MOVING TO OPPORTUNITY & MENDING BROKEN WINDOWS

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I. INTRODUCTION

The overall consensus appears to be that the experiment is working. The stories confirm this belief. Shirley Hudnall dreamed of one day moving into one of the houses with the white picket fence that she passed on her way to the urban ghetto that she called home.[1] For seven years, Shirley and her son Bryant lived together in a public housing unit in Baltimore's inner city.[2] Jobless and alone, Shirley feared that getting out of her current situation might be impossible. She felt trapped. "There were a lot of drugs on the corner. There were a lot of gunshots at night, during the day – a lot of traffic."[3] The Department of Housing and Urban Development (HUD) offered her a way out—a government-sponsored sociological experiment called "Moving to Opportunity." Shirley now has the white picket fence that she dreamed about. She lives in a suburban middle-class neighborhood in Baltimore and no longer fears the streets that she and her son call home.[4]

At its inception in 1994, HUD's Moving to Opportunity for Fair Housing Program (MTO)[5] placed over 2,000 families from poverty-stricken neighborhoods into homes in significantly more affluent neighborhoods.[6] Preliminary findings from studies performed over the course of the experiment have suggested several positive changes in participants from the project, including improvements in the mental and physical health of participants, decreased behavioral issues in some adolescents, and greater self-sufficiency for participants.[7] Accordingly, MTO has given social scientists and other commentators a unique opportunity to study the effects of neighborhood dynamics on

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1. *From Ghetto to White Picket Fence*, CBS NEWS, *available at* http://www.cbsnews.com/stories/2000/06/04/eveningnews/main202445.shtml.

2. *Id.*

3. *Id.*

4. *Id.*

5. The United States Department of HUD maintains an official website at http://www.hud.gov/progdesc/mto.cfm.

6. *See* U.S. Dep't of Housing and Urban Development, *Moving to Opportunity for Fair Housing*, http://www.hud.gov/progdesc/mto.cfm.

7. JEFFREY KLING ET AL., EXPERIMENTAL ANALYSIS OF NEIGHBORHOOD EFFECTS 14–19 (2005), *available at* http://www.nber.org/~kling/mto/mto_exp.pdf.

an individual's health, education, employment, psychology, and crime. Two commentators, Professors Bernard Harcourt and Jens Ludwig, assert that MTO represents the first truly rigorous test of the "Broken Windows" theory as examined by George L. Kelling and James Q. Wilson in their 1982 article of the same name.[8] The Broken Windows theory, one of several neighborhood effects theories, discusses the relationship of physical and social disorder on violent crime.[9] Harcourt and Ludwig suggest that MTO provides the ideal experiment to test whether the disorder-crime relationship alleged by the Broken Windows theory does, in fact, exist. According to Harcourt and Ludwig, the Broken Windows theory has failed that test.

This Note examines whether the MTO program actually is, as Harcourt and Ludwig suggest, the ideal experiment to gauge the effectiveness of the Broken Windows theory. Part I of this Note discusses the basic premise of the Broken Windows theory and briefly reviews past studies of the Broken Windows theory conducted to determine the legitimacy of the theory. Part II of this Note discusses the history of the MTO program, its intended objectives, and the preliminary results of the program regarding the hypothesized positive effects of neighborhood mobility. Part III examines whether MTO actually conforms to the parameters of a legitimate Broken Windows experiment. This Part also addresses several inherent "flaws" in the project that limit its effectiveness as a test of the disorder-crime relationship asserted by the Broken Windows theory. This Note concludes by offering other possible ways of assessing the Broken Windows theory in the future.

II. THE BROKEN WINDOWS THEORY: PAST AND PRESENT

The Broken Windows theory suggests that unchecked physical and social disorder within neighborhoods may lead to serious crime within the neighborhood. Conversely, decreasing disorder within a neighborhood may lead to a decrease in serious crimes.[10] After the release of Wilson and Kelling's article *Broken Windows*, several large cities, most notably New York City,[11] implemented various Broken Windows initiatives

8. Bernard Harcourt & Jens Ludwig, *Broken Windows: New Evidence From New York and A Five-City Social Experiment*, 73 U. CHI. L. REV. 271 (2006); James Q. Wilson & George L. Kelling, *Broken Windows*, ATLANTIC MONTHLY, Mar. 1982, at 29.

9. Wilson & Kelling, *supra* note 8. See Part I *infra* for additional information on the Broken Windows theory.

10. Wilson & Kelling, *supra* note 8, at 35. According to Wilson and Kelling the analogy is as follows: "[I]f a window in a building is broken and is left unrepaired, all the rest of the windows will soon be broken. . . . [O]ne unrepaired broken window is a signal that no one cares, and so breaking more windows costs nothing." *Id.* at 31. The eventual outcomes due to unchecked disorder are a part of a process. As disorder such as aggressive panhandling and loitering increases, prudent and fearful citizens will remain indoors and off of the streets. As citizens withdraw physically, they remove the social connections with other members of the community, thereby handing over social control. This creates an environment where criminals can commit crimes with far less chance of being apprehended. The Broken Windows theory suggests that increased participation between law enforcement and the community to curb and control disorder will eventually lead to a decrease in serious crime. *Id.* at 33; *see also* GEORGE L. KELLING & CATHERINE M. COLES, FIXING BROKEN WINDOWS: RESTORING ORDER AND REDUCING CRIME IN OUR COMMUNITIES 20 (1996).

11. New York is often attributed with one of the most extensive Broken Windows initiatives. After his defeat of David Dinkins, Mayor Rudolph Giuliani focused on quality of life initiatives, particularly illegal vending, graffiti, vandalism, subway fare evasion, and squeegee operators because of their adverse affect on the standard of living in New York City. *See* George L. Kelling & William J. Bratton, *Declining Crime*

aimed at reducing disorder levels to bring down serious crime rates. Social scientists soon began to test the "success" of these initiatives. As discussed below, the studies of these initiatives have generated very mixed results.

A. The Studies

Over the past few decades, there have been several studies that either directly or indirectly sought to determine the validity (or invalidity) of the Broken Windows theory.[12] Most of these studies, however, have not generated favorable results for

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Rates: Insiders' Views of the New York City Story, 88 J. CRIM. L. & CRIMINOLOGY 1217, 1220–23 (2005). He placed much of the responsibility of enforcing the Broken Windows tactics in his newly appointed Police Commissioner, William Bratton, a huge advocate of the Broken Windows theory. *Id.* Bratton first used order maintenance theories to control the crime levels in the New York Subway system. *Id.* In the late 1980s subway crime reached chronic levels. *Id.* The subways were plagued with fare evaders, aggressive panhandlers, illegal vendors, homeless people, drug abusers, and other violators of transit regulations. *Id.* The subways were a dangerous, dirty, and unhealthy atmosphere, housing much of the city's criminal activity. Bratton decided to focus transit authority efforts on these low-level crimes and found that many of the people who jumped the turnstiles were the same people who were robbing subway riders. *Id.* In many stations, graffiti and garbage is completely gone, while other stations are drastically cleaner. *Id.* Moreover, there has been a dramatic decrease in subway crimes. *Id.* Bratton brought his faith in these results to the NYPD. *See id.* For an in depth discussion on the New York Subway story, see KELLING & COLES, *supra* note 10, at 108–137.

When Bratton was appointed police Commissioner, he implemented similar order-maintenance, zero tolerance policies. Commissioner Bratton placed five-thousand more police officers on the streets of New York City. Lori Montgomery, *Broken Windows: How a Theory Shook the Foundations of Law Enforcement and Helped Heal a City*, *available at* http://www.umsl.edu/~nestor/Broken%20Windows.htm. He advised all precincts that nuisance laws would be enforced and quality-of-life infractions would be punished as severely as the law allowed. *Id.* Drinking and urinating in public, aggressive panhandling on the sidewalks and streets, and vagrancy would no longer be tolerated as part of New York City life. In keeping with this new level of enforcement, Bratton abandoned the old method of dealing with nuisance infractions called "desk appearance tickets" (DATs). Randall G. Shelden, *Assessing "Broken Windows" Theory*, http://www.sheldensays.com/Res-three.htm (last visited April 27, 2006). Previously, if a person was accused of committing a minor crime, they were issued a ticket to appear in court on a future date. Montgomery, *supra*. Bratton adhered to a strict policy that if an individual committed a minor crime, he or she would be arrested and taken to jail. *Id.* Individuals who panhandled were forced to show identification, subjected to a warrant check, sometimes brought to the station for debriefing and imprisoned if the warrant check proved fruitful. *Id.*

While there are critics as to whether these tactics actually worked to decrease crime, the results during the 1990s were staggering. In all 76 precincts, crime levels decreased to figures unseen for twenty years. *Id.* In the first two years of Giuliani's term as mayor, the murder rate dropped by thirty-nine percent and the burglary rate dropped by twenty-five percent. *Id.* After 1995, thirty-six percent fewer cars were stolen, robberies decreased by thirty-one percent and 400 fewer people were murdered. *Id.* With the nation's crime rate decreasing by two percent, New York's rate decreased by fifteen percent. Before Giuliani took office, New York ranked 23rd out of the twenty-five largest cities (after San Diego and San Jose) in safety. *Id.* Between 1990 and 1998, the official violent crime rate decreased by fifty-one percent with the murder rate decreasing by seventy-two percent. *Id.*; *see also* KELLING & COLES, *supra* note 10, at 137–56; Montgomery, *supra*.

