

A Short Dissertation on the

Basic Principles of Penal Abolition

By **Dr. Frank M. Dunbaugh, J.D.**

Executive Director of the
Maryland Justice Policy Institute, Inc.,
Annapolis, Maryland, U.S.

A paper prepared for presentation to

ICOPA 14

An International Conference On Penal Abolition

Hosted by the **Institute of International Relations, University of the West Indies,**
At the **St. Augustine Campus, Trinidad & Tobago, June 2012**



© 2011 Theodore Ferguson



*This Paper is Dedicated to the Memory of
Two Beloved Pioneers of the Penal Abolition Movement*

Ruth Rittenhouse Morris of Toronto (1933-2001)

&

Louk H. C. Hulsman of Rotterdam (1923-2009)

© 2012 by MJPI, P.O. Box 1885
Annapolis, MD 21404

The Basic Principles of Penal Abolition

Dr. Frank M. Dunbaugh,¹ Executive Director
Maryland Justice Policy Institute, Annapolis, MD, USA

Belinda and I thank you, Catherine and Liz, for inviting us to your beautiful and historic island.² Congratulations on fifty years of independence, freedom and self-determination. It is a pleasure to exchange ideas of a better world, and to do so in this marvelous setting is very rewarding.

Prior to this conference some of us aging abolitionists engaged in an e-mail conversation about the Best Reasons for abolishing the punitive (or retributive) law system.³ During these pre-conference exchanges of views, I learned that some of the participants here at this conference were not yet convinced that it would be a good idea to abolish the punitive system. Thus, it might be helpful for those of you who are new to this concept if I were to direct my remarks to two points:

First: Why should we adopt the abolitionist position of repealing the criminal laws and closing down the punitive apparatus that is associated with it?

Second: What should we do instead? What are the alternatives to the punitive law system?

I. REASONS FOR ABOLITION

My pre-conference submission emphasized that our criminal law enforcement programs **prevent crime prevention**.⁴ They do so by deceiving the public into believing that law enforcement

¹ Executive Director of the Maryland Justice Policy Institute, J.D., University of Miami, 1957. Admitted to practice before the U.S. Supreme Court and the Fourth Circuit Court of Appeals, and the federal and local courts of the District of Columbia and Maryland. Retired from the U.S. Department of Justice after having served in the Civil Rights Division as a trial attorney, a section chief and a Deputy Assistant Attorney General from 1958 until 1978. Some of my more significant cases were: *U.S. v. Manning*, 205 F.Supp. 172; 206 F.Supp.623 (W.D. La. 1962), and 215 F.Supp.272 (W.D. La.1964); *U.S. v. Wilder*, 222 F.Supp. 749 (W.D. La. 1963); *United States v. Louisiana*, 225 F. Supp. 353 (E.D. La. 1963), *aff'd sub nom, Louisiana v. United States*, 380 U.S. 145 (1965); *U.S. v. Board of Public Instruction of Polk Co.* (Fla.), 395 F.2d 66 (5th Cir., 1968); *Stout. v. Jefferson Co. Bd. of Ed.* (Ala.) 466 F.2d 1213 (5th Cir. Ala. 1972); *Stell v. Savannah-Chatham Co. Bd. of Ed.*, 333 F.2d 55 (5th Cir.), *cert. denied*, 379 U.S. 933 (1964); *Duvall v. Schaefer*, 1988 WL 228561 (D. Md. 1988, Civ. No. K-76-1255). *Dixon v. Md. SABEL*, 878 F.2d 776 (4th Cir. Md. 1989), and *Maryland Green Party v. State Board of Elections*, 377 Md. 127 (2003).

² We also thank the faculty members and students of the host Institute of International Relations, the University of the West Indies, and the people of Trinidad and Tobago. And we thank you for taking us up the mountain to visit the Fergusons' "Home of the Hummingbirds". It was a unique and beautiful experience.

³ The other day, as I was taking some routine medical examinations at Johns Hopkins University Medical Center in Baltimore, I told my doctor that I was planning to speak to a conference about Penal Abolition. I assured him that this conference is not about urology. We have no plans to make male urology an obsolete subject.

⁴ I do not disagree with those who argue that our punitive system is unfair, unjust and racially discriminatory. It is all of those things, as amply described by Michelle Alexander in her book *The New Jim Crow*, The New Press, New York (2010). My concern about this line of rationale is two-fold. 1. It implies unrealistically that we could eliminate those deficiencies. 2. The punitive law system does not help us to achieve any important public [con'd]

prevents crime, which it does not. Law enforcement agencies suck up all of the public funds that could be used to prevent crimes.⁵ Actually, law enforcement budgets are not targeted so as to reduce crime; they are targeted to get more funds. Arresting street vendors of illegal drugs is a high priority for law enforcement policy makers, because increasing arrests takes very little effort and produces high arrest statistics that justify an increase in the law enforcement agencies' budgets.⁶

The defenders of our blame and punishment system say that it reduces crime in two ways: (a) by incapacitating the offender so that he or she is kept out of the crime business at least for the period of imprisonment, and (b) by sending to others (those who did not commit the crime in question) a message designed to make them afraid of engaging in crime, because the cost (pains of punishment) are too great to be worth the rewards of criminal behavior. Both ideas are not logical.⁷

A. **Punishment Does Not Deter Crime.** Crimes of economic opportunity attract replacements faster than the police can arrest the incumbents. For example, many of the incarcerated people are in prison for dealing drugs, yet more dealers are arrested every day. The job of drug salesman is relatively high paying and requires few skills. As a consequence, there are at least 8 or 10 job applicants waiting to take the place of the salesman who is arrested. We could send out an army of cops to arrest every street vendor of drugs in the country tonight, but by tomorrow night they would all be replaced with new vendors operating at full capacity.

Thus, the effect of these arrests is to increase, not decrease, the number of offenses, because, we are using public money to improve the quality of the employee base of the drug trafficking industry. We arrest the lazy, careless and incompetent drug vendors, which permits their employers to find better people and to train them not to make the same mistakes that their predecessor made. We relieve the wholesalers from having to weed out the losers from among their retail employees.⁸

policy goals, so its other failings are not especially relevant. In the past, when I was asked what the alternative to prisons is, I used to answer facetiously, "What is the alternative to child abuse?" "Just stop doing it."

⁵ For FY 2012, the Maryland Department of Public Safety and Correctional Services was allotted over \$1.2 billion of state funds. This does not include the funds for police, crime labs, public prosecutors, public defenders, or court personnel, or any capital budget items or pretrial detention outside of Baltimore City.

⁶ This causes the police to pick off the *easy cases*; the street vendors (mostly African-Americans) who market their products on the streets in the open. Also for budget reasons, the FBI used to aim at recovering and returning stolen luxury vehicles carried across state lines, whose wealthy owners would praise the FBI to Congress.

⁷ In a 1915 treatise on the *Origin of Punishment*, Ellsworth Faris wisely noted: "Our institutions are so complex and our tendency to idealize the existent is so inveterate that we are driven from one theory of punishment to another in the effort to justify what may, perhaps, have no real justification." (Kocourek and Wigmore, *Evolution of Laws: Primitive and Ancient Legal Institutions*, Boston, 1915, Little & Brown, at p. 151).

⁸ The War on Drugs could be called the Drug Trafficker's Management Assistance Program.

