

Invisible Women: Mass Incarceration's Forgotten Casualties

ON THE RUN: FUGITIVE LIFE IN AN AMERICAN CITY. By Alice Goffman.
Chicago, Illinois: The University of Chicago Press, 2014. 288 pages.
\$25.00.

THE ETERNAL CRIMINAL RECORD. By James B. Jacobs. Cambridge,
Massachusetts: Harvard University Press, 2015. 416 pages. \$39.95.

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I know why the caged bird beats his wing
Till its blood is red on the cruel bars;
For he must fly back to his perch and cling
When he fain would be on the bough a-swing;
And a pain still throbs in the old, old scars
And they pulse again with a keener sting —
I know why he beats his wing!¹

—Paul Laurence Dunbar (1899)

In 2013, Eric Holder, the former United States Attorney General, issued an urgent call for drug-law reform.² Indeed, drug reform, decreasing mass incarceration, and reducing overcrowded conditions in jails and prisons can no longer be ignored, even by ardent tough-on-crime proponents, without acknowledging the economic and human costs of such policies.³ As Holder

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1. PAUL LAURENCE DUNBAR, *THE COLLECTED POETRY OF PAUL LAURENCE DUNBAR* 102 (Joanne M. Braxton ed., Univ. Press of Va. 1993) (1913).

2. Eric Holder, Att'y Gen., U.S. Dep't of Justice, Remarks at the Annual Meeting of the American Bar Association's House of Delegates (Aug. 12, 2013) [hereinafter Holder, Remarks at ABA Meeting], <http://www.justice.gov/opa/speech/attorney-general-eric-holder-delivers-remarks-annual-meeting-american-bar-associations> [<http://perma.cc/2VX5-DPH3>].

3. See Douglas A. Blackmon, *An Interview with Eric Holder on Mass Incarceration*, WASH. MONTHLY: TEN MILES SQUARE (Feb. 11, 2014, 12:01 PM), http://www.washingtonmonthly.com/ten-miles-square/2014/02/an_interview_with_eric_holder049026.php [<http://perma.cc/3XE6-762S>] (reporting that even conservatives and libertarians have become concerned with addressing mass incarceration due to the staggering cost it presents).

explained to an audience of lawyers, judges, and academics at the 2013 American Bar Association (ABA) Annual Meeting, American jails are overcrowded and unsustainable,⁴ packed with nonviolent drug offenders who frequently serve disparate sentences based on a strange admixture of race, class, and privilege.⁵ With more than 1.5 million people incarcerated in the United States, which accounts for 25% of all prisoners in the world, the failure of the U.S. drug war and sentencing policies is apparent, particularly as the United States “has only 5% of the world’s population.”⁶

One year later, at the national meeting of the National Association for the Advancement of Colored People (NAACP), President Barack Obama made similar claims about the urgency of penal reform.⁷ He too decried the conditions of prisons and jails in the United States (following up his speech by visiting a prison).⁸ President Obama acknowledged the disparate impacts of policing and jailing.⁹ He urged that it was time to act. Like Mr. Holder, President Obama made a plea for men of color locked behind bars.¹⁰ They forgot about women.

The President and his former Attorney General rooted their concern about the broader terms of criminal justice through a male-focused lens. This could have much to do with the fact that the United States incarcerates so many men. To further explicate the human and economic costs, the United States experiences the highest rate of incarceration of any country in the world—more than England (153 in 100,000), France (96 in 100,000), Germany (85 in 100,000), Italy (111 in 100,000), and Spain (159 in 100,000) combined, because the United States incarcerates about 743 per 100,000.¹¹

4. Holder, Remarks at ABA Meeting, *supra* note 2.

5. See, e.g., Charles J. Ogletree Jr., Opinion, *Condemned to Die Because He’s Black*, N.Y. TIMES (July 31, 2013), <http://www.nytimes.com/2013/08/01/opinion/condemned-to-die-because-hes-black.html?smid=pl-share> [<http://perma.cc/KKV6-NYQC>] (noting that race, specifically being Black, as a predictive status for “future” violence has been unconstitutionally introduced in Texas trials).

6. Dan Roberts & Karen McVeigh, *Eric Holder Unveils New Reforms Aimed at Curbing US Prison Population*, GUARDIAN (Aug. 12, 2013), <http://www.theguardian.com/world/2013/aug/12/eric-holder-smart-crime-reform-us-prisons> [<http://perma.cc/MQ3U-GRJA>].

7. President Barack Obama, Remarks by the President at the NAACP Conference (July 14, 2015), <https://www.whitehouse.gov/the-press-office/2015/07/14/remarks-president-naacp-conference> [<https://perma.cc/L6A7-DVES>].

8. *Id.*

9. *Id.*

10. *Id.*

11. ROY WALMSLEY, INT’L CTR. FOR PRISON STUDIES, WORLD PRISON POPULATION LIST 3, 5 (9th ed. 2011). A recent Pew Center on the States Report adds another layer to this data. It reports that 1 in 31 Americans is under the supervision of the U.S. criminal justice system (through incarceration, probation, or parole). See JENIFER WARREN, PEW CTR. ON THE STATES, ONE IN 31: THE LONG REACH OF AMERICAN CORRECTIONS 5 (2009).

More than half of U.S. incarcerations relate to drug offenses.¹² In 2010, the U.S. federal government planned to expend \$15 billion in its War on Drugs, at a rate of \$30,000 per minute and \$1,800,000 per hour.¹³ By 2012, the White House revised its drug budget structure, increasing its National Drug Control Budget to \$26.2 billion—a significant increase from two years prior.¹⁴ Expenditures to fight the drug war dramatically increase each year; the most recent federal data reports that President Obama requested an additional \$415.3 million over the 2012 enacted level of spending, expanding federal efforts by establishing “two new bureaus to the National Drug Control Budget.”¹⁵

However, as with any war, collateral damages accumulate, expanding the risks of battle and the suffering of those intimately involved and at the periphery. In this context, the price of war extends to “lost productivity, healthcare, and criminal justice costs,”¹⁶ burdening the federal government to the tune of \$193 billion in 2007 alone.¹⁷ The drug war exacts a toll on state and local governments as well, costing them an estimated \$25 billion in 2010.¹⁸ What accounts for such significant spending in light of illicit drug use remaining constant and prescription drug abuse on the rise? As Holder reflected to a reporter in 2014, Congress “put in place some pretty draconian sentencing measures . . . [w]here people who were not engaged in the violent distribution of drugs ended up with ten, twenty, thirty [years]—lifetime sentences.”¹⁹ Ironically, many of those serving stiff prison and jail sentences are nonviolent offenders.

Importantly, the drug war drafts police, prosecutors, and judges to carry out its mission and metaphorically casts some of America’s most vulnerable

12. See E. ANN CARSON, U.S. DEP’T OF JUSTICE, PRISONERS IN 2013, at 16 (2014) (reporting that “more than half of prisoners serving sentences of more than a year in federal facilities were convicted of drug offenses”).

13. EXEC. OFFICE OF THE PRESIDENT OF THE U.S., NATIONAL DRUG CONTROL STRATEGY: FY 2010 BUDGET SUMMARY 1 (2009) (“In Fiscal Year 2010, the President requests \$15.1 billion in support of these key [drug] policy areas, which is an increase of \$224.3 million or 1.5 percent over the FY 2009 enacted level of \$14.8 billion.”). In reality, President Barack Obama allocated \$25.9 billion in the fiscal year 2010 for fighting the Drug War. EXEC. OFFICE OF THE PRESIDENT OF THE U.S., FY 2012 BUDGET AND PERFORMANCE SUMMARY: COMPANION TO THE NATIONAL DRUG CONTROL STRATEGY 5 (2011) [hereinafter FY 2012 BUDGET AND PERFORMANCE SUMMARY].

14. FY 2012 BUDGET AND PERFORMANCE SUMMARY, *supra* note 13, at 5.

15. EXEC. OFFICE OF THE PRESIDENT OF THE U.S., FY 2013 BUDGET AND PERFORMANCE SUMMARY: COMPANION TO THE NATIONAL DRUG CONTROL STRATEGY 1 (2012).

16. *A Drug Policy for the 21st Century*, WHITE HOUSE, <https://www.whitehouse.gov/ondcp/drugpolicyreform> [http://perma.cc/HW89-U35V].

17. *Id.*

18. See JEFFREY A. MIRON & KATHERINE WALDCOCK, CATO INST., THE BUDGETARY IMPACT OF ENDING DRUG PROHIBITION 1 (2010) (suggesting that legalization of drugs would result in \$25.1 billion in savings for state and local governments).

19. Blackmon, *supra* note 3 (second alteration in original).

as enemy combatants to be tracked, policed, and—if caught—jailed. Recent reports of U.S. military equipment populating the artillery in America's police departments further underscore the salience of the war metaphor.²⁰ According to the New York Times, “[a]s the nation’s wars abroad wind down, many of the military’s surplus tools of combat have ended up in the hands of state and local law enforcement,” including armored vehicles, aircrafts, machine guns, and even mine-resistant, ambush-protected armored vehicles.²¹ The militarization of U.S. police captured the nation’s attention in the wake of law enforcement responses to community outrage to the police killings of unarmed African-American men in Ferguson, Missouri, in 2014 and Baltimore, Maryland, in 2015.

This metaphor of poor African-American communities at war and under siege comes to vivid life in Alice Goffman’s *On The Run: Fugitive Life In An American City*,²² an ethnography documenting her time embedded in field research in a low-income, predominantly African-American Philadelphia neighborhood between 2002 and 2007. Professor Goffman dramatically illustrates harrowing daily experiences of young men (and herself) habitually “on the run” from law enforcement.²³ Despite the fact that these young men are hunted for a range of offenses from failure to pay tickets and fines to more disturbing crimes, such as armed robberies and attempted murder, illicit drug use and trafficking account for the majority of Goffman’s research subjects’ arrests and convictions. In elucidating a compelling story about mass incarceration, she exposes the fears and anxieties of African-American men constantly caught in the powerful gaze and grip of law enforcement. She details incessant policing of African-American males on streets, in their cars, in their homes, and even in hospitals.²⁴

20. See Matt Apuzzo, *War Gear Flows To Police Departments*, N.Y. TIMES (June 8, 2014), http://www.nytimes.com/2014/06/09/us/war-gear-flows-to-police-departments.html?_r=0 [<http://perma.cc/4PC8-2CKE>] (describing thirty-ton combat vehicles “showing up across the country, in police departments big and small”).

21. *Id.*

22. ALICE GOFFMAN, *ON THE RUN: FUGITIVE LIFE IN AN AMERICAN CITY* (2014).

23. Professor Steven Lubet critiques Alice Goffman’s methods in a pointed article published in the *New Republic*. In the article, he asks whether she breached research ethics and established protocols by—among other things—driving a getaway car when a young man wanted to avenge the death of a dear friend. Steven Lubet, *Did This Acclaimed Sociologist Drive the Getaway Car in a Murder Plot?: The Questionable Ethics of Alice Goffman’s “On The Run.”* NEW REPUBLIC (May 27, 2015), <http://www.newrepublic.com/article/121909/did-sociologist-alice-goffman-drive-getaway-car-murder-plot> [<http://perma.cc/YYT2-SYDA>] (explaining that Goffman’s book leaves him “with vexing questions about the author’s accuracy and reliability”). *But see* Alice Goffman, *A Reply To Professor Lubet’s Critique* (June 6, 2015), <http://www.ssc.wisc.edu/soc/faculty/docs/goffman/A%20Reply%20to%20Professor%20Lubet.pdf> [<http://perma.cc/VJ2U-YHFU>] (asserting that the type of research she performs involves participating to some extent in the lives of those whom she observes).

