



Framing Advocacy on Fines and Fees Reform

Frame Brief | FrameWorks Institute

This brief lays out a selected set of research-based recommendations for effectively framing messaging on the harmful effects of fines and fees in the justice system and related advocacy efforts to advance monetary sanctions reforms. The brief touches on (1) patterns in public thinking that constrain the policy climate, (2) ineffective frames that dampen support for meaningful reforms, and (3) specific recommendations for more effective framing techniques. In testing, these recommendations have been shown to disrupt dominant stereotypes about why people become involved in the justice system, build understanding of the structural issues that shape the status quo, and boost support for progressive reforms to current practices regarding system-imposed fines and fees.

Advocates have made progress—but can they continue to build momentum?

Courts and legislatures around the country are beginning to acknowledge the role that fines and fees play in the criminalization of poverty. Monetary sanctions—such as fines for low-level offenses, like traffic tickets, or fees related to criminal convictions, like court fees or probation fees—have a disproportionate effect on people who are unable to pay. Recent lawsuits by civil rights advocates have closed down “modern-day debtors’ prisons” from Alexander City, Alabama,¹ to Benton County, Washington.² In 2016, important pretrial reforms—including allowance of waivers for certain fines—were signed into law in Maine.³ Although there is still far to go, the issue is moving in the right direction.

Yet, as demonstrated by 2017’s rollbacks of important policies on numerous issues, past progress is in peril, and future advances are far from assured. In the current climate, the essential role of public understanding, public will, and public mobilization has also come into sharper relief. Unless criminal justice reform advocates cultivate a more visible, more informed conversation on monetary sanctions, it will remain difficult to protect hard-earned policy wins—and even harder to press for the additional changes needed to address the issue of fines and fees on a national scale.

This brief offers framing advice that can help to build a broader public conversation about fees and fines. It synthesizes insights from a series of FrameWorks studies aimed at reframing multiple aspects of justice reform with the findings from a more targeted investigation into ways to elevate the criminalization of poverty issue specifically. The comprehensive set of studies was supported by grants from the Ford Foundation and conducted in partnership with the Charles Hamilton Houston Institute for Race and Justice at Harvard Law School.⁴ The fees and fines experiments were conducted with the support of the ACLU Foundation.

If you use communications to make the case for reforming monetary sanctions or other aspects of the criminalization of poverty, the evidence-based recommendations here will be useful to you. You won't find a catchy slogan or magic words, but you will find guidance that helps you work more intentionally and strategically to advance the conversation about fees and fines in the United States justice system.

To navigate to higher ground, it helps to have a map of public thinking.

Reframing any social issue requires a communications strategy that takes the public's pre-existing attitudes and thinking into account. The issue of court-imposed fines and fees is no different.

However, this brief's approach to public thinking may be different from what seasoned advocates have come to expect from such research. Rather than dividing people into groups based on how they respond to prescribed questions and building a communications strategy from there, FrameWorks seeks to find what assumptions are *shared* and *common* across people who come from different regions, races, political affiliations, or other regularly-investigated demographic influences on opinion. This allows a broad and diverse field of advocacy to work from a shared understanding of how people are reasoning about an issue, allowing communicators to coordinate at a high level.

While differences certainly exist among segments of the public, it's also true that people from different walks of life share at least some basic assumptions—and that these dominant patterns of thinking are regularly reinforced by the media and other aspects of culture. These widely shared “cultural models” influence attitudes, opinions, specific policy preferences, and broader support for the issue. By using theory and techniques from anthropology to study public thinking, FrameWorks researchers have identified several recurring, predictable cultural models that the American public is likely to use to interpret messages about justice reform in general and monetary sanctions in particular.⁵ These include:

- ***Crime = Calculated, Rational Act:*** Using this dominant model, people weigh the costs and benefits of committing a crime and commit the crime when the predicted benefits outweigh the risks. When reasoning from this model, the public concludes that the best way to decrease crime is to change the decision-making calculus by upping the risk side of the equation – by making surveillance more robust and punishments harsher. This model privileges so-called “deterrence” measures. It also bolsters the public's reluctance to eliminate cash bail, because people reason that removing or delaying costs of offending will sway the decisions of rational actors.

