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## POLICY REVIEW: The New York City Police Department's Civil Enforcement of Quality-of-Life Crimes

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# THE NEW YORK CITY POLICE DEPARTMENT'S CIVIL ENFORCEMENT OF QUALITY-OF-LIFE CRIMES

*William J. Bratton\**

## INTRODUCTION

Crime and the fear of crime are the leading domestic issues in the United States.<sup>1</sup> Rising gun violence, increasingly perpetrated by younger and younger felons, and the violent turf wars of the illegal drug market have aroused concern and fear in many of the nation's cities.<sup>2</sup> With the media sensationalizing crime stories from around the country,<sup>3</sup> the fear of crime seems to have outpaced the crime rate itself.<sup>4</sup>

Nevertheless, concerns about crime on the local level take on a very different focus, as New York City precinct commanders learn when they attend community meetings. With rare exceptions, residents, even in the highest crime areas, usually do not talk about murder, robbery, rape and the other violent crimes that make the headlines. They are frequently more concerned about police problems of a different kind, namely street prostitution, low-level drug dealing, underage drinking, blaring car radios and a host of

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\* Commissioner, New York City Police Department ("NYPD").

<sup>1</sup> Ted Gest et al., *Violence in America*, U.S. NEWS & WORLD REP., Jan. 17, 1994, at 22.

<sup>2</sup> *Id.*

<sup>3</sup> See, e.g., Brad Edmondson, *Crime Crazy*, AM. DEMOGRAPHICS, May 1994, at 2, 2 (reporting that the three major television networks showed approximately five crime stories per night in 1993).

<sup>4</sup> See Geeta Anand, *Residents' Fears Can Put Police at Risk*, BOSTON GLOBE, Jan. 1, 1995, at 1, 2 (According to the U.S. Bureau of Justice statistics, even though the crime rate has stabilized or decreased in recent years, national fear of crime has risen.).

other quality-of-life crimes that contribute to a sense of disorder and danger on the street.

These are the crimes, which people see everyday, and which they want the police to combat. Naturally, residents want the police to apprehend murderers, robbers and rapists so that they are convicted and imprisoned. But people will not feel safe in their neighborhoods again until the police are also addressing the so-called low-level crimes that undermine people's quality of life.

### I. "BROKEN WINDOWS" AND PUBLIC ORDER

In recent decades, criminologists and law enforcement officials have begun to acknowledge what the public already instinctively senses—that dealing with low-level, quality-of-life crimes is a critical component of the police mission.<sup>5</sup> In 1982, James Q. Wilson and George L. Kelling advanced the "broken windows" thesis,<sup>6</sup> which uses the metaphor of a broken window in a building to demonstrate how disorder can affect an entire community. According to the thesis, if a single window in a building is broken and then swiftly repaired, the building does not become a target for further abuse. If the broken window is left unrepaired, however, more windows will be broken. If those windows are also left unrepaired, virtually every window in the structure will eventually be smashed.

As a young police sergeant patrolling some of the highest crime neighborhoods in Boston,<sup>7</sup> I witnessed the "broken windows" thesis in effect. While the police department was focusing on high profile crimes, low-level offenders were destroying the neighborhood's sense of security and encouraging the subsequent perpetration of more serious crimes.

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<sup>5</sup> See, e.g., Felice Kirby et al., *A Community Experiment in Problem-Oriented Justice*, 20 *FORDHAM URB. L.J.* 431 (1993) (reporting that the Citizens Committee for New York City advocated grassroots enforcement of quality-of-life crimes to restore order to local neighborhoods).

<sup>6</sup> James Q. Wilson & George L. Kelling, *Broken Windows: The Police and Neighborhood Safety*, *ATLANTIC MONTHLY*, Mar. 1982, at 29, 29-37.

<sup>7</sup> The author served as a police sergeant for the Boston Police Department from 1975 to 1977, when he was promoted to lieutenant.

Public complaints about low-level crimes are an early warning to the police that a neighborhood is under stress. Prostitutes strut brazenly on the sidewalks; drunken youths cause a ruckus in the park; "boom-box" cars roll by, pouring out a deafening noise; small-time drug dealers hold court on street corners; and would-be drug buyers and "johns" cruise the neighborhood looking for a score. Each of these conditions contributes to a general sense of public disorder and promises more serious problems in the future. Furthermore, such conditions create an atmosphere that frightens decent people and emboldens criminals.

