

Getting Away with Murder: Recognizing and Combatting Justice-Frustrating Doctrines and Practices in the Criminal Justice System

Dushaun Thompson, College of Arts and Sciences 2024

PURM Research conducted under Penn Law Professor Paul H. Robinson

Research Goal

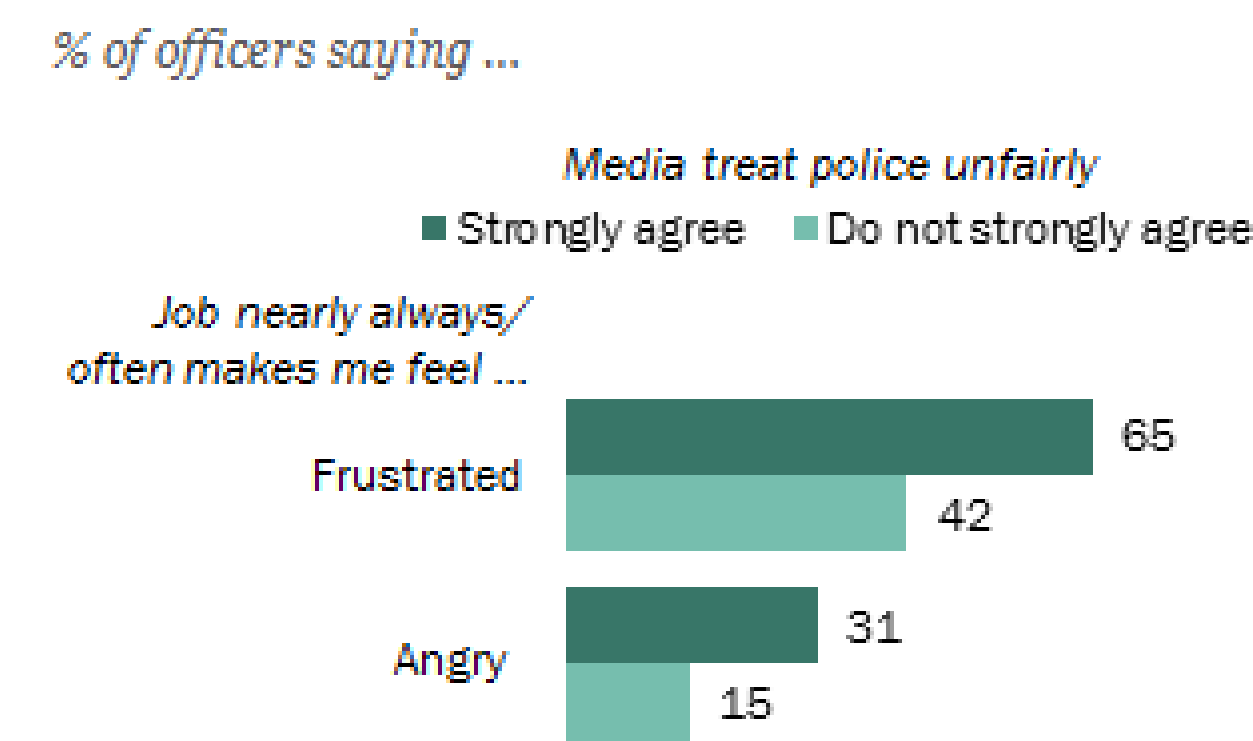
Our research examined the competing costs and benefits of several laws, doctrines, and guiding philosophies in the American criminal justice system that are justice-frustrating, meaning that they allow serious crimes to go unpunished and often unrecognized, whether inadvertently or by design. While much of academic literature has understandably focused on combatting causes of injustice, it is also necessary for a morally credible system of law to be able to control and prevent crime whenever possible. Wherever we recognized a justice-frustrating issue, we constructed a detailed reform proposal aimed at fixing the root cause of the issue. The following are a few examples of the problems researched and the solutions proposed.

Poor Community-Police Relations

The past decade— and especially the last few years— have proven arduous for the relationship between the police and the community that they serve and protect. Poor relations and a lack of effective communication have had direct and dire consequences on crime and crime control.

- Some officers have voluntarily practiced complete non-intervention to avoid public backlash. Studies have suggested this leads to spikes in violent crime and lower clearance rates.
- Citizens have grown cynical about the effectiveness of the police and the criminal justice system, evidenced by increased mistrust in police and a gradual decrease in crime reporting and crime clearance rates.

Among police, negative views of media are linked to feelings of frustration, anger on the job



Source: Survey of law enforcement officers conducted May 19-Aug. 14, 2016.