12. Some studies discussed in conjunction with Broken Windows pre-date the Wilson and Kelling article entitled *Broken Windows*; however, they seek to determine the relationship between order maintenance and serious crime levels. For examples of other studies not discussed in this section, see K. Novak et al., *The Effects of Aggressive Policing of Disorder on Serious Crime*, 22 POLICING: INT'L POLICE STRAT. & MGMT. 171 (1999) (finding that law enforcement of liquor laws did not effect the incidence of robberies or burglaries); J.Q. Wilson & B. Boland, *The Effect of Police on Crime*, 12 LAW AND SOCIETY REVIEW 367 (1978) (finding that as the number of traffic tickets issued increased, the serious crime rate declined); Lawrence W. Sherman, *Police Crackdowns: Initial and Residual Deterrence*, 12 CRIME AND JUSTICE: A REVIEW OF RESEARCH 1 (1990) (finding that focused enforcement of public drinking laws and parking regulations caused citizens to feel safer); Lawrence W. Sherman et al., *Hot Spots of Predatory Crime: Routine Activities and the Criminology of Place*, 27 CRIMINOLOGY 27 (1989) (finding that aggressive enforcement of

Broken Windows. Studies championed by proponents of the Broken Windows theory as evidence of its merit have been met with heavy criticism. Additionally, several studies have produced mixed and unclear results. Critics of the Broken Windows theory point to studies that show no causal link between disorder and serious crime. The following section reviews several of the prominent studies conducted to test the Broken Windows theory and discusses the limitations of those studies.

1. Wesley Skogan 1990 Study

Proponents of the Broken Windows theory generally point to Wesley Skogan's study as the foremost support for the theory. In order to analyze the relationship between neighborhood disorder and crime victimization, Skogan used data collected in five different studies conducted between the years of 1977 and 1983.[13] Using these studies, Skogan found a strong connection between residents' perception of disorder in their neighborhoods and crime. Skogan analyzed whether neighborhoods that residents perceived as disorderly also suffered from high levels of criminal victimization. As his measure of disorder, Skogan used surveys that asked particular neighborhood residents whether certain types of disorder, such as litter and vandalism, were present in their neighborhood.[14] As his measure of crime victimization, Skogan also used surveys.[15] These surveys asked neighborhood residents whether they were victims of certain types of crime, including robbery, assault, rape, burglary, and purse-snatching.[16] Based on the surveys, Skogan concluded that there was a relationship between neighborhood disorder and crime.[17]

Critics, however, show little confidence in these results. In his book *Illusions of Order: The False Promise of Broken Windows Policing*,[18] Bernard Harcourt suggests several problems with both Skogan's methodology and analysis of results. First, Harcourt describes Skogan's data as weak and unreliable because of his use of five separate studies which Harcourt believes were inconsistent and lacked a great amount of

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the laws in crime "hot spots" causes crime to decline); Charles Katz et al., *An Assessment of the Impact of Quality-of-Life Policing on Crime and Disorder*, 18 JUSTICE QUARTERLY 825 (2001); LORRAINE A. GREEN, 2 POLICING PLACES WITH DRUG PROBLEMS (Sage Publications 1995); Lorraine A. Green-Mazerolle et al., *Controlling Drug and Disorder Problems: The Role of Place Managers*, 36 JUSTICE QUARTERLY 371 (1998).

13. WESLEY G. SKOGAN, DISORDER AND DECLINE: CRIME AND THE SPIRAL OF DECAY IN AMERICAN NEIGHBORHOODS (1990). The five data sets consisted of 13,000 interviews taken both in-person and over the telephone. *Id.* at 188–190. Participants were selected at random by random digit dialing for telephone interviews and random selection from address lists for the face-to-face interviews. *Id.* at 190. The interviewees were residents of forty neighborhoods in Chicago, Newark, Atlanta, Philadelphia, San Francisco, and Houston. *Id.* at 188–190.

14. *Id.* at 190.

15. *Id.*

16. *Id.*

17. *Id.*

> The evidence suggests that poverty, instability, and the racial composition of neighborhoods are strongly linked to area crime, but a substantial portion of that linkage is through disorder: their link to area crime virtually disappears when disorder is brought into the picture. This too is consistent with Wilson and Kelling's original proposition, and further evidence that direct action against could have substantial payoffs.

Id.

18. BERNARD E. HARCOURT, ILLUSIONS OF ORDER: THE FALSE PROMISE OF BROKEN WINDOWS POLICING (Harvard University Press 2001).

information.[19] Second, Harcourt explains that Skogan found an actual connection between crime and disorder in only one of the five tests—robbery victimization—that were conducted.[20] The other four tests—burglary, rape, physical assault, and purse-snatching victimization—showed no connection between disorder and crime.[21] Harcourt also questions whether there was actually a disorder-crime connection in regards to robbery because the survey questions were not neighborhood specific[22] and a cluster of five neighborhoods in Newark greatly influenced Skogan's findings.[23] After replicating Skogan's data, Harcourt concluded that there were no statistically significant relationships between disorder and crime. In sum, the data did not support the Broken Windows theory.[24]

2. Robert Sampson and Jacqueline Cohen 1988 Study

In a 1988 study, Robert Sampson and Jacqueline Cohen focused on the direct affect of perception by residents of certainty of punishment on crime levels.[25] By heightening police surveillance, presence, and intervention, it was communicated to criminals that the likelihood of being caught committing a crime had increased.[26] Sampson and Cohen measured aggressive policing by the number of arrests per individual officer for disorderly conduct and arrests for driving while under the influence (DUIs).[27] The study found a significant inverse effect of aggressive policing on the rates of robbery and a weak connection to the burglary rates.[28] In the end, however, the researchers acknowledged that their findings were inconclusive and did not establish whether aggressive policing affects the robbery rate.[29]

3. Kelling and Sousa 2001 Study

George Kelling and William Sousa sought to compare the relationship between violent crime and four variables,[30] including Broken Windows policing, in New York

19. *Id.* at 60. According to Harcourt, information on robbery victimization is available in only thirty of the neighborhoods, and disorder information is missing thirty percent to forty percent of the time on average. *Id.*

20. *Id.*

21. *Id.*

22. *Id.* at 60–61. Skogan asserts that the survey questions did not specify that victimization had to occur in the resident's neighborhood: "[T]he question did not specify that the robbery victimization had to occur in the neighborhood in question, so as a result, it may have occurred in another neighborhood." *Id.*

23. *Id.* at 72. Harcourt rests this assertion on what he calls the "Newark Effect." Harcourt notes that unlike the other neighborhoods, the five Newark neighborhoods used in the study are clustered together. *Id.* Harcourt suggests that if one disregards the observations of those neighborhoods and looks only at the other twenty-five neighborhoods, there is only a very tenuous relationship between disorder and robbery. *Id.*

24. *Id.* at 78.

25. Robert J. Sampson & Jacqueline Cohen, *Deterrent Effects of the Police on Crime: A Replication and Theoretical Extension*, 22 LAW & SOC'Y REV. 163 (1988).

26. *Id.* at 165.

27. *Id.* at 169.

28. *Id.* at 176. The effect varies by age and race of the offender with the effect being insignificant on white offenders but being significant—almost double in magnitude—on black offenders. *Id.* at 177.

29. *Id.* at 175–76.

30. GEORGE L. KELLING & WILLIAM H. SOUSA, JR., DO POLICE MATTER? AN ANALYSIS OF THE IMPACT OF NEW YORK CITY'S POLICE REFORMS 1 (Manhattan Inst. 2001), *available at* http://www.manhattan-

City's seventy-five precincts.[31] According to the empirical data, Kelling and Sousa found a strong negative relationship between misdemeanor arrests at the precinct level and violent crime.[32] They conclude, therefore, that Broken Windows tactics are a highly effective crime fighting strategy. More specifically, "[t]he average NYPD precinct during the ten-year period studied could expect to suffer one less violent crime for approximately every twenty-eight additional misdemeanor arrests made."[33] The police, therefore, mattered significantly in the crime drop in New York City.

