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ARTICLE

The collateral consequences of criminal legal association during jury selection

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Abstract

How does a potential juror's association with the criminal legal system matter during jury selection? Growing scholarship examines statutory exclusions of people with felony convictions, sometimes characterizing felon-juror exclusion as a collateral consequence of mass incarceration. Less research has considered whether court officials seek to exclude potential jurors based on lower-level forms of contact or perceived association. We draw on interviews with 103 lawyers and judges in a Northeastern state to examine how court officials think about juror bias in relation to criminal legal association beyond felon status. We find that court officials often seek to remove people perceived to be offenders with lower-level forms of system association *as well as* people perceived to be crime victims. These exclusionary efforts extend to also exclude perceived offenders' and victims' social networks. These practices are racialized and gendered, likely contributing to the systematic exclusion of marginalized racial/ethnic groups and women. This article expands the collateral consequences literature in two ways: first, by revealing how collateral consequences can be conceptualized not just in relation to people criminalized by the law but also in relation to those whom the law constructs as victims; and second, by underscoring how collateral consequences feed back into the system to reproduce its unequal administration.

INTRODUCTION

Growing scholarship on jury selection has examined the implications of statutory exclusions of people with felony convictions from serving on juries (Binnall, 2009, 2021; Kalt, 2003; Roberts, 2013; Wheelock, 2011). Meanwhile, a robust literature on the collateral consequences of the carceral state has examined how contact with the criminal legal system negatively impacts the well-being of criminalized people, their families, and their communities (Hagan & Dinovitzer, 1999; Kirk & Wakefield, 2018; Lerman & Weaver, 2014; Rose & Clear, 1998). Building from recent research that places these two literatures in conversation (e.g., Binnall 2019; Wheelock, 2011), this article examines whether and why court officials—judges, prosecutors, and defense attorneys—seek to exclude people

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from jury service who have direct and vicarious forms of criminal legal system association beyond a felony conviction. Whereas a small number of interview-based studies have examined how court officials think about juror bias in general (Olczak et al., 1991; Zalman & Tsoudis, 2005) and in relation to felony status in particular (Binnall, 2018a), less research has considered whether and how court officials think about juror bias in relation to potential jurors' broader criminal legal system associations.

In this article, we ask: How do judges and lawyers think about a potential juror's bias in relation to their association with the criminal legal system beyond felony status, and with what implications? We draw on in-depth, semi-structured interviews with 103 prosecutors, defense attorneys, and judges in a state trial court system in the Northeastern United States, where people with felony convictions are statutorily excluded from serving on juries for a period. Our interviews reveal that the exclusion of criminal legal system-associated individuals from juries extends beyond statutory felon-juror exclusion laws. When asked general questions about the jury selection process and what makes for an ideal juror, most of the court officials in our sample reported perceiving two kinds of criminal legal system association—alleged criminality *and* status as a crime victim—as potential forms of juror bias in certain court cases. The court officials in our study are concerned not just about those who have had direct contact with the criminal legal system but also about people who court officials think may be biased in favor of or against the defendant because of their own association with the relevant criminalized behavior. Prosecutors report seeking to exclude people perceived to be offenders (assumed to be biased against the government), and public defenders report seeking to exclude people perceived to be victims (assumed to be biased against criminal defendants). Judges acknowledge the possibility that perceived offenders are unable to be impartial but express even greater concerns that victims' emotional states would impede their impartiality. Court officials' concerns and exclusionary efforts extend beyond those with direct system association to also exclude alleged offenders' and perceived victims' family members and friends. Some court officials report awareness of the possibility that these practices may result in systematic exclusions of marginalized racial/ethnic minorities from seated juries, and a handful of court officials describe victims using gendered language that associates victimhood with womanhood. We suggest that the practices we document are racialized to the detriment of marginalized racial/ethnic groups and gendered to the detriment of women.

These findings have implications for understanding the consequences of lower-level forms of criminal legal system association for individuals as well as understanding how the jury selection process may reproduce unequal power structures in the law's administration. Placing our findings regarding jury selection in conversation with the broader collateral consequences literature, we argue that scholars should consider not just the collateral consequences of a criminal record (or perceived criminality) but also the collateral consequences of victimhood. The growth of the carceral state has created not only a new class of custodial (Lerman & Weaver, 2014) and carceral (Miller & Stuart, 2017) citizens but also a class of people legible to the state as crime victims (Best, 1997; Gruber, 2020; Simon, 2007). The exclusion of perceived victims from jury service is one instance in which the collateral consequences of victim status may operate, as we show in this article. In another example, Lapidus (2003) describes housing discrimination against victims of domestic violence. Thus, perceived association with the criminal legal system as a victim may have negative consequences in domains beyond the criminal legal system, such as housing, health, and employment, through the formal and informal ways authorities draw on stereotypes associated with victimhood.

In addition, our findings underscore how collateral consequences impact the administration of the criminal legal system itself. Whereas research has considered how felony disenfranchisement may impact the politics of punishment (Manza & Uggen, 2006), few scholars have interrogated the ways informal practices systematically remove people with criminal legal associations from administering the criminal law. Serving as a juror constitutes an organizational role imbued with legal authority to administer life-altering components of the law. A jury's decision to acquit or convict a defendant is authoritative, forbidding or allowing state punishment (Culver, 2017). Although very

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few cases reach a jury trial (Diamond & Rose, 2018), the jury has been central to United States legal thought and culture; as Constable (1994, p. 1) writes, "the jury constitutes a practice in which matters of community membership, truth, and law are inextricably intertwined." Moreover, the possibility of adjudication by a jury influences the decision-making of prosecutors (Albonetti, 1986), defense attorneys (Kramer et al., 2007), and defendants (Clair, 2020) throughout the court process. Court officials' racialized and gendered efforts to exclude people with criminal legal association from jury service likely function to reproduce inequality in the structure of the law by removing the voices of perceived offenders (see Smith & Sarma, 2012, p. 406; Wheelock, 2011, p. 354 on felon-juror exclusion) and victims of crime. Thus, our findings draw attention to what we call the *administrative effects* of collateral consequences. Such formal and informal exclusionary practices may also operate in legal institutional contexts beyond jury selection, such as bar admission and the hiring of police and probation officers—legal professional roles imbued with administrative authority. Scholars should, therefore, expand their analysis of collateral consequences to examine the extent to which such consequences feed back to reproduce unequal power structures within the law through exclusions from administrative positions.

EXCLUSION FROM JURIES BASED ON CRIMINAL LEGAL SYSTEM CONTACT

Growing scholarship illuminates the nature and implications of statutory felon-juror exclusion, or state and federal statutes that prevent people with felony convictions from serving on juries in the United States. People with felony convictions are statutorily excluded from some form of jury service for at least a period of time in 49 states (Jackson-Gleich, 2021; see also Kalt, 2003; Roberts, 2013), and about a fifth of states additionally restrict the participation of people with misdemeanor convictions (Roberts, 2013). Statutory felon-juror exclusion is usually justified by the "inherent bias rationale," or the assumption that people convicted of a felony are biased against the prosecution and would, therefore, threaten the integrity of the impartial jury (Binnall, 2009, 2021; Kalt, 2003). Critiquing the inherent bias rationale, legal scholars have argued against categorical statutory restrictions that automatically remove people with felony convictions from the venire, or pool of potential jurors. Scholars have noted that statutory felon-juror exclusion implies a lack of faith in court officials' discretionary decision-making in dismissing biased jurors during the voir dire process (Kalt, 2003), lacks rationale in 29 states where the permissibility of people with felony convictions to practice law is evaluated individually but their jury service is categorically denied (Binnall, 2010), removes relevant experience from the jury room (Roberts, 2013), and disproportionately impacts marginalized racial/ethnic minorities and the poor (Kutz, 2004; Wheelock, 2011). In addition, survey research finds that the average pro-defense/anti-prosecution bias of people with felony convictions is comparable to that of nonfelon law students (Binnall, 2014) and to the anti-defense/pro-prosecution bias of law enforcement personnel (Binnall, 2018b)—groups whose members are evaluated individually during voir dire. In-depth interviews with people with felony convictions in Maine, the only state that does not statutorily restrict felon jury service, further reveal that such individuals profess a commitment to remaining impartial if seated on a jury (Binnall, 2018c).

