

POINT OF ORDER

CRIMINAL JUSTICE TOPIC: TOPICALITY ARGUMENTS

National Federation of State
High School Associations

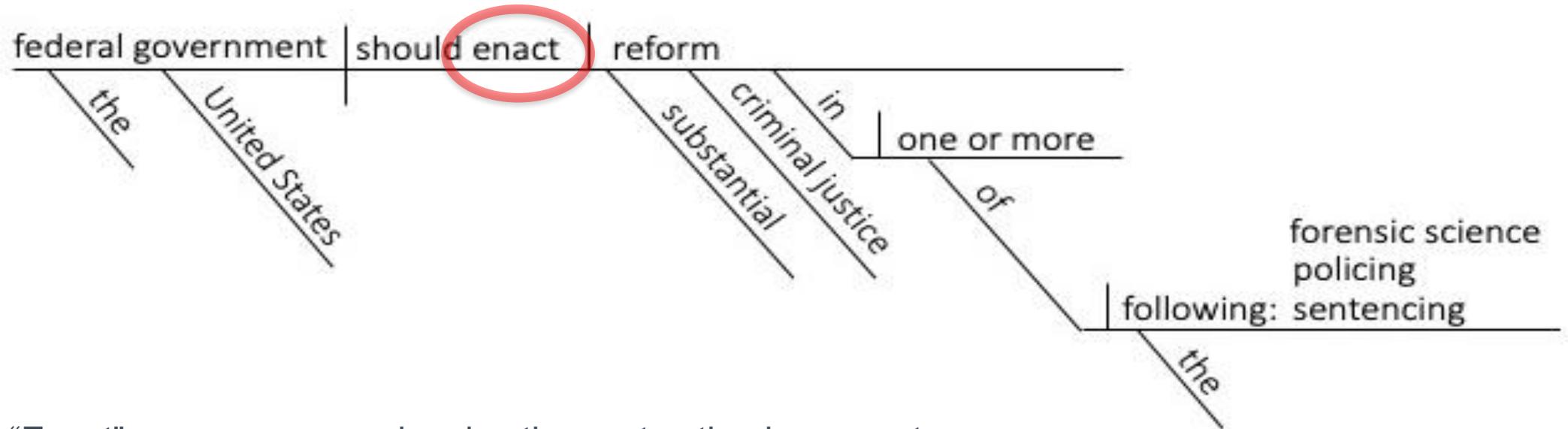


Some possible topicality arguments for the 2020-21 resolution:

Resolved: Resolved: The United States federal government should enact substantial criminal justice reform in the United States in one or more of the following: forensic science, policing, sentencing.

A look at negative topicality arguments provided by Rich Edwards, Baylor University

TOPICALITY: “ENACT” DOES NOT MEAN SUPREME COURT ACTION



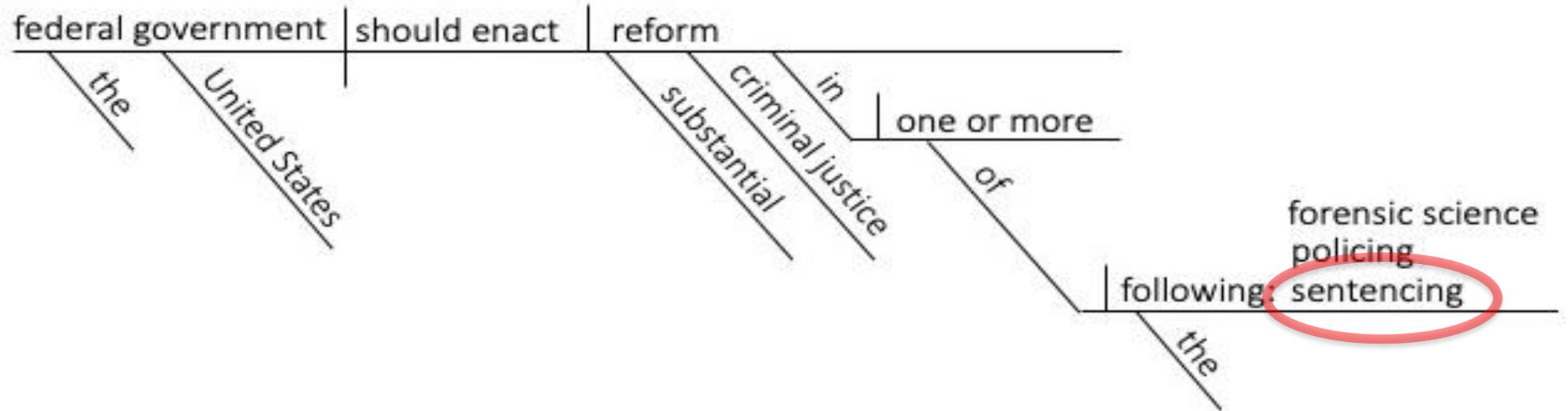
“Enact” means congressional action, not action by a court.