Graffiti is a fitting example of how damaging low-level crime can be. Viewed by many as a relatively harmless form of self-expression, graffiti has caused millions, if not billions, of dollars worth of damage to public and private property.<sup>8</sup> Wherever it is displayed, graffiti evokes a feeling of disorder and shabbiness that encourages others to deface property. In recent years, the police have learned that where graffiti is allowed to flourish, it has become a code system for marking gang territories, advertising illicit drugs and even threatening lives.<sup>9</sup>

I saw the relationship between crime and disorder even more clearly in the closed confines of the New York City subway system when I was transit police chief in 1990 and 1991. Partly because of the crack epidemic, but also because of a lack of police focus on low-level crimes, subway disorder and subway crime exploded in the late 1980s.<sup>10</sup> Chronic fare evaders, violators of transit regulations, aggressive panhandlers, homeless substance abusers and

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<sup>8</sup> See Marisa A. Gomez, *The Writing On Our Walls: Finding Solutions Through Distinguishing Graffiti Art from Graffiti Vandalism*, 26 U. MICH. J.L. REF. 633, 652-53 (1993); Jennifer Kingson Bloom, *When City Walls Speak*, N.Y. TIMES, Jan. 8, 1995, at 3; Jonathan P. Hicks, *Mayor Announces New Assault on Graffiti, Citing Its Toll on City*, N.Y. TIMES, Nov. 17, 1994, at B10.

<sup>9</sup> NEW YORK CITY POLICE DEP'T, POLICE STRATEGY NO. 5: RECLAIMING THE PUBLIC SPACES OF NEW YORK 21-23 (1994) [hereinafter POLICE STRATEGY NO. 5].

<sup>10</sup> News Release from Albert W. O'Leary, director of Media Services, New York City Transit Police (Jan. 19, 1995) (announcing that from 1980 to 1989, the number of felonies committed in the New York City subway system increased from 12,907 to 16,906).

illegal vendors hawking goods on station platforms all contributed to an atmosphere of disorder, and even chaos, in the subways.<sup>11</sup> I was convinced that disorder was a key ingredient in the steeply rising robbery rate, as criminals of opportunity, including many youthful offenders, looked upon the subway as a place where they could get away with anything.

The New York City transit police implemented a full enforcement strategy to simultaneously address the pervasive sense of disorder and the actual commission of subway crime.<sup>12</sup> We called on all transit police officers, including plainclothes anti-crime officers, to enforce quality-of-life offenses. We conducted continual fare evasion sweeps and greatly expanded our homeless outreach efforts in the tunnels and other restricted areas. Many government officials and political activists criticized our efforts, arguing that the transit police should focus exclusively on serious crimes.<sup>13</sup> The outcome, however, proved them wrong. Together with a concerted assault on repeat subway criminals and warrant absconders, the full enforcement strategy successfully lowered subway crime. Beginning in late 1990, subway robberies dropped consistently for a cumulative decrease of nearly fifty percent by the end of 1994.<sup>14</sup>

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<sup>11</sup> William J. Bratton, *Transit Police Enforce Subway Rules While Helping Homeless*, N.Y. TIMES, Jan. 24, 1991, at A16.

<sup>12</sup> NEW YORK CITY TRANSIT POLICE, NEW YORK CITY TRANSIT AUTHORITY, *TAKING BACK THE SUBWAY FOR THE PEOPLE OF NEW YORK* (1992).

<sup>13</sup> See, e.g., NEW YORK CITY OFFICE OF THE COMPTROLLER, *COPS UNDERGROUND* (1991) (New York City Comptroller Elizabeth Holtzman recommended that New York City transit police focus on deterring serious, violent crime rather than fare evasion.).

<sup>14</sup> NEW YORK CITY TRANSIT POLICE, *supra* note 12; see also Lawrence Van Gelder, *Transit Police Report Decline in a Range of Subway Crimes*, N.Y. TIMES, Sept. 8, 1994, at B3 (reporting that the number of subway crimes during first six months of 1994 was almost one-half the number committed during the same period in 1990); Emily Sachar, *Subway Crime Down - Believe It or Not*, NEWSDAY, Feb. 18, 1994, at 31 (indicating that subway crime in 1993 dropped by 35.8% since 1990).

