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The FBI Director's Troubling Comments on the 'Ferguson Effect'

James Comey worries that a spike in crime in some cities is caused by police who are afraid to do their jobs because of public scrutiny.



A protestor films riot police in Cleveland. John Minchillo / AP

David A. Graham

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The Ferguson effect is the Bigfoot of American criminal justice: Fervently believed to be real by some, doubted by many others, reportedly glimpsed here and there, but never yet attested to by any hard evidence.

On Friday, FBI Director James Comey professed himself at least open to believing that the phenomenon—the idea that scrutiny of police since the death of Michael Brown in August 2014 has emboldened criminals and made police reluctant to effectively fight crime—is real. While there are plenty of experts who disagree, what makes Comey’s comments so rattling is that if there is an observable Ferguson effect, it may suggest that many law-enforcement agencies have come to rely on abusive or questionable practices, rather than developing other crime-control strategies that could be successful even under public scrutiny.

“The question that has been asked of me, is whether these kinds of things are changing police behavior all over the country,” Comey said during a speech at the University of Chicago Law School. “And the answer is, I don’t know. I don’t know whether this explains it entirely, but I do have a strong sense that some part of the explanation is a chill wind blowing through American law enforcement over the last year. And that wind is surely changing behavior.”

As Comey acknowledged, there’s no clear proof of a connection. There have been anecdotal stories that argue that criminals are getting bolder—in Baltimore, for example, where violent crime spiked after Freddie Gray’s death in police custody in April—but as Ta-Nehisi Coates has pointed out, most arguments for the Ferguson effect come down to coincidence and hand-waving. Here’s what Comey said Friday:

I’ve been part of a lot of thoughtful conversations with law enforcement, elected officials, academics, and community members in recent weeks. I’ve heard a lot of theories—reasonable theories.

Maybe it’s the return of violent offenders after serving jail terms. Maybe it’s cheap heroin or synthetic drugs. Maybe after we busted up the large gangs, smaller groups are now fighting for turf. Maybe it’s a change in the justice system’s approach to bail or charging or sentencing. Maybe something has changed with respect to the availability of guns.

These are all useful suggestions, but to my mind none of them explain both the map and the calendar in disparate cities over the last 10 months.

A major obstacle to assessing the recent spike is that social scientists struggle to explain fluctuations in the crime rate even when there is copious data to work with. As Inimai Chettiar explained in a deep dive in February, the huge downward trend in crime in the U.S. in the last two decades remains largely unexplained. There’s a raft of theories, none of which effectively explains the drop by itself, and all of which in aggregate still leave most of the decline unaccounted for. Any explanation for the recent rise is likely to be even more speculative, but giving credence to the Ferguson effect risks cutting the police-reform push off at the knees.

Comey has not been blind to the importance of scrutinizing the police. During a speech in February, he called for better collection of data about police use of force, angrily denouncing the lack so far. He again spoke of the need for some scrutiny on Friday.

“Part of that behavior change is to be welcomed, as we continue to have important discussions about police conduct and de-escalation and the use of deadly force,” Comey said. “Those are essential discussions and law enforcement will get better as a result.”

But he added: “We can’t lose sight of the fact that there really are bad people standing on the street with guns. The young men dying on street corners all across this country are not committing suicide or being shot by the cops. They are being killed, police chiefs tell me, by other young men with guns.”

The implication of this argument is far more worrisome. (Though whether Comey should trust what those police chiefs are saying in the absence of the data he called for is another question.) The police-reform push and the Black Lives Matter movement arose in response to some clearly troubling cases: some in which police had obviously overstepped their bounds, and others—such as the arrest of Sandra Bland in July—in which what happened might have been legal, but many people still found the conduct of law-enforcement appalling.

So imagine Comey is right: The spike in crime really is a Ferguson effect, and police have drastically pulled back from policing because they’re afraid of being caught on camera. (Civil-liberties campaigners have long pushed back against the law-enforcement defense of surveillance and stop-and-frisk that if you’ve done nothing wrong you’ve got nothing to hide; by complaining that being videotaped prevents them from carrying out their duties, it seems police are finally embracing the activists’ point.) The implication of the Ferguson-effect argument is that police can’t provide safe streets and low crime rates without massive civil-rights violations—aggressive use of physical force, racial profiling, searches that fall into legal gray areas, and so on—and without alienating black communities.

Many law-enforcement officials, though, don’t agree with the FBI director. “Mr. Comey’s remarks caught officials by surprise at the Justice Department, where his views are not shared at the top levels,” The New York Times reported. “While the department had no immediate comment on Friday, several officials privately fumed at Mr. Comey’s suggestion.” The opinions of police chiefs around the country also diverge.

That’s a good reason to hope the Ferguson effect isn’t real. If the rise in crime is being created by a confluence of factors like cheap drugs, it may be reversible. But if the Ferguson effect is real, and the current system can only provide security by means of questionable policing in communities of color, then American policing is much more troubled than its defenders—the law-enforcement officials and scholars who have who suggest the effect is real—have been willing to acknowledge.