24. One point of critique by several pundits is the veracity of Goffman’s claims about police patrolling maternity wards and hospital corridors to locate young men with warrants for their arrests.

For example, despite claims of postracialism in the United States, the nation's war on drugs exposes how significantly race matters: 1 in 106 white males (eighteen or older) is incarcerated in the United States, compared to 1 in 36 Latino males and 1 in 15 Black males.²⁵ Such stark figures may explain why the war on drugs and mass incarceration are almost exclusively framed as attacks on African-American men; women are invisible—or, in Goffman's research—they are reduced to “snitches.”²⁶ Goffman's account of policing and mass incarceration fails to notice, account for, or discuss the dramatic rise in the incarceration rate of African-American women, particularly during the time of her embedded ethnographic fieldwork. Her study falls within a common, historically incomplete analysis of the vast nature in which Black women are policed in the criminal justice system and the collateral consequences to families and neighborhoods.

Goffman's omissions reflect a broader problem; in the Attorney General's elegant speech to the ABA during the summer of 2013, he too cast the drug war and mass incarceration as male problems.²⁷ In my reading of dozens of articles featuring the Attorney General's remarks, no commentator observed that women were virtually absent from Holder's powerful commentary. In fact, Holder mentioned women only once²⁸—as middle-class, educated victims of sexual violence,²⁹ but not as the drug war's casualties.³⁰ Equally, politicians and pundits proclaimed the Justice Department's effort

Their critiques suggest that police would not extend their patrol that far or that health-privacy laws would prevent this level of law enforcement surveillance. See Dwayne Betts, *The Stoop Isn't the Jungle*, SLATE (July 10, 2014), http://www.slate.com/articles/news_and_politics/jurisprudence/2014/07/alice_goffman_s_on_the_run_she_is_wrong_about_black_urban_life.single.html [<http://perma.cc/6TX2-EVJX>] (calling into question the accuracy of Goffman's claims, asserting: “Goffman doesn't name the hospital or the police officer she quotes. When I called the Philadelphia Police Department for a response to her claim, Lt. John Stanford said the department doesn't have the manpower to run random names from a hospital's visiting list”); Lubet, *supra* note 23 (noting that Goffman's subjects avoided emergency rooms and children's schools for fear of being arrested); Joan Donovan, *Is He Dead, Alice*, OCCUPY SOC. (May 28, 2015), <http://occupythesocial.com/post/120142584663/is-he-dead-alice> [<http://perma.cc/T4PK-DXZA>] (questioning the merit behind Goffman's praise and awards).

25. JENIFER WARREN, PEW CTR. ON THE STATES, ONE IN 100: BEHIND BARS IN AMERICA 2008, at 6 (2008).

26. GOFFMAN, *supra* note 22, at 37, 55 (casting African-American women as sometimes vindictive and ready to punish boyfriends, sons, and other males by cooperating with police).

27. Holder, Remarks at ABA Meeting, *supra* note 2.

28. *Id.*

29. See *id.* (explaining that “nearly one in four college women experience some form of sexual assault by their senior year”).

30. But see generally Phyllis Goldfarb, *Counting the Drug War's Female Casualties*, 6 J. GENDER RACE & JUST. 277 (2002) (analyzing the drug war's impact on female lives).

as long overdue, emphasizing the staggering expansions of U.S. prisons to accommodate drug offenders and the racial impacts on African-American men.³¹

To emphasize what Goffman, other scholars, policymakers, and media pundits overlook, consider the stunning data collected by the Women's Prison Association, the leading national policy center quantitatively and qualitatively researching women in prison.³² The population of women in prison grew by 832% in the period from 1977 to 2007—twice the rate as that of men during that same period.³³ More conservative estimates suggest that the rate of incarceration of women grew by over 750% during the past three decades.³⁴ This staggering increase now results in more than one million women incarcerated in prison, jail, or tethered to the criminal justice system as a parolee or probationer in the United States.³⁵ The Bureau of Justice Statistics underscores the problem, explaining in a special report that “[s]ince 1991, the number of children with a mother in prison has more than doubled, up 131%,” while “[t]he number of children with a father in prison has grown [only] by 77%.”³⁶

This Review Essay fills an important gap in social and legal policy literature, addressing the intersection of sex and mass incarceration as a serious blind spot in legal analysis. It considers two works, James B. Jacobs' *The Eternal Criminal Record*³⁷ and Alice Goffman's *On The Run*. In Part I, this Review Essay offers a brief overview and critique of Goffman's acclaimed new work, critiquing not only her reductive account of African-American women's lives but also the ethics of her study. Readers never learn whether advisors required that she obtain Institutional Review Board (IRB) approval before engaging in her study of boys and men in jails and prisons as well as the lives of families on “6th Street.” This is particularly relevant in light of Goffman's hunger for one of her primary research subject's “killer to die.”³⁸ Because Goffman researched this particular community, ostensibly

31. James Braxton Peterson, *America's Mass Incarceration System: Freedom's Next Frontier*, REUTERS: GREAT DEBATE (July 24, 2015), <http://blogs.reuters.com/great-debate/2015/07/23/americas-mass-incarceration-system-freedoms-next-frontier/> [<http://perma.cc/WSN4-F8KB>] (questioning why it took President Obama so long to make the “mass incarceration” speech and considering how to account for losses in the system for the past thirty years).

32. WOMEN'S PRISON ASS'N, QUICK FACTS: WOMEN & CRIMINAL JUSTICE – 2009 (2009) [hereinafter QUICK FACTS 2009], http://www.wpaonline.org/wpaassets/Quick_Facts_Women_and_CJ_2009_rebrand.pdf [<http://perma.cc/XW5Y-HX8F>].

33. *Id.*

34. *Why It Matters*, WOMEN'S PRISON ASS'N, <http://www.wpaonline.org/about/why-it-matters> [<http://perma.cc/V27P-MUGS>].

35. QUICK FACTS 2009, *supra* note 32.

36. LAUREN E. GLAZE & LAURA M. MARUSCHAK, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, PARENTS IN PRISON AND THEIR MINOR CHILDREN 1–2 (2008).

37. JAMES B. JACOBS, *THE ETERNAL CRIMINAL RECORD* (2015).

38. GOFFMAN, *supra* note 22, at 260.

the man she desired dead was also her research subject. Part II turns to the missing narrative of women and mass incarceration in the United States. It sheds light on and analyzes the complex patterns that frame women's subjugation to law enforcement. Part III analyzes the extralegal and collateral consequences of policing women, including felony disenfranchisement, loss of housing, and the chilling impacts on their children. It unpacks what Professor James Jacobs terms "the eternal criminal record" and teases out findings in his compelling new book of the same name.³⁹

I. Black Lives Matter

Goffman introduces readers to a drug-riddled, poverty-stricken, down-trodden area of Philadelphia, which she names 6th Street. Despite referring to this area as mixed income, the dramatic descriptions of crack infestation throughout the community, unemployment, layoffs, welfare dependency, housing subsidization, unpaid tickets, and warrants illustrate a level of economic and social poverty increasingly common in the United States, but not shared amongst middle-income African-Americans.

It is an area that Professor Goffman comes to know through undergraduate, ethnographic⁴⁰ coursework at the University of Pennsylvania, where her parents—both distinguished linguists—teach.⁴¹

By her own account, Goffman's parents' affiliations may explain the unusual latitude accorded her as an undergraduate researcher.⁴² Goffman immerses herself in the "6th Street" community. At one point she shares an apartment with three African-American males who carry guns, deal drugs, and become involved in shootouts.⁴³ She writes, "[w]hen Mike got taken into custody, I lost all three roommates, since Chuck and Steve had been staying at the apartment at Mike's invitation."⁴⁴ Indeed, Goffman becomes so embedded in her research that she recounts missing meetings with her

39. See generally JACOBS, *supra* note 37 (examining the U.S. criminal-record infrastructure and questioning if criminal-record jurisprudence should be restructured).

40. According to James Spradley, "[t]he essential core of ethnography is this concern with the meaning of actions and events to the people we seek to understand. . . . Ethnography always implies a theory of culture." JAMES P. SPRADLEY, PARTICIPANT OBSERVATION 5 (1980).

41. Goffman's parents, Gillian Sankoff and William Labov, are noted professors at the University of Pennsylvania. However, Goffman's biological father, the much acclaimed sociologist Erving Goffman, broke boundaries with his research, branching out beyond "prevailing paradigms and promot[ing] an ethnographic style all his own." See Donovan, *supra* note 24. The style of his human research did not always seek to provide transparency, sometimes strategically withholding information from his subjects in order to fulfill his aims. *Id.*

42. GOFFMAN, *supra* note 22, at 229 (acknowledging that "[p]erhaps [her] background, and the extra knowledge and confidence it gave [her], also contributed to professors encouraging the work and devoting their time so freely to [her] education" but denying that her privilege afforded her "situational dominance, . . . at least not very often").

43. *Id.* at 246.

44. *Id.*

undergraduate advisors, Professors Elijah Anderson and Michael Katz,⁴⁵ and surrendering to being her own research subject. She writes, “memory itself was changing,” and “cops circling the apartment and the feds looking into Mike’s case, the threats they had been making to arrest me—for harboring fugitives, or interfering with an arrest, or holding drugs in the apartment—were becoming more and more real.”⁴⁶

Subpart I(A) briefly substantiates the concerns raised by Goffman, such as racialized law enforcement surveillance and police violence against the civilians they serve. However, subpart I(B) turns to this Review Essay’s critiques of the book.

A. *The Surveillance State: Policing in the United States*

Given the spate of surveillance and violence committed by law enforcement against African-American men, 6th Street could ostensibly be anywhere in the United States.⁴⁷ In March 2015, the *New York Times* reported that, according to local government records, in Ferguson, Missouri, African-Americans “accounted for 85 percent of traffic stops, 90 percent of tickets and 93 percent of arrests.”⁴⁸ A six-month investigation by the Justice Department revealed a pernicious pattern of racial targeting and discrimination in law enforcement in that city, which ultimately “[led] up to an officer’s shooting of a black teenager” in the community.⁴⁹ However, the intensity of police violence against the African-Americans the police patrol and the spate of shootings of unarmed African-Americans caught on camera is hardly confined to one region of the country.⁵⁰

45. *Id.* at 245.

46. *Id.*

47. See, e.g., Matt Apuzzo, *Ferguson Police Routinely Violate Rights of Blacks*, *Justice Dept. Finds*, N.Y. TIMES (Mar. 3, 2015), <http://www.nytimes.com/2015/03/04/us/justice-department-finds-pattern-of-police-bias-and-excessive-force-in-ferguson.html> [<http://perma.cc/ZY2B-MEEM>] (reporting disparities in police stops, ticketing, and arrests in Ferguson, Missouri).

48. *Id.*

49. Matt Apuzzo, *Justice Department to Fault Ferguson Police, Seeing Racial Bias in Traffic Stops*, N.Y. TIMES (Mar. 1, 2015), <http://www.nytimes.com/2015/03/02/us/justice-department-report-to-fault-police-in-ferguson.html> [<http://perma.cc/QG6R-CEWU>]; see also Conor Friedersdorf, *The Brutality of Police Culture in Baltimore*, ATLANTIC (Apr. 22, 2015), <http://www.theatlantic.com/politics/archive/2015/04/the-brutality-of-police-culture-in-baltimore/391158/> [<http://perma.cc/99XW-RCDX>] (warning that “[y]ears of abuses are every bit as egregious as what the Department of Justice documented in Ferguson, Missouri, and as deserving of a national response”).

