

THE DISASTER OF SUCCESS: LESSONS IN FAILED LEADERSHIP FROM THE CRIMINAL JUSTICE SYSTEM

Frederick W. Thieman

Over the past 50 years, America has been engaged in a war on crime that, by some measurements, has been a glorious success. Crime has dropped, arrests and convictions have accelerated, and America is relatively safe compared to other nations. Yet there is hardly excitement today regarding the state of criminal justice in America. To the contrary, why has criminal justice reform, even in this era of divisiveness, become the primary issue that everyone—Republicans and Democrats, conservatives and liberals, the left leaning American Civil Liberties Union, and the Tea Party oriented Freedom Works—can agree upon? The answer is clear: The criminal justice system is broken.

In the 1960s, the American system of justice, albeit nested within a society still struggling for equality, was widely seen as a model for the rest of the world. With a rate of

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imprisonment similar to other nations, its processes were anchored in widely embraced principles of fairness, due process and trial by peers. Within decades, its incarceration rates would increase sevenfold, its cost would balloon to more than \$80 billion annually, and it would be condemned as unjust and unfair. How did this happen and why? In short, the war on crime reflects a complete failure in many of the basic elements of leadership critical to any campaign:

1. *The Plan.* Any strategic plan requires a clear focus on mission and vision yet criminal justice policy misinterpreted the essential problem to be solved and ignored well-established strategies to enhance public safety.
2. *Guiding Principles.* The criminal justice system was forced to embark on a journey for which it was never constructed, and well-established principles necessary to a clear and compelling purpose were ignored.
3. *Implementation.* Efforts were hampered by a focus on tactics rather than on alignment with strategic goals.
4. *Execution.* Meaningful action was complicated by a dysfunctional chain of command, an absence of accountability, and a lack of transparency that masked inequity and deep-rooted racial disparity.
5. *Measurement.* Too much emphasis was placed on measurements rather than measuring what mattered most.
6. *Cost.* While any strategic plan must consider cost, and balance performance with incentives, the war on crime operated with a blank check and misaligned rewards.

In sum, American criminal justice policy has been a constructed disaster premised upon a faulty strategy implemented in a dysfunctional manner. This failure and the resulting costs, both in economic terms, and in shattered lives, holds important lessons for leaders interested in ensuring public safety in a more fair, just, and efficient manner.

Make Sure You Understand the Problem Before Implementing Solutions

Confronted with a trend in rising crime in the latter part of the twentieth century, criminal practitioners never really stopped to understand the problem or its causes. Focused on treating symptoms rather than seeking cures, America set out to find and remove offenders rather than to prevent crime in the first place. This rush to solutions ignored 200 years of established policing policy that recognized the essence of public safety is the absence of crime. In the 1800s, London's "Bobbies," arguably the first full-time, professional police force in the world, were organized on a set of principles grounded in the belief that the test of police efficiency is the absence of crime and disorder, not the visible evidence of police action (such as apprehensions and arrests). That is why most Bobbies have never carried guns. Nevertheless, in America, police were turned into warriors of apprehension rather than guardians of public safety, and resources were directed to incarceration rather than prevention. Although crime has dropped more than 50% in recent decades, America's rate of imprisonment has continued to surge until today it leads the world in locking up its own citizens: America houses 25% of the world's prisoners but represents only 5% of the world's population. In this rush to build more cells and impose longer prison terms, little analysis went into why crime rates were dropping and whether there was any correlation between rising rates of imprisonment and dropping levels of crime. In fact, studies suggest that more recently, incarceration was less a factor in dropping crime rates than was prevention and deterrence precipitated by: more prevalent use of camera surveillance and technology; the gradual disappearance of cash in

favor of credit cards and electronic funds transfers; the proliferation of home and business security systems; and more efficient deployment of police resources. The march to incarceration continued on in recent decades even though an analysis for the Brennan Center for Justice concluded that “incarceration was responsible for only 6% of the drop in property crime, and that it did not meaningfully contribute to the substantial drop in violent crime.” Indeed, the lack of correlation between overincarceration and dropping crime rates is best illustrated in the following finding by the Pew Center: States that have reduced prison populations the most have seen a larger drop in crime than have those states that have increased prison populations the most. In short, if the strategies to address the problem are wrong, achieving them, especially at tremendous human and financial cost, is hardly success.