Another high priority for law enforcement is murders. Murder cases receive a lot of press coverage, so making an arrest helps to get public support for increasing the law enforcement budget.⁹ Police policy often is to make an arrest as soon as they have enough evidence to justify a jail commitment (less than needed for a conviction). This avoids the embarrassment of finding evidence that would exonerate the accused and revealing a bad arrest.¹⁰ But even if all murder defendants were actually guilty, the punishment system has little effect on the incidence of murders. Nearly all truly premeditated murders are personal. They evolve out of personal relationships.

For example, about 20 years ago, I worked hard to help gain the release from prison of a woman who by then had served about 20 years of a double life sentence for the murder of her adoptive parents. She was just barely 18 years old at the time that her boyfriend killed the “parents” with a shotgun, while they were lying in bed. Linda’s story is very dramatic. Her real father and mother separated when she was still an infant. At about age 3 or 4, the State of Florida took her away from her mother for neglect. She was put in the hands of a church group which awarded her to a family from New Jersey, and she moved there with them. Later, a couple from Maryland was visiting the husband’s brother in New Jersey, who lived in the same neighborhood as the family with whom Linda was living. They met Linda and liked her.

When she was about 7 years old, the Maryland couple bought her¹¹ from the New Jersey family and took her home to Maryland. At age 10 she rapidly developed physically, and the Maryland father (apparently attracted by her womanly shape) starting visiting her bedroom regularly and having sex with her. This kept up until she ran away at about age 13, was recaptured, and sent by the court to a state juvenile facility. She did not want to go back with this family, but the local judge, a friend of the family, had her released and returned. When the sexual abuse continued, she told her boyfriend (who was six years older than Linda), and he blew the parents away. Linda was present and, although she did not solicit the killings, she did not stop him. They were both convicted on two counts of first degree murder.¹²

⁹ As “Deep Throat” told the Watergate reporters, “Follow the money!”

¹⁰ In recent years the Innocence Project has uncovered many such cases in which people have been wrongfully imprisoned for years.

¹¹ This is based on Linda’s recollection of overheard conversations between the Maryland husband and wife.

¹² I am pleased to report that after her release from prison (which took longer than it should have and required more political clout than I have), Linda was provided with excellent re-entry help from a local church group, got a decent job, met a nice man, and got married. She is happy and doing very well.

The point here is that most premeditated murders are specific to the victim. Once the victim is gone, the offender often has no more reason to harm anyone. More importantly, someone who is motivated or driven to kill another person does not see the punishment given to another killer as having any relevance to him or herself or to the personal relationship that is motivating a violent response. Our punitive system does not prevent other killings motivated by very individual and personal relationship factors. The rare for-hire and serial killings may be different.¹³ There is one area in which we do see future behavior influenced by our punishment scheme. This is in the common felony murder case in which an assault or robbery victim is murdered to eliminate the key witness.¹⁴ Thus, our punishment system may **promote** rather than deter crimes of violence. If we gave up the harsh punishments and used restorative justice to make whole the victims of robbery and assault, then there would be less incentive for the offender to kill the victim.¹⁵

B. Deterrence is an Unfair and Poor Policy. In addition to the problem that punishment is not an effective deterrent to bad behavior, the concept of deterrence raises a serious moral issue. It seems wrong to me for us to punish a convicted offender not just for the crime of which he or she was convicted, but for the purpose of putting fear into someone else in order to deter that other person (we know not who) from committing another crime (we know not what crime) at some time in the future (we know not when) at some other place (we know not where). Doesn't this logic of frightening other people encourage the sentencing judge to increase the punishment of the convicted person beyond what might be appropriate for the crime actually committed? Doesn't this violate the spirit of sentencing law¹⁶ that a sentence should express the judgment of the court, based on the facts of the case and of the defendant's prior record, as to what would be an appropriate sentence for the actual defendant before the court and for the actual crime for which that defendant was found guilty?

¹³ Serial killing is very rare and often evades premeditation with an insanity defense. For-hire killings also are rare, and professional hit men usually are not caught. Their expertise is not the killing but the evasion of detection.

¹⁴ There is a strong movement developing to abolish the felony murder theory by which we allow juries to presume premeditation if someone is killed during the course of a felony (such as, robbery).

¹⁵ The criminal law interferes with restorative justice, because an offender is inhibited from acknowledging and accepting responsibility for the harm done as long as the harsh punishments remain a threat. In the criminal system, a conviction normally cannot be overturned except by proof of innocence. Therefore, the incentive is for the alleged offender never to admit guilt.

¹⁶ "It has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue." *Koon v. United States*, 518 U. S. 81, 113 (1996). as quoted by Justice Sotomayor in *Pepper v. U.S.*, 562 U.S. ____ (2011).

C. **Punishment Does Not Vindicate the Victims.** What about the criminal law's goal of providing some closure or satisfaction to the victims of crime? In the 1990s, there was a fad of legislation that purported to protect victims' rights. A victims' rights amendment to the Maryland Constitution was on the 1994 ballot. In an editorial for the then newsletter of MJPI (*Just Line*, Vol. 94-3), I concluded that this amendment was "a sham devised to appear sympathetic with victim's rights, but not designed to make any fundamental change in our legal system." I pointed out that the proposed amendment:

- Does not give victims any standing in criminal cases; this is a continuation of the normal policy,¹⁷ which means that the prosecutor retains control of the case.¹⁸
- Does not provide any new remedies for victims' injuries;

In my judgment, this is why civil litigation or informal restorative justice is a better alternative. These remedial techniques put the victim in charge or make the victim an active participant. The needs and interests of the victims are paramount in these venues.

D. **The "Corrections" Myth.** For those who expect punishment to "correct" offenders, I offer these notions. At no stage of a criminal trial -- neither at the culpability stage nor at the sentencing stage -- does the law require that the state offer evidence that a criminal defendant has some deficiency in his or her character, education or background that needs to be, or can be, corrected.¹⁹ Also, there is no requirement that the state demonstrate its capacity or willingness to provide corrective treatment. In addition, the state never demonstrates its capacity to train or to educate prisoners who may need skills in order to function effectively within our nation's legitimate economic system.²⁰ It is not grounds for a motion to reduce or modify the sentence for a prisoner to

¹⁷ We must always remember that every criminal case is captioned *The State v. the Offender*. Thus, it is clear that the prosecutor represents the State, not the victim. As a practical matter, the prosecutor's office represents the political interests of the elected State's Attorney. While a victim might settle the dispute and forgive the offender, it is usually a bad political decision for an ambitious politician to forgive an offender. In addition, we should recognize that by having numerous cases that pit the state against individuals, we are building up a large population of people who have been labeled as enemies of the state. They are aliens, so to speak, because they often lose voting rights. Can we afford to continue to create so many enemy aliens in our midst?

¹⁸ The victim has no authority to direct the investigation, to determine what charges should be brought, to decide what plea bargain to offer or accept, to decide trial strategy, or to pose questions to witnesses, or even to testify himself or herself. The victim cannot object to the judge's rulings and cannot appeal the case or participate in an appeal.

¹⁹ Only if the defendant pleads insanity or diminished capacity is the *defendant* allowed to produce such evidence, and only then will a court consider ordering psychiatric treatment.

