

Constitutional Sheriffs Wield Unchecked Power Across America, Journalist Says

Jessica Pishko Says A Group Of Sheriffs Have Become A Flashpoint In The Current Politics Of Toxic Masculinity, Guns, White Supremacy And Rural Resentment. Her Book Is *The Highest Law In The Land*.

NPR — FRESH AIR, Tonya Mosley
10 September 2024 (@1201 Hrs EDT)

Jessica Pishko's New Book Is Called "The Highest Law In The Land: How The Unchecked Power Of Sheriffs Threatens Democracy." She's Been Reporting On The Criminal Legal System For A Decade, Focusing On The Political Power Of Sheriffs Since 2016. Her Writing Has Appeared In *The New York Times*, POLITICO, *Rolling Stone* And *The Atlantic*.

Jessica Pishko, Welcome To FRESH AIR.

JESSICA PISHKO: Great To Be Here.

TM: Ok, Jessica, I Think We Should Start Off By Explaining The Difference Between A Constitutional Sheriff And What We Know As A Traditional Sheriff.

JP: So, That's A Great Question, And I'll Answer It In Two Parts. The First Part Is To Just Talk About Sheriffs Generally. And I Grew Up In Texas. So When Someone Said The Word Sheriff, I Immediately Thought Of Someone Like John Wayne Or The Cast Of "Tombstone." So I Think That Most People Consider Sheriffs As Really Important Law Enforcement Figures, Particularly

In Rural Counties. And In Those Counties, Sheriffs Serve As Everything — From Law Enforcement To Investigating Crimes, Serving Warrants, Managing Their Jails And Also Serve A Really Important Political Function. So People Might Come To Their Sheriff For Marriage Counseling, Animal Control. Some Sheriffs In Rural Areas Even Operate 911 Emergency Services. And So This Combined Role Came Out Of An Older Tradition.

And I Think That One Of The Important Things To Keep In Mind About This Tradition Of Law Enforcement Is That It Has Always Really Relied On An Idea Of A Frontier America, So A Sort Of Myth About An Endless Frontier That Required Civilization. And That's Where That Came From. And One Of The Things I Argue In The Book, As I Set That Up, I Point Out That The History Of Sheriffs Themselves, As Well As The Mythology They Perpetuate, Really Lends Itself Quite Understandably To What Some Sheriffs Are Calling The Constitutional Sheriff Movement.

TM: To Understand The Role Of The Constitutional Sheriff, We First Have To Understand The Role Of The Sheriff, And It Means A Lot Of Different Things Depending On Where You Live. But For The Constitutional Sheriff Movement, Is There Something In The Constitution That They're Pointing To That They Believe Gives Them What They'd Say Is Supreme Power Beyond The State And The Federal Government?

JP: So To Be Absolutely Clear, The U.S. Constitution *Does Not Mention Sheriffs At All*. The Term Constitutional Sheriff — They Mean Rather That Sheriffs Are The *Chief Interpreters* Of The Constitution. Now, Most People Might Say, Well, It's The Supreme Court Who Interprets

The Constitution, Right? Constitutional Sheriffs Say It's Actually *The Sheriff In Their County Who Decides How The U.S. Constitution Is Enforced.*

And By That, They Really Mean What They Call The Original Constitution, Which Consists Of The First 10 Amendments. So I Want To Be Clear That When They're Talking About Their Vision Of The Constitution, They're Really Referring To What We Would Call The Bill Of Rights, And They're Not Referring To Things Like Post-Civil War Amendments, So The 14th Amendment Or The 19th Amendment, Which Gave Women The Right To Vote. All Of These Amendments, Particularly After The Civil War That Current Courts Really Rely Upon.

Now, Constitutional Sheriffs Would Argue That *There Is No One Who Can Tell Them What To Do.* So Not The President, Not The Supreme Court, Not The Governor, Not The Legislature. *Sometimes, Constitutional Sheriffs Will Call Themselves Something Like A King. Another Constitutional Sheriff Compared Himself To A Knight. His Badge Was Like A, And He Was The Knight Protecting His Kingdom From The Federal Government.*

TM: One Example Of A Self-Proclaimed Constitutional Sheriff Is Joe Arpaio — Right? — The Former Sheriff Of Maricopa County, Ariz. And Listeners May Remember Him Because Former President **Trump** Pardoned Him In 2017 After He Had Been Convicted Of Criminal Contempt Related To His Tactics With Undocumented Immigrants. What Were Some Of The Maybe Atypical Ways That He Used His Power?