## II. THE NEW YORK CITY POLICE DEPARTMENT'S STRATEGIC CHANGES

To implement New York City Mayor Rudolph Giuliani's criminal justice policies,<sup>15</sup> the New York City Police Department ("NYPD") has taken a strategic approach to both crime and disorder. The NYPD has adopted five crime control strategies that focus on guns, youth crime, drugs, domestic violence and auto-related theft. The results for the first year have been very encouraging, including a twelve percent decline in the seven major felony crimes and an eighteen percent decline in homicides, which is the steepest drop in the city's history.<sup>16</sup>

However, the secret to the NYPD's long-term success is a strategy entitled, "Reclaiming the Public Spaces of New York,"<sup>17</sup> which outlines a full-scale initiative at the precinct level to eliminate quality-of-life offenses. Together with the organizational changes that the NYPD has made, the public spaces strategy puts precinct commanders in a position to mount their own local efforts against prostitution, low-level drug dealing, "boom-box" cars and other quality-of-life offenses, without relying on special units or directives from headquarters.

The strategy also provides police precincts with a broader range of enforcement options and tools, many of which utilize the civil law to supplement criminal law enforcement. Under this strategy, known as the "Civil Enforcement Initiative,"<sup>18</sup> the NYPD has

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<sup>15</sup> Catherine S. Manegold, *Giuliani, On Stump, Hits Hard at Crime and How to Fight It*, N.Y. TIMES, Oct. 13, 1993, at A1.

<sup>16</sup> OFFICE OF MANAGEMENT ANALYSIS AND PROGRAM PLANNING SECTION, NEW YORK CITY POLICE DEP'T, HOMICIDE ANALYSIS REPORT (1991).

<sup>17</sup> See generally POLICE STRATEGY NO. 5, *supra* note 9.

<sup>18</sup> Before the author became New York City police commissioner, the NYPD was already developing most of these options in the Civil Enforcement Initiative, which was begun by Jeremy Travis, the very capable deputy commissioner for Legal Matters under former Police Commissioners Lee Brown and Raymond Kelly. Mr. Travis, who is now the director of the National Institute of Justice, remained with the NYPD for the first six months of the Giuliani administration to help design our public spaces strategy that incorporated much of the Civil Enforcement Initiative. See generally POLICE STRATEGY NO. 5, *supra* note 9.

based sixteen lawyers in field commands throughout the city, each serving as full-time counsel to several precinct commanders. Instead of merely responding to occasional legal inquiries, these civil enforcement lawyers meet with commanders to learn about the issues and problems of a particular precinct from the ground up. The lawyers offer a broad range of new enforcement options, some in the civil law, some that combine criminal and civil measures and some that rely on statutes that police departments do not normally enforce.

The most effective enforcement techniques are often those that allow the police to confiscate, close, or temporarily seize property, including automobiles, contents of drug paraphernalia shops and premises where prostitution or drug transactions occur. Through the Civil Enforcement Initiative, the precinct commander can use the nuisance abatement law, padlock law, forfeiture actions and other measures to strengthen the NYPD's crime fighting efforts. This Essay will describe some of the tactics that the Civil Enforcement Initiative uses to help restore a sense of order and safety to New York City's neighborhoods.

### III. RECLAIMING PUBLIC SPACES

#### *A. Nuisance Abatement Law*

The Nuisance Abatement Law<sup>19</sup> is probably the most powerful civil tool available to the police. The nuisance abatement statutes allow the NYPD, acting under a designation from the New York City Corporation Counsel, to bring actions in State Supreme Court seeking the judicial closing of locations where criminal activities occur.<sup>20</sup> The NYPD uses these actions in conjunction with the traditional techniques of criminal law enforcement to attack drug dealing, illegal gambling, prostitution and automobile "chop shops."

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<sup>19</sup> NEW YORK, N.Y., ADMIN. CODE §§ 7-701-719 (1986).

<sup>20</sup> *Id.* §§ 7-706 (permanent injunction), 7-707 (preliminary injunction), 7-709 (temporary closing order), 7-710 (temporary restraining order), 7-711 (temporary closing order and temporary restraining order).

With criminal investigation generally resulting in the arrest and prosecution of only a few criminals at a time, other criminals are usually willing to replace the recently arrested perpetrators. Criminal enterprises, therefore, can fill vacancies with relative ease, and the arrest of a few employees amounts to an acceptable cost of doing business. Judicial closing orders secured under the Nuisance Abatement Law, however, provide the police with another approach to this problem.<sup>21</sup> By taking legal action against property and shutting down the home of an illegal business, police can more effectively disrupt a criminal enterprise than they could through individual arrests.

