

# CURRENT LAW ENFORCEMENT ISSUES IN THE UNITED KINGDOM



Remarks by Nick Herbert, MP  
The United Kingdom  
Shadow Secretary of State for Justice

Introduction by Howard P. Milstein  
September 17, 2008

# **THE MILSTEIN CRIMINAL JUSTICE POLICY FORUM**



**HOWARD P. MILSTEIN**

Since 2002, the Citizens Crime Commission of New York City has presented a series of Criminal Justice Policy lectures sponsored by Edward L. and Howard P. Milstein through the Milstein Brothers Foundation. Each event features a nationally, or internationally, prominent speaker who addresses the Commission on such issues as crime, criminal justice or terrorism. The formal remarks are followed by a question-and-answer period. Each meeting is open to the media.

Attendance is limited to 150 invited guests drawn from the top ranks of the New York City business and law enforcement communities. Each lecture is printed and distributed to top business, civic and law enforcement leaders.

The Citizens Crime Commission of New York City is an independent, non-profit organization working to reduce crime and improve the criminal justice system in New York City. The Commission is supported by the business community; its board of directors is drawn from top corporate executives and members of major law firms. The Commission was established in 1978.

Howard and Edward Milstein are prominent New York bankers and real estate owners. They have a long record of working with the New York City criminal justice system to create and support innovative programs. They are also active in national crime prevention issues.

## Introduction by Richard Aborn

**T**hank you for coming this morning. And welcome to our first breakfast after the summer. I hope you all had a great summer.

I want to thank, as I always do Natalie Moody and the Gilman Foundation for their ongoing support of the Crime Commission of New York City. And I also want to welcome, of course, Nick Herbert and Howard Milstein. Who Howard Milstein is going to introduce more formally.

I just want to say just one really brief thing. Nick and I had dinner with a couple of people last night. And Nick really showed a skill at accepting a lot of different questions. Some friendly and some not so friendly. So, when we get done, I urge you to jump in. Because whatever you throw at him, I assure you, he can handle and with great ease. But my real pleasure this morning is to introduce to you, as I've done in the past, and I will do so in the future Howard Milstein.

Howard has been a very strong supporter of the Crime Commission for many, many years. His support has been steadfast. He's always been there for us. But it's not just for us, by any means, that Howard is there. Howard is, in my mind, the kind of person that really encapsulates the notion of the good citizen. Howard is generous in ways that nobody will ever know.

He's also generous to this city in ways that some of us do know about. But his generosity goes beyond just New York City. He has thrown himself into very difficult health care issues. He has helped build health care institutions. He has helped support some of the major cultural institutions in this town and other places. He's very active in educational affairs, lending both his own expertise, which is substantial, as well as financial support. And numerous—smaller groups around town that he helps support. And in some cases, keeps afloat. He's just an extraordinarily generous man. We are very, very grateful of his support. And I'm very pleased to introduce to you Howard Milstein. Howard, you can come up.

## Remarks by Howard P. Milstein

Well, thank you Richard. You know, the usual comment about—you wish your mother was here to—hear all of those good words. But—you know, in fact, I got tired just listening to that list of things. But we're here today to deal with something where we can never tire. It's hard to believe—that we're here in our seventh year of the Criminal Justice Policy Forum. But, here we are. We're still going strong.

And over time, our focus has become increasingly international in scope. And our speaker this morning continues this emphasis. Nick Herbert, member of Parliament since 2005, represents Arundel and South Downs located in West Sussex in the south of England. Some of you may not know this, but there are palm trees in the south of England. Southwest of England. Because of the gulf stream.

A Cambridge graduate in law and land economy, he was co-founder and director of Reform, a think tank for improved government policies in public service and economic growth. But more to the point, for purposes of this forum, Nick Herbert is the United Kingdom's Shadow Secretary of State for Justice. As Shadow Secretary, MP Herbert serves as the conservative party's policy counterpoint to the Secretary of State for Justice. As such, he monitors the performance of the Ministry of Justice and develops alternative policies for Great Britain's judiciary and court system. His earlier stint as Shadow Policing Minister is a clear signal of his deep experience and interest in crime and criminal justice.