JP: Joe Arpaio, I Think, Right Now Is Best Known For His Overpricing And Violence Against Immigrants Or People That He Thought Were Immigrants. So One Of The Things He Did Was Conduct Unscheduled Raids On, Let's Say, Particular Businesses. So He Would Try To Catch People, You Know, Janitors Or Something Coming Out Of Public Buildings In Order To See If They Were Undocumented. He And His Deputies Pulled Drivers Over. And If They Were Latino, They Would Often Take Them Into Custody And Run A Background Check To See If They Might Be Undocumented. And This Was Something He Did Regularly In Public And Rather Openly. At The Time, It Was Pretty Well-Known That This Was Joe Arpaio's Method And That He Harbored A Lot Of Anti-Immigrant Animus.

Now, I Think It's Important To Keep In Mind That He Had Help. So Not Only Did He Have Help From The State, Which Passed A Law, The — What They Called The *Show Me Your Papers* Law. But The One Thing About Joe Arpaio That Interested Me A Lot When I Thought About Constitutional Sheriffs Was, Why Did People Let Him Go So Far And So Public?

JP: He Went So Far As To Hold Press Conferences With People Behind Him Dressed In Black And White Stripes Kind Of In A Chain Gang Formation. He Showed Off The Pink Underwear He Said He Forced People To Wear.

TM: Prisoners, Yeah.

JP: Yes. His Prisoners In His Jail, Which Was Largely A Big Tent, Which He Called Tent City, Had No Air Conditioning. He Refused To Give People Things Like Salt And Pepper, Which —

Suppose He Argued That People In Detention Didn't Deserve Salt And Pepper. He Would Also Play Right-Wing Radio Through The Loud Speaker During Particular Times Of Day Because He Thought That...

TM: Within The Prison. Within The Jail. I'm Sorry.

JP: Right, Within The Jail, So That People Would Be Forced To Listen To Right-Wing Radio. And He Did All This, Right? — A Tactic Of Both Humiliation But Also, I Think, A Great Show Of His Power, Right? The Power Of Appearing With, You Know, People In A Chain Gang Behind You Not Only Dehumanizes Them But Also Shows Off, In A Way, That No One Could Stop Him. One Of The Things I Do Want To Add About Joe Arpaio That's Important Is That He Also Proved Himself Extremely Poor At Typical Law Enforcement Functions. So He, For Example, Failed Sexual Assaults. He Ignored Most Of Those. He Ignored Domestic Violence Claims. He Also Failed To Solve A Lot Of Murders And Other Crimes That Most People Would Consider Pretty Serious. So Alongside This Theatrical Display Of Power And Humiliation, He Also, I Think From Most People's Point Of View, Didn't Do The Job That He Was Really Elected To Do.

TM: You Mentioned How You Were Fascinated By How Was Able To Do This All Out Publicly. What Did You Find Out About That, And Why? Is It That Those That He Worked With, As Well As The Community He Served, Agreed With Him And These Tactics?

JP: In Part, He Really Became Something Like A Media Celebrity. So People Around The Country Would Watch Him. He Was On Scores Of News TV, Scores Of Kind Of Praising Articles, Right? He Was Like, The Toughest Sheriff In Arizona, Something That Was Said With Part, You Know, Admiration Maybe Part Criticism. The Other Thing That Really Kept A Lot Of People From Preventing Him From Going So Far As He Did Was That I Honestly Think That Departments Like The Department Of Justice Or The State Of Arizona Were Really Reluctant To Cross Him. Now, There Is No Specific Provision, I Think, About, You Know, When It's Appropriate For, Let's Say, The Department Of Justice To Investigate A Sheriff. And They Did Eventually Investigate Joe Arpaio.

And I Want To Say What Really Happened Was Latino Communities Really Banded Together And Worked Hard To Document All Of The Abuses And Violences That They Suffered So That They Could Go To The Department Of Justice With Kind Of, You Know Unimpeachable Evidence That This Was, In Fact, Really Happening. But Until They Did That, I Think That People Were Very Reluctant To Intervene Because It's Not Always Clear How You're Supposed To Intervene When A Sheriff Is Misbehaving. And I Think, To Some Extent, A Lot Of Other Officials, Even Someone Like President Barack Obama, Was Worried About Crossing The Sheriff For Fear Of What He Might Do.

