

COVID-19 ESSAYS

By

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A CONFLICTED MISSION

An ideologically-fraught quarrel poses unique challenges



For Police Issues by Julius (Jay) Wachtel. There we were, all set to begin work on a brilliant essay that had nothing to do with that nasty bug when [an article](#) in the *Los Angeles Times* caught our eye. Here's the synopsis we posted in our blog's [COVID-19 compliance section](#) a few days ago:

A labor union's threat to organize a massive protest that would implicitly violate social distancing restrictions helped discourage the San Luis Obispo (Calif.) city council from considering a law that, if enacted, would go against the interests of the union's members.

That protest, incidentally, wouldn't be over social distancing. It's about another quarrel. Utility Workers Union of America Local 132 represents blue-collar workers who work for the gas company. But natural gas has come under the gun of nasty environmentalists, who are lobbying for a law that would encourage newly constructed buildings to be all-electric.

Now, we're not taking sides in the "gas or electric" dispute, which at this writing lingers unresolved. But one can appreciate how police might be affected should a zillion angry workers decide to march cheek-to-cheek during a pandemic. Still, if folks socially "distance," then it's O.K., right? Not in New York, which at this writing remains "[On Pause](#)." Through an [executive order](#) issued March 23rd and since [extended to May 15th](#), Governor Mario Cuomo prohibited, among other things, "all non-essential gatherings of individuals of any size for any reason."

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Of course, getting folks to do the right thing without using force can be tough in the best of times. As a glance through our COVID-19 compliance section suggests, Governor Cuomo's order, and those of his counterparts around the country, may be unavoidably doing a whole lot of damage to that *other* kind of body: the body *politic*. Here's [an example from May 3rd](#):

During the weekend New York City had 1,000 plainclothes officers enforcing social distancing. A citizen who challenged an officer was tackled and seriously hurt. Mayor DeBlasio, who was reportedly troubled by a video of the incident, denied it was typical of what took place. But the police union said officers shouldn't be policing distancing and called the mission "untenable."

That video is disturbing. Its implications led Patrick Lynch, the head of the patrol officer union, to warn that forcing cops to enforce social distancing [was tearing the city apart](#):

This situation is untenable: the NYPD needs to get cops out of the social distancing enforcement business altogether. The cowards who run this city have given us nothing but vague guidelines and mixed messages, leaving the cops on the street corners to fend for ourselves. Nobody has a right to interfere with a police action. But now that the inevitable backlash has arrived, they are once again throwing us under the bus.

Mr. Lynch's hostility to social distancing, if not the rest of the message, is shared by his polar opposite. Robert Gangi leads the "[Police Reform Organizing Project](#)," a New York City-based organization that seeks to "expose and end the current ineffective, unjust, discriminatory and racially biased, practices of the NYPD." [According to Mr. Gangi](#), cops should never have been called on to address the pandemic: "We need to move away from using the police and the law enforcement system to respond to social and health problems." (Mr. Gangi also endorses clearing out the jails, which he feels are packed with persons who have been "needlessly" arrested and "certainly do not deserve to be put in the harm's way of a deadly disease.")

Blowback from enforcing a conflicted edict has affected relationships within police departments and between the police and city hall. NYPD's managers of course know that. But as we suggested in "[Urban Ship](#)," ready solutions to urban disorder may not always be at hand. According to NYPD Chief [Terence A. Monahan](#), enforcing the pandemic is intrinsically fraught:

It's not something we want to do, it's something we have to do to keep people safe...It's been a small percentage where either we had to make a summons or

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make an arrest. We don't want to summons people, we don't want to arrest them. We want to warn them, educate them and get them to comply.

That sounds pretty good. Only problem is, "people" come in various colors and ethnicities. These seem tied to economic conditions, which are in turn tied to crime and disorder. Grab a peek at the graphs in "[Place Matters](#)." Citywide, about one-third of New York City's residents are white. Yet according to a [2018 report](#) whites figured as either victim or suspect in *less than one in ten* homicides.

Fine. But social distancing isn't about crime. So what does race and ethnicity have to do with it?

