

The BJA Executive Session on

Police Leadership

2013

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The principals are supported in their work by a team that includes project co-directors Darrel W. Stephens and Bill Geller, project strategist Nancy McKeon, and BJA Senior Policy Advisor Steve Edwards.

Five Police Departments Building Trust and Collaboration

Innovations in Policing Clinic
Yale Law School
Seattle, Washington

Full Case

by

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Full Case

Trust and Collaboration in Seattle, Washington

Jeremy Kaplan-Lyman, in collaboration with members of Yale Law School's Innovations in Policing Clinic

Introduction

In the early 2000s, the Seattle Police Department's (SPD) approach to drug enforcement was a lightning rod for controversy. For years, the SPD had used arrest and prosecution as its primary mechanism to fight drug use and drug dealing. But its enforcement efforts had failed to get a grip on open-air drug markets in the city's downtown core. Residents were increasingly vociferous in their complaints about open drug dealing, drug use, and the disorder that resulted from drug activity. At the same time, SPD's drug enforcement practices were subject to mounting criticism from civil rights organizations for being unduly punitive and racially discriminatory. Despite the general dissatisfaction with SPD's approach to drug enforcement, there was little dialogue between SPD and its critics about how to improve drug policing in Seattle. That all changed with a single question: "What if we all agreed to do something different in regards to drug enforcement; what would be better?"¹

Captain Steve Brown asked this question to Lisa Daugaard, the head of the Racial Disparity Project. Captain Brown's unit, the Anti-Crime Team in the West Precinct, was being sued by Ms. Daugaard's organization for allegedly enforcing drug laws on the basis of race. While the lawsuit reflected the acrimony that has historically characterized the relationship between the SPD and civil rights organizations, Captain Brown's question marked the beginning of a new collaborative effort to create a better approach to drug enforcement in Seattle.

That collaborative effort resulted in the October 2011 launch of Law Enforcement Assisted Diversion (LEAD). The new initiative represents the product of a multi-year collaborative effort between a broad coalition of organizations, ranging from the Racial Disparity Project and the American Civil Liberties Union (ACLU) of Washington, to the SPD and the King County Prosecutor's office. Under LEAD, qualifying low-level drug and prostitution offenders would no longer be subject to arrest and prosecution, but would instead be diverted to community-based treatment and support services.

This report tells the story of the creation of LEAD and provides a preliminary evaluation of the program. As of the writing of this report, LEAD has been in operation for less than six months. While scientific and robust analysis of LEAD's outcomes is not yet possible, there are important lessons to be learned from LEAD for police leaders and reformers. First, the creation of LEAD illustrates the potential for creating innovative policing reforms when historic adversaries decide to stop fighting, find common ground, and collaborate on a solution. As LEAD shows, such collaborative efforts not only produce more effective innovations but might also have benefits for criminal justice reform outside the

¹ Sara Jean Green, *Seattle Program Aims to Break the Habit of Incarceration October*, The Seattle Times, Oct. 13, 2011.

bounds of the program. Second, LEAD’s diversion model has the potential to make policing more effective while being less punitive. Although it is still too early to evaluate the effectiveness of LEAD’s approach, LEAD’s benefits may extend beyond individuals that are diverted to social services to include improving the police’s approach drug-addicted and homeless populations. While the success of LEAD will ultimately be measured by its ability to reduce recidivism amongst its participants as well as its cost-effectiveness, its collateral benefits in creating a less punitive form of policing and possibly enhancing trust between marginalized communities and the police should not be ignored.

This report is organized as follows. Part II provides a brief background to Seattle’s approach to drug enforcement and the problems that LEAD was created to address. Part III narrates the creation of LEAD. Part IV gives an overview of LEAD’s design and compares and contrasts its intervention model to the popular approaches of drug courts and Drug Market Intervention (DMI). Finally, Part V provides preliminary evaluation of LEAD.

Background on Drug Enforcement in Seattle

The City of Seattle

Seattle is a mid-sized city of just over 600,000 residents in western Washington.² Seattle has seen healthy population growth, with the city’s population growing by 8% from 2000 to 2010. Despite pockets of vast diversity,³ the city’s majority is white and it is one of the whitest cities of its size in the United States.⁴

White (non-Hispanic)	66.3%
Black	7.9 %
American Indian	.8%
Asian	14%
Hispanic	6.6%
Mixed race	5%

Just over 100,000 residents of Seattle are foreign born, accounting for about 17% of the overall population.⁶ The foreign-born population is rapidly growing, as 35,000 foreign-born people have moved to Seattle since 2000, accounting for 33% of new residents.⁷

² United States Census Bureau, City and County QuickFacts, Seattle, Washington (hereinafter QuickFacts Seattle) <http://quickfacts.census.gov/qfd/states/53/5363000.html>.

³ G. Willow Wilson, *America’s Most Diverse Zip Code Shows the Way*, Aol News, Mar. 25, 2010, <http://www.aolnews.com/2010/03/25/opinion-americas-most-diverse-zip-code-shows-the-way>.

⁴ Lornet Turnbull and Justin Mayo, *Census Ranks Seattle Among Whitest Big Cities*, The Seattle Times, Apr. 23, 2011, http://seattletimes.nwsourc.com/html/localnews/2014859409_censusrace24m.html.

⁵ QuickFacts Seattle, *supra* note 2.

⁶ U.S. Census Bureau, Statistical Abstract of the United States: 2010 43 (2010), <http://www.census.gov/compendia/statab/2012/tables/12s0039.pdf>.

⁷ *Id.*

Historically, Asian immigrants have constituted the largest percentage of Seattle's foreign-born population.⁸ More recently, however, Seattle has seen an increase in residents from east Africa and Latin American countries. Seattle is a major destination for refugee populations, attracting the fifth most refugees of any city in the United States between 1983 and 2004.⁹

Seattle is a relatively affluent city, with a median household income significantly above the national average and its rate of poverty significantly below the national average.¹⁰ However, poverty rates vary widely by race. The poverty rate of white Seattleites is 8.5%, while it is 23% and 22% for the city's black and Latino communities, respectively.¹¹ About half of all Seattle residents are homeowners.¹² Seattle also has a large and highly visible homeless population. About 9000 people are estimated to be homeless in King County,¹³ the county in which Seattle is situated, and about 1700 are estimated to sleep on Seattle's streets (not counting those in homeless shelters) on any given night.¹⁴ While it is difficult to compare the size of the homeless population of Seattle to that of other cities, demographers estimate that the State of Washington has the fifth highest rate of homelessness in the country.¹⁵

Seattle is considered one of the most liberal cities in the country¹⁶ and it touts itself as a diverse and racially tolerant city. However, the city is also home to significant racial inequalities. The core of the city has been host to intense gentrification over the past 30 years, as wealthier and whiter residents are displacing people of color, who are in turn moving to the southern suburbs.¹⁷ As a result, Seattle is becoming less diverse.¹⁸ Additionally, the city has a history of race-based residential segregation that persists to the present day, with communities of color typically concentrated in the southern half of the

⁸ *Birthplace of Seattle's Foreign-Born Population*, Demographic Snapshots, Jul., 2003, at 1, http://www.seattle.gov/dpd/cms/groups/pan/@pan/documents/web_informational/dpds_006762.pdf.

⁹ Audrey Singer and David Jackson, *Still Yearning to be Free*, The Seattle Times, Nov. 2, 2006, http://seattletimes.nwsourc.com/html/opinion/2003336425_davidjackson02.html.

¹⁰ *Compare QuickFacts Seattle*, *supra* note 2 with United States Census Bureau, State and County QuickFacts, USA, <http://quickfacts.census.gov/qfd/states/00000.html>.

¹¹ *Seattle Poverty Rates Vary Widely*, Demographic Snapshots, Dec., 2003, at 1, http://www.seattle.gov/dpd/cms/groups/pan/@pan/documents/web_informational/dpds_006763.pdf.

¹² QuickFacts Seattle, *supra* note 2.

¹³ *Scope of Homelessness in King County*, Committee to End Homelessness King County, <http://www.cehkc.org/scope/cost.aspx> (last visited Dec. 15, 2011).

¹⁴ *One Night Count*, Seattle/ King County Coalition on Homelessness, http://www.homeless-info.org/one_night_count/2011_results.php (last visited Dec. 15, 2011).

¹⁵ U.S. Department of Housing and Urban Development Office of Community Planning and Development, *The 2008 Annual Homeless Assessment Report to Congress: A Summary of Findings 6*, <http://www.housepdx.com/pdfs/housing/2008AHARSummaryanfullreport.pdf>.

¹⁶ The Bay Area Center for Voting and Research, *The Most Conservative and Liberal Cities in the United States 10*, <http://alt.coxnewsweb.com/statesman/metro/081205libs.pdf>.

