



From Funnels to Large-Scale Irrigation: Changing the Criminal Justice System Paradigm to Improve Public Health and Safety

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Executive Session on Community Corrections

This is one in a series of papers that is being published as a result of the Executive Session on Community Corrections (2013-2017).

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I. Criminal Justice Reform as Paradigm Change

Policing and prosecution patterns are affected by, and also affect, structural changes in the economy, culture, and life of a locale. We start with an example that is local to us. Milwaukee, Wisconsin is the fifth-largest metropolitan area in the Midwest. It has had a long and distinguished history of economic productivity, based largely on an industrial foundation. It sits on the edge of Lake Michigan, one of the largest water resources in the world, and it has many world-class attractions. But like many communities around the United States, it has suffered profoundly from long-term changes in the structure of its local economy. Over decades, deindustrialization has resulted in significant underemployment, lack of upward mobility, a decline in neighborhood vitality, loss of property tax base, and related problems. This history is manifest in the modern patterns of policing and the functioning of its criminal justice system. Bloated dockets, inconsistent outcomes, the loss of community support, indefensible racial disparities in incarceration, and neighborhoods

in trouble are examples of what must be changed. Critics have identified this as both a national and a local problem.¹

As important as it is to identify these challenges, it is difficult to understand how a community can systematically address them and reverse their devastating impacts. Long-term transformational change requires an acknowledgment that profound change is necessary: a willingness to collaborate across traditional institutional boundaries and to reexamine root assumptions; the courage to take risks and explore new ways of thinking and practice; the honesty to critically evaluate changes; and a long-term commitment. Standing alone, each of these recognitions is insufficient, but each is necessary. We believe that Milwaukee's experience of criminal justice reform teaches that when these elements are united, they create an inspiring vision for how criminal justice reform leads to a safer, healthier, and more prosperous community.

The story of criminal justice reform in Milwaukee County is one of organic change. In the last ten years, criminal justice professionals like ourselves – the elected district attorney and the regional attorney manager for the state public defender's office – have come together with others to develop innovations that better serve our community. These innovations have not been drawn from a single source or driven

by a single stakeholder; rather, progressive ideas and approaches originate from different groups interested in the health and well-being of Milwaukee. Points of convergence have emerged. Working in concert with social service agencies and local institutions, Milwaukee has developed evidence-based approaches that combat the origins of crime. The District Attorney's Office has embedded community prosecutors in police stations around Milwaukee, where they proactively address budding disputes at the neighborhood level. The Sojourner Family Peace Center has opened, enabling criminal justice agencies and victim-witness professionals to work alongside community advocates and healthcare providers in a coordinated response to domestic violence. Working together, the District Attorney's Office, the Public Defender's Office, and others have created an early intervention program within the District Attorney's Office which systematically uses risk-and-needs assessments to track low-risk offenders into diversion agreements and treatment programs. The City of Milwaukee established a Homicide Review Commission that brings law enforcement, justice system professionals, and social service providers together to identify and address trends in violent crime.

As a prosecutor and a public defender, the authors are members of a larger community of justice system stakeholders. In Milwaukee, this community has demonstrated creativity and courage. Under the leadership of Chief Judge Maxine White and former Chief Judge Jeffrey Kremers, Milwaukee County's Criminal Justice

Coordinating Council has served as a laboratory for innovation. Milwaukee County Executive Chris Abele and his cabinet have invested in criminal justice reform, as have our partners within municipal government and law enforcement. Similarly, our colleagues in the nonprofit and social service sectors have contributed both resources and a valuable perspective to our efforts to effect meaningful change within a dynamic community.

These partnerships are predicated on a simple goal: improving the effectiveness of our criminal justice system in serving the people of Milwaukee County. The initiatives arising from these partnerships work to improve the lives of Milwaukee County residents who consistently struggle with health, education, crime, and long-term community redevelopment. Essentially, each initiative serves as a step toward a safer, healthier, and more prosperous community.

Simply describing these initiatives does not capture the essence of the changes that have been effected within Milwaukee's criminal justice system. Programs and practices are just the outward expressions of a more fundamental reorientation of our criminal justice philosophy. Working collaboratively, prosecutors, defense attorneys, judges and other systemic actors have redefined both the cultural practices within Milwaukee's criminal justice system and the basic assumptions that define this system. To use Thomas Kuhn's famous phrase, Milwaukee's criminal justice system has undergone a "paradigm shift" (Kuhn, 1962). If a traditional model of the criminal justice system depicted it as a "funnel" that swept a vast array of community problems down an "assembly

line of justice" (Travis, 2009), the Milwaukee model strives to resemble a large-scale irrigation system. This reimagined system features multiple, diverse channels for intervention and response, working throughout the community and reflecting broader social dynamics.

The metaphor of the "funnel" derives from John Jay College of Criminal Justice then-President Jeremy Travis's keynote address at Marquette Law School's 2009 Public Service Conference. To a certain extent, this address sparked our awareness of the need for a paradigm shift in understanding our criminal justice system. Travis described conventional thinking about criminal justice as "warped" by the "tyranny of the funnel." According to Travis, "because our imagination ha[d] been stultified by [the] undue influence" of this funnel paradigm, criminal justice policymakers like ourselves were making four major errors:

- First, we were confusing the pursuit of justice with the successful adjudication of cases, without recognizing that justice can be achieved in ways that do not directly involve the justice system.
- Second, we too readily thought that the proper response to crime was to increase justice system efficiency and the severity of system outcomes without realizing that crime can be reduced through a variety of alternative approaches.
- Third, we believed that the only powers of justice system agencies were the powers to arrest suspects, adjudicate cases, and sanction

law violators, without recognizing the enormous moral authority these agencies hold.

- Fourth, we viewed this system – this funnel – as properly operating in a vacuum, believing that it should be far removed from the messy dynamics of interpersonal relationships and complex processes of community life.

Travis then proposed four “challenges” raised by these observations.

- The First Challenge: We need to recognize that justice is about more than adjudication.
- The Second Challenge: We must explore ways to prevent crime without relying on the criminal justice system.
- The Third Challenge: We need to harness the moral authority of the agencies of justice, not just their legal power.
- The Fourth Challenge: It is imperative that we coordinate agencies of justice with the dynamics of community life.

The errors that Travis identified were flaws in the old paradigm that revealed the need for change; the challenges he described formed the early outlines of a new paradigm that would emerge to replace the old. The “large-scale irrigation” conception of criminal justice discussed in this paper can be understood as our response to Travis’ challenges: it is a vision of a richer, broader,

more complex, more effective justice system that responds directly to problems in our community—or more accurately, in the end allows the community itself to identify and respond to those problems. It is a model that puts the power and moral authority of the criminal justice system to effective use while recognizing the system as just one of many approaches to dealing with community problems. Collaborations with health and social service providers mean that criminal justice professionals can address the needs of people accused of committing crimes, victims and communities in a variety of ways; prosecutors, public defenders, and judges use data-informed assessment tools to determine which approach is optimal for each individual who encounters our system.

These initiatives work because they integrate into the broader cultural and intellectual landscape of criminal justice in our community. Meaningful reform isn’t something you can pull off the shelf, ready to plug in and use. When jurisdictions struggle to make change, it is often because they are merely trying to “adopt” existing models: the paradigmatic foundation necessary to implement such models is absent. If justice system leaders from another jurisdiction came to Milwaukee seeking to replicate our programs, we would urge them to start by examining the culture, practices, and economic realities in their system and its surrounding community. It is at this fundamental, cultural level at which justice system professionals must implement change.

With that said, the purpose of the following paper is threefold.

First, we will describe the process by which Milwaukee is achieving paradigm change within its criminal justice system. In many ways, at least initially, our efforts unwittingly but fortunately benefited from a confluence of forces for which we cannot take credit. But because policymakers in Milwaukee were willing to reflect, collaborate, take risks and sometimes even cede powers traditionally associated with their roles as justice system practitioners, system stakeholders capitalized on those initial opportunities. With growing awareness, justice system policymakers began to develop the intellectual framework needed to sustain transformative progress. We hope that, by studying this process, policymakers elsewhere will find ways in which they may make paradigmatic change.

Second, we will describe some of the intellectual steps taken to construct this new paradigm. Milwaukee's justice system practitioners arrived at some of these new understandings through their own experiences in seeking reform; others were learned from external sources and other jurisdictions once local reforms were already underway.

Finally, we want to sound a note of hope in a challenging era for criminal justice professionals. To our colleagues working in prosecution and public defense roles in other major cities: you can do more than you think with local resources. Successfully shifting to a new paradigm requires

time, a willingness to take risks, and some long, tough conversations, but it is possible. We hope that Milwaukee's story gives you some fresh ideas and strengthens your resolve.

II. Milwaukee's Story of Organic Paradigm Change

The roots of criminal justice reform in Milwaukee do not underlie one place or one professional group. Rather, a growing concern over the outcomes of our criminal justice system have inspired many to be interested in reform. One important example lies within the ranks of the district attorney's office and the public defender's office. Reform ideas arose from courtroom practitioners confronting and resolving the systemic implications of criminal proceedings; learning happened as applied. Leadership teams within the district attorney's and public defender's offices didn't intentionally plant the seeds of change but rather nurtured seeds that were already growing. While we as authors cannot provide step-by-step instructions for planting those seeds, we can describe the attributes that made Milwaukee fertile ground for collaborative reform. And we can explain how Milwaukee's criminal justice system developed an intellectual framework around its blossoming reforms to help them thrive.

Cultural Preconditions for Change

The success of a conversation depends upon the register in which we communicate. An excessively formal register may convey detachment from the realities underlying a conversation; an excessively casual one might communicate disinterest.

A similar principle governs communication between partners in the criminal justice system. For example, while the relationship between prosecutors and public defenders is necessarily adversarial during a contested court proceeding, it need not be when addressing broader, systemic issues. In Milwaukee, we are fortunate that communications between the district attorney's and public defender's offices are conducted in a respectful and collaborative register, one reflective of shared values and a history of criminal justice practitioners conforming their work to the needs of the community. Far too often, the relationship between prosecutors and public defenders is misconstrued as uniformly oppositional.

