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Zero Tolerance Policing

by

Gareth Griffith

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by

Gareth Griffith

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EXECUTIVE SUMMARY

The purpose of this paper is to review the growing body of literature on zero tolerance policing, to discuss what the term means, where zero tolerance policing has been applied and, with particular reference to New York, to consider its effect on crime rates. It should be emphasised that, while this paper reviews assessments of whether zero tolerance provides a good model for Australian policing, in no way does it attempt to decide if zero tolerance policing should be adopted in NSW. As noted, its purpose is to review the literature, not to make recommendations or form definitive conclusions on the matters raised. The paper's main findings are as follows:

- Zero tolerance policing is said to have its philosophical origins in the 'Broken Windows' article published by James Q Wilson and George L Kelling in the journal, *The Atlantic Monthly*, in March 1982. In short, this thesis asserts that just as an unrepaired broken window is a sign that nobody cares and leads to more damage; minor incivilities - such as begging, public drunkenness, vandalism and graffiti - if unchecked and uncontrolled, produce an atmosphere in a community in which more serious crime will flourish. Over time, individuals may feel that they can get away with minor offences, which leads them to commit more serious offences (pages 3-5).
- As a result of its popularity and vogue status, the term zero tolerance policing is defined in many different ways. It is therefore said to be an ambiguous term: 'To some, it connotes comprehensive, aggressive law enforcement with "no holds barred". To others, it refers to a policing strategy which exists as part of a package of carefully designed approaches to combat the crime problems of a specific locality' (pages 5-6).
- Usually two, or possibly three, instances of zero tolerance policing are referred to in the literature. New York is of course a constant reference point, in particular the model of policing which came to the fore after the election of Rudolph Giuliani as Mayor of New York City in 1993 and the appointment of William Bratton as NYC Police Commissioner in January 1994. A second reference point is the Cleveland Constabulary in North-East England and, in particular, the 'confident policing' model which was established after Detective Chief Inspector Ray Mallon took over as chief of crime strategy in Hartlepool in April 1994. A third, less cited, reference point is the 1996 Spotlight Initiative in Strathclyde, Scotland which has been described as a 'deliberate strategy to tackle minor crime, including under-age drinking, public drinking, street robbery, vandalism and truancy' (pages 6-8).
- For most commentators the New York zero tolerance experience is associated with aggressive order maintenance. That strategy is described by its critics as a 'punitive approach' to maintaining law and order, with little or no reference to negotiating acceptable public behaviour at the neighbourhood level. Amongst many criminologists, therefore, the clearest picture of the New York model of zero tolerance policing is drawn in terms of 'aggressive enforcement', as a

confrontational form of policing in which petty offenders are targeted directly and fed into the criminal justice system by arrest or summons (pages 8-11).

- Importantly, the crime prevention hypothesis contained in the zero tolerance policing theory is that the more arrests police make for every petty disorder, the less serious crime there will be (page 11).
- Part of the difficulty in assessing the effects of zero tolerance policing is that, when analysed in more detail, the policing strategies employed in New York are more complex than the term 'zero tolerance policing' suggests. In particular, that strategy has included the use of crime analysis based on accurate and timely intelligence. Also, under the Compstat process local commanders have been made accountable for their staff performance. Instead of questioning the effectiveness of zero tolerance policing, it makes more sense therefore to ask: Has the New York model of policing reduced the crime and murder rate? (pages 11-14)
- The incidence of crime in New York City has been reduced to its lowest level in 25 years. New York City's Independent Budget Office commented in March 1998 that recent reductions in crime have resulted in the city having one of the lowest crime rates in the country among large cities, a lower crime rate in fact than all but two (Indianapolis and San Jose) of the nation's 25 most populous cities (page 16).
- Nonetheless, many criminologists question the precise part played by the police in this process. They point out that the reductions in crime in New York City must be viewed in the context of a general reduction in the major US cities in recent years. A diversity of causes are said to lie behind these developments, including the sustained period of economic growth in the US in the 1990s and the changing nature of the drug market in this period (page 18).
- Six contrasting interpretations of these developments are presented, with some commentators placing greater emphasis on the role played by the police in reducing crime in New York City. In many ways, these contrasting interpretations say as much about the limits of criminology, as an explanatory and predictive discipline, as they do about the precise impact of policing strategies on crime rates (pages 19-28).
- Many commentators also focus on the purported 'costs' of the NYPD model of policing, including an increase in complaints against police. Again, there are contrasting perspectives on these issues (pages 29-35).
- The relevance of zero tolerance policing to NSW has been discussed, again from contrasting standpoints (pages 35-37).

1. INTRODUCTION

In NSW, as elsewhere, ‘zero tolerance policing’ has excited a lot of comment in recent years. The term has been used intermittently in NSW since 1996 by politicians and police officers in support of various initiatives: for example, in January 1997 the Police Minister, Hon Paul Whelan MP, is reported to have said that zero tolerance in the form of ‘an aggressive attack on the most minor crimes’ was appropriate in ‘some circumstances’, adding that neither he nor Police Commissioner Ryan would ‘shirk the responsibility of zero tolerance’ and saying that ‘Many of the strategies used in New York are appropriate for NSW’;¹ and in September 1998 Premier Carr referred to ‘zero tolerance on knives’ when introducing legislation dealing with the possession of knives and other implements.² Likewise, in February 1999 the NSW Police Commissioner, Peter Ryan, in an interview for Channel Nine’s *Today* program called for zero tolerance policing of drug distribution and importation.³

The Police Minister, Mr Whelan, is also reported to have said in January 1997 that, following his meeting with the then New York Police Commissioner, William Bratton, some of the strategies used in New York are already in place in NSW, including ‘a greater accountability for police managers and a focus on foot patrols’.⁴ But whether these or other initiatives amount to the adoption of a zero tolerance strategy is another matter. As Chris Cunneen of Sydney University’s Institute of Criminology explains, although the NSW Police have engaged in recent years in various intensive sector policing operations which *could* be labelled zero tolerance policing, for example *Operation Puccini* in Cabramatta, *Operation Innbruck* in Bankstown⁵ and *Operation Midia* in the Shoalhaven Local Area Command,⁶ ‘there has been no overt “adoption” of the zero tolerance policing across the

¹ M Chulov, ‘Zero tolerance for petty crime’, *The Sun Herald*, 26 January 1997.

² LM Garcia, ‘Crucifix, bayonet and meat cleaver among confiscated weapons’, *The Sydney Morning Herald* 10 September 1998.

³ ‘Ryan wants zero-tolerance policy’, *The Daily Telegraph*, 26 February 1999.

⁴ M Chulov, ‘Zero tolerance for petty crime’, *The Sun Herald*, 26 January 1997.

⁵ A recent report suggests that *Operation Puccini*, which has just finished its second year in the Cabramatta Local Command Area, has had strong crime reduction results, including a 20% drop in drug-related offences such as robbery, while drug detection has increased by 44%. However, a problem of crime displacement has been identified in that drug dealers are said to be moving out of the business centre into apartments in a one-kilometre radius from the shops - L Doherty, ‘Dealers dealt out as police put the cleaners through Cabramatta’, *The Sydney Morning Herald*, 20 July 1999. It is reported that *Operation Innbruck*, an operation carried out by Bankstown Local Area Command starting in January 1999, has resulted in 260 arrests to date, the result of 90 intelligence-driven operations - 2BL Radio News, 21 April 1999.

⁶ ‘Prying police drive criminals out of town’, *The Sydney Morning Herald*, 12 July 1999; ‘Intensive anti-crime campaign takes off’, *The Sydney Morning Herald*, 13 July 1999. This is said to be a three-year program, running from Nowra Police Station, targeting 600 repeat drug offenders as a means of solving property and other crimes. Figures indicate that

board'.⁷ In July 1997 Police Commissioner Ryan set out his position in these terms: 'Zero tolerance is a useful crime-fighting tool in the right place at the right time. But without wide-spread demographics and focus on community-based policing, wholesale use of zero tolerance policing would be neither effective nor acceptable to the community'.⁸ Then, in a paper from an August 1998 public seminar on 'Trends in Police Powers and Practices' hosted by Sydney University's Institute of Criminology, Sergeant David Darcy of City Central Local Area Command reported that for Assistant Police Commissioner, Ike Ellis, the term 'zero tolerance policing' means only that the NSW Police Service has 'zero tolerance to the most serious crimes' - to murder, armed robbery and child sexual assault among other things.⁹

All the same the debate about zero tolerance policing continues in the media, some of it critical¹⁰ or cautious¹¹ in its application to Australian conditions, while other contributions have been more supportive.¹² At the same time, in the limited context of drug law enforcement, the Prime Minister has endorsed zero tolerance as a preferred strategy,¹³ while in the broader policing context it has also found an advocate in the Northern Territory Chief Minister, Shane Stone who, following a visit to New York, said that what attracted him to the zero tolerance idea 'was its simplicity and the inescapable fact that it works'.¹⁴ There is also now a substantial and growing body of literature on the subject of zero tolerance policing, with contributions from both academics and practitioners. This main purpose of this paper is to present a critical review of this literature.

property break-ins have fallen by 49%, robberies by 69%, stealing 34% and car theft and assaults both by 22% in the first six months of 1999. Reports suggest that similar operations are likely to start in other areas.

⁷ C Cunneen, *Zero Tolerance Policing: Implications for Indigenous People*, Paper prepared for the Law and Justice Section of the Aboriginal and Torres Strait Islander Commission, January 1999, p 27.

⁸ S Gibbons, 'Zero Tolerance', *Police News*, July 1997, 25-27.

⁹ D Darcy, 'Recent trends in the use of "alternatives to change": a police perspective, *Paper presented to the New South Wales Institute of Criminology Seminar on Trends in Police Powers and Practices*, 26 August 1998. A revised version of the paper is found in the March 1999 issue of *Current Issues in Criminal Justice*. Sergeant Darcy's analysis is considered in a later section of this paper.

¹⁰ B Toohey, 'The high price of zero tolerance', *The Sun Herald*, 28 February 1999.

¹¹ S Snell, 'But can it work here', *Sunday Telegraph*, 29 March 1998.

¹² Editorial comment, 'Zero option on crime', *The Sun Herald*, 4 May 1997; S Krum, 'A miracle in New York', *Sunday Telegraph*, 29 March 1998; 'The only policy', *The Daily Telegraph*, 16 March 1998; 'Crackdown works', *The Sunday Telegraph*, 29 March 1998.

¹³ M Harvey, 'Zero tolerance to fight heroin', *The Daily Telegraph*, 23 February 1999.

¹⁴ *NTPD*, 18 August 1998, p 1883.

One thing all commentators agree upon is the difficulty involved in pinning down what is meant by ‘zero tolerance policing’. Indeed, it may be that, by the sheer force of usage (or over usage), the term zero tolerance has become one of those rhetorical catch-all phrases which means more or less all things to all persons; as with so many other words and terms of this kind, which are employed in divergent contexts from many political and other standpoints, the way ‘zero tolerance’ is used in popular debate is notoriously imprecise. The first task of this paper, therefore, will be to pose the question, ‘what is zero tolerance policing?’. The second task will be to confront the question of how successful zero tolerance policing has been, something which has divided academic commentators and practitioners alike. The third is to consider whether zero tolerance policing constitutes a real shift in policing practice and theory, or does its interest (at least for those of us who have not experienced the New York model of zero tolerance) lie more in the realm of rhetoric, where any and every initiative to get tough on crime of any sort is hailed by its exponents as another instance of zero tolerance strategy?

It should be noted that, while this paper reviews assessments of whether zero tolerance provides a good model for Australian policing, in no way does it attempt to decide if zero tolerance policing should be adopted in NSW? Its purpose is only to review the literature, not to make recommendations or form definitive conclusions on the matters raised.

