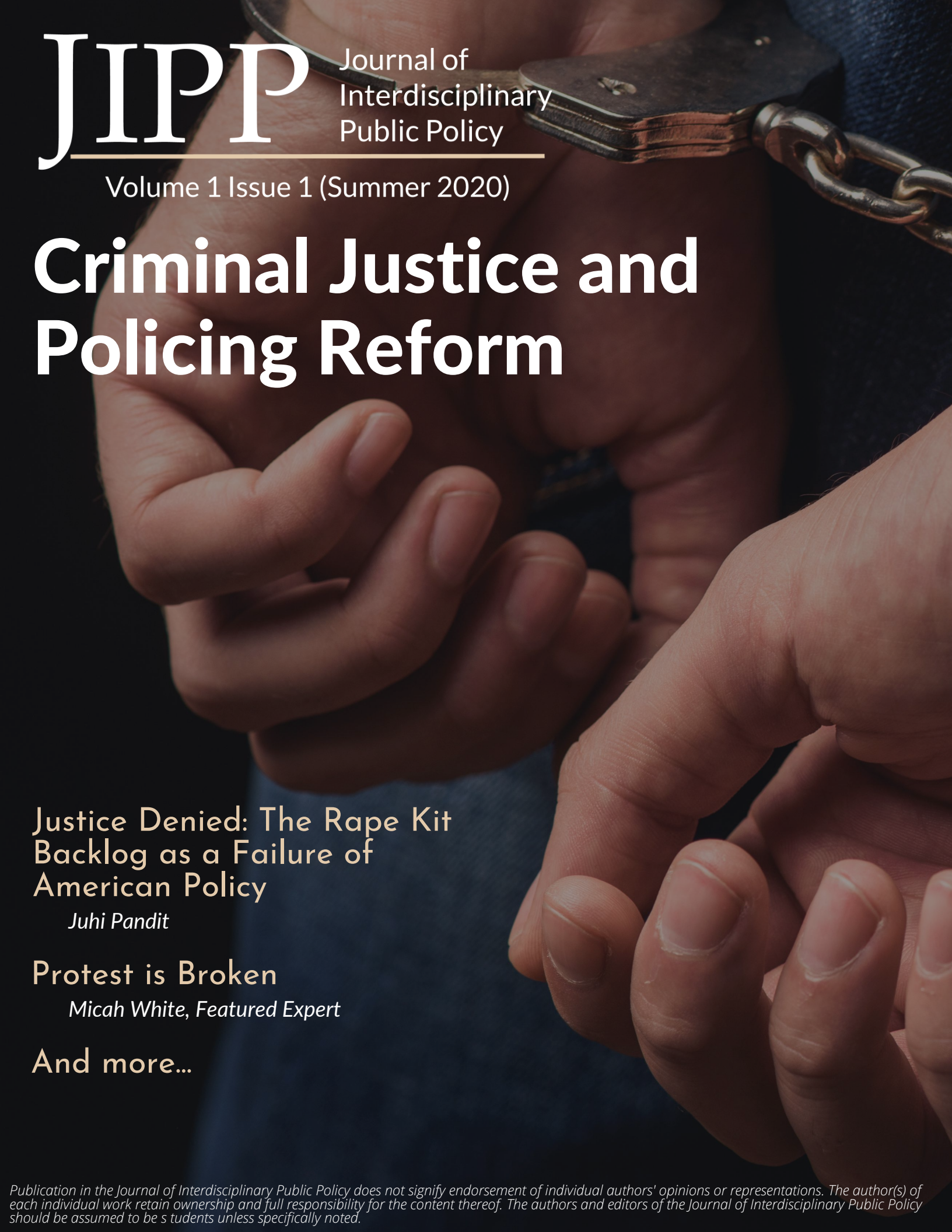
JIPP Journal of Interdisciplinary Public Policy

Volume 1 Issue 1 (Summer 2020)

Criminal Justice and Policing Reform



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Front Matter

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ESSAYS

Eliminating Mandatory Minimums: A Multidisciplinary Argument

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The FIRST STEP Act, the first major policy to reform federal drug sentencing in history, was passed with bipartisan support and signed into law by President Donald Trump in 2018 (Grawert & Lau). However, while the legislation was touted as a win for bipartisan cooperation in an increasingly divided political climate, many have criticized the policy as being only a surface-level fix (Clark & Ross). As support for criminal justice reform soars nationally (Savage), it is imperative we analyze the true nature of criminal justice in the United States, starting with the focus of the FIRST STEP Act: mandatory minimum sentencing.

Mandatory minimum sentencing laws—often called simply "mandatory minimums"—are legal requirements that force judges to sentence convicts for *at least* a specific minimum time in prison, irrespective of the circumstances of each individual case and/or defendant (Pryor, et al. (a)). These laws were first introduced at the federal level in the mid 1980's, as part of the intensely racialized "tough on crime" movement, and were initially intended to punish high-level, violent crimes (The Criminal Justice Policy Foundation; Boyd). However, we argue that these policies are not only foolish and ineffective but are being practiced in a way that is disastrous to the well-being of millions of Americans on a daily basis.

At the most basic level, mandatory minimum sentencing creates contrived categories of crimes that must be punished harshly in all instances. According to senior judge of the Second Circuit Court of Appeals Jon Newmon, judges are disallowed from considering individual circumstances, and thus the power of sentencing is shifted away

from the judiciary to the prosecutor's decision of how to charge—a dangerous misappropriation of responsibility. In addition, mandatory minimum laws are deliberately crafted in a way that decks any nuance. For instance, mandatory minimums for drugs are based on the *sum* of the *weight* of *all drugs related to* the defendant (Doyle). So, a hypothetical 500 grams of 10% cocaine is prosecuted as 500 grams of cocaine in a court of law even though only 50 grams was actually cocaine. Furthermore, although the defendant may have only couriered drugs once, he will be tried for the weight of drugs trafficked by the entire organization he was hired by (The Criminal Justice Policy Foundation). Similarly, the US Sentencing Commission itself has found that the arbitrary distinctions in punishment for receipt and possession offenses for sex offenses are not based on any meaningful criminological basis (Pryor et al. (b)). This system of "incremental immorality," as set up by mandatory minimum policies, is "unknown to any [other] sentencing system in the world" and widely criticized by judges, policymakers, and activists alike (Newmon; Cullen).

The first primary facet of criticism is exploitative prosecuting practices. Let us take the example of Jesse Webster, who was convicted for *conspiracy* to possess cocaine (Jones). Even though Webster had never possessed the drug, he was convicted based solely on the testimony of Webster's alleged co-conspirators, "none of [whom] could be said to have led the existence of choir boys" (qtd. In Jones). While the co-conspirators were able to drastically reduce their sentences by cooperating with the prosecution, Webster was sentenced under the mandatory minimum policy for what he 'would have sold.' Life in prison. The inflation of the sentence under mandatory minimums for Jesse Webster is unjustifiable under the principles of equality and fairness the justice system was founded on. Additionally, his case highlights the problem of the "hearing penalty" (Hechinger). To invoke the hearing penalty, prosecutors often threaten to charge defendants with a crime (or combination of crimes) that would trigger a mandatory minimum sentence (Cullen). Prosecutors then offer one-time only plea offers for less harsh crimes to defendants, who, scared of the prospect of guaranteed harsh punishment, often confess even when innocent (Hechinger). This practice jeopardizes the ideological foundations of the United States: why should plea offers hinge on a person using their constitutional right to a trial? Worse, why should the right to fair, individualized punishment hinge on a person's audacity to invoke their constitutional rights? In the words of the majority in *Mapp v. Ohio*, a landmark Fourth Amendment case, "Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence" (Mapp v. Ohio).

However, some may still contend that, while despicable, such practices are limited to a small number of cases. However, such an argument is simply factually inaccurate. 96.9 percent of federal drug crimes were settled by plea deals (Jones & Cornelssen), and according to the most recent Department of Justice data, more than half of all federal mandatory minimum convictions were non-violent drug offenses where mandatory minimums forced excessively harsh sentences (Pryor et al. (a)). This clearly establishes that the arbitrary distinctions that mandatory minimums rely on are not just bad policy but actively hurt American citizens.

However, the problems in sentencing do not end here. Mandatory minimums were first created in the 80s, when people began to construct Black people as 'the criminal' (DuVernay & Moran; Boyd). Given racially disparate outcomes throughout criminal justice today, and the fact that 95% of elected prosecutors (those to whom mandatory minimums transfer the power of sentencing) are white, no analysis of mandatory minimums can be complete without understanding its racialized outcomes (Equal Justice Initiative). Mandatory minimum sentences—particularly for drug offenses—disproportionately affect Black, Hispanic, and Native American people in all steps of the process (Pryor et al. (a)). A statistical analysis of crack-cocaine sentencing before and after the 2010 Fair Sentencing Act that increased the 10-year mandatory minimum amount to 280 grams by Dr. Tuttle discovered that the amount of cases tried for exactly 280 grams of cocaine (the new mandatory minimum threshold) sharply increased immediately after the law was passed and was "disproportionately large for black and Hispanic offenders." The study concluded that the racial disparity was not due to any feasible external factors, but rather "state-level racial animus" and "prosecutorial discretion" as explored above (Tuttle). In addition to this, once entering the prison system, Black people are the least likely to receive the relief measures established through recent reform legislation (Pryor et al. (a)). All in all, Black people and other people of color, particularly of low socioeconomic status, are specifically harmed by mandatory minimum policies.

Furthermore, people sentenced under mandatory minimum statutes account for more than half of all inmates in federal custody (Pryor et al. (a)), and since mandatory minimums are often excessively long for the crime, more than two-thirds of people serving life or de facto life sentences in federal prison committed non-violent crimes (Nellis). In addition to those incarcerated under mandatory minimum sentences, we must not forget the large number of inmates who were coerced into false confessions

under the threat of mandatory minimums—a population that recent research has indicated is much larger than previously suspected, and particularly biased along racial lines (Gross et al.). Ergo, mandatory minimums are one of the prime contributors to mass incarceration in the United States and the problems associated with it. Mass incarceration wrecks communities, as would-be providers are shipped off to prisons at record rates and for record sentences (Crutchfield & Weeks). This not only results in severe socioeconomic and familial consequences, but the *American Journal of Public Health* found that high incarceration has acute, long-lasting effects on the psychiatric well-being of the nonincarcerated in the community as well (Hatzenbuehler et al.). Lastly, as the prison population skyrockets, expenditure on prisons must rise as well: federal spending on prison has increased 600% since 1980 (Grawert & Lau). However, this spending too has been inadequate—many prisons are overcrowded, some to the point of avoidable deaths in prison populations (Rubin). In fact, the US Supreme Court found that California prisons were crowded to the extent of causing an "unconscionable degree of suffering" and was thus unconstitutional (Brown v. Plata). During the current COVID-19 pandemic, UCLA professor Aaron Littman characterizes prisons as "ideal sites for incubating respiratory viruses" since inmates are tightly packed in with each other with minimal sanitation products and guards physically handle inmates to then go home, to stores, etc. (qtd. in Ganeva). New York Times tracing reveals that 35 of the 100 top cluster sites were tied to correction facilities, more than nursing homes, and the ACLU estimates that 100,000 more people will die because of the American "obsession with incarceration" (Ganeva; Ofer & Tian). The fiscal, political, and social costs of mass incarceration all run deep through American society today.