In the early part of the 21st century, the criminal justice system in Milwaukee was one in which prosecutors and public defenders respected one another and many were open to conversation, innovations, and new ideas. This culture developed due to a long history of conscientious adherence to professional duties and leadership within Milwaukee's criminal justice system. Credit for Milwaukee's respectful and professional justice system culture is owed in large part to E. Michael McCann, district attorney from 1969 to 2007. While McCann remained a firm believer in an adversarial justice system model, his insistence on absolute transparency, ethics and professionalism often produced interactions between prosecutors and the defense bar that were respectful and professional. Furthermore, McCann's support

for restorative justice initiatives signaled an institutional openness to new ways of thinking, inspiring prosecutors to question their received conceptions of the criminal justice system. An additional factor in forming this culture was that in 1977, Wisconsin created a statewide Public Defender System that invited defense attorneys to pursue a career in public service. The creation of the Office of the State Public Defender created a stable institutional partner in Milwaukee. These factors, and the fact that, in a state with only two law schools, many of our prosecutors and defenders had been classmates, made conditions ripe for collaborative dialogue between traditional justice-system adversaries.

By the time McCann retired in 2007, a criminal justice community existed in which prosecutors and defenders usually treated each other with professionalism and respect, and in which a generation of prosecutors was increasingly comfortable with critically analyzing and reforming the status quo. The necessary conditions existed to nurture a new, collaborative criminal justice paradigm. All that was needed was to identify ideas, theories, and practices to seed this fertile ground. Some, as we learned, were just pragmatic innovations.

Moving Beyond the Adversarial Paradigm: A Collaborative Response to Shared Challenges

This impulse to reform and innovate led to some important conversations among members of Milwaukee's criminal justice community. For example, key elected officials and policymakers

in Milwaukee County first began to discuss criminal justice practices when forming what was called a Criminal Justice Coordinating Committee. This committee evolved very quickly into a *community justice* council (hereinafter CJC) focused on addressing the systemic issues associated with criminal justice in a major metropolitan community. Similarly, in late 2006, a group of prosecutors, public defenders and veteran employees of Milwaukee County's pre-trial services team gathered to discuss the challenges throughout the criminal justice system in discharging shared responsibilities.

As a byproduct of these complex conversations, it became clear that all these agencies were drowning in a high volume of cases. Courts, prosecutors, public defenders, and caseworkers alike were working in a system designed to process cases as quickly as possible—and the system just kept sending us more cases. We recognized that we shared an interest in slowing down the pace of this “assembly line of justice,” and in diverting some cases down alternate paths. We also saw that all of our agencies, particularly those involved in social services, were encountering the same people again and again. We understood that many of these offenders suffered from mental illness and addiction. Just as importantly, we also understood that the same people prosecuted had often been victims of crime themselves.

What emerged from these joint recognitions was a willingness to start doing things differently. For example, the district attorney's office developed an initial set of strategies around diversion and

deferred prosecution agreements, supported by other system partners. And Milwaukee County began a drug treatment court.

The challenge, though, was that Milwaukee lacked an intellectual framework to sustain these efforts. We lacked the evidence we needed to help us understand when to use diversion or deferred prosecution agreements. Little data was available to measure the outcomes of our efforts; we had little interest in outcomes other than reducing recidivism, so we ignored the broad and complex impact of the criminal justice system on our communities. Criminal justice system professionals were not collaborating with social services agencies and community resources beyond the criminal justice system. Although Milwaukee's criminal justice system was inching away from the old paradigm of adversarial, assembly-line justice, a new paradigm was not yet in place.

Building the Intellectual Framework

Shortly after Milwaukee's Community Justice Council was created, the National Institute of Corrections (NIC) sought grant applications from local criminal justice systems interested in developing evidence-based decision-making. The NIC grant application process caused transformation, as it allowed us to understand what a new paradigm of criminal justice might resemble, and what elements of evidence-based decision-making it might incorporate. When the CJC received this grant, not yet appreciating fully the opportunity it would create, it also received exceptional support from a team of professionals

at NIC and an extraordinarily capable site coordinator, who committed much time to our development of evidence-based practices.²

The NIC grant was exactly what was needed to translate and expand earlier efforts into a coherent paradigm of criminal justice policy. The process of developing evidence-based practices began with “system mapping,” which meant bringing people from all areas of the criminal justice system to discuss and answer difficult questions: What information do we have? What do we need? How can we measure what we want to measure? Though this process was arduous, it was essential. Because Milwaukee’s commitment to this grant forced us to confront these fundamental questions, it moved all of us from aspiration to systematic rethinking of our work. Friction generated in long conversations between system partners helped us refine our understanding—sanding and polishing away the accumulation of unfounded assumptions, intuitions, and absorption with the anecdotal (even the apocryphal)—revealing the underlying objective realities with new clarity.

Milwaukee’s subsequent reforms and initiatives have been both numerous and diverse, but they are intellectually and institutionally coherent.³ When we, as traditional adversaries, reflect upon these efforts, we see them coalescing around a new set of fundamental understandings, beliefs and values. Paradigm development is a recursive process: new ideas give rise to new initiatives; the lessons learned in implementing these initiatives

refine current understandings and give rise to more new ideas.

We can distill our new intellectual and institutional paradigm into seven core statements:

1. We assert and insist that the purpose of the criminal justice system is preventive, remedial, and punitive.
2. We take seriously first arrests and early opportunities to intervene.
3. We question the limitations on what qualifies as evidence in criminal justice system decision-making.
4. We undertake new collaborations to achieve better outcomes.
5. We work to address racial disparities within the criminal justice system.
6. We seek and develop new data sources and analytics.
7. We work to change the broader conversation about public safety and the criminal justice system.

These seven statements are both the culmination of our process of paradigm change and a road map for continued learning and growth. As we will address in Section III, we also hope that these statements aid criminal justice professionals in other cities in initiating the process of systemic change.

III. Seven Intellectual Steps Towards a New Criminal Justice Paradigm

We have described the organic process by which Milwaukee exchanged old ways of thinking for new ideas. We have also described a generative, self-reinforcing intellectual framework constructed to make system-wide reform strong, coherent, and sustainable. Our goal in this section is to make this framework reproducible: we want to help readers initiate processes of generative, self-reinforcing paradigm development in their own communities. To achieve that, we will explore seven elements evident within this framework, presenting them as affirmative intellectual steps that our readers can take. We will describe some of the scholarly resources that have been—and continue to be—useful as Milwaukee policymakers have developed and refined each of these seven new ways of thinking. We will also provide concrete examples of initiatives undertaken in Milwaukee that have both built upon and contributed to new ways of thinking.

But before we dig into the details, two caveats:

First, we make no pretense that our framework offers a comprehensive criminal justice methodology. We simply outline some starting points: modest but powerful changes in thinking that open up transformative possibilities. We do not discount the legitimacy or power of other possible reorientations of thinking that do not appear in this paper.

Second, the successful implementation of these ideas requires an ongoing and recursive process.

These aren't one-time changes to check off a to-do list. Think of it instead as making a deliberate, long-term commitment to a new way of thinking. These approaches become powerful when applied repeatedly and consistently over time. For that reason, though we structure this section as a list of "steps," they need not be taken in any particular order. What matters most is that these efforts be sustained over time.

Step One: Assert and Insist that the Purpose of the Criminal Justice System Is Preventive, Remedial and Punitive

New avenues for collaboration and innovation are possible when leaders recognize that the criminal justice system exists to do more than simply punish crime. As many have observed, punishment is not a single or simple social action. Embedded in our instinct to punish is the desire to identify moral failing in the individual and to publicly condemn it in strong terms—and in so doing, to set ourselves apart from it, or at least imagine that we do. Alienation is part of, and near the core of, punishment. A recognition of this complexity is important because it goes to the heart of the legitimacy of our adjudicative decisions. In societies like ours, which feature significant inequality, the legitimacy of our response to crime—of who we alienate and why—is always under scrutiny. Collaborative systems, grounded in meaningful partnership with other vital community institutions, offer the best opportunity to effectively address extreme forms of social disorder and dysfunction but with the least possible alienation. By so doing, these systems can improve the health and safety of

individuals, neighborhoods and communities.⁴

Punishment on its own, or as traditionally understood, does not make a community stronger. As the eminent sociologist David Garland argues, “[l]ike all habitual patterns of social action, the structures of modern punishment have created a sense of their own inevitability and of the necessary rightness of the status quo. Our taken-for-granted ways of punishment have relieved us of the need for thinking deeply about punishment and what little thinking we are left to do is guided along certain narrowly formulated channels” (1990).⁵ To truly improve community well-being, the criminal justice system must work to *prevent* crime and *remediate* known offenders to reduce their likelihood of reoffending.⁶ In most cases, the *punitive* function of the criminal justice system must be recognized as subordinate to the system’s preventive and remedial functions; punishment is appropriate only when it advances a preventive or remedial purpose.⁷ In most cases, it is essential that these broader system goals be clearly stated, and that policies be coherently and strategically aligned with these goals (National Research Council, 2014).

Prevention. Historically, crime prevention efforts have been discussed through the lens of law enforcement: police, prosecutors and courts gather intelligence, arrest bad actors and impose punishment to specifically and generally deter crime. Today, it is obvious that building healthy neighborhoods is a key to preventing and successfully responding to public safety risks (Sampson et al., 2005; Sampson, 2012).

Healthy neighborhoods are open and available for daily life, bound together by social cohesion, and nurture sound interpersonal relationships. They allow individuals to solve problems in their own neighborhoods, demonstrating collective efficacy. Healthy neighborhoods prevent criminal behavior and recover quickly when it occurs. To effectively support healthy neighborhoods, a criminal justice system must have deep, persistent and broad connections to other actors working to achieve the same goals. To successfully support preventive efforts, the criminal justice system cannot be a fortress on the hill (Schwieg, 2014).

