

## **A "Rigged" System: Why Victims of Police Violence Don't Report** **by Diane Wetendorf**

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Attorney General Jeff Sessions talks a lot about the Justice Department's responsibility to provide emotional and material support to upstanding police officers who get violent criminals off the streets. What Jeff Sessions does not talk about is the Justice Department's responsibility to get violent cops off the streets.

Police brutality and use of deadly force attract the most media and public attention, but they are far from the only ways that police abuse their power. Residents of minority communities live in a perpetual state of fear: racial profiling, intrusive surveillance, illegal searches and seizures, humiliation, degradation, and the ever-present threat of being gunned down by the police. Female residents of many communities also live in fear of sexual harassment and sexual assault by on-duty police officers. Rarely acknowledged is the significant number of police officers who perpetrate domestic violence by terrorizing and physically abusing the women with whom they live, some of whom are also members of law enforcement. These abusive officers use their professional status, equipment, weapons, access to information, knowledge of the legal system, and the infamous police code of silence to reinforce their personal power and control over their victims.

### **Department of Justice Investigations**

During the last few years of the Obama administration, we repeatedly witnessed police violently attacking and fatally shooting black men, many of whom were young and unarmed. We were able to view these incidents through cellphone videos recorded by witnesses. The videos brought police violence against black men into the national spotlight in a way we haven't seen since the televised coverage of the riots during the civil rights movement. Once again the nation saw powerful evidence of police officers' blatant disregard for suspects' civil rights and their routine brutal treatment of black men. In several cases the recorded evidence contradicted officers' official explanations and justifications for their actions; in other cases we learned that police planted evidence and falsified official reports. This resulted in public pressure on the DOJ to hold law enforcement officers and departments responsible for officers' civil rights violations and illegal use of force. Under the leadership of Attorney General Eric Holder and his successor, Attorney General Loretta Lynch, the DOJ investigated over two dozen police departments to determine whether police were engaging in patterns or practices of unconstitutional policing. Where investigations uncovered civil rights violations, the DOJ recommended specific reforms which were enshrined through court orders known as consent decrees. These decrees were to be monitored by a federal judge to ensure the departments' compliance.

The Chicago Police Department (CPD) was one of the departments investigated, prompted by the 2014 shooting of Laquan McDonald, a 17-year-old black boy, by a white Chicago police officer and subsequent attempts to cover up the incident by the department and city. The Justice Department's report released on January 13, 2017 reveals that this incident was not an aberration: "*The City of Chicago had received over 30,000 complaints of police misconduct during the five years preceding their investigation, fewer than 2% of which were*

*sustained. There was no disciplinary action taken in 98% of these complaints. In the five-year period prior to our investigation, Chicago had investigated 409 police shootings and found that just two were unjustified. It is similarly illustrative that the City paid over half a billion dollars to settle or pay judgments in police misconduct cases since 2004 without even conducting disciplinary investigations in over half of those cases, and it recommended discipline in fewer than 4% of those cases it did examine."*

The DOJ investigation assessed CPD policies, training, reporting, investigation, and review processes related to allegations of officer use of force and criminal misconduct, focusing on the department's systems of accountability, discipline and other corrective action. Investigators looked at how on-duty officers respond to female victims of sexual assault and domestic violence, and furthermore how the department investigates allegations of on-duty police officers' sexual harassment and sexual assault of female citizens. Notably, they scrutinized how CPD investigates complaints of police-perpetrated domestic violence. Finally, the investigation assessed how racial, ethnic, and other disparities in the Chicago Police Department and its accountability practices can lead to a breakdown in community trust.

The Justice Department concluded that the Chicago Police Department's historic toleration of police illegal use of force created and perpetuated a corrupt culture within the department. Echoing what reform advocates have been saying for years, the investigators' report answers two of the most frequently asked questions about officers who abuse their power: Why do they do it? and How do they get away with it? Police officers do it because they can and because no one stops them. Incidents of unconstitutional police practices across the country demonstrate that Chicago's police department is not alone; departments nationwide have created and perpetuated a corrupt culture that overlooks and even condones police misconduct and criminal behavior.

## **Racial and Gender Bias**

Police scholars and psychologists have historically identified the police culture's deeply embedded racism and sexism as driving forces behind police violence against blacks, females, and intimate partners. Today however, they offer a more nuanced explanation: implicit racial and gender bias influence officers' actions.