- ***Problem = Rotten Eggs:*** When employing this model, the public reasons that problems in the justice system—such as overrepresentation of people of color in the justice system—are due to “bad apples” spoiling the bushel. Rather than seeing a system, the public sees individual actors—rogue cops, racist judges, or sadistic prosecutors—making bad decisions due to corruption, ineptitude, or personal or racial animus. By channeling attention to individual character flaws, this model makes it more difficult for the public to understand advocates’ calls for systemic changes or structural shifts.
- ***Fairness Means Uniformity:*** Americans have two ways of modeling how fairness should affect the way the justice system metes out penalties. One is a *uniform* model of fairness that holds that punishments should be fixed regardless of the circumstances surrounding the crime. Using this model, people support uniform sentencing policies such as mandatory minimum sentences. When reasoning from a model that posits that fairness involves strict consistency, people may also be less likely to support reforms that allow for variation of monetary sanctions, such as judicial discretion over the amount of fees or sliding scales for bail.
- ***Fairness Means Acknowledging Context:*** The contrasting contextual model of fairness is premised on the idea that to be fair when determining penalties, the justice system should consider the situation’s unique characteristics, including the defendant’s criminal history and psychological state (mental health, intent, evidence of remorse, etc.) as well as the nature and impact of the crime (violent vs. nonviolent, effect on victim, etc.). When reasoning from a model positing that fairness involves weighing many factors, people are more likely to conclude that it is sensible and fair to consider a defendant’s ability to pay.
- ***Unfair Treatment Is About Class (Not Race).*** Americans (and especially, but not exclusively, whites) tend to assume that the most pervasive cause of disparate treatment in the justice system is defendants’ economic position. People believe that well-to-do offenders can leverage their wealth to secure an aggressive and skilled defense attorney and thereby “buy justice.” By the same reasoning, the public also assumes that average-income or low-income defendants are at a disadvantage in the system. Because this cultural model has a good deal in common with advocates’ arguments, it is especially important to note how it is likely to play out differently in non-experts thinking. For ordinary Americans, this model offers a cognitive path to bypass the importance of race, ethnicity, gender, or citizenship status, because it leads them to focus narrowly on economic status.

Advocates will encounter these patterns in public thinking again and again – and so, it is helpful to become familiar with how they work and how to navigate them. One useful insight into the inner workings of cultural models is that while they are always *available* to people, they are not always *active*. People possess multiple models for any given issue. Some models lead people to think in ways that are productive for discussion and engagement with advocates’ ideas, while others keep the conversation stuck in well-worn ruts or lead to dialogue dead ends.

Because the models are activated by the process of association – triggered by words or images related to the model – communicators can use an understanding of these models to their strategic advantage. For instance, communicators can frame their communications to avoid phrasing that could trigger unproductive patterns of thinking. The next section offers a short list of examples of framing strategies to avoid based on this analysis and subsequent testing of how frames interact with public thinking.

Avoid communications strategies that have proven to be “traps.”

Some themes and frames have unintended negative consequences. FrameWorks’ careful analysis of public thinking—compared with current and possible messaging on fees and fines—pinpoints a set of existing communications practices that have unproductive effects and should be avoided. These “traps” are plausible ways of talking about an issue that, upon empirical analysis, turn out to be ineffective or do more harm than good.

Avoid zooming in on individuals or single episodes.

Because the public is predisposed to think about individual-level explanations for why crime occurs, why people become involved with the justice system, and why disparities exist, communicators run the risk of activating these understandings whenever they highlight the experiences or actions of specific people. The behavior of both accused offenders and misbehaving officials can both be interpreted, by the public, through the “rotten eggs” model. Thus, even the most compelling story can be dismissed as an idiosyncratic or isolated case. Single episodes can also distract from the larger theme, as they lend themselves to endless debate over the details of the incident rather than a deeper discussion of the trend they represent. To avoid this trap, find ways to use lived experiences as enlivening examples within a larger narrative, rather than as standalone stories. One reliable way to do this is to build composite characters – amalgamations of several real-life people – or use other types of scenario-based storytelling. Another way to frame real-life stories is to take pains to explicitly state the systemic roots of the specific experience, and to emphasize the features that the particular episode has in common with the general problem. Put another way: to set up policy thinking, make the story about the system and its effects, not about the people affected by the system.

Don’t lead with the term “fairness,” and don’t use it without a definition.

Advocacy communications can be more effective by appealing to the stable, culturally cherished ideals that social scientists refer to as *values*.⁶ When used artfully in messaging, values help the public make sense of why an issue matters, and can influence their attitudes, behaviors, and policy preferences. Given this power, it is important to select a value based on evidence about its effects—and not through guesswork (intuition) or gut-work (reflecting on one’s own values.) FrameWorks research has consistently shown that appeals to the value of *Fairness* often fall flat or backfire—largely because there are multiple conceptions of fairness, especially when it comes to crime and justice. Use the terms *fair/fairness* sparingly. If it is used, be sure not to lead with the term, to always define it, and include explicit cues that guide the public to interpret it in the way you intend. For most issues related to fines and fees, FrameWorks recommends orienting people toward *Fairness Means Acknowledging Context*, one of the cultural models described in the previous section.

Avoid over-reliance on a cost-efficiency argument.

