

ACJS TODAY

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Racial Bias and the Use of Criminal History

Information by the Courts

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Pervasive and well-documented racial disparities in the American criminal justice system—rooted in a history of oppression and criminalization of black people (Hinton et al., 2018)—have been brought to the national forefront amid protests of police violence and calls for alternatives to traditional justice system processing. The disproportionate impact of the justice system on people of color, and particularly black men, raises significant questions as to how we address the problems inherent in the system (Davis, 2017). Following the killing of George Floyd by police, the current racial justice movement advocates for transformative change to reverse the impact of racist ideologies and discriminatory policies that undergird our entire system of justice. In naming the role of structural racism in American society, broad support has emerged to dismantle the racialized policies affecting our institutions. As criminal justice researchers and practitioners, it is necessary to confront the organizational practices that contribute to inequalities in decision making and

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move beyond our focus on implicit bias and defense of presumably race-neutral practices that, in fact, systematically disadvantage people of color (Hester, Frase, Roberts, & Mitchell, 2018).

This is, of course, a complex and challenging objective, one that has been subject to disagreement and contention throughout decades of research on sentencing disparities and over several significant shifts in sentencing policy (Spohn, 2000). Past attempts at reform that aimed to improve uniformity and equity in the administration of justice, such as the development of structured sentencing guidelines, have come under scrutiny for their roles in perpetuating racial inequities in pretrial detention, prosecution, and incarceration (Omori & Petersen, 2020). Though these policies and practices have been touted as constraining discretionary decision making and discrimination on the part of individual actors, they do little to address the institutionalized drivers of disparity. Instead, there has been a shift in focus to “unwarranted disparities,” or variations in sentencing that are not explainable by “legally relevant” factors, such as offense severity and criminal history. The presumption that racism does not affect such factors, or that the influence of race can be modeled separately from legal factors in social science research, constrains the ways in which we identify and respond to racialized sentencing processes (Murakawa & Beckett, 2010).

With that understanding, research has begun to explore the mechanisms through which race intersects with legal case characteristics in creating racially disparate outcomes. One key focus has been on criminal history records. Although a prior record is considered a legally relevant factor in judicial decisions to detain, convict, and imprison, it is not race-neutral. First, prior record is not a direct measure of offending behavior but is, instead, a measure of criminal justice involvement. Second, criminal justice involvement is impacted by racist laws, policies, and practices that target people of color and perpetuate racial inequalities. For instance, increased law enforcement presence in poor and black communities, along with structural disadvantages in education, employment, and exposure to crime, contribute to justice system involvement (Lippke, 2017; Tonry, 2019). Discriminatory patterns in policing and prosecution are, thus, built into this legal factor, resulting in more extensive criminal histories among people of color (Ulmer, Painter-Davis, & Tinik, 2016; Hester et al., 2018). The impact of a prior criminal record on sentencing cumulatively disadvantages black and brown people to the extent that it operates through, or in combination with, race.

With this focus in mind, this paper presents a brief overview of two legal justifications for using criminal history factors and enhancements in sentencing; summarizes recent research on the impacts of criminal history on sentencing disparity;

and draws on the ways in which prior justice system involvement and structured decision making, such as sentencing guidelines, are impacted by institutional discrimination. It concludes with some directions for research and practice related to assessing and limiting the role of criminal history in sentencing.

Criminal History as an Indicator of Blameworthiness and Dangerousness

Justification for using criminal history in sentencing lies in two main theories of punishment: retribution for past wrongs and utilitarian arguments about risk to public safety, or dangerousness. Both in theory and in practice, consideration of prior criminal history information is widely viewed as relevant and acceptable for making assessments of blame and of risk to public safety (Hester, Frase, Laskorunsky, & Mitchell, 2019; Hester, 2019). Blameworthiness is related to the principle of retribution, in which punishment should fit the crime based on “just deserts.” Retributive perspectives focus on what happened in the past and administering punishment for an inflicted harm. Though there is disagreement about whether past punishment should be considered at sentencing from a strict retributive perspective (Hester et al., 2018), many scholars acknowledge that offending history is used as a shorthand to make determinations about a person’s blameworthiness and the “proportionate” level of punishment (Hamilton, 2015). All else being equal, a person

with a longer criminal history may be seen as more culpable for the current offense, and deserving of greater punishment, than a person without such a history.

To the extent that past behavior is predictive of future behavior, criminal history may also be viewed in terms of risk to public safety (Hamilton, 2015). This shifts the focus from determining blame for a past wrong to making predictions about future dangerousness or repeat offending. It is oriented toward crime prevention through incapacitation and deterrence. All else being equal, a person at higher risk of recidivism should be more likely to receive an imprisonment sentence or a longer sentence than someone at lower risk (Robinson, 2001). This focus on promoting public safety and reducing recidivism has led to the widespread adoption of risk assessment tools that heavily rely on measures of past offending. Across considerations of both past harms and future dangerousness, there is substantial normative support for the use of criminal records in making punishment and crime control decisions.

Though criminal history is one of many factors that help to determine blameworthiness and dangerousness, it is a common and potent factor across all criminal sentencing systems, particularly those with guidelines, mandatory minimums, and sentencing enhancements. In structured systems, criminal history factors are included as formal and systematic considerations in case processing, often along with the offense severity, in the form of

sentencing guidelines (Spohn, 2000). Additional penalties associated with a criminal history, often termed “prior record premiums” or recidivism aggravators, essentially increase punishment for those who exhibit disrespect for the law or pose a recidivism risk (Robinson, 2001; Hamilton, 2015; Hester, et al., 2019). Laws that impose harsher sanctions on people due to prior convictions or justice involvement, such as structured guidelines and three-strikes penalties, can substantially enhance sentences, even for nonviolent drug offenses (Hamilton, 2015).