Even given the number of problems with mandatory minimum sentencing, there remain a minority of people who advocate for mandatory minimum laws as effective methods to preserve public safety. However, analysis of 40 years of data from all 50 states and the 50 largest cities revealed that the efficacy of harsh incarceration policies in crime control "has been non-existent since 2000" (Eisen et al.). Given that mandatory minimums are against the spirit of the Constitution, inflict intense, racialized damage on communities across America, and cause undue fiscal expenditure and death—all for a near-zero benefit to public safety—it is unconscionable for the United States to continue with mandatory minimum sentencing. Instead, the United States federal government, and all states and relevant territories should repeal all mandatory minimum sentencing laws. Such action would revert the power of sentencing back to the judiciary. Instead of prosecutors charging defendants unfairly using arbitrary

minimum sentencing laws, judges would be able to sentence offenders for time suitable for their *individual* case. Gone must be the days that the one-time drug courier gets sentenced more than the kingpin. Repealing mandatory minimums is key to minimizing inordinate community upheaval and prison overcrowding due to excessive sentences, and a critical first step towards a more equitable criminal justice system.

Moreover, an important thing to note is that sentencing based on judicial discretion is in fact more effective at reducing crimes than mandatory minimum sentencing (Caulkins). Crimes are not going unpunished, rather they are being punished fairly and proportionally. Research by the RAND Corporation, a nonpartisan think tank, discovered that judicial discretion reduced 1.5 times the amount of cocaine use as mandatory minimum sentences (Caulkins). Besides, concerns about uniformity in sentencing among similar crimes have been effectively curtailed using sentencing guidelines as opposed to mandatory minimums (Reisinger). In fact, states across the country, both red and blue, have begun to roll back their mandatory minimum provisions and have led to "generational crime lows [and] reduced prison populations" (Newburn et al.; Newburn & Nuzzo). We should move to build on such efforts and universalize those benefits. However, to do that, mandatory minimum reforms must make the changes retroactive. This means that cases sentenced in the pre-reform or pre-elimination era are re-evaluated using revised sentencing guidelines to establish how much time the offender "should" have spent in prison (Reisinger). For clarification, let us refer back to the hypothetical case of 500 grams of 10% cocaine. Instead of the five-year mandatory minimum for 500 grams of cocaine, sentencing guidelines may retroactively revise the sentence to two years (based on noting the true cocaine weight as 50 grams, and other similar metrics of the case). If the offender had already served more than two years, he would be released; if not, he would be incarcerated until the terms of his release were met. In this way, several metrics and guidelines would be used to retroactively revise unfair sentences, reducing prison overcrowding and providing a more equitable punishment for offenders all while maintaining a low burden on prosecutorial and judicial resources (Reisinger). Congress has demonstrated a willingness to commit to this in the retroactivity provisions of the FIRST STEP Act, an action widely considered long overdue (Clark & Ross), though more decisive actions are sorely needed.

The benefits to eliminating mandatory minimums are clear: namely, saving communities from predatory prosecution practices, over-sentencing, and racially

disparate outcomes in addition to the fiscal and social costs of mass incarceration. However, in the words of Inimai Chettiar, Federal Legislative and Policy Director at the Justice Action Network, "it is imperative that this first step not be the only step." Ideally, eliminating mandatory minimums should open up much larger conversations of when incarceration is even necessary and alternate modes of rehabilitation. The criminal justice system in the United States has been constructed by racially motivated policies for decades without any meaningful change, and mandatory minimums are only one piece of a much larger puzzle. While dismantling mandatory minimums is certainly an important policy, it is just a first step of many, and further discussion and research is imperative.

Works Cited

Boyd, Graham. "The Drug War is the New Jim Crow." *NACLA Report on the Americas*, American Civil Liberties Union, Jul./Aug. 2001, www.aclu.org/other/drug-war-new-jim-crow.

Brown v. Plata. 563 U.S. 493, majority opinion by Justice Anthony Kennedy, 23 May 2011, www.law.cornell.edu/supct/html/09-1233.ZO.html.

Clark, Dartunorro and Janell Ross. "The First Step Act promised widespread reform. What has the criminal justice overhaul achieved so far?" *NBC*, 24 Nov. 2019, www.nbcnews.com/politics/politics-news/first-step-act-promised-widespread-reform-what-has-criminal-justice-n1079771.

Crutchfield, Robert D. and Gregory A. Weeks. "The Effects of Mass Incarceration on Communities of Color." *Issues in Science and Technology*, 32(1), Fall 2015, www.issues.org/the-effects-of-mass-incarceration-on-communities-of-color/.

Cullen, James. "Sentencing Laws and How They Contribute to Mass Incarceration." Brennan Center for Justice at New York University School of Law, 05 Oct. 2018, www.brennancenter.org/our-work/analysis-opinion/sentencing-laws-and-how-they-contribute-mass-incarceration.

Doyle, Charles. "Mandatory Minimum Sentencing of Federal Drug Offenses." Congressional Research Service, Report R45074, 11 Jan. 2018, fas.org/sgp/crs/misc/R45074.pdf.

DuVernay, Ava & Jason Moran. *13th.* Netflix Studios, 2016.

Eisen, Lauren-Brooke et al. *What Caused the Crime Decline?* Brennan Center for Justice at New York University School of Law, foreword by Joseph E Stiglitz and Executive Summary by Inimai Chettiar, 12 Feb. 2015, www.brennancenter.org/our-work/research-reports/what-caused-crime-decline.

Equal Justice Initiative. "Study Finds 95 Percent of Prosecutors are White." Equal Justice Initiative, 08 Jul. 2015, eji.org/news/study-finds-95-percent-of-prosecutors-are-white/.

Grawert, Ames and Tim Lau. "How the FIRST STEP Act Became Law — and What Happens Next." Brennan Center for Justice at New York University School of Law, 04 Jan. 2019, www.brennancenter.org/our-work/analysis-opinion/how-first-step-act-became-law-and-what-happens-next.

Gross, Samuel R. et al. "Race and Wrongful Convictions in the United States." *National Registry of Exonerations*, 07 Mar. 2017, www.law.umich.edu/special/exoneration/Documents/Race_and_Wrongful_Convictions.pdf.

Hatezenbuehler, Mark L. et al. "The Collateral Damage of Mass Incarceration: Risk of Psychiatric Morbidity Among Nonincarcerated Residents of High-Incarceration Neighborhoods." *American Journal of Public Health*, 105(1), pp. 138-143, American Public Health Association, Jan. 2015, doi: 10.2105/AJPH.2014.302184

Hechinger, Scott. "How Mandatory Minimums Enable Police Misconduct." *New York Times*, 25 Sept. 2019, www.nytimes.com/2019/09/25/opinion/mandatory-minimum-sentencing.html.

Howard, Simon. "Exonerees in Black and White: the Influence of Race on Perceptions of Those Who Falsely Confessed to a Crime." *Psychology, Crime & Law,* 25(9), pp. 911-924, doi: 10.1080/1068316X.2019.159709.

Ganeva, Tana. "America's Crowded Prisons Are About to Create A Coronavirus Crisis in Rural America." *The Intercept*, 07 May 2020, theintercept.com/2020/05/07/coronavirus-america-rural-prisons/.

Jones, Andrea. "The Nation's Shame: The Injustice of Mandatory Minimums." *Rolling Stone*, 07 Oct. 2014, www.rollingstone.com/politics/politics-news/the-nations-shame-the-injustice-of-mandatory-minimums-46729/.

Jones, Rick and Cornelius Cornelssen. "Coerced Consent: Plea Bargaining, the Trial Penalty, and American Racism." *Federal Sentencing Reporter*, 31(4-5), pp. 265-71, Vera Institute of Justice, doi: 10.1525/fsr.2019.31.4-5.265

Mapp v Ohio. 367 U.S. 643, majority opinion by Justice Tom C Clark, decided 19 Jun. 1961, www.law.cornell.edu/supremecourt/text/367/643.

Nellis, Ashley. "Still Life: America's Increasing Use of Life and Long-Term Sentences." The Sentencing Project, publication layout by Morgan McLeod and graphic design by Casey Anderson, 03 May 2017, www.sentencingproject.org/publications/still-life-americas-increasing-use-life-long-term-sentences/.

Newburn, Greg and Sal Nuzzo. "Mandatory Minimums, Crime, and Drug Abuse: Lessons Learned and Paths Ahead." The James Madison Institute, 19 Feb. 2019, www.jamesmadison.org/mandatory-minimums-crime-and-drug-abuse-lessons-learned-and-paths-ahead/.

Newburn, Gregory. "Mandatory Minimum Sentencing Reform Saves States Money and Reduces Crime Rates." *The State Factor*, American Exchange Legislative Council, 29 March 2016, www.alec.org/app/uploads/2016/03/2016-March-ALEC-CJR-State-Factor-Mandatory-Minimum-Sentencing-Reform-Saves-States-Money-and-Reduces-Crime-Rates.pdf.

Newman, Jon O. "Easing Mandatory Minimums Will Not Be Enough." *Judicature*, 100(1), Duke Law Center for Judicial Studies, Spring 2016, www.judicialstudies.duke.edu/sites/default/files/centers/judicialstudies/judicature/judicature100-1_newman.pdf.

Ofer, Udi and Lucia Tian. "New Model Shows Reducing Jail Population will Lower COVID-19 Death Toll for All of Us." *ACLU*, 22 April 2020, www.aclu.org/news/smart-justice/new-model-shows-reducing-jail-population-will-lower-covid-19-death-toll-for-all-of-us/.