¹⁷ Lornet Turnbull and Justin Mayo, *Shifting Population Changes Face of South King County*, Feb. 23, 2011, http://seattletimes.nwsourc.com/html/localnews/2014314512_censussouthking24m.html.

¹⁸ Dick Morrill, *Seattle Is Shedding Diversity; The State's Minority Populations Grow*, Crosscut.com, Apr. 29, 2011, <http://crosscut.com/2011/04/29/seattle/20804/Seattle-is-shedding-diversity%3B-the-state-s-minority-populations-grow/>.

city.¹⁹ Significant racial disparities exist on a number of other metrics as well. Over half of white Seattleites are homeowners compared to 46% of Asians, 36% of blacks, and 25% of Latinos.²⁰ Black and Latino Seattleites also have significantly lower average incomes than do the city's white and Asian populations.²¹

Like any major city, Seattle has its fair share of crime. The rate of violent crime in Seattle is significantly lower than the national average for cities of similar size.²² On the other hand, the rate of property crime in Seattle is higher than the national average for cities of comparable size.²³ Like many other American cities, crime in Seattle has been on the decline for well over a decade. The rate of homicide in 2010 dropped to its lowest level since 1956.²⁴

Despite gentrification, Seattle's downtown core and surrounding neighborhoods continue to face significant levels of disorder and crime. The city's homeless population is concentrated in its downtown core. A high concentration of social service providers also draws many addicted people to downtown neighborhoods like Belltown.²⁵ In response, a powerful downtown business lobby has publicly waged a campaign to criminalize panhandling in this area.²⁶ Other downtown residents have increasingly complained about feeling insecure in the face of higher levels of street disorder.²⁷ Typical complaints relate to trash, aggressive panhandling, and open-air drug markets.²⁸

¹⁹ See Segregation Maps, Seattle Civil Rights & Labor History Project, http://depts.washington.edu/civilr/segregation_maps.htm (last visited Dec. 15, 2011) (various maps showing historic patterns of racial segregation).

²⁰ Kate Davis, Housing Segregation in Seattle 18 (2005), http://www.seattle.gov/civilrights/documents/housing_seg_in_seattle-2005.pdf.

²¹ *Id.*

²² In 2010, the national violent crime rate for mid-sized cities was 806.6 reported incidents per 100,000 people. FBI, Table 16, Rate: Number of Crimes per 100,000 Inhabitants by Population Group, 2010, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/tables/10tbl16.xls> (last visited Dec. 15, 2011) (hereinafter FBI, Table 16). In 2010, the violent crime rate in Seattle was 566.7 reported incidents per 100,000 people.

FBI, Table 8, Washington, Rate: Number of Crimes per 100,000 Inhabitants by Population Group, 2010, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/tables/table-8/10tbl08wa.xls> (last visited Dec. 15, 2011) (hereinafter FBI, Table 8).

²³ In 2010, the national property crime rate for mid-sized cities was 4,588.7 reported incidents per 100,000 people. FBI, Table 16, *supra* note 22. In 2010, the property crime rate in Seattle was 5,350.9 reported incidents per 100,000 people. FBI, Table 8, *supra* note 22.

²⁴ Telephone interview with Chief John Diaz, Chief, Seattle Police Department (Dec. 15, 2011).

²⁵ Telephone interview with Steve Brown, Captain, Seattle Police Department (Dec. 28, 2012).

²⁶ Dominic Holden, *The Law that Targets Strange People on the Street*, *The Stranger*, Apr. 13, 2010, <http://www.thestranger.com/seattle/the-law-that-targets-strange-people-on-the-street/Content?oid=3846937>.

²⁷ Telephone interview with Steve Brown, *supra* note 25; Interview with Brian Kraus, Sergeant, Seattle Police Department (Feb. 06, 2012).

²⁸ Telephone interview with Steve Brown, *supra* note 25; Interview with Brian Kraus, *supra* note 27.

The Seattle Police Department

Chief John Diaz has led the SPD since 2009. The department has over 1200 full-time sworn officers, with over 850 employees at the rank of Officer²⁹ and an annual budget of over \$240 million.³⁰ The racial makeup of the SPD is similar to that of the city of Seattle, though slightly less diverse. In 2008, 76% of sworn personnel were white, 9% were black, 8% were Asian, 5% were Latino, and 2% were American Indian.³¹

A Short History of the Problem

Like many other American cities, drugs became a social problem in Seattle during the 1980s and 1990s. In the early 1990s, heroin surfaced as a major drug in Seattle, leading some to dub Seattle the “heroin capital,”³² a dubious distinction highlighted by the high-profile addictions and overdoses of a string of Seattle grunge musicians.³³ Crack cocaine, powder cocaine, crystal meth, and ecstasy became common over this time period as well.³⁴ As drug use increased, so did the broader social impacts associated with drug use and sales. Open-air drug markets dotted the city, particularly throughout downtown Seattle, Belltown, Capitol Hill,³⁵ the University District, parts of the Central District, and South Seattle. Increased drug use and sales also brought increased drug-related violence, particularly in the Central District and South Seattle.



Figure 1-- Seattle Neighborhood Map. Belltown is located in the Downtown neighborhood.

As drug use and sales increased throughout the 1990s, so too did the demand that the SPD do something about drugs.³⁶ Historically, the city has taken a very liberal approach to the policing of marijuana, rarely going out of its way to arrest individuals with small

²⁹ The rank of officer does not include detectives, sergeants, lieutenants, captains, or command staff. Seattle Police Department, 2009 Annual Report 14 (2010), http://www.seattle.gov/police/publications/AR/AR09_secure.pdf.

³⁰ *Id.* at 13.

³¹ Seattle Police Department, 2008 Annual Report 17 (2009), http://www.seattle.gov/police/publications/AR/AR08_secure.pdf.

³² Amy Jennings, *Shithole*, *The Stranger*, Oct. 23, 2012, <http://www.thestranger.com/seattle/shithole/Content?oid=16016>.

³³ See Deena Dasein, *Rock 'N' Horse: Rock's Heroin Connection*, Dec. 1996, <http://www.furious.com/perfect/heroin.html> (“When the grunge thing first started happening,’ an insider recently quoted in *Rolling Stone* relates, ‘I never met a band out of Seattle that wasn't either dabbling or full-on heroin addicts.’”); “*Seattle Scene*” *And Heroin Use: How Bad Is It?*, *The Seattle Times*, Apr. 20, 1994, <http://community.seattletimes.nwsourc.com/archive/?date=19940420&slug=1906421> (discussing heroin use in Seattle relative to other cities).

³⁴ Telephone interview with Steve Brown, *supra* note 25.

³⁵ Jennings, *supra* note 32.

³⁶ Telephone interview with Steve Brown, *supra* note 25; Interview with Jim Pugel, *supra* note Error!

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amounts of marijuana³⁷ and officially making it the police's lowest priority via a 2003 initiative.³⁸ But limiting the sale and use of more serious drugs like crack cocaine, powder cocaine, heroin, and crystal meth had been a priority of the SPD since in the 1990s and into the 2000s.³⁹

While a significant portion of Seattle's drug use and sales takes place indoors,⁴⁰ the SPD's approach to low-level drug enforcement has focused on outdoor drug markets.⁴¹ Because the SPD's low-level drug enforcement is highly responsive to civilian complaints, the department has tended to focus on open-air drug dealing and use, which creates more public disorder and generates more civilian complaints.⁴² Processes of gentrification have heightened pressure on the SPD to crack down on outdoor drug dealing.⁴³ New residents of neighborhoods with active drug trades frequently complain to the police about perceived drug-related activity.⁴⁴ As a result, the SPD's limited drug-enforcement resources have been devoted primarily to policing outdoor drug use and drug dealing.⁴⁵

Historically, the SPD addressed low-level drug enforcement through a model of arrest, prosecution, and incarceration. As one Sergeant described SPD's pre-LEAD approach, "they go to jail."⁴⁶ While some social services were available for drug-dependent individuals,⁴⁷ social services were not connected to policing efforts. Throughout the 1990s and 2000s, the SPD's primary tool of policing low-level drug use and sales was buy-and-bust operations.⁴⁸ In a buy-and-bust, police officers purchase drugs from dealers, who are later arrested for selling drugs. The SPD often used buy-and-bust operations to target localized drug markets on a particular street corner or block. A typical buy-and-bust would involve around 10 officers and result in 6 to 10 arrests.⁴⁹ While the SPD has employed other tactics, including "see-pop" (where officers simply observe drug dealing on the street and then arrest the drug dealer), reverse buy-busts, and DMI, these tactics have only been sporadically used and not nearly as often as buy-and-busts.⁵⁰

³⁷ See Beth Kaiman, Hazy Future for "Lowest Priority" Marijuana Initiative, *The Seattle Times*, Aug. 31, 2003 (discussing lack of police enforcement of low-level marijuana possession).