TM: Is Arpaio An Outlier? How Many Sheriffs Consider Themselves Constitutional Sheriffs? Do You Have A Sense Of How Big This Movement Is?

We Don't Have An Exact Count Of Constitutional Sheriffs. And The Reason For That Is That There Are What I Would Call Sort Of People Who Adhere To The Core Ideology And Who Belong To Various Constitutional Sheriff Groups, And Then There Are Also Sheriffs Who Might Believe In Part Of It And Not Other Parts. They Might Not Identify With The Official Groups, But They Might Call Themselves A Constitutional Sheriff If They're Running For Office. So It's A Little Bit Of An In And Out Effect, Like A Venn Diagram.

Right Now, We Think That The Core Constitutional Sheriff Movement Probably Consists Of Around 300 Sheriffs. Bear In Mind, There's About 3,000 Sheriffs Across The Country. So When I Say Around 300 Sheriffs, You Know, We Are Talking Something Like 10%. And I Think It's Fair To Point Out That This Far From The Majority Of Sheriffs In The Country. It Certainly Remains A Far-Right Movement.

TM: But What You're Asserting In The Book Is That They Hold Significant Power, And That Power Is Growing. It's Interesting How You Mentioned, With Arpaio, The Department Of Justice Stepped In After Complaints From Citizens And Those Who Were Impacted By His Policies And Actions. But There Are Some Places — I Mean, Most Law Enforcement Agencies Have A Governing Or Oversight Committee, But That Is Not Always The Case For A Sheriff's Department.

JP: That's Absolutely Right. So One Of The Things About Sheriffs Is That Because They Are Elected, They Do Not Officially Fall Under Someone's Jurisdiction. So They're Not Really In

The County Hierarchy. They Are About Equivalent To Other Elected County Officials. And This Is One Of The Truths That Leads To The Constitutional Sheriff Movement, Right? So The Sheriffs See That They Are Elected, Unlike Police Chiefs, Unlike State Troopers, Let's Say. And They Say, Well, I'm Elected Just Like The Mayor Or The County Commission, And Therefore, I'm Permitted To Do Whatever I Want In My Office. You Guys Could Do What You Want In Your Office, I Do What I Want In My Office. And That Is Generally True. There Is Very Little Stopping Sheriffs From Implementing Whatever Policies They Want In Their Office Or Fail To Implement Policies.

In Many Places — Not In All States, But In Many States — Sheriffs Can Hire And Fire At Will. So It's Not Uncommon To Hire Relatives. It's A Fairly Common Practice. And That Allows Them To Set Policy On All Sorts Of Things. So Everything From What People Wear In Jail — There Was A Sheriff In Georgia Who Forced People Inside His Jail To Get Up Every Morning And *March Around And Sing A Song About How Great The Sheriff Was.*

So Things That Are Sort Of Humiliating And A Little Bizarre Like That To Things Like, Well, When Can You Go To The Hospital If You're In Jail. What Happens If You're Pregnant And You're In Jail? What Happens When You're Getting Served With An Eviction Notice? What Happens When You Go To The Sheriff And You Ask Them To Remove Firearms From Your Abuser, Let's Say? Most Constitutional Sheriffs Don't Believe In Red Flag, And They Fail To Enforce Gun Control. So It Could Be In Your County That You Ask The Sheriff, Could You Please Take These Firearms From My Abusive Spouse? And He Might Refuse. And There's Very Little You Could Do About That.

TM: And I Should Note That A Significant Percentage Of Jails — If Not All Of Them, A Significant Amount Of Them Are Run By Sheriffs.

JM: Yes, About 85% Of Jails Are Run By Sheriffs, So I Would Say The Vast Majority.

Jessica, Let's Take A Short Break. If You're Just Joining Us, My Guest Is Investigative Jessica Pishko. We're Talking About Her New Book, "The Highest Law In The Land: How The Unchecked Power Of Sheriffs Threatens Democracy." We'll Continue Our Conversation After A Short Break. This Is FRESH AIR.

