

MEMO #24

STRENGTHENING CRIMINAL JUSTICE AND LAW ENFORCEMENT: Moving into the Future Requires Looking to the Past

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The new President and Congress will be tasked with improving the functioning of the criminal justice system throughout the country. While some may feel that criminal justice is indeed a local issue over which the federal government has little control, this view is myopic and misguided. The current state of criminal justice in the United States can be directly attributed to the policy decisions of prior Presidential administrations and Congresses. Therefore, moving forward will require that the federal government at least take the lead in various capacities to improve the current state of the system.

The Goals of Strengthening Criminal Justice and Law Enforcement

The challenges associated with dealing with crime in a free society are not new concerns for the current or even a hold-over from the prior administration and congress. Instead, this very challenge has been repeatedly studied and recommendations made about to improve the nature of the process. Perhaps most famously by the President's Commission on Law Enforcement and Administration of Justice which issued its final report in 1967. While some of the commission's recommendations were implemented, many remain unheeded and strangely still applicable today. This sentiment was reiterated by the *President's Task Force on 21st Century Policing*, which identified six key pillars, which are strongly related to one another. The next Congress and Presidential administration would be well advised to build on the six pillars identified in the report.

The ultimate goal of strengthening criminal justice is to work towards the goal of minimizing—if not optimistically eliminating—the risk that a person will become the victim of crime. Additionally, Americans want this goal with the caveat that the process used to accomplish it also respects their fundamental Constitutional rights. As difficult as this task may seem, there is a growing body of evidence suggesting this is realistic.

Recommended Actions

Two places in which the next administration and next Congress could readily strengthen criminal justice and law enforcement are by reconsidering the parts of the War on Drugs and working to improve police-community relations. These two changes are more interrelated than may be readily apparent.

1. Reconsidering parts of the Drug War

In 1971, President Nixon declared war on drugs in the United States (Drug Policy Alliance 2015). Early on, President Nixon's plan called for both demand (treating users) and supply reduction strategies (interdiction efforts) to combat the growing drug problem. However, as time went on the nation focused less on demand reduction and more on supply reduction. The net effect of this policy change is the now well documented rate at which the United States incarcerates its citizens. According to the Bureau of Justice Statistics, as of 2014, the most recent year for which statistics are available, the US incarcerated 612 persons per 100,000 in the population. Approximately 50% of these prisoners were serving time for drug related offenses. The belief being that by incarcerating those associated with the drug trade produces both a specific (on the person sentenced) and general (on others in society) deterrent effect, which would also reduce the violence inherently associated with illicit markets. However, research questions the effectiveness of this policy solution as scientists can attribute *at most* 30% of the great crime decline to the rapid rate at which Americans have incarcerated its citizens (Carson 2015). In the past few years, many states and the federal government have made great strides in reducing prison populations because of legal mandates and/or crushing budgetary pressure. Additionally, other states have decriminalized or legalized the recreational use of marijuana. The changes to the law reflect an evolving moral standard of Americans. When people feel as though an authority figure is not in moral alignment with them, it erodes the legitimacy of the authority figure which can have broader unintended consequences.

Furthermore, the data do not support the belief that crime would rise sharply as a result of increased marijuana consumption (Drug Policy Alliance n.d. and 2015). In addition to the cost savings associated with reduced correctional supervision and legal processing of low-level drug offenders, many of the states have seen a surge in revenue associated with the newly taxed commodity (Keyes 2015). Perhaps more importantly, residents of the places in which marijuana was decriminalized/legalized will no longer see the adverse effects of a criminal record (e.g., being an ex-felon, being ineligible for financial aid, etc.) associated with being caught using marijuana. The fears associated with the use of marijuana—or the legalization of the drug—have never come to fruition. However, it is important to also recognize and address the unintended consequences of decriminalization (increased DUI and accidents) and build on the tools available for police to prevent people under the influence of marijuana from putting themselves and others at risk by accurately detecting who is under the influence of marijuana. Currently, there is no valid and reliable method of assessing (i.e., field sobriety test) or confirming (chemical tests) whether a driver is under the influence of drugs because of how marijuana is metabolized by the body compared to alcohol or other drugs (Koerth-Baker, 2014).

It is recommended that the new Congress and Administration provide federal grants that can be directed to developing field sobriety tests and chemical tests for marijuana use as well as standardizing what content in the blood is considered under the influence (such as B/A .08 for alcohol). Some states are working on this but it is far from standardized.