²⁰ In fact, the high recidivism rates suggest that the prisons fail woefully in this regard. The ELG Think Tank of incarcerated citizens in Maryland's JCI prison has designed a survey of re-incarcerated parolees as a tool to study this issue. A very good place to start with crime prevention would be to reduce the recidivism rate. This [con'd]

allege and to prove that the prison system has no effective “correctional” programs. Accordingly, we can reject the whole idea that punitive sentences are designed to “rehabilitate” a convicted person.²¹

II. ALTERNATIVES TO BLAME & PUNISHMENT

To find viable alternatives, we should start our inquiry by asking: “*What is it that the punitive law system is supposed to do that we will still want done after it has been abolished?*” Our current law only achieves the peripheral goal of providing people with jobs, but it does not achieve the two major goals asserted for it by its defenders. It does not prevent crime by deterring potential criminals from engaging in harmful behavior, and it does not provide satisfaction for the victims. If we feel that we need government action to achieve the goals of reducing crime and vindicating the rights of victims, then we should look for alternatives that will work towards those ends. Neither of these goals is achieved by placing blame on someone and by punishing (harming) the culprit, which is all that our punitive system actually does. [It also helps politicians get re-elected.]

1. **The alternative to crime control is a robust program of crime prevention.** My greatest concern about our current effort to control crime is that it keeps us from thinking about how to prevent crime.²² We are only reacting to events after they happen. We should focus more on why they happen and endeavor to devise ways to prevent the harmful behavior that we call crime.²³ I am not proposing an alternative to punishment, but an alternative to crime.

Trying to suppress crime is like trying to suppress flood waters. At some point the waters can become too powerful to hold back. The Great Flood of 1927 offers an important lesson. Prior to the 1927 flood, the U.S. policy was to hold the water within the rivers of the Mississippi water shed by building levees along the banks of the Mississippi, the Missouri, the Ohio, the

could be achieved in part simply by informing the parole and probation agents that their promotions henceforth will be based on their success rates, not on their failure rates. They need to know that we *expect* them to help with re-entry programs so their clients can adjust to their freedom free of infractions.

²¹ I once testified to a Gubernatorial Task Force, that treatment programs are not likely to be effective in a prison setting. Since the first, second and third goal of all prisoners is to get out; they will do anything we ask if we say it will help to get their release. They will learn Latin, memorize the Bible, do 1,000 push-ups; anything, but it is not because they are motivated to be better informed about Latin and the Bible, or to be more fit; it is only to satisfy the perceived requirement for release.

²² An important reason why I support the ELG Think Tank of incarcerated citizens is that I believe that persons who have been *convicted* of crimes are a valuable resource that can help us to know why crimes are committed. It is a mistake to assign the task of crime prevention to police agencies. They only understand crime suppression and have little understanding of the need to find alternatives to crime. Baltimore’s highly regarded FY2000 crime prevention plan while marginally effective (<http://www.goccp.maryland.gov/msac/documents/FactSheets/Baltimore-City.pdf>) was based almost entirely on policing and prosecution. That misses the root of the problem.

²³ “We must remember that crime, as distinguished from wrong doing, is a fact manufactured entirely by law.” Margaret Wilson, *The Crime of Punishment*, Harcourt, Bryce & Co. (New York, 1931) at p.39.

Red, the Arkansas, the Illinois and other rivers. But the rains of that year provided more water than could be suppressed. The levees were breached and a national disaster occurred.²⁴

After the 1927 flood, a new flood policy was adopted. It was decided to divert the waters, rather than just to suppress them. The Atchafalaya Spillway was constructed, so that in flood conditions, the waters could be diverted from the Mississippi River to the Atchafalaya River and on down to the Gulf of Mexico via a route to the west of Baton Rouge and New Orleans. Choosing diversion over suppression is like adopting a policy to *prevent* crime rather than continuing to try to *suppress* crime.

In my judgment, a robust crime prevention program must have several important elements:

1. The Long Range Element is the most important.²⁵ It must be designed to steer young people away from a life of crime. This means that we should inspire our youth with HOPE. Fear of punishment is not effective. Everyone resists efforts to intimidate them with FEAR. Young urban offenders tell us that they expect to be dead or in prison by age 25.²⁶ They have no American Dream of a successful future. We must provide our youth with hope of economic success, which brings them personal freedom by instilling higher expectations, with education, job training, and job creation. [See, Appendix A.]

True penal abolitionists propose the decriminalization of all crimes, but it is often suggested that we could significantly reduce crime and the prison population (and the racial disparity) by decriminalizing the use and possession of the so-called controlled dangerous substances. This raises another extremely difficult public policy issue.

²⁴ The Mississippi River remained at flood stage for a record 153 days. The flood inundated about 26,000 sq. miles in 170 counties in seven states, driving 931,431 people from their homes, and causing \$400 million in losses. See, Jim Bradshaw, "Great Flood of 1927", Encyclopedia of Louisiana, <http://www.knowla.org/entry.php?rec=763>. Aaron Neville's rendition of Randy Newman's classic song *Louisiana 1927* describes this event.

²⁵ In the paper I submitted to ICOPA 2 in 1985, I mentioned two unique crime prevention strategies that still seem very relevant. One was my theory (it is only a theory) that people who come to believe that they were an unwanted child are more likely to engage in anti-social behavior. This led me to suggest that it would be a good crime prevention strategy to reduce the number of unwanted children. This could be done with better sex education, especially about contraception, for young people. The only important agency whose main goal is to reduce the number of unwanted children is Planned Parenthood. Yet many people in the United States today want to defund Planned Parenthood, because they believe, incorrectly, that this organization is primarily in the abortion business. The other crime prevention strategy that I proposed in my ICOPA 2 paper was that young people need to be better educated about child development. My concern is that parents often have unrealistic expectations of their small children. They expect them to be more mature than is normal while they are still quite young. This leads to parental frustration and sometimes to child abuse. I was very pleased to find that the program for ICOPA 14 included a pediatrician, Dr. Michael Camps, who spoke on this very subject.

²⁶ This was learned by Lamont Flanagan, the former Commissioner of Pretrial Detention in Baltimore, who spent several days on the juvenile cell block talking with the young men. These teenagers may feel that the only thing that will keep them alive until the age of thirty or longer is if they are given a death sentence, because the appeal process can be extended for many years.

I am not concerned about the behavioral effects of drug “legalization.” I am concerned about the economic effects. There can be no doubt that the pharmaceutical industry will move in very quickly to take over the manufacture, processing, and distribution of all of the newly legal drugs. The drugs would soon be available in the drug stores, the super markets, and stores like Wal-Mart and K-Mart. The present retailers (street vendors) and their wholesale suppliers would be out of business. Can we assess the economic damage that would be done to our urban communities? The media may focus on the international drug cartels, but the present system of distribution (drug trafficking) employs many local people, whose families, and the neighborhood Mom & Pop stores and other local businesses (restaurants, bars, beauty salons, service stations, landlords, etc.), are dependent on the incomes they receive from the circulation of the drug money.

