# Circumvention

## Attorney General Barr

### George Floyd Protests Prove

**The biggest obstacle to reform is AG Barr. No risk of solvency; prosecution of George Floyd protestors proves. Toobin, 7/12** [Jeffrey Toobin has been a staff writer at The New Yorker since 1993 and the senior legal analyst for CNN since 2002. His latest book, “True Crimes and Misdemeanors: The Investigation of Donald Trump,” will be published in August. “The Halted Progress of Criminal-Justice Reform,” 12 July 2020, https://www.newyorker.com/magazine/2020/07/20/the-halted-progress-of-criminal-justice-reform] Cgilbert

The cause of criminal-justice reform has been, in recent years, a welcome exception to the extreme polarization that has afflicted so much of our politics. Since 2008, the prison population has dropped in most parts of the country, in both red states and blue. It’s gone down sixteen per cent in Louisiana and twenty-two per cent in South Carolina, which is roughly similar to reductions in more liberal places, such as California (twenty-six per cent) and New York (twenty-one per cent). The fight against mass incarceration even engendered a brief moment of bipartisanship in Washington, in 2018, when Congress overwhelmingly passed, and President Trump signed, the First Step Act, which made modest improvements in federal sentencing practices. But this progress, at least at the federal level, has come to a halt. In the weeks since protests erupted around the nation following the murder of George Floyd, in Minneapolis, on May 25th, the President has returned to the “law and order” bluster that characterized his 2016 campaign. More to the point, the Justice Department, under Attorney General William Barr, has engaged in precisely the kinds of excesses that the reform movement has endeavored to correct. Most of the protests were peaceful, of course, but there was some violence and destruction of property. These sorts of crimes have traditionally belonged in the bailiwick of state prosecutors, who handle most violent crime in the United States. Yet Barr’s prosecutors have stepped in and charged at least seventy people with crimes in connection with the protests. In Mobile, Alabama, a protester allegedly used a bat to break a window of a police cruiser. Such an act is a paradigmatic state crime—an assault—but federal prosecutors contrived to bring a case for “civil disorder,” drawing on a rarely used federal law. Bringing the case in federal court allows Barr to posture against the protesters and, even more important, to make them eligible for longer prison sentences, as is usually the case in federal prosecutions. The most egregious example of this kind of federal excess is taking place in New York, where prosecutors in Brooklyn may be on the verge of responding to a crime with an injustice. On May 29th, two well-regarded lawyers, Colinford Mattis and Urooj Rahman, participated in protests in Fort Greene. According to the complaint filed in federal court, just after midnight, Rahman stepped out of a minivan driven by Mattis and flung a Molotov cocktail through a broken window of an unoccupied police car. (In another part of Brooklyn, Samantha Shader, a twenty-seven-year-old woman from upstate New York, was charged in a separate Molotov-cocktail attack on a police van; neither attack caused any injuries.) The two lawyers are both in their early thirties. Mattis is a graduate of Princeton and of New York University’s law school, and he worked until recently at a well-known corporate law firm in Manhattan. He is active in community affairs in Brooklyn, and is responsible for the care of several young family members. Rahman, a graduate of Fordham University’s college and law school, worked at Bronx Legal Services. Neither had a criminal record. (Shader did have a record of various arrests in different parts of the country.) Mattis and Rahman have pleaded not guilty, but the case against them appears strong. According to prosecutors, there is video evidence of Rahman throwing the improvised bomb, and police found the ingredients to make Molotov cocktails in Mattis’s van. In bringing the case against them, though, the Justice Department has engaged in grotesque overreach. If convicted of the charges in the indictment, Mattis and Rahman face a minimum of forty-five years and a maximum of life in prison. (If they were prosecuted in state court, as they should be, they would likely face five years or less.) The case demonstrates the perversity of mandatory-minimum sentences, which remain common in federal court, despite the changes wrought by the First Step Act. The problems with mandatory minimums only begin with the simple fact that they keep people in prison for too many years. They also concentrate power in the hands of prosecutors and remove discretion from judges, who usually have a broader perspective on the appropriate levels of punishment. Moreover, mandatory minimums warp the entire judicial system, by putting unbearable pressure on defendants (and their lawyers) to enter guilty pleas and avoid the risk posed by a trial. (Prosecutors often waive the minimums if defendants offer to plead guilty.) The case of Mattis and Rahman illustrates this point clearly. Faced with the certainty of decades of prison time if convicted by a jury, what defendant wouldn’t try to cut a deal for a lesser sentence? In federal court today, a remarkable ninety-seven per cent of defendants plead guilty rather than go to trial. But a system in which practically no one goes to trial gives government prosecutors far too much power. Judges and juries are supposed to operate as a check on prosecutors, and they can’t do that job if nearly every defendant pleads guilty. Too often, prosecutors, like those in the case of Mattis and Rahman, use indictments to extort guilty pleas rather than to achieve justice. This is, in many respects, a hopeful moment for progress in the criminal-justice system. District attorneys in cities like Philadelphia, Milwaukee, and San Francisco are pulling back from the mindless pursuit of more convictions and longer sentences. Eric Gonzalez, the Brooklyn District Attorney, is also a reformer, which may be a reason that Barr’s minions snatched the Molotov-cocktail cases away from him. The Attorney General has expressed nothing but contempt for more civilized approaches to law enforcement. In a speech in February, he attacked the new generation of prosecutors, asserting, “These D.A.s think they are helping people, but they end up hurting them. These policies actually lead to greater criminality.” This, to put it charitably, is unproven. Reformers have been winning elections around the country not because their constituents want “greater criminality” but because they recognize that we have incarcerated too many people (and particularly too many people of color) for too long. As usual, Barr is channelling his boss, who has responded to the George Floyd protests with ugly spasms of race-baiting and bigotry. But, as bad as Trump’s invective is on Twitter and elsewhere, Barr’s actions are worse, because individuals and communities will be paying the costs for years, or decades, to come.

### First Step Act Proves

**The Justice Department, under Bill Barr and Trump, will reinterpret the aff that will decrease solvency; the First Step Act proves personnel, not legislation, dictates policy. Shortell, 6/22** [David Shortell covers the Justice Department and federal law enforcement issues out of CNN's Washington bureau. He's reported from the halls of DOJ under Attorneys General Jeff Sessions and William Barr, and from the scene of major crimes across the country, including the Tree of Life synagogue shooting in Pittsburgh and the Sante Fe High School shooting south of Houston. Before that, he worked on the assignment desk in CNN's New York bureau covering breaking news, which included at the time several ISIS-related attacks and arrests. He is originally from West Hartford, Connecticut, and graduated from Emory University in Atlanta. “A tough-on-crime Justice Department is being forced to adapt on policing,” 22 June 2020, https://www.cnn.com/2020/06/22/politics/justice-department-police-reform/index.html] Cgilbert

President Donald Trump this month handed the reins to a burgeoning police reform effort to the Justice Department, giving responsibility for implementing an executive order responding to weeks of nationwide demonstrations against policy brutality to a building that has spent the past three years dismantling previous programs aimed at the same goal. The department whose first leader under Trump, former Alabama Sen. Jeff Sessions, declared in his inaugural speech that Washington would no longer be "dictating to local police how to do their jobs" must now develop a system to certify and reward police departments that meet high standards for the use of force. And Attorney General William Barr, who has aimed the bulk of his fire on the topic at "punks" who lack respect for the police, will now be in charge of building and publicizing information from a database that tracks abusive cops. As public opinion polls have tracked a surge of support for the Black Lives Matter movement in the wake of the killing of George Floyd by a Minneapolis police officer last month, and Trump and lawmakers from both parties have opened the door to policy change, a Justice Department steered by an old guard of tough-on-crime subscribers is being forced to adapt. Criminal justice reform advocates, including some who worked with the administration to craft the executive order, are left with concerns that the department may diminish the reform effort. "We do have some skepticism about how this is going to be implemented by Barr and the Justice Department," said Inimai Chettiar, the legislative and policy director of the Justice Action Network, a bipartisan criminal justice reform group that supports the White House's plan for reform. "We know that that entity is not particularly criminal justice reform-oriented." Criminal justice reformers have found their footing in Washington in recent years, gaining momentum and power with the backing of allies in both parties of Congress and the White House, where Jared Kushner, the President's son-in-law and senior adviser, has championed the issue. But Barr and his predecessor Sessions have long been viewed as obstacles. Barr, whose conservative beliefs on criminal justice have underpinned Washington policy for 30 years, when he first served in the Justice Department and argued for mass incarceration programs, has made room for slight shifts in recent weeks, saying that Floyd's death had "driven home" a breakdown in the criminal justice system that disfavored African Americans. He's also doubled down on his law-and-order persona: when peaceful marches gave way to rioting in the nation's capital, he summoned federal law enforcement to patrol the streets and approved the forcible clearing of peaceful protesters outside the White House one night. Behind the scenes, as the White House debated how to take its first steps toward police reform, Barr argued for minimizing the breadth of national guidelines in the White House document -- deferring to local police forces to set their own policies -- and for leaving more significant reform proposals up to Congress, according to people familiar with the matter. The executive order that Trump signed Tuesday contains moderate reforms, like the tracking program that will encourage localities to submit information on officers that have been fired or found in court to have used excessive force. The Justice Department will also direct federal grants toward police departments that are credentialed for having use of force and deescalation policies and banning the use of chokeholds, except when lethal force is authorized. Working with federal health officials, the department will increase training on programs that pair social workers with police to answer mental health and homelessness calls. Lawmakers in both parties have put forward ambitious packages with further reform efforts and stiffer incentives, although sticking points -- like the use of so-called no-knock warrants, and qualified immunity, which shields public figures from being sued for most actions taken in the course of their official work -- make any compromise far from certain. On Thursday and Friday, Barr traveled to Boston and New York to meet with leaders of the cities' police departments, and he is planning to seek insight and advice on the reform effort from a number of police chiefs across the country in the coming weeks, according to a Justice Department official. As he begins to carry out the administration's first attempt at curbing police misconduct, Barr will be treading unfamiliar ground. The Justice Department's political leadership under the Trump administration has endorsed a policing policy that prioritized stamping out a national uptick in violent crime and boosting the morale of street cops, who they argued had been antagonized under the Obama era. In one of his first moves at the department, Sessions, who served as attorney general from 2017 to 2018, shut down a practice of investigating allegations of systemic misconduct by police forces that had become routine under former President Barack Obama and resulted in court-enforced consent decrees that mandated reform at problematic departments. "They made it very clear that policing the police was not only not a priority of the administration but something they viewed as nefarious," said Kristy Parker, a longtime civil rights prosecutor at the Justice Department who served under Sessions for eight months. Barr has maintained that course, focusing on officer suicides so far in his tenure. In December, he warned that communities that don't respect their police risk losing their protection. Days later, he hosted an Italian dinner for New York Police Department officers in Queens. In interviews and public remarks since Floyd's death, Barr has offered his most nuanced perspective on policing and race, telling CBS News that he did not believe law enforcement was "systemically racist," while acknowledging that African Americans may face unfair scrutiny by police. The Justice Department is now conducting a civil rights investigation into Floyd's killing, as well as into the deaths of Ahmaud Arbery, who was killed while on a run by white neighbors in Georgia in February, and Breonna Taylor, who was killed in her home by Louisville, Kentucky, police in March. Some advocates see the steps the administration and Barr are taking as signs of good faith effort that have staying power. "I think everybody understands that this is not just one of those moments where we're going to say, 'Okay, we tried to do it, we couldn't do it' -- this seems to be a lot different," said Mark Holden, a board member at the conservative Americans for Prosperity advocacy group who has worked with the Trump administration on criminal justice reform efforts. "At the end of the day, there's got to be accountability and transparency because that will build the trust." Still, other advocates point to the Justice Department's implementation of the First Step Act, a sweeping prison reform effort passed with bipartisan support in 2018, as an example of its poor shepherding of progressive policy. Thousands of federal inmates have already been released early under provisions of the law, although outside groups have been unhappy with the Justice Department for an interpretation of the reform that's led prosecutors to challenge hundreds of other release applications. The Justice Department's initial proposal for a tool to rate inmates' risk of recidivism that was required under the law also drew criticism for an overly-broad definition of key factors that deflated the number of inmates eligible for release. It has since offered an updated proposal. Despite his past advocacy for increasing the prison population, Barr has promised to "faithfully implement" the law. "Personnel is policy," said Ames Grawert, a senior counsel at the Brennan Center's Justice Program, a left-leaning policy institute. "If you're going to have policing reforms, if you're going to have broader criminal justice reform policies that have discretionary elements built into them, you want to make sure the people wielding that discretion believe in the cause."

### Politically Divisive

**Barr will use CJR to fight with state prosecutors about reforms he sees as an attack on the Justice Department; history proves he will find ways to increase incarceration rates. Eisen, 20** [Lauren-Brooke Eisen is director of the Brennan Center’s Justice Program where she leads the organization’s work to end mass incarceration. Her team focuses on exposing the profound social and economic hardships that impact those who encounter the justice system while creating policies that ultimately shrink its size and scope. Eisen has authored several nationally recognized reports and articles on how to reduce America’s reliance on incarceration. Her work has been featured in media outlets across the country, including the New York Times, USA Today, Time, U.S. News & World Report, the Daily News, and the Marshall Project and has appeared on MSNBC, CNN, CBS News, NBC News, Fox News, National Public Radio, as well as many other television and radio news programs. Eisen is the author of Inside Private Prisons: An American Dilemma in the Age of Mass Incarceration (Columbia University Press, 2017) and a Pulitzer Center on Crisis Reporting journalism grantee. She has served on the Advisory Council of the New York City Bar’s Task Force on Mass Incarceration and the transition committee for Brooklyn District Attorney Eric Gonzalez. She currently serves on the advisory board of the Prosecutor Project, which seeks to develop more effective and efficient prosecutorial practices and serves as a training and curriculum advisor for Fair and Just Prosecution. In 2020, Eisen became a founding member of the Council on Criminal Justice, which works to advance understanding of the criminal justice policy choices facing the nation and build consensus for solutions that enhance safety and justice for all. Eisen taught an undergraduate seminar on mass incarceration at Yale University and served as an adjunct instructor at John Jay College of Criminal Justice. Before joining the Brennan Center, Eisen was a senior program associate at the Vera Institute of Justice, where she worked on the sentencing and corrections team to implement policies in multiple states to improve public safety while reducing prison populations. She also previously served as an assistant district attorney in New York City, where she worked in the Appeals Bureau, the Criminal Court Bureau, and the Sex Crimes Special Victims Bureau. Before entering law school, Eisen worked as a beat reporter for a daily newspaper in Laredo, Texas, covering criminal justice and immigration. Eisen holds an AB from Princeton University and a JD from the Georgetown University Law Center. “William Barr’s Hypocrisy on Roger Stone’s Sentencing,” 13 February 2020, https://www.brennancenter.org/our-work/analysis-opinion/william-barrs-hypocrisy-roger-stones-sentencing] Cgilbert

Attorney General William Barr has been busy. He’s been making speeches criticizing elected district attorneys who have been pursuing reforms to reduce prison populations. Following the wishes of their voters, they’re instituting policies like more lenient sentences and diversion to drug treatment programs. But Barr wasn’t too busy to have his Justice Department advocate for a lighter sentence for Trump campaign adviser and friend Roger Stone, who was convicted in November of seven federal crimes including lying to Congress, obstruction of justice, and witness tampering. Barr’s interference in the case — over the objections of career DOJ prosecutors, who quit the case in protest — apparently came at the behest of President Trump. It’s a grave abuse of power that undermines the rule of law and erodes public faith in our criminal justice system. Although the Justice Department is part of the executive branch, it is meant to be independent, not a political tool of the president. Barr’s protestations Thursday about the president commenting about on prosecutions seems disingenuous given the number of times Trump has done so while in office. Last week, the Justice Department recommended to the court a sentence of seven to nine years in prison, which is in line with department guidelines. But on Tuesday, newly installed DOJ attorneys on the case said the sentence should be shorter. The government’s reversal flies in the face of Justice Department policy, which directs prosecutors to recommend a sentence within the advisory guidelines range in order to achieve “just and consistent results in federal cases.” In other words, to quote the motto etched in stone on the Supreme Court building, “Equal Justice Under Law.” These extraordinary developments also highlight the attorney general’s retrograde positions on the justice system in general. The same day that his department asked for special treatment for Trump’s friend, Barr gave a speech criticizing prosecutors who are committed to moving away from past incarceration-driven practices. At a law enforcement conference, Barr said, “These self-styled ‘social justice’ reformers are refusing to enforce entire categories of law, including law against resisting police officers. In so doing, these DAs are putting everyone in danger.” Barr went on to claim that their policies are creating more dangerous cities, namechecking San Francisco, Seattle, St. Louis, Chicago, and Baltimore. In fact, San Francisco’s 2019 homicide rate was the lowest it has been in 60 years. And in Chicago, where Kim Foxx was elected as state’s attorney, the number of shooting incidents decreased 22 percent during her first year and 14 percent in her second. King County Prosecuting Attorney Dan Satterberg’s first year in office was 2008, and since then, Seattle’s homicide rate has consistently been among the lowest in the nation for major cities. This is not the first time Barr has criticized local prosecutors for exercising their discretion in choosing not to prosecute certain low-level crimes. Last August, Barr delivered a speech to a police group in New Orleans that was reminiscent of “tough on crime” policies of the 1980s and 1990s. He labeled reform-minded prosecutors — who are relying on decades of evidence that overincarceration does not create healthier and safer communities — as “anti-law enforcement.” A growing body of research shows that there is little or no relationship between length of incarceration and public safety. A Justice Department report found that recidivism rates did not differ significantly among those released after serving 6 months or less all the way through serving 30 months behind bars. This new wave of reformist prosecutors is focused on ending the criminalization of poverty by reducing the harmful impact of court-imposed fines and fees and eliminating cash bail. More prosecutors are relying on evidence-based research to prioritize diversion programs to ensure that those with mental health or substance abuse problems are treated instead of spending time locked up. On Thursday, 39 of those elected prosecutors pushed back on Barr’s misleading attacks, calling him out for trying to go back to a time when “success was measured by how harsh the punishment was, and a fear-driven narrative prevailed.” Barr is out of step with his own party, as many recent criminal justice reforms have been a bipartisan effort. He’s also out of step with the American public, 71 percent of which support reducing the prison population.