Recently, however, Harcourt and Ludwig have suggested a very different conclusion from Kelling and Sousa's data. They conclude that the severe drop in crime can be explained by "mean reversion."[34] Harcourt and Ludwig point to the many influences on crime patterns throughout the United States over the past twenty years, such as the end of the crack epidemic and gun violence associated with the crack epidemic, as the true reason for drops in crime seen in various cities like New York.[35] They suggest that cities which experienced the largest increases in crime during this period subsequently experienced the largest drops in crime.[36] In a similar vein, Harcourt and Ludwig suggest that the neighborhoods in New York City that experienced Broken Windows policing had the largest increases in violent crime in the 1980s and the largest declines in the 1990s.[37] The changes in crime rates across the New York precincts that Kelling and Sousa attributed to the Broken Windows theory, therefore, were likely attributable to the same mean reversion that affected the rest of the nation.[38]

4. Corman and Mocan 2002 Study

In 2002, Hope Corman and Naci Mocan investigated the effect of economic conditions (which they called carrots) and sanctions (which they called sticks) on various crime rates[39] in New York City using monthly times-series data spanning from 1974 to 1999.[40] Corman and Mocan measured "carrots" by the unemployment wage and the real minimum wage; sticks were measured by the number of felony arrests, size

institute.org/pdf/cr_22.pdf. The crime variables included: economic indicators, young male population shifts, the decline in consumption of crack cocaine, and broken-windows policing. *Id.*

31. *Id.*

32. *Id.* at 9.

33. *Id.*

34. Harcourt & Ludwig, *supra* note 8, at 291.

35. *Id.* at 291–97; *see also* Randall G. Shelden, *supra* note 11. In this piece, Shelden discusses the effects of infant mortality, high school dropout, unemployment, child poverty, youth suicide and teenage pregnancy rates on the accuracy of "broken windows tactics." Shelden, *supra* note 11. He also asserts that the FBI's annual reports demonstrate that the majority of persons arrested throughout the nation have been charged with minor offenses. *Id.* In this way, because police have always arrested the majority of individuals for minor crimes, it seems unlikely that "implementing" the *status quo* would have such a huge effect on crime rates. *Id.*

36. Harcourt & Ludwig, *supra* note 8, at 292.

37. *Id.* at 291–97.

38. *Id.*

39. Hope Corman & Naci Mocan, *Carrots, Sticks, and Broken Windows*, 48 J.L. & ECON. 235, 241 (2002). The criminal activities consisted of murder, assault, robbery, burglary, motor vehicle theft, grand larceny, and rape. *Id.*

40. *Id.* at 237.

of the police force, and the number of New York City residents in prison.[41] Corman and Mocan claim to have found that the Broken Windows theory has validity in the case of robbery, motor vehicle theft, and grand larceny.[42] Corman and Mocan recognize that there are other variables, such as economic measures, that may contribute to the decline in crime; however, according to their data, the contribution of deterrence measures is larger than any economic variables.[43]

Some critics, however, have quickly dismissed the results of this study as well. Both Harcourt and Ludwig suggest that research designs that rely on time-series data for a single jurisdiction like New York provide weak authority to explain away the alternative explanations for any patterns found in the data.[44] For these critics, counter-explanations are widespread with even baseball games seemingly having a causal link to crime.[45]

5. Sampson and Raudenbush 1999 Study

Robert J. Sampson and Steven W. Raudenbush designed a study relying upon "systematic social observation" to gauge the effects of disorder on crime levels.[46] In 1995, Sampson and Raudenbush had trained observers videotape various streets in Chicago.[47] The observers drove an SUV at five miles per hour down every street in 196 Chicago census tracts.[48] A random sample of the videotaped streets was selected,[49] and the videos were viewed and coded.[50] There was also audio commentary added to the videotapes by two trained observers.[51] The researchers coded 126 variables including social interactions, physical conditions, housing characteristics, and land use.[52] Analyzing their data, Sampson and Raudenbush concluded that, in regards

41. *Id.* at 239.

42. *Id.* at 252–53.

43. *Id.* at 253–54.

44. Harcourt & Ludwig, *supra* note 8, at 298.

45. *Id.* at 298–99. In order to demonstrate the weak causal relationship between misdemeanor arrests and crime, Harcourt and Ludwig suggest that counter-explanations are widespread. They assert, for example, that when the Yankees do well, we should see a decline in violence in New York City because of strengthened social ties through bonding in local bars and restaurants. *Id.* When the Yankees perform poorly, residents may be less likely to join together in communal settings and residents may be more likely to be combative over the reasons for these failures. Unable to attain Corman and Mocan's time-series data, Harcourt and Ludwig constructed their own annual time series for New York "measuring crime rates and a reasonable proxy for operational mechanism" behind what they call the Broken Yankees Hypothesis. *Id.* at 299. They looked at cumulative number of World Series Championships dating back to 1921 and asserted that there seemed to be empirical support that the strong performance of the Yankee teams under Billy Martin during the 1970s coincides with drops in homicide rates. *Id.* An even stronger and statistically significant relationship is the decline in homicides during Joe Torre's reign during the 1990s. *Id.*

46. Robert J. Sampson & Steven W. Raudenbush, *Systematic Social Observation of Public Spaces: A New Look at Disorder in Urban Neighborhoods*, 105 AM. J. SOC. 603, 605–608 (1999).

47. *Id.* at 615.

48. *Id.*

49. *Id.* In total, 15,141 street sides were chosen. *Id.* at 617.

50. *Id.* at 616.

51. *Id.* at 615–18.

52. *Id.* at 617. Items on the physical disorder scale included whether there were cigarettes, empty beer bottles, trash, graffiti, abandoned cars, condoms, or hypodermic needles on the streets. *Id.* Social disorder observations included public loitering, public drinking, public intoxication, gang indicators, adults fighting, drug sales, or prostitution on the streets. *Id.*

to a disorder-crime nexus, their data did not support the Broken Windows theory.[53] They found that disorder and crime are only moderately correlated and that when certain neighborhood characteristics are accounted for, any connection between disorder and crime disappears in four out of the five tests, including homicide.[54] Their data did find a significant connection between disorder and robbery but they list several caveats in assessing the pattern.[55] They did suggest, however, that disorder may have indirect effects on crime by effecting desire to invest in the community and businesses, migration patterns of residents, and neighborhood viability.[56] Harcourt believes that Sampson and Raudenbush's study offered compelling evidence that the Broken Windows theory has not been validated.[57]

6. Sampson and Raudenbush 2004 Study

Sampson and Raudenbush's most recent study uses information gathered in their 1996 study to reach an additional conclusion.[58] The researchers assert that it is negative racial stereotypes that affect individuals' perception of disorder in their neighborhood. Individuals have come to associate a black neighborhood with "decay and dysfunction, regardless of the objective condition of the area."[59] In response to the Broken Windows theory, they assert that reducing the actual levels of disorder may realistically have no affect on the perceived level of disorder or level of discomfort that

53. *Id.* at 637.

54. *Id.*

55. *Id.* The researchers explained that areas with a high level of disorder may be more attractive venues for robberies because the pool of victims do not have full protection of the police because they may be involved in drugs or prostitution. *Id.* at 630. Another explanation is that professional thieves are especially attuned to local drug markets and drug dealers are prime targets because of the massive amount of cash on hand. *Id.* The researchers further explained that it is possible that citizens, in robbery scenarios, call the police more often, or police more accurately report such robberies in areas perceived to be higher in disorder. *Id.*

56. *Id.* at 637.

57. HARCOURT, *supra* note 18, at 88. He did, however, find some insignificant problems with their study including their characterization of social disorder and timing of the videotaping of the neighborhoods. *Id.* Harcourt explains that he would have excluded the sale of drugs and gang-member indicators from the definition of social disorder. *Id.* Moreover, he found that since the videotaping occurred between 7 A.M. and 7 P.M., it is likely that many signs of disorder were missed because disorder is more prevalent during the evening. *Id.*

58. *See* Richard Morin, *A Crack in the Broken-Windows Theory*, WASH. POST, Jan. 30, 2005, at B05, *available at* http://www.washingtonpost.com/wp-dyn/articles/A46381-2005Jan29.html.
According to the authors, the study showed that race played the largest factor in how residents viewed their neighborhoods. White residents were more likely to describe their neighborhood as disorderly than were blacks or Latinos in the same neighborhood. They also found that as the number of blacks living in the neighborhood increased, the more disorderly whites perceived it to be. This was the perception despite the fact that the trained raters had listed the neighborhood as no more disorderly than those neighborhoods with less black residents. There was a similar result with class. The more poor families living in the neighborhood, the greater disorder was perceived by whites, regardless of the objective condition of the neighborhood. *Id.*

Surprisingly, the researchers saw similar patters with black residents. As the percentage of black residents in the neighborhood increased, black residents who were questioned were more likely to view their neighborhood as disorderly as black residents in neighborhoods with a lower percentage of black residents. These black residents were just as likely as the white residents to be affected by the increase of black residents. Latinos, in turn were even more likely to perceive their neighborhood as disorderly because of increased numbers of black residents. *Id.*

59. *Id.*

residents feel in their neighborhoods.[60]

7. Taylor 2001 Study

In his book *Breaking Away from Broken Windows*, Ralph Taylor attempts to determine the relationship between crime in neighborhoods and social and physical "incivilities," including panhandling, public intoxication, graffiti, litter, and vacant lots.[61] Taylor conducted research in sixty-six Baltimore neighborhoods and found that certain types of "incivilities" had a relationship to crime or urban decay while others did not.[62] Analyzing each neighborhood block by block, Taylor and his researchers counted broken windows and boarded up row-houses.[63] They evaluated traffic and land-use patterns as well as surveyed residents and various community leaders.[64] Using media reports of urban deterioration, Taylor also attempted to measure the level of fear in citizens over time.[65] Taylor concludes that broken windows tactics such as "zero tolerance" and "corner clearing" are inadequate to address the pervasive changes in Baltimore's neighborhoods.[66] Taylor praises former Police Commissioner Thomas Frazier for resisting these tactics and urges researchers and policy makers to "break away from broken windows *per se* and widen the models upon which they rely, both to predict and to preserve safe and stable neighborhoods with assured and committed residents."[67]

8. Anthony Braga 1999 Study

Anthony Braga's recent work on city "hot spots"[68] has produced promising evidence for the Broken Windows theory. Braga chose twenty-four areas in Jersey City, New Jersey, and matched them into twelve pairs.[69] For each pair, a coin was flipped to determine which area would receive special police attention consisting of "problem-oriented policing" which included significant order maintenance.[70] The officers removed loiterers, issued summonses for public drinking, and enforced

60. *Id.*

61. RALPH B. TAYLOR, BREAKING AWAY FROM BROKEN WINDOWS: BALTIMORE NEIGHBORHOODS AND THE NATIONWIDE FIGHT AGAINST CRIME, GUNS, FEAR, AND DECLINE 6–8, 93–94 (Westview 2001).