In Milwaukee, a series of initiatives exemplifies how an emphasis on prevention requires non-traditional partnerships and innovative thinking. For example, the Milwaukee County District Attorney’s Office incorporates the concept of community prosecution as a core function of the prosecutor. The basic premise of community prosecution is that experienced prosecutors can apply their understanding of the dynamics that result in exposure to the criminal justice system, and can work collaboratively to resolve these dynamics at a neighborhood level. Community prosecutors work in collaboration with law enforcement, corrections, municipal service departments, and neighborhood community partnerships to anticipate and address issues that might otherwise threaten public safety.⁸ Milwaukee’s Community Prosecution Unit (CPU) improves the traditional relationship between the community and the court system. Flexible by design, CPU interventions range from nuisance

abatement to full-fledged criminal investigations and prosecutions of violent street organizations. CPU interventions require the direct involvement of citizens in problem solving.

Remediation. The criminal justice system is often confronted with individuals who are appropriately arrested and prosecuted, but whose connection to the criminal justice system is rooted in problems that can best be addressed by means other than punitive sanctions. Obvious examples of these problems are addictions, mental health disorders, and various forms of trauma. Furthermore, the public recognizes that remediation is a key function of the criminal justice system: indeed, families often turn their own children over to police and other criminal justice system agencies, in the hope that the coercive capacities of the criminal justice system can be mobilized to break the destructive cycle in which their children are caught.

In such situations, the use of remedial strategies furthers our underlying goal of preventing crime and building healthy neighborhoods. People who enter the criminal justice system should in most cases be made better by the experience—at least ideally—whether they are victims or offenders.⁹ The criminal justice system must recover its confidence in its remedial mission.¹⁰

This can be a significant challenge for agencies overburdened by a daily diet of human suffering and failed efforts to improve the lives of individuals confronted by overwhelming

disabilities. Nonetheless, when remedial efforts succeed, as with many defendants in drug treatment courts or veteran treatment initiatives, the necessary willingness to take risks and tolerate delays in court processing are completely worthwhile.

It is not enough for the criminal justice system to be remedial in its practices: it must also publicly claim its remedial purpose. The public must be allowed to see, and invited to accept, that punitive sanctions and remedial approaches are equally important. Public messaging is a part of this task—but so, too, is reliance on restorative justice, community engagement, and correct measures for success. The sole measure of criminal justice system success cannot be recidivism. It has to include other solid measures demonstrating remedial successes.

Punishment. Milwaukee's new paradigm focuses on prevention and remedial work as key components of a functioning criminal justice system (Travis, 2009). Unquestionably, there are cases which threaten public health and safety in such primary ways that punishment is a key component of the response.¹¹ But even in these cases, it must remain *only* a component. Punishment for serious criminal behavior should never be treated as an end in itself. Vindication of community safety and other goals is different than mere vindictiveness.

There are several reasons why the successful development of a community-oriented criminal

justice paradigm involves such a constraint of punishment as a criminal justice system function.

First, cross-national comparative analyses of incarceration rates in relation to crime rates show that the United States since the 1970's has—by deliberate choice—relied on punishment through incarceration in degrees of magnitude that far exceed any other country in the world. Criminal justice systems and corrections have grown commensurately (National Research Council, 2014: 2-4). Our reliance on punitive incarceration is a cultural and political anomaly; it does not reflect an objective truth about the morality of punishment or punishment's efficacy as a behavioral deterrent; not in this time or any time, and not in this place or any place.

Second, the effects of lengthy punitive incarceration extend far beyond the incarcerated defendant. Incarceration can cause deep harm to people who share family or neighborhood ties with the defendant, or who depend on the defendant for social, emotional or financial support. Even where incarceration is imposed based on harms to the victim, the needs of the defendant's family and neighbors must also be considered if we are to meet our fundamental responsibility to promote safe, healthy communities (See National Research Council, 2014: 277-78, 298-301).¹²

Third, even in cases in which punishment is a main goal, the majority of convicted offenders will eventually return to their families and neighborhoods. Consistent with our purpose to promote safe communities, we must take steps

while the individual is incarcerated to reduce the likelihood that he or she will cause harm to family members or neighbors by engaging in criminal behavior after release.¹³

Finally, our constitution and traditions of due process require that exacting care be given to decisions which result in the loss of liberty. These factors are, if anything, more important in a society that incarcerates so many for so long.¹⁴

Situating punishment as one component of a criminal justice system that serves broader preventive and remedial goals invites us to ask new questions and explore new initiatives. For example, we can reconnect punishment to remedial approaches guided by social science, psychiatric, neuroscience and medical research in order to significantly reduce individual defendants' potential for long term patterns of criminal behavior. The principal causes of criminal behavior, whether aggressively directed toward others as in violence, or self-directed as in drug usage, child neglect and related behaviors, are reasonably well understood (Andrews and Bonta, 2010; Wilson, Bouffard, and MacKenzie, 2005).¹⁵ Punitive responses guided by validated risk and needs assessments to reduce the criminological risk factors are capable of changing thinking and behavior. When we use these strategies even where punishment is a key focus, remedial outcomes are possible (Center for Court Innovation, n.d.).

This reframing of punishment also invites criminal justice policymakers to take a closer look at what is being done to and for individuals

in our jails and prisons—from the moment of arrest to re-entry into the community. We need to “in-reach” into prisons, linking prisoners to key services that will ultimately facilitate successful re-entry.¹⁶

More broadly, policymakers need to study imprisonment decisions to learn what went wrong with the offender and in our community to create the need for a punitive response. There are almost always warning signs with individuals whose serious criminal conduct leads to imprisonment. The Milwaukee Homicide Review Commission and a growing interest in sentinel events analysis are powerful ways to derive necessary learning from the cases that worry us the most.

Step Two: Take Seriously First Arrests and Early Opportunities to Intervene

When an arrest is made, or when an individual engages in behavior that would justify criminal justice system intervention, criminal justice professionals are given a key opportunity. Too often, limited attention is paid to individuals whose conduct provides a clear warning sign that something is amiss. Increasingly, criminal justice professionals recognize that when we pay too little attention to the underlying causes and characteristics of individuals in the criminal justice system, we make significant errors, which can lead to greater problems. Rethinking the front door of the criminal justice system, and looking back into resources outside the criminal justice system, allows criminal justice professionals to consider a much wider spectrum of responses to behavior that causes concern (Cloud and Davis,

2015; Laura and John Arnold Foundation, 2013b; Broner et al., 2004; Latessa et al., 2013).

There is a robust literature showing that low-risk offenders are capable of self-correction, and that the best response is a prompt action that holds the individual accountable but spares him or her from deeper criminal justice system involvement (Andrews, Bonta and Wormith, 2006; Andrews and Bonta, 2010; Andrews, Bonta, and Dowden, 2007; Lowenkamp and Latessa, 2004; Laura and John Arnold Foundation, 2013a). That same research literature shows that for moderate- and higher-risk offenders, a more comprehensive intervention is needed to address anti-social thinking patterns, in addition to serious addiction or mental health problems (Lipsey, Landenberger, and Wilson, 2007).¹⁷ By systematically assessing individuals as early in the process as possible *and* using assessment information to shape responses, it is possible to achieve greatly improved outcomes. Lower-risk individuals avoid some of the stigmatizing harm attached to criminal justice system involvement; moderate- and higher-risk individuals can get the services necessary to address criminogenic risk at the earliest stage possible.

The use of risk assessment tools has provoked criticism that should be taken seriously (Baird, 2009; Barry-Jester, Casselman, and Goldstein, 2015; Angwin and Larson, 2016; Angwin et al., 2016). First, there is no risk assessment tool that can be used to predict with accuracy the exact future conduct of any individual. Neither can risk assessment tools replace the judgment of well-trained professionals. Rather, when professional

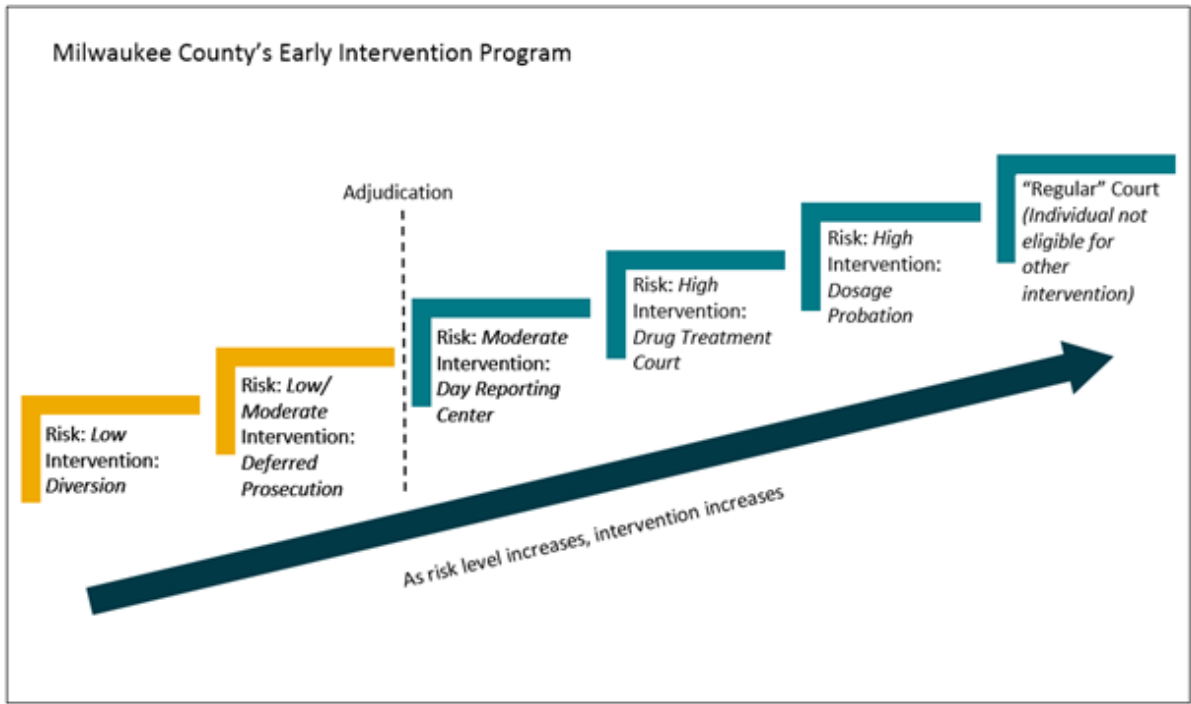
judgment incorporates valid risk assessment information, better decisions are consistently made.¹⁸ As described below, the features of a systematic screening process need to be carefully considered to comport with constitutional requirements. Finally, the use of this information to shape criminal justice system interventions needs to be aggressively monitored with data collection and re-examination as experience grows. This monitoring has to focus on admission criteria for every intervention, performance measures for case management and outcome measures. These data are essential to ensure that continuous learning is possible (Poulos, 1998).