50. Friedersdorf, *supra* note 45; see also Jaeah Lee, *Exactly How Often Do Police Shoot Unarmed Black Men?*, MOTHER JONES (Aug. 15, 2014, 5:00 AM), <http://www.motherjones.com/politics/2014/08/police-shootings-michael-brown-ferguson-black-men> [<http://perma.cc/V5TW-8UQH>] (“The killing of Michael Brown by police in Ferguson, Missouri, was no anomaly: As we reported yesterday, Brown is one of at least four unarmed black men who died at the hands of police in the last month alone.”).

Despite the fact that “[f]ederal databases that track police use of force or arrest-related deaths . . . [are] scattered and fragmented,”⁵¹ investigations by prominent news and civil society organizations illuminate a disturbing level of brutality and misconduct toward African-American communities in the United States. In one report, between 2004 and 2008 in Oakland, California, 37 of 45 officer-involved shootings occurred against African-Americans (none were white).⁵² Another report highlights that Black male teens are twenty-one times more likely to be killed by law enforcement than their white counterparts.⁵³ In Chicago, law enforcement operates “an off-the-books interrogation compound, rendering Americans unable to be found by family or attorneys,” where African-Americans and Latinos were beaten, shackled for prolonged periods, and denied access to legal counsel.⁵⁴ What scant data the Federal Bureau of Investigations (FBI) does collect disturbingly flags that between 1980 and 2012 over 12,000 police shooting deaths were self-reported.⁵⁵ The question is, how many deaths caused by police were unreported during that period?

51. Lee, *supra* note 50. For example, “[n]o agency appears to track the number of police shootings or killings of unarmed victims in a systematic, comprehensive way.” *Id.*

52. Demian Bulwa, *NAACP Focuses on Officer-Involved Shootings*, S.F. GATE (Dec. 17, 2010, 4:00 AM), <http://www.sfgate.com/bayarea/article/NAACP-focuses-on-officer-involved-shootings-2453109.php> [<http://perma.cc/C2X7-F9WL>].

53. Ryan Gabrielson et al., *Deadly Force, in Black and White*, PROPUBLICA (Oct. 10, 2014, 10:07 AM), http://www.propublica.org/article/deadly-force-in-black-and-white?utm_source=et&utm_medium=email&utm_campaign=dailynewsletter [<http://perma.cc/B96J-D6TR>] (“The 1,217 deadly police shootings from 2010 to 2012 captured in the federal data show that blacks, age 15 to 19, were killed at a rate of 31.17 per million, while just 1.47 per million white males in that age range died at the hands of police.”).

54. Spencer Ackerman, *The Disappeared: Chicago Police Detain Americans at Abuse-Laden ‘Black Site,’* GUARDIAN (Feb. 24, 2015, 4:43 PM), <http://www.theguardian.com/us-news/2015/feb/24/chicago-police-detain-americans-black-site> [<http://perma.cc/X7JL-N3JK>] (commenting that at this facility, law enforcement “trains its focus on Americans, most often poor, black and brown”); Lizzie Johnson, *Men Sue Chicago Over Alleged Detainment at Homan Square*, CHI. TRIB. (Mar. 20, 2015, 5:17 PM), <http://www.chicagotribune.com/news/local/breaking/ct-homan-square-police-lawsuit-met-20150320-story.html> [<http://perma.cc/PLQ2-2W63>] (detailing allegations of threats, interrogation without access to legal counsel, and harassment in a pending lawsuit against law enforcement); Frank Main, *Chicago Police Deny Report of Secret Interrogation Compound at Homan Square Site*, CHI. SUN-TIMES (Feb. 24, 2015, 5:57 PM), <http://chicago.suntimes.com/news/7/71/393084/homan-square-site-chicago-police-deny-report-secret-interrogation-compound> [<http://perma.cc/9W2P-2W63>].

55. This calculation is based on roughly 400 “justifiable homicides” reported each year. Compare ALEXIA COOPER & ERICA L. SMITH, BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, HOMICIDE TRENDS IN THE UNITED STATES, 1980–2008, at 32 fig.51 (2011), <http://bjs.gov/content/pub/pdf/htus8008.pdf> [<http://perma.cc/LH3T-9KQZ>] (depicting an average of approximately 400 “justifiable homicides” by law enforcement from 1980 to 2008), with *Uniform Crime Reports: Expanded Homicide Data Table 14*, FED. BUREAU OF INVESTIGATION, http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/offenses-known-to-law-enforcement/expanded-homicide/expanded_homicide_data_table_14_justifiable_homicide_by_weapon_law_enforcement_2008-2012.xls [<http://perma.cc/ZR54-SX6H>] (reporting an average of approximately 400 “justifiable homicides” by law enforcement from 2008 and 2012).

These are not the types of statistics offered in *On The Run*; the book is very thin on statistics and research data of that kind. Rather, the provocative prose of Goffman's subjects—their fights with girlfriends, ex-lovers, and their mothers; stints in juvenile detention, jail, and prison; and flights from police—undergird the work. Many scholars praise the book as an eye-opening view inside “the ghetto.”⁵⁶ However, such responses, particularly from the academic community, deserve scrutiny and examination, because it may reflect the novelty to them of what Goffman describes rather than the book's originality or rigor. That is, Professor Goffman surviving what she describes as a harrowing time *on the run* with human research subjects who became her friends seems its own miracle to many in the academy. After all, as she explains, by the time her experiment of living on 6th Street concluded, “it didn't feel like I was leaving the 6th Street Boys as much as the 6th Street Boys had left me—or rather, that the group as we had known it had ceased to exist,” because one of its members was murdered, another committed suicide, others were in prison or jail, and one was killed by police.⁵⁷

B. *Black Lives Should Also Matter to Human Research*

Sociologists refrain from undertaking an activity when their personal circumstances may . . . lead to harm for a . . . human subject, client, colleague, or other person to whom they have a scientific, teaching, consulting, or other professional obligation.⁵⁸

Goffman's intuition that more is to be said about mass incarceration, police violence, and police–civilian interactions is well-founded and not disputed in this Review Essay. Rather, this Review Essay's critiques are animated by other concerns, including the apparent transgression of ethical norms and standards, weak citations (that perhaps suffice for an undergraduate paper or thesis but cause alarm for a dissertation, let alone professorial work),⁵⁹ reductive analysis of the lives of women in the community she

Problematically, the federal government has not required police departments to provide more robust data to track police–civilian interactions, despite long-standing complaints by civil and human rights organizations alleging police misconduct and serious civil liberties violations against African-Americans carried out by law enforcement.

56. E.g., Jennifer Schuessler, *Fieldwork of Total Immersion: Alice Goffman's 'On the Run' Studies Policing in a Poor Urban Neighborhood*, N.Y. TIMES (Apr. 29, 2014), <http://www.nytimes.com/2014/04/30/books/alice-goffman-researches-poor-black-men-in-on-the-run.html> [<http://perma.cc/Y7FJ-38FE>] (quoting Goffman's dissertation supervisor praising Goffman's access to the “ghetto”).

57. GOFFMAN, *supra* note 22, at 205.

58. ASA COMM. ON PROF'L ETHICS, AM. SOCIOLOGICAL ASS'N, CODE OF ETHICS: ETHICAL STANDARDS § 2(d) (1999).

59. For example, Goffman does not identify dates, times, or precincts associated with her interviews with police. E.g., GOFFMAN, *supra* note 22, at 269 n.7. Neither is the work substantiated with formal studies. See *id.* at 211–61 (discussing methodology through anecdotes). There is reference to a household study conducted with Chuck, presumably when she was an undergraduate.

studies,⁶⁰ and the evident lapse in discernment that distances even the embedded, participant researcher from her human research subjects. This subpart briefly analyzes why, despite the book's gripping descriptions and enthralling narratives, content and research ethics matter. That is, in abandoning what social science researchers call naïve realism, an appreciation for the vulnerability of Goffman's research subjects and even the life of an alleged murderer may also have been disregarded.⁶¹

1. Chasing Down a Murderer: The Limits of Observational Research.— If the point that the book makes—“the US ghetto [i]s one of the last repressive regimes of the age . . . [that] visit[s] an intensely punitive regime upon poor Black men and women living in our cities' segregated neighborhoods”⁶²—is factually accurate, should ethics matter? In other words, while gaining cultural knowledge and documenting social behavior, two fundamental aspects of the human experience and ethnographic field study, what were Goffman's responsibilities to the participants, beyond safeguarding

Id. at 238–39. There is no reference to the study being duplicated as a graduate student under a more rigorous process. *Id.* Readers are not informed about the questions asked, how many questions were presented to participants, or other information that would be important for a graduate study or a professor's manuscript. *Id.* at 55, 265 n.13.

60. African-American women feature in limited tropes in the book: betrayers (snitches), addicts, and church women. Goffman also identifies loyal women, “riders,” but they ultimately betray African-American men, too. *Id.* at 74 (“[T]hey cut off ties to the man they had promised to protect, or they work with the police to get him arrested and convicted.”). Through Goffman and the 6th Street Boys' eyes, we see African-American women as disloyal snitches. *Id.* at 55 (“Most help the police locate and convict the young men in their lives, and so must find a way to cope publicly and privately with their betrayals.”). In another passage she writes, “Out of frustration and anger at his failures as a father, spouse, brother, or son, his partner or family members may freely call the police on him, taking advantage of his wanted status to get back at him or punish him.” *Id.* at 37. In another passage, Mike (whom she later drives around in his attempt to kill someone) says “Black chicks ain't like [loyal Latinas]. They love the cops.” *Id.* at 83. Readers never really come to know the mothers of the 6th Street Boys even though Goffman spends nights in their homes, on their porches, and with their sons, including Miss Linda and the challenges in her life that resulted in addiction, despite the amount of time Goffman spends in her home and with each of her three sons. Miss Linda is often reduced to the thief who stole from her sons and whose home “smelled of piss and vomit and stale cigarettes, and [where] cockroaches roamed freely across the countertops.” *Id.* at 14. Miss Linda's only redemption is that she “ride[s] harder than any bitch out here.” *Id.* at 79.

61. See SPRADLEY, *supra* note 40, at 4 (explaining that naïve realism is the “almost universal belief that all people define the *real* world of objects, events, and living creatures in pretty much the same way”).

62. GOFFMAN, *supra* note 22, at 204.

their identities?⁶³ Was there an obligation to consider their interests, rights, and sensitivities?

In the most chilling account, Goffman describes her desire to avenge the murder of Chuck, a 6th Street Boy, by driving the getaway car.⁶⁴ On one of the nights that Mike (who already had many encounters with law enforcement and incarceration) “had nobody to ride along with him . . . [Goffman] volunteered.”⁶⁵ They started out at 3 a.m., “with Mike in the passenger seat, his hand on his Glock as he directed [her] around the area. [They] peered into dark houses and looked at license plates and car models” as Mike checked on the killer’s whereabouts.⁶⁶

On one such occasion Mike got out of the car with his gun, thinking he spotted the murderer, while Goffman “waited in the car with the engine running, ready to speed off as soon as Mike ran back and got inside.”⁶⁷ She explains:

I got into the car because, like Mike and Reggie, I wanted Chuck’s killer to die.

. . . I didn’t care whether this man had believed his life was threatened when he came upon Chuck outside the Chinese takeout store I simply wanted him to pay for what he’d done, for what he’d taken away from us.⁶⁸

In Goffman’s desire to kill a rival 4th Street Boy, she exposed not only herself to harm, but also Mike (despite his documented criminality, his life mattered, too), and the children, women, and men back on 6th Street, whose lives might likely have come under threat if she and Mike were successful in their plot. In fact, in an earlier gun battle between these two communities, women and girls were placed at serious risk as their homes were riddled with bullets in retaliation.⁶⁹

In hindsight, Goffman admits, “I’m glad that I learned what it feels like to want a man to die . . . to feel it in my bones, at an emotional level eclipsing my own reason or sense of right and wrong.”⁷⁰ For a memoir, this passage is powerful and disturbing; a chilling account of the desire to retaliate in the wake of a friend’s murder. However, as scientific research, hailed for its

63. See SPRADLEY, *supra* note 40, at 21, 51, 57 (speaking to ethnographers about going “beyond merely *considering* the interests” of research subjects; drawing distinctions between spectators and full participants; and emphasizing the importance of introspection, noting that as an ethnographer, “you will need to increase your introspectiveness”).

