

In Defense of Jeff Sessions

His work on policing and immigration merits praise

BY HEATHER MAC DONALD

No cabinet official has delivered on Donald Trump's key campaign promises more resoundingly than Attorney General Jeff Sessions. This fact makes the president's recent churlish attacks on Sessions all the more galling. Trump's most important electoral theme was the restoration of law and order to America's inner cities and to its immigration policy. To appreciate the magnitude of Sessions's accomplishments in these areas, it is necessary to recall how the previous Justice Department treated crime and immigration.

One of Eric Holder's first pronouncements upon becoming attorney general was that America was a "nation of cowards" for not having enough conversations about race. As a corrective, Holder racialized a significant part of the Justice Department's work. In 2013, he ordered all U.S. attorneys to conceal from federal judges the amount of drugs a trafficker had been caught with, so as not to trigger the statutory penalties for large-scale dealing legislated by Congress. Holder's dissembling policy was inspired by the academic idea that a racist drug war was responsible for the disproportionate representation of blacks in the criminal-justice system.

That claim is false. Remove all drug prisoners from the nation's prisons and the proportion of black prisoners remains virtually unchanged, at just over 37 percent. And the impetus for drug enforcement has always come from the law-abiding members of black communities who live under the pall of the open-air drug trade. In 1986, for example, the Washington, D.C., newspaper the *Afro* labeled the drug trade "a threat to our race," and a black assistant police chief launched a martial anti-drug initiative at the urging of black community groups, as documented in James Forman Jr.'s *Locking Up Our Own*. Today, one of the most routine complaints in urban police-community meetings remains: "Why can't you keep the dealers off the corner?" Federal drug enforcement is one way to do just that.

Gun prosecutions also dropped under the Obama Justice Department, since they have a disparate impact on blacks and therefore allegedly contribute to "mass incarceration." Never mind that gun crimes also have a disparate impact on blacks, leading to a death-by-homicide rate that is six times that of whites and Hispanics combined. Many U.S.

attorneys directed their attention to other issues, such as white-collar crime.

In March 2015, Holder tried to discount the findings of his own Justice Department staff, who had demolished the "Hands up, don't shoot" Michael Brown hoax. A Justice Department report found that there was no evidence to justify charging police officer Darren Wilson with a federal civil-rights violation for killing Michael Brown in Ferguson, Mo., in August 2014. Holder groused that that standard of proof in federal civil-rights cases was simply too high. But under *no* standard of proof should Wilson have been indicted, since Brown had tried to grab Wilson's gun—a patent prelude to a cop-killing—and had assaulted him. Holder's unwillingness to unequivocally support the Wilson exoneration perpetuated the dangerous Black Lives Matter mythology.

The Obama Justice Department put more police departments under federal control for alleged systemic bias than any previous administration had. The basis for many of these onerous consent decrees—binding agreements between a local agency and the federal government, overseen by a grotesquely overpaid army of consultants—was specious disparate-impact analysis that ignored the incidence of crime.

By late April 2015, when Holder left the Justice Department, it was already obvious that violence in minority neighborhoods was increasing at an alarming rate. The reason for that increase was what I have called the Ferguson effect: Police officers were backing off discretionary proactive policing under the relentless Black Lives Matter narrative that policing was lethally biased. The increase in reported homicides in 2015 was the largest in nearly 50 years, and its primary victims were black. By the end of 2015, 900 more black males would be killed than in 2014, bringing the black homicide total to more than 7,000. That is 2,000 more black homicide victims than all white and Hispanic homicide victims combined, even though blacks are only 13 percent of the population, and black males, who are the vast majority of black homicide victims, only 6 percent of the total population. The Ferguson effect is continuing: Preliminary estimates show another 14 percent homicide increase in 2016 in the 30 largest U.S. cities and an 8 percent increase nationwide; 2017 does not look any better.

Holder said nothing about the rising death toll. Loretta Lynch did convene a private meeting of police chiefs and mayors in October 2015 to discuss the surging violence, but there was no policy follow-up. Meanwhile, President Obama continued to dismiss the reality of rising crime, calling it a mere "uptick in murders and violent crime in some cities."

JEFF SESSIONS inherited a Justice Department, in other words, that in too many areas had lost sight of its primary mission of protecting public safety and ensuring the fair and impartial administration of justice. The precondition for reversing that misdirection, and for making good on Trump's promise to restore law and order to inner cities, is to acknowledge the rising crime rates and to take responsibility for ending them. Sessions does that at every opportunity.