### Works Against Trump

**Barr and the DOJ will actively work against CJR, even when it is endorsed by Trump. Hopwood, 20** [Shon Hopwood, Associate Professor of Law, Georgetown University Law Center. I'd like to thank Margaret Rusconi and Andrew Lanham for their wise comments. I'd like to thank my two assistants, Molly Hogan and Nicholas Mecsas-Faxon, for their research assistance and editorial guidance on this Review. “THE MISPLACED TRUST IN THE DOJ'S EXPERTISE ON CRIMINAL JUSTICE POLICY.,” April 2020, Michigan Law Review Volume 118 Issue 6] Cgilbert

It is one thing for federal prosecutors in the executive branch to lobby against reforms in Congress and the Sentencing Commission, but it is something altogether different when they attempt to thwart the policy agenda of the president they serve. Yet that is exactly what occurred when President Trump made it a priority to pass bipartisan criminal justice reform through the First Step Act and when President Obama tried to implement new clemency policies. In October of 2017, Senators Chuck Grassley and Dick Durbin introduced the Sentencing and Corrections Reform Act (which the First Step Act later supplanted) in the Senate. (83) By January of 2018, President Trump signaled support for the bill. (84) Just a few weeks later, Attorney General Jeff Sessions undermined that effort by sending Senator Grassley a letter stating that if the bill passed in its current form, "this legislation would be a grave error." (85) After the House of Representatives voted in favor of the First Step Act in May of 2018, and despite the White House's continued support for the bill, the attorney general claimed the legislation would "just create new victims" and then threw "his weight behind legislation to toughen and lengthen prison sentences." (86) Even though it's the president's right to set policy priorities for the executive branch, Attorney General Sessions and the DOJ continued to oppose the White House's desire to pass criminal justice reform. (87) In July of 2018, the DOJ's Office of Legislative Affairs sent a letter to the White House lambasting the First Step Act, claiming that it would "significantly erode" the "long established truth-in-sentencing principles, create impossible administrative burdens, effectively reduce the sentences of thousands of violent felons, and endanger the safety of law-abiding citizens and law enforcement officers." (88) The DOJ's letter was full of inaccuracies. Because Attorney General Eric Holder's new policies had led to shorter federal sentences and a slightly smaller federal prison population, (89) the DOJ argued that "[i]t is likely no coincidence that, at the same time, we are in the midst of the largest drug crisis in our nation's history and recently experienced the two largest single-year increases in the national violent crime rate in a quarter of a century." (90) But, as others noted, "correlation doesn't mean causation," (91) especially given that violent crime prosecutions make up a small fraction of total federal sentences. (92) Indeed, former FBI Director James Comey attributed the 2015 increase in homicides in several American cities to less aggressive policing--not slightly smaller federal sentences and a minor reduction in the federal prison population. (93) The numbers show that the DOJ's claim that the violent crime rate had experienced historically large increases in 2015 and 2016 was also disingenuous. (94) Sure, the FBI's Uniform Crime Report found an increase in violent crime in 2015 and 2016. (95) But when the Bureau of Justice Statistics released the results of its National Crime Victim Survey, it showed that though the numbers demonstrated no significant change, the rate of violent crime dropped from 20.1 per 1,000 in 2014 to 18.6 per 1,000 in 2015. (96) And the DOJ's letter failed to convey the most important point: that the National Crime Victim Survey and the FBI's Uniform Crime Report "both show that crime in the United States remains at its lowest levels in decades." (97) The DOJ further argued that the First Step Act's earned-time provision would "effectively function as a blanket, one-third reduction in the amount of time that many convicted felons would spend in BOP custody." (98) One could wish! Such a policy would mean everyone in federal prison would be incentivized to become rehabilitated, thus reducing their risk of recidivism upon release and making communities safer. (99) Unfortunately, the earned-time credits are only available to people convicted of certain offenses who, through their successful completion of recidivism-reducing programming and a DOJ-created risk assessment, establish that they are at minimum or low risk of offending. (100) Then, and only then, will people in federal prison receive earned-time credits that can be used to serve part of their custodial sentence in a federal halfway house or on monitored home confinement. (101) Given the DOJ's long-held position that the longer the sentence the better, there is a greater risk that the DOJ will create a risk-and-needs assessment allowing too few in federal prison to receive earned-time credits than that it will create an assessment allowing too many to receive credits. (102)

## Dept of Justice

### Can’t be Reformed

**The DOJ is inherently structured to advise the president in its own self-interest. Reform will be perceived as nullification of the department’s role. Barkow & Osler, 17** [RACHEL E. BARKOW (\*) & MARK OSLER (\*\*) (\*) Segal Family Professor of Regulatory Law and Policy and Faculty Director, Center on the Administration of Criminal Law, New York University School of Law. (\*\*) Robert & Marion Short Distinguished Chair and Professor of Law, University of St. Thomas School of Law (MN). “DESIGNED TO FAIL: THE PRESIDENT'S DEFERENCE TO THE DEPARTMENT OF JUSTICE IN ADVANCING CRIMINAL JUSTICE REFORM,” William & Mary Law Review Volume 59 Issue 2, November 2017] Cgilbert

Imagine a President who announced that he or she would take advice on criminal law matters only from the federal defenders' office. His or her primary advisor would be the Federal Public Defender for the District of Columbia, and experts within the defenders' offices would speak for the Administration before Congress and the Sentencing Commission. All pending legislation or proposed sentencing guideline amendments would be supported by the Administration only if the defenders bought into the proposal. In addition, suppose this President intended to put the defenders in charge of federal prisons, forensics, and the clemency process. The President's reasoning would be straightforward: the defenders understand criminal law at the ground level, offer a national breadth of understanding, and include experienced experts. (23) They offer experience equal to or better than anyone else within this specialized world, and are the group of practicing attorneys most responsible for safeguarding the crucial protections for criminal defendants embedded in the United States Constitution. That President would face a firestorm of dissent, despite the truth of the claims. Defenders, critics would cry, only represent one part of the justice system, and are biased given that all of their work is on behalf of defendants. Yet, the mirror opposite (24)--a President whose principal advisor on criminal law is his or her chief prosecutor; (25) who sends prosecutors to speak for the Administration before Congress and the Sentencing Commission; (26) who vets proposals through the Department before determining a position; and who allows the Department to run the prisons, set our forensics policies, and control the clemency process (27)--is our current reality. It matters--a lot--that the primary advisors to the President on criminal justice issues have professional interests to protect, regardless of administration. (28) These interests include maintaining the Department's size and budget, protecting and enlarging the power and discretion of its prosecutors, and expanding the menu of options those prosecutors have by constantly growing the size of the federal penal code and maintaining mandatory punishments. (29) It should not surprise us that the size and power of the Department and the penal code have both exploded in recent years. (30) These things are not always good for the United States, but they are always good for the Department of Justice. The Department is also especially likely to bristle at any reform that questions its prior actions, whether it be a retroactive adjustment to sentences, the early release of someone in federal prison, or a new look at forensic science that the Department commonly relies upon. (31) In areas such as these, reform may appear to the Department as the nullification of its work. Everything we know about the endowment effect tells us that the Department will be particularly resistant to efforts to take back or undo what it has achieved. The role of the Department, including the bias it brings with it to discussions of policy, has been a hidden brake on reform efforts across a striking array of issues within the field of criminal law. (32) While prosecutors necessarily represent the Executive Branch in the federal courts in criminal matters, it is not necessary that they be the only significant input to the President on policy issues. A close examination reveals the damage done by giving this dual role of advisor and interested party to a federal agency that has used that unique power to expand its own power, even when under the leadership of self-proclaimed reformers like President Obama and Attorneys General Eric Holder and Loretta Lynch.

### Lobbying

**Can’t solve CJR; Congress continues to create laws that require enforcement AND DOJ lobbying is highly effective. Hopwood, 20** [Shon Hopwood, Associate Professor of Law, Georgetown University Law Center. I'd like to thank Margaret Rusconi and Andrew Lanham for their wise comments. I'd like to thank my two assistants, Molly Hogan and Nicholas Mecsas-Faxon, for their research assistance and editorial guidance on this Review. “THE MISPLACED TRUST IN THE DOJ'S EXPERTISE ON CRIMINAL JUSTICE POLICY.,” April 2020, Michigan Law Review Volume 118 Issue 6] Cgilbert

These methods are not the only ways that federal prosecutors lobby policymakers. The NAAUSA (29) has delegates in each of the ninety-three U.S. attorneys' offices, and its role is to "protect, promote, foster and advance the mission of [assistant U.S. attorneys]" in the Department of Justice and Congress. (30) It does so through congressional testimony, white papers, press releases, and letters to federal policymakers. (31) The NAAUSA often takes positions on federal criminal justice policy ranging from proposed sentencing reforms to President Obama's clemency project. (32) Few lobbying groups in D.C. have as much power and influence with federal policymakers as the DOJ and the NAAUSA. Take the proliferation of substantive criminal law as one example of their lobbying prowess. The Framers viewed voluminous and unclear criminal laws as a threat to liberty, 33 so federal criminal law grew slowly, and by 1873 there were only 183 separate federal criminal offenses. (34) But the DOJ's "lobbying machine" has consistently "pushe[d] for more, broader and harsher criminal law." (35) As a result, we now live in the era of congressional crime creation. (36) Today, there are approximately 4,500 federal statutes and hundreds of thousands of federal regulations carrying criminal penalties. (37) From 2000 to 2007 alone, Congress created 452 new federal crimes, (38) and from 2008 to 2013, Congress added 439 new offenses. (39) Federal prosecutors are so proficient in moving the Congress to pass criminal laws that there is a Twitter handle to document all the crimes. (40) The "A Crime a Day" Twitter account noted in 2015 that it "will have tweeted a federal crime every day for a year. By some estimates, it will only take ~800 years to tweet the rest." (41) The DOJ has thus been quite effective in moving Congress to enact more and more federal crimes. (42) Congressional overrides of Supreme Court decisions are another marker of federal prosecutors' influence over the legislative process. An override occurs when Congress passes a statute that overrules or modifies a Supreme Court statutory interpretation decision. (43) Professors Matthew Christiansen and William Eskridge conducted a study finding 286 congressional overrides of Supreme Court decisions from 1967 to 2011. (44) Even though congressional overrides involve a nearly limitless number of topics on which Congress legislates, criminal law accounted for almost thirteen percent of the total overrides, making this category "among the largest producers of overrides." (45) Those criminal law-related overrides, the authors noted, were "decidedly one-sided," because "[i]f the Department of Justice believes the Court's stingy interpretation of a criminal prohibition, penalty, or procedural rule stands in the way of effective implementation of a criminal law regime, it can typically gain the attention of Congress and can often secure an override." (46) As a consequence, there was a proliferation of DOJ-initiated overrides "further penalizing [criminal defendants] and virtually no overrides protecting them." (47) The DOJ's and the NAAUSA's views are carefully listened to by federal policymakers and, in the following Sections, I argue that their views are often based on flawed data and a not-so-secret attempt to maintain power at all costs.

### No Incentive for Reform

**No risk of solvency, federal prosecutors have NO incentive to change the status quo. Hopwood, 20** [Shon Hopwood, Associate Professor of Law, Georgetown University Law Center. I'd like to thank Margaret Rusconi and Andrew Lanham for their wise comments. I'd like to thank my two assistants, Molly Hogan and Nicholas Mecsas-Faxon, for their research assistance and editorial guidance on this Review. “THE MISPLACED TRUST IN THE DOJ'S EXPERTISE ON CRIMINAL JUSTICE POLICY.,” April 2020, Michigan Law Review Volume 118 Issue 6] Cgilbert

As Professor Barkow explains, prosecutors are ill-equipped to decide criminal justice policy without bias: They stand as poor stewards to see whether the overall working of the administration of criminal law furthers public safety and maximizes limited public resources because they have too much to lose if it changes. They possess all the power in the current institutional arrangement and no incentives to let that power go. (p. 133) On criminal justice reform matters, federal policymakers have listened to federal prosecutors for too long. Federal prosecutors have steadfastly opposed criminal justice reforms even when those reforms would increase public safety and fairness. They have often advocated against reforms in which they have no expertise, such as corrections policy. And a large amount of their opposition revolves around self-interested claims that reform will make their job of prosecuting and incarcerating people more difficult. Worse still, the DOJ and federal prosecutors have undermined the very policy prerogatives of the presidents they serve. There is no reason for policymakers' continued deference to the views of federal prosecutors. Unlike federal prosecutors, other policy experts do not possess an inherent conflict of interest in trying to maintain power to the exclusion of all other goals. And a large number of policy experts--from criminologists to economists, political scientists, and legal scholars--agree that the criminal justice system can be reformed in ways that protect liberty and improve public safety, human lives, and communities, all at a lower cost. Policymakers should listen to them.

### Resources

**Police reform impossible – legal circumvention – fiat doesn’t check. Blanks, 15** [Johnathan Blanks. May 11, 2015. “Why It's Almost Impossible to Reform America's Police” [<https://www.vice.com/en_us/article/kwxa3m/why-its-almost-impossible-to-reform-americas-police-508>] J onathan Blanks was a Research Associate in Cato’s Project on Criminal Justice. His research is focused on law enforcement practices, overcriminalization, and civil liberties. Blanks has appeared on various television, radio, and internet media including HuffPost Live, Bloomberg Law Radio, and Voice of America. His work has been published in the Washington Post, The New Republic, The Atlantic, Denver Post, Chicago Tribune, Democracy Journal, Philadelphia Inquirer, Vox .com, Vice, Reason, Lib er tar i an ism .org, Timeline, and the Indianapolis Star, among others. In 2015, Blanks testified before the U.S. Commission on Civil Rights on police accountability. Blanks is a graduate of Indiana University.]

From Freddie Gray in Baltimore to Walter Scott in South Carolina to the more than 100 people tortured and framed over two decades in Chicago, the issue of police abuse has finally started to permeate the national discourse. But even as regular headlines reveal fresh abuses, many officers continue to take shelter behind the use-of-force framework for police interactions, suffering few or no negative consequences for excessive use of force. There are roughly 18,000 law enforcement agencies in the United States. Most of them operate relatively autonomously, yet officers are shielded in the same way in most states and jurisdictions. Spurred by the growing national movement against police brutality, lawmakers and activists have started looking for solutions that would hold police officers more accountable for the use of force. On Friday, President Obama's new Attorney General Loretta Lynch announced that the Justice Department would investigate the Baltimore Police Department to determine whether there had been systemic civil rights violations by officers. But given the sheer number of law enforcement agencies in the country, the DOJ doesn't have nearly enough resources to investigate all of them. Between close relationships with prosecutors, secretive police culture, and laws that protect officers from taking personal responsibility for their actions, the obstacles to police reform are stifling. Trusting police officers is effectively a professional requirement for most prosecutors, and that trust doesn't evaporate when an officer the prosecutor works with shoots a suspect. So it's not surprising that indictments for on-duty incidents [are exceedingly rare](http://www.washingtonpost.com/sf/investigative/2015/04/11/thousands-dead-few-prosecuted/) without incontrovertible evidence that contradicts an officer's version of events. In Los Angeles County, no officer has been prosecuted for an on-duty shooting since 2001. According to the [Los Angeles Daily News,](http://www.dailynews.com/general-news/20150307/no-police-officers-prosecuted-for-shootings-in-los-angeles-county-since-2001) "In each of the 409 shootings since January 2010, prosecutors determined on-duty officers were justified in using deadly force." Taken together, that seems like a lot of shootings without a single unjustified incident. But prosecutors look at each case individually on its own merits, and more often than not, they believe the police officer. Generally speaking, prosecutors are not incentivized to doubt every story of the cops they work with daily. In addition to working together on criminal cases, many state and local prosecutors are elected officials who rely on political support from police. And prosecutors often run on their conviction stats, further disincentivizing them from questioning the people who supply the cases that keep them in office. As for the use of force, over the years the Supreme Court has essentially created a [checklist of requirements](http://www.policeone.com/legal/articles/1271618-How-to-ensure-use-of-force-is-reasonable-and-necessary-and-avoid-claims-of-excessive-force/) for police violence to be justified. Unsurprisingly, police explanations in use-of-force incidents often sound remarkably similar to those requirements: The most common explanations will include "the officer feared for his life" and "the suspect reached for his waistband," as if for a weapon. This doesn't mean all officers who say something like this are lying. Rather, officers know exactly how to frame their account of an incident in a way that will satisfy a prosecutor.

**The DOJ is woefully underfunded and lacks subpoena to mount effective reform against police misconduct. Maxwell & Solomon, 18** [Connor Maxwell is a research associate for Race and Ethnicity Policy at the Center for American Progress. Danyelle Solomon is the Senior Director of Race and Ethnicity Policy at the Center. The authors would like to thank Ed Chung for his thoughtful input and contribution to this issue brief. “Expanding the Authority of State Attorneys General to Combat Police Misconduct,” 12 December 2018, Center for American Progress Online, https://www.americanprogress.org/issues/race/reports/2018/12/12/464147/expanding-authority-state-attorneys-general-combat-police-misconduct/] Cgilbert

Studies show that when implemented properly, these reform agreements strengthen communities, reduce crime, and improve trust in law enforcement, all without undermining the authority and autonomy of the police chief. One review of all cases even found that “many police chiefs who have been through the process of a DOJ investigation said that the end result was a better police department—with improved policies on critical issues such as use of force, better training of officers, and more advanced information systems that help police executives to know what is going on in the department and manage their employees.”17 The chiefs also felt, “In some cases, consent decrees have been instrumental in giving chiefs the authority and the resources to act.”18 One study found that pattern or practice reforms minimize law enforcement misconduct and “generate desirable policy outcomes” for local communities.19 But sustaining police reforms is a challenge: The same study found that “organizational changes are not self-sustaining; implementation does not in and of itself guarantee meaningful, institutionalized change.” Jurisdictions that have been subject to DOJ intervention have also been found to have reduced the risk of civil rights litigation, suggesting that consent decrees—or court-enforceable reform agreements—improve satisfaction with police agencies and reduce police misconduct.20 But while the DOJ has helped bring about reform in dozens of states and localities nationwide, it has never possessed the tools or resources necessary to address every case of systemic police misconduct. One significant limitation to Section 14141 cases is the DOJ’s lack of subpoena power to compel the release of internal documents from law enforcement agencies.22 Therefore, if an agency refuses to cooperate with an investigation, the DOJ may be unable to obtain documents that could help in determining whether a pattern or practice case exists. Although the DOJ receives a multitude of complaints against state and local law enforcement agencies, it must exercise significant discretion in choosing cases or else risk a potentially lengthy and expensive lawsuit if it meets resistance from local leadership.23 Another limitation to bringing such cases is persistent underfunding. The Special Litigation Section of the DOJ’s Civil Rights Division enforces civil rights laws designed to protect people in state or local institutions; individuals with disabilities who receive services in their communities; youth involved in the juvenile justice system; individuals who wish to access reproductive care clinics; and people who interact with state and local law enforcement. But in 2015, the section had just 71 positions and $12 million available for police misconduct enforcement nationwide.24 This constituted just 0.01 percent of the $105 billion state and local governments spent on policing in 2015.25 With such limited resources and a large mandate, the Special Litigation Section cannot afford to investigate every serious allegation of systemic policing problems.

### Structural Barriers

**Structural barriers exist that deck aff solvency; DOJ is too bloated, full of career “professionals” and will to do everything in its power to resist change. Barkow & Osler, 17** [RACHEL E. BARKOW (\*) & MARK OSLER (\*\*) (\*) Segal Family Professor of Regulatory Law and Policy and Faculty Director, Center on the Administration of Criminal Law, New York University School of Law. (\*\*) Robert & Marion Short Distinguished Chair and Professor of Law, University of St. Thomas School of Law (MN). “DESIGNED TO FAIL: THE PRESIDENT'S DEFERENCE TO THE DEPARTMENT OF JUSTICE IN ADVANCING CRIMINAL JUSTICE REFORM,” William & Mary Law Review Volume 59 Issue 2, November 2017] Cgilbert

Beyond the mindset of individual prosecutors, there are structural features of the Department that inexorably push it towards expanding its own power, resisting reforms that would limit its power, and fighting to maintain the status quo when it already possesses authority in an area. One, perhaps the most important, is the fact that the Department is a large bureaucracy. (47) A second is that the Department is heavily influenced by career prosecutors. (48) A third is the coastal bias one finds in the Department, which may lead the Department's managers to believe that what happens in Washington, D.C., or the Southern District of New York is the norm, rather than what goes on in Waco or Memphis. (49) With forty-one components and more than one hundred thousand employees, (50) the Department is, above all, an enormous bureaucracy. The nature of bureaucracies is to perpetuate themselves, and the Department is no different. It will naturally act to protect its power and stature by continuously seeking to expand its role. Max Weber, who shaped much of the way we see bureaucracy, worried about the "power position" of large bureaucracies and the danger that their organizational sophistication and control over the dispensation of resources could give them power greater than that of the sovereign. (51) The Department's preference to expand the penal code is a perfect example. (52) With each new federal crime, the role of the Department--in investigation, prosecution, and incarceration--grew further into what had traditionally been the realm of the states. (53) A second powerful institutional force within the Department is a large cadre of career prosecutors, both at Main Justice and spread out among the offices of United States Attorneys. These career prosecutors fill the rank and file positions as well as leadership posts. Attorney General Holder spent most of his career with the Department, (51) as did his successor, Loretta Lynch, who started her career with the Department in 1990 and spent eighteen of the next twenty-six years there. (55) The Deputy Attorney General under Lynch was Sally Yates, a career Department employee who served for twenty-seven years, primarily as an Assistant United States Attorney. (56) Yates's Associate Deputy Attorney General, David Margolis, was a fixture at Main Justice for fifty years, primarily advising the upper echelons of the leadership. (57) It would defy everything we know about human cognition to expect individuals with that kind of institutional loyalty to be objective when assessing reforms. While there is value in placing people with experience in such posts, we should also expect that long-term employees are more likely to protect what is known and familiar rather than reverse course. It should not surprise us that bureaucracies in fields prizing innovation feature frequent mobility between employers--for example, the average tenure of employees at Google and Amazon is only about one year. (58) The line prosecutors in the Department share those same tendencies--something that was especially noticeable in the open opposition to reform found among Assistant United States Attorneys in the field offices. The National Association of Assistant United States Attorneys resisted sentencing reform at every turn, (59) and when President Obama began using clemency more actively, they even held a rally in Washington, D.C., and protested that the federal system needed more imprisonment, not less. (60) Finally, the leadership of the Department tends to come from just a few coastal districts, largely ignoring the middle of the nation. Of the last thirteen Attorneys General, only three (Jeff Sessions of Alabama, Alberto Gonzales of Texas, and John Ashcroft of Missouri) came from somewhere other than a coastal state. (61) The fact that Main Justice is located in Washington, D.C.--meaning that officials will live amidst the political elite--creates a strong nexus between the coasts and the management of the Department. This creates the potential for blindness to the practices in smaller offices across the middle of the country, where federal cases can be different than the norm in a large coastal city, and where prosecutors often pursue severe sentences for things that would be treated as minor on the coasts. (62)

**The Gideon decision created the illusion that CJR is possible for black folk; the aff perpetuates this masquerade that reform will produce progress. History says reform leads to more crackdowns. Butler, 13** [Paul D. Butler, Professor, Georgetown University Law Center; Yale College, B.A.; Harvard Law School, J.D. For helpful comments on this Essay, I thank Kristin Henning, Allegra McLeod, Gary Peller, Louis Michael Seidman, Abbe Smith, Robin West, and the participants in a faculty workshop at Florida State University College of Law. I am also grateful for the excellent editorial assistance of Robert Quigley, Yale Law School, J.D. 2014. “Poor people lose: Gideon and the critique of rights,” Yale Journal of Law Volume 122 Issue 8] Cgilbert

Gideon v. Wainwright (1) is widely regarded as a milestone in American criminal justice. When it was decided in 1963, it was seen as a major step forward in assuring fairness to poor people and racial minorities. Yet, fifty years later, low-income and African-American people in the criminal justice system are considerably worse off. It would be preferable to be a poor black charged with a crime in 1962 than now, if one's objective is to avoid prison or serve as little time as possible. The "critique of rights," as articulated by critical legal theorists, posits that "nothing whatever follows from a court's adoption of some legal rule" (2) and that "winning a legal victory can actually impede further progressive change." (3) My thesis is that Gideon demonstrates the critique of rights. Arguably, Gideon has not improved the situation of accused persons, and may even have worsened their plight. The reason that prisons are filled with poor people, and that rich people rarely go to prison, is not because the rich have better lawyers than the poor. It is because prison is for the poor, and not the rich. In criminal cases poor people lose most of the time, not because indigent defense is inadequately funded, although it is, and not because defense attorneys for poor people are ineffective, although some are. Poor people lose, most of the time, because in American criminal justice, poor people are losers. Prison is designed for them. This is the real crisis of indigent defense. Gideon obscures this reality, and in this sense stands in the way of the political mobilization that will be required to transform criminal justice. I know that, for some readers, these claims are counterintuitive, and I ask these readers' indulgence for the time it takes to read this Essay, in which I will attempt to prove my claims. It is also important to emphasize that I am not malting a "but-for" claim of causation. Gideon is not responsible for the exponential increase in incarceration or the vast rise in racial disparities in criminal justice. As I explain later, however, Gideon bears some responsibility for legitimating these developments and diffusing political resistance to them. It invests the criminal justice system with a veneer of impartiality and respectability that it does not deserve. Gideon created the false consciousness that criminal justice would get better. It actually got worse. Even full enforcement of Gideon would not significantly improve the wretchedness of American criminal justice.