Despite these reservations and the need for safeguards, the use of risk assessment tools allows systems to comparatively norm their responses with a greater degree of transparency and accountability. Current practices are subjectively and often irrationally tied to non-objective factors such as cash bail as a proxy for risk. While risk tools are not a panacea,¹⁹ they represent an opportunity for systems to measure and respond to disproportionality in ways not commonly used or, at the edges, even possible without such tools.

In order to best match our interventions to the needs of each offender it is important to disaggregate the population as it enters the criminal justice system. The use of risk and needs assessments is one important means of accomplishing this task. Our goal is to match our system responses with an individual's risks and needs, to guide us toward outcomes that will more durably protect public health and safety and restore the individual's capacity to meaningfully participate in civic life.²⁰ A variety of techniques

may be applied to facilitate disaggregation, many of which (including universal screening and early intervention programs) have been employed in Milwaukee.²¹

An important example is Milwaukee County's Early Intervention Program, which embraces a rehabilitative model of criminal justice, assisting individuals who admit to unlawful conduct in "righting the ship" and living successfully as members of the community. The program encompasses various structured outcomes to unlawful conduct; in determining which outcome is best suited to a particular case, prosecutors rely on a risk assessment score (see graphic). Low-risk offenders who agree to educational programming may be diverted out of the criminal justice system prior to the issuance of criminal charges. When an underlying offense requires a greater degree of accountability to the public, a low-to-moderate risk offender may be granted a deferred prosecution agreement (DPA). A DPA is post-plea and pre-sentencing, and entails the dismissal of a case in exchange for a commitment to engage in rehabilitative programming. Higher risk offenders suffering from substance abuse disorders may be engaged in programming such as that offered by the Milwaukee County Drug Treatment Court and the Veterans' Treatment Initiative. In these programs, defendants plead guilty and engage in a series of court-supervised treatment opportunities, which are designed and monitored by a team of professionals representing social service agencies, probation services, and community advocates. Representatives of the District Attorney's Office and the Public Defender's Office provide advocacy for the public interest and the treatment recipient, respectively.



The Early Intervention Program is fundamentally preventive. Its goal is both to rehabilitate individuals who have admitted to violating community norms and to assist these individuals in engaging more successfully in their communities. It is not a program applied to violent offenses but rather to public order, property and substance-related crimes often associated with criminogenic risk factors like substance abuse disorders and the past experience of trauma. To this end, people granted diversion agreements, for example, must adhere to conditions including attendance at short-term, targeted educational programming; restorative justice conferencing that imparts the significance of even low-level unlawful conduct to the lives of victims and community members; avoiding further criminal activity; and, when applicable, the payment of restitution or the performance of community service.

The potential consequences for failure to successfully complete an Early Intervention Program opportunity are no different from the potential consequences had such an opportunity never been offered. But the benefits of successful completion of Early Intervention programming are substantial. The successful completion of diversion or deferred prosecution programming allows a substantial number of individuals to move forward in their lives without suffering the dramatic collateral consequences of a criminal conviction. By graduating from Drug Treatment Court or the Veterans' Treatment Initiative, an individual has the opportunity to move forward without the burden of acute addiction.

Step Three: Reconsider What Qualifies as Evidence in Criminal Justice System Decision Making

Most criminal justice system professionals are trained to understand legal rules and the accepted interpretive strategies that allow people to understand what the law means. This is difficult work. Unfortunately, a consequence of this complexity is that criminal justice practitioners often ignore important ideas and research that govern the behavior to which these legal rules are being applied.

Evidence is a term of art in legal systems. In its narrowest sense it is what information is admissible in a court hearing or trial.²² More broadly in criminal justice, evidence can mean information commonly assembled by law enforcement during the investigation of a criminal case. This is an area that is governed by its own lexicon and requires considerable technical expertise to master. On appellate review, trial court decisions in criminal cases are frequently viewed through the lens of these complex evidentiary rules.

The result of the complexity of criminal evidence is that certain facts and sources of information are accepted, and many other important and relevant sources of information are ignored or incompletely considered. Criminal justice system actors are not subject to negative professional outcomes because they failed to consider critical relevant findings in social science: a trial judge's decision is not reversed by the Court of Appeals; attorneys are not subjected to professional discipline or criticism for deficient performance. The result is that our criminal justice system

maintains high barriers to the introduction of new information and insights. While there is value to legal traditions and deliberative caution so that there is doctrinal stability and predictability, the cost of ignoring important developments and reliable information outside the rules of evidence is too high.²³ Insular decision-making focused on case adjudications alone contributes to the deficiencies identified by Jeremy Travis.

There are three areas in which a reengagement with related fields of research and practice can help support necessary change. First, outcome measures for criminal justice must use broader criteria than recidivism alone. Measuring system outcomes requires management tools and skills outside the legal system.²⁴ Integrating a commitment to effective system outcomes with the requirements of adjudication requires a careful restructuring of professional roles. This is not an abandonment of necessary professional responsibilities. Rather it reframes decision-making by adding new information and questions to the analysis; it subtracts nothing and supplements instead. Professionals operating in this developing environment become more curious, better and active learners, and existing options are used more effectively. To achieve culture change in criminal justice system roles requires connection to experts working on changing institutional culture or behavior (Travis, 2015; *State v. Loomis*; Mauer and Epstein, 2012).

The second important implication of expanding the boundaries of acceptable knowledge is to understand insights derived from social psychology and behavioral economics (Glaser, Spencer, and Charbonneau, 2014).²⁵ There are many cognitive errors that are easily made in

The Homicide Review Commission

The Milwaukee Homicide Review Commission (MHRC) strives to reduce homicides and non-fatal shootings through a multi-level, multi-disciplinary and multi-agency homicide review process. The MHRC is comprised of law enforcement professionals, criminal justice professionals and community service providers who meet regularly to exchange information regarding the city's homicides and other violent crimes to identify methods of prevention from both public health and criminal justice perspectives. At its core, the MHRC is a data-driven enterprise. It annually produces an in-depth analysis of all the homicides, non-fatal shootings, and a few other types of very serious crimes (e.g. violent sexual assaults). This report identifies the causes attributed to each of these incidents and cross-references this information geographically and demographically. The rigor of this data analysis is a point of pride for those working for the MHRC. The MHRC makes recommendations based on trends identified through the case review process. These recommendations range from micro-level strategies and tactics to macro-level police change. Many of the recommendations made to date have been implemented. The Milwaukee Homicide Review Commission provides a unique forum for addressing violence in the city of Milwaukee.

Several years ago, the NIJ issued an important report (National Institute of Justice 2014) on the value of sentinel events analyses in criminal justice systems. Milwaukee, Baltimore, and Philadelphia were selected as beta sites to examine whether this methodology had value. An analysis was done on an extremely complicated homicide case involving juvenile justice, mental health, and a lack of coordinated public health response to an individual and family with significant indications of distress. The committed group convened included representatives from: police, prosecutors, child protection, juvenile supervision (county and state), schools, public defenders, and the judiciary. Everyone involved has agreed that this method needs to be replicated on a regular basis. A second grant underway is allowing us to define the criteria and approach necessary to bring this practice to scale. The importance of sentinel events analyses is that they allow for deep discussion and identification of oversight and error. When coupled with a commitment to broad and coordinated data analysis of the sort that the MHRC provides, there is the belief that we can shape our policies and practices in a much more creative and effective way.

pressured situations. Recent interest in implicit bias or adolescent brain development are examples of how new research can guide our response to old questions. Research into trauma and addiction are other examples which hold great promise (van der Kolk, 2014). The mind sciences have a place in both making policy and making individual case decisions, even when the rules of evidence have not yet acknowledged that.

The third important area is what is often described as sentinel events, after-action reviews, or critical incident reviews (National Institute of Justice, 2014). These are common in medicine, air safety, and law enforcement. By looking back at cases

that had bad outcomes, or were “near misses,” with all system actors in a safe environment, significant learning can occur. While contested cases may not have an agreed outcome in the same way that we wish to avoid airplane disasters, there is a surprising opportunity to look at hard cases—especially when root causes of the underlying conduct are included in the sentinel events analysis.²⁶ The Homicide Review Commission has proven a valuable platform for this analysis (see Sidebar). Stated differently, the criminal justice system is only a part of a larger pattern of problems in the community that need to be considered.

Step Four: Build New Collaborations to Achieve Better Outcomes

Many others before us have noted that criminal justice agencies often are the first responders to problems best addressed by others. This frequent over-reliance on policing and sanctions is often driven by the availability of public safety resources on a 24-7 basis. Not surprisingly policing responses are limited and cannot always achieve successful outcomes.²⁷

Awareness of this difficulty has led to efforts to partner policing, prosecution and courts with social service agencies, neighborhood development efforts, nuisance abatement, housing and mental health service providers. These partnerships enable criminal justice systems to meet their obligation to support and strengthen communities so as to prevent ongoing problems from developing into patterns of criminal behavior.²⁸

To meet the preventive and remedial goals of the criminal justice system, it is essential that key efforts in the community be linked to public safety efforts in new ways. Narrowly, this means access to treatment for individual defendants and to job programs or other resources. More broadly, it connects the criminal justice system to public health, community and economic development, and neighborhood investments.²⁹ Criminal justice professionals have often worked together to address a specific crime problem, e.g., gang violence, domestic violence, or certain drug offenses. Some grants require applicants to have a multi-disciplinary team. Finally, there has

been a growing emphasis on local jurisdictions developing criminal justice coordinating committees. In general, these collaborations have been located inside criminal justice.

What is needed are new connections between criminal justice agencies and organized efforts in disciplines traditionally disconnected from criminal justice. A few examples can illustrate where there is a need for robust new collaboration.