Nuisance abatement actions are a powerful tool for several reasons. First, the law allows the police to commence such actions with an *ex parte* motion for a preliminary injunction, temporary closing order, or temporary restraining order.<sup>22</sup> The *ex parte* nature of the proceeding is particularly useful because it gives the police the element of surprise. By executing these temporary and preliminary orders, the police can sweep down on a location and close it without warning, seizing illegal goods and records of illegal activity that may further criminal prosecutions. In cases where preliminary injunctions are ordered, the statute protects due process by providing for a hearing within three days.<sup>23</sup>

Second, nuisance abatement actions do not need to be predicated upon arrests and convictions.<sup>24</sup> The statute allows the actions to be commenced upon a showing that a public nuisance exists.<sup>25</sup> Such a showing may be based upon incidents of criminal activity, which are not necessarily limited to arrests and convictions,<sup>26</sup> thus

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<sup>21</sup> See Matthew Goldstein, *Judge Rejects City Bid to Bar Leasing of Store*, N.Y.L.J., Oct. 19, 1994, at 1. Gabriel Taussig, head of New York City Law Department's Administrative Law Division, may appeal an unfavorable decision by the New York State Supreme Court by arguing to close a building under the Nuisance Abatement Law. *Id.*

<sup>22</sup> NEW YORK, N.Y., ADMIN. CODE §§ 7-707, 7-709, 7-710.

<sup>23</sup> *Id.* § 7-707.

<sup>24</sup> *Id.* § 7-703(a).

<sup>25</sup> *Id.*

<sup>26</sup> See, e.g., *New York v. Castro*, 160 A.D.2d 651, 652-53, 559 N.Y.S.2d 508, 509-10 (1st Dep't 1990) (issuing preliminary closing order based on affidavits of six police officers who stated that they observed illegal gambling



decreasing the time that it takes to commence nuisance abatement actions and conserving police enforcement resources. Due process considerations are satisfied by judicial review before the issuance of the order.<sup>27</sup> In this respect, the initiation of nuisance abatement actions is consistent with the issuance of arrest and search warrants, where due process protection from a greater degree of intrusion, such as forcible entry into a person's home, is also guaranteed by prior judicial review.

Third, nuisance abatement actions provide an effective means of dissuading landlords from allowing their properties to be used for criminal activities. A number of absentee property owners in New York City are willing to accept rent payments from criminal enterprises without regard for the detrimental effect that the presence of criminals can have on the surrounding community. The statute, however, allows for fines against these property owners of up to \$1,000 per day in situations where the landlord knowingly permits criminal activity on the premises.<sup>28</sup> Criminal activity may be shown by the general reputation of the location within the community.<sup>29</sup> The fines are a powerful deterrent for irresponsible landlords, who tend to pay attention when the storefront that once paid them rent starts costing them \$1,000 per day in fines.

Although nuisance abatement actions require the commitment of patrol and investigative resources, as well as many hours of litigation preparation, the rewards make all of this work worthwhile. To maximize the benefits, the NYPD often pursues a disposition in court proceedings and negotiations with landlords that includes the return of the location to legitimate business. A location that was formerly used by criminals is often returned to the

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on the premises).

<sup>27</sup> See, e.g., *New York v. Castro*, 143 Misc.2d 766, 542 N.Y.S.2d 101 (Sup. Ct. 1989), *aff'd*, 160 A.D.2d 651, 559 N.Y.S.2d 508 (1st Dep't 1990) (finding "no denial of due process in view of the requirement that a judicial hearing on the merits be held within three days and the fact that the closing order may be vacated upon a proper showing that the public nuisance has been abated").

<sup>28</sup> NEW YORK, N.Y., ADMIN. CODE § 7-706(h); *People v. Rodriguez*, 140 Misc.2d 1, 529 N.Y.S.2d 688 (Sup. Ct. 1988).

<sup>29</sup> *New York v. New St. Mark's Baths*, 130 Misc.2d 911, 497 N.Y.S.2d 979 (Sup. Ct.), *aff'd*, 122 A.D.2d 747, 505 N.Y.S.2d 1015 (1st Dep't 1986), *appeal dismissed*, 70 N.Y.2d 693, 512 N.E.2d 555, 518 N.Y.S.2d 1029 (1987).

community to provide jobs and services instead of crime and fear. In Brooklyn, New York, for example, a grocery store owned by an absentee landlord had degenerated into a cocaine dealing site. The NYPD's 75th Precinct responded by closing the store with a nuisance abatement proceeding.<sup>30</sup> In the negotiations that followed, the landlord agreed to hire a management company to reopen the store and train a permanent manager. The reopened grocery store is no longer a drug location. Instead, it is a better quality store, offering fresher groceries at lower prices. Therefore, through nuisance abatement actions, the police can often permanently close a criminal business and significantly improve the community's quality of life.

