

CRIMINAL LAW BULLETIN

Volume 41, Number 1

Beyond the Sentence: Public Perceptions of Collateral Consequences for Felony Offenders
Milton Heumann, Brian K. Pinaire and
Thomas Clark

Beyond the Sentence: Public Perceptions of Collateral Consequences for Felony Offenders*

Milton Heumann,* Brian K. Pinaire,** and Thomas Clark***

Part of our psychology as Americans is that we don't want to face our problems and deal with them, so we would rather put them behind bars. And that is where we stick our problems, so someone else can think about it—and so we don't have to. That is the easy answer.¹

I. Introduction

In his State of the Union Address this year, President Bush surprised many political observers by addressing the problems associated with prisoner re-entry. This year, as the President noted, over 600,000 individuals will be released from American jails, prisons, and detention centers and most will return to the communities in which they lived prior to incarceration.² To ease the transition back into society, Bush proposed a four-year, \$300 million "Prisoner Re-Entry Initiative" intended to "expand job training and placement services, to provide transitional housing, and to help newly released prisoners get mentoring, including from faith-based groups."³ Covering many political and ideological bases then, Mr. Bush both pragmatically acknowledged that offenders who lack opportunities for "self help" will find themselves coming right back through the "revolving door" of the criminal justice system and resurrected the spirit of Horatio Alger by reminding us that "America is the land of the second chance and when the gates of

* We would like to thank the Franz and Class of 1968 Fellowship Fund (Lehigh University), the President and Provost's Faculty Development Fund (Lehigh University) and the Kneller Fund (Rutgers University) for supporting this research at various stages. We would also like to thank Al Friedes and Alec Ewald for reading earlier versions of this article with great care.

* Professor, Department of Political Science, Rutgers University, B.A., Brooklyn College, 1968; M.Phil., Yale University, 1970; Ph.D., Yale University, 1974.

** Assistant Professor, Department of Political Science, Lehigh University, B.A., Whitman College, 1997; Ph.D., Rutgers University, 2003.

*** Ph.D. student, Department of Politics, Princeton University, B.A., Rutgers University, 2003.

¹ Audio tape: Focus Group Session #4 (June 24, 2003) (on file with authors).

² Approximately 635,000 prisoners re-entered society in 2002. See Joan Petersilia, *When Prisoners Come Home*, at v (2003).

³ President George W. Bush, *The State of the Union Address*, quoted in *N.Y. Times*, January 21, 2004, at A19.

© 2005 Thomson/West

Thomson/West have created this publication to provide you with accurate and authoritative information concerning the subject matter covered. However, this publication was not necessarily prepared by persons licensed to practice law in a particular jurisdiction. Thomson/West are not engaged in rendering legal or other professional advice, and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.

the prison open, the path ahead should lead to a better life."⁴ This, it seems, is "compassionate conservatism."

And yet such rhetoric seems out of step with the last thirty years worth of "get tough" and "just desert" criminal justice policies.⁵ Mr. Bush's father ("41"), after all, famously made the ineptitude of "liberal" criminal justice policies a central theme in his campaign for president in 1988. The "Willie Horton" ads were meant to demonize (black) offenders and demonstrate the incapacity of the Democratic nominee, Governor Michael Dukakis of Massachusetts, to properly deal with hardened criminals.⁶ Indeed, since the late 1960s we have been confronted with assertions of "coddled" criminals, promises that offenders who "do the crime" will "do the time," and various other sound-bite over-simplifications. In line with this "get tough" approach, at the federal level the Sentencing Guidelines were tightened (and toughened) up in the 1980s, while Bill Clinton pledged to put "100,000 new cops on the street." At the state level, the nation's strictest drug laws were promoted by New York Governor Nelson Rockefeller in the early to mid-1970s; parole boards and discretionary release were consumed by the momentum for "mandatory minimums" and "determinate sentencing" in the '70s and '80s; and citizen initiatives, such as California's "Three Strike and You Are Out" law, and the "no frills" approach to prisons set the tone for the 1990s. Finally, at the local level, the public seemed generally supportive of proactive law enforcement practices assuring "zero tolerance" and loosely mimicking the famous "broken windows"⁷ theory of community policing.

Given this recent "law and order" approach to our public policies, it is particularly interesting that a Republican president would sound the call for reassessment and reform. Clearly the Administration still wants to satisfy its conservative base, thus emphasizing *punishment*. But with the number of those re-entering society reaching such levels (an unintended consequence of the "get tough" and "lock 'em up" approaches that have incarcerated record numbers of individuals⁸), it makes sense to help those released become productive members of society—an approach that appeals more to

⁴ Bush, *supra* note 3.

⁵ See, e.g., Ted Gest, *Crime & Politics: Big Government's Erratic Campaign for Law and Order* 41-61 (2001).

⁶ The "Willie Horton" ads broadcast during the 1988 campaign are perhaps the most memorable recent examples of the political exploitation of criminal justice issues and the painting of certain policies as "soft." See Kathleen Hall Jamieson, *Dirty Politics: Deception, Distraction, and Democracy* 15-42 (1992).

⁷ James Q. Wilson & George Kelling, *Broken Windows*, *Atlantic Monthly*, March 1982, at 29.

⁸ The number of incarcerated individuals in the nation's prisons and jails reached a record high of 2,078,570 by midyear 2003. Paige Harrison and Jennifer Karberg, *Prison and Jail Inmates at Midyear 2003*, at 1 (Bureau of Justice Statistics Bulletin, U.S. Dep't of Justice, May 2004). According to data compiled by the Manhattan Institute, "[b]y the end of 2001, a record 6.6 million people were in the United States correctional system [including prison, parole, and probation]." William Eim-

the spirit of *rehabilitation*.⁹ Partisans on both sides of most criminal justice questions are likely firmly fixed in their place on this spectrum, but the majority of Americans, it seems safe to surmise, have more complex and less entrenched views on these matters. That is, despite the rhetorical barbs and tough talk that consume the national discussion over criminal justice policies in the United States, public attitudes on such important issues as the *purpose* of the criminal justice system, the appropriate allocation of resources for those on the inside, the nature and degree of various sentences accorded to offenders, etc. may be quite a bit less punitive, more inclined to support "second chances," and, overall, more nuanced and complicated than traditional survey research often leads us to believe.