In an interview earlier this year, MP Herbert stated that violent crime in the United Kingdom is rising, and it has spurred MP Herbert's Conservative Party to promote an active debate on law enforcement and crime. Under his leadership, the conservatives have focused on three core items for crime fighting: locally accountable policing, reducing red tape for police officers, and prison reform. All of these are pretty familiar to us on this side of the pond, and speak to the value of sharing strategies across national borders.

I happen to share another passion with MP Herbert, as Richard mentioned. Since becoming a Member of Parliament, he's tackled the growing problem of tuberculosis. To that end, he serves as co-chairman of the All-Party Parliamentary Group on Global Tuberculosis.

As some of you are aware, our own foundations have also been actively involved in funding cutting edge research in finding durable cures for TB and other scourges of the developing world. So it's a double pleasure for me to invite this renaissance man to the podium this morning, Nick Herbert, MP, and Shadow Secretary of State for Justice.

## Remarks by Nick Herbert

**G**ood morning, ladies and gentlemen. And thank you so much for that very kind introduction. And for mentioning my interest in TB, something I'm not going to talk about today. But a wholly curable disease, an easily and cheaply curable disease that still kills a million and a half people globally every single year, simply because they don't have access to drugs that cost less than a few dollars to administer.

But I'm here not wearing that hat, wearing a hat, as you said, of Shadow Secretary of State for Justice. That means that I am in the shadow cabinet. And when there is a general election, which will have to be in June, 2010, by the very latest, my party, the Conservative Party, hopes to form the next government. And I hope to be a part of that. My boss, David Cameron, and my electorate, and the British public, willing.

As part of my job in shadowing the Ministry of Justice, I've been over here this week and plan to visit a few more states, looking at prison and probation services, seeking to learn from your experience here as I sought to learn a couple of years ago, when I was responsible for policing policy.

I visited some of your great police forces, learnt not least from the extraordinary success of policing in New York in the 1990s, and took some of those ideas back home to the United Kingdom, where my party has picked them up in terms of developing policies for accountable policing, for a different form of neighborhood policing, for things like crime mapping, an idea which is now being introduced by our new man of London, picked up from experience in the United States.

And as part of our fact-finding yesterday, we had a meeting—with your commissioner for probation, Marty Horn, who showed us a new IT system which enables him to monitor the reporting of probationers.

And I must tell you that it was an alarmingly successful demonstration, because within a very few seconds, as a result of an inquiry, which I now wish I hadn't made—at the touch of a button, he was able to tell us that there are 27 Brits currently being monitored in this city, who are under probation for a variety of exotic offenses. And I apologize for the behavior of my fellow citizens in your city, though I'm relieved, perhaps, that the number wasn't greater.

There is no higher duty, I think, for any government than to ensure the security of its people. And perhaps highest on our agenda, and I'm sure on yours, is ensuring the security of our nations against external threats, in particular, the threat from Islamic fundamentalism, which can manifest itself in an internal threat to our security. We have a

shared experience in dealing with suicide bomb attacks, and a shared mission to root out that terrorism. That is not an issue for which I am responsible, as an opposition spokesman, or intend to speak about today.

But I don't want to let this moment go past without reaffirming to you the commitment that we have in Britain and in my party to ensuring that our countries, with a fundamental and powerful belief in liberty and democracy, are able to face down and deal with the threat of fundamentalism from those who seek not a territorial gain, but to overthrow our whole way of life.

And the fact that I don't now talk about that issue further is not a sign of any lack of interest on my part or on my party's part in that great cause. I'm very happy to answer questions about it. But it's simply a sign of the real organization of departmental responsibilities in the United Kingdom

I know that you had my parliamentary colleague, another party, John Reid, here, to address you some months ago. It was when John Reid was Home Secretary that he and Tony Blair, decided to split our Ministry of the Interior, you know as the Home Office. That great department was cleaved in two, in order that it should be able to deal with today's challenges.

What is left of the Home Office is now effectively a Department of Homeland Security. That deals with policing, immigration, a live issue also in the United Kingdom. And above all, counter terrorism and assuring internal security.

Responsibility for criminal justice policy, prisons and probation, was transferred to new department, merged with the former Lord Chancellor's Department, which had responsibility for courts and judges. And that new department was named the Ministry of Justice, and has now been in operation for about a year. And it is that Department which I Shadow. Indeed, my formal title is Shadow Secretary of State for Justice and Shadow Lord Chancellor. We now have the extraordinary Constitutional Affairs Department that the Lord Chancellor sits, the Lord Chancellor sits as a commoner in the House of Commons, and not in the House of Lords.