People with lower-level forms of criminal legal system contact are not statutorily excluded from the venire in most states. Yet they could be excluded from juries during voir dire based on court officials' assumptions about biases that people with lesser forms of criminal legal involvement may hold (see Roberts, 2013). Voir dire is an institutional process meant to provide judges and lawyers an opportunity to identify and exclude potential jurors whom officials perceive to be biased and, therefore, unfit to be a juror for a specific case (Jolly, 2019; Kassin & Wrightsman, 1988; Marder, 2015). But the Sixth Amendment guarantee to an impartial jury does not clarify the meaning of impartiality (Abramson, 1998), and current case law remains vague aside from the basic requirement that "an impartial juror is one who will base a verdict on the evidence and the instructions of the trial court"

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(Howe, 1995, p. 1181). Legal scholars generally agree that state and federal laws also require that a juror not have personal ties to any of the parties involved in the case (Howe, 1995), not exhibit explicit racial bias (Howe, 1995; Jolly, 2019), and accept the legitimacy of the criminal charge and its potential sentence if the defendant is convicted (Howe, 1995). This definition of impartiality allows for jurors to have various biases—for example, prior knowledge of the case from the news (Minow, 1992)—as long as they are willing and able to set their biases aside and decide the case based on the facts and instructions presented in court (Gobert, 1988; Marder, 2015). Judges and lawyers rely on juror questionnaires and direct questioning of potential jurors to identify those with biases perceived to be disqualifying (see Kovera et al., 2012). In most jurisdictions, judges first decide whether potential jurors have any disqualifying biases and, if so, remove such jurors "for cause." Lawyers from the prosecution and defense are then permitted to strike remaining potential jurors using a limited number of "peremptory challenges." Lawyers may use their peremptory challenges for any reason other than potential jurors' race or gender. Court officials thus have considerable discretion when excluding potential jurors during voir dire (Howe, 1995), allowing for the development and enactment of taken-for-granted institutional practices that may have systematic implications for juries' representativeness similar to the implications of statutory exclusions (on institutional discrimination in routine court practices, see Clair, 2020, p. 174).

Little research has examined whether court officials consider people with criminal legal system association beyond felony convictions to be biased and, if so, how such constructions of bias may result in systematic exclusions from jury service during voir dire. Much research on court officials' practices during voir dire relies on administrative data, ethnographic observations of peremptory strikes, or mock jury selection experiments, finding that prosecutors and defense attorneys use their peremptory challenges to differentially remove jurors in relation to race and gender (see Diamond et al., 2009; Turner et al., 1986)—demographic attributes that lawyers may perceive to be associated with certain biases. While important, these studies do not provide insight into how lawyers and judges think and strategize about juror bias and do not give insight into how court officials view criminal legal system association in relation to bias.

A few studies using in-depth interviews, in contrast, provide suggestive evidence of how court officials understand bias in relation to criminal legal system association during voir dire. Based on interviews with 27 court officials in Maine, Binnall (2018a) found that most court officials report making individualized assessments of potential jurors with felony convictions, largely rejecting the idea that such individuals should be excluded based on their felony status alone. This study reveals that in the only state without statutory felon-juror exclusion, court officials may not always seek to exclude people with direct criminal legal system contact. As part of an experimental study on jury selection more broadly, Olczak et al. (1991) asked 19 trial attorneys to describe juror characteristics that they typically find important. Along with open-mindedness and intelligence, lawyers mentioned potential jurors' attitudes toward the crime in question and the police. Finally, Zalman and Tsoudis (2005) interviewed 79 lawyers working in a wealthy, predominantly White jurisdiction. The lawyers reported various racial, gendered, and class-based stereotypes they believe to be predictive of jurors' biases, and some described seeking to remove jurors who reported negative experiences with police or were a victim of a crime (Zalman & Tsoudis, 2005, pp. 304 and 353). These findings suggest that court officials may be concerned not only about potential jurors' lower-level forms of criminal legal system association as labeled offenders but also as victims of crime.

Overall, while existing research suggests that judges and lawyers consider other forms of criminal legal system association beyond felony convictions in relation to potential jurors' biases, researchers have yet to provide a comprehensive account of the types of criminal legal system association that court officials consider or the implications of these considerations. Consequently, this article asks: How do judges and lawyers think about a potential juror's bias in relation to their association with the criminal legal system beyond felony status, and with what implications? As we will show, examining this question reveals that court officials are concerned about, and collectively seek to remove, potential jurors based on constructions of bias in relation to alleged criminality and victimhood that

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go well beyond felony status and that implicate not just individuals with direct system association but also those with whom they have social ties. Although these exclusionary voir dire practices are not formalized in statute, we suggest that they constitute taken-for-granted court norms that are implemented through the daily practices of court officials (see Lynch, 2017; Ulmer, 2019) collaborating in courtroom workgroups (Eisenstein & Jacob, 1977).

EXPANDING UNDERSTANDING OF COLLATERAL CONSEQUENCES

Scholars studying statutory felon-juror exclusion have conceptualized such exclusions as a collateral consequence of a felony conviction (e.g., Binnall, 2009; Kalt, 2003; Smith & Sarma, 2012; Wheelock, 2011). Collateral consequences refer to the civic and social consequences of criminal legal system contact for alleged and convicted offenders that arise outside of criminal legal punishment (as opposed to sanctions "imposed directly by the court") (Kirk & Wakefield, 2018, p. 172). For example, a felony conviction might result in a sentence of incarceration (a criminal legal sanction), the suspension of the right to vote (a civic collateral consequence), and discrimination when applying for jobs (a social and often informal collateral consequence). Framing felon-juror exclusion as a collateral consequence, therefore, underscores how felon-juror exclusion restricts the civic participation of people with felony convictions even after they have served their sentences.

Collateral consequences have been theorized and shown to impact both individuals who have been criminalized by the law and criminalized people's communities, altering community-level resources and well-being (Kirk & Wakefield, 2018; Wakefield & Uggen, 2010).[1] For example, Rose and Clear (1998) argue that mass incarceration, when considered at the ecological level, might increase crime in disadvantaged neighborhoods—the opposite effect of what criminal legal authorities and policymakers ostensibly intended to accomplish. The authors write that "disrupting a large number of networked systems [such as family, economic, and political life] through incarcerating consequential portions of a neighborhood's population can promote, rather than reduce, crime" by reducing neighborhoods' capacities for informal social control (Rose & Clear, 1998, pp. 457–8). Hagan and Dinovitzer (1999) similarly argue that incarcerated individuals, their families (Comfort, 2007), and their communities suffer a loss of social and human capital.