There is growing concern over the amount of influence that criminal history information is given in legal decision making and the disproportionate impacts that it can have on sentence outcomes and racial disparities (Frase & Roberts, 2020). Variations in how this information is applied, which can include consideration of misdemeanor or juvenile records and the prior-record penalties associated with less serious types of cases, can result in disproportionately severe sentences, without comparable public safety benefits (Robinson, 2001; Hamilton, 2015; Lippke, 2017). In addition, the implications of using criminal history to determine risk and blame are especially problematic due to their differential impacts on people of color, specifically young black men (Steffensmeier, Ulmer, & Kramer, 1998). Racialized fears, stereotypes of dangerousness, and attributions of responsibility can result in disparate

incarceration outcomes based on race. The negative impact of prior-record enhancements is then compounded for black people, who are overrepresented in all stages of the justice system and among those charged with drug-related offending (Everett & Wojtkiewicz, 2002; Harcourt, 2015; Hinton et al., 2018; Tonry, 2019).

The Relevance of Criminal History in Sentencing Disparities

Because perceptions of black criminality and racial stereotypes converge with over-policing and structural disadvantages, the use of criminal history information, and any associated penalties, should be situated within an understanding of systemic racism. This, however, makes the relationship between race and justice involvement much more challenging to disentangle. Past sentencing *disparity* research has focused on the extent to which defendant race impacts sentencing outcomes, net of other legal controls, such as offense seriousness. Spohn (2000) describes this main effect of race as a measure of “direct discrimination.” She also describes how “subtle discrimination” can operate through other factors, including pretrial detention, offense type, or other extra-legal factors, such as age and gender. There is, indeed, a substantial body of work showing how these relationships play out and finding evidence that the effects of other variables, including legally relevant factors, are conditioned by, or operate jointly with, defendant race to impact sentencing

(Steffensmeier, et al., 1998; Ulmer, et al., 2016; Skeem & Lowenkamp, 2016). A main limitation of this work is that it fails to acknowledge the historical injustices, and heightened criminal enforcement, imposed on black and brown people that contributes to their overrepresentation in the justice system and criminal history.

To better account for these complex relationships, court research scholars have conducted analyses to examine how racial disparities manifest in terms of criminal history enhancements and sentencing guidelines calculations, which make prior convictions relevant for sentencing decisions. This line of empirical evidence suggests that sentencing guidelines do, indeed, reflect institutionalized discrimination in past sentencing practices. Everett and Wojtkiewicz (2002, p. 206) found that race influences the sentencing guidelines range determination. Together with results showing that black defendants are more often sentenced for harshly sanctioned drug offenses, they posit that it may be evidence of “structural unwarranted disparity.” Examining prior record enhancements, Frase (2009) found that racial disparity in sentencing was driven by the criminal history side of the Minnesota sentencing grid. Looking at both mediation and moderation effects, Ulmer and his colleagues (2016) found that criminal history mediated much of the black male imprisonment effect, and that black and Hispanic males with lesser criminal histories and presumptive

sentence ranges were disadvantaged compared to white males. Utilizing a decomposition approach, a recent study assessed how racialized case factors, including criminal history, accounted for racial inequalities in pretrial detention, conviction, and incarceration (Omori & Peterson, 2020). Prior record was a main driver of detention and conviction inequalities, but economic marginalization was also significant. These studies either directly or indirectly acknowledge that prior criminal history—a salient legal factor—intersects with race and past discrimination in sentencing and pose questions of significant policy relevance regarding the ways in which criminal records are weighed and factored in court and sentencing outcomes.

Directions for Research and Practice

Research on sentencing disparities has come a long way to more fully explore racial inequities in the justice system by moving beyond the identification of direct discrimination at discrete decision points (generally at the sentencing phase) to understand the impacts of earlier decisions and cumulative disadvantage. It must now seek to identify the ways in which the justice system process can mitigate the impacts of systemic racism, particularly in terms of how criminal histories affect and exacerbate racial and ethnic disparities over the course of a criminal arrest, charge, prosecution, and incarceration. There are several unexplored issues related to the role of criminal history information,

structured decision-making systems, and disparate punishment outcomes that deserve further attention. Specifically, future research is needed that more fully explores the following:

1. The extent to which criminal history information is operationalized and weighed by justice actors to impact racially disparate outcomes (such as how often prior record premiums result in more severe sentences for less serious offending);
2. The unintended impacts of prior record enhancements on people of color, including future justice involvement and collateral consequences;
3. The role of mitigating factors in reducing racial disparities in criminal histories; and
4. The reciprocal and multiplicative nature of justice involvement and criminal history scoring.

In terms of criminal justice practice, it is critically important to acknowledge how systemic racism, in addition to racial and ethnic biases, manifests in punishment decisions, including through criminal history records. An organizational assessment of how criminal history drives

sentencing decisions and impacts racially disparate outcomes could shed light on the kinds of interventions that might matter the most. This might include examining the role of criminal history in pretrial detention decisions, particularly for people of color, and the implications of detention for later outcomes. In a similar vein, risk assessment validation studies should be conducted to ensure that criminal history measures, as utilized, have a meaningful relationship to more serious forms of recidivism and are not having an outsized effect on decision making. For instance, the role of criminal history could be limited to violent or sexual offending. Last, a fundamental shift in how criminal history information is used may be warranted, such as by rejecting sentence length enhancements based on prior record or by adopting a guidelines system that weighs criminal history against economic, social, or other mitigating factors (e.g., economic status, lack of housing). Ultimately, the field needs to develop evidence-based and principled approaches for responding to continued justice involvement and addressing the overrepresentation of people of color in prison and jail at a systems level.

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ACJS 2021 ANNUAL CONFERENCE

“Reforming and Transforming Criminal Justice.”

April 13th – 17th, 2021

~~Caribe Royale All-Suites Resort~~
~~Orlando, Florida~~

Due to the ongoing pandemic, it is necessary to cancel the 2021 annual meeting in Orlando. As a service to our members, the Executive Board is in the process of planning for a scaled-down virtual alternative to the in-person meeting. A nominal registration fee may be charged.