Pryor, William H et al (a). *An Overview of Mandatory Minimum Penalties in the Federal Criminal Justice System*. United States Sentencing Commission, Jul. 2017, www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20170711_Mand-Min.pdf.

--- (b). "Mandatory Minimum Penalties for Federal Sex Offenses: Key Findings." United States Sentencing Commission, Jan. 2019, www.ussc.gov/research/research-reports/mandatory-minimum-penalties-federal-sex-offenses.

Reisinger, Nathaniel W. "Redrawing The Line: Retroactive Sentence Reductions, Mass Incarceration, and the Battle Between Justice and Finality." *Harvard Civil Rights-Civil Liberties Law Review*, vol. 54, pp. 299-326, Spring 2019, harvardcrcl.org/wp-content/uploads/sites/10/2019/03/Reisinger.pdf.

Rubin, Ashley. "Prisons and jails are coronavirus epicenters — but they were once designed to prevent disease outbreaks." *The Conversation, 15 Apr. 2020,* www.theconversation.com/prisons-and-jails-are-coronavirus-epicenters-but-they-were-once-designed-to-prevent-disease-outbreaks-136036.

Savage, Luke. "Black Lives Matter is More Popular Than Donald Trump." *Jacobin*, 11 Jun. 2020, www.jacobinmag.com/2020/06/black-lives-matter-blm-polling-donald-trump.

The Criminal Justice Policy Foundation. "Mandatory Minimums and Sentencing Reform." The Criminal Justice Policy Foundation, n.d., www.cjpf.org/mandatory-minimums.

Justice Denied: The Rape Kit Backlog as a Failure of American Policy

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Content Warning: This essay contains mentions of rape and sexual assault, as well as direct quotes from survivors about the aftermath of sexual assault.

> *Every 73 seconds a woman in America is raped ("Scope of the Problem: Statistics"); and yet, 99.5% of perpetrators walk free with no felony conviction ("The Criminal Justice System: Statistics"). Although the argument that this is due to the low percentage of victims that come forward is partially true, it cannot explain rapists avoiding felony convictions even when charges are pursued in a court of law by the victim. What does, however, is the rape kit backlog.*

Rape kits refer to the medical evidence gathered from survivors of rape and/or sexual assault. Immediately after being attacked, survivors are either asked to or choose to undergo a forensic examination that is physically and emotionally traumatizing. Perhaps the most well-known account of this experience comes from Chanel Miller, an unconscious victim of sexual assault who anonymously published the powerful letter she read to her attacker Brock Turner (a Stanford swimmer who was later sentenced to a mere six months in jail and released in three) in court. In her statement, she wrote of how her first moments regaining consciousness after being raped were spent having "multiple swabs inserted into [her] vagina and anus…[and] a Nikon pointed right into [her] spread legs" (qtd. in Baker). She recalled how she felt "terrified of [her body]...too empty to continue to speak," and how she would often "drive to a secluded place to scream," becoming "isolated from the ones [she] loved most" (qtd. in Baker).

Though the evidence collected comes at a tremendous cost to survivors, rape kits are the strongest way to prove rape has occurred in a court of law, a crime otherwise challenging to show beyond reasonable doubt (Hamdan). A study published in the Vanderbilt Journal of Entertainment and Technology Law found that 26.5% of jurors "would find the defendant not guilty if there was no scientific evidence, even [if] the alleged victim testifies to the assault" (Shelton et al. 359). And, reports have shown "juries are 33 times more likely to convict when presented with DNA evidence [in sexual assault cases]" (Briody 170). Given that DNA evidence can "identify an unknown assailant...affirm the survivor's account of the attack…[and] connect the suspect to other crime scenes" (Joyful Heart Foundation), rape kits are crucial to solve and prevent rape and sexual assault crimes.

However, despite the general consensus that crape kits are critical, experts estimate hundreds of thousands of rape kits either await testing or have yet to be submitted to crime labs—a gross miscarriage of justice (Joyful Heart Foundation). The collection of these "backlogged" kits form the rape kit backlog, the existence of which is primarily attributed to a lack of monetary resources. According to a report by the National Academy of Sciences, publicly funded crime labs are already "underfunded [and] underequipped" (National Research Council). After one considers the $1,000 to $1,500 cost to test a single rape kit—along with the thousands of rape kits and DNA samples already awaiting testing—it is no surprise that many crime labs can take years to send back the results of DNA and rape kit tests (Joyful Heart Foundation). Even worse, however, is the fact that the majority of rape kits sit unopened in police storage, where local prosecutors and police officers choose not to send them to crime labs, effectively destroying the chance that the victim will ever see justice. The federal government estimates 200,000 unopened or untested kits nationally, but the Joyful Heart Foundation notes that "there may be several hundred thousand more" given the deliberately secretive nature of cities and states when discussing the backlog (Hagerty; Joyful Heart Foundation). Each of these hundreds of thousands of kits represents a victim whose assailant walks free, a victim who has been denied justice for a crime of unfathomable emotional and physical trauma.

While ending this backlog is far from an easy task, the first step is clear: mandating the testing of backlogged and newly collected kits. In order for progress to be made in eliminating the rape kit backlog, state law must require that every untested rape kit is sent to a crime lab within 180 days and that labs complete the kit's analysis

within 90 days, outsourcing testing to private laboratories if the deadline cannot be met (Joyful Heart Foundation). Although these deadlines may seem aggressive, numerous states have successfully passed such legislation and, in turn, have ended their backlogs. For instance, in 2013, Colorado enacted H.B. 13-1020, which required law enforcement to send backlogged rape kits to crime labs within 120 days and new kits within 21 days. Only three years later, Colorado's state lab announced it had tested all of its thousands of backlogged rape kits and eliminated its backlog, bringing long overdue relief to those who were assaulted (Phillips). The untested rape kits resulted in 1,556 DNA profiles and 691 matches to profiles of convicted felons (Phillips), evidence that was of paramount importance in convicting sexual offenders and connecting them to prior crimes.

Given that rape is "the easiest violent crime to get away with" (Hagerty), unconvicted rapists often go on to commit/have committed other violent crimes, including homicide, robbery, and kidnapping. Take the case of Eric Eugene Wilkes, a man "known to Detroit police for robbery and carjacking, [but] not for rape" (Hagerty). Over the course of eleven years, Wilkes brutally assaulted and raped 11 women, "all while [his] identity was preserved in sealed containers that no one had bothered to open" (Hagerty). By failing to test the rape kits provided by numerous victims, law enforcement denied justice from at least 11 known women and allowed Wilkes to walk free and continue his brutal assaults and other crimes. Moreover, serial rapists like Wilkes are far more common than one thinks: a study by Case Western Reserve University noted over half of a random sample of backlogged rape kits were linked to serial offenders (Rothkopf). In order to bring justice to victims of rape and sexual assault across the country and prevent future violent crimes, rape kit testing cannot be reliant on an individual police officer's arbitrary decision: it must be mandatory, with accountability mechanisms in place to ensure law enforcement agencies test new and backlogged kits (Joyful Heart Foundation).

However, law enforcement agencies can only be held accountable for their actions regarding rape kit testing if there is a federal system in place to track all rape kits through the testing process. Presently, no centralized system exists, and rape kits are being unjustly destroyed in large numbers. A CNN investigation found 25 law enforcement agencies in 14 states destroyed rape kits in cases that could *still* be prosecuted, claiming it was a "routine process...to make space in evidence rooms" (Fantz et. al). Numerous other independent investigations have shown the number of

rape kits destroyed per county every year to be in the hundreds (Broadwater; Stahl et. al). The destruction of each kit directly destroys a survivor's hope to bring their attacker to justice, and, if the attacker was a serial offender, contributes to the possible assault of more victims. Therefore, in addition to the aforementioned testing mandate, an online, easily accessible federal tracking system for rape kits must be implemented. Ultimately, testing kits is not enough if those kits no longer exist. Such a system would track rape kits throughout the entire testing process: from the initial collection at medical centers, to local law enforcement, to testing laboratories, to its disposal and sending of results. In addition, legislation must ensure that victims can securely and privately access this information and have sole control over the decision to not test or destroy their rape kit (Busch-Armendariz). A Joyful Heart Foundation research study on such victim notification policies found that "access to information about the status of their cases can promote healing for survivors of sexual assault." However, it is important to note that survivors should never be forced to track their rape kits—according to a study by the Institute on Domestic Violence & Sexual Assault, requiring them to do so is often triggering and violent (Busch-Armendariz). Thus, implementing online tracking systems—which is recommended by the Department of Justice itself—enables victims to maintain autonomy over the process in a way that is safe and comfortable for them (SAFER Act Working Group). Ultimately, rape kit reform must fundamentally seek to both dole criminal justice for survivors and prioritize their healing.

Although enacting the above legislative reforms is vital, they cannot be adequately carried out without increased state funding. Presently, the most substantial federal effort to end the backlog comes in the form of the Debbie Smith Act. While the Act is certainly critical—according to the National Institute of Justice, 42% of DNA matches in CODIS (the FBI's DNA database system) are the direct result of Debbie Smith Act funding ("Critical Rape Kit Backlog Funding Passed By Congress")—there are numerous problems with federal efforts. Namely, federal funding is 1) insufficient and 2) unstable due to the politicization of funds. Currently, local law enforcement agencies are entirely dependent on the Debbie Smith Act's funding, but the amount given is often not enough to begin with (Zhou). Moreover, disseminating federal funds appropriately to local departments requires financing in and of itself, significantly detracting from the actual testing of rape kits (Reilly). Ergo, it is far more efficient for funding to be as localized as possible, which additionally helps in holding law enforcement accountable. Secondly, federal funding is frequently contingent on unrelated local policies. A prime example of this is seen in Albuquerque, New Mexico:

the city was allocated one million dollars by the Department of Justice to clear their rape kit backlog, funding which was quickly rescinded due to Albuquerque's immigration policy (Chavez). This is one of many examples of the federal government using funds critical to justice for rape and sexual assault victims as a bargaining chip. It is unconscionable for us to allow justice for rape and sexual assault to be contingent upon local leaders' political standpoints. To prevent this injustice, states must take funding into their own hands and become independent of federal politics. Though this seems impossible, to date, 21 states and Washington D.C. have taken steps to do so. While these states have made some progress, it is still imperative for all states to become fully self-sufficient and be more proactive when allocating funding towards mandating testing of rape kits.