In a 2014 controlled experiment that tested frames' ability to move the public toward a variety of progressive justice reforms, including measures to reduce mass incarceration, FrameWorks' found a *Cost Efficiency* frame to be largely ineffective—and moreover, that it moved the public *away* from reform measures designed to address racial disparities⁷. A more targeted 2016 experiment (one that probed the effects of a *Cost Efficiency* argument on policy preferences about fees and fines specifically) found the *Cost Efficiency* frame to be relatively effective on this narrower issue. FrameWorks' interpretation of these divergent results is that Americans will pay any price to “lock up the bad guys” yet are hesitant to allow wealth or poverty to skew the functioning of the justice system. FrameWorks thus recommends that advocates for monetary sanction reforms refrain from leading with *Cost Efficiency* or using it in mass communications settings. Rather, advocates should reserve it for use as a supporting point with audiences who are more intensely concerned about budgets (legislators, conservatives, etc.). This avoids the risks of elevating an argument that won't work on other justice reforms (such as efforts to reduce incarceration rates) yet allows economic justice advocates to productively activate thinking about the fiscal consequences of confinement when it can really make a difference.

Eliminate the term “pay-or-stay sentences.”

In testing, the specific wording “pay or stay sentences” generated *more* support for jailing people for failing to pay fines or fees—that is, it led to a backfire effect. Americans consistently misinterpreted the phrase “pay or stay,” thinking that it meant that defendants could make a personal and meaningful choice between a fine or jail time, and therefore, that this was a desirable practice. In other words, calling this issue “pay or stay” was actively *unhelpful*. FrameWorks recommends that the field stop using this term altogether.

Using tested framing strategies can boost support for meaningful reforms.

With a shared understanding of themes to avoid, advocates are in a better position to elevate themes and arguments that can advance the issue. And this issue is one whose time is now. In a 2016 controlled experiment with a nationally representative sample, FrameWorks researchers found that there are high levels of public support for many reforms designed to eliminate the criminalization of poverty. Specifically, Americans were generally against the idea of confining people for failure to pay system-imposed legal debts and in favor of improving and expanding the system of public defenders to prevent this possibility. Advocates should take advantage of these supportive attitudes by talking about frequently and prominently. In fact, baseline levels of support on fees and fines reform are so high (up to 65%) that it's worth considering using this issue a way to build and broaden constituencies that could later be mobilized on other aspects of justice reform. For instance, because support for bail reform is lower than support for fees and fines reform, it would make strategic sense to open a communication opportunity – an op/ed, or an education campaign – with a focus on fees and fines, and then make the parallel to bail issues later.

The specific recommendations in this section offer tools for leaning into this issue, including values, metaphors, and other framing devices that can boost support for policies to improve indigent defense and reform monetary sanctions, and shift public attitudes from a punitive orientation to a more rehabilitative stance.

Appeal to the shared American value of *Integrity* to frame why monetary sanctions are problematic.

To frame an issue effectively for non-experts, it is important to lead with a value. This means that it is essential to assert, explicitly and early on, why the issue matters to society. The goal here is not to merely heighten concern, but to orient people toward a principle that should inform civic deliberations about systemic change. On the issue of fees and fines, FrameWorks recommends appealing to the value of *Integrity* – the virtue of doing the right things for the right reasons. In testing, *Integrity* helped people think more robustly about inequities in the system and helped orient them to the rehabilitative functions of the system, breaking through the punitive orientation that characterizes default American thinking. Here’s an example of how this value might be used in the opening of a longer communication:

Integrity means doing the right things for the right reasons. Americans should insist that all public systems—and especially the justice system—operate with integrity. Right now, too many parts of our justice system operate on a profit motive. The bail system, jails and prisons, and probation programs often rely on contracts with private companies to run parts of the system. These companies place a priority on profits, not on people, and not on the higher purposes of our justice system. There is a similar problem when police or the courts impose fines or fees without any consideration of how these will affect an individual’s case or their life beyond the legal situation. To restore the integrity of the system, we need to remove the profit motive from our justice system, and take steps to ensure that equal justice is available to all, not only those who can pay their way out of problems.

Crucially, the recommendation to lead with the ideal of *Integrity* also entails the recommendation to avoid leading with other values (like *Fairness*, *Justice*, *Equity*, or *Constitutional Rights*.) Those ideas have a place in the argument—as will be explained further below—but the field will be better served by coalescing around a consistent lead value.

Continue to emphasize that some current practices have already been found unconstitutional.