PEW RESEARCH CENTER



Proposal:

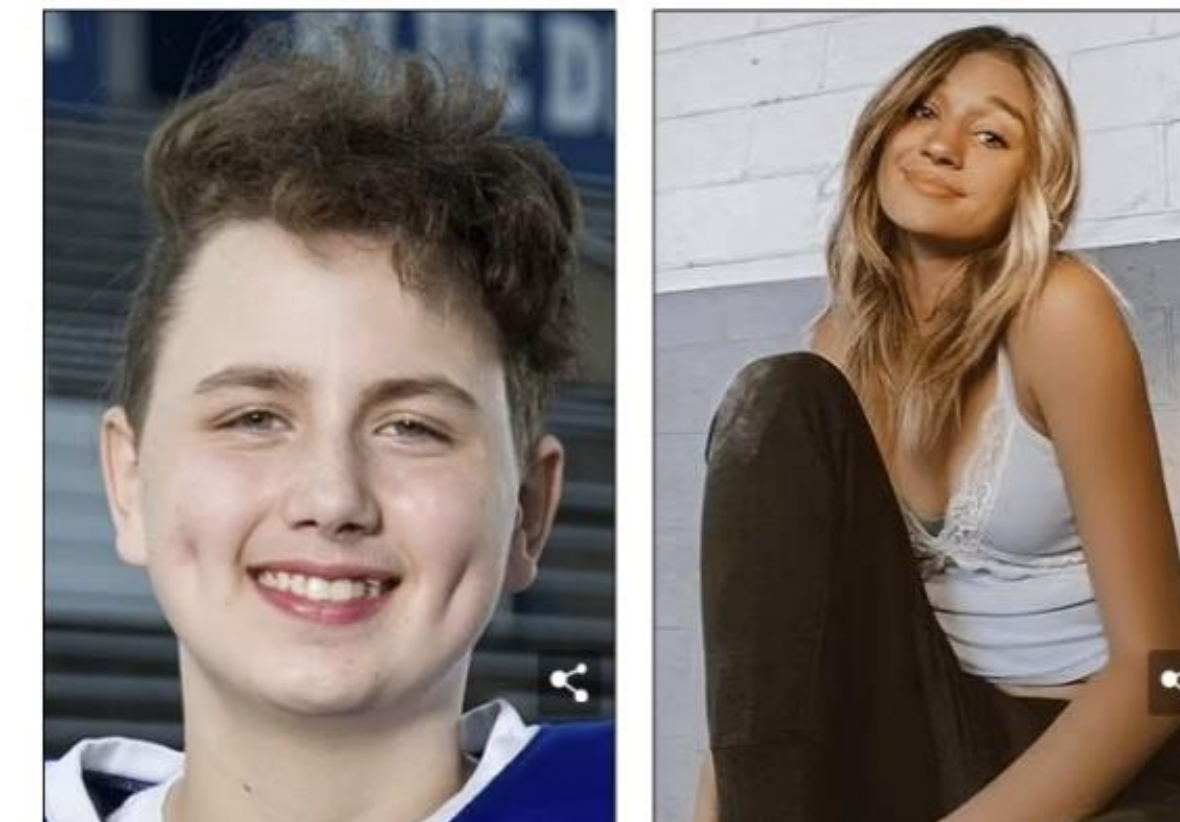
Civilian police oversight commissions have proven effective at improving communication, trust, and credibility between the police and the public. The ideal commission has four key functions:

- conduct accessible complaint intake
- review completed investigations of complaints generated by citizens
- hear appeals from citizens who are unsatisfied with the outcome of a complaint investigation.
- make recommendations to the police executive regarding remedying past incidents and improving conduct in the future.