What do most people really think *is* the purpose of the criminal justice system? What do they think it *should* be? *How* do they perceive of felony offenders in our society—that is, in what way do they conceive of them and by what means do they arrive at such conclusions? What is the public responsibility for those who have "served their time" but who lack the resources to reach for that "better life" once the prison doors are opened? Should offenders be returned to society with full rights and privileges, or is there good reason to discriminate and make distinctions as we evaluate the restoration of full citizenship? Has an offender completed his or her time when he or she leaves prison, or is it appropriate to attach additional legal restrictions, economic prohibitions, and social consequences? What is the proper balance—in terms of resources, efforts, and energies—between the *punishment* and *rehabilitation* of offenders? And, perhaps most importantly, to what extent (if at all) do people really ever think seriously about questions such as these? Thus, while some issues of crime and punishment are often "hot-button" and elicit "gut-level" responses (i.e., capital punishment), are people generally able to justify their views—especially once abstract questions are put into more specific, even personal, terms?

As these questions suggest, this article looks to both general conceptions of the criminal justice system and specific public policies that impose upon felony offenders a range of "collateral consequences." These consequences include everything from the loss of (or inability to attain) a professional license,¹⁰ to prohibitions on voting, jury service, and other political involve-

icke & Steven Cohen, 29 *Civic Bull.: America Works' Criminal Justice Program: Providing Second Chances Through Work* 1 (November 2002). Moreover, Christopher Uggen and his colleagues concluded that, in 2000, 13 million Americans were ex-felons—meaning that they either had already served time or were currently incarcerated, on parole or on probation. This figure equals 6.5% of the entire adult population and 37% of the adult black male population. See Petersilia, *supra* note 2, at 10.

⁹ See Fox Butterfield, *Repaying the Long Road Out of Prison*, *N.Y. Times*, May 4, 2004, at A23, for more on the increasingly bi-partisan appeal of "re-entry" programs.

¹⁰ See Clyde Haberman, *Ex-Inmate Denied Chair (And Clippers)*, *N.Y. Times*, Feb. 25, 2002, at B1 (discussing the case of a man who was trained to cut hair while serving time at the Clinton Correctional Facility, but who was prohibited from

ment,¹¹ to lifetime bans on receiving welfare benefits and public housing opportunities, and various other "invisible punishments"¹² that are not formally included as part of the "sentence", but that undoubtedly punish offenders—sometimes for the rest of their lives. (See Table 1 at the conclusion of this paper for a listing of selected state-imposed collateral consequences and Table 2 for a listing of collateral consequences imposed at the federal level.)

The remainder of this article is divided into three sections: In Part II, we outline our methodology for this project and reflect upon the benefits of a focus group-based approach for research projects motivated by similar concerns. In Part III, we present and discuss our primary conclusions, while Part IV offers an outline for future research and some concluding thoughts.

II. The Focus Group Method

In previous public opinion work on this general topic, two of us (Pinaire and Heumann) made use of a 500-person national survey in order to provide much-needed (and previously non-existing) data on public attitudes toward the disenfranchisement of felons.¹³ In that study we found that while a supermajority (81.7%) of Americans opposed the *permanent* disenfranchisement of felons, most respondents did support some measure of *temporary* disenfranchisement. At the same time, only about half (50.3%) either "strongly" or "somewhat" agreed with the statement, "Felons who serve their time should return to society as full citizens, with full rights and privileges." What could explain this? Why would over 80% feel that the

receiving a barber's license by the state of New York because his criminal history indicated "lack of good moral character" and trustworthiness required for licensure); Webster Hubbell, Without Pardon: Collateral Consequences of a Felony Conviction, 13 Fed. Sentencing Rpt. 223 (2000-2001) (recounting the various jobs that he, a convicted felon, Associate Attorney General, and formerly the third-highest law enforcement official in the United States, is now permanently barred from holding); Nora Demleitner, Preventing Internal Exile: The Need for Restrictions on Collateral Sentencing Consequences, 11 Stanford L. & Pol'y Rev. 153 (1999) (arguing that ex-offenders are "saddled with restrictions that exclude them from major aspects of society").

¹¹ See Kathleen M. Olivares et al., The Collateral Consequences of a Felony Conviction: A National Study of State Legal Codes 10 Years Later, 60 Fed. Prob. 10 (1996).

¹² See Fox Butterfield, "Freed from Prison, but Still Paying a Penalty," N.Y. Times, Dec. 29, 2002, at 18. "Invisible punishments" is a term that was coined by Jeremy Travis of the Urban Institute.

¹³ See Brian Pinaire, Milton Heumann & Laura Bilotta, Barred from the Vote: Public Attitudes Toward the Disenfranchisement of Felons, 30 Fordham Urb. L.J. 1519 (2003) (hereafter Barred from the Vote).

right to vote should be restored, while only half felt that "full rights and privileges" should be restored?¹⁴

These and other response patterns that seemed to be in conflict led us to conclude that while most Americans seemed to be willing to re-seat an ex-felon "at the table" (reinstating formal political rights), the "tablemates" of these offenders were still cautious, suspicious, and uncertain about the "fit" of these individuals in society. How else to explain such an apparent tension? While a quantitative, survey-oriented study such as that employed in our earlier article provided us with generalizable data with which to draw conclusions about Americans' general impressions on various issues, we realized throughout the course of our inquiry and analysis that some of our research questions could be more thoughtfully considered within a focus group format that allowed for increased interaction and deliberation *with* and *between* the sources of data.¹⁵

Such settings encourage genuine discussion and debate between individuals who may not otherwise encounter one another and who would likely never (except perhaps in a jury setting, for example) discuss such important issues and public policies.¹⁶ Along these lines, as Kathryn Taylor

¹⁴ Additionally, when we asked those who supported temporary or permanent disenfranchisement why they supported such policies, the modal response for this restriction was that "felons have proven that they should not be treated as citizens" (32.7%). At the same time, the modal response to our question regarding the "purpose of the criminal justice system" was "rehabilitation" (30.8%). Barred from the Vote, supra note 13, at 1519-50.

¹⁵ We realize there is a certain irony here. In the course of research in marketing, psychology, sociology, and other fields which make extensive use of focus group methods, such techniques are usually employed at the start of a larger research project as a means of generating hypotheses which can then be tested in a more statistical or quantitative manner in subsequent projects. Our work proceeded in the opposite direction: We began with a national survey and used those data to devise hypotheses and hypotheticals for exploration in the focus group setting. While perhaps outside the normal ordering of events, the results we achieved may encourage researchers to integrate focus groups into later phases of the research agenda.

