National Crime Victimization Survey (NCVS). Each of these programs produces valuable information about aspects of the Nation's crime problem. Because the UCR and NCVS programs are conducted for different purposes, use different methods, and focus on somewhat different aspects of crime, the information they produce together provides a more comprehensive panorama of the Nation's crime problem than either could produce alone.

UNIFORM CRIME REPORTS

FEDERAL BUREAU OF INVESTIGATION (FBI)

The FBI's UCR program, which began in 1929, collects information on the following crimes reported to law enforcement authorities: homicide, forcible rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, and arson. Arrests are reported for 21 additional crime categories.

The UCR data are compiled from monthly law enforcement reports or individual crime incident records transmitted directly to the FBI or to centralized state agencies that then report to the FBI. Each report submitted to the UCR Program is examined thoroughly for reasonableness, accuracy, and deviations that may indicate errors. Large variations in crime levels may indicate modified records procedures, incomplete reporting, or changes in a jurisdiction's boundaries. To identify any unusual fluctuations in an agency's crime counts, monthly reports are compared with previous submissions of the agency and with those for similar agencies.

In 1994, law enforcement agencies active in the UCR Program represented approximately 249 million U.S. inhabitants--96 percent of the total population.

The UCR Program provides crime counts for the Nation as a whole, as well as for regions, states, counties, cities, and towns. This permits studies among neighboring jurisdictions and among those with similar populations and other common characteristics.

UCR findings for each calendar year are published in a preliminary release in the spring, followed by a detailed annual report, *Crime in the United States*, issued in the following calendar year. In addition to crime counts and trends, this report includes data on crimes cleared, persons arrested (age, sex, and race), law enforcement personnel (including the number of sworn officers killed or assaulted), and the characteristics of homicides (including age, sex, and race of victims and offenders, victim-offender relationships, weapons used, and circumstances surrounding the homicides). Other special reports are also available from the UCR Program.

Following a 5-year redesign effort, the UCR Program is currently being converted to the more comprehensive and detailed National Incident-Based Reporting System (NIBRS). NIBRS will provide detailed information about each criminal incident in 22 broad categories of offenses.

NATIONAL CRIME VICTIMIZATION SURVEY BUREAU OF JUSTICE STATISTICS (BJS)

The Bureau of Justice Statistics' NCVS, which began in 1973, provides a detailed picture of crime incidents, victims, and trends. After a substantial period of research, in 1993 the survey completed an intensive methodological redesign. The redesign was undertaken to improve the questions used to uncover crime, update the survey methods, and broaden the scope of crimes measured. The redesigned survey collects detailed information on the frequency and nature of the crimes of rape, sexual assault, personal robbery, aggravated and simple assault, household burglary, theft, and motor vehicle theft. It does not measure homicide or commercial crimes (such as burglaries of stores).

U.S. Census Bureau personnel interview all household members at least 12 years old in a nationally representative sample of approximately 49,000 households (about 101,000 persons). Households stay in the sample for 3 years and are interviewed at 6-month intervals. New households rotate into the sample on an ongoing basis.

The NCVS collects information on crimes suffered by individuals and households, whether or not those crimes were reported to law enforcement. It estimates the proportion of each crime type reported to law enforcement, and it summarizes the reasons that victims give for reporting or not reporting.

The survey provides information about victims (age, sex, race, ethnicity, marital status, income, and educational level), offenders (sex, race, approximate age, and victim-offender relationship), and the crimes (time and place of occurrence, use of weapons, nature of injury, and economic consequences). Questions also cover the experiences of victims with the criminal justice system, self-protective measures used by victims, and possible substance abuse by offenders. Supplements are added periodically to the survey to obtain detailed information on topics like school crime.

The first data from the redesigned NCVS were published in a BJS bulletin in June 1995. BJS publication of NCVS data includes Criminal Victimization in the United States, an annual report that covers the broad range of detailed information collected by the NCVS. BJS publishes detailed reports on topics such as crime against women, urban crime, and gun use in crime. The NCVS and UCR data files are archived at the National Archive of Criminal Justice Data at the University of Michigan to enable researchers to perform independent analysis.

COMPARING UCR AND NCVS

Because the NCVS was designed to complement the UCR program, the two programs share many similarities. As much as their different collection methods permit, the two measure the same subset of serious crimes, defined alike. Both programs cover rape, robbery, aggravated assault, burglary, theft, and motor vehicle theft. Rape, robbery, theft, and motor vehicle theft are defined virtually identically by both the UCR and NCVS. (While rape is defined analogously, the UCR Crime Index measures the crime against women only, and the NCVS measures it against both sexes.)

There are also significant differences between the two programs. First, the two programs were created to serve different purposes. The UCR Program's primary objective is to provide a reliable set of criminal justice statistics for law enforcement administration, operation, and management. The NCVS was established to provide previously unavailable information about crime (including crime not reported to police), victims, and offenders.

Second, the two programs measure an overlapping but non-identical set of crimes. The NCVS includes crimes both reported and not reported to law enforcement. The NCVS excludes, but the UCR includes,

homicide, arson, commercial crimes, and crimes against children under age 12. The UCR captures crimes reported to law enforcement, but it excludes sexual assaults and simple assaults from the Crime Index.

Third, because of methodology, the NCVS and UCR definitions of some crimes differ. For example, the UCR defines burglary as the unlawful entry or attempted entry of a structure to commit a felony or theft. The NCVS, not wanting to ask victims to ascertain offender motives, defines burglary as the entry or attempted entry of a residence by a person who had no right to be there.

Fourth, for property crimes (burglary, theft and motor vehicle theft), the two programs calculate crime rates using different bases. The UCR rates for these crimes are per-capita (number of crimes per 100,000 persons), whereas the NCVS rates for these crimes are per-household (number of crimes per 1,000 households). Because the number of households may not grow at the same rate each year as the total population, trend data for rates of property crimes measured by the two programs may not be comparable.

In addition, some differences in the data from the two programs may result from sampling variation in the NCVS and from estimating for nonresponse in the UCR. The NCVS estimates are derived from interviewing a sample and are therefore subject to a margin of error. Rigorous statistical methods are used to calculate confidence intervals around all survey estimates. Trend data in NCVS reports are described as genuine only if there is at least a 90% certainty that the measured changes are not the result of sampling variation. The UCR data are based on the actual counts of offenses reported by law enforcement jurisdictions. In some circumstances, UCR data are estimated for nonparticipating jurisdictions or those reporting partial data.

Each program has unique strengths. The UCR provides a measure of the number of crimes reported to law enforcement agencies throughout the country. The UCR's Supplemental Homicide Reports provide the most reliable, timely data on the extent and nature of homicides in the Nation. The NCVS is the primary source of information on the characteristics of criminal victimization and on the number and types of crimes not reported to law enforcement authorities.

By understanding the strengths and limitations of each program, it is possible to use the UCR and NCVS to achieve a greater understanding of crime trends and the nature of crime in the United States. For example, changes in police procedures, shifting attitudes towards crime and police, and other societal changes can affect the extent to which people report and law enforcement agencies record crime. NCVS and UCR data can be used in concert to explore why trends in reported and police-recorded crime may differ.

Apparent discrepancies between statistics from the two programs can usually be accounted for by their definitional and procedural differences or resolved by comparing NCVS sampling variations (confidence intervals) of those crimes said to have been reported to police with UCR statistics.

For most types of crimes measured by both the UCR and NCVS, analysts familiar with the programs can exclude from analysis those aspects of crime not common to both. Resulting long-term trend-lines can be brought into close concordance. The impact of such adjustments is most striking for robbery, burglary, and motor vehicle theft, whose definitions most closely coincide.

With robbery, annual victimization rates based only on NCVS robberies reported to the police are possible. It is also possible to remove from analysis UCR robberies of commercial establishments such as gas stations, convenience stores, and banks. When the resulting NCVS police reported robbery rates are compared to UCR non-commercial robbery rates, the results reveal closely corresponding long-term trends.

READING #2

AS CRIME FALLS, PRESSURE RISES TO ALTER DATA

BY: FOX BUTTERFIELD

AUGUST 3, 1998 © NEW YORK TIMES

Senior police officials around the nation are concerned that the sharp drop in crime in recent years has produced new pressure on police departments to show ever-decreasing crime statistics and might be behind incidents in several cities in which commanders have manipulated crime data.

So far this year, there have been charges of falsely reporting crime statistics here, in New York, Atlanta and Boca Raton, Fla., resulting in the resignation or demotion of high-ranking police commanders.

In Boca Raton, for example, a police captain, with the knowledge of the police chief, systematically downgraded property crimes like burglaries to vandalism, trespassing or missing property, reducing the city's felony rate by almost 11 percent in 1997.

Experts say they believe these incidents do not mean that the nationwide drop in crime since 1992 is illusory.

But they are beginning to question whether politicians seeking office, the news media and the public should attach so much importance to the annual, and sometimes monthly, release of the latest crime figures.

In Philadelphia, the city has had to withdraw its crime figures from the national system maintained by the Federal Bureau of Investigation for 1996, 1997 and for at least the first half of 1998 because of underreporting and downgrading crimes into less serious incidents and sloppiness.

Because of Philadelphia's size -- it accounts for 2 percent of all killings in the United States -- the removal of its numbers could skew the crime rate for the whole nation. But Harlan McEwan, a Deputy Assistant Director of the F.B.I., said he was confident the agency had statistical methods to adjust the national rate even without Philadelphia's figures. The 1997 crime figures will be published this fall.

The impact on Philadelphia will be more telling. "I can guarantee you my crime is going to be way up this year," said John F. Timoney, who took over as Philadelphia's Police Commissioner in March. "But I don't care. If we are going to get this right and reduce crime, we have to start with accurate statistics."

Gil Kerlikowske, the former Police Commissioner of Buffalo, said the pressure on police departments to prove their performance through reduced crime figures, with promotions and pay raises increasingly dependent on good data, "creates a new area for police corruption and ethics," along with the traditional problems of brutality and payoffs.

Mr. Kerlikowske suggested that there had been too much focus on the eight major crimes counted by the bureau in its crime index: the violent crimes of murder, rape, robbery and aggravated assault along with the property crimes of burglary, theft, car theft and arson.

"There is too little focus on lesser crimes, which are not counted by the F.B.I.," Mr. Kerlikowske said, "like drug sales, prostitution and graffiti, which are more meaningful to the overall quality of life because there is so much more of them."

A common thread running through many of the incidences of police officials altering crime statistics has been that police commanders have downgraded felonies like aggravated assault and burglary, which are reported to the F.B.I., to misdemeanors like vandalism that are not reported to the bureau.

One of the first acts by Mr. Timoney, who was a career police officer in New York, where he helped pioneer the city's highly regarded computerized crime statistics system, was to set up a quality assurance division. It soon discovered that serious crimes throughout Philadelphia were being underreported by about 8 percent, he said in an interview. Much of this was the result of "stupidity or carelessness and was not intentional," Mr. Timoney said.

But Mr. Timoney discovered this month that the youngest district commander in the city, Capt. Daniel Castro, who had an excellent reputation for introducing community policing and aggressively eliminating drug dealers from the streets, had greatly exaggerated his reports of crime reduction.

Captain Castro reported an 80 percent drop in serious crime in his district over the past year. But a review found that Captain Castro had downgraded many robberies, burglaries and thefts to cases of "missing property." Captain Castro was removed from his command.

In New York, Kenneth Donohue, the head of the police department's Transportation Bureau, was forced to resign this year after Police Commissioner Howard Safir said he had presided over the bureau at a time when commanders carried out an elaborate scheme to reclassify incidents on the subway as street crimes. Mr. Safir said the manipulation had gone on for years and had underestimated crime in the subways by about 20 percent, but it had not affected New York City's overall crime rate because the crimes had been shifted to the streets and were reported by the regular precincts.

Problems have occurred at the precinct level as well. In 1996, the commander of the 41st Precinct, which covers Hunts Point in the Bronx, was forced to resign after he was charged with reclassifying a number of crimes as misdemeanors instead of felonies in an effort to make the decline in crime in the precinct more dramatic.

In the past, police officers here and in many other cities across the country had not attached much importance to collecting crime statistics beyond the need to report them to the F.B.I., Mr. Timoney said, and most commanders were more interested in issues like narcotics, training or forestalling corruption.

This casual attitude toward statistics, Mr. Timoney said, also stemmed from a "belief by the average police chief, in their heart of hearts, that they couldn't do anything about crime because they couldn't affect the root causes of crime." This was an idea that was popularized by academic criminologists in the 1970's and 1980's.

The success of New York in significantly reducing crime, with similar successes in cities from Boston to Houston, changed that old-fashioned mindset, Mr. Timoney said. Statistics have become as important a tool to the police as good accounting is to corporate executives.

But the change to placing a premium on keeping accurate statistics in a big police department is not easy. For years, the Philadelphia police counted crimes not when they occurred, but when officers logged them into their records, sometimes months later, meaning that some crimes that took place in one year were not reported to the F.B.I. until the next year, throwing off the national crime rate.

In Boca Raton, tips from low-level police officers led to an investigation by the Palm Beach County State Attorney's office last month that found that Capt. Jim Duke had systematically downgraded felonies, mostly property crimes, to misdemeanors "for the direct purpose of not having to report these crimes" to the F.B.I. In 1997, Captain Duke, who was later forced to resign, downgraded 385 felonies, 11 percent of the city's total of 3,635 serious crimes.

In most of the cases, Captain Duke personally reclassified the crimes by writing supplemental reports claiming new information showed that they were not as serious as originally recorded, according to the prosecutor's report. In one instance, Captain Duke downgraded a home burglary to vandalism, though it had

occurred while the residents slept at 1 A.M. and someone broke in through a kitchen window and stole a purse.

In another incident originally labeled a burglary, a thief stole \$5,000 in jewelry and did more than \$25,000 in damage, the prosecutor said, but Captain Duke also reclassified the case as vandalism.

The prosecutor's office found that the "prevailing philosophy" at the Boca Raton Police Department regarding report classifications, from at least the level of Captain Duke down to the officer on the beat, was that the reports "should be classified at the lowest level possible."

The city's police chief, Peter Petracco, initially denied knowing about the changes, but was also forced to resign after it was discovered he had lied, said the city manager, Donna Dreska.

Debra Shannon, a spokeswoman for the Boca Raton Police Department, said the motives of the two in manipulating the crime report were still unknown. The prosecutor's investigation said the two had no criminal intent. An internal city police investigation is continuing.

In Atlanta, the City Council and the Georgia Bureau of Investigation are investigating accusations by a deputy police chief, Louis Arcangeli, that two other deputy chiefs pressured detectives and officers to write off unsolved crimes and misclassify violent crimes as nonviolent when preparing the city's crime statistics for 1996, the year the Olympics took place there. In a series of memorandums to Police Chief Beverly Harvard of Atlanta, Deputy Chief Arcangeli warned that the number of crimes reported as "unfounded," or without basis after an investigation, jumped 78 percent from 1995 to 1996.

Chief Harvard demoted Deputy Chief Arcangeli to captain after he wrote the memorandums, which were leaked to journalists, though she has insisted his demotion had nothing to do with the dispute.

Captain Arcangeli's lawyer, Bill McKenney, said the Atlanta Police Department's crime reporting procedure created ample room for the problem. Unless a crime is serious, like murder or rape, Mr. McKenney said, detectives do not investigate it in person but instead send postcards to the victims.

Alfred Blumstein, a criminologist at Carnegie Mellon University, said one reason to continue to have confidence in overall national crime figures reported by the police to the F.B.I. is that the downward trend reported had been mirrored by the country's other statistical program to measure crime, the National Crime Victimization Survey. Begun in 1973 as a check on the F.B.I. data, it measures crimes by a survey of 49,000 households.

The danger of sloppy reporting by the police, or outright fraud, is the reason most criminologists focus on murders as the most accurate crime statistic, Professor Blumstein said. It is hard to hide bodies.

An investigation at the Boca Raton Police Department found that a police captain downgraded reports of felonies to those of misdemeanors. Because only felony crimes are reported to the F.B.I.'s Uniform Crime Reporting Program, this helped make Boca Raton appear significantly safer than it really was in national crime statistics.

READING #3

THE FALLING CRIME RATE

KOCH CRIME INSTITUTE

ABSTRACT

The consensus on the falling crime rate is that there is no singular event, policy implementation, or social action that can account for the decrease during the last six years. Individuals and organizations assessing the cause and implications of this decline are arriving at a unified theory attributing collective efforts and change as the reason or reasons.

Again there exists a consensus that the effective measures require further examination and definition, but that the current effect is temporary and will dissipate with the aging of the pre-teen and teen generation currently impacting the nation's juvenile justice systems.

BACKGROUND

The media frequently make reference to America's declining crime rate. According to the Federal Bureau of Investigation's "Uniform Crime Reports," the crime index rate fell for the fifth straight year in 1996, and is down 10% from the rate of 1992.¹ The FBI's Uniform Crime Reporting Program is a city, county, and state law enforcement program that provides a nationwide view of crime based on the submission of information from local law enforcement agencies about crimes reported to police. The index includes several offenses: (a) Murder and Nonnegligent Manslaughter, (b) Forcible Rape, (c) Robbery, (d) Aggravated Assault, (e) Burglary, (f) Larceny-Theft, (g) Motor Vehicle Theft, and (h) Arson.

This reported decline is good news, but the reason for it is not understood. Surprisingly, no one seems to want to take credit for the decline. Crime is an issue similar to the weather: It is reportable, its effects are observable, everyone talks about it, a few try to predict it, and no one wants to claim responsibility for it. However, just as we now know a few things about what causes changes in the weather — some of which we can intentionally affect and some we cannot — we also know about crime.

DISCUSSION

PERSONAL RESPONSIBILITY

Do domestic violence initiatives such as hotlines, shelters, and education, as well as victims' assistance organizations and programs, have an impact in raising the awareness and ability to prevent these crimes?

The United States Department of Justice reports that 48% of all victims of violence in 1996 knew their offender. Seven out of 10 robberies were committed by strangers, compared to three out of 10 of all rapes/sexual assaults. Just over one-third of all rapes/sexual assaults were committed by nonrelatives well-known to the victim. Of murder victims, 45% were related to or acquainted with their assailants, 15% were murdered by strangers, and almost 40% had an unknown relationship to their murderer.²

Despite these statistics, the number of rape, sexual assault, robbery, aggravated assault, and simple assault victimizations at the hands of an intimate acquaintance declined from a 1992 high of 1.1 million to 840,000 in 1996. Bureau of Justice Statistics Director Jan Chaiken noted, "The victimization rates in 1996 are the lowest recorded by the National Crime Victimization Survey since its inception in 1973."³

The rise in assistance and awareness programs may have significantly contributed in helping potential victims remove themselves from dangerous situations.

SENTENCING POLICIES AND INCARCERATION

Robbery, theft, assault, burglary, and motor vehicle theft rates continue to decline. Is there a relationship between these types of crimes and those who are now incarcerated?

It is generally recognized that a minority of criminals commit a majority of the crimes; therefore, one offender may be responsible for multiple incidents within a type of crime. In defending the California legislation referred to as "Three Strikes You're Out," Governor Pete Wilson stated that two-thirds of violent crime is perpetrated by less than 10% of convicted felons. He further related that during the first three years of the law, 2,900 violent criminals in California were imprisoned, while overall crime dropped 20%, with violent crime down 9.3% and property crimes down 14%.⁴

Most states have initiated tougher sentencing for repeat offenders and for crimes that have a link to the commission of additional criminal acts. Since 1990, the number of people in custody has risen more than 577,100, or 1,708 inmates per week. Today, more than 1.7 million individuals are confined in state, federal, and local correctional facilities.⁵ As the repeat offenders are taken off the streets, it is reasonable to expect that the repeatable crimes should decline.

Perhaps the state of Texas provides an example of this. In the 1980s, crime in Texas jumped 29%, creating a ratio of eight crimes for every 100 citizens. During the 1990s, after the creation of additional prison space and a concerted effort to fill it with repeat offenders, the rate dropped to 5.6 crimes per 100, the lowest since 1973.⁶

A recent article in the Washington Times reported that since 1991, when the rate of violent crime peaked at 758 offenses per 100,000 population, the rate has declined each of the following five years, reaching 634 offenses per 100,000 population in 1996, a cumulative decline of 16%.⁷

Concurrently, the incarceration rate increased from 479 per 100,000 in 1991 to 645 per 100,000 in 1997. How many crimes would have been committed by the 444,000 convicted felons who otherwise would not be incarcerated? Some estimates for the number of felonies committed by a career criminal range as high as 200 per year.⁸

COMMUNITY POLICING

Are the police having an impact on crime?