*Implicit racial bias* attributes discriminatory policing and the targeting of blacks to unconsciously held stereotypes and profiles of black people that negatively affect officers' attitudes and shape their response to black men. For example, implicit bias might lead an officer to assume that a black man is an armed and dangerous criminal who possesses super-human strength to resist or attack the police and by his very existence poses a clear and present danger to officer and public safety. Implicit racial bias distorts officers' perception of reality and causes them to respond to a *perceived* threat in the absence of an *actual* threat. The perception that a situation is life-threatening, false as it may be, serves as a justification of the 'split-second decision' to shoot a black man. The DOJ investigation found that CPD uses force almost ten times more often against blacks than against whites.

*Implicit gender bias*, like implicit racial bias, has significantly influenced police behavior since the inception of policing, though the DOJ did not officially acknowledge the impact of gender bias until 2015. Implicit gender bias attributes discriminatory policing and targeting of women to unconsciously held stereotypes and profiles of women that negatively affect officers' attitudes and shape officers' understanding, actions, and decisions. For instance, stereotypes of female victims of sexual assault and domestic violence result in officers' presumption that women fabricate or falsely allege domestic violence and sexual assault incidents, that women are responsible for violence perpetrated against them because they 'asked for it' or provoked it, and that women typically have an ulterior motive for accusing an officer of rape, sexual assault, or domestic violence. While unable to secure statistics, DOJ reported that gender bias

may lead an officer to misclassify or dismiss sexual assault cases, fail to test sexual assault kits, intimidate victims during investigative interviews, and inappropriately conclude that cases are unfounded. Gender bias may cause an officer to trivialize domestic violence and to consider it a private family matter rather than a violent crime. When a woman accuses a police officer of sexual assault or domestic violence, gender bias may influence investigators and thus impede thorough investigations, the end result of which is the protection of male officers from accountability. Clearly gender bias—or outright misogyny and sexism—leads police officers to violate women's constitutionally protected right to equal protection and justice under the law.

The outcome of the investigation of the Chicago Police Department is significant to me because my specialized work on police-perpetrated domestic violence began with victims of CPD officers. The Justice Department's report is immensely valuable in that it provides critical validation of victims' experience; victims who were, for good reason, afraid to file formal complaints with the department. The department has a reputation for discrediting and dismissing anyone who accuses an officer of misconduct or criminal behavior on-duty or off, particularly blacks and women. The Chicago Police Department, of course, is by no means unique in its poor response to complaints about officers; I can testify that police departments around the country respond to victims of police abuse in much the same way.

### **Systemic Barriers**

Accountability for officers' unlawful use of force—whether that force is used against members of the public or officers' intimate partners—requires that victims file formal complaints with the officer's department. Many departments publicly claim that they are committed to upholding the highest standards in officer performance. It would seem that they would be receptive to complaints alleging police misconduct and criminal behavior in that those complaints could provide valuable feedback for monitoring and supervising officers. But in the Chicago Police Department, the DOJ discovered that instead of being receptive to complaints, CPD creates tremendous disincentives and erects systemic barriers to reporting. When victims were able to overcome these barriers, the Justice Department found that CPD's Independent Police Review Authority (IPRA) investigators acted under the influence of racial and gender bias which led them to perceive complainants as troublemakers looking to destroy the accused officer's career. IPRA investigators' biases against complainants worked in tandem with a deeply rooted bias in favor of officers to ensure that accused officers suffered no consequences for their behavior. The DOJ found these biases against complainants and in favor of officers to be foundational to the culture of the Chicago Police Department affirming what victims of police violence have been alleging all along, that “the internal systems in place in the Chicago Police Department are designed to defend and protect accused officers' careers, not to protect their victims.”

The following are some of the systemic barriers established by the Chicago Police Department:

The department requires that anyone with a complaint against an officer have an *in-person meeting with an investigator*. The complainant must provide a complete recorded statement of the incident and submit a sworn affidavit that all claims made in the statement are true and correct under penalties of law. The department provides the accused officer with a copy of the complaint, including the name of the complainant. The inability for the complainant to be anonymous leads many to change their mind about reporting because they fear the accused officer's retaliation. This fear is not unreasonable; the DOJ identified a significant number of incidents in which police officers intimidated victims of police violence in order to prevent them from reporting or testifying in court. Accused officers often threaten victims, harass them, or file counter complaints against the complainant. Victims of police-perpetrated domestic

violence are vulnerable to both professional and personal forms of intimidation, threats, and retaliation due to their intimate relationships with their assailants. The abusive officer has personal access to and influence over every facet of the victim's life in that they share a home, children, friends, finances, and so on.