62. *Id.* at 39–50. Taylor compared data collected during the late 1970s and the mid-1980s with more current data collected during the mid-1990s. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.* at 22–23.

67. *Id.*

68. Hot spots are areas with high levels of criminal activity within a particular city. Anthony A. Braga et al., *Problem-Oriented Policing in Violent Crime Places: A Randomized Controlled Experiment*, 37 CRIMINOLOGY 541, 542 (1999).

69. *Id.* at 550; *Making America's Streets Safer: The Future of the COPS Program: Hearing Before S. Judiciary Comm.*, 104th Cong. (2001) (testimony of David B. Muhlhausen, Policy Analyst, Heritage Foundation), *available at* http://www.heritage.org/Research/Crime/Test120501.cfm; *see also* Anthony A. Braga, *Systematic Review of Effects of Hot Spots Policing on Crime* (forthcoming), *available at* http://www.campbellcollaboration.org/doc-pdf/hotspots.pdf.

70. Braga, *supra* note 68, at 548.

neighborhood rules.[71] The areas that received special attention saw a dramatic drop in crime and disorder in comparison to the twelve areas that did not.[72] Despite the presence of other variables that may have contributed to the drop in crime, the conclusion was that order maintenance helped to reduce crime.[73]

Some critics, however, are once again unconvinced. Both Harcourt and Ludwig suggest that the research is unable to distinguish between effects of the Broken Windows theory and effects caused by the traditional deterrence associated with increased arrests, police presence, and surveillance.[74]

B. The Limitations

As detailed above, it is regrettably clear that researchers have not been able to successfully validate the Broken Windows theory. The theory has struggled to gather strong empirical support for the premise that decreasing disorder will lead to decreases in serious crime. Past studies have failed to generate data that demonstrates a significant causal link between levels of disorder in a neighborhood and serious crime. The studies, however, suffer from various limitations that make them inadequate demonstrations of the theory. These limitations do not allow for meaningful assessment of the Broken Windows theory.

First, many of studies involving the Broken Windows theory have focused on "piecemeal" tests of the theory such as traffic enforcement,[75] or liquor law enforcement.[76] The Broken Windows theory, as set forth by Wilson and Kelling, suggests a need to target several signs of disorder in order to reduce serious crime.[77] In order to determine the effect of disorder on crime, researches must study the aggregate effects of removing disorder.

A second limitation of the past research has been that most of the studies have been micro-level, not macro-level, in nature.[78] In other words, many of the studies have been restricted to particular neighborhoods or cities. While this is certainly beneficial in understanding the mechanisms that a particular neighborhood can use to implement the Broken Windows theory, the failure of certain tactics in a particular neighborhood do not suggest the failure of the theory. As the Wilson and Kelling article pointed out, the demographic make-up of the neighborhood and its individual rules play a large role in the effectiveness of decreasing disorder and serious crime.[79] Attempting to implement a "cookie-cutter" program of "broken windows tactics" based on their success or failure in a particular neighborhood does not provide adequate information on how the theory can be generally applied.

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71. *Id.*

72. *Id.*

73. *Id.*

74. Harcourt & Ludwig, *supra* note 8, at 286.

75. *See generally* Wilson, *supra* note 12. *See also* Sampson & Cohen, *supra* note 25.

76. *See generally* Novak et al., *supra* note 12. *See also* Sherman, *supra* note 12; JOHN L. WORRALL, DOES "BROKEN WINDOWS" LAW ENFORCEMENT REDUCE SERIOUS CRIME? (Cal. Inst. 2002), *available* at http://www.cicg.org/publications/CICG_Brief_Aug_2002.pdf.

77. Wilson & Kelling, *supra* note 8, at 130.

78. WORRALL, *supra* note 76, at 4.

79. Wilson & Kelling, *supra* note 8, at 130–31.

Another limitation on the past research is that most of the studies have not studied the Broken Windows theory over time.[80] The Broken Windows theory, like many other neighborhood effects theories, is concerned with the adverse effects of a particular variable on the neighborhood over a period of time. Wilson and Kelling did not claim an immediate change and eradication of serious crime if disorder decreased; rather they claimed that disorder precedes serious crime in the developmental sequence.[81] Multiple observations over time, therefore, are essential to an adequate evaluation of the theory.

Yet another limitation of the various studies on the Broken Windows theory is that there has been an inability to control for the alternative explanations for the data collected.[82] As discussed above, this has been the greatest firepower for many of the critics of the Broken Windows theory because several other variables may be used to explain the drop in crime.

Finally, another limitation of the past research has been the reliance upon incorrectly-termed "broken windows tactics." Many of the studies have relied upon zero-tolerance policing and misdemeanor arrests as the basis for their data. The Broken Windows theory did not advocate zero-tolerance.[83] All studies of the effects of the Broken Windows theory will be unsuccessful if the base-line information for many of these studies involves tactics that are antithetical to the Broken Windows theory.

Concededly, the MTO program does not suffer from all of these limitations. There remain, however, several limitations. As the MTO program is an experiment to test the effects of neighborhood mobility on children and adults, it is, at best, an indirect measure of disorder on crime. As an indirect test of the theory, it does not eliminate alternative explanations for the data. Further, as described in detail below in Part III, the MTO program is not the proper test for the Broken Windows theory because the test does not provide information for the location of criminal activity documented in order to properly determine the relationship between disorder in a neighborhood and crime levels in that neighborhood.

III. MOVING TO OPPORTUNITY: THE EFFECTS OF NEIGHBORHOOD MOBILITY

The MTO program was authorized by the Housing and Community Development Act of 1992.[84] In the first two years of the experiment, Congress appropriated seventy million dollars in Section 8 rental assistance and instructed the Department of Housing and Urban Development (HUD) to create a method of evaluating the participants to determine both short-term and long-term effects of residential mobility programs.[85] In order to maximize the usefulness of the program, HUD created a random assignment process that allocated families into three separate groups through the use of a computerized lottery system.[86] The experiment hoped to facilitate long-term evaluation

80. *See* WORRALL, *supra* note 76, at 4.

81. Wilson & Kelling, *supra* note 8, at 31.

82. *Id.*

83. KELLING & COLES, *supra* note 10, at 23.

84. 42 U.S.C. § 1437f(2002).

85. *See also* John Goering et al., *A Cross-Site Analysis of Initial Moving to Opportunity Demonstration Results*, 13 J. HOUSING RES. 4 (2002).

86. *Id.* at 4–5.

to provide for extensive research on the effect of neighborhood mobility on participants.

A. Goals and Objectives

The object of MTO is simple: using HUD's Section 8 rental voucher program,[87] the experiment facilitates the movement of families out of inner-city public housing (areas with high concentrations of persons living in poverty) to areas with a low concentration of poverty-stricken people.[88] The long-term goals of MTO, however, are far from simple. In fact, many social scientists rested their hopes of answering longstanding questions about the origins of various societal problems on the shoulders of this program.

During the onset of neighborhood effects research, statistics showed that poor minorities were concentrated within particular neighborhoods throughout the United States; high rates of crime also flourished in these areas.[89] Moreover, this concentration of poverty has various harmful effects on the overall well-being of the residents of these neighborhoods. Children and adolescents are most vulnerable to these neighborhood attributes because of their susceptibility to the influences of their environment.[90] This has caused a devastating cycle of poverty spanning several generations.[91]

In 1976, the Supreme Court heard *Hills v. Gautreaux*,[92] a case that brought to light many of the negative consequences of extreme racial segregation imposed on residents in public housing developments. In *Gautreaux*, the Court held that HUD had historically violated the Constitution and the Civil Rights Act of 1964 in their placement of public housing and ordered the desegregation of the Chicago Public Housing units.[93] Families were given assistance, through the newly established Section

87. Housing vouchers provide subsidies to families that are used in the private housing market. The subsidy is usually defined as the difference between thirty percent of the household's income and the HUD-defined Fair Market Rent, which equals either the 40th or 45th percentile of the local area rent distribution. *Id.*

88. Notice of Program Guidelines for the Moving to Opportunity for Fair Housing (MTO) Demonstration Program, 58 Fed. Reg. 43,458 (Aug. 16, 1993) [hereinafter MTO Guidelines]. The PHAs defined areas with high concentrations of poverty as census tracts where forty percent or more of the residents were poor in 1990. Low poverty areas were those census tracts with less than ten percent of the population living in poverty in 1990. This ten percent rate corresponds to the median tract-level poverty rate in the United States in 1990. *Id.* at 43,459.