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He rightly sees criminal victimization as a civil-rights issue: “Regardless of wealth or race, every American . . . deserves to live without the constant fear of violence spilling over into their daily lives,” he said in Philadelphia on July 21, two days after Trump’s public attacks on him began. Sessions has eloquently described how crime destroys the viability of cities: “If government fails in its core mission of protecting safety, communities enter a death spiral,” he said on August 1 in Atlanta, addressing the National Organization of Black Law Enforcement Executives. “Schools are less effective, fewer businesses can succeed, grocery stores disappear, and home values plummet. Suddenly, a retired couple who worked their whole lives to buy their home finds themselves trapped in a failing community, unable to pass along that nest egg to their children and threatened daily by the increasing violence around them.”

The new attorney general has also identified the cause of the current crime surge: politically induced de-policing. While Sessions has vowed to prosecute officers who break the law, he argued in Atlanta that “we cannot let mayors and city councils run down police in communities that are suffering only to see crime spike in the very neighborhoods that need proactive, community policing the most.”

At the end of March, Sessions ordered a review of all Justice Department functions to make sure that they contributed to the core mission of the department; among the subjects of review were existing and contemplated consent decrees. Former Obama officials and civil-rights groups went ballistic, but a reevaluation of the consent-decree process was long overdue. On April 3, Justice Department attorneys asked a federal judge to briefly delay finalizing a misguided decree for the Baltimore Police Department that the Obama administration had hurriedly cranked out in its final week. (See my NR article “Let the Police Police,” May 15, 2017.) The judge refused and signed the document anyway; since then, robberies, assaults, burglaries, and homicides (the latter now at a historic high) have continued to climb. Sessions did manage to abort what would have been an equally destructive consent decree for the Chicago Police Department, thereby saving Chicago tens, if not hundreds, of millions of dollars in paper-pushing and consulting fees that would have come out of police hiring and training. Not that anyone in the Windy City’s government has thanked him.

The Holder policy requiring federal attorneys to dissemble regarding the amount of drugs a dealer was caught with has been withdrawn. The traditional practice of charging the maximum provable offense has been restored. Sessions has directed federal prosecutors to pay more attention to gun crime. Indictments for the unlawful possession of a firearm rose nearly 23 percent in the three months after Sessions’s order; prosecutions for using a gun in a violent crime increased 10 percent. In fiscal year 2017, the government is on track to charge the most federal firearms cases since 2005.

The proponents of decriminalization and de-incarceration have blasted Sessions for being out of step with the times. But the decriminalization and de-incarceration movements are a luxury enabled by the stricter sentencing policies of the last two decades. Those more certain and sometimes

longer sentences, in conjunction with proactive policing, produced the 20-year drop in violent crime that the country enjoyed through the first half of 2014, before the Black Lives Matter movement took hold. Without that crime drop, the de-incarceration movement would have many fewer adherents.

SESSIONS’S revamping of immigration policy has been as central to fulfilling Trump’s electoral mandate. Trump’s campaign gained momentum only after he seized on the sanctuary-cities issue. Trump championed the case of Kate Steinle, killed in July 2015 by an illegal-alien felon with a long criminal and deportation history. The San Francisco sheriff had previously defied a request by Immigration and Customs Enforcement officials to briefly hold the inmate beyond his release time so that ICE agents could pick him up for deportation (a process known as a detainer request). Instead, the sheriff let him back onto the streets, and the Mexican drug dealer shot Steinle eleven weeks later.

The Obama administration’s stance toward San Francisco and the rest of the country’s 300 sanctuary jurisdictions was a study in hypocrisy. In 2010, the Justice Department sued Arizona over a state law, SB 1070, that encouraged local law-enforcement officers to assist ICE with immigration enforcement. SB 1070 made clear that those officers had the right to ask a suspect about his immigration status if they had reasonable grounds to believe that he was in the country illegally. Holder’s DOJ argued that any such state and local immigration measure was unconstitutional, because only the federal government could implement immigration policy. A federal judge agreed and enjoined most of SB 1070. Yet at the same time that the Obama administration was fighting Arizona’s alleged usurpation of Washington’s plenary power over immigration, the Obama DOJ chastely looked away as states and cities flouted ICE detainer requests and set themselves up as de facto arbiters of immigration law.