Years ago, police officers walked beats, where they were in close proximity to the people they served. The officers and community members in their beats were often on a first name basis and the beat officers were an integral part of the local community. As times have changed, patrol cars have taken over the foot beat, isolating officers from the public. In response to this, the nation's cities are now turning to community policing. Community policing is "a philosophy of full-service, personalized policing where the same officer patrols and works in the same area on a permanent basis, from a decentralized place, working in a proactive partnership with citizens to identify and solve problems."⁹

Crime and its impact on society are so complex that the problem cannot be solved by a single agency. In the analysis of this problem it can be recognized that an agency such as the police is not the only one responsible for finding solutions. The traditional approach to crime control directs all anticrime efforts to the police. Early on, the police embraced the role of crime fighter and have identified with the image but have retreated from responsibility for rising crime rates. As entities, departments have often taken credit for successes but have been hesitant in accepting responsibility for failures.

Policing techniques that were popular before the community policing trend caused the officers to be isolated from the communities they served and impaired crime-control efforts. Community policing allows law

enforcement agencies to get back to their founding principles. Agencies and their officers are becoming reintegrated into the fabric of their communities so that the people come to the police for counsel and help before a serious problem arises, not after the fact.

The police are just one tool in crime-fighting. When an agency and its officers begin to tackle the problems of their communities (social and physical), those criminogenic conditions that foster and support criminal behavior begin to diminish. The total effect of improving quality of life and assisting the members of the community to resolve issues before they are problems reduces the levels of crime. The police, through these efforts, become better crime fighters.

THE ECONOMY

Is there a relationship between crime and employment?

Certainly for some, crime is a lifestyle. Others may find themselves involved, inexcusably, but by choice due to economic situations. Historically, crime trends have followed economic/employment trends.¹⁰ Simply put, the more people who are working, the lower the crime rate, and vice versa.

Theorists and researchers have been hesitant to make a firm linkage between lower unemployment and lower crime. Everyone does agree that while paying for the services that attend to criminal behavior (courts, police, prisons, etc.) is not pleasant, it is undeniably necessary in some quantity. During the '90s, the law enforcement community has expanded in all facets, reaching record numbers of employees, facilities, and expenses. Having the capacity to shoulder these fiscal burdens is certainly easier in a vibrant economy.

DEMOGRAPHIC CHANGES

How old is a criminal?

Through the analysis of crime data we can develop a profile of characteristics for past offenders. Two of these characteristics are age and sex of an offender who is most probable to commit crimes. Noted criminal justice author R. J. Herrnstein believes that "the typical offender today, like the typical addict, is a young male probably between the ages of fifteen and twenty-four." Presently, there is a low point in the population of those in this group who would be sentenced as adults. The adult statistics have been declining. Juvenile rates have continued to increase in all categories. The present lull is limited in duration, as there is a large juvenile population on the horizon.¹¹

The upcoming group of offenders have already demonstrated a disturbing capacity for violence. The coming crime wave reflects more a poverty of values than a poverty of material wealth.

Community Involvement

Who is responsible for solving the crime problem?

There has been a revitalization movement across the nation in terms of community, whether it is defined as block, neighborhood, city, or state. People have begun to stop relying on others to resolve their problems. It is the involvement of individuals in the conduct of their community that is the catalyst of change and leads to the improvement of their collective quality of life.

In his 1995 article, "Crime: The Real Root Causes," John J. DiIulio, Jr., summed up the position, saying, "Governmentally, locking the revolving door on criminals is vital. But so is opening the door to cooperation with law-abiding citizens. In the long run, nothing will buy America more public safety via government than reordering the justice system so that it does more to foster than to frustrate private (individual, community group, neighborhood, and business) anticrime efforts of all sorts."¹²

CONCLUSION

The "magic bullet" is not out there, but there are other reasons the crime rate is declining. The reasons mentioned here are not all inclusive but they merit discussion. While more police and prisons may help, the cure may lie in a renaissance of personal responsibility, and a reassertion of responsibility over rights and community over egoism. These are some of the issues being explored by the Koch Crime Commission. It is not sufficient when asked why crime is declining to reply, "I can't tell you why." The reasons it is declining are the same ones that will keep it from going up again. The continuing application and refinement of intentional and effective practices will be the tools required to face tomorrow's challenges.

ENDNOTES

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Reprinted from Koch Crime Institute White Paper Report, April 1998. © 1998 Koch Crime Institute

READING #4

COMMUNITY POLICING: EXPLORING THE PHILOSOPHY

BY DAVID M. ALLENDER

A discussion concerning the definition of community policing can include vastly different connotations, depending upon the views held by those involved. Street level officers might conjure up a scenario that requires the transfer of officers from traditional enforcement duties to an assignment that requires little “police action” but, instead, concentrates on helping citizens confront “order maintenance” issues. Community groups may envision a police force that responds exclusively to the demands voiced by them. Researchers usually define the model by their particular orientation. Politicians typically support the concept, but often remain unsure of what the theory means. Law enforcement administrators tend to view the idea as another federally supported initiative that they must implement to receive grant funds. Finally, officers and citizens working in a successful project often reach a consensus interpretation entirely dissimilar to any of these. With such a wide range of viewpoints, formulating a definition of community policing becomes a daunting task. However, one explanation highlights nine words that can provide the key to better understanding of the concept.

Community policing is a *philosophy* of full-service, *personalized policing* where the same officer *patrols* and works in the same area on a *permanent* basis, from a *decentralized place*, working in a *proactive partnership* with citizens to identify and solve *problems*.¹

Based on this definition, the first indication that this form of policing differs from other approaches is its label as a philosophy. Three other critical aspects include personalized, partnership, and problem-solving ingredients. Other identified factors, while important, are not as essential to understanding the concept of community policing.

CHANGING THE APPROACH

Over the years, American society has embraced a number of policing methodologies. Many scholars have defined the type of work done by officers in the 1950s through the early 1970s as “traditional” policing. This terminology, in fact, can prove misleading. Several factors, including the massive shift of many police forces into vehicles equipped with police radios, reform initiatives designed to remove politics from the police agencies, and early steps toward professionalism, already had altered the methods and tactics employed by law enforcement. Moreover, not everyone in the profession accepted the traditional policing approach.

To this end, several law enforcement agencies attempted to implement “team policing” in the 1980s. Poorly defined and improperly marketed to law enforcement and the public, this model had little chance of success. Rising crime rates, especially in the categories of violent crime, dictated the need to develop a more successful model for the police to follow. Community policing, which attempts to form a partnership between the police and residents in the neighborhoods the officers serve, developed primarily because many people desired an improved American police force.

Early advocates of community policing identified order maintenance issues as important factors in the overall control of crime.² Reports identifying the amount of crime in the country indicated that most Americans were much more likely to encounter problems associated with uncivil behavior than to become a victim of crime. Fear on the part of residents, however, often caused community groups to equate disorderly persons with criminal activity. Academic information supported the feeling that resident fear represented an important factor in determining police effectiveness. Thus, reducing civil disorder became a main ingredient of the emerging community policing philosophy.

Law enforcement professionals, equipped with lessons learned during the problem-laden traditional policing period and the failed team policing initiative, realized the need to work with various communities they served to identify issues viewed by each neighborhood as significant. Traditional policing “is centered on serious crime, as opposed to maintenance of community social order or general service delivery.”³ Those designing community policing projects were determined to go in a different direction, but they faced many challenges. The first obstacle to overcome was formulating a definition for the concept.

DEFINING THE CONCEPT

Confusion about what constituted community policing arose from the beginning. Everyone from citizens to politicians, academics, and even law enforcement managers espoused conflicting ideas of what comprised community policing. Community advocates latched onto the name and decided that it signaled a new value system in which police would become more involved with the social problems within their neighborhoods. Grant programs encouraged community policing measures that satisfied written grant requirements and attempted to meet the needs of the target area receiving funds. Grant writers, however, often failed to define what those measures entailed. Law enforcement managers began holding meetings for their rank and file sworn personnel informing them that with the advent of community policing, officers would be “empowered” to take care of the problems on their beats. These managers, however, sometimes failed to explain adequately all of the responsibilities that would accompany this policy. Uncertainty about what the program entailed hindered its implementation in the law enforcement community. Some veteran officers began to feel that community policing was just another federal program that would disappear as soon as the grant money dried up.

How, then, could the proponents of community policing identify the expected outcomes of the program? The common theme running through all of the definitions of community policing remains the desire to improve the quality of life for local residents. To accomplish the goals and objectives of the program, most community policing theories state that an order maintenance component must exist that targets problems specific to each community or environment.

However, coupled with order maintenance, police also must engage in problem solving designed to deal with the underlying causes for the problems. The general public and law enforcement must partner to identify problems and formulate solutions. The local law enforcement agency and its citizens must arrive at a consensus definition for community policing *before* they attempt its implementation. The definition needs to be flexible and subject to change as problems in the neighborhood evolve.

IMPLEMENTING THE STRATEGY

Besides law enforcement officers, other components of the criminal justice system can be impacted by the implementation of a community policing strategy. Prosecutors or district attorneys need to be part of the planning process before officers bring them arrests for order maintenance concerns that otherwise might have been overlooked. Judges need to understand that cases brought before them from these areas are part of a systematic approach to alleviate problems in a targeted area. Aggressive enforcement that results in increased arrests might impact the jail because of an increased inmate population. Probation and parole officers may benefit from working with community policing offices, who could offer them a better understanding of problematic persons living in the area. Public defenders may encounter an increased caseload and possibly find prosecutors more resistant to plea bargaining. Officials charged with enforcing city ordinances involving zoning and housing will be asked to assist police with a variety of projects. To achieve maximum success, each component of the criminal justice system must mesh with others and keep in mind certain influential factors, including constitutional issues, cost considerations, and the level of public support.

CONSTITUTIONAL ISSUES

Constitutional issues may arise from community policing efforts. Changes in the way police enforce the law or institute new programs may give rise to challenges or complaints. Community police are encouraged to try new concepts. Whenever police enter an uncharted area, legal challenges generally result. Some issues will be decided in the favor of law enforcement, whereas others will be decided in favor of the defendants. For example, if the target area is located in a part of the city populated mostly by minorities, charges of racial profiling may result from aggressive enforcement. The law enforcement administrator charged with planning a community policing program must make every effort to plan for and avoid legal complications, such as in the previous example wherein it may be necessary to gather statistical information on both victims and suspects. Planning will help legal advisors defend controversial efforts.

COST CONSIDERATIONS

Cost associated with community policing need not be high. After all, law enforcement's single largest expenditure is officer salaries. The officers assigned to a given area can work either in the traditional mode or in a more directed manner under established community policing guidelines. Regardless of the approach, salaries will remain the same.

As a philosophy, community policing can make use of existing resources. Integration of law enforcement assets with other components of the community actually can make for a more efficient and cost-effective police agency. It is true that in the start-up phase of the effort, the use of overtime and other grant funds can be an important way to get personnel to support the program. To continue the effort after grant funds run out, a department can tap into money that it ordinarily would budget for public relations activities, normal overtime expenditures, and officers already assigned to the neighborhood. With increased interaction with the community, officers, at the very least, will gain intelligence information that can enable them to better deal with neighborhood problems.

PUBLIC SUPPORT

Public support for community policing can vary depending on how an agency plans and implements the effort. If officers work with the community to establish a mutual goal, the program will probably be accepted. In locations where officers make little or no effort to achieve a consensus of opinion, problems will arise.⁴ Political support will come only if the residents support the concept. Civil liberties groups will monitor the effort closely to see if constitutional problems or other irregularities occur.

CONCLUSION

The philosophy of community policing states that successful programs require the formation of a partnership between the police and area residents. Problem solving represents an important component of the effort. Flexibility remains a necessity in dealing with evolving problems in the target area.

Regular interaction between residents and the police builds trust and an increased flow of information. Intelligence gained from the public is an invaluable tool for police. Information gained as a result of community policing can lead police to criminal activity that otherwise would have gone undetected. Although criminal activity may mutate and continue, a successful community policing program will help formulate new solutions for new problems.

ENDNOTES

1. Robert C. Trojanowicz, U.S. Department of Justice, Federal Bureau of Investigation, Behavioral Science Unit, and Michigan State University, National Center for Community Policing, *Community Policing: A Survey of Police Departments in the United States*, (1994), 6.
2. James Q. Wilson and George L. Kelling, "Broken Windows," *Atlantic Monthly* 249 (March 1982): 29-38.
3. Jack R. Greene, "Community Policing in America: Changing the Nature, Structure, and Function of the Police," in *Policies, Processes and Decisions of the Criminal Justice System* vol. 3 (Washington, DC: U.S. Department of Justice, National Institute of Justice, 2000), 299-370.
4. The author based this statement on his observations during a 6-month detail working in the Executive Office of the Weed and Seed as a part of the FBI's Executive Fellowship Program. He visited several cities that had instituted community policing as a part of Weed and Seed, which strategically links concentrated and enhanced law enforcement efforts (weeding) with health and human services (seeding) to prevent and deter further crime. One city had three sites that varied greatly in police commitment and resident participation. The most successful site had low police involvement, little resident support, and even some evidence of resident opposition in the program.

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READING #5

THE BLUE PLAGUE OF AMERICAN POLICING

BY ROBERT A. FOX

Cops kill themselves three times more often than other Americans. They suffer more depression, divorce more, and drink more—as many as one in four police officers have alcohol abuse problems. Cops are unhappy. They feel estranged from their departments and from a public eager to find a scapegoat for their own social, economic and political woes. This problem should give pause to everyone, to supporters and critics of the police department alike. Society needs police officers, and we need them to be happy and healthy.

The numbers are staggering. Lt. Peter J. Pranzo of the New York City Police Department estimates that America's cops kill themselves at a rate roughly triple the national average. Researchers at the University of Buffalo have found that police officers are eight times more likely to commit suicide than to be killed in a homicide. The most recent U.S. Census estimates that police officers divorce twice as often as the national average. The respected researchers J.J. Hurrell and W.H. Kroes say that as many as 25 percent of police officers have alcohol abuse problems. This evidence cannot be ignored. Police officers are suffering from anomie; they believe that society is turning their back on them.

The irony is that police perceive society to be shunning them even as society believes them to be doing their jobs better than ever. A recent Harris poll found that over the past decade police improved their ratings in all of the following categories: “helpful and friendly”, “not using excessive force”, and “treating people fairly”. The poll also reported dramatic improvements in the ratings Americans gave police in preventing crime and solving crime and, most impressively, significant improvements in the fair treatment of minorities and a decline in the fear of being arrested when completely innocent.

So what's going wrong? Why do cops feel unappreciated even as their performance improves? The convenient conclusion is to attribute officer stress to increased violent crime, budget cuts, and low pay, matters beyond the control of the agency and public. The truth, though, is that the most common and debilitating source of stress in law enforcement comes from within the agency itself. Cops don't complain much about the added complexity of their jobs nearly as much as they do about the agency for which they work. Cops feel estranged, caught between a public that is both distrustful and unappreciative of them and an agency that marginalizes them. Ask cops what they don't like about their jobs and they cite internal politics, favoritism and impersonal treatment as their most common criticisms of their work environment. Internal surveys reveal that cops rate personal stress management as the most pressing need. Working in a paramilitary structure depersonalizes and marginalizes people from top to bottom. Decision-making structures that deprive them of input embitter officers and breeds cynicism. They resent supervisors who treat them as numbers, who have no consideration for their personal or family lives, who play favorites in terms of choice assignments, shifts, and recognition. They doubt whether or not they will be backed up by their superiors in times of trouble.

No cop ever joined the force to drink or get divorced. They became cops to make a difference. But the ideal is difficult to maintain as the chasm of distrust and alienation between police officers and the public widens. Police officers have an incredible capacity to deal with incidental stress. What police cannot deal with is the chronic stress of a system that marginalizes them. Psychologist William James said it well: “The deepest principle in human nature is the craving to be appreciated.”

Many police officers suffer from Post Traumatic Stress Syndrome. PTSD is commonly associated with war survivors, but isn't just experienced by veterans. We know now that it can be experienced by anyone working in an environment where individuals feel marginalized and dehumanized. Up until the 1980's,

victims of PTSD were often seen as “weak” or in a transient state of recovery. We understand now that PTSD sufferers often have alcohol and drug problems, and experience depression, feelings of isolation, and confusion. They have sleep problems and coping difficulties, and often feel irritable, hyper-alert and angry. It is not uncommon for PTSD sufferers to contemplate and attempt suicide to escape their anxiety. Sound familiar?

We need to create a non-toxic work environment for the men and women that protect us. The training and education a police officer receives address the criminal justice system, race relations, constitutional law, self-defense and ethics, among other subjects. It offers little or nothing to prepare the future officer to successfully adjust to the new and very different working environment of law enforcement. It’s time for officials at the highest policy-making levels to take responsibility for the fact that the stress is killing and incapacitating more police officers than bullets. Along with body armor, every man and woman entering this profession deserves a “stress vest” that provides them with the knowledge, skills and on-going services to combat the deadly consequences of stress.

Like any problem, the solution begins with awareness and education. Before young people are exposed to the realities of life as a police officer in a paramilitary environment, they deserve to be properly trained and educated in their profession. Beginning with the police academy experience, future police officers (cadets) need to learn about working in a complex bureaucracy. They need to learn how to deal with human tragedy and separate it from the way they interact with friends and loved ones. Police officers need ongoing services in stress management to maintain their identities as human beings first and understand that law enforcement is a job and career, not who they are. Police officers who lose their humanity become cynical and are at risk of losing their connections to their families and society. Police administrators, often perceived by their subordinates as uncaring and disrespectful, need to learn more effective management skills.

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Reprinted from *Law Enforcement News*, May 15/31, 2003. © 2003 by Law Enforcement News, John Jay College of Criminal Justice/CUNY, 555 W. 57th St., New York, NY 10019.

READING #6

YOU CAN'T JUDGE A CROOK BY HIS COLOR

RACIAL PROFILING MAY BE JUSTIFIED, BUT IT'S STILL WRONG

By [RANDALL KENNEDY, THE NEW REPUBLIC](#)

In Kansas City, a Drug Enforcement Administration officer stops and questions a young man who has just stepped off a flight from Los Angeles. The officer has focused on this man because intelligence reports indicate that black gangs in L.A. are flooding the Kansas City area with illegal drugs. Young, toughly dressed, and appearing nervous, he paid for his ticket in cash, checked no luggage, brought two carry-on bags, and made a beeline for a taxi when he arrived. Oh, and one other thing: The young man is black. When asked why he decided to question this man, the officer declares that he considered race, along with other factors, because doing so helps him allocate limited time and resources efficiently.

Should we applaud the officer's conduct? Permit it? Prohibit it? This is not a hypothetical example. Encounters like this take place every day, all over the country, as police battle street crime, drug trafficking, and illegal immigration. And this particular case study happens to be the real-life scenario presented in a federal lawsuit of the early '90s, *United States v. Weaver*, in which the 8th U.S. Circuit Court of Appeals upheld the constitutionality of the officer's action.

"Large groups of our citizens," the court declared, "should not be regarded by law enforcement officers as presumptively criminal based upon their race." The court went on to say, however, that "facts are not to be ignored simply because they may be unpleasant." According to the court, the circumstances were such that the young man's race, considered in conjunction with other signals, was a legitimate factor in the decision to approach and ultimately detain him. "We wish it were otherwise," the court maintained, "but we take the facts as they are presented to us, not as we would like them to be." Other courts have agreed that the Constitution does not prohibit police from considering race, as long as they do so for bona fide purposes of law enforcement (not racial harassment) and as long as it is only one of several factors.

These decisions have been welcome news to the many law enforcement officials who consider what has come to be known as racial profiling an essential weapon in the war on crime. They maintain that, in areas where young African American males commit a disproportionate number of the street crimes, the cops are justified in scrutinizing that sector of the population more closely than others--just as they are generally justified in scrutinizing men more closely than they do women.