³⁸ See Katherine Beckett and Steve Herbert, *The Consequences and Costs of Marijuana Prohibition 48-52*, 2008 (describing Initiative 75, which made the policing of small amounts of marijuana officially the Seattle's the policing of marijuana "intended for adult personal use, the City's lowest law enforcement priority").

³⁹ Telephone interview with Steve Brown, *supra* note 25.

⁴⁰ See Tal Klement and Elizabeth Siggins, *A Window of Opportunity: Addressing the Complexities of the Relationship Between Drug Enforcement and Racial Disparity in Seattle*, 1 *Seattle Journal for Social Justice* 165, 206 (2002) ("The SPD recognizes that a significant portion of drug dealing and drug use occurs behind closed doors and out of public view.").

⁴¹ *Id.* at 199; Telephone interview with Steve Brown, *supra* note 25.

⁴² Klement and Siggins, *supra* note 40, at 199; Telephone interview with Steve Brown, *supra* note 25.

⁴³ Telephone interview with Steve Brown, *supra* note 25; Klement and Siggins, *supra* note 40, at 200.

⁴⁴ Telephone interview with Steve Brown, *supra* note 25.

⁴⁵ *Id.*; Klement and Siggins, *supra* note 40, at 202.

⁴⁶ Interview with Thomas Yoon, Sergeant, Seattle Police Department (Feb. 06, 2012).

⁴⁷ Interview with caseworkers at Evergreen Treatment Services (Feb. 09, 2012).

⁴⁸ Klement and Siggins, *supra* note 40, at 198; Interview with Thomas Yoon, *supra* note 46.

⁴⁹ Klement and Siggins, *supra* note 40, at 109.

⁵⁰ Telephone interview with Steve Brown, *supra* note 25; Interview with Thomas Yoon, *supra* note 46; Interview with Brian Kraus, Sergeant, Seattle Police Department (Feb. 06, 2012).

In the late 1990s and early 2000s, SPD's approach to low-level drug enforcement came under fire from a variety of civil rights organizations and community groups. First, civil rights organizations assailed the SPD for racial disparities in arrests for low-level drug offenses. In 2000 and 2008, two high-profile studies revealed that the SPD was arresting blacks for drug-related offenses at rates vastly disproportionate to their percentage of the population and to the rate at which they were using and selling drugs.⁵¹ A 2008 report by sociologist Katherine Beckett found that, despite the fact that the majority of people who use and deliver serious drugs in Seattle are white, a majority of those arrested for delivery of drugs are black.⁵² Professor Beckett reported that in 2006 the drug arrest rate for delivery of serious drugs was 21 times higher for blacks than it was for whites.⁵³ These racial disparities were among the worst in the nation, as the report noted "only one of 38 comparable mid-sized cities had a higher degree of racial disproportionality in drug arrests than Seattle."⁵⁴

Public defenders in Seattle seized on this data to fight the drug prosecutions of their clients. The Racial Disparity Project, part of a public defender agency, brought a selective enforcement challenge on behalf of 19 of its clients who were facing drug charges.⁵⁵ The ensuing litigation lasted several years and pitted the Racial Disparity Project in a public battle against the King County Prosecutor's office and SPD about the racialized nature of drug enforcement in Seattle. The case ultimately ended in a settlement.⁵⁶

The SPD consistently disclaimed that any of its drug enforcement was based on race. While department leaders admitted that they wanted to address racial disparities, they nonetheless emphasized that their policing tactics were responsive to civilian complaints and not based on race. Police Chief Gil Kerlikowske stated that his officers had a duty to combat open-air drug dealing: "There's no greater form of racism than not going into an area because it might be perceived as being racially insensitive."⁵⁷

While public defenders challenged racial disparities in the SPD's drug enforcement practices, other advocates were increasingly concerned with the rising toll of incarceration caused by the city and state's drug policies. Critics in Seattle and Washington State blamed rising rates of incarceration on drug laws that imposed harsh sentences even for low-level drug offenses. For example, the 19 defendants whose cases were consolidated for the Racial Disparity Project's selective enforcement challenge collectively faced 177 years of prison for "an alleged amount of six grams of drug with a total dollar amount of

⁵¹ See Sam Skolnik, *Drug Arrests Target Blacks Most Often: Study Finds Racial Disparity; Chief Pledges to Review Issue*, Seattle Post-Intelligencer, May 14, 2001 (reporting on 2000 Harvard Kennedy School study finding racial disparities in drug enforcement in Seattle); Katherine Beckett, *Race and Drug Law Enforcement in Seattle*, 2008, [http://old.defender.org/files/Race%20and%20Drug%20Law%20Enforcement%20in%20Seattle%20\(2004\).pdf](http://old.defender.org/files/Race%20and%20Drug%20Law%20Enforcement%20in%20Seattle%20(2004).pdf).

⁵² Beckett, *supra* note 51.

⁵³ *Id.* at 15.

⁵⁴ *Id.* at 55.

⁵⁵ The Racial Disparity Project, *Helping the Client and Changing the System 3*, http://brennan.3cdn.net/8ed2e2ee73bed7db31_xsm6bhyjo.pdf.

⁵⁶ Green, *supra* note 1.

⁵⁷ Skolnik, *supra* note 51.

600 dollars.”⁵⁸ As the attorney for the defendants noted, one plain M&M weighs one gram.⁵⁹ Partially as a result of these punitive drug laws, the rate of incarceration for 18 to 49 year olds in Washington nearly tripled from 1970 to 2000.⁶⁰ Critics were quick to point out that the massive expansion of Washington’s prison population had been accompanied by rising levels of racial disparity in prison rates. Although only 3% of Washington’s population was black, 51% of individuals sent to state prison were black.⁶¹ Community and civil rights activists argued that the increase in incarceration had vast collateral consequences for marginalized communities and those arrested for low-level drug offenses.⁶² Moreover, critics contended that using arrests, prosecution, and arrests to deal with low-level drug offenses was simply a very expensive and ineffective way to deal with the harms associated with the use and selling of drugs.⁶³

Privately, the SPD also harbored concerns about its drug enforcement practices. Police officers increasingly realized that a handful of repeat offenders made up a significant part of their workload and that arrests were not disrupting the patterns of criminality of “frequent fliers” in the criminal justice system. One survey by the SPD found that in one downtown neighborhood, 54 individuals had been collectively arrested over 2,700 times.⁶⁴ Sergeant Sean Whitcomb, a spokesman for the SPD, stated, “Officers are frustrated arresting the same people over and over again. We know it’s not working.”⁶⁵

Moreover, despite a decade of drug enforcement focused on drug hotspots, open-air drug markets throughout the city persisted unabated. Seattle police officials admitted that their drug enforcement efforts at best temporarily shut down drug markets, which often just moved blocks away. As one officer explained, “[w]e want to create an environment where people can work and live without fear. But, realistically, really we’re only displacing it. For every person we arrest, another one steps in.”⁶⁶ Another officer described his job as “‘herding sheep’ from one street corner to the next.”⁶⁷ Other officers claimed that their efforts produced at least some meaningful results, limited though they may have been:

I remember when I was first in the South Precinct, typically when we made a buy on a corner, for the rest of the night that street was quiet. So, even though we haven’t won the war—far from it—we’re keeping it down to a dull roar. We ensured

⁵⁸ The Racial Disparity Project, *supra* note 55 at 3.

⁵⁹ *Id.*

⁶⁰ Washington State Institute for Public Policy, Options to Stabilize Prison Populations in Washington: Interim Report 2 (Jan. 2006), <http://www.wsipp.wa.gov/rptfiles/06-01-1202.pdf>.

⁶¹ Le Roi Brashears, *Same Crime, More Time*, Seattle Post-Intelligencer, May 29, 2007.

⁶² See, e.g., ACLU Drug Policy Litigation Project, Public Housing (Jan. 2003), <http://www.aclu-wa.org/sites/default/files/attachments/Public%20Housing.pdf> (detailing consequences of drug conviction on public housing benefits).

⁶³ See Jane Hadley, *A Unified Call to End the War on Drugs: Doctors, Pharmacists, Lawyers Say it Doesn’t Work*, Seattle Post-Intelligencer, Dec. 13, 2001 (interviewing critics of the war on drugs).

⁶⁴ Green, *supra* note 1.

⁶⁵ *Id.*

⁶⁶ Klement and Siggins, *supra* note **Error! Bookmark not defined.**, at 201.

