



Prepared Testimony of Vikrant P. Reddy
Senior Policy Analyst, Texas Public Policy Foundation
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Members of the Task Force, thank you for the opportunity to appear before you today to discuss this important issue. My name is Vikrant P. Reddy, and I am a senior policy analyst in the Center for Effective Justice at the Texas Public Policy Foundation. TPPF’s mission is to promote and defend liberty, personal responsibility, and free enterprise in Texas and the nation by educating and affecting policymakers with academically sound research and outreach. We seek to advance these goals in several different policy areas. My work concerns research and advocacy in the area of criminal justice.

We are here today because of several high-profile interactions between police officers and civilians that have resulted in tragic civilian deaths. This task force exists, in part, to recommend policy reforms that will produce fewer police-civilian interactions that result in death or serious bodily injury.

The most obvious way to have fewer police-civilian interactions that result in injury is, of course, to have fewer police-civilian interactions, period. To this end, one of the most significant things that federal, state, and local governments can do to improve policing is scale back the extraordinary number of criminal laws in America.

When the U.S. Constitution was ratified, it provided for three federal criminal offenses: treason, counterfeiting, and piracy.¹ Today, there are approximately 5,000 federal criminal laws scattered throughout the U.S. Code.² These are separate from the approximately 300,000 agency regulations that carry criminal penalties.³ There are also thousands more crimes at the state and local level. In my home state of Texas, approximately 1,300 criminal offenses are located outside of the state penal code.⁴ This includes eleven separate felonies relating to oyster harvesting.⁵

What happens when police officers observe people committing these “crimes?” Yale Law Professor Stephen Carter says that he advises his “first-year students never to support a law they are not willing to kill to enforce ... [because] the police go armed to enforce the will of the state, and if you resist, they might kill you.”⁶

This seems common sense. Some crimes will be noticed by the police. The police are going to enforce the prohibition against those crimes by confronting offenders, perhaps seeking to make an arrest. In a small number of cases, these confrontations will become violent, and in a very small number of cases, these violent confrontations will result in death. This is inevitable.

That is why policymakers more often need to ask themselves Professor Carter’s question before passing new criminal laws: is this a law that I would be willing to kill to enforce? Americans are generally

willing to kill to enforce traditional criminal laws, such as those against murder, rape, and robbery. It is difficult to find many Americans, however, who would be willing to kill enforce oyster harvesting violations.

In the sad case of Eric Garner of Staten Island, for instance, Mr. Garner was killed during a police confrontation that arose from his underlying crime of selling untaxed, individual cigarettes, rather than packs, on a street corner. Selling individual cigarettes—colloquially called “loosies”—is a crime in New York. This criminal law was almost certainly passed in order to crack down on the profit incentive created by New York’s onerous cigarette taxes. (Individuals can purchase cigarettes cheaply in low-tax states and then sell them in New York for a profit.) The New York cigarette tax, in turn, was probably passed with the laudable goal of reducing smoking among New Yorkers.

Nevertheless, as well-intentioned as the goal may have been, I doubt that many policymakers asked themselves: ‘Is this a law that I am willing to kill to enforce?’ Had they done so, I suspect that the law—however well-intentioned—would not have passed. Policy-makers cannot pass laws of this sort, and then imply that they did not expect police officers to enforce them. That makes a mockery of the rule of law.

To some extent, policy-makers can limit police-civilian confrontations by passing laws that are enforced through citations, rather than arrests. (In Texas, for instance, we have a Class C misdemeanor classification for crimes for which officers have the discretion simply to write tickets.) While I strongly encourage policy-makers to look for opportunities like this, I want to caution that it will not be a panacea. A small number of offenders will repeatedly ignore citations, and at some point, an arrest will need to be made. Again, a small number of these arrests will become violent, with tragic results.

For this reason, policymakers should focus, first and foremost, on identifying crimes that can be eliminated altogether—not merely reclassified.

I also want to take a moment to discuss how this recommendation might help improve police morale and the trust between police officers and civilians.

A county attorney in Texas once told me that people who dream of becoming prosecutors do not spend their days in law school dreaming about prosecuting petty crimes. They dream of prosecuting murderers, rapists, and drug kingpins. Those are the cases that bring them professional renown and personal satisfaction.

I suspect the same thing holds for police officers. I doubt that young men and women training to become officers are dreaming of arresting people for selling “loosies” or for harvesting oysters at the wrong time of day. I imagine that they want to find and arrest murderers, rapists, and drug kingpins. Let police officers prioritize their time and energy on fighting serious crimes, and I think you will find that police officers develop better morale.