TM: This Is FRESH AIR, And Today We're Talking To Investigative Journalist Pishko. She's Written A New Book Called "The Highest Law In The Land: How The Unchecked Power Of Sheriffs Threatens Democracy." The Book Examines How Sheriffs Are Given Outsized Jurisdiction Over People's Lives And How Little Is Known About How That Came To Be. Pishko's Book Investigates How An Office With So Much Power Effectively Flies Under The Radar And How They Have Come To Be Embraced By Far-Right Militia Groups And White Nationalists.

Let's Talk Just A Little Bit About The History Here, How This Movement Has Grown. You Write About Richard Mack. He's Someone That Is A Major Player In This Movement. He Founded The Constitutional Sheriffs And Peace Officers Association. He's From Arizona, Was An Elected Sheriff Twice, And A Former Board Member Of The Oath Keepers. How Did He Become The Face Of The Movement?

JP: So Sheriff Richard Mack, Who Still Calls Himself A Sheriff Although He Hasn't Been A Sheriff In Several Decades, Was A Two-Term Sheriff In *Rural Arizona*. During The Course Of His Second Term, The Clinton Administration Passed A Handgun Law Called The Brady Handgun Act. The Law Was A Pretty Basic Handgun Law, It Was A Gun Control Law, And One Of The Things Was That It Asked County Sheriffs To Run Background Checks. This Was In 1995, And This Was Before We Had A Computerized Background Check System, Which Is What Is Now Used. We Don't Have Sheriffs Conducting Background Checks Anymore.

But In Any Event, Sheriff Mack, Alongside A Few Other Sheriffs, Partnered With The National Rifle Association To Sue The Federal Government Over This Particular Provision. And Eventually, The Case Went To The Supreme Court And The Sheriff Won. The Supreme Court Decision Was Written By Antonin Scalia, And It Was One Of The Early Decisions About Guns That Started To Assert An Individual Right To Firearms. Justice Clarence Thomas Wrote A Concurring Opinion In Which He Claimed That People Had An Individual Right To Firearms. So This Is Again, Building On Things That We Have Now Seen Come To Fruition. Richard Mack Used This As A Big Platform To Join The Militia Movement In Essence.

TM: And This Kind Of Gave Him Street Cred, You Know, Among Conservatives In The Tea Party Movement.

JP: It Did. It Gave Him Street Credit As A Second Amendment Supporter, As A Pro-Gun Person, A Pro-Militia Person. You Know, Mack Tried To Run For Office Several Times. I Mentioned In The Book, He Ran For Multiple Offices. He Didn't Win Any Of Them. He Ran For Another Sheriff. He Didn't Win. He Did A Reality TV Show Where He Ran A Fake

Campaign For President. He Lost That. So He Ran Multiple Real And Fake Campaigns, And Where He Found His Place Was In This Militia Movement, Which Also Happened To Be Coalescing Around The Same Time. I Think Most People Will Remember The Oklahoma City Bombing In 1995, Which Was One Of The Very Violent Acts Committed By People Associated With This Militia Movement.

And Richard Mack Continued To Tout The Same Ideology. And Richard Mack Continued To Tout The Same Ideology. One Of The Things He Did Around 2011 Was Partner With Stewart Rhodes, Who Formed The Oath Keepers. So That Was Kind Of The First Partnership In Which, Depending On Who You Ask, *Either Stewart Rhodes Raised Mack's Profile Or They Were Equal Partners. There's A Little Bit Of A Debate There.*

And Stewart Rhodes Believed All Of The Tenants Of The Constitutional Sheriff Movement. He Believed That The County Sheriff Was **The Only Legitimate Law Enforcement**. He Thought — He Believed *In An Unlimited Second Amendment Right, So The Right To Own Machine Guns, Any Firearms You Wanted*. He Believed In States' Rights. Freedom Of Religion Is Also Very Important. So, All These Kinds Of Things Came Together. They Kind Of Went On A Road Show, Which Is When Richard Mack Started What He Called The Constitutional Sheriff And Peace Officers Association.

And His Goal There Was To Create A Club For Sheriffs And Their Supporters In Which They Could Get Together And Do What Richard Mack Calls *Training*. I Describe It As More Of A Tent Revival With Which He Gathers Sheriffs And Other Like-Minded People Together And

Talks To Them About What He Thinks The Proper Role Of A Constitutional Sheriff Is.