At the request of the ACLU Foundation, FrameWorks tested the effects of including the constitutional argument in advocacy messaging. A controlled experiment found that this information was not just effective in driving support for ending “debtors’ prison” practices, but that it also had positive spillover effects on other issues relevant to equal justice for the poor, such as more funding for public defenders. The message tested in research was as follows:

Our Constitution guarantees every person in the United States the right to equal protection under the law. Yet poor people—especially poor people of color—are more likely to be arrested, fined, or put in jail than others are. In many communities around the country, people are imprisoned for failing to pay fines or fees set by courts. These may be fines for low-level offenses, like traffic tickets, or they may be fees tied to criminal convictions, like court costs or probation fees.

This practice is unconstitutional. More than 30 years ago, the U.S. Supreme Court ruled that judges cannot send people to jail for not paying court-imposed fines and legal fees they cannot afford. They ruled that this violates people’s Constitutional right to equal protection under the law, because a person’s financial situation cannot and should not influence whether they go to jail. Yet, in violation of this decision, many judges continue to imprison people who cannot afford to pay their debts. In order to uphold our Constitutional rights, we need to demand an end to the practice of imprisoning people for failure to pay fines and fees they could never afford to begin with.

Based on this finding, the field should feel confident in continuing to use explanations that highlight the finding of the case described above, *Bearden v. Georgia*.

Explain the problem in everyday language.

Explanatory techniques are called for on this issue. The public is likely to agree that this issue needs to be addressed once they grasp it. Hyperemotional or recognizably partisan rhetoric can squander this support by activating “myside bias,” or the tendency to come to a conclusion based on political identification.

It is also important to include all the links in the chain of explanation that people need to connect causes to consequences: offer essential background information, describe the policy, offer a brief example of how it is implemented, and take care to assert that it has harmful effects. Here’s an example of how to build a simple and clear explanatory chain on this issue:

In many communities around the country, people can be put in jail for failing to pay fines or fees set by courts. These may be fines for low-level offenses, like traffic tickets, or they may be fees tied to criminal convictions, like court costs or probation fees. These fines and fees can create a vicious cycle that distorts justice for those who can’t pay their way out of the problem.

Additional explanatory techniques follow.

Explain *Implicit Bias* to help the public understand how prejudice is built into the system, and how policy can help remove it.

Because people are more likely to endorse public solutions when they understand a mechanism that contributes to a problem, it’s a good framing practice to explain a process that can be influenced by policy. This caution is all the more pertinent to the justice field, as an analysis of the field’s advocacy communications found that they rarely included causal explanations.⁸

A FrameWorks study on framing school-to-prison pipeline issues found that a fully articulated, cause-and-effect explanation of implicit bias can be an especially powerful way of shifting public thinking about whether and how “race matters” and boost support for changes to systemic practices that reproduce and exacerbate racial inequities.⁹ Talking about implicit bias may also help the public reason more effectively about the criminalization of poverty and its intersection with other forms of oppression, like racism. Here is an example of how this connection might be framed:

Implicit bias helps to explain why, in the United States, poor people—and especially poor people of color—are more likely to be arrested, fined, or put in jail than others are. We are all affected by the negative stereotypes we absorb through the media and culture, often without even realizing it. The result is what psychologists call implicit bias—flawed “snap judgments” that our brains form automatically. These biases shape the way we all react to people based on race, class, or other perceived differences. It’s one reason why African Americans are more likely to be arrested than others who commit the same offense, and more likely to be assessed fines by a court. The overall negative impact on people of color, and our society, is deeply problematic.

The multi-sentence explanation here is purposeful and important. The term *implicit bias* is not a “magic word” that can shift attitudes through its mere utterance. It’s important to explain it to the public, not just name it. Explanatory chains on implicit bias should name a process that allows bias to form (media or culture, for example), explain how it works (snap judgments), and conclude with an explicit statement of negative outcomes.

Highlight the collateral consequences for people’s everyday lives.

FrameWorks research suggest that it is more effective to talk about how fees and fines can get people’s lives off track than it is to frame the problem as communities being drained of resources or cities becoming dependent on revenue from fines or fees.

Here’s an example of how one might frame the problem of individual-level collateral consequences – without falling into the trap of episodic framing.

Many Americans don’t realize that people can be put in jail for failing to pay fines or fees set by courts. These may be fines for low-level offenses, like traffic tickets, or they may be fees tied to criminal convictions, like court costs or probation fees. These fines and fees can create a vicious cycle that distorts justice for those who can’t pay their way out of the problem.

For example, in some communities, when someone is unable to pay a traffic ticket, they can be sent to jail. While in jail, that person may be charged “jail fees” to cover the jurisdiction’s expenses for feeding them during lockup. Once released, the same person may then be charged probation fees.

These debts add up quickly, but they don’t go away easily. People can’t work when they are in jail, and they have often lost their jobs by the time they get out—so they may have no way to pay off debts. The problem can escalate if these debts are handed over to collections agencies, which harms people’s credit scores and limits housing, transportation, and, in turn, employment opportunities.