The Program Committee is working closely with the Executive Board to create the program. Details will be provided in the coming weeks. As soon as it is possible, the national office will also begin contacting 2020 and 2021 registrants to coordinate refunds and credits. We respectfully request that people refrain from emailing the national office with refund inquiries. We will contact you.



Photo courtesy of Caribe Royale Orlando

A Changing Student Profile in the Era of Experiential Learning: Considerations for Research

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Civic engagement, service learning, community service, practica, and internships are among the many buzzwords being used to answer the call for high impact practices within higher education. Incorporation of these experiential learning techniques has been a growing trend among institutions of higher education as a way to help students learn course concepts; understand the conditions that lead to racial, economic, and social disparities; and become productive citizens in a global society (Jordan, 2007; Quaye & Harper, 2007). This is done by connecting the curricula to societal issues through engagement with the community. While the use of these educational practices is still relatively new, characteristics of student populations are constantly evolving, and we must consider the changing student profile when investigating the efficacy of these methods.

Evaluations of experiential learning have illustrated many benefits at both the institutional and individual level. For example, the increase in student retention (Prussia & Weis, 2004) and graduation rates (Plotkowski & Joseph, 2011) that accompanies experiential learning efforts is advantageous for colleges and universities. At the same time, these educational experiences have shown improvements in problem-solving skills, interpersonal skills, diversity attitudes, and cultural

competencies for the students who engage in them (Hirschinger-Blank, Simons, Finley, Cleary, & Thorig, 2012; Hirschinger-Blank & Markowitz, 2006; Simons et al., 2012; Simons et al., 2011). It is worth noting, however, that the majority of research in this area relies on cross-sectional research methods. That being said, a limitation in this area of research is the lack of longitudinal investigations on these pedagogical advances (see Moely & Ilustre, 2013; Prussia & Weis, 2004 for exceptions).

In an attempt to address the void in longitudinal research on experiential learning, my colleague, Dr. Nancy Blank, and I collected longitudinal data on a sample of 90 students at our university over a year and a half. The first data collection point was prior to any experiential learning in college and the second data collection happened 3 semesters later, after experiencing varying degrees of experiential learning. Using pre-existing scales designed by Moely and colleagues (2011), we looked at changes in student outcomes as a result of participation in experiential learning. Specifically, we looked at civic action, problem solving, leadership skills, diversity attitudes, civic responsibility, and cultural skills. Each of these scales had a reliability coefficient between .736 and .929 in our sample. Interestingly, there was no significant difference in any of the student outcomes between time 1 and time 2. The results of these analyses really made me question why we were not seeing significant changes when previous literature had and students had spoken so highly of these experiences.

As a result, we looked a little more closely at our sample and uncovered some interesting context surrounding our students that could help explain the lack of significant findings. First, our sample had a very high level of prior exposure to experiential learning. In fact, at time 1, 78% of the sample had reported that they had participated in some type of experiential learning prior to coming to college (e.g., community service, service learning, internships). Additionally, 62% of our sample said that opportunities to engage in service was among their top reasons for choosing Widener. As such, their time 1 scores on many of the outcome measures were already at the high end of the scales, leaving little room for improvement after additional experiential learning at Widener. For example, our sample had a mean of 50.03 at time 1 on the interpersonal and problem-solving scale that ranged from 19–60 and a mean of 30.26 on the civic action scale ranging from 13–40. Although scores improved from time 1 to time 2, these high baseline scores did not leave much opportunity for significant growth.

This analysis highlighted some of the challenges to measuring student growth and development that I believe will only become more difficult over time, for two reasons. First, while the trend toward students entering college with more experiential learning experience is obviously a positive, it presents a challenge for developing scales to uncover changes in learning outcomes because the students are starting college with a

higher score on pre-existing scales than students in the past. This is a sentiment echoed by Moely and Ilustre (2013) when they compared two samples and found that the younger sample entered college with a greater appreciation of community engagement than an older comparison group. Second, these types of high-impact practices are becoming a more integral part of the mission statement of many colleges and universities. As such, certain schools are going to attract students who are seeking out such educational experiences. As mentioned, this was the case in our sample, which should not be a surprise for Widener, given its national reputation for civic engagement and appearance on *Newsweek's* list of the 25 most service-minded colleges (“The 25 best schools for do-gooders,” 2010). Still, as this focus becomes more common across institutions and students use this in their selection criteria for school, it will further skew pre-test scores on scales measuring such experiences.

I bring forth these concerns not to dissuade this type of research, but instead to challenge researchers to think about this issue carefully and consider it in measurement of concepts and design of evaluations in this area of study. At the end of the day, I believe that we are in an era of experiential learning that is valued by universities, sought out by students, and contributing to better citizens upon graduation. Now, it is on us as researchers to acknowledge this changing student profile and figure out how to best capture their experiences and report on the efficacy of these efforts.

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Welcoming our newest faculty

The School of Criminology and Criminal Justice is committed to Arizona State University's mission to transform higher education through excellence, access, impact, and for our school, adaptability. To that end, we proudly bring our students and research to the next level as we welcome our most recent faculty and leadership to the school.



Effective January 2021 Anthony Peguero, Ph.D. will hold a joint appointment with the School of Criminology and Criminal Justice and the T. Denny Sanford School of Sociology. Anthony joins us from Virginia Tech. His research interests include youth inequality and justice; race, ethnicity, and immigration; schools, stratification and education; Latina/o/x Criminology and Sociology. ASU being "measured not by whom it excludes, but by whom it includes" resonates with Dr. Peguero as he looks forward to representing the diversity that is the Phoenix metro area.



Abigail Henson, Ph.D. earned her doctorate at Temple University in 2020. Her research involves policing, family, reentry, corrections, evaluation, racial inequalities, qualitative methods, mixed methods. She is excited to launch @whatsjust, an anti-racist public criminology social media platform with the mission of challenging existing stereotypes, turning the critical gaze towards policymakers and racist institutions, and informing the public on the criminal justice system's broad impact.