### *B. Police Padlock Law*

Similar to the Nuisance Abatement Law, the Police Padlock Law<sup>31</sup> authorizes closing orders to be issued by the police department. The Police Padlock Law differs from the Nuisance Abatement Law, however, in its design and application. While the Nuisance Abatement Law is judicial in nature, the Police Padlock Law is an administrative procedure, with hearings held before police department employees. Moreover, the Police Padlock Law may be applied only under certain circumstances.

A specific series of events must occur before the police can commence a padlock law action. Two arrests must take place inside the targeted location, with one of those arrests resulting in a criminal conviction. After the conviction, a third, or triggering arrest must occur. During the period when the arrests are being made, the police department must send notice of the illegal activity to all interested parties. In addition, the entire sequence of events, from the first arrest to the triggering arrest, must occur within one year, including the conviction for one of the arrests.<sup>32</sup> Only after all of these requirements are met can a hearing be held to determine whether the location should be subject to an order of

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<sup>30</sup> NEW YORK, N.Y., ADMIN. CODE § 7-709.

<sup>31</sup> *Id.* §§ 10-155-156 (1989).

<sup>32</sup> *Id.* § 10-155(a)-(e). The full year is usually needed to secure criminal convictions.

discontinuance or a closing order.<sup>33</sup> These arrest and conviction requirements of the Police Padlock Law contrast with the Nuisance Abatement Law, which only requires the occurrence of criminal incidents to commence an action.<sup>34</sup> The Police Padlock Law's arrest and conviction requirements serve as a due process safeguard, which is necessary because there is no outside pre-appellate judicial review of padlock proceedings.<sup>35</sup>

The Police Padlock Law also differs from the Nuisance Abatement Law because it mandates that the police give official notice to the owner and occupants of the targeted location.<sup>36</sup> Combined with the long process of prerequisite arrests and convictions, the notice requirement gives criminals who use the location considerable warning that the police are trying to close them down and allows criminals enough time to relocate their illegal business. The notice requirement is a major weakness of the Police Padlock Law. Indeed, if such a requirement were always in effect, police criminal investigations would be unduly constrained.

The Police Padlock Law can provide useful leverage when a location is conducting both illegal and legitimate activities. Employees of a functioning neighborhood grocery store, for example, may also conduct an illegal gambling operation on the premises. In such a case, the initial goal would not be to close the store through nuisance abatement because that would interfere with the surrounding community's access to groceries. Instead, the police would make arrests at the location and use the record of those arrests to commence a padlock action. With the padlock action in progress, the police could exert pressure on the store operators to abandon their illegal activity or risk losing their legitimate business. If the criminal activity at the location did not cease immediately, the police could then close the store.

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<sup>33</sup> *Id.* § 10-156(a).

<sup>34</sup> *Id.* § 7-703.

<sup>35</sup> *Id.* § 10-156.

<sup>36</sup> *Id.* § 10-156(b)(1).

### C. Forfeiture Actions and Prostitution<sup>37</sup>

Operation Losing Proposition, a citywide initiative against street prostitution, enables the police to seize vehicles from men who hire prostitutes to perform sex acts in those vehicles.<sup>38</sup> Under Operation Losing Proposition, female undercover police officers pose as prostitutes in neighborhoods that have a chronic prostitution problem. The men who approach the undercover officers and agree to pay for sex are arrested and charged with patronizing a prostitute.<sup>39</sup> Because the man's car is the intended scene of the crime, the car is seized and subject to forfeiture proceedings.

Prostitution is far from a victimless crime. Men, women and children who live and work in a community beset by street prostitutes are victimized every day. Many of the men arrested for patronizing street prostitutes in New York City come from the suburbs, where they would never consider performing sex acts in a parked car in front of their own homes. Operation Losing Proposition is the NYPD's way of telling such men that they cannot solicit illegal sex in front of the homes of New York City residents either.

The men arrested under Operation Losing Proposition have to explain to their wives, families and friends why they have come home without their automobiles. The whole experience can be a powerful disincentive. Although most offenders eventually get their cars back under a negotiated settlement which requires them to pay a percentage of the car's book value, it is unlikely that they will repeat the offense.