¹⁶ In this spirit, for a democracy to function to its potential, citizens must communicate their concerns, preferences, and interests to one another; but they must also feel as if they are being heard—that they have a place and a voice. Because focus groups "mirror the group or social context within which many people actually experience citizenship," they can make an important contribution to this project. Pamela Johnston Conover, Ivor M. Crewe & Donald Searing, The Nature of Citizenship in the United States and Great Britain: Empirical Comments on Theoretical Themes, 53 J. Pol. 800, 805 (1991) (hereafter The Nature of Citizenship).

Indeed one of the central assumptions of focus group-based research is that "group processes can help people to explore and clarify their views in ways that would be less easily accessible in a one to one interview" and thus group discussion is "particularly appropriate when the interviewer has a series of open ended questions and wishes to encourage research participants to explore the issues of importance to them, in their own vocabulary, generating their own questions and pursuing their own priorities." For these reasons, "focus groups reach the parts that

Gaubatz noted in her excellent analysis of the views toward crime and punishment held by various residents of Oakland, California, such questions and "a general atmosphere in which thinking aloud is encouraged offer the opportunity to understand *how* participants put their thoughts together" because interviewees "describe not only what they think, but also *why* they think it."¹⁷

For this project we employed four focus groups—two including Rutgers University staff members (Groups #1 and #3)¹⁸ and two involving primarily Rutgers University students (Groups #2 and #4).¹⁹ Each focus group was conducted in late June 2003, included between seven to ten individuals (for a total of thirty-five), and lasted between 1-1½ hours. All three authors participated in devising the questions and recruiting the participants, though only two of us (Heumann and Pinaire) moderated the sessions, getting the discussion started with a series of general inquiries regarding the nature and purpose of the criminal justice system and basic conceptions of fairness, followed by explorations of more focused, policy-oriented questions. Respondent recruitment was conducted via "snowball" or "network" sampling

other methods cannot reach, revealing dimensions of understanding that often remain untapped by more conventional data collection techniques." Jenny Kitzinger, *Introducing Focus Groups*, 311 *Brit. Med. J.* 299 (1995). For more on the role of focus groups in opinion formation, see Richard Krueger, *Focus Groups* 10-11 (2d ed. 1994); Catherine Marshall & Gretchen Rossman, *Designing Qualitative Research* 85 (2d ed. 1995); Alan Johnson, 'It's Good to Talk': The Focus Group and the Sociological Imagination, 44 *Soc. Rev.* 516 (1996).

¹⁷ Kathryn Taylor Gaubatz, *Crime in the Public Mind* 11 (1995); see also David Mathews, *Politics for People* 3 (1994). It is the opportunity to ask the "Why?" question that may best distinguish the focus group method from its alternatives. To draw another parallel to the problems we encountered in our previous study, as we sought to assess why individuals may support felony disenfranchisement, we had to imagine the various potential justifications that might be offered and fit them into the survey format. And, while 66.5% of respondents did choose one of our four options (felons are immoral individuals; felons have proven that they should not be treated as citizens; felons cannot be trusted; and all of the above), significantly 31.1% answered "none of the above/some other reason," while 2.5% answered "don't know/refuse to answer." Banned from the Vote, supra note 13, at 1536.

This suggests a few things: perhaps those who answered "none of the above/some other reason" lacked a clear sense of why they supported restrictions on voting for felons, but they knew it was not one of the reasons offered; or perhaps these respondents did know why they believed this, however the one-way polling technique employed precluded them from sharing their justification. Whatever the reason, the dialogical, interactive nature of focus groups significantly (though not entirely) reduces the amount of data lost to "some other reason" and the assessments confused by contradictory responses.

¹⁸ Group +1 included three white men, four white women, one black woman, and two Hispanic women and Group +3 included two white men, one black man, five white women, and one Hispanic woman.

¹⁹ Group +2 included six white men and three white women and Group +4 included five white men, one white woman, and one woman of middle-Eastern descent.

techniques, wherein index individuals (four or five students and staff associated with the Political Science Department) were recruited and then encouraged to recommend for participation various other appropriate candidates.²⁰ Lunch was provided to staff members at the noon sessions and dinner was provided for students at the evening session. Each focus group session was audio-taped and transcribed; each respondent was made aware of, and signed a document acknowledging their rights as a "human subject;" and anonymity has been preserved through each stage of the study.

No research method is entirely without its drawbacks. We made use of focus groups for *this* project because, as suggested above, we felt that our interests required an environment wherein we could promote observation, interaction, and deliberation. We do not claim the ability to predict behavior or generalize about any groups' views of the criminal justice system; the focus group method simply cannot provide such precision. Sample sizes are small in focus groups and samples are not selected using probability methods—meaning that they are not representative and thus the results are not generalizable. Further, while we found flexibility in questioning (as to wording, flow, and ordering) to be a "plus" for this type of inquiry, certainly this makes it more difficult to compare the results between different groups of respondents. Moreover, the responses elicited in these groups are not independent; as noted (and lauded) above, deliberation does occur, meaning that individuals do influence each other and thus (perhaps) corrupt or obscure the "true" beliefs of respondents. Finally, while "data" are gathered (in the form of transcripts from audio tapes and the researchers' notes during the session), the results are not easily quantifiable (see the concerns noted by Krueger above) and are contingent upon the quality (or lack thereof) of the analyst and his/her interpretation of events.²¹ These criticisms notwithstanding, for the right type of project the focus group method has the potential to provide the richness and nuance that might otherwise be missing in an exploration of public attitudes.

III. Findings and Discussion

Most of the matters raised in the focus groups were issues about which respondents had given little prior thought. The more specific the issue—voting or license denial—the more pronounced this observation, but even on general policy matters of rehabilitation, costs of incarceration, and "codingling", the responses evidenced little prior thought. Indeed, even the kind of "code word" associations that we expected for coddling, punishment, etc. were not very visible. We are not sure why this is the case, but several possible explanations come to mind: There may be a general decline in the attractiveness of crime as a political issue, with the concomitant decline in

²⁰ For more on the "snowball" method, see Jean Schensul et al., *Enhanced Ethnographic Methods* 72 (1999); Krueger, supra note 16, at 84-5.