Each day the rape kit backlog persists, hundreds of thousands of rape and sexual assault victims are forced to live under the overpowering fear that their assailant will return, and perpetrators are left free to commit more violent crimes. It is the government's duty to seek justice for all, and testing rape kits is not only a massive public safety investment but also fiscally benefits the rest of the community. This is because of the fact that rapists often commit other serious crimes, which have negative costs to the community in the forms of public safety, need for increased policing and investigation, etc. A study by Case Western Reserve University found that each kit tested resulted in an estimated net savings of $8,893 (Lovell et al.) while a study by West Virginia University placed the return on investment at an astronomical 65,000% ("Pillar: Appropriate Funding for Reform"). Considering the number of the backlogged rape kits, eliminating the backlog has the potential of saving counties millions of dollars (Lovell et al.).

All in all, the benefits of eliminating the rape kit backlog are unquestioned and the path forward is clear. Once again calling on the words of Chanel Miller, "you cannot give me back the life I had before that night," but it is the responsibility of the justice system to ensure that "the seriousness of rape [be] communicated clearly" in its policies (qtd. in Baker). The United States cannot delay justice for survivors any longer.

Works Cited

Baker, Katie J.M. "Here's The Powerful Letter The Stanford Victim Read To Her Attacker." *BuzzFeed News*, BuzzFeed News, 11 Nov. 2019, www.buzzfeednews.com/article/katiejmbaker/

heres-the-powerful-letter-the-stanford-victim-read-to-her-ra.

Briody, Michael. "The Effects of DNA Evidence on Sexual Offense Cases in Court." *Current Issues of Criminal Justice*, Vol. 14, 2002.

Broadwater, Luke. "Maryland Police Departments Destroyed 270 Rape Kits Over the Last Two Years." *Baltimore Sun*, 09 Jan. 2020, www.baltimoresun.com/politics/bs-md-pol-rape-kits-destroyed-20200109-4ypovxpv2vb6hozmbguzd6s6ia-story.html.

Busch-Armendariz, Noel. "How to Notify Victims about Sexual Assault Kit Evidence: Insight and Recommendations from Victims and Professionals." Project Directors: Sapana Donde, Caitlin Sulley, and Shetal Vohra-Gupta. Contributions by Laurie Cook Heffron, Karen Kalergis, Nicole Levy, and Alison Lee. *Institute on Domestic Violence & Sexual Assault, School of Social Work, The University of Texas at Austin*, 20 March 2015, *Houston Action-Research Project Working Group*, *National Institute of Justice,* houstonsakresearch.org/resources/documents/IDVSA_victim.pdf.

Chavez, Stephanie. "Federal Funding For Rape Kit Backlog, Being Withheld Over Immigration Policy." *KRQE*, Nexstar Media Group, 5 Mar. 2020, www.krqe.com/news/albuquerque-metro/federal-funding-for-rape-kit-backlog-being-withheld-over-immigration-policy/.

"Critical Rape Kit Backlog Funding Passed By Congress." *Rape, Abuse, and Incest National Network*, 20 Dec. 2019, www.rainn.org/news/critical-rape-kit-backlog-funding-passed-congress.

Fantz, Ashley et al. "Destroyed: How the trashing of rape kits failed victims and jeapordizes public safety." *CNN*, 29 Nov. 2018, www.cnn.com/interactive/2018/11/investigates/police-destroyed-rapekits/index.html.

Hagerty, Barbara Bradley. "An Epidemic of Disbelief." *The Atlantic*, Atlantic Media Company, 24 July 2019, www.theatlantic.com/magazine/archive/2019/08/an-epidemic-of-disbelief/592807/.

Hamdan, Nadia. "The Provability Gap: Why It's Hard For Prosecutors To Prove Rape Cases Beyond A Reasonable Doubt." *KUT*, National Public Radio, Moody College of Communication at the University of Texas at Austin, 20 Aug. 2019, www.kut.org/post/provability-gap-why-its-hard-prosecutors-prove-rape-cases-beyond-reasonable-doubt.

H.B. 13-1020. Signed by the Governor of Colorado on 5 Jun. 2013, www.leg.state.co.us/clics/clics2013a/csl.nsf/fsbillcont3/81D352C1BB84F08587257AEE00570221?Open&file=1020_enr.pdf.

Joyful Heart Foundation. "Comprehensive Rape Kit Reform: A Legislative Handbook," *Joyful Heart Foundation*, May 2018, www.endthebacklog.org/sites/default/files/JHF%20Legislative%20Handbook%202019.pdf.

Lovell, Rachel et al. "Testing Sexual Assault Kits Saves Money and Prevents Future Sexual Assaults." *Translational Criminology*, Special Issue: Translating Research to Policy: Improving Justice for Women and Girls, Winter 2019.

National Research Council. "Strengthening Forensic Science in the United States: A Path Forward." *The National Academies Press*, Committee on Identifying the Needs of the Forensic Science Community, Committee on Science, Technology, and Law Policy and Global Affairs, and the Committee on Applied and

Theoretical Statistics Division on Engineering and Physical Sciences, 2009. doi: 10.17226/12589

Phillips, Noelle. "Colorado Eliminates Backlog of Rape Test Kits, Identifies Suspects in Hundreds of Old Cases." *The Denver Post*, 16 Jul. 2016, www.denverpost.com/2016/07/16/rape-kit-backlog/.

Reilly, Steve. "No Action on Rape Kits Despite New Laws, Federal Money." *USA Today*, 17 Jul. 2015, www.usatoday.com/story/news/2015/07/17/1b--rape-kit-funding-not-being-spent--fix-problem/29902283/.

Rothkopf, Joanna. "Analysis of Untested Rape Kits Reveals Serial Rapists Are 'Fare More Common' Than We Thought." *Jezebel*, 6 June 2016, jezebel.com/analysis-of-untested-rape-kits-reveals-serial-rapists-a-1780808012.

SAFER Act Working Group. "Transparency and Accountability of Law Enforcement for SAKs." *National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach*, NCJ 250384, August 2016, *National Institute of Justice*, www.ncjrs.gov/pdffiles1/nij/250384.pdf.

"Scope of the Problem: Statistics." *Rape, Abuse, and Incest National Network*, www.rainn.org/statistics/scope-problem.

Shelton, Donald E., et. al. "A Study of Juror Expectations and Demands Concerning Scientific Evidence: Does the 'CSI Effect' Exist?" *Vanderbilt Journal of Entertainment & Technology Law*, Vol. 9, 2006, pp. 331-368.

Stahl, Brandon et al. "Police in Minnesota Destroyed Hundreds of Rape Kits, Putting Cases in Peril.' *KARE 11*, 23 Jul. 2020, www.kare11.com/article/news/investigations/kare-11-investigates-police-in-minnesota-destroyed-hundreds-of-rape-kits-putting-cases-in-peril/89-1ff69998-cabe-49ce-998c-771e5f0f61dc.

"The Criminal Justice System: Statistics." *Rape, Abuse, and Incest National Network*, www.rainn.org/statistics/criminal-justice-system.

Zhou, Li. "Thousands of Rape Kits Are Currently Untested. Kamala Harris Has a Plan to Change That." *Vox*, 12 Jul. 2019, www.vox.com/2019/7/12/20690828/kamala-harris-2020-plan-rape-kits-backlog.

"Pillar: Appropriate Funding for Reform." *Endthebacklog.org*, www.endthebacklog.org/ending-backlog-our-approach-campaign-end-backlog-2020-end-backlog-goals/pillar-appropriate-funding.

Predictive Prosecution: Part I[1]

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Note: This is Part I of a two part series on Predictive Prosecution. This essay details the history and current implementation of predictive prosecution. Part 2 will explore the impacts and future of predictive prosecution.

Predictive prosecution—data-driven policies that shape prosecution strategies—exists in an experimental phase. This Essay seeks to raise preliminary questions about an obviously nascent experiment. But, the questions are real, and will need to be answered soon. The hope of this brief Essay is to set forth the basics of predictive prosecution while the second part will explore possible impacts, raise questions, and plan for the future of predictive prosecution.

Introduction

Police in major metropolitan areas now use "predictive policing" technologies to identify and deter crime (Huet). Based on algorithmic forecasts from past crime patterns and individual criminal risk factors, police claim to be able to identify places and persons more likely to be involved in criminal activity (Adams; Goode; Gordon; Economist). This data-driven approach impacts police patrols, investigations, and public health— like

[1] Abridged from "Predictive Prosecution," originally published in *Wake Forest Law Review*. © 2016 Andrew Guthrie Ferguson.

strategies to disrupt and monitor forecasted criminal activity (Bond-Graham & Winston (b); Buntin).

The early success of predictive policing has led a few prosecutors' offices to adopt quasi-"predictive prosecution" strategies. Predictive prosecution involves identifying and targeting suspects deemed more at risk for future serious criminal activity, and then using that information to shape bail requests, charging decisions, and sentencing arguments. The potential problem, however, is that the data used to inform predictive prosecution strategies may be subject to the same vulnerabilities currently limiting predictive policing. Data can be bad, biased, or based on erroneous correlations (Logan & Ferguson). Data-driven justice challenges values of transparency, accountability, and autonomy (Ferguson (a)). And, while these problems matter when it comes to questions of where to send a patrol car, or even whom to investigate, they matter much more when data directly impacts a prosecutor's decision about individual liberty.

Fortunately, prosecutors, more so than police, may have the institutional capacity and power to ensure an equitable and accountable use of predictive technologies. Prosecutors, due to their ethic "to do justice," may be in a better position to ensure that issues of accuracy, transparency, validity, error, and exculpatory information are addressed before widespread adoption (Green). Prosecutors may be able to capitalize on the innovation of predictive analytics and promote stronger accountability mechanisms that could benefit the entire criminal justice system.

The Influence of Predictive Policing on Predictive Prosecution

Predictive prosecution is an outgrowth of the reported success of predictive policing. Predictive policing involves the use of data collection and analysis to predict areas of crime and individuals involved in crime (Pearsall). The generic term "predictive policing" encompasses a variety of different techniques, proprietary products, and tactical uses. Predictive-policing technologies are shaping police strategies in a diverse list of places, including major cities like Los Angeles, New York City, Chicago, Philadelphia, Miami, Seattle, Kansas City, and Memphis, and smaller cities like Reading, Pennsylvania and Alhambra, California (Geography & Public Safety (a); (b); Berg; Vuong). The federal government has funded pilot programs (Beiser), and large and small companies are competing for city contracts (King; Reyes).