It is, as I reminded David Cameron, who is my boss and the leader of the opposition, and I hope will be the next Prime Minister, the Lord Chancellor is in fact, a more office than the Prime Minister in the United Kingdom. Takes precedence over the Prime Minister, something which he wasn't particularly happy to be reminded of. He then reminded me that he appoints the Lord Chancellor.

What I'd like to focus on has been a neglected area of policy debate in the United Kingdom. As you heard, we have a great concern in the U.K. about crime. It is not been neutralized as an election issue to the same extent that it has arguably been neutralized in the United States by very sharp falls in crime across your country. Concern about levels of crime still ranks as one of the top three issues for the British electorate. And there is particular concern about rises in violent crime. And in the last year, we've had a spate of outbreaks of knife crime, particularly in London and some of our other great cities. There is also a concern about antisocial behavior, nuisance behavior, which ruins people's quality of life.

While some progress has arguably been made in reducing the levels of some crime, for a particular crime, such as violent crime, which remain on the increase, and politicians are still searching for the answers to deal with it. And some of these solutions have been debated for some time now in the U.K., which turned around more effective policing, and so on.

But I'd like to focus on the neglected area, which is that of prisons. Because I believe, in common with David Cameron, that prison reform is an essential component of delivering an effective criminal justice system. A system which Tony Blair, when he was Prime Minister, described as the public service in Britain that was most remote from citizens.

And I'd like to explain why I think that prison reform is a great cause. It is not a cause that belongs exclusively to the left or to interest groups, but is an issue which passes to the right, which I represent, and one should also be interested in.

I think there have been two attitudes to prisons policy, two polar extremes, which I think are both wrong. At one end of the spectrum, there is a view which says, let us incarcerate more offenders. Let us not worry too much about an increase in the incarceration rate. If necessary, let us build more jails. Because we know that if we incarcerate offenders, they will be kept safely away from the public. They will be incapacitated. And there is some evidence that an increased incapacitation rate may cause, too, reductions in crime.

At the other end of the spectrum, occupied often by prison reform lobbies that I'm sure are here, as they are in the United Kingdom, there is a view that prison is terribly ineffective, that prisoners leave prisons and go on to re-offend, that we cannot deal with an ever-rising prison population, and that we should search radically for alternatives to incarceration; indeed, that we should empty our jails of short term offenders.

I have, of course, caricatured both those arguments and put them at their polar extremes. But I think both expressed that way, are wrong. I don't think that we can go on simply incarcerating more offenders without regard not just to the costs of that, but to the inevitability that most of those offenders will, at some point, be released from jail.

It is, of course, true that very few of our offenders actually end up serving jail sentences for life, or even the longest jail sentences. Most will be released after a period of years. And we should mind about what happens when they are released.

And in the United Kingdom, the recidivism rates, which are already appallingly high, are rising. An adult offender, on average, will re-offend, or rather, be re-convicted, let alone re-offend, within two years of his release. There is a 66 percent chance of that reconviction. Two-thirds of adult offenders are being reconvicted within two years of their release.

Arrested juveniles, or younger offenders, the re-conviction rates are actually in the high nineties. We send young men in the United Kingdom to prison in the sure and certain knowledge that when they are released from prison, they will go on to re-offend. We have built more prisons, but not at a sufficient rate to keep pace with the rising prison population. Our prisons are appallingly overcrowded.

Young men are getting on drugs in prisons, and are leaving with relatively little support, to immediately return to a life of crime. Yes, those prisons are successfully incapacitating offenders. Well, though it must be said that the crisis that there is in the prison population at a record high in the UK, nothing like your levels here, but nonetheless, at a record high, means that offenders are having to be released early, and therefore are not being incapacitated for as long as was intended by the courts, in the first place.

In fact, an offender sentenced to a term in prison for, say, four years, will actually serve less than two, now, in our jails, as a consequence of the executive early release. So these prisons are not actually fulfilling a function other than to incapacitate and punish offenders. They're not fulfilling a basic, I think, requirement of an effective prison policy which is to rehabilitate offenders too.