2. FIXING BROKEN WINDOWS

By way of a background comment, it is worth pausing at the outset to note the key features of the influential ‘Broken Windows’ argument of Wilson and Kelling which, it is often claimed, set the scene for much of the subsequent debate about zero tolerance policing. Zero tolerance policing is said to have its philosophical origins in the ‘Broken Windows’ article published by James Q Wilson and George L Kelling in the journal, *The Atlantic Monthly*, in March 1982. In fact, the term ‘zero tolerance’ was not used in the article, a point which is consistent with the more general observation that the term is rarely invoked by those who are taken to be its exponents. As the UK criminologist, Roger Hopkins Burke from the University of Leicester’s Scarman Centre, has explained:

We should note at the outset that ‘zero tolerance’ is a soundbite term regularly used by the media and politicians but virtually never employed by senior police officers or its academic supporters. It is a generic expression used to describe a variety of - what I here refer to as - proactive, confident, assertive policing strategies. There are variations in these strategies but, in general, they are theoretically informed by the ‘broken windows’ thesis, developed in the USA in the early 1980s by two criminologists, James Q Wilson and George Kelling. In short, this thesis asserts that just as an unrepaired broken window is a sign that nobody cares and leads to more damage, minor incivilities - such as begging, public drunkenness, vandalism and graffiti - if unchecked and uncontrolled, produce an atmosphere in a community in which more serious crime will flourish. Over time, individuals may feel that they can get away with minor offences, which

leads them to commit more serious offences.¹⁵

As formulated by Wilson and Kelling, this 'broken windows' thesis emphasised certain strategies which are consistent with a revised model of community policing, namely, a policing strategy based on high levels of visible police presence on the streets in which the policemen and women on the beat, relying on the application of discretion, arrive by negotiation at an appropriate order maintenance strategy at the neighbourhood level. This philosophy was encapsulated in the statement that 'The essence of the police role in maintaining order is to reinforce the informal control mechanisms of the community itself'.¹⁶ In saying this, Wilson and Kelling had in mind certain flaws in the prevailing police strategies in vogue at the time, in particular the trend of taking police off the beat and placing them instead in patrol cars, a move which, in their view, altered profoundly 'the reality of police-citizen encounters'.¹⁷ Wilson and Kelling concluded on the following holistic note:

Above all, we must return to our long-abandoned view that the police ought to protect communities as well as individuals. Our crime statistics and victimization surveys measure individual losses, but they do not measure communal losses. Just as physicians now recognize the importance of fostering health rather than simply treating illness, so the police - and the rest of us - ought to recognize the importance of maintaining, intact, communities without broken windows.¹⁸

It can be added that Wilson and Kelling also discussed some of the dangers inherent in their preferred model of policing, particularly as it applies to complex, multi-racial societies. The concern about equity was especially pressing, in their view, and they posed the questions - 'how do we ensure that age or skin color or national origin or harmless mannerisms will not also become the basis for distinguishing the undesirable from the desirable? How do we ensure, in short, that the police do not become the agents of neighborhood bigotry?'. They were not sure that there was a 'satisfactory' answer, except to hope that by training and other means the police 'will be inculcated with a clear sense of the outer limits of their discretionary authority'. According to Wilson and Kelling, 'That limit, roughly, is this - the police exist to help regulate behaviour, not to maintain the racial or ethnic purity of a neighborhood'.¹⁹

In an update to the original article, the same concerns were noted by Kelling and Coles in their 1996 book, *Fixing Broken Windows*, where it was acknowledged that the 'police and criminal justice agencies have a sorry record when it comes to respecting, let alone

¹⁵ RH Burke (ed), *Zero Tolerance Policing*, Perpetuity Press Ltd 1998, p 12.

¹⁶ JQ Wilson and GL Kelling, 'Broken Windows', *The Atlantic Monthly*, March 1982, 34.

¹⁷ Ibid.

¹⁸ Ibid, 38.

¹⁹ Ibid, 35.

protecting, the rights of minorities and the poor'.²⁰ Yet, despite these and other obstacles, they still maintained that 'order can be restored in American cities', a belief based partly on the experience of policing in New York and other American cities in the 1990s; more fundamentally, it was based too on a faith in 'the enormous capacity for good of well-meaning police officers once they are placed in neighborhoods'.²¹ They stated, in support of what they perceive to be a new paradigm of community-based policing, that:

The police are uniquely positioned to assist in order restoration and maintenance through their historical role as problem solvers in the community; in fact, citizen demands for order have been met in many cities with new police strategies emphasizing order maintenance and crime prevention, as well as citizen involvement in crime control efforts in concert with police.²²

3. WHAT IS ZERO TOLERANCE POLICING?²³

Zero tolerance - an ambiguous term: As a result of its popularity and vogue status, the relevant literature contains several competing definitions of zero tolerance policing, some complimentary in intent, others decidedly hostile. Austin Asche QC, President of the Northern Territory Law Reform Commission, has commented in this regard:

Zero tolerance ...has been variously labelled as an 'aggressive short term tactic', 'a useful crime fighting tool in the right place at the right time', 'fairly ruthless policing with detailed attention to even the most minor infraction', 'being tough on low level crime', 'taking back the streets', 'reclaiming the streets', 'the science of kicking ass' or 'positive policing'.²⁴

Also, as several commentators point out, the zero tolerance strategy has been implemented differently in different places. PN Grabosky wrote in a recent Australian Institute of Criminology Trends and Issues Paper:

²⁰ GL Kelling and CM Coles, *Fixing Broken Windows*, p 7. Concern was also expressed about the specific New York experience of policing in the 1990s (page 164).

²¹ Ibid, p 319.

²² Ibid, p 7.

²³ Cunneen notes that the notion of 'zero tolerance' originated in the drug policies of the Reagan administration in the early 1980s. It was associated then with the 'war on drugs' and was later applied to other areas of public policy including, in the US, targeting drink driving among teenagers and as an approach to violence and guns in schools. In early and mid-1990s the term was associated in Australia and elsewhere with campaigns against domestic violence, sexual assault and child abuse - C Cunneen, *Zero tolerance policing: implications for indigenous people*, pp 8-9.

²⁴ A Asche, *Zero Tolerance Policing: Preliminary Report*, Northern Territory Parliamentary Paper No 563, 18 August 1998, p 2. Asche adds: 'Depending upon which of the above tags are used - and there are many others - one can make a pretty accurate guess at an individual's attitude to the policy'.

The term 'Zero Tolerance Policing' is ambiguous. To some, it connotes comprehensive, aggressive law enforcement with 'no holds barred'. To others, it refers to a policing strategy which exists as part of a package of carefully designed approaches to combat the crime problems of a specific locality.²⁵

This begs the question as to whether a zero tolerance strategy can be said to have been adopted if a proactive, confident, assertive approach to policing is directed towards a particular crime hot spot - say Cabramatta or Bankstown in the NSW context- or must it reflect a more concerted State-wide approach? It also begs the question as to how exactly any new police crackdown on a crime hot spot differs from similar tactics employed in the past. Cunneen comments in this regard that swamping particular 'high crime areas' has been 'a feature of policing in Redfern for decades'.²⁶ There is also the residual question of whether zero tolerance policing must, in principle, be antithetical to the more established models of policing (notably, the community model of policing), or can it in certain circumstances be viewed as complementary to that model? Note that a comparison of different policing models is set out at Appendix A.

Another perspective on the subject is that zero tolerance policing is often identified specifically with the New York 1990s model of policing. Paradoxically, however, 'zero tolerance' is not a term that the architect of that model, former NY Police Commissioner, William Bratton, prefers to use, pointing out (as others do) that the reform of the NYPD involved a range of strategies and policies which lie outside any zero tolerance paradigm. As a result of such complicating factors, the odd situation has developed where, in Australia at least, zero tolerance policing is associated with the New York experience, but some commentators are reluctant to apply the term to that model of policing.

Three examples of zero tolerance policing: Usually two, or possibly three, instances of zero tolerance policing are referred to in the literature. New York is of course a constant reference point, in particular the model of policing which came to the fore after the election of Rudolph Giuliani as Mayor of New York City in 1993 and the appointment of William Bratton as NYC Police Commissioner in January 1994.

A second reference point is the Cleveland Constabulary in North-East England and, in particular, the 'confident policing' model which was established after Detective Chief Inspector Ray Mallon took over as chief of crime strategy in Hartlepool in April 1994. This version of zero tolerance policing specifically targeted house burglary and, following the 'broken windows' strategy, involved the confident policing of low-order offences or 'nuisance crime'.²⁷

²⁵ PN Grabosky, *Zero Tolerance Policing*, Trends and Issues in Crime and Criminal Justice, No 102, Australian Institute of Criminology, January 1999, p 1.

²⁶ C Cunneen, *Zero Tolerance Policing: Implications for Indigenous People*, p 27.

²⁷ T Romeanes, 'A question of confidence: zero tolerance and problem-oriented policing' in RH Burke (ed), *Zero Tolerance Policing*, pp 40-41.

A third, less cited, reference point is the 1996 Spotlight Initiative in Strathclyde, Scotland which has been described as a ‘deliberate strategy to tackle minor crime, including under-age drinking, public drinking, street robbery, vandalism and truancy’.²⁸ Again, the main architect of the Spotlight Initiative, the Chief Constable of Strathclyde, John Orr, has claimed that it is misleading to label the initiative as zero tolerance policing.²⁹

Different accounts of zero tolerance policing: In a recent paper published by the South Australian Office of Crime Statistics, Jayne Marshall noted that the term zero tolerance policing has been used to refer to a variety of concepts and practices.³⁰ For Marshall zero tolerance policing can refer to: (a) a general commitment to being tough on crime; (b) a strict, non-discretionary approach to law enforcement; (c) consistent with the ‘broken windows’ thesis, a form of police action against minor offences and disorder which may be either discretionary or non-discretionary in nature; or (d) the New York model of policing which must be understood as a combination of policies and strategies, including the use of timely, accurate intelligence data.

‘Tender’ versions of zero tolerance - Cleveland and Strathclyde: For the present, the versions of zero tolerance under point (c) can be taken as the focus of discussion, on the basis that they represent contrasting ideal types or models of zero tolerance policing in line with the ‘broken windows’ thesis. Basically, the discretionary and non-discretionary crackdowns on minor offences can be characterised as ‘tender’ and ‘tough’ versions of zero tolerance policing respectively. Under the ‘tender’ model, while some police action against minor offences and disorder is expected, nonetheless the police have the discretion to choose what level of intervention is appropriate to the circumstances - from simply talking to the offenders, as Marshall explains, through warnings and informal cautions, up to the more serious report or arrest.³¹ Another feature of this tender model of zero tolerance policing is the emphasis it places on police partnerships with other agencies and the community at large.

Both the British examples of zero tolerance policing, in the Cleveland Constabulary and the Strathclyde Spotlight Initiative, are said to belong to this discretionary/community partnership model. Of the Strathclyde experience, for instance, Chief Constable John Orr writes ‘A fast-track route to the cells for those caught committing so-called minor crimes is neither the intention nor the practice of the Spotlight Initiative. A fundamental principle of Strathclyde Police is to encourage the use of officer discretion when dealing with

²⁸ J Marshall, *Zero Tolerance Policing*, South Australian Office of Crime Statistics, Information Bulletin No 9, March 1999, p 6.

²⁹ N Dennis (ed), *Zero Tolerance: Policing a Free Society*, IEA Health and Welfare Unit 1998, pp 105-125.

³⁰ J Marshall, *Zero Tolerance Policing*, South Australian Office of Crime Statistics, Information Bulletin No 9, March 1999, p 1.

³¹ The difficulty, conceptually, with this ‘tender’ version of zero tolerance policing is that it is a contradiction in terms, something which, by definition, is less than ‘zero tolerant’ of all law-breaking.

offenders'.³² Orr adds that the initiative was 'viewed as part of an overall commitment to community safety, the promotion of which requires effective and co-ordinated corporate action by every possible sector of the community'.³³ The application of zero tolerance in Hartlepool also appears to have been discretionary in nature. Moreover, Chief Superintendent Terry Romeanes, Force Operations Adviser to the Cleveland Constabulary, has emphasised that zero tolerance policing is only a short-term strategy for the Constabulary, to be understood alongside a long-term commitment to more established models of policing based on partnerships with other agencies.³⁴ For Romeanes, zero tolerance policing in the UK is very much a part of the community-based 'Bobby on the beat' tradition of British policing 'from which', he states, 'we have become diverted during the past 30 years'.³⁵

A 'tough' version of zero tolerance - New York: It may be that this relatively 'tender', user friendly account of zero tolerance policing could also serve as a basis for conceptualising what has occurred in New York since 1994 under Police Commissioner Bratton and Mayor Guiliani, and later under Police Commissioner Safir. Take, for instance, the work of EB Silverman, Professor of Police Science at John Jay College of Criminal Justice in New York, who has set out to dispel what he calls the 'six zero tolerance myths', which include: the common myth that the focus in zero tolerance is on repression by enforcement and that the strategy is fundamentally counter to policing by consent; that zero tolerance leaves the police no discretion; and that zero tolerance is anti- or non-responsive to the community.³⁶ A similar line is taken by Kelling and Coles. Their argument is that, while the NYPD strategy is 'congruent with the basic elements of community policing', it has nonetheless emphasised *aggressive order maintenance*: for Kelling and Coles community policing itself 'requires the restoration of public order and the involvement of police in order maintenance'.³⁷

Taking up this aggressive order maintenance theme, most commentators tend to place aggressive order maintenance at the forefront of that part of New York policing strategy identified with zero tolerance. That strategy is described by its critics as a 'punitive approach' to maintaining law and order, with little or no reference to negotiating acceptable

³² In N Dennis (ed), *Zero Tolerance: Policing a Free Society*, p 105. By emphasising this discretionary element, Orr expressly distances the Spotlight Initiative from zero tolerance policing

³³ Ibid, p 114.

³⁴ Ibid.

³⁵ Ibid, p 39.

³⁶ EB Silverman, 'Below zero tolerance: the New York experience' in Ibid, pp 57-67.