The DOJ found that IPRA investigators routinely *neglect to or refuse to interview witnesses*. Some of these witnesses are eyewitnesses; others, as in cases of domestic violence, are people who have significant knowledge of the abuse through communication with the victim or from having seen evidence of abuse such as physical injuries or symptoms of emotional trauma. These witnesses have information that would lend credence to the victim's report and be valuable to the investigation should investigators make the effort to interview them.

The DOJ found that IPRA investigators' *questioning of officers is cursory and often biased* in favor of the officer and investigators ask questions that are "aimed at eliciting favorable statements justifying the officer's actions rather than seeking truth." Investigators accept the officer's statements at face value and fail to challenge the accused officer's account even when it is inconsistent with physical evidence, credible eyewitness statements, or common sense.

Following decades of vehement denial that the *code of silence* exists, officers and supervisors, the president of the police union, and high-level CPD officials were finally forced by irrefutable evidence to admit that the code of silence is a fundamental part of the department's culture. Officers are acutely aware of the consequences for violating the code. DOJ investigators quote one sergeant saying that an officer who violates the code is "dead on the street." The report states that the code of silence is "beyond a passive code"; officers and supervisors "affirmatively lie about incidents and intentionally omit material facts and evidence, falsify reports, give false testimony in interviews and in court to conceal evidence and cover up misconduct." Officers who respond to the scene of a crime are given ample opportunity to discuss, collude, and line up their stories. When they give apparently rehearsed accounts, department investigators rarely ask follow up questions to ferret out collusion. Alarming, IPRA accepts these seriously corrupt practices as routine behavior and "immutable fact rather than something to root out." The result is that officers "believe there is not much to lose if they lie to cover up misconduct," contributing to the corrupt culture of the CPD. Even the president of the police union admitted to the code of silence, "There's a code of silence everywhere, everybody has it ... so why would the [Chicago police] be any different?"

The DOJ also exposes as myth the claim that supervisors refuse to risk their own careers to cover-up for their subordinates. It found that all too often *supervisors focus on keeping subordinates out of trouble* when there may be reason for discipline. Supervisors said that they want to avoid generating conflict with officers they work with every day. One supervisor explained that "no one wants to be the bad guy" and another said that the culture is one in which supervisors "are people's friends rather than supervisors." Supervisors, along with the accused officer's peers, are likely to be sympathetic to an officer accused of any type of misconduct or criminal behavior. Domestic violence and sexual assault allegations elicit particular sympathy because many supervisors and fellow officers believe that women's allegations are false and that punishment for offending officers is unjustly harsh. Contrary to all evidence, supervisors and officers share the belief that all it takes is for some woman to file a complaint of domestic violence or sexual assault and a good officer's career is destroyed.

When it is not possible to successfully deny or cover up an officer's or department's criminal conduct, the Chicago Police Department, like other departments nationwide, offers the victim, civil rights

advocates, and the public a scripted response in which the agency will express its regret, assure that it was an 'isolated incident' rather than an indication of a pattern or practice, promise to review its policies and procedures, commit to providing additional resources for officer training, pledge to work for reform, and pledge to hold agencies and officers accountable in the future. After a sufficient amount of time passes and things quiet down, it is back to business as usual until the next tragedy demands some kind of response from the department.

The total lack of police accountability leaves victims of police violence wondering why they risked their personal safety to file a complaint. It also serves to deepen distrust of the police in the general public. Most significantly, it reinforces police officers' confidence that they will not be held accountable and are, for all practical intents and purposes, above the law.

### **Department of Justice Prospects**

It falls upon the federal government to police the police when police departments have proven uninterested or incapable of policing their own. The willingness of Obama's DOJ to fulfill its mission by challenging the corrupt police culture that fosters discriminatory policing practices and by demanding accountability for corrupt police practices provided a glimmer of hope to civil rights advocates and victims of police violence who might have benefited from long-term reforms. They were encouraged to see that the DOJ was taking concrete action to expose and eliminate racial and gender bias and impose federal oversight. The consent decrees the DOJ put in place in over a dozen departments indicated a serious intent to follow through with reform.