Fast-forward to this August. Eric Holder is now advising California’s government on a proposed bill that would make California’s status as a sanctuary state impermeable; he is also a partner at the elite law firm of Covington & Burling, where his usual fees are likely around \$1,500 an hour. Under California’s Senate Bill 54, no local police or sheriff’s agency could report or detain an illegal-alien criminal if asked to do so by ICE; ICE agents would be barred from interrogating illegal-alien criminals in local jails, even though jails routinely let other federal agents speak with their inmates. Holder has sent Sessions a letter primly informing him that SB 54’s open contempt of federal immigration authority is “constitutional and not preempted by federal law.” Never mind that Holder deemed Arizona’s *compliance* with immigration enforcement to be preempted by federal law. Holder is encouraging other states to follow California’s lead: “This is something that needs to be done nationwide,” he told the *Los Angeles Times*.

What has prompted this defensive reaction? Sessions’s pledge to restore the rule of law. “For those that continue to seek improper and illegal entry into this country, be

forewarned: This is a new era,” he said on April 11. “The lawlessness, the abdication of the duty to enforce our immigration laws, and the catch-and-release practices of old are over.” The extent of that lawlessness is shocking. In the first six months of 2017, the New York Police Department turned down all 198 detainer requests it received from ICE, sending the subjects of those requests back onto the streets. The city’s Department of Corrections honored only six of its 161 detainer requests; apparently New York City does not have enough criminals already and needs to hold on to those who are in the country illegally as well.

Sessions is trying to use every lever he has to change such obstruction. On July 25, he announced that Washington’s law-enforcement grants to localities would thenceforth be conditional on compliance with ICE detainers. Participation in a new federal–local crime-fighting initiative, the Public Safety Partnership, would also depend on a city or county’s respect for federal immigration policy. This unprecedented demand for cooperation has elicited hilarious justifications for lawlessness on the part of sanctuary jurisdictions. “Being a sanctuary city does not mean that you are out of compliance or trying to violate federal law in any way,” Nisha Agarwal, New York City’s commissioner for immigrant affairs, lamely wrote Sessions. The executive director of the Center for Migration Studies in New York City complained that the Trump administration was trying to tell people that “nobody should come that’s not documented.” That is a shocking idea to the advocates.

The Obama administration was assiduously silent about the crimes committed by illegal aliens. Sessions is not. He went to Long Island in April and vowed to use the immigration laws to wipe out MS-13, the ruthless gang that has been engaged in a killing spree there since 2016. New York City pastor Calvin Butts objected. “His response is anti-immigrant.” Apparently Butts thinks that all immigrants are murderers.

Sessions has ordered U.S. attorneys to prosecute the crimes that facilitate illegal immigration, such as alien smuggling, document fraud, and felonious reentry following deportation. To ensure that justice does not founder on delay, he has budgeted for an additional 50 immigration judges this year and another 75 next year. There is currently a backlog of more than 610,000 cases on the immigration docket. The chief federal immigration judge issued a memo on July 31 reminding immigration judges and staff to move their dockets along and not reflexively grant continuation requests.

On August 7, Chicago’s mayor, Rahm Emanuel, sued Sessions in federal court, claiming that the city was entitled to federal law-enforcement funding despite its sanctuary status. Emanuel’s suit is just the latest move in a swelling legal campaign to thwart immigration enforcement.

Illegal entries across the border have fallen precipitously. In March 2017, the number of illegal crossings was down 72 percent compared with the month before Trump was inaugurated, the lowest figure for at least 17 years. Some of that



drop is the result of Trump’s rhetoric and of ICE’s enforcement actions under the able leadership of retired Marine general John Kelly, now White House chief of staff. Arrests of illegal aliens were up 38 percent in Trump’s first 100 days. But it was Senator Sessions who created the philosophical basis for ICE’s reinvigorated activity, in his decades-long crusade on Capitol Hill for an immigration policy that acknowledged borders and respected the rule of law. Likewise, the bill introduced by Senators Tom Cotton and David Perdue on August 2 to reorient legal-immigration policy toward a skills-based system was inspired by Senator Sessions’s tireless campaign to publicize the costs of mass low-skilled immigration, borne disproportionately by low-skilled American workers.

Since Trump’s childish tantrum against Sessions began, the attorney general’s defenders have invoked Sessions’s early support of Trump’s campaign as the primary reason the president should withhold his narcissistic bile. The better reason is that Sessions is irreplaceable.

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