So then, say the prison reform lobby, if you concede all of this, you should stop sending offenders to jail. You should look for alternatives to short-term prison sentences. You should reduce the prison population that way. The problem with that easy argument is that actually, only a small proportion of our prison population are short-term offenders. Most of the prison population is taken up by offenders who are on relatively long sentences, either first time serious offenders or recidivists.

Magistrates and judges who send people to prison in the United Kingdom do not do so lightly. They have not only gone through the gamut of ineffective community sentences, before they ever arrived in jail. They have been placed on community sentences given, unpaid work requirements, placed on drug rehabilitation requirements, asked to pay fines, which they have not paid, which they have not completed, which work they have refused to do.

And eventually, our magistrates and judges despairingly find that they have to send them to jail. When they leave jail, we know that the amount of crime committed overall is the responsibility of a fifth of former prisoners. Half of all crime in the United Kingdom is committed by former offenders. So if we want to look at a more serious approach to making our country safer, and dealing with a rising prison population, we should actually worry about these very high re-offending rates.

We should actually worry about what our prisons are doing to prepare our prisoners for the outside world. And we should not believe that the cause of prison reform only belongs to people who appear to have more interest in the welfare of prisoners than they do in the welfare of the public. Because I believe, actually passionately, that all citizens have an interest in insuring that prisons are run more effectively to try and turn the lives of offenders around.

Short-term offenders are released, in the United Kingdom, with little or no supervision or support. Even if an offender in prison manages to escape the proliferation of drugs, he will be released, and I say he, because most of these prisoners are, of course, men and young men too. He will be released, in a situation where it is very unlikely that he will have a job to go.

It is likely that he, that offender, will have significant learning disabilities. He may well not be able to read and write. He may well be suffering from a more acute form of mental illness. And he may well not have a home to go to. Faced with all of those conditions, the near certainty, to use those words again, is that that offender will, whatever his intentions when he leaves jail, go onto re-offend.

And we have the extraordinary situation, that we are spending huge sums of public money in watching that process happen, watching that cycle of crime accelerate, watching the vortex deepen. We know it happens and yet we seem powerless to intervene, or at least we haven't tried to intervene. Where's the mission of our prisons? The mission of our prisons actually is to keep prisoners safe and secure, to stop them escaping. They did escape, under a previous government.

And the government reputation suffered very badly as a consequence.

So politicians are really most interested in ensuring that prisoners remain in prison. And of course, that must be the first responsibility of any prison governor. But I think that prisons should have another mission to, which is to send their prisoners out ready for the world of work, personal responsibility and to lead a law-abiding life.

And I think that if we give prisons that responsibility and hold them accountable, and measure their performance, things we simply don't do at the moment, then we have a chance, actually, not of spending more sums of public money on a failing system, but of saving money that is currently wasted. The sums are extraordinary. It costs \$50,000 to reconvict an offender in our crown court. It costs \$80,000 a year to keep them in prison.

Currently, because of overcrowding, we are housing prisoners in police cells, overnight. That is more expensive than staying in the Waldorf-Astoria for a night. Vast sums of public money are spent in this cycle of failure. Eleven billion pounds a year are spent in this cycle of failure. And the knowledge is to welfare to work proposals, which again we have learnt from the United States.

We believe that if we can transfer the costs of this failure, and invest the money instead in success, in turning the lives of offenders around, we could not just save money, but actually make Britain a safer place. So we want to incentivize prisons to offer support services, to get offenders into work, to make sure they can read and write, to get them off drugs. This is a fundamental change in prison policy, a really radical and exciting agenda for prison reform which is coming not from a party of the left in the United Kingdom, but from the party of the right.

It is a great cause. It is a cause which I believe all citizens in the United Kingdom can join in, because it is not about being soft on offenders or on crime. It is actually about rebuilding confidence in a system that is failing, and actually doing justice to the victims of crime, because above all, they want to assure that those offenses are never committed again.

I want to conclude by saying that this is only part of a very important agenda to tackle crime. Yes, more effective, locally accountable policing is a crucial element. Yes, we need more effective courts and in particular the dispensation of community justice needs to be improved and that's why I was looking yesterday at pilots like your Red Hook Community Justice Center project, and wondering the extent to which these ideas are transferable on a larger scale or whether there are lessons to be learned from them.