But what had looked like a glimmer of hope to civil rights advocates and victims of police violence during the Obama administration was a serious threat to the goals of the conservative right, the alt-right, the Christian right, and the Fraternal Order of Police (the largest police union in the country). These groups considered the Obama administration the most dangerously liberal and anti-law enforcement administration in history. They believed the Obama-era DOJ Civil Rights Division, in its efforts to ensure equal rights and equal access to justice, was undermining the security of the established social order of white male supremacy. White male supremacy, by definition, requires the suppression of the civil rights of people of color and women. Conservative groups heavily criticized President Obama and the CRD for investigating and publicly exposing law enforcement's violations of civil rights and demanding police reform. Conservatives saw no need for police reform and considered federal investigations of local police departments to be an attack on a police force already under siege by minorities and their activist allies in organizations like the American Civil Liberties Union, Black Lives Matter, and various women's rights advocacy groups.

Right wing conservatives, members of the alt-right, the Christian Right and the Fraternal Order of Police were greatly relieved when they got Trump into the White House. Trump had campaigned on his law-and-order platform and has remained, at least in this instance, true to his word.

The same people who were thrilled when Trump was elected were ecstatic when Trump nominated Alabama Senator Jefferson Beauregard Sessions III for the position of U.S. attorney general. While those on the right celebrated Sessions' nomination, those on the left were seriously alarmed. One hundred forty-four civil and human rights organizations submitted an open letter of opposition urging the Senate to deny Sessions' confirmation. The letter pointed out that "Sessions has a 30 year record of racial insensitivity, bias against immigrants, disregard for the rule of law, and hostility to the protection of civil rights that makes him unfit to serve as the Attorney General of the U.S." The National Task Force to End Sexual and Domestic Violence also submitted a letter of opposition stating that "Sessions' history leads us to question

whether he will vigorously seek to ensure that all victims and survivors of gender-based violence, particularly vulnerable populations and those at the margins of society, have access to vitally needed services and legal protections” and noted that Sessions had voted against the re-authorization of the Violence Against Women Act in 2013. Congressman Luis Gutierrez put it this way: “If you have nostalgia for the days when blacks kept quiet, gays were in the closet, immigrants were invisible, and women stayed in the kitchen, Senator Jeff Sessions is your man.”

The congressional representatives of the millions of Americans who shared that nostalgia ignored the objections from the left and proceeded to confirm Jeff Sessions as the attorney general. With his confirmation came the long-awaited opportunity for conservatives to fulfill their promise to “roll back the clock to the 1950s.” The right wing longed to go back to the idyllic days before the civil rights movement infringed on white male supremacy in the U.S.; the bygone days when the government allowed law enforcement to do whatever was necessary to keep blacks, gays, immigrants and women in their place.

The Trump administration continues to derail the reform efforts begun in the Obama administration, as the CRD becomes yet another federal agency turned upside down and inside out diligently working toward the sabotage rather than the fulfillment of its mission. The current administration is determined to enact a law-and-order approach to policing—often out of alignment with constitutional rule of law but in perfect alignment with the police culture's us-versus-them warrior mentality. According to this worldview, dangerous minority groups (read: blacks, immigrants, and women) and their liberal activist allies in the ACLU and Black Lives Matter are waging a war on police that threatens to destroy America's (read: white males') social order. Supporters cheer at rallies when speakers replace the black lives matter slogan with the bastardized blue lives matter slogan that signifies sympathy for police over black shooting victims. Sessions clearly pits rule of law against law-and-order style of policing when he tells a law enforcement group, “My goal is to support you, to empower you, and to unleash you and your law enforcement partners to apply the good and lawful policies that are proven to make our communities safer. ... If you want crime to go up, let the ACLU run the police department. If you want public safety, call the professionals.” Sessions declares that “In the Trump administration, we know whose side we're on. We're on the side of law and order—and we back the blue, not the criminals. ... In the Trump era, the ACLU isn't making our law enforcement policies. The professionals are.”

The current DOJ does not want officers to be restrained by the threat of civil rights lawsuits. Sessions has pledged to pull back on these lawsuits because “Unfortunately, in recent years law enforcement as a whole has been unfairly maligned and blamed for the unacceptable deeds of a few bad actors. Too many of our officers, deputies, and troopers believed the political leadership of this country abandoned them. ... In this age of viral videos and targeted killings of police ... some law enforcement personnel are more reluctant to get out of their squad cars ... arrests have fallen even as murder rates have surged. ... We should encourage the proactive policing that keeps our neighborhoods safe. This Department of Justice will do just that. ... We will enforce our laws and put bad men behind bars. ... We will support the brave men and women of law enforcement, as they work day and night to protect us.”