2. Improving Police-Community Relations

Recent high-profile events highlight the strained nature of police-community relationships throughout the United States, particularly affecting how much confidence people have in the police (Gallup, 2015). The reason for the strained nature of these relationships is complex and is strongly related to the specific strategies used during the War on Drugs. The President's Task Force on 21st Century Policing (2015) collected input from experts from across the country on best practices for improving this situation. These recommendations are based on empirical studies and best-practices that have been developed by law enforcement agencies seeking to improve police-community relations.

a. Promoting De-Escalation Techniques

One of the most controversial aspects of policing relates to the use of force. There are a myriad of laws, moral principles, and ethical guidelines defining those instances in which an officer may justifiably use force. However, often times these decisions must be made in a split-second on incomplete information. The consequences of making the wrong decision could prove potentially deadly for the officer and/or the citizen involved in the encounter. Many police agencies, Dallas and Las Vegas most notably, have focused on de-escalation techniques (Fachner and Carter 2014; Balko 2016). On the whole, these techniques serve to train and reinforce for officers that their *ultimate goal should be the preservation of human life when at all feasible*. Agencies implementing these techniques have seen a massive decline in the number of use of force incidents, especially deadly force incidents. However, this type of training takes financial resources and political will to implement. Both of which the incoming administration and Congress could assist with through budgetary appropriations and other mechanisms.

The federal government should reevaluate federal policies dealing with the mentally ill. Are police departments the best organizations to help those with mental difficulties? At a minimum increased training is needed for responding officers to better recognize mental illness from calculated violence. Officers should be better trained to deploy nonlethal tactics while still conscious about officer safety. The federal government can support best practices and provide funding to help first responders with mentally ill people. Fast response Crisis Intervention Teams (CIT) can be a joint approach to public safety and helping those with mental illness (Watson and Fulambarker 2012).

It is recommended that the incoming president and Congress consider bolstering funding opportunities to assist state and local public safety. Federal grants for community policing should be enhanced with an emphasis placed on de-escalation techniques and dealing with mentally ill citizens. Further, supporting research on the use of non-lethal techniques is needed. With the millions of encounters with police each year, a few videos in social media have defined an "epidemic."

b. Enhancing Transparency

Policing agencies are frequently criticized for their general unwillingness to openly share information with their constituents. More and more agencies are sharing non-sensitive (e.g., calls for service and crime reports) with their constituents, but many are unwilling to share more sensitive data (e.g., detailed use of force and officer misconduct). Failing to make this information readily available to constituents again diminishes the legitimacy of the police because citizens are left to feel as though the police are not held responsible for their misdeeds. Again, the Dallas Police Department has led the way on these sorts of transitions (Robbins 2016). Chief David Brown was quoted as saying, “We believe that the data we have belongs to citizens and we’re the caretakers of that data” (Socrata 2016). The process of transparency has two benefits. First, it assuages the public’s concerns that problematic trends and incidents are available for public review. Second, it makes agencies engage in a reflexive process of self-evaluation looking for potential problems with more zeal than if the data are not publicly available.

One of the most alarming aspects of the current situations regarding police-community relationships is the lack of data at the national-level. This inability of data precludes researchers from making empirical statements about the claims of the police and the community. Furthermore, this is something that could be easily changed by changing the rules associated with grant money distributed to agencies. Simply making it a requirement that agencies report this type of data to be eligible for federal money could fix the problem in short order.

Creating a clearing house for crime data that is accessible to the general public, law enforcement, research institutions, and news outlets can help investigate methods of policing that are working or are not working. Allowing federal dollars to be spent on gun violence is needed to help provide elected officials with valid and vetted policy options to curtail gun violence without banning firearms. Along those same lines, continued partnerships with state and local governments are imperative. Easing some of the onerous requirements and security clearances can better enhance trust between federal, state, and local law enforcement and transparency.

Conclusion

The criminal justice system in the United States clearly could be strengthened by the new Administration and Congress. Making relatively simple changes that are based on available data would likely yield substantive results. Actively considering what Americans want their criminal justice system to do and then holding it responsible is the first step in this process. Only through an efficient and transparent criminal justice system will Americans and policymakers be able to effectively and efficiently realize the goal of public safety.

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