

Getting Away With Murder

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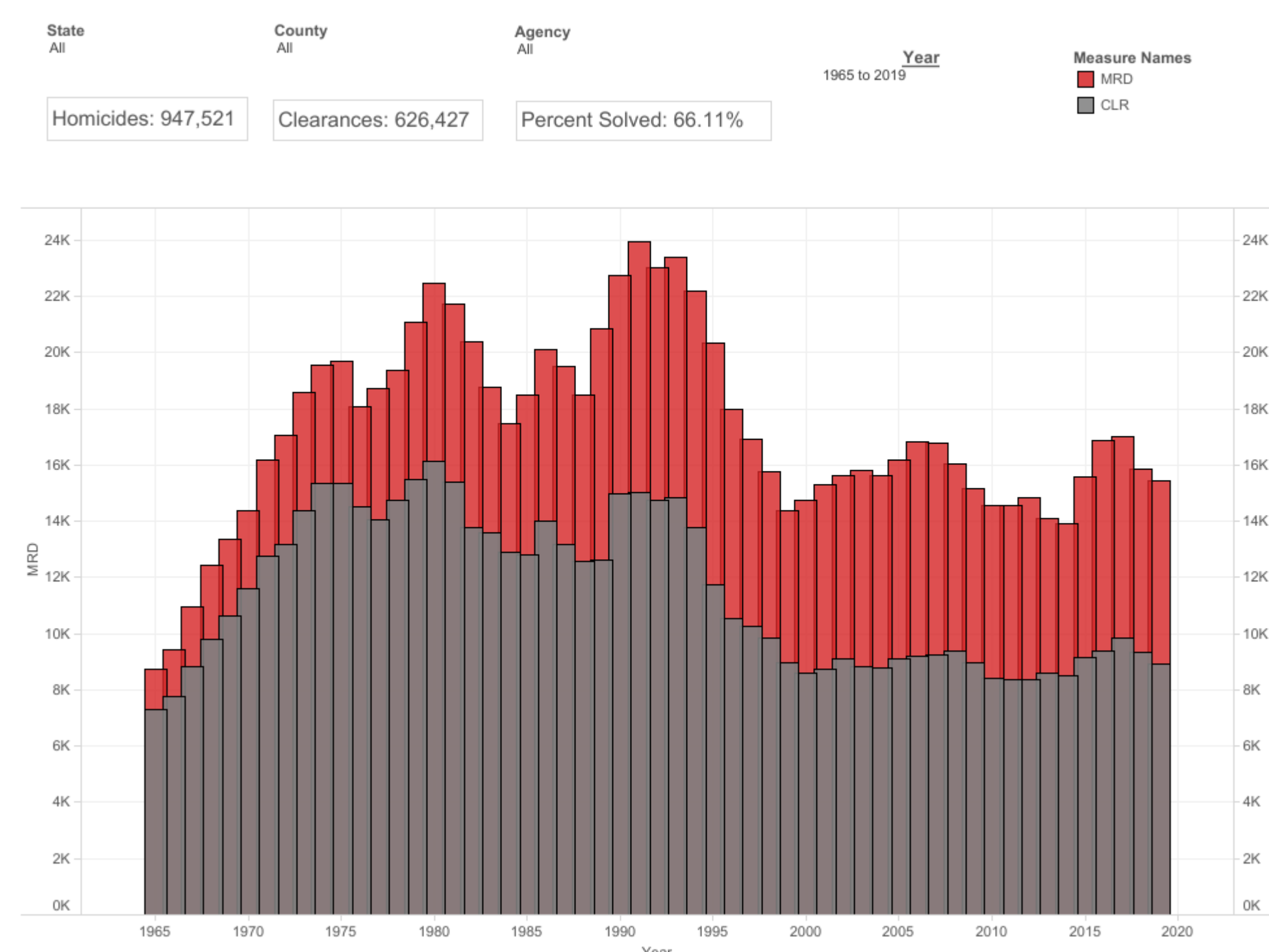
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The Problem: Failures of Justice

Killers on the Loose

Tens of thousands of murderers are walking uncaught in society. Hundreds of thousands of homicides remain unsolved. The official United States clearance rate for murder, or the rate at which killings are solved, has decreased over time from around 90% in 1965 to 60% today. The following graph from the Murder Accountability Project shows total murders in red compared with total clearances in gray.

