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# Leadership Issues in Criminal Justice Policy - Introduction

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## **Leadership Issues in Criminal Justice Policy**

### **Introduction**

Bill Lockyer\*

Most people go to law school before they run for the legislature. Well, I kind of did it backwards. My decision to go to law school had something to do with an old promise I made to my mother on her deathbed. I was twenty years old at the time. She called me in and said, "I am going to be dead tomorrow," and she proceeded to go through a list of things she wanted me to do. One of the things on the list was to graduate from law school. I disregarded the list until I could no longer bear the guilt. Also, working in the legislature I quickly learned that you work hard during the day, but there are six or seven cocktail parties around the capitol every evening. So, the choice was either to go to law school or to become an alcoholic. I decided to ignore the suggestion that one can do both.

Shortly after finishing school, I recall reading in a distinguished professional journal about a particular psychological study done on law students and mental illness. The results of the study showed a direct correlation between time spent in law school and mental illness. I was in law school for seven-and-a-half years. So, it appears that I sort of "beat the odds." I was chairing the Senate Judiciary Committee when I took the Bar exam, and there were all of these reporters that were just dying to write the story "Judicial Chair Flunks Bar." Fortunately, I passed.

That gets me to the topic of how criminal justice policy and practice evolves in our state. What I typically witnessed during my twenty-five years as a legislator was a newspaper story or an anecdote that would generate a slogan, which would result in a bill being introduced and often passing. That may not be new or unusual for policy makers, but I had always thought that our work should be a little more rigorous. I kept saying to my colleagues, "You know, the plural of 'anecdote' is not 'evidence,'" and I would get these puzzled looks. I would say, "My point is, could we kind of be a little more empirical and collect the facts that might inform our policy option?" And my colleagues would say, "Oh, okay." So then we would have an anecdote for each one of the three suggestions that would be the fact basis for the policy.

I actually tried over a period of four years to rewrite the entire criminal code in California. Ed Davis, who was the vice chair of my Judiciary Committee,

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always referred to it is as “Lockyer’s Magnum Opus” because it was the largest bill that anyone recalled seeing. The basic problem (it is still a problem in my view) is that we have a triad of sentencing options for each crime. So, for each crime there is a penalty structure, and then there are all the various enhancements and add-ons for use of a weapon and priors and the various kinds of circumstances related to the crime and the criminal. I urged people to at least consider something like New York’s system, which involves clusters. Under that kind of system the option would be either A, B, C, or D; then the debate in criminal sentencing is essentially a debate about proportionality. The analysis would then be: is this really a B or a C in terms of the other crimes that are in that particular cluster? But that effort ultimately failed. While I had several hundred years of net increases in criminal penalties, there were a couple that were just so disproportionate to the scheme that they had to be lowered a bit to be able to fit into a logical place and eventually not pull all of the others up. There were a few “downs” amid many, many “ups” and the defense bar, Gerald Uelman,<sup>1</sup> and others reminded me, “Wait a minute, Bill. This isn’t sentencing neutral.” I said, “No, it is not supposed to be sentencing neutral it is supposed to get signed.” Well, it still got vetoed, and that was my last effort. I think that these are policy areas where people have very strong views. Whether it is the practitioners, the experts, the judges, the probation people, the academics, or the citizens who have very strong opinions about what would be good policy, it all certainly complicates the discussion.

On June 4, 2002, I had an all-day conference, which included a follow-up discussion on the same idea. Grantland Johnson and the Department of Health and Human Services are working together to combine law enforcement and public health perspectives in addressing crime and some related problems. Our first conference some months ago asked the question, “Why did crime decline so dramatically in California and the United States during the last decade-and-a-half?” We brought experts together from all over the country to focus on these topics. Then, yesterday, having taken a look at this hard evidence, we did another round of discussions on what policy results or conclusions might be appropriate. What still stands out in my mind from the conference are some very smart and interesting comments on domestic violence from one of the sociologists from Boston that ran a gun-violence project there. David Kennedy, who is now doing that in San Francisco, was much needed during my introductory comments. I mentioned “gang violence,” and he thought it was appropriate to scold me because I should not use the word “gang.” I should say “groups of chronic offenders.” I found that amusing because I could not imagine using the term “groups of chronic offenders” with my constituents. Anyhow, it does somewhat illustrate the disconnect between some of the academic analysis and commentary

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1. See Gerald F. Uelman, *Formulating Rational Drug Policy in California*, 33 MCGEORGE L. REV. 771 (2002) for Gerald Uelman’s contribution to this symposium.

and the real work that goes on with law enforcement, prosecutors, and other associated with crime and violence.