⁶⁷ *Id.* at 215.

the neighborhoods, we wouldn't let it become a free-fire zone and we haven't. That's about the best we ever did.⁶⁸

Assistant Chief Jim Pugel stated that the SPD's efforts were effective only to the extent that they "reduced the number of complaints we received."⁶⁹ But he was quick to emphasize the cyclical nature of drug markets and the reality that "we can't be there all of the time."⁷⁰ Even if their efforts produced safer neighborhoods, police officers conducting low-level drug enforcement realized that their efforts were not in any way reducing levels of drug use or permanently eliminating drug markets.

Moreover, police officials and prosecutors were increasingly concerned about the cost of arresting and incarcerating low-level drug offenders.⁷¹ Due to the increasing tightening of budgets, prosecutors in Seattle and King County were prosecuting fewer and fewer low-level drug crimes.⁷² New prosecutorial policies impacted policing practices. Increasingly, officers realized that the low-level drug offenders they were arresting would be back on the street a few days later and many would not be prosecuted at all.⁷³ Lieutenant Nollette explained, "I don't think it was any secret that what we were doing before LEAD was that we were arresting people repeatedly and we were booking people repeatedly on drug crimes, and what we were seeing is charges not being filed or people being back on the street the next day. So there was a frustration that we weren't impacting the problem."⁷⁴ As a result, police officers increasingly did not arrest individuals they encountered who were only carrying drug paraphernalia and small amounts of controlled substances or using drugs.

By the late 2000s, seemingly every stakeholder in Seattle's criminal justice process was aligned against the state of Seattle's drug enforcement policies. As Lisa Daugaard, supervisor of the Racial Disparity Project, recalled, "Virtually everybody involved in our local justice system was frustrated with the status quo and felt like it wasn't delivering the kinds of outcomes we wanted to see."⁷⁵

⁶⁸ *Id.* at 201.

⁶⁹ Telephone interview with Jim Pugel, *supra* note **Error! Bookmark not defined.**

⁷⁰ *Id.*

⁷¹ Green, *supra* note 1.

⁷² Interview with Thomas Yoon, *supra* note 46.

⁷³ *Id.*; Interview with Brian Kraus, *supra* note 27.

⁷⁴ Interview with Deanna Nollette, Lieutenant, Seattle Police Department (Feb. 06, 2012).

⁷⁵ *Tell me More: Treatment, Not Jail, For Low Level Drug Crimes* (NPR radio broadcast Nov. 25, 2011), <http://www.npr.org/2011/11/25/142704483/treatment-not-jail-for-low-level-drug-crimes>.

Reframing the Question to Produce a Collaborative Solution

To some, the crisis of low-level drug enforcement in Seattle may seem unsurprising. Many police departments across the country face criticism for their drug enforcement techniques and have difficulty in shutting down drug markets. It is also not surprising that a variety of institutions and community groups disagreed about the origins of the problem. What sets Seattle apart, however, is how a set of leaders from a broad array of institutions that were traditionally adversarial to one another came together to try to create a new approach to low-level drug policing.

The genesis for the collaborative project that grew into LEAD was an intensely adversarial moment. As mentioned above, the Racial Disparity Project had brought a selective enforcement action against the SPD and the King County Prosecutor's office. Attorneys for the Racial Disparity Project were in the middle of a particularly intense deposition of SPD Captain Steve Brown, supervisor of the precinct covering the city's downtown core, where a significant portion of the department's drug enforcement took place. In a break from questioning, Captain Brown turned the tables on Ms. Daugaard, the supervisor of the Racial Disparity Project, asking her, "What would you do for the community?"⁷⁶

The significance of this moment—this question really—cannot be understated. The question forced Ms. Daugaard to reframe her entire approach to the problem. Traditionally, Ms. Daugaard and other civil rights advocates operated from a position of critique. But Captain Brown's question forced her to reconsider her approach and focus on proactive interventions. At the same time, Captain Brown's question also suggested that he was open to a different way forward. Instead of only defending his officers' practices, Captain Brown's question indicated that he was willing to seek out common ground, listen to his adversary, and potentially build a better solution.

Captain Brown later revealed that his decision to ask Ms. Daugaard about her thoughts was not spontaneous. A short time before this interaction, Captain Brown had travelled to Northern Ireland with future SPD Chief John Diaz.⁷⁷ While there, Captain Brown saw how Northern Irish police agencies were working with both Catholic and Protestant communities to build trust with the police and bridge deep-seated communal tension.⁷⁸ For the police officers and communities he observed, collaborating with their historic adversaries was a powerful tool to creating security.⁷⁹ Captain Brown returned to Seattle with a commitment to building bridges with the SPD's critics to come up with better approaches to the problems that faced the city.⁸⁰

While the Racial Disparity Project would soon settle the selective enforcement legal action, Ms. Daugaard took Captain Brown's question as an opportunity to work together on solving the problems with Seattle's approach to drug enforcement. She invited leaders from the Prosecutor's office and the SPD to work with the Racial Disparity Project to try

⁷⁶ Telephone interview with Steve Brown, *supra* note 25.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

to develop a solution.⁸¹ Leaders from the Racial Disparity Project sat down for a meeting with King County Prosecutor Dan Satterberg and Captain Brown.⁸² Each side came to the meeting concerned with the state of drug enforcement but without solid answers about how to go about correcting the problem. As Assistant Chief Pugel explained, “all of the sides realized we all had our own mission: we were throwing them in jail and not doing anything else; [the Racial Disparity project] was suing and not doing anything else; prosecutors were prosecuting but not doing anything else.” The leaders had a conversation to see if they shared any common ground. Captain Brown repeated the question he had asked before, framing the purpose of the meeting: “What if we all agreed to do something different in regards to drug enforcement; what would be better?”⁸³ This moment of collaboration spawned LEAD.

Although the former adversaries did not agree on everything about drug enforcement, they did agree on some fundamental principles. Those principles were later articulated in a Memorandum of Understanding as follows:

- “Booking, prosecuting, and jailing individuals committing low-level drug offenses . . . has had limited effectiveness in improving either public safety or public order in the neighborhoods.
- “Interventions that connect low-level drug offenders with services may cost less and be more successful at reducing future criminal behavior than processing these individuals through the criminal justice system.”⁸⁴

Even after agreeing to work together to create a new approach to low-level drug enforcement, the process of creating LEAD took several years. Ms. Daugaard organized a working group representing a broad coalition of legal and political organizations to oversee the creation of LEAD, which included the Racial Disparity Project, the ACLU of Washington, the King County Prosecutor’s office, the Seattle City Attorney’s office, the Seattle Mayor’s office, and the SPD.⁸⁵ By incorporating so many different organizations into the design of the new program, LEAD organizers ensured that the program had broad political support.

The eventual result of this working group was LEAD, a pre-booking program that diverted low-level drug offenders into intensive, community-based social services. The program is being funded by grants from private foundations for four years, at which point its leaders hope they can point to positive results to justify a permanent funding stream from either the city or the state government.⁸⁶

⁸¹ *Id.*

⁸² Interview with Dan Satterberg, Prosecuting Attorney, King County Prosecutor’s Office (Feb. 06, 2012).

⁸³ Green, *supra* note 1.

⁸⁴ Memorandum of Understanding Regarding Law Enforcement Assisted Diversion Program Coordinating Group: Formation, Governance, and Responsibilities (2010) (on file with author) (hereinafter “Memorandum of Understanding”), at 1.

⁸⁵ Interview with Anita Khandelwal, former Staff Attorney, Racial Disparity Project (Feb. 08, 2012).

⁸⁶ Law Enforcement Assisted Diversion (LEAD): Briefing Memo (on file with author).

LEAD Program Design

LEAD is designed to work as follows. When an individual without a disqualifying criminal history is arrested for a low-level drug crime, a specially trained police officer may refer that individual to a dedicated social service provider instead of booking and charging the detained individual.⁸⁷ By intervening at this stage, LEAD seeks to limit offenders' criminal records and the amount of time they spend behind bars, thus preventing the criminogenic effects of incarceration and reducing the high costs of processing an individual in the criminal justice system. At the same time, by providing drug offenders with intensive social services, LEAD attempts to create a rehabilitation-based intervention that helps individuals clean up and straighten out, which will also hopefully be more cost effective than cyclical arrest and incarceration. As Ms. Daugaard explains, “the basic idea of LEAD is to offer those on society's margins the same opportunity to carve a new path as middle-class kids whose parents stage interventions and have the resources to help them get off drugs[.]”⁸⁸ LEAD also endeavors to improve public safety by reducing drug use, drug selling, and the quality-of-life problems associated with open-air drug markets. As Sergeant Whitcomb of the SPD states, “[O]ur primary objective is public safety and if we can achieve that mission by getting people out of the cycle of low-level crime and getting them into a situation where they can get treatment to address a root cause, it’s a huge victory.”⁸⁹

The remainder of this section provides a detailed look at how LEAD works and contrasts LEAD to other models of social service intervention.