Maybe a lot. [Brooklyn](#) is 43.5 percent white, 32.6 percent black, and about twenty percent Hispanic. Yet [data released by the Brooklyn D.A.](#) revealed that *thirty-five* of the forty persons arrested in the borough for social distancing violations during a recent seven-week period were black (four were Hispanic and one was white.) More than one-third of arrests reportedly took place in a black-majority neighborhood.

Once [all the boroughs weighed in](#) the numbers grew even more concerning. According to the [Census](#), New York City is 31.9 percent white, 21.7 percent black, and 29.2 percent Hispanic/Latino. NYPD wrote 374 social distancing summonses between March 16 and May 5, nearly half at seventeen unauthorized gatherings. Fifty-two percent (193) of the citations were issued to blacks and thirty percent (111) to Hispanics. That left a measly eighteen percent for whites, Asians and other groups.

Remember bad-old "stop and frisk"? While its application has been somewhat toned down, major agencies continue using such measures to address the violence that besets poverty-stricken areas (for LAPD click [here](#); for NYPD click [here](#).) Thanks to litigation, they're now keeping track. [NYPD data](#) reveals that in 2016 its officers stopped 1,270 whites and 6,498 blacks. In the end, eighty percent (1,008 whites and 5,194 blacks) were let go.

Just like in coronavirus enforcement, that racial disparity was likely the product of geography – of the places where cops looked. It's what we discovered when poring through stop-and-frisk data [in Los Angeles](#). But each of those thousands of "false positives" is a *person*. Here's how [one of L.A.'s citizens](#) saw it:

Brian Williams, a middle-aged black man, [recently described an incident](#) that happened not long ago while waiting outside his apartment building for a friend: "Someone called in a report and police questioned me and asked me why I was there. I had to prove to them that I actually lived there. It did not become

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physically violent but my initial reaction was visceral, I was like I need to watch what I say here because this could turn bad.”

Incidentally, Mr. Williams happens to be a trauma surgeon.

It's not surprising that critics harken social distancing enforcement to stop-and-frisk. [Representative Hakeem Jeffries](#), a Democrat from Brooklyn, wonders whether police are using coronavirus enforcement to the same effect: “We can't unleash a new era of overly aggressive policing of communities of color in the name of social distancing.” For [Jumaane Williams](#), New York City's elected Public Advocate, the question's been asked and answered (for his full official statement click [here](#)):

This virus has disproportionately claimed thousands of black and brown bodies, and now, in response, it is black and brown bodies facing the kind of over-policing never seen in other communities....

It's not just about race. Restrictions imposed because of the pandemic have been challenged for violating a host of civil liberties. For example:

- Right to protest. Flaunting California's lockdown rules, about one-hundred protesters waving flags and signs (e.g., “Defy Fascist Lockdown”) [gathered in Huntington Beach](#) to demonstrate against restrictions. “It's not dangerous out here” said one. “The beaches are open. It's a nice beautiful day. What are we doing? Stop being a germophobe.” Police watched and occasionally cleared the street for traffic. Observing them was a 57-year old self-professed member of “the 31st Field Force Light Foot California State Militia.” Throughout, armed citizens have made themselves highly visible. In Michigan, fatigue-clad, [rifle-toting militia members](#) accompanied “several hundred” protesters inside the State Capitol to demonstrate against coronavirus restrictions.
- Right to practice religion. In Virginia, a pastor [sued the Governor](#) for including churches in an order that bans gatherings of more than ten persons, even if a six-foot separation is maintained. (He was cited after ignoring police and holding a service for sixteen parishioners.) Attorney General William Barr filed a [“statement of interest”](#) in support of the suit.
- Right to bear arms. New Jersey initially left gun stores off the “essential” list. Fierce objections by pro-gunners followed, and [the Governor promptly caved](#). Meanwhile the President [came out in favor](#) of opening gun stores, leading gun control groups to cry foul.