As for consent decrees related to police reform, Sessions states that “too many people believe the solution is to impose consent decrees that discourage the proactive policing that keeps our cities safe. Reforms must promote public safety and avoid harmful federal intrusion in the daily work of local police.” Shortly after taking office he issued a memo ordering the DOJ to conduct a nationwide review of existing federal consent decrees, raising the question whether he will do away with these consent decrees completely or merely choose to not enforce them.

## **Crux of the Problem**

Here we reach the crux of the problem: how to understand the seemingly contradictory actions of the federal government in the Trump and Sessions administration. The premise of those on the left is that the Civil Rights Division (CRD) of the Department of Justice was created to uphold the civil and constitutional rights of *all* Americans, particularly those of the most vulnerable. The premise of those on the right is that the Civil Rights Division is to uphold the civil and constitutional rights of *some* Americans, particularly those of the most privileged. Where those on the left see corruption of the CRD's mission by this administration, those on the right see its fulfillment.

As I write this, the CRD's mission statement remains in its original form on the agency's website, but former employees are sounding alarms warning that it is being eradicated and that the rule of law is being replaced by this administration's dedication to law and order. According to former employees, the agency is dismantling civil rights protections at every turn. Vanita Gupta, the former head of the CRD under Obama, warns us that "This DOJ and Jeff Sessions are rolling back civil-rights progress and undermining fundamental American values of equality and justice in a fairly unprecedented manner. ... The attorney general is advancing a vision of America that is narrow, and abdicating some of the DOJ's core responsibilities and mandate to ensure equal rights and access to justice for all." Sharon McGowan, a former Principle Deputy Chief in the CRD says, "From the first day Sessions came to the DOJ, he has been dismantling decades of work. ... You are seeing a brain drain out of the DOJ that is not normal, and it is a reflection of how aberrant this attorney general has been, with not only reversal of positions but targeting of communities." And Diana Flynn, former Chief of the CRD Appellate Division who resigned in June 2018 after the DOJ pursued what she characterized as rollbacks of LGBTQ and other civil rights, says "Civil rights generally are, in my view, under assault. ... There was certainly a different feel in the Civil Rights Division in the last year or two then there had been in the past."

President Trump and Attorney General Sessions are strongly reinforcing the fundamental ethos of the corrupt police culture: the us versus them war mentality, the mandate to do whatever it takes to win, the postulate that the end justifies the means, the strong bonds of loyalty within the police brotherhood, and the sacred code of silence that provides an impenetrable barrier to accountability. In this administration, there is no such thing as abuse of power—any exercise of power is a legitimate exercise of power. Federal and local law enforcement agencies have but one goal to achieve: to protect the power and privilege of the dominant group; a group composed of white, upper class, Christian, heterosexual, and America-born males. If trampling on the civil rights of the vulnerable is a necessary means to the desired end, so be it.

The current administration's alignment with the police culture is not surprising as its leader exemplifies the unbridled exertion of power in a world where you do whatever it takes to get whatever you want. Gaining and maintaining power is the only value; when you have power "they let you do it, you can do anything." And if somebody doesn't like it, just what are they going to do about it? In this administration, it's okay to rely on the kind of loyalty that allows Trump to say, "I could stand in the middle of 5th Avenue and shoot somebody and I wouldn't lose voters." *That's* the message he and Sessions send through the police ranks: Do whatever you want to do and be confident you will suffer no consequences. "When somebody challenges you unfairly, fight back—be brutal, be tough—don't take it. It is always important to WIN!"

The agenda of Sessions' DOJ is more than just the reversal of Obama's policies, it is the bringing to fruition of a long, carefully orchestrated strategy to undermine minority civil rights in this country. A lot

of vulnerable people are now asking the same questions victims of police violence have always asked: "Who protects us from our protectors? Who polices the police?" What kind of response will victims of police violence get from this pro-police Department of Justice when they file a complaint against an abusive officer or a negligent police department? Sessions repeatedly assures law enforcement officers that they need not worry about accountability for civil rights violations or any other abuses of police power. It seems reasonable to assume that he will honor the scripted statement he makes at the end of almost every speech he gives to law enforcement audiences: "Thank you for all that you do. President Trump is grateful, I am grateful, and the entire Department of Justice is grateful for your service. We have your back and you have our thanks." What about the rest of us?

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