I am delighted to be here with partners in state government and local DA's and others. I have a couple of thoughts to share about a remarkable change in emphasis over the last couple of decades. It occurred during a time when our concern about crime, particularly crimes committed against women, kids, and the elderly blossomed. These are crimes that were not talked about historically. If you go back far enough, of course, you find the various commentaries suggesting that women are chattel and subject to man's control. We have certainly come a long way since then. But, regardless of some important changes in legal doctrine, practice had been deficient. So we have now seen this extraordinary explosion of interest in rape, family violence, and elder abuse. I am very proud to be associated with the effort to write laws and improve our practices in these exciting areas. Paul Pfingst,<sup>2</sup> from San Diego, probably has the pioneer local unit in elder abuse—certainly in the state if not in the country. There are other local efforts in Alameda County and elsewhere with which I am familiar that are really ground-breaking efforts to address family violence.

Let me tell you some of the statistics because they are so startling. In 2002, local law enforcement offices received about 200,000 domestic violence calls, resulting in 52,000 domestic violence arrests. In one year, there were 671,000 reports of child abuse and neglect—671,000 reports is a staggering number. It is tragic to realize that the least safe place for a little child in our society is at home. Regardless of political ideology, this is the sort of family value commitment that I think everybody can embrace, from the right to the left. The home ought to be the most nurturing and loving place in which a child can grow up. Hopefully, some day our notions of justice will include the fact that our great-great-grandchildren, in every country and every walk of life, should be respected and loved. But that goal seems distant, given the damage that we are doing to our own children. I do not know that it is different now than a generation or four generations ago. The measurements are so inaccurate and impossible that we probably will not be able to answer that, except in a more prospective way. But the deployment of local resources to address these crimes is substantial, and it keeps increasing. As for those that are associated with that effort, I sincerely thank you and compliment you for your commitment.

We have been trying to do a few things that I hope will be relevant. Let me just mention those quickly. We have a domestic violence restraining order file which we have expanded to include, not just active orders, but past orders as well. This is designed to allow local investigators or prosecutors to acquire the best information possible. As many know, when a 9-1-1 call comes in from a neighbor that there is a serious problem next door and an officer is dispatched,

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2. See Paul Pfingst, Gregory Thompson & Kathleen M. Lewis, "The Genie's Out of the Jar": The Development of Criminal Justice Policy in California, 33 MCGEORGE L. REV. 717 (2002) for Paul Pfingst's contribution to this symposium.

approaching that door is one of the most dangerous moments for a law enforcement officer. Many of them are injured or killed because the perpetrators project their anger onto them when the door opens. We want our officers to know as much information as possible about that house and who the officers are going to encounter when they knock on the door. Without sufficient information, it is difficult to make the right decisions about what needs to be done there. So, that is one of many databases that we are spiffing up. The two that I take the greatest pride in, just to sort of mention them collaterally, are the DNA databank and Cal-Photo. We are solving a lot of crimes because of the effect of zero profiles. Three years ago, local crime scene evidence was matched to 210,000 samples of prior felon-conviction profiles. Many of these crimes would have otherwise gone unsolved. There are one or two "cold hit" cases per week now, and I expect, in the next year or so, it will probably be one per day. These are most often sex crimes where there is no suspect; the crimes that are least likely to get investigated and prosecuted in our system. So, there is a lot of work yet to be done.

I know there was a little discussion earlier about bench warrants and why judges issue them if no one is going to do anything about it. I continue to worry about the fact that, even excluding domestic violence, no-shows, and so on, we have 2.5 million unserved warrants in this state. About a quarter million of those are for felonies. I suspect that the subjects named in these warrants are not our best citizens. Taking a look at the unserved warrants in each jurisdiction could have a positive impact on public safety. The trick is figuring out a way to get law enforcement agencies to devote a little time to serving warrants. This is typically a very, very low priority task. I envision a system in which a patrol officer will actually be able to download to a laptop any outstanding warrants in his own beat. The officer would thus have more opportunities to serve warrants, make a stop now and then, or at least be aware of what the problem spots are in his jurisdiction. We are getting there, but we are not quite there yet.