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- Right to practice one's trade or profession. Bars, restaurants and hair salons have been among businesses considered “non-essential” by most States. But not everyone's gone along. In one of numerous examples of resistance, a popular [Orange County, Calif. restaurant reopened](#) in violation of the State's stay-at-home orders. It was promptly packed with customers, unmasked and not distancing. While county health inspectors visited and warned the proprietors, wary authorities deferred action to the State. But that's a little fish compared to Tesla, which as we're “going to press” announced it's reopened factory lines in Fremont, Calif. in violation of the orders. “If anyone is arrested, I ask that it only be me,” said its kingpin, Elon Musk.

It's not only State v. Doe. Private citizens on opposite sides of the lockdown have also clashed. A few of these quarrels turned lethal. An Oklahoma City woman who insisted on “eating in” was forcibly escorted from a McDonald's. She returned with a handgun [and opened fire](#), wounding three employees. In Flint, Michigan, a customer became angry when her daughter was turned away from a store by a security guard because she wasn't wearing a mask. The patron [returned with her husband and adult son](#). They confronted the middle-aged guard, and the son shot him dead.

We're not aware of any pandemic-related police encounters involving gunfire. But that tackling of a citizen ([the officer was stripped of his gun and badge](#)) was not an isolated event, and videos of other forceful encounters have surfaced. Really, ordering imperfect cops to enforce social distancing – meaning, to get imperfect people to go against their nature – virtually guarantees that stuff will happen.

Ideology has brought together some unlikely soulmates. An article in the *Los Angeles Times* [describes a convergence](#) between three movements: anti-vaccine forces, lockdown opponents, and gun-control foes. Our response to the pandemic has made some long-standing political conflicts painfully evident. We don't just mean the Prez v. the lib's, which is fodder for the nightly newscast. States and localities have acted in ways that mirror their ideological leanings, although in perhaps unexpected directions, with liberals demanding *more* enforcement while conservatives insist on less.

For example, in mostly liberal California, three small counties [that lean to the right](#) – Modoc, Sutter and Yuba – ignored the Governor and [allowed “non-essential” businesses](#) such as bars and restaurants to stay open, albeit with social distancing. In notably right-leaning Idaho, ostensibly like-minded souls [went at each other](#). State Representative Heather Scott and Bonner County Sheriff Daryl Wheeler heartily seconded citizens who rejected a (conservative) Governor's stay-at-home order. Their

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call was eagerly joined by Ammon Bundy, a radical rightist who once led an armed showdown at a wildlife refuge.

Ideology makes for more than just strange bedfellows. Liberals demand that social distancing be enforced. So they're on the cops' side, right? But when something goes astray, it's also the lefties – Representative Hakeem Jeffries and Public Advocate Jumaane Williams come to mind – who so eagerly pounce. And guess who gets left holding the...tape? (Sorry. We couldn't resist it!)

No wonder NYPD's union chief sees the lockdown as lose-lose. Alas, so do we.

Posted 3/17/20

COVID-19: R.I.P. POLICING?

Crime-fighters confront the challenges of Coronavirus

For Police Issues by Julius (Jay) Wachtel. What risks does the pandemic pose to effective policing? To the administration of justice? How are police and other components of the criminal justice system responding? How *should* they respond? And last but not least, is the crisis being used to advance pre-existing agendas?

Police work brings officers into frequent, close contact with colleagues and citizens. Routine interactions are close and personal, and the intimacy skyrockets during an arrest. When officers are called on to provide a service, it's not as though they can postpone or defer a response. Neither is their work only about crime. As Sunnyvale (Calif.) officers [fought to revive an elderly man](#), they didn't know he had been exposed to the virus. And when they were told, they didn't stop. In the end, five cops and two paramedics wound up in quarantine. (Fortunately, their patient turned out not to be infected.) Similar situations are popping up throughout the U.S. For example, in Los Angeles, where [three deputies and five firefighters were recently quarantined](#).

In Kirkland, Washington [the circumstances were far grimmer](#). An adult nursing facility that was placing an unusually large volume of emergency medical calls became the "epicenter" of America's coronavirus outbreak. At least ten residents and former residents have died from the infection, and seven visitors (one from North Carolina) came down with the virus. Three police officers and thirty-one firefighters – *twenty-five percent* of the fire department – [wound up in quarantine or isolation](#); eighteen were symptomatic.