Yes of course, tackling crime, it's a much earlier stage in terms of

early intervention, must be a priority for any government. Stopping young men getting into crime in the first place. Dealing with education failure, embarking on radical welfare reform, dealing with early mental health breakdown. All these are major drivers of crime in the United Kingdom.

That also is the focus of our attention. But today, I want to tell you that the conservative party, I believe, is demonstrating that we are a party of ideas. I think when an opposition party rediscovers a mission, but also rediscovers ideas, starts setting the agenda, is willing, in an open-minded way, to learn, apart from success and failure in our own country, but also abroad, I think then that that opposition party demonstrates that it is ready to govern again.

And in admitting that past policy has not succeeded in reducing re-offending in Britain, and admitting that the earlier agenda, which simply, crudely said that all we needed to do was go on incarcerating more offenders, was one dimensional, in having a vision for reforming our jails and making Britain safer. I believe that the conservative party is demonstrating that we are ready to govern again. And I'm honored today to have been able to discuss that agenda with you. Thank you.

## Questions & Answers

### Nick Herbert, MP

**Q. LESLIE CROCKER SNYDER:** Thank you for that fascinating talk. And those who must have been in the criminal justice system a long time in this country agree with—many of us agree with many of your ideas. But it's interesting, and I don't know what the analogy is in Britain, that anytime the budget, we have budget problems, the first thing to go is any kind of programs in jail, any kind of rehabilitative efforts.

Many of us feel that prison reform is critical and talk about it. But somehow, the money never seems to be there. And I wonder how realistic your ideas are in your country, and I'd very much like to hear more about it, because it just doesn't seem to happen here, although intellectually, I can't really see how anyone could disagree with this, these concepts.

**A. NICK HERBERT:** Thank you. Yes, there's a saying in our country that there are no votes in prisons. And I think for a long time, that was the view of politicians. Being in charge of prisons was a nightmare job, often described as a graveyard job, one in which you would suddenly be caught out with something like an escape or a riot or re-offending by a prisoner who was released early and it would be the end of your political career.

Actually, I think that you are, of course, right, in the sense that we face much tighter economic circumstances now. The decade of very big public spending rises, is coming to an end. Money is tight and our Chancellor of the Exchequer back at home, and our Shadow Chancellor of the Exchequer know that resources are going to have to be apportioned with great care over the next few years.

So the pressures are there. But I think the virtue of what I'm proposing is that it moves away from this piecemeal approach, which says a minister in charge of prisons has to go with a begging bowl, to the treasury, and say, "Can I have a few dollars here and there for a scheme to try and deal with drug dependency, or a scheme to try and get prisoners to read?" And so on.

And these schemes were partially funded and partially directed from the center, and never effective. What I'm saying is that we actually need an entirely different funding mechanism, which recognizes that huge sums of public money are being spent now. But they're being spent on failure. That 11 billion pounds is being spent on reconvicting and re-incarcerating offenders.

And what I have devised is a scheme which actually says, "If we can take that money and instead spend it on programs that successfully reduce re-offending, and if we can, analogous to welfare-to-work programs, only pay that money to providers, if they succeed in reducing re-offending, than we can be certain that we have saved the state money. And if we are certain that we have, if the treasury can see that re-offending has been reduced, they can count the saving and they can pay it out."

So just like our welfare-to-work programs, where we effectively pay a success fee if people who are jobless are put back in work. And we can fault that success fee because we would otherwise be paying benefit. We have a payment mechanism which says we can afford to have effective programs to re-house offenders, get them off drugs, ensure literacy and so on, because only if that offender does go straight will the money be paid up.

And in this way, I believe that we will be able to unlock very significant sums of money, for the first time, to reduce re-offending. But the beauty is, this will be money that is only spent if it is successful. So there is a discipline in the financial framework. And I have succeeded in persuading our treasury that this is a scheme that they can support. And I cannot overestimate to you the significance of how we've succeeded in doing that.

**Q. RICHARD ABORN:** Other than economics, you have rising crime, rising violent crime, rising fear. You have increasing number of people being put into prison, but serving a small portion of their sentence, because you have overcrowded. Is there any thought being given to simply building more prisons, so you can house more prisoners for longer periods of time?