64. GOFFMAN, *supra* note 22, at 260–61.

65. *Id.* at 260.

66. *Id.*

67. *Id.*

68. *Id.* at 260–61.

69. *Id.* at 250.

70. *Id.* at 261.

rawness and rich detail, the book reflects a disconcerting cognitive bias within the academic community that praises the hunting of a Black man with murderous intent. Dr. Kenneth D. Bailey cautioned about this very type of rationalization in social research, warning against “[r]ationalization on the part of the researcher that the study is not unethical because the harm inflicted on the subject is justified . . . because the researcher considers the subject evil and feels justified in harming him.”⁷¹ According to Bailey, “[i]t is generally agreed that it is unethical for researchers to harm anyone in the course of research.”⁷² The harms described by Bailey extend beyond the physical to also include psychological harm, emotional turmoil, guilt, and reminding a subject about “an unpleasant experience.”⁷³

What if the man Goffman plotted to kill with Mike and his loaded Glock were white or Asian? Might she have considered other options, such as removing herself, imploring Mike to stand down, or calling the police? Might her advisors have recoiled or questioned Goffman’s involvement in that type and level of “research”? The point here is that even if the killer belonged to a skinhead, biker, or equally disparaged community where some whites affiliate, rather than being a Black 4th Street Boy, his life might have mattered—if not to Goffman, perhaps to her dissertation committee, the book’s reviewers, and the scholars who praise the work.

If Professor Goffman were a Black social scientist out for blood, driving a getaway car, intending to be an accomplice to murder, would the academy celebrate her daring, eye-opening time in the “ghetto”? Quite possibly, Goffman’s perceived “vulnerable” status as a white woman and “courage” living in a dangerous Black neighborhood may have blinded scholars from taking a more critical view; after all, her supervisor explained to the *New York Times*, “[t]he level of immersion is really unusual She got access to the life of the ghetto and came to understand aspects of it we don’t ever get to see.”⁷⁴

Disputing the vivid narrative in her own book, Goffman issued a statement one year after its publication, in June 2015, stating, “at no time did I intend to engage in any criminal conduct in the wake of Chuck’s death.”⁷⁵ How should readers reconcile and understand the two very different accounts of the same event? On one hand, the book closes with a powerful story of a night out for death. However, in the aftermath of criticism about the book and its veracity, Goffman offered a narrative that suggests neither she nor

71. KENNETH D. BAILEY, *METHODS OF SOCIAL RESEARCH* 407 (3d ed. 1987).

72. *Id.* at 406.

73. *Id.* (urging that “researchers want and have every reason to be ethical”).

74. Schuessler, *supra* note 56.

75. Goffman, *supra* note 23.

Mike really considered killing anyone that evening and that the ride was more about catharsis than murder.⁷⁶ Readers will have to decide.

2. *Ethics in Social Science Research.*—So far as the book reveals, the extent of Goffman’s protection of her research subjects and informed consent process involved asking “Mike what he thought of [her] writing about his life for [her] undergraduate thesis at Penn [They] agreed that [Goffman would] conceal his name and the neighborhood location, and that [she] wouldn’t include any events he wanted [her] to leave out.”⁷⁷ This was the process also with “Chuck, Steve, Alex, Anthony, and some of the other young men who hung out together on 6th Street” and their other relatives, girlfriends, and mothers.⁷⁸ What might suffice as a memoir of Goffman’s time attending college at Penn while living on or near 6th Street is quite different than an academic research study.

Under the tutelage of Mitch Duneier and an elite dissertation committee, Goffman honed her project to be framed “as an on-the-ground look at mass incarceration and its accompanying systems of policing and surveillance.”⁷⁹ However, the project launched during her undergraduate years and continued through graduate study.⁸⁰ Never at any point are readers informed about an IRB process or approval⁸¹ at the University of Pennsylvania where the research began, nor informed consent forms signed or assent obtained for the human research conducted with minors such as Tommy, Aisha, Ronny, and Reggie, whose ages ranged from about eleven to fifteen at the time they became her research subjects.⁸² Goffman does explain that she talked with people on 6th Street and they verbally consented to the research.⁸³

Yet, Professor Goffman’s African American research subjects deserved the same standard of care afforded white subjects. Ethical concerns associated with Goffman’s human research are particularly relevant for three reasons. First, her research involved prisoners, minors (Aisha, Tommy, Ronny, and others), and what ethicists refer to as “vulnerable” populations, requiring additional protections. Second, failure to take into account the po-

76. *See id.* (explaining that the drives “were a way to mourn a dear friend”).

77. GOFFMAN, *supra* note 22, at 223.

78. *Id.*

79. *Id.* at 249. She describes her very worthwhile study as “documenting the massive expansion of criminal justice intervention into the lives of poor Black families in the United States.” *Id.*

80. *Id.* at 214–17, 245–47.

81. *See generally Institutional Review Boards (IRBs)*, U.S. DEP’T HEALTH & HUM. SERVS., <http://www.hhs.gov/ohrp/assurances/irb> [<http://perma.cc/PJ2X-CMMX>] (noting that “IRBs must approve proposed non-exempt research before involvement of human subjects may begin” and providing resources for the approval process).

82. GOFFMAN, *supra* note 22, at 214, 218, 227 (listing the ages of Tommy, Ronny, and Reggie and characterizing Aisha as a high-school freshman).

83. *Id.* at 223.

tential to endanger or harm the research subjects she came into contact with on 6th Street exposes a broader concern about Black lives mattering in human research. For example, rationalizing a failure to follow ethical protocols because neighborhoods like 6th and 4th Streets are already under siege or presently suffering the conditions of poverty is an unsupportable and weak justification for ignoring research ethics. Third, as an institutional matter, violations in research ethics surfaced at the University of Pennsylvania in a separate study several years before Goffman's project, resulting in a federal investigation and settlement in a case involving the death of a teenage human research subject, Jesse Gelsinger.⁸⁴

Simply stated, the federal government urges, "IRBs must approve proposed non-exempt research before involvement of human subjects may begin."⁸⁵ This may be misinterpreted to suggest that only when federal dollars support the research do ethical protocols matter. Not so.⁸⁶ Ironically, such requirements are to protect communities like 6th Street—not simply research subjects in clinical drug trials but also individuals who may experience psychological or physical harm in studies. With regard to prisoners, the National Institutes of Health (NIH) warns: "Because prisoners may not be free to make a truly voluntary and uncoerced decision whether or not to participate as subjects in research, the regulations require additional safeguards for the protection of prisoners in research" and that the safeguards "appl[y] to all research that includes any individual who is or becomes a prisoner while participating in a research study."⁸⁷ Bioethicists and

84. In this case, the University of Pennsylvania settled with the Justice Department for conducting a study in which fraud, the making of false statements, and the failure to disclose relevant information were alleged in a human research clinical trial that ultimately resulted in the death of a participant. See *U.S. Settles Case of Gene Therapy Study that Ended with Teen Death*, U. PA. ALMANAC (Feb. 15, 2005) [hereinafter *Gene Therapy Study*], <http://www.upenn.edu/almanac/volumes/v51/n21/gts.html> [<http://perma.cc/VU24-JYS6>] (describing the university's study as well as the resulting investigation and settlement); Sheryl Gay Stolberg, *The Biotech Death of Jesse Gelsinger*, N.Y. TIMES (Nov. 28, 1999) <http://www.nytimes.com/1999/11/28/magazine/the-biotech-death-of-jesse-gelsinger.html?pagewanted=3> [<http://perma.cc/3ZM5-UA4H>] (cataloging the events that led to both the clinical trial and the participant's death). As part of the settlement, one of the researchers, "Dr. Wilson[,] must meet imposed training/educational requirements applicable to human research participant protections and clinical research." *Gene Therapy Study*, *supra*.

85. *Institutional Review Boards (IRBs)*, *supra* note 81.

86. "Human subject means a living individual about whom an investigator (whether professional or student) conducting research obtains" data through interactions and interpersonal contact with the individual. 45 C.F.R. § 46.102(f) (2015).

87. *Research Involving Vulnerable Populations*, NAT'L INSTITUTES HEALTH, <http://grants.nih.gov/grants/policy/hs/prisoners.htm> [<http://perma.cc/K9AD-KCMP>] (defining a prisoner as "any individual involuntarily confined or detained in a penal institution").

government agencies voice similar concerns about human research involving children under the age of eighteen.⁸⁸

Baked into bioethics and law are robust concerns for participant safety, autonomy, informed consent, respect for persons, beneficence, and social justice, among other long-standing priorities, dating back to Nuremberg and the infamous Tuskegee Syphilis Study, which exploited the vulnerabilities of poor African-American farmers in the South for forty years.⁸⁹ These lines are particularly vulnerable to blurring in the type of ethnographic fieldwork conducted by Goffman: A cafeteria worker who supervised her, a girl she tutored, and a man she went on a date with became her first research subjects on 6th Street. She recalls:

I'm not sure if people's behavior toward me changed, but I imagined that this date with Mike helped something click for Aisha's neighbors and relatives. If I had been something of a puzzle before, now my presence in the neighborhood made sense: I was one of those white girls who liked Black guys.⁹⁰

Valuable lessons can be gleaned from research conducted using African-American subjects, including cautionary tales. Professor Sudhir Venkatesh attracted strident criticism for his embedded research on gangs (as a graduate student).⁹¹ While studying Chicago gangs and their economies, he acquired accounting notebooks by T-Bone for the purpose of writing an article; T-Bone was later murdered in prison, presumably for revealing the information that was later featured in Venkatesh's articles.⁹² However, that work ultimately secured a book contract, prestigious speaking engagements,

88. See, e.g., *Special Protections for Children as Research Subjects*, U.S. DEP'T HEALTH & HUM. SERVS., <http://www.hhs.gov/ohrp/policy/populations/children.html> [<http://perma.cc/T2NN-7WFH>] (outlining protections for research subjects under eighteen years old).

89. See Jean Heller, *Syphilis Victims in U.S. Study Went Untreated for 40 Years*, N.Y. TIMES, July 25, 1972, at 1 (detailing how the Tuskegee Syphilis Study was a morally dubious clinical trial because it denied available treatment to participants). See generally FRED D. GRAY, *THE TUSKEGEE SYPHILIS STUDY: THE REAL STORY AND BEYOND* (1998) (telling the story of the Tuskegee Syphilis study from an insider's point of view).

90. GOFFMAN, *supra* note 22, at 221.

91. SUDHIR VENKATESH, *GANG LEADER FOR A DAY: A ROGUE SOCIOLOGIST TAKES TO THE STREETS* 113–14 (2008) (giving examples of professors' criticisms about Venkatesh being too involved with the subjects of his research); see also Ariel Kaminer, *Columbia's Gang Scholar Lives on the Edge*, N.Y. TIMES (Nov. 30, 2012), http://www.nytimes.com/2012/12/02/nyregion/sudhir-venkatesh-columbias-gang-scholar-lives-on-the-edge.html?_r=0 [<http://perma.cc/P78K-DSV2>] (explaining that Venkatesh's research techniques have "brought controversy," including a large-scale investigation of his research expenditures); Claire Potter, *Puff the Magic Sociologist: Sudhir Venkatesh, Gang Leader for a Day, A Rogue Sociologist Takes to the Streets*, CHRON. HIGHER EDUC.: TENURED RADICAL (Apr. 7, 2009, 2:32 PM), <http://chronicle.com/blognetwork/tenuredradical/2009/04/puff-magic-sociologist-review-of-sudhir/> [<http://perma.cc/M39P-692N>] (characterizing Venkatesh's research methods as "disturbing").