89. U.S. Dep't of Housing & Urban Development, *In the Crossfire: The Impact of Gun Violence on Public Housing Communities* 14 (2000), http://www.hud.gov/library/bookshelf18/pressrel/crossfir.pdf ("There is a strong correlation between income and violent crime; thus the low-income population in public housing is especially vulnerable to gun violence."). For an interesting discussion on new ways in which poverty is being concentrated through homeless campuses, see Nicole Stelle Garnett, *Relocating Disorder*, 91 VA. L. REV. 1075 (2005).

90. *See* Goering, *supra* note 85, at 2.

91. *Id.*

92. 425 U.S. 284 (1976).

93. *Id.* at 297. The litigation began in 1966 when six black tenants, including Dorothy Gautreaux a tenant activist, and several applicants for public housing brought separate actions on behalf of themselves and all similarly situated tenants against the Chicago Housing Authority (CHA). *Id.* at 286. The complaints alleged that all of the sites for the family public housing selected by CHA were deliberately located in areas known as the "Negro Ghetto" to prevent the placement of black families in white neighborhoods. *Id.* Uncontradicted evidence showed that 99½ percent of all family units were in black neighborhoods and 99 percent of the occupying tenants were black. *Id.* at 288. To remedy the situation, the district court ordered

8 program, to move out of areas heavily populated by minorities into areas that were either racially mixed or predominantly white.[94]

As the *Gautreaux* case made its way through the various judicial levels, social scientists began to consider whether there are clear, identifiable attributes within neighborhoods that affect the behavior of children.[95] In order to identify the causal effects, many social scientists considered whether a child's movement from a high-crime, high poverty neighborhood to a neighborhood with low levels of crime and poverty through the voucher system would positively affect children.[96] Studies on the effects of the mobility of these families, known as "Gautreaux families," began in the late 1980s.[97] The research suggested that the families' movement into suburbs with less racial segregation had significant positive effects on children.[98]

While the results of the Gautreaux study were optimistic, several inherent problems interfered with the credibility of the results. For example, it was clear that self-selection played a role in guaranteeing that participants would demonstrate positive results after being moved.[99] The program also screened families for their suitability in the replacement neighborhoods.[100] Moreover, sample sizes were small because there were problems locating information on participating families.[101] Despite its flaws, the Gautreaux study supplied promising information on the positive effects of mobility of poor families. As a result, the federal government soon asked HUD to develop a program that would succeed where many of the past studies, particularly the Gautreaux study, had failed. HUD responded with the MTO program.

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that CHA build its next 700 family units in predominantly white neighborhoods and to locate at least seventy-five percent of its new public housing in white areas of Chicago or Cook County. *Id.* HUD argued that the district court's order was improper under *Milliken v. Bradley*, 418 U.S. 717 (1874), a school desegregation case that disallowed district courts from imposing interdistrict equal protection remedies where only one district had been found to violate the Constitution, because the remedy would affect units outside of Chicago's boundaries without proof of violation. *Id.* at 297. Rejecting the argument, the Supreme Court ruled that *Milliken* did not apply and the district court had authority to order the remedy. *Id.* at 296–97.

94. Goering, *supra* note 85, at 3 (citing LEONARD RUBINOWITZ & JAMES ROSENBAUM, CROSSING THE CLASS AND COLOR LINES: FROM PUBLIC HOUSING TO WHITE SUBURBIA (2000)). The "[f]amilies chosen for the Gautreaux program received Section 8 certificates that required them to move to either predominantly white or racially mixed neighborhoods." *Id.* To facilitate the transition, each family was assisted by housing counselors to help them locate an apartment. *Id.* Approximately seventy-five percent were required to move to predominantly white suburban areas. *Id.* The remainder were able to move to more racially diverse neighborhoods. *Id.* Over the twenty years that the program operated, and through the moving of over 7100 black families, eligibility criteria varied; however, participants were always required to move to a nonsegregated neighborhood. *Id.*

95. *Id.* at 2.

96. *See id.* at 2–3.

97. *Id.* at 3.

98. *Id.* at 2. Looking at small samples, the data showed that children living in the non-segregated neighborhood for seven to ten years were less likely to drop out of school and were more likely to take college track classes than children who moved within Chicago instead of the suburbs. *Id.* Also, after high school, Gautreaux children were more likely to attend a four-year college or have full time employment than their city counterparts. *Id.* at 4 (citing RUBINOWITZ & ROSENBAUM, *supra* note 94).

99. Goering, *supra* note 85, at 4.

100. *Id.*

101. *Id.*

B. The Experiment

In September 1993, MTO kicked off with solicitation of geographical sites for the program. Approximately six months later, HUD selected five local public housing authorities (PHAs) to participate in conducting the demonstration: Baltimore, Boston, Chicago, Los Angeles, and New York. [102] The PHAs were responsible for identifying the public housing and Section 8 developments in high-poverty areas from which they would recruit families. The PHAs were also told to partner with a non-profit agency that would counsel the families assigned to the treatment group.[103] In order to recruit families, the PHAs held meetings with groups of tenants to explain the program and how to apply. Each city created waiting lists which were used to invite applicants to orientation sessions where the details of the experiment were explained.[104] After an eligibility screening, families were selected and randomly assigned to participate in the experiment.[105]

Between 1994 and 1998, families that volunteered for the program were randomly assigned to one of three groups: (1) the MTO treatment group, (2) the Section 8 comparison group, and (3) the in-place control group.[106] The MTO treatment group received vouchers under the condition that the vouchers be used in areas with a poverty rate of less than 10 percent for at least one year and were assigned a counselor to assist with finding a private rental unit.[107] The Section 8 comparison group received vouchers with no geographic or time length restrictions. This group also did not receive counseling services to locate an apartment.[108] The members of the control group continued to receive their current public housing rental subsidy.[109] HUD believed that these three groups would allow for the most helpful and reliable points of comparison when evaluating the results of the families who moved from public housing units.

HUD designed the MTO project so that there would be three stages of evaluation. Phase One was conducted by seven teams of social scientists operating independently within a single MTO site.[110] Phase Two involved a cross-site evaluation.[111] Phase Three, expected to occur approximately in 2008, will be the final impact evaluation of the demonstration.[112] As Congress stipulated, HUD has made great efforts to extract as much information as possible from its evaluations of participants. Initial results, as well as the most recent results, suggest that neighborhood mobility from poor neighborhoods to affluent neighborhoods does have positive effects on the residents.

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102. MTO Guidelines, *supra* note 88, at 43,458. HUD issued a Notice of Funding Availability (NOFA) in September 1993 to solicit sites for the demonstration, laying out the statutory criteria for MTO site selection. *Id.*

103. *Id.* at 43,458–59.

104. Goering, *supra* note 85, at 8.

105. MTO Guidelines, *supra* note 84, at 43,458–59. PHAs were required to follow strict guidelines to ensure uniformity across all five sites. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. Goering, *supra* note 85, at 6.

111. *Id.*

112. *Id.*

C. *The Results*

The essential premise behind the MTO experiment is that the movement of poor families from poor neighborhoods to more affluent neighborhoods with improved neighborhood conditions will bring about significant enhancements in education, health, behavioral issues, employment opportunities, and law-abiding behavior. The initial results and data from Phase Two demonstrate that some of these areas were positively affected by the participating family's movement while results concerning other areas showed some negative effects or remained unclear due to limitations.[113]

For adults, the data demonstrated that for both the treatment group and the Section 8 comparison group, there were positive effects in the areas of economic sufficiency, physical health, and mental health with mental health being statistically significantly higher for the treatment group than all other groups.[114]

Youth involved in the program also demonstrated positive effects for mental health and education. However, the effects for females were far more beneficial than the effects for males. Female activity involving violent crime decreased.[115] While male delinquent behavior showed short-term improvement, after three to four years, male criminal activity involving property actually increased.[116] Despite the negative effects concerning male criminal activity, the study showed an overall positive effect for all participants.[117]

IV. APPLYING MTO TO THE BROKEN WINDOWS THEORY

As discussed above, MTO has been used to examine various neighborhood effects theories. The previous lack of structured experiments has many social scientists and commentators looking to extrapolate evidence of various social phenomena from the somewhat limited data of the MTO program. In a recent article, Bernard Harcourt and Jens Ludwig use MTO as a way of analyzing the Broken Windows theory, concluding that the theory has little, if any, empirical support.[118]

In their article *Broken Windows: New Evidence from New York City and a Five City Social Experiment*, Harcourt and Ludwig assert that MTO effectively demonstrates that changes in neighborhood disorder are not enough to change criminal activity.[119] While Harcourt and Ludwig have viewed cities' attempts to implement Broken Windows tactics with great skepticism—asserting that none of the claimed success stories fairly or adequately demonstrate that changes in disorder have any significant effect on violent crime—they have looked favorably towards the MTO housing experiment.[120] Harcourt and Ludwig suggest that the MTO experiment conforms in

113. *Id.* at 21–22.