³⁷ GL Kelling and CM Coles, *Fixing Broken Windows*, pp 158-164. It should be emphasised that this does not translate into support for the concept of zero tolerance policing as such which, as Kelling has said in other contexts, 'ignores the discretionary nature of good policing'. For Kelling, 'The emerging model is one of a high level of activity, high levels of discretion, and trying to get low levels of arrest' - G Kelling, 'Kelling's law', *Policing Today*, December 1997, 17-18.

public behaviour at the neighbourhood level. In that regard, it is suggested that zero tolerance is something of a perversion of the 'broken windows' thesis, with Associate Professor David Dixon of the University of New South Wales stating that zero tolerance 'prioritises law enforcement', whereas 'broken windows' suggested a broader order maintenance strategy.³⁸ Moreover, this prioritising of law enforcement is claimed to be the focus of most discussion of zero tolerance policing today, with Cunneen noting that the strategy is generally regarded 'as directly aimed at increasing arrest rates for minor offences such as public drunkenness, offensive language and behaviour, loitering and other similar offences'.³⁹

Amongst many criminologists, therefore, the clearest picture of the New York model of zero tolerance policing is drawn in terms of 'aggressive enforcement', as a confrontational form of policing in which petty offenders are targeted directly and fed into the criminal justice system by arrest or summons.⁴⁰ As CJ Edwards, Lecturer in Justice Studies at Edith Cowan University, states: 'The essential premise of zero tolerance is that if petty misbehaviour goes unchecked, then general standards of behaviour will degenerate. If action is taken over minor offences, then most serious offences may be prevented, and more offenders will be dealt with'.⁴¹ Edwards writes:

Zero tolerance relies upon police action being taken for every detected infringement of public order and crime legislation, so that, even if the eventual disposal of the matter does not involve a harsh penalty, the nuisance factor of being arrested for a minor offence is quite high. Once an arrest has been made, a physical search of the offender is automatically authorised, as are inquiries to confirm name and address. Individuals who are arrested for disorderly conduct will therefore also be dealt with for offences revealed in connection with any weapons or drugs on their persons, or for any outstanding warrants relating to them. To avoid the consequences of coming to notice, persons carrying drugs or weapons maintain a low profile. The result, it is claimed in New York, is that there is less disorder on the streets, a markedly lower crime rate and consequently a greater feeling of public safety.⁴²

To this, Edwards adds that 'In some ways, community policing is the antithesis of zero tolerance policing, in that it has long-term objectives of building good relations with all

³⁸ D Dixon, 'Broken windows, zero tolerance, and the New York miracle' (1998) 10 *Current Issues in Criminal Justice* 96.

³⁹ C Cunneen, *Zero Tolerance Policing: Implications for Indigenous People*, p 8.

⁴⁰ CJ Edwards, *Changing police Theories for 21st Century Societies*, The Federation Press 1999, p 136.

⁴¹ *Ibid*, p 83.

⁴² *Ibid*, p 55.

sections of the public, and being approachable to all groups'.⁴³ According to the American commentator, Michael Massing, this observation would apply to the New York experience of zero tolerance policing. Writing in November 1998, he stated:

The idea of cooperation between the police and local communities is undeniably appealing, but it doesn't remotely describe what happened in New York under Bratton, or what is now happening under his successor, Howard Safir. While Bratton transferred officers from squad cars to the street, he did not encourage officers to establish close relations with local leaders or residents.⁴⁴

To this can be added the observation that during Giuliani's second term as mayor the attention of the police moved 'from drug dealers to jaywalkers and other assorted "miscreants" including street vendors, zigzagging cab drivers, and unleashed dogs'.⁴⁵ The extent of police activity on the streets is suggested by the statistic that, in 1997 and 1998, the elite Street Crimes Unit alone performed 45, 084 frisks.⁴⁶

This 'tough' version of the New York experience of zero tolerance is also consistent with Cunneen's approach. Cunneen acknowledges the difficulties involved in defining zero tolerance policing while at the same time arguing that, based on the New York model, the term 'does have a fairly clear political and symbolic meaning within Australia'. Cunneen continued: 'While there can be no singular definition of zero tolerance policing it is certainly most commonly associated with a NYPD policy of strict law enforcement towards 'antisocial' behaviour and 'quality of life' offences'.⁴⁷ Expanding on this, Cunneen stated:

Zero tolerance policing relies on the belief that a strong law enforcement approach to minor crime (in particular public order offences) will prevent more serious crime from occurring and will ultimately lead to falling crime rates.

Zero tolerance policing is a strategy directly aimed at increasing arrest rates for minor offences such as public drunkenness, offensive language and behaviour, loitering and other similar offences.⁴⁸

Importantly, the crime prevention hypothesis contained in the zero tolerance policing theory is that the more arrests police make for every petty disorder, the less serious crime

⁴³ Ibid, p 57.

⁴⁴ M Massing, 'The blue revolution', *The New York Review*, 19 November 1998, 32 at 33.

⁴⁵ F Siegel, 'Rudy awakening', *The New Republic*, 19 April 1999, 14 at 16.

⁴⁶ E Kolbert, "The perils of safety', *The New Yorker*, 22 March 1999, 50 at 52.

⁴⁷ C Cunneen, *Zero Tolerance Policing: Implications for Indigenous People*, p 9.

⁴⁸ Ibid, p 4.

there will be.

4. THE NEW YORK MODEL OF POLICING IN MORE DETAIL⁴⁹

A more complex model: As it has been said, part of the difficulty in assessing what is meant by zero tolerance policing and analysing how effective it has been in New York is that, when considered in more detail, the policing strategy adopted in New York in the 1990s is not reducible to ‘zero tolerance’. In fact, the architect of that strategy, William Bratton, is adamant that the zero tolerance is a ‘troublesome’ phrase that sends out problematic messages about policing, in that it ‘smacks of over-zealousness’, lacks credibility and ‘as a slogan belies the complexity of police work’: ‘Consequently’, Bratton concludes, ‘zero tolerance is neither a phrase that I use nor one that captures the meaning of what happened in New York...’.⁵⁰ It is important to bear in mind, therefore, that when Bratton is said to make ‘absolutist’⁵¹ claims about the part played by the police in reducing crime in New York, Bratton himself is not referring in any clear or simple sense to zero tolerance policing as such.

To this PN Grabosky adds: ‘The key to New York was not so much zero tolerance, as crime analysis based on accurate and timely intelligence, and the accountability of local patrol commanders. From time to time, selected high priority “hot spots” would be targeted for special attention, including strict enforcement of minor offences’.⁵² Dixon has commented in this regard:

Zero tolerance street policing was just the most-publicised feature of wide-ranging changes in policing in New York during this period. The NYPD also adopted intelligence-led policing, in which traditional reactive tactics are secondary to computer assisted identification of places and people at risk. While this new, technologically-driven policing may be harder to sell to a public fearful of crime than a catchy slogan like zero tolerance, its implication may well be significant. Computer mapping was a tool of significant managerial changes, in which close supervision and scrutiny of local commands’ performance were introduced, notably via the Compstat process, in which local commanders were called to account to the Commissioner and his staff for their performance.⁵³

The key elements of the NYPD model: In summary, the key elements of the New York

⁴⁹ The NYPD is said to be the largest police force in the USA. The department is divided into 76 precincts covering the five boroughs of New York City, Manhattan, Brooklyn, The Bronx, Queens and Staten Island.

⁵⁰ WJ Bratton, ‘Crime is down in New York City: blame the police’ in *Zero Tolerance: Policing a Free Society* edited by N Dennis, IEA Health and Welfare Unit, 2nd ed 1998, pp 42-43

⁵¹ D Dixon, ‘Broken windows, zero tolerance, and the New York miracle’, at 98.

⁵² PN Grabosky, *Zero Tolerance Policing*, p 2.

⁵³ D Dixon, ‘Broken windows, zero tolerance and the New York miracle’, 98.

model of policing are as follows:

- **crime control strategies:** over a two year period eight crime control strategies were created to focus on drugs, guns, youth crime, auto theft, corruption, traffic, domestic violence and 'quality of life' crimes;⁵⁴
- **increasing police numbers:** police numbers were increased significantly, from around 30,000 in 1990 to over 38, 000 in 1996. It is proposed to increase the NYPD by a further 1,900 officers during the 1998/1999 fiscal year which would bring the total strength to 40,210 officers (a 25 per cent increase over the number of officers in 1990).⁵⁵
- **use of timely, accurate intelligence data:** information systems were improved to provide police managers with up-to-date data on crime hot spots and weekly trends down to the local level. In addition, weekly planning sessions of senior management and precinct commanders, known as 'Compstat' meetings, were introduced. These sessions, at which the performance of local commanders was actively monitored, used crime mapping techniques to highlight crime hot spots.⁵⁶ As described by Bratton, the Compstat system was built on four concepts: (a) accurate and timely intelligence; (b) rapid deployment of personnel and resources; (c) effective tactics; and (d) relentless follow-up and assessment.⁵⁷ Reinforcing the significance of the Compstat system, as well as emphasising the connections between the different aspects of policing strategy adopted in New York, Professor Silverman has said that Compstat is the engine that drives 'zero tolerance' policing in New York City, and that 'it is at the heart of the strategic organizational changes that Bratton introduced when he took command of the NYPD in 1994'.⁵⁸
- **empowering precinct commanders:** precinct commanders were made accountable for crime in their areas and for developing and implementing focused local crime reduction strategies. Moreover, local commander were empowered to deploy detectives and specialised units to assist in tackling crime problems in designated areas, rather than these units operating to their own individual objectives as had traditionally been the case.⁵⁹ In this way, precinct commanders were made responsible for the total policing effort in their districts, including special drugs

⁵⁴ J Marshall, *Zero tolerance policing*, p 2.

⁵⁵ C Cunneen, *Zero tolerance policing: implications for indigenous people*, p 10.

⁵⁶ D Brereton, 'Zero tolerance and the NYPD: has it worked there and will it work here?', paper presented to the Australian Institute of Criminology Conference *Mapping the Boundaries of Australia's Criminal Justice System*, Canberra 22-23 March 1999 - <http://www.cjc.qld.gov.au/cjc/zerotol.shtml>

⁵⁷ W Bratton, *Turnaround: How America's Top Cop Reversed the Crime Epidemic*, Random House 1998, p 224.

⁵⁸ Quoted in JA Greene, 'Zero tolerance: a case study of police policies and practices in new York City' (1999) 45 *Crime and Delinquency* 171 at 172.

⁵⁹ Ibid.

-
- operations and the deployment of beat officers and detectives;⁶⁰ and
 - **enforcing ‘quality of life’ crimes:** under the zero tolerance component of the strategy, police were encouraged to use strict enforcement of minor offences, which in practice meant enforcing city ordinances in an effort to reduce graffiti, littering and public drinking. Also, persons suspected of involvement in more serious criminal activities were targeted through misdemeanour arrests. As well as searching anyone arrested for minor public order offences, stop and frisk was used widely against anyone suspected of carrying a weapon or drugs.⁶¹ In this way, zero tolerance policing was used as a means of disrupting patterns of criminal activity and discouraging the carrying of firearms;⁶²

‘Zero tolerance’ or ‘NYPD model’ - preferred terms: In the light of this more complex and rounded picture of NYPD model, Dr David Brereton, Director of Research and prevention at the Queensland Criminal Justice Commission, decided not to use the term ‘zero tolerance policing’ when discussing the New York policing experience. Brereton explains that, to the extent that the NYPD has had a positive impact on levels of crime in New York City, ‘this has been the consequence of the package of measures adopted, not just the component of ‘zero tolerance’. Brereton adds:

Applying the label of ‘zero tolerance’ to the NYPD therefore both distorts public understanding of what has been done in New York, and contributes to the mistaken belief that police departments elsewhere will be able to achieve results similar to those claimed for the NYPD simply by cracking down on minor offending.⁶³

There is, too, the additional problem that any attempt to assess and quantify the positive impact the NYPD has made on levels of crime in New York City in recent years runs into significant difficulties if the term ‘zero tolerance policing’ is employed. This is because it is impossible to separate out any impact arising as a result of the zero tolerance strategy, as against the impact of the combination of reforms introduced into the NYPD in the 1990s. In other words, zero tolerance is enmeshed in the total strategic package and whatever success it has had can only be analysed and understood in the context of that package as a whole. If the New York experience is to be evaluated it must surely be done so in its totality.

Taking our lead from Brereton, therefore, it makes little sense to ask such a question as, ‘has zero tolerance policing reduced the crime and murder rate in New York City?’. More promising from the standpoint of meaningful analysis is the question, ‘has the New York model of policing reduced the crime and murder rate in New York City?’. Even then, of course, the prospect of unambiguously unravelling the impact of police on crime and

⁶⁰ J Marshall, *Zero tolerance policing*, p 2.

⁶¹ Ibid.

⁶² D Brereton, ‘Zero tolerance and the NYPD: has it worked there and will it work here?’.

⁶³ Ibid.

murder rates is likely to prove very difficult.