Our Guest Today Is Investigative Journalist Jessica Pishko. She's Written A New Book Called "The Highest Law In The Land: How The Unchecked Power Of Sheriffs Threatens Democracy." We'll Continue Our Conversation After A Short Break. I'm Tonya Mosely, And This Is FRESH AIR.

(SOUNDBITE OF BILL FRISELL'S 'COLD, COLD GROUND')

This Is FRESH AIR. I'm Tonya Mosely, And Today My Guest Is Investigative Journalist Jessica Pishko. And We're Talking About Her New Book, "The Highest Law In The Land: How The Unchecked Power Of Sheriffs Threatens Democracy." Jessica Pishko Has Been Reporting On The Criminal Legal System For A Decade, Focusing On The Political Power Of Sheriffs Since 2016. And Her Writing Has Appeared In *The New York Times*, *POLITICO*, *Rolling Stone* And *The Atlantic*. In Her Latest Book, She Examines The Unchecked Power That Sheriff's Wield In Policing Their Communities And The Troubling Impact This Has On American Life.

TM: Jessica, Let's Talk A Little About Immigration For A Moment Because County Sheriffs, As You Write, Have Become Almost Like Avatars For The Anti-Immigration Movement. How Did They Become The Law Enforcement Agency Involved In Immigration?

JP: It Was Something That Really Began To Happen When The United States Decided That It Would Interlock The Immigration System With The Criminal Legal System. So That's — Some

People Call It The Crimmigration System, Which Is Not A Term That I Coined. It's Something That Immigration Law Experts Coined. But When Congress Passed A Certain Series Of Laws In The 1980s And '90s, What They Wanted To Do Was Create A System In People Who Were Accused Of Crimes, Particularly At The Time Drug Crimes, Would Be Able To Be Immediately Deported, In A Way That Was Basically Faster. So They Didn't Have To Be Convicted.

So Normally, If You're Accused Of A Crime, You Have A Right To A Trial, Then You Might Be Convicted Or Acquitted, Or You Might Plea Out. If You Are Determined To Be Undocumented, You Can Actually Be Put Into Deportation Proceedings Before Anyone Brings You To Trial. So You Just Are Arrested And Charged And You Can Go Immediately Into Deportation Proceedings. And It Turned Out That This Was A Pretty Effective Way For Police To Interact With The Immigration System. And Sheriffs Became A Lynch Point Originally Because They Run County Jails.

TM: Jails.

JP: So County Jails Are Kind Of The First Stop If You're Arrested. If You Are Unfortunate To Be Arrested, You Will Go Through The County Jail, At Which Point They Take Your ID, Your Fingerprints. They Take A Variety Of Information. And Sheriffs Kind Of Became Really Useful Because They Were In The Jail Already, So They Could Interview People, Ask Them If They Had Proof Of Citizenship, And Then Help ICE Put Them Into Deportation Proceedings. And Alongside That, Sheriffs Were Also Able To Make Some Money By Housing People Awaiting Deportation In Their Jails.

TM: So That's The Benefit For Them. Yes.

JP: That's Also The Benefit For Them. The Federal Government Houses About 25% Of Immigrants In Detention In County Jails Right Now. And They Pay These Sheriffs Per Diem. So They Get Paid Sort Of Per Day To Keep People In Their Jails. And It's One Of The Ways That Sheriffs Are Able To Use That Jail, Kind Of As A Political Tool — Right? — To Make Money For Their County.

TM: How Did Their Role As Immigration Agents Grow Under The **Trump** Administration.

JP: So Under **Trump**, Two Things Happen. One Was That Anti-Immigration Groups — So I Mentioned The Federation For American Immigration Reform, Or FAIR. That Was A Group That Was Already In Existence. They're An Anti-Immigrant Group. And They Began To Email Sheriffs, Especially Sheriffs That They Knew Were Kind Of Constitutional Sheriffs Or In The Far-Right Sheriff Atmosphere And Say, Hey, Would You Like To Help The **Trump** Administration Deport More People? Many Of Them Said, Sure.

And So Using This Anti-Immigrant Group, The **Trump** Administration Recruited More Sheriffs To Join A Program Called 287(g). And 287 (g) Is A Federal Program That Essentially Deputized Sheriffs And Their Deputies To Act As Immigration Agents. So Under **Trump**, Many, Many More Sheriffs Joined This 287 (g) Program. Now, The 287 (g) Program Is A Bit Interesting Because It Doesn't Include Any Funding For The Sheriffs, But It Is Something That Sheriffs Used To Say That They Were Tough On Immigration.