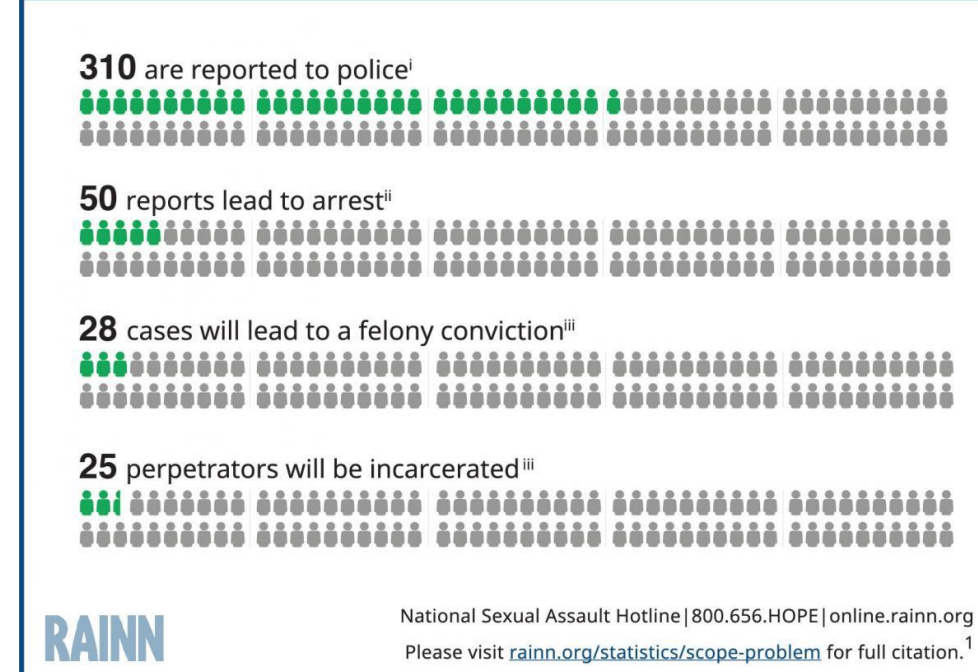
Uniform Crime Report for Homicides: 1965-2019



Even worse, "clearances" only mean police believe they have found the killer; it does not mean a conviction occurs. Conviction rates for homicide are less than 50%. Getting away with murder is like flipping a coin weighted in the killer's favor.

