

THE UNITED STATES IS NOT A POLICE STATE; THERE NEEDS TO BE RESTORATION OF THE CRIMINAL JUSTICE SYSTEM THROUGH ADJUSTMENT IN ORDER TO ALLEVIATE DISCONTENT EXPRESSED BY THE AMERICAN PUBLIC

JEFFREY T. WENNAR†

I. INTRODUCTION

Police State! The phrase evokes images of SS officers walking the streets of Berlin with muzzled attack dogs. It calls to mind: the Gestapo in Nazi Germany under Adolf Hitler, loading Jews into railroad cars for transportation to the death camps;¹ the KGB in the former Soviet Union under Joseph Stalin, purging people Stalin thought were disloyal or threats;² the DINA of Chilean President Pinochet, torturing those he believed did not support him;³ SAVAK of the Shah of Iran, torturing and murdering thousands;⁴ and the Mukhabarat of Iraq, Saddam Hussein, massacring villages, assassinating, and attempting to assassinate.⁵ A

† Mr. Wennar recently retired from the Montgomery County Maryland State's Attorney's Office where he was a Senior Assistant State's Attorney specializing in felony gang prosecution. Prior to his retirement, Mr. Wennar was also an adjunct professor at The American University Washington College of Law where he proposed, developed and taught two courses: Challenges and Obligations of the Prosecutor and Prosecuting the Gang Homicide. The author wants to thank his wife Judith Herbert for support and help with this article.

1. *SS and the Camp System*, U.S. HOLOCAUST MEMORIAL MUSEUM, <https://www.ushmm.org/wlc/en/article.php?ModuleId=10007399> (last updated Jan. 29, 2016).

2. William Grimes, *Robert Conquest, Historian Who Documented Soviet Horrors, Dies at 98*, N.Y. TIMES (Aug. 4, 2015), <http://www.nytimes.com/2015/08/05/arts/international/robert-conquest-historian-who-documented-soviet-horrors-dies-at-98.html>.

3. *Pinochet's Chile*, WASH. POST, <http://www.washingtonpost.com/wp-srv/inatl/longterm/pinochet/overview.htm> (last visited Mar. 16, 2016).

4. John Barry, *Watching Torture*, NEWSWEEK (Dec. 9, 2007, 7:00 PM), <http://www.newsweek.com/watching-torture-94887>.

5. Jake Tapper, *Massacre Highlights Saddam's Reign of Terror*, ABC NEWS (Mar. 1, 2006), <http://abcnews.go.com/International/story?id=1674089&page=1>; David Von Drehle & R. Jeffrey Smith, *U.S. Strikes Iraq for Plot to Kill Bush*, WASH. POST, June 27, 1993,

police state describes a totalitarian state with “secret police in place of regular operation of administrative and judicial organs of the government.”⁶

Even so, there are those individuals and groups who would label the United States a police state,⁷ and they would attribute actions undertaken by the government as examples to support their conclusions. The phrase is an inflammatory label that has gained popularity recently as a way to describe dissatisfaction with the entire criminal justice system within the United States—inflammatory and inaccurate.

This article posits that the United States of America is not a police state because the United States is a country of laws. It is a country that ascribes to democratic ethos. In the United States, elected legislatures on both the federal and state level enact laws.⁸ Those laws are enforced by law enforcement officers, and those laws are subject to judicial review.⁹ This process exemplifies the checks and balances of the United States Constitution wherein all three branches of government—the legislative, the executive, and the judiciary—act within the parameters of a constitutional article that established that branch, subject to the oversight of the other two branches.¹⁰

The United States Constitution is, and remains, a viable means by which persons within this country enjoy freedoms of religion, press, and peaceful assembly, and those accused of a crime can seek protection and redress for any rights guaranteed

at A1, <http://www.washingtonpost.com/wp-srv/inatl/longterm/iraq/timeline/062793.htm>.

6. *Police State*, MERRIAM-WEBSTER NEW COLLEGIATE DICTIONARY (11th ed. 2014).

7. John W. Whitehead, *Life in the Emerging American Police State: What's in Store for Our Freedoms in 2014?*, HUFFPOST POLITICS (Mar. 8, 2014, 10:16 PM), http://www.huffpost.com/entry/john-w-whitehead/life-in-the-emerging-amer_b_4519241.html (listing government spying, militarized police, police shootings of unarmed citizens, the erosion of private property, strip searches, invasion by drones, criminalization of childish behavior, and common core standards as reasons that America is a police state).

8. U.S. CONST. art. I, §§ 1, 8.

9. *Marbury v. Madison*, 5 U.S. 137, 177–78 (1803).

10. U.S. CONST. art. I, § 1; *id.* art. II, § 1; *id.* art. III, § 1; *see also* *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635–38 (1952) (Jackson, J., concurring) (describing the system of checks and balances established by the U.S. Constitution); *Marbury*, 5 U.S. at 177–78 (establishing that legislative and executive actions are subject to judicial review).

by the Constitution that are perceived to have been denied to that person.¹¹

II. AMERICA'S FREEDOMS

The First Amendment of the United States Constitution states:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and petition for a redress of grievances.¹²

A. Freedom of Religion

This First Amendment prohibits the establishment of a government religion¹³ through the Establishment Clause and protects citizens' rights to practice the religion of their choice through the Free Exercise Clause.¹⁴ "In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between church and state.'"¹⁵ Regarding the separation of church and state, Justice Black wrote, "[G]overnmentally established religions and religious persecutions go hand in hand."¹⁶ It was these protections guaranteed to Americans that President Franklin D. Roosevelt was referring to when he spoke of the "four essentially human

11. U.S. CONST. amend. I (establishing the rights of freedom of religion, press, and peaceful assembly); *id.* amend. IV (protecting the rights against unreasonable searches and seizures); *id.* amend. V (protecting citizens from self-incrimination, being charged for an offense without an indictment from a Grand Jury, the government taking property of an individual without just compensation, and the denial of life, liberty, or property, without due process of law); *id.* amend. VI (establishing the right to a speedy and public trial before an impartial jury of one's peers, to confront one's accuser, and to defense counsel); *id.* amend. VII (establishing the right to a jury trial); *id.* amend. VIII (protecting against cruel and unusual punishment).

12. *Id.* amend. I.

13. *Id.* ("Congress shall make no law respecting an establishment of religion.").

14. *Id.* ("Congress shall make no law . . . prohibiting the free exercise [of religion].").

15. *Everson v. Bd. of Educ.*, 330 U.S. 1, 16 (1947) (quoting *Reynolds v. United States*, 98 U.S. 145, 164 (1878)).

16. *Engel v. Vitale*, 370 U.S. 421, 432 (1962).

freedoms.”¹⁷ He believed it was necessary to secure the right of every person in the world “to worship God in his own way.”¹⁸

Religious freedom was inherent in the founding of the United States. The Puritans fled England seeking relief from religious persecution.¹⁹ Roger Williams left Massachusetts for Rhode Island seeking religious tolerance.²⁰ The framers of the Constitution specifically prohibited any requirements for a religious test “as a Qualification to any Office or public Trust under the United States.”²¹ The United States, through the Constitution and by way of court decisions, has upheld and ensured the freedom of religion.²² The Due Process Clause of the Fourteenth Amendment incorporates the First Amendment, which prohibits states from interfering in the free expression of religion.²³

In 2000, the United States Congress enacted the Religious Land Use and Institutionalized Persons Act.²⁴ The act provides that government may not “impose[] a substantial burden on the religious exercise of a person.”²⁵ This statute prohibits interference with the ability of prisoners to worship as they please.²⁶ A prisoner denied rights guaranteed by this statute may file an action for deprivation of those rights.²⁷

17. President Franklin D. Roosevelt, Annual Message to Congress on the State of the Union: Four Freedoms Speech 7 (Jan. 6, 1941) (transcript available at <http://www.fdrlibrary.marist.edu/pdfs/fftext.pdf>) [hereinafter Four Freedoms Speech].

18. *Id.* at 8.

19. *Religion and the Founding of the American Republic*, LIBR. CONGRESS, <https://www.loc.gov/exhibits/religion/re101.html> (last visited Mar. 16, 2016).

20. Timothy L. Hall, *Roger Williams and the Foundations of Religious Liberty*, 71 B.U. L. REV. 455, 462, 465 (1991).

21. U.S. CONST. art. VI.

22. U.S. ATTORNEY’S OFFICE—DIST. OF MINN., U.S. DEP’T OF JUSTICE, KNOW YOUR RIGHTS: A GUIDE TO THE UNITED STATES CONSTITUTION 2, <https://www.justice.gov/sites/default/files/usao-mn/legacy/2011/09/16/MN%20Civil%20Rights%20FINAL.pdf> (last visited Mar. 31, 2016).

23. *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940) (holding that the First and Fourteenth Amendments protect both the freedom to believe and the freedom to act on those beliefs in society).

24. 42 U.S.C. § 2000cc (2012); *see also Religious Land Use and Institutionalized Persons Act*, U.S. DEP’T JUST. (Aug. 6, 2015), <https://www.justice.gov/crt/religious-land-use-and-institutionalized-persons-act>.

25. 42 U.S.C. § 2000cc(a)(1) (2012).

26. *Id.* § 2000cc-1(a).

27. *Id.* § 1983 (providing for relief for the deprivation of rights); *id.* § 2000cc-1(a).