Do Not Force a System to Do Things It Was Never Intended to Do

The American criminal justice system historically worked well and, until the latter half of the 20th century, was a model of success, replicated by democracies around the world. This concept of public safety was built upon America’s vision of a government that recognized the importance of a separation of powers within an essential framework of constitutional principles. As with any well-constructed plan, these principles provided well-delineated responsibilities and core values anchored by clear and compelling purpose. But the rush to incarceration forced police, prosecutors, judges, and the entire criminal justice system away from these core values embedded in public safety. Police became the front lines of a new and aggressive enforcement attitude, planting the seeds of distrust between police and communities that would eventually explode into civil unrest. Important constitutional principles were replaced with sound bites and slamming cell doors as a new generation of politicians “got tough on crime.” The ensuing legislative encroachment on other branches of government removed judicial discretion (with draconian sentencing guidelines and laws such as “three

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strikes and you’re out”), while prosecutors embraced newly granted power that resulted in charging decisions often based on triggering enhanced sentences rather than facts. Jails ceased to hold primarily violent criminals convicted of serious offenses and instead, over 60% of jail inmates were simply waiting for a trial, unable to come up with the money to purchase their release, and not even convicted of the offense that landed them there in the first place. The war on crime intertwined the criminal justice system with concerns of racial and economic injustice, and, as a result, confusion, tension, and dysfunction ensued. The enduring principles that had long guided the pursuit of health, safety, and welfare were lost in the rush to incarceration.

Do Not Jump to Tactics Before a Coherent Strategy Is Adopted, Communicated, and Embraced

The forced march into the war on crime was hampered by an undue focus on execution to the detriment of planning. Execution was quick and premised on assumptions that more and longer prison terms would deter crime; yet studies suggest just the opposite. Research on incarceration and deterrence highlighted by the National Institute of Justice shows that the risk of apprehension is what actually deters crime, while the length of a sentence, especially longer sentences, has less deterrent impact. As tactics focused on increasingly longer

prison terms, the costs of housing an increasingly aging population skyrocketed, driving a surge in the building of new prisons. The high cost of housing prisoners drove cost-cutting measures in other areas of the criminal justice system, including the size of police departments, which in turn has influenced apprehension rates, impacting the ability of police to prevent or deter crime in the first place. Perversion of the bail system also had disruptive impacts on public safety. The constitution requires the release of accused individuals pending trial unless the individual is a risk to flee or to commit violence in the interim. Over the past 30 years, however, courts have increasingly required the posting of a monetary bail before the accused can be freed to await trial. This increased use of pretrial cash bail has resulted in more individuals, mostly the poor, being unable to come up with the cash to purchase pretrial freedom. As a result, money (or the absence of it) has become the principal reason that 60% of those sitting in jail are simply awaiting trial. As the court dockets have increased, the time to disposition of cases in front of judges has slowed, keeping pretrial detainees even longer in jail. Finally, the rise in incarceration drove an increase in the number of individuals eventually released from prison, which drastically increased the case loads of probation and parole officers charged with monitoring those who were released. Increased caseloads came with a corresponding difficulty in supervising those most likely to reoffend. In short, tactics implemented were actually in conflict with the intended goal of improving public safety. The war on crime jumped into tactical execution without aligning actions to the overall goals of a coherent strategy.

A Dysfunctional Chain of Command, a Failure of Accountability, and a Lack of Transparency Masked a System Plagued by Racial Disparities and Uneven Enforcement

Law enforcement is essentially militaristic in its need for a clear chain of command. However, despite the fact that crime is intensely local, from victimization

to arrest, policy in the criminal justice arena was often set by legislators in Washington, DC, or in state capitals far removed from the local communities most closely attuned to and victimized by crime. Those closest to a desire for public safety, and the locally tailored strategies to achieve it, were too often ignored. Although eight out of ten Americans believe that police should cite rather than arrest people accused of nonviolent offenses, jail bookings exploded in the war on crime, and jails accepted anyone sent there, without regard to cost or consequences. Worse, a lack of transparency in criminal policy masked the fact that criminal enforcement has been inequitable and criminal justice has been just plain unjust. In the war on crime, Black men have been booked into jail at six times the rate of White men and, although nationally, African Americans and Hispanics constitute only 31% of the general population, they constitute over 50% of those incarcerated. Nor can those shocking statistics be explained by suggestions that police only arrest those who commit crimes. Brookings has reported that Blacks are 3.6 times more likely to be arrested for selling drugs and 2.5 times as likely to be arrested for possession of drugs than are Whites, even though Whites are more likely to sell drugs and equally likely to consume them. The poor and communities of color, with the weakest voices, were those most victimized by the inequitable enforcement. When experts calculate the cost of the war on crime in terms of that kind of

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impact on families and neighborhoods, cost estimates soar to nearly one trillion dollars. The dysfunctional chain of command, absence of accountability, and lack of transparency masked inequity and deep-rooted racial disparity.