1. *Mental health disorders.* Every jurisdiction has individuals who suffer from serious and chronic mental health disorders. Some of these individuals have symptoms which cause them to cycle through the criminal justice system, corrections, community and emergency mental health services, emergency rooms, and homeless shelters. The cost of this is staggering in terms of human suffering and financial expense (Council of State Governments, 2002). Since the very beginning of discussions in Milwaukee about criminal justice reform, there has been continuing concern about the plight of individuals with serious and persistent mental illness who end up in the criminal justice system. A significant effort has been made to use data to better understand this sub-population and their experiences. Through these efforts, we have identified individuals who cycle unproductively through our public mental health system, criminal justice system, are often homeless, and are cited for disruptive behavior. Further analysis of our jail population has revealed that about 35% of those in custody are

receiving psychotropic medication on a daily basis. When the most serious charges for these individuals are examined, it is clear that the majority are in for misdemeanors or very low-level felony offenses. In order to break these cycles, our community justice council has made a deep commitment to fundamentally alter the approach to this problem.³⁰

A significant part of this effort is contained in the current work being done with the MacArthur Foundation Safety and Justice Challenge. But this new work builds on a series of existing efforts. These include a mental health pilot project in which a small number of individuals with aggravated mental health histories appear before a circuit court judge in a post-conviction review process. The purpose of this review is to convene social service agencies that work with behavioral health and housing, probation services, and criminal justice system professionals to ensure that there are coordinated interventions to assist the individuals in this project to succeed. Other efforts include the Milwaukee Police Department committing to training all of its officers in what is known as CIT (crisis intervention training). The Milwaukee Police Department has developed partnerships with our Behavioral Health Division which create three specialized teams pairing a clinician with a police officer to respond to crises involving people with mental health disorders. Additionally, the Milwaukee County District Attorney's Office Early

Intervention Program has been used to work with some individuals whose criminal justice problems arise from mental health concerns. Existing efforts are modest, given the scale of this problem, but the ambition to make long-term, fundamental change is large.

2. *Neighborhood investment and public safety.* The criminal justice system can be described as a people-based intervention. Neighborhood development is a place-based intervention. There is strong evidence that crime rates fall when neighborhood remediation is under way. Impressive evidence reveals that even modest changes involving nuisance abatement, increasing available pockets of green space, and providing safe public spaces can have a significant role in improving health and safety.³¹

For these reasons, Milwaukee has supported community prosecutors and related initiatives within the Milwaukee Police Department to coordinate with city agencies responsible for nuisance abatement and the maintenance of public spaces. Coordination with county services for parks and housing along with the creation of boundary spanners have become early examples of a developing collaboration built on these principles.

Similarly, coordination between public health and criminal justice systems serves builds a safer community. It is well understood that environmental lead exposure correlates with

violent behavior (Nevin, 2015). The sustained progress to move lead from the environment has contributed to reduction in violence (Nevin, 2015). There are other public health efforts that have a significant role in reducing criminal behavior. These include efforts to increase immunization rates, reduce the use of illicit street drugs, reduce teen pregnancy, reduce children's exposure to violence, and identify trauma effects in children early.³²

Many of these public health campaigns, when successful, help shape the environment for individuals in ways that decrease the risk of criminal behavior. They also drive down medical costs in significant ways (Leifman, 2014).³³ Connecting criminal justice professionals with these efforts is important, because access to criminal defendants is a key opportunity to improve public health outcomes by connecting the interventions sought in each field.

3. *Domestic violence.* This conduct often arises in family settings in which numerous agencies have an active interest. It is not uncommon to see school authorities, child protective services, criminal justice professionals, and perhaps several types of courts working with individuals in a troubled family. Breaking off pieces of this dysfunction and routing them through the criminal justice system is rarely effective at preventing further difficulties.³⁴ New collaborative models are needed to coordinate efforts to respond to complex family problems. Indeed, these problems are

often made worse by current piecemeal efforts.

As a central part of efforts to address domestic violence, Milwaukee has opened the Sojourner Family Peace Center. This center serves as a catalyst for reimagining responses to family violence in the context of Milwaukee County's justice system. The center is both a resource for survivors of domestic abuse and a coordinating hub for Milwaukee County's response to family violence. The culmination of a long and fruitful process of collaboration between the public and private sectors, the center co-locates traditional shelter services, including temporary housing, childcare, and counseling, with medical services provided by Children's Hospital of Wisconsin and those operations of the criminal justice system most pertinent to a family violence prosecution (Luthern, 2015). For example, the Milwaukee Police Department has stationed its Sensitive Crimes Unit at the center, and assistant district attorneys in the Domestic Violence Unit routinely work out of offices at the center.

Prior to the center's establishment, a survivor's interaction with justice system personnel – and those personnel's interactions with each other – might have taken the form of rushed conversation in a dimly lit courthouse corridor. Various agencies concerned with survivor housing, counseling, and medical attention might have scrambled to find a bed or to contact a law enforcement official involved in the case. The integrated approach housed

within the Sojourner Family Peace Center has transformed these dynamics. It provides family violence survivors direct access to the system actors responsible for their cases. Furthermore, it facilitates early, frequent, and substantive communication between all parties interested in the successful prosecution of a family violence case. The center also serves a central role in assisting survivors and children previously exposed to other social and environmental traumas in successfully reentering their neighborhoods. Aided by the district attorney's office's Witness Protection Unit, law enforcement services at the center ensure survivors' safety even after they return home. The center provides outpatient counseling services to assist survivors, especially those who suffer from substance abuse conditions, in successfully navigating the greater Milwaukee community.

By concentrating resources and partnerships in one physical location, the Sojourner Family Peace Center serves as a platform for launching far-ranging preventive strategies. When the center was established, among its primary purposes was the effectuation of long-term change. As such, Sojourner serves as an educational center, fostering dialogue regarding the most effective ways to prevent and remediate the harms of family violence. The center encourages system actors to reimagine traditional, purely responsive approaches to addressing family violence and to instead consider new partnerships that

put new learning into action. For example, the innovative philosophies underlying programming at Sojourner are shared by the Alma Center, a nonprofit which provides rehabilitative services to individuals who have committed acts of family violence. The Alma Center plays a critical role in responding to past acts of family violence, but it serves an equally important function in its efforts to reduce the likelihood of recidivism.

4. *Public-private partnerships.* The criminal justice system has repeatedly been called upon to respond to social problems beyond its competence. Its inability, acting alone, to help stabilize neighborhoods and assure individual success has far-reaching implications for Milwaukee. Many of our business and community leaders are open to discussions about how new collaborations and new thinking might find solutions to seemingly intractable problems. As a consequence, our Community Justice Council has included in its membership individuals and organizations who, historically, would have had little to do with the criminal justice system.

As a part of the process surrounding the National Institute of Corrections' evidence-based decision-making grant, the Community Justice Council convened a conference of key policymakers on the intersection of public health, medical treatment, and criminal justice at the Zilber School of Public Health. This was followed by

a collaboration with the Federal Reserve Bank in Chicago to host a Healthy Communities Conference in Milwaukee, focused on many of the same questions. Key members of the Community Justice Council have been actively involved in further planning and discussions about how to address long-term problems with a broad community response which is sensitive to public safety needs but is focused on preventive and remedial efforts underway in the community.

These discussions have attracted interest from business leaders and other key stakeholders historically separate from the criminal justice system. An example of this change is the inclusion of the District Attorney's Office, Public Defender's Office, Community Justice Council Coordinator, and MPD community liaison officers in the Community Development Alliance meetings, which are held at a major local foundation. The CDA represents an early effort to integrate funding strategies for neighborhood and community development with a public health and safety efforts. It is premature to claim that these efforts have identified a comprehensive or coordinated strategy, but they do represent an enduring commitment to conceptual and programmatic change.

Step Five: Address Racial Disparities

Among the greatest problems of the American criminal justice system is its racially disparate impacts. Racial disparities, especially but not exclusively those affecting African-American

men, are acute in Wisconsin, where research conducted at the University of Wisconsin-Madison has revealed the dramatic overincarceration of black men (Oliver, 2009). Milwaukee plays a driving role in this phenomenon because of its status as Wisconsin's largest city and home to the state's largest black population. These disparities are well-publicized and, like similar findings nationwide, they have led in many ways to a "crisis of confidence" in the criminal justice system's ability to achieve fair and equitable outcomes. Although efforts toward reforming Milwaukee's criminal justice system seek to alleviate these disparities, and have in fact resulted in both short-and-long-term reductions in our local jail populations, the service of justice requires our continued vigilance in combating racial inequities.

Our efforts to address Milwaukee's troubling record of racial disparities began with two public recognitions: that these disparities exist, and that we needed an outside review to determine how best to resolve them. By collaborating with the Vera Institute of Justice, we sought to determine exactly which system operations produced disproportionate outcomes. The District Attorney's Office gave the Vera Institute *carte blanche* to review its operations and to propose changes, and from 2005 to 2006, the institute's staff assessed charging decisions made by county prosecutors. The review, which was constrained by the limited race descriptors available at the time, produced findings indicating minimal overall disparity but significant disparity in the charging of white

and black defendants for low-level drug and public order offenses. As a result of this review and subsequent consultations with the Vera Institute, the District Attorney's Office embraced policies aimed at reducing this disparity. For example, the office's Early Intervention Program substantially reduced the number of drug and public-order offenders exposed to primarily punitive outcomes. Similarly, when prosecutors sought to charge certain types of offenses they were required to first consult with a member of the District Attorney's management team.

Progress in addressing racial disparities requires a willingness to talk honestly and openly about the painful and difficult issues of race and poverty. Disparities within the criminal justice system are cross-sections of complex social inequalities rooted in centuries of racial and economic discrimination. They have deeply personal implications for many Milwaukeeans interacting with the criminal justice system, including our fellow system practitioners. In 2014, then-Chief Judge Jeffrey Kremers converted a mandatory judicial retreat into a conference on race and the criminal justice system open to all system participants. These included prosecutors, public defenders, defense attorneys, selected law enforcement officials, staff from the Department of Corrections and others. This day-long conference was held in an auditorium at Marquette University and began an annual tradition of such events. These conferences have been possible because of a Directive from the Chief Judge which closes the criminal courts and other court operations to ensure attendance.