²¹ For more on these critiques, see Edward Fern, *Advanced Focus Group Research* 121-48 (2001).

public attention to "things criminal." The source of this decline is a matter beyond the scope of this paper, but it may reflect the greater saliency of other matters of current concern (i.e., the economy or the conflict in Iraq), the fact that crime has been almost trivialized in political debates, or the fact that on the specifics of some of our issues (license deprivation) most people are simply unaware of public policies.

Nonetheless, our research uncovered five distinct themes, each developed in greater detail below. First, throughout each of the four sessions—and across our various questions, vignettes, and hypotheticals—we encountered resistance to "black and white" thinking on these issues. While our inquiries encouraged clear and contained responses to various crimes and punishments, our respondents (as we would hope a jury might) by and large insisted on case-by-case evaluations of various problems and questions. Second, we detected clear support for programs aimed at rehabilitation, though of what we refer to as the "utilitarian" variety; that is, we sensed support for rehabilitative programs not because they are right or moral, but because they strike a chord of common sense in the minds of a public that, too, wants to cease the "revolving door" phenomenon. Third, we affirmed our earlier findings on public attitudes toward the disenfranchisement of felons, though this round of research gave us a clearer sense of exactly *why* people perceive these laws as they do. Fourth, and in line with the resistance to black and white thinking mentioned above, we uncovered a clear preference for a more individualized and tailored approach to various felony sentences and their collateral consequences—a clearer and more direct connection between the "crime" and the "time" in other words. Finally, we noticed repeated examples of what we are calling "Willie Horton: Revisited and Revisited"—in essence remarkable stories of *reform* (not abuse) and *rehabilitation* (not recidivism) that were shared with us by respondents.

A. "It Depends on the Crime"

We were surprised to see that, throughout the four groups, respondents were quite reluctant to think in "black and white" terms; that is, they resisted the sort of "blanket" response that might translate into a "lock 'em all up" attitude, or its alternative. They were neither instinctively "tough" nor "soft" on crime; rather, as we proposed hypotheticals of a general nature, the participants in this study consistently desired to know more about the proposed situation, the alleged crime, and potential mitigating factors. Thus, as we would hope a jury might, these respondents eschewed ideological and "kneejerk" reactions—and, instead, insisted on proceeding on a case-by-case basis without being governed by preconceptions or predispositions.

What is interesting about this is *not* that people treat different crimes differently (this is to be expected), but rather the consistency by which they resisted the rhetoric, the extremes, and the hyperbole that are often associated with discussions of criminal justice. In our questions involving the acceptance of felons back into society and various legal and social consequences, for example, we found that respondents wanted to make distinctions and draw conclusions based on the specific nature and *type* of felony offense

in question. All felons, we were repeatedly told in one form or another, are not created equal. And, in fact, this inclination toward particulars had practical significance for our study, because, as we tried to gauge *general* public attitudes toward the criminal justice system ("Would you say you generally support punishment, rehabilitation, . . .?"), we were repeatedly told that "it depends on the crime." This is significant because many of the laws that attach collateral consequences to felony convictions (i.e., voting restrictions, prohibitions on jury service and service in elected office, or licensing restrictions) do *not* make such distinctions, but rather *indiscriminately* treat felons as a class of "equal" offenders.

In this regard, what our respondents seemed to emphasize was something quite different in spirit from the push for "mandatory" and "uniform" punishments of the 1980's: we saw, for the most part, support for distinctions between various types of felony offenses (violent vs. non-violent, drug crimes vs. rapes and murders) and in general a more "individualized" approach to both the crime and the punishment. Thus, while the state may categorize individuals convicted of non-violent drug offenses as "felons" in the same manner as those convicted of felony assault, armed robbery or murder, our respondents resisted such a wholesale approach, especially as they considered post-conviction consequences, thus suggesting that public attitudes are not in line with various public policies.

B. "Utilitarian Rehabilitation"

Despite the "tough talk" of criminal justice that was alluded to in the Introduction, we did not find that our respondents think criminals are "coddled" by the system. As we determined in our previous study,²² and as other recent studies²³ have concluded, "rehabilitation" was named as the primary purpose of the criminal justice system; though interestingly, this round of questioning evinced support for an attitude or approach that we are calling "Utilitarian Rehabilitation:" a willingness, that is, to expend public money and resources not so much because rehabilitation programs are good for *individual offenders*, but rather because the reform of these individuals would ultimately benefit *society* in the long run. The end may be the same, or approximately the same—in that offenders may receive greater assistance while incarcerated and punitive energies may be re-channeled to rehabilita-

²² See Barred from the Vote, supra note 13.

²³ Other recent studies have found some degree of "rehabilitation" to be the most popular response. See Brandon Applegate et al., Public Support for Correctional Treatment: The Continuing Appeal of the Rehabilitative Ideal, 77 Prison J. 237 (1997) (finding rehabilitation [41.1%] to be the preferred emphasis of incarceration); Eagleton Institute of Politics, Poll #123 (September 1999) (finding support for rehabilitation [43%] as the "major job of prison"); ACLU-sponsored poll, "Optimism, Pessimism, and Jailhouse Redemption: American Attitudes on Crime, Punishment, and Over-Incarceration," conducted by Belden, Russenello & Stewart (January 5-22, 2001), at 4 (finding that 40% of respondents believe that rehabilitation should be the main purpose of sending a person to prison).

tive pursuits—but we were intrigued by the expressed motives that underscored and articulated the social good that would result from reform-oriented criminal justice policies.

As a respondent in our first session put it, acknowledging the complexity of reform efforts and the tendency toward recidivism,

If people are going to be released, I think there has to be some commitment to rehabilitation. I think one would follow the other. If we are not going to put them away—and indeed we can't put them away forever—then the punishment has to fit the crime. Then there has to be some effort to rehabilitate because [if we are to achieve] the ultimate goal that put them in prison—the protection of society—and *continue* to protect society then, at the other end, I think we have to try to do something to make an effort that they do not return to being criminals.²⁴

What's more, a respondent in another focus group suggested, rehabilitation allows us to “do good” both for the offender and for the larger community. “I absolutely, wholeheartedly believe that we should provide education and job training skills,” this respondent explained, noting that “this is one of those rare occasions when our virtue and our self-interest are both rewarded—because we would all benefit if there were fewer drug dealers and fewer criminals at large.”²⁵ And, as we heard in our third session, it was the larger structural problems²⁶ (“lack of education, lack of employment opportunities, and things like that”) that made the criminal offense more likely in the *first place*, and “so *not* training them, and not giving them some kind of opportunities, is only exacerbating the problems that are already existing in these communities.”²⁷

What our findings portray in this regard is a clear public recognition of the *utility* to be derived from addressing the “revolving door” problem in our criminal justice system. Many of our respondents agreed that it made little sense—as a matter of public policy—to incarcerate individuals without providing education, training, and rehabilitative programs, because upon release offenders “don't know how to do anything else to make money other than what got them into jail in the first place.”²⁸ In this regard, as another individual explained,

²⁴ Audio tape: Focus Group Session #1 (June 23, 2003) (on file with authors).