## Forensic Science

### Lack of Scientist Consensus

**Reforms, before the aff, didn’t go far enough. Without consensus from career forensic scientists, the aff is doomed to repeat failed attempts at reform. Hadley, 19** [Megan Hadley is a senior staff writer at The Crime Report. “Forensic Science Reform at ‘Crossroads’,” 10 January 2019, https://thecrimereport.org/2019/01/10/forensic-science-reform-at-crossroads/] Cgilbert

Recent efforts to reform the use of forensic science in the courtroom don’t go far enough to meet widespread criticisms of its validity and reliability, according to a University of California-Los Angeles (UCLA) Law School study. In the last two decades, often-used forms of pattern evidence, such as fingerprint, tool mark, and bite mark identification, have faced significant criticism, wrote study author Jennifer L. Mnookin, a law professor at UCLA, in a research paper posted in Daedalus, a journal of the American Academy of Arts and Sciences. The Department of Justice’s decision in April 2017 not to renew the charter of the National Commission on Forensic Science reduces the likelihood of real reform, which Mnookin said puts forensic science at a “crossroads.” “Our best hope for sustained, substantial changes necessary for improving forensic science evidence within our system of justice requires the creation of another national commission or other institutional body, made up of both research scientists and other institutional stakeholders,” she wrote. Mnookin uses a mistaken bite mark identification case to further her point. Alfred Swinton, was released from prison after serving 18 years of a 60-year sentence for murder, after an expert admitted ruled the bite mark identification evidence used to convict him no longer seemed persuasive or valid. The bite mark expert “no longer believed with reasonable medical certainty–or with any degree of certainty –that the marks on [the victim] were created by Mr. Swinton’s teeth, because of the recent developments in the scientific understanding of bite-mark analysis,” odontologist Constantine Karazulas told the Hartford Courant, as quoted by Mnookin. Is Forensic Science ‘Junk Science’? Karazulas even called his earlier testimony “junk science” and said he “no longer believes that Mr. Swinton’s detention was uniquely capable of producing the bite marks I observed.” Mnookin suggested the case indicated a potential sea change for the use of bite mark evidence, and noted there is a growing consensus among judges that the forensic science community should scale back exaggerated and overconfident assertions of knowledge and authority by forensic scientists. Mnookin concluded that future reform required an institutional structure adversarial advocates, and practitioners themselves, staffed by accomplished research scientists to pave new ways for credible forensic science evidence to be used in courtrooms. “We are simply not likely to see continued forward motion unless there is some institutional body to prompt reform, a commission or working group with both convening power and a claim to legitimacy, in which academic researchers and forensic science stakeholders can jointly assess the state of forensic science and continue to push for, and argue about, improvements,” she wrote.

### Lack of Research

**Forensic science reform is being circumvented in the status quo; forensic science isn’t spared from Trump’s assault on science, writ large. The lack of an emphasis on research dooms any risk of aff solvency. Pierson, 18** [Steve Pierson is a contributing author to the American Statistical Association (ASA). This post is co-authored with Karen Kafadar,\* chair, American Statistical Association (ASA) Advisory Committee on Forensic Science; Commonwealth Professor and Chair; Department of Statistics, University of Virginia; 2019 President of the ASA. Hal S. Stern,\* vice-chair, ASA Advisory Committee on Forensic Science; Professor of Statistics, University of California, Irvine. “Trump Administration Outlines New Forensic Science Policies …. Largely Omitting the Science,” 29 March 2018, https://community.amstat.org/blogs/steve-pierson/2018/03/29/trump-administration-outlines-new-forensic-science] Cgilbert

The U.S. Department of Justice (USDOJ) last month outlined its new forensic science policies, introducing some welcome transparency but taking a step back when it comes to interaction with the scientific community. Such a step back will impede forensic science progress and criminal justice reform in the United States. To understand why this is a step back, consider, for example, the immense about of work needed to scientifically quantify a match in such common evidence as finger prints, bite marks, and firearm markings. There was little interaction of the scientific community and forensic science practitioners until a 2009 National Academies report, Strengthening Forensic Science in the United States: A Path Forward, brought widespread attention to many glaring scientific pitfalls of most forensic science disciplines. That report also inspired productive reforms—including the creation of the National Commission for Forensic Science (NCFS), forensic science support and research at National Institute of Standards and Technology (NIST), and the creation of a NIST-managed standards-development body called the Organization of Scientific Area Committees (OSAC) for Forensic Science—that were helping to strengthen our criminal justice system and to help ensure guilty parties faced prosecution and innocent individuals weren’t imprisoned. Almost a year after letting the NCFS expire and then proposing major cuts to forensic science support and research at NIST, Deputy Attorney General Rod Rosenstein presented at the American Academy of Forensic Sciences (AAFS) 70th Annual Scientific Meeting in Seattle USDOJ’s most comprehensive comments since issuing an April 2017 call for comments on advancing forensic science. While affirming USDOJ’s reliance “on forensic science to carry out its mission” and its “commitment to the reliable use of forensic science,” Rosenstein made these four announcements: the issuing of guidance to Department forensic examiners for testimonial consistency and quality assurance; testimony monitoring practices to ensure testimonial consistency and accountability; public posting of quality management system documents and summaries of internal validation studies to increase transparency; and the re-chartering of the Council of Federal Forensic Laboratory Directors. While Rosenstein attention to forensic science reform is encouraging as is the fact that he traveled to Seattle to speak, his department is placing insufficient emphasis on the importance of more research to bolster the forensic sciences and on the joint engagement of law enforcement, legal professionals, forensic science practitioners, and scientists that is so critical to effective forensic science reform. Deputy Attorney General Rosenstein failed to acknowledge in his AAFS comments the need to bolster the science underlying many forensic science disciplines. Rosenstein’s comments use the word “research” sparingly, for example, in saying that one of the duties of the revived Council of Federal Forensic Laboratory Directors (CFFLD) is to “identify research needs.” The omission of a call for more research is concerning because of the fundamental importance of science to advance forensic practice. In response to the Department of Justice’s April 2017 call for comments, the ASA made six recommendations, three of an administrative nature and three to improve forensic science practice. The first administrative recommendation speaks to the just-mentioned omission in Rosenstein’s comments: “The Department of Justice should remain focused on assembling the four communities - law enforcement, legal professionals, forensic science practitioners, scientists - whose joint engagement, input, and involvement are required to address the underlying challenges needed to effect forensic science reform.” If the CFFLD can bring together these four communities, we would urge it do so. Of the other ASA recommendations, two were recommendations on how the USDOJ National Institute of Justice and NIST could advance forensic science research; these were endorsements of recommendations of another National Academies report, the 2015 Support for Forensic Science Research: Improving the Scientific Role of the National Institute of Justice. In a positive light, Rosenstein’s transparency announcement—Department forensic laboratories supporting criminal investigations and prosecutions will begin publicly posting current quality management system documents and summaries of internal validation studies online—is a welcome one and will help to improve the practice of forensic science. The following comments are also encouraging, and perhaps an acknowledgment of the ASA recommendation for reports and testimony to acknowledge “uncertainty associated with forensic science measurements, processes and interpretations”: [an expert’s conclusion] “must be carefully expressed in words—in both forensic reports and trial testimony. Those words must correctly convey both the significance and the limitations of that conclusion.” In addition to Rosenstein’s science-lite forensic science policies, the Trump administration proposed once again in their F19 budget proposal to slash NIST’s forensic science research work and its OSAC management functions. Fortunately, as we learned March 21, Congress rejected these efforts in FY18. There is no telling however how Congress will respond to the FY19 request to cut NIST’s forensic science efforts since the House had initially gone along with the FY18 proposed cuts. The USDOJ press release framed Rosenstein's announcement around "advancing forensic science" but to us these moves appear to be a step back, to a pre-2009 strategy that even the forensic scientists agree was not effective.

### Trump Won’t Allow

**Trump will actively resist reforms that improve forensic science; it’s part of his overall strategy to hamper science at every level of government. As long as the DOJ is the gatekeeper to reform, innocent people will continue to be wrongfully convicted. Fulton, 17** [Deirdre Fulton is a Common Dreams staff writer. “Trump Administration's War on Science Reaches Justice Department,” 10 April 2017, https://www.commondreams.org/news/2017/04/10/trump-administrations-war-science-reaches-justice-department] Cgilbert

The Trump administration's anti-science bent has reached the Department of Justice (DOJ), with Attorney General Jeff Sessions saying Monday that the department is ending the National Commission on Forensic Science. The 30-member panel was described by ThinkProgress as "a group of scientists, judges, prosecutors, defense attorneys, and other experts tasked by the Obama administration in 2013 with raising standards for the use of forensic evidence in criminal proceedings." In its place, a senior forensic advisor will be appointed "to interface with forensic science stakeholders and advise department leadership," Sessions' statement said. Members of the commission—experts from major institutions and universities—wrote to Sessions (pdf) just last week, urging that the panel's charter be renewed. The commission, they wrote, "has made a positive and indelible impact on the criminal justice system" and "has facilitated an important discussion regarding issues at the intersection of science and law that are unique to forensics." "For too long, decisions regarding forensic science have been made without the input of the research science community," they declared. Now, the Washington Post reported, "Several commission members who have worked in criminal courts and supported the input of independent scientists said the department risks retreating into insularity and repeating past mistakes, saying that no matter how well-intentioned, prosecutors lack scientists' objectivity and training." U.S. District Judge Jed S. Rakoff of New York, the only federal judge on the commission, told the Post: "It is unrealistic to expect that truly objective, scientifically sound standards for the use of forensic science...can be arrived at by entities centered solely within the Department of Justice." And the implications could be dire. "The reliance of law enforcement on questionable science and the overstatement of the reliability of that science has been a leading cause of the wrongful conviction of innocent people," said National Association of Criminal Defense Lawyers (NACDL) president Barry Pollack on Monday. "The reason the National Commission on Forensic Science has been so important is that it includes leading independent scientists, allowing an unbiased expert evaluation of which techniques are scientifically valid and which are not. NACDL is terribly disappointed that even while acknowledging the crucial role played by the National Commission on Forensic Science, the Attorney General has chosen to disband it." Other journalists and rights advocates weighed in on Twitter: Sessions kills a commission meant to improve forensic science so it doesn't convict the wrong people https://t.co/qG1nC5sJuC — Mazel Tov Cocktail (@AdamSerwer) April 10, 2017 Trump administration wants to convict more people on bogus "scientific" and "forensic" non-evidence. https://t.co/ZlXce8tSq3 — Dan Gillmor (@dangillmor) April 10, 2017 According to the Post, Trump's DOJ also "has suspended an expanded review of FBI testimony across several techniques that have come under question." Monday's moves are just the latest in a string of anti-science decisions made by the Trump administration, which has moved to slash funding for and otherwise hamstring the Environmental Protection Agency, the Energy Department, and the National Institutes of Health, among other agencies.

## Police Unions

- this is best read against a policing-type aff

**2 Alt Causes to the aff; police unions and other professional organizations will actively resist reform. It is viewed as an assault on their profession. Petersen, 19** [Randy Petersen spent 21 years as a police officer working in the patrol, investigations, training, and administrative divisions. He retired as a patrol watch commander in 2014 and became the director of a police academy here in Texas. He is currently the Senior Researcher for the policing initiative at Texas Public Policy Foundation. “Why is it so Hard to Reform Criminal Justice?” 10 May 2019, http://rightoncrime.com/2019/05/why-is-it-so-hard-to-reform-criminal-justice/] Cgilbert

Policing is a core function of government, one of its few necessary functions, but is also the most intrusive institution in all of government. A deliberate restraint on government’s power and a constant review of governmental influence in our lives is a fundamental principle of conservatism and therefore applies to law enforcement at least as much as any other area of government. Or does it? Conservative doctrine respects the rule of law and demands that laws (and government) be limited and equally applied, punishments just, communities safe, and personal accountability enforced. In contrast, progressive doctrine looks to government to solve societal problems, the byproduct being ever more laws and larger government. The enforcement of the copious laws a government generates is tempered by very little appetite for personal accountability, and identity politics is often the basis for the calculus for how accountable an individual should be to these numerous laws. This is admittedly a simplification of the two worldviews, and there are many points in between, but it gives some background for why the policing issue is such a political nightmare. None of the normal rules apply. Limited government conservatives routinely and reflexively defer to law enforcement—part of the very government they declare needs restraining and limiting—whenever policing legislation is considered. Progressives, normally content with passing all sorts of regulations and crimes, reflexively oppose those we empower to enforce the laws they pass, often with abolitionist talking points and accusations of racism. The two ends of this political spectrum often pass each other without hitting any point of agreement. Further complicating the issue are the police unions. Police unions claim to speak for the police, but do they really? Police officers tend to be a right-of-center group. Unions (even police unions) are almost always left-of-center in their politics. Police officers and police unions have overlapping interests in some cases, but where they speak to genuine law enforcement officer concerns and where they speak to union concerns is lost in the dressing. Unions are the darlings of the far left, the far right reflexively supports law enforcement, and the police union is therefore a political paradox unseen anywhere else. Police unions either represent collectivist union interests or they represent government agents dictating the terms of their power in relation to your liberty-pick your poison. What other entity is given the courtesy by legislative members to change bills and then still come up to testify against the amended bill. Why would a member modify a bill to appease the unions when they will not support the bill even as amended? The next time you hear a police officer claim he is only enforcing the laws that the legislature makes (as it should be), consider the fact that those supposedly speaking on his behalf probably had more than a little hand in crafting that law. How perverse is that? A similar dynamic is seen in with prosecuting attorneys. Whether the issue at hand is civil asset forfeiture or prudent restraints placed upon a grand jury, without fail members of their professional association show up at hearings to allege that even if a modicum of reform were to pass, cities would burn to the ground. Such sensational alarmism (and those who would uncritically take it as gospel) reduces liberty to the mere scope that government agents think it fitting for the public to enjoy; completely contrary to our founding principles Civil asset forfeiture reform made it to the platform of both political parties this year, yet any attempt at reforming this process is met with intense law enforcement and district attorney resistance. Think about that. The government entities that get to keep the revenue generated by the practice-a practice that relies on continued criminal activity to keep the revenue stream up-have an outsized voice in front of the same government they are a part of. If the government represents itself to the government with disproportionate effect, who represents the citizens? As a retired police officer, former academy director, and current policy analyst, I find this situation frustrating. I want good policies to be passed into law. I want safe communities, limited government involvement, and justice. I want our police to be the finest members of our society, as we so often refer to them. I want there to be some agreement on how all of that should look. But there is not. As In the interest of getting both sides of the political spectrum to reevaluate their position and tactics, I pose a question for each. To conservatives I would ask: What part of limiting and restraining government involves deferring to the arm of the government in all policy matters where the powers and authorities of that arm are reviewed? To progressives I would ask: In what other aspect of your dealings with people does calling them racist or attributing vile intentions to their actions garner support and consensus? A politician’s view on policing has become a litmus test for both sides. Because of this, moving even reasonable legislation ends up being derailed by ironically competing political philosophies. One side wants laws but despises those who would enforce them, the other side wants government out of our lives but balks at any restraint on its most intrusive arm. Criminal Justice reform should not be viewed as an adversarial concept with the men and women of law enforcement, if it were I would find no part in it. I view reasonable reform as a means to ensure that it remains the honorable institution I have always believed it to be. Until we can agree that not all policies that reform policing are anti-police and that the police are not the bad guys we will continue to miss opportunities to come together on good legislation.

### Arbitration Process

**Arbitration process prevents lasting disciplinary action for officers. Tice, 20** [D.J. Tice JUNE 5, 2020, commentary editor and an opinion columnist for the Star Tribune, based in Minneapolis. He previously served seven years as political news editor. He has written extensively about Minnesota and American politics and history, economics and legal affairs., <https://www.startribune.com/here-s-why-cops-can-t-be-held-accountable/570998142/>]

St. Paul Mayor Melvin Carter spoke wisely and well at a May 31 briefing where state and local officials updated the public on their newly muscular efforts to control civil unrest in the wake of George Floyd’s terrible and world-famous in-custody death. Carter pleaded with protesters to channel the passions on display on Twin Cities streets in recent days of rage into a crusade for positive change. “Take that energy,” Carter said, “and use it not to destroy our neighborhoods but to destroy the historic culture [of injustice], to destroy the systemic racism, to destroy, in specific, the laws, the legal precedents, the police union contracts — all of the things that make it so difficult to hold someone accountable when a life like George Floyd’s is so wrongfully taken.” Carter has certainly set forth an heroic agenda here. To heal and transform the often sorrowful legacy of history is not the work of a day. But politicians often proclaim grand, visionary goals. What actually made Carter’s battle cry an exceptional case of starry-eyed optimism was his nuts-and-bolts call to reform “police union contracts” and dismantle “laws and precedents” that help those unions block accountability. But by all means, let us dream the impossible dream. Minneapolis Mayor Jacob Frey seems willing. Welcoming a state investigation of his Police Department, he decried how “for years in Minneapolis, police chiefs and elected officials committed to change have been thwarted by police union protections and laws that severely limit accountability.” What barriers to accountability could the mayors be talking about? Well, one might well wonder how a Minneapolis police officer could possibly suppose that physically abusing a handcuffed arrestee would ever, if discovered, be seen as anything but intolerable misconduct. Reading a few labor arbitration rulings in police discipline cases might clear up that mystery. Last October, barely more than half a year before Floyd’s death, a fired Minneapolis police officer was [reinstated to his job](https://www.startribune.com/firing-of-minneapolis-officer-who-struck-handcuffed-man-reduced-to-2-week-suspension/565749592/) by a [state arbitrator](https://www.scribd.com/document/464218108/Arbitration-Ruling). MPD officer Peter Brazeau had beaten a handcuffed, intoxicated man who kicked him, producing what the arbitrator described as “a pool of blood.” The arbitrator agreed with Police Chief Medaria Arradondo that Brazeau had violated policy and shown no remorse. But Brazeau had (somewhat strangely) been returned to duty as a “training officer” and had performed well while his case went through channels following the 2016 [beating incident](https://www.startribune.com/newly-released-surveillance-video-shows-punching-incident-that-led-to-minneapolis-officers-firing-rehiring/566189181/). A two-week unpaid suspension would be punishment enough, the arbitrator decided. Any regular reader of this column has endured this kind of story before — and this kind of frustrated harangue. I have been writing about the dysfunctions of police disciplinary processes for roughly 30 years, without the slightest effect. But this is merely to say that my reform efforts on this front have been about as successful as everyone else’s. [State law](https://www.revisor.mn.gov/statutes/cite/179A.20) governing public employment requires every police department in Minnesota, as public employers, to allow all discipline to be appealed to binding arbitration. Arbitrators sometimes uphold discipline (including firings) but it’s not uncommon for terminations to be reduced to suspensions and for other discipline to be diminished. Evidence suggests fired cops are reinstated roughly [half the time](https://www.startribune.com/arbitration-win-rate-for-fired-cops-if-you-stop-to-think-about-it-is-high/512658822/). Often, as I’ve noted before, such cases come down to judgment calls about whether an officer has demonstrated that he or she does not possess, or has lost, the exceptional level of self-control and sound judgment we need from police — and which most officers heroically display. Presumably, we appoint police chiefs and elect city officials to make such judgment calls. But what we have instead is a “broken and flawed” system of second-guessing, in the words of a 2017 lawsuit in which the city of Richfield, backed by the League of Minnesota Cities, the Minnesota Police Chiefs Association and others, pleaded with the courts that the arbitration system should not be applied to “police officers, who by the very nature of their positions, hold the trust and safety of the public in their hands … . [C]ities and their police chiefs must be allowed to fulfill their affirmative duty to protect public safety by [enforcing] rigorous accountability and transparency standards when [officers] use force on the public,” the city and police leaders wrote. A three-judge panel of the state Court of Appeals agreed with the city and its allies in the case at issue, writing that even public employment law “expressly subordinates the [right to] arbitration … to the rights of Minnesota citizens.”