Ojmarrh Mitchell, Ph.D. comes to CCJ from the University of South Florida. His research centers on criminal justice policy, particularly in the areas of drug control, sentencing and corrections, and racial fairness in the criminal justice system. Dr. Mitchell broadly focuses on the effectiveness and fairness of criminal justice sanctions. He sees the school as research driven, policy relevant and focused on implementation of its' work. This innovation, this action, drew him to ASU.



Earning his J.D. at Harvard University and his Ph.D. at University of Chicago, Jon Gould comes to us from American University bringing experience from the Department of Justice and the National Science Foundation. As director of the school, Dr. Gould is passionate about providing pathways for student success through national, international, and local collaborations and research opportunities with premier faculty and exceptional practitioners in the field of Criminology and Criminal Justice.

Congratulations to the 2020 National Criminal Justice Month Award Winners**Stephen Owen, PhD****Chair, ACJS National Criminal Justice Month Committee****Professor of Criminal Justice, Radford University**

The Academy of Criminal Justice Sciences National Criminal Justice Month Committee would like to recognize and offer its congratulations to the recipients of the 2020 National Criminal Justice Month awards. While we were not able to recognize recipients at the 2020 Annual Meeting, we would like to share information about their accomplishments.

In 2009, the U.S. House of Representatives designated March as National Criminal Justice Month, encouraging collaborations between “policymakers, criminal justice officials, educators, victim service providers, nonprofits, community leaders, and others to promote awareness of how to prevent and respond to crime” (House Resolution 45, 111th Congress, January 9, 2009). To recognize efforts related to this mission, three awards are given annually to academic departments or institutions by the Academy of Criminal Justice Sciences.

The Education Award recognizes an event for its educational impact on students and the community. The 2020 recipient was the Department of Sociology and Criminal Justice at the University of the Incarnate Word. In an activity open to all community members and jointly sponsored by Women’s History Month, the department screened the film *Southwest of Salem: The Story of the San Antonio Four*. The documentary focuses on the stories of four women who were exonerated after almost 15 years in prison, following a wrongful conviction on a gang-rape charge. The film was followed by a panel discussion with the four women featured in the film, focused on wrongful conviction and the criminal justice system. As noted in the nomination narrative, this event addressed the notable theme of “injustice[s] in the criminal justice system that are rooted in homophobia and gender discrimination.”

The Community Engagement Award recognizes an event that meaningfully engages the community on criminal justice issues, with an emphasis on those that include student engagement with a local criminal justice agency. The 2020 recipient was the Center for Correctional Solutions within the School of Criminology and Criminal Justice at Arizona State University. Their event was titled “Prison Chopped” and was facilitated by graduate and undergraduate student fellows of the Center, all of whom had previously

participated in the Inside-Out Prison Exchange Program. The audience, composed of executive-level participants from a variety of industries, was divided into groups and challenged with the task of making the best peanut butter and jelly sandwich—but with some groups provided fewer resources and limited in their ability to communicate with one another, representative of challenges posed by imprisonment. As noted in the nomination narrative, this experience was unpacked as “the students shared their experiences learning alongside incarcerated men and conveyed to the audience the importance of providing opportunities for meaningful transformation on the outside. Their passion was contagious,” and a powerful message to participants.

The Program of the Year Award recognizes an academic department that successfully showcases a range of National Criminal Justice Month events. The 2020 recipient was the Criminal Justice Program at the Borough of Manhattan Community College. The program sponsored a number of Criminal Justice Month activities, including a panel discussion and networking event attended by students, faculty, and court system professionals, focused on careers in the courts; screening and discussion of the film *Beyond the Wall: After Incarceration, There's Life*, which focuses on reentry programming for those released from incarceration; and a session for students to learn about the City University of New York Justice Academy, which provides a pathway toward a baccalaureate degree in criminal justice. In addition, groups of students attended and presented at the Eastern Sociological Society Annual Meeting and attended the Academy of Criminal Justice Sciences Annual Meeting. Finally, the program incorporated Criminal Justice Month into its social media postings for the month of March. As noted in the nomination narrative, “over 200 criminal justice students [participated] in these experiences outside of the traditional classroom, enhancing their criminal justice education and involvement, not just in terms of breadth and depth, but exposure, networking, and activism in the criminal justice field.”

Congratulations to each of these programs, their faculty and staff, and their students, for the efforts put forth to sponsor Criminal Justice Month programming! As March of 2021 approaches, the ACJS National Criminal Justice Month Committee encourages academic departments and programs to consider how National Criminal Justice Month activities can contribute to their curricular and co-curricular missions, prompting dynamic and engaging conversations such as those highlighted above.

Book Review: *Punishing Poverty: How Bail and Pretrial Detention Fuel Inequalities in the Criminal Justice System*. University of California Press, 2019. ISBN: 9780520298316 (Paperback)

Randall Snyder*

Punishing Poverty: How Bail and Pretrial Detention Fuel Inequalities in the Criminal Justice System provides an in-depth look into the use of pretrial detention based on conditions of bail commonly set by judges overseeing initial appearances. The book opens with a summary of the origins and history of bail as a common form of pretrial release. The authors identify the four common types of bail as release on recognizance, cash bond, property bond, and bail bonds and provide an in-depth explanation of them. This explanation elaborates on various forms of bond and their use as an unintentional pretrial detention method. In addition, tools utilized to determine a suspect's worthiness of bail and racial inequalities are discussed. The authors finally offer a conclusion with informative suggestions to reduce jail populations and provide ideas for police and bail reform. This work is through a combined effort of Christine S. Scott-Hayward and Henry F. Fradella. Christine S. Scott-Hayward is an associate professor of law, criminology and criminal justice at California State University in Long Beach, California. Henry F. Fradella is the author or coauthor of a dozen books and is currently a

professor of criminology and criminal justice and an affiliate professor of law at Arizona State University.