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<sup>37</sup> As interpreted by *McClendon v. Rosetti*, 369 F. Supp. 1391 (S.D.N.Y. 1974), New York City Administrative Code § 14-140(4)(b)-(d) empowers the police property clerk by allowing seizure of items that are the proceeds or instrumentality of a crime. If an item is used to commit a crime, the police can confiscate it, at least temporarily. This gives the NYPD the power to pursue the most valuable piece of equipment that most minor offenders possess—their car.

<sup>38</sup> Derek Alger, *Soliciting Is a Losing Proposition; Anti-Prostitution Team Takes Cars, Publishes Names of Would-Be Johns*, NEWSDAY, Nov. 15, 1994, at B7.

<sup>39</sup> N.Y. PENAL LAW § 230.30 (McKinney 1989).

Operation Losing Proposition also demonstrates how police presence on the streets dealing with a problem like prostitution can lead to police action against more serious crimes. Police officers conducting Operation Losing Proposition in the Midtown North Precinct, for example, arrested a serial attacker known as the midtown slasher when they found a bleeding victim moments after one of the slasher's attacks. Also, in October 1994, a "john" arrested during Operation Losing Proposition in the Bronx was found to have an arsenal of eighteen pipe bombs and one-thousand rounds of ammunition in his car and additional weapons in his home.

#### *D. Forfeiture Actions and the Drug Trade*

The NYPD also uses forfeiture actions to deter drug trafficking by seizing cars and money from drug buyers as well as dealers. This technique, known as Operation Chariot,<sup>40</sup> is especially effective in deterring people from driving into New York City to purchase drugs.<sup>41</sup> By commencing forfeiture actions to seize buyers' cars, the NYPD has a unique method for limiting the number of drug transactions that occur within the city. Although the criminal justice system no longer provides a disincentive for drug buyers, the police can deter such crimes by seizing offenders' cars and cash.

Similar to patronizing a prostitute, purchasing drugs is not a victimless crime. The neighborhoods where drug trafficking occurs are frightening and dangerous places for the honest families who try to live there. A casual drug buyer from another neighborhood or from outside New York City has no right to disrupt the lives of law-abiding citizens. Seizing drug buyers' cars disrupts buyers' lives and, in many cases, changes their behavior.

Another way to reduce drug use and drug trafficking is to disrupt the sale of drug paraphernalia, which is used to package, ingest, or smoke illegal drugs. Possession and sale of these items

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<sup>40</sup> Memorandum from Janet J. Lennon, deputy commissioner for Legal Matters, New York City Police Dep't (Dec. 5, 1994).

<sup>41</sup> Russell Ben-Ali, *Making the City a Comfort Zone*, NEWSDAY, Sept. 17, 1993, at 36.

with knowledge of their intended use is a crime in New York State.<sup>42</sup> Under Enhanced Operation Parable,<sup>43</sup> the NYPD Narcotics Division, in cooperation with local prosecutors, has been able to identify major sellers of these items, establish knowledge of the intended use of the items, secure search warrants and arrest the sellers.<sup>44</sup>

Enhanced Operation Parable has decentralized the effort to confiscate drug paraphernalia by assigning police officers to conduct drug paraphernalia raids in their precincts instead of diverting Narcotics Division officers from their central role of pursuing high-level and mid-level drug dealers. The total number of items seized may be smaller, but the constant pressure at the local level will cut down on the availability of everything from crack pipes to glassine envelopes. In addition, stores selling drug paraphernalia often sell illegal non-firearm weapons, including brass knuckles, switchblade knives, daggers, mace and black-jacks.<sup>45</sup> Police conducting Enhanced Operation Parable also make arrests for possession and sale of these illegal weapons and seize the contraband.

### *E. Forfeiture Actions and Illegal Drivers*

Forfeiture actions give the NYPD an effective means of pursuing people who would otherwise repeatedly violate motor vehicle laws. The NYPD actively uses forfeiture laws against drivers with suspended licenses who continue to drive illegally.<sup>46</sup> Seizing cars and commencing forfeiture actions discourages people from driving with suspended licenses, and enables the police to

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<sup>42</sup> N.Y. PENAL LAW § 220.50 (McKinney 1989).

<sup>43</sup> Memorandum from Janet J. Lennon, *supra* note 40.

<sup>44</sup> Scott Ladd, *Raids Land Truckloads of Drug Tools*, NEWSDAY, Oct. 30, 1993, at 6.