²⁵ Audio Tape: Focus Group Session #2 (June 23, 2003) (on file with authors).

²⁶ As this reference to “structural problems” implies, we did find support during these sessions for a proactive emphasis on the underlying causes of crime. As another respondent explained:

If you are going to have real crime reduction policy, you are going to have to intervene before people do their crime—that is, go into these neighborhoods, to into these cities, and figure out a way to improve people's lot in life. . . .

Audio Tape: Focus Group Session #4 (June 24, 2003) (on file with authors).

²⁷ Audio Tape: Focus Group Session #3 (June 24, 2003) (on file with authors).

²⁸ Audio Tape: Focus Group Session #3 (June 24, 2003) (on file with authors). This finding is consistent with that of an earlier study, conducted by Public Agenda, which concluded:

Prisoners leave prison with few new positive or marketable skills and many bad habits. They have little supervision and have a hard time finding a job. As a

[Y]ou should prepare them [offenders] to enter the world so they don't have to go back to being a career criminal. You should give them the opportunity to finish high school in jail, or go to college—so when they get out . . . if you don't do any of those things, they are going to get out and they don't know anything else, so they are just going to go right back to jail.²⁹

Again, what we found most interesting about this and the various other statements affirming this position, was the way that so many respondents saw the bigger picture and long run issues and social interests at stake. Support for policies of this sort, and the allocation of resources to support them, was not grounded in normative concerns, but rather was rooted in a basic utilitarian premise that drew the connection between specific post-conviction public policies and the good of the community in general. To be sure, there was not universal support for this position (there were several individuals who saw “punishment” or mere “incapacitation” as the primary state objectives), but the majority of our respondents did agree that it made sense, at least in principal, to provide some sort of opportunities for those incarcerated so that they would not sustain the “revolution” of the door separating the incarcerated from the free citizenry.

C. Felony Disenfranchisement

As in our earlier study, we found that the large majority of respondents were opposed to the *permanent* disenfranchisement of felons. Some were opposed on principle, but most rejected this policy on grounds consistent with #2 above (What is the “utility” or social benefit of policies?) and in the spirit of #4 below (What does a restriction on voting have to do with “X” offense?) As one respondent noted, capturing the general sentiment,

[O]nce they have done their time, I don't understand what the purpose would be in keeping them from voting. That doesn't make any sense to me. You would think you would want them to be integrated back into society, and take responsibility, and all that kind of stuff. And voting is part of belonging to a civil society and being part of the community.³⁰

Most respondents, we should note, were unaware that felony offenders lose their right to vote,³¹ but when we informed them of these state policies, the typical response was along the lines of the above quote. Even those individu-

result, they fall back into the same behavior patterns that sent them to prison in the first place. All of this, most of our respondents believed, leads to high rates of recidivism and a virtual revolving door, with people going back into prison almost as fast as they leave it.

Jean Johnson & John Immerwahr, *The Revolving Door: Exploring Public Attitudes Toward Prisoner Reentry*, 7 (April 12, 2002).

²⁹ Audio Tape: Focus Group Session #4 (June 24, 2003) (on file with authors).

³⁰ Audio Tape: Focus Group Session #3 (June 24, 2003) (on file with authors).

³¹ As of early May 2004, there are seven states that permanently disenfranchise all felony offenders; there are seven states that permanently disenfranchise some offenders (depending either upon the date of the conviction or the nature of the offense); there are two states (Maine and Vermont) that never disenfranchise any of-

als who *did* advocate the permanent loss of the franchise were inclined to make distinctions (along the lines of point #1 above) between various types of felony offenses—such that certain felons (primarily violent offenders) would lose the right to vote, while others should have it restored if they desire to be re-connected to the community in such a fashion. Of course, support for felons' voting rights was not universal; approximately one respondent in each group expressed support for the categorical removal of voting rights, but this percentage is consistent with the degree of support (15.9%) in our earlier national survey.³² It is also worth noting that the current trend in the states is to return the franchise to *particular* groups of felony offenders—primarily those who have committed non-violent offenses—which is consistent with our “it depends on the crime” findings discussed above.³³

D. A Connection to the Crime

As we had expected, we found little awareness of post-conviction consequences generally, and virtually no consideration of what we call “second-level consequences”—or those social and economic consequences that are the *consequence* of state-imposed consequences. “Second-level” consequences come into play when, for example, a doctor who might have been convicted of insurance fraud—and who lost his license, paid a fine, and possibly did time as a function of his state-imposed sentence—can no longer find employment in *any* medical-related profession because he can no longer find an insurer that will cover him. Or, on the opposite side of the socioeconomic spectrum, a felon released from prison would be unable to work as a security guard, for example, because various state and federal laws prohibit felons from possession of a firearm—a requirement for a variety of professions.³⁴

When we informed our respondents of these collateral and “second-level” consequences most failed to see the logic in sustaining post-conviction restrictions that were not directly correlated to the particular nature of the offense. That is, consistent with Findings #1 and #2 above, most respondents seemed to favor more individualized treatment or tailored

finders; and the rest of the states restrict the right to while in prison, on probation, or on parole, or some combination thereof. See www.sentencingproject.org (May 20, 2004).

³² See Barred from the Vote, *supra* note 13.

³³ See The Sentencing Project, Legislative Changes on Felony Disenfranchisement, 1996-2003, at 1-9 (Sept. 2003).