According to a 2015 research study, Indonesia had the highest level of religious intolerance in 2013.²⁸ “Burma (Myanmar), Egypt, Pakistan and Russia also had some of the highest levels of religious restrictions.”²⁹

B. Freedom of Speech

President Roosevelt advised Congress in his January 6, 1941, State of the Union message that “freedom of speech and expression,” a right guaranteed to Americans, was a basic right to every person throughout the world.³⁰ There is a principle in the Constitution that can be identified as free thought. “[N]ot free thought for those who agree with us, but freedom of thought that we hate.”³¹ Thought becomes an opinion, and an opinion is expressed through speech or writing. Individuals are “entitled to discuss the public issues of the day and thus in a lawful manner, without incitement to violence or crime, to seek redress of alleged grievances.”³² The Supreme Court has cautioned to “be eternally vigilant against attempts to check the expression of opinions that we loathe . . . unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country.”³³ The First Amendment is violated when Congress makes laws to punish dissent.³⁴ Of course there is, and needs to be, a limit to that principle. When expression poses a clear and present danger, restriction is permissible.³⁵ Speech can be restricted if it is

28. Angelina E. Theodorou, *Religious Restrictions Among the World's Most Populous Countries*, PEW RES. CTR. (Mar. 3, 2015), www.pewresearch.org/topics/restrictions-on-religion.

29. *Id.*

30. Four Freedoms Speech, *supra* note 17, at 7.

31. *United States v. Schwimmer*, 279 U.S. 644, 654–55 (1920) (Holmes, J., dissenting) (reasoning that excitement of popular prejudice is not sufficient grounds for suppressing speech).

32. *Dejonge v. Oregon*, 299 U.S. 353, 366 (1937) (holding that the guarantee of the right to peaceably assemble, regardless of who organizes it, is the essence of personal liberty).

33. *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting) (disagreeing with the majority opinion that the First Amendment retains the common law prohibition on seditious libel).

34. *Schenk v. United States*, 249 U.S. 47, 52 (1919) (holding that unlawful dissent is a “question of proximity and degree” relative to the probability of danger).

35. *Id.*

“directed to inciting or producing imminent lawless action” and “likely to produce such action.”³⁶ U.S. courts have set the standard high for government action that interferes with free speech.³⁷ “Those who begin coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only unanimity of the graveyard.”³⁸

The First Amendment is applicable to the states through the Fourteenth Amendment. “[F]reedom of speech and of the press—which are protected by the First Amendment from abridgement by Congress—are among the fundamental personal rights and liberties protected by the Due Process Clause of the Fourteenth Amendment from impairment by the states.”³⁹

C. Freedom of the Press

Entwined with the freedom of speech is the freedom of the press. Prior restraint on the press is unconstitutional.⁴⁰ A 2013 report concluded it is “clear that democracies provide better protection for the freedom to produce and circulate news and information than countries where human rights are flouted.”⁴¹ Of the 179 countries identified, some of the worst ranked were Syria (176), Somalia (175), Iran (174), China (173), Vietnam (172), and Cuba (171).⁴² The United States ranked 32.⁴³

D. Freedom of Peaceful Assembly and Petition the Government for a Redress of Grievances

The final freedom guaranteed to Americans by the First Amendment is the freedom to assemble peaceably and seek

36. *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969).

37. *Id.* (holding that advocating violence to enhance political means is not enough to outlaw such speech).

38. *Bd. of Educ. v. Barnette*, 319 U.S. 624, 641 (1943).

39. *Gitlow v. New York*, 268 U.S. 652, 666 (1925).

40. *Near v. Minnesota*, 283 U.S. 697, 720 (1931).

41. *2013 World Press Freedom Index*, REPS. WITHOUT BORDERS, <https://en.rs.f.org/press-freedom-index-2013,1054.html> (last visited Mar. 16, 2016).

42. *Id.* In 2015, those same counties ranked: Syria (177); China (176); Vietnam (175); Cuba (169); Somalia (172); and Iran (173). *2015 World Press Freedom Index*, REPORTERS WITHOUT BORDERS, <http://index.rs.f.org/#!/index-details> (last visited Mar. 16, 2016).

43. *2015 World Press Freedom Index*, *supra* note 42 (ranking Finland (1) and North Korea (179)).

redress for grievances against the government.⁴⁴ The freedoms are intertwined and coexist with each other. Like the freedom of speech, the freedom to peaceably assemble, meet, and exchange thoughts and ideas is inherent in the Constitution and court decisions.⁴⁵ This last freedom includes the right of free association.⁴⁶ These freedoms have been incorporated against the states.⁴⁷

U.S. Ambassador to the Organization for Security and Cooperation in Europe, Daniel B. Baer, delivered a speech proclaiming, “The foundation of a democratic state is respect for the rule of law and human rights and fundamental freedoms, including the freedoms of association and peaceful assembly.”⁴⁸ The ambassador cited recent examples of abuse of this principle by Russia, Azerbaijan, Kyrgyzstan, Turkey, and Turkmenistan.⁴⁹

III. GUARANTEE OF RIGHTS

In addition to the four freedoms guaranteed by the First Amendment of the United States Constitution, individuals within the United States have a number of guaranteed rights.

A. *Constitutional Articles*

Article Four prescribes that “Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.”⁵⁰ This clause makes court judgments of one state binding in other states.⁵¹ Article Four further prescribes, “The citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states.”⁵²

44. U.S. CONST. amend. I.

45. *Dejonge v. Oregon*, 299 U.S. 353, 364 (1937).

46. *Roberts v. U.S. Jaycees*, 468 U.S. 609, 617–18 (1984).

47. *Edwards v. South Carolina*, 372 U.S. 229, 235 (1963).

48. Daniel B. Baer, U.S. Ambassador to the OSCE, Speech to the Supplementary Human Dimension Meeting on Freedom of Assemble and Association (Apr. 16, 2015) (transcript available at http://osce.usmission.gov/apr_16_15_freedom_of_assembly_and_association.html).

49. *Id.*

50. U.S. CONST. art. IV, § 1.

51. *Id.*

52. *Id.* art. IV, § 2.

This clause prohibits states from discriminating against non-residents in favor of its own citizens.⁵³

Article Six mandates that elected members of Congress, state legislatures, executives, and judicial officers of both the United States and the states “shall be bound by Oath or Affirmation to support the Constitution.”⁵⁴ Nowhere in the Constitution is there a requirement that citizens swear such oath or affirmation to the Constitution. Justice Jackson in striking down a compulsory pledge of allegiance to the flag wrote, “[T]o sustain the compulsory flag salute we are required to say that a Bill of Rights which guards against the individual’s right to speak his own mind, left it open to public authorities to compel him to utter what is not in his mind.”⁵⁵ The Justice continued, “[T]o believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous instead of compulsory routine is to make an unflattering estimate of the appeal of our institutions to free minds.”⁵⁶

B. Constitutional Amendments

For those individuals charged with committing a crime or crimes, a number of Constitutional amendments guarantee those individuals certain rights. The Fourth Amendment guarantees that people have a right “to be secure in their persons, houses, papers, and effects against, unreasonable searches and seizures.”⁵⁷ Those searches and seizures can only occur when a warrant has been issued, and that warrant must be based “upon probable cause, supported by oath or affirmation.”⁵⁸ The warrant application must be presented to and issued by a neutral and detached magistrate.⁵⁹ The warrant must “particularly describe[] the place to be searched, and the person or things to be seized.”⁶⁰ Should evidence be obtained in violation of this amendment, courts may

53. *Id.*

54. *Id.* art. VI, § 1.

55. *Bd. of Educ. v. Barnette*, 319 U.S. 624, 634 (1943).

56. *Id.* at 641.

57. U.S. CONST. amend. IV.

58. *Id.*

59. *Johnson v. United States*, 333 U.S. 10, 14 (1948).

60. U.S. CONST. amend. IV.

suppress or exclude the evidence.⁶¹ These Fourth Amendment protections—protection against unreasonable searches and seizures,⁶² the warrant requirement,⁶³ the standard for judging whether a search or seizure undertaken without a warrant was unreasonable,⁶⁴ and the exclusionary rule⁶⁵—apply to the states through the Fourteenth Amendment.

The Fifth Amendment requires, with very limited exceptions, that “no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury.”⁶⁶ The Amendment forbids a retrial of a person for the same crime after the person has been acquitted of having committed that crime; this is a concept known as double jeopardy.⁶⁷ The Amendment prohibits a criminal defendant from being compelled to be a witness against one’s self.⁶⁸ Finally, the Amendment states that a person may “not be deprived of life, liberty, or property without due process of law.”⁶⁹ These rights—indictment by a grand jury,⁷⁰ protection against double jeopardy,⁷¹

61. *Weeks v. United States*, 232 U.S. 383, 393–94 (1914) (“To sanction such proceedings [the use of illegally obtained evidence] would be to affirm by judicial decision a manifest neglect if not an open defiance of the prohibitions of the Constitution, intended for the protection of the people against such unauthorized action.”), *overruled by* *Mapp v. Ohio*, 367 U.S. 643 (1961).

62. *Mapp*, 367 U.S. at 654.

63. *Aguilar v. Texas*, 378 U.S. 108, 115–16 (1964) (holding that a warrant should not have been issued because the affidavit did not present sufficient probable cause), *abrogated by* *Illinois v. Gates*, 462 U.S. 213 (1983).