5. HAS THE NEW YORK MODEL OF POLICING REDUCED THE CRIME AND MURDER RATE?

Blaming the police for reducing the crime rate: Underlying the broken windows argument, as set out earlier in this paper, is the contention that disorder is rooted in a declining civil society and that, given the right leadership and strategy direction, the police can play a crucial part in arresting that decline. The proponents of those policing strategies most closely identified with zero tolerance, the New York and Cleveland models, certainly identify with this point of view. For example, while acknowledging the need for police to form partnerships with other agencies, Chief Superintendent Terry Romeanes has asserted that 'it would be foolish to believe that the police alone cannot, by themselves, have a considerable impact on the quality of life of the public by operating a zero tolerance approach towards crime, antisocial behaviour and quality of life offences'.⁶⁴ That the police can make a significant impact is also an article of faith for former New York Police Commissioner, William Bratton, who wrote:

We have shown in New York City that police can change behaviour, can control behaviour and, most importantly, can prevent crime by their actions - independently of other factors.⁶⁵

Returning to the subject in his 1998 autobiography, Bratton said that when he took up the post as NYPD Commissioner the Department had been content for the past twenty years or so 'to focus on reacting to crime while accepting no responsibility for reducing it, let alone preventing, it'. Bratton continued in his brash style to say:

Crime, the theory went, was caused by societal problems that were impervious to police intervention. That was the unchallenged conventional wisdom espoused by academics, sociologists, and criminologists. I intended to prove them wrong. Crime, and as important, attitudes about crime, could be turned around. Using law enforcement expertise, leadership and management skills, and an inspired workforce, I intended to create an organization whose goal and mission was to control and prevent crime - not just respond to it.⁶⁶

This belief that the police on their own can make a difference, that to a significant extent they are to blame for the decline in crime rates in New York in recent years, for instance, is fundamental to the thinking behind the more aggressive, confident style of policing with

⁶⁴ RH Burke (ed), *Zero Tolerance Policing*, p 46.

⁶⁵ WJ Bratton, 'Crime is down in New York City: blame the police' in *Zero Tolerance: Policing a Free Society*, p 41.

⁶⁶ W Bratton (with P Knobler), *Turnaround: How America's Top Cop Reversed the Crime Epidemic*, Random House 1998, p xi.

which zero tolerance is associated. It is a belief which challenges the orthodoxies of academic criminology and the assumptions behind contemporary policing strategy alike. The reaction of orthodox criminology to such claims was explained by David Dixon in these terms:

A criminologist's initial reaction to claims that police have significantly reduced crime should be scepticism. This is because a foundation stone of modern policing studies and policy is the body of research on police activity in which conventional policing strategies - random patrol and reactive investigation - 'have been shown to have little or no effect on crime' ...This does not, of course, mean that police are irrelevant to crime control...but simply that, within levels of resources and powers which can realistically be provided, it is unlikely that conventional policing can significantly reduce crime.⁶⁷

Outside the field of professional criminology, at any rate, a different view is taken. For example, the August 1995 cover of the *New York* magazine declared 'The end of crime as we know it'. Then in August 1996 it was said in the same magazine that 'Bratton and Giuliani are showing that it is possible to keep a lid on crime solely through effective law enforcement'.⁶⁸ One journalistic view is that 'It is hard to argue that zero tolerance has not been a success'.⁶⁹ Contrast that with the reported comments of the NSW Director of Public Prosecutions, Nicholas Cowdery, who told a recent Law and Order Forum held by New South Wales Young Lawyers:

The falling murder rate in New York City...is touted as being due to zero tolerance policing - fixing the broken windows so that disorder will not break out - but it is associated more closely with the effects of the decline of the crack cocaine epidemic and increased economic prosperity in general.⁷⁰

What has been achieved in New York? In stark terms the decline in the number of crimes and murders in New York in recent years has been staggering. Michael Massing writes that in 1992 the number of recorded crimes stood at 626,182, a figure which had been reduced to 355,893 by 1997, a drop of 43.2 per cent. Even more dramatic is the decline in the

⁶⁷ D Dixon, 'Broken windows, zero tolerance, and the New York miracle', *Paper presented to the Australian and New Zealand Society of Criminology Conference*, 8-10 July 1998. Dixon does add that 'The research evidence suggests that policing can affect particular types of crime', "but usually only in cooperation with other agencies and only if they adopt strategies which are in stark contrast to those dictated by the professional law enforcement" model'.

⁶⁸ Quoted in M Massing, 'Crime and drugs: the new myths', *The New York Review*, 1 February 1996, p 16.

⁶⁹ C Stewart, 'Crime and reason', *The Australian Magazine*, 29-30 May 1999, 18 at 22.

⁷⁰ 'Zero tolerance for law'n order myths', *New South Wales Law Society Journal*, Volume 37, April 1999, p 20.

murder rate, from 2,154 in 1992 to 770 in 1997, a drop of 64.3 per cent.⁷¹ It is worth noting, too, that according to Police Department records, gun murders in New York City were the highest they had ever been in 1991, at a figure of 1,605. Whereas in 1997 that figure was down to 375, a decline of almost 77 per cent.⁷² The crime rate fell 11.7 per cent in 1994 and another 18.3 per cent in the first six months of 1995. From January 1994, when Giuliani became mayor, to June 1995, homicides were down 37.3 per cent, robbery was down 31.3 per cent, and burglary was down 23.6 per cent. New York City's Independent Budget Office commented in March 1998 that recent reductions in crime have resulted in the city having one of the lowest crime rates in the country among large cities, a lower crime rate in fact than all but two (Indianapolis and San Jose) of the nation's 25 most populous cities.⁷³ Indeed, the incidence of crime in New York City has been reduced to its lowest level in twenty five years.

The continuing trend in crime in New York City is illustrated by the following table showing decreases in crime from 1993 to 1998:⁷⁴

Against the Person (%)		Against Property (%)	
Murder	-67	Burglary	-53
Rape	-23	Grand larceny	-40
Robbery	-54	Motor vehicle	-61
Felonious Assaults	-29	Theft	

Interpreting crime and murder trends in New York: Statistics of this kind have caused a range of reactions in criminological circles. Among these, a cautionary note has been struck where crime figures are concerned. For example, Massing comments that, 'As anyone who works with crime statistics knows, it's often possible to prove a point by picking the right period', a point he makes to question Bratton's selective use of crime data.⁷⁵ What is clear is that agreement on the effects of the New York model of policing is

⁷¹ M Massing, 'The blue revolution', *The New York Review*, 19 November 1998, p 33.

⁷² E Kolbert, 'The perils of safety', *The New Yorker*, 22 March 1999, 50 at 51.

⁷³ Independent Budget Office, City of New York, *Correspondence with the New York City Council Committee on Public Safety*, 16 March 1999, 11 May 1998 (copy on file).

⁷⁴ EB Silverman, *NYPD Battles Crime*, Northeastern University Press 1999, p 7.

⁷⁵ M Massing, 'The blue revolution', *The New York Review*, 19 November 1998, p 32. Bratton limits his analysis to the first six months of 1995, a period which happens to show New York in an especially favourable light vis a vis other US cities.

at a premium. Kelling and Coles, supporters of the New York experiment in policing, sum up the issue involved in deciding upon its impact on crime in these terms:

Because New York is a media centre, and because the order-maintenance activities there are the cornerstone of police crime-control activities, considerable controversy has developed over whether or not Bratton's policies are responsible for New York's widely reported reductions in crime. Within criminological circles, this debate has been rigorous indeed. The issue of whether crime is declining as a result of police actions raises some of the thorniest problems of causality in social science. How do we know that crime has actually dropped? Are the 'books being cooked'? Are citizens changing their reporting habits, say out of concern for corruption? Are the changes a temporary blip that over time will return to previous 'normal levels'? If crime has dropped, how can the effect be parsed out? What role does sentencing play? The increase in prisons? Are there structural changes in society - say changes in poverty levels - that could be responsible for the shifts? These and other legitimate questions abound.⁷⁶

Kelling and Coles continue:

This debate has also been rancorous, because deep-seated ideologies are involved. One side argues that poverty, racism, and social injustice cause crime, and since police can do little about these structural features of society they will never be able to do much about crime either. An alternative and more optimistic view, to which we subscribe, asserts that addressing the 'root causes' of crime, whatever they may be, need not be the only way of reducing crime itself: in fact, regardless of the causes of crime, police can, through the use of the proper strategy and a variety of tactics, affect crime rates.⁷⁷

The New York crime figures are contentious therefore. Among the issues discussed in the context are the following: (a) that the decline in New York's crimes rate is only part of a US-wide trend; and (b) that similar results have been achieved in other US cities using very different and more cost-effective models of policing. There is also a third argument to consider, namely, that even if the NYPD model, including its zero tolerance component, can be shown to work as a policing strategy, that its benefits are achieved at too great a cost.

Declining crime and murder rates in the US: The argument is made that the reductions in the crime and murder rates in New York City must be viewed in the context of a general

⁷⁶ GL Kelling and CM Coles, *Fixing Broken Windows*, The Free Press 1996, p 155.

⁷⁷ Ibid. Kelling and Coles then say: 'The key question for those who espouse this latter view is whether and how police can help to create the conditions in neighbourhoods and communities that will allow other institutions - the family, neighbourhood, church, community agencies and government, and commerce - to deal with these basic problems of society'.

reduction in these trends throughout the US in recent years. For example, murder is down about 20 per cent from the level of the early 1990s, reaching the lowest rate in 1997 in 30 years. Also, crime is down in nearly every category, including burglary and robbery. Since 1993, even as the population continues to grow, not only has the felony rate dropped, but the total number of violent felonies has fallen 14 per cent.⁷⁸ More particularly, significant reduction in crime rates have been recorded in the mid-1990s in 17 of the 25 largest US cities. Marshall adds: 'Between 1990 and 1996 the crime rate also decreased in 160 of 197 American cities with a population of 100,000 or more. The crime declined by at least 20% in 65 cities and by 30% or more in 31 cities. Nine cities experienced decreases of between 40% and 49%'.⁷⁹ The question is how are these changes explained?

Amongst most criminologists the explanation of these figures tends to point towards a diversity of causes. For example, PN Grabosky notes that 'While some would attribute this decline primarily to policing strategies, the contributing factors are more numerous and complex'. Grabosky then states that these factors include:

- a sustained period of economic growth;
- a significant reduction of crack cocaine use;
- the stabilisation of cocaine markets and a concomitant reduction in warfare between drug gangs;
- the ageing of the 'baby boom' generation beyond the crime-prone years;
- concerted efforts, particularly in large metropolitan areas, to restrict teenagers' access to firearms, particularly handguns;
- increased police-community cooperation;
- longer sentences, particularly for perpetrators of violent crime;
- and the proliferation of crime prevention programs, particularly early intervention programs for children with little parental supervision.⁸⁰

Sceptics also point to the fact that significant reductions in crime and murder rates have been achieved in other US cities with very different policing strategies. An often cited example is Washington DC where crime and murder rates fell by 18.6 and 32.3 per cent respectively between 1992 and 1997 but where, by all accounts, 'the police department has been corrupt and hopeless and, in large stretches of the city, neither police nor residents seem disposed to fight the criminals in their midst'.⁸¹ Cited, too, is the Boston Police Department's successful campaign against juvenile crime, a campaign which has taken community policing ideas so seriously that it is said to have turned policing 'into something not far from social work'.⁸² The result, its supporters claim, is that only two juveniles have been killed with a gun in Boston since July 1995, compared with ten in 1990 alone. Indeed,

⁷⁸ G Easterbrook, 'America the OK', *The New Republic*, 4 and 11 January 1999, 19 at 20.

⁷⁹ J Marshall, *Zero Tolerance Policing*, p 3.

⁸⁰ PN Grabosky, *Zero Tolerance Policing*, p 2.

⁸¹ 'Crime in America: defeating the bad guys', *The Economist*, 3 October 1998, 37 at 38.

⁸² *Ibid.*

the decline in the murder rate generally in the two cities is said to show a comparable trend.⁸³ At the same time, important differences between New York and Boston are noted. Boston has a population of around 550,000 compared with New York's 7.3 million. The Boston police force has 2,200 officers; the NYPD around 40,000. In 1998 there were 35 murders in Boston, compared with 629 in New York.

Six contrasting interpretations: The difficulty is that there is no one agreed analysis of the available crime data. The statistics tend to be used and interpreted differently from different perspectives. For this reason, this paper presents six contrasting interpretations of the effectiveness of the NYPD model of policing in reducing crime: the first from Michael Massing; the second from Professor Eli Silverman; the third from Fagan, Zimring and Kim; the fourth from Dr David Breton; the fifth from Judith Greene; and the sixth from Chris Cunneen. These interpretations vary in focus and perspective.