### Sticking Together

**Patrol officers, middle managers, and unions prevent reform from ‘sticking’**

**Weitzer, 15** (Ronald Weitzer is a Sociology Professor at George Washington, “American Policing Under Fire: Misconduct and Reform”, Society Journal, October 1 2015)

Despite the impression that American policing is at a crossroads and that meaningful reforms may be on the horizon, there are reasons to be pessimistic that this is pivotal moment in policing. First, it is not known how many police chiefs are learning lessons from the cities where police are now embroiled in controversy. How many are reviewing their own practices and considering new measures to curb misconduct and enhance accountability among their officers? How many of them have read the consent decrees and settlements that the Justice Department has entered into with the 20+departments it has investigated for “pattern or practice” misconduct in the past 20 years? How many of them have thoroughly institutionalized community policing as a philosophy and practice in their departments, rather than simply giving it lip service or marginalizing it in a “community relations” unit? A majority of departments mention community policing in their mission statements, give officers some training in com-munity policing, and have a specialized community affairs unit (Reaves2010 , 2015 ). But these superficial indicators can-not be used to measure department-wide institutionalization of community policing as a policy and practice, which appears to be the exception rather than the rule. We do know, however, that at least a few police departments have made substantial changes in the recent past in the direction of a more community-oriented model (e.g., Chanin 2015; Greene1999 ; Lowery2015 ; Stone et al.2009 ; Zernikeaug2014 ). Second, even when reforms are initiated, social scientists know just how hard it is to make then “stick”–institutionalizing them in training, codes of conduct, performance evaluations, and rewards and punishments, and being embraced in the police subculture (Chanin2015; Skogan2008; Walker2012 ). The record is mixed for departments that have under-gone a Justice Department pattern-or-practice investigation and then introduced the mandated reforms (Chanin2015; Walker 2012 ). Some of the departments that have complied and instituted reforms have made clear progress, while others have had difficulty sustaining the reforms after the period of DOJ oversight has ended. This is partly due to resistance to change from patrol officers, mid-level managers, and police unions (Skogan 2008), but mostly because of the very nature of policing on the ground. It is axiomatic that patrol officers enjoy a substantial amount of discretionary authority, which can be curbed only to a limited extent by any reform. And most officers patrol alone, unfettered by the checks that a fellow officer or supervisor might provide. For these reasons we should expect more officer misconduct in the future, including unjustified killings.

### White Union Resistance

**White police unions undermine** black empowerment via police reform – Hager and Li 20 [06.10.2020, [Eli Hager](https://www.themarshallproject.org/staff/eli-hager) is a staff writer covering juvenile justice, family court, indigent defense, fines and fees and other issues; he also edits the "Life Inside" series of essays by incarcerated writers. He was a Livingston Award finalist for his 2017 investigation of the for-profit prisoner transport industry and is a three-time finalist for the Education Writers Association awards. [Weihua Li](https://www.themarshallproject.org/staff/weihua-li) is a data fellow at The Marshall Project. She uses data analysis and visualization to tell stories about the criminal justice system. She studied journalism and comparative politics at Boston University and graduated from Columbia University with a master's degree in data journalism., <https://www.themarshallproject.org/2020/06/10/a-major-obstacle-to-police-reform-the-whiteness-of-their-union-bosses> ]

The president of Minneapolis’s police union [called George Floyd a “violent criminal”](https://www.theguardian.com/us-news/2020/jun/01/bob-kroll-george-floyd-minneapolis-police-union-chief) and those protesting his killing by a police officer a “terrorist movement.” A union chief in Baltimore once said Black Lives Matter activists were a [“lynch mob](https://www.buzzfeednews.com/article/tomnamako/police-union-president-compares-baltimore-protests-to-a-lync)”; one in Philadelphia referred to them as [“a pack of rabid animals.”](https://www.nbcphiladelphia.com/news/local/police-union-president-calls-black-lives-matter-protesters-outside-philadelphia-officers-house-a-pack-of-rabid-animals-report/26796/) Another has labeled St. Louis’s democratically elected prosecutor, who is black and supports police reform, [a “menace to society” who must be removed “by force”](https://www.themarshallproject.org/2020/01/16/facing-intimidation-black-women-prosecutors-say-enough) if necessary. All of these union leaders also have this in common: They are white. In many cities, [police officers are more likely to be white](https://www.nytimes.com/interactive/2014/09/03/us/the-race-gap-in-americas-police-departments.html) than the people they are sworn to protect and serve. But this is especially true of the presidents of their unions, The Marshall Project found in an analysis of [demographic data from major U.S. police departments](https://www.icpsr.umich.edu/icpsrweb/NACJD/studies/36164). Of the 15 largest departments in which a majority of officers are people of color, only one, Memphis, has a union leader who is black. Another, in Honolulu, is led by an Asian-Pacific Islander, and the union president of the Miami Police Department is white Hispanic. The Marshall Project confirmed the race of 12 union leaders by asking them or their staff directly, using voter registration records and asking local reporters who cover the police; three leaders who appear to be white in photos on their unions’ websites did not respond to repeated calls. About four-fifths of the Miami-Dade Police Department’s officers, who patrol the county surrounding Miami, are people of color, but the head of their union is white. In Atlanta, about two-thirds of officers are people of color, but the union chief is white. It’s a similar story in many other major cities such as Washington, D.C., New Orleans, Houston and Los Angeles: Most police are not white, but the person who represents their interests—who publicly speaks for them—is. The same is true of the entire leadership structure of many police unions and associations. The Chicago Fraternal Order of Police has no black officers among its top brass, the union confirmed. California’s statewide FOP [appears](https://www.cafop.org/about/executive-board) to have an executive board consisting of nine white men—and one black man serving as the chaplain. (The board did not respond to multiple calls.) “It is to the detriment of policing, period, that our community is not represented at police union tables,” said Sonia Pruitt, chairwoman of the National Black Police Association, an advocacy group, not a union, for black cops. Police unions are so powerful that “if they had leaders who said, ‘Listen, what happened to George Floyd was absolutely terrible,’ officers around the country would follow.” [According to a Pew survey in 2017](https://www.pewsocialtrends.org/2017/01/11/behind-the-badge/) of nearly 8,000 police officers nationally, 92 percent of white officers believe the United States has already achieved equal rights for black people, while only 29 percent of black officers do. And while only 27 percent of white officers believe that protests against police violence are motivated at least in part by a genuine desire for accountability, roughly 70 percent of black officers do. Michael Williams, president of the Memphis Police Association, says he’s “one of the lone black guys doing this.” “I’ve been discriminated against. I wasn’t socioeconomically privileged growing up,” he said. “I understand what these young people in the streets are going through more than some of my white contemporaries.” Williams also noted that unlike many white union leaders, he personally knows black pastors, activists and even gang members, which he says helps him defuse community tension in the aftermath of police violence. “We don’t always agree,” he said, “but we have a mutual respect.” Like other labor organizations, many police unions negotiate salaries and benefits for officers as well as fight for job protections. The role of all union chiefs is to go to battle for workers, so they are often pugnacious and defend members even if charged with wrongdoing, whether representing cops, teachers, truckers or others. But this is particularly true of police union leaders, who have long protected members accused of brutality and racism by winning [employment contracts](https://www.reuters.com/investigates/special-report/usa-police-unions/) that make it difficult or [impossible](https://www.theatlantic.com/politics/archive/2014/12/how-police-unions-keep-abusive-cops-on-the-street/383258/) to fire or discipline them. They have also [neutered](https://www.themarshallproject.org/2015/04/27/blue-shield) internal-affairs units and civilian review boards, both of which also try to hold bad cops accountable. Meanwhile, some police unions [have paid for warrior training,](https://www.buzzfeednews.com/article/melissasegura/police-unions-history-minneapolis-reform-george-floyd) instead of de-escalation training, for the officers they represent. And they have [helped scrub racist cops' social media pages](https://www.azcentral.com/story/news/local/phoenix/2019/07/18/phoenix-police-union-officers-erase-facebook-posts-internet/1773194001/) as a further way of protecting them. The Fraternal Order of Police, the national association of unions that represents roughly 330,000 officers nationwide, “seems committed to putting white men in charge,” wrote Paul Butler, a former federal prosecutor who is a law professor at Georgetown University and the author of “Chokehold: Policing Black Men,” [in a 2017 essay for The Marshall Project.](https://www.themarshallproject.org/2017/10/11/why-the-fraternal-order-of-police-must-go) “The organization serves as a union cum fraternity for white cops and has a retrograde effect on policing, especially as it relates to civil rights.” Jim Pasco, executive director of the Fraternal Order of Police, responded to a question about why there is so little minority representation in police union leadership with an email saying, “I don’t respond to questions which telegraph a negative story.” Vince Champion, the Southeast Regional Director of the International Brotherhood of Police Officers, said he has never heard black officers complain that they don’t trust him to represent their interests because he is a white man. “We don’t see color, and we don’t see race,” said Champion, who represents members in the Atlanta Police Department, where 63 percent of sworn officers were people of color according to the latest available federal data in 2013. “We see blue. As long as you are a fellow officer, your lifestyle doesn’t matter.” Black officers often have no choice but to join these unions, either because it is mandatory or because they need the collective bargaining power to negotiate their wages and promotions, experts said. But then the union defends white officers who have committed violent acts against black people—“and you realize that your values, your community values, as a person who probably has experienced that same kind of treatment when your uniform is off, are not being represented at the top,” said Chris Burbank, a white former police chief in Salt Lake City and now vice president of law enforcement strategy at the Center for Policing Equity, an organization that works with local police departments on race issues. This is in part why, in dozens of cities, a separate black police officers’ association also exists. But these are often smaller groups with less influence over how the department operates and less visibility when a major incident occurs. There are several reasons for the disparities at the head of police unions, law enforcement experts and former police chiefs said. It starts with who gets recruited and encouraged to take leadership positions, they said. And when black candidates emerge for these top roles, some white officers are suspicious that they won’t be sufficiently pro-law enforcement. In recent decades, there has been an [increase in the number of black and Latino police officers](https://www.justice.gov/tribal/pr/percentage-local-police-officers-who-were-racial-or-ethnic-minorities-nearly-doubled) nationally, but that demographic change has yet to be reflected in the higher ranks, experts and former chiefs said. The older guard is still more likely to be white, and to know enough of the union’s insiders to have a chance to lead it. “Do I ever remember a person of color on my executive board? I don’t,” said Brendan Cox, former police chief in Albany, New York, and also a former union leader there. “I’m white male Irish Catholic, which is not exactly the hardest thing to be in a police department,” he said. “Officers of color who want a leadership position have to prove themselves in a completely different way.” To be sure, white police can be open to reform. And if elected to union leadership, black officers may not necessarily take reform-minded stances. [Some research has suggested](https://psmag.com/social-justice/black-cops-are-just-as-likely-as-whites-to-kill-black-suspects) that black cops are nearly as likely to kill black people as white ones are, suggesting that racial bias is systemic and that representation alone won’t solve the deep-seated problems in policing. “Black officers are not a monolith—I think most of us like to talk things out more with the community, and aren’t as angry with the community all the time. But others buy into that ‘us vs. them’ policing mentality,” said Pruitt of the National Black Police Association. Williams, the president of the Memphis Police Association, has at times defended police officers ferociously (he once put up billboards saying [“DANGER: ENTER AT YOUR OWN RISK”](https://www.wmcactionnews5.com/story/22047563/police-union-billboards-spark-criticism/) along local highways to protest inadequate pay and benefits for his cops). But he also says he is aware of the contradictions of his own position. “Sometimes I ask myself, why do I put myself in this situation? My community has problems even seeing that I’m black; they just say ‘F the police,’” he said. Williams says he wants to leave his post, but is struggling to find a black officer to replace him. “It’s hard enough for them these days just to be the police. They just want to stay out of the public eye, and go home to their families,” he said. “It’s easy to find white people, though, to run a union.”

## Sentencing

### AG Barr Resistance

**The aff doesn’t matter, AG Barr will reinterpret the aff gutting solvency. Lau, 18** [Tim Lau is a staff writer with the Brennan Center’s editorial team. Lau reports and produces explanatory writing on issues including voting rights, campaign finance, criminal justice reform, and civil liberties. He also provides editorial guidance on a variety of web products and platforms, including the organization’s newsletters, podcast, publications, and social media channels. Lau previously worked with the editorial teams at the Natural Resources Defense Council and the Asia Society. Prior to joining the nonprofit world, he began his career with Edelman’s digital practice, working primarily with clients in the consumer technology sector. He received his BA in international relations and English literature from Wheaton College. “William Barr Is Out of Step on Criminal Justice Reform,” 7 December 2018, https://www.brennancenter.org/our-work/analysis-opinion/william-barr-out-step-criminal-justice-reform] Cgilbert

President Donald Trump announced Friday his plan to nominate William Barr as the next attorney general. Barr previously held the same role from 1991 to 1993 under President George H.W. Bush. If confirmed by the Senate, Barr would replace Matthew Whitaker, who was appointed by Trump as acting attorney general after Jeff Sessions resigned last month under pressure from the White House. Barr’s criminal justice positions are out of touch with majority of Congress As attorney general, Sessions brought back a hardline approach to criminal justice, pushing for tougher penalties and ramping up the war on drugs. There are strong indications that Barr would follow in Sessions’s footsteps. Last month, Barr co-authored an op-ed in the Washington Post that extensively praised Sessions’s criminal justice record. Barr applauded Sessions for restoring “police morale” by pushing back on the “Ferguson effect,” a myth about crime rates and policing that has consistently been disproved by criminologists. And in 2015, Barr was part of a vocal minority, which included Senator Tom Cotton (R-Ark.), to oppose the Sentencing Reform and Corrections Act (SRCA), a bipartisan bill that would have modestly reduced sentences for federal non-violent drug convictions. According to research by the Brennan Center, the United States has experienced a sharp decline in crime in the past two decades — and mass incarceration has contributed very little, if at all, to that decline. Barr’s record suggests he might also be opposed to the FIRST STEP Act, the current bipartisan bill on criminal justice reform. If passed, the bill would shorten some unnecessarily long federal prison sentences and enforce rules that would improve conditions for people currently in prison. Barr’s potential opposition to the FIRST STEP Act would put him at odds with President Trump and the majority of Republicans in the Senate, who support the bill. Barr’s previous stint as attorney general also included troubling positions on criminal justice issues. During his tenure in the Bush administration, Barr helped devise federal policies that furthered mass incarceration and the war on drugs. Notably, in 1992, he published a book by the Department of Justice called The Case for More Incarceration, which argued that the country was “incarcerating too few criminals.” After serving as attorney general, Barr led efforts in Virginia to abolish parole in the state, build more prisons, and increase prison sentences by as much as 700 percent. To be sure, that was an era when tough criminal justice policies attracted support across the political spectrum. But Barr's more recent record suggests, that unlike many in his party, his thinking hasn't changed significantly since then, even as the failure of mass incarceration has become too glaring to ignore.

### First Step Act Proves

**The First Step Act proves the DOJ will either lobby against or refuse to faithfully enforce the aff. Hopwood, 20** [Shon Hopwood, Associate Professor of Law, Georgetown University Law Center. I'd like to thank Margaret Rusconi and Andrew Lanham for their wise comments. I'd like to thank my two assistants, Molly Hogan and Nicholas Mecsas-Faxon, for their research assistance and editorial guidance on this Review. “THE MISPLACED TRUST IN THE DOJ'S EXPERTISE ON CRIMINAL JUSTICE POLICY.,” April 2020, Michigan Law Review Volume 118 Issue 6] Cgilbert

As I quickly found out in the halls of Congress while advocating for the First Step Act, (14) sometimes the correct policy answers for federal reform don't matter to policymakers, even if those policy answers would make the public safer and the justice system more equitable. Policymakers are not always persuaded by the best public policy positions because they don't want to appear soft on crime or have a Willie Horton moment like Michael Dukakis did in his presidential race against George H.W. Bush in 1988. (15) Horton was a state prisoner in Massachusetts who absconded from a furlough program. A year later, he raped a woman and assaulted her boyfriend. Although the furlough program had a 99 percent success rate, Bush used Horton's example and Massachusetts Governor Dukakis's support for the program in attack ads. (16) As Professor John Pfaff has explained, criminal justice policy is a "low-information, high-salience" issue, meaning voters don't pay attention to mundane criminal justice issues but mostly respond to shocking events, such as Horton's crime. (17) The Horton ads contributed to Dukakis's loss in 1988, and ever since, policymakers have realized that "[e]ven smart leniency is politically costly, but severity is not." (18) Because congressional members are concerned about appearing soft on crime, they are much less likely to vote for criminal justice reform bills without political cover from law enforcement groups, which are thought to possess the most salient expertise on criminal justice matters. Political cover was necessary during the Senate negotiations leading up to a vote on the First Step Act, a bill mostly designed to reform the federal prison system. Despite the fact that police and prosecutors have no expertise on corrections policy, (19) it took support from the National Fraternal Order of Police (FOP)--and feigned silence rather than open opposition from the DOJ--before Senator McConnell called the First Step Act for a floor vote and members in the Senate felt comfortable voting for a modest reform bill. (20) But even though the First Step Act's passage was a win for criminal justice reform and sound public policy, the FOP endorsement came at a huge cost. In return for FOP's support, lawmakers decided against making many of the First Step Act's sentencing provisions retroactively applicable to people currently in federal prison. (21) So while Congress determined that these sentencing provisions led to needlessly punitive and unjust sentences, it would not correct the injustices for those who had already been sentenced under them. This one example is emblematic of why large-scale reforms of the federal criminal justice system are currently impossible to obtain: law enforcement has a very effective lobbying group. The agenda for federal policymaking is often set by interest groups lobbying the government. The DOJ is no different. (22) It lobbies federal policymakers in several ways. First, the DOJ has the Office of Legislative Affairs (OLA) that strategically advances its legislative initiatives. (23) In this role, the OLA "articulates the Department's position on legislation proposed by Congress" and "facilitates the appearance of Department witnesses at congressional hearings." (24) Second, the DOJ lobbies the White House through both letters and meetings with the goal of moving the president and his staff toward the DOJ's desired policy outcomes. For example, when President Trump considered whether to support the inclusion of sentencing reforms in the First Step Act, the DOJ sent a letter to the White House outlining its position against the proposed bill. (25) Third, the DOJ sends an annual letter to the U.S. Sentencing Commission, which oversees the advisory sentencing guidelines that govern all federal sentences. (26) The DOJ's efforts before the Commission include "commenting on the operation of the sentencing guidelines, suggesting changes to the guidelines that appear to be warranted, and otherwise assessing the Commission's work." (27) The DOJ also has an ex officio commissioner assigned to the Commission. (28)

### Lobbying

**Barr’s DOJ will actively lobby against ANY type of sentencing reform. Hopwood, 20** [Shon Hopwood, Associate Professor of Law, Georgetown University Law Center. I'd like to thank Margaret Rusconi and Andrew Lanham for their wise comments. I'd like to thank my two assistants, Molly Hogan and Nicholas Mecsas-Faxon, for their research assistance and editorial guidance on this Review. “THE MISPLACED TRUST IN THE DOJ'S EXPERTISE ON CRIMINAL JUSTICE POLICY.,” April 2020, Michigan Law Review Volume 118 Issue 6] Cgilbert