Our attention to exclusions based on criminal legal association during jury selection expands the collateral consequences literature in two ways. First, our inductive analysis of court officials' reported routine practices reveals their concerns with criminal legal associations beyond felony status. Whereas the collateral consequences literature has largely focused on the implications of having a criminal record, especially one that includes a felony conviction, our findings suggest that the collateral consequences literature should expand its analysis to consider the impact of mass criminalization not just for those criminalized by the law but also for those whom the law increasingly constructs as victims. Along with growing numbers of people who bear the mark of a criminal record, the rise of the carceral state has also created a growing class of people who view themselves as victims and survivors of criminalized acts (see Best, 1997; Gruber, 2020; Simon, 2007). Our case reveals that victims are intentionally excluded from participating in juries. Future work could consider whether—and to what extent—victims are excluded from other domains within and beyond the law. Such research would expand our understanding of when and how the harms of mass criminalization extend beyond the criminalized to negatively impact those whom the law is often claimed to be protecting (see Sered, 2019, chapter 1).

[1]As Kirk and Wakefield (2018) note, the American Bar Association defines collateral consequences narrowly, focusing on the individual-level consequences of a "conviction" that "limit or prohibit people with criminal records from accessing employment, occupational licensing, housing, voting, education, and other opportunities" (ABA 2013 as cited in Kirk & Wakefield, 2018, p. 172). Kirk and Wakefield, however, suggest that the sociological and criminological literatures have come to define collateral consequences more broadly as the consequences of punishment that impact not just individuals but also "families and communities."

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Second, whereas collateral consequences research often focuses on the social and political ramifications of criminal legal system contact in domains outside the legal system, we underscore the consequences of criminal legal system association for access to the administration of the criminal legal system itself. Our findings reveal how routine practices and norms—not just statutory felon-juror exclusions—reproduce power structures by generating social closure to the exclusion of groups beyond those targeted by formal statute. Weber (1978) theorized that dominant status groups maintain their power by excluding members of other, nondominant status groups from accessing roles and resources maintained by the dominant group. The criminal law—through its constructions of people as offenders and victims—creates status groups, albeit some more formal (e.g., people with felony convictions [Uggen et al., 2006]) than others (e.g., people living in heavily-policed neighborhoods). The jury selection process—from formal statutory exclusion laws to informal, but routine voir dire practices—can be conceptualized as a form of social closure, whereby politicians and court officials use status groups created by the criminal legal system, and by the concept of "bias," to determine who can participate in one of the few ways ordinary people can directly take part in the law's administration. We refer to this feedback process as an *administrative effect* of collateral consequences. Such exclusions of potential jurors on the basis of lower-level forms of criminal legal system association may function to maintain the status quo through the reproduction of dominant interpretations of evidence, reasonable doubt, and guilt.

This administrative effect has implications for racial and gender inequality. It is well established that the United States criminal legal system disproportionately criminalizes poor people of color. For instance, by the age of 23, an estimated 30% of youth born in the early 1980s had been arrested at least once according to self-report (Brame et al., 2012), with 49% of Black men, 44% of Hispanic men, and 38% of White men having experienced an arrest (Brame et al., 2014). Black people are also disproportionately victimized by violent crime; in 2016, 20.5 per 1000 White people and 20.2 per 1000 Hispanic people experienced a violent victimization, whereas 24.1 per 1000 Black people did (Morgan & Kena, 2017). Meanwhile, middle-class, White women are often conceived as the prototypical crime victim (Crenshaw, 1990; Gruber, 2020). Thus, the exclusion of those with criminal legal system association—as offenders and as victims—from juries likely disproportionately excludes marginalized racial/ethnic minorities and women from the administration of the criminal law. Indeed, Wheelock shows that felon-juror exclusion in Georgia disproportionately impacts Georgia's Black population, concluding that felon-juror exclusion could result in a "feedback loop" that could lead to "greater levels of racial inequality throughout the criminal justice system itself" (Wheelock, 2011, p. 354).

Collateral consequences likely have additional administrative effects beyond jury selection, with implications for reproducing inequality in the law's administration. While five states statutorily prohibit those with felony convictions from becoming lawyers, other states use institutional standards and norms to exclude those with a broader range of criminal convictions (Rhode, 2018). For example, the requirement that lawyers have good moral character has been used to exclude people with criminal legal system contact from being admitted to the bar (Levin, 2014). In addition, in California, law schools and the state bar use both formal and informal procedures to exclude those with criminal records from attending law school (Cohn et al., 2019). With respect to policing, some states have moral character requirements, including requirements that police officers cannot have been convicted of certain felonies or misdemeanors (see, e.g., Collins, 2004, p. 514). Like collateral consequences in the case of jury selection, exclusions from becoming a lawyer or police officer may operate through taken-for-granted practices and norms—not just statutory and other, formalized policy exclusions—that work to exclude people with criminal legal system association and may do so in relation to both people perceived to be offenders and those perceived to be victims.

RESEARCH DESIGN

We draw on in-depth, semi-structured interview data collected among a purposive sample of court officials in a state trial court system from December 2013 to April 2016. To protect the

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TABLE 1 Interview sample of court officials in Northeast State, by demographic characteristics

	Judges ($N = 52$)	Prosecutors ($N = 24$)	Public defenders ($N = 27$)
Race/ethnicity[a]			
White	42	20	18
Non-White	13	4	9
Gender			
Man	35	15	11
Woman	17	9	16

[a]Total is more than *N* when court officials identify as more than one race/ethnicity.

confidentiality of our respondents, we refer to the state where we conducted interviews as "Northeast State." Northeast State trial courts include "Upper" and "Lower" courts. Whereas Upper Courts operate at the county level and have jurisdiction over all charge types, Lower Courts operate at the city level and have jurisdiction over lower-level charges, such as misdemeanors and felonies that carry lesser sentences. While certain routines associated with the criminal court process vary by courthouse or county, we focus our analysis on variation across court officials.

Data and analysis

We conducted interviews with 52 judges, 24 prosecutors, and 27 public defenders. We sought to interview a range of court officials with varying professional backgrounds and demographic characteristics (Weiss, 1994). Table 1 details the race/ethnicity and gender compositions of our sample by professional position. Reflecting the population of court officials in Northeast State, most of our sample identifies as White, but about a quarter of our sample identifies as a race/ethnicity other than White. Most judges and prosecutors we interviewed are men, and most public defenders we interviewed are women, which reflects the gender compositions of judges and public defenders in the state.[2] We recruited judges by emailing or calling all judges in the Upper Court and by both purposively and snowball sampling Lower Court judges. We recruited lawyers through purposive and snowball sampling. We continued recruiting and interviewing respondents from each professional group until we reached saturation and no longer obtained novel information in our interviews.

Interviews typically lasted between 60 and 100 minutes. Most interviews were conducted in person by one of the two authors, allowing us to travel to courthouses throughout the state. We checked in with one another throughout data collection and listened to recorded segments of each other's interviews to ensure consistent interviewing techniques. The interviews covered many aspects of criminal court procedure and norms, given the study's broader sociological interest in court official decision-making.[3] This article focuses on legal officials' responses to questions related to the jury selection process, including:

[2]In 2015, according to data we assembled capturing all trial court judges in Northeast State, most judges were men and most were White; our sample includes a similar proportion of women and a greater proportion of racial/ethnic minorities. In 2016, according to data we were provided by state officials, most public defenders in Northeast State were women and most were White; our sample includes a similar proportion of women and a greater proportion of racial/ethnic minorities. We do not have data on the racial/ethnic or gender compositions of Northeast State prosecutors.

[3]Our approach was informed by sociological research that draws on qualitative data to examine how and why court officials make decisions within legal constraints (see Lynch, 2017; Ulmer, 2019). Such research seeks to understand how "law on the ground" differs from "law on the books," and with what implications. Respondents in our study consented to an in-depth interview focused on the jury selection process and other points of courtroom decision-making, such as setting bail and sentencing.