A Step-by-Step Explanation of How LEAD Works

Step 1: Identification of Potential Clients

Potential clients are initially identified by specially trained officers in LEAD-eligible precincts. Officers can refer individuals to LEAD that they have detained and have probable cause to arrest for a low-level drug crime or prostitution. They can also make “social contact” referrals for individuals who they think would be a good fit for the program but are not currently facing arrest or criminal charges.⁹⁰ Social contact referrals can only be made for individuals with prior documented involvement in drugs (possession or selling) or prostitution.⁹¹

Not every low-level drug offender is eligible for LEAD. Individuals arrested under the following circumstances are presumptively not eligible for LEAD:

⁸⁷ See discussion *supra* section IV.A.

⁸⁸ Green, *supra* note 1.

⁸⁹ *Id.*

⁹⁰ Law Enforcement Assisted Diversion (LEAD)—Belltown Referral and Diversion Protocol—Final (on file with author) (hereinafter “LEAD Protocol”), at 1-2, 4.

⁹¹ *Id.* at 4. While LEAD was originally designed as a pre-arrest diversion program for low-level drug offenses, its organizers expanded the potential client population to include prostitution offenders. Organizers of the program were concerned that an exclusive focus on low-level drug offenders would lead to the disproportionate inclusion of men in the program.

- The amount of drugs involved exceeds three grams.⁹²;
- The individual does not appear amenable to diversion;
- The suspected drug activity involves delivery or possession with intent to deliver, and there is reason to believe the suspect is dealing for profit above a subsistence income;
- The individual appears to exploit minors or others in a drug dealing enterprise;
- The individual is suspected of promoting prostitution; and/or
- The individual has disqualifying criminal history as follows:
 - Without time limitation: Any conviction for Murder 1 or 2, Arson 1 or 2, Robbery 1, Assault 1, kidnapping, VUFA 1, or any sex offense (or attempt of any crime listed here).
 - Within the past 10 years: Any conviction for a domestic violence offense, Robbery 2, Assault 2 or 3, Burglary 1 or 2, or VUFA 2.⁹³

Even individuals with more serious criminal backgrounds can be referred to LEAD social services *post*-booking at the recommendation of the arresting officer.⁹⁴ Finally, police officers are trained only to refer individuals to LEAD who show an interest in and willingness to receive social services as opposed to being booked and sent to jail.⁹⁵

Step 2: Pre-Booking Diversion

When a police officer has identified a low-level offender who would benefit from LEAD services, that officer contacts a LEAD case manager, who then goes to the station immediately.⁹⁶ Although that individual is not booked at this time, the officer nonetheless forwards the LEAD-referred individuals' files to the Seattle City Attorney's office (which is responsible for prosecuting misdemeanor crimes) or the King County Prosecutor (which is responsible for prosecuting felonies). These offices ultimately maintain discretion over whether or not to charge an arrested person.⁹⁷

Step 3: Social Service Intervention and Ongoing Monitoring

LEAD contracted with Evergreen Treatment Services, a nonprofit addiction treatment provider, to hire caseworkers for LEAD clients.⁹⁸ The caseworkers' caseloads are made up exclusively of LEAD participants.⁹⁹

One of LEAD's core operating principles calls for "immediate access to needed services for program participants, rather than referral to a waiting list, in order to maximize the

⁹² However, in situations where an individual has been arrested for a low-level drug offense—for example, delivery of or possession with intent to deliver marijuana, or for possession of, delivery of, or possession with intent to deliver prescription controlled substances (pills)—officers have latitude to consider the other criteria without reference to the amount limitation.

⁹³ *Id.* at 3-4.

⁹⁴ *Id.*

⁹⁵ *Id.* at 1.

⁹⁶ *Id.* at 5.

⁹⁷ *Id.* at 3.

⁹⁸ Interview with Ron Jackson, Executive Director, Evergreen Treatment Services (Feb. 09, 2012).

⁹⁹ *Id.*

likelihood of participant success.”¹⁰⁰ This model of immediate access to services helps ensure that offenders are not simply arrested and released with a meaningless referral to service providers; it also ensures that individuals do not fall through the cracks in the system.

Generally, the police officer relinquishes custody of the LEAD-referred client as soon as a caseworker arrives at the police station.¹⁰¹ That caseworker completes an initial assessment of the causes behind the client’s participation in drugs or prostitution and immediately connects the client with services that address his or her acute needs.¹⁰² For example, if the client is homeless, the caseworker may arrange for temporary housing in their initial meeting.

After the initial intake, the caseworker works with the client to create an individual intervention plan. Each individual intervention plan is suited to the client’s particular needs and may include “assistance with housing, treatment, education, job training, job placement, licensing assistance, small business counseling, child care or other services.”¹⁰³

LEAD employs several core operating principles that guide its provision of social services. First, LEAD adheres to a non-displacement principle, which means that LEAD never jumps the line for access to social services.¹⁰⁴

Second, LEAD follows a harm reduction approach, which means “a focus on individual and community wellness, rather than an exclusive focus on sobriety, by immediately addressing the participant’s drug activity and any other factors driving his/her problematic behavior, even if complete abstinence from drug use is not immediately achieved.”¹⁰⁵ The harm reduction model assumes that overcoming drug addiction is a long process and that setbacks are to be expected.¹⁰⁶ As a result, continued and ongoing participation in LEAD does not depend on abstention from drugs.

Finally, LEAD requires its participants to participate in peer counseling, first as a client and later as counselor.¹⁰⁷ Peer-based interventions are highly effective in improving outcomes in marginalized populations. In the first phase of the program, LEAD program staff work with participants in group sessions to develop life and leadership skills.¹⁰⁸ As participants move through the program, they become outreach workers and peer counselors, working with new participants to connect them to needed services and helping them achieve success in their efforts to lead a new life.¹⁰⁹

¹⁰⁰ Concept Paper, Law Enforcement Assisted Diversion (LEAD): A Pre-Booking Diversion Model for Low-Level Drug Offenses (on file with author) (hereinafter “LEAD Concept Paper”), at 3.

¹⁰¹ LEAD Protocol, at 5-6.

¹⁰² *Id.* at 6.

¹⁰³ *Id.* at 6.

¹⁰⁴ *Id.* at 8.

¹⁰⁵ LEAD Concept Paper, at 3.

¹⁰⁶ Interview with Ron Jackson, *supra* note 98.

¹⁰⁷ Interview with John Page, Program Director, Racial Disparity Project (Feb. 07, 2012).

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

There is no time limit on how long a LEAD participant can receive services and benefits. As the LEAD protocol explains, individual intervention programs are “designed to maximize the odds of a participant being able to achieve self-sufficiency independent of program funding at some point in the relatively near term.”¹¹⁰ However, if LEAD program staff finds that the participant is not making good use of the resources provided, services may be withdrawn.¹¹¹

There are no formal punitive sanctions built into LEAD’s program design. By participating in the program, the King County Prosecutor’s office and the Seattle Attorney’s office do not relinquish their jurisdiction over or power to bring charges against LEAD participants for past crimes or crimes they commit while in LEAD.¹¹² However, prosecutors have committed to working in conjunction with LEAD, which means exercising their discretion not to bring charges against LEAD participants if this route can be avoided.¹¹³

Distinguishing LEAD from Other Models of Social Service Intervention

At its core, LEAD reflects the view that the best approach to addressing low-level drug and prostitution behavior is not through punitive intervention (arrest, prosecution, and incarceration) but rather through the provision of social services. By offering intensive social services, LEAD hopes to address the underlying causes that lead low-level offenders to choose to participate in prostitution or the drug trade.

LEAD is not unique in suggesting that punitive measures are not the proper way to fight low-level drug crime and prostitution. The program’s DMI and drug courts, used throughout the country and in Seattle, provide a specific point of comparison. Three features distinguish LEAD from DMI and drug courts. First, unlike drug courts, LEAD is a pre-arrest diversion. Second, unlike DMI and drug courts, LEAD invests substantial discretion in street-level police officers to identify individuals for participation in the program. Finally, also unlike both drug courts and DMI, LEAD employs a harm reduction, non-punitive approach to diverting low-level offenders.

¹¹⁰ LEAD Protocol, at 7.

¹¹¹ *Id.*

¹¹² Interview with Dan Satterberg, *supra* note 82.