114. KLING, *supra* note 7, at 15–16.

115. JEFFREY R. KLING ET AL., YOUTH CRIMINAL BEHAVIOR IN THE MOVING TO OPPORTUNITY EXPERIMENT 14–18 (2004), *available at* http://www.npc.umich.edu/news/events/others/crime.pdf.

116. *Id.*

117. *Id.*

118. Harcourt & Ludwig, *supra* note 8.

119. *Id.* at 271.

120. *Id.*

every way to the ideal experiment that could test the validity of the Broken Windows theory.[121]

According to Harcourt and Ludwig, the ideal experiment requires six factors: (1) a sufficiently large sample size; (2) participants at high risk for committing crimes; (3) movement of participants into areas with low levels of disorder; (4) random selection and assignment of participants; (5) long-term evaluation of participants; and lastly (6) minimal sample attrition.[122] At first glance, the MTO experiment does appear to conform to the six requirements put forth by Harcourt and Ludwig; however, upon closer inspection, the MTO experiment is inadequate to test the validity of the Broken Windows theory.

First, it is likely that MTO does not actually solve many of the problems found in the Geatreaux studies and may produce somewhat unreliable results. In particular, MTO does not (1) facilitate a completely random group of participants, making self-selection a continued problem; (2) allow for sufficiently long-term evaluation; or (3) sufficiently prevent sample attrition. Second, even assuming that the data generated by the MTO experiment is reliable, the program is inapplicable to the Broken Windows theory and any data available is useless for an assessment of the validity of the Broken Windows theory. These problems, while not significant when gauging the effects of neighborhood mobility on child development—the intended purpose of the experiment—ultimately make MTO a meaningless test of the Broken Windows theory.

A. Problems with the Reliability of MTO Data

One of the aspects that observers of the MTO experiment have championed has been its organization and thoroughness. This organization, however, presents several logistical problems when applying MTO to the Broken Windows theory. Specifically, MTO likely created a "creaming effect" and, therefore, did not eradicate the self-selection issues that made researchers skeptical of the Gautreaux program. The results are further compromised by other limitations on the accuracy of the data. Additionally, the MTO program places emphasis on the effect of movement into a low-disorder neighborhood on the individual participants; however, it ignores the effect of individuals on the treatment neighborhood. This factor is crucial to any evaluation of the Broken Windows theory. The following sections discuss these limitations in turn.

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121. *Id.* at 300–01.

122. *Id.* In their article, Harcourt and Ludwig describe the ideal experiment:

> We would start with a sample of people who were at high-risk for criminal offending and were living in very socially disordered communities. We would then randomly assign some of these families, but not others, to neighborhoods that were less disorderly—ideally, much less disorderly, so that the "treatment dose" that families experience from neighborhood moves would be large enough to yield statistically detectable impacts on behavior. In this idealized experiment we would then wish to follow participants for many years, measure their involvement in criminal activity in different ways (for example with both self reports and administrative arrest records) as well as characteristics of their neighborhoods, and be careful to minimize sample attrition.

Id.

1. "Creaming" the Crop

According to researchers and commentators, the Gautreaux study lacked credibility because of the clear self-selection by participants who chose to use the Section 8 vouchers. HUD utilized a randomized assignment system to the three experimental groups in order to resolve this issue with the MTO program. HUD, however, did not completely eliminate the voluntary aspect of the program. Although participants were randomly assigned to the three evaluation groups, all participants initially volunteered for the experiment. This fact raised the question of whether those who volunteered consisted of a fair representation of the types of residents in the housing projects. Moreover, it raised the question of whether there was a significant trait that caused certain families to volunteer while others did not. Some analysts of the program suggested that MTO likely would produce a "creaming" effect.[123] In other words, volunteers would likely be "the very people who might otherwise take an active role in improving these communities."[124] Approximately 21,200 families in all five cities were eligible to apply for the MTO program.[125] Only 5300 families across the five cities volunteered for the program.[126] This figure accounted for only twenty-five percent of eligible families.[127] Such a disparity creates questions as to why certain families volunteered for the program while others did not.

In addition to the volunteer aspect of the program, HUD had strict eligibility criteria that also likely played a role in further "creaming" the applicant pool. Applicants were screened for eligibility under four criteria. First, applicants had to have a child in the family under eighteen years old.[128] Second, applicants had to be tenants in good standing with regard to rent payments.[129] Third, all family members had to be listed on the current lease.[130] Fourth, the family members had to be without criminal background or history as required by the local Section 8 program rules.[131] Of the 5300 families that volunteered for the program, 4608 families were found eligible to continue the experiment.[132]

The "creaming effect" may appear to lend some credence to Harcourt and Ludwig's

123. Goering, *supra* note 85, at 9.

124. *Id.* Although some analysts have interpreted the "creaming effect" as a phenomena that attracts the most needy of the applicants. *Id.* at 11. However, it is clear from the baseline surveys that many of the volunteers wanted to distance themselves from crime and violence in the neighborhoods. According to the baseline surveys conducted before applicants were assigned, fear of crime and criminal victimization were the major reasons that families chose to participate in the MTO program. *Id.* at 9. More than seventy-five percent of participants listed fear of gangs and drugs as the first or second motivation for wanting to move from their neighborhood. *Id.* In addition, approximately fifty-five percent of participants listed crime, drugs, and gangs as the principal reason. *Id.* Approximately fifty-seven percent of participants wanted a better house or apartment; thirty-nine percent wanted better schools. *Id.* A small portion identified employment as a reason. *Id.*

125. Goering, *supra* note 85, at 9.

126. *Id.*

127. *Id.*

128. *Id.* The child had to be a resident of the household. *Id.*

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.* Regardless of the number of applicants, the MTO program would inevitably be limited to 285 vouchers per site, as that is what was allocated by Congress. *See id.*

assertion that disorder has no relationship to crime levels. One may posit that if so-called "creamed" participants, in other words crime-averse individuals, have moved into low-disorder neighborhoods and subsequently engaged in criminal activity demonstrated by the post-treatment arrest rates, it would seem that a factor other than disorder is at play. It is clear, however, that while Section 8 and public housing subsidies required clean arrest records, there were members of the family who had pre-treatment arrests. It would appear then that heads of households—those who made the choice to volunteer and who were primarily female[133]—probably created the "creaming effect." The possible self-selection of the participants is pointed out not to suggest that all participants in the MTO were not predisposed to criminal behavior; rather it is to demonstrate the fact that self-selection continues to occur despite MTO's attempt at randomization. Just as with the Gautreaux program, self-selection raises skepticism about the accuracy of the results. Where data is in question, the analysis extrapolated from that data will likely be questionable as well.

Moreover, the very nature of the MTO program may have contributed to creating a self-selected group of participants. There are several inherent aspects to the experiment that may have influenced a particular "type" of resident to apply for the program, thereby limiting the representative effect of the three groups.

First, residents were made aware that they would be subjected to long-term observation and evaluation.[134] Those persons who view government agencies with skepticism may have been discouraged from participating. Alternatively, those residents with established criminal tendencies may have preferred to remain in their communities where they can easily facilitate their criminal business. Additionally, residents were faced with the likelihood that they would have to move to areas far from other family members and friends.[135] The MTO program may have also discouraged individuals anxious to leave public housing from applying for the program because of the novelty of the Section 8 program. Residents would have to rely upon Congress renewing its funding commitments each year. Residents likely viewed the public housing subsidies as a more secure form of housing than the Section 8 program. For residents with families and unstable jobs, unsecured housing—even in a better neighborhood—may present an unwise tradeoff.

2. Other Concerns

Alongside the "creaming" effect and other forms of self-selection, the reliability of the data of the MTO program was likely affected by certain limitations of the program. First, neighborhoods were characterized as high-poverty and low-poverty neighborhoods using the outdated 1990 Census.[136] It is, therefore, possible that areas labeled as being low-poverty (less than ten percent poverty rates) contained greater poverty than imagined under the experiment. If the MTO program was unable to accurately determine poverty levels, disorder levels may have been greater in areas

133. Goering, *supra* note 85, at 10.

134. *Id.* at 8.

135. Many residents may have feared losing social networks that helped with housing, jobs, childcare, and other necessities.

136. MTO Guidelines, *supra* note 88, at 43,459.

depicted as treatment neighborhoods.