<sup>45</sup> Mere possession of these items violates state law. See N.Y. PENAL LAW § 265.01(1)-(2) (McKinney 1987).

<sup>46</sup> N.Y. VEH. & TRAF. LAW §§ 511(3)(a)(ii), 511(c)(2) (McKinney Supp. 1995). This statute allows forfeiture actions to be commenced if the driver has 10 or more suspensions emanating from summonses received on 10 or more different days.

advocate for dispositions in these forfeiture cases that include returning the offender's license to a valid status. In some cases, paying all outstanding summonses can amount to thousands of dollars in fines.

Any driver caught with ten license suspensions from ten different dates is arrested for a first degree violation<sup>47</sup> and the car is vouchered and subject to forfeiture.<sup>48</sup> For example, the NYPD recently seized the car of a livery cab driver whose seventy-five license suspensions were due to unanswered summonses. Because this person drives a car for a living, he thought that he could ignore the motor vehicle laws with impunity. Now the police have his car and if he drives another car, the police will seize that one as well.

### *F Interdisciplinary Attack on Noise*

Excessive street noise is a chronic problem in New York City and perhaps the most common complaint to the police. The biggest offenders are "drive-by" noise polluters with their "boom-box" cars pouring out deafening music. These cars are sometimes so loud that people complain about the vibrations as well as the noise. The state legislature recognized the problem and enacted a law that proscribes operating a vehicle's audio amplification system in excess of eighty decibels, measured at fifty feet.<sup>49</sup> Until recently, however, it was very difficult to enforce this statute against moving violators because enforcement required an interdisciplinary team. Agencies experienced in measuring sound levels, such as the New York City Department of Environmental Protection ("DEP"), were not equipped or trained to conduct motor vehicle stops. Police, on the other hand, who are prepared to conduct traffic stops, were not equipped or trained to measure sound levels. The NYPD's Operation Soundtrap<sup>50</sup> effectively linked DEP inspectors with police officers to combat excessive street noise. Using sensitive sound meters, the DEP inspectors measured sound levels, while police officers stopped offending cars and issued summonses.

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<sup>47</sup> N.Y. VEH. & TRAF. LAW § 511(3)(a)(ii) (McKinney Supp. 1995).

<sup>48</sup> *Id.* § 511(c)(2).

<sup>49</sup> *Id.* § 375(47)(a).

<sup>50</sup> POLICE STRATEGY NO. 5, *supra* note 9.

Since summonses alone would probably not have much impact on reducing noise, Operation Soundtrap also has a seizure component. Because a vehicle must be heavily modified to make noise that rises to the level proscribed by law, the police are entitled to seize, voucher and safeguard a vehicle as evidence that, as equipped, it may have been used to commit the offense. Once the summons is adjudicated, which can happen as soon as the next working day, the police return the vehicle to its owner. Because this offense is merely a violation under New York State law, the police cannot institute forfeiture proceedings against these drivers.

Although the NYPD cannot seize the vehicles, officers can ruin the drivers' fun. A car seized on a Friday night, for example, will not be returned before Monday. With local police officers identifying the loudest and most notorious "boom-boxers" in a neighborhood, Operation Soundtrap enabled the police to apprehend these offenders and send them home on foot. The message quickly spreads that a loud radio could cost inconsiderate drivers their cars for the weekend.

Having learned the basics of sound metering from DEP inspectors, the NYPD currently conducts Operation Soundtrap citywide without any assistance from the DEP, which only has limited staff assigned to night duty. The NYPD has purchased sound meters and trained precinct officers to use them properly. The only limit on Operation Soundtrap is the small number of meters that the NYPD has been able to purchase so far. But in response to overwhelming community support, help is on the way. Queens Borough President Claire Shulman, for example, donated five additional meters for use in Queens, and community groups have promised to do the same throughout the city.

Precincts have capitalized on the reputation of Operation Soundtrap to deter excessive noise. Some enterprising police officers in the Bronx, for example, constructed a fake sound meter by pasting a black ping pong ball to a TV remote control. Armed with the decoy, they conducted simulated soundtrap operations for a few nights. The officers could not make any traffic stops, of course, but the "boom-box" offenders have become so aware of Operation Soundtrap's consequences that the mere sight of the imitation meter caused them to turn down their sound systems.