We may be told that the drug king-pins live high on the hog buying fancy cars and luxury yachts, and maybe they do,²⁷ but it would be no surprise if they also invest venture capital to help finance many small private enterprises in our large cities. Some of this loss might well be replaced, in part at least, by an epidemic of armed robberies. I worry that the economic loss to the most deprived areas of our cities could be catastrophic.²⁸

2. The Self-Control Element requires that we recognize that many violent crimes are committed by persons who are out of control at the time. To address this we need a broad mental health program that is available to all without stigmatizing those who use it.²⁹ The Jerry Sandusky case is on point. Experts tell us that some people are born with a proclivity to be (they are wired to be) sexually attracted to children, but that they do not have to become child molesters.³⁰ It is unlikely that the insurance

²⁷ If these people are put out of business, will this economic loss spill over to the Mercedes dealers? How would it affect those few corrupt police officers who expropriate some of the seized cash and drugs?

²⁸ If the wave of armed robberies were followed up with vigorous policing, we could very well bankrupt our states with prison building and other repressive measures that could only be funded by reducing our investment in education, health care and other crime preventions efforts. Is this the destruction of America of which Osama bin Laden dreamed?

²⁹ Presently, drug courts and civil commitments which mandate mental health treatments seem to require that a person be convicted of a crime or be provably dangerous to get the treatment they need. This culture needs to change.

³⁰ While ICOPA 14 was under way in Trinidad, the State of Pennsylvania was trying football coach Jerry Sandusky for 51 counts alleging that he sexually abused juvenile males. This is the kind of serious violent crime that most concerns the opponents of penal abolition. [They would support penal abolition if it meant castration.] “What would you do with Jerry Sandusky?” they would ask. A Canadian expert of sex offenses, Dr. James M. Cantor, has said:

One cannot choose to not be a pedophile, but one can choose to not be a child molester. . . . It appears [from research] that one can be born with a brain predisposed to experience sexual arousal in response to children

No one has been able to find a way to change pedophiles into non-pedophiles. But that does not mean we cannot prevent child molestation. Sexual preference for children doesn’t have to result in actual sexual behaviors toward children. [con;d]

industry (essentially professional gamblers) will provide the coverage we need. Professional gamblers will avoid the risks of liability and the unpredictable costs. Not all uncontrolled behavior reflects mental illness. People often simply react to other's actions toward them without careful forethought. We need to teach our children that they should not allow others to control their actions by provocation.

3. The Technological Element. If our society put its mind to it, we could make many crimes very hard to commit. Some efforts have been made, but we are not fully focused on this avenue of crime prevention. For example, counterfeiting has become very difficult, because of the use of special paper and unique printing techniques. It was once pointed out that it was nearly impossible to commit bigamy in France, because a man could not marry without his birth certificate, and all marriages and divorces are endorsed on the birth certificate.³¹ Margaret Wilson reflected, "One wonders how much forgery, stealing and burglary might be made impossible if the brain of a nation was turned towards devising ways of prevention."

Some progress has been made by limiting the amount of cash available to the clerks in convenience stores. In addition, bank vaults are much harder to crack than they were in the hay day of bank robberies. The extensive use of surveillance cameras also is an effective preventive measure,³² but civil libertarians and reformers are concerned about the expansion and extent of this and other broader forms of government control over citizen behavior.³³ Many ideas need to be explored.³⁴

4. The Community Development Element. It is very important for municipal and state agencies to help each community to develop its own tailored crime prevention plan.

Cases of child molestation that involve long strings of victims over the course of years illustrate what can happen when someone gives in to, or outright indulges, his sexual interests, regardless of the potential damage on others. It is those cases that dominate headlines and provoke revulsion toward pedophiles. But [these cases] are rare.

The science suggests that they are people who, through no fault of their own, were born with a sex drive that they must continuously resist, without exception, throughout their entire lives. Little if any assistance is ever available for them.

They are often unable to consult mental health professionals (because of mandatory reporting rules); their families will often disown rather than support them; and despite the openness of the Internet, there are few options for coming out and joining communities of other pedophiles for mutual support.

³¹ Wilson, *The Crime of Punishment*, op cite supra, footnote 23, at p. 298.

³² As shown to be an effective detection tool in such TV shows as *CSI* and *Person of Interest*.

³³ See, Michael Foucault, *Discipline and Punish: The Birth of the Prison*, translated by Alan Sheridan, Pantheon Books, New York (1977), p.293, and the discussion of the universal carceral in Justin Piche and Mike Larson, *The moving targets of penal abolitionism: ICOPA, past, present and future*, Contemporary Justice Review, Vol. 13, No. 4, December 2010, 391-410.

³⁴ So far the most the police seem to be able to do is to map where offenses occur and to assign more police into those areas. This is not a crime prevention strategy; it is simply a method of compounding existing biases. If we are arresting too many people from one community and not enough from another, this just makes matters worse. A better crime prevention strategy would be to train, authorize and encourage the police to help street people (homeless) to find shelter, or medical treatment, if needed. The police need incentives to avoid arrests.

This needs to extend well beyond the ordinary community watch program.³⁵ A more comprehensive community crime prevention program was designed by MJPI and the ELG Think Tank as part of their plan to reduce Maryland's prison population. [See, Appendix B.]

We need to recognize that it will take a robust crime prevention initiative to make a significant dent in the violent, predatory, and harmful behavior that we now call crime. To afford a truly robust program, we will have to move public resources from the criminal law and punishment bureaucracies. As we say in MJPI's Motto: ***Invest in Children, not in Pri\$on\$!!!***

B. The alternative to the criminal law for vindicating the victims is to create a user-friendly civil law or informal restorative justice system for assessing and repairing the harm. As already noted, the criminal law excludes the victim from the process, because all crimes are looked upon as transgressions against the interests of the State. If you are attacked by a friend, by a neighbor, by a family member, or by a stranger, the attack is regarded as an offense against the State (a breach of the King's peace).³⁶ You are just a witness, with no control over the prosecution.

The attack upon you is also, however, a civil trespass or tort. This gives you, the victim, the right to sue your attacker in civil court for money damages. It is this tort action that I propose be substituted for criminal prosecutions as the proper vehicle for fixing responsibility (blame you might say) on the attacker and for assessing the value of the harm that you suffered as a result of the attacker's actions. This is the venue in which the interests of the victim have priority.

There are two reasons why the civil law is not used for most crimes. *First*, we have chosen, or allowed, the prosecutor to have first crack at the offender. Thus, the criminal prosecution has precedence and goes first. A finding of not guilty in the criminal court makes it more difficult to convince the civil jury of the attacker's responsibility and liability. In addition, even when the victim wins in civil court, the offender often has spent all of his or her resources defending the criminal

³⁵ As shown by the Trayvon Martin matter, such programs can present a serious problem if the community watchers begin to think that they are the police.

³⁶ This development occurred long before our country came into existence. Henry II wanted to take greater control over the legal system of England and to use it as a source of royal income through court fees. So he expanded the jurisdiction of the royal courts by sending his judges on circuit. S. J. Gardiner, *History of England*, Longmans Green & Co. (London, 1892) at p. 148. The Norman King was all powerful, so that "Justice was his and he assumed for himself the right to enforce it on all; an offense against the law was an offense against him personally; justice and courts were his instruments." George Burton Adams, *Constitutional History of England*, revised by Robert L. Schuyler, Henry Holt & Co. (New York, 1947) at pp. 53-54. As Dutch criminology professor Herman Bianchi has written, the government acquired a monopoly over dispute resolution, and we need to break that monopoly.

charges, so is unable to pay the damage judgment. Isn't this what happened in the O.J. Simpson case? *Second*, many offenders (unlike O.J.) had no money in the first place, so that obtaining a judgment is a Pyrrhic victory. It is costly to prosecute a civil damages case. No civil lawyer would bring such a case unless the defendant was wealthy. Personal injury lawyers only get paid out of the money collected if they win. They cannot afford a Pyrrhic victory by winning a case with no pay off.