Our new software is not made by Microsoft, Oracle, or other software companies. It was written purely by our own technologists. I have been trying to figure out if there is a way we can license it to help with the budget problems because everybody wants it. It is called Cal-Photo. With Cal-Photo we download photographs on the law enforcement wire. This is the communication system by which we process 1.5 million messages every day into our system between our databanks and local law enforcement. It is useful in a variety of situations, including stops where an officer would want to see a photograph of the person to see if the identification presented is correct, warrant checks, stolen vehicles, and so on. But its utility is not limited to the roadside. It will even be useful for setting up a photo array of possible suspects on a laptop, in a person's own living room, rather than dragging him downtown. This system has amazing potential. There are literally millions and millions of photographs that are now available through this wire, and it is currently deployed. Orange County was the first to make use of Cal-Photo, and it is starting to spread, depending on the kind of inter-operability of different systems.

Let me now mention an area that causes great frustration for me. I make this point mostly because Aileen Adams<sup>3</sup> is participating in this symposium, and I am trying to lobby her. So, with that disclaimer, let me mention that we have a total of nine data bundles in our huge collection of databanks of criminal records, licensees, weapon purchasers, mental health records, and so on and so forth. Unfortunately, an officer that makes a stop may have to go in and out of the system nine times to get the information which he or she cannot or will not use. We are in the middle of installing a relational database whereby one entry would sweep through all of the files. This is obviously much more efficient, but, unfortunately, because of our budget problems we have had to discontinue that half-way because it is a four-year project. We will get back to it one of these days and hopefully make another leap forward in terms of this technology.

We have also been funding and expanding current funding for spousal abuse prosecution programs. The legislature and governor have been very responsive in providing monies and not cutting budgets for such programs when it gets tight in this area. In fact, we had to find some emergency funding for women's shelters. There are various problems but the principle problem with these shelters is that they all live "hand-to-mouth." Someone needs to figure out some adequate long-term funding for the shelters in the state. It is too bad that they spend half of their time chasing grants, having bake sales, and everything else they must resort to in order to make their budgets. They are such a vital service that we have to figure out a way to integrate them in a more reliable way.

We expanded the training and the use of death review teams when a family homicide occurs. Our purpose is to have all of the appropriate agencies focus and do what they call in the spy business "walking back the cat." The object is to go back and see when and where the problems occurred in a particular home. If we can identify something that could have been done to intervene in a more efficient way, we can learn from that experience. Too often these Tuesday morning quarterback exercises that rely on hindsight become accusatory, and I have yet to find any system or person that is perfect. They all have imperfections, but we will keep trying to make them work a little better. These review teams that many of my fellow speakers are associated with are a good way to do that.

Finally, my department was the first state agency to actually provide work place training on domestic violence for our employees. It has been a well-regarded, popular, and useful program.

I also want to mention the primary emphasis in deployment of new Department of Justice resources: the "Safe From the Start" program. The three basic crime-fighting strategies are apprehension, detention, and prevention. I include prosecution as part of apprehension and detention. We do a pretty good job catching them. In law enforcement they inform me that their dirty little secret is that they mostly

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3. See Aileen Adams & David Osborne, *Victims' Rights and Services: A Historical Perspective and Goals for the Twenty-First Century*, 33 MCGEORGE L. REV. 673 (2002) for Aileen Adams's contribution to this symposium.

catch the dumb ones, and some of the smarter ones get away. But we get some of them to. There are a lot of resources devoted to catching criminals, and law enforcement employs this strategy very well. The prosecutorial efforts are very strong and professional in this state as well; the prison sentences are lengthy.

If there is a weak component in this three-pronged approach it would be prevention. We simply do not focus on trying to prevent crime from occurring in the first place. We know, for example, with the revolution in neuroscience, that when a young child is exposed to violence (usually occurring at home) in his first four years of life, the physiology of the brain actually changes. The brain structure is changed. It is not just a matter of what attitudes or perspectives and values get inculcated; there are both physical and psychological impacts. These children are twice as likely to be incarcerated in the future. Their arrest records are higher. They are more likely to be abusers themselves, and we have all known that intuitively. The odd thing is that brain development is about ninety-five percent complete by age four or five. Currently, expenditures aimed at healthy development start at age five. So we have to figure out smart ways to get to children earlier. Head Start and some other programs try in very modest ways.