In her book, Professor Barkow observes that "prosecutors are often key lobbyists for getting laws and guidelines with longer sentences passed" (p. 51). That has certainly been the case for federal prosecutors, who continue to lobby for longer sentences and who oppose even modest reductions of federal sentencing provisions. In this Section, I explain the DOJ's and the NAAUSA's misguided views on mandatory minimum sentencing provisions and retroactively applicable reductions of the U.S. Sentencing Guidelines. Federal prosecutors have long argued that longer mandatory minimum punishments are indispensable in deterring people from committing crimes and are needed as leverage to persuade defendants to cooperate and plead guilty. In a 1993 article in the Los Angeles Times, then-Attorney General William Barr said of mandatory minimums, "The only way to get a real hammer effect on some crimes is to set a floor below which the judge cannot go." (48) Since then, not much has changed. In 2014, several former federal prosecutors, including Barr, sent a letter to the U.S. Senate arguing that lowering some mandatory minimum provisions "will make it harder for prosecutors to build cases against the leaders of narcotics organizations and gangs." (49) In 2016, the NAAUSA similarly sent a letter opposing the Sentencing Reform Act of 2015 to members of the House of Representatives, claiming that mandatory minimum and other sentencing provisions helped reduce violent crime by half. (50) In 2017, the NAAUSA and other law enforcement organizations also opposed the Sentencing Reform and Corrections Act, claiming that the legislation would undermine mandatory minimum penalties for drug crimes and would "make it more difficult for law enforcement to pursue the most culpable drug dealers and secure their cooperation to pursue others." (51) The DOJ continues to lobby in favor of mandatory minimum punishments. Just last year, the DOJ advocated in favor of Senate Bill 2635, called the "Ending the Fentanyl Crisis Act of 2018." (52) This bill would have reduced the threshold quantity of fentanyl necessary to trigger steep mandatory minimum penalties. (53) The DOJ argued that the current quantity threshold and punishments were an "inadequate deterrent." (54) It further argued that the quantity threshold for fentanyl was not consistent with heroin, resulting in the "perverse effect of encouraging drug traffickers to substitute fentanyl for heroin." (55) Putting aside that stiff mandatory minimum punishments have yet to create success in reducing the trafficking and use of illegal drugs (as the opioid crisis shows), (56) many of these claims by federal prosecutors are contrary to the opinions of experts in the field. To begin with, the claim that rising incarceration rates were the dominant driver of the American crime decline is against the weight of views from criminologists and economists. Experts believe that the link between higher incarceration and lower crime rates is not nearly as strong as previously thought. (57) Because there were many variables that led to the crime decline, criminologists now believe that increased incarceration had no "statistically significant effect" on reducing violent crime in the 1990s and the 2000s. (58) After replicating several "high-credibility" studies on whether incarceration reduces crime, one notable economist concluded that "the best estimate of the impact of additional incarceration on crime in the United States today is zero." (59) These experts' views are borne out by recent data. Between 2007 and 2017, thirty-four states reduced both their crime rates and their prison populations. (60) But it is not surprising that federal prosecutors believe that their efforts have led to a dramatic reduction in crime. In Prisoners of Politics, Professor Barkow explains that while prosecutors "often believe they are experts in public safety, they are not criminologists or social scientists who study these issues on a regular basis. When they decide policy questions, it tends to be from their own experience as prosecutors, uninformed by broader data or empirical analysis" (p. 166). Nor are federal prosecutors' claims about the general deterrent effect of mandatory minimums and other harsh sentencing provisions accurate. Many people who commit crimes--young men, people in the throes of drug or alcohol addiction, or those suffering from mental illness--don't act rationally. (61) Even if they did, deterrence only works if people understand the consequences. Not surprisingly, the public grossly underestimates the harshness of American sentences. (62) And behavioral economics suggests that people don't properly estimate unlikely-but-severe outcomes, which means that a ten-year prison sentence won't have much more of a deterrent effect than a five-year sentence. (63) Indeed, a report commissioned by the DOJ concluded that lengthy prison sentences are not the best way to deter future crimes. (64) Instead, it is the certainty of getting caught, not the severity of the punishment, that provides the most deterrent benefits. (65) The claims about the necessity of mandatory minimums are also contrary to the goal of public safety. (66) The U.S. Sentencing Commission concluded that mandatory minimum penalties contributed to the rise of the federal prison population, (67) which has risen so much that the Federal Bureau of Prisons' (BOP) detention costs now account for "roughly one third" of the DOJ's overall budget. (68) That result "comes with significant public safety consequences" because the growing BOP budget has "crowd[ed] out" other policy priorities at the DOJ. (69) If federal prosecutors were really concerned with deterring crime and saving their precious resources, they would advocate for sentencing reforms designed to significantly reduce the federal prison population. (70) The DOJ could then reallocate the resources spent on incarcerating people for the hiring of additional law enforcement officers and prosecutors, who could solve and prosecute more crimes, thus increasing the likelihood of being caught and deterring more people from committing crimes. One claim federal prosecutors frequently employ is that any reduction in mandatory minimum punishments will lead to less cooperation and fewer guilty pleas, thereby stymieing their efforts to prosecute drug crimes. (71) When Attorney General Eric Holder instructed federal prosecutors not to charge offenses carrying mandatory minimum penalties in drug cases, there were fears that prosecutors would lose their leverage. (72) The rate of guilty pleas, however, stayed exactly the same as it was before the new DOJ policy. (73) After Congress passed the Fair Sentencing Act of 2010, (74) a bill that increased the threshold quantity of crack cocaine corresponding to mandatory minimum penalties, federal cases were adjudicated by guilty plea at a rate of 97 percent. (75) And even if it were true that federal prosecutors would have difficulty securing guilty pleas and cooperation without mandatory minimums, that single factor is not a reasonable basis upon which to set all federal sentencing law policy. Congress has never stated that the goal of federal sentencing is to make federal prosecutors' jobs easier. (76) If that were the only goal of reforming the criminal justice system, then we should also abolish the jury trial, the right to counsel and to confront one's accusers, and many other protections the Framers enshrined in the Bill of Rights precisely to make it more difficult for the federal government to charge and incarcerate large numbers of people. Federal prosecutors have additionally opposed retroactive sentencing guidelines changes that reduce punishments. When the U.S. Sentencing Commission considered broad retroactive application of the Amendment 728 "drugs minus two" provision, (77) the deputy attorney general (DAG) testified in favor of only "limited retroactivity of the pending drug guideline amendments." (78) The DAG asked for limited application of the new sentencing rule because of "public safety concerns that arise from the release of dangerous drug offenders, and from the diversion of resources necessary to process over 50,000 inmates." (79) Once again, the DOJ's arguments prioritized the workload of federal prosecutors to the exclusion of all other policy goals, such as fairness and public safety. The U.S. Sentencing Commission ultimately made Amendment 728 broadly applicable, (80) bringing prisoners' sentences in line with current law and providing a measure of fairness to the system. The DOJ's claims about releasing "dangerous drug offenders" also proved to be wrong. The U.S. Sentencing Commission later issued a report stating that those released under Amendment 728 recidivated at the same rate as those who had served their full sentences before the law was made retroactively applicable. (81) Although federal prosecutors like to employ the scare tactic of highlighting that reforms will lead to the release of dangerous prisoners, what they often fail to explain is that an overwhelming majority of people serving time in federal prison will one day be released regardless. And despite a growing consensus among experts that the longer someone spends in a correctional setting, the higher their risk of recidivism upon release, (82) federal prosecutors are not lobbying for those in federal prison to receive more recidivism-reducing programs to assist those reentering society from reoffending. As Professor Barkow notes, "[i]f prosecutors cared mainly about public safety instead of what made their professional life easier, they would be just as vocal about other issues that affect the successful reentry or reform of individuals who have committed crimes" (p. 7).

## State not Federal Level

**The worst mechanisms of the criminal justice system are at the state, not federal level; aff can only solve a small fraction since most reforms are needed at the state level, outside the reach of federal policymaking. Eisen, 20** [Lauren-Brooke Eisen is director of the Brennan Center’s Justice Program where she leads the organization’s work to end mass incarceration. Her team focuses on exposing the profound social and economic hardships that impact those who encounter the justice system while creating policies that ultimately shrink its size and scope. Eisen has authored several nationally recognized reports and articles on how to reduce America’s reliance on incarceration. Her work has been featured in media outlets across the country, including the New York Times, USA Today, Time, U.S. News & World Report, the Daily News, and the Marshall Project and has appeared on MSNBC, CNN, CBS News, NBC News, Fox News, National Public Radio, as well as many other television and radio news programs. Eisen is the author of Inside Private Prisons: An American Dilemma in the Age of Mass Incarceration (Columbia University Press, 2017) and a Pulitzer Center on Crisis Reporting journalism grantee. She has served on the Advisory Council of the New York City Bar’s Task Force on Mass Incarceration and the transition committee for Brooklyn District Attorney Eric Gonzalez. She currently serves on the advisory board of the Prosecutor Project, which seeks to develop more effective and efficient prosecutorial practices and serves as a training and curriculum advisor for Fair and Just Prosecution. In 2020, Eisen became a founding member of the Council on Criminal Justice, which works to advance understanding of the criminal justice policy choices facing the nation and build consensus for solutions that enhance safety and justice for all. Eisen taught an undergraduate seminar on mass incarceration at Yale University and served as an adjunct instructor at John Jay College of Criminal Justice. Before joining the Brennan Center, Eisen was a senior program associate at the Vera Institute of Justice, where she worked on the sentencing and corrections team to implement policies in multiple states to improve public safety while reducing prison populations. She also previously served as an assistant district attorney in New York City, where she worked in the Appeals Bureau, the Criminal Court Bureau, and the Sex Crimes Special Victims Bureau. Before entering law school, Eisen worked as a beat reporter for a daily newspaper in Laredo, Texas, covering criminal justice and immigration. Eisen holds an AB from Princeton University and a JD from the Georgetown University Law Center. “Criminal Justice Reform at the State Level,” 2 January 2020, https://www.brennancenter.org/our-work/research-reports/criminal-justice-reform-state-level] Cgilbert

The criminal justice system in America is complex, made up of county courts and jails, state courts and prisons, and a federal justice system with its own courts, judges, and prisons. Reducing mass incarceration means working across this tangled web. Despite the attention that the federal system gets, most Americans encounter the justice system at the county and state level. In fact, most incarcerated people in America are held in state and county facilities. That is why state reform efforts are so important. The staggering number of people behind bars in America Today, some 2.2 million people are incarcerated in county jails and state and federal prisons, giving the United States the largest prison population in the world. Many factors building over decades got us here. Since the late 1960s, the government has spent billions of dollars funding crime prevention in the United States that was focused more on policing and punishment than on addressing the root causes of crime. States also enacted a series of laws that dramatically lengthened sentences for many crimes and created entirely new ones. In particular, mandatory minimum sentencing and truth-in-sentencing provisions required individuals to serve longer periods of time behind bars, contributing to the explosion in the nation’s prison population. The criminal justice system encompasses more than 1,700 state prisons, 100 federal prisons, 1,700 juvenile correctional facilities, 3,100 local jails, and 80 jails on Native American reservations, as well as other facilities like military prisons. These figures underscore an important point: it is impossible to end mass incarceration by focusing on just one aspect of this sprawling system. Harsher state criminal laws, followed by the prison-building boom State laws contributed to mass incarceration, and those laws must change to end it. Federal crimes cover a relatively narrow range of conduct, such as drug offenses. State laws, on the other hand, cover crimes that are more recognizable to the average citizen, like drunk driving, shoplifting, and homicide. It’s no surprise, then, that state courts handle many more cases than federal courts. As crime rose in the 1970s and 1980s, lawmakers at the state and federal level enacted more draconian laws that ensnared more people in the criminal justice system. In 1973, legislators in New York passed the so-called Rockefeller drug laws, which imposed mandatory minimum 15-year terms for possession of marijuana and other drugs. Michigan and other states quickly enacted similar laws. Continuing this trend, Washington State in 1984 adopted the nation’s first “truth-in-sentencing” law, which required people to serve at least 85 percent of their sentences before becoming eligible for parole. In a domino effect across the country, 27 other states imposed similar requirements. Although violent crime in America peaked in 1991, and crime today remains at historic lows, our nation’s punitive responses to crime resulted in a prison building spree throughout the 1990s. According to the Congressional Research Service, in the mid-1990s, at the peak of the prison construction boom, a new prison opened every 15 days on average.

# Defund the Police

## Defund Good

### Solves Trauma

- defund police would redirect money from the school to prison pipeline

- FIRST patrols were to capture runaway slaves (Fugitive Slave Act)

- 95% of arrests are minor offenses = overpolicing

**American policing is not neutral; it is and has always been a tool to surveil and oppress black and brown bodies. Defunding the police is a key first step in resolving trauma in communities hardest hit by aggressive, overfunded policing. Fernandez, 20** [Paige Fernandez is the Policing Policy Advisor in the ACLU’s National Political Advocacy Department. Fernandez develops and implements comprehensive strategies that advance the ACLU’s affirmative vision for reducing the role, power, presence, and responsibilities of the police in U.S. communities. She also develops and leads nationwide advocacy around police practices. Fernandez’s approach to policing advocacy places communities at the forefront of the work, a practice rooted in her grassroots experience. Prior to joining the ACLU, she co-founded and directed multiple chapters of Together We Stand, a nonprofit aimed at dismantling racism, discrimination, and police brutality. She also has a master’s degree in Public Policy from Oxford University and a B.A. from Sarah Lawrence College. “Defunding the Police Will Actually Make Us Safer,” 11 June 2020, https://www.aclu.org/news/criminal-law-reform/defunding-the-police-will-actually-make-us-safer/] Cgilbert

Almost exactly six years after NYPD officers murdered Eric Garner in New York City, Minneapolis police officers murdered George Floyd. Activists, advocates, and protestors are still screaming “I can’t breathe” and begging government officials for police reform that will end police violence in Black communities. But today’s demands are bigger and bolder: Now, protesters are advocating for systemic changes that require a complete reimagining of law enforcement in the United States. American policing has never been a neutral institution. The first U.S. city police department was a slave patrol, and modern police forces have directed oppression and violence at Black people to enforce Jim Crow, wage the War on Drugs, and crack down on protests. When people ask for police reform, many are actually asking for this oppressive system to be dismantled and to invest in institutions, resources, and services that help communities grow and thrive. That’s why many protestors and activists, following in the footsteps of Black-led grassroots groups, are demanding immediate defunding of police departments. The idea of defunding, or divestment, is new to some folks, but the basic premise is simple: We must cut the astronomical amount of money that our governments spend on law enforcement and give that money to more helpful services like job training, counseling, and violence-prevention programs. Each year, state and local governments spend upward of $100 billion dollars on law enforcement—and that’s excluding billions more in federal grants and resources. Budgets are not created in a vacuum. They can be changed through targeted advocacy and organizing. We can demand that our local officials (including city council members and mayors) stop allocating funds for the police to acquire more militarized equipment and instead ask for that money to go toward community-run violence-prevention programs. We can demand that our federal government redirect the money that funds police presence in schools to putting counselors in schools instead. Funneling so many resources into law enforcement instead of education, affordable housing, and accessible health care has caused significant harm to communities. Police violence is actually a leading cause of death for Black men: A recent study found that 1 in 1,000 Black men can expect to be killed by police, and public health experts have described police violence as a serious public health issue. For a country like ours, which considers itself a modern democracy that pushes ideals of freedom and justice for all, that number should be truly shocking. Much of the work police do is merely engage in the daily harassment of Black communities for minor crimes or crimes of poverty that shouldn’t be criminalized in the first place. Consider this: Out of the 10.3 million arrests made per year, only 5 percent are for the most serious offenses, including murder, rape, and aggravated assault. These are the ones that truly threaten public safety. The other 95 percent of arrests are for things like traffic violations, marijuana possession, unlawful assembly, and even removing a shopping cart from store premises. That means that police spend the most resources going after minor incidents that actually don’t threaten everyday life but do lead to mass criminalization and incarceration. And as you know, some arrests are made for doing nothing at all beyond being Black. We have little evidence, if any, to show that more police surveillance results in fewer crimes and greater public safety. Indeed, funneling police into communities of color and pushing officers to make arrests just perpetuates harm and trauma. Yet since the 1980s, spending on law enforcement and our criminal legal system has dramatically outpaced that in community services such as housing, education, and violence prevention programs. Those are the institutions that help build stable, safe, and healthy communities. For example, Los Angeles’s budget gives police $3.14 billion out of the city’s $10.5 billion. Spending on community services such as economic development ($30 million) and housing ($81 million) pale in comparison to the massive LAPD budget. (On Wednesday night, after years of Black Lives Matter grassroots activists demanding a cut in LAPD’s budget, Los Angeles Mayor Eric Garcetti announced he would cut $100 million to $150 million from the LAPD budget and reinvest those funds in communities of color.) Similarly, in New York City, the government spends almost $6 billion on policing, which is more than it does on the Department of Health, Homeless Services, Housing Preservation and Development, and Youth and Community development combined. By shrinking their massive budgets, we can help end decades of racially driven social control and oppression as well as address social problems at their root instead of investing in an institution that further oppresses and terrorizes communities.

### Solves Crime Rates

**Defunding Police has been shown to lower crime rates and create better communal relationships with law enforcement. Chabaria, 20** [Anita Chabria covers California state politics and policy for the Los Angeles Times and is based in Sacramento. Before joining The Times, she worked for the Sacramento Bee as a member of its statewide investigative team, and previously covered criminal justice and City Hall. 13 July 2020, <https://www.msn.com/en-us/news/crime/bankruptcy-forced-this-california-city-to-defund-police-here-s-how-it-changed-public-safety/ar-BB16FLPu?li=BBnbcA1>]

Resolute, sincere and white, Stockton Police Chief Eric Jones [stood in front of a Black congregation](https://www.facebook.com/stocktonpolicedepartment/videos/1025666660862591/) in 2016 and apologized for a history that many of his colleagues dismiss: the slave patrol origins behind modern American policing. Not long ago, he said, law enforcement was dispatched to keep order at lynchings, part of a legacy that has long prevented Black communities from trusting police. He spoke in uniform, with a black band across his badge to honor [five Dallas officers ambushed](https://www.latimes.com/nation/nationnow/la-na-dallas-police-20170709-story.html) days earlier by an Army reservist angry about the killing of Black men by police. Though Jones said he and his officers were not responsible for the actions of those who came before them, he needed to own the history of injury if he wanted this community to believe he meant to do things differently. And he wanted them to believe. "That badge carries that burden," Jones said in a recent interview. "As the law enforcement leader, I had to be the first one to give the acknowledgment of the past harms." As [California and the nation debate](https://www.latimes.com/california/story/2020-06-04/gavin-newsom-listening-tour-stockton-amid-calls-for-action-after-protests) the aftermath of the George Floyd killing, Stockton has some insights, if not answers, about what it means to rethink policing. When Jones took over as chief eight years ago, the Great Recession had decimated the city's finances and crime was rampant, forcing him to do more with less. He began by rejecting a reliance on crime statistics and the "zero-tolerance, blanket enforcement" he was taught as a rookie. Instead, he pushed to evaluate public safety by how people felt about their neighborhoods and their treatment by police. The results of Jones' experimental approach provide a lesson for a nation in turmoil about what defunding police departments really means, how far and fast reform can go, and the degree police should be held responsible for racism that is systematic in schools, banks, healthcare and other institutions. **Even with fewer officers, crime here has fallen and the department currently has a clearance rate on homicides of about 80%.** Jones **attributes these successes to better communication and responsiveness in neighborhoods where people felt disenfranchised,** a reliance on community organizations to fill in gaps where police lack resources and a system that rewards officers for positive interactions, not just arrests. More striking to some, Jones has earned trust from his mayor, many citizens of color and the officers' union. **As protests and uprisings** over police brutality **have swept the U.S. in recent weeks,** **Stockton hasn't "had to do one curfew, no rubber bullets, no tear gas,"** said Mayor Michael Tubbs, a Black politician who has gained a national following for championing ideas such as a [universal basic income.](https://www.latimes.com/local/california/la-pol-ca-basic-income-stockton-reparations-20190415-story.html) But Stockton is also a lesson in what can't be done, even with nearly a decade of trying, and the grueling realities of what American policing may face as it seeks a new way to do business. "Nobody including Eric Jones would look at facts on the ground in Stockton right now and say everything is great," said David Kennedy, a professor of criminology at John Jay College of Criminal Justice in New York, who has worked with Stockton on reforms. **"Trying to get this right is a difficult, grinding, long-term work in progress."** Few dispute that life in Stockton has improved since Jones took over, but largely because it's hard to envision how it could be worse. In his first year, about 20% of Stocktonians were unemployed, and crime and homelessness were spiking with homicides nearly tripling. With a population around 300,000, the city had been hit hard by foreclosures and bad municipal investments when Wall Street crashed, and was forced to declare bankruptcy that year**. City leaders slashed the Police Department's budget by $14 million, resulting in the loss of a quarter of its 440 officers —** an **involuntary defunding that dropped the number of sworn officers to some of the lowest levels per capita in the country**. At the same time, a troubling string of police shootings continued, 27 between 2009 and 2014, according to local media. Black and brown communities were simultaneously angry at police mistreatment, and demanding more help in violent neighborhoods. A "good dude," as one supporter describes him, with a deep Christian faith, **Jones used the fiscal meltdown to begin reshaping the department under a personal vision he dubbed "principled policing," allowing the "community to have a say in the way they want to be policed."** But despite the usual fixes — implicit bias training, more officers in high-crime spots — not enough was changing. So in 2014, Jones made a "risky" move, he said, and volunteered Stockton to be one of six cities, including Minneapolis, for a national initiative on police reform. That effort promised to help with racial reconciliation, which was increasingly being recognized as a necessary step to restoring the legitimacy of police within communities of color. He began talking about race with his officers, and on stage at the church months later, made a snap decision to try it in public. Though aware the conversations were happening within the department, hearing it as he sat in the audience made him "teary-eyed," said Tubbs, who was on the City Council at the time. He remembers it as "one of the moments that made me think I want to be mayor." Tubbs' father, whom he is named after, went to prison on a life sentence for robbery, including a kidnapping charge for forcing his victim to drive to a bank and withdraw cash, according to court records. Tubbs was about 4 at the time, and his father was 25. The robbery netted the elder Tubbs about $3,000 in money and goods — which the mayor recently learned was meant to pay for the funeral of his baby sister, who died while an infant. That detail was unearthed this year during the filming of an upcoming HBO documentary, ["Stockton on My Mind."](https://www.hbo.com/documentaries/stockton-on-my-mind) While Jones began taking his apology to other churches and forums, he was also broaching another volatile topic internally: officers' expectations of each other and their jobs. He is well-aware that, across the country, chiefs had been stymied and even ousted by police unions unhappy with pushes to reform. Still reeling from the bankruptcy and ongoing protests of police shootings, his officers were demoralized and in "preservation mode," said Chuck Harris, the head of the local police union. "The ship was sinking in everybody's eyes," Harris said. Jones realized that the job of being a Stockton cop was often unpleasant. How, he wondered, could he expect them to change when they were struggling just to find reasons to stick with it? Officers, he suggested, suffered from working in an oppressive system, and that too needed to change. Harris said that the culture of how officers are taught and treated has morphed drastically under Jones. "Twenty, 30 years ago, you had, 'You're going to learn this, rookie,'" Harris said. Today, he said, that has transformed to "I'm going to treat you 100% decent like any other person, and we are going to go through this together." Stockton also tries to address mental health, believing that well-adjusted officers make better decisions in the field, Jones said. When Harris was working as a homicide detective in 2012, there were a record 71 killings, he said, and it was "miserable ... for the families, for the citizens, for us." He recalls the pressure of going home to his family with the images of murder scenes in his head. Now, young officers are given a welcome package that has included a teddy bear that sings when its paw is pushed, and are taught, "It's OK to talk about your problems," Harris said. "You don't need to go home and drink. You don't need to go out and party." Retention remains a problem because of pay, though — a remnant of defunding. Stockton police still earn less than counterparts in surrounding areas. The result is that about 75% of officers have less than five years of experience. The oldest homicide detective, usually a job that requires decades of experience, is 33, Harris said. The plus side of the youthful ranks, Harris said, is an inclusive culture that doesn't nurture the kind of blind obeisance to veterans that some have suggested kept inexperienced officers from stepping in as George Floyd was killed. But there are drawbacks to this young force, paid for on the cheap. Many officers don't live in Stockton, and they are far from matching the diverse demographics of the city. The neighborhoods they patrol are unfamiliar, and community members are often strangers. Burnice Redic, a Stockton native who was formerly incarcerated and now works in a violence prevention program, recalls what it was like to know the officers who walked his block when he was a kid. Once, when he was about 11, a well-known officer everyone called "Blondie" caught him with drugs, he said. But the beat cop knew his mother, father, aunt and grandmother, and let him go with a warning. "He just looked at me and was like, 'You know, Burnice, you're better than this,'" Redic recalled. "Discretion goes a long way. People remember that. Like I said, I remember when he did that for me." Harris agrees that not having officers that know the people they police is a loss. "I've missed that, too," he said, "You don't have a steady group who's like, 'This is my city. I know everybody in it.'" Dionne Smith-Downs, one of the harshest critics of the department, said the problems in Stockton go beyond what the department admits, and that changes have been superficial. Her son, James Rivera Jr., was shot by two Stockton officers and a San Joaquin sheriff's deputy in 2010. "The only thing I see is that they pick and choose what they want to show the world, but they are still cutting us down," Smith-Downs said recently. "We are still being profiled, we are still being falsely arrested, and we are still [having] guns put on us." Nuri "Brian" Muhammad, the leader of Advance Peace in Stockton, thinks programs such as his are necessary because of that remaining mistrust. Police alone will never be the answer to public safety, he said. "The people that we deal with, they look at the police as somebody that's there to put them in jail," Muhammad said. "They won't open up to them the way they open up to us." Redic said he recently prevented a shooting by convincing two teens, one of whom was armed with a handgun, to settle their differences another way. Unable to calm the teen with the gun, he said, he improvised. The young men would fight without weapons, and let the matter go, no matter who won. Redic said those kinds of solutions are unorthodox but necessary. "They squashed it and everything's been solid ever since," he said. Jones said he will take help where he can get it, and has made community interventions a cornerstone of his approach since there still aren't enough officers to respond to every call. Though **there are bright spots — incidents of police shooting people decreased about 33% for the last five years compared to five years prior** — gun violence remains a problem, homelessness continues to grow and the pandemic is causing a new round of economic problems. The last years are "just the beginning," he said, and an urgency for change remains. "It's such hard work, difficult work, but my goal is infusing it into who we are as a department," Jones said. "Because I could be gone tomorrow ... and it needs to live."