Can we correct these problems? I believe that we can. We often hear conservatives say that we need tort reform. Their complaint is that because of malpractice suits against health care providers, the costs of health care are rising. It is argued that all doctors must pay higher premiums for their malpractice insurance and that this additional cost must be passed on to the consumers. It is also argued that to avoid a malpractice suit, doctors often order many expensive tests which may be unnecessary. The solution, according to the conservatives, is to restrict malpractice suits either by limiting the use of class actions³⁷ or by limiting the amount of damages that can be awarded.³⁸ They try to frighten us by talking about multimillion dollar awards by juries. [See, John Grisham, *The King of Torts*, Random House, New York (2003).]

Civil Law Reform. My idea of tort reform is to make the civil law more user-friendly, and to urge that we utilize informal restorative justice as a substitute for the civil law much more frequently. The civil law reforms that I would propose are:

1. That the prosecutors (if we retain any criminal law) shall give crime victims an opportunity to settle or to litigate their civil claim against the alleged offender before any criminal charges are tried in court.

³⁵ As to class action suits, it is much more efficient and less costly for personal injury lawyers to bundle similar claims into a single law suit. That is one way for a group of cases that might not be worth an attorney's time can promise a sufficient fee to warrant the attorney's attention. All of the cases can be disposed of without having the same or different expert medical witnesses come to court for each individual suit. We do not need to empanel a separate jury for each suit. It should not be necessary for a multitude of lawyers (and judges and jurors) to learn all of the technicalities of the medical procedures in question. The court rules provide that the individual cases in a class action must rest on common facts or common legal principles. If they do not, the defendants can have the dissimilar cases removed from the class. See, Rule 23 (a)(2), Fed. R. Civ. Proc.

³⁶ As to the high damages, what should we do? Should we tell jurors that they cannot award the injured party in a meritorious case the full value of his or her injury? Should the jury not award punitive damages where the jury finds that the malpractice was intentional or with reckless disregard for the health of the patient? It seems to me that the major malpractice awards have been against a very few doctors. If they are repeat offenders, then punitive damages would seem to be appropriate. But why does the medical profession have repeat offenders? Doesn't the profession protect its integrity by decertifying grossly negligent practitioners? Why would the insurance industry continue to insure such providers? Instead of the malpractice premiums going up, the number of negligent doctors ought to be going down, and the premiums going down as well.

2. That the prosecutors shall be required to show good cause for proceeding with a criminal case, if the civil case has been resolved. Good cause could require that the offense be very aggravated, or that the civil resolution was corrupt.
3. That the prosecutors shall give to crime victims full access to the government's investigative files.
4. That (if the criminal law has been abolished) the investigative resources should be made available to the civil litigants. [Insurance companies now use police reports to determine insurance claims,]
5. That we provide greater funding for Legal Aid programs to assist the poor with civil claims.
6. That the State create a fund from which offenders can borrow money at very low interest rates only for the purpose of paying damages to victims awarded by the civil courts or determined to be due in a restorative justice proceeding. While it is important that the funds pass through the offender, the State could require the offender to endorse the check and take it back to deliver directly to the victim.
7. That the State maintain a bank of community service jobs (working for a government agency or for a charitable organization that benefits community interests), and that the State be willing to employ or assign offender-borrowers for these jobs so that they can pay off the loans mentioned in the previous paragraph by doing community service. Their work should be valued at market rates. This plan would literally allow offenders to pay off their debt to society.

Restorative Justice. I see the civil law as the alternative to the criminal law, but I also see restorative justice as the alternative to the civil law remedies, at least when it comes to resolving disputes and designing case specific remedies. The informal processes are much more flexible than the formal legal processes that are adversary in nature and require an impartial judge and/or a jury to decide which party should prevail. In contrast, restorative justice is cooperative, considers many diverse factors that may have contributed to the problem, and normally results in a consensus as to the remedies.

To understand restorative justice, one should read Howard Zehr's seminal work, *Changing Lenses*, Herald Press, Scottsdale, PA (1990, 1995). In Maryland, we also have the important resource of the Maryland Community Conferencing Center.³⁹ It is significant that in New Zealand, the law requires that all criminal charges against juveniles must be referred to community conferencing, and that a very high percentage of the referred juvenile cases are resolved peaceably with a settlement agreement, so that the court action does not go forward. New Zealand is now

³⁹ See, <http://www.communityconferencing.org/> to learn more about this.

beginning to use these techniques in adult criminal cases.⁴⁰ What is most needed is to promote vigorously the use of restorative techniques. This will require a strong public education program to support and enhance the implementation of restorative justice processes and some reforms, such as:

- Providing to the restorative justice process the public investigative resources that are now used in the criminal law process,
- Making available public facilities for restorative justice activities, like conferences,
- Encouraging and facilitating prosecutor approval for the non-revocable diversion of cases to the restorative justice process,
- Using public agencies to monitor and supervise compliance with restorative justice agreements, and
- Finding means to help the participants in the restorative justice process to meet their obligations by, for example, providing publicly financed low-interest loans, and allowing payment on such loans to be made with community service evaluated at normal pay rates for such services.

New Civil Enforcement Authority. Some major infractions of community standards are going to require new civil remedies. An important element of the 20th century Civil Rights Movement was the granting of authority to the U.S. Attorney General to seek civil, including equitable remedies, for civil rights violations. The 1957 Civil Rights Act opened this innovation by authorizing the U.S. Attorney General to initiate civil suits to enforce voting rights. Under 42 U.S.C. §1971(a), the Justice Department was able to sue state and county voting registrars for denying voting rights to qualified African-American residents. By suing for equitable relief, that is, for mandatory injunctions, the cases could be tried by a judge without a jury and the findings of the court were subject to appeal. Most importantly, the injunction could set out the specific standards that were to be used by the registrar. By applying the standards that had been used traditionally for white voters, the court orders generally required universal suffrage. During the period 1960-1965 many voter discrimination suits were filed and won,⁴¹ but the overall increase in black voters in the Deep South was minimal. By 1965, it was apparent that more drastic remedies were needed, so the Voting Rights Act of 1965 eliminated all literacy tests for voting in states with a history of racial discrimination in voting and also barred these states from changing any voting requirement without the prior approval of the U.S. Justice Department.

⁴⁰ Helen Bowen & Jim Consedine, *Restorative Justice: Contemporary Themes and Practice*, Ploughshares Publications, Lyttelton, New Zealand (1999).

⁴¹ I tried suits in Louisiana (FN 1) that challenged the racially discriminatory use of voter ID (*Manning*) and discriminatory purges of registered black voters (*Wilder*) [issues that seem to be re-arising in 2012] and the discriminatory use of literacy tests, including a test of an applicant's understanding of provisions of the state constitution (*US v. La.*).