92. Potter, *supra* note 92.

and praise from within the academic community.⁹³ Not until later were important ethical questions regarding his research raised by academics. In one review, a historian wrote: “[I]f this book is taught at all it should be taught as a perfect example of an academic exploiting a community to advance his career.”⁹⁴

However, concerns about human research and exploitation in African-American communities are not new. Researchers conducting the syphilis study in Tuskegee, Alabama, denied available treatments and information to the African-American research participants despite their debilitating disease.⁹⁵ Other disputed studies include the irradiation of African-American cancer patients for over ten years by Dr. Eugene Saenger at the University of Cincinnati;⁹⁶ at the University of Pennsylvania, Dr. Albert Kligman conducted skin experiments on Black inmates at Holmesburg Prison;⁹⁷ HIV drug experimentation on African-American children in foster care in New York proceeded despite complaints by the children’s guardians;⁹⁸ and lead studies conducted in African-American neighborhoods by Johns Hopkins researchers purposefully withheld information about the harmful impacts and potentially significant risks to Black children,⁹⁹ to name a few. Importantly, in each study researchers and often their universities believed these studies would benefit society, even if not their African-American subjects.¹⁰⁰

93. See VENKATESH, *supra* note 92, at 244–45 (describing how Venkatesh began “present[ing] [his] research at various academic conferences” and noting that his “academic career probably started the day [he] met J.T.”).

94. Potter, *supra* note 92.

95. GRAY, *supra* note 90, at 48–49, 52–55; HARRIET A. WASHINGTON, *MEDICAL APARTHEID: THE DARK HISTORY OF MEDICAL EXPERIMENTATION ON BLACK AMERICANS FROM COLONIAL TIMES TO THE PRESENT* 157 (2006); Heller, *supra* note 85, at 1; Carol Kaesuk Yoon, *Families Emerge as Silent Victims of Tuskegee Syphilis Experiment*, N.Y. TIMES (May 12, 1997), <http://www.nytimes.com/1997/05/12/us/families-emerge-as-silent-victims-of-tuskegee-syphilis-experiment.html> [<http://perma.cc/62XL-VFBZ>]; U.S. Public Health Service *Syphilis Study at Tuskegee: The Tuskegee Timeline*, CENTERS FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/tuskegee/timeline.htm> [<http://perma.cc/L5DF-8P5M>].

96. See Keith Schneider, *Cold War Radiation Tests on Humans to Undergo a Congressional Review*, N.Y. TIMES (Apr. 11, 1994), <http://www.nytimes.com/1994/04/11/us/cold-war-radiation-test-on-humans-to-undergo-a-congressional-review.html?pagewanted=all> [<http://perma.cc/8SGA-PE9U>] (noting that most subjects were poor and sixty percent were Black).

97. WASHINGTON, *supra* note 96, at 248–49.

98. Jamie Doran, *New York’s HIV Experiment*, BBC (Nov. 30, 2004), http://news.bbc.co.uk/2/hi/programmes/this_world/4038375.stm [<http://perma.cc/4H7R-3F3L>].

99. *Grimes v. Kennedy Krieger Inst.*, 782 A.2d 807, 812–14 (Md. 2001).

100. See *id.* at 811–13 (noting the belief by researchers associated with Johns Hopkins that it was acceptable to conduct nontherapeutic research on children to determine the effectiveness of various lead-paint abatement procedures); WASHINGTON, *supra* note 96, at 252 (citing Kligman’s defense of his research that it resulted in advancing “knowledge of the pathogenesis of skin disease”); *id.* at 233–34 (describing Saenger’s rationalization for using dangerous, experimental doses of total body irradiation on cancer patients); *id.* at 333–34 (describing how researchers at the Incarnation Children’s Center stated that the testing of experimental drugs on foster children in New

Finally, the fact that Goffman does not disclose a formal review process at the University of Pennsylvania in *On The Run* reasonably leads readers to believe there was not any.

3. *Does Researching Race Require Citation?*—Goffman’s methodological notes further explain her introduction to the 6th Street Boys and her participant observations in their community.¹⁰¹ In this section, she reveals the plot to kill the 4th Street Boy as well as her intimacy with the community in which she lived for six years.¹⁰² Yet for all the spectacular accounts she details in the book and the rich descriptions in its methodological notes, at least two traditional hallmarks of academic books are absent: a bibliography and an index.

These core features of an academic book articulate the breadth of research and knowledge gained by the researcher studying a particular topic. Bibliographies typically add greater academic strength and rigor to the work, and in this case may have highlighted newspaper articles, research studies, articles, books, legislation, dates of interviews, identification of interviewees (even with altered names), and questions used in her 2007 household survey conducted with Chuck. Bibliographies highlight the scope of a researcher’s investigation and demonstrate the breadth of her investment in the topic. Indexes serve similar purposes, particularly for other researchers who may wish to consult particular sections of the book or assess whether certain topics come under discussion in the book. However, these references are simply absent, which again might be more consistent with a memoir, an undergraduate thesis, or a journalist’s account of an in-depth investigative report, but these are conspicuous oversights for an academic book.¹⁰³

Finally, in Alex Kotlowitz’s review of *On The Run* for the New York Times, he writes, “The level of detail in this book and Goffman’s ability to understand her subjects’ motivations are astonishing—and riveting.”¹⁰⁴ Kotlowitz explains “a power of ‘On the Run’ [is] that her insights and conclu-

York was therapeutic and agreed that pediatric drugs require testing in children); Michele Goodwin & Allison M Whelan, *Law, Bioethics, and Biotechnology*, in 13 INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL & BEHAVIORAL SCIENCES 557, 560 (Neil J. Smelser & Paul B. Baltes eds., 2d ed. 2015) (noting that in many instances of medical ethics breaches, researchers and field scientists ardently defend their controversial studies).

101. GOFFMAN, *supra* note 22, at 211–61.

102. *Id.*

103. Contrast with similar ethnographies or imbedded field research on the lives of low-income people of color. E.g., KHIARA M. BRIDGES, *REPRODUCING RACE: AN ETHNOGRAPHY OF PREGNANCY AS A SITE OF RACIALIZATION* (2011).

104. Alex Kotlowitz, *Deep Cover: Alice Goffman’s ‘On the Run,’* N.Y. TIMES (June 26, 2014), http://www.nytimes.com/2014/06/29/books/review/alice-goffmans-on-the-run.html?_r=0 [<http://perma.cc/LZ73-UC4T>].

sions feel so honest to what she's seen and heard."¹⁰⁵ Yet, he also notes, this is what makes the book troublesome.¹⁰⁶ Goffman dispenses with citations—when they might be most relevant.

At one point, she asserts that “the police typically take whatever cash they find” during drug raids. On another occasion, she writes of an F.B.I. agent who, in an effort to track people with warrants, supposedly developed a computer program inspired by the Stasi, the East German secret police. Nowhere does she tell us where she got such information.¹⁰⁷

Goffman has since destroyed her field notes; what remains of her 6th Street research are chilling accounts in the book, some with cited sources and others without.¹⁰⁸ We learn about the fate of the few 6th Street Boys she continues to follow, but not much about the women who were an integral part of the community she observed.

II. Mass Incarceration and the Invisible Sex

The shocking toll of male incarceration crowds out research and more nuanced understandings of women's engagement with the penal system. After all, 1 in every 106 white males (eighteen or older) is incarcerated compared to 1 in every 15 Black males,¹⁰⁹ and “[i]f current trends continue, one of every three black American males born today can expect to go to prison in his lifetime.”¹¹⁰

105. *Id.*

106. *Id.*

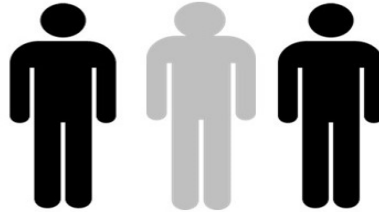
107. *Id.*

108. Leon Neyfakh, *The Ethics of Ethnography*, SLATE (June 18, 2015, 5:58 PM), http://www.slate.com/articles/news_and_politics/crime/2015/06/alice_goffman_s_on_the_run_is_the_sociologist_to_blame_for_the_inconsistencies.html [<http://perma.cc/H9B9-S2NS>]. See generally GOFFMAN, *supra* note 22, at 211–61 (detailing her research methods and excluding citations).

109. Sophia Kerby, *The Top 10 Most Startling Facts About People of Color and Criminal Justice in the United States*, CTR. FOR AM. PROGRESS (Mar. 13, 2012), <https://www.americanprogress.org/issues/race/news/2012/03/13/11351/the-top-10-most-startling-facts-about-people-of-color-and-criminal-justice-in-the-united-states> [<https://perma.cc/4QG7-P7RJ>].

110. THE SENTENCING PROJECT, REPORT OF THE SENTENCING PROJECT TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE REGARDING RACIAL DISPARITIES IN THE UNITED STATES CRIMINAL JUSTICE SYSTEM 1 (2013).

**Figure 1: One-in-Three Black Males Will Be
Incarcerated in His Lifetime**



On one hand, researchers and policymakers tend to view incarceration through a male lens—arguably an approach adopted by Goffman. On the other hand, race matters when concerns about sex inequality arise—often featuring white women at the center of that discourse.¹¹¹ Marginalized and invisible then are women of color, despite their experiences with mass incarceration,¹¹² police brutality,¹¹³ sexual violence within their communi-

111. See Mary Berry, *Foreword*, in *ALL THE WOMEN ARE WHITE, ALL THE BLACKS ARE MEN, BUT SOME OF US ARE BRAVE* (Gloria T. Hull et al. eds, 1993) (“The women’s movement and its scholars have been concerned, in the main, with white women, their needs and concerns.”). See generally BELL HOOKS, *AIN’T I A WOMAN: BLACK WOMEN AND FEMINISM* (1981) (discussing the focus on white women during the women’s rights movement).

112. QUICK FACTS 2009, *supra* note 32.

113. See Kate Abbey-Lambertz, *These 15 Black Women Were Killed During Police Encounters. Their Lives Matter, Too*, HUFFINGTON POST (Feb. 13, 2015, 4:59 PM), http://www.huffingtonpost.com/2015/02/13/black-womens-lives-matter-police-shootings_n_6644276.html [<http://perma.cc/2JQR-FMQD>] (lamenting that “as thousands march for justice, the names of the women killed by police—particularly women of color killed by police—continue to be less known”); Stephen A. Crockett Jr., *Officer Charged With Raping 8 Black Women Finds Support Online*, ROOT (Sept. 2, 2014, 7:41 AM), http://www.theroot.com/articles/culture/2014/09/officer_charged_with_raping_8_black_women_finds_support_online.html [<http://perma.cc/RW4V-V56P>] (discussing financial support provided by online donors for a male police officer charged with sexually assaulting eight black women); Tasha Fierce, *Black Women Are Beaten, Sexually Assaulted and Killed by Police. Why Don’t We Talk About It?*, ALTERNET (Feb. 26, 2015), <http://www.alternet.org/activism/black-women-are-beaten-sexually-assaulted-and-killed-police-why-dont-we-talk-about-it> [<http://perma.cc/27M6-Y72C>] (“While media attention has focused on the tragic loss of Black cisgender men, it seems like we’ve forgotten that Black women are subjected to the same state-sponsored violence.”).

ties,¹¹⁴ shackling while pregnant (if in the penal system),¹¹⁵ birthing behind bars,¹¹⁶ restrictions on housing access, and other pernicious encroachments on their daily lives.¹¹⁷ According to her field notes, Goffman originally starts off interested in the “lives of . . . women struggling on welfare,” but abandons this project because “Mike and his friends . . . were a mystery,”¹¹⁸ unlike the women of 6th Street whose lives already seemed accounted for in other scholarship.