As Bernard Parks, chief of the Los Angeles Police Department, explained to Jeffrey Goldberg of *The New York Times Magazine*: "We have an issue of violent crime against jewelry salespeople. . . . The predominant suspects are Colombians. We don't find Mexican Americans, or blacks, or other immigrants. It's a collection of several hundred Colombians who commit this crime. If you see six in a car in front of the Jewelry Mart, and they're waiting and watching people with briefcases, should we play the percentages and follow them? It's common sense."

Cops like Parks say that racial profiling is a sensible, statistically based tool. Profiling lowers the cost of obtaining and processing crime information, which in turn lowers the overall cost of doing the business of policing. And the fact that a number of cops who support racial profiling are black, including Parks, buttresses claims that the practice isn't motivated by bigotry. Indeed, these police officers note that racial profiling is race-neutral in that it can be applied to persons of all races, depending on the circumstances. In predominantly black neighborhoods in which white people stick out (as potential drug customers or racist hooligans, for example), whiteness can become part of a profile. In the southwestern United States, where Latinos often traffic in illegal immigrants, apparent Latin American ancestry can become part of a profile.

But the defenders of racial profiling are wrong. Ever since the Black and Latino Caucus of the New Jersey Legislature held a series of hearings, complete with testimony from victims of what they claimed was the New Jersey state police force's overly aggressive racial profiling, the air has been thick with public denunciations of the practice. In June 1999, at a forum organized by the Justice Department on racial problems in law enforcement, President Clinton condemned racial profiling as a "morally indefensible, deeply corrosive practice." Vice President Al Gore has promised that, if he is elected president, he will see to it that the first civil rights act of the new century would end racial profiling. His rival for the Democratic nomination, Bill Bradley, has countered that Gore should prepare an executive order and ask the president to sign it now.

Unfortunately, though, many who condemn racial profiling do so without really thinking the issue through. One common complaint is that using race (say, blackness) as one factor in selecting surveillance targets is fundamentally racist. But selectivity of this sort can be defended on nonracist grounds. "There is nothing more painful to me at this stage in my life," Jesse Jackson said in 1993, "than to walk down the street and hear footsteps and start to think about robbery and then look around and see somebody white and feel relieved." Jackson was relieved not because he dislikes black people, but because he estimated that he stood a somewhat greater risk of being robbed by a black person than by a white person. Statistics confirm that African Americans--particularly young black men--commit a dramatically disproportionate share of street crime in the United States. This is a sociological fact, not a figment of a racist media (or police) imagination. In recent years, victims report blacks as perpetrators of around 25 percent of violent crimes, although blacks constitute only about 12 percent of the nation's population.

So, if racial profiling isn't bigoted, and if the empirical claim upon which the practice rests is sound, why is it wrong?

Racial distinctions are and should be different from other lines of social stratification. That is why, since the civil rights revolution of the 1960s, courts have typically ruled--based on the 14th Amendment's equal protection clause--that mere reasonableness is an insufficient justification for officials to discriminate on racial grounds. In such cases, courts have generally insisted on applying "strict scrutiny"--the most intense level of judicial review--to government actions. Under this tough standard, the use of race in governmental decision making may be upheld only if it serves a compelling government objective and only if it is "narrowly tailored" to advance that objective.

A disturbing feature of this debate is that many people, including judges, are suggesting that decisions based on racial distinctions do not constitute unlawful racial discrimination--as long as race is not the only reason a person was treated objectionably. The court that upheld the DEA agent's action at the Kansas City airport, for instance, declined to describe it as racially discriminatory and thus evaded strict scrutiny.

But racially discriminatory decisions typically stem from mixed motives. For example, an employer who prefers white candidates to black candidates--except for those black candidates with superior experience and test scores--is engaging in racial discrimination, even though race is not the only factor he considers (since he selects black superstars). In some cases, race is a marginal factor; in others it is the only factor. The distinction may have a bearing on the moral or logical justification, but taking race into account at all means engaging in discrimination.

Because both law and morality discourage racial discrimination, proponents should persuade the public that racial profiling is justifiable. Instead, they frequently neglect its costs and minimize the extent to which it adds to the resentment blacks feel toward the law enforcement establishment. When O.J. Simpson was acquitted, many recognized the danger of a large sector of Americans feeling cynical and angry toward the system. Such alienation creates witnesses who fail to cooperate with police, citizens who view prosecutors as the enemy, lawyers who disdain the rules they have sworn to uphold, and jurors who yearn to get even

with a system that has, in their eyes, consistently mistreated them. Racial profiling helps keep this pool of accumulated rage filled to the brim.

The courts have not been sufficiently mindful of this risk. In rejecting a 1976 constitutional challenge that accused U.S. Border Patrol officers in California of selecting cars for inspection partly on the basis of drivers' apparent Mexican ancestry, the Supreme Court noted in part that, of the motorists passing the checkpoint, fewer than 1 percent were stopped. It also noted that, of the 820 vehicles inspected during the period in question, roughly 20 percent contained illegal aliens.

Justice William J. Brennan dissented, however, saying the Court did not indicate the ancestral makeup of all the persons the Border Patrol stopped. It is likely that many of the innocent people who were questioned were of apparent Mexican ancestry who then had to prove their obedience to the law just because others of the same ethnic background have broken laws in the past.

The practice of racial profiling undercuts a good idea that needs more support from both society and the law: Individuals should be judged by public authorities on the basis of their own conduct and not on the basis of racial generalization. Race-dependent policing retards the development of bias-free thinking; indeed, it encourages the opposite.

What about the fact that in some communities people associated with a given racial group commit a disproportionately large number of crimes? Our commitment to a just social order should prompt us to end racial profiling even if the generalizations on which the technique is based are supported by empirical evidence. This is not as risky as it may sound. There are actually many contexts in which the law properly enjoins us to forswear playing racial odds even when doing so would advance legitimate goals.

For example, public opinion surveys have established that blacks distrust law enforcement more than whites. Thus, it would be rational--and not necessarily racist--for a prosecutor to use ethnic origin as a factor in excluding black potential jurors. Fortunately, the Supreme Court has outlawed racial discrimination of this sort. And because demographics show that in the United States, whites tend to live longer than blacks, it would be perfectly rational for insurers to charge blacks higher life-insurance premiums. Fortunately, the law forbids that, too.

The point here is that racial equality, like all good things in life, costs something. Politicians suggest that all Americans need to do in order to attain racial justice is forswear bigotry. But they must also demand equal treatment before the law even when unequal treatment is defensible in the name of nonracist goals--and even when their effort will be costly.

Since abandoning racial profiling would make policing more expensive and perhaps less effective, those of us who oppose it must advocate a responsible alternative. Mine is simply to spend more money on other means of enforcement--and then spread the cost on some nonracial basis. One way to do that would be to hire more police officers. Another way would be to subject everyone to closer surveillance. A benefit of the second option would be to acquaint more whites with the burden of police intrusion, which might prompt more of them to insist on limiting police power. As it stands now, the burden is unfairly placed on minorities--imposing on Mexican Americans, blacks, and others a special kind of tax for the war against illegal immigration, drugs, and other crimes. The racial element of that tax should be repealed.

I'm not saying that police should never be able to use race as a guideline. If a young white man with blue hair robs me, the police should certainly be able to use a description of the perpetrator's race. In this situation, though, whiteness is a trait linked to a particular person with respect to a particular incident. It is not a free-floating accusation that hovers over young white men practically all the time--which is the predicament young black men currently face. Nor am I saying that race could never be legitimately relied

upon as a signal of increased danger. In an extraordinary circumstance in which plausible alternatives appear to be absent, officials might need to resort to racial profiling. This is a far cry from routine profiling that is subjected to little scrutiny.

Now that racial profiling is a hot issue, the prospects for policy change have improved. President Clinton directed federal law enforcement agencies to determine the extent to which their officers focus on individuals on the basis of race. The Customs Service is rethinking its practice of using ethnicity or nationality as a basis for selecting subjects for investigation. The Federal Aviation Administration has been re-evaluating its recommended security procedures; it wants the airlines to combat terrorism with computer profiling, which is purportedly less race-based than random checks by airport personnel. Unfortunately, though, a minefield of complexity lies beneath these options. Unless we understand the complexities, this opportunity will be wasted.

To protect ourselves against race-based policing requires no real confrontation with the status quo, because hardly anyone defends police surveillance triggered solely by race. Much of the talk about police "targeting" suspects on the basis of race is, in this sense, misguided and harmful. It diverts attention to a side issue. Another danger is the threat of demagoguery through oversimplification. When politicians talk about "racial profiling," we must insist that they define precisely what they mean. Evasion--putting off hard decisions under the guise of needing more information--is also a danger.

Even if routine racial profiling is prohibited, the practice will not cease quickly. An officer who makes a given decision partly on a racial basis is unlikely to acknowledge having done so, and supervisors and judges are loath to reject officers' statements. Nevertheless, it would be helpful for President Clinton to initiate a strict anti-discrimination directive to send a signal to conscientious, law-abiding officers that there are certain criteria they ought not use.

To be sure, creating a norm that can't be fully enforced isn't ideal, but it might encourage us all to work toward closing the gap between our laws and the conduct of public authorities. A new rule prohibiting racial profiling might be made to be broken, but it could set a new standard for legitimate government.

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READING #7

RACIAL PROFILING AND ITS APOLOGISTS

RACIST LAW ENFORCEMENT IS ROOTED IN DECEPTIVE STATISTICS, SLIPPERY LOGIC, AND TELLING INDIFFERENCE

BY TIM WISE

It's just good police work." So comes the insistence by many—usually whites—that concentrating law enforcement efforts on blacks and Latinos is a perfectly legitimate idea. To listen to some folks tell it, the fact that people of color commit a disproportionate amount of crime (a claim that is true for some but not all offenses) is enough to warrant heightened suspicion of such persons. As for the humiliation experienced by those innocents unfairly singled out, stopped, and searched? Well, they should understand that such mistreatment is the price they'll have to pay, as long as others who look like them are heavily represented in various categories of criminal mischief.

Of course, the attempt to rationalize racism and discriminatory treatment has a long pedigree. Segregationists offer up many "rational" arguments for separation and even slave-owners found high-minded justifications for their control over persons of African descent. In the modern day, excuses for unequal treatment may be more nuanced and couched in calm, dispassionate, even academic jargon; but they remain fundamentally no more legitimate than the claims of racists past. From overt white supremacists to respected social scientists and political commentators, the soft-pedaling of racist law enforcement is a growing cottage industry: one rooted in deceptive statistics, slippery logic, and telling indifference to the victims of such practices.

As demonstrated convincingly in David Harris's new book *Profiles in Injustice: Why Racial Profiling Cannot Work* (New Press, 2002), racial profiling is neither ethically acceptable nor logical as a law enforcement tool. But try telling that to the practice's apologists.

According to racial separatist Jared Taylor of American Renaissance—a relatively highbrow white supremacist organization—black crime rates are so disproportionate relative to those of whites that it is perfectly acceptable for police to profile African Americans in the hopes of uncovering criminal activity. His group's report "The Color of Crime"—which has been touted by mainstream conservatives like Walter Williams—purports to demonstrate just how dangerous blacks are, what with murder, robbery, and assault rates that are considerably higher than the rates for whites. That these higher crime rates are the result of economic conditions disproportionately faced by people of color Taylor does not dispute in the report. But he insists that the reasons for the disparities hardly matter. All that need be known is that one group is statistically more dangerous than the other and avoiding those persons or stopping them for searches is not evidence of racism, but rather the result of rational calculations by citizens and police.

Although in simple numerical terms, whites commit three times more violent crimes each year than blacks, and whites are five to six times more likely to be attacked by another white person than by a black person, to Taylor, this is irrelevant. As he has explained about these white criminals: "They may be boobs, but they're our boobs."

Likewise, Heather MacDonald of the conservative Manhattan Institute has written that racial profiling is a "myth." Police, according to MacDonald—whose treatment of the subject was trumpeted in a column by George Will last year—merely play the odds, knowing "from experience" that blacks are likely to be the ones carrying drugs.

Michael Levin, a professor of philosophy at the City College of New York, argues it is rational for whites to fear young black men since one in four are either in prison, on probation, or on parole on any given day.

According to Levin, the assumption that one in four black males encountered are therefore likely to be dangerous is logical and hardly indicates racism. Levin has also said that blacks should be treated as adults earlier by the justice system because they mature faster and trials should be shorter for blacks because they have a “shorter time horizon.”

Conservative commentator Dinesh D’Souza says that “rational discrimination against young black men can be fully eradicated only by getting rid of destructive conduct by the group that forms the basis for statistically valid group distinctions. It is difficult to compel people to admire groups many of whose members do not act admirably.”

Even when the profiling turns deadly, conservatives show little concern. Writing about Amadou Diallo, recipient of 19 bullets (out of 41 fired) from the NYPD Street Crimes Unit, columnist Mona Charen explained that he died for the sins of his black brethren, whose criminal proclivities gave the officers good reason to suspect that he was up to no good.

Putting aside the obvious racial hostility that forms the core of many if not all of these statements, racial profiling cannot be justified on the basis of general crime rate data showing that blacks commit a disproportionate amount of certain crimes, relative to their numbers in the population. Before making this point clear, it is worth clarifying what is meant by racial profiling.

Racial profiling means one of two things. First, the over-application of an incident-specific criminal description in a way that results in the stopping, searching, and harassment of people based solely or mostly on skin color alone. An example would be the decision by police in one upstate New York college town a few years ago to question every black male in the local university after an elderly white woman claimed to have been raped by a black man (turns out he was white).

So while there is nothing wrong with stopping black men who are 6’2”, 200 pounds, driving Ford Escorts, if the perp in a particular local crime is known to be 6’2”, 200 pounds, and driving a Ford Escort, but when that description is used to randomly stop black men, even who aren’t 6’2”, aren’t close to 200 pounds, and who are driving totally different cars, then that becomes a problem.

The second and more common form of racial profiling is the disproportionate stopping, searching, frisking, and harassment of people of color in the hopes of uncovering a crime, even when there is no crime already in evidence for which a particular description might be available. In other words: stopping black folks or Latinos and searching for drugs.

This is why general crime rates are irrelevant to the profiling issue. Police generally don’t randomly stop and search people in the hopes of turning up last night’s convenience store hold-up man. They tend to have more specific information to go on in those cases. As such, the fact that blacks commit a higher share of some crimes (robbery, murder, assault) than their population numbers is of no consequence to the issue of whether profiling them is legitimate. The “crime” for which people of color are being profiled mostly is drug possession. In that case, people of color are not a disproportionate number of violators and police do not find such contraband disproportionately on people of color.

All available evidence indicates that whites are equally or more likely to use (and thus possess at any given time) illegal narcotics. This is especially true for young adults and teenagers, in which categories whites are disproportionate among users.

Although black youth and young adults are more likely than white youth to have been approached by someone offering to give them or sell them drugs during the past month, they are less likely to have actually used drugs in the last 30 days. Among adults, data from California is instructive: although whites over the

age of 30 are only 36 percent of the state's population, they comprise 60 percent of all heavy drug users in the state.

Although blacks and Latinos often control large drug sale networks, roughly eight in ten drug busts are not for dealing, but for possession. Drug busts for narcotics trafficking rarely stem from random searches of persons or vehicles—the kind of practice rightly labeled profiling—but rather, tend to take place after a carefully devised sting operation and intelligence gathering, leading to focused law enforcement efforts. As such, the usage numbers are the more pertinent when discussing the kinds of police stops and searches covered by the pejorative label of “profiling.”

A Department of Justice study released in 2001 notes that although blacks are twice as likely as whites to have their cars stopped and searched, police are actually twice as likely to find evidence of illegal activity in cars driven by whites.

In New Jersey, for 2000, although blacks and Latinos were 78 percent of persons stopped and searched on the southern portion of the Jersey Turnpike, police were twice as likely to discover evidence of illegal activity in cars driven by whites, relative to blacks, and whites were five times more likely to be in possession of drugs, guns, or other illegal items relative to Latinos.

In North Carolina, black drivers are two-thirds more likely than whites to be stopped and searched by the State Highway Patrol, but contraband is discovered in cars driven by whites 27 percent more often.

In New York City, even after controlling for the higher crime rates by blacks and Latinos and local demographics (after all, people of color will be the ones stopped and searched most often in communities where they make up most of the residents), police are still two to three times more likely to search them than whites. Yet, police hunches about who is in possession of drugs, guns, other illegal contraband, or who is wanted for commission of a violent crime turn out to be horribly inaccurate. Despite being stopped and searched more often, blacks and Latinos are less likely to be arrested because they are less likely to be found with evidence of criminal wrongdoing.

So much for MacDonald's “rational” police officers, operating from their personal experiences. Despite police claims that they only stop and search people of color more often because such folks engage in suspicious behavior more often, if the “hit rates” for such persons are no higher than, and even lower than the rates for whites, this calls into question the validity of the suspicious action criteria. If blacks seem suspicious more often, but are actually hiding something less often, then by definition the actions deemed suspicious should be reexamined, as they are not proving to be logical at all, let alone the result of good police work. Indeed, they appear to be proxies for racial stops and searches.

Nor can the disproportionate stopping of black vehicles be justified by differential driving behavior. Every study done on the subject has been clear: there are no significant differences between people of color and whites when it comes to the commission of moving or other violations. Police acknowledge that virtually every driver violates any number of minor laws every time they take to the road. But these violations are not enforced equally and that is the problem.

In one New Jersey study, for example, despite no observed differences in driving behavior, African Americans were 73 percent of all drivers stopped on the Jersey Turnpike, despite being less than 14 percent of the drivers on the road: a rate that is 27 times greater than what would be expected by random chance. Similar results were found in a study of stops in Maryland. On a particular stretch of Interstate 95 in Florida, known for being a drug trafficking route, blacks and Latinos comprise only 5 percent of drivers, but 70 percent of those stopped by members of the Highway Patrol. These stops were hardly justified, as only nine

drivers, out of 1,100 stopped during the study, were ever ticketed for any violation, let alone arrested for possession of illegal contraband.

As for Levin's claim that whites should properly consider one in four black males encountered to be a threat to their personal safety, because of their involvement with the criminal justice system, it should be remembered that most of these have been arrested for non-violent offenses like drug possession. Blacks comprise 35 percent of all possession arrests and 75 percent of those sent to prison for a drug offense, despite being only 14 percent of users.

When it comes to truly dangerous violent crime, only a miniscule share of African Americans will commit such offenses in a given year and less than half of these will choose a white victim.

With about 1.5 million violent crimes committed by blacks each year (about 90 percent of these by males) and 70 percent of the crimes committed by just 7 percent of the offenders—a commonly accepted figure by criminologists—this means that less than 2 percent of blacks over age 12 (the cutoff for collecting crime data) and less than 3.5 percent of black males over 12 could even theoretically be considered dangerous. Less than 1.5 percent of black males will attack a white person in a given year, hardly lending credence to Levin's claim about the rationality of white panic.

The fact remains that the typical offender in violent crime categories is white. So even if black rates are disproportionate to their population percentages, any "profile" that tends to involve a black or Latino face is likely to be wrong more than half the time. Whites commit roughly 60 percent of violent crimes, for example. So if 6 in 10 violent criminals are white, how logical could it be to deploy a profile—either for purposes of law enforcement or merely personal purposes of avoiding certain people—that is only going to be correct 40 percent of the time? So too with drugs, where any profile that involves a person of color will be wrong three out of four times?

Additionally, the apologists for profiling are typically selective in terms of the kinds of profiling they support. Although whites are a disproportionate percentage of all drunk drivers, for example, and although drunk driving contributes to the deaths of more than 10,000 people each year, none of the defenders of anti-black or brown profiling suggests that drunk driving roadblocks be set up in white suburbs where the "hit rates" for catching violators would be highest.

Likewise, though white college students are considerably more likely to binge drink (often underage) and use narcotics than college students of color, no one suggests that police or campus cops should regularly stage raids on white fraternity houses or dorm rooms occupied by whites, even though the raw data would suggest such actions might be statistically justified.

Whites are also nearly twice as likely to engage in child sexual molestation, relative to blacks. Yet how would the Heather MacDonalds and Dinesh D'Souzas of the world react to an announcement that adoption agencies were going to begin screening out white couples seeking to adopt, or subjecting them to extra scrutiny, as a result of such factual information?

Similarly, those seeking to now justify intensified profiling of Arabs or Muslims since September 11 were hardly clamoring for the same treatment of white males in the wake of Oklahoma City. Even now, in the wake of anthrax incidents that the FBI says have almost certainly been domestic, possibly white supremacist in origin, no one is calling for heightened suspicion of whites as a result.