Second, more than ten years after MTO's inception, it is clear that information used to evaluate the success of the program is incomplete. The experiment was limited in that the hypothesized effects of the program depended on families actually using the vouchers offered to them. Not all families in the treatment and Section 8 comparison groups actually used the vouchers.[137] Only forty-seven percent of families in the treatment group actually used their vouchers; sixty percent of the Section 8 comparison group used their vouchers.[138] The low compliance rate of the program certainly affected the data produced in various neighborhoods.

Third, the program has also suffered from sample attrition. Under the three-phase design, the experiment is scheduled to last for at least fourteen years. Participants in the treatment and Section 8 comparison groups, however, were only required to stay in the new neighborhoods for one year.[139] As of 1997, twenty-five percent of the treatment group participants moved back to low- or mid-poverty level neighborhoods.[140]

B. Problems With Analyzing MTO Data

Even if we assume that the MTO data was reliably obtained, MTO is likely an inadequate test of the Broken Windows theory. To date, the MTO experiment has shown no significant reduction in criminal activity—primarily by young men—for those who moved to neighborhoods characterized as having low disorder. Relying upon this, Harcourt and Ludwig suggest that the MTO research data reveal that moving to a less disorderly, less disadvantaged community does not reduce criminal behavior among the MTO program population. They further suggest that policies focused on reducing disorder may not reduce an individual's criminal behavior where such changes are accompanied by modifications in neighborhood composition. Ultimately, they conclude that disorder levels have no significant relationship to criminal behavior or to violent crime in particular.[141]

As Harcourt would likely agree, assuring that the information regarding criminal activity is neighborhood-specific is crucial to any test of the Broken Windows theory.[142] This neighborhood-specific data, however, is largely unavailable in the MTO experiment, and its omission has been greatly ignored by Harcourt and Ludwig in their analysis of the program as a test for the Broken Windows theory. The MTO analysts gathered a significant amount of information regarding the criminal activity of youth in the program for ninety-four percent of youth ages fifteen to twenty.[143] They

137. *Id.* at 11.

138. Goering, *supra* note 85, at 11. In fact, the MTO Section 8 comparison group compliance rate was lower than the local Section 8 program. *Id.* Several explanations have been offered for this fact. *Id.* One explanation is that MTO participants were probably less in need of housing than local Section 8 participants because they were already in subsidized housing. *Id.*

139. *Id.* at 8.

140. *Id.* at 14. Two percent (thirteen families) moved to high-poverty neighborhoods; twenty-three percent (123 families) moved to mid-poverty level neighborhoods. *Id.*

141. Harcourt & Ludwig, *supra* note 8, at 316.

142. *See supra* note 22 and accompanying text.

143. KLING, *supra* note 115, at 14. The researchers used information such as name, race, sex, date of birth, and social security numbers to link baseline arrest records with post-assignment arrests. *Id.*

had information on the date of all arrests, the criminal charge, and typically the dispositions of those arrests.[144] They were unable, however, to acquire information from official arrest histories on where the criminal acts took place.[145] The data regarding arrest rates after compliance with the voucher program is irrelevant to determining a disorder-crime relationship if the information does not indicate whether the criminal activity occurred within the treatment neighborhood. If this information was available, then arrests of MTO participants for a serious crime committed in the treatment neighborhood may suggest that levels of disorder have little to no relationship to criminal activity as Harcourt and Ludwig claim. For if the Broken Windows theory is correct, MTO participants should be less likely to commit crimes in the treatment neighborhoods because signs of disorder were either non-existent or significantly reduced. Absent information on the locations of the crimes, however, it is possible that the post-treatment arrests were for crimes which occurred in pre-treatment or similar high-disorder neighborhoods. We, therefore, are merely left with the suggestion that the MTO participants who were inclined to commit crime would continue to do so on a similar or increased basis.

The location of the criminal activity is essential because the Broken Windows theory looks at whether disorder begets crime in a particular neighborhood. The effect of disorder on the individual is, therefore, only relevant in as much as it causes the individual to choose the disorderly neighborhood to commit crime. In the words of Wilson and Kelling:

> [S]erious street crime flourishes in areas which disorderly behavior goes unchecked. The unchecked panhandler is, in effect, the first broken window. Muggers and robbers, whether opportunistic or professional, believe they reduce their chances of being caught or even identified if they operate on streets where potential victims are already intimidated by prevailing conditions. If the neighborhood cannot keep a bothersome panhandler from annoying passersby, the thief may reason, it is even less likely to call the police to identify a potential mugger or to interfere if the mugging actually takes place.[146]

In this way, the Broken Windows theory is not particularly concerned with the universal effect of disorder on an individual's desire to commit crime generally. In other words, the Broken Windows theory asks, "Why do criminals commit crime here?" and not simply. "Why do criminals commit crime?" The latter question is far beyond the scope of Wilson and Kelling's original hypothesis.

The importance of location in the Broken Windows theory is further evidenced by the theory's suggestion that those adversely affected by disorder may be unlikely to commit crime generally. While the Broken Windows theory talks largely of would-be offenders, an individual's propensity to commit crime in general is not dispositive of the disorder-crime relationship within a neighborhood. In fact, the theory suggests that

144. *Id.*

145. *Id.* at 15.

146. Wilson & Kelling, *supra* note 8, at 34.

even crime-averse or crime-neutral individuals may commit crimes where disorder is prevalent. This fact is best demonstrated by the experiment, often discussed in conjunction with the Broken Windows theory, conducted by psychologist Philip Zimbardo in 1969.[147] Zimbardo created an experiment to determine what types of people engage in vandalism. He placed two "abandoned" cars in the Bronx, New York and in Palo Alto, California.[148] Zimbardo purchased used cars, removed the license plates, left the hoods up, left the cars in various neighborhoods, and photographed the results. Within ten minutes the vandalism began.[149] The first vandal was a white, middle-class American who happened to be driving by the car.[150] This driver took a tire from the car.[151] Ten minutes later, a family came and vandalized the car: the father took the radiator, the mother emptied the trunk, and the child emptied the glove compartment.[152] In forty-eight hours, there were twenty-three destructive contacts with the car, only one of which involved children.[153] After the car was stripped of all valuable items, random acts of vandalism such as broken windows and ripped upholstery took place.[154] The car in Palo Alto sat untouched for a week. It was first touched when a passerby put the hood down because it had begun to rain.[155] Zimbardo then smashed part of the car with a sledgehammer, and within a few hours the car had been turned upside down and was virtually destroyed.[156] Much of the destruction was caused by "respectable-looking" white persons.[157]

This experiment demonstrated that regardless of an individual's propensity for criminal activity, the common factor was the presence of unchecked disorder. This suggests that both law-abiding and criminally-prone individuals will commit crimes in locations where disorder is present. This is at the very heart of the Broken Windows theory. This is also the reason why MTO is inadequate in testing the relationship between disorder and crime.

Arguably, the Broken Windows theory suggests some positive universal effect on the propensity of individuals to commit crime. In other words, the Broken Windows theory may suggest that individuals in low-disorder areas are personally less likely to commit crimes. The MTO, nevertheless, failed to control for outside influences of disorder. While the MTO program sought to relocate families into low-poverty/low-

147. Philip Zimbardo, *See You Can't Be a Sweet Cucumber in a Vinegar Barrel*, EDGE THIRD CULTURE, Jan. 18, 2005, http://www.edge.org/3rd _culture/zimbardo05/zimbardo05_index.html (last visited April 27, 2006). Zimbardo recalled the various times he reported the presence of vandalized cars to the New York City police. *Id.* The police often responded that the cars were likely vandalized by "little[] black, or Puerto Rican kids who come out of the sewers, smash everything, paint graffiti on the walls, break windows and disappear." *Id.* Intrigued by this response, Zimbardo created this experiment. *Id.* He found that little black and Puerto Rican kids who liked to smash property were clearly not the culprits. *Id.*; *see also* Wilson & Kelling, *supra* note 8, at 131.

148. Zimbardo, *supra* note 147.

149. *Id.*

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

154. *Id.*

155. *Id.*

156. Wilson & Kelling, *supra* note 8, at 31.

157. *Id.*

disorder neighborhoods, the experiment did not—and could not—prevent participants from interacting with their old, high-disorder neighborhoods. The MTO treatment group was, therefore, naturally influenced by other sources of disorder. These other sources create alternate explanations for the data generated regarding criminal behavior. For individuals who spent a great deal of time in their former neighborhoods, perhaps because of a lack of social ties with their new neighborhoods, the high levels of disorder of those neighborhoods may have influenced their criminal behavior. If true, increased criminal behavior may actually reinforce the effects of disorder within a neighborhood and crime rates.

Absent neighborhood-specific information or the ability to confine MTO's participants to the treatment neighborhood, MTO presents a fair experiment to test neighborhood effects on individuals; however, it does not present an appropriate, much less an ideal test for determining the relationship between neighborhood disorder and the presence of crime in that neighborhood as set forth in the Broken Windows theory.