(a) *Massing's analysis:*

Massing, writing in *The New York Review*, considered the comparative data on falling crime and murder rates in several major US cities, but concluded that the New York experience is still in 'many ways unique'. On his reckoning, there the declines in crime and murder rates have outstripped those in every other major city. What's more, to the extent that the changing nature of the market in crack cocaine is thought to be a factor in the overall decline, Massing points out that 'crime in New York has dropped to levels well below those prevailing before crack's arrival'.⁸⁴ Indeed, he argues that one has to go back to 1967 to find a year in which fewer murders were recorded in the city than the 770 of 1997.

⁸³ 'First safety, then civility', *The Economist*, 1 May 1999, 29-30.

⁸⁴ M Massing, 'The blue revolution', *The New York Review*, 19 November 1998, 32 at 33.

In support of his argument, Massing presents the following snapshot of the reductions in crime and murder rates in the major US cities:

Table 1			
CHANGES IN U.S. CRIME AND MURDER RATES			
	<i>1992</i>	<i>1997</i>	<i>%Change</i>
New York (number of crimes) (number of murders)	626,182 2,154	355,893 770	-43.2 -64.3
Los Angeles	338,531 1,094	204,554 574	-39.6 -47.5
Houston	148,326 465	130,844 254	-11.8 -47.5
Philadelphia	97,395 425	92,591 410	-4.9 -3.5
Baltimore	90,114 335	77,595 312	-13.9 -6.9
Miami	65,369 128	50,259 103	-23.1 -19.5
Washington, D.C.	67,134 443	54,649 300	-18.6 -32.3
Detroit	117,246 595	119,717 469	+2.1 -21.2
San Francisco	76,551 117	51,996 59	-32.5 -49.6

A number of points can be made about Massing's analysis. One is that, while it recognises the unique features of the New York experience and is in many respects supportive of the NYPD's record, Massing is by no means an uncritical supporter. Here, as elsewhere,⁸⁵ he emphasises the costs associated with the New York model of policing and, in considering the general downward trend in the crime figures, he points to changes in drug use as the most significant underlying factor. All the same, Massing is of the view that the above statistics 'lend weight to Bratton's claims about the importance of his reforms in New York. Certainly most New Yorkers are grateful for the new sense of peace on their streets. To them, the "police revolution" seems real enough'.⁸⁶

⁸⁵ M Massing, 'Crime and drugs: the new myths', *The New York Review*, 1 February 1996, p 16.

⁸⁶ M Massing, 'The blue revolution', *The New York Review*, 19 November 1998, p 33.

(b) *Silverman's analysis*

Of the six interpretations of the effectiveness of the NYPD model discussed in this paper, Silverman's is the most positive in his analysis of the role played by the police. After setting out the decrease in crime in New York City from 1993 to 1998, he explains that as a result of the 'phenomenal drop in its crime rate, New York's crime ranking has declined'. He continues, 'In a five-year period (1994 to 1998), New York dropped from a position of 114th to 163rd in the ranking of the 200 most dangerous US cities with populations above 100,000'. Not only has this made New York safer than Dallas, Houston, Los Angeles, Baltimore, Washington and Philadelphia, according to Silverman it means that New York has proportionally less crime than such smaller cities as Phoenix, Memphis, Seattle, San Francisco and San Diego.⁸⁷

Silverman considers several issues relevant to the interpretation of the crime figures. He notes, for example, that some have questioned the accuracy of the data, asking whether officials have distorted the figures more in the last few years than before. Silverman thinks not. He points out that the NYPD 'has beefed up its auditing of crime reporting'.⁸⁸ Taking on the sceptics in orthodox criminological circles who would downplay the role played by the police in reducing crime, he also considers a range of what he calls 'conventional explanations' for the fall in crime which include: a fluctuating youth population; a rise in incarceration rates; and reduced drug activity. Of all these alternative interpretations, Silverman claims that there is at best only limited support for their underlying hypotheses.⁸⁹

For his part, Silverman advocates a form of explanation which highlights the role of policing - in particular, smarter, intelligence-driven policing associated with Compstat in New York - for the decline in crime in New York as in the US generally. For him, this trend has challenged the ruling orthodoxies of criminology which hold that 'without profound changes in society, there isn't much anyone can do about crime'. Silverman continued:

As the naysayers have been reduced to debating not whether but how much credit should be given to the police, a fresh recognition of a new and successful policing strategy is emerging. Reflecting on this phenomenon, the columnist Neal Peirce notes criminologists' failure to predict the nationwide decline in crime and their inadequate 'after the fact explanations...Crime is dropping much too fast, too rapidly in multiple major cities for such explanations to suffice...Smarter, reinvented policing' provides the key.⁹⁰

⁸⁷ EB Silverman, *NYPD Battles Crime*, p 7. This book was published too late for its findings to be fully incorporated into this paper. Instead, the paper seeks only to summarise those key points covered in the book's introductory chapter.

⁸⁸ Ibid.

⁸⁹ Silverman's analysis of incarceration rates in New York is discussed later in the paper.

⁹⁰ Ibid, p 14.

What Silverman seems to be saying here is that, irrespective of local differences in policing strategies, it is the common element of intelligence-driven policing which has made the vital difference across the board in US cities in recent years. However, as Silverman's own analysis appears to be confined to New York City, his work is not the ideal vehicle for either proving or disproving that argument.

(c) *Fagan, Zimring and Kim's analysis*

The recent analysis of changing crime trends in New York City presented by Fagan, Zimring and Kim is restricted to the study of declining homicide figures. They do not attempt a comparative analysis of recent homicide rates in other major US cities, although historical comparisons are made. They note at the outset a drop of 52 per cent in five years in homicides in New York and state that 'changes in police manpower and strategy are widely believed to have contributed to the decline. If this drop can be plausibly tied to enforcement activities, it would be the most conspicuous success of city police deployment policies in the twentieth century'.⁹¹ Their findings are complex. For a start, they identify two separate types of homicide with two discreet trends, factors which, they say, complicate theories wishing to identify discreet causes of reduced violence and crime in New York City. There is 'nongun homicides' for which, the authors conclude, the decline 'starts too early and continues too evenly throughout the period under study to have a plausible linkage to changes that come into the city two or three years into the 1990s'.⁹² More difficult, say the authors, is the question whether changing policing strategies and resources were major causes of the decline in 'gun homicides' in New York City. The temporal fit is said to be a 'good one'. Gun homicides begin to decline in 1991 from the epidemic proportions reached in the previous year but, as Fagan et al state, 'the declines were not large prior to 1994'. They continue:

Because of the steep increase in the gun homicide rate through the late 1980s, some regression would be expected from peak rates in 1990. So the initial declines in gun killings could be put aside as probable regression leaving the 85% of the drop that happens after 1993 as gun homicide declines that could have been produced by changing patterns of policing in the city.⁹³

However, Fagan et al go on to qualify this positive assessment of the role of the police in reducing gun homicides, noting that 'There is no rigorous method available to parse [separate out] causal responsibility between law enforcement, social trends, and regression for the city's gun homicide record. All contributed to the decline, all were probably significant'. To this they add, 'What makes us reluctant to dismiss the law enforcement role is the sharp decline also ...in gun assault and gun robbery', the pattern and magnitude of

⁹¹ J Fagan, FE Zimring and J Kim, 'Declining homicides in New York City: a tale of two trends' (1998) 88 *The Journal of Criminal Law and Criminology* 1277 at 1278.

⁹² *Ibid* at 1319.

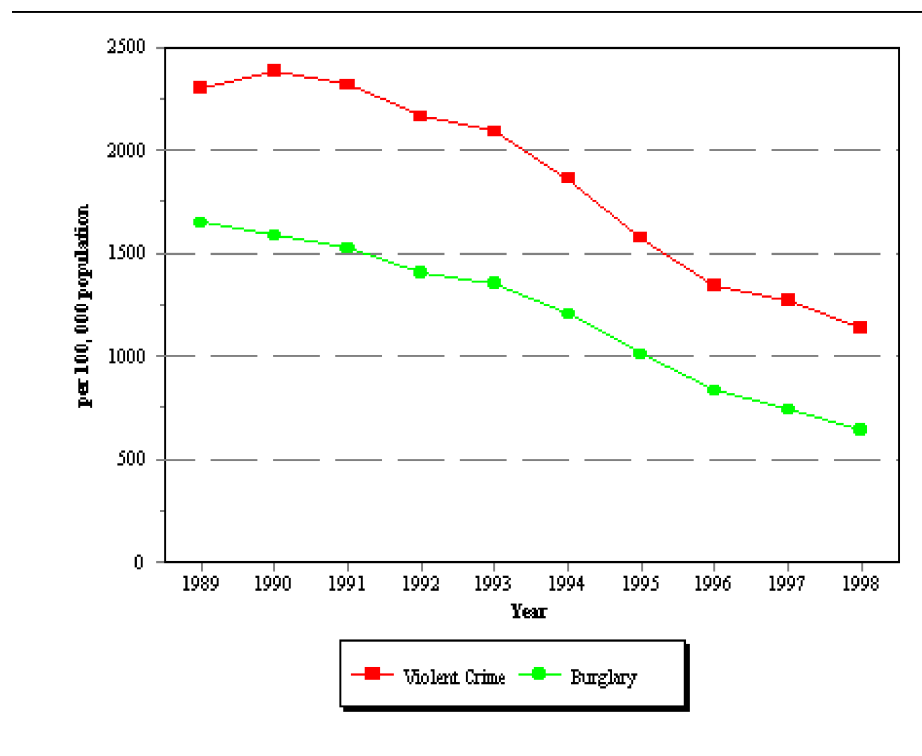
⁹³ *Ibid*.

which 'are consistent with a substantial environmental change'. All the same, they add, 'How much of the decline can be claimed by law enforcement alone simply cannot be determined'. Overall, their message is one of caution in interpreting the crime figures, advocating something of a wait-and-see approach.

(d) *Brereton's analysis*

The most sophisticated comparative analysis to date of the relationship between falling crime rates in various US cities and the likely effect of contrasting policing approaches was presented by Dr David Brereton at the Australian Institute of Criminology's 1999 Conference on 'Mapping the Boundaries of Australia's Criminal Justice System'. Brereton is generally critical of the claim that the NYPD deserves most of the credit for the reduction in crime since 1993. His argument is twofold. First, Brereton maintains that the violent crime and property crime rate began declining in New York City from 1990 onwards, some three years before Bratton's reforms were introduced. As Figure 1 shows, between 1989 and 1993 violent crime declined by 12% (from 2,383.6 offences per 100,000 population to 2,089.8) and burglary decreased by 18% (from 1,646.3 offences to 1,350.3 offences per 100,000 population). 'The rate of decline did accelerate after Bratton became Commissioner', Brereton acknowledges, 'but on the basis of the trend of the preceding years it seems reasonable to assume that there would have been a further fall in reported crime after 1993, even if the NYPD had not undergone any re-engineering'.

Figure 1.



Source: Bureau of Statistics, *Sourcebook of Criminal Justice Statistics*, various.
Federal Bureau of Investigation, *Uniform Crime Reports*, various.

Notes: 1. The violent crime rate is the number of homicides, rapes, robberies and assaults per 100,000 population.

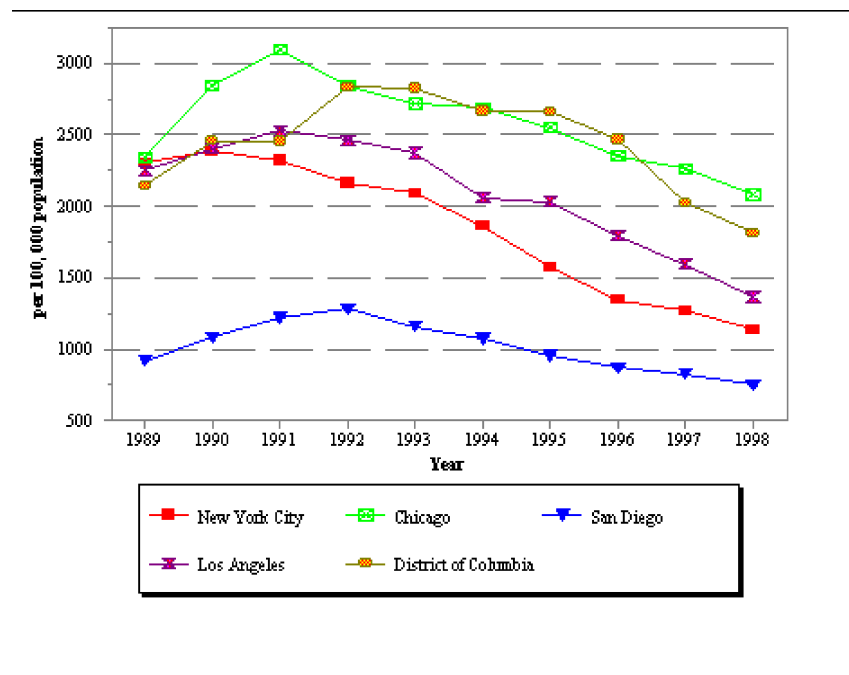
2. 1998 data are for the six months from January to June only and have been annualised to ensure comparability.