This trend of authorizing equitable civil remedies was followed in the 1964 Civil Rights Act that provided authority for the Department of Justice to bring civil suits to desegregate the public school systems, the public parks and other public facilities, the private food service facilities and the motels and hotels and movie houses and other public accommodations venues open to the white public.⁴² Once the government proved that the defendants were engaged in unlawful discrimination, the courts often ordered the defendants to submit a remedial plan.

This practice, like restorative justice, engaged the wrongdoer in helping to frame the remedy, which tended to cause the wrongdoer to become invested in the solution and to be more likely to implement the plan. Of course, the courts did not simply rubber stamp the defendants' plans. The attorneys for the United States studied the plans and usually proposed amendments to make the plans more effective. Authority to use civil law remedies similar to that granted by the civil rights legislation of the 1960s should be proposed for a wide variety of business corruption cases, such as consumer fraud, product safety, environmental violations, and other unlawful business practices.⁴³

Consumers need to be protected from fraud and defective products. Prosecuting the company or its employees who take advantage of consumers does not help the consumers. We need to educate consumers in order to reduce the frequency that they are duped. Also, there should be a very user-friendly means of recovering damages for fraud and defective merchandise. Informal restorative justice techniques are adequate, provided that the state will help enforce the settlement agreements.

⁴² The 1964 Act also authorized suits to eliminate discrimination in employment practices. Housing discrimination was covered by the 1968 Act.

⁴³ The first news story about Enron prompted me to think that the Attorney General should have the authority to go into federal court quickly with a complaint in the nature of an involuntary bankruptcy proceeding and to seek the following emergency relief: (a) to freeze the assets of the corporation and its officers and directors, (b) to compel the corporation and its officers and directors to submit to the court financial disclosure statements, including tax returns and bank account statements, (c) to allow the Attorney General access to corporate financial records, (d) to allow the Attorney General to pose written interrogatories to the officers of the corporation on a short time frame, (e) to require the Attorney General and the officers of the corporation to confer and to submit to the court a temporary plan for allowing the distribution of small amounts of the frozen assets under the supervision of the court or a special master, so that the corporation and the officers and directors can continue to function relatively normally, without being able to hide or to distribute assets that might be needed to pay the corporation's employees and its creditors, and to hold in trust retirement accounts and profits for distribution to the stockholders, if there are enough assets for this.

The BP Gulf Oil Spill of 2010 evoked the same reaction from me as the Enron matter. This is the type of incident in which all citizens are harmed, so that our pooled resources (federal taxes) need to be spent to correct the harm. Instead of waiting to see what BP would do, the Attorney General should have the authority to go into federal court immediately to compel BP to provide its plans for capping the well, for cleaning up the spill, and for compensating those who lost income from the spill. The adequacy of the plans could then be litigated early.

There are undoubtedly many situations in which either the federal or state Attorney General should be given the authority to seek civil remedies; not just damages, but also equitable remedies that can change the way business is done in the future. A major element of such relief should be to compel disclosure of corporate records, including internal memos with warnings of potential problems.⁴⁴ The public should be able to know what percentage of the purchase price of a company's product goes to executive salaries and bonuses, or to advertising⁴⁵ or to lobbying or to political action funds.⁴⁶ If this public knowledge should lead to fewer sales, the corporation can adjust its spending habits accordingly.

At this point it might be useful to suggest that those in charge of public safety expand the scope of their job description well beyond the objective of controlling crime. They should focus on what in their community is NOT safe for the general public.⁴⁷

⁴⁴ A corporation is an entity created by the state through its incorporation laws. A corporation is not a private person who has a reasonable expectation of privacy. The states that create corporations could require them to make their business records open for inspection. They would not have to disclose a secret formula for a drink or a perfume, or some other product. But they should have to disclose the actual cost of developing and producing their products.

⁴⁵ One of my pet peeves is the extensive advertising of prescription drugs. How would we feel if there were television ads urging the public to use cocaine or heroin? The pharmaceutical industry has no business trying to create a consumer demand for prescription drugs. They should be able to advertise to doctors, but urging the patients to pressure the doctors to prescribe drugs, many with serious side effects, is irresponsible. The costs of such ads should not be allowed as a valid tax deductible business expense. The created demand facilitates the industry in producing drugs that only treat the symptoms and do not cure the disease. They want life-time buyers of their drugs.

⁴⁶ In contrast with the U.S. Supreme Court's decisions in *First National Bank of Boston v. Bellotti*, 435 U.S. 385 (1972) and in *Citizens United v. FEC*, 558 U.S. ____ (2010), I do not believe that a corporation can have a political opinion. Therefore, the opinions expressed by lobbyists and PACs with corporate financing, are the opinions of one or more of the corporate officers. IRS should treat the expenditures for lobbyists and political contributions as money spent by the officers whose opinions are being expressed. These so-called business expenses should not be deductible, but should be treated as a bonus (taxable income) to the officers. The SEC should require that these bonuses be disclosed to the shareholders, whose political views may differ from those paid for out of corporate profits that rightfully belong to the shareholders as dividends or as increased net worth that raises the stock value.

⁴⁷ The Maryland Secretary of Public Safety should obtain a firm grasp of this state's most recent (2010) vital statistics and learn about the greatest threats to the safety of Maryland residents. This would show him that the most frequent causes of death in Maryland are heart disease (killer No. 1 @ 43,255) and cancer (killer No. 2 @ 10,898). He would also find that accidents (including auto accidents, work place accidents and fires) (killer No.5 @ 1,440) rank a good bit higher than homicides (killer No.13 @ 437).

The General Assembly should be asked to create a new Deputy Secretary of Public Safety with four objectives and supporting staff put in that office. The objectives would be to determine whether some deaths and serious injuries in Maryland could be reduced significantly by studying these deaths and injuries carefully and proposing corrective measures. The four areas of study would be: (1) Deaths and serious injuries resulting from automobile accidents, (2) Deaths and serious injuries resulting from work place accidents, (3) Deaths occurring to persons in a hospital and medical malpractice cases, and (4) research into the causes and treatment of heart disease and cancer.

It is likely that better lighting, easier to read signs, better lane markings, and better traffic control could reduce deaths and serious injuries on our highways. If we analyze the problems and provide our research to the Secretary of Transportation with specific recommendations, corrective measures are more likely to be put in place. A similar analysis of work place accidents is likely to help the Secretary of Labor to call for more detailed inspections. We might also determine whether wrongful death cases have been filed by [con'd]

III. CONCLUSION

The thesis is simple. We do not need a criminal law system.⁴⁸ The one we have is not useful. Instead of putting all of our resources in Blame and Punishment we need to focus our resources on making harmful behavior obsolete. To the extent that persons are still harmed by the actions of others, we should give up vengeance and turn to peaceful means of dispute resolution and restitution.

[Author's note: This will be my last paper for an ICOPA. I have made presentations to six ICOPAs – Nos. 1 (Toronto), 3 (Amsterdam), 5 (Bloomington), 9 (Toronto), 11 (Hobart) and 14 (Trinidad). While I may attend a few more, I do not expect to do any more extensive writing on abolition. I think I have said what I need to say. This one gets more into prevention than I have in the past. I tried and failed to expand Ruth Morris' vision of Transformative Justice into the area of Economic Justice, which is still a quagmire for me. I expect that I may try to put my abolition papers into a published form. At my age, it is time to relax and to outline memoirs.]

survivors and urge the Maryland Attorney General to intervene in the cases for purposes of asking the court to include in the relief, in addition to the money damages for the survivors, that the dangerous working conditions be corrected in order to protect other workers.