Administrative Office of the U.S. Courts, UNDERSTANDING THE FEDERAL COURTS, Nov. 22, 2019. Retrieved May 13, 2020 from <https://www.uscourts.gov/sites/default/files/understanding-federal-courts.pdf>

The courts do not enact the laws; that is the responsibility of Congress. Nor do the courts have the power to enforce the laws; that is the role of the President and the many executive branch departments and agencies.



TOPICALITY: “SENTENCING” DOES NOT MEAN LEGALIZATION

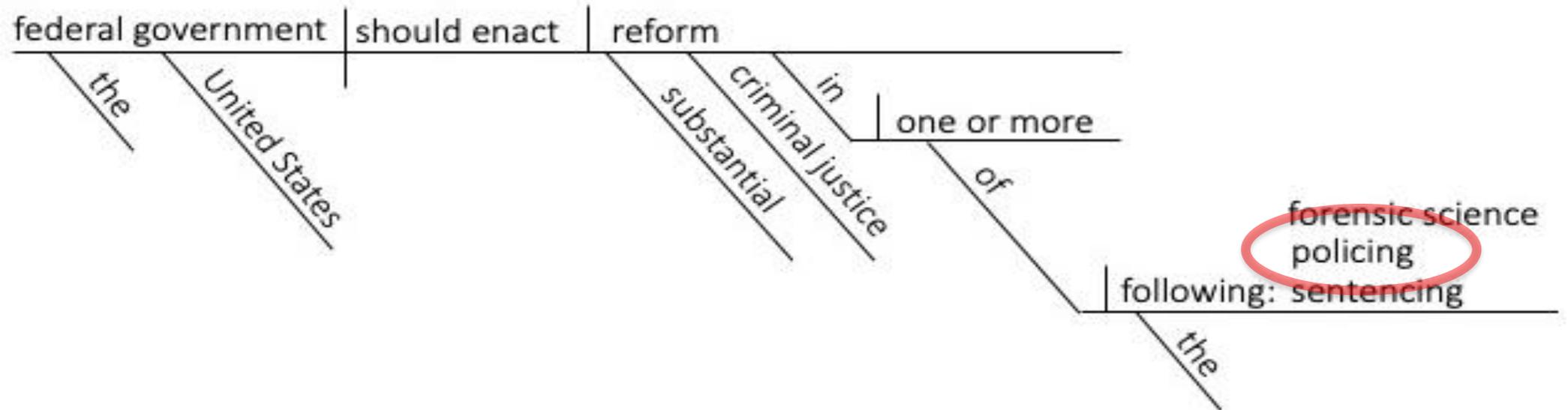


“Sentencing” refers only to the post-conviction phases of a criminal trial – the resolution gives no power to change what is legal or illegal, but only the penalty for illegality.

Mark Davis, (Dir., Institute for the Study of Violence, Kent State U.), CONCISE DICTIONARY OF CRIME AND JUSTICE, 2016, 234.