¹¹³ *Id.*

Drug Market Intervention

Drug Market Intervention (DMI), also known as the High Point Model, is a focused deterrence approach to shutting down localized open-air drug markets. In the DMI model, police and prosecutors work together to build strong cases for prosecution against participants in an open-air drug market. Mid- and upper-level players in that market are then aggressively prosecuted, while lower-level offenders are offered an out. Working with community members and social service providers, the police and prosecutors notify lower-level participants that their drug dealing days are over. At the same time, participants in the local drug market are offered robust social services to help them embark upon a clean life but are warned that they will be aggressively prosecuted if they continue to engage in any aspect of drug use or drug dealing. While DMI functions as a pre-arrest diversion for low-level offenders, its focused deterrence approach relies on the threat of harsh punishments. Seattle has employed the DMI approach to shut down drug markets. There has been no published evaluations documenting the success of DMI on reducing crime rates and the recidivism of offenders as applied in Seattle, though other cities claim the model has been successful.

Pre-Arrest Diversion

LEAD is distinct from drug courts in that it diverts individuals *pre*-arrest. Referral to LEAD occurs before participants are formally arrested, booked, processed, jailed, and charged.¹¹⁴ As a pre-arrest diversion, LEAD may save more resources than drug courts. To get access to the social services and treatment programs offered in drug court, individuals must first be arrested and booked and charged. In the process, potential drug court participants use scarce criminal justice resources: they may spend days to weeks in jail and receive a public defender. Drug courts also harness the resources of the court system to initiate the participant's treatment plan and monitor the participant's progress and compliance with the conditions of the program. As a pre-arrest diversion, LEAD cuts out many of the intermediate and potentially costly steps between arrest and access to social services. As King County Prosecutor Satterberg explained, "If we believe that treatment works, why do we involve the court?"¹¹⁵

¹¹⁴ See discussion *supra* section IV.A.

¹¹⁵ Interview with Dan Satterberg, *supra* note 82.

Drug Courts

Local and state governments have turned to drug courts to divert low-level drug offenders from the criminal justice system. Founded in late 1980s, drug courts have become one of the most popular approaches to diverting drug offenders from incarceration nationally, with over 2,000 courts now functioning across the country.¹¹⁶ Drug courts offer non-incarceral, drug treatment-focused alternatives to low-level drug offenders. In most drug court systems, low-level drug offenders are referred to drug court in lieu of prosecution at the discretion of the prosecutor.¹¹⁷ To participate in drug court, defendants often must give up their rights to contest the charges against them and may be required to enter a plea of guilty.¹¹⁸ Instead of levying punitive prison sentences or fines, drug courts generally impose drug treatment requirements on defendants and offer offenders social services.¹¹⁹ The drug court is usually involved in the ongoing monitoring of the defendant's progress in complying with the conditions imposed by the drug court.¹²⁰ The judges in drug courts retain discretion to penalize participants for not complying with the conditions of their sentences and often threaten incarceration or actually incarcerate participants who fail to comply with the conditions of their participation in the program.¹²¹

Proponents of drug courts claim that they are effective in keeping low-level drug offenders out of prison, reducing participant recidivism, and saving scarce public dollars.¹²² Critics claim that drug courts require participants to give up their constitutional rights to challenge the charges against them and widen the dragnet of the criminal justice system.¹²³ Critics also question the methodology and results of empirical studies that claim that drug courts are cost-effective and reduce recidivism, noting in particular that drug courts often skim offenders that are most likely not to reoffend and that drug courts' ongoing judicial monitoring requirement is unnecessarily resource-intensive.¹²⁴ The State of Washington has several drug courts in operation, including one in King County and another in the Municipal Courts of Seattle.

Pre-arrest diversions may also lead to better outcomes for program participants as compared to drug courts. As LEAD participants are not formally arrested or charged and because they avoid pre-trial incarceration, they also avoid some of the negative collateral consequences typically associated with incarceration and arrest.

Street-Level Officer Discretion

¹¹⁶ C. West Huddleston et al., *Painting the Current Picture: A National Report Card on Drug Courts and Other Problem-Solving Court Programs in the United States* 3 (May 2008), http://www.ndci.org/sites/default/files/ndci/PCPII1_web%5B1%5D.pdf.

¹¹⁷ Eric J. Miller, *Embracing Addiction: Drug Courts and the False Promise of Judicial Interventionism*, 65 Ohio St. L.J. 1479, 1489-91 (2004).

¹¹⁸ *Id.* at 1489-92.

¹¹⁹ *Id.*

¹²⁰ *Id.* at 1491-95.

¹²¹ *Id.* at 1499.

¹²² *See generally*, Huddleston et. al, *supra* note 116, at 6-18 (reviewing benefits of drug courts).

¹²³ *See generally*, Miller, *supra* note 117.

¹²⁴ *Id.*

The LEAD model is distinct from DMI and drug courts in that it invests street-level police officers with substantial discretion in selecting individuals to divert from arrest as opposed to vesting discretion with prosecutors and judges. In drug courts, prosecutors decide whether to charge defendants or to offer them drug court as an option.¹²⁵ Once in drug court, the judge wields enormous power to incarcerate participants who do not comply with the conditions of treatment plan.¹²⁶ In the DMI model, prosecutors maintain plenary power to revoke their initial non-prosecution offer. In contrast, LEAD vests discretion with street-level police officers. In LEAD, specially trained officers who patrol the street are the actors who decide whether or not an individual they encounter or arrest should be referred to LEAD. While prosecutors formally retain jurisdiction to decide whether to charge a LEAD-referred individual for past or future crimes, they have nonetheless committed to working with LEAD individuals to ensure they can become successful in the program.

Increasing the discretion of street-level officers to choose whether or not to arrest an individual may be disconcerting to civil libertarians. It is true that this broader discretion creates openings for racial profiling and uneven enforcement of the law. Yet the ACLU and public defender organizations involved in LEAD's design and governance have supported giving line officers discretion to decide whom to divert. LEAD's approach recognizes that police officers may be best positioned to identify individuals most in need of social service intervention. Moreover, police officers should be well situated to identify the target population of LEAD—low-level drug and prostitution offenders who cycle in and out of the criminal justice system. Finally, the concerns of civil libertarians may be tempered by the fact that the LEAD discretion vested in police officers does not actually expand police officers' power to arrest or punish individuals; they cannot levy punishments beyond the *ex ante* status quo.

Harm Reduction

LEAD is also unique in its adoption of a harm reduction strategy. Harm reduction does not emphasize criminalization of drug use and abstinence. Instead, "harm reduction shifts the focus away from drug use itself to the consequences or effects of addictive behavior."¹²⁷ Thus, a harm reduction model holds that the withholding of social services until an individual is completely clean not only harms the participant in their process of recovery (withholding the very services necessary to attain abstinence in the first place) but also leads to the spending of more public dollars. As Ron Jackson, the Executive Director of Evergreen Treatment Services, explained, "we [are] going to outreach and engage and continue to work with people whether they espoused an abstinence goal or went into treatment or not."¹²⁸ Harm reduction can be contrasted with the approaches of drug courts and DMIs, which premise the provision of social services and the withholding of criminal charges on participants' abstention from criminal behavior.

¹²⁵ See *supra* notes 117-121 and accompanying discussion.

¹²⁶ See *supra* notes 119 -121 and accompanying discussion.

¹²⁷ G. Alan Marlatt, *Harm Reduction: Come as You Are*, 21 *Addictive Behaviors* 779, 785 (1996).

¹²⁸ Interview with Ron Jackson, *supra* note 98.

1811 Eastlake: Harm Reduction in Action

A controversial housing program for chronically alcoholic homeless people in Seattle, known as 1811 Eastlake, illustrates the potential benefits of the harm reduction approach. The program provides housing for “homeless adults with severe alcohol problems who use local crisis services at the highest levels.”¹²⁹ Unlike similar services, 1811 Eastlake imposes no sobriety requirement and allows residents to consume alcohol on site. While conventional wisdom suggests that chronic alcoholics might simply drink themselves to death in this situation, a recent study demonstrates that the reverse is true. Residents at 1811 Eastlake drank less and less over the course of their stay. The study reported that the “[m]edian number of drinks dropped steadily, from 15.7 per day prior to housing to 14.0, 12.5, and 10.6 per day at 6, 9, and 12 months in housing, respectively.”¹³⁰ Moreover, the study found that the longer participants were in Eastlake housing, the less burden they put on the local health system. “[Program] participants had total costs of \$8,175,922 in the year prior to the study, or median costs of \$4066 per person per month . . . Median monthly costs decreased to \$1492 . . . and \$958 . . . after 6 and 12 months in housing, respectively.”¹³¹ After accounting for housing costs, each resident of 1811 Eastlake saved the city an average of \$2449 per month in public health and emergency expenditures.¹³² LEAD’s organizers are hopeful that its adoption of a comparable harm reduction model will provide similar results.