Data and Measurement Matter but Measuring What Matters Is More Important

Arrest and incarceration rates became the defining metrics of the war on crime rather than the actual drop in crime itself. Stop and frisk, response times, and “broken window” theories—often targeted specifically on minority neighborhoods—fueled self-fulfilling prophecies and defined enforcement themes rather than the prevention of crime. Initiatives directed at community policing, where community relations and crime prevention are cornerstones, gained little traction in police departments judged by, and therefore committed to, arrests and convictions. Yet the dramatic increase in incarceration rates has neither reduced recidivism nor improved rehabilitation, key components of a coherent public safety strategy. In fact, holding lower risk pretrial defendants in jail for even a few days is strongly correlated with higher rates of new criminal activity both during the pretrial period and years later (in part because those defendants can lose their jobs, have their benefits suspended, or lose their housing). The Arnold Foundation has published statistics showing that when held just two or three days, low risk defendants are almost 40% more likely to commit new crimes before trial than are equivalent defendants held no more than 24 hours. In short, rushing to imprison individuals can actually increase crime, hardly a goal of improving public safety. Measuring the wrong data and declaring success on the wrong metrics did little to aid a better understanding of dropping crime rates or deployment of resources in a more fair and equitable manner. While emphasis was placed on measuring arrests and prison populations, criminal justice policy failed to measure what mattered most—justice and public safety.

The Criminal Justice System Was Given a Blank Check and Avoided Scrutiny Under the Guise of Public Safety

Although virtually all other functions of government have regularly been subjected to intense analysis and cost-cutting scrutiny, the criminal justice system has enjoyed almost unlimited funding with little effort to align incentives with performance. Police are judged and rewarded for arrests and convictions. Overtime pay for police officers is driven by the court appearances integral to the drive for arrests and convictions. Virtually no incentives or rewards exist for police to prevent crime or improve community relations. Likewise, jails have been provided zero incentive to develop thoughtful and consistently applied intake criteria. Jails became “open” facilities, and the price tag has been paid with a blank check. The cost of imprisonment in America increased more than threefold to \$80 billion annually. Worse, 68% of those held in jails across the country have a history of abusing alcohol or drugs or both. Although two of every three Americans believe that crimes driven by addiction or mental illness should be met with treatment, not prison, according to the Vera Institute of Justice, 14.5% of male prisoners and 31% of female prisoners have serious mental illnesses, a rate 4 to 6 times than that expected within the general U.S. population. Despite the lowest crime rate in decades, America now has 2.2 million individuals behind bars and Brookings has noted estimates that one-third of Black male Americans will spend time in state or Federal prison at some point in their lives. Indeed, a recent report highlighted 16 states that have more

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individuals incarcerated than in college dormitories. This country can no longer afford the tremendous cost, in dollars and in destroyed human lives, that the war on crime has wrought. Accordingly, it is not surprising that fiscal conservatives have joined with social justice advocates to demand reform.

Conclusion

There has been a widespread leadership failure within one of the most fundamental functions of our government: the responsibility to preserve public safety while also protecting the individual rights that undergird what it means to be an American. Restoring this proper balance requires a recommitment to leadership focused on learning from past failures in order to inform policy decisions moving forward. And there are encouraging signs that such a leadership is emerging. Today, some 52 cities and counties, in 32 states, under the guidance of the MacArthur Foundation, are convening local leaders to identify more fair, just, and effective ways to preserve public safety. Those efforts are part of a larger nationwide movement, perhaps best reflected in New York City's plans to slash imprisonment rates while closing the infamous Rikers Island jail, which recognize that:

- Crime is uniquely local and requires leadership at the local level to fashion a coordinated effort to preserve public safety by preventing crime;
- Strategic convening of a broad-based coalition of community stakeholders is critical to identifying system goals and the strategies to achieve them; and
- Local infrastructure must be created or enhanced to track and measure system improvements in

a transparent manner that allows for feedback, midcourse correction, and cost containment.

These encouraging leadership efforts must learn from past mistakes and utilize well-established guidelines for strategic planning to build a foundation for public safety that will have lasting national impact.

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Frederick W. Thieman is the Frances Hesselbein Leader-in-Residence in the Graduate School of Public and International Affairs, University of Pittsburgh. Mr. Thieman served as the U.S. attorney for Western Pennsylvania from 1993 to 1997. While serving as the U.S. attorney, Mr. Thieman was instrumental in establishing a youth crime prevention effort that garnered national attention. He was president of the Buhl Foundation, Pittsburgh's oldest multipurpose foundation, from 2007 to 2016, and currently serves as its Chair for Civic Leadership.