It’s one thing to hold people accountable for a mistake or a crime, but it’s another to derail their lives through these additional financial punishments.

Observe that while this message focuses on the cascading consequences for defendants, it does not “zoom in” on a particular person’s experience and therefore avoids the trap noted earlier.

If, in a particular context, it is important to highlight community-level collateral consequences, then communicators should be sure to frame the cause of the problem at the community level as well. Otherwise, it is too easy for the public to conclude that the “bad apples” committing crimes are spoiling the barrel of their community.

Use the *Exitless Maze* metaphor to explain how the system entraps the poor.

Metaphors offer advocates a powerful form of explanation because they are particularly vivid, memorable, and easy to repeat – they have a “stickiness” factor. They can also make systems thinking easier and more robust—thereby dampening Americans’ tendency to attribute the causes and solutions of social problems to individuals. Because metaphors are potentially so memorable and influential, FrameWorks carefully develops and rigorously tests explanatory metaphors to ensure that they have consistent and reliable effects on people’s knowledge, attitudes, and policy preferences.

FrameWorks recommends that when advocates want to heighten the public’s attention to the ineffective, inefficient, and inequitable aspects of the justice system, they compare the system to a maze with no exits. In testing, this analogy channeled people’s attention to the mis-design of the system, led them to be less likely to focus on the alleged misdeeds of defendants, and boosted people’s sense that reform could work.

Here’s an example of how to apply this metaphor to the issue of fees and fines:

Our justice system is too often like an impossible maze: one that has too many entrances, and where all the paths lead to dead ends. In the United States, poor people—especially poor people of color—are more likely to be caught up in this maze. They are more likely to be arrested than others who commit the same offense, and more likely to be assessed fines by a court. In many parts of the country, people can be put in jail if they don’t pay on time. These may be fines for low-level offenses, like traffic tickets, or they may be fees tied to misdemeanor convictions, like probation fees.

When people are unable to pay these fines or fees, they are sent further into the maze. Take this example: An unpaid ticket leads to jail time. Jail time leads to additional debt, as people are charged fees for room and board during lockup—while their everyday bills continue to pile up on the outside, at the very same time that they have no ability to work and earn money. Getting out of jail doesn’t mean getting out of the maze: upon release, people are often assessed probation fees. They may find that they have lost their jobs, so they are unable to pay the escalating costs. And when their debt is handed over to collection agencies, their credit scores are affected, limiting housing, transportation, and even employment opportunities.

In puzzle books, even the most difficult mazes have a way to get out. But for poor individuals who are faced with fines and fees imposed by the justice system, there are no exits. At every turn, the system-imposed financial sanctions block people’s way to resolving the problem. They remain trapped in the system, unable to find a way to get out from under their debt.

For our justice system to serve its purpose, we need to eliminate the walls and dead ends that prevent people from moving through a simple legal problem and back into their lives and our communities. Some redesigns are obvious. For instance, we can start by eliminating the practice of

jail time for court-imposed financial obligations that people are unable to meet. And we can adopt sliding scales for fees and fines, which will allow the poor to navigate the system in the same straightforward way as the more affluent.

In order to advance a frame that communicates both that change is sorely needed *and* that change is possible, FrameWorks recommends that advocates pass up the well-worn metaphor of *Broken System* and reach instead for the tested explanatory metaphor of *Exitless Maze*.

Infuse messaging with cues for Pragmatism to communicate that change is within our reach.

Americans easily default to fatalistic attitudes about the possibility of meaningful change in public systems—readily assuming that things are so broken that they cannot be fixed. Boosting constituents’ sense of efficacy is therefore an important reframing task. One framing technique that can help is to highlight promising or effective approaches that are being implemented in other places in the United States.¹⁰ By shaping communications to include concrete, conceivable, and collective actions that could be taken, framers can boost public will for change. Another framing technique is to appeal regularly to the value of *Pragmatism*, or the that taking reasonable, feasible steps can lead to meaningful change. In two separate experiments designed to identify values frames that lifted policy support, FrameWorks found that *Pragmatism* was particularly effective in shifting attitudes away from blaming “bad apples” and toward systems-level thinking. Here’s an example of language expressing the *Pragmatism* theme:

To take a practical approach to achieving our shared goals, we need to take a level-headed look at our justice system. Any objective review of the data about who is likely to be arrested, fined, or put in jail reveals that the system is anything but objective. Poor people—especially poor people of color—are caught up more frequently and treated more harshly. This doesn’t make sense. Our efforts toward change should be focused on ensuring that the system doesn’t mete out punishments based on poverty. There are different and smarter ways of doing things. In cities that have adopted a sliding-scale approach to court fees, there are higher rates of payment and fewer instances of people getting trapped in a cycle of legal debts.