Judicial findings of medical malpractice should be brought to the attention of licensing agencies that could decertify practitioners who are grossly negligent, especially those who are repeat offenders. As to the research into heart disease and cancer, these are the greatest killers in our state. They rank very far above homicide as a cause of death. If we are willing to invest over \$1.5 million of our taxpayer's money to punish the killer of a single individual (40 years or more of imprisonment @ \$40,000 per year or more) we should be anxious to invest in finding cures for the killer maladies that bring death to thousands of our citizens every year. Even if we do not invest *directly* in medical research, we may be able to learn enough about these and other killer diseases and about the very best practices world-wide for diagnosis and treatment of these diseases so that we may be able to reduce the deaths in Maryland with programs of professional education, public education, and technology transfer. If so, we should try this avenue to protect our citizens.

⁴⁸ See, Gilbert Cantor, *An End to Crime and Punishment*, 39 SHINGLE 99 (1976).

APPENDIX A

A Suggested Long Range Plan for Crime Prevention

The most important alternative to having a criminal law is to reduce the behavior that we label as crime to a minimum. We will not reduce crime by threatening people with death or imprisonment. Most of our young offenders have no hope. They do not make plans for their future lives, because they expect to be killed or in jail by their early twenties. How can we change this dynamic and provide our youth with hope for a better life in the future? The best answer is that provided by Baltimore Congressman Elijah Cummings (Dem., Md. 7th Cong. Dist.). He asks us to do three things:

1. We must believe that **every child has the capacity to succeed.**
2. We must let the children know that we **expect them to succeed.**
3. We must provide the children with **the resources they need** in order to succeed.

The Congressman's thesis is supported by a very interesting book written by a successful young black man from Baltimore whose name is **Wes Moore**. He tells his own life story, about how his mother helped him to escape the lure of drugs and crime to become a respected naval officer, a Rhodes Scholar, a White House Fellow, and a successful Wall Street financier. His book also tells the story of another young black man, also from Baltimore, who was his age and who also has the name Wes Moore. This other man did not escape from the urban life of drugs and crime. He is now serving a long sentence at Maryland's Jessup Correctional Institution (JCI).⁴⁹ The early lives of these two men were quite similar, but the outcomes for them have been very different. The book is ***The Other Wes Moore***.⁵⁰ The most interesting thing about this book is that the author Wes Moore is not sure why the two men reached a different place. But the prisoner Wes Moore told him (at p. 126) the answer.

“We will do what others expect of us. If they expect us to graduate, we will graduate. If they expect us to get a job, we will get a job. If they expect us to go to jail, then that is where we will end up too.”

⁴⁹ For the past several years I have been working with a Think Tank created and incorporated by a group of citizens incarcerated at JCI. We have developed a prison population reduction plan and they are now working with gang leaders and others to promote a **Peace Initiative** designed to reduce violence both in the prison and on the streets.

⁵⁰ Wes Moore, *The Other Wes Moore*, Spiegel & Grau Trade Paperbacks, New York (2011).

The other Wes Moore confirmed exactly what Congressman Cummings has been saying for a long time. If we expect the children to succeed, they most likely will succeed.⁵¹ The alternative to crime control by punitive means is to reduce crime through crime prevention. We must inspire our youth with HOPE, a realistic hope of economic success and “True Freedom”.⁵²

In our ICOPA 14 pre-conference e-mail discussion, I listed as the most important reason for *abolishing* the punitive law system is that it *prevents crime prevention*. If we consider that the goal we wish to achieve is to reduce seriously harmful crimes, such as violence and predatory behavior, we must find an alternative to these crimes. The most important alternative is crime prevention. Following MJPI’s motto (*Inve\$t in Children, not in Pri\$on\$!!!*), we must invest in children. This means that much of the vast public resources we now wastefully invest in prisons and on other crime control strategies should be diverted to important crime prevention programs such as education, vocational training, and job creation.⁵³ I live in a state which has an excellent public education system, but it fails to help many children. I would suggest that we do the following:

1. Stop expecting every child to learn the same things at the same rate. Children are not like interchangeable parts of a machine. They each have a unique history and personality. They each have different interests and are motivated by different stimuli. While all children have the capacity to learn and to succeed, they each must progress in their learning and development at their own pace. We should be careful neither to slow them down nor to push them too fast. It is very important that we not mark any of them as failures.⁵⁴

⁵¹ I noted the *expectations phenomenon* years ago when I ate often at a restaurant that operated on an honor system. You took the food you wanted from a buffet table and as you left you told the cashier what you owed. If you trust people, they will nearly always prove to be trust worthy. If you expect them to be dishonest, they will cheat you.

⁵² See, this author’s article for ICOPA 11, *True Freedom Requires Economic Justice*, published on line at http://www.actionicopa.org/items/81-Dunbaugh_ICOPA11.pdf.

⁵³ To the extent that some crimes are economically motivated we must recognize that the best alternative to such crimes is to provide vocational training and jobs, helping everyone to become sufficiently independent economically so that there is little or no need for them to rob or to steal or to defraud people. Because fraud, which may have more negative impact than street crime, may be more difficult (in time and investigative power) to detect and prove, it is not very high on the priority lists of law enforcers, which look for low cost success statistics. Due to its commitment to health care reform and its effort to bring down the nations’ health care costs, I believe that the Obama administration has given more emphasis to prosecuting Medicare and Medicaid fraud.

⁵⁴ I am a committed baseball fan. *Baseball is the best teacher of life. It demonstrates that failure can be overcome.* A world championship team loses nearly 40% of its games. The 2011 Champion Cardinals lost 39.6%. Ted Williams, the best hitter of all time, in his best year failed to get a hit almost 60% of the times he batted. His batting average in 1941 was .406, a very high mark. In my judgment, American football is a mistake. It teaches that winning is everything (too few games, so losing one is nearly fatal), and it teaches that to be a winner, a player must be bigger, stronger and meaner than the opponent. Football is like a war with the generals (coaches) playing mind games against one another in the safety of the sidelines, while the teams (the soldiers) are on the battlefield trying to hurt one another.

2. Revise the elementary and secondary education curricula. I fear that we are boring the children.⁵⁵ We need more civics, history, art and music, and less repetition.⁵⁶ We should be able to condense the courses and to use more modern communications techniques so that the students can get a high school diploma and be prepared for college or for work at about age 16 after twelve years (PreK-10).⁵⁷ Then we should arrange for all of the students to get meaningful job (and life⁵⁸) experience between the ages of 16 and 20. By this time they should be ready for serious academic or vocational pursuits.⁵⁹
3. There should be greater emphasis on teaching our young people research and investigation skills, and on the ability to comprehend, organize, analyze and present information and ideas. Not just how to make a slick power point presentation, but to understand the information and its implications.

[The suggested ideas set forth in this Appendix are the thoughts of the author as to how we might develop a long range plan to reduce violence and other unwanted behavior. There is no doubt that others can come up with other and additional viable plans to achieve the desired results.]

⁵⁵ I often ask students whether or not they are required to read Shakespeare's plays. When they tell me that they are, I tell them that Shakespeare did not write his plays to be read, he wrote them to be seen and heard. Why should you need to read these plays when you can see them on film performed by some of the best actors in the world?