64. *Ker v. California*, 374 U.S. 23, 33 (1963) (“[A]lthough the standard of reasonableness is the same under the Fourth and Fourteenth Amendments, the demands of our federal system compel us to distinguish between evidence held inadmissible because of our supervisory powers over federal courts and that held inadmissible because prohibited by the United States Constitution.”).

65. *Mapp*, 367 U.S. at 657 (“[O]ur holding that the exclusionary rule is an essential part of both the Fourth and Fourteenth Amendments is not only the dictate of prior cases, but it also makes very good sense.”).

66. U.S. CONST. amend. V.

67. *Id.*

68. *Id.*

69. *Id.*

70. *Hurtado v. California*, 110 U.S. 516, 538 (1884) (holding that an indictment by grand jury satisfied Fifth Amendment rights as applied through the Fourteenth Amendment).

71. *Benton v. Maryland*, 395 U.S. 784, 794 (1964) (“[T]he double jeopardy prohibition of the Fifth Amendment represents a fundamental ideal in our constitutional heritage, and that it should apply to the states through the Fourteenth Amendment.”).

and the privilege against self-incrimination⁷²—have been incorporated and made binding on the states through the Fourteenth Amendment.

The Sixth Amendment guarantees:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . . to be informed of the nature and cause of the accusation; to be confronted by the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have assistance of counsel for his defense.⁷³

On November 21, 2015, two Italian authors were indicted by Vatican prosecutors after writing books exposing corruption in the Vatican.⁷⁴ The trial began on November 24, 2015.⁷⁵ Gianluigi Nuzzi, one of the authors, “complained that . . . he would not have enough time to prepare his defense. ‘I haven’t had access to the charges or investigative acts, I haven’t spoken to my Vatican court-appointed lawyer, and I am still not sure what I am being accused of.’”⁷⁶ The rights guaranteed to a criminal defendant in the United States would ensure that the failure to inform the accused of the charges and evidence against him would not occur in either a federal or state court.

The right to speedy trial,⁷⁷ public trial,⁷⁸ impartial jury,⁷⁹ notice of accusations,⁸⁰ confrontation of witnesses,⁸¹ compulsory

72. *Griffin v. California*, 380 U.S. 609, 615 (1965) (“[T]he Fifth Amendment, in its direct application to the Federal Government and in its bearing on the States by reason of the Fourteenth Amendment, forbids either comment by the prosecution on the accused’s silence or instructions by the court that such silence is evidence of guilt.”); *Malloy v. Hogan*, 378 U.S. 1, 6 (1964) (“[T]he Fifth Amendment’s exception from compulsory self-incrimination is also protected by the Fourteenth Amendment against abridgement by the States.”).

73. U.S. CONST. amend. VI.

74. Elisabetta Povoledo, *Five Indicted in Leak of Confidential Vatican Documents*, N.Y. TIMES (Nov. 21, 2015), <http://www.nytimes.com/2015/11/22/world/europe/five-indicted-in-leak-of-confidential-vatican-documents.html>.

75. *Id.*

76. *Id.*

77. *Klopfer v. North Carolina*, 386 U.S. 213, 223 (1967) (holding that the accused was denied his right to a speedy trial under the Sixth Amendment when the state indefinitely postponed his trial).

process,⁸² and assistance of counsel⁸³ have all been incorporated as applying in state cases through the Fourteenth Amendment.

The Eighth Amendment establishes that excessive bail is prohibited in federal criminal cases⁸⁴ as well as in state cases.⁸⁵ Cruel and unusual punishment is also prohibited.⁸⁶ The guarantee of all of these rights applies to all persons⁸⁷ regardless of their legal status within the United States.⁸⁸

IV. THE PROBLEM

The United States is not a police state, but the country's criminal justice system is in need of restoration through adjustment in order to assuage those who have lost faith in the system's ability to carry out its objectives: due process⁸⁹ and equal

78. *In re Oliver*, 333 U.S. 257, 266 (1948) (holding that an accused's trial and conviction conducted outside of open court violated the accused's Fourteenth Amendment right to due process).

79. *Duncan v. Louisiana*, 391 U.S. 145, 149 (1968) (“[T]he Fourteenth Amendment guarantees a right of jury trial in all criminal cases which—were they to be tried in a federal court—would come within the Sixth Amendment’s guarantee.”).

80. *In re Oliver*, 333 U.S. at 273 (holding that a person’s right to reasonable notice of a charge against him is a fundamental due process right).

81. *Pointer v. Texas*, 380 U.S. 400, 403 (1965) (“[T]he Sixth Amendment’s right of an accused to confront the witnesses against him is . . . a fundamental right and is made obligatory on the States by the Fourteenth Amendment.”).

82. *Washington v. Texas*, 388 U.S. 14, 19 (1967) (holding that “the right to compulsory process is applicable in this state proceeding” by virtue of the Fourteenth Amendment).

83. *Gideon v. Wainwright*, 372 U.S. 335, 342 (1963) (holding that in all criminal prosecutions, the accused shall enjoy the right to assistance of counsel for his defense, which is made obligatory by the Fourteenth Amendment); *Powell v. Alabama*, 287 U.S. 45, 53 (1932) (“[A] defendant should be afforded a fair opportunity to secure counsel of his own choice.”).

84. U.S. CONST. amend. VIII.

85. *Schilb v. Kuebel*, 404 U.S. 357, 365 (1971) (“[T]he Eighth Amendment’s proscription of excessive bail has been assumed to have application to the States through the Fourteenth Amendment.”).

86. U.S. CONST. amend. VIII.

87. *Yick Wo v. Hopkins*, 118 U.S. 356, 373 (1886) (“[E]qual protection of the laws . . . is secured to the petitioners, as to all other persons, by the broad and benign provisions of the Fourteenth Amendment.”).

88. *Yamataya v. Fisher*, 189 U.S. 86, 101 (1903) (holding that the Fourteenth Amendment right to due process must be afforded to an undocumented Japanese immigrant); *Wong Wing v. United States*, 163 U.S. 230, 238 (1896) (holding that “all persons within the territory of the United States are entitled to the protection guaranteed” by the Fifth and Sixth Amendments).

89. U.S. CONST. amends. V, XIV.

protection⁹⁰ for all persons involved with the criminal justice system. Perhaps more appropriate phrases to describe this dissatisfaction would be *over-criminalization* or *over-federalization*. There exist approximately 4500 federal crimes and approximately 300,000 federal criminal regulations.⁹¹ In the decades between 1980 and 2004, the number of federal crimes increased by thirty percent.⁹² Congress added 452 federal criminal offenses between 2000 and 2007.⁹³ In the past forty years, Congress has increasingly federalized crimes already covered by state law.⁹⁴

Perhaps the discontent prevalent in today's culture may better be described as a concern for police over-reaction. The difference is that in a police state, police act in secret. The totalitarian police state is different from when police act openly and are subject to scrutiny by the public and the press. Police Chief Charles A. Gruber⁹⁵ of South Barrington, Illinois, stated:

We, the police, are the instrument by which government enforces its laws, policies, and legal mores. No institution is more visible than the police. We are scrutinized daily for our actions, our inactions, what we did, what we didn't do, our intentions. Our policies and procedures are debated in the newspapers and reviewed countless times in the courts around the country. And, the most visible area in policy, use of force, continues to be the pinnacle issue for civil rights infractions.⁹⁶

Acknowledged in his speech and article, one of the greatest concerns in America today is the use of force by law enforcement officers.

90. *Id.* amend. XIV.

91. *Defining the Problem and Scope of Over-Criminalization and Over-Federalization: Hearing Before the Over-Criminalization Task Force of 2013 of the H. Comm. on the Judiciary*, 113th Cong. 29 (2014) (statement of John G. Malcom, The Heritage Foundation).

92. *Id.* at 2.

93. *Id.* at 4.

94. *Id.* at 3.

95. Police Chief Gruber is now retired. Ashok Selvam, *South Barrington Police Chief to Retire*, DAILY HERALD (Jan. 10, 2008), <http://prev.dailyherald.com/story/?id=110277>.

96. Charles A. Gruber, *A Chief's Role in Prioritizing Civil Rights*, POLICE CHIEF (Nov. 11, 2004), http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=448&issue_id=112004.

V. POLARIZING EVENTS

On February 4, 1999, Amadou Diallo was standing near his building in New York City at approximately 12:40 in the morning.⁹⁷ Diallo matched the description of a well-armed serial rapist.⁹⁸ He was approached by four plain-clothes police officers who identified themselves as New York police officers.⁹⁹ Diallo ran, failing to obey their orders to stop and show his hands.¹⁰⁰ Diallo reached into his jacket, withdrawing his wallet.¹⁰¹ The porch light was out and Diallo was backlit by the inside vestibule light, showing only his silhouette.¹⁰² One of the officers yelled “gun,” mistakenly believing Diallo had pointed a gun at the officers.¹⁰³ The officers opened fire at Diallo, striking him nineteen times, and resulting in his death.¹⁰⁴ The song “American Skin (41 Shots)”¹⁰⁵ was inspired by this incident.