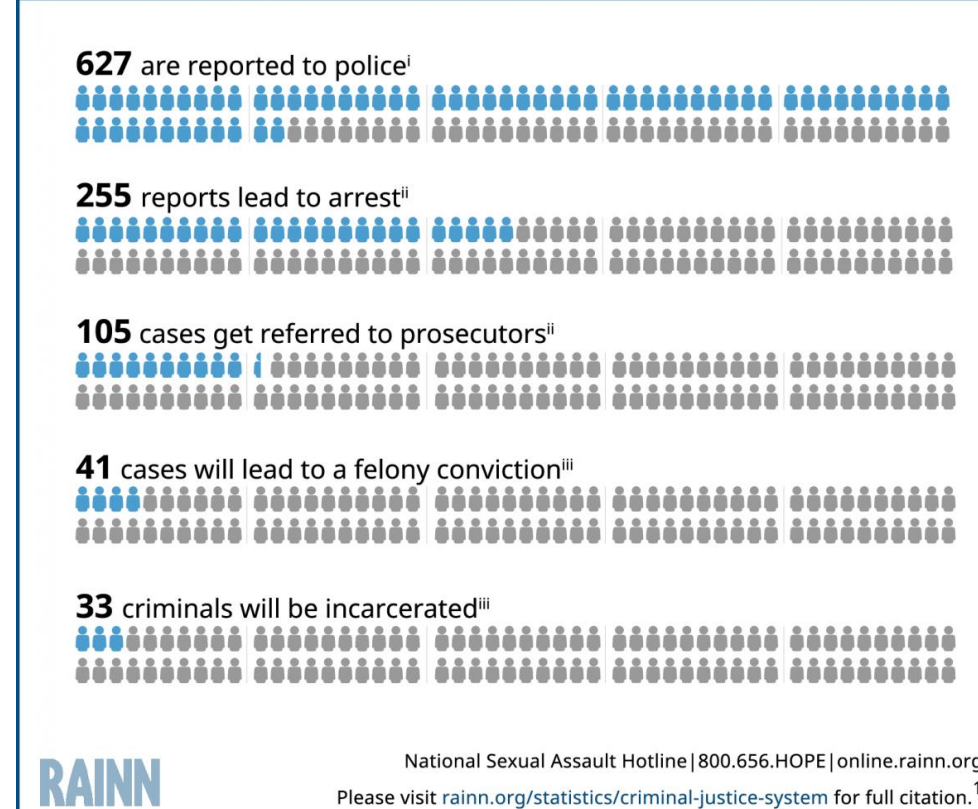
A Broader Problem

OUT OF EVERY 1,000 SEXUAL ASSAULTS, 975 PERPETRATORS WILL WALK FREE

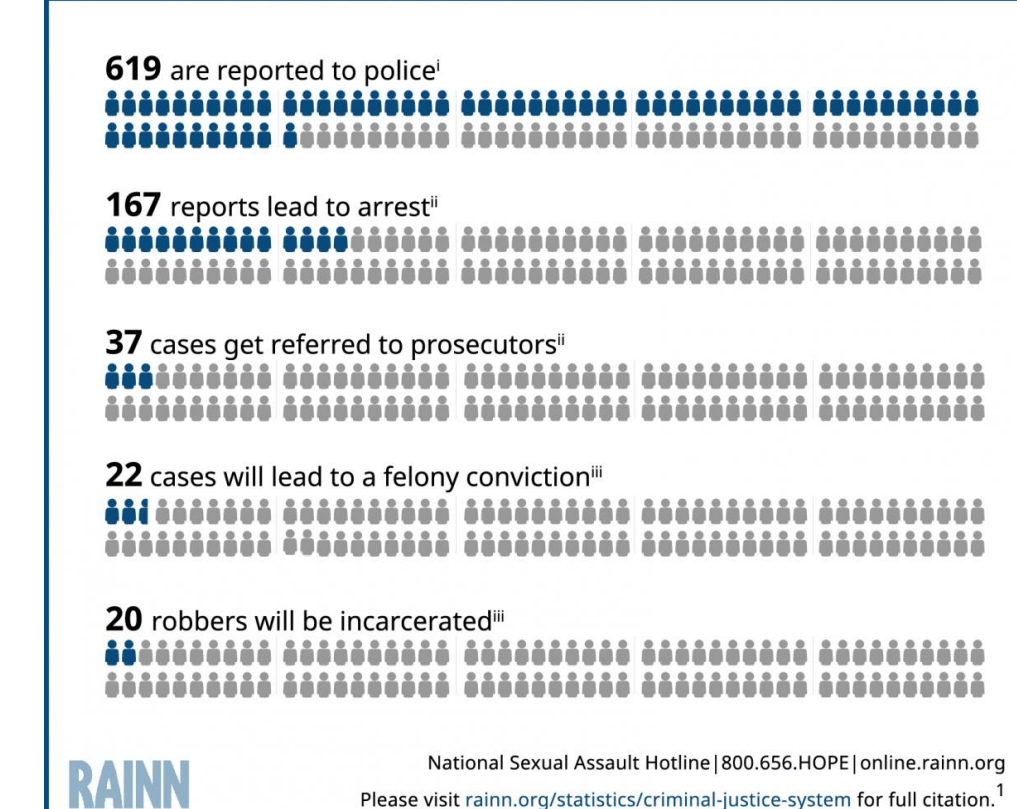


And now for more bad news. Murder has the highest clearance and conviction rate of any crime. Other serious crimes like rape, assault, and robbery often go unreported and have conviction rates of less than 5%. Even when serious criminals are arrested, they often escape conviction or receive only a fraction of the punishment the law prescribes. When a serious criminal does not receive their deserved punishment, whether through escaping arrest, conviction, or receiving an overly lenient sentence, a failure of justice occurs.

OUT OF 1000 ASSAULT AND BATTERY CRIMES:



OUT OF 1000 ROBBERIES:



The Project: Why Justice Fails

Seeking Answers

The goal of this project was to provide answers to the question why justice fails so often in America today. Specifically, what factors and legal rules in the justice system allow for so many serious criminals to walk free? Our research team reviewed, analyzed, and synthesized an extensive body of past studies, data sources, victim stories, and more to provide insight on why failures of justice routinely occur. The following are three main categories of causes of failures of justice based on when those failures occur and some selected topics making up those categories.

Causes During Investigation

- Legal Limitations on Police Investigation.** For example, warrant requirements can prevent police from following promising leads, and restrictions on interrogation such as the required reading of the "Miranda Rights" have been shown to reduce confession and clearance rates. Rules restricting police access to new technology such as surveillance cameras or DNA databases also allow more criminals to escape uncaught.
- Inadequate Financing and Investigative Errors.** A lack of funding causes many police departments to cut back on staff which is shown to decrease clearance rates. Inadequate financing also leads to evidence going unanalyzed such as rape kits or DNA samples which could pinpoint the perpetrators. Simple errors during investigation such as contaminating evidence or not responding fast enough to a crime scene also contribute to failures of justice.
- Witness Intimidation.** One of the largest and most pernicious causes of failures of justice is witness intimidation. Witness intimidation is a silent epidemic as 66% of law enforcement agencies describe witness intimidation as common. Intimidation occurs in 75-100% of gang-related crimes. Hundreds of killers and tens of thousands of rapists escape justice each year due to witnesses and victims being too scared to speak out.
- Poor Police-Community Relations.** Even when direct intimidation does not occur, communities are often distrustful of police due to police misconduct or cynical about the justice system's ability to deliver justice. This leads to crimes going unreported, community members refusing to help police, and further failures of justice that only perpetuate the vicious cycle.