3. 1998 rates are based on 1997 population figures.

4. Due to the unavailability of data, 1990 rates are estimates only, based on the average of 1989 and 1991.

Secondly, Brereton notes that there has been a general drop in reported crime rates in the US in recent years, especially in the larger cities. He adds: ‘To support claims about the *particular* crime reduction benefits of the NYPD model, it is necessary not only to show that crime has fallen in New York since 1993, but also that it has dropped by a greater amount than in other cities where different policing approaches have been employed. Applying this test, the evidence for a special “New York effect” would seem to be equivocal at best’. Brereton then presents figures showing trends in annual crime rates for New York and four other large US cities from 1989 to 1998. The four other cities, he explains - Chicago, Los Angeles, San Diego and Washington - were chosen for comparison because they provide examples of a variety of different policing approaches. Thus, the San Diego Police Department is an example of problem-oriented policing; since 1993, the Chicago Police Department has implemented a community policing model on a department-wide basis; in 1997 Washington DC Police implemented a pro-active patrol-based strategy, combining aspects of the NYPD model and the problem-oriented policing approach; the Los Angeles Police Department, on the other hand, was not chosen on the basis that it is a leader in any one policing approach, but because it is one of the largest policing departments and the city present ‘some significant policing challenges’. Figure 2 shows that all five cities have experienced a decline in the reported rate of violent crime and that, in particular, the trends for New York, Chicago and Los Angeles are similar. For Washington DC, the largest falls occurred later than in other jurisdictions, coinciding, Brereton explains, with the introduction of a new patrol strategy in 1997. He notes, too, that San Diego has experienced the smallest decline in violent crime, but that, as the rate was relatively low to begin with, there may have been less scope for policing innovation to have an impact on this indicator.

Figure 2.



Source: As per Figure 1.

Note: See Figure 1 for the definition of violent crime, and details of how rates were calculated. The violent crime rate for Chicago does not include forcible rape.

There is much of interest in Brereton's work. One point to note is that, while he is critical of the argument that the NYPD was the key determinant in reducing crime in New York City after 1993, in other comments he does seem to suggest that policing strategies can play a decisive role in this regard. Most notable in this respect is his comment that the fall in crime in Washington DC *coincided* with the introduction of a new patrol strategy in 1997. He notes later that the reduction in homicide numbers in Washington DC has also occurred in the last two years, again seemingly bolstering the case for the part played by policing strategies in fighting crime. However, that is not the conclusion Brereton himself draws. Instead, he argues that the available data suggests that 'broader social and economic developments' have been '*primarily* responsible for the fall in crime'. He adds: 'This is not to deny that policing innovations have also contributed, but it is quite extravagant to assert that the police have been primarily responsible for the "turnaround"...To the extent that policing has made a difference, the impact seems to have been more on the pace, than the direction, of change'.

(e) *Greene's analysis*

Judith Greene, Senior Fellow at the University of Minnesota's Institute of Criminal Justice, offers a less detailed comparative account of falling crime trends in the US than is found in Brereton. On the precise question of why crime is on the decline generally and more specifically in New York she is, if anything, even less definite in her answer. Regarding explanations of the general trend across major US cities, she notes that, among American criminologists, both liberals (who point to economic inequality and racial injustice as primary contributing factors) nor conservatives (who prefer to explain crime by reference to declining social values) 'have so far failed to offer any coherent, convincing explanations of recent national crime trends'. She adds, 'If there is an ascendant theory among American criminologists, it may be simply stated: No single factor, cause, policy, or strategy has produced the drop in crime rates'.⁹⁴ In other words, like most explanations of social events, the suggestion is that changing crime trends are the result of a number of diverse factors, including demographic factors and changing trends in drug use.

Social scientists, Greene notes, do not offer much evidence in support of the assertion that zero tolerance policies alone have directly produced the crime reductions reported by the NYPD. However, Greene does not dismiss the assertion altogether. She acknowledges, for example, 'the truly phenomenal record that William Bratton set in managing organizational change within the NYPD'. Noted, too, is research suggesting that both the increase in patrol strength begun under Mayor Dinkins and the aggressive policing associated with Bratton 'have had positive effects in reducing gun homicides'.⁹⁵ Instead, she goes on to say that even if it is true, the assertion still leaves other questions to be addressed, including the question whether the NYPD model is the only or best approach available? As with Brereton, Greene looks to the contrasting example of San Diego's community policing

⁹⁴ JA Greene, 'Zero tolerance: a case study of police policies and practices in New York City' (1999) 45 *Crime and Delinquency* 171 at 178.

⁹⁵ As distinct from non-gun homicides which, Greene states, 'began a long, steady decline many years before these tactics were introduced' - *Ibid* at 180.

strategy as a better overall model of effective policing. Among other things, Greene points to the evidence of arrest statistics for 1993 to 1996, with the total number rising by 23% from 255,087 to 314,292 in New York for this period, but declining from 56,631 to 48,264 in San Diego (an across the board reduction of 15%). At the same time, Greene reports, San Diego's reductions for the key indicators of crime (homicides and FBI Index Crimes) 'closely rival the crime reductions in New York City. Greene also points out that between 1990 and 1995 crime was down by 37.4 % in New York, but that the number of police officers increased by 39.5%; in San Diego, on the other hand, a 36.8% reduction in crime was achieved in the same period with an increase in sworn officers of only 6.2%. The implication Greene seeks to draw, therefore, is that even if NYPD model was primarily responsible for reducing crime, it may not be the only or necessarily the best way of achieving that goal.

(f) *Cunneen's analysis*

Chris Cunneen's reflections on zero tolerance policing were originally published in the form of a paper prepared for the Law and Justice Section of the Aboriginal and Torres Strait Islander Commission. In it Cunneen is highly critical of all aspects of the NYPD model of policing and deeply sceptical of the claims made on its behalf. Only one aspect of his analysis of the effects of that model is noted here, namely, his discussion concerning the level of policing and the level of crime in a community. This is, in effect, a continuation of the latter part of Greene's work.

In brief, Cunneen's argument is that the NYPD model of zero tolerance policing is a 'resource intensive policing strategy', requiring high staffing levels to achieve the necessary level of direct law enforcement on the streets. 'Therefore', he states, 'it is fair to ask whether citizens get value for money from increased numbers of police necessary to operate a zero tolerance policing strategy. Does the increase in resources actually lead to a reduction in the crime rate?'.⁹⁶

Responding to his own question, Cunneen notes that in 1998 the Independent Budget Office for the City of New York found that:⁹⁷

- San Diego was the only other major city (besides New York City) to achieve a 40% drop in the crime rate from 1990 through 1996. However, San Diego achieved this with a 1% increase per capita police staffing levels;
- Dallas achieved a 39% drop in the crime rate with a *decline* in the per capita police staffing levels of between 2 and 3%;
- Pittsburgh achieved a 36 % drop in the crime rate with a 6% increase per capita

⁹⁶ C Cunneen, *Zero tolerance policing: implications for indigenous people*, p 19.

⁹⁷ Cunneen does not appear to question the reliability of these figures. Could it be, for example, that one force has many more desk-bound officers where another has replaced them with civilians?

police staffing levels;

- El Paso achieved a 33% drop in the crime rate with a 5% increase in per capita police staffing levels;
- Miami achieved a 28% drop in the crime rate with a *decline* in the per capita police staffing levels of over 11%; and
- Seattle achieved an 18% drop in the crime rate with a *decline* in the per capita police staffing levels of 6%.

These figures can be compared with the New York experience where, Cunneen writes, a 46% reduction in the crime rate was achieved between 1990 and 1996, but with an increase from around 30,000 to 38,000 police officers in the same period.⁹⁸ Cunneen concludes: 'The relationship between the level of policing and the level of crime in a community is by no means clear. Some cities have both low crime rates and low per capita policing levels. Others have high crime rates and high police staffing levels. In addition some cities have achieved significant reductions in crime without embarking on a zero tolerance policing strategy with the associated increase in police staff levels'.⁹⁹

Comments: In answer to the question, 'has the New York model of policing reduced the crime and murder rate?', one answer is that it depends on the figures and how these are interpreted. Another answer is that any attempt to calculate the effect of the police on crime, independently of all other factors, is beset with methodological difficulties. A third response is the cautionary approach suggested by Fagan et al who advocate something of a wait-and-see policy, at least in respect to declining homicide rates. A fourth answer is that, while the kind of analysis presented by Brereton is not dismissive of the potential role of the police, it does point to a more complex picture requiring what can be called a multi-causal analysis of changing crime rates across the US. As Greene suggests, that would appear to be the balance of opinion among academic commentators.

For all that, it is worth restating the observation of the New York City's Independent Budget Office, made in March 1998, that recent reductions in crime have resulted in the city having one of the lowest crime rates in the country among large cities, a lower crime rate in fact than all but two (Indianapolis and San Jose) of the nation's 25 most populous

⁹⁸ In March 1998 the Independent Budget Office commented: 'New York City's current staffing level of 53 police officers per 10,000 residents is second only to Washington among the nation's 25 most populous cities. If the NYPD expands to 40,210 uniformed personnel as proposed in the 1999 preliminary budget, New York City would have 55 police officers per 10,000 residents - almost double the average in America's next 24 largest cities' - Independent Budget Office, City of New York, *Correspondence with the New York City Council Committee on Public Safety*, 16 March 1999, 11 May 1998 (copy on file).

⁹⁹ C Cunneen, *Zero tolerance policing: implications for indigenous people*, p 19..

cities.¹⁰⁰ Whatever the explanation (and it is likely to be complex in nature), ten years ago a predication along these lines would probably have been looked upon as a species of near-utopian speculation. In a sense, attempts at explaining the contribution of policing strategy to the fall in the crime rate in New York City say as much about the limits of criminology, as an explanatory and predictive discipline, as they do about the precise impact of policing strategy on crime rates.¹⁰¹

An important question is that posed by Cunneen, in particular: whether the same or a similar outcome could have been achieved in a more cost-efficient way, using fewer police. One possible response to this line of argument is that the situation in New York is quite distinctive and requiring of a particular response to the extreme problems faced by law enforcement agencies. Thus, notwithstanding the analysis presented by Cunneen (as well as that of Brereton and Greene), it could be claimed that ‘the New York miracle’ should be explained as a unique historical phenomenon and the role played by the police must similarly be understood in distinctive terms. On the other side, however, anyone adopting an approach of this kind would also have to consider its limitations, for an explanation of this sort emphasises the point that what may have worked in New York may not work elsewhere, thereby restricting its export potential to other crime hot spots. Another consideration is that, as crime rates have fallen generally in the major US cities, any argument on behalf of the contribution of the police to reducing crime in New York City is likely to be in terms of the pace and degree of that reduction only.

Turning the uniqueness argument on its head, there is the possibility that the reduction in crime in New York has been so marked precisely because the situation there was peculiarly extreme in the first place, with the result that the impact of economic and other factors on crime was all the greater. However, even the severest critics of the NYPD policing model acknowledge that, within limits, it seems reasonable to conclude that ‘zero tolerance policing may have had some effect on crime in New York’.¹⁰² For these critical commentators the problem is not only in determining the extent of that effect, but in weighing the actual costs against the model’s presumed benefits.

¹⁰⁰ Independent Budget Office, City of New York, *Correspondence with the New York City Council Committee on Public Safety*, 16 March 1999, 11 May 1998 (copy on file).

¹⁰¹ To argue, for instance, that the claim of Bratton and others that zero tolerance policing *caused* the decline in crime in New York City is fallacious because no such causal relationship has been demonstrated, is itself problematic. For example, Cunneen, in his summary of the main arguments against zero tolerance policing, cites the contention that: ‘There is a lack of evidence of any direct causal link between zero tolerance policing and declining crime figures’ - C Cunneen, *Zero tolerance policing: implications for indigenous people*, p 23. It is true that such a cause and effect between a particular police strategy and reduction in crime has not been proved but, then, has criminology ever produced a direct causal explanation of any phenomenon in these strict terms? Perhaps the best that criminology can hope to achieve is the demonstration of a negative or positive association or correlation between certain phenomena, say for example between rising juvenile unemployment and corresponding juvenile crime rates.

¹⁰² D Dixon, ‘Broken windows, zero tolerance, and the New York miracle’ (1998) 10 *Current Issues in Criminal Justice* 96 at 98.