Male accounts about mass incarceration, while troubling and certainly not inaccurate, fail to problematize and offer a detailed reading of U.S. prisons and penal systems. More importantly, these depictions fall short of informing the American public about women and children as the casualties of the nation’s overpriced and unsuccessful drug war, neglect to account for children raised in prison alongside their mothers,¹¹⁹ ignore how and why states target women, particularly during their pregnancies, and fail to notice

114. MATTHEW J. BREIDING ET AL., CTRES. FOR DISEASE CONTROL & PREVENTION, PREVALENCE AND CHARACTERISTICS OF SEXUAL VIOLENCE, STALKING, AND INTIMATE PARTNER VIOLENCE VICTIMIZATION 5 (2014), <http://www.cdc.gov/mmwr/preview/mmwrhtml/ss6308a1.htm> [<http://perma.cc/36Q3-GX9X>] (“38.2% of non-Hispanic black women experienced sexual violence other than rape during their lifetimes.”).

115. See *Nelson v. Corr. Med. Servs.*, 583 F.3d 522, 524–25 (8th Cir. 2009) (en banc) (affirming denial of summary judgment to a correctional officer accused of violating an inmate’s Eighth Amendment rights by requiring the inmate to be shackled during childbirth); Elizabeth Alexander, *Unshackling Shawanna: The Battle Over Chaining Women Prisoners During Labor and Delivery*, 32 U. ARK. LITTLE ROCK L. REV. 435, 446 (2010) (discussing the Eighth Circuit analysis used to determine if shackling an inmate with a serious medical condition, such as pregnancy, violates constitutional rights); Priscilla A. Ocen, *Punishing Pregnancy: Race, Incarceration, and the Shackling of Pregnant Prisoners*, 100 CALIF. L. REV. 1239, 1241–42 (2012) (recounting the experience of an inmate forced to remain in shackles during a cesarean delivery).

116. Michele Bratcher Goodwin, *Precarious Moorings: Tying Fetal Drug Law Policy to Social Profiling*, 42 RUTGERS L.J. 659, 666 (2011); see also Lynn Paltrow, *South Carolina First in the Nation for Arresting African-American Pregnant Women - Last in the Nation for Funding Drug and Alcohol Treatment*, NAT’L ADVOCATES FOR PREGNANT WOMEN (Jan. 8, 2003), <http://advocatesforpregnantwomen.org/issues/briefingpaper.htm> [<http://perma.cc/T6PL-Y224>] (commenting on the need for drug treatment programs as an alternative to the incarceration of pregnant women).

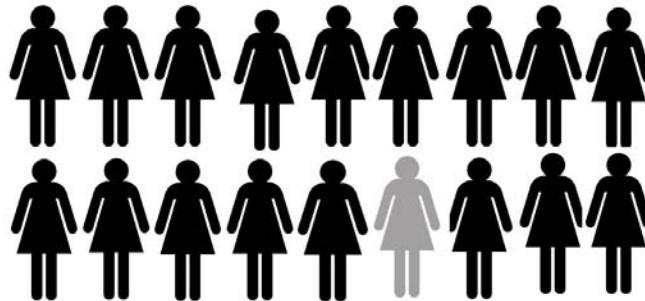
117. See, e.g., Michele Goodwin, *Fetal Protection Laws: Moral Panic and the New Constitutional Battlefield*, 102 CALIF. L. REV. 781, 783 (2014) (examining the constitutionality of prosecuting women for smoking tobacco during pregnancy).

118. GOFFMAN, *supra* note 22, at 223.

119. See Melissa Luck, *Born Behind Bars: Inmates Raising Children in Prison*, KXLY (Sept. 9, 2011, 5:25 PM), <http://www.kxly.com/news/Born-Behind-Bars-Inmates-Raising-Children-in-Prison/-/101270/682766/-/115bpxz/-/index.html> [<http://perma.cc/3HVK-P69Q>] (“Right now, at Washington’s largest corrections center for women, 871 inmates are serving their sentences. Among them are 8 babies being raised right in the middle of it all.”); Paula Nelson, *Raised Behind Bars*, BOS. GLOBE (Dec. 14, 2012), http://www.boston.com/bigpicture/2012/12/raised_behind_bars.html [<http://perma.cc/32U3-BXV8>] (noting the international institutionalization of children with their mothers); Suzanne Smalley, *Should Female Inmates Raise Their Babies in Prison?*, NEWSWEEK (May 13, 2009, 8:00 PM), <http://www.newsweek.com/should-female-inmates-raise-their-babies-prison-80247> [<http://perma.cc/F8H6-6AE2>] (reviewing the dire conditions of U.S. prisons).

racial disparities in women's mass incarceration. However, for Black women, 1 in 18 will experience incarceration in her lifetime.¹²⁰

Figure 2: One-in-Eighteen Black Women Will Be Incarcerated in Her Lifetime



A. *An Empirical Account: The Scale and Scope of Women's Mass Incarceration*

To better comprehend the scale and scope of U.S. incarceration, consider that it incarcerates more women than any other country in the world.¹²¹ To place this in context, the U.S. jails more women than Russia, China, Thailand, and India combined.¹²² Nearly a third of the world's women inmates are incarcerated in the United States.¹²³

Predictably, in the United States, mass incarceration of women suffers from similar features of male criminal institutionalization, namely race and class disparities. One in 118 white women stands a likelihood of imprisonment in her lifetime.¹²⁴ However, Latinas can expect that within their demographic, 1 in 45 will be imprisoned at some point in her lifetime;¹²⁵ for

120. THOMAS P. BONCZAR, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, PREVALENCE OF IMPRISONMENT IN THE U.S. POPULATION, 1974-2001, at 8 (2003).

121. ROY WALMSLEY, INT'L CTR. FOR PRISON STUDIES, WORLD FEMALE IMPRISONMENT LIST 1 (2d ed. 2013).

122. *Id.*

123. *Id.*

124. BONCZAR, *supra* note 120, at 8 fig.5.

125. *Id.*

African-American women the numbers are worse: 1 in 18 will likely experience incarceration.¹²⁶

These stark figures frame the raw numbers of mass incarceration, but do little to explain and account for its broader social implications, which extend to children, family, and communities. Much of the nation's current incarcerated population, including women, are drug offenders—many of them first-time offenders—caught in the powerful, punitive grip of the war on drugs policy.¹²⁷ Significantly, what accounts for the 800% increase in the rate of female incarceration over the past three decades is drug offenses.¹²⁸ Importantly, women's drug use has not increased in the last thirty years—only their rate of incarceration.¹²⁹ In fact, the proportion of incarcerated women who are in prison for drug offenses now surpasses that of men.¹³⁰ At the state level, 25% of women prisoners were serving time for drug offenses in 2012 compared to 15% of male prisoners.¹³¹

Women suffer the collateral damage of federal and state drug war policy; they and their children are the drug war's casualties.¹³² According to the Women's Prison Association, “[o]ver 2.5 million women were arrested in 2008.”¹³³ This accounted for nearly a quarter of arrests that year and nearly a 12% increase from ten years prior.¹³⁴ To compare the increase in women's incarceration, consider that the “female prison population grew by 832% from 1977 to 2007”; male prison incarceration grew by “416% during the same time period.”¹³⁵ Equally disproportionate during that period were women's arrests for drug violations: up 19% compared to 10% for men.¹³⁶

Further disaggregation of this data reveals significant racial disparities. For example, the U.S. Department of Justice reports that the rate of imprisonment for Black women is 113 per 100,000, more than twice that of white females (51 per 100,000).¹³⁷ Even more troubling are the new trends

126. *Id.*

127. See QUICK FACTS 2009, *supra* note 32 (listing facts about the rate of incarceration and noting that “[i]n the ten-year period from 1999 to 2008, arrests of women for drug violations increased 19%”).

128. *Id.*

129. See 2 LLOYD D. JOHNSTON ET AL., MONITORING THE FUTURE: NATIONAL SURVEY RESULTS ON DRUG USE 1975–2014, COLLEGE STUDENTS & ADULTS AGES 19–55, at 176 (2015) (showing the percentage of females between ages nineteen and twenty-eight who have used any illicit drug is relatively similar in 2014 compared with the late 1980s).

130. CARSON, *supra* note 12, at 15 tbl.13.

131. *Id.*

132. Goldfarb, *supra* note 30, at 295–96.

133. QUICK FACTS 2009, *supra* note 32.

134. *Id.*

135. *Id.*

136. *Id.*

137. CARSON, *supra* note 12, at 1.

in mass incarceration among young women. Black women caught in the last gasps of teenage life are almost five times more likely to be imprisoned than their white counterparts: 33 inmates per 100,000 versus 7 inmates per 100,000.¹³⁸ And despite comprising roughly 6% of the U.S. population, Black women make up 22% of the prisoner population in the United States, and Latinas are 17% of the prison population.¹³⁹ At every phase within their life span, Black women’s incarceration dramatically outpaces that of white and Latina women, as demonstrated in the chart below. Sadly, federal data-keeping neglects to further disentangle certain racial categories (as seen below), lumping ethnic populations such as Native American women with Asians and Pacific Islanders.

Table 1: Imprisonment Rate of Sentenced State and Federal Prisoners per 100,000 U.S. Residents by Age and Race December 31, 2013¹⁴⁰

Age	Total Female	White	Black	Latina	Other*
Total	65	51	113	66	90
18-19	14	7	33	17	24
20-24	95	73	154	100	131
25-29	168	140	260	173	232
30-34	180	156	277	169	235
35-39	151	133	240	133	178
40-44	131	113	224	107	144
45-49	112	90	202	99	135
50-54	70	54	128	72	94
55-59	36	26	72	44	52
60-64	19	14	34	25	27
65 or older	5	4	7	8	8

Despite the power of these statistics to highlight women’s incarceration, missing are narratives that help us to understand who these women are, why they are behind bars, who benefits from their incarceration, and who is harmed. Missing is an account that informs scholars, policymakers, and an

138. *Id.* at 8.

139. *Id.* at 9 tbl.8.

140. CARSON, *supra* note 12, at 9 tbl.8 (noting that the “other” and “total female” categories “include[] American Indians, Alaska Natives, Asians, Native Hawaiians, Pacific Islanders, persons of two or more races, or additional racial categories in the reporting information system”).

interested lay public about why women's incarceration rate outpaces that of men—even if the raw numbers are much lower.

In *The Eternal Criminal Record*, Professor James B. Jacobs argues that “[o]ne reason that the United States has such an immense population of persons with criminal records is the overuse of criminal law.”¹⁴¹ He lists drug offenses as one such area, where in 2012 alone, 1,552,432 arrests were made for drug offenses.¹⁴² Of the drug arrests, Jacobs casts particular attention on the 42.4% involving marijuana possession.¹⁴³ Jacobs further emphasizes this point, explaining that in the past few decades, “millions of people have been convicted of selling and possessing illicit mood and mind-altering drugs, especially marijuana.”¹⁴⁴ Jacobs urges that we imagine if the possession of cannabis were not illegal or criminal; in such a scenario, “all those people . . . would not have a criminal record.”¹⁴⁵ Jacobs does not unpack how such laws and criminal policing particularly impact women. However, federal data gives some indication. Nearly 60% of the “most serious offense[s]” committed by “women in federal prisons and 25.1% of women in state prisons [are] violations of drug laws.”¹⁴⁶

A considerable percentage of women arrested, convicted, and serving prison sentences suffer either from drug addiction or from the causes of their addiction, which motivated the crimes that ultimately resulted in their arrests.¹⁴⁷ For example, without further detail in its *Prisoners Report*, the Bureau of Justice Statistics calculates that nearly 10% of women's prison sentences relate to “commercialized vice, morals, and decency offenses” and liquor-law violations.¹⁴⁸ Vice crimes, along with petty property thefts, fraud (writing “bad checks”), and stealing cars, account for over a third of women's prison sentences.¹⁴⁹ Importantly, these crimes often relate to and mask drug addiction. Unlike their male counterparts, where over half serve time for violent offenses, two-thirds of women's offenses were nonviolent. Among these women, incredibly high percentages are mothers, especially women serving time for drug-related offenses.