The absurdity of anti-Arab profiling is particularly obvious in the case of trying to catch members of al-Qaeda. The group, after all, operates in 64 countries, many of them non-Arab, and from which group members would not look anything like the image of a terrorist currently locked in the minds of so many. Likewise, Richard Reid, the would-be shoe bomber recently captured was able to get on the plane he sought

to bring down precisely because he had a “proper English name,” likely spoke with a proper English accent, and thus, didn’t fit the description.

The bottom line is that racial profiling doesn’t happen because data justifies the practice, but rather because those with power are able to get away with it, and find it functional to do so as a mechanism of social control over those who are less powerful. By typifying certain “others” as dangerous or undesirable, those seeking to maintain divisions between people whose economic and social interests are actually quite similar can successfully maintain those cleavages.

No conspiracy here, mind you: just the system working as intended, keeping people afraid of one another and committed to the maintenance of the system, by convincing us that certain folks are a danger to our well-being, which then must be safeguarded by a growing prison-industrial complex and draconian legal sanctions; or in the case of terrorist “profiles,” by the imposition of unconstitutional detentions, beefed-up military and intelligence spending, and the creation of a paranoiac wartime footing.

Until and unless the stereotypes that underlie racial profiling are attacked and exposed as a fraud, the practice will likely continue: not because it makes good sense, but because racist assumptions about danger—reinforced by media and politicians looking for votes—lead us to think that it does.

Tim Wise is a Nashville-based writer, lecturer and antiracist activist. Footnotes for this article can be obtained at tjwise@mindspring.com.

READING #8

RIGHT PLACE, WRONG FACE

AT HOME IN MY LOBBY, I FIT THE STATS--AND WENT DIRECTLY TO JAIL

BY [ALTON FITZGERALD WHITE](#), [THE NATION](#)

As the youngest of five girls and two boys growing up in Cincinnati, I was raised to believe that if I worked hard, was a good person, and always told the truth, the world would be my oyster. I was raised to be a gentleman and learned that these qualities would bring me respect.

While one has to earn respect, consideration is something owed to every human being. On Friday, June 16, 1999, when I was wrongfully arrested at my Harlem apartment building, my perception of everything I had learned as a young man was forever changed--not only because I wasn't given even a second to use the manners my parents taught me, but mostly because the police, whom I'd always naively thought were supposed to serve and protect me, were actually hunting me.

I had planned a pleasant day. The night before was payday, plus I had received a standing ovation after portraying the starring role of Coalhouse Walker Jr. in the Broadway musical *Ragtime*. It is a role that requires not only talent but also an honest emotional investment of the morals and lessons I learned as a child.

Coalhouse Walker Jr. is a victim (an often misused word, but in this case true) of overt racism. His story is every black man's nightmare. He is hardworking, successful, talented, charismatic, friendly, and polite. Perfect prey for someone with authority and not even a fraction of those qualities. On that Friday afternoon, I became a real-life Coalhouse Walker. Nothing could have prepared me for it. Not even stories told to me by other black men who had suffered similar injustices.

Friday for me usually means a trip to the bank, errands, the gym, dinner, and then off to the theater. On this particular day, I decided to break my pattern of getting up and running right out of the house. Instead, I took my time, slowed my pace, and splurged by making strawberry pancakes. Before I knew it, it was 2:45; my bank closes at 3:30, leaving me less than 45 minutes to get to midtown Manhattan on the train. I was pressed for time but in a relaxed, blessed state of mind. When I walked through the lobby of my building, I noticed two light-skinned Hispanic men I'd never seen before. Not thinking much of it, I continued on to the vestibule, which is separated from the lobby by a locked door.

As I approached the exit, I saw people in uniforms rushing toward the door. I sped up to open it for them. I thought they might be paramedics, since many of the building's occupants are elderly. It wasn't until I had opened the door and greeted them that I recognized that they were police officers. Within seconds, I was told to "hold it"; they had received a call about young Hispanics with guns. I was told to get against the wall. I was searched, stripped of my backpack, put on my knees, handcuffed, and told to be quiet when I tried to ask questions.

With me were three other innocent black men who had been on their way to their U-Haul. They were moving into the apartment beneath mine, and I had just bragged to them about how safe the building was. One of these gentlemen got off his knees, still handcuffed, and unlocked the door for the officers to get into the lobby where the two strangers were standing. Instead of thanking or even acknowledging us, they led us out the door past our neighbors, who were all but begging the police in our defense.

The four of us were put into cars with the two strangers and taken to the precinct station at 165th and Amsterdam. The police automatically linked us, with no questions and no regard for our character or our lives. No consideration was given to where we were going or why. Suppose an ailing relative was waiting

upstairs, while I ran out for her medication? Or young children, who'd been told that Daddy was running to the corner store for milk and would be right back? My new neighbors weren't even allowed to lock their apartment or check on the U-Haul.

After we were lined up in the station, the younger of the two Hispanic men was identified as an experienced criminal, and drug residue was found in a pocket of the other. I now realize how naïve I was to think that the police would then uncuff me, apologize for their mistake, and let me go. Instead, they continued to search my backpack, questioned me, and put me in jail with the criminals.

The rest of the nearly five-hour ordeal was like a horrible dream. I was handcuffed, strip-searched, taken in and out for questioning. The officers told me that they knew exactly who I was, knew I was in Ragtime, and that in fact they already had the men they wanted.

How then could they keep me there, or have brought me there in the first place? I was told it was standard procedure. As if the average law-abiding citizen knows what that is and can dispute it. From what I now know, "standard procedure" is something that every citizen, black and white, needs to learn, and fast.

I felt completely powerless. Why, do you think? Here I was, young, pleasant, and successful, in good physical shape, dressed in clean athletic attire. I was carrying a backpack containing a substantial paycheck and a deposit slip, on my way to the bank. Yet after hours and hours I was sitting at a desk with two officers who not only couldn't tell me why I was there but seemed determined to find something on me, to the point of making me miss my performance.

It was because I am a black man!

I sat in that cell crying silent tears of disappointment and injustice with the realization of how many innocent black men are convicted for no reason. When I was handcuffed, my first instinct had been to pull away out of pure insult and violation as a human being. Thank God I was calm enough to do what they said. When I was thrown in jail with the criminals and strip-searched, I somehow knew to put my pride aside, be quiet, and do exactly what I was told, hating it but coming to terms with the fact that in this situation I was a victim. They had guns!

Before I was finally let go, exhausted, humiliated, embarrassed, and still in shock, I was led to a room and given a pseudo-apology. I was told that I was at the wrong place at the wrong time. My reply? "I was where I live."

Everything I learned growing up in Cincinnati has been shattered. Life will never be the same.

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READING #9

GERMAN COURT CONVICTS INTERNET CANNIBAL OF MANSLAUGHTER

BY MARK LANDLER

JANUARY 31, 2004 © NEW YORK TIMES (ONLINE, RETRIEVED 1/31/04)

FRANKFURT, Jan. 30 — A German computer technician who killed and ate a willing victim he found through the Internet was convicted of manslaughter on Friday, in a ruling that reflected the legal ambiguities of a case that has, by turns, fascinated and repulsed people here.

A court in Kassel, about 90 miles north of here, sentenced the man, Armin Meiwes, to eight-and-a-half years in prison for killing Bernd-Jürgen Brandes, who responded to an Internet posting by Mr. Meiwes seeking someone willing to be "slaughtered." The three-judge court rejected the prosecution's plea for a murder conviction and a life sentence.

"Both were looking for the ultimate kick," said the chief judge, Volker Mütze, after reading the verdict. "This was an act between two extremely disturbed people who both wanted something from each other."

The conviction on a lesser charge means that Mr. Meiwes could be released in less than five years.

Harald Ermel, a lawyer for Mr. Meiwes, said he would appeal the verdict. Mr. Ermel had argued that his client was only guilty of "killing on request," an illegal form of euthanasia that carries a maximum jail term of five years.

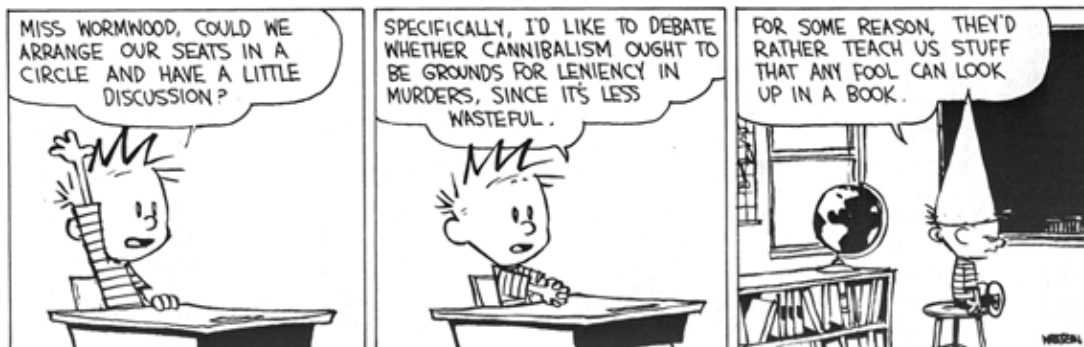
"He's a model prisoner," Mr. Ermel told reporters at the courthouse. "He will voluntarily undergo psychiatric therapy to get away from his fetish for men's flesh. I'm sure he won't do anything like this again."

That is not likely to calm the nerves of people in Rotenburg an der Fulda, the secluded village south of Kassel where Mr. Meiwes, 42, lived in a rambling half-timbered house. He played host there to four other men who responded to his Web posting, before finding the 43-year-old Mr. Brandes in March 2001.

What followed was an evening of sexual role-playing and violence, much of it videotaped by Mr. Meiwes. In the end, he stabbed Mr. Brandes to death with a kitchen knife, hung the corpse on a meat hook, and carved it up, storing pieces of flesh in plastic bags in his freezer.

"With every piece of flesh I ate, I remembered him," Mr. Meiwes said during his trial. "It was like taking communion."

It was hard to reconcile the placid, well-dressed defendant in the courtroom with the grisly testimony. Yet it was the legal dilemma, as much as the lurid details of the case, that consumed the court. Convicting Mr. Meiwes of murder would have been difficult, according to legal experts, because the victim consented, even pleaded, to be killed. But confining Mr. Meiwes to a psychiatric hospital would also have presented problems because a court-appointed psychiatrist testified that he was not suffering from "diminished responsibility" at the time of the killing.



READING #10

THE C.S.I EFFECT:

ON TV, IT'S ALL SLAM-DUNK EVIDENCE AND QUICK CONVICTIONS. NOW JURIES EXPECT THE SAME THING—AND THAT'S A BIG PROBLEM

BY KIT R. ROANE & DAN MORRISON

Picture this: A middle-aged woman from out of town digs into a bowl of chili at a fast-food restaurant in California. Each bite is more delicious than the last. She chews. She savors. Then something goes terribly wrong. She spits. She screams. She vomits. All eyes focus on the table, where a well-manicured fingertip peeks out from a mound of masticated chili. Lights and sirens. Forensic experts troll for evidence. Pimple-faced fry cooks are lined up. Fingers are pointed, and fingers are counted. The nub is popped into an evidence bag to make the forensic rounds. A fingerprint is taken to run through a national database. DNA tests are done. Detectives search for clues.

If this were an episode of *CSI: Crime Scene Investigation* --and it might well become one--the well-coiffed technicians who star in the show would solve the mystery lickety-split. Fingerprints or DNA evidence would identify the victim, a leggy blond, within 45 minutes. Then, in a twist, a smudge of blood still under the nail would lead to her killer, a jealous fashion photographer, unwilling to let go of his star.

But this is real life. Anna Ayala reported her disturbing find at a Wendy's restaurant late last month. And as of last week, investigators were still stumped. Ayala hasn't confessed to any fraud. The fry cooks all had their fingers. The print wasn't a match. And the DNA test still hadn't come back from the lab. On CBS's *CSI*, the forensic science is sexy, fast, and remarkably certain, a combination that has propelled the three-show franchise to top ratings, attracting nearly 60 million viewers a week. The whole investigation genre is hot, from NBC's *Law & Order* series on down to the documentary-like re-creations of A&E's *Forensic Files*. America is in love with forensics, from the blood spatter and bone fragments of TV's fictional crime scenes to the latest thrust and parry at the Michael Jackson trial.

That's good, right? Jurors are smarter, and understaffed government crime labs are using the trend to seek more funding. But not so fast. Stoked by the technical wizardry they see on the tube, many Americans find themselves disappointed when they encounter the real world of law and order. Jurors increasingly expect forensic evidence in every case, and they expect it to be conclusive.

"Your *CSI* moment." Real life and real death are never as clean as *CSI*'s lead investigator, Gil Grissom, would have us believe. And real forensics is seldom as fast, or as certain, as TV tells us. Too often, authorities say, the science is unproven, the analyses unsound, and the experts unreliable. At a time when the public is demanding *CSI*-style investigations of even common crimes, many of the nation's crime labs--underfunded, undercertified, and under attack--simply can't produce. When a case comes to court, "jurors expect it to be a lot more interesting and a lot more dynamic," says Barbara LaWall, the county prosecutor in Tucson, Ariz. "It puzzles the heck out of them when it's not."

A disappointed jury can be a dangerous thing. Just ask Jodi Hoos. Prosecuting a gang member in Peoria, Ill., for raping a teenager in a local park last year, Hoos told the jury, "You've all seen *CSI*. Well, this is your *CSI* moment. We have DNA." Specifically, investigators had matched saliva on the victim's breast to the defendant, who had denied touching her. The jury also had gripping testimony from the victim, an emergency-room nurse, and the responding officers. When the jury came back, however, the verdict was not guilty. Why? Unmoved by the DNA evidence, jurors felt police should have tested "debris" found in the victim to see if it matched soil from the park. "They said they knew from *CSI* that police could test for that sort of thing," Hoos said. "We had his DNA. We had his denial. It's ridiculous."

Television's diet of forensic fantasy "projects the image that all cases are solvable by highly technical science, and if you offer less than that, it is viewed as reasonable doubt," says Hoos's boss, Peoria State's Attorney Kevin Lyons. "The burden it places on us is overwhelming." Prosecutors have a name for the phenomenon: "the *CSI* effect."

Some of the "evidence" the *CSI* shows tout--using a wound to make a mold of a knife, or predicting time of death by looking at the rate at which a piece of metal might rust--is blatant hokum, experts say. But more and more, police and prosecutors are waking up to the need to cater to a jury's heightened expectations. That means more visual cues, with PowerPoint and video presentations, and a new emphasis during testimony on why certain types of evidence haven't been presented. If there are no fingerprints in evidence, more prosecutors are asking investigators to explain why, lest jurors take their absence as cause for doubt.

The same goes for DNA or gunshot residue. Joseph Peterson, acting director of the Department of Criminal Justice at the University of Illinois-Chicago, says DNA is rarely culled from crime scenes and analyzed. Crime scenes today are much like they were in the 1970s, Peterson says, when his studies found that fingerprints and tool marks were the most common types of evidence left at crime scenes. Blood was found only 5 percent of the time, usually at murder scenes.

Like crime scenes, many crime labs also haven't changed that much--at least in one respect. Many are still understaffed, and they often don't receive all of the relevant physical evidence from the crime scene, either because police investigators don't know what they're looking for or because they figure--possibly wrongly--that the case is strong enough without it. A crime lab's bread and butter is testing drugs found at crime scenes, doing toxicology screens, and comparing fingerprints. DNA matches are way down the list, mainly because they're time consuming and expensive. How much time? A Cape Cod trash hauler gave police a DNA sample in March 2004. The lab was backlogged. Last week, after it was finally analyzed, he was arrested for the 2002 murder of fashion writer Crista Worthington.

Defense attorneys, predictably, are capitalizing on the popularity of shows like *CSI*, seizing on an absence of forensic evidence, even in cases where there's no apparent reason for its use. In another Peoria case, jurors acquitted a man accused of stabbing his estranged girlfriend because police didn't test her bloody bedsheets for DNA. The man went back to prison on a parole violation and stabbed his ex again when he got out--this time fatally.

The *CSI* effect was raised in the acquittal last month of actor Robert Blake in the murder of his wife. The L.A. district attorney called the jurors "incredibly stupid," but jurors noted that the former *Baretta* star was accused of shooting his wife with an old Nazi-era pistol that spewed gunshot residue. Blake's skin and clothes, a juror told *U.S. News*, had "not one particle."

"On thin ice." Still, forensic evidence and expert testimony can add a lot of weight. Confronted with a possible fingerprint or DNA match, many de-fendants will plead guilty instead of risking a trial and the possibility of a heavier penalty.

At trial, many juries tend to believe forensic experts and the evidence they provide--even when they shouldn't. Sandra Anderson and her specially trained forensic dog, Eagle, are a case in point. Dubbed a canine Sherlock Holmes, Eagle and his trainer were the darlings of prosecutors and police across the country. They appeared on TV's *Unsolved Mysteries* and headlined forensic science seminars. The dog seemed to have a bionic nose, finding hidden traces of blood evidence, which Anderson duly corroborated in court. In one case, Eagle's million-dollar nose gave police enough for a search warrant after he found damning evidence in the house of a biochemist suspected of murdering his wife. Plymouth, Mich., Police Lt. Wayne Carroll declared at the time: "Before we brought that dog down there, we were on thin ice." Anderson and Eagle, however, were frauds. After she admitted planting blood on a hacksaw blade during

the investigation of the suspect, Azizul Islam, he was granted a new trial last year. It was one of several cases in which Anderson faked evidence. She is now serving a 21-month prison term after pleading guilty to obstruction of justice and making false statements. Lawyers and forensic experts say Anderson is just one of the more bizarre cases of forensic specialists lying under oath, misreading test results, or overstating evidence.

In recent years, the integrity of crime labs across the country, including the vaunted FBI crime lab, have come under attack for lax standards and generating bogus evidence. One problem is that crime labs don't have to be accredited. All DNA labs seeking federal funding will have to be accredited by next year, but roughly 30 percent of the publicly funded crime labs operating in the United States today have no certification, a recent Justice Department study found. The FBI's lab gained accreditation in 1998, after it was embarrassed by a series of foul-ups. A Houston lab sought accreditation this year, following a scandal that has so far resulted in the release of two men from prison and cast doubt on the lab's other work.

Dozens of coroners, crime lab technicians, police chemists, forensic anthropologists, crime-reconstruction experts, and other forensic specialists, meanwhile, have been fined, fired, or prosecuted for lying under oath, forging credentials, or fabricating evidence. It's hard to find anyone in law enforcement who can't recite a story of quackery on the stand or in the lab. Forensic practitioners say the popularity of the field may make things even worse, noting that new forensics-degree programs are cropping up all over the place, some turning out questionable candidates. "For some reason, the forensic sciences have always had their fair share of charlatans," says Max Houck, director of the Forensic Science Initiative at West Virginia University. "Because of the weight the analysis is now given, professional ethics and certification of labs has never been more important."

"Dead-bang evidence." One of the most infamous charlatans worked his magic just down the road from Houck at the West Virginia State Police lab. Fred Zain, who died in 2002, was a forensics star, a lab chemist who testified for prosecutors in hundreds of cases in West Virginia and Texas, sending some men to death row. No one ever bothered to look at his credentials--including the fact that he had failed organic chemistry--or review his test results. When two lab workers complained that they had seen Zain record results from a blank test plate, they were ignored. Zain was undone when DNA test results performed on Glen Woodall--serving a prison term of 203 to 335 years--proved that he could not have committed two sexual assaults for which he'd been convicted. Zain had told the jury that the assailant's blood types "were identical to Mr. Woodall's." After Woodall's conviction was overturned, in 1992, the West Virginia Supreme Court of Appeals ordered a full review of Zain's work. Its conclusion? The convictions of more than 100 people were in doubt because of Zain's "long history of falsifying evidence in criminal prosecutions." Nine more men have since had their convictions overturned.

Forensic science experts say the solution is to tighten standards for experts and increase funding for crime labs. A consortium of forensic organizations is lobbying Congress now to do both. "In many places, crime labs are the bastard stepchildren of public safety," says Barry Fisher, a member of the Forensic Science Consortium and director of the L.A. County Sheriff's Department crime lab. Asked about the importance of mandatory certification, he adds: "I don't know if I would go to a hospital that wasn't accredited. The same goes with labs."