Topics have included powerful and provocative presentations and facilitated discussions aimed at encouraging all system participants to reexamine how their conduct and decision-making plays into unacceptable disparate racial impacts of the criminal justice system.

Due to the role of race and racism in shaping American history, discussions about their continuing impact within our social structures never are easy. Within the context of the criminal justice system, these discussions are often particularly difficult. No single entity in the criminal justice system – or in the community at large – is responsible for the racial disparities in our system. Progress in resolving these disparities is inevitably slow. And it is sometimes difficult to identify how an individual decision, such as the use of discretion in charging a criminal case, could have devastating ramifications for an entire community.

Furthermore, justice system policymakers are actors not in an empty room but on a large, filled, and complicated stage. Only when we reconsider the narratives long associated with our respective roles can we effect real change and truly address the racial disparities we long to eliminate. The social structures of Milwaukee County are marred by historic and contemporary racial inequalities, extending from education achievement and healthcare gaps to neighborhood segregation (Downs 2015). The criminal justice system is a dimension of this complex and tragically inequitable system. Without real change affecting this entire system, driven by innovative thinking on the

part of criminal justice policymakers and a new commitment to cross-sector collaboration, we cannot fully reform criminal justice policy. Recently, Milwaukee County Executive, Chris Abele signed a resolution declaring that “racism is a public health crisis.”³⁵

Step Six: Develop New Data Sources and Analytics

To measure progress, conventional markers in criminal justice like arrest and conviction rates must be supplemented to provide deeper insight into root causes of disruptive behavior and better analytics to test the efficacy of newer interventions.³⁶ Much has been written about the rise of an era of “big data”.³⁷ Almost every discussion of an important topic in contemporary media contains obligatory references to a few data points, studies, “findings” and the like. Reliance on data and a preference for “data driven” strategies often obscure a number of different activities. To redesign the criminal justice system along the lines described in this article requires several related approaches easily, but unwisely, lumped together.

The most basic role of data in improving our system of adjudication will come from developing shared data that can be used to set performance goals and measure outcomes. This requires a significant change in conventional approaches: traditional metrics include the number of arrests for a particular crime, percent of arrests that result in criminal charges, the length of time to the resolution of a charged case as seen in the number of court events and court processing time,

conviction rates, and so on. These data reveal important information about our process and implicitly carry certain normative assumptions about the value of speedy or timely dispositions. But they do not provide a measure of the quality of the decisions made or their long-term effects.

Currently, we cannot measure reliably how well our processing of cases serves the goals we are concerned about. This is true for several reasons.

There is often an intuitive appeal to using recidivism as the key measure of the success of criminal justice interventions. A deeper look at this topic reveals limitations to its utility. The first problem is that recidivism statements are often incomplete or confusing (Butts and Schiraldi 2018; Gelb 2018). As a matter of definition, recidivism is used in varying contexts for different purposes. For example, when measuring the success of a drug treatment program the key issue may be whether the individual returns to drug usage after the completion of the program. But short-term relapse while working through a program rightly is often not seen as a disqualifying failure given the inherent difficulties in overcoming addiction.³⁸ Recidivism for this group should be inclusive of any indicator that this has occurred including emergency medical treatment, municipal citations for drug related activity and criminal arrest. An arrest for an individual in treatment for conduct wholly unrelated to drug usage may not be that important.

Successful programs aimed at stopping future criminal activity may be measured in a variety of ways: by any arrest, or only by an arrest that

leads to a criminal charge, or more narrowly by convictions. Any attempt to measure recidivism must also resolve the tricky question of the time period to be considered. This period might be longer for sex offending than for other types of behavior.

In order to build a better system of measurements, a great deal of work is needed. There are many untested assumptions about the efficacy of criminal justice decisions and punishments, despite large public expenditures in policing, courts, and corrections.

One example of how conventional data measurements can change is the use of assessment tools described in Section II. Milwaukee has relied on a pre-trial risk assessment tool to guide bail decisions and entry into pre- and post- charging programs that closely ties the resulting agreements to interventions likely to address key criminogenic risk factors. The next generation of this effort might permit the analysis of case processing and sentencing information according to the risk and needs levels of each defendant. Combined with improved information of a similar sort being used by the Wisconsin Department of Corrections it may be possible to reach a new understanding of our work tied to variables derived from these assessments.

As new information is developed we can create better system metrics. The call, however, is to accelerate this process dramatically to create new measurable performance goals and outcomes. In Milwaukee, there are early efforts to establish a

data hub that, for example, combines public health and education resources with existing records maintained within the criminal justice system.³⁹ Additionally, sentinel events analyses like those we discussed earlier provide an opportunity to identify patterns apparent within existing data.⁴⁰

Step Seven: Change the Broader Conversation About Public Safety and the Criminal Justice System

As we have learned from our experiences in Milwaukee, to change the tenor of conversations about criminal justice policy, we must change the register in which we communicate. The same principle applies to communications between criminal justice system professionals and the members of the public whom we serve daily. While Jeremy Travis calls attention to the “enormous moral authority” held by agencies of our justice system, how easily we may harness this authority and where the gaps in that moral authority lie are other questions. We see two trends in political discourse surrounding the criminal justice system: dialogue concerning equity, particularly surrounding community-police relations; and disappointing political rhetoric that misrepresents innovative practices as “soft on crime” or “hug-a-thug” approaches. In line with the former trend, public polling data clearly shows public acceptance of the need for effective and smart criminal justice policy.⁴¹

We as criminal justice system policymakers can engage the public in a constructive discussion of effective policy. To do so, we must utilize a

consistent, coordinated, and smart strategy of public and media communication to attract the support necessary for the implementation of reforms and best practices. This in turn requires justice system officials to work with communications professionals to explain the scale and scope of the changes underway.

Another valuable way in which we can change the register of criminal justice discourse is to ensure that our systems are procedurally just. When members of the public interact with our criminal justice system, it is rarely in the public forum in which we as system professionals debate the finer aspects of policy. Instead, it is often in a police investigation area or in a courtroom or, even more often, in a courthouse hallway. It is critical that these interactions support central pillars of procedural justice theory: the public's confidence that justice system actors will treat them respectfully and with dignity; a high degree of justice system competence; the system's engagement in practices that are legitimate; and that we are parsimonious in distributing punitive sanctions but also unafraid to do so when necessary.

Procedural justice research originated with the work of Tom Tyler and Tracey Meares, Yale researchers who became interested in the concept of justice system legitimacy in the wake of national debates over community-police relations.⁴² Social science research stemming from these debates has indicated that, when civil and criminal litigants feel that they have been treated in ways that are procedurally just, they view system proceedings as legitimate, even

when they do not prevail.⁴³ Essentially, when members of the public are treated in a dignified way, by prosecutors, public defenders, judges, and the array of system professionals who play crucial supporting roles during the pendency of a criminal case, they are more likely to engage constructively with the criminal justice system.

As justice system professionals, we must take pains to ensure that legitimacy underlies the register in which we engage with the public. After all, it is the public whose authority gives legitimacy to our systems, and it is public trust that allows those systems to work at all. We must ensure that these systems operate in ways that inspire the public's confidence and its willingness to support a best-practices paradigm of criminal justice.

IV. Conclusion: A Note of Hope

A growing body of literature has addressed problems in the criminal justice system from a variety of perspectives: policing reforms including law enforcement diversion, reform in front-end practices like the use of risk assessment tools and the elimination of cash bail at the point of pretrial release decisions, the use of treatment courts, sentencing alternatives and various efforts to modify the length of prison sentences and practices including the elimination of solitary confinement.⁴⁴ A distinct body of literature examines the cultural assumptions that underlie criminal justice system decision-making, finding the roots of what is termed mass incarceration in deeply held and often hidden racial biases.⁴⁵ Within these academic debates

and reform efforts are longstanding questions about individual responsibility and the degree to which we are influenced by the inflexible operation of inequitable social structures and practices that limit opportunity and shape the consciousness of marginalized populations in ways that make contact with the criminal justice system all but inevitable.⁴⁶ And, of course, there is a political discourse about crime and the severity of punishment that has a life apart from research and writing about these issues. Analysts have gone so far as to question whether real reform is possible (Pfaff, 2017; Barkow, 2016; Karakatsanis, 2019).

The experience that Milwaukee has had with its reform efforts makes a modest contribution to these debates. Here are a few key insights:

1. There is a critical difference between fundamental, transformational change and incremental progress. The historical narrative described in this paper reflects that we could only make real reform when, as a system, we were able to reexamine our practices “root and branch.” Milwaukee’s criminal justice system features an open climate, collaborative leadership, and visionary commitments from outside entities like the National Institute of Corrections and the MacArthur Foundation. These conditions allowed us to make significant change and they give us confidence in taking on the many challenges ahead.

Significant change is impossible in a justice system culture that protects traditional

roles and decision-making at the expense of openness to new ideas and approaches. Many decisions in our criminal justice system impose some risk of public criticism when it appears that new or experimental approaches are being taken (Toobin, 2015). The fear that a single decision might be tragically wrong can be disabling. Leadership matters, and our experience in Milwaukee proves that, once established, reforms can take root quickly.

2. There must be a willingness to learn about and address the key issues affecting communities that our justice system serves, but which are poorly understood. To do so at once requires both humility and confidence. Real reform is impossible without a commitment to both, no matter how uncomfortably those two qualities may seem to exist together. To mention a few examples:

Interpersonal violence and its capacity to frighten us. The understandable ability of street violence to frighten people makes it very challenging to embark on any public discussion of violence and criminal justice system policy for fear that it will be seen as failing to be responsible about public safety.

The roots of violence in our neighborhoods are incompletely understood. There are many neighborhoods of “concentrated disadvantage” in Milwaukee which meet the definition proposed by Robert Sampson in his study of Chicago. In such places, the availability of social capital is very limited,

opportunity for advancement stunted, and exposure to and participation in violence and conflict fairly common. We have been guided by a long tradition of ethnographic sociology which has informed our understanding that creating healthy neighborhoods is key to public safety and our criminal justice system must become more “place based” in its approaches. Embedded within our most challenged neighborhoods are areas where an integrated approach to improving things, matching both confidence and humility, has had a remarkable effect. Community prosecutors and policing along with some of our front end Early Intervention strategies have helped this success occur.

