



Illustrations by Taylor Gallery

TOO SLOW, TOO BIG, TOO HEAVY-HANDED

MARQUETTE LAW PROFESSORS SEE NEED FOR CHANGES IN THE WAY THE CRIMINAL JUSTICE SYSTEM OPERATES ON A DAY-TO-DAY-BASIS.

Recent issues of *Marquette Lawyer* have offered perspectives from prominent scholars on the state of the criminal justice system in the United States. A central question has been whether the system can be changed to produce more just, more constructive, and fairer outcomes.

In large part, the scholars have been, shall we say, the visiting team—literally so, in that they came to Marquette Law School to deliver major lectures. To continue our focus on these issues, we decided to call in some members of the home team—scholars on the faculty of Marquette Law School—for their insights.

Gathered around a table in Eckstein Hall, the participants were Professors **Daniel D. Blinka**, **Edward A. Fallon**, **Michael M. O’Hear**, and **Andrea K. Schneider**. Moderating the conversation was **Alan J. Borsuk**, editor of *Marquette Lawyer*.

Blinka, a former Milwaukee County prosecutor who teaches courses including Criminal Law and Constitutional Criminal Procedure, also holds a Ph.D in United States history. Fallon, whose specialties include constitutional law and white-collar crime, is the new chair of the Milwaukee Fire and Police Commission. O’Hear is a nationally recognized authority on criminal punishment and author of books including *The Failed Promise of Sentencing Reform* and *Prisons and Punishment in America: Examining the Facts*. Schneider is an expert on alternative dispute resolution; among her books and articles, she was coauthor of the 2019 book, *Negotiating Crime: Plea Bargaining, Problem Solving, and Dispute Resolution in the Criminal Context*.

Here is a condensed and lightly edited transcript of the conversation.

BORSUK: The first and, I think, the biggest question is this: How well is the criminal justice system working on day-to-day basic cases, the ones that don't make big headlines?

O'HEAR: I think there are some reasons to feel good about how the system is functioning and there are some reasons to be concerned about the way the system is functioning. Based on the empirical data about sentencing and about who ends up in prison, the biggest determinants of sentencing outcomes are offense severity and criminal history, which are generally regarded as perfectly appropriate factors to take into account in sentencing.

Contrary to the beliefs of a lot of people, our prisons are not full of nonviolent drug offenders. The great majority of the people in prison have been convicted of violent crimes. It seems to me that the system is doing a reasonably good job of distinguishing between more serious cases and less serious cases and imposing more severe outcomes on the more severe cases. So I would say the system does reasonably well in its relative treatment of different offenders.

The real problem, to my mind, is the overall scale of severity of the system. If you look at our incarceration figures in the United States, we incarcerate still at very high levels compared to international norms and also compared to our own historic norms. But the severity doesn't even end with incarceration. If you look at the number of people we have on community supervision, we put far more people on supervision than other countries do. And even at the lowest levels of the system, even for people who are getting no community supervision, the financial penalties can be very severe, considering the great majority of defendants are poor.

SCHNEIDER: One of the things I'm curious about is that there are differences in populations who get swept up, at the beginning, for what is a nonviolent offense or a minor offense. Joyriding, whatever—those kinds of things. When we get to sentencing (for a subsequent matter), the judge looks back and says, "Well, yes, this person has already had contact with the

criminal justice system." But the fact of the matter is that it is likely that if that person had been in a different part of the city, they wouldn't have been picked up and wouldn't have been considered to have contact. So it looks objective, but, of course, there are racial differences.

O'HEAR: Agreed. Criminal history is not perfect.

BORSUK: Do any of you see trends in that? I mean, post-Minneapolis and post George Floyd and with all the priority that has been given to racial disparities, is anything changing?

FALLONE: I think what's changed is that the focus is no longer solely on the justice system and its impact on the particular defendant. I think what you see is people marching across the country because they're saying that they care about the impact of the justice system on the broader community. And so incarceration rates are an issue because multiple generations of African American males have been separated from their families and cannot serve as father figures, which leads to generations of African American youth who are in a fractured family environment. There are mental health impacts. People increasingly question the criminal justice system's being used to address people's mental health incidents and the impact that has on their lives, their families' lives. And so I think it's great to talk about the fact that we are identifying violent criminals to a large degree and incapacitating them in prison. But that still doesn't answer the question: what is the cost to the broader community?