The authors begin *Punishing Poverty* by looking at the historical origins of bail in the common law tradition. Examples are then provided of some unfortunate incidents of obvious systematic failures of the bail system. The authors offer that pretrial detention is the best predictor in considering the outcome of pending litigation. One explanation provided is the fact that jail conditions are unpleasant and the accused may plead guilty in order to be released. This may occur when the accused is innocent of the crime they are accused of simply to escape the conditions of confinement. When an accused person is able to make bail, this lessens the possibility of an innocent person entering a guilty plea to simply escape incarceration (Wiseman, 2018). Bail, unfortunately, has become a strong commercial business, with companies launching strong opposition for true bail reform. Several legislative attempts have been made to reform the bail system. Attempts from the Manhattan Bail Project to the Bail Reform Act of 1984 seemingly offered more restrictions and punitive measure as opposed to easing the system in the essence of fairness and equality, especially to the impoverished.

Unfortunately, for impoverished minorities, the inability to make bond and be released prior to trial increases their risk of pleading guilty or

accepting plea agreements with longer terms of incarceration (Donnelly & Macdonald, 2018). Bail is not a constitutional right and therefore not guaranteed by the United States Constitution under the Eighth Amendment. The Constitution does provide that citizens shall be free of excessive bail, although no clear interpretation of what excessive bail is has been established. Considering this lack of a guarantee from the Eighth Amendment, applicable protections are provided through the Fourteenth Amendment, even though bail is not mentioned in this amendment. These protections are provided through the clauses of due process and equal protection.

Of the common bail types previously discussed, money bail is the most common and widely used. This has allowed commercial bail companies to flourish. Commercial bail companies require the accused to pay a percentage of the ordered bail in addition to having someone sign the bail as a guarantor. Like any business, bail companies are designed with a business model to produce profit. Although the actions of some bail companies have branded the commercial bail industry as corrupt, it remains an unfortunate necessity in the majority of states. Without this system, many of the accused would not be able to make bond on other conditions. In reference to the Sixth Amendment, the authors address the right to counsel and its applicability at the stages of

preliminary hearings, arraignments, interrogations, lineups, trials and other critical stages.

One area that is obviously excluded from the Sixth Amendment's applicability is bail hearings. The authors suggest that defining the Sixth Amendment's critical stage provision has proven to be complex. Heaton et al. (2017) provides validation of the necessity of the right to counsel at bail hearings, even in misdemeanor cases, as pretrial detention impacts verdicts. If the accused is released on bail, they stand to be subjected to any host of conditions based on the perceived seriousness of their offense and potentially their criminal history. The authors contend that pretrial service agencies play a critical and important role in the monitoring and supervision of those released prior to trial. While this type of agency does not exist across the nation, they play an intricate role in reducing reoffending prior to trial as well as failure to appear cases. The authors further identify four separate categories of nonfinancial conditions of pretrial release: status quo conditions, problem-oriented conditions, contact conditions, and restrictive conditions. These conditions can range from maintaining prearrest status, such as employment, to jurisdictional limitations. Imposing such limitations can prevent the accused from leaving the jurisdiction, which ultimately limits their freedom of movement and should consequently encourage court appearance. Aside from the factor used in determining suitability for bail previously

mentioned, various risk assessment tools may be used to determine conditions and financial requirements for bail.

Controversially, those accused of an offense who have the ability to post bail are not free from unjust treatments or conditions after posting bail. This is apparent in the case of *Dawson v. Board of County Commissioners of Jefferson County* (Coleman, 2019). In *Dawson*, the right to be free from pretrial detention absent the proof of guilt is again debated and should be further reviewed for clarity. *Dawson* supports the authors' position for bail reform and further bail policy as it relates to the release of a person custody. Dawson was arrested on a Thursday and made bail the following day, Friday. Dawson remained in custody until Wednesday the following week due to potential conditions that would require Dawson to wear a GPS monitor while on release. Dawson did not meet the required condition and was ultimately released without the GPS monitor (Coleman, 2019).

As several entities called for bail reform, agencies began advocating and calling for the implementation and adoption of an objective criteria to assist in determining detention or pretrial release. The authors identify a variety of risk assessment tools that have been developed throughout the United States, each one with its own set of flaws or discrepancies. While some of these assessments use algorithms and others use clinical assessments, the authors' argument concerning the fairness of these

tools is compelling. Institutions reported the use of such assessment tools does not increase racial or ethnic disparities; however, this statement should not be accepted without scrutiny. In response to the claim of racial and ethnic disparities not being increased by various assessments, the authors point to the *ProPublica* article which states the contrary. The *ProPublica* article identifies minorities as having higher risk scores and reveals that scores have indicated false positives for black defendants, while categorizing them as high risk. As this article is not without objections as well, the authors point to the variance in risk assessments. The authors discuss the risk assessment's inability to accurately and with validity be predictive across "racial, ethnic, and gender lines" (p. 120). As far as risk assessments are concerned, the authors find that the concept of fairness is based on the views of those weighing it; however, a valid concern for a lack of training and understanding the various methods of assessments is identified. Though some will argue pretrial detention is effective and a necessity of the criminal justice system, it comes with obvious impacts that could cause undue suffering for the accused.

During the pretrial portion of incarceration, if the accused does not have the ability to make bail, they may be subject to any variety of unfavorable situations. These situations have the potential to cause lasting and adverse impacts on the well-being of the accused, including mental anguish, physical

abuse, false guilty pleas, unnecessary detention lengths, loss of employment, and family strain. The authors identify that across the United States, 65.1% of those incarcerated are awaiting trial. They further report that 90% are awaiting trial simply because they cannot afford bail, meet conditions of bail, or choose not to meet the conditions of bail. In considering the financial constraints of bail, the authors identify a 2015 analysis of New Orleans, Louisiana. This analysis identifies the median annual income of those incarcerated as \$15,000 while the average felony bond is \$10,000. Although paying the usual 10% of this bond equates to \$1,000, this can still create an adverse financial impact for the accused. This potential impact is identified by the authors through Federal Reserve data. The data indicate that the average American does not have emergency funds in the amount of \$400 without borrowing or selling items. As this is the case, the need to obtain \$1,000 would seem like a daunting or impossible task for most Americans. With this inability being a reality for most incarcerated persons, the mental anguish brought by this may seem unbearable to overcome.