141. JACOBS, *supra* note 32, at 94.

142. *Id.*

143. *Id.* at 94–95.

144. *Id.* at 95.

145. *Id.*

146. *Women & The Drug War*, DRUGWARFACTS.ORG, <http://www.drugwarfacts.org/cms/Women#sthash.0Rmwnfob.dpbs> [<http://perma.cc/3CFE-3MGK>] (citing *Federal Criminal Case Processing Statistics*, BUREAU JUST. STAT., <http://www.bjs.gov/fjsrc/index.cfm> [<http://perma.cc/2LJN-2PE8>]); E. ANN CARSON & WILLIAM J. SABOL, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, PRISONERS IN 2011, at 1, 9 tbl.9 (2012).

147. NATASHA A. FROST ET AL., INST. ON WOMEN & CRIMINAL JUSTICE, *HARD HIT: THE GROWTH IN THE IMPRISONMENT OF WOMEN, 1977–2004*, at 25 fig.15 (2006).

148. CARSON & SABOL, *supra* note 146, at 9 tbl.9.

149. *Id.*

Moreover, while the Bureau of Justice Statistics clarifies some racial disparities and highlights room for more research regarding others, it does not include women caught within the revolving door of criminal justice—out on probation or parole, living in a halfway house, suspended in the limbo of confinement before or after adjudication, or in a court-ordered rehabilitation program. Nor does it offer a better sense about motherhood and incarceration.

B. Motherhood and the Criminal Justice System

The problem of mass incarceration is also the problem of parents behind bars and children suffering the loss of the support and relationships with their mothers and fathers. Indeed, the rate of parental incarceration raises important public policy concerns, particularly as a third of children who have parents in prison will reach adulthood while that parent is behind bars.¹⁵⁰ Between the early 1990s and 2007, mothers and fathers detained in state and federal prisons increased by 79%.¹⁵¹ The number and rate of children whose parents are incarcerated increased too.¹⁵² From 1991 to 2007, the number of children whose parents are incarcerated nearly doubled from 860,300 to 1,427,500.¹⁵³ And while the number of incarcerated fathers increased by 77%, it more than doubled with mothers—up by 131%.¹⁵⁴ To further disentangle this data, this subpart analyzes what accounts for this and what the mothers were convicted for.

According to federal research data published in 2008, 63% of women held in state prison for drug-related offenses report being a mother; equally, more than half of women in federal prison for drug-related crimes acknowledged being mothers.¹⁵⁵ Thus, drug offenses not only significantly account for women's incarceration, but also drug policies, and particularly the “drug war,” directly impact the lives of children in the United States. This latter point deserves further explanation, because illicit drug use can often be perceived as a “bad choice” made by “bad mothers” and thus the convictions and punishment of these women are not only justified through this rationalization, but also are deemed necessary.

By default, illicit drug users are perceived as uncaring, selfish mothers who risk not only their own health, but also the well-being of their families. Frequently and erroneously, policy makers and the general public perceive female drug abusers as Black and Latina, despite the fact that white and

150. GLAZE & MARUSCHAK, *supra* note 36, at 3.

151. *Id.* at 1.

152. *Id.*

153. *Id.* at 2 tbl.1.

154. *Id.* at 2.

155. *Id.* at 4.

African-American women use illicit drugs at about the same rate (white women a scant higher).¹⁵⁶ However, African-American women are ten times more likely to be reported to Child Protective Services (arguably another branch of law enforcement) than white women.¹⁵⁷ Equally, when accounting for legal but potentially addicting drugs, such as alcohol and prescription medications, white women's use outpaces that of their African-American counterparts.¹⁵⁸ However, illicit drugs often carry the stigma and shame of poverty, dereliction, irresponsibility, disorderliness, and violence. Arguably, these perceptions significantly shaped federal drug policies that erroneously designated crystallized cocaine as substantially distinct from powder cocaine (the former viewed as dangerous and the latter recreational).¹⁵⁹

The trope of the bad mother perversely extends to the criminal justice system. In part, this pattern continues due to erroneous distinctions between illicit drugs and prescription medications. A longitudinal study conducted by Dr. Allen A. Mitchell, Director of the Slone Epidemiology Center at Boston University, debunks misperceptions about drug use, particularly during

156. Kellie E. M. Barr et al., *Race, Class, and Gender Differences in Substance Abuse: Evidence of Middle Class/Underclass Polarization Among Black Males*, 40 SOC. PROBS. 314, 318 tbl.2 (1993) (showing little statistical variation in illicit drug use for African-American and white women); cf. Sean Esteban McCabe et al., *Race/Ethnicity and Gender Differences in Drug Use and Abuse Among College Students*, 6 J. ETHNICITY SUBSTANCE ABUSE, no. 2, 2008, at 75, 82 tbl.1 (showing higher rates of illicit drug use among white undergraduate women as compared with African-American undergraduate women).

157. See Ira J. Chasnoff et al., *The Prevalence of Illicit-Drug or Alcohol Use During Pregnancy and Discrepancies in Mandatory Reporting in Pinellas County, Florida*, 322 NEW ENG. J. MED. 1202, 1204 (1990) (“[A] black woman was 9.6 times more likely than a white woman to be reported for substance abuse during pregnancy.”).

158. See NAT'L INST. ON DRUG ABUSE, U.S. DEP'T OF HEALTH & HUMAN SERVS., *DRUG ABUSE AMONG RACIAL/ETHNIC MINORITIES* 43 (rev. ed. 2003) (“Estimates for lifetime history of illegal drug use indicate that use is highest among White women (51.2 percent), followed by African-American women (36.0 percent)”); Denise Kandel et al., *Prevalence and Demographic Correlates of Symptoms of Last Year Dependence on Alcohol, Nicotine, Marijuana and Cocaine in the U.S. Population*, 44 DRUG & ALCOHOL DEPENDENCE 11, 24 (1997) (noting that when accounting for those who smoke cigarettes, “blacks and Hispanics are significantly less likely than whites to be dependent; however, among those who used cocaine/crack within the last year, blacks are significantly more likely than any other group to be dependent”); Stephanie J. Ventura et al., *Trends and Variations in Smoking During Pregnancy and Low Birth Weight: Evidence from the Birth Certificate, 1990–2000*, 111 PEDIATRICS 1176, 1177 (2003) (“Prenatal smoking rates varied substantially among racial and Hispanic-origin populations . . . ranging in 2000 from . . . 9.2% of non-Hispanic black women, [and] 15.6% of non-Hispanic white women.”); John M. Wallace, Jr., *The Social Ecology of Addiction: Race, Risk, and Resilience*, 103 PEDIATRICS 1122, 1123 (1999) (“Among adults, recent national data indicate that annual and current alcohol prevalences generally are highest among whites.”).

159. See Elizabeth Tison, *Amending the Sentencing Guidelines for Cocaine Offenses: The 100-to-1 Ratio Is Not As “Cracked” Up As Some Suggest*, 27 S. ILL. U. L.J. 413, 416 (2003) (noting how the federal Anti-Drug Abuse Act of 1986 established a “100-to-1 quantity ratio between the two forms of cocaine”).

pregnancy.¹⁶⁰ The study revealed that educated white women were more likely to rely on prescription medications during pregnancy, and their reliance increased by age.¹⁶¹ Importantly, the prescription drugs most likely to be relied upon during pregnancy include powerful narcotics such as Demerol, Tylenol with codeine, Xanax, Oxycontin, and Ritalin.¹⁶² My point here is to suggest that drug policies and trends in mass incarceration disparately and erroneously police women and mothers by stereotype and bias.

More than two-thirds of women in prison are mothers,¹⁶³ and the collateral impacts of their incarceration reach beyond the criminal justice system into the lives of their children. For example, these women are more likely to be the primary caretakers of their children—three times more likely than fathers (77%).¹⁶⁴ A relatively small percentage of incarcerated mothers had any support in caring for their kids prior to incarceration, unlike dads who overwhelmingly acknowledge that mothers were the primary caregivers to their children.¹⁶⁵ According to research conducted by the Bureau of Justice Statistics:

Mothers were more likely than fathers to report living with at least one child. More than half of mothers held in state prison reported living with at least one of their children in the month before arrest, compared to 36% of fathers. More than 6 in 10 mothers reported living with their children just prior to incarceration or at either time, compared to less than half of fathers.¹⁶⁶

For example, the collateral costs of the drug war and mass incarceration include burdens on parental rights. When lawmakers enacted the Adoption and Safe Families Act of 1997, which requires states to file petitions to terminate parental rights on behalf of any child who has been in foster care for fifteen of the most recent twenty-two months, they did not provide any special provisions for incarceration.¹⁶⁷ Importantly, the typical amount of time served for a drug-related offense far exceeds fifteen months,¹⁶⁸ meaning

160. Allen A. Mitchell et al., *Medication Use During Pregnancy, with Particular Focus on Prescription Drugs: 1976-2008*, 205 AM. J. OBSTETRICS & GYNECOLOGY 51.e1, 51.e1 (2011).

161. *Id.* at 51.e4–e5.

162. *Abusing Prescription Drugs During Pregnancy*, AM. PREGNANCY ASS'N, <http://www.americanpregnancy.org/pregnancyhealth/abusingprescriptiondrugs.html> [<http://perma.cc/JVV7-LMAZ>].

163. FROST ET AL., *supra* note 147, at 26; QUICK FACTS 2009, *supra* note 32.

164. QUICK FACTS 2009, *supra* note 32.

165. FROST ET AL., *supra* note 147, at 22.

166. GLAZE & MARUSCHAK, *supra* note 36, at 4.

167. Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115, 2118 (codified as amended at 42 U.S.C.A. § 675(5)(E) (West 2015)).

168. See U.S. SENTENCING COMM'N, QUICK FACTS: MANDATORY MINIMUM PENALTIES (2011), http://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Quick_Facts_Mandatory_Minimum_Penalties.pdf [<http://perma.cc/4D8X-P6G7>] (reporting that the

that after being convicted of a drug-related offense, most women risk the permanent loss of parental rights.

No group is more impacted by this than African-American children. Black children are more than seven times more likely to experience a parent in prison compared to white children.¹⁶⁹ For Latino children, they are more than twice as likely as white children to experience a parent's incarceration.¹⁷⁰ And at least when interviewed, incarcerated women claim more children than men.¹⁷¹ Often, these women are the primary caregivers prior to entering the criminal justice system. Furthermore, the psychological impacts of parental incarceration can be quite severe. Professor Kristin Turney's research argues that the impacts of incarceration on children are worse than experiencing a parent's death or suffering through divorce.¹⁷²

The growing impact of mothers behind bars now results in babies born behind bars and children incarcerated alongside their mothers as a policy solution, highlighting mass incarceration's deeply contentious and fraught impacts. In their report *Mothers, Infants, and Imprisonment*, the Women's Prison Association's Institute on Women and Criminal Justice emphasizes that because "the number of women in prison has skyrocketed over the past 30 years, states have had to consider what it means to lock up women, many of whom are pregnant or parenting."¹⁷³ In most cases, children of incarcerated mothers, whether their births occur behind bars or not, move into various forms of "other" care, which may include relatives, foster homes, shelters, group homes, and other arrangements.