Some forensic experts, however, question the value of certification. Psychologist Steve Eichel, a longtime critic of what he calls "checkbox credentials," secured credentials for his cat--"Dr. Zoe D. Katze" --from four major hypnotherapy and psychotherapy associations. Critics have questioned the rigor of the American College of Forensic Examiners International, the largest forensic certifier in the country. Its founder, Robert O'Block, who was charged with plagiarism and fired from the criminal justice department at Appalachian State University shortly before starting the organization, strongly denies assertions that he runs a

certification mill, blaming those accusations on disgruntled competitors; the Appalachian incident, he says, was retaliation for reporting improper academic practices.

Even accredited crime labs, however, can make mistakes. Most publicly accredited labs gauge their proficiency through declarative tests, where lab workers know they're being tested. Although most labs do well on such tests, some experts question their ability to judge labs' day-to-day performance. And even in declarative tests, deficiencies can be glaring. According to 2004 proficiency results from one private testing service reviewed by *U.S. News*, a few labs failed to properly match samples on simple DNA tests, mysteriously came to the right result after making the wrong interpretation of the data, or accidentally transposed the information from one sample onto another. In a ballistics test, one lab matched a slug with the wrong test gun.

Such errors can have real-world consequences in court. In 1999, a Philadelphia crime lab accidentally switched the reference samples of a rape suspect and the alleged victim, then issued a report pointing to the defendant's guilt. Last year, a false fingerprint match led the FBI to wrongfully accuse an Oregon lawyer--and converted Muslim--of complicity in the al Qaeda-linked Madrid train bombings. The FBI later blamed the foul-up on the poor quality of the fingerprint image. "There are a number of cases that deal with what on the surface ought to be dead-bang evidence," says Fisher. "But it turns out it was the wrong result. Improper testing or improper interpretation of data left the innocent convicted."

For all the setbacks and scandals, science has made considerable progress in the courts since the advent of forensic investigation. In the 1600s, the evidence against two London "witches" accused of causing children to vomit bent pins and a twopenny nail was . . . a bunch of bent pins and a twopenny nail. So it must have seemed fairly revolutionary in the 1800s when a Brussels chemist named Jean Servais Stas devised a way to separate a vegetable poison from the stomach of a countess's brother to prove how he had been killed. Or when an English investigator around the same time solved the case of a murdered maid by matching a corduroy patch left in the mud at the crime scene to the pants of a laborer working some nearby fields.

"Obvious" problems. That doesn't mean forensics can always be believed, however, even when the data are accurate. As Sherlock Holmes said, "There is nothing more deceptive than an obvious fact." DNA is a case in point. While DNA testing is the most accurate of the forensic sciences, experts can make vastly different interpretations of the same DNA sample. Criminal justice experts say most lawyers and judges don't know enough about any of the forensic sciences to make an honest judgment of the veracity of what they are told. Prosecutor Mike Parrish in Tarrant County, Texas, decided to get a second opinion on his DNA evidence in a capital murder case three years ago after the local police lab amended its result to more strongly link his suspect to the crime. Suspicious, Parrish had the sample reanalyzed by the county medical examiner, whose results were much less definitive. In the end, Parrish said, because of the conflicting DNA reports, he chose not to seek the death penalty.

Other forensic tests are even more open to interpretation. Everything from fingerprint identification to fiber analysis is now coming under fire. And rightly so. The science is inexact, the experts are of no uniform opinion, and defense lawyers are increasingly skeptical. Fingerprint examiners, for instance, still peer through magnifying glasses to read faint ridges.

Many of these techniques and theories have never been empirically tested to ensure they are valid. During much of the past decade, coroners have certified the deaths of children who might have fallen down steps or been accidentally dropped as "shaken baby" homicides because of the presence of retinal hemorrhages--blood spots--in their eyes. Juries bought it. Noting that new research casts grave doubt on the theory, Joseph Davis, the retired director of Florida's Miami-Dade County Medical Examiner's Office and one of the nation's leading forensics experts, compares proponents of shaken-baby syndrome to "flat Earthers" and says its use as a prosecution tool conjures up "shades of Salem witchcraft" trials.

The list goes on. Ear prints, left behind when a suspect presses his ear to a window, have been allowed as evidence in court, despite the fact that there have been no studies to verify that all ears are different or to certify the way ear prints are taken. The fingerprint match, once considered unimpeachable evidence, is only now being closely scrutinized. The National Institute of Justice offered grants to kick-start the process this year. Other "experts" have pushed lip-print analysis, bite-mark analysis, and handwriting analysis with degrees of certainty that just don't exist, critics say.

Microscopic hair analysis was a staple of prosecutions until just a few years ago and was accorded an unhealthy degree of certitude. "Hair comparisons have been discredited almost uniformly in court," says Peterson of the University of Illinois-Chicago. "There are many instances where science has not come up to the legal needs," adds James Starrs, professor of forensic sciences and law at George Washington University. Everyone, including the jury, wants certainty. But it seldom exists in forensics. So the expert, says Starrs, "always needs to leave the possibility of error."

MORE ONLINE

Details on forensics, the law, and how they intersect are available in a free database at the National Clearinghouse for Science, Technology, and the Law, a program of the National Institute of Justice, at **ncstl.org/**

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READING #11

ILLINOIS GOVERNOR IN THE MIDDLE OF NEW DEATH PENALTY DEBATE

BY MONICA DAVEY

CHICAGO, March 14 — A bit more than a year after George Ryan, then the governor of Illinois, declared the state's capital punishment system broken and emptied death row, the struggle over the death penalty is returning here.

On one side of the new debate are legislators and prosecutors who say landmark reforms state lawmakers have adopted in recent months mean it is time to begin executions again. On the other side are critics of capital punishment who praise the reforms but say many more must be made before Illinois can be certain it is not executing an innocent person — if that can ever be assured.

Caught somewhere in the middle is Rod R. Blagojevich, a Democrat, who was sworn in as governor two days after Mr. Ryan, a Republican, condemned the state's system and cleared death row last January. For now, Mr. Blagojevich, a former prosecutor who supported the death penalty in the past, says that he is in no rush to move forward and that a statewide moratorium on executions — put in place four years ago by Mr. Ryan — stands. But he has begun facing pressure from both sides.

The possibility of killing an innocent man set off Illinois's struggle in 2000 and drew the attention of other states' leaders. By then, 13 condemned prisoners, including one man who came within 50 hours of execution, had been freed from death row because of exonerations and appeals — more than the number the state had actually executed since the death penalty was reinstated in 1977. If the truth, as Mr. Ryan then said, was that the system was broken, answers seem murkier now: Is it fixed? Can it ever be? And who gets to decide when that time has come?

"We did the death penalty reform bill," said State Senator Peter J. Roskam, a Republican from Wheaton, who said he was urging Governor Blagojevich to at least consider execution dates of new death row inmates once their cases reach the end of appeals. Since death row was cleared 14 months ago, only three people have been sentenced to death in the state, and it will be years before their cases make their way through the appeals process, but legislators like Mr. Roskam say it is time to begin setting that process in motion.

"We went through months of negotiations," Mr. Roskam said. "If the governor has substantive concerns about the bill that he has signed, we didn't hear about them. Now I think the time has come to lift the moratorium and enact the law."

That attitude deeply troubles others, like Edwin Colfax, executive director of the Illinois Death Penalty Education Project.

"Our big concern is that people see the substantial progress we've had to date and are under the impression that the death penalty has been fixed," Mr. Colfax said. "That would be a tragedy. The reality is that there is such a long way to go. We are not on the cusp of a death penalty system that deserves our confidence."

In January, Governor Blagojevich signed the last piece in a package of legislative changes to the system. The police will be required to audiotape or videotape their interrogations of murder suspects. Judges may now rule out execution in cases that depend on only a single jailhouse informant; moreover, such testimony must now be subject to screening before it is admitted in court. Defendants are granted more access to DNA databases and have more time to petition the court with new evidence.

"I couldn't have gotten one of these passed five years ago," said Senator John J. Cullerton, Democrat of Chicago, who helped guide the package through the Legislature. "This was really a big deal."

Still, the legislation by no means included all of the more than 80 recommendations made by a panel Governor Ryan appointed to review the system. Among those not adopted were these: a requirement that the public defender be assigned during police interrogations of death-eligible cases if a suspect requests it; the separation of the evidence laboratory from the state police; a significant reduction of the number of crimes that carry the death penalty; and the creation of a statewide review panel to consider each capital case brought by local prosecutors.

Supporters of the death penalty insist there is another agenda underlying the continuing moratorium and all the talk of more revisions. Kevin W. Lyons, the Peoria County prosecutor, said that opponents of the death penalty wanted to end capital punishment in Illinois altogether, not reform it.

"This debate was birthed as a question of certainty — we wanted to be certain that we were executing the right people," Mr. Lyons said. "But it has been raised as a political issue. The death penalty abolitionists hopped the train, derailed it, and it became a hope to abolish the death penalty."

If Mr. Lyons and others are pressing Mr. Blagojevich to reconsider the moratorium, another group is pressing for more revisions. Aaron Patterson, who left death row 14 months ago, is one of that number.

While Mr. Ryan commuted more than 160 of the condemned to sentences of life in prison, he pardoned Mr. Patterson and a handful of others outright and sent them home. Mr. Patterson, Mr. Ryan said, had been wrongly convicted in the 1986 stabbing deaths of an elderly couple.

Since he emerged from death row, Mr. Patterson, 39, has not gone away quietly. He has disrupted news conferences held by Mayor Richard M. Daley of Chicago and Patrick J. Fitzgerald, the United States attorney here. He set up a tea service on the lawn of Richard Devine, the Cook County state's attorney, in an effort to get Mr. Devine's attention.

"These people are unapologetic about what they did," he said, "and somebody has to hold their feet to the fire."

After 17 years behind bars, Mr. Patterson is running for the State Legislature in Tuesday's primary. It bothers him, he said, to watch what he considers the slowness of reforms to the death penalty and to the state's justice system in general.

"They've been touching the surface," Mr. Patterson said of legislation in Springfield, the state capital. "I just don't see the tide turning fast enough. I feel like I should go down there to the source of the problem and change it."

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READING #12

METHODS OF EXECUTION, AS OF 1/2004

State	Min. Age	LI	E	GC	FS	H
Federal Govt.	18	X				
Military	18	X				
Alabama	16	X	X			
Arizona	none	X		X (<11/92)		
Arkansas	14	X	X (<7/83)			
California	18	X		X		
Colorado	18	X				
Connecticut	18	X				
Delaware	16	X				X (<6/86)
Florida	17	X	X			
Georgia	17	X				
Idaho	none	X			X	
Illinois	18	X				
Indiana	18	X				
Kansas	18	X				
Kentucky	16	X	X (<3/98)			
Louisiana	none	X				
Maryland	18	X				
Mississippi	16	X				
Missouri	18	X		X		
Montana	none	X				
Nebraska	18		X			
Nevada	16	X				
New Hampshire	17	X				X ^a
New Jersey	18	X				
New Mexico	18	X				
New York	18	X				
North Carolina	17	X				
Ohio	18	X				
Oklahoma	16	X	X ^b		X ^b	
Oregon	18	X				
Pennsylvania	none	X				
South Carolina	none	X	X			
South Dakota	none	X				
Tennessee	18	X	X (<12/98)			
Texas	17	X				
Utah	14	X			X	
Virginia	14	X	X			
Washington	18	X				X
Wyoming	16	X		X ^b		

^a Only if lethal injection cannot be given.

^b Will be administered if other methods of execution are found to be unconstitutional.

LEGEND:

LI	Lethal Injection	(<date)	If condemned was convicted before this date, they may choose their method of execution from those available in that state. Individuals convicted after that date will be executed using the primary method of execution.
E	Electrocution		
GC	Gas Chamber		
FS	Firing Squad		
H	Hanging		

READING #13

TEN YEARS LATER

BY RICHARD A. CLARKE

© THE ATLANTIC MONTHLY, JANUARY/FEBRUARY 2005

"Then the second wave of al-Qaeda attacks hit America." A leading expert on counterterrorism imagines the future history of the war on terror. A frightening picture of a country still at war in 2011

This is a transcript of the Tenth Anniversary 9/11 Lecture

Sunday, September 11, 2011

John F. Kennedy School of Government

Cambridge, Massachusetts

Professor Roger McBride

Dean, Honored Guests,

It is a great honor to be chosen to give this tenth-anniversary lecture. This year, more than at any other time since the beginning of the war on terror, I think we can see clearly how that war has changed our country. Now that the terror seems finally to have receded somewhat, perhaps we can begin to consider the steps necessary to return the United States to what it was before 9/11. To do so, however, we must be clear about what has happened over the past ten years. Thus tonight I will dwell on the history of the war on terror.

2001-2004: THE RESPONSE TO 9/11

Having ignored al-Qaeda until September 11, 2001, President George W. Bush responded to the attack in three ways. First, he ordered an end to the terrorist sanctuary in Afghanistan. For five years thereafter a token U.S. military force assisted the Kabul government in its attempts to rule the warlords and suppress the Taliban and al-Qaeda. Second, he moved to strengthen U.S. domestic law enforcement with the first Patriot Act (a law that civil libertarians would find benign from today's perspective) and the Department of Homeland Security, which in those early years of the war on terror was largely ineffectual.¹ Third, Bush ordered the ill-fated invasion and occupation of Iraq, which effectively turned his administration into an active recruiting office for al-Qaeda and other *jihadi* groups around the world.

The move against Afghanistan did set al-Qaeda and the *jihadi* movement back. Although regional affiliates were able to stage spectacular attacks in Riyadh, Istanbul, Bali, Madrid, Baghdad, and elsewhere, and although there were twice as many attacks worldwide in the three years after 9/11 as there had been in the five years before that day, no al-Qaeda-related attacks took place in the United States in the years immediately following 9/11.

The several years without an attack on U.S. soil lulled some Americans into thinking that the war on terror was taking place only overseas. Few corporations increased security spending. Americans increasingly questioned President Bush's security policies, the Patriot Act, and Secretary of Homeland Security Tom Ridge's ridiculed color codes. In the 2004 presidential election George W. Bush won a second term in part by dismissing such issues as whether the mishandling of the Iraq War had made us less secure, whether we had paid enough attention to al-Qaeda, and whether we were adequately addressing our vulnerabilities at home.

Then the second wave of al-Qaeda attacks hit America. Since then we have spiraled downward in terms of economic strength, national security, and civil liberties. No one could stand here today, in 2011, and say that America has won the war on terror. To understand how we failed to win, and exactly what has been lost along the way, I want to look at the past seven years in some detail.

2005: RETURN TO THE HOMELAND BATTLEFIELDS

The U.S. government had predicted that future attacks, if they came, would likely be on financial institutions, noting that Osama bin Laden had issued instructions to destroy the U.S. economy. Thus when the casinos were attacked, it was a surprise. It shouldn't have been; we knew that Las Vegas had been under surveillance by al-Qaeda since at least 2001. Despite that knowledge casino owners had done little to increase security, not wanting to slow people down on their way into the city's pleasure palaces.² Theme-park owners were also locked into a pre-9/11, "it can't happen here" mindset, and consequently were caught off guard, as New Yorkers and Washingtonians had been in 2001. The first post-9/11 attacks on U.S. soil came not from airplanes but from backpacks and Winnebagos. They were aimed at places where we used to have fun, what we then called "vacation destinations." These places were particularly hard to defend.

Peter and Margaret Rataczak, of Wichita, Kansas, were the first to die on June 29, 2005, in a new wave of suicide attacks launched against the United States in retaliation for the killing of Osama bin Laden that spring, and for the continuing presence of U.S. troops in Iraq. These attacks were every bit as well planned as those of 9/11 and, in typical al-Qaeda fashion, used low-technology means to achieve maximum public impact. What we know about the attacks' planning and execution comes in large part from tourists who provided photos and video from their travels. Without these images we might never have known that the Rataczaks' killers were non-Arab. It would also have been harder to discover that they seem to have entered the United States by driving across the border from Canada.³

In order to save money for the poker tables that night, Peter chose to stay at an RV campground, parking his Winnebago at around 4:00 P.M. Shortly thereafter a casually dressed Asian couple approached the Rataczaks' secluded campsite with a map unfolded in front of them. Only the birds heard the silenced shots. The first murders by the group calling itself al-Qaeda of North America had been carried out.

With the bodies in the back of the darkened camper, the Asian couple drove back toward a safe house they had quietly rented in the hills. (The landlord had no reason to suspect they were fundamentalist Muslims; their religion was of no concern to him. Nor, certainly, would his standard background credit check have turned up their association with an Indonesian al-Qaeda affiliate.) The man quickly backed into the garage and loaded an ammonium nitrate device into the van. His leader had said the device would force the unbelievers in "Sin City" to realize that even in their ignorance they were guilty of conspiring with the Zionists to destroy Islam. After a good night's sleep and his morning prayers, the man carefully helped the woman into her vest and belt before leaving her to finish dressing and praying.

It was only an hour's drive to the city limits, and the man was careful never to exceed the speed limit. State troopers at the exit ramp to the city ignored the van. At 3:00 P.M. the streets were packed as crowds wandered the Strip. On Tropicana Avenue the man stopped briefly to let his partner out with an exchange of nods and a whispered statement: "God is great." The woman blended seamlessly into the flow of people walking into the Florentine casino, looking like one of the millions of annual visitors to Las Vegas from the Pacific Rim. She seemed a little heavy for her frame, and the jacket she wore seemed a little out of place in the heat, but the doormen, as security videos later showed, didn't even give her a second look. She had been there many times before.

The woman never hesitated. She walked to the roulette table, fifty feet from the front door, and pushed a detonator, blowing herself up. The explosion instantly killed thirty-eight people who were standing and sitting at nearby tables. The nails and ball bearings that flew out of the woman's vest and belt wounded more than a hundred others, even though slot machines absorbed many of the miniature missiles.⁴ Eighteen of the hundreds of elderly gamblers in the casino suffered heart attacks that proved fatal when they could not be treated fast enough amid the rubble.

Just seconds later the man drove his van into the lobby of the Lion's Grand and detonated his cargo. This bomb was designed to wreak tremendous damage that would remain in the consciousness of the American people for years to come. Whereas the damage done to the Florentine casino was repaired in just under a month, the billion-dollar Lion's Grand was closed for more than a year while security enhancements and structural improvements were made. Losing the use of 5,034 rooms, plus casino gaming and concerts and other special events, cost the Lion's Grand a million dollars a day, and damaged its bond rating.

The long-term economic effects continue today: tourism in Las Vegas has never returned to its pre-2005 level, and unemployment in the city is at 28 percent.⁵

The attacks in Nevada occurred at almost the same time as the ones in Florida, California, Texas, and New Jersey. Two women strolling separately through Mouseworld's Showcase of the Future detonated their exploding belts in the vicinity of tour groups in the "Mexican Holiday" and "Austrian Biergarten" exhibits. Similar attacks took place at WaterWorld, in California; Seven Pennants, near Dallas; and the Rosebud Casino, in Atlantic City. By the end of the day 1,032 people were dead and more than 4,000 wounded. The victims included many children and elderly citizens. Among the dead were only eight terrorists, two each from Iraq, Indonesia, Pakistan, and the Philippines.

The next morning CNN's Los Angeles bureau received a video purporting to be from al-Qaeda of North America. On the tape the group claimed responsibility for the incidents and pledged that attacks would continue until America left the Middle East. We can all recall the soft, steely voice in which the chilling words were delivered: "We are not terrorists. We are patriots trying to throw off the mantle of an oppressive society. We do not look like you think we do. And we will kill you until you leave our holy lands."

Eyewitnesses supported the recording's assertions, telling investigators that some of the terrorists who had committed these atrocities did not look like Arabs. Three of the terrorists were women. The FBI, the Department of Homeland Security, and the local authorities were momentarily stunned, and began frantically trying to prepare for what they feared were further imminent attacks. The DHS raised the nationwide terror-alert level to red.

The social effect of the attacks was widespread. In Detroit, northern New Jersey, northern Virginia, and southern California armed gangs of local youths attacked mosques and Islamic centers. At the request of local clerics, the governor of Michigan ordered National Guard units into the city of Dearborn and parts of Detroit to stop the vigilante violence against Islamic residents.