More importantly, however, we need to help parents who want to do a good job raising their kids get the appropriate tools. I do not think there are many parents that say to themselves, "I'm going to raise a twisted sociopath monster; that is my plan." They want to be good parents, but they just do not know how. Sometimes I wonder how many people there would be in this room or on this planet if their parents really knew beforehand how hard it is to raise a child. It is a hard job; maybe one of the most complicated human tasks. It has always seemed a little like a "gotcha" to me; one can never fully prepare for parenthood.

We are doing some good things along these lines. Proposition 10, for example, generated six videos that I would recommend to anyone that has an interest. These videos cover topics like parenting, discipline, drugs, nutrition, alcohol, and things of that sort. There are movie stars, singers, and other prominent figures woven through the presentations. A study was conducted on whether people would look at these videos. Well, for new moms, they are more likely to look at them while they are still pregnant than after the child is born. So, we are making a real effort to get them distributed through pediatricians and OB-GYN services. We found that ninety-four percent of the parents looked at these videos. They are wonderful training tools for new mothers and fathers. These videos are just one of many ways to try to help people comprehend the weighty responsibility of raising children.

In law enforcement we are trying to improve the procedure for first responders. I would like to recount two true stories; one illustrates faulty procedure and the other illustrates proper procedure. In each instance, there is a call of a violent episode at home. In the first case, the officer arrives and finds a young girl lying beside an aunt who has been stabbed multiple times. The officer puts the child in the back of the patrol car and then goes about his other duties—the yellow tape, the ambulance, etc. It is not until four or five hours later that the little girl's

mother hears about this on the radio and comes home. The little girl gets out of the car, faints, and slips into a coma. Two or three months later, when she is back at home, the little girl is found holding a knife to the throat of her younger brother just like she saw happening in front of her. Well, as you would expect, that is not the right way to behave.

Contrast that scene with an officer who arrives at a residence and finds a kid lying on top of his mom who has been stabbed multiple times. The officer checks for life signs, calls for emergency help, and explains that “Mom is going to be okay.” He explains to the child, “You will be able to go to the hospital and be with her. Right now what we want to figure out who made the call to the police.” The child responds, “It was my little brother. I think he is upstairs hiding.” The officer asks, “Can we go get him?” They find him under the bed upstairs, and the officer explains that Mom is going to make it. The officer then asks if there is someone, like a neighbor, a babysitter, or a family member that comes and spends time and helps at home. The children direct him to their nanny’s phone number posted on the refrigerator. So, they call her. She gets there, and she helps with the kids while the crime scene work goes on.

The difference in treatment by first responders has a dramatic impact on the future of these children. We know that, unfortunately, just witnessing violence may be enough to etch in the young mind a tendency for violent behavior. In fact, oddly enough, it appears that those who have witnessed violence are, by some modest statistical difference, more likely to become criminals than those who were actually victims of violence. Many children witness violence in their own homes. I have what I think are modest goals. I am hoping that we can figure out what we have to do in California in order to eventually eliminate family violence. What would be the programs, the policies, and the laws? We are making progress but there is a lot of work to do. I think we can do it, but it is going to require a sustained effort and a genuine commitment to make it happen.

Finally, let me conclude with the following thought. Some years ago, I had a very prominent lawyer friend in Oakland who also happened to be my mentor. His spouse called me one day and said that my friend was in the hospital dying of cancer. She said that the doctors thought he had about a week to live and that he asked if I would visit. So, I went down to the hospital, and we engaged in forty minutes or so of awkward small talk and reminiscing. I had an enormous amount of regard for this individual, and I finally got up the courage to ask him what I really wanted to ask him. I asked, “What have you learned?” He responded, “Bill, it is really simple. Our highest moral obligation is to the kids—to see that each kid has a little better break, a little better life, a little more opportunity, and a little healthier existence than we had. That is our primary obligation.” I truly believe he is right.

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