TM: **Trump** Sees Sheriffs As His Allies. But We Should Note That Even After He Left Office, The Biden Administration Has Also Poured Money Into Immigration Enforcement At The Border, At The Mexican Border, More Money Than Even Before, *And Which Translates Really Into Big Bucks For These Sheriff's Departments.*

JP: That's Absolutely Right. So Another Aspect Of Immigration I Talk About That Has Become, I Think, More In The Forefront Of The News Is Border Enforcement. And There I Talk About Sheriff Mark Lamb, Who Is In Final County, Which Is Not Actually On The Border. But He Is A Person Who Receives Quite A Lot Of Money From The Department Of Homeland Security Under A Program Called Operation Stonegarden.

Operation Stonegarden Is A Bit Of An Unusual Program Because It Funds Local Law Enforcement To Conduct Sort Of Border Policing. It's Given Also To Sheriffs On The U.S. - Canada Border, As Well As The U.S. - Mexico Border. And There Have Been Previous Reports That The DHS Does Not Track Where This Money Goes. So There's Sort Of A Pre-Existing Problem In Which They Fail To Track The Money, See Where The Money Is Actually Going And Then Monitor The Effectiveness Of The Funding. So There's No Reason Here To Think That Putting More Money Into Operation Stonegarden In Some Way Has A Positive Impact Or Any Impact At All.

But Mark Lamb — I Found That Even Though He Did Receive Money Under The **Trump** Administration, That Under The Biden Administration, It Had More Than **DOUBLED**. So He Received Money To Purchase Things Like Helicopters And Go On With Border Patrol To Run,

They Call Them Missions, It's A Bit Of A Military Speak — But They Go Run On, Quote-Unquote, “Missions, Along The U.S.-Mexican Border, Which Mostly Consists Of Stopping Vehicles To See If They Are Carrying Undocumented People Or Drugs, Doing Sort Of Groups, When Groups Of People Are Walking Across The Border...

TM: I Want To Clarify. Are We Just Talking About Sheriffs Whose Counties Butt Up Against The Border, Or Like, Are All Sheriffs Who Are In The Region Part Of This Enforcement?

JP: All Sheriffs In The Region Consider Themselves Part Of This Enforcement.

TM: Ok.

JP: It Is Not Really Just Sheriffs On The Border. It's Even Sheriffs In Places Like Vermont, Upstate New York.

TM: And How Do They Justify That?

JP: Some Of Them Are Buying Snowmobiles To, You Know, Drive Through The Snow. Stonegarden Money Was Used Yo Buy, Like, Snow Suits. So That's One Common Use In The North. In The South, It's A Lot Of ATVs, Helicopters. Overtime Is Another Big One. And Again, What's Very Interesting Is That The Federal Government Doesn't Really Track How This Money Gets Used.

There's Not Very Good Information About, You Know, Exactly Where These Dollars Go. Like, Are They Going To Weaponry Or Vehicles, Or Overtime Or Additional Staff? They Seem Able To Go To All Of It, But It's Something That The Federal Government Hasn't Really Decided To Look Into.

If You're Just Joining Us, My Guest Is Investigative Journalist Jessica Pishko. We're Talking About Her New Book, "The Highest Law In The Land: How The Unchecked Power Of Sheriffs Threatens Democracy." We'll Continue Our Conversation After A Short Break. This Is FRESH AIR.

(SOUNDBITE OF FLORATONE'S "FRONTIERS")

TM: This Is FRESH AIR, And Today We're Talking To Investigative Journalist Jessica Pishko. She's Written A New Book Called "The Highest Law In The Land: How The Unchecked Power Of Sheriffs Threatens Democracy." The Book Examines How Sheriffs Are Given Outsized Jurisdiction Over People's Lives And How Little Is Known About How That Came To Be. Pishko's Book Investigates How An Office With So Much Power Effectively Flies Under The Radar And How They Have Come To Be Embraced By Far-Right Militia Groups And White Nationalists.