A. A Brief History of Place-Based Predictive Policing

The algorithmic approach to crime prediction was based on decades of social science research showing that certain property crimes encouraged similar crimes in a predictable manner (Bowers & Johnson). A burglary in one neighborhood might encourage additional burglaries in that same neighborhood (Ratcliffe & Rengert). An auto theft at a particular time in one area might suggest future thefts in the same area (Koehn). The reasons for such a "near repeat phenomenon" or "boost theory" have been debated, but the correlation of additional crime around the same area has been regularly demonstrated (Bernasco; Bowers & Johnson; Johnson; Chainey et al.; Johnson et al.). Building off this insight and adding lessons learned from environmental criminology (Yerxa), hotspot policing (L. Kennedy et al.), and crime mapping (Harries; Paulsen & Robinson; Ferguson (b)), academic researchers developed place-based predictive software to predict certain property crimes (Beiser).

Initial pilot projects in the Los Angeles Police Department (LAPD) eventually developed into a commercial business to sell the predictive software (Rubin). Currently, more than half a dozen predictive policing companies, including large corporations like IBM, Hitachi, and Motorola, are competing for business (Chammah). These first predictive technologies have different names and different theories, but share five commonalities. The technology involves crime data, time, location, an algorithm, and a theory about why a particular area has a heightened likelihood of criminal activity (Chainey et al.; Turkel). Place-based algorithms have been used to target property crimes and violent crimes (Caplan et al.). Many questions still remain about the application, effectiveness, and promise of the technology. But, as LAPD Commissioner Bratton stated in 2016, "Predictive policing used to be the future, and now it is the present" (Black).

B. The Development of Person-Based Prediction

Person-based approaches to crime arose independently of predictive policing and were largely based on a public health model of targeting crime (Braga et al. (a); D. Kennedy et al.). For decades, sociologists identified the reality that a small subset of individuals in any community committed the vast majority of crimes (Kennedy (a); Braga; Papachristos et al. (a)). Police recognized that targeting those individuals could result in a disproportionate reduction of crime rates (Davey (b); Guarine). For violent crimes, researchers studied shooting victims and, by tracking their social networks, could identify likely future victims or criminal actors (Papachristos et al. (c)). The theory

behind this approach was that most shootings involve a social network of retaliation between rival groups (such as gangs, neighborhood crews, and drug dealers) who respond in relatively predictable ways (MacDonald (a)). A shooting of a gang member would lead to a retaliatory act. That act, in turn, would continue the cycle of violence. Professor David Kennedy demonstrated that by targeting youth violence through a public health model, police could dramatically curtail shootings (Kennedy (b); D. Kennedy et al.). Andrew Papachristos, Anthony Braga, and David Hureau investigated similar social network intervention strategies between rival gangs (Papachristos et al. (b)). Other scholars have investigated this same social network phenomenon.

The best known person-based predictive policing system involves the Chicago Police Department. The Chicago Police Department developed a data-driven process to identify the most likely offenders of violent crime (Gorner). Entitled the "Heat List," the concept is to identify young people who might engage in violence or be victims of violence and intervene before the violence occurs. This identification is conducted by police officers (called District Intelligence Officers) who evaluate past criminal activity, whether the target has been identified as part of a gang audit, whether the target has been placed on the "strategic subjects list" ("SSL") (Chicago P.D. (a)).

Once identified and placed on the "Heat List," a team of police officers, social workers, and community leaders conduct a "custom notification" which involves a face-to-face meeting and the delivery of a custom notification letter (Gorner). This letter details the individual's prior contacts with the criminal justice system, as well as potential future consequences for any continued criminal activity (Chicago P.D. (a)). These custom notification meetings usually involve home visits. Essentially, the young person is offered a choice: take advantage of social services to prevent involvement in future violence or face additional law enforcement surveillance—and perhaps punitive consequences. Currently, the Chicago Police Department includes over 1300 names on its Heat List (Davey (a)).

This suspect and social network–focused approach to policing has—under different names and different programs—been adopted in Kansas City, Boston, New Orleans, Los Angeles, and other cities (Braga et al. (b); Goldberg; RT; Palantir Technologies). Juvenile courts have also begun to consider implementing similar identification processes for troubled youth (Rao). The open question, however, is how the algorithm scores the criminal record, connections with associates, and intensity of

criminal history, among other considerations. With few exceptions, the types of identification mechanisms have not been validated through scientific methods.

C. Early "Predictive Prosecution" Models

The efficacy of predictive policing remains both alluring and unproven. Significant research studies have yet to be conducted in any systemic way. Questions remain as crime rates have fluctuated in cities using the technologies (Huet). Yet, despite the unknowns, prosecutor offices have embraced the insight that predictive analytics and information sharing can identify risk factors in a community and improve the prosecutorial function (MacDonald (a)). The same broad tactical shift toward proactive law enforcement has thus begun influencing proactive prosecutorial strategies. As the former head of the Manhattan Criminal Strategies Unit stated, the change is as much one of philosophy as technology (O'Keefe & Chicon). The goal is to focus on crime, not cases. "Intelligence- driven" prosecutions seek to take already existing information in prosecution offices, organize it, manage it, and deploy it to target those most at risk of driving crime in a community

While still in the very early stages, two distinct predictive prosecution models have been developed. Here I describe them as the "Enforcer Model" and the "Investigator Model." Neither, to be clear, involves pure algorithmic or machine predictions. Just as predictive policing is more of a risk identification tool than a predictive guess, so, too, predictive prosecution seeks to proactively identify risk factors (areas and suspects) in a community and direct attention to those problems. Predictive prosecution involves data-driven, information-sharing innovations, but not pure algorithmic judgments about places or people. As will be discussed, some blending of predictive policing techniques and predictive prosecution techniques may occur in the future, but currently the prosecution side has relied on more human rather than algorithmic predictions.

1. Enforcer Model

The Enforcer Model arises from person-based predictive policing strategies. In this model, prosecutors play a role of enforcing warnings made to those predicted to be involved in criminal activity (especially violence). In some cases, this prosecutorial enforcement might be indirect, but in other cases, the prosecutors might directly and personally provide verbal notice of harsher enforcement penalties.

For example, the Special Order detailing the process of custom notification in Chicago makes explicit reference to prosecutorial involvement. The Custom Notification Letter will be used to inform individuals of the *arrest, prosecution, and sentencing consequences they may face if they choose to or continue to engage in public violence*. The letter will be specific to the identified individual and incorporate those factors known about the individual inclusive of prior arrests, impact of known associates, and *potential sentencing outcomes* for future criminal acts (Chicago P.D. (a)). The procedures and policy behind custom notification, thus, encourage prosecutors to follow through on the charging, bond, and sentencing warnings provided in the custom notification letters.

Prosecutors play a more direct enforcer role in other gang violence reduction strategies (MacDonald (b)). One strategy that has been adopted by law enforcement is called "focused deterrence" (Papachristos & Kirk). Focused deterrence involves a targeted message to a small percentage of the population that prosecutors, police, and community members know who is engaged in violence and that they are committed to stopping it.

For example, Chicago has developed a broad Gang Violence Reduction Strategy that identifies gang members through "gang audits" and the SSL (Chicago P.D. (b)). Identified targets are then invited to "call-in" meetings with prosecutors, police, and community members. For example, if a young man is identified through a gang audit, the SSL, or some other targeting measure, and asked to participate in a community forum, it is not uncommon for a prosecutor to be present. These call- in meetings serve as a "scared straight" warning for individuals placed on the Heat List (Eligon & Williams) The prosecutor symbolically and sometimes literally describes the consequences for failing to heed the warning to stay away from crime.

As described above, prosecutors, as enforcers for predictive policing techniques, remain in a fairly typical prosecutorial role with one exception: the enforcement threats are influenced by predictive data. Clearly, prosecutors have long held community meetings. Prosecutors have long held "scared straight" talks in community forums (M. Fan). Prosecutors have long stood arm in arm with police to send a message that criminality will not be tolerated. The difference here is that the targets of the community forum, and thus the subjects of harsher punishment, were originally identified by predictive policing techniques and other data-driven mechanisms. If those algorithmic or social network correlations are in error, then the subsequent harsher punishment may be unjustified. Evidence is very clear that arrest records are filled with mistakes

(Attorney General; Faturechi & Leonard; Simon; Duggan). Similar problems exist with gang databases and offender registries (Howell; Wright; *Herring v United States*). If those "Heat Lists" are found to be flawed, then not only police surveillance, but prosecutorial judgment becomes distorted.

The Chicago Tribune interviewed a young man, Robert McDaniel, whose name appeared on the Heat List because a friend of his had been shot (Gorner). Mr. McDaniel's prior record consisted of a single misdemeanor conviction and a few minor arrests (Gorner). But, by being placed on the list, Mr. McDaniel was now associated with the worst of the worst. An enhanced sentence predicated in part on a connection to a Heat List that later turns out to be unwarranted would be a real unfairness to someone like Mr. McDaniel. If the prosecutor does not take on an independent duty to double check the data, then the harm from such a prediction could be significant.

2. Investigator Model

The Investigator Model of predictive prosecution involves a more organic prosecutor-led information-sharing system. Such a system, like the Crime Strategies Units (CSU) being developed in Manhattan, San Francisco, Philadelphia, and Baton Rouge, is data driven and targets identifiable criminal actors (MacDonald (a); Brown). These systems are not based on algorithmic judgments, but on data of actual crime patterns in a city (Brown). Using data, prosecutors identify geographic areas of concern based on reported shootings, thefts, or particular types of crime. Suspects are identified as being engaged in violence or gang activity based on past criminal activity (MacDonald (a)). These individuals are monitored through social media and traditional law enforcement surveillance. The predicted targets are then prosecuted using available prosecutorial leverage to extract enhanced pleas or sentences from those identified (MacDonald (a); Brown).

In general, this type of intelligence-driven prosecution involves five modifications from the traditional police-prosecutor relationship (Brown; MacDonald (a)). First, prosecutors identify geographical areas of concern based on reported crime patterns in a city. The focus is again on crime, not cases, meaning even unsolved crimes also capture the attention of prosecutors. Second, prosecutors identify individuals who are considered the crime drivers in a community and include them in an "arrest alert system." These individuals become the "primary targets" of prosecution, under the theory that by removing these violent actors, overall violence levels will fall. As will be

discussed, the arrest alert system triggers heightened attention for a prosecutor to incapacitate these predicted bad actors through existing legal mechanisms. Third, less traditional data points enter into the calculation of whom to target. Social media posts, a past lack of cooperation with police, status as a victim of violence, and other less formal bits of information are included in the risk assessments of whom to target. Fourth, the information sharing between police and prosecutors is prioritized and strengthened (McKinley). Intelligence-driven prosecution is not just about being smarter, but developing actionable intelligence about crime patterns in an area. Finally, all of this information about past criminal activities is memorialized in a searchable dataset for future action.