According to the [Centers for Disease Control](#) the main route of transmission is via virus-laden droplets infected persons expel when they cough or sneeze. Should these land on someone's mouth or nose they can be aspirated and set off an infection. However, the "good news" is that droplets bearing the virus are relatively heavy and fall to the ground within six feet. Transmission by touching an object or surface on which droplets landed or were deposited, then transferring the virus to oneself by touching the eyes or nose, is thought possible but much less likely.

CDC's [guidance for law enforcement officers](#) emphasizes that the danger zone is six feet. Regular hand washing is important, as is not touching one's face "with unwashed hands." Beyond that, the CDC urges that officers use specialized personal protective

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equipment (PPE) whenever contacting persons believed to be infected. Here's what's needed:

- Disposable examination gloves
- Disposable isolation gown or single-use/disposable coveralls (if unable to wear a disposable gown or coveralls because it limits access to duty belt and gear, ensure duty belt and gear are disinfected after contact with individual)
- NIOSH-approved particulate respirator (i.e., N-95 or higher-level. Facemasks are an acceptable alternative until the supply chain is restored)
- Eye protection (i.e., goggles or disposable face shield that fully covers the front and sides of the face)

Officers are counseled to disinfect their duty belt and other gear with spray or wipes after making any arrest that involves “close contact.” They are also advised to launder (but not shake) their clothing. These admonitions aside, the CDC's assessment is that “for law enforcement personnel performing daily routine activities, the immediate health risk is considered low.”

Well, that may be so. Alas, even when dispatched, officers typically know nothing about the physical condition of those with whom they might interact on scene. And when they arrive, there is usually little time or opportunity to gather that information. So a few steps seem prudent:

- Require that officers who encounter persons in need of medical assistance don goggles and a face mask before they step in to help
- Regardless of the nature of an incident, require that call-takers inquire whether someone with a communicable disease is present and relay the response to dispatchers so they can pass it on
- Insure that pertinent medical information is entered into the dispatch database to forewarn officers who handle future calls involving the same persons or locations

Incidentally, we emphasize the role of dispatchers and databases because of their centrality to safe and effective patrol operations. (For more about that check out “[A Matter of Life and Death](#)”).

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Of course, it's not just about officers. It's also about organizations. "If we lose 40 percent of our force, what would police service look like?" Considering what happened in Sunnyvale and Kirkland, that concern, [voiced by a Portland Deputy Chief Chris Davis](#), is hardly far-fetched. During these uncertain, stressful times, having a full complement of officers on hand is a paramount concern. To help keep the peace at besieged retail stores, LAPD and the L.A.S.D. [are putting "more boots on the ground"](#) and shifting detectives to patrol. But police departments are staffed by people, and people get sick. How should agencies prepare for the personnel shortages that coronavirus will inevitably bring? [Steps recommended by the IACP](#) include pooling resources with neighboring communities, canceling vacations, extending shifts and placing off-duty officers on call. Calling in reservists and even retirees are also options.

Well enough. But the chiefs offer one more recommendation, and it's somewhat jarring. Agencies are advised to evaluate "what services require an on-scene police presence versus those that can be handled by alternative means such as by phone or online." In other words, to consider rationing.

To be sure, *what* cops do and *why* can always stand reassessment. That seems particularly apropos when an epidemic's afoot. Consider [what recently befell](#) Miami PD's motorcycle squad. It's on quarantine after Brazil's president, for whom its officers provided security (and with whom they mingled) was diagnosed with the virus. Substantially easing the burden on field resources, though, calls for a lot more than banning motorcades or, another Miami example, [not serving eviction notices](#). But withholding flesh-and-blood cops from calls that have been classified as less pressing is not without major risk. There would certainly be "errors in call classification," perhaps more than a few with grave consequences. And even if nothing bad happens, the deterrence and reassurance benefits of a uniformed police presence would be lost. Natch, these effects would fall most heavily on the long-suffering residents of the high-crime neighborhoods that typically generate the most service requests.