6. ANALYSING THE COSTS OF THE NYPD MODEL OF POLICING

Two notorious cases: Much of the analysis of the NYPD model of policing deals with the purported costs associated with its implementation. The argument tends to be that, even if this policing approach can be shown to have played some part in reducing crime rates, any gains made are outweighed by the costs incurred, particularly in the form of violations of civil and political rights. In recent months a particular focus has been on two notorious cases: the trial of five white New York police officers in the 1997 case of Abner Louima, a Haitian immigrant who was sodomised with a plunger in a Brooklyn police station;¹⁰³ and the arraignment of four other white police officers for second-degree murder in the shooting death of Amadou Diallo, an African immigrant hit with 19 bullets by members of a special Street Crimes Unit while he was unarmed. Interpretations of the significance of these cases for the NYPD model generally vary, from the official view that they are merely 'isolated incidents' to the contention that the Diallo case seems emblematic of 'a form of racial bias that is statistically driven and officially sanctioned'¹⁰⁴ and that the Louima case 'is indicative of the types of severe problems within the NYPD which a strategy of zero tolerance policing has exacerbated'.¹⁰⁵

Whatever the correct interpretation, there is no doubt that in the volatile context of New York policing these cases have led to large-scale public demonstrations, as well as to renewed doubts concerning the costs of the New York aggressive model of policing. These doubts, it seems, are shared by the Patrolmen's Benevolent Association, representing police officers, which is reported to have cast a unanimous vote of no confidence in Police Commissioner Safir amid rising concern about police misconduct.¹⁰⁶ Further to this, a recent survey suggested widespread dissatisfaction among New Yorkers with the police, especially from amongst members of racial minorities: nearly 9 out of 10 black residents questioned in the survey said they thought that the police often engage in brutality against blacks, and almost two-thirds said that police brutality against members of minority groups in general is widespread; moreover, more than two-thirds of blacks said the policies of the

¹⁰³ On 8 June 1999 three white New York police officers were found not guilty in the case; a fourth policeman was convicted and a fifth had already pleaded guilty - 'Three cleared, one guilty in police broomstick assault', *The Electronic Telegraph*, 9 June 1999, <http://www.telegraph.co.uk:80/e>

¹⁰⁴ E Kolbert, 'The perils of safety', *The New Yorker*, 22 March 1999, p 51.

¹⁰⁵ C Cunneen, *Zero tolerance policing: implications for indigenous people*, p 14.

¹⁰⁶ J Bone, 'Zero tolerance sparks mutiny in police ranks', *The Australian*, 16 April 1999; M Cooper, 'Zero tolerance past its usefulness, says New York police union', *Police News* July 1999, p 31. James Savage, president of the Patrolmen's Benevolent Association is quoted as saying that 'When zero tolerance tactics were first introduced by the department crime was at an all-time high...Now that crime is way down, an adjustment of the strategy is required. If we don't strike a balance between aggressive enforcement and common sense, it becomes a blueprint for a police state and tyranny'.

Giuliani administration have caused an increase in police brutality.¹⁰⁷ As a recent article in *The New York Times* dealing with the Diallo and Louima cases stated: ‘Just about everybody would agree that if these flagrant episodes were the unintended outgrowths of aggressive policing - and it is by no means certain that they were - then the price for such a modus operandi is exorbitant in the extreme’.¹⁰⁸

Costs: This paper is not the place to deal with the implications of the Diallo and Louima cases in any detail. It is enough here to note the major costs of the NYPD model of policing, as these have been identified in the literature:

- *Complaints against police:*¹⁰⁹ a standard argument in the literature is that NYPD’s aggressive policing has resulted in increased police-civilian conflict, resulting in a sharp rise in complaints against the police registered with the Civilian Complain Review Board (CCRB). Cunneen comments: ‘During the specific period between 1993 and 1996 when Bratton was the Police Commissioner complaints concerning police misconduct rose by 65 per cent. In the four years up to 1998 the filing of civil rights claims against police for abusive conduct had increased by 75 per cent and they were continuing to rise’.¹¹⁰ Dixon adds in this respect that even Bratton has acknowledged that ‘the increase in complaints of police brutality in New York is a clear indicator of the cost of encouraging police aggression’.¹¹¹
- *Racial and minority targeting:* As Brereton explains, the extension of this argument is that ‘relations between police and visible minority groups such as blacks have been placed at risk, because these groups have been the primary focus of the increase in enforcement activity’.¹¹² The argument runs that, while crucial segments

¹⁰⁷ ‘Most New Yorkers see police bias, poll finds’, *The New York Times*, 16 March 1999. The survey suggested that a ‘sharp disparity’ exists between blacks and whites over how the police have affected their sense of personal safety. For example, a third of blacks surveyed said they had been in situations where they feared a police officer, while only 11 per cent of whites said they had felt the same way’.

¹⁰⁸ F Bruni, ‘Public assent behind crimes of the war on crime’, *The New York Times*, 21 February 1999.

¹⁰⁹ For Amnesty International’s report on police brutality and excessive force in New York see - <http://www.amnesty.it/Allibtop/1996/AMR/25103696.htm>

¹¹⁰ C Cunneen, *Zero tolerance policing: implications for indigenous people*, p 17. Cunneen notes that ‘The most recent figures for the first half of 1998 revealed a 20 per cent increase in complaints compared to the same period in the previous year’. This observation contradicts Brereton’s finding that the level of complaints has dropped back in the last three years. Cunneen’s point of departure is that it has now been revealed that complaints were being ‘undercounted by the CCRB by around 20 per cent as a result of a “clerical error”’. Cunneen’s analysis is based, in turn, on JA Greene, ‘Zero tolerance: a case study of police policies and practice in New York’ (1999) 45 *Crime and Delinquency* 171.

¹¹¹ D Dixon, ‘Beyond zero tolerance’, p 9

¹¹² D Brereton, *Zero tolerance and the NYPD: Has it worked there and will it work here?*.

of the white constituency have little to lose by the adoption of aggressive policing policies, the story for blacks and Hispanics is very different. Allegations of this kind were aired at a recent New York City Council hearing where Police Commissioner Howard Safir was asked to defend his department's Street Crime Unit from claims that 'it stops people because of their race'.¹¹³ For a variety of reasons, it is said that the police are more likely to identify black and Hispanic behaviour as suspicious and that, as a result, the focus of aggressive policing at street level is on suspects from these minority groups. As a recent article in *The New Yorker* commented, 'The more aggressive policing becomes - the more the cops try to anticipate crimes before they occur - the more such structural biases are brought out into the open'.¹¹⁴ Judith Greene writes that data has been presented showing that three quarters of all CCRB complaints are filed by African Americans and Latinos: the figures are based on the work of Norman Siegel, director of the New York Civil Liberties Union, who reported 'that African Americans (who make up 29 percent of the city's population) filed 53 percent of all complaints in 1996'.¹¹⁵

- *Obedience to the law and perceptions of police legitimacy:* A further extension of the original argument is put suggested by PN Grabosky who states that zero tolerance policing (or any version of aggressive policing for that matter) has the potential to break down the relationship of trust required between the police and the public. He writes: 'Heavy-handed law enforcement can destroy the legitimacy of police, making their job difficult if not impossible. Emerging evidence suggests that the less respectful police are towards suspects and citizens generally, the less people will be inclined to comply with the law...a legitimate police institution fosters obedience to the law itself'.¹¹⁶ As Dixon and Maher state, in warning New South Wales police officers not to adopt the New York model, 'Efficiency requires legitimacy'.¹¹⁷
- *Incarceration rates and greater criminalisation:* Leading on from the above, Cunneen puts the case that zero tolerance policing will lead to far greater levels of criminalisation, 'In particular, minority group, which already have large proportions of their male population with criminal records, will see even greater degrees of

¹¹³ 'Safir defends frisking policy before a panel of skeptics', *The New York Times On the Web*, 20 April 1999. Safir also gave the racial breakdown of the 362-member Street Crimes Unit: 82% white; 3% black; 14% Hispanic; and 1% Asian.

¹¹⁴ E Kolbert, 'The perils of safety', *The New Yorker*, 22 March 1999, p 56.

¹¹⁵ JA Greene, 'Zero tolerance: a case study of police policies and practice in New York' (1999) 45 *Crime and Delinquency* 171 at 177.

¹¹⁶ PN Grabosky, *Zero tolerance policing*, p 3.

¹¹⁷ D Dixon and L Maher, 'Law enforcement, harm minimization and risk management in a street-level drug market', *Paper presented to the Australasian Conference on Drugs Strategy*, Adelaide, 27-29 April 1999, p 15. Cited is Professor Sherman's finding from his survey of what works in policing crime prevention that 'the less respectful police are towards suspects and citizens generally, the less people will comply with the law'.

criminalisation. This will further compound social and economic marginalisation'.¹¹⁸ Comparing New York's aggressive model of policing with San Diego's more community-based approach, Greene concluded that 'the San Diego strategy seems better designed to support and sustain vital elements of community social organization that can inhibit criminality and build safer neighbourhoods over the long run'.¹¹⁹ Greene cited the work of Tracey Mears, a law professor at the University of Chicago, which suggests that 'get tough' measures that lead to lengthy incarceration of a large number of young offenders (notably drug offenders) may offer a measure of short-term relief for law-abiding residents. The difficulty is that, in the long-term, the negative consequences may wash out the short-term positives: 'This is because the deterrent effects of such a strategy are weak at best, whereas its damaging effects - disruption of family ties, stigmatizing barriers to labor market participation, increased levels of alienation and distrust - may prove crimogenic in themselves'.¹²⁰ Thus, as the recent National Institute of Justice report on *Preventing Crime- What Works, What Doesn't, What's Promising* noted, while zero tolerance may reduce violent crime in the short-term, its longer-term consequences for people arrested for minor offences need to be evaluated: 'The data suggests that zero tolerance programs should be evaluated in relation to long-term effects on those arrested, as well as short-term effects on community crime rates'.¹²¹ With the same considerations in mind, Dixon has said that 'New York has more than three times as many people in gaol now as it did in 1980'.¹²²

- *Resource costs:* Jayne Marshall of the South Australian Office of Crime Statistics has identified three main resource implications associated with zero tolerance policing. The first is the cost of hiring many more police officers when, as Cunneen and others have argued, crime has been reduced almost as much in other US cities with far more modest increase in police numbers or even actual decreases. A second resource implication relates to the need for greater court resources to deal with increased arrests, with Marshall commenting that current court workloads in New York City are 'very high', with each of the 107 judges in 1997 expected to adjudicate an average of 5,600 cases a year (compared to approximately 1,440 cases per magistrate in South Australia in 1997/98). The third resource implication refers back to the growth in the prison population under zero tolerance policing and the subsequent need for additional prison facilities. Marshall notes in this regard that

¹¹⁸ C Cunneen, Zero tolerance policing: implications for indigenous people, p 5.

¹¹⁹ JA Greene, 'Zero tolerance: a case study of police policies and practice in New York' (1999) 45 *Crime and Delinquency* 171 at 185.

¹²⁰ Ibid at 182.

¹²¹ LW Sherman et al, *Preventing Crime: What Works, What Doesn't, What's Promising*, A Report to the US Congress, 1997, pp 8-29.

¹²² D Dixon, 'Broken windows, zero tolerance, and the New York miracle', *Paper presented to the Australian and New Zealand Society of Criminology Conference*, 8-10 July 1998 at p 10.

the number of prisoners in New York increased by 25% between 1993 and 1997.¹²³

Contrasting perspectives: As ever in the field of criminology, there is room for alternative perceptions and interpretations. For example:

- *Incarceration rates revisited:* having set out the figures for the increase in the New York prison population between 1993 and 1997, Marshall then makes reference to Brereton's argument that this increase is more likely the result of tougher sentencing policies than tougher policing and is, in any event, 'actually lower than the 41.5% growth in the total United States prison population between 1992 and 1996'.¹²⁴ Brereton takes issue with Dixon and other on this point, stating that 'Some commentators ...have predicted that the introduction of a more assertive style policing into New York will result in a substantial expansion of the custodial population, but there is little evidence, as yet, of such an effect'. He went on to say: 'It could be argued that the general drop in crime in New York City and elsewhere in the United States has disguised the potential long term impact of the NYPD model on the incarceration rate, but this is a matter of speculation. To be fair, the evidence is equally consistent with the counter claim that the crime reductions in offending which can be achieved under this model will more than compensate for the impact of any short term increase in apprehension rates'.¹²⁵

Another perspective is gained from Silverman's work. In relation to incarceration rates, he argues that the rise in the New York State prison population in recent years has been modest, no more than an annual rate of 7.8% - 'hardly enough to reduce crime significantly'.¹²⁶ To this he adds, 'the number of annual additions to the prison system actually declined 10.3 percent during this period, with city residents constituting a stable 70 percent of the annual state prison admissions in recent years. The number of inmates serving sentences of one year or less for misdemeanor convictions in the city's jails has remained stable...In addition, New York's prison growth rate ranks as the nation's third lowest from 1992 to 1997'.¹²⁷

- *Police-public relations reconsidered:* Brereton is also very cautious in his analysis of the implications of the New York policing model for complaints against the police. His conclusion in this respect is that 'it is difficult to determine the extent, if at all, to which adoption of the NYPD model has led to an increase in the overall level of police-civilian conflict in New York City. Excessive force complaints, after increasing for a time, are now back to pre-1994 levels and the rate of police

¹²³ J Marshall, *Zero tolerance policing*, 8.

¹²⁴ *Ibid.*

¹²⁵ D Brereton, *Zero tolerance and the NYPD: Has it worked there and will it work here?*, p 9.