Sentencing: the phase of court processes at which the defendant is punished. In many felony cases, the presiding judge uses a presentence investigation report for assistance in arriving at a more just sentence. Sentencing options include prison or jail terms, probation, fines, or other alternatives.

TOPICALITY: “POLICING” DOES NOT MEAN LEGALIZATION



“Policing” refers to those whose job it is to make sure that people obey the law – the resolution gives no power to change what is legal or illegal, but only the policing of existing laws.

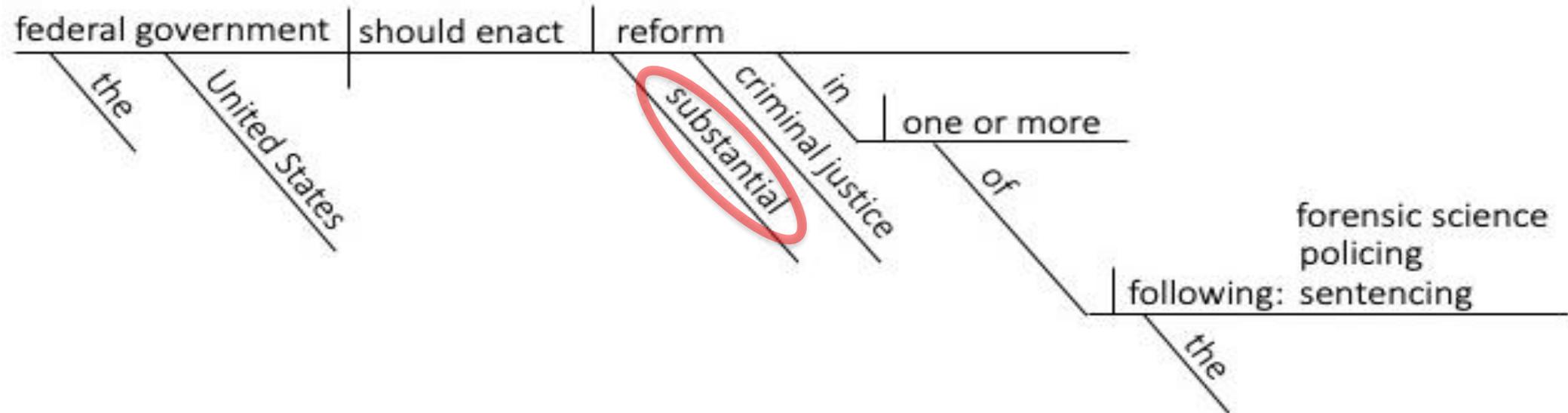
Della Summers, (Editor), LONGMAN DICTIONARY OF CONTEMPORARY ENGLISH: THE LIVING DICTIONARY, 2005, 1264.

Policing: The people who work for an official organization whose job is to catch criminals and make sure that people obey the law.