Still, in the "real world" some retrenchment may be called for. Initiatives to limit *who* comes into the system are exploding in popularity. [Courts throughout the U.S.](#) are postponing trials, arraignments and such. Jails and prisons are responding with [lockdowns](#), no visiting allowed. What else can be done? How about the cops? After all, they're the ones who kick off the mess by making arrests. Collin County (Texas) Sheriff Jim Skinner fears that arrestees might waltz in with a lethal present, then spread it through his jail. So [he's urged local police](#) to forego taking non-violent criminals into custody: "Would you arrest if you and your staff had to take custody and care for the person? You may decide that an arrest isn't necessary to protect public safety." A local

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small-town chief agreed: “We do not believe his request is unreasonable given the current situation.”

Sheriff Skinner has plenty of big-time company. Los Angeles County, for example, has used cite-and-release and early release [to reduce its jail population](#) by six-hundred inmates. Meanwhile arrests have reportedly dropped from three-hundred a day to sixty. That’s *a full eighty percent*. [Colorado](#), though, seems an exception. To keep jails and prisons humming as usual it’s made major efforts to keep physical spaces disinfected and to screen new and current inmates for the virus. Actually, screening persons about to be released can greatly benefit the community. Unfortunately, this is a very imperfect world. Our decentralized criminal justice system, which reflects our decentralized political system, doesn’t turn on a dime. Jails and prisons may not be able to round up enough “dimes” to test everyone. So for crimes that are *really* non-violent – say, drunken driving, shoplifting or petty theft – cite-and-release seems an appealing option.

Yes, mistakes in identifying arrestees who pose a threat to society will happen, and we know the communities that would bear the heaviest load (hint: it’s not nine-oh-two-one-oh.)* So it’s crucial that adjustments made during the pandemic be considered as temporary. Yet some are already pouncing on the chaos to advance their agendas. In a long, nicely crafted [opinion piece](#) in the *New York Times*, staff writer Emily Bazelon approvingly mentions King County D.A. Dan Satterberg’s decision to file “only serious violent cases” because of the pandemic. That police have long criticized D.A. Satterberg [for being too easy on offenders](#) isn’t mentioned. Instead, Ms. Bazelon uses his move to support her view that our present crisis provides “an opportunity to rethink how the system treats low-level offenses”:

It also makes sense to stop arresting and incarcerating people for technical – that is, noncriminal – violations of parole and probation. About 4.5 million people live under court supervision around the country. In 2017, they made up 25 percent of new admissions to state prisons, not because they committed new crimes, but for infractions like missed curfew or unauthorized travel. This practice often makes little sense in terms of public safety; it is particularly hard to justify now.

Ms. Bazelon’s opinions are not uncommon among well-meaning observers who haven’t labored in the system’s trenches. But when [The Crime Report](#) breathlessly announces that similar sentiments have been expressed by America’s “top probation and parole executives,” one need pay attention. In an [open letter](#) that warns of the risk posed by the many arrestees “churning” between jails and home, “[Exit: Executives Transforming Probation and Parole](#)” urges major reductions in the number of persons

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placed under supervision, a “drastic” curtailment of arrests for “technical” violations, and a large increase in early releases. Indeed, as [NBC reports](#), the Covid-19 threat has led to such easings throughout the U.S. “Exit,” though, has long pushed for parole and probation systems that are “smaller, less punitive, and more hopeful, equitable, and restorative.” So it’s hardly an impartial observer.

There are also good reasons for acting against “technical” probation and parole violators. Really, minor, isolated breaches land no one in jail. Supervision caseloads, though, invariably include miscreants who are out of control but have not yet been arrested for another crime. A P.O.’s ability to meaningfully sanction problem clients for “technical” violations is an invaluable tool. It’s the bedrock on which probation and parole rest. If only an arrest for a crime will do, where’s the deterrent value? Why place anyone under supervision?

And that was our final point: crises can make for lousy precedent. But rest assured, we’ll be keeping an eye on things. In the meantime don’t forget: six feet!

* ZIP Code for Beverly Hills

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LETTING GO

Who should stay locked up during the pandemic? Who can go?