**A. NICK HERBERT:** Yes. I should say that the government has belatedly increased the number of prison places. They've recognized that the prison projections were riding ahead of the capacity that they'd planned. They'd got themselves their fix by not providing enough capacity. That means that they have to embark upon these early release schemes.

I couldn't stress to you more how damaging those are to the reputation of any government. Our government had to do it obviously on a lesser scale. It was very damaging to our government. It is seriously damaging to public confidence, when something like 30,000 offenders in the UK have been released in the last year, early, when they are already being released at the halfway point of their sentence.

They are being released still earlier. Some of those offenders have

gone on to commit the most serious crimes, including a murder, when they should have been in custody. The public simply will not forgive a government for having to resort to that kind of emergency measure. So belatedly, our present building program is underway, but it is not enough to cope with rising projections, or to deal with overcrowding.

We've said that we want to accelerate that building program further, not so as to be able to incarcerate more offenders, but to achieve the capacity in the system that will enable these programs of rehabilitation to work, and over time, to reduce the prison population, but in the only correct manner, which is to reduce crime. What I reject is artificial means of reducing a prison population, by interfering with the sentencing decisions of judges and magistrates by having executive release schemes, or by insisting on the inappropriate use of community penalties, when our judiciary determined that a custodial penalty is necessary. I'm very committed to trying to develop more effective forms of non-custodial punishment.

And I think that's an important part of our agenda. But I will not direct judges and magistrates to use those alternatives, because I think that that is a breach of the independent judiciary, which, by the way, my office the office of Lord Chancellor is—essentially obliged to uphold.

**Q.** One of the great frustrations I've heard in talking with law enforcement officers from Great Britain is a frustration with the pace of the judicial system in Great Britain. And it would seem to me that that would be a component of any kind of reform in that in, for example, our alternative-to-incarceration programs, where defendants are faced with serious certain and relatively swift incarceration unless they satisfactory, complete a rehabilitation program. Those are the programs that are successful. But if you don't have swift and certain consequences, isn't that going to undermine any other reforms that you contemplate?

**A. NICK HERBERT:** Yes. Firstly, there has, I think correctly, been an agenda to speed up the administration of justice—justice delayed is justice denied. It may be an old adage, but I think that there is truth in it, and there were delays in our magistrates' courts because of very inefficient processes, which are now coming down.

But there are still too many delays, and that all needs addressing. But to go to the heart of what I think you're referring to in relation to alternatives to custody, it is all about public confidence. If the public and if sentences can have confidence in an alternative disposal than I hope that they will be used.

But at the moment, they do not have confidence. We have work requirements, in our communities, which are not completed, which take place over such a long period of time that the offender never really has the sense that he is properly paying back to the community. Two-thirds of these unpaid work requirements are completed. But a third are not.

So one in three offenders are effectively choosing whether or not to be punished under this scheme. We have drug rehabilitation requirements that are not completed. We have fines that are not paid. And all of this bravely undermines public confidence, and a magistrate would be putting him or herself in a very difficult position if confronted with an offender, who has run through the gamut of these sentences who has frankly been cocky snoot at the courts.

If our magistrate did not say, "Well, I'm afraid I've reached the end of my patience. You're going to go to prison." And until we do come up with more robust alternatives disposals which are meaningful, in terms of community sentences, which are visible. Until we do come up with those, then I'm afraid we are still going to see the use of short-term custodial sentences, which we know are problematic, in terms of high re-offending rates.

So the development of those alternatives is very important to us, and for instance, visible punishment in the community it is, I think, an essential component. Where offenders are sentenced to work in the community, I think that work should be visible to the public. The public need to see that those offenders are re-paying for their crimes.

Yet in the UK in spite of successive attempts by ministers to talk about those offenders, wearing some kind of visible identification our probation services has stood in the way of that and refused to allow it to happen. I know it from visiting the Red Hook Community Justice Center yesterday, that offenders were doing community work wearing tabards. And I see no objection to that at all.

I don't believe it's demeaning to offenders. Indeed, I believe it's a very important part of the process, of having confidence in an alternative to custody. I think that a sentence, a disposal needs to have a number of elements attached to it. Indeed, we formally proposed that a sentence should always have a number of penalties attached to it. One is that there should be a punitive element.

Offenders have committed a crime, and it's important that there is a punitive element. And we shouldn't shrink from saying that. There should also be an element of reparation involved, so that victims are paid back for those crimes. There should be a work element involved, because actually, worklessness is at the root of so much of our crime.