The reaction from the White House and Congress was swift. Patriot Act II, which had been languishing on Capitol Hill, passed in July. As more evidence was made public, it became increasingly clear that the attacks had been perpetrated by terrorists who were in the United States illegally, either on false passports or having overstayed their visas.⁶ Two were Iraqis pretending to be South Africans, using passports that had been stolen in Cape Town the year before.⁷ Others had actually been picked up before the attacks for being "out of visa status," but had been released because immigration detention facilities were full.⁸

The attorney general sought broad emergency powers to impose extended pre-arraignment detention, investigative confinement, broader material-witness authority, and expanded deportation authority. After the passage of Patriot Act II, federal agents conducted large-scale roundups of illegal immigrants and members of ethnic groups that were suspected of hiding terrorists in their midst. Many citizens who had been forcibly detained were held "with probable cause" for allegedly "planning, assisting, or executing an act of terrorism"; they were denied access to an attorney for up to seven days, "by order of the judicial officer on a showing that the individual arrested has information which may prevent a terrorist attack."⁹ Many detainees, if they failed to produce proof of citizenship or immigrant status, were moved to new DHS illegal-immigration detention facilities for further investigation and possible deportation. The camps were in remote areas, including one in Arizona that ended up holding 42,000 suspected illegals.¹⁰

Although the American Civil Liberties Union vigorously condemned these roundups, most of the public accepted them as not only a suitable precaution against possible future attacks but also a brake on further vigilante violence.¹¹ The fear that follow-on attacks were likely was enough to satisfy the judiciary that state and federal law enforcement should be allowed to begin broad sweeps of communities suspected of harboring sympathizers.

Roundups based on ethnicity succeeded only in enraging local ethnic communities. This made it more difficult for the authorities to enlist cooperation in either investigating hate crimes or preventing future attacks from within these communities. Despite earlier warnings from sympathetic foreign officials, the U.S. government, with the support of federal judges and the American people, deemed these detentions the only way to hold those who had collaborated with the suicide bombers and to capture those who might carry out the next attack.¹² In short, "the gravest imminent danger to the public safety," which had justified the internment of Japanese-American citizens during World War II, was invoked again to support the widespread use of pre-trial detentions and material-witness warrants.¹³

Over the objections of the Pentagon, Congress had in 2004 created a cabinet-level director of national intelligence and given the position budgetary control of all intelligence agencies and operational control over all agencies except the Defense Intelligence Agency and the armed services' individual intelligence branches. By this point most Americans were well aware of the lapses in U.S. intelligence produced by a lack of spies in the Middle East.¹⁴ Not long after 9/11 George Tenet, then the director of the CIA, had suggested that it would take at least five years to raise the CIA's human-intelligence capacity to where it needed to be. Although the new law gave the national intelligence director the muscle to manage all U.S. intelligence, Tenet turned out to have been right: it took more than five years to train even a fraction of the new field agents needed for a global war on terror.

One price the United States has paid for security is a significant decrease in foreign students at our colleges and universities, effectively preventing young people from all over the world from meeting one another and building bridges between warring ideologies. Foreign attendance is now down by more than a third from what it was in 2001, resulting in the closing or consolidation of some graduate programs in science and engineering, and producing severe budget cuts in others.¹⁵ At the same time, research institutions in France, England, India, China, and Singapore have all grown. Many of us are now using the Asiapac operating system on our laptops and taking drugs imported from such foreign companies as Stemlabs and EuroPharmatica.

The summer and autumn of 2005 passed without further attacks. By Thanksgiving many Americans believed what government spokesmen were telling them: that the attacks had been the work of eight isolated terrorists, the last of Khalid Sheikh Muhammad's al-Qaeda cells in America.

The government spokesmen were wrong.

On December 2, 2005, the Mall of the States became a victim of a low-tech terrorist attack. In the preceding years malls in Israel, Finland, and the Philippines had been attacked; so far, American malls had been spared. As security professionals knew, this was partly luck; such targets are difficult to protect.¹⁶ In June of 2004, after learning of intelligence reports indicating that the Madrid train bombers had originally planned to strike a suburban shopping area, Charles Schumer, a Democratic senator from New York, called for increased funding to secure U.S. shopping centers and malls.¹⁷ Congress chose instead to focus on defending other targets against more-sophisticated terrorist acts.

The 4.2-million-square-foot mall, located in Minnesota, was globally recognized as the largest entertainment and retail complex in America, welcoming more than 42 million visitors each year, or 117,000 a day. On this day neither the 160 security cameras surveying the mall nor the 150 safety officers guarding it were able to detect, deter, or defend against the terrorists.¹⁸ Four men, disguised as private mall-security officers and

armed with TEC-9 submachine guns, street-sweeper 12-gauge shotguns, and dynamite, entered the mall at two points and began executing shoppers at will.

It had not been hard for the terrorists to buy all their guns legally, in six different states across the Midwest. A year earlier Congress had failed to reauthorize the assault-weapons ban. Attorney General John Ashcroft had announced a proposal, on July 6, 2001, to have the FBI destroy records of weapons sales and background checks the day after the gun dealer had the sale approved. This meant that if a gun buyer subsequently turned up on the new Integrated Watch List, or was discovered by law-enforcement officials to be a felon or a suspected terrorist, when government authorities tried to investigate the sale, the record of the purchase would already be on the way to the shredder.¹⁹

The panic and confusion brought on by the terrorists' opening volleys led many shoppers to run away from one pair of murderers and into the path of the other, leading to more carnage. Two off-duty police officers were cited for bravery after they took down one pair of terrorists with their personal weapons, before the local SWAT team could get to the scene. Meanwhile, one of the other terrorists used his cell phone to remotely detonate the rental van he had driven to the mall; this resulted in even more chaos in the parking garages. Once the SWAT team arrived, it made short work of the two remaining terrorists. By the time the smoke had cleared, more than 300 people were dead and 400 lay wounded. In the confusion of the firefight the SWAT team had killed six mall guards and wounded two police officers.²⁰

At the same moment, at the Tower Place, in Chicago; the Crystal Place, in Dallas; the Rappamassis Mall, in Virginia; and the Beverly Forest Mall, in Los Angeles, the scene was much the same: four shooters and hundreds of dead shoppers. America's holiday mall shopping effectively ended that day, as customers retreated to the safety of online retail.

The December attacks were achieved with a relatively small amount of ammonium nitrate, some Semtex plastic explosive, and a few assault weapons in the hands of twenty people who were willing to die. Some of the terrorists were Iraqis, members of the fedayeen militias, who had been radicalized by the American presence in Baghdad. Others were Saudis. Only one was captured alive, at the Rappamassis Mall. Through continued questioning of him, said to involve CIA-trained interrogators, it was discovered that more shootings were planned for the New Year. Acting on this information, FBI agents, in concert with the Texas Rangers and the Seattle police, thwarted two follow-up attacks, aimed at New Year's Eve festivities on Sixth Street in Austin and in the Pike Place Market area of Seattle.

As the bloody year ended, the president pointed to our having prevented those two attacks as evidence that we had turned a corner, and that the United States would be safer in 2006.²¹

2006: MOBILIZING THE HOME FRONT

Well before the end of the first quarter of 2006 the economic effects of the previous year's attacks were clear. The closing of casinos and theme parks around the country had increased only regional unemployment, but the national effect on the already ailing airline industry was significant. The pre-Christmas attacks on shopping centers had been the most damaging of all. Economic indicators in the first quarter of 2006 showed the dramatic ripple effect of the collapse of retail shopping on top of the earlier economic devastation of recreational travel: GDP growth was negative, and national unemployment hit 9.5 percent in January.²²

There were rumors that in his State of the Union speech the president would call for the military to take on more security missions at home and would federalize all National Guard units. Acting to pre-empt him, eighteen governors met and announced that they were abolishing their National Guard forces and creating state militias, which could not be put under Washington's control and could not be sent overseas.²³ Speaking

for the rebellious governors, Rhode Island's chief executive said, "The promises of more security at home have yet to be backed by concrete action. Our modern-day Minutemen are needed in Woonsocket, not Fallujah. My problem is empty shopping malls, not whether Shiites or Sunnis or Kurds or Turkmen run this or that part of Iraq." She then ordered the first units of the Ocean State Militia to begin screening cars and shoppers at three shopping centers. Rhode Islanders emerged from their homes in response.

In January, when the president actually delivered the speech, he called for immediate passage of Patriot Act III. "We are a nation at war," he said. "We need to start acting that way. We can no longer be in denial. We must mobilize the home front." To that end he proposed four things: adding 200,000 members of the Army, to compensate for National Guard shortfalls; deploying three squadrons of new unmanned aerial vehicles (UAVs) to conduct reconnaissance in the United States; suspending the 1878 Posse Comitatus Act (which had prevented the military from conducting arrests in the United States); and modifying the charter of the National Security Agency to permit "unfettered use of its capabilities" in support of the FBI and the Department of Homeland Security.²⁴ Several senators immediately denounced the plan as the militarization of America, and promised to filibuster to stop the law's passage. Polls showed that 62 percent of Americans believed the president knew best what was necessary to defend America.

Skeptical civil libertarians were concerned that the new UAVs, which included Predators and Global Hawks, would be deployed not only to kill or intercept terrorists but also to monitor Americans. Girded by the polls, the president pressed forward with his plan. The secretary of homeland security welcomed the additional monitors, saying, "The more eyes we have looking at our coastline and borders, the more likely we are to interdict future terrorists and deter their attacks." The Air Force announced that deploying these UAV patrols domestically would finally provide large municipalities with the air security they demanded. The governors and mayors did not complain.

Then came Subway Day. Public-transit systems in Atlanta, Boston, Baltimore, and Philadelphia were all struck at 8:15 A.M. eastern time, on a Monday in April. Unlike the previous year's attacks, these strikes did not appear to involve suicides. The bombs were apparently hidden on trains while they sat in rail yards, or were placed in newspaper racks and ticket machines. "We knew something was up," the homeland-security secretary said, in a remark that many believe led to his resignation a week later. "We hesitated to raise the alert level to red again because we lacked actionable intelligence and we didn't want an increase in the terror alert to tip off the terrorists." More than 200 people died and more than 3,000 were injured.²⁵

Subways and commuter rail lines in New York, Washington, and Chicago moved quickly to halt trains and clear stations, causing chaos even in those cities that were not under attack. San Francisco closed its system for the day at 5:45 A.M. Pacific time, a half hour after the attacks in the east and before most commuters had left home, forcing workers onto the highways. Most cities kept their transport systems closed for the next day or two, leading to enormous traffic problems and numerous car accidents, as local officials struggled desperately to put passenger-screening systems in place.

The mayor of Chicago, whose security investments and preparations had often been lauded by the homeland-security secretary, was defiant as he pledged to ride the storied "El" to city hall each day. He also promised to speed up the installation of his once controversial "smart" surveillance cameras throughout public areas in the city. The system linked all video monitoring to a central emergency-management site, where police officers and sophisticated software programs could track suspicious activity on public thoroughfares. The mayor's actions received unanimous support from the city council. Chicagoans responded by continuing to use the trains.

Thursday was Railroad Day. Improvised explosive devices—or IEDs, popularized by Iraqi insurgents after the American invasion—exploded as interstate trains passed by or over them in Virginia, Colorado, Missouri, Connecticut, and Illinois.²⁶ The five charges resulted in almost a hundred deaths. Among the fatalities was the national rail service itself, as terrorists finally broke congressional will to fund the money-

losing venture any further: fifty pounds of explosives had accomplished what no appropriations committee could. It suspended operations that day and went into closure and liquidation the next month.

The "Patriot" line, from Boston to Washington, reopened later, after the Federal Railroad Police were created. The Ferpys, as they quickly became known, eventually took over security for all subway and commuter rail lines except the New York subway (which stubbornly resisted federal protection). The numerous agents on trains, along with the Ferpys' bright-yellow surveillance helicopters, are now a reassuring everyday sight in most large metropolitan areas—supplemented, of course, by the many UAVs, which are much harder to see.

Although Congress acted quickly on the president's proposal, creating the Ferpys took time. It was 2007 before all 155,000 officers had been hired, trained, and deployed. That delay was the major reason the Army went into the cities.

Most analysts now agree that Subway Day and Railroad Day not only caused the Senate filibuster to end, permitting the passage of Patriot Act III, but also finally triggered the withdrawal of some 40,000 troops from Iraq. The Army was needed in the subways.

In announcing the Reaction Enclave Strategy, the CENTCOM commander acknowledged, "Our goal now is just to prevent Iraq from becoming a series of terrorist training camps. If the new Iraqi army can't keep the peace among the factions, that's its problem." The strategy, which was also adopted in Afghanistan, has reduced the U.S. force deployment to those troops necessary to sanitize the area around the U.S. Counter-Terrorism Reaction Force (CTRF) camps. Iraq, with its three bases, and Afghanistan, with its two, require only 20,000 and 7,500 members of the U.S. armed forces respectively. Although some have criticized military and political leaders for allowing both countries to become "failed states" again, our CTRFs do at least retain the ability to strike terrorist facilities whenever they are detected. Improved intelligence collection and analysis have increased the success rate of the CTRFs and limited collateral damage.

The attacks in April of 2006 finally made possible the creation of the National Transportation Security Identity Card, or SID, as we now call it.²² Recall that before 2006 each of the fifty states actually issued its own card, in the form of a driver's license. The SID is a biometric smart card with the owner's photo, retinal signature, fingerprints, Social Security number, birthday, and address encoded in it. It has (so far, anyway) proved foolproof. Today a SID is required for passage through card-reader turnstiles at train stations, subway stations, and airports. Soon all automobiles will be equipped with SID readers connected to their ignition systems.

Even the Harvard Law School professor Alan Dershowitz, whose wariness of unnecessary government intrusion is well known, had acknowledged several years earlier that a national ID card would offer some benefits. Just a few weeks after 9/11 Dershowitz wrote,

Anyone who had the card could be allowed to pass through airports or building security more expeditiously, and anyone who opted out could be examined much more closely. As a civil libertarian, I am instinctively skeptical of such tradeoffs. But I support a national identity card with a chip that can match the holder's fingerprint. It could be an effective tool for preventing terrorism, reducing the need for other law-enforcement mechanisms—especially racial and ethnic profiling—that pose even greater dangers to civil liberties ... A national ID card would not prevent all threats of terrorism, but it would make it more difficult for potential terrorists to hide in open view, as many of the Sept. 11 hijackers apparently managed to do.

The American Civil Liberties Union had disagreed, arguing not only that the government would misuse ID cards but also that corporations would be allowed to learn more about our private habits, and that foreign-looking people would still suffer more discrimination. The National Rifle Association made common cause with the ACLU, noting that requiring gun buyers to use the card would create a de facto gun registry. For

several years the ACLU, the NRA, and their supporters helped prevent the introduction of a national ID card. After the mall massacres, perpetrated with assault rifles, Congress finally broke ranks with its NRA donors.

Not only has the SID increased identity security, but it could ultimately yield billions of dollars in savings by reducing bureaucracy. Local governments are using it to improve the delivery of state services and to cut down on waste and fraud by adding other information (gun and fishing licenses; welfare, unemployment, and insurance information) to the card.

The SID uses the same technology that has also been put in place on all shipping containers, which now incorporate tags that can provide location data when swept by a radar beam. Radar beams from towers, UAVs, and even satellites cause a SID to emit a signal that rides back to the transceiver on the return beam. That signal provides the card's number, and the processor computes its location. The signal is no stronger than that used for years at airports and in police speed traps. It is almost certainly safe, according to studies by the National Institutes of Health.²⁸

There were those who thought that the radar signals would be used to track Americans carrying the SID. The homeland-security secretary declared, "Our computers do not have the processing capability to track that many signals. We are focused on maintaining the integrity of our immigration system by keeping illegals out and expelling those individuals staying beyond their visas. We use the US-VISIT cards to do that." Still, some Americans refused to sign up for a SID. They are the people you now see waiting in lines at airports for the special interrogation and search procedures.

The suspension of rail transport for parts of 2006, along with the collapse of the national rail service and some of the airlines, exacerbated the economic problems that had emerged in 2005 and caused national unemployment to reach double digits by December. The GDP declined again, as both the manufacturing and retail sectors suffered. The federal deficit as a percentage of GDP reached a new high, because the government needed to pay for additional security measures but, with the economy in such poor shape, didn't dare to raise taxes.

2007: IRAN AND SAUDI ARABIA

At the beginning of the year three decisions demonstrated the differences between America and Europe yet again.

First, Chuck Hagel, a Republican senator from Nebraska, sponsored a resolution calling on the administration to reach out to the Islamic world with a number of specific proposals and to join the proposed EU Tolerance and Reconciliation Initiative. For several years Hagel had been articulating a foreign-policy strategy based on the "humble" approach promised by President Bush before 9/11.²⁹ Early in 2007 the administration rejected the Hagel resolution as "buckling under to terrorists." The plan went down to defeat in the Senate.

Second, the European Union reached a compromise on the issue of admitting Turkey. The EU president claimed that Turkey's membership would destabilize the "Christian EU" and flood Europe with Muslim immigrants.³⁰ Turkey agreed to a limit on immigration and was admitted. The EU passed the Tolerance and Reconciliation Initiative and opened talks with the nations of the Islamic Conference.

Third, the United States and Europe parted ways over what to do about "definitive intelligence" showing that Iran had six nuclear devices ready to be mounted on mobile long-range missiles. The war on terror had, admittedly, distracted U.S. national-security officials from dealing with Iran and nuclear proliferation generally.³¹

We had suspected that Iran had assembled some nuclear weapons, but only owing to the good work of the British Secret Intelligence Service did we learn that all the weapons would be in one place at one time. The president decided to launch a pre-emptive attack; given the circumstances, he could hardly have done otherwise. The B-2 strike in May did indisputably destroy all the mobile missiles and their launchers. (Regrettably, it also killed some Chinese defense contractors.) To the president's dismay, the attack apparently did not destroy any of the nuclear warheads, because they had not yet arrived at the base. Intelligence is still not good enough to provide precision. The good news was that without their missiles, the Iranians had very few ways of using their nuclear warheads. The bad news was that this revived fears that the warheads would fall into terrorist hands.

The Iranians responded to the attack by launching their older SCUD missiles, armed with conventional warheads, at the Saudi oil facilities at Ras Tanura. Iranian navy units attacked Saudi tankers. The result of all this was quite unsettling, both to regional stability and to the U.S. economy. World oil prices spiked to \$81 a barrel, before falling back to \$72 a month later.

Then, on the day before Thanksgiving, Hizbollah, the Iraqi Shia militia, and special operatives of Iran's elite Qods ("Jerusalem") Force acted.³² (They no doubt chose that day because it was then still a relatively heavy travel day in America.) "Stinger Day," as it came to be known, did not actually involve Stinger missiles, as originally thought. Rather, the missiles were SA-14s and SA-16s stolen from Iraqi army stockpiles way back in 2003, after the U.S. invasion. The United States had failed to secure the Iraqi weapons depots, giving terrorists an opportunity to help themselves to Saddam Hussein's guns, explosives, and missiles. The missiles were later smuggled across the Canadian border into Minnesota, Washington, and Montana.³³

SA-14s and SA-16s are much like Stingers, heat-seeking and easily portable. The four missile strikes that succeeded that day (in Atlanta, Chicago, Miami, and Los Angeles) were all aimed at 767s. The death toll was nearly 1,200, including those who died on the ground where the aircraft crashed. There is some dispute about whether three or four additional attempts failed in other cities. The most widely reported incident involved the killing by New Jersey state police officers of two Lebanese Hizbollah members who had been discovered sitting in a car with an SA-14 on a police ramp over I-95 next to Newark International.

Scarcely six years after 9/11 had briefly shut down commercial aviation and driven several major airlines into bankruptcy, the same thing occurred again. Hundreds of thousands of Americans were stranded for days that weekend. The Air Line Pilots Association refused to allow its members to return to the skies until all U.S. aircraft had been equipped with defenses against surface-to-air missiles, such as the ones used by Israel's air fleet.³⁴ Airline executives halted flights until troops had been deployed along all the takeoff and landing corridors at airports. Even then few people flew. In truth, the "legacy carriers," those airlines left over from the days when the industry was federally regulated, such as Delta, US Airways, and United, would probably have failed anyway. They already had crushing debt, and had been in and out of bankruptcy since 9/11. Their basic economic model (relying on outdated "hub and spoke" systems) was flawed, and they lacked the versatility of the regional carriers. In any event, having exhausted all federal loan guarantees and direct bailout packages, the remaining legacy airlines were closed down and broken up.