³⁴ As Joan Petersilia notes, some unions completely exclude all ex-convicts, while many bonding companies “flatly refuse to underwrite bonds for ex-prisoners.” Petersilia, *supra* note 2, at 114. Of course, for those with the right “look,” a criminal background might be the key to success: a talent agency, “Suspect Entertainment,” now actively recruits former gang-members to play such characters for television and movies. David Hochman, Casting a Gang Member? Call Suspect Entertainment, N.Y. Times, May 9, 2004, at 6.

sentences, eschewing *categorical* condemnations (or absolutions) and *blanket* penalties (loss of the right to vote, loss of opportunity to serve on a jury, loss of employment license for a non-work-related offense) that attached to *all* felony convictions. As one participant presented this connection, “I would say that the rights that are taken away would have to relate in some sense to the crime that they did . . . [so if] you abused the privilege of owning a gun, you can no longer have it—if you drive drunk, you have abused the privilege of having a driver’s license.”³⁵

But while the participants in our study seemed reluctant to impose collateral consequences on beauticians, grave-diggers, and other professions that fall within the state’s regulatory reach—especially when the “crime” had little or nothing to do with the additional “time” imposed by licensing restrictions and prohibitions—we did note that certain professions, notably doctors and lawyers, were seen in a different light. That is, as one respondent cautiously suggested, the essential link between the offense and the appropriate collateral consequence might turn on the degree of *trust* and social obligation bestowed upon certain professionals:

[W]hen you commit a crime, you break the trust between yourself and the rest of society—by not conforming to society’s rules. In certain professions it is about having the trust of society, or the trust of somebody else: a doctor when you perform a surgery, or a lawyer when you say “get up there and defend me in court,” or a teacher and you say “educate my kids.” So, once you have broken the trust of society . . . [the argument would go] society has a right to say “you broke my trust, so should we trust you again?”³⁶

Many of our questions about licensing restrictions revolved around issues such as those raised by this respondent: When felons are released from prison, should they face these licensing restrictions? Should they be barred from the occupations they formerly held? What is or should be the state’s interest in such regulations? Are all professions on the same plane?

A clear answer to this question was provided in the second Focus Group: “We are taking examples, lawyers and doctors, we have higher standards for these people because they need to be trusted. We are patients and customers and we want them to be honest. I don’t want to see a doctor who is not honest.”³⁷ And, as we explored support for potential alternative sentences, we noted that there also was very little support for giving professionals such as doctors the option to serve poor communities in lieu of losing their licenses. Many respondents found this to be a condescending or patronizing sort of proposal, and wondered aloud why poor communities should be expected to welcome the services of offending, or “bad,” doctors who had violated a professional trust.

E. Willie Horton: Revisited and Revised

We have noted several times our surprise at the almost complete absence

³⁵ Audio Tape: Focus Group Session #4 (June 24, 2003) (on file with authors).

³⁶ Audio Tape: Focus Group Session #4 (June 24, 2003) (on file with authors).

³⁷ Audio Tape: Focus Group Session #1 (June 23, 2003) (on file with authors).

of support for the notion that the criminal justice system "coddles" criminals, and the related and surprising support for rehabilitation. Going even one step further, some of our respondents pointed to "success stories" as reasons for investing in rehabilitation. If Willie Horton was the symbol that visibly and forcefully commanded "toughness" in our criminal justice policies, the examples of and potential for rehabilitation that some respondents raised—coupled with their receptivity to investments to support these objectives—suggest that success narratives stand a chance of capturing the public's attention, and gaining public financial (and perhaps voting booth) support. That is, seeing that various approaches and efforts may actually "work"³⁸—despite the pessimism and rhetoric of the past few decades—could sustain the bi-partisan momentum that seems to be moving in the direction of reform. This may be Pollyannaish but it is reasonable conclusion to draw from some suggestive observations made in the focus groups.

IV. Conclusion

Working from the conclusions reached in this exploratory study, we hope to conduct an additional, more theory-driven focus group study, wherein participants will complete mail-in surveys and then be selectively drawn from this initial batch of respondents. We will be looking for the broadest range in opinion and demographics possible and will assemble between four and six groups. We expect to use hypothetical cases and vignettes prior to and after the group discussion as a way of more precisely measuring how people think—and how those thoughts evolve—during these sessions. This information-processing approach assumes that an individual's thinking can be arranged in schematic terms and it "emphasizes the role of cognitive structures and stored affective reactions."³⁹ These hypotheticals will present situations that require difficult choices with respect to the allocation of scarce resources and that measure the degree of support for various "alternative" sentences; but this arrangement will also, we hope, further illuminate the potential of focus group method *itself*. Indeed, our final question during each of the sessions urged respondents to think about whether their views had changed in any way throughout the course of the discussion. Our next project will, therefore, incorporate both quantifiable survey and hypothetical case-based data (measured before and after the discussions) and qualitative, impressionistic assessments derived through a method that may elicit the most reflective, if still non-generalizable, picture of public attitudes regarding these important questions.

³⁸ Robert Martinson's famous article left many advocates with little hope of winning over the public on this question. See Robert Martinson, *What Works? Questions and Answers about Prison Reform*, 35 *Pub. Interest* 22 (1974); Petersilia has referred to the 1970s as the "nothing works" era. See Petersilia, *supra* note 2, at 16.

³⁹ Conover, Crew, and Searing, "The Nature of Citizenship in the United States and Great Britain," 804. The Nature of Citizenship, *supra* note 16, at 804.

APPENDIX 1: Focus Group Questions

Note: While the wording and sequence of our questions varied slightly across the four focus groups, the basic outline is represented below. As you can see, we began with general impressions of the criminal justice system, to get the discussion started, and then probed for reactions to more specific public policies and targeted hypothetical situations.