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> "Please explain to me what your goal is during the jury selection process."
> "How do you make sure that your goal is met?"
> "In your opinion, what makes an ideal juror?"
> "And what makes a juror less than ideal?"
> "How do you ensure that appropriate jurors are selected and inappropriate jurors are not?"

These questions served as a guide to begin a conversation around jury selection and potential jurors. We continuously asked respondents to provide examples if they could. We did not ask explicit questions about juror bias or criminal legal system association. Rather, these themes emerged inductively, suggesting how deeply institutionalized our findings regarding bias, and criminal legal association are. If a respondent did not mention these topics on their own, we did not ask about them, because, when designing our study, we did not anticipate that potential jurors' criminal legal system associations would be such a central concern of voir dire.

Ninety-one of the 103 court officials we interviewed (88%) spontaneously mentioned juror bias or impartiality when describing the goal of the jury selection process and/or their beliefs about what makes an ideal juror, opening a conversation about officials' constructions of bias. Hence, court officials' discussions of potential jurors with criminal legal system association sometimes emerged in relation to officials' constructions of bias and sometimes emerged in relation to officials' constructions of the ideal juror. Depending on the respondent, the latter might be jurors whom court officials believe are biased in their favor (for lawyers) or jurors whom court officials believe are free of bias (for lawyers and judges). Given our open-ended approach to studying court officials' understandings of juror bias, the findings that emerge from our study likely underestimate the extent to which court officials think about and understand bias in relation to criminal legal system association.

Our analysis of the interview data began during data collection, as we met regularly to discuss emerging themes while in the field. Based on our initial impressions of the importance of criminal legal system association as an indicator of juror bias, we developed a preliminary coding scheme. The first author then began reading transcripts in detail using the preliminary coding scheme. Based on this first read of the data, we developed a final coding scheme that captures six themes related to court officials' understandings of bias and association with the criminal legal system as a perceived offender or victim. The first author randomly selected six respondents—two judges, two prosecutors, and two public defenders—whose interview transcripts each author independently coded. We agreed on 34 of the 36 (94%) coded themes among this sub-sample (see Weston et al., 2001). We discussed the two codes where we disagreed and came to a collective understanding of why we disagreed and how to move forward. The first author then coded the rest of the interview transcripts.

Jury selection in Northeast State

Jury selection practices vary, to some degree, across judges and courthouses in Northeast State, but every criminal courtroom shares several common features. State statute and criminal procedure (both of which include language necessitating the examination of whether potential jurors exhibit any bias) guide judges and lawyers during voir dire. As the potential jurors (the jury pool or "venire") enter the courtroom, the judge and attorneys are provided with each potential juror's completed questionnaire, which includes demographic information (e.g., place of birth, education, and employment status) as well as a section inquiring about experiences with the legal system. While the questionnaire does not ask about race/ethnicity or gender, court officials perceive these and other embodied attributes when the venire enters the courtroom. In Northeast State, like many other states, individuals are disqualified from jury service if they have been recently convicted of a felony, are currently charged with a felony, or are currently in custody. There are no statutory restrictions from jury service for individuals with other forms of criminal legal system association.

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Following a preamble welcoming the jurors, the judge asks questions of the venire as a group, of individual potential jurors at sidebar, or in combination thereof at the judge's discretion. Some questions are standard, such as whether the potential jurors know either party or any of the potential witnesses, whereas other questions vary by case and by the judge's discretion. Attorneys can submit questions in advance that judges, in turn, ask at their discretion.

Following questioning, judges dismiss potential jurors for whom sitting on a jury would constitute an undue hardship and remove jurors for cause whom judges perceive to have a relevant bias that the juror is unable to set aside. Attorneys occasionally petition judges to remove a juror for cause, and judges occasionally solicit attorneys' input when deciding whether to remove a juror. If a potential juror has not been dismissed for cause or hardship, the prosecutor or the defense attorney may decide to use a peremptory challenge to strike the potential juror. In general, jury selection in Northeast State is a fast-paced process that can take as little as an hour in the Lower Courts and as long as multiple days in the Upper Courts, depending on the anticipated length of the case and the nature of the charges, among other factors.

Limitations

Our empirical analysis has limitations that could be further explored in future research. First, voir dire in Northeast State is often shorter than in other states, affording lawyers less information. On the one hand, more detailed questioning of potential jurors may reveal additional forms of association with the criminal legal system that are then used as bases for exclusion. On the other hand, more detailed questioning may reveal additional information that convinces court officials of potential jurors' abilities to be impartial despite their system association. The extent to which each of these dynamics plays out in varying contexts is a ripe area for future research on collateral consequences in the case of jury selection. Second, we do not quantify how often potential jurors' prior criminal legal system association is used as a justification for removal. Future research could rely on administrative records, surveys of court officials and/or the public, or observations of voir dire to help assess the prevalence of such exclusions and how often people with system association serve as jurors. Taking a page from empirical research on felon-juror exclusion (Wheelock, 2011), future research could also quantify the extent to which such exclusions disproportionately impact marginalized groups, including Black people and women.

FINDINGS

Most lawyers in our study—prosecutors and public defenders alike—describe concerns about potential jurors' biases in relation to their associations with the criminal legal system. A substantial minority of the judges we interviewed also express concerns about such biases. We focus on two broad kinds of criminal legal system association that court officials discussed and that illustrate how collateral consequences operate in the case of jury selection: association as a perceived offender and association as a perceived victim.

Court officials describe seeking to remove potential jurors who have had direct contact or perceived association with the criminal law as offenders or victims; moreover, they describe seeking to remove such individuals' family members and friends. Most prosecutors we interviewed (17 of 24) report a desire to remove people perceived to be offenders from juries, because they believe that such jurors are more likely than jurors without such system association to be biased against the prosecution. Whereas a small number of judges (9 of 52) acknowledge the possibility that perceived offenders and their social networks might be biased against the prosecution, more than a third of public defenders in the study (10 of 27) report a desire to retain jurors with experience as offenders. But public defenders complain that prosecutors' use of their peremptory challenges makes the retention of such potential jurors unlikely. At the same time, just over half of the public defenders we

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interviewed (15 of 27) report a desire to remove perceived victims from seated juries, because public defenders believe that victims are likely to hold biases against criminal defendants. Only three prosecutors in our sample (3 of 24) mentioned perceived victims in relation to jury selection, noting that they would want to know more about whether perceived victims and members of their social networks would be able to be impartial jurors. Among judges, a substantial minority (15 of 52) report concern with respect to perceived victims' potential biases. Unlike public defenders, judges' concerns tend to revolve around perceived victims' emotional well-beings and their abilities to be impartial in light of their emotional states—a concern that is often gendered. A handful of court officials in the study report an awareness of how their and other officials' decisions may systematically exclude criminalized individuals and victims from juries, with implications for juries' racial and gender representativeness.

Excluding people perceived to be offenders

Most of the prosecutors in our sample describe seeking to remove potential jurors who have prior criminal convictions of any type, who have had lower-level encounters with the criminal legal system, or who are perceived to engage in criminalized behavior. For example, Prosecutor Scott[4] described how he typically uses the completed juror questionnaires to identify potential jurors' biases. He uses a plus sign to indicate potential jurors he believes might be biased in his favor and a minus sign to indicate those he believes might be biased against the prosecution. When asked when he might use a minus sign, Prosecutor Scott replied that he often seeks to remove those with a prior conviction:

> So someone who…mentions that they have a prior conviction or similar offense. They mention that they have family members who have been arrested or convicted of similar offenses, you know, that sometimes would be cause for concern.