### Redirect Needed Funds

**State and local spending on policing has increased within the past 40 years - defunding police would redirect money to communities where it’s needed. Weissman, 20** [Robert Weissman is president of Public Citizen and a staunch public interest advocate and activist, as well as an expert on corporate and government accountability. He is available to discuss the effect of money on politics, economic and regulatory policy, corporate crime and wrongdoing, trade and globalization, financial reform, prescription drug pricing and access to the courts. He worked as director of the corporate accountability organization Essential Action from 1995 to 2009. From 1989 to 2009, he was editor of the Multinational Monitor, a magazine that tracked multinational corporations. Weissman helped make HIV drugs available to the developing world and has provided assistance to numerous governments on intellectual property and access to medicine issues. He previously worked as a public interest attorney at the Center for Study of Responsive Law. A member of the Ohio bar, Weissman earned a J.D. from Harvard Law School, where he graduated magna cum laude. 24 June 2020, <https://pressofatlanticcity.com/opinion/commentary/defunding-police-improves-justice-redirects-resources-to-better-uses-says-robert-weissman/article_bd4a8ec2-3bf7-5eb2-8b5a-8e88358740f8.html>]

Set aside the emotions. **Defunding the police — reducing the money spent on policing and reallocating it to other local priorities — is common sense**, whether you look at the issue from a budgetary, criminal justice or social point of view. From the budgetary point of view, **we** just **spend too much money on policing**. **Over the last 40 years, state and local spending on policing has almost tripled**, rising from $42 billion to $115 billion (in 2017 inflation-adjusted dollars). **Consider these snapshots from Texas: — The Dallas Police Department budget is $516,967,195 this year.** That’s **more than the city will spend on libraries, parks and recreation, public works, housing, planning and zoning, and municipal courts combined.** — The city of San Antonio police budget is $479,091,284 this year. **That’s 37% of the city’s general fund spending** — more than taxpayers spend on human services, housing, courts, jails, libraries, public parks and animal control combined. — Austin’s police department’s budget is $440,000,000. That’s more than the city spends on public health, housing, libraries, city planning, parks and recreation and emergency medical services combined. The **massive municipal spending on policing simply crowds out spending on other priorities, leaving cities unable to make the investments they need to include everyone’s quality of life —** by creating more economic opportunity, supporting affordable housing, improving parks and libraries, and more. From a criminal justice point of view, **more police do not give us more public safety. Black and brown communities know directly that the police are too often a source of violence, harassment and intimidation** — that’s what the Black Lives Matter protests are surfacing so poignantly. The horrific police murder of George Floyd was no exception, and stop-and-frisk and similar abuses are pervasive, not occasional. In the peak year of stop and-frisk during the New York mayoralty of Michael Bloomberg, New York police conducted almost 700,000 stops, with African Americans and Latinos nine times more likely to be stopped than whites. The overwhelming number of police arrests are for misdemeanors, 80%, according to University of California law professor Alexandra Natapoff. Some misdemeanors are serious, but most aren’t. So long as most police arrests involves misdemeanors, more police means more crime and a lower quality of life — not just because the numbers are artificially boosted by needless arrests for low-level offenses but because people who are pulled into the criminal justice system have narrowed opportunities and are more likely to be pulled back into the criminal justice system again. From a social point of view, we ask the police to do things they are not set up to do. In too many cases, police are the de facto case workers and jails the de facto clinics for people with mental illness. Police are often the frontline social workers for people experiencing homelessness. Police fill the gaps from missing economic opportunity. We should instead be relying on trained professionals to perform these and other tasks. Policing is hard work, and we all need assurances of public safety. Police must be held accountable for wrongdoing, but we all should also appreciate the good-faith and hard work of most police officers. At the same time we can recognize their importance and individual and collective commitment to protecting communities, we can also see the need for right size police departments. **There’s simply too much money being thrown at police forces, and it’s coming at the expense of other priorities. Excessive policing is not reducing crime — it’s criminalizing Black and brown communities and making us less safe.** At this moment of national reckoning, **we should be rethinking the criminal justice system and shrinking its footprint — decriminalizing low-level offenses, reducing the prison population and yes, shrinking police forces — while redirecting resources into investments in jobs and housing, parks and libraries. In doing so, we will improve public safety and quality of life for everyone, especially those in Black and brown communities.**

### Police Don’t Solve Crime

**Police do not solve crimes**

**Vitale, 17** (Alex Vitale is an author and professor of sociology at Brooklyn College. He is also the coordinator of the Policing and Social Justice Project at Brooklyn College, ‘*The End of Policing’* Chapter 2)

The police exist to keep us safe, or so we are told by mainstream media and popular culture. TV shows exaggerate the amount of serious crime and the nature of what most police officers actually do all day. Crime control is a small part of policing, and it always has been. Felony arrests of any kind are a rarity for uniformed officers, with most making no more than one a year. When a patrol officer actually apprehends a violent criminal in the act, it is a major moment in their career. The bulk of police officers work in patrol. They take reports, engage in random patrol, address parking and driving violations and noise complaints, issue tickets, and make misdemeanor arrests for drinking in public, possession of small amounts of drugs, or the vague “disorderly conduct.” Officers I’ve shadowed on patrol describe their days as “99 percent boredom and 1 percent sheer terror”—and even that 1 percent is a bit of an exaggeration for most officers. Even detectives (who make up only about 15 percent of police forces) spend most of their time taking reports of crimes that they will never solve—and in many cases will never even investigate. There is no possible way for police to investigate every reported crime. Even homicide investigations can be brought to a quick conclusion if no clear suspect is identified within two days, as the television reality show The First 48 emphasizes. Burglaries and larcenies are even less likely to be investigated thoroughly, or at all. Most crimes that are investigated are not solved.

## Police Free Zones

**Cop Free Zones Solvency Card. Crimethinc 20** [07-02-2020, <https://crimethinc.com/2020/07/02/the-cop-free-zone-reflections-from-experiments-in-autonomy-around-the-us>, CrimethInc., also known as CWC, which stands for either "CrimethInc. Ex-Workers Collective" or "CrimethInc Ex-Workers Ex-Collective", is a decentralized anarchist collective of autonomous cells. CrimethInc. CrimethInc. is a rebel alliance — a secret society pledged to the propagation of crimethink. It is a think tank producing inflammatory ideas and action, a sphinx posing questions fatal to the superstitions of our age. CrimethInc. is a banner for anonymous collective action. It is not a membership organization, but a mouthpiece for longings that extend throughout the population at large. Anyone can be CrimethInc. — it could be your next-door neighbor or the person sitting beside you on the bus. You and your friends already constitute an [affinity group](http://destructables.org/node/54), the organizational model best suited to guerrilla tactics, ready to go into action against all the forces that threaten your freedom. CrimethInc. is an international network of aspiring revolutionaries extending from Kansas to Kuala Lumpur. For over twenty years, we have published news, analysis, [books](https://crimethinc.com/books), [journals](https://crimethinc.com/journals), [posters](https://crimethinc.com/posters), [videos](https://crimethinc.com/videos), [podcasts](https://crimethinc.com/podcast), and a wide range of other resources — all copyright free, produced and distributed by volunteer labor, without reliance on external funding or market trends. We also coordinate [speaking tours](https://crimethinc.com/2015/12/28/report-to-change-everything-us-tour), [debates](https://crimethinc.com/2012/09/17/post-debate-debrief-video-and-libretto), and various other public events. Though we rarely seek public recognition for our efforts, everything we do is informed by our participation in social movements. CrimethInc. is a desperate venture. As this society lurches ever closer to annihilation, we are staking everything on the possibility that we could kick open the escape hatch to another future. Rather than competing for social capital or selling ourselves to the highest bidder, we have thrown ourselves completely into the struggle for a better world. We invite you to do the same.]

The cop-free zone is not the particular block or traffic circle or park. It is the shared commitment to defending a space and eliminating the dynamics of policing and white supremacy. In the following collection, we explore some people’s experiences attempting to create police-free autonomous zones in different parts of the United States. Yesterday, Seattle police evicted the Capitol Hill Autonomous Zone (CHAZ), also known as the Capitol Hill Organized Protest (CHOP), ending an experiment in autonomy that had extended over three weeks of inspiring creativity and heartbreaking tragedies. Yet the legend of this space has spread around the world, inspiring solidarity actions as far away as [Tokyo](https://twitter.com/crimethinc/status/1278040554572599301) and attempts to emulate it from Portland to New York City and [Washington, DC](https://twitter.com/escapedmatrix/status/1277144912480403456). For an overview of the story of the occupation in Seattle, you could start [here](https://anarchiststudies.org/in-defense-of-autonomy-seattles-organized-protest-zone-advanced-the-movement-for-black-lives-by-michael-reagan/). To establish a cop-free zone is a show of strength, whether it lasts for a [single evening](https://crimethinc.com/2017/08/08/total-policing-total-defiance-the-2017-g20-and-the-battle-of-hamburg-a-full-account-and-analysis#the-defense-of-schanze-police-free-zone) or a period of years. It can dramatically expand the popular imagination: just as police abolition was unthinkable until the uprising in Minneapolis [demonstrated](https://crimethinc.com/2020/06/17/snapshots-from-the-uprising-accounts-from-three-weeks-of-countrywide-revolt) that rioters could defeat police in open confrontation, even the most temporary autonomous zone can enable people to rethink their assumptions about policing. Above all, a liberated zone provides a space in which to remember and mourn. Just as Occupy Oakland renamed the plaza they occupied in honor of Oscar Grant in 2011, contemporary cop-free zones have served as memorials to those whose lives have been taken by police violence, hosting breathtaking participatory art installations. The most important artistic endeavors and community gatherings in the US right now are taking place in these spaces. At the same time, when the police are still so powerful and the ruling class that they serve is scrambling to legitimize them in the public eye, establishing a cop-free zone involves challenges and risks. In response to the sudden popularity of police abolition, the state urgently needs to create spectacles that create the impression that the abolition of policing is even more gruesome than the ongoing violence of police. Trying to control fixed territory puts us on the defensive, making us a stationary target for white supremacists and others to attack us. These attacks can range from actual shootings, such as the one DeJuan Young [described experiencing](https://www.kiro7.com/news/local/man-critically-injured-chop-shooting-says-he-was-victim-racial-attack/ZHXSJZLBEBGSHOUOO3FMWKQGFI/) in Seattle, to the [blatantly dishonest](https://www.seattletimes.com/seattle-news/politics/fox-news-runs-digitally-altered-images-in-coverage-of-seattles-protests-capitol-hill-autonomous-zone/) smear campaign that Fox News perpetrated against the occupation there. At the same time, police and other state actors seek to drive violence and anti-social activity into areas they don’t control in order to discredit those who inhabit them. In Greece, police have long used [this tactic](https://crimethinc.com/2019/08/29/the-new-war-on-immigrants-and-anarchists-in-greece-an-interview-with-an-anarchist-in-exarchia) against ungovernable neighborhoods like Exarchia as well as autonomous zones in Greek universities. Controlling a particular space doesn’t necessarily equip us to interrupt the processes that cause the anti-social violence that the authorities use to justify policing. The proposal to abolish the police is not a proposal to defund a particular institution, but to overhaul our entire society, abolishing the disparities that make police necessary to maintain the prevailing order. Inside an autonomous zone, we can demonstrate gift economics and other models of mutual aid, but that won’t suffice to protect the participants from the pressures of capitalism and white supremacy, which are bound to continue destabilizing our relationships until we can bring about wider social change. This doesn’t mean we should abandon the language of “autonomy” in favor of “occupation” or “organization,” as some have argued. Rather, we need to popularize a different understanding of what autonomy is. As we understand the concept, to be autonomous is not to administer an independent juridical zone the way the state does; rather, autonomy is a question of how much leverage all the participants in an environment have over what they are able to do and experience in it. In this sense, autonomy is not a property of a defined physical space, but rather a quality of a network of relations. *“*Autonomy… needn’t mean meeting all your needs independently; it could also mean the kind of interdependence that gives you leverage on the people you depend on. No single institution should be able to monopolize access to resources or social relations*. A society that promotes autonomy requires what an engineer would call redundancy: a wide range of options and possibilities in every aspect of life.” -*[*From Democracy to Freedom*](https://crimethinc.com/books/from-democracy-to-freedom)Concentrating power over an autonomous zone in a single leadership or decision-making structure is a liability, not an advantage. Monopolies on power usually benefit the comparatively privileged, who are best equipped to employ frameworks of [legitimacy](https://crimethinc.com/2012/03/27/the-illegitimacy-of-violence-the-violence-of-legitimacy) to position themselves favorably, whereas those who are on the receiving end of racial and class disparities are often excluded even when these frameworks are supposed to empower them. If our goal is to abolish white supremacy, our top priority should be to support the voices and actions of the most disenfranchised Black, brown, and queer people, not to follow the leadership of those who already benefit from status of some kind. Likewise, too much emphasis on unity tends to restrict both tactics and long-term goals to a lowest common denominator, undercutting the diversity and unpredictability that enable movements to establish autonomous zones in the first place. All these considerations suggest that, even if our goal is simply to hold a particular physical space, we have to prioritize carrying out offensive activities throughout society at large that can keep our adversaries on the defensive, while investing energy in the activities that nourish movements and spaces rather than focusing on defending particular boundaries. We should understand occupied spaces as an effect of our efforts, rather than as the central cause we rally around. Other movements have already grappled with these questions in the past. We can learn a lot from the [squatting](https://crimethinc.com/2014/05/13/squatting-in-england-heritage-prospects) [movement](https://crimethinc.com/2019/03/01/the-battle-for-ungdomshuset-the-defense-of-a-squatted-social-center-and-the-strategy-of-autonomy) in Europe, the Movimento sem Terra (MST) in Brazil, the [Occupy movement](https://crimethinc.com/2013/09/10/after-the-crest-part-ii-the-rise-and-fall-of-the-oakland-commune) in the US, and [other](https://crimethinc.com/2011/06/08/fire-extinguishers-and-fire-starters-anarchist-interventions-in-the-spanish-revolution-an-account-from-barcelona) examples worldwide. In the worst case, misunderstanding autonomous space as a physical territory rather than as the relationships and courage that maintain it can lead to some participants making [disastrous compromises](https://crimethinc.com/2018/04/09/la-zad-another-end-of-the-world-is-possible-learning-from-50-years-of-struggle-at-notre-dame-des-landes) with the authorities in hopes of being permitted to retain that territory. Finally, establishing and defending police-free zones compels us to develop a robust analysis of what policing is in order to make sure that we don’t replicate it. The extent to which we can resolve conflict ourselves in these spaces will be one of the most important factors in determining whether we can hold on to them and demonstrate a model of autonomy that deserves to become contagious. We should not confuse our ability to defend cop-free zones with being able to employ lethal force the same way that the police do. If we make this mistake, we risk reproducing the dynamics of existing systems of policing, and the ones who suffer the worst consequences will likely be young Black men. *“We must find mutually satisfying resolutions or else suffer the consequences of ongoing strife. This is an incentive to take all parties’ needs and perceptions seriously, to develop skills with which to defuse tensions and reconcile rivals. It isn’t necessary to get everyone to agree, but we have to find ways to differ that do not produce hierarchies, oppression, or pointless antagonism. -*[*From Democracy to Freedom*](https://crimethinc.com/books/from-democracy-to-freedom)In this regard, the first line of defense of the cop-free zone is not the violent force with which it is defended, but the ways that the participants turn care into a transformative force.