A law enforcement officer may use deadly force to prevent escape only if the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.¹⁰⁶ Courts apply an objective reasonableness standard in assessing the officer’s actions when making a determination of how that law enforcement officer acted during a use of deadly force incident.¹⁰⁷

The death of Michael Brown on August 9, 2014, in Ferguson, Missouri, and the death of Freddie Gray in Baltimore, Maryland, on April 19, 2015, are just two recent examples.¹⁰⁸

97. Jane Fritsch, *4 Officers in Diallo Shooting are Acquitted of All Charges*, N.Y. TIMES, Feb. 26, 2000, at A1.

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. Ollie Gillman, *NYPD Officer Involved in Killing of Unarmed Black Man Who Was Shot at 41 Times by Cops is Promoted to Sergeant*, DAILYMAIL.COM (Dec. 16, 2015), <http://www.dailymail.co.uk/news/article-3363191/NYPD-officer-involved-killing-unarmed-black-man-shot-41-times-cops-promoted-sergeant.html>.

103. Fritsch, *supra* note 97.

104. *Id.*

105. BRUCE SPRINGSTEEN, *American Skin (41 Shots)*, on HIGH HOPES (Columbia Records 2014).

106. *Tennessee v. Garner*, 471 U.S. 1, 3 (1985).

107. *Graham v. Connor*, 490 U.S. 386, 388 (1989).

108. Joshua Barajas, *Freddie Gray’s Death Ruled a Homicide*, PBS (May 1, 2015, 11:13 AM), <http://www.pbs.org/newshour/rundown/freddie-grays-death-ruled-homicide>;

There is an acknowledged “national debate over how much racial bias skews law enforcements['] behavior, even subconsciously.”¹⁰⁹

These high profile incidents raised valid concerns and initiated a national dialogue, which must continue with objectivity. The images and the stories of these incidents, as well as many others, were reported by the media. In most incidents, the story became bigger than the life of the decedent. The death of Brown resulted in civil and criminal unrest in Ferguson, as well as in Los Angeles, California, and Atlanta, Georgia.¹¹⁰ After the funeral of Gray in Baltimore, there was citywide rioting, looting, and arson.¹¹¹ These incidents of rioting, looting, and arson, and incidents like them resulted in editorials.¹¹² The cry went out for change.¹¹³ The belief existed, and still exists, that the social contract has been breached and the rule of law broken.¹¹⁴

The World Justice Project’s definition of the rule of law is a system in which four universal principles are upheld:¹¹⁵

- (1) The government and its officials and agents as well as individuals and entities are accountable under the law.

Manuel Roig-Franzia et al., *In Ferguson, Three Minutes—and Two Lives Forever Changed*, WASH. POST (Aug. 16, 2014), https://www.washingtonpost.com/politics/in-ferguson-three-minutes-and-two-lives-forever-changed/2014/08/16/f28f5bc0-2588-11e4-8593-da634b334390_story.html.

109. Sharon LaFraniere & Andrew W. Lehren, *The Disproportionate Risk of Driving While Black*, N.Y. TIMES, Oct. 25, 2015, at A1.

110. Veronica Rocha, *183 Ferguson Protestors Arrested in L.A., Many More Than in Other Cities*, L.A. TIMES (Nov. 26, 2014, 12:23 PM), <http://www.latimes.com/local/lanow/la-me-ln-ferguson-protests-130-los-angeles-20141126-story.html>.

111. Polly Mosendz et al., *Public Emergency Declared After Baltimore Rioters Burn Police Cars, Loot Stores Following Freddie Gray Funeral*, NEWSWEEK (Apr. 27, 2015, 4:28 PM), <http://www.newsweek.com/protesters-baltimore-throw-rocks-bottles-police-following-freddie-grays-325771>.

112. *See, e.g.*, Editorial, *No Disclosure, No Justice*, BALT. SUN (June 4, 2015, 3:04 PM), <http://www.baltimoresun.com/news/opinion/editorial/bs-ed-gag-order-20150604-story.html>.

113. *See e.g., id.*

114. JEAN-JACQUES ROUSSEAU, *THE SOCIAL CONTRACT OR PRINCIPLES OF POLITICAL RIGHT* 5 (H.J. Tozer, trans., Wordsworth Eds. Ltd. 1998) (1762) (explaining the legitimacy of the state’s authority over the individual).

115. *What is the Rule of Law?*, WORLD JUST. PROJECT, <http://worldjusticeproject.org/what-rule-law> (last visited Feb. 24, 2016).

(2) The laws are clear, publicized, stable, and just; are applied evenly; and protect fundamental rights, including the security of persons and property.

(3) The process by which the laws are enacted, administered, and enforced is accessible, fair, and efficient.

(4) Justice is delivered timely by competent, ethical, and independent representatives and neutrals who are of sufficient number, have adequate resources, and reflect the makeup of the communities they serve.¹¹⁶

The United States criminal justice system, on both the federal and state levels, meets the definition of the rule of law according to the World Justice Project. No one is above the law. For example, Dennis Hastert, a former Speaker of the U.S. House of Representatives, was indicted and pled guilty to violating federal banking laws.¹¹⁷ The Sixth Amendment right to a public trial has been addressed, and “[t]rial courts are obligated to take every reasonable measure to accommodate public attendance at criminal trials.”¹¹⁸ In the United States, the Due Process Clause¹¹⁹ includes liberty as an economic right.¹²⁰ Facially neutral laws applied in a racially discriminatory manner violated the Equal Protection Clause.¹²¹

VI. LAW ENFORCEMENT TODAY

There are approximately one million sworn federal, state, and local law enforcement officers in the United States¹²² serving a

116. *Id.*

117. Monica Davy & Mitch Smith, *Dennis Hastert Ex-Speaker of House, Pleads Guilty to Banking Violation*, N.Y. TIMES (Oct. 28, 2015), http://www.nytimes.com/2015/10/29/us/dennis-hastert-guilty-plea.html?_r=0.

118. *Presley v. Georgia*, 528 U.S. 209, 213–16 (2010).

119. U.S. CONST. amends. V, XIV.

120. *Allgeyer v. Louisiana*, 165 U.S. 578 (1897) (holding that citizens of a state may not be prohibited from contracting outside of that state under the Constitution).

121. *Yick Wo v. Hopkins*, 118 U.S. 356 (1886).

122. BRIAN REAVES, U.S. DEP’T OF JUSTICE, CENSUS OF STATE AND LOCAL LAW ENFORCEMENT AGENCIES, 2008, at 1 (July 2011), <http://www.bjs.gov/content/pub/pdf/cs1lea08.pdf>.

population of approximately 323 million.¹²³ During the first five months of 2015, 385 people were shot and killed by police nationwide.¹²⁴ Statistically, the breakdown was 171 whites and 154 blacks and Hispanics.¹²⁵ Eighty percent were armed with potentially lethal weapons.¹²⁶

A 1983 report described a twenty-one foot rule as a zone posing a danger to a police officer by a person armed with a contact-distance weapon.¹²⁷ A healthy individual could cover that twenty-one foot distance in one and one-half seconds, which is the same time it would take an officer to draw a handgun and place two center hits on an adult target.¹²⁸ Law enforcement officers are taught to avoid allowing an armed person into this reactionary gap in order to afford themselves a zone of safety.

Malcolm Gladwell uses the killing of Amadou Diallo as an example of how rapid, intuitive judgment can have disastrous effects.¹²⁹ However, law enforcement officers survive by the rule, “make sure when your shift is over you go home alive.”¹³⁰ A pending bill before the U.S. House of Representatives explains, “Most law enforcement officers walk into risky situations and encounter tragedy on a regular basis.”¹³¹ James B. Comey, director of the Federal Bureau of Investigation, stated in his October 24, 2015, speech that “additional scrutiny and criticism of police officers in the wake of highly publicized episodes of police brutality may have led to an increase in violent crime in some cities as officers have become less aggressive.”¹³² Neither extreme,

123. *Population*, U.S. CENSUS BUREAU, <http://www.census.gov/topics/population.htm> 1 (last visited Mar. 16, 2016).

124. Kimberly Kindy, *Fatal Police Shootings in 2015 Approaching 400 Nationwide*, WASH. POST (May 30, 2015), https://www.washingtonpost.com/national/fatal-police-shootings-in-2015-approaching-400-nationwide/2015/05/30/d322256a-058e-11e5-a428-c984eb077d4e_story.html.

125. *Id.*

126. *Id.*

127. Dennis Tueller, *How Close is Too Close?*, SWAT MAG. (Mar. 1983), http://www.theppsc.org/Staff_Views/Tueller/How.Close.htm.

128. *Id.*

129. See MALCOLM GLADWELL, *BLINK: THE POWER OF THINKING WITHOUT THINKING* (2005).

130. *THE UNTOUCHABLES* (Paramount Pictures 1987).

131. Sensenbrenner-Scott SAFE Justice Reinvestment Act of 2015, H.R. 2944, 114th Cong. § 553(a)(1) (2015).

132. Michael S. Schmidt & Matt Apuzzo, *F.B.I. Chief Links Scrutiny of Police with Rise in Violent Crime*, N.Y. TIMES (Oct. 23, 2015), <http://www.nytimes.com/2015/10/24/us/politi>

over-aggressive policing nor lethargic policing, are acceptable as methods to achieve a means of a safe society for all individuals.