A final consideration in framing solutions: a fully-elaborated explanation of one solution is better than a laundry list of possible reforms that are named but not described. When the public arrives at the satisfying sense that they grasp the remedy, they are more likely to support not only the specific reform but other aligned solutions as well. On the other hand, a long series of unfamiliar policy names are likely to have little effect.

Combine these tested themes and techniques into a coherent narrative.

While each of the recommendations above was shown to have measurable effects in isolation, they will be more powerful when used together, as building blocks to structure a communication. Below is one example of how the recommendations might be integrated into a medium-length text, such as website copy or a blog post. A longer communication like this one could be customized and enhanced with references to recent or local data, or a timely news event. The overall structure could also be applied to shorter communications or rolled out across multiple communications appearing in a serial fashion.

As Americans, we believe in integrity—doing the right things for the right reasons. And so, when we see a part of our system of government doing the wrong things for the wrong reasons, we need to address it. Right now, in jurisdictions across the country, we’ve gotten into a situation where we are punishing poor people simply because they are poor. In some parts of the nation, people can be put in jail for failing to pay fines or fees set by courts. These may be fines for low-level offenses, like traffic tickets, or they may be fees tied to misdemeanor convictions, like probation fees. More than 30 years ago, the Supreme Court ruled that it is unconstitutional to send people to jail for failing to pay legal fines and fees they cannot afford, yet this practice continues.

In too many locations, the fines and fees are set not by the public system itself, but by private businesses, motivated by the pursuit of profit. Some jurisdictions have given private companies contracts for handling different parts of the justice system, like jails or probation. These companies have an interest in maximizing their profit, so they stack on fees for things like room and board for jail time. Then, the companies add late fines when people can’t pay the fees.

These debts quickly add up. Because people can’t work when they are in jail and often have lost their jobs by the time they get out, they have no way to pay off debts. Meanwhile, the companies are likely to sell the debts to collection agencies, which lowers people’s credit scores and can limit their options for housing, transportation, and even employment. In the end, these policies—often set by business people, not judges or elected representatives—keep people trapped in a complicated, expensive maze with no realistic way out.

Just as justice shouldn’t be skewed by the profit motive, it shouldn’t be shaped by race—but it is. Because we are all affected by the negative stereotypes we absorb through the media and culture, people of color are more likely to get caught in this maze. Implicit bias—flawed “snap judgments” that our brains form automatically—is one way that race shapes Americans’ experiences with the justice system. Implicit bias subtly influences who gets an expensive citation and who gets off with a warning, who is set bail and who is allowed to await trial without paying for – or with - their freedom. Implicit bias helps to explain the widely different experience of white people and Black people in the system. For example, it helps us understand why, although Blacks and whites use marijuana at similar rates, Black people are more than three times as likely to be arrested for marijuana possession.

The criminalization of poverty affects people of color most directly, but it affects all Americans indirectly. The consequences of unnecessary imprisonment, unfair debt burdens, and unconstitutional practices are shared. When the lives of our neighbors are destabilized, our community civic and social life is dampened. When groups of people are regularly treated unfairly by our public systems, trust in the institutions we all depend on, like the courts and law enforcement, is weakened. It doesn’t make sense to continue these practices given their social costs—not to mention the unnecessary cost associated with keeping people involved in the system.

We need to take a level-headed, objective approach to addressing the problems with putting people in jail based on legal fines or fees they can’t afford. There are practical things we can do to make a

difference. Courts can take into account people's ability to pay when assigning fines or fees, or setting bail. States, counties, and cities can stop subcontracting out parts of the system that touch on Americans' constitutional rights to companies who are only concerned with maximizing their bottom line. And we can all pay attention, speak up, and get involved to restore the integrity of our justice system.

Conclusion

In sum, multiple frame elements can be recruited to activate Americans' opposition to the criminalization of poverty. When these various recommendations are assembled into coherent narratives, advocates have a powerful way to help the public get smarter about the possibilities of thoughtful and effective changes to the use of monetary sanctions across the justice system. The findings also suggest that advocates continue and extend their efforts to shine a light on the conflicts of interest that arise when public functions are privatized and the desire for profit distorts the pursuit of justice and equal treatment of the law.

The history of social movements strongly suggests that harnessing the unifying power of shared narratives is part of addressing this deeply problematic trend in American society. Sharing and telling a common story is part of what it takes to enact long-term social change.¹¹ As such, FrameWorks encourages the use of the strategies in this brief, which can be adopted verbatim or adapted for public messaging. We offer this work as an important asset in the forward movement toward a more equal, more inclusive society.