SCHNEIDER: Anybody would be arrested for breaking and entering. It's that we incarcerate people for months, if not years, longer than other countries for the same crime.

O'HEAR: Yes, I think the punishment decisions we make operate along two different dimensions. One is that you want to make sure that you're treating people in the right way relative to other defendants in the system, so you want the most dangerous people who have committed the most serious crimes getting the most serious treatment, and so on down the line, so that there's a sensible relative ordering. That's one



Daniel D. Blinka



Edward A. Fallone



Michael M. O'Hear



Andrea K. Schneider

dimension. And I think the system does an okay job at that, not a perfect job by any means.

But I think the bigger problem with the system is along the other dimension, which is, what is the level of punishment that's attached when we say, "All right, this person's the most dangerous person who committed the most serious crime, and this person should get the second-most severe punishment, and this person should get the third-most severe punishment." What exactly is the punishment level that we're attaching to the scale? And that's where I think we, through a generation, have become much more severe than we used to be and much more severe than any peer country in the world.

BLINKA: Another thing I ask is: how do we define outcomes? One way to look at it is who's going to prison and for how long. Yet I can remember a time back in the late '70s, early 1980s, when the number of homicides in Milwaukee on an annual basis was in the upper 30s, low 40s. Every once in a while it would creep up near 50, and we'd say, "What the hell is going on?" By late August this year, the city had about 120 homicides. And those are just the homicides. Tracking the gun violence—any kind of a crime involving a firearm is just through the roof. Probably the homicide rate would be even higher except that we've got really good medical services here in Milwaukee, so, thankfully, not everyone is dying.

The criminal justice system does an okay job for certain kinds of problems. What the criminal justice system does really well is to take really violent offenders—the murderers, the ones who do terrible sexual assaults—identify them, prosecute them, and lock them up. The rest of the time, we haven't come up with an effective plan.

So my analogy is this: The criminal justice system is kind of like the emergency room where we take care of the violent offenders. The problem is, what's going on in the rest of the hospital where the treatment isn't as effective as we would like it to be? This tracks back to the problem of expecting too much from police. They're expected to handle everything, and they simply can't do it. And even when we do throw people in jail and drag them into court, what happens? We don't often have the kinds of resources to give to these people—whether they're victims or defendants—what we wish.

BORSUK: We've had a big spike in Milwaukee this year in auto thefts. Someone gets picked up for stealing cars—let's say not a juvenile, an adult. How's the system going to work for that person?

BLINKA: Well, apparently the problem is that they're going to blame the car manufacturers for making the cars too easy to steal.

SCHNEIDER: Part of the problem is: who are you, and where did you steal the car? If you go out to the suburbs,

the punishment can be quite different than if you're caught in the city. I think there are concerns when the outcome actually depends on where you steal the car, let alone the brand, how old you are, and, frankly, what race you are. That's the kind of thing that makes you question the system. What do we want to happen? We don't want this person to steal any more cars. Will throwing you in prison for X amount of time actually deter you or will it so punish you that you know when you get out you're never going to be able to hold another job, your record is going to follow you, and you will have no choice but to hook up with the band of car thieves that you were part of beforehand in order to make money? That's part of the problem of collateral consequences that follow you for far longer than the crime would argue.

BORSUK: Is the person charged with auto theft going to get decent legal representation? Is that system working?

BLINKA: Highly unlikely. That's the problem with the plea-bargaining system. You have to factor in wealth. Some wealthy kid is going to have a very different outcome in the system than some, let's say, white kid from the lower middle class or even a poor family. And then we factor in race, and it really falls off the table.

We talk about sending to prison, sending to prison. You know what? I look at this and say, here's what we should do: The first time you steal a car, all that's involved is we hold the case open and tell you, "Don't do it again." The second time you do it, you get 5 days in jail, 10 days in jail. I mean the system we have—and even more now with COVID—we're backed up a couple years on misdemeanors. What the hell kind of system is that? I might go to jail in a couple years? See you next time I'm arrested.

And we've got to bail people out because we don't have any room for them in the Milwaukee County Jail or we can't send them to the Milwaukee House of Correction. So they continue to steal cars or whatever it may be. Maybe part of the answer is saying, "Look. We need swifter outcomes." We need a way to say, "Let's try this kid in two weeks or three weeks and impose, let's say, three to five days, so he knows if you screw up, you're going to get arrested, then you're going to be punished and punished quickly." None of this silliness of a couple of years.