I think you will also find that this will lead to police officers developing better relationships with the people in the communities that they are policing. Few people perceive police officers to be unreasonably harassing their neighbors when officers make arrests for violent crimes, or theft, or property destruction. They do perceive harassment, however, when officers make arrests for actions that historically never would have been considered crimes. This perception of harassment leads to a diminution of trust, and this diminution of trust could have significant public safety consequences. Individuals should trust police officers enough to alert them about serious crimes. That may not happen if an individual is resentful of the police presence in his or her neighborhood.

Finally, I want to say something about “broken windows” policing and other law enforcement strategies that focus on targeting low-level crimes. These policies should generally be continued—and there is absolutely nothing inconsistent about advocating for both broken windows policing and the reversal of overcriminalization.

Some crimes, while they may be “low-level,” are legitimate crimes—in the sense that they carry moral blameworthiness, have directly identifiable victims, and would traditionally have been recognized as criminal acts—and police officers should certainly enforce the law against these crimes. Graffiti is an excellent example. Graffiti is perhaps a “low-level” crime in the sense that it does not involve violence. Nevertheless, graffiti is the destruction of someone else’s property, and law enforcement should not ignore it.

When police officers in New York City began taking graffiti—and other similar crimes—more seriously in the 1990s, crime rates began a rapid decline. It is also worth noting that, according to the Vera Institute for Justice, incarceration also declined in New York.⁷ It would be incorrect to assume that “broken windows” policing was responsible for the entirety of the crime and incarceration decline, but it seems sensible to argue that the policy was responsible for at least a portion of the decline. On the metrics Americans care about the most—reducing crime and reducing incarceration—Broken Windows worked.

The only respect in which Broken Windows has been problematic is that it may have eroded the trust that some individuals have in police officers. We can solve this problem without getting rid of Broken Windows altogether. The solution is to reduce the number of crimes.

Issuing a citation—or in rare instances, making an arrest—for graffiti is a legitimate use of police power, and in the long run, it will result in less crime and less incarceration. On the other hand, halting adults from selling individual cigarettes to other adults is a less legitimate exercise of power. Because of the erosion of trust that such policing produces, it is not clear that crime rates and incarceration are significantly affected. The only thing that is clear is that such policies are an invitation to police-civilian confrontations—some of which will end with tragedy.

To conclude, I want to let the task force know that we are aware of the complexity of this problem. There may be modifications to police procedure that could result in fewer tragedies when police confront civilians. I will leave it to others, however, to present some of these ideas, as this is not a focus our research. My goal today is to explain not what the police officers need to do—and not even what the civilians need to do—but rather what the policy-makers need to do. Policy-makers must bear some culpability for the recent tragedies that have drawn worldwide media attention.

We will see some progress in police-civilian relations if policy-makers recognize their role in these confrontations, and if they more often ask themselves Professor Carter’s question before proposing or voting on new crimes: ‘Am I willing to kill to enforce this law?’

¹ Edwin Meese, III, [“The Constitution and Crime,”](#) *Washington Times*, Sep. 15, 2010.

² Testimony of Steven D. Benjamin on behalf of the National Association of Criminal Defense Lawyers before the House Committee on the Judiciary Overcriminalization Task Force Re: “The Crimes on the Books and Committee Jurisdiction,” July 25, 2014, at 4-5.

³ *Id.*

⁴ Vikrant P. Reddy, [More Law, Less Justice: The Proliferation on Non-Traditional Crimes in the Texas Legal Code](#) (Texas Public Policy Foundation October 2014), 1.

⁵ Chapter 76 of the Parks & Wildlife Code governs oysters, and section 76.118 assigns penalties for various oyster offenses. See TEX. PARKS CODE ANN. [§ 76.118](#) (Vernon 2011). If an offender has been found guilty on two or more

occasions in a five-year period of having violated sections 76.101 (Oyster Licenses Required), 76.107 (Sale of Sport Oysters Prohibited), 76.109 (Night Dredging Prohibited), or 76.116 (Oysters from Restricted Areas), then his third offense within that period is a felony. *Ibid.* Similarly, if an offender has been found guilty on just one prior occasion of having violated section 76.109 and section 76.116, then the offense is a felony. Notably, this figure, which was tabulated by my colleague Marc Levin of the Texas Public Policy Foundation, was rated as “mostly true” by the fact-checking organization Politifact. The fact-checkers only rated the figure as mostly true because they suggested that under a different counting methodology, the number of oyster crimes in Texas is actually *even higher* than the Texas Public Policy Foundation alleges: sixteen altogether. See W. Gardner Selby, “[Scott Henson says Texas has 11 different felonies you can commit with an oyster](#),” *Austin American-Statesman*, March 27, 2013.

⁶ Stephen Carter, “[Law Puts Us All in Same Danger as Eric Garner](#),” Bloomberg View, Dec. 4, 2015.

⁷ Michael P. Jacobson & James Austin, [How New York City Reduced Mass Incarceration: A Model for Change?](#) (Vera Institute for Justice January 2013).