We don't use what we do know about violence to guide our responses. Our Homicide Review Committee findings show that the majority of homicides and non-fatal shootings are tied to fights over status and retaliation. The conclusion should be obvious: there are much better ways to resolve such disputes, we can say confidently, but winning adoption of those better ways also requires humility and time. Our criminal justice system reforms must link with new efforts to reach individuals before things go tragically wrong. Often there are warning signs but smart intervention strategies are unavailable.

The intersection of poverty and trauma is devastating to many people. We know from our Homicide Review Commission and shot spotter data that there are neighborhoods

in which the primary and secondary effects associated with actual and threatened gun violence leave residents with damaging levels of trauma. Taking action with the relatively small number of people who are drawn to violence is only a part of the problem for the criminal justice system. Other people, affected by traumatic experiences, often are unable to fully conform their behavior to societal expectations due to the damage that has been done to them by exposure to violence. Whether its effects are focused in self-destructive ways like drug abuse and addiction, in neglectful ways that lead to family and child care problems or in an physical acting out against others, we must learn how to understand trauma and put it at the forefront of our thinking in criminal justice system decision-making. We frequently have an inability to discern the important distinctions between high-risk individuals and those whose connection to street violence is driven by trauma or is defensive in nature. Indeed, more broadly we do not understand enough about criminal violence to match the types of reforms needed to our criminal justice system.

3. There needs to be honesty and courage in surmounting the lack of institutional support for reform. Our experience teaches that criminal justice system professionals must be willing to have difficult discussions that examine the framework of the system in which we operate. Busy people must be willing to devote significant amounts of

time to developing new, innovative, and collaborative approaches. System actors must surrender the comfort associated with static institutional roles and they must be willing to commit to a vision of progress and change. There has to be a tolerance for risk and the inevitable failures associated with change. Our old system has experienced many failures but has changed little. In fact, the last forty years of jurisprudence have created legal structures that support this old (and largely failed) system, providing incentives for system actors to continue with the old and reject or resist new approaches.

4. We need to seek modern data. We need a new generation of criminal justice data to help document the effects of reform efforts. In part, this will be a broader data set including information from public health, medicine, neighborhood and community development efforts. It is also essential that proven reform efforts which reduce the scale and scope of the criminal justice system be supported by reinvestment of saved resources into practices that will sustain them. This, too, requires new data and conceptual models to support the claim on public resources.
5. Finally, we must, as Jeremy Travis suggests, stop measuring criminal justice solely by the adjudication of cases; we must focus on system outcomes. When people are harmed by the criminal justice system as it does its work, we must push for restraint in its use by continuously analyzing what really works and following that lead.

Perhaps there is no better articulation of what our criminal justice system could accomplish than the visionary language of Alan Jenkins in *To Build a Better Criminal Justice System*:

When people emerge from this modern system, they will have stronger skills and inner resources than when they entered, and they will have affirmative opportunities to succeed. Obstacles to higher education, affordable housing, gainful employment, and political participation that make up today's status quo will have toppled. And systems will exist affirmatively to aid in people's transition into free society. The American public will demand these changes as crucial to upholding our national values and advancing our societal interests.

The success of criminal justice reform in Milwaukee is modest. But it teaches that an aspiration like that of Alan Jenkins is within reach.

Endnotes

1. See, for example, Western (2006), Stuntz (2011), Alexander (2012), and Stevenson (2014).
2. The authors would like to thank the members of the team at the National Institute of Corrections, and the technical assistance advisors, who helped us in Milwaukee develop this council. These valued partners included Mimi Carter, Lori Eville, Becki Nye, and Mark Carey.
3. Of great significance is the commitment of the MacArthur Foundation Safety and Justice Challenge to “change the way America thinks about and uses jails.” This large initiative has chosen Milwaukee as an implementation site.

While many changes described in this paper predate the MacArthur Foundation grant, we believe it will ultimately represent a major step forward in effectuating these efforts.

4. The jurisprudential literature regarding punishment is fascinating, diverse, and the subject of continuing academic debate outside of courtroom practice. See, for example, Shelby (2016). In developing reform efforts in Milwaukee, we recognize the importance of this literature as an external point of reference by which we can evaluate the quality, purpose, and outcomes of our work. To further understand what meaningful collaboration can mean, please see Davis and Cloud, 2015; Burley and Drake, 2015; and CSH, n.d. These collaborations can include, among other things, mental health and substance abuse service agencies, supportive housing (FUSE) systems, medical and dental systems, and civil commitment involuntary treatment.

5. Garland expands upon this reasoning in *Punishment and Modern Society* (3-4): “Thus we are led to discuss penal policy in ways which assume the current institutional framework, rather than question it – as when we consider how best to run prisons, organize probation, or enforce fines, rather than question why these measures are used in the first place. The institutions of punishment conveniently provide us with ready-made answers for the questions which crime in society would otherwise evoke. They tell us what criminality is and how it will be sanctioned, how much punishment is appropriate and what emotions can be expressed, who is entitled to

punish and wherein lies their authority to do so. In consequence, these difficult and troublesome questions no longer arise. They are authoritatively settled, at least in principle, and only matters of detail need to be concluded – details which can be left to experts and administrators in specialist institutions set aside for that purpose.

“Once a complex field of problems, needs, and conflicts is built over by an institutional framework in this way, these problematic and often unstable foundations disappear from view. In their place all that is immediately visible are the categories and forms of action which the established institution holds out to us. Through repeated use and respect for their authority, these instituted ways of doing things create their own ‘regime of truth’ which simultaneously shores up the institutional structure and closes off any fundamental questions which might undermine it. The penal system’s very existence helps us to forget that other answers to these problems are possible: that institutions are based upon convention rather than nature. For all these reasons, and for most of the twentieth century, the institutions of punishment have normally been surrounded by a sense of their own appropriateness and transparency. Questions about punishment became a matter for penologists – technical experts whose frame of reference was given by this institutional structure.”

6. We must approach this re-thinking of punishment with due caution. There is a long line of critical thought identifying rehabilitative

ideas as fundamentally coercive and potentially menacing totalitarian practices. For example, in 1968, Herbert Packer noted that “[o]ne trouble with the rehabilitative ideal is that it makes the criminal law the vehicle for tasks that are far beyond its competence” (55). More colorfully, in his famous essay “The Humanitarian Theory of Punishment,” C.S. Lewis observed that “It may be said that by the continued use of the word Punishment and the use of the verb ‘inflict’ I am misrepresenting the Humanitarians. They are not punishing, not inflicting, only healing. But do not let us be deceived by the name. To be taken without consent from my home and friends; to lose my liberty; to undergo all those assaults on my personality which modern psychotherapy knows how to deliver; to be remade after some pattern of ‘normality’ hatched in a Viennese laboratory to which I never professed allegiance; to know that his process will never end until either my captors have succeeded or I have grown wise enough to cheat them with apparent success who cares whether this is called Punishment or not? That it includes most of the elements for which nay punishment is feared—shame, exile, bondage, and years eaten by the locust—is obvious. Only enormous ill-desert could justify it; but ill-desert is the very conception which the Humanitarian theory has thrown overboard.” To comment briefly on this debate, it is important to note that every program described in this paper is built on a studious attention to due process rights, which include the right to counsel. Since the time that these earlier critics have written, the criminal justice system has dramatically expanded in scope and has assumed a role in society that is

in fact much broader than it occupied historically. We know, for example, that jails and prisons are our largest providers of psychiatric services. In light of this change in the role that criminal justice system institutions play, it seems hardly as controversial that they should be interested in preventive and remedial goals. Finally, while being modest about the limits of our knowledge, a great deal more is known today about treating addictions, mental health disorders, and related problems, and therefore some confidence in alternative approaches is justified.

7. A long history of “normative theories of jurisprudence and social policy” supports “the restrained use of punishment.” See National Research Council (2014): 323. Political theorists and students of the law have long recognized community well-being as a central goal of the justice system’s operations. Jeremy Bentham proposed the justice system as a means to regulate the identifying the “purpose of law” with “the furtherance of [his] principle of utility,” which emphasized “‘greatest happiness of the greatest number.’” See Alfange (1969): 63-65. Even advocates of retributive criminal justice, like Norval Morris, have written that “[j]ustification for [the] utilitarian and humanitarian principle” of parsimony in the criminal justice system’s exercise of its punitive function “follows from the belief that any punitive suffering beyond societal need is, presumably, what defines cruelty.” See Morris (1974): 1163.

8. Community-based partnerships have experienced considerable success, even in

Milwaukee's most challenged neighborhoods. Within the 53206 zip code, for example, which has drawn national attention for its high concentrations of social inequities and dysfunction, there are highly successful neighborhood development projects which, within confined settings, have overcome many of the area's negative trends.

9. In a discussion of lessons learned during a tour of German prisons, Nicholas Turner and Jeremy Travis explained: "Germans, like Americans, are greatly concerned with public safety. But they think about recidivism differently. During our visit, we heard prison professionals discussing failure in refreshingly unfamiliar terms: If, after release, an individual were to end up back in prison, that would be seen as a reason for the prison staff members to ask what *they* should have done better." Turner and Travis (2015).

10. See David F. Musto and Pamela Korsmeyer, *The Quest for Drug Control: Political and Federal Policy in a Period of Increasing Substance Abuse (1963-1981)(2002)*(Arguing that President Nixon declared the war on drugs in 1971 after initially having embraced greater investment in treatment, rehabilitation, and public health to combat substance abuse).

11. The healing of the victim must be an equally important goal of the criminal justice system's response to these incidents. Milwaukee's Project Ujima is an example of innovation in this regard. Link: <http://www.chw.org/childrens-and-the-community/violence-prevention-counseling/>

12. In Milwaukee, Marquette University Law School's restorative justice initiative, led by former Wisconsin Supreme Court Justice Janine Geske, has provided a platform to explore and remediate the levels of harm experienced within both the defendant's and victim's spheres of influence.

13. Council of State Governments Justice Center What Works in Reentry Clearinghouse. <https://whatworks.csgjusticecenter.org/>

14. See, for example, *Vitek v. Jones*, 445 U.S. 480, 494-5 (1980) which outlines procedural protections for individuals sent to a state hospital for involuntary treatment.