FALLONE: We've created a system that is so expensive in terms of defendants and the legal costs of the defense. We've got that whole class issue in terms of who can afford lawyers. But it's also expensive institutionally just to operate. You can't be nimble; you can't all of a sudden take 100 cases and go through the backlog. It's a very gold-plated, expensive system, and what we need is to be nimble.

That raises the questions of where we are putting our money, and why we are spending it on the things we're spending it on. A lot of institutional forces just want that



money to keep on going where it is going because they have staffing priorities, etc. So we should talk about trying to shift resources. Unfortunately, the phrase “defund the police” got associated with all sorts of things in the public’s mind, but I think it is a very serious issue. Why are we using such an expensive process for a lot of nonviolent crimes, misdemeanors, other crimes, when perhaps there’s an alternative, cheaper way to get quick justice?

SCHNEIDER: That also means we need to fund judges and public defenders. Look at how much money goes into correctional facilities and some of the lobbying organizations around that. If we are going to be nimble, we actually need more judges. If we are going to provide lawyers, we actually need to pay for public defenders.

BORSUK: Professor Paul Butler of Georgetown University spoke here two years ago and used both of the terms “abolish prisons” and “defund the police,” but interpreted them as saying “Let’s find better ways to do things. Let’s solve problems.” There is increased interest, including in Milwaukee, in steps such as sending social workers or psychiatric teams to deal with some problems. Is this a good step? Is it a feasible step?

BLINKA: I think the feasibility part of it is very interesting. We don’t need to get in the weeds on the alternative. But, boy, with some calls, I’d have my heart in my throat if I were an EMT and walking into a particular neighborhood or situation. I would want either the cops or somebody who is armed there with me. But particularly with a mental illness or drug addiction situation—and things like that—cops don’t have to be the first responders on everything. On the other hand, how do the responders know what they’re rolling into?

O’HEAR: It’s worth experimenting with and studying the outcomes. Milwaukee has been a place that’s been on the forefront of some interesting experimentation and research in the past. For instance, an important study done here in the 1980s on mandatory arrest policies for domestic violence showed that these arrests were not effective in reducing domestic violence recidivism. I think that this is the kind of study that needs to be done with innovative policies like that. There need to be careful, academic-quality studies testing whether innovations are successful. I can see theoretical reasons to think that they might be successful, but there are all kinds of practical issues as well.

FALLONE: One of the benefits of community-based policing is having police officers who are part of the community. They know the community, the community knows them, so they can get to know who in the neighborhood has mental health issues, who in the neighborhood is perhaps hanging out with the wrong gangs, etc. That reduces a lot of the uncertainty, and you’re not asking the police officer to instantly make an assessment of what they’re walking into if they already have strong ties to the community.

BORSUK: Is it feasible to do that to a scale that would make a difference, to have more social service resources available or to have people on call?

SCHNEIDER: It’s less expensive than incarcerating somebody for decades on end.

BLINKA: Or even arresting people. I mean the cops arrest somebody, you’re taking a squad out of service for a goodly period of time. And that means that that squad is not available to take other hitches and help other people.

I think part of the problem here is that our criminal code is just a wreck. I mean everybody who wants a crime put on the books seems to get the crime that they want. It's just a massively overgrown garden, and the problem is that it lends itself to arresting way too many people who should never be arrested or prosecuting people who don't need to be prosecuted.

Look at the Milwaukee County district attorney's office. When I was there in the late 1970s, I was at the bottom of the letterhead, and I think I was person number 49 or 48 or something. Now I think the number on the letterhead is north of 120. And the problem is that you get more prosecutors, you issue way more cases, and that puts so much stress on the system. Again, the sexual assaults and murders, those are straightforward to prosecute, I mean relatively speaking, but what about all of the misdemeanors?

FALLONE: Is it even possible to talk about that sort of a reform effort of the law when criminal law and policing has become so politicized?

BLINKA: Oh, absolutely not. But, I tell you, one of the most impressive things about Wisconsin politics as relates to criminal law is that, since I've been around or aware of serious issues, there's never been what I would call a strong conservative push for the death penalty in this state. I think that speaks well of our bedrock political culture that we've never had that battle over the death penalty here. Thank God for that.

BORSUK: Expand on saying that the criminal code is a wreck.