And I think there also needs to be a rehabilitative element involved. But I think if sentences could be structured so that they have all of those elements rather than just one of them, with a much more robust approach to compliance and enforcement of those community sentences, then I think we have a much better chance of dealing with this problem of short-term offenders.

**RICHARD ABORN:** I shared a footnote of one thing before, and I apologize for not doing this. Their magistrates' court is not like our federal magistrates here. Their magistrates' court would be roughly equivalent to our criminal court.

**NICK HERBERT:** Yes.

**RICHARD ABORN:** Their crown court would be equivalent to our Supreme Court. So, the criminal terms pretty much overlap.

**NICK HERBERT:** The volume of business is done by magistrates on the the low level offenders.

**Q. JUDGE ROSLYNN MAUSKOPF:** As somebody who's been involved in the criminal justice system here for many years, it has always astounded me that this conversation takes place largely within the criminal justice community. And as a prosecutor looking for ways to help those offenders who truly needed to be given a chance, we were totally ignorant of the whole other side of this discussion. And that is the social welfare side, housing, health, welfare-to-work.

And the programs that were available out there. And I think one of the things that we, at the state and local level, and even at the federal level have observed as the US attorney, one of the things that we don't do well, is we have not brought those other government stakeholders to this table. Is there an effort or can you talk about how that can be done, particularly given your comment about how fractured government has become, how the home office has been cleaved into two? How do you bring these stakeholders to the table? And can't we do better, if we do bring those stakeholders to the table?

**A. NICK HERBERT:** I think that's a great question, which goes to the heart, actually, of our trip here, which is to what extent do judiciary judges and magistrates have a role in engaging those services? Visiting the community court yesterday, you see an example of, to use a controversial phrase, activist judges. Now, not activist in the sense that you hear about activist judges, and we'll beginning to, by the way, in the United Kingdom, not in quite the same way.

But activist in a different sense. The court is using a coercive power to problem solve, rather than simply to sentence. The judges in the community courts are, in this experimental system, are saying, "Can we actually use the power of the court to say, this isn't just about sentencing an offender. It's about saying, "Where's the problem this offender has? Doesn't this offender need to go to drugs program?"" I'm not satisfied that the offender completed that drug program, because I want to see that offender back in my court, if it's not satisfactorily completed. I'm going to use the power of the court to ensure a better outcome, whether that's relating to drugs, whether it's related to employment and so on, and with judges and we have a model in the UK, which has been directly taken from Red Hook, that have particular energy and charisma and drive.

We have seen some very interesting results from the operation of those community courts. That raises, it seems to me, a number of questions. Firstly, is that the role of the judiciary? That, I suspect, is something that you know, your colleagues would debate hotly. Is that the proper role of judges? Or is your job only to administer the law?

Is it somebody else's job to ensure the rehabilitation of offenders? In which case, I would ask the question, who is accountable? Because the real virtue of the community courts is the introduction of accountability. Somebody is saying, "I am going to grip this offender, and I am going to ensure that he goes straight."

And the second question that how, if we did decide that we did want judges and magistrates to take this more interventionist role that they are in a good position to coerce the services that need to be coerced to turn that offender's lives around, if we are going to do that, how scalable are these experimental community courts? Could they actually be upscaled across the operation of justice more widely? And what would be the cost implications of that? And that is something which I think we need much more research about than I've so far seen, both here and in the United Kingdom. Personally, I'm immensely attracted to the principle.

**Q. RICHARD ABORN:** I think this is an immensely important question, because it's really at the crime commission, we talk a lot about silo busting, that is, breaking down the barriers between governmental agencies, so they can work in a mutually supportive way. Another way to frame this question should become, in my mind, who owns the crime issue?

**NICK HERBERT:** Yeah.

**Q.** **RICHARD ABORN:** Is it strictly the police? Is it strictly the courts? Is it strictly the prosecutors, or does the broader government have a responsibility for that?

Just to follow up on what Judge Mauskopf was saying, in you know, the discussion, that I think by and large, particularly with street and violent crime, you know, we realize that our laws are based on the values of society, and how we express them. And by and large, the people who commit the crimes are at least working out of a set of values that are skewed away from that, in some respect. And while it's a criminal justice issue, certainly for rehabilitation and all that, one thing that would be extremely helpful to all of us is to actually have this process start further upstream.