Now, Jessica, You Devote An Entire Chapter To Race, Basically How Sheriffs Essentially Keep The Counties They Serve White. And Before We Talk About What You Found In Your Reporting, I Want To Go Back A Little Bit. Historically, The Role Of Police, As We Know,

Evolved From Slave Catchers. But That's Not How Sheriffs Came To Be In This Country. You Touched On This A Bit, But What Role Did They Play In The Pre- And Post-Civil War Era?

JP: There's Interestingly Kind Of Different Writings, Depending On The Region Of The United States. So There's Kind Of One Set Of Writing About Sheriffs In The West. Now, This Makes Some Sense Because When The United States Was, In Essence, *Colonizing The West*, The Sheriffs There Operated Almost As A Part Of A Military-Like Apparatus.

So The Issue In The West Was Generally That, You Know, Anglo Settlers Were Moving Into Territory That Was Already Occupied By Native Americans. Sheriffs There Largely Served As Something As A Military Force To Help These Settlers Claim The Land, Right? So They Helped People Sort Of Steal The Land. They Saw Their Job As Protecting The Settlers From Both Native Americans, And In Certain Places, A Variety Of People Who Were Part Of Mexico — Right? — Because At The Time, The United States Had Annexed Parts Of Mexico, So There Were Also People Who Identified As Mexican Living There.

TM: And Threats Against Cattle Ranchers And Land Detachments, Yes, Yes.

JP: Yes. So That Was A Large Part Of What They Did, Was This Sort Of, Again, Policing Race. Eventually, When California Was Settled By Anglos, There Was Also Quite A Lot Of Actions By Sheriffs Doing Things Like — They Were Very Concerned About What They Called Vagrants, What We Now Might Call Homeless People, Right? So This Has Always Been A Concern In

California. There Are Deep Concerns About These Many Unmarried Men Who Were Coming to Work In California. And Many Of Them Formed Sort Of Small Camps, And Sheriffs And Their Poses Would Be Kind Of Tasked With This Job Of Keeping These Maybe Unruly People. Also, A Huge Amount Of Violent Policing Against Chinese Americans, Which Was Another Large Immigrant Group, Particularly In California.

So They Had This Sort Of, I Think, Like I Said, Quasi-Military Function In The West. In The South, What Happened Was After The Civil War, When Slavery Officially Ended, *Sheriffs Became Something Like What The Enslavers Had Been*. So They Took — You Know, Many Of The Counties And Parishes, If We're Talking About Louisiana, They Were Formed As A Result Of Basically The Boundary Lines Of Plantations. So The Sheriff Would Sort Of Be The Head Law Enforcement In That Particular Area. And They Served, Quite Frankly, Really As White Supremacist Actors. I Did A Lot Of Research Into Post-Reconstruction Violence. And I Think What's Interesting There Is That One Of The *First Things Black Americans* Wanted To Do Was *Elect Black Sheriffs*. This Was A Very Natural Thing.

TM: Right.

JP: They Wanted To Take Control Of Law Enforcement In Their County, And The Idea Was That If They Elected A Black Sheriff, That Sheriff Would Protect Them From Forces Like The Klan. Very Logical Thing To Do. Now, It Turned Out That White People Did Not Like That At All. And There's A Quote I That I Found From Someone Saying That They Would Rather See A Black Person Elected To Any Other Office Than Sheriff. And I Think That Points To How The

Sheriff Was Seen As The Local Figure Who Maintained The Racial Segregation.

TM: As You Write In Your Book, To This Day, 90% Of Sheriffs Are White Men.

JP: That's Correct. We Still See It To This Day.

TM: One Of The Things You Found In Researching That Time Period Is How Sheriffs Were Intimately Involved In The Creation Of, Like, A Labor Force That Was Specifically Designed To Benefit Both Themselves And These Wealthy White Landowners. Can You Lay Out Some Of The Ways That Sheriffs Were Able To Do That And Some Remnants Of Those Practices Today?

JP: Yes. So Sheriffs, Particularly In The South, Were Participating In A Program Called Convict Leasing. And In Essence, What Would Happen Is The Sheriff, Who At That Time Worked On A Fee System — So Historically, Sheriffs Worked Fee For Service. So They Would Get Paid To Hold People, And Then They Got Their Fee When Someone Came And Picked Up That Person For Whatever Reason. That Was How They Worked. They Got Paid To Serve A Warrant Or Paid To Serve Papers, Right? They Were Paid For Service. And This Tradition Persists Today, Which Is Why Sheriffs Among Law Enforcement Officers Still Have A Lot Of Pay-For-Service Mechanisms. In Many Places, For Example, Landlords Pay The Sheriff To Evict Tenants. It's Just A Flat Fee. So Among Also Those Things Was That They Would Take People And Lease Them Out To White Land Owners. They Didn't Just Lease Them Out For Farming. They Were Sent To Mines, To Poultry Processing Plants. In Florida, They Were Sent To Collect Tar In The Everglades. And I Think It Can't Be Understated Just How Dangerous And Violent Convict Leasing Was.