TOPICALITY: “SUBSTANTIAL” MEANS MORE THAN JUST A TINY PERCENT

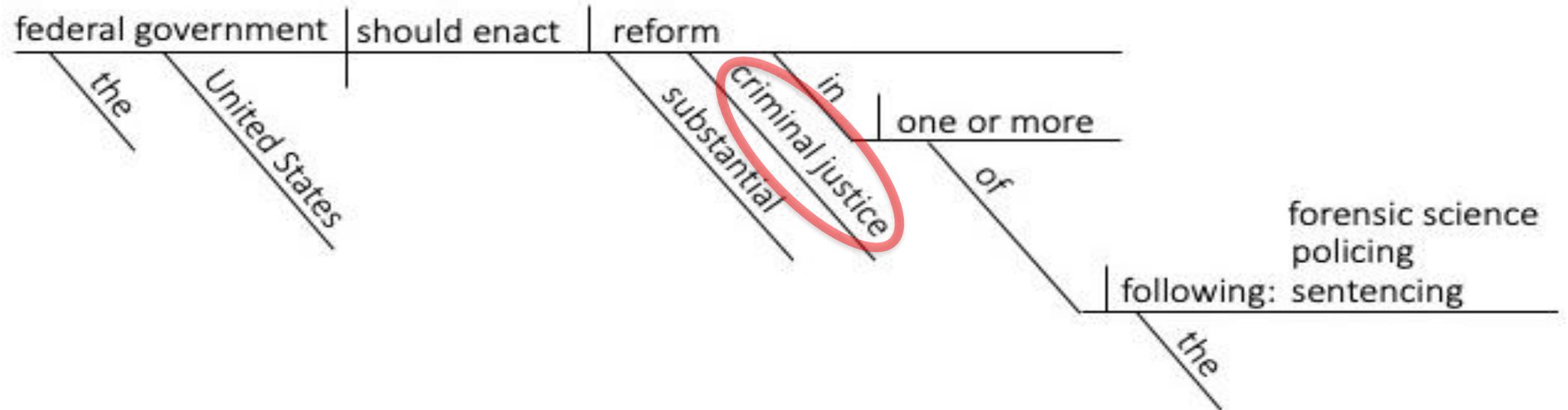


“Substantial” means that the affirmative plan must offer a big change, rather than minor ones – numerous proposed changes are “incremental” in nature, rather than “substantial.”

Nicole Porter, (Dir., Advocacy at the Sentencing Project), WAKE FOREST JOURNAL OF LAW AND POLICY, Feb. 2016. 1-2.

In recent years, there has been growing consensus across ideological lines to address mass incarceration. Yet, policy changes are incremental in approach and do not achieve the substantial reforms needed to significantly reduce the rate of incarceration and its collateral impacts. Incremental policy reforms include: reducing the quantity differential between crack and powder cocaine that results in racially disparate sentencing outcomes at the federal level and in certain states; reclassifying certain felony offenses to misdemeanors; expanding voting rights and access to public benefits for persons with felony convictions; and adopting fair chance hiring policies for persons with criminal records.

TOPICALITY: “CRIMINAL JUSTICE” DOES NOT INCLUDE CIVIL LAW

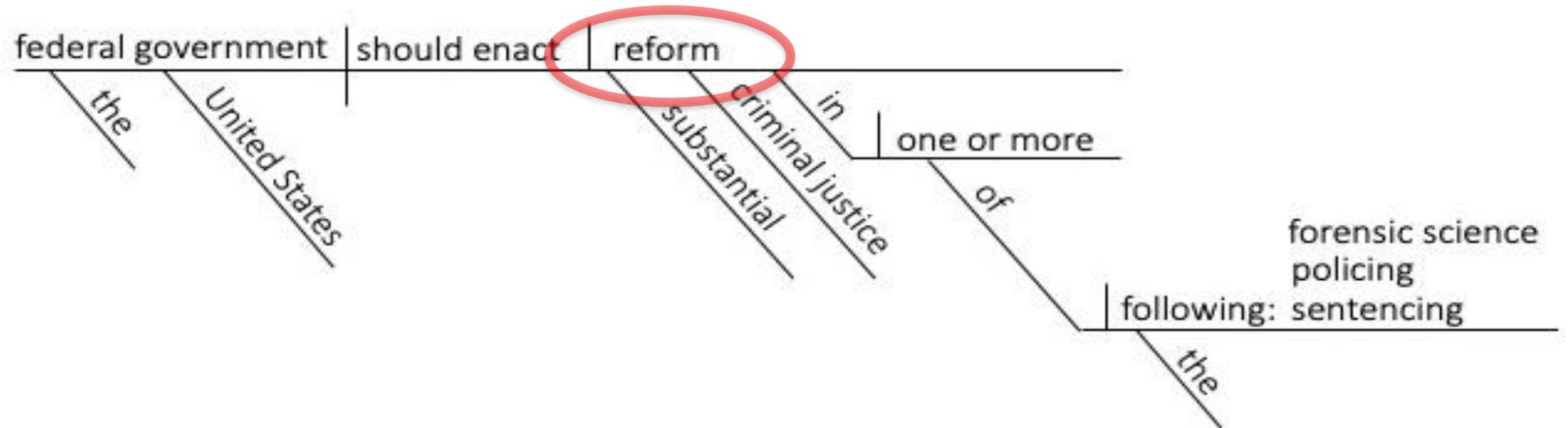


Deportation of immigrants is a matter of civil, rather than criminal law; affirmative cases that attempt to halt deportation of immigrants would be nontopical.