Operation Soundtrap gave rise to another initiative known as Operation Cyclecheck.<sup>51</sup> In neighborhoods where Operation Soundtrap had shut down the "boom-box" cars, police enforcement agents were still hearing the powerful drone of unlawfully loud motorcycles. Some illegally modified motorcycles produce exhaust noises so loud that they set off the anti-theft alarms of cars parked along the street. When packs of riders cruise neighborhoods on these loud motorcycles, they make sleep impossible and drown out car horns and emergency sirens, creating a serious safety hazard.

New York State's Vehicle and Traffic Law strictly regulates the modifications that may be made to a motorcycle's exhaust system as well as the noise that a motorcycle may produce.<sup>52</sup> For many years, however, the NYPD did not enforce these limitations, which were couched in complex technical terms about muffling devices. Under Operation Cyclecheck, investigators from the New York State Department of Motor Vehicles ("DMV") join police officers at checkpoints to stop all two-wheeled, motorized vehicles for inspection of their exhaust systems. DMV investigators introduced police officers to various techniques for detecting illegally modified exhaust systems. For example, they taught the police about shining a flashlight into an exhaust system to reveal holes in the piping and about shoving a nightstick into the pipe to determine if its muffling devices had been illegally removed.

When police officers stop motorcycles that are illegal or unsafe to operate, they voucher and safeguard the motorcycles. Aside from muffler violations, Operation Cyclecheck has found a substantial number of stolen motorcycles as well as unlicensed, unregistered and uninsured ones. The police allow none of them to drive away.

### *G. Sale of Alcohol to Minors*

Underage drinking is not one problem; it is many. Loud, rowdy groups of intoxicated teens have disrupted neighborhoods and committed various criminal acts, including public urination, drunk

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<sup>51</sup> POLICE STRATEGY NO. 5, *supra* note 9.

<sup>52</sup> N.Y. VEH. & TRAF. LAW §§ 375(31), 375(31-a), 375(31-6) (McKinney 1986 & Supp. 1995).

driving, criminal mischief, assault and even homicide. The NYPD strategy is to address this problem at its source—the merchants and bar owners, who have adopted casual attitudes about selling alcohol to minors.

NYPD civil enforcement lawyers and precinct commanders meet with the owners of bars and delicatessens throughout the city to raise the owners' awareness of the problem and to inform them of the penalties for selling alcohol to minors. The police conduct these meetings cordially, reminding the merchants that they are part of their community and that they play a vital role in preventing underage access to alcohol. The police inform the merchants that government-issued photo identification is now required as proof of age and show them how to detect forgeries. The officers also explain that NYPD is ready to aggressively enforce underage drinking laws.<sup>53</sup> Enforcement measures include uniform inspections of stores and bars, underage purchases by police cadets and, with assistance from the New York State Liquor Authority ("NYSLA"), revocation of liquor licenses from bars and stores that violate the law.

In two large nightclubs in lower Manhattan, for example, the NYPD discovered multiple offenses, including the sale of alcohol to minors, violence in and around the premises and the operation of too many bars within one nightclub. Working with the NYSLA, NYPD civil enforcement attorneys successfully revoked the licenses of both establishments. More often than not, however, revoking an establishment's license is not necessary, because most merchants carefully comply with the law once they are given notice.

## CONCLUSION

Throughout my career, I have been a strong believer in community policing—the idea that police must work with communities to accomplish mutual enforcement goals. But as a life-long police officer, I am also a strong believer in practical results. The idealized notion of community policing, in which beat cops

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<sup>53</sup> N.Y. ALCO. BEV. CONT. LAW §§ 65, 65-a, 65-b (McKinney 1987 & Supp. 1995).

organize a community to solve its problems, has always struck me as unrealistic. It is far too much to ask individual police officers, who are often in their early twenties, to be responsible for solving complex problems and bringing the various resources of local government to bear on problem locations. It may work in some small communities, but it is the rare exception in a community as complex as New York City.

Something else can and is happening in New York City—the reorganization of police resources and police strategies, including civil enforcement tactics, to help communities counter the problems that afflict them. We have made the precinct commander, instead of the beat officer, the locus of problem solving and given the commander the necessary tools, including quality legal advice, to get the job done. The NYPD's public spaces strategy and its civil enforcement component are strengthening community policing by providing the organizational means and the tactical knowledge to accomplish community ends—to shut down drug dealing locations, take noisy cars off streets and deter low-level offenders from coming into New York City neighborhoods. As communities see the police taking effective actions against the problems that they care about, residents will be far more likely to view us as their allies and work cooperatively with us. Working together, we can achieve what every community wants—streets that not only are safer, but feel safer, too.