¹²⁶ *Ibid*, p 10.

¹²⁷ EB Silverman, *NYPD Battles Crime*, p 10.

shootings has fallen to an historical low;¹²⁸ on the other hand, the upsurge in serious arrest-related complaints in 1997 and the Diallo shooting and its aftermath lend weight to arguments that police aggressiveness is on the rise, at least in some areas'.¹²⁹ More decided in his views is Professor Eli Silverman who argues that interaction between the police and the community has increased since the introduction of zero tolerance policing . He states, 'As a group, precinct commanders and their staff are more in contact with the communities today than at any time during the past ten years. They are now in a position to be more sensitive to community needs because along with zero tolerance-style policing, precinct commanders have more authority, as well as accountability, than they ever had before'.¹³⁰

- *Continued support for zero tolerance:* Against those who point to the excesses and errors associated with zero tolerance policing, a case is made for the reform or fine-tuning of that approach but not its abandonment. Indeed, even if it is accepted that many (or even most) New Yorkers are concerned about police incursions into civil and political rights, as Cameron Stewart suggests in a recent article, it is by no means certain that the same people would want to alter the fundamentals of policing strategy. Stewart continues: 'Yet while most New Yorkers would like the police to be less aggressive, there appears to be no broad based support for them to abandon zero tolerance. Most seem willing to risk the occasional tragic mistake in return for the continued low crime rate'.¹³¹ Whether that is an accurate reflection of majority opinion on the issue can be debated. However, the comment does suggest an underlying sense of support for the NYPD policing experiment, or at least with the general thrust it has taken and the results it appears to have achieved. As Massing wrote, 'most New Yorkers are grateful for the new sense of peace on their streets. To them, the "police revolution" seems real enough'.¹³² Responding to the particular claim that zero tolerance policing controls crime by essentially segregating the underclass, Silverman states, 'Many of the so-called underclass are themselves the victims of crime. It is these very groups who have experienced the most dramatic decline in crimes and who have also welcomed the police presence in their communities'.¹³³
- *Other considerations:* In any event, it could argued, the claim that aggressive zero

¹²⁸ As noted, Cunneen would seem to dispute the figures relied on by Brereton (note 110).

¹²⁹ D Brereton, *Zero tolerance and the NYPD: Has it worker there and will it work here?*, p 11.

¹³⁰ EB Silverman, 'Below zero tolerance: the New York Experience, from *Zero tolerance policing* edited by RH Burke, p 60.

¹³¹ C Stewart, 'Crime and reason', *The Australian Magazine*, 29 May 1999, p 22.

¹³² M Massing, 'The blue revolution' p 33.

¹³³ EB Silverman, 'Below zero tolerance: the New York Experience', from *Zero tolerance policing* edited by RH Burke, p 58.

tolerance policing will harm the legitimacy of the police and thereby foster disobedience to the law is clearly contradicted by the facts. Even if the premise of the argument is accepted, that zero tolerance policing has damaged police legitimacy in New York, its conclusion that this will result in more crime is obviously wrong. Crime is down, not up.

Comments: Again, the obvious comment to make is that any cost-benefit analysis of the New York model is sure to give rise to competing and conflicting interpretations. The one thing we would not expect to find is agreement and consensus either among criminologists or New Yorkers themselves. At the street level the balance of costs and benefits vary between one person and another, perhaps depending in part on race. Criminologists, on the other hand, may find that the costs are no easier to pin down in clear terms than are the benefits gained in the prevention of crime. This should not be read as being too negative but a warning of complexity and a reminder that the evaluation of the NYPD policing model is an ongoing project.

7. THE RELEVANCE OF ZERO TOLERANCE POLICING TO NEW SOUTH WALES

Dixon's analysis: The most forthright analysis to date of the relevance (and irrelevance) of zero tolerance policing to New South Wales is found in the work of Associate Professor David Dixon. In essence, there are two sides to this analysis. On the 'irrelevant' side, Dixon maintains that significant differences between New York and New South Wales, notably in relation to gun use and ownership, along with the historical acceptance of the discretionary nature of police powers in Australia, undercuts the relevance of the New York model.¹³⁴ The idea that one could apply the same tactics and achieve the same outcomes is dismissed. On the 'relevant' side, Dixon argues that, in New South Wales as elsewhere, the idea of zero tolerance policing is 'far from being an insignificant slogan'. On the contrary, for Dixon it represents a general move away from community and problem-oriented policing towards a more aggressive approach in which the bottom-line is that a certain 'in-your-face' policing style can have a significant effect on crime.¹³⁵

The Wood Royal Commission into the NSW Police Force stated that community policing was adopted in 1986-87 in the State as the 'principal operational strategy'. The Wood Royal Commission then noted that 'Community consultation was seen as central to a successful community policing strategy' and it went on to cite the comment in the *Annual Report, 1987-88* of the NSW Police Force which said: 'Community-based policing is primarily concerned with the prevention of crime and social disorder through the co-operative efforts of police and the community. The fundamental theme of community-based policing is to deliver an improved police service by establishing an effective communication network

¹³⁴ D Dixon, 'Broken windows, zero tolerance, and the New York miracle' (1998) 10 *Current Issues in Criminal Justice* 96 at 98.

¹³⁵ These different models of policing are compared at Appendix A.

between police and the community'.¹³⁶

Dixon's argument is that the current trends represent the emergence of a 'new paradigm in policing', one which undermines the nexus of relationships established between the community and the police. That this new paradigm is influential at present in New South Wales is suggested in a recent paper by Dixon and Maher where they say:

It is particularly worrying to see New South Wales Police officers being encouraged to engage in 'in-your-face' policing and to see their performance judged in Operations and Crime Reviews by rates at which they stop and search, move on, and arrest people, without reference to other indicators such as complaints and police-public relations.¹³⁷

For Dixon, as for Cunneen, such a change would be a step-backwards to a discredited policing style which, among other things, would have an adverse impact on indigenous people.

Darcy's response: In March 1999 a member of the New South Wales Police, David Darcy, responded to some of the issues raised by Dixon. Basically, Darcy acknowledges that policing style in New South Wales is changing, 'with large scale, tightly scripted, high profile policing operations addressing street violence and disorder more prevalent than they have been for many years'; 'Yes', he states, 'New South Wales police have readily adopted some elements of zero tolerance, such as tactical deployment of police using the latest crime mapping technology, high profile saturation style activities and increased levels of accountability of supervisors and managers...'. However, Darcy adds:

many of its elements, despite comment to the contrary, have been abandoned because they are not useful in the Australian policing context. Put simply, the New York policing environment has little in common with its Australian counterpart and astute police managers, whilst 'dabbling' with some of its elements, have quickly realised the efficacy of attempting to implement the New York form of zero tolerance is questionable.¹³⁸

Focusing on Operation *City Safe*, described by Darcy as 'one strategy in a whole raft of strategies aimed at reducing crime and disorder in the inner city', he argues the case that, with the effective use of police discretionary powers, based on a 'firm but fair' policing philosophy, crime rates and patterns were 'significantly affected or disrupted' within the

¹³⁶ Royal Commission into the NSW Police Force, *Final Report, Volume II: Reform*, May 1997, p 384. What is lacking here is an evaluation of the actual effectiveness of community policing.

¹³⁷ D Dixon and L Maher, 'Law enforcement, harm minimization and risk management in a street-level drug market', *Paper presented to the Australasian Conference on Drugs Strategy*, Adelaide, 27-29 April 1999, p 15.

¹³⁸ D Darcy, 'Zero tolerance - not quite the influence on New South Wales policing some would have you believe' (1999) 10 *Current Issues in Criminal Justice* 290.

central Sydney area. One conclusion Darcy draws from the experience is that ‘Tightly scripted, high profile policing operations focusing on crime hot spots can by themselves significantly reduce violent street crime within the central Sydney area’. The second, which contradicts Dixon, is that ‘the recent increased focus on high profile policing operations does not inevitably lead to the abandonment of community and problem-oriented policing’. A third conclusion is that ‘The changes that are being seen in policing practice have less to do with the influence of zero tolerance and more to do with a major organisational overhaul’: what is being seen now, Darcy claims, ‘is the materialisation of Commissioner Ryan’s strategic vision’.¹³⁹

Operation Midia: Darcy does not discuss *Operation Midia* which has attracted comments in the press in recent weeks. As noted, this operation, which runs from Nowra police station, has targeted 600 repeat drug offenders with the purpose of reducing property and other crimes. It aims, in effect, ‘at having officers actively prevent crime rather than react after the event’.¹⁴⁰ Its results in reducing crime are said to be ‘unprecedented’. According to the commander of the South-Eastern Region, Christine Nixon, the new powers given the police, such as knife laws and stop-and-search powers had ‘given police confidence’. She is also reported to have said that the operation and its results are a sign of ‘organisational growth’ since the Police Royal Commission.¹⁴¹

Comments: The debate is likely to continue. Dixon’s central claim is that zero tolerance policing represents ‘a new paradigm in policing and may presage as significant a shift as that which occurred when community policing challenged law enforcement policing’.¹⁴² The prediction remains to be tested in future years, although the growing ‘confidence’ suggested by such operations as *Operation Midia* would seem to indicate changing attitudes and approaches in the NSW police force, a shift towards having police officers actively prevent crime rather than reacting after the event.

8. CONCLUSIONS

In a sense it may be too early to make hard and fast conclusions about the NYPD policing model. As Brereton observed, ‘It is difficult to provide a balanced assessment of the NYPD model, given the lack of reliable evaluation data and the amount of hype generated about the New York “miracle” over the last few years...’. However, Brereton does offer four tentative conclusions, as follows: (a) the re-engineering of the NYPD most probably has contributed to some reduction in crime in New York City, but certainly not to the extent that has been claimed: (b) a variety of policing strategies have been associated with

¹³⁹ Ibid at 297.

¹⁴⁰ ‘Prying police drive criminals out of town’, *The Sydney Morning Herald*, 12 July 1999.

¹⁴¹ ‘Intensive anti-crime campaign takes off’, *The Sydney Morning Herald*, 13 July 1999.

¹⁴² D Dixon, ‘Broken windows, zero tolerance, and the New York miracle’ (1998) 10 *Current Issues in Criminal Justice* 96 at 104.

reductions in crime in other large US cities in recent years and there 'is little evidence to support claims of New York exceptionalism'; (c) the model has not yet had a major impact on the city's custodial population; and (d) while there is growing concern about some of the tactics used by the NYPD, there is 'only limited evidence available to support the claim that police-civilian conflict has increased overall.

Needless to say, many would disagree in a general or particular sense with these conclusions. Silverman, for example, would want to draw a far more positive picture of the achievements of the NYPD. Cunneen, on the other hand, would certainly dispute aspects of the fourth conclusion. Perhaps for the long-term, as Dixon suggests, the significance of the NYPD model lies more in the shift it seems to suggest towards a more assertive policing style, this being a shift in fundamental attitudes about the part played by the police force in fighting crime and the relationship it has with the community it serves. But, again, that remains to be seen.

As noted, much of the debate about the impact of the NYPD model of policing appears to say as much about the limitations of criminology as an explanatory and predictive discipline as it does about the model itself. In that regard it stands as a good object lesson in the imprecise art of social explanation. With that in mind, it may be that, for the foreseeable future at least, hard and fast conclusions in respect to 'the New York miracle' will remain as contested as they are elusive.

APPENDIX A

Comparisons of Different Policing Models

D. Brereton

‘Zero Tolerance and the NYPD: Has it worked there and will it work here?’

Paper presented to The Australian Institute of Criminology Conference

‘Mapping the Boundaries of Australia’s Criminal Justice System’

Canberra

22-23 March 1999

COMPARISON OF DIFFERENT POLICING MODELS

	Traditional Reactive Model	NYPD Model	Community Policing Model	Problem-Oriented Policing
Main Priorities	Process-focused responding to calls; investigating and solving crimes	Outcome-focused reducing crime and disorder	Process-focused improving police-community relations; addressing community concerns	Outcome and process-focused identifying and solving policing problems; working with community
Extent of involvement of non-police 'players'	Low -- policing seen as a specialised activity	Relatively low -- police primarily responsible for developing and implementing crime reduction strategies	High -- emphasis on working with 'the community' and its representatives	High -- emphasis on establishing 'partnerships' with other agencies to address problems
Utilisation of information	Low -- delivery of policing services highly routinised	High -- information used to identify problem areas, target resources and evaluate impacts	Moderate -- emphasis on using information at local level, rather than using it to drive organisation-wide responses'	High -- information used to identify problems, develop strategies and evaluate responses
Utilisation of coercive policing strategies	Moderate to high -- occasional 'crackdowns' and 'blitzes'; some tolerance of minor offences	High -- extensive use of arrest, stop and search powers; vigorous enforcement of minor offences	Low -- emphasis on policing by consensus; police seek to work with the community	Low to Moderate -- coercive strategies used where appropriate to problem, but only one of a menu of options