* * *

Critics of the Broken Windows theory have fairly asserted that the studies do little to establish a strong causal connection between levels of disorder in a neighborhood and serious crime in the neighborhood. All tests—those that show a causal link as well as those that deny such a casual link—suffer from similar limitations. The MTO program has certain positive aspects in regards to these limitations discussed in Part IB. As the treatment neighborhoods have been labeled as low-disorder areas, it is a fair assumption that various types of disorder are "removed" from the neighborhood and would, therefore, look at the aggregate effects of multiple types of disorder. Additionally, as discussed above, the study involves five cities and is, therefore, more akin to a macro-level experiment than studies limited to only one city or neighborhood. Moreover, there have been two phases of observation over the past decade documenting the various effects of the treatment dose on, in part, the criminal activity of the program participants. The MTO program has, therefore, given researchers the opportunity to study the effects of the program over time. Still, the MTO experiment suffers from a significant limitation: it does not test the basic premise of the Broken Windows theory because it fails to take into account the importance of location in the hypothesis. In this way, MTO may conform to many of the ideal factors set forth by Harcourt and Ludwig; however, it is simply not applicable to the Broken Windows theory. The MTO experiment, therefore, fails to contribute valuable information about the Broken Windows theory.

IV. CONCLUSION

Increased criticism of the Broken Windows theory has made it a theory under siege. Harcourt and Ludwig suggest that the MTO program has launched the most recent attack. While it is currently up for debate whether Wilson and Kelling's theory has been proven, the MTO program has not hammered the final nail into its coffin. The MTO experiment is far from ideal as it does not present a workable assessment of the Broken Windows theory.

Critics of the theory, such as Harcourt and Ludwig, point to the empirical data amassed to suggest that there is no direct causal effect between disorder and crime. They assert that it is time to lay the theory to rest and point valuable resources in other directions. Where can proponents of the theory turn, then, for an answer? Is it back to the drawing board to design the ideal experiment in order to prove the theory's validity? Or should they, as Harcourt and Ludwig suggest, turn their backs on the Broken Windows theory and look towards other explanations of neighborhood crime? We may also ask whether empirical studies are the best way to analyze the Broken Windows theory at all. As social scientists look for solutions to many of society's worst problems, locking in on concrete causal connections seems a natural and logical reaction to theories that seek to reduce or eliminate crime. However, where strong causal links are lacking, the inherently positive attributes of certain theories are often overshadowed by the inability to find hard-fastened numbers. Perhaps, a more normative analysis of the intrinsic merits of order maintenance tactics is necessary.[158] The Broken Windows theory points out particular harms caused by disorder that call for some form of intervention. A normative analysis may help to reaffirm the basic principles of the Broken Windows theory. In this way, cities may begin to clearly

158. For a discussion of the dangers of strong causal reasoning, see Martin Rein and Christopher Winship's article *The Dangers of "Strong" Causal Reasoning in Social Policy*, 36 SOCIETY 38 (July/Aug. 1999). Strong causal reasoning attempts to identify intervention plans that have significant indirect effects on an important social outcome through the use of complex causal methods. Rein and Winship discuss the various dangers of causal reasoning as it affects school desegregation and the use of scientific data to justify the abandonment of "separate but equal" in the case of *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954). In reaching its decision in *Brown*, the Supreme Court heavily relied upon data generated by social scientists asserting that segregated schools negatively impacted the personal development and educational achievement of black children because of the stigma of inferiority. 374 U.S. at 494–95. In the past few decades, however, the theories upon which this decision relied have come to be questioned because there has been little research able to identify positive effects of integrated schools on the achievement of racial minorities. Rein & Winship, *supra*, at 40–41. This lack of a strong causal nexus, however, should not discount the inherent merits of the original proposition that segregation has negative effects on children. *Id.* Instead, we should ask the more pertinent question of whether segregation of students by race is morally justified even absent strong causal data. *Id.* Rein and Winship explain:

> [S]ocial science has been able to prove only what we would call "weak" causal theories. In the vast majority of cases the effects that are found are of modest size and only a small amount of the variation in the dependent variable is explained. . . . What is problematic is that in arguing for particular policies, we often argue as if social science's findings imply that there are strong determinative relations between particular causes and outcomes. Certainly, education affects earnings, but this does not mean that equalizing education will have much effect on earnings inequality. Similarly, economic poverty certainly affects child development, but this does not mean that reducing economic poverty will substantially improve child development.

Id.

> In the same way, disorder may affect crime, but that does not mean that order maintenance will substantially reduce the level of violence in the most troubled cities and neighborhoods—a conclusion that seems to be borne out by recent disillusionment with the broken windows theory among many criminologists. Consequently, it is probably too optimistic to hope that the strong causal broken windows theory offers a scientific way to bypass difficult moral arguments about the propriety of "public order" as a goal of policing.

Id. at 45. For more information, see David Thacher's article entitled *Order Maintenance Reconsidered: Moving Beyond Strong Causal Reasoning*, 94 J. CRIM. L. CRIMINOLOGY 381 (2004), which suggests an alternative method of analyzing the Broken Windows theory that focuses more directly on the intrinsic merits of efforts to reduce disorder by using ethnographic research and normative analysis. Building on Rein and Winship's work regarding desegregation, Thacher argues that social scientists should move away from searching for strong causal links in the area of Broken Windows theory and instead look to the inherent merits of the theory using ethnographic research and a normative analysis. Thacher, *supra*, at 412.

implement those principles, thereby allowing social scientists to adequately document the results.

Moreover, we may ask why the Broken Windows theory is so unpopular. Much of the backlash against the Broken Windows theory has been because of the adverse effects that arise out of its implementation. The implementation, as evidenced by New York City, has usually consisted of aggressive policing. The negative implications of aggressive policing are evident. Such tactics inevitably target minorities and the poor because the poor and homeless are most likely to engage in "disorderly behavior" such as vagrancy and panhandling.[159] What is termed aggressive policing, therefore, actually appears more like racial targeting.[160]

The theory, however, cannot be invalidated because of the failure of cities to correctly implement it as an order-maintenance initiative. Many cities rely upon aggressive "street-sweeping" through zero-tolerance and misdemeanor arrests. The ideas put forth in Wilson and Kelling's article may even be called "antithetical" to such tactics. The theory "advocated close collaboration between police and citizens, including street people, in the development of neighborhood standards. Moreover, neighborhood rules were to be enforced for the most part through non-arrest approaches—education, persuasion, counseling, and ordering—so that arrest would only be resorted to when other approaches failed."[161] Many of the "implementations" of the Broken Windows theory have lost sight of this very simple premise put forth by Wilson and Kelling.

Until neighborhoods and cities properly implement the theory, studies cannot accurately depict the validity of the Broken Windows theory. Moreover, studies that do not rely upon the basic principles of the theory—police involvement, community cooperation, and neighborhood norms—cannot produce data that is valuable in assessing the Broken Windows theory. This is ultimately the reason why the MTO program sheds little, if any, light on the issue. The program may work well as a

159. With cases such as *Illinois v. Wardlow*, 528 U.S. 119 (2000) (allowing reasonable suspicion to be found where the police have a dangerous location coupled with evasion by suspects) and *Hiibel v. Sixth Judicial Dist. Court of Nevada*, 542 U.S. 960 (2004) (allowing arrest and imprisonment for failure to provide name during a *Terry* stop), it seems as if many areas of the law are moving towards more lax reasons for approaching individuals on the street.

160. Jeffrey Fagan's recent study in New York City claims that the Broken Windows theory suggests that neighborhoods suffering from great amounts of disorder should demonstrate higher "stop and frisk" activity, particularly for quality of life crimes. Jeffrey Fagan, *Street Stops and Broken Windows: Terry, Race, and Disorder in New York City*, 28 FORDHAM URB. L.J. 457, 499 (2000). Fagan, however, asserts that the empirical evidence gathered suggests that policing in New York is not about the disorder in particular places; rather it is about policing the poor in poverty stricken places. *Id.* at 462–63. Although Broken Windows theory seemed to spur quality of life policing strategies, the observed "stop and frisk" activity suggests that characteristics of neighborhoods such as racial composition, poverty levels, and social disorganization are stronger predictors of crime-specific police stops than are "broken" windows. *Id.* at 492–93. Moreover, many individuals were stopped despite lack of reasonable suspicion as required for *Terry* stops. *Id.* at 476. This form of policing contradicts the policy rationale behind the Broken Windows theory as it deviates from the emphasis on community conditions and instead focuses disproportionately on minorities. *Id.* at 496. Policing that disproportionately uses race reinforces perceptions by citizens in minority neighborhoods that they are under non-particularized suspicion and targeted for aggressive stops. *Id.* This targeting reduces faith in the law, which inevitably weakens citizen participation in law enforcement and, therefore, undermines the broader social norms goals of contemporary policing. *Id.* at 499.

161. KELLING & COLES, *supra* note 10, at 23. It is questionable whether these order-maintenance policies, such as New York's zero-tolerance initiative, are even related to the Broken Windows theory.

demonstration of the effects of neighborhood mobility; the demonstration may also have other applications in social science; but, to use Harcourt and Ludwig's baseball reference, in regards to the Broken Windows theory, MTO is simply not in the same ballpark.