

Let's Get Free: A Hip-Hop Theory of Justice by Paul Butler The New Press, 214 P. \$25.95**Publication Date:** February 2010**Volume:** 45-6**Author:** Dan Fiorito**Category:** Book Review

Mr. Butler opens his book recounting his prosecution of a prostitute in the District of Columbia Superior Court. He is anxiously awaiting his opportunity to rip the defendant apart on cross-examination while his mother watches from the gallery. The reader is then transported further along in Mr. Butler's career where he has progressed to a prosecutor in the Department of Justice's Public Integrity Section. While in the midst of preparing for a high-profile corruption trial, Mr. Butler, an African-American, is arrested for assault. He is subsequently tried for the crime and acquitted after much professional embarrassment. This personal experience serves as the trigger for his departure from the Department of Justice and helps shape his personal reassessment of the criminal justice system.

Let's Get Free serves as a blueprint that Butler believes if followed, can help reduce the rate of incarceration for non-violent offenders in this country while at the same time increasing public safety and protecting our personal freedoms. The reader is introduced early on to some alarming statistics. For example, the United States has 5% of the world's population and houses 25% of its prisoners. There are currently 2.3 million people in American prisons. In the United States, one prison or jail opens every week. He also provides analysis as to why minority populations are over-represented in the prison system and makes the argument that the "War on Drugs" has actually created a culture that makes us less safe.

Butler suggests that the high rate of incarceration in this country should be of concern because incarceration has a tipping point that once passed, will negatively impact everybody's safety. For example, Butler states that most individuals that go to prison are committed for non-violent offenses. While behind bars, the non-violent prisoners have an opportunity to learn how to become dangerous criminals. Upon release, their legitimate employment opportunities are limited and they are more likely to reoffend. Butler highlights this point with a study from the Department of Corrections which found that about one quarter of prisoners incarcerated for non-violent crimes are sentenced a second time after committing a violent offense. Butler explores many additional reasons why incarcerating non-violent offenders will actually lead to a more dangerous society. He then suggests that we in our capacity as citizens have the ability to transform a system that prefers incarceration to rehabilitation.

Butler, a nationally recognized expert in jury nullification, advocates that through the responsible application of nullification, jurors can curb the upward trend of incarceration. Jury nullification occurs when a jury believes that the government has proven its case beyond a reasonable doubt but votes to acquit because it believes the law is either unfair or unethical. The book provides an overview of the history of nullification and explains that the practice has generally been frowned upon by the courts. Butler suggests that nullification can be used strategically by jurors in order to promote justice. For example, in cases involving the possession or sale of small amounts of drugs, jurors, Butler believes, should consider voting not guilty. Butler is quick to defend nullification against charges that it is anti-democratic. If used responsibly, Butler believes nullification can serve as a tool to "free those people for whom prison will do no good."

Butler offers several criticisms of law enforcement techniques and suggests remedies and solutions to combat the abuses. For example, he believes that police are too dependent on informants when policing their communities. Informants by the nature of their position have incentives to fabricate evidence. The unintended consequences of “snitching” according to Butler are lackadaisical policing, police-sanctioned criminal activity, and the undermining of trust within a community. Butler suggests that we need to curb snitching practices and be more aware of our own interactions with police.

Butler’s opinions invite controversy with regard to the function of prosecutors in our justice system. For example, Butler makes the argument that no matter how progressive the prosecutor, their ultimate responsibility, punishing people, precludes them from reforming the prison system. He is firm in his position that prosecutors ultimately add to the problem of mass incarceration and regardless of their intentions, will end up collaborating with a system of injustice. While falling well short of calling prosecutors bad people, he unequivocally states that if you want to help reform the criminal justice system, you cannot do so as a prosecutor from the inside. While this may not come as news to seasoned criminal practitioners, Butler’s opinions can certainly be viewed as painting prosecutors in a negative light, notwithstanding his belief that he remains a “prosecutor at heart.”

In what is perhaps his most interesting opinion, Butler suggests that mainstream society should inform itself on the injustices that occur within our justice system through the prism of hip-hop culture and hip-hop music. Butler makes the argument that many hip-hop artists are modern day theorists on issues regarding crime, punishment, responsibility, excuse, and justification. Butler samples selections of hip-hop lyrics to show how the mass incarceration of African-American and Latino cultures has influenced more than a generation of artists. Through the narrative of hip-hop, Butler believes society can get a better understanding of the collateral damage mass incarceration has had on minority communities. Butler acknowledges that hip-hop has some shortcomings to overcome before it can become a mainstream political force. However, he does suggest that the institutional knowledge of crime and punishment found within hip-hop music should be examined as the debate over what to do about incarceration levels, particularly with respect to minority communities, continues.

In what appears to be a detour from the theme of his book, Butler examines several ways that developing technology may be introduced into the criminal justice process that will impact civil liberties, potentially for the benefit of the individual over the State. For example, he suggests that deceptive police interrogations may be replaced with brain scans that can operate as more of a neutral source in determining guilt. The underlying assumption is that these technologies have the potential to be accurate. Butler’s foray into this topic raises more questions than answers. He seems to include the material to remind social justice advocates that they need to immerse themselves in the advances to ensure our human rights and civil liberties remain intact if these technologies are in fact employed.

Butler concludes his book with some practical solutions as to how ordinary citizens can reduce the incarceration rate of non-violent offenders, some as simple as paying for high-risk students to finish school. Overall, Butler makes a strong argument that something needs to be done to reduce America’s dependence on the incarceration of non-violent offenders. While he suggests drug sentencing law reform and less aggressive policing as potential solutions, Butler focuses the majority of his thoughts on more grass-roots level ideas. Mr. Butler persuades the reader that the path to justice starts with their actions. Regardless of your politics, this book will increase your understanding of why there is a movement afoot

to reduce the amount of non-violent people incarcerated in prisons, and what options exist for the every day citizen to help transform the current system.

Dan Fiorito is a solo practitioner in Ballard who practices in the areas of criminal defense and plaintiff's personal injury. He is a WSAJ EAGLE member and serves on the Trial News Editorial Board.

Editor's note: Mr. Fiorito received a review copy of the book and no other compensation.