Prosecutor Scott particularly notes that he seeks to remove potential jurors with prior convictions on "similar offenses" to the current case.

In addition to removing those with formal criminal convictions, prosecutors also describe seeking to remove potential jurors who have experienced lesser forms of criminalization. Prosecutor Robinson said that his goal during jury selection is to select a jury "that's fair and impartial to the government," not just "fair and impartial to the defendants." As such, he seeks to remove jurors who have had negative encounters with the police. He said, "I'm looking for […] someone that doesn't have an axe to grind because of how they or someone they know was treated by the police." Whereas people who have been treated poorly by the police might also be conceived of as victims of the police, or of criminalization, our respondents categorize such individuals and their assumed biases together with those who have criminal convictions.

Some prosecutors further seek to remove jurors who they think, based on stereotypical characteristics, might offend in the future, have already offended in some capacity, or identify with the criminal behavior in question. When asked what her goal is during jury selection, Prosecutor Wilson described how she seeks to remove people with any experience—however minor—with the alleged crime. She provided the example of prosecuting a drunk driving case:

> […] if you're doing a [driving under the influence] jury, you don't want people who drink necessarily. You don't want alcoholics. You don't want people with a red nose, who smell, who look like wife beaters.

Prosecutor Wilson seeks to remove "alcoholics," not just those who have been convicted of a drunk driving offense, because they may be resentful of the prosecution in such cases. Similarly, Prosecutor

[4]All names are pseudonyms.

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Allen said that she tries to remove "male weirdos" when selecting juries for sexual assault cases. Her reasoning is based on her assumptions about their possible criminality: "Single male weirdos…like the kind that I could envision being sex offenders, I don't put on my juries."

Prosecutors also seek to remove the family members and friends of those who are perceived offenders. When asked what makes for an ideal jury, Prosecutor Campbell told us that he and other prosecutors often seek to remove people who are close to those with criminal records:

> And a prosecutor would always look at whether somebody had a criminal record or whether they had close family, friends who had criminal records, just for the reason that [that] would suggest that this person has a greater chance [than] somebody else who does not have these connections of having had some negative experience with the criminal justice system. Now, I think if you could really ask those people, some of those people would say, "You know what? I was guilty, and I am fine with that," or, "My son did do that" […] So, as I was saying, I'm not saying I was right in every decision—in fact I am sure I was wrong in plenty of decisions.

Prosecutor Campbell recognizes that not all people who are close to others with criminal records believe that punishment is never warranted or have negative opinions of the criminal legal system. Yet, he seeks to prevent such people from being seated as jurors absent additional information. Earlier in the interview, he explained his philosophy in relation to someone with a criminal record:

> So, if you have a person, prospective juror, who has a criminal record, you were forced to conclude […] this is a risk I can't take. I didn't conclude that this was a bad person or that this person may not understand that this is a murder case […But] you can't take that risk. And I represent the [government], and I can't take that risk on behalf of the [government].

The risk for prosecutors is that people who have had direct or vicarious experiences with the criminal legal system as perceived offenders might have biases against the prosecution. Prosecutor Taylor elaborated: "As a district attorney, I might feel like, you know, the person [previously charged with a crime] might have some animus towards the criminal justice system, the police, the DA [district attorney], and they shouldn't serve."

Some prosecutors feel that people with criminal records or negative encounters with the law are more likely to believe that law enforcement officers are corrupt or fabricate evidence. Such beliefs would make it difficult for prosecutors to convince them of the credibility of evidence presented by police during trial. Prosecutor Miller explained:

> So I don't want people that are susceptible to the conspiracy theory, that the police made this up and planted the evidence. So, people that might not trust the government, might not trust the police, those are people that I'm not gonna want.

According to Judge Peterson, prosecutors in the capital city, where juries tend to be "more diverse," are particularly frustrated by a sense that many potential jurors are biased against the prosecution because of their beliefs about the police. She told us: "They [prosecutors] think they have a jury nullification problem, because the jurors think the cops are lying or won't convict anyone." The capital city's more diverse jurors are more likely than jurors in other parts of the state to live in poor Black or Latino neighborhoods that are disproportionately subject to criminalization.

A small number of officials mentioned how their and others' decisions may systematically exclude criminalized people and neighborhoods from juries, with racialized implications. Public Defender Thomas described how residents of poor neighborhoods of color are less likely to sit on juries, because court officials eliminate people with criminal records:

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> […] in underserved communities, where minority people live, [people] are not participating as much as they should in the jury process. And I think that's something that should have something done about that, because I think it's an opportunity for the people who live in the minority communities and the underserved communities to be empowered to do something. That's the power. They have power to do something about what's happening in their communities through the jury process. […] the DA is gonna know about the conviction and they're basically going to eliminate those people, so there's going to be a lot of people eliminated because of their record.

Public Defender Thomas' observation that prosecutors routinely use peremptory challenges to exclude people with criminal records aligns with the accounts of prosecutors in our sample. Public Defender Thomas argues that such removals are disempowering of minority communities.

Additionally, some officials recounted how potential jurors' offender status is used as a legitimate reason to exclude potential jurors of color. When we asked judges and lawyers about their experiences with Batson challenges, or questioning whether a lawyer inappropriately used a peremptory challenge to exclude a potential juror based on race or gender, some described how association with the criminal law could be offered as an ostensibly race-neutral justification. Judge Baker provided the following example:

> I had one [a Batson challenge] in [Small Town] a few months ago when the assistant district attorney challenged [or struck] a minority of the same race as the defendant. [I] [b]rought them [the attorney] to sidebar—I think I knew what the answer was ahead of time, and they indicated that the reason was not based on the person's race, but on the fact that they had multiple criminal convictions. That's a legitimate reason to challenge [or strike] somebody.

Judge Baker's example reveals how prosecutors may offer conviction status as an ostensibly race-neutral justification for striking a potential juror.

Not all prosecutors we interviewed describe seeking to remove people perceived to be offenders during voir dire. A few, in fact, report little interest in seeking to identify biases among potential jurors. Prosecutor Greene did not mention perceived offenders in relation to jury selection and said that he does not spend much effort trying to shape the seated jury. He said that he wants a jury that will "listen to the evidence […] that's presented in the confines of the courtroom and make a decision about the case after I instruct you on the law. […] I think we do too much mucking around with the jury." Meanwhile, Prosecutor Lee noted that some prosecutors may hesitate to remove perceived offenders or anyone else beyond those whom the judge removed for cause, because prosecutors worry about their convictions being overturned on appeal. He said:

> I just want people that will listen to me and, at the end of the day, will be fair and impartial. I don't want there to be any issues down the road if it is a guilty for appellate issues […] I want the record to be clear. I want people who the record will show that are going to be fair and impartial.

Prosecutor Allen expressed a similar sentiment. Even though she admitted to seeking to remove perceived offenders from the jury, she nonetheless acknowledged the risk of an appeal. Consequently, her goal during jury selection is, "to very truly—I'm not BS-ing you—to pick a fair and impartial jury. To pick the fairest, most impartial jury we possibly can so that this defendant can have a fair trial. If I can convict him, my case doesn't get flipped." For Prosecutor Allen, however, a "fair and impartial jury" might exclude certain perceived offenders, such as "single male weirdos," as she described above.