TM: We See The Use Of Inmates To Do Manual Labor Even Today.

JP: Yes. People Who Are In Jail Do A Lot Of Labor, And Most Of That Is — I Mean, Honestly, It Goes To The Benefit Of The Sheriffs. So In Some States — Particularly Louisiana Is One Of Those Where They Can Still Lease Out Individuals In The Jail For Labor. Some Of Them Do — Are Leased Out For Public Companies — So, Like, Companies Cleaning Up After Hurricane Katrina, For Example. Some Are Doing Dangerous Work Like Roofing.

And, Of Course, Then There's The Abuse Of Those. So There Were Multiple Instances In Which Sheriffs In Other States, Too — So Not Just Louisiana But Texas And California, And Even On The East Coast — Where They Would Use People In The Jail To Do Things Like Wash Their Cars, Mow Their Lawn. Set Up Barbecues Was A Really Common One. So They Would Hire People To Basically Set Up Their, Let's Say, Campaign Launch Barbecue. This Was — It's Common. It's Very, Very Common.

TM: What About Sheriff Reform Overall? You've Touched On This Throughout Our Conversations. Why Are Most States Still Wary Of Legislating Sheriffs.

JP: Most States Want To Legislate Their Police. Well, There Was A Great Movement In 2020 For States To Legislate Their Police, And We Saw A Lot Of States Try To Do It. I Think Two Things. One Is That Interest In Legislating Police At 2020 Has Faded, Unfortunately, So We've Seen States Lose Interest In That. We've Seen A Bit Of Rollback In Terms Of Some Of These Proposed Reforms.

Second Is That Sheriffs Have Run A Very Successful Campaign Arguing That They Can't Be Legislated. It's Kind Of Genius If You Think About It. They Form A Small Group. So Most States Have, Like, A State Sheriff Association. They Will Go To The Legislature And Lobby And Testify. One Of The Things About Sheriffs As Political Figures Is Their Ability To Do This Kind Of Political Lobbying, Which Is A Bit Odd From Law Enforcement. But They Will Lobby For Laws That They Don't Like, And They Will Say, Well, I Don't Like This Law. We Don't Want To Do It, And We Think You Can't.

In General, Legislatures Believe Sheriffs. They Have A Patina Of Authority. They're Law Enforcement Officers. They Take What They Say Is True. If The Sheriff Says, Well, You Can't Legislate Me, They'll Say, Oh, Well, I Guess We Can't Do It. We'll Just Let It Go. And That's Something We've Seen In States Over And Over. It Takes A Lot Of Persistence And Kind Of A Little Chutzpah For People To Put These In Place And Sort Of Say, OK, Fine. You Know, You Could Just Say, Well, Pass The Law; Let Them Sue You, Which They Also Do.

You Know, When California Made Sheriff Civilian Oversight Legal In Every County, Sheriff's Sued, Saying, You Can't Do That. *Luckily, They Lost.* So In California Now, Every County Can Have Civilian Oversight, Different Ways Of Implementing It. But That Is Something The State Decided. So I Think It's — Again, This Is — I Chalk Up To The Influence Somewhat Of The Far-Right Sheriff Movement, Which Has Argued — Right? — Sheriffs Are Above The Law. *And If They're Above The Law, Then You Can't Make Laws That Govern Them.*

TM: Jessica Pishko, Thank You So Much For Your Reporting And For This Book.

JP: Thank You.

Jessica Pishko, Author Of “The Highest Law In The Land: How The Unchecked Power Of Sheriffs Threatens Democracy.” Coming Up, Book Critic Maureen Corrigan Reviews Rachel Kushner’s New Novel, “Creation Lake.” This Is FRESH AIR.

(SOUNDBITE OF JERRY GRANELLI’S “THE GREAT PRETENDER”)

###