Causes During Prosecution

- Statutes of Limitations.** While murder has no statute of limitations, crimes such as rape and manslaughter often have expiration dates of only a few years for prosecutors to bring charges. These antiquated rules from a time when memory was the main evidence fail to account for new forms of evidence, such as DNA, which make solving old crimes more likely.
- Double Jeopardy.** Double jeopardy is an ancient legal rule originating from the Roman Republic which bars a second prosecution for the same crime even when new evidence is discovered. Due to the rise of new forms of evidence, increasing numbers of murderers are escaping due to the rule.
- The Exclusionary Rule.** The exclusionary rule bars evidence gathered in violation of legal limits on police investigation from being admitted in court even when the violations are minor and the evidence essential. At least 10,000 felons escape justice each year due to the exclusionary rule, with even serial killers being allowed to go free on technicalities to kill again.
- Ideological Prosecution.** Calls for criminal justice reform have led to the election of "progressive prosecutors" who promise to act where legislatures fail at reducing mass incarceration. Such prosecutors often implement policies of non-prosecution for more minor offenses and even drop many serious cases in order to reduce prison populations.
- Plea Bargaining.** Over 97% of criminal cases end in a plea bargain instead of a trial. In order to incentivize criminals to plead guilty, prosecutors usually offer charge and sentence reductions. Many murderers only end up being punished for manslaughter, and rapists often strike deals for only a few months in jail. Plea bargaining replaces the scales of justice with the scales of commerce where punishments are bought and sold based on convenience instead of justice.

Causes After Conviction

- Judicial Sentencing Discretion.** Judges often give shockingly lenient sentences, especially for crimes they may not consider too important like rape. Disparities in sentencing are enormous. Depending on the judge, the same crime of child rape has been punished by either probation, 60 days in jail, or 1,500 years in prison. 20% of federal sentences are below the minimum prescribed by sentencing guidelines purely due to judicial discretion.
- Early Release.** Most serious state criminals serve only about 50% of their sentences before being released on parole. The sentence given for a crime and the sentence served often produce an unjust remainder of missing punishment.
- Executive Clemency.** The president and state governors wield the power of pardons and commutations, and thousands of serious criminals have escaped their full punishment by having friends in high places.

The Purpose: Moving Forward

Balancing Competing Interests



We need to think individually and as a society about why things are the way they are. In addition to examining causes behind failures of justice, this project also spent time examining the interests at stake. Justice is often sacrificed in the legal system to uphold alternative interests. Everything in life is a tradeoff, and this maxim holds true when it comes to failures of justice. Limiting police investigation upholds privacy while letting murderers get away. Money spent on processing rape kits can't be spent on education. The exclusionary rule tries to deter police illegality at the cost of letting some serial killers go free. Plea bargaining saves time and money in exchange for letting many serious criminals off with a slap on the wrist. Judicial sentencing discretion allows the judge to fit the punishment to the crime, but it also allows offensively lenient sentences. Executive clemency allows mercy but too often leads to corruption.

Reassessing the Balance of the Past

People often view the legal system as somehow untouchable without realizing the rules today were made by balances struck in the past when circumstances were different. Many failures of justice occur due to outdated societal balances. Statutes of limitations and strict double jeopardy laws are examples of this. Rules on warrants, interrogation procedures, and police use of new technology often date back decades or centuries. Times are changing, and citizens, legislatures, and courts need to strike new balances better suited to upholding justice and the interests we most value today.

Counting the Costs

The social costs of failures of justice defy simple economic accounting. Justice is a moral obligation. How can a price be put on grief or pain? Studies show victims and their families have a much harder time moving on when justice is not served and are more likely to suffer from depression and other crippling effects on mental health. Moreover, every criminal who goes uncaught is free to commit more crime, contributing a substantial portion of the approximate \$2.5 trillion yearly cost of crime in the United States. When people see criminals routinely escaping justice, the moral credibility of the law also suffers, leading to more crime and failures of justice in a vicious cycle. A failure of justice anywhere is a threat to justice everywhere. Only reforms serving to uphold justice can break this cycle.



Reforming the System



This project was an academic one focused on gathering information and painting a clearer picture of why so many people literally get away with murder. But in addition to gathering information on causes, our research also briefly surveyed implemented reforms and reform proposals to better promote justice. It is not the purpose of this project to politically advocate for some reforms over others, but every person concerned with justice needs to educate themselves on the causes of failures of justice, the interests at stake, and the reforms that can ensure fewer criminals get away with murder.

For more information on this project or poster please contact Jeffrey Seaman at jise999@sas.upenn.edu