About the FrameWorks Institute

The FrameWorks Institute is a communications think tank that uses social science methods to study how people understand social justice issues and identify ways that experts and advocates can explain them more effectively. Since 1999, it has conducted pioneering research on the communications aspects of a wide variety of scientific and social issues, such as early childhood development, climate change, immigration, and more. In 2015, FrameWorks received the MacArthur Award for Creative & Effective Institutions.

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- ⁷ Gilliam, F. & Simon, A. (2013). *Framing and Facts: Necessary Synergies in Communicating About Public Safety and Criminal Justice: A FrameWorks Research Report*. Washington, DC: FrameWorks Institute.
- ⁸ Wald, J., Gibbons, C., & Beane, C. (2014). *Adjusting our Focus: Current Communication Practices and Patterns in the Criminal Justice Sector*. Cambridge, MA: Charles Hamilton Houston Institute for Race and Justice at Harvard Law School.
- ⁹ Sweetland, J., Gibbons, C., & Vo, C. (2016). *Reframing School Discipline: A Strategic Communications Playbook*. Washington, DC: FrameWorks Institute.
- ¹⁰ FrameWorks research has consistently found that ordinary Americans dismiss examples of solutions from elsewhere in the world and reject comparisons to other nations. In public-facing communications, avoid international examples.
- ¹¹ Benford, R. D., & Snow, D. A. (2000). Framing Processes and Social Movements: An Overview and Assessment. *Annual Review of Sociology*, 26, 611-639.

Appendix A: Naming Experiment

A preliminary experiment conducted in May 2016 tested the effects of specific names—what to call the arrest and incarceration of poor people for failure to pay fines and fees. This survey experiment was conducted online using Amazon’s Mechanical Turk (MTurk) survey platform. MTurk, widely used in experimental and survey-based social science research, provides samples of respondents that are broadly representative of the US population (although it tends to be slightly skewed toward younger people and those with lower incomes).¹

The goal of the experiment was to test the effects of two terms used by advocates to describe the jailing of people for failure to pay legal fines or fees: “modern-day debtors’ prisons” and “pay-or-stay sentences.” These names were embedded within a short paragraph that briefly described the practice, and were compared against a control condition, which included the description of the practice but with no name. Three hundred respondents were recruited for the experiment, divided evenly across the three message conditions. Following the presentation of the paragraph, respondents were asked questions assessing their attitudes toward the practices and the accuracy of their knowledge. The message treatments and the questions are provided below.

MESSAGES

Debtors’ Prisons	Pay-or-Stay Sentences	Control Condition (no name)
<p>In some communities in the United States, people are jailed for failing to pay court-required fines and fees—a practice known as “modern-day debtors’ prisons.” The practice of modern-day debtors’ prisons can involve jailing people for failure to pay fines for traffic violations or other low-level offenses, or for failure to pay fees tied to criminal convictions, such as fees for court administration, probation, and jail operation.</p>	<p>In some communities in the United States, people are jailed for failing to pay court-required fines and fees—a practice known as “pay-or-stay sentences.” The practice of pay-or-stay sentences can involve jailing people for failure to pay fines for traffic violations or other low-level offenses, or for failure to pay fees tied to criminal convictions, such as fees for court administration, probation, and jail operation.</p>	<p>In some communities in the United States, people are jailed for failing to pay court-required fines and fees. This practice can involve jailing people for failure to pay fines for traffic violations or other low-level offenses, or for failure to pay fees tied to criminal convictions, such as fees for court administration, probation, and jail operation.</p>

¹ Huff, C., & Tingley, D. (2015). “Who are these people?”: Evaluating the Demographic Characteristics and Political Preferences of MTurk Survey Respondents. *Research and Politics*, July-September (1), 1-12.

Likert-type scale questions

When you think about debtors' prisons/pay-or-stay sentences/these practices:

- How fair do you think they are? (not at all fair, a little fair, somewhat fair, quite fair, very fair).
- How just do you think they are? (not at all just, a little just, somewhat just, quite just, very just).
- How useful do you think they are? (not at all useful <-> very useful).
- How necessary do you think they are? (not at all necessary <-> very necessary).
- How effective do you think they are in cutting costs? (not at all effective <-> very effective).
- How effective do you think they are in reducing crime? (not at all effective <-> very effective).

- How likely are you to support them in your community? (*not at all likely <-> very likely*).