For Police Issues by Julius (Jay) Wachtel. A [new study](#) confirms that keeping one's distance is *the* key preventive to the transmission of coronavirus. That's a tough prescription for inhabitants of densely-populated places like New York City to follow. Actually, apartment and condo dwellers everywhere are at risk. Ditto students who live in dorms or labor in packed classrooms. It's why campuses closed and education moved online. Heck, they've even shut down the Vegas strip!

But jails and prisons can't simply close. So what can be done to protect prisoners? Staff? In response to [an inmate lawsuit](#), a Texas Federal judge ordered "widespread testing" at a prison unit housing older, high-risk inmates. He also required that this vulnerable subset receive hand sanitizers and masks and that social distancing rules be followed during their movement. Yet his decision was overruled by an appeals court, which [held that it interfered](#) with the State's "rapidly changing and flexible system-wide approach" to managing the pandemic.

Just what approaches *should* jails and prisons follow? [Extensive guidelines](#) issued by the Centers for Disease Control recommend screening incoming inmates, isolating those with symptoms and quarantining any, symptomatic or not, who had close contact with an infected person. Improvements in hygiene and social distancing are thought especially important. Conceding that "not all strategies will be feasible in all facilities," the CDC suggests working towards a goal of keeping prisoners six feet apart by, among other things, staggering meal hours, removing and rearranging seating and bunks, and closely managing the use of recreational areas.

State correctional authorities have announced a host of measures (for Texas click [here](#), for California click [here](#), for New York click [here](#).) It's apparent that these well-intentioned plans address physical distancing mostly by prohibiting visiting and suspending group activities. Some tweaks are possible. For instance, [California relocated several hundred inmates](#) from dorms "where prisoners are bunked as close as two feet apart with shared sinks and showers." (One surmises that the "fix" involved using areas formerly reserved for recreation.)

Of course, prisons weren't built with distancing in mind. As the CDC's "not all strategies..." observation implicitly acknowledges, crowding *is* the norm. Measures that reduce correctional populations are providing some breathing room during the

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pandemic. California, for example, temporarily [suspended](#) accepting new prison inmates from local jails. It also “[expedited](#)” the release of 3,500 inmates who were serving time for “non-violent” crimes and had two months or less left on their terms. (According to [a recent report](#) at least three of this group subsequently tested COVID-19 positive.) Meanwhile the Federal Bureau of Prisons, which has [just under 150,000 inmates](#), placed an additional 1,751 inmates it considered sufficiently trustworthy [into “home confinement.”](#)

There’s of course a catch. Prisons house persons convicted of serious crimes, so their release – particularly, their early release – brings into question the issues of adequacy of punishment and, naturally, public safety. Our recent post on point, “[Must the Door Revolve?](#)” offers some stark warnings. Consider, for example, the New York City mother [who was found strangled](#) last October 16 (her body was discovered by her two small children.) Her alleged assailant had been paroled from a manslaughter conviction three years earlier.

Recidivism is undeniably a major problem. According to [a Federal study](#), a full *eighty-three percent* of the 401,288 state prisoners released in 2005 were rearrested an average of *five times each* during their first nine years back on the street. And it wasn’t just addicts “doing drugs again”: more than seventy-five percent of released narcotics offenders were re-arrested for a non-drug crime. That’s why the Attorney General’s [directive authorizing home confinement](#) calls for the careful assessment of potential releasees. It’s why despite COVID’s sobering toll [on California corrections](#) (as of April 28, 194 prisoners and 132 staff members have been infected, and one prisoner has died) the ostensibly liberal State has ignored activist demands for mass releases. (A Federal court [recently refused](#) to force the state to loosen up because of the virus.)

Fine. But even if one agrees that a mass release of *prison* inmates isn’t a good idea, what about city and county lockups? Their “clientele” constitutes a far lesser threat. Right?

Maybe, maybe not. Jails hold misdemeanants who will remain within the local system. But they’re also a way-station for felons on their way to state prison. [According to BJS](#), local jails held 738,400 inmates at midyear 2018. Two-thirds were yet to be adjudicated. *Sixty-eight percent* faced at least one felony charge.