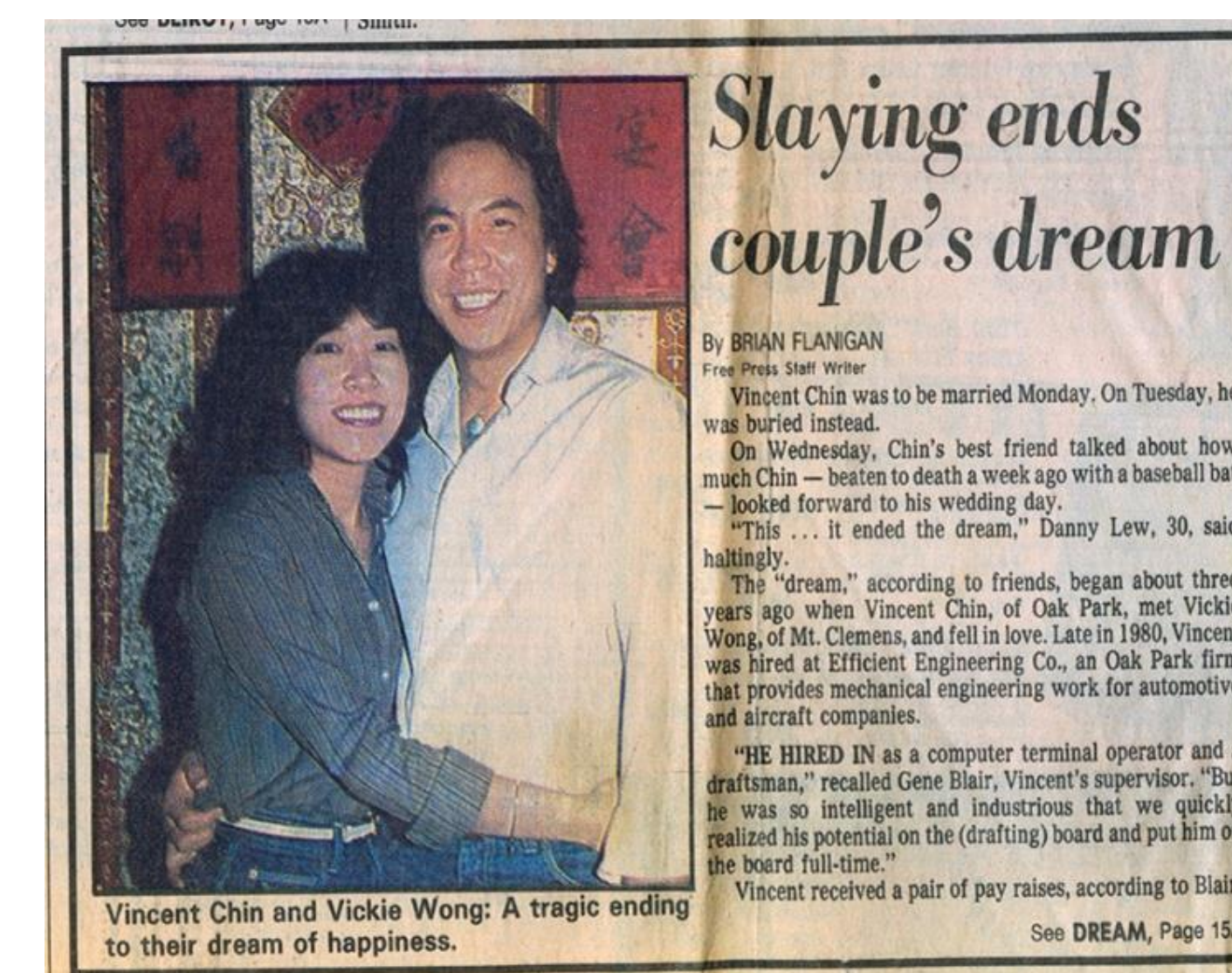
Unchecked Judicial Sentencing Discretion

Rule of law ought to reduce arbitrariness in deciding when and how to punish crime. At the same time, judges are responsible for providing a necessary human discretionary element to sentence determination that no guideline, no matter how comprehensive, could adequately provide. However, when judges are left unchecked in their sentencing discretion, gross leniency and disparity arise, resulting in massive failures of justice.

In 2021, 18-year-old Drew Clinton is convicted of criminal sexual assault of a 16-year-old girl, which carries a minimum sentence of four years in prison in Illinois. The judge, however, believes that Clinton is too young to serve a criminal sentence and allows him to walk free.



In 1982, Vincent Chin was racially harassed and subsequently beaten to death by two men. Despite the men accepting a guilty plea, the judge decides that prison time was too harsh of a punishment; instead, they received a \$3000 fine and probation.



Proposal:

Each state should adopt comprehensive sentencing guidelines, created by a state sentencing commission composed of qualified legal experts. These guidelines should try to account for certain individual factors that make cases unique. The guidelines should be presumptive but not mandatory; judges can deviate in extreme circumstances with a detailed written explanation and review from a multi-judge panel.

Witness Intimidation

Many crimes occur in broad daylight and in front of crowds of people, and yet police and prosecutors are unable to secure a conviction because of a growing epidemic of witness intimidation.

- Prosecutors routinely report witness intimidation in up to 80% of cases
- 36% of witness who testify receive direct threats.

Proposal:

Allowing witnesses to testify anonymously through pre-written, pre-recorded, or anonymous live recordings would reduce personal risk without compromising on the reliability of the evidence. The witness should be anonymous to all except the police, prosecution, and the judge.

Investigative Errors

Internal police procedures are often sources of failure in achieving justice. Perhaps the most infamous example of investigative errors occurred in the O.J. Simpson murder case, in which the investigators mishandled the evidence, contaminated the crime scene, failed to properly enter evidence into the chain of custody, and poorly stored evidence.



On a national scale, hundreds of thousands of rape evidence kits have never been tested. Similarly, thousands of unsolved homicide cases have evidence that has still never been tested.

Proposal:

An independent nation-wide body of experts, including criminologists, detectives, and forensic scientists, should be created to draft and continually update a set of best investigative practices. Using either private or federal funding, the organization would be able to provide grants to the departments in most dire need of financial assistance. By providing investigators a model to strive for, unintentional investigative errors can be greatly reduced and issues regarding lack of funding can be addressed.