In a speech before the International Association of Chiefs of Police, three days after Director Comey's speech, President Obama expressed concern for the way police officers are perceived. He said, "Too often law enforcement gets scapegoated for the broader failures of our society and our criminal justice system . . . we can't expect you to contain and control problems that the rest of us aren't willing to face or do anything about."¹³³ President Obama listed three objectives that were a concern for law enforcement and society as a whole: "First, making sure you've got the resources you need to get the job done. Second, criminal justice reforms that will make the system smarter and fairer. And, third, reducing the risks your officers face in the field with common-sense gun safety reforms."¹³⁴ President Obama made reference to a criminal justice reform bill pending in the House of Representatives.¹³⁵

VII. THE 1960s

The early 1960s in America was a tumultuous time. The Civil Rights Movement spurred the Free Speech Movement.¹³⁶ Both of those movements fueled opposition to the war in Vietnam, creating the Anti-War movement.¹³⁷ All three movements—the Civil Rights, Free Speech, and Anti-War—were followed by the Women's Movement.¹³⁸ Citizens were discontented, and when peaceful protests and civil disobedience failed to effect changes, violence erupted across the nation.¹³⁹ In addition to watching the Commissioner of Public Safety of Birmingham, Alabama, advocate

cs/fbi-chief-links-scrutiny-of-police-with-rise-in-violent-crime.html.

133. President Barack Obama, Remarks at the 122d Annual IACP Conference (Oct. 27, 2015) (transcript available at <https://www.whitehouse.gov/the-press-office/2015/10/27/remarks-president-122nd-annual-iacp-conference>).

134. *Id.*

135. *Id.*

136. Michael J. Hampson, Note, *Protesting the President: Free Speech Zones and the First Amendment*, 58 RUTGERS L. REV. 245, 251–53 (2005).

137. *Id.*

138. *Id.*

139. *Race Relations During the 1960s and 1970s*, SCHOLASTIC, <http://www.scholastic.com/browse/subarticle.jsp?id=1437> (last visited Mar. 7, 2016).

for segregation at all costs,¹⁴⁰ television viewers were also entertained by a fictional, inept, small-town deputy sheriff who bumbled through his duties.¹⁴¹ Either extreme of policing was abhorrent to Americans, and that sentiment resonated in Washington, D.C.

In 1965, President Lyndon B. Johnson established a commission to study all aspects of the criminal justice system in America.¹⁴² In his speech after signing the Law Enforcement Assistance Bills, President Johnson said that the commission “will consider the problems of crime prevention; the needs of law enforcement; the tasks of administering criminal justice in our courts; the effectiveness of our systems of corrections and rehabilitation.”¹⁴³ President Johnson went on to say, “The basic responsibility for dealing with local crime and criminals is, must be, and remains local. But the Federal Government can provide an infusion of ideas and support for research, for experiments, for new programs.”¹⁴⁴ Regarding those men and women who put on their police uniform every day and place themselves in harm’s way, President Johnson acknowledged, “He bears a burden which increases each day. We must give him modern training, organization, and equipment if he is to succeed in saving our cities from the malignancy of crime. This is a major objective of the Law Enforcement Assistance Act.”¹⁴⁵

The commission developed seven specific goals, all of which are relevant to today’s conversation regarding law enforcement: (1) prevent crime; (2) adopt new ways of dealing with offenders; (3) eliminate injustice and unfairness; (4) upgrade personnel; (5) conduct research to find new and effective ways to control crime; (6) appropriate the necessary funds to accomplish

140. *Theophilus Eugene “Bull” Connor (1897–1973)*, NAT’L PARK SERV., <http://www.nps.gov/subjects/civilrights/bull-connor.htm> (last visited Mar. 7, 2016).

141. Louie Estrada, *Don Knotts, TV’s Barney Fife, Dies*, WASH. POST (Feb. 26, 2006), <http://www.washingtonpost.com/wp-dyn/content/article/2006/02/25/AR2006022501535.html>.

142. See PRESIDENT’S COMM’N ON LAW ENF’T & ADMIN. OF JUSTICE, *THE CHALLENGE OF CRIME IN A FREE SOCIETY* (1967), <https://www.ncjrs.gov/pdffiles1/nij/42.pdf> [hereinafter *THE CHALLENGE OF CRIME IN A FREE SOCIETY*].

143. President Lyndon B. Johnson, *Statement Following the Signing of Law Enforcement Assistance Bills* (Sept. 22, 1965) (transcript available at <http://www.presiden cy.ucsb.edu/ws/?pid=27270>).

144. *Id.*

145. *Id.*

the goals; and (7) involve all elements of society in planning and executing changes in the criminal justice system.¹⁴⁶

In 1968, Congress declared “that crime is essentially a local problem that must be dealt with by State and local governments if it is to be controlled effectively.”¹⁴⁷ Having made this determination, Congress established the Law Enforcement Assistance Administration (“LEAA”) within the Department of Justice whose mission was “to assist State and local governments in strengthening and improving law enforcement at every level by national assistance.”¹⁴⁸ This Act sought to strengthen the states rather than the federalization of state and local crimes.¹⁴⁹ Clearly Congress saw street crime as a local rather than a federal issue.¹⁵⁰ Law enforcement was an issue that went beyond the officer on the street to encompass the larger criminal justice system of police, courts, and correctional systems. The LEAA was responsible for federal funding to state and local agencies.¹⁵¹ It administered funding for educational programs, research, state planning agencies, and local crime initiatives.¹⁵² Congress abolished LEAA in 1982.¹⁵³ In 1984, LEAA was succeeded by the Office of Justice Programs (“OJP”).¹⁵⁴ OJP oversees programs and grants in the areas of corrections, courts, juvenile justice, law enforcement, and

146. THE CHALLENGE OF CRIME IN A FREE SOCIETY, *supra* note 142, at vi.

147. Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, tit. I, 82 Stat. 197 (1968).

148. *Id.*

149. Jay N. Varon, *A Reexamination of the Law Enforcement Assistance Administration*, 27 STAN. L. REV. 1303, 1304 (1974).

150. *Id.* at 1305.

151. *Id.* at 1303.

152. *Id.* at 1305.

153. *Records of the Law Enforcement Assistance Administration [LEAA]*, NAT'L ARCHIVES, <http://www.archives.gov/research/guide-fed-records/groups/423.html> (last visited Mar. 7, 2016) (noting that the LEAA was abolished by failure of appropriations on April 15, 1982).

154. *Id.* The mission of OJP is “to increase public safety and improve the fair administration of justice across America through innovative leadership and programs.” *Mission and Vision*, OFF. JUST. PROGRAMS, <http://ojp.gov/about/mission.htm> (last visited Mar. 7, 2016). OJP strives to make the nation’s criminal and juvenile justice systems more responsive to the needs of state, local, and tribal governments and their citizens. *Id.* It aims to partner with federal, state, and local agencies, as well as national community- and faith-based organizations to develop, operate, and evaluate a wide range of criminal and juvenile justice programs. *Id.*

victim's rights.¹⁵⁵ The budget request for fiscal year 2016 is \$2,749,900—a 32.1 percent increase over the level enacted in fiscal year 2015.¹⁵⁶

VIII. PENDING LEGISLATION

The bill President Obama referenced in his speech before the International Association of Chiefs of Police is entitled the Safe, Accountable, Fair, and Effective (“SAFE”) Act of 2015.¹⁵⁷ SAFE’s stated purpose is:

To improve public safety, accountability, transparency, and respect for federalism in Federal criminal law by applying the findings of the bipartisan Over-Criminalization Task Force and evidence-based reforms already made by some States, and reinvesting the resulting savings from doing so in additional evidence-based criminal justice strategies that are proven to reduce recidivism and crime, and the burden of the criminal justice system on the taxpayer.¹⁵⁸

Congress had previously acknowledged that “crime is essentially a local problem,”¹⁵⁹ and the Over-Criminalization Task Force has acknowledged that there were too many federalized crimes covered by state laws.¹⁶⁰

SAFE fails to meet two of the three objectives articulated by President Obama. The bill neither provides the resources to local and state law enforcement officers to “get the job done,”¹⁶¹ nor

155. *About Us*, OFF. JUST. PROGRAMS, <http://ojp.gov/about/about.htm> (last visited Feb. 28, 2016).

156. U.S. DEP’T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, FY 2016 PERFORMANCE BUDGET 5 (Feb. 2015).

157. Sensenbrenner-Scott SAFE Justice Reinvestment Act of 2015, H.R. 2944, 114th Cong. (2015).

158. *Id.*

159. Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, tit. I, 82 Stat. 197 (1968).

160. *Defining the Problem and Scope of Over-Criminalization and Over-Federalization: Hearing Before the Over-Criminalization Task Force of 2013 of the H. Comm. on the Judiciary*, 113th Cong. 3 (2014) (statement of Rep. Robert C. Scott, Ranking Member, Over-Criminalization Task Force of 2013).

161. President Barack Obama, *supra* note 133.

does the proposed legislation address gun reform.¹⁶² The remaining objective—reforming the criminal justice system—when examined closely creates a number of concerns, including those for existing court precedents.

A. SAFE: Title I

Title I of the SAFE bill is captioned: “Identifying and reducing over-federalization and over-criminalization by respecting the balance of powers among the states and the Federal government.”¹⁶³ The first section of this bill requires the United States Department of Justice to “compile a listing of the various Federal law violations that carry criminal penalties.”¹⁶⁴ Although the stated purpose is “to ensure that individuals have fair notice of prohibited conduct and the criminal penalties they bring,”¹⁶⁵ the reality is that all laws, both federal and state, are published and can be accessed through the United States Code on the federal level and through individual state codes. These volumes are available in courthouses and some public libraries throughout the United States. The bill requires the Attorney General to publicize the existence of these federal laws and penalties in a database on the Department of Justice website.¹⁶⁶ This fails to take into consideration that the overwhelming majority of criminal prosecutions occur on the state and local level. For fiscal year 2013, the ninety-four U.S. District Courts¹⁶⁷ provided the U.S. Sentencing Commission data that 80,207 cases had concluded through sentencing.¹⁶⁸ In 2013, the United States population was 316.5 million.¹⁶⁹ Compare the number of federal prosecutions to

162. H.R. 2944.

163. *Id.*

164. *Id.* § 101(a).