1. "In your mind, which of these should be the primary goal of the criminal justice system: Punishment of the offender, rehabilitation of the offender, incapacitation of the offender, or deterrence (discouraging others from committing crimes)? Is there a distinction to be made between what you see as the current objective and what you believe *should be* the objective? And do you think most people tend to agree with you on this matter?"
2. "Sometimes we hear that offenders are 'coddled' by the criminal justice system. Is this your impression? Do you think most people believe this? Are there particular examples that support your belief?"
3. "Would you say that the criminal justice system is basically fair or basically unfair? Do you believe that most individuals are treated the same?"
4. "We would like to explore some word association: If I say the word 'felon', what is the first image that comes to your mind? What do you think of? A particular type of criminal—or person?"
5. "Would you say that, generally speaking, felons who have served out their entire sentences should be returned to society as full citizens, with full rights and privileges? Or, would you say that, given their prior offense, felons have demonstrated that they are 'lesser' citizens—not worthy of a 'second chance.'"
6. "To the extent that you are aware of this, would you say that you are more suspicious of those individuals with a criminal record? With a felony record? What if a convicted felon moved in next door to you? Would you be able to welcome this individual—to be 'neighborly?'"
7. "Convicted felons in New Jersey face a variety of 'collateral consequences'—penalties that go beyond their 'official' sentence—including, but not limited to, the following: a prohibition on voting while incarcerated, on parole, or on probation; a permanent prohibition on jury service; a felony conviction is grounds for divorce; a prohibition on ever holding public office; a permanent loss of the right to own a firearm; various registration requirements (i.e. Megan's Law). Were you aware of any of these restrictions? Do these strike you as overly harsh, about right, or too lenient? Explain."
8. "Additionally, public and private review boards have the authority to revoke or suspend licenses of professionals who are convicted of felonies and other forms of 'moral turpitude.' Doctors, real estate agents, barbers, and teachers, for example, are often prohibited from—or delayed in—returning to their occupations, even after they have served out their sentence. Do these additional restrictions seem necessary or appropriate to you? For all professions, or just some? Explain."
9. "Would your view on this change if your brother-in-law was the

- professional in question? If it was your child's teacher, your neighbor, or your accountant? Explain."
10. "Sometimes an offender is given an "alternative sentence," or a sentence that avoids prison time in order to meet some larger public interest. Imagine that a lawyer had committed a felony offense but that, rather than a prison sentence, he or she was required to work for five years in a free legal aid clinic. What would be your reaction to this? What if a doctor, also guilty of a felony (i.e. insurance fraud), was 'sentenced' to five years in a low-income community clinic?"
 11. "Would you characterize yourself as more inclined to support policies that "get tough" on crime (more, bigger, and 'harder' prisons, more cops on the street) or policies that sought to address the underlying causes of crime (poverty, lack of opportunity, substance abuse, one [or non]-parent homes)? Explain."
 12. "As we have noted, felons who are released from prison often face a range of difficulties upon re-entry into society. In an effort to ease this return, prisons may offer a variety of programs including GED classes, job training, and substance abuse treatment. Are you generally supportive of such efforts? These programs cost money: Would you still be in support of these programs if it meant making cuts in other social programs such as Medicare, education, etc?"
 13. "Over the course of the last hour and a half you have had the opportunity to reflect on some issues that you may never have given much thought to before. As you have listened to the various questions, engaged in the discussion, and considered the views of your peers, would you say that your thoughts have changed in any way? Explain."

TABLE 1: Collateral Consequences at the State Level

Explanation: The table below outlines the primary collateral consequences faced by ex-felons in each state. We cannot present the entire universe of such restrictions that attach to felony convictions because, as Nora Demleitner has noted, "the number and scope of such adverse consequences tend to be unknown even to the participants in the criminal justice system, often because they are scattered throughout different bodies of law."⁴⁰ The information below is drawn from several sources: The Office of the Pardon Attorney, Civil Disabilities of Convicted Felons: A State-by-State Survey (October 1996); Felony Disenfranchisement Laws in the United States, available at <http://www.sentencingproject.org>; The Legal Action Center, After Prison: Roadblocks to Reentry (May 2004), available at <http://www.lac.org>; and the Sex Offender Registry Information Center, available at http://www.crimetime.com/sex_offender.htm.

TANF and Food Stamp Ban: "Has the state adopted or modified the 1996

⁴⁰ Demleitner, supra note 10, at 154.

federal law that prohibits anyone convicted of a drug-related felony from receiving federally funded food stamps and cash assistance (TANF-Temporary Assistance for Needy Families)?"

- Fed (adopted the federal ban)
- Opt-fed (opted out of the federal ban entirely)
- Opt-food/mod-TANF (opted out of the food stamp ban and modified the ban on TANF)
- Mod-treat (modified the ban by requiring treatment)
- Mod-sent/treat (modified the ban by requiring completion of sentence or treatment)
- Other mod (limiting the ban to distribution or sale offenses or requiring submission to drug testing)

Employment Inquiries: "Does the state permit all employers and occupational licensing agencies to ask about arrests not leading to conviction?"

- Yes (all employers/agencies are permitted)
- Some (some employers/agencies are permitted)
- No (no employers/agencies are permitted)

Licensing Restriction: "Which felony convictions result in the loss, etc. of a professional or occupational license?"

- All (any felony conviction could result in the loss/denial/suspension of a license)
- Certain (certain convictions could result in the loss/denial/suspension of a license)
- Related (a license may be denied if the offense has a "reasonable" or "direct" relationship to the employment for which the license is desired)
- Moral (a license may be lost/denied/suspended for any felony/crime of moral turpitude)
- Rehab (a felony conviction could result in the loss of a license, but the licensing agency or review board is expressly charged with considering the offender's degree of/potential for rehabilitation)

Voting Rights: "What is the extent/duration of disenfranchisement for convicted felons?"

- None (no restrictions on voting rights)
- Prison (voting rights restricted only during incarceration)
- Prison + (voting rights restricted during incarceration and parole)
- Prison + + (voting rights restricted during incarceration, probation, and parole)
- Life-some (voting rights permanently restricted for certain offenses/offenders)
- Life-all (voting rights permanently restricted for all offenders)

Restoration: "By what means are voting rights restored?"

