COLORADO ACLU SPEECH

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I'm an analyst, who leads 800 top-quality analysts in a nonprofit, nonpartisan institution. So you're not going to get a political talk, but an analytical one.

I have a theme, with a subtheme, and a message: I'll give these to you right now, in case I drone on and exceed my 20-minute timetable. I've given Reggie Rivers a figurative hook to use if I wander.

The theme is that analysis of effective public policies often clashes with other values, such as fairness. The subtheme is that this frequently happens because the most effective public policies target resources, be they money or other kinds, onto specific groups of individuals, described by statistically identifiable attributes. We do this kind of analysis and it can be controversial at times. In my time as the RAND Corporation's president, it seems as though we've been attacked from all azimuths of the political compass.

The message is that if we—as a society—don't get the facts on the table regarding effectiveness, then we are just left with arguments devoid of facts, driven by self-interest, personal morality, or political ideology. There's nothing wrong with those things: They belong in public debate. But without the facts, the discussion is incomplete and "facts" get invented.

This was brought home to me about eight years ago when RAND released the results of a study on effectiveness of mandatory minimum sentences for federal drug crimes. We analyzed whether these harsh sentences were effective at

reducing the total consumption of cocaine compared with other policy measures aimed at the same objective. We could find no measurable advantage to the mandatory minimums. The chief reason was that most of the individuals incarcerated were street dealers. These retail operators are, in effect, a dime a dozen; they are easily replaced. We suggested that harsh sentences targeted at individuals further up the drug distribution chain would be more effective.

Nevertheless, this study was attacked pretty energetically. At least one congressman charged that RAND advocated "coddling criminals." In subsequent discussions with people who favored the mandatory minimums, I realized that they favored this approach as a form of punishment for illicit behavior, not really to control drugs. Nevertheless, many had convinced themselves of the effectiveness argument and used it in public debate. Now we (RAND) said that it was wrong, and they were unhappy.

RAND started nearly 60 years ago with a nearly exclusive focus on defense and security issues. These are not immune to partisan wars and debates over ideology or morality, but based on my experience they seem less likely to trigger deep controversy than social issues. After all, the principal aim of military strategy is to match available means to desired ends—in other words, to be effective.

In the late 1960s, when RAND debated adding domestic issues to its research portfolio, many opposed this because they felt it would lead RAND into issues far more heavily laden with "values" than defense. RAND's leaders went ahead anyway.

Yet the opponents were proved right. Whether the topics are health care, justice, education, children's programs, and the like, we have often found ourselves embroiled in political debates. Ultimately, I think we've added value by putting

facts on the table and helping people understand what we know about what works and what doesn't. Many appreciate that; some don't.

For example, in the 1970s and early '80s, RAND (along with others) demonstrated (a) that there were "career criminals" (i.e., individuals who were far more likely to embark on a criminal career than others); (b) that 10 percent of criminals account for 60 percent of crime; and (c) that it was possible to identify career criminals fairly early in their careers through statistical analysis of personal attributes, such as age of crime initiation, drug and alcohol use, and injury to the victim. Given that, several policy ideas emerged that would improve the effectiveness of the criminal justice system in reducing crime through targeted policies aimed at effective use of incarceration. You can imagine that those ideas that aimed long sentences at some people rather than others who committed the same crime were very controversial. They were ultimately abandoned as unfair and inconsistent with the Constitution's equal protection clause. But the research continues to inform prosecutors, judges, and parole boards as they exercise the discretion granted them by the law to make the most effective use of resources.

In the '90s, this very same line of research put us on the other side of the political fence, when we assessed the proposed "Three Strikes and You're Out" law for California. This law—which passed, by the way—is the opposite of targeting in that it prescribes the identical sentence for individuals who have crossed the third-strike threshold. Thus it does not effectively use resources because it incapacitates people who probably are not long-term problems for society. They either weren't dangerous when they crossed the threshold or they will cease to be because they will stay in prison well past the age of active criminal careers. We analyzed an alternative "one-strike" law that would target mandatory long sentences at likely career criminals who had committed violent crimes and found it to be more cost-effective than "three strikes."

I've dwelt on crime and sanctions because I'm speaking to the ACLU. But this same issue—a tension between effective policy and fairness or equity—pervades the world of policy analysis. Almost every analysis shows that effective policies will involve some form of targeting of resources. The question frequently arises whether such policies are fair.

For example, RAND's recent study on the cost-effectiveness of universal preschool programs in California raises this issue. When only "at-risk" children are offered preschool, the return on investment is estimated to be more than 6 to 1. But when it's universal, the estimate drops to 2.5 to 1. The reasons are clear—most children are going to turn out okay and directing resources to them will add little value. By directing resources to children at risk—basically economically disadvantaged kids—a greater payoff results. RAND identified such payoffs as greater economic value and avoidance of criminal justice costs when the beneficiaries reach adulthood.

But would this be fair? Why should some people benefit and others not. The effectiveness answer is enough for me: If the economy grows and crime declines, I'm happy to trade one set of public goals at the expense of another. But many others can't. And it is hard to muster political support for programs that seem to selectively benefit only some people. For that reason, the backers of a ballot initiative in California have chosen the universal preschool route and not the targeted approach.