# Reform Debate

## Can Be Reformed

### Better than Abolition

**Abolishing the Police is a utopian project that will fail; reform can occur through better resources and practices. Orrell, 20** [Brent Orrell is a resident fellow at the American Enterprise Institute, where he works on job training, workforce development, and criminal justice reform. Specifically, his research focuses on expanding opportunity for all Americans through improved work readiness and job training and improving the performance of the criminal justice system through rehabilitation and prisoner reentry programs. Before joining AEI, Mr. Orrell worked in the executive and legislative branches of the US government for over 20 years. He was nominated by President George W. Bush to lead the Employment and Training Administration of the US Department of Labor, and he served as deputy assistant secretary for policy at the Administration for Children and Families at the US Department of Health and Human Services. Mr. Orrell is the editor of “Rethinking Reentry” (AEI, January 2020), in which he authored the chapter “Identity and Agency: A New Approach to Rehabilitation and Reentry.” He is also the host of the podcast “[Hardly Working](https://www.aei.org/tag/hardly-working-podcast/).” A frequent contributor to the popular press, Mr. Orrell has been published in Law & Liberty, RealClearPolicy, RealClearMarkets, and The Hill. He has a bachelor’s degree from the University of Oregon. 13 July 2020, <https://www.usatoday.com/story/opinion/2020/07/13/police-reform-must-include-fixing-officers-broken-ties-communities-column/5412473002/> ]

The death of George Floyd at the hands of Minneapolis police officers and the follow-on nationwide protests has thrust the issue of police reform from the periphery of the nation’s consciousness to a first-tier public policy issue. As is typical in American discussions of crime and punishment, the public remains divided between those who focus on the root causes of the excessive police force that brought on protests, demonstrations and, occasionally, riots and those who are concerned with how the disturbances threaten public safety and the rule of law. **This polarization is not helpful to addressing either the needs of over-policed and violence-prone neighborhoods or better equipping the officers tasked with maintaining safety and order and preventing excessive use of force by the police**. **The truth is that our most vulnerable neighborhoods, communities and cities deserve better policing than they are getting**, and the overwhelming majority of police officers deserve recognition and support for undertaking difficult and often dangerous work. **Crime is part of the human condition and will always be with us, making the police a necessity. But** [**actual prevalence of criminal activities changes**](https://www.themarshallproject.org/2019/09/30/new-fbi-data-violent-crime-still-falling) **and our approaches to the problem should change with it.** **Certain aggressive and lethal practices** — like chokeholds, no-knock warrants and discriminatory stop-and-frisk policies — **need to be reformed or banned.** **Qualified immunity, which largely protects officers against civil suits resulting from excessive use of force claims, must also be reformed to change police incentives when it comes to use of lethal force.** However, **merely limiting the methods of police engagement is not, by itself, sufficient** to begin improving relationships between the police and community. **It is imperative that we focus on improving police conduct and their capacity for understanding**, interpreting and responding to the effects of trauma in the communities they serve — and in themselves. One of President Donald Trump’s recently proposed reforms is to [integrate social workers into police departments](https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-taking-unprecedented-steps-strengthen-relations-law-enforcement-communities/) to take part in responding to non-violent police calls. Such professionals could serve as a resource for understanding and interrupting the police-community-trauma-violence dynamic. Such staff**, trained in understanding how symptoms of trauma and mental illness manifest in individuals, would help officers know when to hold back on use of force,** as well as serving as a resource for officers to better understand how the day-to-day grind of police work is shaping their own attitudes, reactions, and responses. **Additional** [**mental health and de-escalation resources also should be embedded in disadvantaged neighborhoods**](https://cvg.org/) **to help defuse conflicts before violence breaks out and help to build a generally more peaceful environment**. **Defunding and abolishing police is a utopian project destined to fail, and, in so doing, create conditions for another round of “get-tough” criminal justice policies, programs and practices that have wreaked such havoc on our families, communities and police forces.** This is the last thing a nation riven by social and political conflict needs. Rather, **we should to look for** [**models and practices that build police-community collaboration and trust**](https://www.aei.org/articles/dont-abolish-the-police-reform-them/) **and reduce the prevalence of fatal force.** In the process, **we** might **learn that cultivating more peaceful police forces and communities is not a soft-headed effort in social engineering, but a vital strategy for strengthening communities and the police officers who serve them.**

### Culture Shift

**Culture shift proves reform is best option, especially for communities of color. Helfgott, 20** (Jacqueline B. Helfgott is professor and director of the Seattle University Department of Criminal Justice Crime and Justice Research Center. She serves on the Seattle Police Department’s Crisis Intervention Committee. “The movement to defund the police is wrong, and here’s why”, Seattle Times, June 9 2020, https://www.seattletimes.com/opinion/the-movement-to-defund-the-police-is-wrong-and-heres-why/)

**Police culture is changing.** Yes, this change is painfully slow and incremental, and many argue we have no time to wait. However, **starting over is not realistic or reasonable**. Police reform in Seattle and Washington state has not been successful in changing police culture entirely or in other jurisdictions across the country and does not change the hard, heartbreaking fact that police killed Floyd. The Major Cities Chiefs Association and the International Association of Chiefs of Police condemned Floyd’s death, noting that Floyd’s arrest was horrific and blatantly inconsistent with good police procedure on use of force. Police culture has been slowly changing for many years through the implementation of guardian-oriented policing, policy and oversight, crisis intervention training, community policing, and police-community engagement efforts, collaborative partnerships with mental-health and social-service agencies, and the increase in women and minorities in law enforcement. The clashes between protesters and police in Seattle over the use of tear gas and crowd-control tactics, and Mayor Jenny Durkan and Seattle Police Chief Carmen Best’s willingness to listen to the protesters and modify SPD’s approach by “meeting peace with peace” reflects this change in police culture and willingness to work with the community for change. We need the police**.** The police are the first responders to a broad range of public-safety issues and serious crime. Crime will not end if we abolish or defund the police. If the police are defunded, there will be delayed response when people who are in need call 911, fewer police on the street in neighborhoods and communities, and lack of police capacity to respond to serious crimes that present significant threats to public safety. If we defund the police, those most affected will be the poor and the marginalized. Wealthy neighborhoods will hire private security as they are already doing, and poorer neighborhoods will have to fend for themselves even more than they already have to. Delays in police response and lack of police capacity will increase fear of crime, render victims of crime helpless and wreak havoc on communities, especially communities of color, even more so than is already the case. Are we there yet? No. We all owe Floyd’s family and every Black American and person of color who has to fear the police an apology and a promise that law enforcement in the United States will never again be the same as it was the day Floyd was killed. Justice for Floyd means prosecuting officers and those who stand by and do nothing, policing that is inclusive of the community, crisis intervention and de-escalation training in all police agencies, empathetic police training in police academies, and commitment from law enforcement personnel and every community member to speak out against racism and police power that violates civil liberty. Now is the time to test the accountability mechanisms implemented through years of police reform in Seattle. These reforms have made a difference and offer a framework for moving forward. Now is not the time to defund the police but to do the opposite — to invest in our police agencies to build on local and national police reforms. Every law enforcement officer who wears a badge, who takes their oath of service to uphold the law, who is trusted with extraordinary authoritative power to protect public safety, has the personal and professional responsibility to do their jobs in a way that values every single human life to ensure that there will not be another wrongful death at the hands of police.

### Evidence-Based Solves

**Evidence-based reform reduces violent crime and officer involved shootings. Coleman, 20** (Aaron Coleman is a reporter covering race and economics. “Police reform, defunding, and abolition explained”, Vox, July 16th 2020, https://www.vox.com/21312191/police-reform-defunding-abolition-black-lives-matter-protests)

The police reform movement stands atop two premises**. Good policing is good. Reams of research show it does, in fact, reduce violent crime.** But bad policing is bad. It’s bad on its own terms, because it harms the people it brutalizes, and it’s bad because it delegitimizes the police in the eyes of the community they’re meant to serve. In Milwaukee, for instance, an important study showed that 911 calls fell after a publicized case of police brutality. The harm of bad policing, in other words, was both the police brutality and the severing of the relationship between the community and the public agency meant to keep them safe. **Police reformers**, then, are trying to **do two things at the same time: Make sure there are enough police to keep violent crime low, and make sure those police are both well-trained enough and tightly constrained enough not to abuse their power.** The Obama administration’s Task Force on 21st Century Policing formed just after the 2014 uprising in Ferguson, Missouri, and published its report immediately after the 2015 Baltimore uprising. Its policy goals were a shift in policing culture, use of force, transparency, and fairness. As with universal pre-K, a $15 minimum wage, free community college, and a federal jobs program, the report articulated a progressive vision that was never fully achieved. Yet today, as establishment politicians respond to protesters’ calls for change, the task force’s report still offers a window into how traditional reformers imagine a new American policing paradigm. Among the report’s 59 recommendations were that officers “acknowledge the role of policing in past and present injustice and discrimination”; avoid violence against “children, elderly persons, pregnant women, people with physical and mental disabilities, limited English proficiency, and others”; and “adopt and enforce policies prohibiting profiling and discrimination based on race, ethnicity, national origin, religion, age, gender, gender identity/expression, sexual orientation, immigration status, disability, housing status, occupation, or language fluency.” The task force envisioned officers who are friendly, mentally well-adjusted, highly trained “guardians.” Through incentives, curriculums, and hiring programs, departments would create officers who prioritize deescalation and nonviolent intervention, abide by strict anti-discrimination laws, operate under strong transparency protocols, and stand accountable to local civilians. Under this plan, police are not abolished; they are enlightened. The authors also call for expanding the use of social workers and other nonviolent crisis specialists to supplement police officers. The report recommends reducing crime “through a variety of programs that focus on public health, education, mental health, and other programs not traditionally part of the criminal justice system.” This broader response to crime represents an area of overlap with the more progressive protests demanding alternatives to policing. Robinson, the co-chair of the task force, says the ethos of the document has entered into the bloodstream of American policing. Citing a survey of 47 of the largest law enforcement agencies in the United States from 2015 to 2017 conducted by the Major Cities Chiefs Association (MCCA) and the National Police Foundation, **Robinson notes that 39 percent of the departments updated their use of force policies and incorporated deescalation training. The survey also reported that officer-involved shootings during this period dropped by 21 percent**. While these data points highlight good news, Robinson also underscores that administrative barriers prevented the policy recommendations from becoming universal policing standards across the country. “We have a highly decentralized system,” she says. “We have 18,000 separate and very independent state and local law enforcement agencies that are operated and run by, in our case, many local independent mayors and city managers who are responsible for operating and overseeing those local departments.” This fragmented bureaucracy clashing and the strength of police unions makes even the more modest reforms suggested in the policing task force more difficult to enact. But Robinson — and Obama — remains optimistic that the report’s recommendations remain the right path forward. **“We know there are specific evidence-based reforms that if we put [them] in place today would build trust, save lives, would not show an increase in crime,”** Obama said in a statement following George Floyd’s death. “Those are included in the 21st-Century Policing Task Force report.”

## No Good Prisons

### Build and Fill

**There are no better prisons – if we build them we will fill them – gender inclusive prisons just means more queer and trans people dying a slow death in prison**

**CURB, 07** [Californians United for a Responsible Budget, CURB is a statewide coalition of over 40 organizations working to curb prison spending by reducing the number of people in prison and the number of prisons in California, “How ‘Gender Responsive Prisons” Harm Women, Children, and Families,” <http://curbprisonspending.org/wp-content/uploads/2010/05/curb_report_v5_all_hi_res.pdf>. AB)

In 1970, there were about 5,600 people in women’s prisons in the entire U.S.; today there are over 11,000 in California alone. With increasing reliance on imprisonment as the catchall solution to social problems, the women’s prison population has grown by almost 500% since 1980. Over 80% of people in women’s prisons are serving time for actions classified as nonviolent, property or drug-related crimes—“crimes of survival”. People of color are represented disproportionately in prison systems across the nation, comprising around 60% of people in women’s prisons. African Americans make up nearly 30% of people in California’s women’s prisons, but comprise only about 7% of women in the state. Many people in women’s prisons suffer from severe and often life-threatening physical and/or mental illnesses, reflecting lack of access to preventative care to women and transgender people from communities of color and low-income communities. Being in prison damages one’s health. Many people in women’s prisons are co-infected with HIV and Hepatitis B and/or C. HIV rates are at least 10 times higher among prisoners than in the general population, and the rate is higher among people in women’s prisons than in men’s prisons. Hepatitis C has reached epidemic levels in California prisons—the CDCR estimates that 40% of the prison population is infected, with 60% of people in women’s prisons infected. Meanwhile, prison healthcare is minimal at best, especially for this population, whose specific health concerns largely go unaddressed. There is a dearth of access to treatment, but also to education about serious yet preventable conditions. The recent takeover by the Federal courts of the state’s prison health care system is expected to improve health care, but even Constitutionally-acceptable prison health care does not prevent significant health deterioration among prisoners. And inside prison, violence against women and transgender people in the form of human rights abuses—including medical neglect, brutality, and sexual abuse—occurs regularly. Outside prison, the imprisonment of millions of people of color has a devastating long-term impact on the communities from which prisoners come. Economies are deeply affected by the loss of potential wage earners who are removed and sent to prison. Approximately 70% of people in women’s prisons are mothers, and the majority were the primary caretakers of their children before they were sent to prison. Their removal from the community destroys entire families, leaving children to be raised by the state. Children who have imprisoned parents are more likely to end up in the juvenile justice system and prison themselves. Furthermore, imprisonment operates as a form of reproductive control, as women who are imprisoned are effectively denied the right to reproduce. Thus massive imprisonment destroys a community’s ability to create a future. The harms endured in women’s prisons have proven impervious to reform attempts, policy changes or class action lawsuits, despite landmark victories by prisoners and their advocates. Abuses continue despite their illegality and offense to human rights and common practice. In this climate, there is a pressing need for policy that reduces the numbers of Californians and families impacted by these abuses. The best way to do that is to reduce the number of people in California’s prisons for women and shrink the CDCR’s overall capacity to imprison people. In contrast to policies to reduce the number of people in women’s prisons, the FRCCC prison expansion proposal uses the grave needs of people in women’s prisons to manipulate public sentiment in favor of rehabilitation and services to expand a failing system at the same time that Californians overwhelmingly oppose prison expansion and increased spending: EXPANDING CAPACITY WOULD EXACERBATE OVERCROWDING, NOT ALLEVIATE IT. As the Governor’s California Performance Review Commission on Prisons concluded, “the key to reforming the system lies in reducing the numbers”—not in expanding capacity. Increasingly, the state’s only and ubiquitous answer to any problem within the prison system— whether it be the need for more and better programming, disastrous medical and mental health care or the fact that there are too many people in prison—is bricks, mortar and expansion. But, as State Senator Gloria Romero and others have cautioned, "You can't build your way out of this problem.” Increasing the number of cells will only increase the number of people in prison. History teaches us: if we build them, we will over- fill them. As far back as 1882, when Folsom Prison was built to replace the already decrepit and crumbling San Quentin, expansion after expansion have failed to address the rising number of people in prison, conditions, public safety, or the lack of programming and services. The current plan offers no indication it will produce different results. When California’s most recent prison, Delano II, opened in June 2005, CDCR Secretary Rodrick J. Hickman named it California’s “last prison,” yet already more prisons are being proposed and Delano II is filled beyond capacity. Building more prisons, public or private, ties up an increasing percentage of state funds for more correctional staff, operations, and debt service. More space has never, and will never, pave the way for increased programming or better conditions. It's time to stop pretending that increased capacity, no matter how gender responsive, is part of the solution. DECENTRALIZING THE WOMEN’S PRISON SYSTEM WOULD THWART OVERSIGHT, FURTHER ENDANGERING PEOPLE HOUSED IN THE PROPOSED MINI PRISONS. In response to overwhelming evidence of unaddressed violence, medical neglect, and abuse, the CDCR, federal courts, and watchdogs are working to centralize control of California’s prison system to increase oversight, address the myriad scandals, and ensure that people are treated equally no matter where they are imprisoned. Counter to this objective, the expansion proposal scatters prisoners throughout the state in mini-prisons unaccounted for in any existing oversight plan. Resulting health care decentralization would be particularly onerous. All evidence points to the CDCR’s failure to provide even baseline medical services, i.e. pap smears, or appropriate care for older prisoners, particularly surrounding women’s and transgender healthcare issues. These abuses would be exacerbated by decentralization and result in further marginalization of the healthcare needs of women in prison. The proposal also threatens to create a patchwork of contracting agencies—public, nonprofit, and private—that would operate these new prisons. The CDCR is incapable of administering such a system. For example, community hospitals across the state have begun refusing accepting patients from prison because the CDCR owes millions of dollars for past treatment. Because the CDCR has been unable to guarantee even basic constitutional and human rights, advocates and people in prison spend much time monitoring and exposing abuses. By scattering people throughout a system of new mini-prisons, the limited oversight won by advocates would be nearly impossible to maintain. Importantly, without the possibility of oversight mechanisms, people in prison would be rendered invisible to policymakers, increasing barriers to ongoing litigation aimed at prison reform. For instance, the closest model California currently has to the proposed system of mini-women’s prisons is the Community Prisoner Mother Program (CPMP). The lack of access advocates have to these facilities has contributed to the fact that they are not being monitored for compliance under Plata v. Davis, a major ongoing class action lawsuit designed to address Constitutionally deficient health care conditions in California prisons and resulting in the appointment of a federal health care receiver to manage California’s failing prison healthcare system, even though they are clearly covered. THE EXPANSION PLAN DECREASES COMMUNITY SERVICES. The proposal provides for new CDCR- controlled facilities or the transformation of residential therapeutic programs into locked facilities staffed with guards. Thus, the proposal allows CDCR to take over a huge swath of existing community resources—the exact resources that currently can help people stay out of prison. This proposal would displace community treatment beds, which are already in short supply. The result, perversely, would be to route these resources through the prison system—low-income Californians would have to go to prison to get community treatment. Increased spending by CDCR would further squeeze funds for services outside CDCR control. THE EXPANSION PLAN INCREASES CALIFORNIA’S TAX BURDEN. Ironically, while reducing community services, the expansion plan would result in significant additional fiscal costs. It is much more expensive to provide services in prison than outside because of added CDCR costs and often less effective. What we really need is more voluntary treatment centers in our community, not to hand over our already short supply to the CDCR. THE EXPANSION PLAN MISLEADINGLY APPROPRIATES THE LANGUAGE OF “COMMUNITY- BASED” AND “ALTERNATIVE TO INCARCERATION.” Contrary to what the proposal claims, transferring people to smaller prisons under CDCR control does not constitute an “alternative to incarceration,” and prisons that are less far away are not “community- based.” Moving thousands of people from California’s women’s prisons into FRCCC beds to make room to imprison others is an expansion of the prison system. THE EXPANSION PLAN REPLICATES PROGRAMS RIFE WITH ABUSE AND INEFFECTIVENESS. It is instructive to look below the surface at the CDCR’s CPMPs. There is little or no oversight over these prisons, and credible accounts of misused funds. Services they claim to provide sometimes just do not exist. Basic conditions are often filthy, including documented exposure to mold and lead, which are especially toxic to infants. Women can be sent back to traditional state prison if they cannot “control” their child. In practice, this means a crying toddler can result in her mother being expelled from the program. Additionally, beds are left vacant, while judges send pregnant women to prison based on the erroneous assumption that they will be placed in a CPMP, when in reality very few of the already small number of women who even qualify are let into the program. What we are seeing in practice is more women being sent to prison, not more women in prison being sent to a CPMP. EXPANDING THE PRISON SYSTEM, WHETHER THE ADDED CAPACITY IS DESIGNATED FOR MEN OR WOMEN, IS BAD FOR ALL CALIFORNIANS. If over 4,000 people are moved out of one of the state’s women’s prisons, it stands to reason that at least one of these prisons could be closed, which would actually help shift resources from prisons to basic needs and services. However, there is no commitment to do this. Last session, AB 2066 did not state as its legislative intent to close a women’s prison, and the Governor proposed to convert the added capacity into a men’s prison in FY 2020/2021. This session, the language in AB 76 facilitates the conversion of a women’s prison into a men’s prison with legislative approval. To truly address the damage mass imprisonment causes for women and girls in California, we also need to address the negative impact the continued mass imprisonment of men has on families and communities. We cannot be responsive to the needs of people of any genders in California if we continue our commitment to imprisonment as bedrock social policy. THE EXPANSION PLAN FORECLOSES THE POSSIBILITY OF REAL, SINCERE CHANGE. We all agree change is needed urgently. This prison expansion plan is neither an imperfect proposal that will improve the lives of women, nor is it a good first step—it takes us backwards by creating more of a failed and costly system: the CDCR. It is a rehash of the state’s failed experiment with Community Corrections Centers now dressed up in ‘gender responsive’ language. More people in prison is never better than the huge number of people locked up now. Fewer treatment beds for people in the community is not better that what we have now. California would not be better off with private and public prisons instead of just public prisons.

### Not Broken

**Nah, there are no better prisons. The prison isn’t broken, it’s working exactly as intended**

**Lydon 16** (Lydon, Jason M. Winter 2016 Issue. "Once There Was No Prison Rape: Ending Sexual Violence as Strategy for Prison Abolition." philoSOPHIA, vol. 6 no. 1, 2016, pp. 61-71. Project MUSE, Jason Lydon is the founder and National Director of Black and Pink. Jason founded Black and Pink in 2005 after his own incarceration. He has been the full time National Director since 2012 and will be stepping down from the position in September 2017. Jason is responsible for overseeing all the projects of Black and Pink, leading the national campaigns, speaking publicly for the organization, and ensuring financial strength and sustainability for the organization. yr)

This article focuses on the particular tension between prison reformist campaigns and abolitionist vision in efforts to address the needs of survivors of sexual violence in prison. Prison reform advocates, from conservative and progressive sides, have relied on punishment-expanding efforts to bring an end to sexual assault in prison. They rely on state actors and disciplinary actions to control individual acts of sexual violence. Abolitionist organizers, however, have offered very little to meet the immediate needs of incarcerated survivors. **In an attempt to not extend the reach of state power, many abolitionists have failed to provide immediate support or relief to individual survivors of sexual violence in incarceration settings.** I will discuss this dynamic and offer some potential ways for abolitionists to more authentically meet the immediate needs of incarcerated survivors. A little over a year after being released from prison, I founded Black and Pink, a nationally networked grassroots organization focused on meeting the immediate needs of LGBTQ prisoners while simultaneously working to abolish the prison industrial complex. In our statement of purpose we describe ourselves as “an open family of LGBTQ prisoners and ‘free world’ allies who support each other.” Our organizing efforts include: a pen pal program, community power-building among currently incarcerated and court-involved people, and a free newspaper for prisoners filled with prisoner-generated content. Black and Pink is an explicitly abolitionist organization. **Abolition, for us, means that we believe the U.S. prison system1 is not broken but rather that it works exactly as it is intended to. The assertion that the U.S. prison system is not broken forces us to question what its function is.** While abolitionists are not a monolith, there are key underpinnings to abolitionist understandings of the prison system. Abolitionists assert that the U.S. prison system has been built up with the purpose of, among other things, maintaining systems of “anti-Blackness” (Alexander 2012), regulating and disciplining non-normative gender/sexuality (Mogul, Ritchie, and Whitlock 2012), controlling im/migration (Walia 2013), suppressing resistance (Churchill 2001), and establishing a capitalist response to surplus labor (Gilmore 2007). This understanding of the prison system has been developed from the lived experience of prisoners (James 2005, Jackson 1970, James 2013) as well as research by academics and grassroots community organizers. Abolition can be thought of as both the end goal, a world with no prisons, and also as the method of getting us to the goal. As an abolitionist organizing effort, composed primarily of prisoners, Black and Pink recognizes that we must work to eliminate the immediate suffering experienced by prisoners without expanding the power of the punishment system. Abolitionist scholar Ruthie Wilson Gilmore refers to such efforts with these principles as non-reformist reforms. Gilmore likens this to removing bricks from the system while struggling to tear the walls down. Angela Y. Davis similarly explores this dynamic. In an interview with Dylan Rodriguez, Davis states, The seemingly unbreakable link between prison reform and prison development—referred to by Foucault in his analysis of prison history—has created a situation in which progress in **prison reform has tended to render the prison more impermeable to change and has resulted in bigger, and what are considered ‘better,’ prisons.** The most difficult question for advocates of prison abolition is how to establish a balance between reforms that are clearly necessary to safeguard the lives of prisoners and those strategies designed to promote the eventual abolition of prisons as the dominant mode of punishment. (2004) It is very difficult for abolitionists to involve ourselves in the dominant efforts to address sexual violence in prison. The reason for this is a fundamental disagreement on the purpose of prisons, as illustrated by an excerpt from an article on “Nonconsensual Sexual Behavior” in the 2002 anthology Prison Sex: Practice and Policy, in which four self-described prison reformers open with the following: “For decades, a cancer has gone untreated and has overtaken the ability of U.S. Corrections institutions to provide safe and humane treatment for its charges. . . .” (Hensley 2002). The idea that prisons serve to provide “safe and humane treatment” to prisoners is completely at odds with the abolitionist analysis that prisons function as a tool of racial and class control, relegating those society considers disposable to concrete and steel cages. It is understandable that an alliance between reformists and abolitionists is difficult, and even impossible, when their understandings of the prison’s core function are so different. Abolitionists and reformists do, however, work together on campaigns quite often. In California, abolitionists and reformists worked closely together to support hunger-striking prisoners in Pelican Bay State Prison who were protesting the torture of solitary confine- ment. In Illinois, abolitionists and reformists worked together to shut down the TAMMS supermax prison. In Massachusetts, abolitionists and reformists worked together on a campaign to stop an initiative that would charge prisoners five dollars daily for their incarceration. Given these examples, which illustrate that abolitionists and reformist can and often do find common ground, I find myself wondering, what makes sexual violence in prison so different?