The emergency program to develop infrared countermeasures for civilian passenger aircraft is one of the best examples of America's using its high-tech advantage to battle the terrorists.³⁵ The IRCMs were produced at a cost of less than \$2 million per aircraft, and 2,000 were installed (at taxpayer expense) before the next Thanksgiving rolled around. Today we have almost 4,000 in place on the two new major U.S. airlines that have supplanted the old carriers. It has taken four years, but travelers are slowly returning to the air.

The U.S. bombers that struck Iran had been refueled from and then landed in Saudi Arabia. This gave fundamentalist forces in that country the spark and the distraction they needed to finally stage a coup against

the regime, which they did in August. The coup succeeded, and the House of Saud was driven out, at which point the price of oil reached the vicinity of \$85 a barrel and stayed there.

The Saudi coup marked one of the worst U.S. intelligence failures in years. We were caught off guard because we had not been able to effectively collect intelligence inside "the kingdom," as it was then called. We relied on the Saudi Ministry of the Interior to tell us how strong the *jihadis* were, and whether there was serious opposition to the king. As it turned out, opposition was widespread, even among the royal family and the Saudi National Guard that had been created to protect it.³⁶

The main stimulus for the coup probably came from the many Saudis who had returned from neighboring Iraq, where they had been radicalized by their experiences fighting the U.S. occupation. Osama bin Laden's final, pre-death request, captured on video and broadcast worldwide on al-Jazeera and other media networks, was that the royal family be deposed. It unexpectedly unified a variety of Saudi dissident groups.

By dawn on the third day of the coup the surviving members of the House of Saud had fled or were in prison, the oil fields were in the hands of troops loyal to the ruling clerics, and all foreigners were being rounded up and escorted to the airports or the borders. Iraq was the first country to acknowledge the new government. Other Gulf states soon followed.

Had the United States welcomed the new government, which we now know as Islamiyah, the effect on the world oil market might have been different. Instead we cut off the flow of spare parts needed to maintain the billions of dollars' worth of high-tech arms we had sold to the Saudis throughout the 1980s and 1990s; we also withdrew the U.S. contractors who knew how to make the systems work. Naturally, the new regime responded by canceling all oil contracts between U.S. firms and Saudi Arabia's national oil company. The company made up much of what it had lost in dumping the U.S. contracts by signing new long-term deals with China; recent economic growth had raised China's demand for overseas oil to about the level of America's, which had been depressed by economic stagnation.³⁷ The dislocation in the world oil supply was short-lived, but it was a cold winter in the northern United States that year.

The real economic effect of the oil-price increase didn't hit until the last quarter of the year. Still, 2007 ended with U.S. unemployment at 15 percent and GDP down again. The "good news," as the president pointed out in his Christmas message, was that because rail and air travel had been so heavily curtailed, and because fewer people were hanging out at shopping malls, and because many "destination venues" remained closed, Americans were spending more time together as families.

2008: ELECTION YEAR AND VIRTUAL WAR

Iran's hostile reaction to the U.S. bombing continued into 2008 and made use of Hizbollah allies. (Hizbollah, although composed largely of Palestinians and Lebanese, was created in the 1980s by Iran, which closely controlled it for more than twenty years.) Iran also employed its Qods Force, the covert arm of its Revolutionary Guards. American counterterrorism specialists had always feared Hizbollah and the Qods Force, because their "tradescraft" was so superior to that of other terrorist groups, including al-Qaeda and its many progeny. Diplomats and military leaders had for years used numerous back channels to keep both groups on the sidelines while we engaged in counterterrorist warfare. Our overt attack on Iran brought their full power to bear on our citizenry, with tragic results.

Working with the remnants of al-Qaeda, the Iranians staged a significant cyberattack in the United States during the 2008 election year. Reliance on cyberspace for retail had, of course, increased significantly after the many mall closings. More important, America had been using cyberspace to control its critical infrastructure since the late 1990s. Electrical-power grids, gas pipelines, train networks, and banking and financial markets all depended on computer-controlled systems connected to the Internet. President Bill

Clinton had acknowledged this dependence and vulnerability in a 1998 presidential directive. President Bush had articulated the National Strategy to Secure Cyberspace in 2003, but he had done little to implement it.³⁸ Meanwhile, many nations created information-warfare units and did surveillance on U.S. networks.³⁹ Iran was one of those nations.

The cyberattack began with a "Zero Day worm," a piece of self-propagating software that exploited a hitherto unknown vulnerability in a widely used computer operating system.⁴⁰ The worm bypassed computer firewalls and placed applets on companies' networks. The applets sent back covert messages describing what kind of network they had penetrated. Then, all at once, the worms erased the operating systems on key computers throughout the United States, and in their place installed a program that caused the computers to repeatedly reboot whenever they were turned on. Freight trains stopped. Nuclear-power plants shut down. Banks and brokerage houses froze. In some cities the emergency-call systems crashed; in others traffic lights shut off.⁴¹

Then, as cybersecurity teams were attempting to figure out what had happened, a second worm penetrated the operating system of the most widely used routers on U.S. computer networks. Once inside, the worm found the routing tables, called border gateway protocols, that told Internet traffic where to go. It scrambled the tables so that packets were lost in cyberspace. Confused by the traffic errors, many of the routers exceeded their processing capabilities and collapsed.

The stock market closed, as did the commodities markets. Major hospitals canceled all but emergency surgeries and procedures. Three major power grids experienced brownouts. Police and state militia units were ordered into the cities to maintain order and minimize looting. Millions of Americans, now staring at blank computer screens, were sent home from work.

The already reeling economy took another hit. The U.S. software industry was hurt the most. As a result open-source software, which had already spread widely in Europe and Asia, now dominates U.S. servers, routers, and desktops. The "free" software movement badly hurt revenues at several U.S. firms. Intervention by the new Federal Cyber Security Service, through its monitoring of all Internet traffic, has since somewhat reduced the prevalence of worms and viruses. Although some Americans complained about loss of privacy, others noted the benefits, such as a significant reduction in the volume of spam e-mail.

State and local police forces, state militias, Homeland Security Department personnel, and private guards now protected airports, the neighborhoods around them, train stations, the tracks connecting them, shopping malls, and U.S. borders. By the middle of 2008 there were 220,000 more such security officers than there had been in 2000. The armed forces had grown by 215,000 during the same period. Yet these new jobs hardly put a dent in unemployment, which hovered at 16 percent as the election approached.

During the campaign the two major parties had attempted to outdo each other in their anti-terror fervor. The similarity of their hawkish strategies helped give rise to an influential third party, the American Liberty Party, which challenged the Patriot Acts. San Francisco's mayor, a Chinese-American woman, surprised the experts by garnering 12 percent of the popular vote for the presidency on a platform built almost exclusively on shoring up civil liberties. Two new governors were elected on the American Liberty ticket, as were fourteen congressmen, who became a vocal minority in the new Congress.

2009: "NUKE SQUADS" AND THE NEW DRAFT

The Homeland Protection and Service Act of 2009 could not have been introduced in an election year. It was controversial when the president proposed it, in his 2009 State of the Union address, and, frankly, remains so today. Had he proposed it in 2008, it is likely that the American Liberty Party would have roused even more support than it did. The "new draft," as its opponents have labeled it, is different in important respects from earlier conscriptions in U.S. history. Conscripts are randomly selected and may serve any two consecutive years, as long as their service begins before age twenty-two. Most draftees are given monitoring

or first-responder jobs here at home; few are required to go through weapons training. Despite these differences from Vietnam-era conscription, draft dodging and AWOLs have already become such a large problem that the U.S. Marshals have created special squads to hunt down recalcitrants and force them back into service.

The act also included funding for special federal courts (which would operate in secret, to protect the judges and lawyers involved) to determine whether U.S. citizens, resident aliens, and illegal aliens detained on suspicion of terrorist activity should be treated as POWs or as enemy combatants. Recognizing how long it would take for the government to process the increasing number of detainees, Congress authorized the detention of suspected terrorists for up to three years without a hearing, subject to review every six months by the attorney general.

Meanwhile, the attorney general worried openly about the threat from those terrorists who were not yet known to the government and did not appear on any watch lists: freshly arrived illegal immigrants, members of sleeper cells, and new religious converts. He conceded that capturing these people before they committed acts of terror was next to impossible. Announcing that the Department of Justice would crack down on Islamic prayer in prisons, he instructed the authorities to track released prisoners thought to have converted to Islamic fundamentalism. Al-Qaeda and its imitators did not have to work hard to make converts within the U.S. prison system. A disproportionate majority of the prison population was nonwhite. Radical Islamists preached to these prisoners that the society that had imprisoned them should be made to pay.⁴²

Shortly after his inauguration the president announced that U.S. intelligence had detected plans by Iran and Hizbollah to bring nuclear weapons into the United States in retaliation for the U.S. bombing of Iran.⁴³ He announced the Safe Sea Approaches Program, which required all ships within 200 nautical miles of the U.S. coast to broadcast on a satellite frequency, squawking their location, name, departure and destination ports, and cargo. Ships not complying would be intercepted and might be sunk. In the first months of the program only one ship, a small Yemeni-flagged oil tanker bound for a refinery in Trinidad, was sunk, by a U.S. attack submarine 120 miles off Puerto Rico, causing limited environmental damage.

The Safe Sea effort also aimed to replace the entire global inventory of shipping containers with smart shipping units.⁴⁴ SSUs contain sensors that automatically and continuously transmit information about the contents of the containers from the moment they are sealed until they are opened. The Department of Homeland Security deployed 12,000 U.S. customs inspectors in overseas ports to ensure that the SSUs were not tampered with and to keep any non-SSU containers off U.S.-bound ships. Radiation portals and imaging equipment were also installed in foreign ports and shipping depots, providing real-time images of every container's contents as the container was loaded into a ship or a truck bound for America.

Concerned that Iran had already slipped nuclear weapons into the country, the Department of Homeland Security greatly expanded its nuclear search-and-disarmament teams, or "nuke squads," as they became known. Under an amendment to Patriot Act III the nuke squads were empowered to search "anywhere, anytime," with Geiger counters and other devices that could detect gamma rays and neutron flux. The squads regularly raided self-storage facilities and set up checkpoints at weigh stations on interstate highways. Initially, federal courts differed on whether other illegal materials found in these searches could be used as a basis for arrests; the Supreme Court ultimately ruled that searches for nuclear weapons did not require a warrant, and that any incriminating material found in the course of such a search could be used as evidence in court.

When Canada refused to allow U.S. nuke squads to conduct warrantless searches at customs stations on the Canadian side of the border, we built the Northern Wall, which channeled trucks and freight trains to a limited number of monitored border crossings. Barbed wire, radar installations, and thousands of security workers made our border with Canada resemble our border with Mexico.⁴⁵

The quick and thorough response to the threat of smuggled Iranian nuclear weapons was successful. Iran was evidently deterred, and no terrorist nuclear weapons have ever been found in the United States or en route to it.⁴⁶

2010: USING OUR OWN CHEMICALS AGAINST US

It had been three years since a terrorist bomb had been detonated on U.S. soil when executive jets packed with explosives slammed into chlorine-gas facilities in New Jersey and Delaware. Fortunately, in New Jersey much of the potential gas cloud was consumed by the flames of the initial explosion, and winds sent what remained of the plume over a largely uninhabited area. Delaware, however, was less fortunate: the poisonous cloud produced by the explosion left 1,500 dead and 4,000 injured, some as a result of panic during the evacuation of the Wilmington area.⁴⁷

Both al-Qaeda and Hizbollah claimed responsibility for the attacks on the chemical plants, although Iran condemned them and offered assistance to the affected communities. Investigation into the attacks is still officially ongoing. The United States has not yet retaliated, and the Pentagon is reported to have recommended against a retaliatory bombing of a nuclear-armed Iran. (The president has publicly denied that the Pentagon made any such recommendation, and points out that we bombed Iran as recently as 2007.)

Although the deaths in Delaware did not result from terrorist use of a chemical weapon, they nonetheless highlighted the dangers of a chemical attack and led directly to the issuing of gas masks to all citizens in metropolitan areas and rural counties with chemical plants or refineries. The masks were sound despite their mass production, but improper training caused some deaths from suffocation or coronary arrest during practice exercises.

Heavy lobbying by the chemical industry in the years following 9/11 had prevented any congressional regulation that would have imposed terrorism-specific security requirements or standards on chemical plants near large municipalities. Some reports claimed that the Bush administration had tried to undermine the Environmental Protection Agency by relaxing the system for evaluating plant security, in order to reduce the number of facilities deemed high-risk.⁴⁸ Indeed, both the facilities that were attacked had at one point been on the EPA's high-risk list but were not on the Bush administration's. Therefore they never underwent the security upgrades that a more severe risk assessment might possibly have induced. Outrage at this realization led to substantial new regulations and security requirements for private chemical and nuclear plants. Whereas the federal government might once have helped fund and carry out these improvements, the economic situation now placed the burden on companies and state militias. Money was drying up.

2011: WHAT WE MIGHT HAVE DONE DIFFERENTLY

Nine months into this year we have so far been spared any new terrorist attacks on our soil. Of course there have been incidents at our embassies and some U.S.-owned hotels overseas, as there have been nearly every year for more than a decade, but they have produced few U.S. casualties.

Some believe that the *jihadi* movement has lost its fervor. Others believe that with *jihadi* governments holding power in the former Saudi Arabia and in Pakistan, as well as in large parts of Iraq and Afghanistan, the terrorists are now too busy governing to be planning further assaults. I think the real reason for the diminished number of attacks is that the United States has hardened itself. We have greatly reduced our overseas profile, generally limiting our presence to highly secure embassies. It has become extremely difficult for people or cargo to get into or out of the United States without extensive inspection. The number of security workers per capita within America's borders is now higher than in any other country, including long-embattled Israel. A would-be terrorist knows that his communications can easily be monitored and his vehicles and facilities searched with little provocation. If suspicious materials are found, or if an informant

provides a potential lead, suspected terrorists can be held for an extensive period of time pending investigation. All this has made it more difficult to carry out attacks on U.S. soil. Of course, it has also hurt us in world trade, swelled our national debt, and depressed our GDP.

As we mark the tenth anniversary of 9/11 and the launch of our global war on terror, it is hard for many Americans to remember when the sight of police officers with automatic weapons and body armor was rare. Yet it wasn't so long ago that we could enter a shopping mall, a train station, an airport, or a public building without "see-through scanners" and explosive-sniffers. The use of SIDs is now so routine that we can hardly believe we ever did without them. For all the additional security these developments have afforded us, however, they have also produced a powerful political backlash. Polls show that the American Liberty Party may draw up to a third of the popular vote in the campaign next year.

Could the global war on terror have played out differently?

If the war had been restricted to eliminating al-Qaeda in the two years following 9/11, it is possible that the first generation might have been suppressed before al-Qaeda metastasized into a multi-group *jihadi* movement. In 2002 especially, we squandered opportunities to unite the global community in a successful counterterrorism effort. If we had initially sent a more substantial U.S. force to Afghanistan, bin Laden might have been killed in the first few weeks of the war, perhaps preventing many of the attacks that took place around the world in the following three years.

Had we not invaded Iraq, many of the *jihadis* we know today would never have been recruited to the terrorists' cause. Not invading Iraq would also have freed up money for earlier investments in domestic security: for instance, upgrades for chemical plants, trains, container shipping, and computer networks. Because we developed most such protective measures too late, panicking under political pressure, we too often used brute-force methods that were costly, intrusive, and less effective than we hoped. With more time, money, and careful consideration, the body politic might have persuaded the private sector to join the federal government in a real partnership to enhance the security of critical infrastructure. More important, we would have been better able to carry on an open national dialogue about the tradeoffs between security and civil liberties, and about the ways in which strong civil liberties and strong domestic security can be mutually reinforcing.

Perhaps, too, we could have followed the proposal of the 9/11 Commission and engaged the Islamic world in a true battle of ideas. Indeed, if we had not from the start adopted tactics and rhetoric that cast the war on terror as a new "Crusade," as a struggle of good versus evil, we might have been able to achieve more popular support in the Islamic world. Our attempts to change Islamic opinion with an Arabic-language satellite-television news station and an Arabic radio station carrying rock music were simply not enough. We talked about replacing the hate-fostering madrassahs with modern educational programs, but we never succeeded in making that happen. Nor did we successfully work behind the scenes with our Muslim friends to create an ideological counterweight to the *jihadis*. Although we talked hopefully about negotiated outcomes to the Palestinian conflict and the struggle in Chechnya, neither actually came to pass. Because we were afraid to "reward bad behavior," we let Iranian nuclear-weapons development get too far along, to the point where our only option was to attack Iran. This set back the Iranian democratic reform movement and added Hizbollah to our list of active enemies.

Although we occasionally lectured Arab states about the need for democracy and reform, we never developed a country-by-country program, or provided practical steps for moving theocracies and autocracies in that direction. Moreover, our haranguing Arab governments to be nicer to their citizens ended up producing a backlash against us, because our exhortations were seen as hypocritical in view of our bombing, torture, and occupation tactics in Iraq.

It can still be debated whether we accelerated the fall of the House of Saud with our arrogant tactics. The almost total lack of intelligence about what was going on in Saudi Arabia before the revolution did, however, make it hard for U.S. policymakers to develop sound strategies.

Despite years of earnest-sounding talk about "energy independence" and weaning ourselves from our addiction to foreign oil, no president since Jimmy Carter in the 1970s has ever seemed serious about these goals. We never developed truly fuel-efficient vehicles, so our foreign energy imports drastically harm the economy when oil prices soar.

As early as 2004 our nation's leaders were admitting that the war on terror would probably last a generation or more, even as they continued to argue among themselves about whether it could *ever* truly be won. If they had acted differently—sooner, smarter—we might have been able to contain what were at one time just a few radical *jihadis*, and to raise our defenses more effectively. Instead our leaders made the clash of cultures a self-fulfilling prophecy, turning the first part of the twenty-first century into an ongoing low-grade war between religions that made America less wealthy, less confident, and certainly less free.⁴⁹

FOOTNOTES:

1. As of June 28, 2004, about a year after the Department of Homeland Security's operational startup, only forty of 104 key changes recommended by the Government Accountability Office (GAO) had been implemented. "Status of Key Recommendations," GAO-04-865R, July 2, 2004.

2. Surveillance tapes obtained in 2002 by Justice Department officials in Detroit and Spanish authorities in Madrid included footage of the MGM Grand, Excalibur, and New York, New York casinos on the Las Vegas Strip, along with the World Trade Center in New York and Disneyland, in California. Las Vegas authorities and casino representatives declined to alert the public, possibly fearing a decline in tourism or an increase in the casinos' legal liability. "Despite Two Terror Tapes, Public Not Alerted to Vegas Threat, Memos Show," Associated Press, August 10, 2004. Also "Las Vegas, California Authorities Reacted Differently to Same al-Qaida Footage," Associated Press, August 11, 2004.

3. Canada's ethnically diverse population, liberal immigration and refugee policies, and long border with the United States make it a good place for terrorists to raise funds, procure supplies and fake documents, and plan attacks. The Canadian Security and Intelligence Service acknowledged in 2003 that it considered more than 300 people in Canada to be members of various terrorist organizations, including al-Qaeda.

The Mexican border is even more porous than the Canadian. More than 4,000 illegal immigrants cross into Arizona alone each day. Most are Mexican, but a large number hail from other countries. The Border Patrol, less than 10,000 strong, is no match for this enormous wave. For every person it picks up, at least three elude capture. "The Challenge of Terror," *Time International*, January 27, 2003. Also "Who Left the Door Open?" *Time*, September 20, 2004.

4. According to notebooks kept by *jihadi* students in Uzbekistan in the mid-1990s, instruction in explosive devices—from antipersonnel mines to bombs capable of destroying buildings—was a standard part of the curriculum at terrorist training camps. "The Terrorist Notebooks," *Foreign Policy*, March/April 2003.

5. After 9/11 the casino operator MGM Mirage—which owns the Mirage, the MGM Grand, and the Bellagio, among others—reported that its fourth-quarter earnings for 2001 were about a third of what they had been the year before (www.bizjournals.com/pacific/stories/2002/01/28/daily54.html).

6. The 9/11 Commission's investigation into the attacks of 2001 found that lax screening by immigration officials and poor communication between security agencies allowed the hijackers to enter the United States even though they used fraudulent passports, provided incomplete and false statements on visa applications, and were listed as suspect in intelligence-community information systems. As many as fifteen of the nineteen hijackers were potentially vulnerable to interception by border authorities, the commission concluded. *The 9/11 Commission Report*, Norton, 2004.