Incidentally, targeting isn't always controversial. To my knowledge, nobody objected when our research led to a set of factors that identified "vulnerable elderly"—a group of people over age 65 who have four times greater chance of functional decline over a two-year period compared with their peers. About 32 percent of elders are vulnerable. However, I can well imagine that targeting scarce

medical resources at this group at the expense of somebody's grandpa could lead to a hue and cry.

Following the Madrid bombings and more recently the bombings in London, attention has turned to the question of intensifying security for modes of transport in addition to air travel. One key question is whether to search items such as luggage, backpacks, briefcases, and purses or even to conduct searches aimed at detecting explosive belts.

Because such searches could seriously impede the operation of mass transit and be enormously expensive, it is unlikely that the search rate—the fraction of passengers searched—could be very high. This stands in contrast to air travel, where every passenger is subjected to a search. For mass transit, like the London tube, perhaps a couple of percent is the best one could hope for. If only some passengers are selected for a search, two questions arise: (1) How should they be selected? (2) How effective will the search policy be at reducing the probability of terrorists? I pose the second question in probability terms because it's clearly impossible to eliminate terrorism, no matter what the politicians want to say. Terrorism has been around for thousands of years and won't be wiped out completely.

At RAND, we're interested in both these questions because we've been hired by Amtrak to help it improve security and the search question comes up. Without getting into details, let me assert an answer to the first question. A search policy that targeted the searches with search probabilities guided by a profile would be more effective than random searches. I know that's a dangerous thing to say in front of an ACLU audience, but I think I'm on firm analytic ground. As I said earlier, policies that target resources based on empirically determined personal attributes are generally more effective.

Because terrorism doesn't happen very often, it is difficult to determine empirically the appropriate attributes to build a profile. And implementing such a targeted search policy could be too complicated for security personnel. And it might be a bad idea on grounds other than effectiveness.

In any case, the New York MTA has initiated a program of random searches of individuals entering the subway. The NYCLU has sued the city over this program raising two issues: the constitutionality of the searches (Fourth Amendment) and the likely ineffectiveness of the MTA's approach.

It's appropriate to raise the effectiveness issue together with constitutionality because the courts seem willing to permit some searches if they serve a larger public good—in this case, a reduction of terrorism on the subways. In other words, if the policy is effective, some trade-off with privacy could be warranted. The NYCLU is arguing that the policy is ineffective.

How do they know that? Part of the argument is that the search policy is implemented ineptly. From what I have read, that appears to be the case. That could be corrected (and perhaps has been). But I think the NYCLU would continue to object.

The Reason Society has supported the NYCLU's position regarding ineffectiveness of random searches, pointing out that a program that searches at a low rate, say 1 percent, will only catch at best 1 percent of the terrorists. Thus, the probability of terrorism would only be reduced by 1 percent. This hardly seems worth the effort, let alone triggering a constitutional fight.

But that misses the point. The more important issue in assessing effectiveness is whether the possibility of having their operations thwarted would deter terrorists from attacking the subway. We frequently tend to think of terrorists as lone actors

who are willing to die for their cause and thus can't be deterred. But they are almost always part of a larger organization dedicated to inflicting mass violence on innocents. The organization does not want to be broken up because of one mistake. Thus, conceivably, even a low search rate could have a disproportionate impact on the probability of terrorism on the subway by causing terrorist organizations to abandon the subway as a target because of a risk of getting caught and having the organization broken up by the authorities. If a 1 percent search rate produced, say, a 40 percent reduction in the probability of terrorism, then I would argue that the search program was effective.

Estimating the deterrent effect is very difficult. The best one can do is look for similar situations where the chance of a malefactor being thwarted can be demonstrated to reduce the likelihood of a malicious act.

There is some basis to believe in a substantial deterrent effect based on a study of LoJack—the radio transmitter device used for retrieving stolen vehicles. Even at very low levels of LoJack deployment, researchers at the University of Chicago found a significant reduction in auto theft rates. A 1 percent deployment of LoJack into a metropolitan area produced a 40 percent reduction in auto theft. The next 1 percent only produced 16 percent more reduction and the next 1 percent produced 5 percent more. This suggests that the mere presence of a low level of LoJack devices caused professional thieves to fear a disruption of their operations.

Professional auto thieves aren't the same as terrorists, but there are some similarities. Both have organizations vulnerable to disruption. This does at least suggest that there could be a substantial deterrent effect on terrorist organizations from low search rates. It will take a lot more research to be definitive, however.

At this point, I have no idea what a careful study of the deterrent effect of low search rates will show. I do know that it is important to get a handle on it so that the constitutionality issue can be properly joined.

That's my main message. A lot of considerations go into making sound policy. Effectiveness should be among the more important. It's worth finding out what we can about the likely effectiveness of a given policy proposal before we drift off into battles guided only by our personal opinions and biases, expressing our opinions about other opinions. Opinion-based battles rather than fact-based ones: That's the direction in which I fear this country is headed.

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