BLINKA: For example, take battery. Everybody's got their own statute. So somebody hits somebody else, intentionally causes injury, that's battery. But now we also have identity politics. So if your victim is elderly—well, that makes some sense. But then you get into things like battery to a technical college teacher and a number of other specialized batteries; these are instances where some group decided that they want their own battery statutes because it enhances their own identity or sense of professionalism. We don't need all that junk. The statute from the 1950s would work fine today.

O'HEAR: Just as an indication of the politics, I think it was about five years ago that the legislature created a legislative study committee to take a look at obsolete and unnecessary crimes in the criminal code. And a big report was issued after a lengthy analysis that identified several dozen crimes that could be eliminated without anybody feeling any loss. You know, things like crimes involving telegraphs or obsolete farm equipment.

BLINKA: Or tying your boat to a railroad trestle.

O'HEAR: A lot of patently unnecessary crimes were identified. A proposal was made to amend the criminal code accordingly—which went absolutely nowhere in the legislature.

FALLONE: If you're an elected politician and you favor such a sensible reform as eliminating "felony murder" (a crime that is on the books but almost never charged), can you imagine



the television commercial your opponent will run against you in the next election? “He voted to put murderers back on the street.” That sort of hyper-politicization has made it impossible to have reasoned discussion about what is effective and what works, because any attempt at reform—something different, something new—will immediately get cast in political terms and used against you.

SCHNEIDER: You can do it only at the end of your term, really, when you know you’re stepping down. This applies to judges also. Or you need to find some sort of nonpartisan commission, and even then it might go down in flames.

BORSUK: Mary Triggiano is the chief judge in the Milwaukee County Circuit Court, as you know. I asked her, in the course of working on a story for the spring 2021 *Marquette Lawyer*, what got her so interested in treatment courts as an alternative to conventional courts. Her answer was, “Outcomes.” She thought that what was happening as a result of conventional proceedings and sentencing just wasn’t productive, it wasn’t helpful to the people in front of the judge, and it wasn’t helpful to community safety. What’s your response to that word *outcomes*?

O’HEAR: “Are we getting good outcomes?” is a difficult question to answer. What are the outcomes we desire? Because you and I might have different ideas about what the ideal outcomes should be. I think when people talk about outcomes, that’s usually linked to evidence-based decision making. When people say, “Let’s focus more on outcomes,” what they usually have in mind is, let’s use data and research more to inform the decisions being made by the criminal justice system, particularly with an eye to recidivism reduction. Recidivism rates certainly are very high. There is some evidence they’ve been coming down marginally over the last 20 years or so. The kind of interventions that are being pushed now as evidence-based interventions have some demonstrated ability to achieve further reductions in recidivism.

If the outcome of interest is recidivism, the answer is pretty clear that the traditional system, the business as usual system, does not produce good outcomes.

SCHNEIDER: Some studies show that the highest predictor of likelihood to commit a crime is whether you’ve been imprisoned as a juvenile. If sending a kid to prison is the single best predictor of whether they’re going to commit another crime, why are we putting that kid in prison to just learn how to get better at that or to realize that they have limited choices?

If you look at treatment courts, an extraordinary amount of resources needs to be devoted to them. Many of us have gone to see how these operate. I would argue that the commitment

to have drug counselors tracking the people going through drug court and lawyers and social workers are all less costly than putting that person in prison, and, by the way, putting their children in the foster care system, which is also what’s going to happen. And so it’s a question of where we are devoting our resources. I think that’s really what Judge Triggiano is talking about.

At the same time, part of the concern with specialty courts is that we’re carving out those who are worthy of having special treatment, say, juveniles and those people who are addicted or veterans. That means some people are not worthy of the Cadillac approach, of getting the social worker and counseling and of seeing the judge every week in order to check in and show that you’re doing okay. The Cadillac approach would be terrific if we could figure out how to deliver that to more people.

BLINKA: What I’m left with, and I hate to be overly cynical about this, is that this system is being asked to do things it can’t possibly do. Putting on my historian’s hat here, there’s a fraying of the social fabric, and in some parts of the community what we have is, unfortunately, families that are not effective in terms of supporting family members. We have a dysfunctional school system. The transit system [to get to jobs], forget about that.

FALLONE: When we talk about measuring success, let’s also bear in mind you know if you have a system that relies on identifying offenders through almost random pat downs of people on the street in certain neighborhoods, stop and frisk taken to the extreme, if you have a system where an interaction with a civilian based on a minor offense, a traffic offense, for example, can escalate into a use-of-force situation, that’s not a successful system. So it’s not just about outcomes at the end. It’s also how the system treats people, deciding who gets caught up in it in the first place.