15. Andrews and Bonta (2010) identify eight key criminogenic risk factors: 1) History of antisocial behavior; (2) Antisocial personality pattern; (3) Antisocial cognition; (4) Antisocial associates; (5) Family/marital circumstances; (6) School/work; (7) Leisure and recreation; (8) Substance abuse.

16. See e.g.: Wisconsin Department of Correction on Health Services – Opening Avenues to Reentry Success (OARS) program to help inmates with mental illness plan for their successful return to community.

17. Additionally, addiction and mental health are not criminogenic risk factors, but underlying conditions that can compound a person's existing risk levels.

18. The National Institute of Corrections (2010) offers a four-part framework by which the validity of risk-assessment tools may be analyzed.

19. See for example Angwin et al, (2016).

20. The use of risk-and-needs assessments creates an opportunity for systems to analyze key discretionary decision points that can create both racial disparity and disproportionality. In both Milwaukee and New York, prosecutorial systems have opened their practices to examination by the Vera Institute, providing a template for addressing this uncomfortable and daunting challenge.

21. Examples of techniques we have found helpful in facilitating disaggregation include, aside from universal screening and early interventions, the Department of Corrections use of the COMPAS risk-assessment tool, operating-after-revocation programs, the analysis of Homicide Review Commission data, and outside evaluations like those performed by the Vera Institute.

22. *Black's Law Dictionary*, for example, defines evidence as “[a]ny species of proof, or probative matter, legally presented at the trial of an issue, by the act of the parties and through the medium of witnesses, records, documents, concrete objects, etc., for the purpose of inducing belief in the minds of the court or jury as to their contention.”

23. As the eminent legal theorist Roscoe Pound once observed, “law must be stable and yet it cannot stand still” (Pound 1923). See also, American Civil Liberties Union (2011).

24. Criminal justice system outcomes are connected to the larger enterprise of supporting and stabilizing communities. Therefore, public

safety in its broadest sense is much more than the rate of recidivism for individual offenders. The importance of new management tools to understand system outcomes is described in Principle Four of the National Institute of Corrections’ “A Framework for Evidence-Based Decision Making in State and Local Criminal Justice Systems, 4th Edition” p. 32. We can also learn from those studying health equity. See, for example, Woolf (2017) pp. 986-987: “The ‘health in all policies’ movement arose from the recognition that social policy is health policy. It calls on decision makers in all sectors to systematically consider the health consequences before making choices about policy options. It encourages policy makers to commission health impact assessments, which systematically analyze the potential health benefits and risks of policy options.

“But health is not the only sector committed to addressing social justice or equity concerns in public policy. Just as health varies by race and ethnicity, socioeconomic position, and geography, so do job opportunities, access to education, and social mobility. The equity movement is larger than public health. Organizations, agencies, and activists are at work in many sectors to ensure equitable access to affordable housing, desirable neighborhoods, a living wage, bank loans, and an unbiased criminal justice system. However, no sector alone holds the key, and each confronts the same challenge: Be they teachers, police officers, or health care providers, front-line professionals who care for vulnerable populations lament their inability to resolve core issues that are

beyond their reach, such as the economic forces and societal factors that limit opportunity and perpetuate cycles of poverty.” See also, Drucker (2018).

25. See for example, the UK’s Behavioural Insights Team or “Nudge Unit” which uses behavioral insight to inform public policy, <http://www.behaviouralinsights.co.uk> See also, Sunstein (2019).

26. Milwaukee’s Homicide Review Commission reviews focus on the juvenile justice, mental health, and social history record of individuals involved in serious crimes, and include representatives from police, prosecutors, child protection, juvenile supervision (county and state), schools, public defenders, and the judiciary.

27. A 2014 report from the Brennan Center for Justice (Roeder et al., 2014) did find that one police management technique, CompStat, had a modest effect on reducing crime. Otherwise, “The authors conclude that incarceration had relatively little to do with the crime decline. They find that the dramatic increases in incarceration have had a limited, diminishing effect on crime. And they have quantified those minimal benefits. At today’s high incarceration rates, continuing to incarcerate more people has almost no effect on reducing crime.”

28. See, generally, National Research Council (2014).

29. The general efficacy of “collective impact” in addressing serious social challenges is widely

recognized, as are the benefits of cross-sector collaboration between the criminal justice system and other community stakeholders. See, for example, Hanleybrown et al. (2016), Woolf (2017), Beckett (2014), and Lee (2000), as well as the Vera report on Bridging Health and Justice systems, Davis and Cloud, (2015).

30. See generally, Roth (2018).

31. Academic interest in controlling public spaces and revitalizing neighborhoods is quite heterogeneous. See, for example, Cozens et al (2005); Cozens and Love (2017). See also: Ellickson (1996); Subramanian and Shames (2013); Bebinger (2016); Lugalia-Hollon and Cooper (2018). More generally, see also Montgomery (2013), Garvin, (1996) and Garvin (2016) and Kondo et al. (2015). See Anderson et al. (2013), who describe existing scholarship correlating public space use to local crime trends. White and Sutton (1995), Montgomery (2013), and Loukaitou-Sideris and Ehrenfeucht (2009) also provide valuable insight into this emerging field.

32. See, for example, Roeder et al. (2014) and Cloud and Davis (2015), pp. 9-20, Drucker (2018).

33. As Iglehart (2016) explains, Miami-Dade County, Florida has taken substantive efforts toward decriminalizing mental illness. The results of this “Miami Model” are compelling: over the past 4 years, police have responded to nearly 50,000 calls for people in mental health crisis and have made only 109 arrests. The jail population has shrunk from 7800 to 4400, allowing the county to close a jail at an annual

savings of \$12 million.

34. See, for example, National District Attorneys Association Women Prosecutors Section (2017), pp. 40-41.

35. See, Wacquant (2009) at 206: Provides a deep examination of the structural connection between contemporary criminal justice system policy and practice and America's history of racial discrimination: "By the end of the 1970s. . . as racial and class backlash against the democratic advances won by the social movements of the preceding decade got into full swing, the prison abruptly returned to the forefront of American society and was offered as the universal and simplex solution to all manners of urgent social problems by politicians eager to reestablish state authority while rolling back state support for the poor. Chief among these problems was the breakdown of social order in the 'innercity.'" See also, Wacquant (2002); Lugalia-Hollow and Cooper (2018) and Kohler-Hausmann (2018) (showing how criminal justice system practices are concentrated on controlling and marking individuals - mostly poor and of color in New York). It is also critical to avoid missing that the story of racial discrimination and poverty is not solely one of the urban demographics but it is geographically distributed, too. See Allard (2017).

36. Increasingly, policymakers understand that improved data and analytics are essential to improving broader criminal justice system outcomes. See, for example, Davies et al. (2015), Chettiar et al. (n.d.). Amy Bach's Measures for Justice initiative (<https://measuresforjustice.org/>)

has both evaluated and provided valuable guidance to Wisconsin criminal justice policymakers, including ourselves. In Milwaukee, we have worked to embrace better data: the Homicide Review Commission, for example, has taken a multifactorial approach to understanding the causes of violent criminal activity in Milwaukee. See also, Bach (2009).

37. See, for example, Poole (2013) and Stephens-Davidowitz (2017). Poole offers the important observation that "once you've manufactured data with instruments that operate according to certain theories, you then need to analyse it theoretically," adding that "raw data is not knowledge."

38. See, for example, Milwaukee County (2009). This first iteration of Milwaukee County's drug treatment court policies accommodated the high likelihood of such relapses by developing a series of gradual sanctions short of expulsion from the program.

39. Dr. Mallory O'Brien, who leads this effort, has described the promise of the data hub as a type of "precision epidemiology". A few prototypic examples have shown a strong link between childhood lead exposure and incidents of family distress, leading to school disruption and juvenile and adult criminal behavior.

40. Based on the premise that bad outcomes and near misses expose multi system error, these practices permit an analysis of patterns of neglect, inattention, poor quality control, lack of timely and adequate communication and other related

deficiencies. See National Institute of Justice (2014).

41. See the EBDM Framework, in National Institute of Corrections (n.d.); FUSE, commonly referred to as Housing First, in CSH, (n.d.). Tyler (2006) elucidate a critical principle of procedural justice research through their intent to “demonstrate that solely legal yardsticks are not the best, most complete way to evaluate what legal authorities do.” Milwaukee has participated in some early work toward achieving a better understanding of procedural justice. See Farley et al. (2014) and Reed (2017) at 152-160.

42. The notion that procedural, rather than legally substantive, interactions with court personnel may affect a litigant’s perception of fairness is well-documented. See, for example, Tyler (2007). Additionally, Burke and Leben (2007) comment that 89% of surveyed judges in Hennepin County, Minnesota believed their conduct on the bench “affected the litigants’ satisfaction with the outcome of their case.”

43. For a general discussion of problems in the criminal justice system, see Stuntz (2011). On the specific issue of solitary confinement, see Grassian (1983) at 355: “The restriction of environmental stimulation and social isolation associated with confinement in solitary are strikingly toxic to mental functioning, producing a stuporous condition associated with perceptual and cognitive impairment and affective disturbances. [...] Moreover, the harm caused by such confinement may result in prolonged or permanent psychiatric disability, including

impairments which may seriously reduce the inmate’s capacity to reintegrate into the broader community upon release from prison. [...] The laws and practices that have established and perpetuated this tragedy deeply offend any sense of common human decency.”

44. See, for example Western (2006), Stevenson (2014), and, specifically, Alexander (2012).

45. See, for example, Shelby (2016).

46. See, for example, Lynch (2016), concerning the debate sparked by Heather MacDonald’s *The War on Cops*. Lynch observes that some trends in political rhetoric surrounding public safety ignore a more reasoned national discourse on criminal justice.

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Research and editing assistance for this paper was provided by Elisabeth Thompson (Marquette University Law School, Class of 2017) and Theodore Chisholm (Macalester College, Class of 2020).

This paper was prepared with support from the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice, under contract number 2012-R2-CX-0048. The opinions, findings, and conclusions or recommendations expressed in this publication are those of the authors and do not necessarily represent those of the Department of Justice.

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