In the best of times having even a minor criminal record can prove daunting. Still, persons under supervision who cooperate with their probation officers, participate in post-release programs and work assiduously to reverse bad habits can ultimately do well. Pandemics, though, seem a poor time to test anyone’s mettle. Rehabilitation programs and job opportunities may be unavailable. Ditto probation officers, who may

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be struggling to avoid infection while dealing with the increased caseloads brought on by largescale releases.

Such as in California. On April 13 its court system imposed [State-wide zero-dollar bail](#) with some exceptions for violent crimes. One day later [a State memo](#) reminded County Sheriffs and Chief Probation Officers of their [undisputed authority](#) to release inmates in response “to any existing or imminent emergency endangering the lives of inmates in any county jail, juvenile detention center, or other correctional institution.”

Local officials jumped at the chance to thin out their jails. Even as he voiced concern about a possible “crime surge,” Sheriff Alex Villanueva [released 4,276 inmates](#) from the Los Angeles County Jail, one out of every four. [Alameda County started out](#) by releasing 314 inmates, about twelve percent of its jail population. [Within a few days](#) that number jumped to 600, with more on the way. But emptying out the jail though, as activists heatedly demanded, was thought impossible. According to sheriff’s Sgt. Ray Kelly, “ninety percent of those individuals are in here for serious violent crimes, including homicides, sexual assault, crimes against children and other crimes of serious public concern.”

It’s not just about the pandemic. California jail and prison populations have been affected by a series of easings that began more than a decade ago:

- [A 2009 Federal appellate decision](#) required that the State cut its prison population so that it would not exceed 137.5 percent of its “combined design capacity” ([an estimated cut of 40,000](#) from a population of about 150,000)
- [The Public Safety Realignment Act of 2011](#) transferred “non-serious, non-violent [and] non-sex” offenders from state to local supervision
- [The Safe Neighborhoods and Schools Act of 2015](#) reduced many crimes to misdemeanors
- [The Public Safety and Rehabilitation Act of 2016](#) facilitated earning release credits and gaining early parole

As we discussed in “[The Blame Game](#)” these moves were roundly criticized for an increase in crime. Given the chronic problem of recidivism, there are no shortage of examples. Say, the February sexual assault of a Sacramento-area woman by a 22-year old man only [one day after](#) his early release thanks to the 2016 Act (he was serving time for violating his probation for felony assault.)

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What prior laws *didn't* do was zero out bail altogether. [That move](#), which is applicable to most non-violent crimes, happened on April 6 thanks to the virus. And just like Sheriff Villanueva might have forecast, stuff started to happen. We settled on three examples from Alameda County (for case information check the links):

- [Owen Aguilar](#). Aguilar's known entanglements begin in April 2013 when he was charged with felony drug possession and misdemeanor battery (case no. F13912136). Aguilar pled guilty to a misdemeanor drug charge and was ordered into treatment.

Four years later Aguilar faced two felonies: attempted robbery and criminal threats (case no. F17903965.) He pled guilty to the latter and got three years. Aguilar was released on parole in June 2019.

He was back in trouble in March 2020, charged with felony animal cruelty (case no. F20902123.) Bail was set at \$107,000, which he couldn't make. But on April 13 jailers released Aguilar because of the COVID-19 emergency.

Four *days* later [he went on an arson spree](#). His targets included a tent occupied by a homeless person and several commercial dumpsters. A brush fire broke out. [Officers soon collared Aguilar. A witness confirmed](#) that Aguilar was indeed the firebug, and he also reportedly confessed. Aguilar's parole was revoked. In addition to the cruelty charge, Aguilar faces seven counts of felony arson (case nos. F20902589 and P209000461).

- [Rocky Lee Music](#). Music's Alameda County court record begins in October, 2013 when he was charged with two counts of first-degree residential burglary (case no. F13912136.) Two months later his plea of no contest to one count earned him three months in jail and five years probation (case no. H55198.)