Early Notes on Implementation

LEAD was officially launched in October 2011. Currently, LEAD is only operating in the Belltown neighborhood of Seattle. Belltown is a densely populated and highly class-stratified neighborhood in Seattle’s downtown core, with many homeless individuals living at the base of luxury condo developments. Belltown has historically been a rough neighborhood, home to working-class bars and dozens of social service providers for drug-dependent individuals and the city’s homeless population.¹³³ Since the early 1990s, however, Belltown has become increasingly gentrified, with developers building upscale high-rise condos and expensive restaurants and nightclubs moving into the neighborhood.¹³⁴ Despite this gentrification and increased policing, open-air drug markets, concentrated homelessness, and street disorder remain common in the neighborhood. Moreover, SPD’s drug enforcement efforts in Belltown and other downtown neighborhoods were increasingly scrutinized for arresting a disproportionate numbers of people of color for drug crimes.¹³⁵ Thus, rolling out LEAD in Belltown sought to address the two problems that led to LEAD’s creation in the first



Belltown in the foreground.

¹²⁹ Mary E. Larimer et Al., *Health Care and Public Service Use and Cost Before and After Provision of Housing for Chronically Homeless Persons With Alcohol Problems*, 301 JAMA 1349, 1350 (2009).

¹³⁰ *Id.* at 1354-55.

¹³¹ *Id.* at 1349.

¹³² *Id.*

¹³³ Telephone interview with Steve Brown, *supra* note 25.

¹³⁴ *Id.*; Interview with Thomas Yoon, *supra* note 46.

¹³⁵ See discussion *supra* notes 51-54 and accompanying text.

place: reducing racial disparities in the criminal justice system and creating a lasting solution to open-air drug markets.

As of the writing of this report, it is still too early to draw many conclusions about the implementation of LEAD. In what follows, this section provide a brief description of how the implementation of LEAD has gone so far.

Focus Groups and Training

The prevalence of drug use, open-air drug markets, and street disorder in Belltown also posed a problem for LEAD’s organizers. Given the frequent complaints from residents that the police were not doing enough to stop drug dealing in Belltown, how could they develop buy-in from the community to arrest *fewer* drug dealers, drug users, and sex workers? Moreover, how could they develop buy-in from police officers who were used to arrest-focused tactics?

To initiate dialogue with officers and community members alike, LEAD hosted a series of focus groups before launching the program. LEAD invited business owners, social service providers, and Belltown residents to participate in a focus group specifically for community members. LEAD concurrently organized a focus group for the line officers who would implement LEAD. The focus groups served as a means to both disseminate information about LEAD and gather feedback from community members and officers.

In each focus group, the facilitator described LEAD and asked for reactions to the proposed program. Some of the reactions were predictable. In both the community and police focus groups, participants expressed concern that the program reflected a “hug-a-thug” approach to policing.¹³⁶ In addition to such responses, the focus groups provided an opportunity for meaningful discussion about the implementation of the proposed program. In the police focus groups, line officers wanted to make greater use of social contact referrals to the program. LEAD organizers later incorporated this suggestion into the program’s design.¹³⁷ The focus groups also enabled LEAD organizers to uncover potential misconceptions about the program.¹³⁸ Most importantly, the focus groups helped develop support for the program within each group. When it came time to train officers to implement the program, the fact that their suggestions were reflected in the training materials ultimately enabled more buy-in from officers.¹³⁹

In addition to the focus groups, officers implementing LEAD also went through a series of trainings. Part of this training included a discussion with case managers about the principles of harm reduction and how social services work. Despite some initial hesitancy from line officers, most individuals interviewed thought that officers were fairly receptive to implementing LEAD.¹⁴⁰ Although some officers were skeptical about the program, others saw it as a useful tool to combat drugs.¹⁴¹ Others, aware that their arrests of low-

¹³⁶ Interview with Anita Khandelwal, *supra* note 85.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

level drug and prostitution offenders did not result in prosecution, thought that LEAD would be helpful in getting drug-addicted individuals off the street. Still others were open to it simply because nothing else had worked and they did not see the harm in trying something new.¹⁴²

Officer Buy-In

Measuring officer enthusiasm for LEAD was difficult. All of the command staff interviewed expressed strong support for the program. The line officers interviewed also expressed support for the program, though to varying degrees. According to LEAD organizers, officers' responses to the program have ranged from support for the idea that social services will more effectively aid individuals, to the view that the program "can't hurt," to the idea that the program serves as a useful tool in the policing tool kit, to a realist's acceptance that LEAD is a better option than arresting individuals only to see them released a few days later. That said, given the limited scope of the Yale research team's visit, it was difficult to get a sense of how broad support for LEAD is among the line officers implementing the program. The research team conducting the site visit did not see any evidence that officers are not reasonably embracing the program.

The part of the LEAD program that both precinct leaders and line officers had the most trouble buying into was the harm reduction model. As Lieutenant Nollette explained:

Our view initially going in [was]: you get this opportunity, [and if] you blow it, you're done. You go to jail, you get charged, we prosecute. None of this is our low priority. It was an interesting conversation, in that [the service providers] were saying, no, that is part of recovery. . . . We are not going to force people to stop using. They can continue to use. We are looking at reducing their illegal behavior. That is a really hard thing for cops to get their head around.¹⁴³

It was not clear from the interviews with officers whether or not they have fully bought into the harm reduction model. That said, given the prosecutor's office's decision to generally not charge low-level drug offenses, SPD might be operating under a *de facto* harm reduction model anyway (at least with respects to whether or not to charge individuals arrested for minor possession).

Progress as of Site Visit

As of this team's site visit in February 2012, LEAD had been in operation for approximately six months. LEAD was implemented in the West Precinct by a select group of officers that make up the Anti-Crime Team, a squad that line officers can apply to join. As of February 2012, LEAD had 25 participants. Of those participants, 12 had been diverted from arrest while 12 were social contact referrals. LEAD's launch was slowed somewhat by the Occupy Seattle protests, which required the patrol time of the officers who would ordinarily make LEAD referrals.

A Preliminary Evaluation of a Promising Program

¹⁴² *Id.*

¹⁴³ Interview with Deanna Nollette, *supra* note 74.

LEAD is still in its infancy. A more robust and scientific evaluation of the program's outcomes will be possible down the line, but at present it is not possible to make many conclusions about the program.¹⁴⁴ That said, there are certain lessons that can already be drawn from the experience of creating and launching LEAD. This section first discusses what this author views as LEAD's two key interventions. It then discusses other lessons learned from the creation of LEAD and challenges that continue to face the program.

LEAD's Key Interventions

The Collaborative Model

The first aspect of LEAD that bears highlighting is its collaborative approach to police reform. The story of LEAD is fundamentally one of collaboration. The collaborative model that LEAD has developed has three distinct benefits:

- **LEAD's collaborative model facilitates powerful problem solving.**

One of the most powerful aspects of LEAD's model is that it creates a space for collaborative problem solving. LEAD's governing body is made up of representatives from a broad range of organizations, including the city and county prosecutor's offices, the Racial Disparity Project, the ACLU of Washington, the SPD, and Evergreen Treatment Services. At leadership team meetings, representatives from these organizations evaluate the LEAD's progress and debate potential reforms. These meetings create a space for individuals who would not ordinarily sit down together to share information and collaboratively solve problems. The attendance of organizations with divergent perspectives helps generate more robust ideas for improving the program design and implementation.

Additionally, during these meetings, the leadership team conducts case reviews, in which caseworkers review the progress of their LEAD-referred clients. As many of the LEAD participants have extensive ongoing legal problems, some of which predate their involvement in LEAD, case reviews allow prosecutors, defense attorneys, and police officers to work together to solve some of the legal problems that LEAD clients face. LEAD thus provides a mechanism for a set of traditional adversaries to work together to attempt to try to solve the problems of some of the most marginalized participants in the criminal justice system.

¹⁴⁴ LEAD has a comprehensive evaluation plan. LEAD's organizers recognize that the long-term sustainability of the program depends on their ability to demonstrate that the program produces outcomes. They plan to conduct a scientific evaluation of the program in three to four years. That study will compare the outcomes of LEAD participants on a number of metrics to a control population that did not receive LEAD services. Those metrics include:

- Levels of participation in drug and criminal activity
- Cost-savings to local criminal justice, health, and social service systems
- Success of participant's ability to attain housing, jobs, and education
- Rates of recidivism
- Levels of trust between the police and communities in which LEAD is implemented
- Overall net impact on public safety resources

LEAD's Collaborative Problem Solving in Action

In February, LEAD participant Mr. R was arrested. Like many other LEAD participants, Mr. R had been arrested and incarcerated dozens of times over his life. When Mr. R was originally referred to LEAD, he continued to struggle with drug abuse. The Department of Corrections Neighborhood Corrections team found him using drugs several times. He was also caught with three grams of cocaine, presumably for dealing purposes. But he eventually successfully completed a 90-day inpatient drug treatment. But on the day of his release from drug treatment, U.S. Marshals arrested him on an extradition warrant from Ohio. That warrant was for outstanding child payments of \$15,000.