TABLE 2: Collateral Consequences at the Federal Level

Information available at: www.usdoj.gov/pardon/collateral_consequences.pdf

CONSEQUENCE	EXPLANATION	RESTORATION
Voting	The United States Constitution, with certain exceptions (discrimination based on age, gender, and race), provides that qualifications for voting in federal elections are determined by state law. See Table 1 above.	See the processes spelled out in Table 1 above.
Jury Service	Individuals are disqualified from serving on a federal grand or petit jury following conviction in federal or state court of a crime punishable by imprisonment for more than one year.	The right to serve on a federal jury is not restored unless an offender's "civil rights" have been restored, principally by presidential pardon or some other "affirmative act."
Federal Office/ Federal Employment	The United States Constitution does not prohibit felons from holding elected federal office, though various federal statutes provide that a conviction (i.e. treason) may result in the loss of or ineligibility for office. The sentencing court may also attach various disqualifications for certain offenses. A felony conviction does not disqualify one from federal employment, though it may be a factor in determining suitability for the position.	The right to hold public office may be restored by presidential pardon.
Armed Forces: service and benefits	With certain exceptions, a felony conviction makes one ineligible to enlist in any service of the armed forces. Those convicted of certain offenses (i.e. treason) forfeit all current and future veterans benefits	The right to serve in the armed forces and receive benefits may be restored by presidential pardon

STATE	TANF & Ban	Food Stamp	Employment Inquiries	Licensing	Voting Rights	Restoration	Jury Service	Restoration	Sex Offender Registry—Web Access
Missouri	Fed	Yes	Yes	Related	Prison ++	Auto	Yes	Pardon	No
Montana	Fed	Yes	Yes	Certain	Life-all	Pardon/Cert	Yes	Pardon	Some
Nebraska	Fed	Yes	Yes	All	Life-some	Pardon	Yes	Pardon	No
Nevada	Mod-treat	Yes	Yes	Related	Prison	Auto	No	Pardon	Some
New Hampshire	Opt-fed	Some	Yes	Certain	Prison	Auto	Yes	Pardon	Some
New Jersey	Other mod	Yes	Yes	Related	Prison ++	Auto	Yes	Pardon	Yes
New Mexico	Opt-fed	Some	Some	All	Prison ++	Auto	Yes	Pardon	Some
New York	Opt-fed	Yes	No	Certain	Prison ++	Auto	Yes	Pardon	Some
North Carolina	Other mod	Yes	Yes	Related	Prison	Auto	Yes	Auto	Some
North Dakota	Fed	Yes	Yes	Related	Prison ++	Auto	Yes	Auto	Some
Ohio	Opt-fed	No	No	All	Prison ++	Auto	Yes	Auto	Yes
Oklahoma	Opt-fed	Yes	Yes	Related	Prison	Auto	Yes	Auto	No
Oregon	Opt-fed	Yes	Yes	Related	Prison	Auto	Yes	Pardon	No
Penn.	Opt-fed	Yes	Yes	All	Prison ++	Auto	Yes	Auto	No
Rhode Island	Mod-treat	Yes	Yes	Certain	Prison ++	Auto	Yes	Pardon	Yes
South Carolina	Other mod	Yes	Yes	Certain	Prison ++	Auto	Yes	Pardon	Yes
South Dakota	Fed	Yes	Yes	Certain	Prison	cert	Some	Pardon	Yes
Tennessee	Mod-treat	Yes	Yes	All	Life-some	Cert/Pardon	Some	Pardon	Yes
Texas	Fed	Yes	Yes	Related	Prison ++	Auto	Yes	Pardon	Yes
Utah	Opt-fed	No	No	Moral/rel	Prison	Auto	Yes	Pardon	Yes
Vermont	Opt-fed	Yes	Yes	All	None	na	Yes	Pardon	No
Virginia	Fed	Yes	Yes	Related	Life-all	Cert/Pardon-5	Yes	Pardon	Yes
Washington	Other mod	Yes	Yes	Related	Life-some	Cert/Pardon	Yes	Pardon	Some
West Virginia	Fed	Yes	Yes	All	Prison ++	Yes	Pardon	Some	Yes
Wisconsin	Other mod	No	No	Related	Prison ++	Auto	Yes	Auto	Yes
Wyoming	Fed	Yes	Yes	All	Life-some	Cert/Pardon	Yes	Pardon	Some

CONSEQUENCE	EXPLANATION	RESTORATION
General occupational restrictions	Federal law and the U.S. Sentencing Guidelines allow for the sentencing court to impose certain occupational restrictions as a condition of probation or supervised release when a "reasonably direct relationship" exists between the defendant's occupation and offense conduct. Specific federal statutes provide that certain convictions may result in the loss of/ineligibility for a federal license (i.e. custom broker's license).	Occupational restrictions may generally be restored by presidential pardon.
Banking, commodities, securities	Those convicted of a criminal offense involving dishonesty, a breach of trust, or money laundering may not be a party with respect to a federally insured depository institution. The Securities and Exchange Commission may suspend, revoke, or refuse to issue licenses to individuals convicted of certain enumerated offenses.	The prohibition may be waived with the written consent of the FDIC and ten years after the conviction.
Labor organizations	Conviction of certain offenses (i.e. bribery, extortion, arson) disqualifies an individual from serving a variety of positions within a labor organization.	Disability lasts for 13 years after the conviction or until the end of imprisonment, whichever is sooner; may also be removed if the individual's "citizenship rights" have been restored, or by the sentencing court.
Federal contracts and programs	Certain individuals convicted of specific felonies are prohibited (for not less than five years) from working in a management capacity for a defense contractor. Certain convictions may also prohibit an individual from work related to federal health care programs or with the Department of Housing and Urban Development.	The five year period may be waived by the Secretary of Defense in the interest of national security.

CONSEQUENCE	EXPLANATION	RESTORATION
Federal benefits	Drug offenders convicted after Sept. '89 may be ineligible for various federal benefits. (See column one in Table 1 above for the states' responses to this federal ban.) Individuals convicted of a federal or state offense involving the sale or possession of drugs are ineligible to receive any grant, loan, or work assistance (for students attending institutions of higher education or benefits under the federal work-study program). Those subject to lifetime registration requirements under state programs are ineligible for federally assisted housing. Passports may be revoked or not issued to persons convicted of felony federal or state drug offenses if the passport was used in the commission of the offense.	The ban on student loan and work study assistance applies for two years after conviction for those found guilty of first offense sale of drugs. Passport disqualification lasts during the period of imprisonment or treatment.
Immigration	With certain exceptions, aliens are ineligible for admission to the United States if they have been convicted of crimes involving moral turpitude.	Presumably, a presidential pardon would release immigration restrictions.
Registration and Notification Statutes	Every state has enacted its own version of "Megan's Law." Minimum national standards for these programs (i.e. some form of community notification, periodic address verification) are set forth in federal law (the Wetterling Act).	It is not clear that a lifetime registration requirement may be released by presidential pardon.
Firearms privileges	The Gun Control Act of 1968, as amended, provides that felons (and those convicted in any court of a "misdemeanor crime of domestic violence") may not possess firearms.	Firearms privileges for federal are restored when "civil rights" are restored, which seems to require a presidential pardon.