Music's lawbreaking continued. Two years into his probation a misdemeanor arrest for disturbing the peace cost him a few days in jail (case no. 152534). Then in 2016 he was charged with assault and grand theft, and in 2018 with burglary. (What happened in those cases isn't mentioned.) He remained a free man until April 19, 2020, when [Oakland police caught him](#) driving a stolen car. Music apparently tried to outrun the cops and nearly drove into a lake. Thanks to COVID-19 rules, as a "non-violent" offender his bail was zero and he was promptly released.

Within a half-hour after walking out of jail Music carjacked one car, abandoned it, then tried to carjack another. When officers caught up the desperado tried to

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break into a building, and it took a police dog to finally bring him down. Now back in jail, he faces a host of felonies, from vehicle theft to assault and carjacking (case no. 20-CR-005177.)

- [Kristopher Sylvester](#). Actually, neither Aguilar nor Music hold a candle to Sylvester. Sylvester's record, which began in 2004 and includes arrests for narcotics, vehicle theft, burglary, felony eluding and felon with a gun, merit *forty* separate Alameda superior court files. He was most recently on probation on two cases for crimes including felon with a gun, burglary, stolen vehicle and felony evasion.

On April 2nd. a police stakeout [caught Sylvester and his cronies](#) burglarizing vehicles. Officers pounced. They found property from prior crimes and a gun, which Sylvester wasn't supposed to have because he was a multiple-convicted felon. Sylvester got a court date for "multiple counts of commercial burglary, committing a burglary during a State of Emergency, possession of stolen property, possession of a firearm, felony evading, and a probation violation" (case no. 20-CR-005177.)

But thanks to COVID-19, his bail was set at zero. *Within a few days* Sylvester and three buds embarked on a vehicle theft and burglary spree that spanned the Bay area. Their haul included cash registers and an improbable *twenty-three cars* taken from a Hertz lot. Three days Sylvester and a partner, Jacob Mauk (he has a record for robbery and felony assault) [crashed their vehicle](#) while being chased by police. They were charged with burglary, possession of stolen property and resisting arrest. The two remaining members of their crew (both were on felony probation) were arrested on similar charges days later in a nearby town.

Thanks to the COVID-19 rule, [everyone was released on zero bail](#). Sylvester's a two-time winner!

No matter their classification as ostensibly "non-violent," it's clear that characters such as Aguilar, Music and Sylvester pose a serious risk to both cops and citizens. And just as we were "going to press," [LAPD Chief Michel Moore complained](#) that zero-bail policies were encouraging repeat offenders such as car thieves. One, Eric Medina, was arrested with a different car four times in three weeks. Another, three times in only two days. And it's not just harmless types. An unidentified zero-bail beneficiary compiled six quick arrests: one was for "brandishing a weapon," another, for trespassing.

Punishment's effectiveness as a deterrent reportedly rests on its [certainty, severity, and celerity](#): whether, how much and how quickly. As *everyone* who labors in the world

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of criminal justice must realize, these values are to some extent undermined by zero-bail and its running mates. As L.A. District Attorney and zero-bail supporter Jackie Lacey concedes, “unfortunately, a few defendants have taken advantage of this public health effort.”

To be sure, coronavirus *is* a serious threat. Places of confinement are a breeding ground, threatening the well-being of those inside *and* outside the criminal justice system. Our website’s [COVID-19 corrections section](#) lists many sobering examples. Riverside County (Calif.) jails presently hold about 3,200 inmates. [As of April 27](#), 136 inmates and 71 employees have tested COVID-19 positive, and two deputies and one inmate have died. [George Gascón](#), an unabashed progressive who is expected to challenge Jackie Lacey in the next election, advocated for zero-bail as San Francisco D.A. He still does:

Does keeping huge numbers of people in custody on small-time offenses pose a greater threat to us all than letting them out? This virus does not care if you’re a prosecutor, victim or a defendant. Innocent or guilty, this virus can still kill you.

So by all means, take the virus into account. COVID-19, though, is not the appropriate vehicle for furthering preexisting political or ideological agendas. Even in our intensely polarized climate, we must dispassionately consider *all* risk, from microscopic and human foe alike. That, in a nutshell, is our message.

And here’s another: stay safe!