BORSUK: So what should we do about all this?

O’HEAR: I think we need to dramatically reduce the scale of punishment in the country. We can and should do that to bring ourselves more in line with international norms.

It’s an imperfect system. Human beings are running it. Whatever we can do, whatever reforms we want to make to the system, mistakes will be made. To my mind, the overriding priority for the system should be to minimize the damage that we do when we make mistakes in the system. So I think we could cut maximum sentences in half, pretty much across the board, and that could be done with little adverse impact on public safety, maybe no adverse impact at all. And it would just make all of the problems with this system seem much less serious and much less delegitimizing if the costs of errors were a lot lower than they are.

BLINKA: Oh, I agree with that. I'm old enough to remember a time where if somebody was sentenced for a felony for more than 10 years, it was like . . . wow. The sentences that are being handed down now, whether it's for burglaries, drug cases in particular, it's just unfortunate.

SCHNEIDER: We really need to think about that rehabilitation piece after incarceration, which we have defunded and deprioritized in the last 10 to 20 years. There's very little attention paid to reintegration into the community. Again, that's left to the nonprofit world to pick up, as opposed to being a state government priority.

BLINKA: A different conversation is, why don't we get rid of plea bargaining? Just get rid of it. And tell prosecutors to charge it. If you do this, one of two things is going to happen: either you try everything, or the defendant's going to plead to everything. But I think part of the problem is the coercion that is built into the plea-bargaining system, where a defendant feels that regardless of whether I'm innocent or whatever, I've got no choice but to plead guilty.

O'HEAR: And that's one of the reasons I say to reduce the stakes dramatically. Not just imprisonment, but fines, probation terms, probation conditions. Ratchet down everything in the system, which would greatly reduce the prosecutor's leverage in extracting plea bargains.

FALLONE: I would suggest that many of these reforms, like reducing the severity of sentences, handgun reform legislation, etc., might be politically out of reach. The next best option might be around the word *accessibility*, which means funding more diversion programs, more alternative treatment programs, and social workers who can monitor people. And accessibility of lawyers. Even though it is self-serving for a law professor to say we need more lawyers, one of the pernicious effects of plea bargaining, why it is so harmful, is lawyers, defenders, public defenders in particular, have such huge caseloads that they can't give adequate individualized attention to their cases. If they had lower caseloads, that would help a great deal. And in addition, there's the class impact. Middle-class teenagers who get in trouble have lawyers, private attorneys, who know how to work the system and how to get alternatives to trial, whereas low-income kids in trouble don't necessarily get that attention, legal attention. So accessibility, more lawyers, and more social workers.

BORSUK: When Tommy Thompson's autobiography came out several years ago, he took part in an "On the Issues with Mike Gousha" here at the Law School. I think it was one of the first times that he said the thing he regretted the most about his time as governor of Wisconsin was building so many prisons in the 1990s. We should have been investing in treatment programs, he said. Your reaction to that?

SCHNEIDER: He's absolutely right. We've chosen by where we spend our money to put our priorities into imprisoning versus dealing with the underlying causes.

BORSUK: Could prison be made a more constructive, shall we say, experience for people?

FALLONE: It never has been.

SCHNEIDER: I mean there are other countries that handle it better, that do more halfway-house work, that do job training, that do rehabilitation, that do everything from financial counseling to social work. Sure.

O'HEAR: But the benefits you get even from highest-quality, evidence-based, prison-based programming are on the margins. I mean, there are benefits. There are reductions in recidivism that can be achieved through very good prison-based programming. But it's going to affect maybe 10 percent—maybe if you're really lucky 15 percent—of the inmate population. It's better to deliver programming and treatment in the community than in prison because prison is such an artificial atmosphere. When people are released from prison, they still are going to face huge ruptures in their lives and the need to rebuild everything from scratch. If you want to rehabilitate better, it's better to keep people in the community where they can maintain whatever positive things they have going on—relationships, employment, housing—and deliver programming in a way that has more of a connection to their lives outside the institution.

BORSUK: When Professor Bruce Western of Columbia University was here at Marquette Law School several years ago, he emphasized that for people coming out of prison, if they have three things—stable housing, access to health care, and a job—their chances of moving into a stable lifestyle are much higher. Number one: does that make sense? Number two: is there a way to make that a more common experience?