Christopher Lasch, (Prof., Law, U. of Denver Sturm College of Law), YALE LAW JOURNAL FORUM, Oct. 24, 2017, 431.

The Supreme Court has explained that immigration arrests that initiate deportation proceedings are civil in nature.

TOPICALITY: “REFORM” DOES NOT MEAN ABOLITION



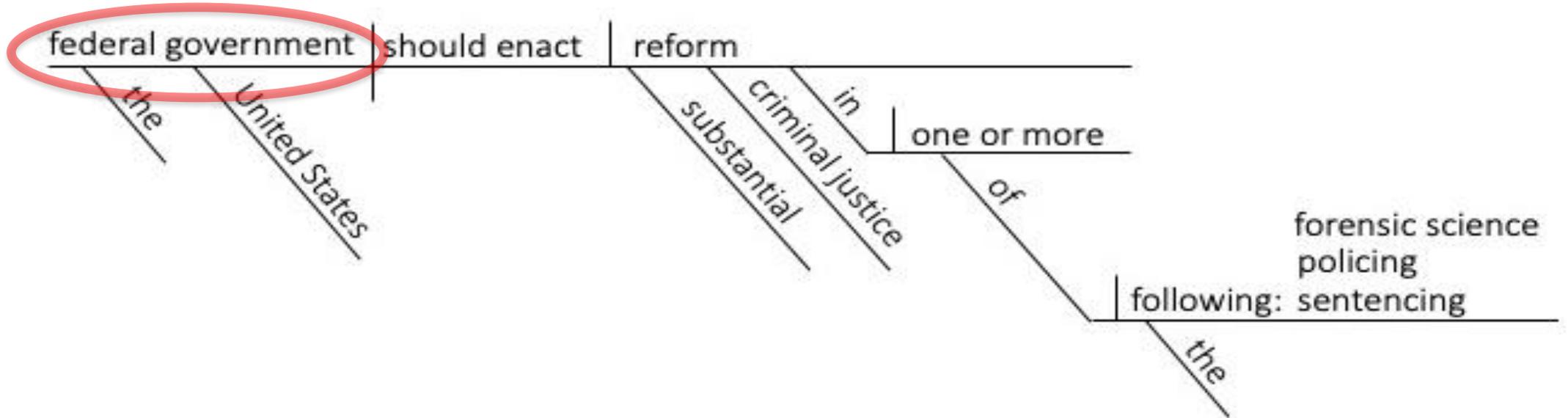
Reform means to improve the present system; abolitionists argue for scrapping the present system.

Ruairi Arrieta-Kenna, (Assistant Editor), POLITICO MAGAZINE, June 12, 2020. Retrieved June 28, 2020 from <https://www.politico.com/news/magazine/2020/06/12/abolish-defund-police-explainer-316185>

We still do need police, the argument goes, but policing as we know it is so broken that departments can't simply be reformed. It will take scrapping our current police forces to allow a new and better version to emerge.



TOPICALITY: “FEDERAL GOVERNMENT” DOES NOT MEAN STATES



The “federal government” is the agent of action in the resolution; affirmative plans may not “enact reform” in state and local police forces.

Nathan James and Ben Harrington, (Staff, Congressional Research Service), WHAT ROLE MIGHT THE FEDERAL GOVERNMENT PLAY IN LOCAL GOVERNMENT REFORM?, Nov. 16, 2018. Retrieved May 10, 2020 from <https://fas.org/sgp/crs/misc/IF10572.pdf>.

The federalized system of government in the United States limits the influence Congress can have over state and local law enforcement policies. The U.S. Constitution established a federal government of limited powers. A general police power is not among them. That authority is largely reserved for the states.



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