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Only nine judges in our sample brought up people perceived to be offenders in relation to jury selection. Among this group, judges, like prosecutors, acknowledged the possibility that perceived offenders and members of their social networks might be biased against the prosecution or police. But unlike prosecutors, these judges do not necessarily exclude perceived offenders from sitting on juries. Rather, they typically ask questions of such jurors individually to determine whether such jurors can be impartial in relation to the case at hand. As Judge Flores described in relation to how she conducts voir dire:

> Once the attorneys have looked over the questionnaires […] they'll bring it to our attention whether or not they want certain people questioned [individually], and if they miss someone, I'll bring someone forward because in the questionnaire it says something like "my father, my uncle, my brother, they're all police officers," or "my father, my brother, my uncle have all been arrested for similar type offenses." So if they miss that, I'll call the juror, because I need to make sure we can have an impartial jury.

For their part, public defenders in our sample report seeking to retain perceived offenders as jurors. Like prosecutors, public defenders believe that people with direct or vicarious criminal legal system association as perceived offenders are likely to be biased against the prosecution and favor their clients. For example, Public Defender Ward recounted an incident of a juror refusing to convict a defendant because the juror's father had been a political prisoner. She said:

> [O]ne of the pro-bono cases I worked when I was a paralegal was a […] small level marijuana distribution case—and it was a hung jury because one of the juror's fathers had been a political prisoner somewhere, and [said] resolutely, "I could never convict anybody. Could never do it. So no, I'm not gonna agree with the rest of you guys and say guilty; you're never gonna break me down."

After recounting this story, Public Defender Ward said that "the prosecutor somehow [should have] drawn that out in jury selection," implying that such a bias is something that prosecutors, not defense attorneys, should seek to weed out.

In general, public defenders we interviewed were much more explicit than prosecutors about their efforts to seat a jury that is biased in their clients' favor, likely because acquittals typically cannot be appealed. Public Defender Hayes told us: "My goal during the jury selection process is to get a jury that would be most sympathetic or able to identify the most with my client." Public Defender Morris similarly said: "I mean, you're not looking for an impartial jury; you're looking for a partial jury toward your side." And Public Defender Pérez told us that people who have offended and their family members are people she likes to have on her juries. When asked about her ideal juror, Public Defender Pérez said:

> So it's good if they committed a crime to tell the truth, you know? […] if they have the experience of them being arrested and going through the process, because I think they have a better understanding of what the defendant is going through […] or sometimes they have family members who were prosecuted, and I know this because they go to sidebar and said, "I don't know that I can be impartial, because my brother was prosecuted and it was similar to these facts, and the police handled it so poorly." And I'm going, "Shh-shh don't say anything" (chuckles), but I think people who have had that experience, I think they bring something interesting.

Finally, echoing Prosecutor Robinson above, Public Defender Smith also believes that people who have experienced criminalization by police are more likely to be biased in favor of the defense. He reflected that "if you grew up in an all-Black community [with…] a high crime rate, you might be

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used to police officers showing up in your community and slamming you against the wall. […] So I want somebody on the jury that will consider that… police officers sometimes lie."

Despite some public defenders' desires to seat perceived offenders and members of their social networks on juries, prosecutors' desires to remove such jurors can be realized unilaterally by way of peremptory challenge. As Public Defender Pérez recounted above, she thinks to herself, "shh-shh" when potential jurors reveal their negative experiences with the criminal law during voir dire and thereby provide a clear basis for a prosecutor to strike them. If a prosecutor strikes a perceived offender or their social ties, a public defender has little recourse—other than an accusation of direct racial or gender discrimination—to keep the person on the jury. Although some officials recognize the racialized consequences of the exclusion of perceived offenders, they lament that such exclusions do not constitute racial discrimination under the law.

Excluding people perceived to be victims

Public defenders in our sample commonly describe seeking to remove potential jurors who have been victims of crime. Public Defender Russell told us that he often looks at the section of the juror questionnaire that asks about experiences with the law to identify victims and possibly remove them from the jury. He said:

> You know, if somebody was like a litigant in a civil matter involving a landlord-tenant dispute, well that really doesn't apply to us. But if somebody were to put on there "I was a victim of a larceny," "I was the victim of domestic violence," "I was the victim of blah blah blah," whatever it may be. You're gonna want to probe further to see if that person can be a fair and impartial juror for your case.

Public Defender Burman described the importance of not only eliciting more information from victims of crime about whether they can be impartial, but of removing them from the jury. When asked to explain what her role is during the jury selection process, she responded that it is to "choose an effective jury." To do so, Public Defender Burman tries to guess how potential jurors will "think about your client." And she believes that people who have been victimized are unlikely to view her clients favorably. She said:

> […] so if during the voir dire process someone says, "You know, I've been a victim of a crime, a victim of domestic violence," and your client's charged with a domestic violence case and they say, "No, I can handle things really impartially and I'm going to be unbiased." It's super paternalistic, but I don't think you will be able to. I don't. I think there will be a stronger tendency for you to not be able to do so than to be able to do so. And so, why take that risk?

Like many public defenders, Public Defender Burman describes it as a "risk" not to remove jurors who have been victims of a crime similar to the one the defendant is accused of committing. Public Defender Collins bluntly stated: "Really the only disqualifiers I have are cop, related to a cop, or been a victim of a very similar crime…and had a relationship with the DA."

Public defenders also seek to remove the family members, friends, and neighbors of those who have been victimized. When describing the questions that he often submits to judges to ask during voir dire, Public Defender Freeman said that he wants to know if potential jurors have personally or vicariously experienced victimization:

> So if it is, for instance, a domestic assault and battery case, I want to know if anybody in the jury panel has ever been a victim of a violent crime. I want to know if anybody

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> has witnessed a violent crime or if anybody has ever known anyone who has been a victim of a violent crime, particularly domestic violence. […] That could be very difficult for a lot of people to push that out of their mind.

For Public Defender Freeman, experiencing, witnessing, or knowing someone who has experienced a crime related to the case are bases for excluding potential jurors, because such experiences or affiliations will likely bias these jurors against defendants. Similarly, Public Defender Bennett described a recent case in which her client was accused of raping a child, and she tried to exclude "any jurors who had any experience with being victims of domestic violence or someone they know" from the jury. Public Defender Bennett further elaborated about a potential juror who was not a direct victim of sexual assault but whose wife was:

> But the last juror I had to seat—I couldn't get him excused for cause. It was a man who was married to a woman who never ever reported being sexually assaulted as a child in very similar circumstances. And I tried to get him excused for cause and I couldn't, and I didn't have any more peremptories […] And I was stuck with this guy. Thinking, "Oh my God, this is like the worst juror I could have." But it wasn't. I mean they acquitted my client, so clearly he wasn't so bad, which I think goes to what's so unpredictable.

While this experience illustrated the unpredictability of juror decision-making for Public Defender Bennett, she still attempts to exclude victims and their social networks from juries when possible. Furthermore, she does so regardless of whether the victim had direct contact with the criminal legal system, much like prosecutors who seek to exclude perceived offenders without direct system contact under the assumption that they may nevertheless be biased.

Some public defenders seek to remove not only victims of crime and their family members or friends, but also potential jurors who might identify too closely with victimhood in a given case even absent prior experience as a victim. For example, when describing how he uses the juror questionnaire, Public Defender Thomas said, "If it involves some kind of crime involving children, I try to think if that jury is going to sympathize with the victim because they have kids and wouldn't want to see it happen to their kids. Who are the jurors that are going to relate to me or my client […]?" Defender Thomas's quotation illustrates how public defenders sometimes group those who might fear victimization with victims themselves. Similarly, Public Defender Mitchell described how he does not want "activist types"—those who might be prone to advocating for the victim—serving on juries in domestic assault cases. He said:

> […] if I have a domestic assault and battery case…I probably don't want a lot of young women, especially not young college women, you know, I hate to say, like somebody who'd be more of an activist type. […] and hopefully we can weed out victims themselves of domestic violence cases.