And that is, before people ever offend, I don't know how you target that. I guess that's been sort of a universal question. But is it politically feasible, to make that shift 'cause it's money, and programs and education that's going to do that. But is it feasible to do that in the political environment which you live? I think, doesn't seem to be in ours, but that would seem to be the place to begin, is way back upstream.

**A.** **NICK HERBERT:** You must be right. Of course, that must be the place to begin. Politically, I don't think that it would be feasible to shift resources from enforcement, and say that we're going to spend them on that early intervention. Because of the clear danger that it wouldn't be possible to devise programs which would be certain enough to reduce the offending rates, that you could confidently reduce resources in enforcement.

And I think there's a danger in seeing these things as alternatives. I think they should be seen as complimentary strands of a coherent agenda to improve the security of citizens. And I think too often as we talk about this early intervention, the lack of clarity about what we really mean by it, actually Tony Blair, when he first came to office, did so on the back of a slogan that became his.

And instantly memorable. "Tough on crime, tough on the causes of crime," was his slogan. It wasn't just an easy political slogan. It actually appeared to people to encapsulate a truth, which is that people want action to deal with the causes as well. But he came to believe that actually simply increasing public spending on social programs wasn't going to be enough.

And that actually, he began to resort more and more to quite tough, direct interventions to deal with things like antisocial behavior. But it really isn't to dismiss those programs. It is just to say that we must make

them more effective. So I think welfare reform is a crucial element in this.

I think that addressing family breakdown over the longer-term, is a crucial element. We know that our young offenders, when they get into the criminal justice system, are very likely to have been in care. In fact, I think a third of all young adult offenders have been in care, from an early age. They're unlikely to have been in school at all, in and out of schools. They almost certainly have learning disabilities.

And they may well have early drug problems. So of course it must be right to try and intervene, at an earlier stage to deal with those. But I think we have to realize that some of those programs are long-term programs and not short-term programs.

**Q.** Are the differences between the large city problems, London, Manchester, Glasgow, and more rural areas of Britain, in terms of the kind of the things that you get, education, the intervention, say your own constituency?

**A. NICK HERBERT:** Yes. I think my constituency is an affluent, rural constituency, with relatively low levels of crime. And yet, we still face problems of antisocial behavior. It's on a far lower scale than you would find in our cities, but nevertheless, it is present and it is a nuisance to my residents, in the same way that it can be a nuisance, but on a greater scale in the cities.

Violent crime is a particular problem in the cities and urban areas. But it is not exclusive to those urban areas. Certainly the outbreak of knife crime is not exclusive to the urban areas, but there is a particular problem in London and amongst some of the ethnic minority constituencies and we do need to focus resources on that. I think that the issue is not so much a divide between city and town, as a question about whether we structurally have got an approach which brings all of the agencies together as we've been discussing. And sometimes it is easier to do that in a city, where all the agencies are working within a single boundary than it is in rural areas, where there are many disparate bodies involved, and where resources are spread more thinly.

**Q.** Is there any relationship between the uptick in crime and the immigration? I mean, who commits the crimes? Evenly distributed through the population or any particular subset?

**A. NICK HERBERT:** It is not wholly really distributed through the population. There is a disproportionate offending rate

amongst the ethnic minority communities, which would go to questions about the social conditions and so on, which is giving rise to that. Over 10 percent of our prison population are ethnic minority offenders. Indeed, I should rephrase that. Over 10 percent are actual foreign nationals. They're not even British citizens. And that is a plainly, a disproportionate number. And that has given rise to all sorts of problems, in our prisons. It does go to wider questions, about the relative levels of poverty and opportunity in some of our ethnic minority communities, which does need addressing.

As to the wider issue of immigration, there is a widespread view in the United Kingdom that very steep increases in levels of immigration over the last ten years were a mistake and have been unsustainable, and that limits now need putting on those levels. Not just because of the dangers of a threat to social cohesion but actually more because of perceived pressure on things like public services, which simply hadn't been accounted for when the limits were removed.

**RICHARD ABORN:** Thank you very much. Thank you all, Nick and Howard, thank you again. We will see you all soon. Thank you for coming. ■



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