This focus on incapacitating "primary targets" has significant practical effects on traditional prosecution practices. Routinely now, if someone listed in the CSU arrest alert system is arrested, even for a low-level offense, the full power of the prosecutors' office is directed against them (Brown). First, the targeting system impacts bail decisions, as prosecutors might be instructed to ask for higher bail for those identified in the arrest alert system (MacDonald (a)). Before the arrest occurs, CSU drafts particularized bail applications on predicted individuals advocating for strict bail positions (McKinley). Second, targeted individuals could face enhanced criminal charges in order to maximize prosecutorial leverage (MacDonald (b)). This means that prosecutors would be instructed to seek the maximum charges justified under law (McKinley). These initial charging decisions obviously impact later plea deals and impede plea negotiations as defendants face much harsher potential punishments (Fox). Sentencing decisions can also be ratcheted up as prosecutors seek to ensure the maximum penalty possible (Gorner). Maximum sentences on minor crimes result in extended incarceration. Even after convictions and sentencing, prosecutors have been known to weigh in on parole decisions and requirements of release (Fox).

Before moving on to discuss the future of predictive prosecution, it must be made clear that much of what is being proposed is not fundamentally all that new. Police and prosecutors have long kept detailed dossiers on potential suspects (Logan). As Wayne Logan and I have written about, our current data-driven criminal justice system has roots in 18th century innovations. Data in the form of arrest logs, arrest warrants, offender registries, biometrics, and a host of court and community supervision records has long been available to police. Further, police have recognized the need to identify and target potential "bad apples" since before there were police forces (Logan). This

information has regularly been shared with prosecutors who have built similarly extensive investigative files on potential offenders. Predictive prosecution is merely an innovative way to identify and predict likely targets through the use of better data-sharing technologies.

Nevertheless, the impact of predictive analytics and social network technology on law enforcement and prosecution is real and needs to be examined. Predictive policing has gained a foothold in police administration. Predictive prosecution is only a few years behind. And so, the promise and perils need to be addressed as the technology and methodologies develop.

Works Cited

Adams, Guy. "The Sci-Fi Solution to Real Crime", *The Independent*, London, Jan. 11, 2012.

Beiser, Vince. "Forecasting Felonies: Can Computers Predict Crimes of the Future?," *Miller-McCune*, July–Aug. 2011, psmag.com /can-computers-predict-crimes-of-the-future-5dd5ecaab617#.o8gsmcvzt.

Berg, Nate. "Predicting Crime, LAPD-style," *Guardian*, June 25, 2014.

Bernasco, Wim. "Them Again?: Same-Offender Involvement in Repeat and Near Repeat Burglaries," 5 *European Journal of Criminology*, pp. 411-2, 2008.

Black, David. "Here Comes Predictive Policing: The Next Wave of Crimefighting Technology is Being Tested in New York City," *New York Daily News*, Jan. 24, 2016, www.nydailynews.com/opinion/david-black -predictive-policing-article-1.2506580.

Bond-Graham, Darwin & Ali Winston (a). "All Tomorrow's Crimes," *San Francisco Weekly*, Oct. 30–Nov. 5, 2013.

--- (b). "Forget the NSA, the LAPD Spies on Millions of Innocent Folks", *Los Angeles Weekly*, Feb. 27, 2014, http://www.laweekly.com/news/forget-the-nsa-the-lapd-spies-on-millions-of -innocent-folks-4473467

Bowers, Kate J. & Shane D. Johnson. "Who Commits Near Repeats? A Test of the Boost Explanation," *Western Criminology Review*, Nov. 2004, pp. 12-13.

Braga, Anthony A. "Pulling Levers Focused Deterrence Strategies and the Prevention of Gun Homicide," 36 *Journal of Criminal Justice*, pp. 332, 332–34, 2008.

Braga, Anthony A. et al. (a). "Problem-Oriented Policing, Deterrence, and Youth Violence: An Evaluation of Boston's Operation Ceasefire," 38 *Journal of Research in Crime and Delinquency*, pp.195, 195–200, 2001.

--- (b). *Smart Approaches to Reducing Gun Violence*, 2014, http://www.smartpolicinginitiative.com/sites/all/files/SPI%20Gun%20Violence%20Spotlight%20FINAL.pdf;

Brown, Chip. "The Data," D.A., *New York Times*.,

Dec. 7, 2014.

Buntin, John. "Social Science: Facebook and Other Social Media Networks are Upending the Way Chicago Fights Gang Violence", *Governing*.

Caplan, Joel M. et al. "Joint Utility of Event-Dependent and Environmental Crime Analysis Techniques for Violent Crime Forecasting," 59 *Crime and Delinquency*, pp. 243, 243–45, 248, 2013.

Chainey, Spencer et al., "The Utility of Hotspot Mapping for Predicting Spatial Patterns of Crime," 21 *Security Journal*, pp. 4-5, 2008.

Chammah, Maurice. "Policing the Future," *Verge*, www.theverge.com/2016/2/3/10895804/st-louis-police-hunchlab-predictive-policing-marshall-project, 2016.

Chicago Police Department (a). *Chicago Police Department, Custom Notifications in Chicago, Special Order S10-05*, Oct. 6, 2015, http://directives.chicagopolice.org /directives/.

--- (b). *Chicago Police Department, Custom Notifications in Chicago, Special Order G10-01*, Dec. 31, 2015, directives.chicagopolice.org/directives/.

Davey, Monica (a). "Chicago Police Predict Who May Shoot or Be Shot," *New York Times*, May 23, 2016, http://www.nytimes.com/2016/05/24/us/armed-with-data-chicago-police-try-to-predict-who-may-shoot-or-be-shot.html?_r=0.

--- (b). "Chicago Tactics Put Major Dent in Killing Trend,: *New York Times*, June 11, 2013.

Duggan, Briana. "The Rap-Sheet Trap: One Man vs. a Multitude of Errors," *City Limits,* Mar. 3, 2015, citylimits.org/2015/03/03/the-rap-sheet-trap-one-man-vs-a-multitude-of -errors/#.

Eligon, John & Timothy Williams. "On Police Radar for Crimes They Might Commit," *New York Times*, Sept. 25, 2015.

Fan, Maureen. "Steering Youth Straight Sound Counsel From Mentor Cops, Prosecutors and Judges," *New York Daily News,* May 18, 1997, www.nydailynews.com/archives/boroughs/steering-youth-straight-sound-counsel-mentor-cops-prosecutors-judges-article-1.760985.

Faturechi, Robert & Jack Leonard. "ID Errors Put Hundreds in County Jail," *Los Angeles Times*, Dec. 25, 2011.

Ferguson, Andrew Guthrie (a). "Big Data and Predictive Reasonable Suspicion," 163 *University of Pennsylvania Law Review*, pp. 327, 329–30, 2015

--- (b). "Crime Mapping and the Fourth Amendment: Redrawing "High Crime Areas"," 63 *Hastings Law Journal*., pp. 179, 182–84, 2011.

Fox, Aubrey. "David O'Keefe, Head of the Manhattan District Attorney's Crime Strategies Unit," *Center for Court Innovation*, May 29, 2013, www.courtinnovation.org/research/david-okeefe-head-manhattan-district-attorneys-crime-strategies-unit.

Geography & Public Safety (a). "Chicago Police Department Adopts Predictive Crime-Fighting Model," *Geography and Public Safety*, Mar. 2011.

--- (b). "Predictive Policing Helps Tennessee Officers Reduce Violent and Property Crimes,"*Geography and Public Safety,* Mar. 2011.

Goldberg, Jeffrey. "A Matter of Black Lives," *The Atlantic*, Sept. 2015, pp 70, 73.

Goode, Erica. "Sending the Police Before There's a Crime," *New York Times*, Aug. 16, 2011.

Gordon, Leslie A. "A Byte Out of Crime," *American Bar Association Journal*, Sept. 2013.

Gorner, Jeremey. "The Heat List," *Chicago Tribune*,

Aug. 21, 2013.

Green, Bruce A.. "Why Should Prosecutors "Seek Justice"?," 26 *Fordham Urban Law Journal*, pp. 607- 608, 1999.

Harries, Keith. *Mapping Crime: Principle and Practice, National Institute of Justice*, 1999, https://www.ncjrs.gov/pdffiles1/nij/178919.pdf.

Herring v. United States, 555 U.S. 135, 155, 2009. (Ginsburg, J., dissenting).

Howell, K. Babe. "Gang Policing: The Post-Stop-and-Frisk Justification for Profile-Based Policing," 5 *University of Denver Criminal Law Review*, pp. 1, 15–16, 2015.

Huet, Ellen. "Server and Protect," *Forbes*, Mar. 2, 2015.

Johnson, Shane D. "Repeat Burglary Victimisation: A Tale of Two Theories," 4 *Journal of Experimental Criminology*, pp. 215-6, 2008.

Johnson, Shane D. et al. "Space-Time Patterns of Risk: A Cross National Assessment of Residential Burglary Victimization," 23 *Journal of Quantitative Criminology*, pp. 201, 203–04, 2007.

Kennedy, David M. (a). *Don't Shoot: One Man, a Street Fellowship, and the End of Violence in Inner-city America*, p. 269, 2011.

--- (b). "Pulling Levers: Chronic Offenders, High-Crime Settings, and A Theory of Prevention," 31 *Valparaiso University Law Review*, pp. 449, 449–51, 1997.

Kennedy, David M. et al. "Youth Violence in Boston: Gun Markets, Serious Youth Offenders, and a Use-Reduction Strategy," 59 *Law and Contemporary Problems*, pp. 147, 147–49, 156, 1996.

Kennedy, Leslie W. et al. "Risk Clusters, Hotspots, and Spatial Intelligence: Risk Terrain Modeling as an Algorithm for Police Resource Allocation Strategies," 27 *Journal of Quantitative Criminology*, pp. 339, 358, 2011.

King, Rachael. "IBM Analytics Help Memphis Cops Get 'Smart'," *Bloomberg*, Dec. 5, 2011, www.bloomberg.com/news/articles/2011-12-05/ibm-analytics-help-memphis-cops-get-smart.

Koehn, Josh. "Algorithmic Crimefighting," *Sanjose.com*, Feb. 22, 2012, www.sanjose.com/2012/02/22/sheriffs_office_fights_property_crimes_with_predictive_policing/.