FALLONE: Expunge criminal records, because once you have your record, you're not going to have access to a lot of housing because the landlord is going to do a background check.

O'HEAR: Expungement is a great idea, but that's serving the needs of a different group than the people who are coming out of prison. People coming out of prison are going on to supervision. You're not going to expunge their record on coming out. Research shows that in the first year after leaving prison, the transition is really rough. If you can design better reintegration systems to get people through the first year or two, they're most likely going to continue to succeed on a long-term basis.

And this is just the classic problem of social service resources and the criminal justice system. We don't have enough social service resources for people without criminal records. It's a tough sell to devote more of our overtaxed social resources to the people with criminal records, who are seen as undeserving or less deserving than the people who do not have a record.



BORSUK: Let's return to the racial equity aspect. Is it any better or worse than it used to be? And is it likely to get any better or worse?

O'HEAR: There's some evidence that racial disparities nationally have been declining marginally in recent years. In Wisconsin, the Black share of our prison population has ticked down a few percentage points over the last 15 years. So there are signs of progress, although hardly dramatic. You still see greatly disproportionate representation by Black people in our prisons. At this point, I think it's far too early to say whether the aftermath of the George Floyd killing will have any real impact. There's always a couple of years' time lag in criminal justice data—plus, everything from 2020 and 2021 is going be badly warped by COVID as well.

BLINKA: Regrettably, the historical record would not foster optimism about this. You consider the inner-city riots of the 1960s. You fast forward to 1981 and the case of Ernest Lacy in Milwaukee, who was allowed to die in the back of a police paddy wagon because they weren't going to give this guy mouth-to-mouth because he was Black. It turned out he was completely innocent of the rape they were arresting him for. Then in the early 1990s, we get Rodney King in L.A. Yet, as a society, we have this unfortunate capacity to forget things. So with George Floyd, people say, "Well, this will be different; this will be different." I say, "I hope you're right, but I wouldn't be really optimistic if you take a look at the historical record of what we've seen."

FALLONE: I think the technology has been game-changing. The fact that we have body-camera footage and cell phone footage. I think it has caused a lot of people in the public to question whether they even really understood police practices in this country. And it makes, I think, historical comparisons difficult because it's hard to tell whether what we're seeing on cell phone video of arrests and use of force is worse, more racially connected, or better. We just don't have that technological

record from the past. And so it causes you to question how much we really know about racial disparities in policing in the past.

BORSUK: Looking forward, is there hope for things getting better?

FALLONE: If one puts their faith in technology, I think use of body cameras on a regular basis can deter more extreme abuses, but you can't say just having more body cameras is going to do everything. You still have to pay attention to training. You still have to pay attention to recruitment. And you still have to pay attention to policing strategies. It's such a multifaceted issue, public safety, that you need a lot of things to change to make a meaningful difference.

BLINKA: Well said.

BORSUK: So back to our starting question: is the system working? Any concluding thoughts? You have the right to remain silent.

FALLONE: In early 2020, Andrea [Schneider] and I went with a bunch of Marquette law students to Northern Ireland and to Belfast. We toured a community that had a long history of paramilitary policing, a long history of civilians killed by security forces. Still to this day, there are giant murals painted in the neighborhoods celebrating the lives of civilians who died, some who were actually IRA members. We talked to a lot of families who were still grappling with the trauma of living under that kind of militarized policing for a long period of time, where any civilian was subject to being stopped and questioned and where extreme use of force was the norm. And I see that as a very cautionary tale. When you look at the United States and see how our police departments increasingly are militarized, and you see the murals across the country of people who were killed, the George Floyd murals, the Breonna Taylor murals, you start to wonder: Are we heading in that direction in the United States?

O'HEAR: I liked Dan Blinka's analogy to the emergency room and what's going on in the rest of the hospital. It seems to me that the system does a pretty good job, not a great job, but a pretty good job, of establishing accountability for people who commit major victimizing crimes. What we want from the system is not only retrospectively establishing accountability for bad stuff that's happened in the past. We also want the system to protect us prospectively from more bad things happening in the future. That's where the system doesn't work so well, and there is probably some significant room for improvement within the system.

That said, people need to appreciate more that, at the end of the day, what drives crime rates is less the activities of the criminal justice system and much more the broader social realities that are completely beyond the control of police, prosecutors, judges, and corrections officials. ■