Mr. R's arrest and potential extradition to Ohio would be devastating to any progress he made in LEAD. As Mr. R had no income, there would be no way for him to satisfy his debt and he likely faced an extended period of incarceration in Ohio. But LEAD's collaborative model provided a potential resource for Mr. R. Ian Goodhew, the Deputy Chief of Staff at the King County Prosecutor's office, and Isabel Bussarakum, an attorney with the Racial Disparity Project began to work together to assist Mr. R's attorney contest the extradition and work out some sort of settlement with the court in Ohio that would allow Mr. R to stay in Seattle.

- **LEAD's collaborative model facilitates the development of relationships that may have benefits beyond the bounds of LEAD.**

LEAD's collaborative model facilitates the development of working relationships between adversaries in the criminal justice system that may have benefits beyond the scope of the program. In reflecting on the process of creating LEAD, leaders from the police department, the prosecutors' office, the police department, and the Racial Disparity Project continuously discussed how working together on this project has forced them to recognize the perspectives of other actors in the criminal justice system. Lieutenant Nolette of the West Precinct commented:

Traditionally we have definitely been on opposite side[s] of most issues. . . . The planning has been interesting in that it has forced us to look at our expectations and look at the way we analyze things and to be able to discuss it with people who have a completely different way of analyzing things. Initially there was a lot more emotion behind it. And now we have come to see some commonality. . . . In the process of talking to people we realized we have the same goals and desires in what we wanted to accomplish. We just have different tools to use to try to get there.¹⁴⁵

Captain Brown emphasized that the benefits of collaborating with his former adversaries enabled communication and problem solving beyond the scope of LEAD:

¹⁴⁵ Interview with Deanna Nollette, *supra* note 74.

Before there was no real communication [about issues of policing]. But working together has opened communication. . . . Lisa [Daugaard] has my cell phone and my email. We meet on a regular basis for coffee or lunch. . . . She can call me directly when there is a problem, LEAD related or not. I trust her. And I believe she trusts me. It is a great relationship.¹⁴⁶

These types of relationships may enable LEAD's leaders to more effectively take on new problems in the criminal justice system going forward.

- **LEAD's collaborative model builds credibility and legitimacy.**

LEAD uses non-punitive alternatives to incarceration for low-level drug and prostitution offenders. Even in a liberal political climate like Seattle, such an approach may prove politically controversial. For example, when LEAD organizers ran a community focus group in Belltown, a large portion of residents and business owners complained that the reason for the ongoing street-level problems in the neighborhood was the lack of arrests and aggressive prosecutions of drug offenders.¹⁴⁷ However, the fact that LEAD represents the work of a diverse coalition of organizations from different parts of the criminal justice spectrum provides LEAD with more credibility in maintaining that arrest, prosecution, and incarceration are not necessarily the best approaches to drug enforcement.

The broad coalition involved with LEAD will also be important if the program ever faces a public-relations crisis. As a program that diverts individuals from incarceration, the possibility exists that a LEAD participant will go on to commit a serious crime. As LEAD is connected to the police department, the prosecutor's office, public defenders, and civil liberty organizations, it is well positioned to withstand a potential public-relations crisis.

Potential to indirectly improve policing practices beyond the bounds of LEAD

LEAD has the potential to change the way line officers police drug-addicted, mentally ill, and homeless populations. LEAD represents a new approach to policing in two respects. First, it asks line officers to consider whether the individual they are arresting would be amenable to social services. Second, it asks officers to embrace the harm reduction model. The LEAD model thus requires police officers to develop a more nuanced and multi-dimensional understanding of the drug or prostitution offender. Additionally, line officers implementing LEAD are often in close communication with LEAD participants' caseworkers. These relationships may also facilitate new approaches to policing. As one caseworker explained, "if [the officers] come to trust us and they come to see the change that comes to happen, then this could change the way the police approach their work."¹⁴⁸

The harm reduction approach may also bring about broader reforms to policing models. If LEAD is successful and can establish that its approach reduces recidivism and saves money, police departments in other cities may also adopt a harm reduction approach to

¹⁴⁶ Interview with Steve Brown, *supra* note 25.

¹⁴⁷ Interview with Anita Khandelwal, *supra* note 85.

¹⁴⁸ Interview with LEAD caseworkers (Feb. 9, 2012).

policing certain types of crime. This shift might be particularly important for the policing of crimes that stem from other social needs, such as street-level disorder due to homelessness and destructive behavior that results from drug addiction. By adopting a harm reduction approach, police departments may be able to reduce the overall burden on the local public health system and criminal justice system while improving outcomes for the individuals impacted.

Other Principles for Success and Lessons Learned

- *Focus groups are an effective tool to use before training officers in a new program.*

LEAD's use of focus groups to introduce the program to officers and community members is a model that other departments should consider replicating. Using focus groups provides community members and line officers an opportunity to give feedback about the proposed reforms and thereby gives organizers the opportunity to adjust the design of the proposed program in response. Moreover, the incorporation of officers' suggestions into the program design made it easier for line officers to buy into LEAD.

- *Make the intervention easy for line officers to implement.*

Time and time again, leaders from LEAD emphasized that one of the most important methods of achieving departmental buy-in was to create a protocol that did not require line officers to do extra work. Line officers only have to fill out a single sheet of paper—really a series of check boxes—in order to recommend an individual for LEAD. Police leadership and line officers said that it was easier for them to adopt LEAD because there was minimal extra time and paperwork required to implement the program.

- *Sometimes finding common ground enables advocates to achieve other goals indirectly.*

On its face, LEAD does not appear to be directed at reducing racial disparities or building trust and collaboration between marginalized communities and the police. Although one of the Racial Disparity Project's advocacy goals was to reduce racial disparities in drug arrests, they found that whenever they brought up race in their conversations with the SPD, they were not able to find common ground or make progress. However, even though LEAD is not explicitly tailored towards ending racial disparities in the criminal justice system, the program may still help achieve that outcome. If policing practices continue to adhere to the status quo, then line officers will continue to arrest a disproportionate number of people of color. Assuming officers' referral patterns do not produce reverse racial disparities (disproportionately referring white arrestees and social contacts), many of the individuals who would previously have been arrested will be diverted to social services. If the LEAD intervention is successful, we may expect to see less racial disparity in low-level drug prosecutions and incarceration. At the same time, if LEAD is implemented successfully, it may have the collateral effect of improving relationships between the police and marginalized communities, as the homeless and drug-addicted population in Seattle may no longer view the police solely as a punitive entity. Thus, although

reducing racial disparities in drug arrests, prosecutions, and incarcerations and building community trust might not be the explicit ends of LEAD, the program nevertheless might achieve those goals.

Ongoing Challenges

- *Getting officers to buy in to the harm reduction model.*

One ongoing challenge for LEAD is getting police officers to buy into the harm reduction model. Historically, the SPD has taken an abolitionist approach to low-level drug dealing and sex work, arresting and prosecuting individuals that engage in these behaviors. LEAD's harm reduction approach asks officers and prosecutors to consider an offender's behavior as part of a continuum and to not necessarily take punitive measures against an individual if he or she is otherwise making progress in the recovery process.

Asking police officers not to arrest individuals who are committing crimes has been difficult. As Sergeant Brian Kraus explained, the hardest part of implementing LEAD occurred with officers asking, "What do you mean they can come down here and still use drugs?"¹⁴⁹ Other officers involved in implementing LEAD expressed ongoing concern that the harm reduction approach facilitated drug use and allowed individuals involved to continue to use with impunity. Similarly, some law enforcement officials involved in LEAD were concerned that caseworkers were overly protective, and they expressed some concern that if LEAD or similar diversionary models aim to fully embrace harm reduction, then more training is needed to get officers to fully embrace the harm reduction principles.

- *Role of the community needs to be better defined.*

LEAD's organizational structure calls for a Community Advisory Board (CAB) to help oversee the implementation of the program in each neighborhood. In theory, the CABs provide community members with a mechanism for providing feedback about the program and making suggestions for program improvements. However, in practice, the exact role that the CAB plays within the larger governance structure of LEAD is ill defined. Members of the CABs expressed support for the program but were unable to articulate what their exact function was within the larger project. Going forward, finding better ways to integrate CABs into the governance of LEAD may make their role more meaningful and may make LEAD more accountable to the communities in which it is operating.

¹⁴⁹ Interview with Brian Kraus, *supra* note 27.

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The principals on our team include John Crombach, Gail Christopher, Darrel Stephens and James Forman, Jr.

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