Logan, Wayne A. "Policing Identity," 92 *Boston University Law Review*., p. 1561, 2012.

Logan, Wayne A. & Andrew Guthrie Ferguson. "Policing Criminal Justice Data", 101 *Minnesota Law Review*, 2017.

MacDonald, Heather (a). "A Smarter Way to Prosecute," *Los Angeles Times*, Aug. 10, 2014.

--- (b). "Prosecution Gets Smart," *City Journal*, 2014, www.city-journal.org/2014/24_3_intelligence-driven-crime-fighting.html.

McKinley, James C., Jr. "In Unusual Collaboration, Police and Prosecutors Team Up to Reduce Crime," *New York Times*, June 5, 2014.

O'Keefe, David & Kerry Chicon. Telephone Interview, Manhattan Dist. Attorney's Office, Mar. 30, 2016.

Office of the Attorney General. *The Attorney General's Report on Criminal History Background Checks, U.S. Department of Justice*, 2006, www.bjs.gov/content/pub/pdf/ag_bgchecks_report.pdf.

Palantir Technologies. "Reducing Murder Rates," *Palantir Technologies*, www.palantir.com/philanthropy-engineering/annual-report/2015/murder-reduction/

Papachristos, Andrew V. & David S. Kirk. "Changing the Street Dynamic: Evaluating Chicago's Group Violence Reduction Strategy," 14 *Criminology and Public Policy*, pp.525, 533, 2015.

Papachristos, Andrew V. et al. (a). "Attention Felons: Evaluating Project Safe Neighborhoods in Chicago," 4 *Journal of Empirical Legal Studies*, p. 223, 2007.

--- (b). "Social Networks and the Risk of Gunshot Injury," 89 *Journal of Urban Health*, pp. 992-93, 2012.

--- (c). "Why Do Criminals Obey the Law? The Influence of Legitimacy and Social Networks on Active Gun Offenders," 102 *Journal of Criminal Law and Criminology*, pp. 397, 436, 2012.

Paulsen, Derek J. & Matthew B. Robinson. *Crime Mapping and Spatial Aspects of Crime,* 2nd ed., pp. 154–55, 2009.

Pearsall. Beth. "Predictive Policing: The Future of Law Enforcement?," *National Institute of Justice Journal*, June 2010.

Rao, Maya. "Police Tool Targets At-Risk Teens," *Star Tribune*, Oct. 25, 2014.

Ratcliffe, Jerry H. & George F. Rengert. "Near-Repeat Patterns in Philadelphia Shootings," 21 *Security Journal*, p. 58, 2008.

Reyes, Juliana. "Philly Police Will Be First Big City Cops to Use Azavea's Crime Predicting Software," *Technical.ly*, Nov. 7, 2013, technical.ly/philly/2013/11/07/azavea-philly-police-crime-prediction-software

RT. "Los Angeles Police Using CIA Software to Track Criminals, Ex-cons," *RT*, Nov. 15, 2014, http://rt.com/usa/205727-lapd-criminals-data-collection/.

Rubin, Joel. "Stopping Crime Before It Starts," *Los Angeles Times,* Aug. 21, 2010.

Simon, Amanda. "Garbage In, Unnecessary Arrests Follow," *Daily Kos*, Apr. 26, 2010, www.aclu.org/blog/speakeasy/garbage-unnecessary-arrests-follow.

The Economist. "Predictive Policing: Don't Even Think About It," *Economist*, July 20, 2013.

Turkel, Dan. "'Predictive Policing' Tries to Stop Violent Crime Before It Happens," *Business Insider*, Sept. 25, 2015, www.businessinsider.com/predictive-policing-tries-to -stop-violent-crime-before-it-happens-2015-9.

Vuong, Zen. "Alhambra Police Chief Says Predictive Policing Has Been Successful," *Pasadena Star-News*, Feb. 11, 2014, www.pasadenastarnews.com/government-and-politics/20140211/alhambra-police-chief-says-predictive-policing-has-been-successful.

Wright, Joshua D. "The Constitutional Failure of Gang Databases," 2 *Stanford Journal of Civil Rights and Civil Liberties*, pp. 115, 122–23, 2005.

Yerxa, Megan. "Evaluating the Temporal Parameters of RiskTerrain Modeling with Residential Burglary," 5 *Crime Mapping*, pp. 7, 10–11, 2013.

COMMENTARY

Federal Agents Deployed in Portland: Policing, Federalism, and a Startling Pattern of Federal Overreach

The Journal of Interdisciplinary Public Policy Student Editorial Board

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Protestors in Portland, Oregon have mobilized for more than 50 days straight in solidarity with the Black Lives Matter movement in the fight against racialized police violence. However, the Trump administration has deployed over a hundred federal agents to "protect federal property" (Kanno-Youngs). Far from this claimed reason, numerous accounts have placed unidentified federal agents throwing local protestors into unmarked vans miles away from any federal property against the direct requests of local and state officials (The Guardian; Egan).

While numerous media sources have expressed (righteous) concern for these events, few have recognized that the actions in Portland have been legitimized by a long history of questionable laws and Executive overreach. Instead, we need to recognize this moment as an exposition of the inconsistencies baked into United States law and challenge that in all its instances.

First, we must acknowledge the two-faced actions of the administration throughout these events. Trump's Department of Homeland Security (DHS) initially pushed back against claims of overreach in the protests (Phillips), but since contradictingly confirmed firsthand accounts of unmarked vehicles and unidentified officers (Levinson, et al.). While the Trump administration paints the protests as violent and out of control, most accounts have characterized them as peaceful (Shepherd & Berman). The only exceptions were a small number of instances of aggravation that the Portland Police Department is wholly capable of handling.

Additionally, while many profess outrage that "this is not America," the truth of

the matter is that it is. Professor Vladeck of the University of Texas at Austin offers an incisive critique of the current federal government actions. Using legal rights granted to the federal government, President Trump has ramped up operations of numerous federal law enforcement agencies, including the FBI, DEA, Bureau of Prisons, U.S. Marshals Service, and more, by deputizing agents and assigning them at discretion, often with little to no training (Olmos, et al.). In fact, as a coastal city, Portland is categorized as an "international border" which has led the DHS to leverage numerous constitutional exceptions. For example, they are leveraging loopholes to arrest people for *any* federal offense they witness in Portland. As part of an agreement for some level of power sharing in states, federal officers in Oregon are extended the same enforcement rights as local law enforcement, but Oregon's pleas for federal officers to leave have been repeatedly ignored.

While there exists a convincing case to argue against federal officers in the courts, as the Oregon government is trying to do, the federal loopholes are plenty and strong. In fact, federal officers are not bound by law to identify themselves (Brown & Saunders). Additionally, the Trump administration is unlikely to volunteer answers in court—as it has shown time and time again—and it has grown increasingly difficult to hold federal officers accountable because of qualified immunity in many cases and the recent Supreme Court decision to make it harder for private parties to sue federal law enforcement even if immunity does not apply (*Hernández v. Mesa*).

Now is the time to take back legislative power—the ability for the federal government to deploy camouflaged officers who refuse to identify themselves at whim is a dangerous threat to our pursuit of liberty. Such government crackdowns occur each time the people decide to mobilize for true change. Political processes are not as cut and dry as we think, and we must acknowledge that in our movements for reform.

Works Cited

Kanno-Youngs, Zolan. "Were the Actions of Federal Agents in Portland Legal?" *The New York Times*, 24 July 2020, www.nytimes.com/2020/07/17/us/politics/federal-agents-portland-arrests.html.

The Guardian. "Portland Mayor Demands Removal of Camouflage-Clad Agents Detaining Protesters - Video." *The Guardian*, 18 July 2020, www.theguardian.com/us-news/video/2020/jul/18/portland-mayor-demands-removal-of-camouflage-clad-agents-detaining-protesters-video.

Egan, Lauren. "Oregon Attorney General Sues DHS

Amid Reports of Unlawful Detainment of Portland Protestors." *NBC News*, 18 July 2020, www.nbcnews.com/politics/politics-news/oregon-attorney-general-sues-dhs-amid-reports-unlawful-detainment-portland-n1234297.

Phillips, Morgan. "DHS Pushes Back Against Claim Federal Agents Detaining Portland Protestors Aren't Identifying Themselves." *Fox News*, 17 July 2020, www.foxnews.com/politics/dhs-pushes-back-against-claim-federal-agents-detaining-portland-protesters-arent-identifying-themselves.

Levinson, Jonathan, et al. "Federal Officers Use Unmarked Vehicles To Grab People In Portland, DHS Confirms." *NPR*, 17 July 2020, www.npr.org/2020/07/17/892277592/federal-officers-use-unmarked-vehicles-to-grab-protesters-in-portland.

Shepherd, Katie and Mark Berman. "'It was like being preyed upon': Portland protesters say federal officers in unmarked vans are detaining them." *The Washington Post*, 17 July 2020, www.washingtonpost.com/nation/2020/07/17/portland-protests-federal-arrests/.

Vladeck, Steve. "What the Heck Are Federal Law Enforcement Officers Doing in Portland?" *Lawfare*, 17 July 2020, www.lawfareblog.com/what-heck-are-federal-law-enforcement-officers-doing-portland.

Olmos, Sergio et al. "Federal Officers Deployed in Portland Didn't Have Proper Training, D.H.S Memo Said." *The New York Times*, 18 July 2020, www.nytimes.com/2020/07/18/us/portland-protests.html.

Brown, Rachel and Coleman Saunders. "Can Law Enforcement Officers Refuse to Identify Themselves." *Lawfare*, 12 June 2020, *Privacy Paradox: Rethinking Solitude*, www.lawfareblog.com/can-law-enforcement-officers-refuse-identify-themselves.

Hernández v. Mesa. U.S. Supreme Court No. 17-1678, opinion of the Court by Justice Alito, 25 February 2020, https://casetext.com/case/hernandez-v-mesa-8.

Another Point of View

Aydra Maki

Aydra Maki is a self-described member of the youth activism industrial complex, and is passionate about prison abolition, social justice, and economic equality.

"It's always been this way." The man, strongly gripping an American flag in his hands, continued. "The police have always protected us. I don't see why we have to change it now."

He had been taking down posters calling for the abolition of the police, and I stood in front of him, attempting to hinder his progress. Over the past few weeks, my rural community split into two over one of the most pressing questions of our time: Do Black Lives Matter?