The authors describe the case of Erma Faye Stewart. This unfortunate case describes multiple aspects of various unfavorable situations and lasting impacts of pretrial detention. This case not only provides an overview of the anguish and atrocities that can be suffered by someone under pretrial detention, it further exemplifies the necessity for

true bail reform while lending support to the authors' ideology for systematic reform. Erma Faye Stewart was arrested in a drug sweep and spent four weeks in jail. Erma remained in jail because she was unable to make the \$70,000 bond. Eventually Erma pleaded guilty to the charges and was released. She was ordered to serve 10 years of probation and pay \$1,800 in fines. The failure of the bail system is fully visible in this case. The confidential informant who initiated the drug sweep was later discredited and all charges were dropped against Erma's co-defendants. Erma, unfortunately, is now destitute because of the guilty plea, which can't be withdrawn and makes her ineligible for various forms of governmental assistance. Despite being innocent of the charges, Erma is a victim of the current bail model on many levels, including making a false guilty plea for freedom, a decision mostly based around the need to care for her child. The authors contend that Erma Faye Stewart's case is not an isolated incident and those subjected to pretrial detention are more likely to plead guilty or be convicted in contrast to those who are released from custody.

The final chapter is potentially the strongest in the authors' stance of reform. While it is potentially the strongest, it is also heavily critical of the law enforcement use of discretion with calls for limitations. The authors further elaborate a need for better hiring practices, legislative changes, and advanced continual training for police officers. The

authors discuss their thoughts on eliminating officer discretion to arrest for traffic-related offenses. While the position to eliminate discretion is extreme, it is not without merit in some instances. Texas, for example, has three traffic-related offenses for which a driver can only be issued a citation and cannot be arrested. These offenses are speeding, open container (alcoholic beverage), and texting while driving (*Texas Penal and Traffic Law Manual*, 2019). The authors' stance on issuing a citation and releasing the offender is good in theory, but it goes further with the exploration of issuing citations and releasing for various other crimes. The authors suggest this is accomplished through the issuance of policy and legislative reform. The authors provide the case of *Atwater v. City of Lago Vista* as the motivational case law for their call to reform legislation and the elimination of officer discretion.

In this case, Gail Atwater was arrested for operating a motor vehicle without a seatbelt. This arrest was made after the contacting officer recognized Gail from a previous encounter in which she received a verbal warning for the same offense. As many would agree, the decision to arrest may appear extreme; however, the officer was justified by statute and calling for the elimination of officer discretion based on this may be an overreaction. In direct contrast to their own stance, the authors discuss the state of Tennessee's statute of citation in lieu of arrest and further call for all states to pass

similar legislation. The contrasting portion of Tennessee's citation in lieu of arrest legislation is the aspect dictating that officers are prohibited from issuing a citation unless the offense is likely to resume, continue, or persons or property may be endangered. It is attestable that in *Atwater* the behavior resumed after a verbal warning and thus *Atwater* placed herself in danger by operating the vehicle without her seatbelt. This conclusion is drawn from the commonality that seatbelt laws are in place for an occupant's safety.

In comparison, it may be more logical to suggest removing seatbelt laws, just as some motorcyclists are not required to wear helmets. Even though arrest, including the arrest of minorities, is under attack, the assumption is the power to arrest is essential to policing (Harmon, 2016). The authors further indicate a desire to overturn *Atwater* and express their belief that the United States Supreme Court was wrong to uphold the arrest. When considering overturning case law, it is imperative to look at *stare decisis*. Although *stare decisis* discourages revisiting previous rulings and voiding precedents set by them, it is possible, though highly unlikely, for the United States Supreme Court to reverse its previous decision.

Punishing Poverty: How Bail and Pretrial Detention Fuels Inequalities in the Criminal Justice System makes valid arguments for the necessity of bail reform. The authors' contribution to the field of criminal justice, namely corrections and the essence

of bail, is tremendous. The authors provide verifiable data and case law that fully support their position of the necessity of bail reform. While racial disparity is not a new notion in sentencing, the authors contribute abundantly to understanding the stigma associated with pretrial detention. It is apparent, through research, that racial disparities in the bail system are a plaguing factor for those incarcerated. These disparities impact all departments of corrections considering the likelihood of being sentenced when unable to obtain pretrial release. The disparities further impact those awaiting trial, potentially more so than those

sentenced and adjudged guilty after obtaining pretrial release. The need for bail reform should be taken under heavy consideration with guidance provided by the high court to clarify the questionable steps within the process, such as where does a critical stage begin. The authors' call for reform should be intensely considered. This work should serve as a focal point for the necessity to redefine and reform a system that unjustly punishes the impoverished and minorities through a system of financial requirements, flawed risk assessments, and pretrial detentions.

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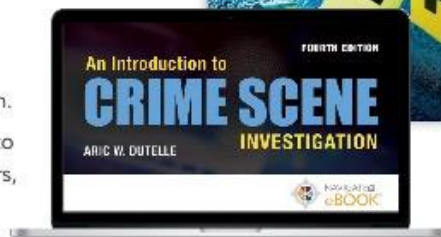
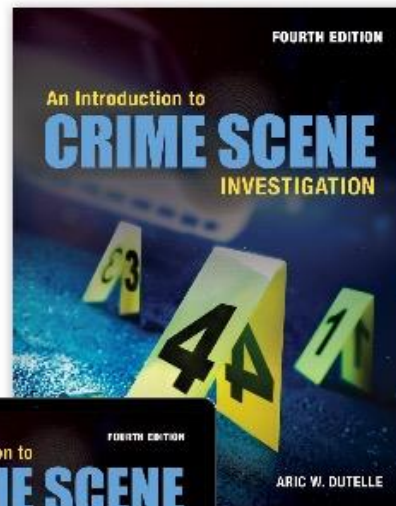
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Book Review: Jack Levin & Julie B. Wiest, *The Allure of Premeditated Murder: Why Some People Plan to Kill*. Rowman & Littlefield. 2018.