For the babies and children who have the benefit of residing alongside their mothers in prison nursery programs, the outcomes for both mothers and their babies show significant promise: recidivism rates are lower, and so far, "children show no adverse affects" of their lives behind bars.¹⁷⁴ Nevertheless, these options are fraught too. For example, the conditions of prisons and jails are sometimes horrific. As one reporter explains, the conditions of

"average sentence for drug offenders subject to the mandatory minimum penalty was 132 months" and was sixty-one months for offenders subject to relief from mandatory minimum sentences).

169. GLAZE & MARUSCHAK, *supra* note 32, at 2.

170. *Id.*

171. *Id.*

172. Kristin Turney, *Stress Proliferation Across Generations? Examining the Relationship Between Parental Incarceration and Childhood Health*, 55 J. HEALTH & SOC. BEHAV. 302, 311-14 (2014).

173. CHANDRA KRING VILLANUEVA, INST. ON WOMEN & CRIMINAL JUSTICE, WOMEN'S PRISON ASSOCIATION, *MOTHERS, INFANTS AND IMPRISONMENT: A NATIONAL LOOK AT PRISON NURSERIES AND COMMUNITY-BASED ALTERNATIVES 4* (Sarah B. From & Georgia Lerner eds., 2009).

174. *Id.* at 5 ("By keeping mothers and infants together, these programs prevent foster care placement and allow for the formation of maternal/child bonds during a critical period of infant development.").

U.S. prisons where nurseries are found are so dire that “you walk through a metal detector and a locked steel door to a courtyard surrounded by razor wire and two 20-foot fences.”¹⁷⁵

Male-centered accounts about mass incarceration fail to paint a more vivid and illuminating tapestry about children forced into foster care due to their mother’s incarceration¹⁷⁶ or the dramatic increase in the number of women incarcerated for drug-related offenses.¹⁷⁷ Pregnant women who are nonviolent, low-level drug addicts are subjected to similar penalties as black market drug traffickers with ties to cartels, large-scale organizations, and gangs.

III. Women and the Criminal Justice System: Their Eternal Record

In this Part, I briefly analyze the extra-legal and collateral consequences of policing women, including felony disenfranchisement, loss of housing, and the chilling impacts on their children. It unpacks what Professor James Jacobs terms “the eternal criminal record” and teases out findings in his compelling new book of the same name.¹⁷⁸ Unlike Goffman’s *On The Run*, Jacobs’ book is not an ethnography. He does not take to the trenches in New York to study crime on the ground and amongst those most policed. Nor does he specifically give attention to women.

However, Jacobs uncovers critical blind spots in criminal justice, specifically related to the criminal record. Some of these issues are featured in Goffman’s descriptions about the challenges of 6th Street Boys’ attempts to obtain drivers licenses and jobs. Yet, Jacobs offers much more by way of content and analysis about the general impacts of being labeled a criminal in American society. Part III draws from this and places women at the center of that analysis.

Women’s invisibility to lawmakers, activists, and scholars studying the drug war may account for their misreading of the drug war as a problem in society for and about men generally and Black men especially. This misreading of the drug war and who it impacts neglects the unique ways in which women and children endure mass incarceration and the drug war

175. Smalley, *supra* note 119.

176. See PARENTS IN PRISON, THE SENTENCING PROJECT 1–3 (2012) (showing that children with incarcerated parents are at a higher risk for particularly damaging social problems and that federal policies pose barriers that make it difficult for incarcerated parents to provide for their children’s needs); Dorothy Roberts, *Prison, Foster Care, and the Systemic Punishment of Black Mothers*, 59 UCLA L. REV. 1474, 1494 (2012) (depicting the “devaluation of incarcerated mothers” through the immediate placement of a pregnant mother’s newborn in foster care).

177. Tammerlin Drummond, *Mothers in Prison*, TIME (Oct. 29, 2000), <http://www.time.com/time/magazine/article/0,9171,58996,00.html> [<http://perma.cc/YPA4-TDN9>] (“Florida is attempting to address a disturbing national phenomenon: the explosion in the number of mothers in prison.”).

178. See generally JACOBS, *supra* note 37 (analyzing what it means for a person to have an “eternal criminal record”).

especially. Rendering women invisible disserves lawmaking because it ignores the potentially harmful impacts of some policies, obfuscating how to better shape law to address poverty, drug abuse, and other social concerns. Misreading women and mass incarceration also ignores the long-term impact and consequences of a woman's criminal record.

According to James Jacobs, “[t]he criminal record is a kind of negative curriculum vitae or resumé.”¹⁷⁹ It contains only “disreputable” information, and the longer the “rap sheet,” the more a woman will endure the stigma of a career criminal.¹⁸⁰ The longer a woman's criminal record, the more difficult for her to plea bargain within the criminal justice system or to persuade judges of her contrition. It likely also impacts relationships with defense attorneys (the longer the criminal record, the more pressure to plea bargain even when a woman may be innocent of the charges alleged). Jacobs warns that what was originally a bookkeeping mechanism, the criminal record, has morphed to “drive decision making at every step of the criminal justice process.”¹⁸¹

As a practical matter, the criminal record also impacts every step and opportunity that a woman may seek outside of the criminal justice system, rendering civilian life a different form of incarceration. Criminal records are traded like any commodity, commercially sold and acquired for tenant screening, employment, eligibility to serve as a volunteer, or even to become a student.¹⁸² The criminal record now creates what Jacobs refers to as an enhanced pathway into the public domain.¹⁸³ These enhanced pathways no longer serve the criminal justice system alone, but now link to the commercialized reach of private information vendors.¹⁸⁴

Criminal record vendors promote and sell criminal background checks to anyone willing to pay a fee, including for non-criminal justice purposes. These policy choices coincided with drug war policies of the 1970s.¹⁸⁵ According to Jacobs, Congress chipped away the FBI's policy that prevented criminal records from being shared with non-law enforcement agencies, including “certain industries, businesses, and voluntary associations.”¹⁸⁶ Congress has now extended the privilege of obtaining criminal background

179. *Id.* at 2.

180. *Id.*

181. *Id.*

182. *Id.* at 70.

183. *See id.* at 10 (explaining that court records' “enhanced accessibility has put into the public domain information that heretofore had existed in practical obscurity”).

184. *Id.* at 70.

185. *See id.* at xiii (explaining “how the expansion of criminal law and the intensification of law enforcement since the 1970s have resulted in the proliferation of criminal intelligence and investigative databases”).

186. *Id.* at 43.

information from the FBI to the securities industry, banks, child and eldercare organizations, housing authorities, and many more.¹⁸⁷ Even if obtaining some criminal background information could be justified for some industries, what has been less thought out is the use of this information by commercial enterprises that “download court and other publicly accessible criminal record information to their own proprietary databases,”¹⁸⁸ essentially privatizing public information, claiming the same types of rights to this information as government.

Thus, the very pathways to a restored and rehabilitated life may be cut off to women and men when they leave government incarceration because this seemingly private (and certainly personal) record not only becomes public but also follows them. And the impacts are corrosive. Further, for those who fall back into the clutches of criminal conduct, such as drug use, they are “subject to heavy sentence enhancements” because “the defendant’s prior record has a significant impact on the sentence.”¹⁸⁹ Jacobs argues that these policies are deliberate but unexamined.

Consider the Housing Opportunity Program Extension Act of 1996.¹⁹⁰ This law provides that the housing authority may request criminal conviction information as a screening device for housing applicants to filter out those who have been convicted.¹⁹¹ Even when low-income women stay clear of law enforcement, the convictions of the men in their lives also become their problems, because “[u]nder HUD’s one-strike policy, any drug offense may lead to eviction from public housing, even offenses of which the tenants themselves are unaware and even if the offenses were committed off-site.”¹⁹² This policy came under significant scrutiny in the wake of Shelly Anderson’s eviction from low-income housing.¹⁹³ Anderson, a mother of three only weeks away from a kidney transplant, was found to be in violation of the one-strike policy because her boyfriend pleaded guilty to cocaine possession charges and in turn Anderson’s house was searched.¹⁹⁴ The search did not turn up drugs, but it surfaced paraphernalia inside her mother’s purse.¹⁹⁵ Despite no drug use of her own, Anderson now has a record within the

187. *Id.*

188. *Id.* at 10–11.

189. *Id.* at 3.

190. Housing Opportunity Program Extension Act of 1996, Pub. L. No. 104-120, 110 Stat. 834 (codified as amended in scattered sections of 12 U.S.C. and 42 U.S.C.).

191. 42 U.S.C. § 1437d(q)(1)(A) (2012).

192. Arin Greenwood, ‘One Strike’ Public Housing Policy Hits Virginia Woman Who Needs Kidney Transplant, HUFFINGTON POST (Dec. 22, 2011, 11:45 AM), http://www.huffingtonpost.com/2011/12/22/one-strike-policy-housing-alexandria-virginia-kidney-transplant_n_1151639.html [<http://perma.cc/W9BD-X4CL>].

193. *Id.*

194. *Id.*

195. *Id.*

government's housing system. And for many women, this is a powerful form of disenfranchisement, especially as primary caretakers.

Housing aside, the criminal record now serves as a gatekeeping function for many other purposes. In 1998, Congress passed a law that bars any student with a drug conviction from obtaining federal loans to fund her education.¹⁹⁶ Prospective students most impacted by this law will not be wealthy young adults from educated families, but low-income persons. Journalist Clarence Page refers to such laws as creating a “[w]ar on our children.”¹⁹⁷ However, this too may be a war on mothers who seek to return to school as a new pathway in their lives, because such policies cut off the pathway.

For lawmakers, activists, and scholars who care about mass incarceration, education reform, safe housing, and related social issues, urging policy solutions that filter out women and concentrate primarily on the lives of men ignores women's interactions within the broader criminal justice system. In such circumstances, not only are women invisible, but their sometimes abusive interactions with police who exploit their drug dependence, selective prosecutions of women for drug offenses—particularly pregnant women—and long-term problems associated with their criminal records are also imperceptible.

Conclusion

There are many reasons one could choose not to study the lives of low-income or working-class women and girls impacted by mass incarceration. However, dismissing the value of that research based on the belief that prior studies exhaust whatever there was to say about that population is shortsighted. In *On The Run*, Alice Goffman passed aside observing the lives of women living in the trenches of poverty and police violence because she believed it was covered by less than a handful of books on welfare. That betrays an understanding about the complexity of Black women's lives in criminal and civil justice systems. In describing why she abandons researching about women and girls on 6th Street, Goffman explains that she had “learned a lot about . . . women struggling on welfare,” referencing three books and doubting that she “could add to what these books had already said.”¹⁹⁸

196. 20 U.S.C. § 1091(r)(1) (2012).

197. Clarence Page, *College Loans Are Casualties in Drug War*, CHI. TRIB. (Apr. 29, 2001), http://articles.chicagotribune.com/2001-04-29/news/0104290396_1_student-loans-wording-applicants [<http://perma.cc/3Z76-FATT>].

198. GOFFMAN, *supra* note 22, at 223.

This Review Essay considers where Goffman left off and fills in critical gaps by exploring James Jacobs' important new work, *The Eternal Criminal Record*. By wedding the stories of mass incarceration, the drug war, and the collateral impacts of the criminal record, a more nuanced understanding of women in the criminal justice system emerges. Essentially, women are rendered visible.