Knowledge Questions

- Are [debtors' prisons/pay-or-stay sentences/these practices] constitutional? [Yes/No]
According to what you just read about [debtors' prisons/pay-or-stay sentences/these practices], people are sometimes sent to jail for which of the following? Check all boxes that apply. [Options, presented in randomized order: Failure to pay... a traffic ticket / a jail operation fee / a probation fee / driver license renewal fee / credit card debt / mortgage / car loan / gym membership bill / cable bill]

Appendix B: Main Experiment Methods

The bulk of the recommendations in this brief are based on findings from a July 2016 experiment designed to test the effects of frame elements on attitudes and policy support regarding different aspects of the criminalization of poverty. The sample, recruited from an online survey panel, comprised 2,700 US respondents. Respondents were adult (over 18) registered voters matched to national demographic benchmarks for gender, race/ethnicity, household income, age, and political party. Benchmarks were derived from US Census data.

Each respondent was randomly assigned to read a message with a frame element, or to a control group that received no message. The messages tested included four values (culturally cherished ideals about what is desirable) and four different explanations (cause-and-effect sequences that illustrate how an issue works.) Values messages tested were *Pragmatism*, *Cost Efficiency*, *Contextual Fairness*, and *Integrity*. The explanation messages tested were *Unconstitutional Practice*, *Individual Harm*, *Community Harm*, and *Impossible Maze*.

After being randomly assigned to one of these message treatments or to a control condition which received no message, respondents were asked questions assessing their attitudes toward different aspects of the justice system and their support for different types of policy change. These questions, provided below, were developed and refined with feedback from the ACLU Foundation.

Scale	Questions <i>(Presented in randomized order. Respondents answered on a 7-point Likert scale, i.e., ranging from strongly disagree to strongly agree, or very unlikely to very likely.)</i>
Inequity in the Justice system	<ul style="list-style-type: none"> • Some people are more likely to be arrested than others for committing the same offense. • In this country, criminal laws are applied equally to poorer and richer people. (Reverse Code) • Criminal laws are applied equally to white people and members of racial minority communities. (RC)
Rehabilitative Attitudes	<ul style="list-style-type: none"> • The criminal justice system should focus on things other than punishment. • Sending people to prison is usually a mistake. • When someone breaks the law, they should be punished harshly. (RC)
Bail Reform	<p>Bail is something that someone pays so they can be released from jail before trial. If they do not turn up for trial, they lose their bail.</p> <ul style="list-style-type: none"> • Bail for poorer defendants should be lower than bail for richer defendants. • Judges should release defendants without bail in almost all circumstances. • People arrested for minor crimes should not have to post bail. • Bail amounts should be standard—people accused of the same crime should be given the same bail. (RC)

Survey items continued on next page

<p>Imprisonment for Failure to Pay Debt</p>	<p>In some communities in the United States, people are jailed for failing to pay court-required fines and fees. These may be fines from traffic violations or other minor offenses, or they may be fees that are charged when people are convicted of a crime, such as fees for court administration, probation, and jail operation.</p> <ul style="list-style-type: none"> • If people cannot afford to pay the fines and fees they owe, they should be sent to jail. (RC) • The amount of fines and fees should be standard—people should be fined the same amount and charged the same fees for the same minor offenses. (RC) • When people cannot pay fines and fees, it is better to reduce the amount they owe than to send them to jail. • When people cannot pay the fines and fees they owe, they should be sentenced to community service, not jail. <ul style="list-style-type: none"> ○ Fines and fees should be set lower for poorer defendants than richer defendants.
<p>Public Defenders</p>	<p>When people cannot afford a lawyer, a lawyer is appointed to represent them in court. This lawyer is sometimes called a public defender.</p> <ul style="list-style-type: none"> • If there is very strong evidence that a person committed a crime, how important is it for the government to provide a public defender? • We need to lower the number of cases that public defenders are responsible for, even if that means spending more money on public defenders. • Public defenders should receive as much government funding as prosecutors. • The government should significantly increase the amount of money spent on public defenders. • If someone faces a jail sentence for failure to pay fines or fees, the justice system should provide them with a lawyer.
<p>Collective Responsibility</p>	<ul style="list-style-type: none"> • Making sure that the criminal justice system works is the responsibility of all members of our society. • We are all responsible for improving the criminal justice system. • If someone gets a jail sentence that’s longer than it should be, it’s no one’s fault but their own. (RC)
<p>Collective Efficacy</p>	<ul style="list-style-type: none"> • If members of the public put pressure on the government, this will result in reform of the criminal justice system. • By working together, ordinary people can bring about reform of the criminal justice system. • There is nothing ordinary people can do to fix the criminal justice system. (RC)
<p>Intention to Engage in Collective Action</p>	<p>How likely are you to engage in the following activities over the next 12 months?</p> <ul style="list-style-type: none"> • Sign a petition in support of reforming the criminal justice system. • Call or write to a local, state, or federal official to encourage them to support criminal justice reform. • Write to a newspaper, voicing your support for criminal justice reform. • Vote for a candidate running for office because—at least in part—he or she is in favor of criminal justice reform. • Donate money to an organization that advocates for criminal justice reform.