165. *Id.*

166. *Id.*

167. *Introduction to the Federal Court System*, U.S. DEP’T JUST., <https://www.justice.gov/usaof/justice-101/federal-courts> (last visited Mar. 8, 2016).

168. GLENN R. SCHMITT & ELIZABETH JONES, U.S. SENTENCING COMM’N, OVERVIEW OF FEDERAL CRIMINAL CASES: FISCAL YEAR 2013, at 1 (2014), http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2014/FY13_Overview_Federal_Criminal_Cases.pdf (explaining that “[a]mong these cases, 80,035 involved an individual offender and 172 involved a corporation or other organizational offender”).

169. *Population, Total*, WORLD BANK, <http://data.worldbank.org/indicator/SP.POP.TOTL> (last visited Feb. 28, 2016).

the number of felony prosecutions in Maryland for the same year. Maryland, whose 2013 population was 5.939 million,¹⁷⁰ had a total of 83,721¹⁷¹ felony prosecutions in the state's circuit courts.¹⁷² In 2013, Maryland's population was 1.88 percent of the total United States population.¹⁷³ All of the federal courts combined had 4.2 percent fewer criminal cases than the entire state of Maryland.¹⁷⁴

Part (b) of Section 101 invests in the Attorney General the power to approve executive branch agency's implementation of regulations carrying criminal penalties.¹⁷⁵ This approval is conditioned upon the criminal penalty having a sunset provision within five years of the penalty's effective date.¹⁷⁶ This provision creates an unconditional power within the head of one cabinet department superior to the secretaries of all other departments, making those other departments subordinate to the actions of the Attorney General.¹⁷⁷

Section 102's objective is to create and implement "procedures to reduce over-federalization."¹⁷⁸ This section mandates "coordination by Federal prosecutors and law enforcement agencies with state prosecutors and law enforcement agencies to reduce duplicative prosecutions of the same offender for the same conduct at both state and Federal levels."¹⁷⁹ The objective of this section is the reduction of federal prosecutions.¹⁸⁰ With the reduction of federal prosecutions, the states will see an increase in state and local prosecutions. While the federal government will experience a cost savings benefit, conversely the

170. *Population of Maryland in 2016*, POPULATION 2016 (Jan. 21, 2016), <http://population2016.com/population-of-maryland-in-2016.html>.

171. MD. JUDICIARY COURT OPERATIONS DEP'T, ANNUAL STATISTICAL ABSTRACT: FISCAL YEAR 2013, at CC-5 (Apr. 2014).

172. *Id.* at CC-2 (explaining that each county in Maryland and Baltimore City has a Circuit Court, which are the trial courts of general jurisdiction).

173. *Percent of U.S. Population for Maryland*, CIVIC DASHBOARDS, http://www.civicdashboards.com/state/maryland-04000US24/percent_of_us_population (last visited Feb. 28, 2016).

174. *Compare* SCHMITT & JONES, *supra* note 168, at 1, *with* MD. JUDICIARY COURT OPERATIONS DEP'T, *supra* note 171, at CC-5.

175. Sensenbrenner-Scott SAFE Justice Reinvestment Act of 2015, H.R. 2944, 114th Cong. § 101(b) (2015).

176. *Id.*

177. *Id.*

178. *See id.* § 102.

179. *Id.*

180. *Id.*

states will see a rise in the amounts they spend to enforce criminal statutes, prosecute offenders, and maintain those individuals who are incarcerated.¹⁸¹ This legislation makes no provision for providing resources and funding to offset an increase in state spending to maintain an effective state criminal justice system.

Section 102 further mandates that the Inspector General will examine the number of cases accepted and declined for federal prosecution¹⁸² and in that examination determine the costs and savings to the federal correctional system for accepting or declining the cases.¹⁸³ This is clearly an attempt at cost saving and has absolutely nothing to do with reforming the criminal justice system. The next section, Section 103, requires the Attorney General “to create and implement procedures to reduce over-incarceration due to pretrial detention in order to (1) reduce overcrowding of pretrial detention facilities; and (2) reduce the cost of pretrial detention.”¹⁸⁴ The overriding purpose of this section appears to be cost reduction. Unlike other sections of this bill where there is statistical data, there are no statistics to support an existence of overcrowding in pretrial detention centers.¹⁸⁵ The reduction in costs, if any, will be at the federal level, not the state level.

Section 104 creates a citizen complaint process.¹⁸⁶ While on its face the objective appears meritorious, the effect will be to create an additional bureaucratic unit that will usurp a role traditionally handled by criminal defense attorneys by means of habeas petitions.¹⁸⁷ The proposed legislation delegates to the Department of Justice a responsibility that is not part of the department’s historical mission.¹⁸⁸ If this process is necessary, the appropriate placement would be within the Federal Defenders

181. *See id.*

182. *Id.*

183. *Id.*

184. *Id.* §103.

185. *Id.*

186. *See id.* § 104.

187. *See id.*

188. *About DOJ*, U.S. DEP’T JUST., <http://www.justice.gov/about> (last visited Mar. 10, 2016) (noting that the mission statement of the U.S. Department of Justice is “[t]o enforce the law and defend the interests of the United States according to the law; to ensure public safety against threats foreign and domestic; to provide federal leadership in preventing and controlling crime; to seek just punishment for those guilty of unlawful behavior; and to ensure fair and impartial administration of justice for all Americans.”).

Service whose stated mission “is to ensure that the right to counsel guaranteed by the Sixth Amendment, the Criminal Justice Act (18 U.S.C. § 3006(A)), and other Congressional mandates is enforced on behalf of those who cannot afford to retain counsel and other necessary defense services.”¹⁸⁹

Pursuant to the Sentencing Reform Act of 1984,¹⁹⁰ Congress established the United States Sentencing Commission¹⁹¹ whose duties are to promulgate guidelines for use by federal courts in sentencing in criminal cases.¹⁹² Persons found guilty of federal statutes are sentenced pursuant to federal law.¹⁹³ In sentencing, federal district court judges are to focus on a broad range of factors in imposing sentencing. The federal guidelines are not mandatory.¹⁹⁴

i. Manipulated Conduct

Subsequent language in Title I of the SAFE bill directs federal judges to disregard criminal behavior if not specifically charged—ignoring plea bargains and disregarding facts at sentencing.¹⁹⁵ The bill accords federal judges the discretion to disregard manipulated conduct during sentencing in controlled dangerous substance cases.¹⁹⁶ Although the term “manipulated conduct” is not defined within the bill, it is clear that the bill finds that defendants who participate in reverse stings or fictitious stash house robberies are to be given special consideration.¹⁹⁷

The bill defines a reverse sting as “a situation in which a person who is a law enforcement officer or is acting on behalf of law enforcement initiates a transaction in which the person offers to sell a controlled dangerous substance, counterfeit substance, firearm or ammunition to a targeted individual.”¹⁹⁸ The bill goes

189. See *Mission—Defender Services*, U.S. CTS., <http://www.uscourts.gov/services-forms/defender-services/mission-defender-services> (last visited Mar. 15, 2016).

190. Sentencing Reform Act of 1984, 18 U.S.C §§ 3551–3742 (2012).

191. 28 U.S.C. § 991 (2012).

192. *Id.* § 994.

193. 18 U.S.C. § 3551(a) (2012).

194. *United States v. Booker*, 543 U.S. 200, 245–46 (2005).

195. Sensenbrenner-Scott SAFE Justice Reinvestment Act of 2015, H.R. 2944, 114th Cong. § 105 (2015).

196. *Id.*

197. *Id.*

198. *Id.*

on to define a stash house as “a location where drugs and/or money are stored in furtherance of a drug distribution operation.”¹⁹⁹ It also defines a fictitious stash house robbery as “a situation in which a person who is a law enforcement officer or is acting on behalf of law enforcement describes a fictitious stash house to a targeted individual and invites the targeted individual to assist the person in robbing such fictitious stash house.”²⁰⁰

Sentencing occurs after an individual has entered a guilty plea or has been found guilty by a trier of fact. In the latter, if there had been a defense of entrapment, counsel for the defendant could raise that affirmative defense during trial.²⁰¹ “A valid entrapment defense has two related elements: government inducement of the crime and a lack of predisposition on the part of the defendant to engage in the criminal conduct.”²⁰²

ii. Conspiracies

SAFE not only permits the sentencing judge to consider a defense that may have previously been rejected by the trier of fact, but it cloaks the defendant with a shield of mitigation by characterizing the conduct as manipulated.²⁰³ The bill seeks to amend the federal Controlled Substances Act²⁰⁴ by holding a defendant accountable for a violation of the act in a conspiracy only for “the defendant’s own unlawful acts; and any unlawful acts of a co-conspirator that: (I) the defendant agreed to jointly undertake; (II) was in the furtherance of that unlawful act the defendant agreed to jointly undertake; and, (III) was intended by the defendant.”²⁰⁵ This proposed language attempts to negate a well-established tenant that proof of an overt act in furtherance of the conspiracy is not required to sustain a drug conspiracy conviction.²⁰⁶

The Fourth Circuit has held that to prove a conspiracy to possess a controlled dangerous substance with the intent to

199. *Id.*

200. *Id.*

201. *Mathews v. United States*, 485 U.S. 58, 63 (1988) (holding that a defendant may raise an affirmative defense and deny the offense with which he was charged).