ISBN: 978-1538138977 (Paperback).*

David A. Blackmon*

This book review was accepted for publication in *Theory in Action* and permission was obtained to publish a version in *ACJS Today*.

In their book *The Allure of Premeditated Murder*, Jack Levin and Julie B. Wiest provide a scholarly analysis of premeditated murder. As long as there has been a written record of events, murder has intrigued society. The struggle to understand why individuals engage in acts of premeditated murder has inevitably thrust some of history's most infamous killers into celebrity status. As a byproduct of reporting incidents of murder, and perhaps a desire to entertain viewers, much misinformation has been reported surrounding acts of murder and what drives these killers to commit such acts.

While it is vital to track and apprehend individuals who commit atrocious acts of premeditated murder, understanding what motivates individuals to commit these crimes may provide information that can assist criminologists in reducing future crimes. Presenting examples of past acts of violence and applicable research, the authors guide the reader through various aspects of premeditated murder.

Utilizing research, the authors begin with the planning phase of murder and lead the reader on a journey of murder that concludes with thoughts on what works and what does not work when dealing with mass murder. Beginning the book with "Planning Is the Payoff," the authors outline the distinction between spontaneous and premeditated murder and provide several intriguing thoughts on the role that planning plays in premeditated murder.

While the actual act of premeditated murder may last only a few minutes, the planning of the murder may last for months or even years. Not unlike other events in life, planning is everything. Whether an individual awakens in the morning and plans for the day or contemplates their long-term future, planning is required to achieve a desired goal. As outlined by the authors, individuals who commit premeditated murder gain some type of gratification from the planning portion of their attack, which is often relived after the act is committed. During the initial planning phase, the killer may rehearse the commission of the act over and over in their head. This continuous mental recall not only allows the killer to fine-tune their plan, but it is believed mental recall may provide some continued mental stimulation in anticipation of the attack (Murray, 2015). In fantasizing these acts, which often involve lust murders, the killer may utilize various forms of paraphilia to further enhance the fantasy. Prior research on paraphilic

disorders has shown that deviant sexual fantasies may influence deviant sexual behavior in serial killers during the actual offending process (Chan, Beauregard, & Myers, 2015, p. 74).

Further evaluating the importance of the planning stage of a murder, the authors examine the final preparation for the attack, which would include acquiring the killing instruments, deciding on the location of attack, and in most cases, deciding how the killer would access the location undetected (Levin & Wiest, 2018). In the case of the Las Vegas mass killer Stephen Paddock, planning would come in the form of selecting a hotel with a vantage point that would allow him to unleash rage upon 22,000 concert goers. In planning the attack, Paddock carried suitcases of guns and more than 1,600 rounds of ammunition to his room over a three-day period. The planning stage of his attack provided a blueprint of how killers often begin planning long before the incident and how careful last-minute preparation and planning goes into an attack. While playing video games such as *Call of Duty* or *Hitman* may not mean someone will commit a premeditated murder, the realism of these games may stimulate the mind of individuals who may be susceptible to such thoughts (Atkinson & Rodgers, 2016).

While individuals who commit murder may do so as a result of some prior incident in their lives or a possible mental psychosis, gaining national recognition has also been found to be a driving force

in some of history's most notorious killings. Chapter 2 of the book, "Going out in a Blaze of Glory," is perhaps one of the most intriguing portions of the book, as it highlights the need for notoriety when committing these unthinkable acts. Understanding the need for recognition during the planning phase of murder, the authors highlight this often-important aspect of the crime. As outlined in the book, it is not uncommon for mass killers and serial killers to construct diaries and manifestos to create a makeshift autobiography (Levin & Wiest, 2018, p. 21). To this end, the media has created what can best be described as star status for many of history's most notorious killers. Because of this, individuals contemplating these types of acts may see the media as a mechanism for immortality.

Expanding upon the role that the media plays in reporting the news, scholars have shown that the type of coverage provided on these attacks may affect how a killer is viewed in society. Making celebrities out of killers, which appears to be a recent trend, often leads to the portrayal of these individuals as handsome, intelligent, white males. More recent research highlights that these portrayals are inaccurate. In fact, black males have been reported to have committed more than 50% of serial killings (Hickey, 2016, p. 5).

In many of these reported cases, the overall concern for and well-being of the victim has taken a back seat to the star-like celebrity status given to the

killer. Researching how various cultures portray killers, the UK media appears to portray killers as more of a monster, with greater attention given to the victim. In contrast, the United States media appears to grant more of a celebrity status to violent offenders (Wiest, 2016). Unfortunately, unscrupulous reporting comes at a price.

While serial killers have long been stigmatized as individuals with mental impairments who are sexual deviants, comprehensive research has proven the reality to be much different. In fact, these individuals do not routinely suffer from mental illness. Rather, most serial killers would fall into the category of psychopathy. Because these individuals are often narcissistic in nature, they lack the ability to be sympathetic or remorseful. For these reasons, psychopaths are usually not amenable to treatment (Jefferson & Godman, 2014). It has been shown that the power that resides in the ability to choose who lives or dies provides an overwhelming amount of satisfaction to killers. As highlighted in the chapter "Playing God," most potential victims of serial killers come from populations that are vulnerable and less likely to resist (Levin & Wiest, 2018). These populations, such as runaways, prostitutes, and mental patients, prove to be easy targets for killers. In the Green River serial murder cases, Gary Ridgway would utilize his familiarity on the strip to create encounters that would allow him to control his

victims and vent his hatred of women on prostitutes who would be powerless to seek help (Levi-Minzi & Shields, 2007). In the end, Gary Ridgway would see these individuals as little more than property to be discarded, and ones he killed quickly so they would not suffer.