Public Defender Mitchell stereotypes young women as "activist types," revealing how the exclusion of those associated with victimhood can be gendered to the detriment of women.

Indeed, one public defender mentioned how her and other defenders' decisions may systematically exclude women from serving as jurors. In response to our question about Batson challenges, Public Defender Brooks said that, "unfortunately," she finds that prosecutors are more likely to make Batson challenges against public defenders than vice versa. She went on to say:

> It's [Batson challenges are] something we're worried about, because we're much more likely to use all our peremptories and to really, you know, strike people. And since […] we don't learn a lot about our jurors, we make these hunches and guesses. So, we use our peremptories for things that probably shouldn't be peremptories. But, you know,

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> you have a case where you really don't want a woman on the jury—like a horrible rape case. So, who's the one striking all the women? It's us.

Public Defender Brooks' implication is that women may be biased against the defense in rape cases. Meanwhile, Prosecutor Martín, also in response to our Batson question, lamented that it can sometimes be difficult to empanel a diverse jury because of the removal of people with prior experiences of victimization. She said: "[S]ometimes it happened to be that the people who were from diverse backgrounds did have legitimate biases or had reasons that they also admitted that they could not be impartial. Um, a lot of them were members of the community who also suffered from […] they either were victimized, or [had] issues that they couldn't be open to."

Much like public defenders, some of the judges in our sample express concerns about victims or those associated with victimhood serving as jurors. A handful of these judges reported seeking to remove victims for cause (before lawyers use their peremptory challenges). Judge Jackson said that she excludes jurors who have personally or vicariously experienced sexual assault in relevant cases:

> So if it's a sexual assault case and the person has had, you know, some guy, or someone they know, have had an experience with sexual assault, then, I say that, "this probably isn't the best case for you to sit on, and we'll send you back to the jury pool, where you'll perhaps eventually be picked for a different case."

Similarly, Judge King noted that, when considering potential jurors who should be removed for cause, one category of potential jurors that he might remove is victims. When describing the questions he asks of potential jurors during voir dire, Judge King said:

> If it's a domestic violence case, there may be people who have lived or been brought up in domestic violence and have some grievances about domestic violence. While the defendant has [only] been arrested, [the potential juror might think]: "they probably did it—the police don't arrest people who didn't do it. He probably did it, and there's little way to prove to me he didn't."

Given their potential negative attitudes toward those accused of domestic violence, victims of such violence are viewed by Judge King as a legitimate category of potential jurors to remove for cause.

Whereas public defenders and some judges describe perceived victims as likely to be biased against defendants, judges who mentioned victims in relation to jury selection more often described victims as unfit to be jurors because of their emotional states. Victims were framed as too "emotional" or "sensitive," traits stereotypically associated with women, to be impartial. For instance, Judge Richardson feels that it would be difficult for jurors to focus during trial if they have experienced "terrible tragedies" that are similar to the alleged offenses:

> I think it's really important to ask if there have been tragedies in their lives with either friends or family members that were either someone had been injured or killed or they had been affected by somebody who was operating under the influence of alcohol, there's been an accident. And I tell you, when I ask that question, so many people come forward saying this report of terrible tragedies. Even if that question had been asked [of the full venire] and they're just sitting there saying, "I think I can be fair" and might not have raised their hand because it's such a personal thing. But when they come up [for individual questioning] with tears in their eyes, saying their brother was killed by a drunk driver or their best friend from high school was killed by a drunk driver, I don't think…those people, I don't think they could put it aside. […] You don't want someone on the jury who's going to be distracted by thinking about their own personal situation.

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Judge Richardson believes that victims of similar crimes would likely be "distracted" during trial and would not be able to put their own experiences aside and judge the cases at hand in an impartial manner. Meanwhile, Judge Turner described the care he takes when inquiring about potential jurors' experiences as victims:

> And some cases, if they [potential jurors] were the victims, they'll get extremely emotional, and it's very difficult for them to talk about it at sidebar, and so the way I handle that is I'll usually ask some preliminary questions. I'll say, "this is a case that they're alleging the defendant committed child abuse, and that's a serious matter, and is there anything about the nature of that kind of allegation that would make you uncomfortable?" Before I get to the question of have you been a victim, I'll ask [in] a more general way. And if they say "Yes, I have difficulty with that," I'll excuse them, and I never get to the question of them having been a victim. So that's the way I protect their privacy.

Because of the "emotional" nature of inquiring about potential jurors' experiences as victims as well as his desire to protect jurors' privacy, Judge Turner does not typically ask whether jurors who have been victims would be able to set any biases they might have aside. He removes them for cause rather than providing an opportunity for them to be rehabilitated and face lawyers' peremptory challenges. Along these lines, Judge Young was blunt in his reasoning for excluding victims of rape from serving as jurors in rape-related cases: "I just can't accept that that experience won't subconsciously color that person's ability to be a fair and impartial juror." Since women are disproportionately victims of rape relative to men (Matoesian, 1993), Judge Young's practice likely disproportionately excludes women from juries. One judge also appeared to be concerned that victims might be traumatized by the legal process—not just the experience of victimization itself—and therefore biased. Judge Murphy told us that he is "probably more likely to excuse somebody for cause than maybe some of my colleagues." He went on to describe his worry about seating a potential juror whose "house was broken into" and "after trial they [the defendant] got found not guilty for whatever reason, and that was a traumatic experience [...]."

Most judges, however, do not report that they remove perceived victims for cause, unless the juror presents a clear bias that the juror themself does not believe could be set aside. A judge's interpretation of a prospective juror's confidence in their ability to remain impartial plays a role in this decision (see Rose & Diamond, 2008). Judge Wright gave the example of a potential juror who had been a victim of a rape who Judge Wright nonetheless determined could be an impartial juror for a sexual assault case:

> I had a woman say to me, a juror, and she ended up on the jury, she was raped when she was 25. She's 65. She said, "That was 40 years ago and it's not me, and how could I judge this man based upon what some lunatic did to me 40 years ago? I would never judge someone based on what happened to me." Oh, ma'am. Can you take a seat? Can we help you to your seat? You know? That's what you want. You want that opportunity. You want people to have that opportunity as human beings, to say, you know, "It's part of what happened to me, but it's not part of who I am."

Yet, judges' questioning of perceived victims about their potential biases allows lawyers, especially public defenders, to identify potential jurors associated with victimhood that the lawyers would like to strike using their peremptory challenges. Judge Moore described an instance that illustrates these dynamics:

> I'll give you a little anecdote from a sexual assault case that I did once in which I was asking a question about whether the juror had ever been a victim of a sexual assault, including when they were a child. And a juror said to me words to the effect of, "I've

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> never told anyone this, not even my spouse, but yes. I was the victim of a sexual assault as a child." And when I asked an ordinary follow up question about whether the juror could nonetheless be fair on a trial like this, the juror said that the juror could do so. […] The juror was challenged for cause by the defense attorney, understandably. And I denied that challenge, because it was my conclusion under law that the juror was a fair juror. The defense attorney then said, "Well, alright, I'm gonna exercise a peremptory challenge."

Judge Moore went on to contrast his role as a neutral judge with that of the defense attorney as an "advocate who has the right […] to deselect some people from the jury" by peremptory challenge. Other judges discussed the importance of using voir dire to provide the lawyers with relevant information about potential jurors' experiences as victims, even if the judges themselves ultimately decide the jurors can be impartial. In this way, peremptory challenges ultimately enable public defenders to exclude people perceived as victims from juries, just like prosecutors use peremptory challenges to exclude people perceived as offenders.