202. *Id.*

203. H.R. 2944 § 105.

204. 21 U.S.C. § 841 (2012).

205. H.R. 2944, § 105.

206. *United States v. Shabani*, 513 U.S. 10, 11 (1994).

distribute, the government must establish: (1) an agreement to possess the drug with the intent to distribute existed between two or more people; (2) the defendant knew of the conspiracy; and (3) the defendant knowingly and voluntarily became part of the conspiracy.²⁰⁷ Under existing Fourth Circuit case law, the proof of the conspiracy may be circumstantial,²⁰⁸ and once the conspiracy has been established, the evidence need only show a slight connection between the defendant and the conspiracy to support conviction.²⁰⁹

The most salient aspect of existing case law that SAFE seeks to negate for controlled dangerous substance cases is the established precedent that the defendant need not have knowledge of his co-conspirators or of the details of the conspiracy and may be convicted despite having played only a minor role in the overall conspiracy.²¹⁰ The existing case law establishes adequate protection for a defendant charged with a federal drug conspiracy.²¹¹

Addressing the Controlled Substances Act, Title I, Section 106, amends existing federal statutes by limiting federal law enforcement of narcotics cases to “within the special maritime and territorial jurisdiction of the United States.”²¹² Although the section states that it addresses “simple possession,” the language of the bill does not specify a substance nor an amount; the bill only prohibits federal law enforcement officers from enforcing the controlled dangerous substance laws anywhere other than those areas designated in the bill.²¹³

207. *United States v. Wilson*, 135 F.3d 291, 306 (4th Cir. 1998).

208. *United States v. Mabry*, 953 F.2d 127, 130 (4th Cir. 1991).

209. *United States v. Brooks*, 957 F.2d 1138, 1147 (4th Cir. 1992).

210. *United States v. Allen*, 716 F.3d 98, 103 (4th Cir. 2013).

211. *Id.* at 103–04 (holding evidence of a simple buy-sell transaction is insufficient on its own to prove conspiracy); *United States v. Hackley*, 662 F.3d 671, 679 (4th Cir. 2011) (holding that government agents cannot be a defendant’s sole co-conspirator); *United States v. Stephens*, 482 F.3d 669, 672 (4th Cir. 2007) (“It is beyond dispute that a criminal defendant’s conviction cannot rest entirely on an uncorroborated extrajudicial confession.”).

212. Sensenbrenner-Scott SAFE Justice Reinvestment Act of 2015, H.R. 2944, 114th Cong. § 106 (2015).

213. *Id.*

B. SAFE: Title II

Title II of the SAFE bill is captioned: “Addressing information disparity and accuracy in criminal prosecutions to protect innocence robustly and to reduce the number of wrongful convictions.”²¹⁴ This bill highlights an aspect of a system that needs to be repaired. The bill cites national statistics of eyewitness identification but fails to indicate that the overwhelming majority of these misidentifications occurred at the state level.²¹⁵ A number of police departments have implemented procedures to use for eyewitness identification. Wisconsin has developed a model “to ensure that the highest quality evidence possible is obtained from eyewitnesses.”²¹⁶ Photo arrays must possess certain features of reliability. Those arrays cannot be impermissibly suggestive in either the nature of the photograph itself or the conduct of the police or prosecutor as it affects the viewer.²¹⁷ The double blind method for presenting photo arrays is the preferred method.²¹⁸ In this procedure, the administrator of the array is not in a position to unintentionally influence the witness’s selection because the administrator of the array did not assemble the array nor does the administrator know who the suspect is within the array.²¹⁹ The instructions to the witness need to be non-biased to include that the perpetrator may or may not be present and that the administrator does not know which person is the suspect.²²⁰ The array should be presented sequentially—one photograph at a time—rather than simultaneously.²²¹ This discourages relative judgment and encourages absolute judgment of each person presented because the eyewitnesses are unable to see the subjects all at once and are unable to know when they have seen the last subject.

Likewise, the bill states that DNA has been used to exonerate the innocent and identify the real perpetrators, again

214. *Id.*

215. *Id.*

216. BUREAU OF TRAINING & STANDARDS FOR CRIMINAL JUSTICE, WIS. DEP’T OF JUSTICE, MODEL POLICY AND PROCEDURE FOR EYEWITNESS IDENTIFICATION 1 (Apr. 1, 2010).

217. *See id.*

218. *Id.* at 8.

219. *Id.* at 4.

220. *Id.* at 3.

221. *Id.*

failing to identify this as primarily a state issue.²²² The legislation fails to appropriate funding to the states for new labs, chemists, and testing.

i. Informants

SAFE defines an informant as “a person who was not a victim of a crime who offers to provide information or assistance to law enforcement in exchange for leniency or some other benefit.”²²³ The bill categorizes informants seeking some benefits as “inherently suspect.”²²⁴ The bill goes on to find and declare that “The use of informant testimony without a system to properly assess its reliability or corroborate its substance provides fertile ground for obstruction of the fair administration of justice.”²²⁵

This finding, incorporated within the proposed legislation, fails to consider or account for the specific language of the Sixth Amendment which states, “[I]n all criminal prosecutions, the accused shall . . . be confronted with the witnesses against him.”²²⁶ This is referred to as the Confrontation Clause. The intent of this clause is to test the reliability of out-of-court testimonial statements in one manner alone.²²⁷ The Confrontation Clause has come to be called “the crucible of cross examination.”²²⁸ The Confrontation Clause contemplates two classes of witnesses: (1) those against the accused and (2) those in his favor. It is the burden of the prosecutor to produce the former.²²⁹ The Confrontation Clause bars the admission of “testimonial” statements unless the witness testifies at trial or the witness is unavailable and his statement has previously been subject to an adequate opportunity for cross-examination.²³⁰ The right of confrontation does not go so far as to guarantee either effective or successful cross-examination.²³¹ Statements are testimonial where the circumstances “objectively

222. Sensenbrenner-Scott SAFE Justice Reinvestment Act of 2015, H.R. 2944, 114th Cong. § 201(2) (2015).

223. *Id.* § 201(22).

224. *Id.*

225. *Id.* § 201(24).

226. U.S. CONST. amend. VI.

227. *Crawford v. Washington*, 541 U.S. 36, 61 (2004).

228. *Id.*

229. *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 313 (2009).

230. *Crawford*, 541 U.S. at 59.

231. *United States v. Owens*, 484 U.S. 554, 560 (1988).

indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution.”²³²

Historically, a dying declaration was an exception to the Confrontation Clause.²³³ One additional exception on equitable—rather than historical grounds—is forfeiture by wrongdoing.²³⁴ The rule of forfeiture by wrongdoing admits statements when the defendant’s wrongdoing results in the declarant’s unavailability with the purpose of preventing the declarant from testifying.²³⁵ Each of these exceptions permits the use of the out-of-court statement when specific elements are proven by the prosecutor.

In order to highlight potential issues with informants, the Fourth Circuit has developed an “informant instruction”:

The testimony of an informer who provides evidence against a defendant for pay, or for immunity from punishment, or for personal advantage or vindication, must be examined and weighed by the jury with greater care than the testimony of an ordinary witness. The jury must determine whether the informer’s testimony has been affected by interest or by prejudice against a defendant.²³⁶

The Sixth Amendment confrontation protections are applicable in state courts via the Fourteenth Amendment, as well as in federal courts.²³⁷

C. SAFE: Title III

Although well-meaning in its intent, some of the most glaring provisions of SAFE that will fail to address public safety concerns follow. Title III is captioned: “Encouraging accountability with greater use of evidence-based sentencing

232. *Davis v. Washington*, 547 U.S. 813, 822 (2006).

233. *Giles v. California*, 554 U.S. 353, 362 (2008).

234. *Id.* at 359.

235. *Id.*

236. *United States v. Luck*, 611 F.3d 183, 186–87 (4th Cir. 2010) (quoting *United States v. Brooks*, 928 F.2d 1403, 1409 (4th Cir. 1991)).

237. *Pointer v. Texas*, 380 U.S. 400, 403 (1965).

alternatives for lower-level offenders.”²³⁸ This title mandates federal courts to impose a period of probation to a first-time federal offender who is eligible for probation.²³⁹ The caveat in this section, “first time federal offender,” fails to take into consideration a person who has previously been convicted on the state level, thus providing for probation for repeat offenders with multiple convictions for drug offenses if they are new to the federal system.²⁴⁰ This title directs the U.S. Sentencing Commission “to formulate the sentencing guidelines in such a way as to ‘minimize the likelihood that the Federal prison population will exceed the capacity of the Federal prisons.’”²⁴¹ At its very core, this section too considers the cost of incarceration over the punishment of individuals who have violated the law.