While some argue that killers commit crimes with the underlying desire to get caught, research has shown these beliefs to be inaccurate. By carefully planning their acts and being selective when choosing their victims, killers often work to avoid capture by utilizing a risk versus rewards system when selecting their victims. Utilizing these tactics, serial killers such as Ted Bundy were able to go undetected for years. This philosophy of eluding capture clearly separates serial killers from mass murderers who seldom give little thought to their apprehension.

In Chapter 3, "The Thrill of the Hunt," the authors provide compelling research and case history on why many of society's most notorious killers receive such gratification in the hunt for their victims and from the collection of trophies from their kills. Not unlike great hunters in general, successful serial killers stalk their prey. In doing so, these killers pride themselves in knowing the terrain in which they are hunting and the movements of their prey. While media often portrays serial killers as monsters who wonder aimlessly around the country hoping to pounce on unsuspecting victims,

research has shown this not to be factual for most serial killers. As outlined earlier in the book, planning is essential to the success of the kill and plays a substantial role in the gratification of the hunt.

When planning, a home base in which to plan is crucial for a successful hunt. Killers such as Dennis Radar (BTK) would find comfort in hunting in known areas and would not leave an established geographic killing zone. Dennis Radar went undetected for many years as he hunted his victims throughout Wichita, KS. To utilize a term coined by D. K. Rossmo in his paper titled *Target Patterns of Serial Murderers*, the *decay function* has shown that as the serial killer's hunting zone expands, their chances of success are reduced (Canter, Coffey, Huntley, & Missen, 2000). For this reason, it is not uncommon for many serial murderers to be localized as opposed to traveling killers. In addition, research has revealed that there are many sociological factors at work before the killings begin. Utilizing the social class theory, the authors argue killers may feel marginalized in the community they live in and take their hatred out on that geographical area rather than hunting in other areas that would fail to provide the killer with any mental stimulation.

One of the most intriguing aspects of serial killers is their collecting of trophies after the kill. As stated earlier by the authors, the planning phase of a

murder is often one of the most pleasurable aspects the killer might experience and one that will last much longer than the actual event. Previous studies of serial killers have shown that these individuals may take souvenirs after their killings. These souvenirs were found to provide continued mental stimulation for the offender. Reflecting on past serial killings, Douglas Clark and Carol Bundy, also known as the Sunset Strip Killers, said they would utilize both a centralized hunting ground technique and the collection of trophies to satisfy their hunger to kill.

In 1886, Krafft-Ebing was the first person to record that sexually motivated killers torture, degrade, and take trophies from their kills. While some believed that sex was the reason for these killings, the reality has been proven to be much different. In fact, sexual pleasure is not always the driving force behind such acts. For individuals such as lust killers, postmortem mutilation and sexual acts to further degrade the victim are not uncommon (Knight, 2006). While there have been many studies on why serial killers use sex as an instrument of violence, such as childhood trauma, the primary motive for killings such as these appears to be control over the victim.

Evaluating the mental conditions of individuals who commit premeditated murder, the authors effectively highlight various mental states that may lead one to kill. While insanity is a legal

term aimed at determining whether an individual is mentally fit to be held accountable for their actions, the word conjures up images of mentally deranged individuals. As highlighted in Chapter 4, “Mind Over Murder,” mental states can have many triggers. Among these triggers are events in our lives that may alter our mental perception of reality and may involve both love and hate. The authors’ analysis of homelessness provides an intriguing review of how situational conditions have the potential to alter an individual’s mental state. Current studies on the relationships between homelessness, mental illness, and crime have repeatedly yielded positive correlations between increases in mental illness and the propensity for crime (Fischer, Shinn, Shrout, & Tsember, 2008). Unfortunately, while various forms of psychosis, which may have a propensity to lead to murder, are treatable through medication, the United States has opted to discard many of these individuals who are left to self-medicate.

In the chapter “Seeking Sweet Revenge,” the authors provide sobering reminders of how individuals who may have been bullied as children may commit horrific acts of violence. Unlike serial killers, individuals who commit mass murder appear to give little regard to what happens after their act is committed. Mass murderers may often plan, utilizing previous mass killings in an attempt to increase their expected media coverage of the

event with the belief that larger body counts will result in more coverage (Gill, Silver, Horgan, & Corner, 2017).

In the chapter “Prevention,” the authors provide compelling thoughts on how society might reduce the instances of mass murder and serial killing. Particularly noteworthy is the authors’ willingness to highlight what they felt worked and what didn’t work. They claim gun control is found to be nonproductive in terms of reducing mass shootings. In contrast, the ability to recognize and address instances of depression in our schools may work to defuse a potential time bomb waiting to explode.

While the authors did an effective job of researching the various aspects of premeditated murder and provided numerous examples of those aspects, more statistical data would have further enhanced the chapters. For example, in the chapter “Playing God,” the authors highlight that most victims of serial killings are members of vulnerable populations but provide little statistical data to support this claim (Levin & Wiest, 2018). Second, while female serial killers have finally been acknowledged as concerns in society, the book only briefly touched on an example in the “Death for Dollars” chapter. Last, while health care killers flourish in our society, often going undetected for years, these premeditated serial murderers were absent from the book.

Overall, the book *The Allure of Premeditated Murder* is a compendium of cases concerning various forms of premeditated murder, which make it a welcome addition to anyone wanting to further explore and attempt to better understand the motivations of murderers. Reading the book, one can see that the book details the dark


side of murder by reflecting upon the various killers in history. In addition, the authors effectively highlighted the important role that planning plays in the various aspects of murder. While not without its shortcomings, the research was well thought out and the chapters were arranged in a manner that made the book enjoyable to read.

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