DISCUSSION

By examining court officials' understandings and strategies during jury selection, this article illustrates the meanings and micro-level, institutional practices that likely help to sustain the unequal functioning of the carceral state: the exclusion of otherwise-eligible individuals with criminal legal system association from jury service and, in turn, from influence over the formal administration of the criminal law. In their efforts to seat impartial criminal juries, court officials in our study seek to remove jurors thought to be biased based on their direct or vicarious association with the criminal law. Whereas prosecutors seek to remove people with experiences as perceived offenders, the social networks of perceived offenders, and people who might identify too strongly with criminal behavior, public defenders seek to remove those with experiences as perceived victims, the social networks of perceived victims, and people who might identify too strongly with victimhood. Judges we interviewed also express concerns about perceived offenders' and victims' potential biases, but judges rarely report removing such jurors for cause. Based on this in-depth analysis of court officials' understandings and reported practices, we theorize that court officials' combined efforts likely result in the systematic exclusion of criminal legal system-associated individuals—people with the most direct knowledge of the factors at play—from participating in the interpretation and application of the criminal law as jurors.

This article has implications for juries as well as for broader research on the collateral consequences of the criminal legal system. For potential jurors themselves, serving as a juror may be an important opportunity for societal (re)integration and positive engagement with the state among people with prior criminal legal system contact (Binnall, 2021; see also Manza & Uggen, 2006). Indeed, a positive experience of jury service can increase civic engagement (Gastil et al., 2010). Furthermore, research suggests that the public is more likely to consider courtroom verdicts as fair when the jury is racially heterogeneous (Ellis & Diamond, 2003; Sommers, 2008). Just as excluding people with criminal legal system association from juries likely disproportionately excludes marginalized racial/ethnic minorities, as noted above, so too does excluding members of their social networks. Whereas 45% of the adult population has ever had an immediate family member incarcerated, 63% of Black people, 48% of Hispanic people, and 42% of White people have experienced the incarceration of an immediate family member (Enns et al., 2019). And just as Black people without a high school degree are incarcerated at the highest rates relative to White people and Latinos (Western & Pettit, 2010), Black people without a high school degree experience the highest rate of family member incarceration (Enns et al., 2019). Meanwhile, violent victimization disproportionately impacts poor communities of color, and the symbolic idea of victimhood in the United States is often

constructed around middle-class, White women to the exclusion of Black women and men (Crenshaw, 1990; Gruber, 2020; Simon, 2007). Indeed, some court officials in this study referenced women (explicitly or implicitly) as victims whose emotions would prevent them from being impartial jurors, reflecting broader patriarchal legal discourses that devalue women victims, especially survivors of sexual assault (Conley et al., 2019; Matoesian, 1993). Thus, court officials' efforts to remove those with system association risk leaving White men as the ideal impartial jurors to be seated, potentially threatening juries' and their verdicts' perceived legitimacy.

Collateral consequences in the context of jury selection may also negatively impact juries' deliberations and verdicts. When people impacted, or at risk of being impacted, by the criminal law are excluded from the processes by which it administers legal sanctions, their perspectives and concerns are less likely to be addressed. Roberts (2013) argues that, given that it is nearly impossible for jurors to be perfectly impartial, "the pureness of the vision of the jury is hampered, rather than enhanced, by the exclusion of one portion of human experience [criminalization], and the concomitant insistence on ignorance" (Roberts, 2013, p. 628). Similarly, Minow (1992) argues that a diversity of perspectives, including those who might identify with defendants, allows for jury impartiality through a "collaborative decision making process involving people reflecting those multiple perspectives" (Minow, 1992, p. 1209). Indeed, racially diverse, as opposed to all-White, juries tend to discuss a wider range of information (Sommers, 2006), and juries picked from racially diverse jury pools tend to acquit White and Black defendants at the same rate, whereas those picked from all-White jury pools tend to acquit White defendants at higher rates (Anwar et al., 2012). Future research could examine how these findings intersect with jurors' criminal legal system associations as offenders or victims—and with what implications for jury verdicts as well as jurors' subjective perceptions of the deliberation process (Winter & Clair, 2018). One study suggests that juries with members with and without felony convictions perform similarly to juries comprised only of people without felony convictions in terms of their deliberation structure and content (Binnall 2019). But this study did not consider lower-level forms of criminal legal system association, experience as a victim of criminalized behavior, or the juries' verdicts.

Our analysis expands scholarly understandings of the collateral consequences of the carceral state. Attention to collateral consequences during jury selection reveals that the very people who experience mass criminalization are foreclosed from authoritative participation in the system, limiting their abilities to shape its apparatuses of control. Thus, collateral consequences have what we refer to as *administrative effects*. Administrative effects highlight theoretical connections between the various ways that social closure excludes people with criminal legal system association from organizational roles across legal institutions. Future research could compare these processes. For example, studies of exclusion from bar admittance could benefit from understanding how the case of bar exclusion relates to the case of jury exclusion with respect to common (or distinct) norms and stereotypes about criminality and victimhood that officials use to enact social closure (see Binnall, 2010 who compares statutory felon-juror exclusion to the moral character requirement for bar admission). In addition, each of these cases could inform future study of possible collateral consequences in the contexts of law schools, police academies, judiciaries, jails, and prisons. As we have shown in the case of jury selection, without empirical analysis of how cultural understandings and routine, micro-level practices operate on the ground, scholars may underestimate the impact of collateral consequences. Furthermore, whereas collateral consequences in domains such as housing or employment arise from landlords' or employers' concerns regarding individuals' future criminal behavior, we show that collateral consequences can arise from an additional mechanism—court officials' concerns regarding individuals' negative perceptions of the criminal legal system.

Moreover, future research could attend to whether the category of perceived or potential victims is salient beyond jury selection and, if so, how perceived victims are framed in relation to their suitability to administer the law as public defenders or police officers, for example. One unintended consequence of decades of important struggles to take seriously crimes disproportionately impacting women, such as sexual assault, could be the systematic exclusion of women from system

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administration. Finally, future research could follow the lead of the quantitative literature on collateral consequences (Kirk & Wakefield, 2018) and use survey and administrative data to estimate the effects of criminal legal system association on the likelihood of serving on a jury or becoming a correctional officer, police officer, lawyer, or judge.

There are ways for individuals and communities with criminal legal system association to influence the administration of the criminal law beyond the formal organizational roles impacted by collateral consequences. In the long term, voting—for those who have the right to do so—in local elections and social movement activism can impact legal policies and practices (see Walker, 2014, showing a positive association between proximal criminal legal system contact and political participation). However, marginalized racial/ethnic minorities have been disproportionately foreclosed from voting not only through felony disenfranchisement but also through gerrymandering, voter identification laws, and other methods. More immediately, public participation in the administration of the criminal law can be exercised through informal routes, such as by attending criminal court proceedings to observe and provide a form of public accountability for court officials (Simonson, 2014) or organizing community bail funds to subvert the power of judges (Clair & Woog, 2022). Simonson (2014) suggests that in a "post-trial world" where a minority of cases are tried by a jury, such public accountability is a necessary and underappreciated potential pathway for excluded communities to influence the administration of the criminal law. While public engagement through court watching, activism, and other means is important, such engagement cannot make up for the exclusion of criminal legal system-associated individuals and neighborhoods from formal apparatuses of control that wield the power of the state to surveil, incarcerate, and even kill with impunity. Exclusion from juries and other formal organizational roles reproduces power structures within the criminal law in ways that likely entrench the carceral state.

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