So, while I and hundreds of other people showed up at protests and vigils honoring those killed by police brutality, we were met with glares, obscene gestures, and foul language from others. Still, smiles, waving, shouts of support by passers-by, and a devotion to an honorable cause kept us going. Nevertheless, it was disappointing to see my community divided so drastically over one (seemingly) obvious statement. To me and my fellow protesters, Black lives mattered. We believed a person's life shouldn't be taken so easily, and so senselessly, by agents of the state. We believed this violence had gone on for far too long and stolen far too many lives. For me, with the memories of people leaning out of their car windows to scream at us, driving through our crowds at high speeds, sexually harassing teenage girls at the front of my mind, this belligerent man with his flag crumbling up our posters was the last straw.

"The police have always protected us?" I asked, arms crossed. "Who is 'us?' Did they protect Breonna Taylor? Elijah McClain? Tamir Rice? Aiyana Jones? No, they killed them. They killed them all." Above my mask, my eyes were hardened. "The police weren't made to protect us. One day, you might find that they won't protect you. Because people are secondary to them, always. But we can do better." I pointed at the protesters, standing in a line on the sidewalk, brandishing signs, chanting, singing. Hopeful. "We have to do better.

Protest is Broken: An Interview with Micah White[2]

Micah White, PhD is a Featured Expert at the Journal of Interdisciplinary Public Policy. White is an award-winning activist, author, and speaker. White is co-creator of Occupy Wall Street and the founder of the Activist Graduate School. He is also the author of The End of Protest: A New Playbook for Revolution, *and is currently the Activist-in-Residence at the UCLA Institute on Inequality and Democracy.*

Gone are the days where protests with millions of people were guaranteed success, White says. "Occupy was a perfect example of a social movement that should have worked according to the dominant theories of protest and activism. And yet, it failed." Thus, White argues for a restructuring of protest. He discusses the current context of the Black Lives Matter movement and its demands. He argues for a reframing of demands away from policy and towards more transformative change and "deeper protest."

How would you analyze Occupy Wall Street today? What went wrong?

This is the big question and of course I've been thinking about it since the end of Occupy. For me, the Occupy movement was a "constructive failure," which basically means it was a failure that taught us something about activism.

The real benefit of Occupy Wall Street is that it taught us the contemporary ideas and assumptions we have about protests are false. Occupy was a perfect example of how social movements should work. It accorded with the dominant theories of protest and activism: it was a historical event, joined millions of people across demographics from around the world around a series of demands, there was little violence. And yet, the movement failed. So my main conclusion is that activism has been based on a series of false assumptions about what kind of collective behavior creates social change.

[2] This interview is reproduced with express consent of Micah White.

What are these assumptions?

First, the central idea of contemporary activism: urban protests, with large numbers of people in the streets, primarily secular, and that revolve around a unified demand. The idea is basically, "Look, if we get a million or ten million or a hundred million people in the streets, finally our demands will be met." However, if you look at the last ten, fifteen years, we have had the biggest demonstrations in history. And the protests continue to grow in size and frequency, and yet they have not resulted in political change.

Now what?

What we learned from Occupy, and also with the Arab Spring, is that revolutions happen when people lose their fear. So I think the main trigger for the next revolutionary movement will be a contagious mood that spreads throughout the world and the human community.

For me, the main thing we need to see is activists abandoning a materialistic explanation of revolution—the idea that we need to put people in the streets—and starting to think about how to spread that kind of mood, how to make people see the world in fundamentally different ways. That's about it. The future of activism is not about pressing our politicians through synchronized public spectacles.

It's not about pressuring politicians?

No. I think the standard forms of protest have become part of the standard pattern. It's like they are expected. And the key is to constantly innovate the way we protest because otherwise it is as if protest is part of the script. It is now expected to have people in the streets, and these crowds will behave in a certain way, and then the police will come and some of the people will be beaten up and arrested. Then the rest will go home. Our participation in this script is based on the false story that the more people you have in the streets the higher your chances of getting social change.

Can you explain better what you're proposing?

What I am proposing is a type of activism that focuses on creating a mental shift in people. Basically an epiphany. In concrete terms, I think there is much potential in the creation of hybrid social movement-political parties that require more complex

behaviors of people like running for political office, seeking votes, participating in the city administration.

The use of social networks is quite controversial among contemporary activists. Some say it is a key tool to increase the reach of the protests, others say it exposes the movement to monitoring by the authorities. What's your opinion?

This is one of the key challenges. Social media is one of the tools that activists have, and we need to use it in some way. But in fact, social media has a negative side, which goes beyond police monitoring.

During Occupy, we experienced it: things started to look better on social networks than in real life. Then people started to focus on social media and to feel more comfortable posting on Twitter and Facebook than going to an Occupy event. This to me is the biggest risk: to become spectators of our own protests.

What do you think of the Black Lives Matter protests that are happening in the United States as a result of racial tension in the country?

Of course I fully support this movement. I am black, I have experienced the discrimination that they are protesting. But thinking strategically, I believe it is very important never to protest directly against the police. Because the police are actually made to absorb protest—the objective of the police is to dissipate your energy in protesting them so you'll let alone the most sensitive parts of the repressive regime in which we live: politicians and big corporations. We must protest more deeply.

What do you think of the use of violence in protests?

Some studies suggest that protesters who use violence are more effective than those that do not. I think violence is ineffective in the long term, because you end up developing a kind of organized structure that is easy for police to infiltrate. In the long run, it is much better to develop nonviolent tactics that allow you to create a stable and lasting social movement.

But doesn't violence exclude the public from the movement?

People become alienated and become frightened when they see the black bloc tactic because they do not understand and can not imagine doing it. And movements

work when they inspire people, when they are positive, affirmative and make people lose their fear.

It's a difficult balance, because you also do not want to be on the other side and only support forms of activism that are tepid and tedious—you have to find a middle ground that excites people and also leaves them with a little fear. No one really has a remedy to resolve the issue.

Your book *The End of Protest* decrees the end of the protest as we know it. Can we reinvent protest?

Protest is reinvented all the time. Every generation experiences its own moments of revolution. The main thing is that we are now living through a time when tactical innovations are happening much more often because people can see what others are doing around the world and innovate in real time.

I think the future of revolution starts with people promising themselves that they will never protest the same way twice. This is very difficult for activists because they like to follow patterns. But when we are committed to innovation, we will invent totally new forms of protest. People did not expect to see something like Occupy when it emerged. And now we do not expect the next big movement... but it will come.

ART + POETRY

Too Soon

Rohan Palavali

Rohan Palavali is a 17 year old student at Coppell High School. In addition to his hobbies, Rohan runs Pal O'Valley Inc. with his sister. Pal O'Valley Inc. sells art and donates all proceeds towards the NAACP and Doctors Without Borders (MSF). More information can be found on Instagram at @pallovalley_cards or their website at palovalley.wixsite.com/cards.

While many of us, myself included, look at the fight for Black lives from a place of privilege we must viscerally understand that too many lives in the United States are directly implicated by the very structures that grant us privilege. For many, the very people sworn to protect them have denied them the most unalienable right of them all: the right to life. As citizens of this nation and the world, we must all fight to have the voices of our Black brothers and sisters be heard and to stop the racism and blatant disregard for life that our officers display sickeningly often.

We must hold our officers accountable for their crimes. Civilian review boards need to be established in cities so that police departments can be transparent to whom they serve. Federal oversight of police departments needs to be increased so that if a police department shows a pattern of violence or excessive force, the federal government can take legal action against them. Laws need to be passed to ban chokeholds, require warnings before shooting, wear body cameras at all times, and ensure complete transparency. More extensive training should be implemented so that officers aren't entrusted with the lives of their communities after mere weeks of police academy.

Sometimes, however, it's not the fault of police officers or their departments. They are simply tasked with too much. Armed officers are not equipped to handle mental health crises, drug addiction charges, school safety, or the many other things they are forced to do just because they are expected to. We need to defund police departments and redistribute this money to mental health services, health care, better educational opportunities, and forces for good in our communities.

Our brothers and sisters murdered at the hands of police departments across the country should never be forgotten. We must always remember who they were - bright people who were taken from us far too young. They all had families who mourned for them. Families who had to bury vibrant, beautiful people just like any of us. I chose to frame George Floyd's face in flowers to reflect this. He was an active member of his community who strove to do the right thing. We must remember him not as a criminal, but as a caring individual with his whole life ahead of him. The best way to memorialize the fallen, however, is not to hold vigils or draw memorials to them. The best way to memorialize the fallen is to avenge them—bring their killers to justice, and make sure no one else is unjustly murdered at the hands of their supposed protectors. This happens through using our voices to fight in the streets and the policy chambers.

Again and Again. (and Again.)

Shruthi Dandamudi

Shruthi Dandamudi is a rising junior who enjoys writing and playing the piano. She has been dancing classically for 9 years and started writing as a freshman in high school. Her passion for poetry led her to start @thedandiary on Instagram to challenge herself and allow her to venture to new places.

Gunshots hit the lives of the innocent,
full force and merciless.
Terror threats and circulatory comments fight them
to lose their battle.
Police cars on Friday nights and every day after,
defenseless victims and
assumed culprits,
to their trial without consent.

If lucky.

With testimonies that are meaningless,
justice that is secondary,
the unlucky use their palms as their only shield,
skin as their only strength,
fear as their only option.

And video recordings as their only evidence.

Our country has gone numb, insane,
tolerant to pain,

oblivious to understanding,
and untruthful to ourselves.

They can't walk
the same grounds we do.
They can't breathe
the same way we do.
They can't plead.

Bang.
He's been shot.

Bang twice.
He's dead.

Bang thrice.
He's forgotten.

Stop waking up to mass shootings and
punctured lives and
being okay with it because it
wasn't your people.

Repost, read, recommend, and
repeat again.
Repost, read, recommend, and
repeat until it all happens again because—

Breaking news.

He's been shot.
Bang twice and thrice.
Bullet in his body,
tears in his blood,
but this one is not on camera.

Repost?
Read?
Recommend?
It happens again;
again and
again and
again.

We need to do more.
Stop letting social media act as an arcade plaza
where you can find the next game to win and
voice to dominate.

Because the dent in the earth already exists.
We've built a bridge over centuries
to break off the hearts of people
identical to us, people innocent.
People who have children to come home to
and bills to pay;
who work tirelessly to help us but
get thrown under a bus,
used like a dirty rag.

For what?

For acting
as though everything is a fresh breeze?
For pretending
our country is the best?

No, please think again.
This is not right.
We need to change.
We are the change.
But we need more.
Fight with your all.
Take responsibility.
NO exceptions.