7. According to Belgian police, 19,050 blank Belgian passports have been stolen from various embassies, consulates, and town halls since 1990. Belgium's poor security, as well as the country's location at the crossroads of Europe (through which a high volume of human traffic passes), makes it an attractive base for terrorists and a global capital of identity fraud. Thousands of passports stolen from other countries also circulate on the black market. "How to Fake a Passport," *The New York Times Magazine*, February 10, 2002.

8. On July 19, 2004, days after wading across the Rio Grande, a Pakistani woman with a doctored South African passport was arrested at an airport in Texas. Because of inadequate funding, the DHS's Office of Detention and Removal is capable of detaining only about 200,000 illegal immigrants a year—even though some 1.2 million are apprehended. The lack of space has led to a system of "catch and release," in which border officials return hundreds of thousands of Mexican nationals to Mexico, only to see them return repeatedly to the United States. Non-Mexican illegals are released directly into U.S. communities on personal-recognition bonds with summonses to appear in court. More than 90 percent never show up. Not even all those illegal immigrants from countries that sponsor terrorism, such as Syria and Iran, are detained, because the DHS is not required by statute to detain illegal aliens unless they are felons, known terrorists, associates of terrorists, or persons suspected of certain other criminal violations. "Transforming the Southern Border: Providing Security and Prosperity in the Post 9/11 World," House Select Committee on Homeland Security, September 2004.

9. These procedures for treatment of detainees are drawn from recommendations made by the anti-terrorism experts Philip Heymann and Juliette Kayyem in their final report for Harvard University's Long-Term Legal Strategy Project. In the report the authors strive to balance the need for increased security in the post-9/11 world with the obligation to protect civil liberties. Philip B. Heymann and Juliette N. Kayyem, "Preserving Security and Democratic Freedoms in the War on Terrorism," Belfer Center for Science and International Affairs, Harvard University, November 16, 2004.

10. In August of 2002 Attorney General John Ashcroft indicated his desire to create separate camps for U.S. citizens held indefinitely as "enemy combatants." The Immigration and Customs Enforcement Agency currently operates or oversees more than fifteen detention facilities (most of which are categorized as Service Processing Centers) around the country for housing illegal aliens. "Camps for Citizens: Ashcroft's Hellish Vision," *Los Angeles Times*, August 14, 2002. Also www.ice.gov/graphics/dro/index.htm.

11. After 9/11 the FBI noted a 1600 percent increase in reported hate crimes against Muslims—481 incidents in 2001, compared with twenty-eight in 2000. *Hate Crime Statistics 2000* and *Hate Crime Statistics 2001*, FBI.

12. In 1998 Lord Alfred Dubs, a member of Parliament from Northern Ireland, said of his country's experience with terrorists, "The Government have long held the view that internment does not represent an effective counterterrorism measure ... The power of internment has been shown to be counterproductive in terms of the tension and divisions which it creates."

13. In *Korematsu v. United States* (1944) the Supreme Court ruled that "the gravest imminent danger to the public safety" justified the internment of Japanese-American citizens as necessary to prevent "espionage and sabotage in an area threatened by Japanese attack." In his opinion Justice Hugo Black wrote, "Compulsory exclusion of large groups of citizens from their homes, except under circumstances of direst emergency and peril, is inconsistent with our basic governmental institutions. But when under conditions of modern warfare our shores are threatened by hostile forces, the power to protect must be commensurate with the threatened danger."

14. In early 2002 the GAO revealed a dearth of translators, interpreters, diplomats, and intelligence specialists with adequate foreign-language skills in the U.S. Army, the Department of State, the Department of Commerce's Foreign Commercial Service, and the FBI. Follow-up reports over the next two years acknowledged the State Department's efforts to address its staffing shortfalls but pointed out the still dire shortage of foreign-service officers proficient in Arabic, Russian, Chinese, and other languages. "Foreign Languages: Human Capital Approach Needed to Correct Staffing and Proficiency Shortfalls," GAO-02-375, January 2002. Also "State Department: Targets for Hiring, Filling Vacancies Overseas Being Met, but Gaps Remain in Hard-to-Learn Languages," GAO-04-139, November 2003.

15. Student visa applications fell by 21 percent from 2001 to 2004, and the number of graduate school applications from foreign students has dropped by 32 percent in the past year alone. "State, Homeland Security Urged to Overhaul Student Visa Process," *Government Executive*, August 2, 2004.

16. Unlike airports and government buildings, which screen people and bags, shopping malls currently have no security checks at their entrances. Visitors may move about freely, carrying large bags and packages. Shopping centers must tread a thin line between keeping the public safe and scaring it away. "Soft-Target Protection: Keeping Shopping Malls Safe," *Homeland Security*, June 2004.

17. Schumer's announcement followed the Justice Department's indictment of a Somali man involved in an alleged al-Qaeda plot to bomb a shopping mall near Columbus, Ohio. "New Intelligence Shows Terrorists Targeting Shopping Centers; Feds Need Stronger Response to Strengthen Security in Malls," Office of Senator Charles Schumer, June 20, 2004.

18. According to *Access Control & Security Systems* magazine, "the Mall of America CCTV system covers nearly 1.6 million square feet of mall plus several acres of parking lots." *Access Control & Security Systems*, March 1, 1997.

19. The changes to the FBI's National Instant Criminal Background Check System (NICS), ultimately implemented in 2004, came on the heels of an earlier rule change, also proposed and implemented by the Ashcroft Justice Department, reducing the maximum retention period for information relating to firearms sales from six months to three months. In 2002 a GAO study found that the next-day destruction of records would prevent the FBI from identifying mistaken firearms transactions and initiating retrieval actions. *Federal Register* Vol. 66, No. 130 (July 6, 2001). Also "Gun Control: Potential Effects of Next-Day Destruction of NICS Background Check Records," GAO-02-653, July 10, 2002.

20. Lack of coordination among first responders is a continuing problem, and communications breakdowns (which caused so many deaths among police and firefighters on 9/11) can be lethal. Brian Jackson, D. J. Peterson et al., "Protecting Emergency Responders: Lessons Learned From Terrorist Attacks," RAND, 2002. Also "Emergency Responders: Drastically Underfunded, Dangerously Unprepared," Council on Foreign Relations, June 2003.

21. The State Department keeps track of the number of terrorist attacks and publishes an annual report, "Patterns of Global Terrorism," through its Office of the Coordinator for Counterterrorism. The initial report, published on April 29, 2004, under-reported the number of attacks in 2003, but the revised report, published on June 22, 2004, revealed that 208 acts of international terrorism took place in 2003, up from 205 in 2002.

22. Although the direct effects of 9/11 were too small and geographically concentrated to make a measurable dent in the country's overall economic output, the attacks did significantly affect the airline, insurance, agriculture, and food industries, small businesses, and New York City. "The Economic Effects of 9/11: A Retrospective Assessment," Congressional Research Service (CRS), September 27, 2002.

23. National Guard units may be most effective in conducting homeland-security missions when left under state control. Bernard Rostker, "The National Guard and Homeland Security," testimony before the Senate Judiciary Committee's Subcommittee on Technology, Terrorism, and Government Information, December 13, 2001.

24. Since 9/11 more than 51 percent of Army Guard members and 31 percent of Air Guard members have been activated for homeland security and overseas missions. Although intended to be a later-deploying reserve force, the Army Guard has taken on extensive ongoing missions. The Air Guard's readiness has declined, because the rapid pace of operations limits training opportunities and creates maintenance challenges in its aging aircraft. The demands of overseas missions have made Guard units unavailable for

state needs. "Reserve Forces: Observations on Recent National Guard Use in Overseas and Homeland Missions and Future Challenges," GAO- 04-670T, April 29, 2004.

25. The need to balance security with accessibility and convenience, and the open design of the mass-transit systems, make those systems difficult to secure. Security challenges to both passenger and freight rail systems are compounded by the interconnection of trains with other modes of transportation, such as shipping and trucking. The freight system encompasses more than 100,000 miles of rail in the United States and often transports hazardous materials, providing numerous attractive targets for terrorists. Despite this, the Bush administration has been slow to request dedicated funding for rail security. "Rail Security: Some Actions Taken to Enhance Passenger and Freight Rail Security, but Significant Challenges Remain," GAO- 04-598T, March 23, 2004.

26. Rail security is already hotly debated. On March 22, 2004, Tom Ridge outlined a series of security initiatives for rail and mass-transit systems, including training additional bomb-detecting canine teams; developing biological, chemical, and explosive countermeasures; and screening baggage. Critics argue that these initiatives do not address immediate security concerns, the need for additional funding, or the lack of coordination between the Department of Homeland Security and the Department of Transportation. The DHS still lacks a plan to secure public-transportation networks. "Fact Sheet: Rail and Transit Security Initiatives," DHS, March 22, 2004. Also "America at Risk: Closing the Public Transportation Security Gap," Congressman Jim Turner, Democratic Staff Report, Select Committee on Homeland Security, May 2004. Also "Rail Safety and Security: Some Actions Already Taken to Enhance Rail Security, but Risk-based Plan Needed," GAO-03- 435, April 2003.

27. For some years various experts have been recommending that states issue "smart ID cards" containing digitally encoded biometric data. Shane Ham and Robert D. Atkinson, "Modernizing the State Identification System: An Action Agenda," Progressive Policy Institute, February 7, 2002.

28. The growth of new technologies using radiofrequency fields (RF)—mobile phone systems, radio and television transmitters, medical equipment, radar systems—has led to numerous studies examining their effects on human health. A comprehensive review provisionally concluded that these studies presented no consistent or conclusive evidence of a causal relationship between RF exposure and any adverse health effect, but the studies have too many deficiencies to rule out an association completely. Anders Ahlbom et al., "Epidemiology of Health Effects of Radiofrequency Exposure," *Environmental Health Perspectives*, National Institute of Environmental Health Sciences, September 23, 2004.

29. Hagel has long been a critic of the Bush administration's aggressive policy of unilateralism, arguing that "U.S. leadership is determined as much by our commitment to principle as by our exercise of power." "A Republican Foreign Policy," *Foreign Affairs*, July/August 2004.

30. In an interview with the German newspaper *Die Welt* last summer, Bernard Lewis, a Princeton professor emeritus and a widely cited authority on the Middle East, said, "Europe will be part of the Arab west, the Maghreb. Migration and demography indicate this. Europeans marry late and have few or no children. But there's strong immigration: Turks in Germany, Arabs in France and Pakistanis in England. They marry early and have many children. Following current trends, Europe will have Muslim majorities in the population by the end of the 21st century at the latest." "Europa wird am Ende des Jahrhunderts islamisch sein," *Die Welt*, July 28, 2004.

31. In 2004, even as military planners contemplated the possibility of pre-emptive strikes, there was still no long-term U.S. strategy for dealing with Iran's nuclear ambitions, and at least one analyst feared that the United States might already have missed its chance to stop Iran from developing nuclear weapons. "U.S. Debates Military Strikes on 'Nuclear Iran,'" *Financial Times*, September 16, 2004.

32. A recent study of terrorist organizations by the RAND Corporation identified Hizbollah as one of the three most significant threats to the United States (along with al-Qaeda and the Revolutionary Armed Forces of Colombia), because of its strong antipathy toward the country and its ability to launch sophisticated attacks. Kim Cragin and Sara A. Daly, "The Dynamic Terrorist Threat: An Assessment of Group Motivations and Capabilities in a Changing World," RAND MR-1782-AF, 2004.

33. Man-portable air defense systems (MANPADS) are short-range surface-to-air missile systems designed for use by one or two soldiers to attack aircraft. Since the 1950s twenty countries have developed and produced MANPADS, and 500,000 to 750,000 weapons are believed to be in the worldwide inventory today. Their portability, ease of use and concealment, and low cost make them attractive to terrorists. The U.S. government estimates that a few thousand currently lie outside state control and that thousands more may be vulnerable to theft and transfer to terrorist groups because of inadequate physical security, inventory controls, and national export standards. Thousands of MANPADS may have been provided to Iraqi security forces or stolen during hostilities immediately following the collapse of Saddam Hussein's regime, possibly doubling the number of MANPADS on the black and gray markets. Colin Powell has said that "no threat is more serious to aviation" than these weapons. "Nonproliferation: Further Improvements Needed in U.S. Efforts to Counter Threats From Man-Portable Air Defense Systems." GAO-04-519, May 13, 2004. Also "U.S. Expands List of Lost Missiles," *New York Times*, November 6, 2004.

34. The cost of fully outfitting U.S. airframes with countermeasures against surface-to-air missiles is estimated at \$50-\$100 billion over twenty years. "Airline Protection Advances in House," *Washington Times*, April 30, 2004. Also "Aviation Security," GAO-04-728, June 4, 2004.

35. In October 2003 the Department of Homeland Security's Science and Technology Division initiated the Counter-MANPADS Program, to adapt current military countermeasure technology for civilian aircraft. The Directed Infrared Countermeasure, a technology currently used in the military's Large Aircraft Infrared Countermeasure system, uses a high-intensity modulated laser beam to defeat the threat missile's guidance system. It is difficult to adapt the technology for civilian use, however, partly because maintenance and logistical infrastructure costs are prohibitive and false-alarm rates are high. "Fact Sheet: Countering Missile Threats to Commercial Aircraft," DHS, January 6, 2004.

36. Over the course of the past eighty years, particularly during the height of Nasserism and pan-Arabism in the 1950s and the reaction against oil-wealth-generated modernization in the 1970s, the Saudi monarchy has at various times faced challenges from Islamic extremists and from secular movements supported by other Arab states. Since the 1990s hard-line opposition groups—some inspired by Osama bin Laden—have re-emerged in response to the American presence on Saudi soil. The Saudi government has done relatively little to track the thousands of young Saudis who have passed through terrorist training camps, or to disrupt the flow of

money to extremist groups, or to suppress the spread of radical ideology. Until the attacks on a housing compound in Riyadh on May 12, 2003, the Saudi government had viewed terrorism largely as an external problem rather than a threat to national security. Anthony H. Cordesman and Nawaf Obaid, "Saudi National Security: Military and Security Services—Challenges and Developments," Center for Strategic and International Studies, working draft, May 30, 2004.

37. "At 5.5 million barrels a day," according to a recent ABC News report, "China is already the world's second-largest consumer of oil, behind the United States, and it has the fastest-growing appetite for more. Oil feeds the factories that have turned it into a manufacturing powerhouse, making 50 percent of the world's cameras and 30 percent of its air conditioners and TVs." A report by the International Energy Agency predicts that Chinese oil imports will equal current U.S. imports by 2030. "A Closer Look Behind the Price," ABC News, May 26, 2004. Also "World Energy Outlook 2004," International Energy Agency, October 2004.

38. In a letter to Secretary of Homeland Security Tom Ridge dated March 19, 2004, Senator Joseph Lieberman criticized the Bush administration for failing to move beyond the vague generalities outlined in the National Strategy to Secure Cyberspace and implement concrete plans to protect information systems from cyberattacks. Meanwhile, Internet-industry officials believe that the government's neglect of cybersecurity has led to rapid turnover in the position of director of the National Cyber Security Division, part of the Department of Homeland Security. "Top U.S. Cyber-Security Official Resigns," *The Washington Post*, October 2, 2004.

39. China, Russia, North Korea, Iran, Libya, Syria, India, Cuba, Japan, Germany, France, and the United Kingdom all are reportedly developing their information-warfare capabilities. The Pentagon's 2003 assessment of China's military potential noted "an unusual emphasis on a host of new information warfare forces," including "a corps of 'network warriors.'" "Cyberwarfare," CRS, RL30735, June 19, 2001. Also "Annual Report on the Military Power of the People's Republic of China," Department of Defense, July 28, 2003.

40. Zero Day worms, viruses, and other electronic "exploits" have already attacked military and civilian computer systems in the United States. Vulnerability to such attacks persists. "Blindsided," *Government Executive*, May 1, 2004. Also "Computer Attack and Cyber Terrorism: Vulnerabilities and Policy Issues for Congress." Also CRS, October 17, 2003.

41. The increased reliance on computers to monitor and control telecommunications, power distribution, water supply, and public-health and emergency services, combined with the adoption of standardized technologies (such as Microsoft's Windows) and the widespread availability of technical information, has put these control systems at greater risk of attack. "Critical Infrastructure Protection: Challenges in Securing Control Systems," GAO-04-140T, October 1, 2003.

42. A recent Justice Department report suggests that there are few safeguards against the propagation of Muslim extremism in federal prisons. Fundamentalist Islamic inmates are converting fellow prisoners to radicalism, and at times urging them to overthrow the U.S. government. "A Review of the Federal Bureau of Prisons' Selection of Muslim Religious Services Providers," Department of Justice, Office of the Inspector General, April 2004.

43. The Maritime Transportation Security Act of 2002 identified vulnerabilities in the nation's ports and waterways, the routes by which an illicit nuclear weapon might arrive. The Coast Guard has worked with facilities and vessels to implement security plans, but the task may be too big to complete in time. "Maritime Security: Substantial Work Remains to Translate New Planning Requirements Into Effective Port Security," GAO-04-838, June 30, 2004. Also Graham Allison, *Nuclear Terrorism: The Ultimate Preventable Catastrophe*, Times Books, 2004.

44. Today most containers are secured by a passive seal that indicates when there has been tampering but does not prevent access to the contents. Such seals are easily circumvented. Standardizing seals and containers and installing electronic systems to monitor a container's status would greatly increase security throughout the transport chain. Maarten van de Voort et al., "Seacurity: Improving the Security of the Global Sea-Container Shipping System," RAND, MR-1695-JRC, 2003.

45. Not that our southern border is particularly secure: currently no strategy exists for comprehensively monitoring all 1,933 miles of the U.S.-Mexico border around the clock. Technology is used erratically, and most of the seismic, magnetic, and thermal sensors deployed along the border are more than twenty-five years old and require constant maintenance. Integrated surveillance systems, which use both ground sensors and cameras linked to a central command center, have recently been installed, but they cover only a portion of the border. The Tethered Aerostat Radar System is a set of six high-altitude balloons anchored over the border that identify low-flying aircraft. When TARS is inoperable because of bad weather, P-3 airplanes flown by the Office of Air and Marine Operations provide live radar and video feeds of activity along the border. The Border Patrol has also deployed unmanned aerial vehicles that use night-vision equipment. "Transforming the Southern Border," House Select Committee on Homeland Security, September 2004.

46. A nuclear attack on the United States is, along with the threat of a biological attack, the most frightening possibility to contemplate. Although developing and using even a crude nuclear weapon would be extremely difficult for terrorists, it is far from impossible, and the United States remains poorly prepared to defend against a nuclear attack. Matthew Bunn and Anthony Wier, *Securing the Bomb: An Agenda for Action*, Nuclear Threat Initiative and the Project on Managing the Atom, Harvard University, May 2004. Also Graham Allison, op. cit.

47. A recent study conducted by the New York Academy of Medicine found that two fifths of Americans would fail to follow civil-defense orders properly in the event of a biological attack. Roz D. Lasker, "Redefining Readiness: Terrorism Planning Through the Eyes of the Public," New York Academy of Medicine, September 14, 2004.

48. The EPA and the DHS have done separate threat analyses showing that between two (the DHS's estimate) and 123 (the EPA's estimate) of the nation's chemical plants pose a risk to the lives of more than a million people. Current federal requirements to reduce risks at chemical facilities are based on the Emergency Planning and Community Right-to-Know Act of 1986 and the Clean Air Act of 1990. But neither law explicitly addresses chemical release due to criminal or terrorist acts. Proposals now pending before Congress would require vulnerability assessments, reduce the amount of information available to the public about security at chemical facilities, and increase funding for security at those facilities. "Chemical Plant Security," CRS, RL31530, January 20, 2004. Also "Chemical Plants Still Have Few Terror Controls," *Wall Street Journal*, August 20, 2004.

49. *Author's note:* This scenario is intentionally very bad but not worst-case. (A nuclear or biological attack would be the worst case.) The purpose of this article is to suggest that there are still opportunities to avoid such disasters without sacrificing our liberties, if we

act now. Finally, for those who may say that this has given the terrorists recipes and road maps for how to attack us, here's a bit of bad news: the terrorists already know in much greater detail how best to attack us again.

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