⁵⁶ I felt that I took the same American history course in elementary school, high school and college.

⁵⁷ There is good reason to believe that we need to do more to provide public education at the pre-K level.

⁵⁸ Someone should research the implications of keeping our children economically dependent through college, so that it is often impractical for a young person to marry before age 26. If the child reaches puberty by age 12 or 13, and we frown on pre-marital sex, what are we doing to these young adults?

⁵⁹ My brother, who was a very successful history professor, believed that it was a mistake to have children move from high school directly into a university. One idea would be to place our high school graduates into community service jobs, including the Peace Corps, a CCC type program to preserve our parks and fight forest fires, and other useful work. We could have a cadet corps in the National Guard, to train and deploy world-wide our young people as disaster responders who could be assigned to inventory needs, people and resources, to remove rubble, to construct temporary housing, to provide food services, to operate and manage transport and communications, and to offer first aid and to help medical triage teams as assistance for the victims of hurricanes, earthquakes, etc.

APPENDIX B

Community Safety Plan

Here are some ideas that the ELG and MJPI have put together in response to the need expressed by John Morris to the members of ELG. The people who are planning the revitalization of a community in Baltimore, without gentrification, need to have a plan for making the neighborhood safe. John sought ELG's help in developing such a plan.

1. Association. The first thing needed is some form of community association. It might be structured like the old-time municipal political organizations, in which there were block captains and ward healers. On Saturday mornings, the ward healer sat in the local community center (usually the fire house) and, like a parish priest, held an audience with local residents who brought to him (or her) their concerns. A pothole, a streetlight burnt out, a policeman out of order, the bus was late, the water bill was too high, etc. The ward healer took notes and then, during the next week, made sure that the responsible city official was informed of and acted on these complaints. [Person to person, political action.]
2. Census. It will be important for the planners to learn about the residential and business population of the neighborhood. This should not be done with an obtrusive door-to-door survey. Instead, some of the people who live on a particular block should be asked to make a map of the block, showing every building on each side of the street. Then they should start putting down the names of the people (and businesses) who live or work in the building, as they learn them. Instead of a formal survey, there should be a block party (or a house party) designed to attract everyone from the block to come out. In this way, an informal census can take place. It is especially important to find out about the children, their ages, what schools they attend, and in what grades. This will enable the creation of tutoring services and study groups, as well as the formation of a childcare cooperative.

The census should include noting what skills and talents residents have to bring to the table. This could lead to bartering services, such as plumbing for baby-sitting or house painting, or even to providing paid work in the neighborhood for someone with plumbing or other skills. It also could lead to developing a community music group (a local band) or other groups with common interests. It will identify local residents who can help the community with artwork, such as posters, and could lead to a neighborhood tool or skills pool.

3. Lighting. It has been said that good lighting in the streets reduces crime. The community leaders should find the research on this. The November 2010 issue of the *National Geographic* magazine, on page 33, discusses a new type of street lamp that runs on solar energy and provides wi-fi access to the community. The article refers the reader to www.starsightproject.com.
4. Camera Surveillance. Many business establishments have cameras in or outside their places of business. Also, the City has some cameras on the streets. What the City may be willing to do should be explored. In addition, find out whether insurance companies may be able to help. Form a group of people doing business in the community. This group could explore this issue and encourage local businesses to invest in cameras. Perhaps, a not-for-profit would provide some

seed money and fund a research project to determine its effectiveness. Care must be taken not to offend the residents with too much surveillance.

5. Neighborhood Watch. Residents should be organized to form a watch system. Care should be taken to instruct the watchers that they are reporters, not cops. They should be properly trained to observe and report. Their activities should be as unobtrusive as possible. For example, the residents can be encouraged to beautify the street side of their homes. It is a Baltimore tradition to clean the marble front steps. Those without steps could put in a window box or other small garden. This would allow people to be on the street tending to their property (and incidentally watching the neighborhood). The same could be said of taking the dog out for a walk. In addition, a custom could be developed of visiting a neighbor's house for after dinner coffee. Any type of activity that would bring people out of doors during the evening hours, especially in good weather, would be a crime prevention strategy.
6. Play Time. Another means of getting residents out on the street in the evening would be to organize play for the children with plenty of parental supervision. It is important to get the youngsters into clubs and organizations that provide them with a sense of belonging. This will help to keep them from seeking out an association with a street gang. Athletic groups, social groups and study groups should be considered. Attaining success in school is extremely important. This will keep them in school, rather than becoming frustrated with school and acting up and being expelled to the streets and into the arms of gangs. Of course, the long-term benefits of school success are much more important, but it is hard to motivate young people with long-term rewards. All residents with children should be encouraged to attend school events, including PTA meetings and be helped with transportation and childcare.
7. Community Center. Shakti Belway had a terrific idea, which she shared with John, for a multi-purpose community center. This idea should stay on the agenda. Until such a program is established, someone needs to make a comprehensive list of municipal and state services with the telephone numbers and addresses of the places where the services are available. Brochures from the agencies should be gathered and placed in the local school or library. Someone from the community ought to visit each service provider to establish a liaison with the agency.
8. Re-Entry. The Indonesians greet neighbors who are released from prison with a banquet to welcome them home and to re-establish them in the community.
9. Communicate with troublemakers and gangs. This is a very difficult and sensitive issue. Community leaders should meet with the men at Safe Streets to learn how they operate and to determine whether the Safe Streets program can be assigned to work in their community. The whole idea of the ELG Peace Initiative is to try to find ways to make the street gangs a force for good in the community, so the gangs can acquire a measure of respect. It is not an easy task, but should be given a sincere try by the community.
10. Community Conferencing. The community leaders should develop a good working relationship with the Maryland Community Conferencing Center. Some residents should become trained facilitators, and the community should be educated about the benefits of this informal means of resolving disputes.
11. Social Clubs. The concerns of the restoration project are more geared to street violence, but it would not be a bad idea to address domestic violence. While it may be very difficult to get

a woman or a child to lodge a complaint about domestic violence, it could be helpful to get the women of the community to form a Ladies' Social Club, which would give them an opportunity to get together to exchange recipes, or to discuss community issues or books, or to play cards, or to listen to music, or something. In the course of this, they are likely to gossip, which will have two good effects. It will produce a bonding and a sense of community. In addition, if there are any serious problems within a household (a child out of control, drugs, domestic violence) it is likely to surface in this type of venue and can be addressed by the community before any law enforcement people are involved. ("You didn't hear it from me.") There also should be neighborhood social groups for the men and for the kids.

12. Law Enforcement. Of course, the community leaders need to have a good working relationship with law enforcement agencies, and should understand their operating procedures and their limitations. The community needs to know what the police think about their community. Can the police supply copies of the police public safety assessment of the community? Can they provide a monthly or quarterly report on police activity in the community? The police should be encouraged to seek community intervention with problems in the community and to refer some cases and disputes to community conferencing. If the community leaders could be advised of the arrests of youth and others in the community, it would be possible for the community to learn of problems in order to embrace and support those in the community who are in need, including the families of both the victims and the alleged offenders.

[This plan was designed by MJPI working in conjunction with the ELG Think Tank. It was included as an attachment to the Prison Population Reduction Plan submitted to Maryland's Secretary of Public Safety in early 2011.]