Section 402 creates several additional levels of “safety valves” under the Federal Sentencing Guidelines for the release of drug offenders.²⁴² Section 405 allows for retroactive application of the Bill’s provision for reduced sentences.²⁴³

Sections 532, 541, and 542 restrict federal courts’ power to revoke probation and establish a quota system for incarceration with a financial bonus for compliance.²⁴⁴ Examining these last sections, along with the other sections discussed, a federal decision to decline a criminal case will cause that same case to be prosecuted at the state level. It is a slight of hand to call these provisions criminal justice reform when a shifting of the case from the federal criminal justice system to the state criminal justice system occurs.

Section 553 addresses “investing in and supporting safe law enforcement.”²⁴⁵ This section identifies providing federal law enforcement with tactical first-aid kits and first-responder training; antiballistic vests and body armor; pepper spray to correctional officers; and hiring additional law enforcement and correctional

238. Sensenbrenner-Scott SAFE Justice Reinvestment Act of 2015, H.R. 2944, 114th Cong. tit. III (2015).

239. *Id.* § 302.

240. *Id.*

241. *Id.* § 303(b)(1) (internal quotation omitted).

242. *Id.* § 402.

243. *Id.* § 405.

244. *Id.* §§ 532, 541–42.

245. *Id.* § 553.

officers on the federal level.²⁴⁶ The legislation suggests “providing incentives for State and local law enforcement to do” the same,²⁴⁷ but it makes no fiscal appropriation for either federal or state law enforcement to implement these recommendations.

President Johnson in 1968 and President Obama almost fifty years later, recognized that local law enforcement officers need and deserve the tools to perform their jobs effectively, efficiently, and safely.²⁴⁸ House Bill 2944 does not afford local and state law enforcement those resources. For half a century, the executive and legislative branches have acknowledged that it is local and state law enforcement that responds to and deals with crime on a daily basis. Yet this piece of legislation, referred to by President Obama as addressing criminal justice reform, contains no provisions to help the men and women of law enforcement who place themselves in harm’s way daily.

IX. RESOLUTIONS FOR CHANGE

In his speech, Chief Gruber advised police departments to establish a clear vision in addressing civil rights.²⁴⁹ The way a police department addresses civil rights needs to be clear and unambiguous, and clearly communicated to the department.²⁵⁰ Officers need to be held accountable for a failure to comply with those written directives.²⁵¹ There must be a zero tolerance policy for failure to comply.²⁵² Chief Gruber advocated training-retraining-training.²⁵³

The first step is training at the entry level. In 1979, four police associations²⁵⁴ created the Commission on Accreditation for

246. *Id.*

247. *Id.*

248. President Lyndon B. Johnson, Special Message to the Congress on Crime and Law Enforcement: “To Insure the Public Safety” (Feb. 7, 1968) (transcript available at <http://www.presidency.ucsb.edu/ws/?pid=29237>); President Barack Obama, *supra* note 133.

249. Gruber, *supra* note 96.

250. *Id.*

251. *Id.*

252. *See id.*

253. *Id.*

254. *The Commission*, CALEA, <http://www.calea.org/content/commission> (last visited Mar. 27, 2016) (stating that the four police associations that created CALEA are: International Association of Chiefs of Police (“IACP”); National Organization of Black Law Enforcement Executives (“NOBLE”); National Sheriffs’ Association (“NSA”); and Police Executive Research Forum (“PERF”)).

Law Enforcement Agencies (“CALEA”).²⁵⁵ This department accreditation is a “method for an agency to voluntarily demonstrate their commitment to excellence in law enforcement.”²⁵⁶ CALEA extended its accreditation process in 2002 to include Public Safety Academy Accreditation.²⁵⁷ This academy accreditation establishes standards derived from best practices—*what* they should be doing, not *how* they should be doing, which is left up to the individual academy.²⁵⁸

Using the CALEA model, all public safety academies, regardless of who operates them should conform to a national standard of graduation requirements. In addition to the basic training, in order to graduate from the academy and be certified as a law enforcement officer, each recruit should be required to successfully pass a block on ethics for law enforcement. Presently, the United States Holocaust Memorial Museum offers a five-hour program on leadership and ethics training for law enforcement professionals titled “Law Enforcement and Society: Lessons of the Holocaust.”²⁵⁹ In addition to a guided tour of the Holocaust Museum, there is an in-depth examination and discussion of the role of the police in conjunction with the Nazis and an interactive examination of the role of police in American society today.²⁶⁰ There are a number of federal and local law enforcement agencies that already have this block as a component of their academy training.²⁶¹

The Holocaust Museum also has a one-day program for judges, prosecutors, and court administrators.²⁶² The program is either conducted on-site in Washington, D.C., or at state bar and

255. *Id.*

256. *Law Enforcement Accreditation*, CALEA, <http://www.calea.org/content/law-enforcement-accreditation-program> (last visited Mar. 27, 2016).

257. *Public Safety Training Academy Accreditation*, CALEA, <http://www.calea.org/content/public-safety-training-academy-accreditation> (last visited Mar. 27, 2016).

258. *Id.*

259. *Law Enforcement*, U.S. HOLOCAUST MEMORIAL MUSEUM, <https://www.ushmm.org/professionals-and-student-leaders/law-enforcement> (last visited Mar. 11, 2016).

260. *Id.*

261. *Law Enforcement Training*, FED. BUREAU INVESTIGATION, <https://www.fbi.gov/about-us/training/law-enforcement-training> (last visited Mar. 15, 2016) (stating that ethics and integrity are part of the training program for domestic and international leaders).

262. *Judiciary*, U.S. HOLOCAUST MEMORIAL MUSEUM, <https://www.ushmm.org/professionals-and-student-leaders/judiciary> (last visited Mar. 11, 2016).

judicial conferences.²⁶³ The training covers topics like the responsibility of judges to the legal system as a whole, the challenges to a fair and impartial administration of justice in the United States, and the role of judges in ensuring that the kind of failures that led to the Holocaust do not happen in this country.²⁶⁴

To be more effective, the United States Department of Justice needs to submit a budget request for funds to create and monitor, in conjunction with the United States Holocaust Memorial Museum and the National Civil Rights Museum, a traveling program—Law Enforcement and Society—that is fully funded and staffed for presentations at all public safety academies throughout the United States. This training needs to be funded and presented to each and every academy class.

In addition, recruits need to be trained to recognize signs of mental illness and trained to adjust their reactions accordingly. Crisis intervention training must be part of both the basic recruit training in the academy and at all future in-service trainings. Each and every police department in the United States should have officers trained and certified in crisis intervention management. Montgomery County Police Department in Maryland has a forty-hour certification course that focuses on safely handling incidents involving persons with mental illness, developmental disabilities, co-occurring disorders, and brain injuries.²⁶⁵

Law enforcement recruits must experience a block of training addressing de-escalation of situations through appropriate communication. This would begin with the initial officer-citizen encounter and the specific phrases, tone, and body language that an officer would use to begin the encounter. A portion of this block should include verbal confrontation training and the use of language to manage all situations involving citizens. Retraining would consist of reinforcing the skill sets initially taught during the academy training. Officers would need to demonstrate proficiency in these skills in order to maintain certification from their state training commission.

263. *Id.*

264. *Id.*

265. Memorandum from Susan J. Farag & Essie McGuire, Legislative Analysts, to Pub. Safety & Health & Human Servs. Comms. Montgomery Cty., Md. (Mar. 29, 2011), http://www.montgomerycountymd.gov/COUNCIL/Resources/Files/agenda/cm/2011/110331/20110331_PSHHS1.pdf.

Section 553 of the SAFE bill, “Investing in and Supporting Safe Law Enforcement,”²⁶⁶ addresses some means of aid to federal law enforcement with the caveat of “providing incentives to State and local law enforcement and corrections agencies to do the same.”²⁶⁷ A designated sum needs to be appropriated by Congress and set aside for state and local law enforcement agencies—with a specific formula for large, medium, and small police departments and correctional services—for funding training and equipment upgrades to include ballistic vests, body cameras, and in-car video systems. There needs to be monies allocated by Congress to assess staffing needs and the funding of additional officers. This should be part of the yearly federal budget and not just a one-time appropriation.

State and local prosecutors also need to be trained on a regular basis. The majority of the persons charged with crimes are prosecuted at the state and local level. There is a National Advocacy Center on the campus of the University of South Carolina in Columbia, South Carolina.²⁶⁸ Originally, the facility was envisioned as a training venue for federal prosecutors and federal personnel with a separate program for state and local prosecutors under the auspices of the National District Attorney’s Association.²⁶⁹ The center has closed to state and local prosecutors²⁷⁰ as a result of Congress’s failure to appropriate sufficient funding.

All stakeholders need to be included in the coordination and establishment of services directly within the communities affected. This would bring resources to the people in need of those services instead of forcing the individuals to travel to a county seat to obtain the services.

The citizens of America are advocating for a change. If Congress is listening and is serious about complying with the demands of Americans, Congress should make the financial appropriations—specifically for state and local law enforcement

266. Sensenbrenner-Scott SAFE Justice Reinvestment Act of 2015, H.R. 2944, 114th Cong. § 553 (2015).

267. *Id.*

268. *Training*, OFFS. U.S. ATT’YS (Oct. 14, 2015), <https://www.justice.gov/usao/training>.

269. *National Advocacy Center Courses*, NAT’L DISTRICT ATT’YS ASS’N, <http://www.ndaa.org/nac.html> (last visited Mar. 11, 2016).

270. *Id.*

agencies—available in order to restore through adjustment the respect for and the integrity of the American criminal justice system.