## Police Good

### Less Crime

**More policing leads to less violent crime**

Yglesias, 19 (Matthew Yglesias is a cofounder of vox.com and an economic columnist. “The case for hiring more police officers”, Vox February 13 2019, <https://www.vox.com/policy-and-politics/2019/2/13/18193661/hire-police-officers-crime-criminal-justice-reform-booker-harris>) MR

The research is clear: more cops = less crime. In a 2005 paper, Jonathan Glick and Alex Tabarrok found a clever instrument to measure the effects of officer increases through the terrorism “alert levels” that were a feature of the early to mid-aughts. During high-alert periods, the Washington, DC, police force would mobilize extra officers, especially in and around the capital’s core, centered on the National Mall. Using daily crime data, they found that the level of crime decreased significantly on high-alert days, and the decrease was especially concentrated on the National Mall. Critically, the finding was not that adding police officers leads to more arrests and then locking up crooks leads to lower crime in the long run. It’s simply that with more officers around, fewer people commit crimes in the first place. That seems to be the criminal justice ideal, in which fewer people are getting locked up because fewer people are being victimized by criminals. This sounds a little paradoxical, but the reality is the size of the prison population is driven largely by the harshness of the sentencing, not the number of police stops. The criminologist Lawrence Sherman has observed that the United States is very unusual in spending much more money on the prison system than on our police departments. This suggests the possibility of switching to a formula Tabarrok has summarized as “more police, fewer prisons, less crime”: uniformed officers patrolling the streets stopping crime before it starts rather than working in prisons surveilling convicts. About a year ago, Stephen Mello of Princeton University assessed the Obama-era increase in federal police funding. Thanks to the stimulus bill, funding for Clinton’s Community Oriented Policing Services (COPS) hiring grant program surged from about $20 million a year in the late-Bush era to $1 billion in 2009. The program design allowed Mello to assess some quasi-random variation in which cities got grants. The data shows that compared to cities that missed out, those that made the cut ended up with police staffing levels that were 3.2 percent higher and crime levels that were 3.5 percent lower. This is an important finding because not only does it show that more police officers leads to less crime, but that actual American cities are not currently policed at a level where there are diminishing returns. Instead, reductions in crime seem to be about proportional to increases in the size of police forces. A larger historical survey by Aaron Chalfin and Justin McCrary looked at a large set of police and crime data for midsize to large cities from 1960 to 2010 and concluded that every $1 spent on extra policing generates about $1.63 in social benefits, primarily through fewer murders.

## Reform Bad

### Liberal Pacification

**Aff is an example of co-option and white liberal pacification that politicians employ to silence us – Woods & Soderberg, 6/18** [BAYNARD WOODS is a freelance writer living in Baltimore. His work has appeared in The New York Times, The Guardian, The Washington Post, and many other publications. He is coauthor, with Brandon Soderberg, of I Got a Monster: The Rise and Fall of America's Most Corrupt Police Squad. BRANDON SODERBERG is a reporter living Baltimore and was previously the Editor in Chief of the Baltimore City Paper and a contributing writer to SPIN.Woods and Soderberg are the authors of "I Got a Monster: The Rise and Fall of America's Most Corrupt Police Squad," to be published in July. June 18, 2020/ [<https://theeagle.com/opinion/columnists/police-reform-doesnt-work-baltimore-proves-it/article_ea969f0d-9bd2-5728-b166-9a0f6f4adf99.html>] “Police 'reform' doesn't work. Baltimore proves it.]

As calls to defund police departments gain prominence nationwide, police officers and their unions are already beginning to push back. Pat Lynch, **the president of the Police Benevolent Association** in New York, **said** at a news conference last week: "For our legislators, and **I emphasize our legislators, to then demonize police officers as if we're the problem ... as if we caused violence - that is absolutely outrageous."** In Buffalo, a group of **57 officers resigned from** the Emergency Response Team (**a riot squad**) **in protest over the suspension of two colleagues who were recorded shoving a 75-year-old man and leaving him bleeding on the ground.** And **politicians are taking note. In place of more radical calls** to defund or abolish police departments, **they offer milder improvements**: "**The better answer is to give police departments the resources they need to implement meaningful reforms," Joe Biden said** in a USA Today op-ed. Even President Donald Trump, who has previously encouraged police misconduct, signed an executive order this past week focused on training and "best practices."

## Reform Not Possible

### Black People

\*\*TW - STRONG/RACIAL LANGUAGE\*\*

 \*Card has been edited to remove language that may offend or illicit strong emotional reaction\*

**America and its police are founded off of the back of hatred and villainizing black people - in this America, the black man will never be free from the police. Ramsey, 15** [Donovan X. Ramsey, 02/03/15 11:50AM, [Donovan X. Ramsey](http://twitter.com/idxr) is a multimedia journalist whose work puts an emphasis on race and class. Donovan has written for outlets including MSNBC, Ebony, and TheGrio, among others. He's currently a [Demos](http://demos.org/) Emerging Voices fellow. <http://justice.gawker.com/police-reform-is-impossible-in-america-1683262551>]

In recent weeks, the White House has reaffirmed its [commitment](http://www.whitehouse.gov/the-press-office/2014/12/01/fact-sheet-strengthening-community-policing) to strengthening "community policing" around the country. The U.S. Conference of Mayors has coalesced around the same theme, releasing a [report](http://www.usmayors.org/pressreleases/uploads/2015/0130-communitypolicing-release.pdf) days ago with recommendations for community policing measures to be adopted nationally. The **suggestions for building better "relationships" and boosting "trust" are comprehensive but,** for a national crisis brought on by the killing of unarmed black people, **there's one thing conspicuously absent from the public policy solutions: the acknowledgement of racism.** The New Testament says that **faith is "the substance of things hoped for, the evidence of things not seen.**" Well**, in the absence of data to support excessive policing and police brutality in communities of color**, it appears that **America has just stepped out on faith.** **Rates of** [**violent crime are down**](http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/tables/1tabledatadecoverviewpdf/table_1_crime_in_the_united_states_by_volume_and_rate_per_100000_inhabitants_1993-2012.xls) and have been falling sharply for more than 20 years. In fact, since the early 90s, **the national homicide rate has fallen by 51 percent, forcible rapes have declined by 35 percent, robberies have decreased by 56 percent and the rate of aggravated assault has been cut by 45 percent.** And **black Americans have contributed to the decline.** **For blacks,** rates of robbery and serious property offenses are the lowest they've been in more than 40 years. **Murder, rape, assault, domestic violence—all down.** America is safer than it was 20 years ago. Really. **Still, white Americans** (and many black Americans, for that matter) **believe there's more violent crime than there actually is, and that blacks are** largely **responsible for it.** In fact, **nearly half of white Americans** [**polled**](http://cdn.yougov.com/cumulus_uploads/document/zf00atkxpr/tabs_OPI_places_20140912.pdf) **believe that violent crime has increased** in the last 20 years. Another 13 percent believe that it's stayed the same. **Less than a quarter of whites realize there are less violent crimes today than there were in the 90s** when the crack epidemic and gang violence were at their height. Even more, **whites overestimate just how much blacks are involved in "serious street crime" and**, on average, **believe that black people commit a larger proportion of crime than whites do.** According to a [2012 study](http://onlinelibrary.wiley.com/doi/10.1111/j.1745-9125.2011.00255.x/abstract) by researchers at the University at Albany, whites significantly overestimate the share of armed robberies, break-ins and drug crimes committed by black people. So, this is how we get **to Rudy Giuliani, a man once in charge of the** nation's **largest police force,** [**insisting**](http://www.washingtonpost.com/blogs/fact-checker/wp/2014/11/25/giulianis-claim-that-93-percent-of-blacks-are-killed-by-other-blacks/) **that, "White police officers wouldn't be [in black neighborhoods] if [blacks] weren't killing each other"** as a justification for the killings of unarmed black people. **This is how we get Stop and Frisk policies,** [**Tamir Rice**](http://www.nytimes.com/2014/11/27/us/video-shows-cleveland-officer-shot-tamir-rice-2-seconds-after-pulling-up-next-to-him.html) shot dead in a park, [**John Crawford**](http://www.nydailynews.com/news/crime/police-kill-man-air-rifle-walmart-ohio-article-1.1895479) shot dead in Wal-Mart, [**Akai Gurley**](http://www.nytimes.com/2014/11/24/nyregion/police-tactic-scrutinized-after-accidental-shooting.html) shot dead in a dark stairwell, [**Miriam Carey**](http://www.cnn.com/2014/04/08/us/miriam-carey-autopsy/) shot dead outside the White House (the list goes on and on.) And this is also how we get a grand jury reviewing video of **Eric Garner** choked to death and seeing no evidence of a crime. Each is **an example of racist policing based on the assumption of threat.** In a country that has identified black people as its criminal element, public safety (and perceived security) is more tied to the suppression of blacks than it is to the suppression of crime. And as long as the public insists on its myth of black criminality—almost as an article of faith—police practices will be impossible to reform. In the summer of 1963, Boston public television aired "[The Negro and the American Promise](http://video.pbs.org/video/2112495022/)," an hour-long examination of racial tension in America featuring interviews with Martin Luther King, Jr., Malcolm X and James Baldwin conducted by renowned psychologist Kenneth Clark. During his segment, Baldwin delivered a blistering indictment of the white American psyche that is essential to untangle the myth of black criminality and its serviceability to American identity and feelings of security. **In a country that has identified black people as its criminal element, public safety** (and perceived security**) is more tied to the suppression of blacks than it is to the suppression of crime. And as long as the public insists on its myth of black criminality—almost as an article of faith—police practices will be impossible to reform**. "**What white people have to do**," Baldwin offers, "**is try and find out in their own hearts why it was necessary to have a Nigger in the first place**...If I'm not a Nigger here and you invented him, you, the white people, invented him, then you've got to find out why. And the future of the country depends on that." **"[The N Word]/N\*gg\*r**" as used by Baldwin is, of course, more than an epithet. It **is** arguably **the very articulation of racism in this country.** Its utterance summons a phantom that is as essential to American identity as the American Dream and the Pursuit of Happiness. So, when **Baldwin** talks about the creation of the Nigger, he's speaking to more than the word. He **is assigning responsibility for a construct that has permeated every single American institution**, one essential to the nation's founding and development. Willie Horton, for example, was not the Nigger but it was conjured out of his cold stare, from OJ's courtroom smirk and even seen by some in the form of our "[contemptuous](http://www.washingtontimes.com/news/2014/sep/25/contempt-congress-case-will-proceed-without-holder/?page=all)" attorney general. **Darren Wilson invoked the [N word] N\*gg\*r quite adeptly in his** [**testimony**](http://www.washingtonpost.com/news/morning-mix/wp/2014/11/25/why-darren-wilson-said-he-killed-michael-brown/) **before a grand jury to convince them it was necessary to shoot an unarmed Michael Brown at least six times.** "He looked up at me and had the most intense aggressive face. The only way I can describe it, it looks like a demon, that's how angry he looked," said Wilson about the moments before he fired the first bullet into Brown. "At this point," Wilson said, "it looked like he was almost bulking up to run through the shots, like it was making him mad that I'm shooting at him. And the face he had was looking straight through me, like I wasn't even there, I wasn't even anything in his way." More bullets. Then **the final shot into Brown's head from 148 feet away. "And then when it went into him, the demeanor on his face went blank, the aggression was gone, it was gone, I mean, I knew he stopped, the threat was stopped," said Wilson. A grand jury believed it.** A great many Americans find the story believable—most without ever even having to hear it from Wilson's lips or read the transcript. So, why does America need such a narrative? The question is something of a psychoanalytic approach to our country's policing problem but one that's been gaining traction in the media as of late. Ta-Nehisi Coates gestured toward it in his [column for **The Atlantic**](http://www.theatlantic.com/politics/archive/2015/01/why-the-nypd-turned-its-back-on-the-city/384196/) weeks ago. He wrote: "...And knowing that identity is not simply defined by what we are, but what we are not, can it be that **our police help give us identity, by branding one class of people as miscreants, outsiders, and thugs, and thus establishing some other class as upstanding, as citizens, as Americans?** Does the feeling of being besieged serve some actual purpose?" I am not white. The Nigger has never been of any use to me so, unfortunately, I don't think the question is mine to answer. I do have my theories, though. I imagine, like Coates seems to, that **identifying blacks as this country's criminals helps white Americans dismiss their own criminal activity as incidental** (teenage drug use, insider trading, mass shootings, etc). But I think it also must help to organize their fear in an uncertain world. Like "Goldstein" in Orwell's **1984**, perhaps the Nigger gives white Americans something specific to fear so they don't fear everything—including themselves and each other. Ultimately, **the contrast between the reality of black crime and this nation's perception of it reveals just how invested in the myth of the [N Word] N\*gg\*r America actually is.** And, **as protesters push forward and leaders federal and local circle around "community policing" as reform, Baldwin's question will only become more urgent.** White Americans of good conscience will have to confront their boogeyman head on. Because the truth is that **there can be no "community policing" in black communities without engaging the community, without engaging black people and our distortion in the American imagination.**

### Implicit Bias

**The root cause of injustice is implicit racist bias – simple police reform can’t solve. Bogel, 18** [Ellen K. Boegel. May 17, 2018. [<https://www.americamagazine.org/politics-society/2018/05/17/racism-makes-criminal-justice-system-reform-impossible>] Ellen Boegel is a lawyer who teaches various legal studies courses, including Immigration Law and Legal Research. She is America magazine's contributing editor for legal affairs. “Racism makes a criminal justice system reform impossible”]

July 9 will mark the 150th anniversary of the 14th Amendment’s ratification, but the promise of racial equality in the United States is still unrealized. Overtly discriminatory and segregationist laws have been repealed, but conscious and subconscious racism infests every level of society. Schools are no longer segregated by law, but public school segregation in many places is as bad today as it was in the 1960s. Members of minority groups are legally eligible for all jobs, but studies suggest that employers still favor white applicants, and the median income for black American households is, adjusted for inflation, lower than it was in 2000. Racism’s intransigence in the criminal justice system is particularly destructive, as it denies basic human liberties and undermines the very structures designed to ensure our safety. Examples of explicit and implicit, individual and institutional racism in law enforcement are, tragically, too numerous to list. And recent, well-publicized police interactions with black Americans engaging in innocent activities, such as falling asleep in a dorm lounge or waiting for a business associate at a coffee shop, remind us that all racist acts begin with the simple, reprehensible and, for some, almost instinctual, assumption that skin color determines how a person should be treated. Law enforcement interventions often begin when a member of the public calls the police about what is perceived as suspicious or illegal activity. As these recent events have shown, racial bias can trigger that call. As for policing decisions, according to the New York City Police Department, community complaints account for disproportionately high arrest rates for marijuana possession in black and Latino neighborhoods. But studies show that once police are involved in either minority or predominantly white neighborhoods, they are more likely to stop, question, arrest and shoot black and Latino males. Disproportionate statistics alone are not proof of racism, but the allegation that more people of color are arrested because they commit more crimes ignores “differential selection and processing,” known in the vernacular as “white privilege.” This refers to the 911 calls and traffic stops not made; the lower ratio of police deployed to white neighborhoods; the warnings given instead of arrests made; and the misdemeanors instead of felonies charged. Racial and economic disparities continue throughout the post-arrest criminal justice process. A disproportionate number of black and Latino persons arrested for nonviolent crimes are held in pretrial detention. Pretrial detention, in turn, pressures a person, even an innocent person, to plead guilty. Racial bias, whether conscious or subconscious, causes prosecutors to offer better plea bargains to white defendants than to defendants of color charged with the same crimes; it causes all-white juries to disproportionately convict black defendants; judges to impose harsher sentences on black defendants (sometimes to the detriment of defendants of the judge’s own race); and influences probation decisions. The intransigence of racial discrimination in our criminal justice system mirrors its ubiquitousness in U.S. society, but we can make progress in exposing and rooting out overt and subconscious discrimination.

### Legal System Alt Causes

**Police are not the root cause of harms— legislatures, court system are, proves police reform will never solve**

**Nelson, 17** (William E Nelson is a legal historian and professor of law at NYU, “The Emerging American Police State: The Problem Is Not with the Police, but Higher up” Touro Law Review, 2017).

Thus the police typically are not the problem. The problem begins with legislatures, which enact laws or fail to enact them, often on behalf of narrow interest groups. Legislatures often ignore limits on their own or the police’s power or otherwise put the police in untenable situations. The proliferation of stop signs in my locality is one example. The failure to keep guns out of the hands of dangerous criminals is another. Such legislative behavior obliges police to enforce laws they should not be enforcing and to use excessive force that they should avoid using. The behavior makes the police -- the government entity that citizens see on the ground -- look bad. But it is the legislature that is at fault.Then there are the lawyers and judges in entities such as the Nassau County Traffic Agency. Collectively, whatever their intentions, the lawyers and judges with whom I dealt in Nassau County have created an institution that has the effect of intimidating those who appear before it and coercing them to pay tribute to government at the lowest possible cost to government in collecting it. It is not a fair adjudicatory body committed to doing justice, but the key cog in an emerging police state that subordinates the people who come into contact with it, grabs money from them, and helps to keep them in their subordinate place. I have enough power and resources to fight it. But people of color and other minorities do not. No wonder, they feel abused. Of course, Nassau County may be an aberration, although I doubt it. Assuming Nassau is typical, American society deludes itself in thinking that reforming the police will resolve the crisis that exists in relations between government and minority communities and the poor. The problem is higher up, with legislatures that enact laws promoting the concerns of narrow, special interests and with bureaucratic institutions, largely staffed by judges and lawyers, that enforce those laws through coercion and intimidation.

### Reform Impact Turn

**Training and reform make the police worse**

**Vitale, 17** (Alex Vitale is an author and professor of sociology at Brooklyn College. He is also the coordinator of the Policing and Social Justice Project at Brooklyn College. ‘*The End of Policing’* Chapter 1)

The training police receive at the academy is often quite different from what they learn from training officers and peers. The emphasis is on strict discipline and rote learning of laws and rules, and emphasizes proper appearance over substance. Cadets are given little in the way of substantial advice about how to make decisions in a complex environment, according to two veteran officers’ memoirs. Even sympathetic portrayals, such as the reality television show The Academy, provide stark evidence of a militarized training environment run by drill sergeants who attempt to “break down” recruits through punitive drilling and humiliating personal attacks. When officers start working, the first thing their peers often tell them is to forget everything they learned in the academy. In some ways, training is actually part of the problem. In recent decades, the emphasis has shifted heavily toward officer safety training. Seth Stoughton, a former police officer turned law professor, shows how officers are repeatedly exposed to scenarios in which seemingly innocuous interactions with the public, such as traffic stops, turn deadly. The endlessly repeated point is that any encounter can turn deadly in a split second if officers don’t remain ready to use lethal force at any moment. When police come into every situation imagining it may be their last, they treat those they encounter with fear and hostility and attempt to control them rather than communicate with them—and are much quicker to use force at the slightest provocation or even uncertainty.