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## Criminal Law and Criminology: A Survey of Recent Books

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## RECENT BOOKS

### CRIMINAL LAW AND CRIMINOLOGY: A SURVEY OF RECENT BOOKS

BARD R. FERRALL\*

#### CRIMINOLOGY

DARNELL F. HAWKINS, ED., *VIOLENT CRIME: ASSESSING RACE AND ETHNIC DIFFERENCES* (Cambridge UK, Cambridge University Press, 2003) 432 pp.

This book offers numerous contributors' views on areas of further research regarding the correlation between ethnicity and crime. Several contributors review particular statistical compilations of United States homicides to compare levels of involvement by various ethnic and racial groups, including American and European Caucasians, African-Americans, Latinos or Hispanics, Haitians, Native North-Americans, and the Maori in New Zealand. The authors note that even when a correlation between homicide rates and ethnicity is found, other structural factors, such as economic deprivation and the higher concentration of residents in impoverished black communities, should be studied. (In rural communities where impoverished whites are concentrated at levels similar to those of impoverished urban blacks, homicide rates are also at similar levels.) The correlation between homicide rate and ethnicity may be significantly reduced when these other factors are controlled in the studies. Even when homicide rates are found to be higher among middle class blacks than middle class whites, for example, the greater proximity of middle class black communities to poorer communities may be a contributing factor. Community disorganization, family problems and exposure to street life—factors associated with greater criminal involvement—also impact many ethnic and racial minorities at greater rate. At the same time, minority status, as well as the labeling effect of criminal sanction, may exacerbate the effects of these factors. One contributor looks at what is known about homicides committed by whites against minorities in England and Wales and suggests that levels of clearly racist murders may indicate much larger kinds of victimization where the racial factor is more ambiguous. A need for development of conceptual frameworks is identified, as well as improved quantitative and qualitative statistical techniques to estimate the levels of, define the types of, and

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identify the motivations for racially based violence, and thereby to find effective methods of reduction. Two contributors look at the great risk of domestic abuse to women of ethnic minorities. One contributor notes that though the severest forms of domestic violence against black women have declined, lesser acts of abuse have increased, resulting in "coercive control." When these lesser acts are witnessed by children, this injures the community as a whole and continues into the next generation. While criminal justice intervention has contributed to the decrease of severe battering, more permanent prevention can be achieved by methods linked with affirmative traditions in black culture and the struggle for civil rights and social justice, and by dissuading the identification of masculinity with control. Another contributor argues the violence experienced by African-American women must be evaluated not only from the perspective of gender, but of race and ethnicity as well; from this perspective it may also be seen that criminal offenses committed by black women may result from coercive control by their male partners. Several contributors seek explanations for the higher level of criminal involvement of African-American males. Important risk factors for criminal involvement by all males include: high rates of impulsiveness, low school attainment, poor parental supervision, harsh parental punishment, having a young mother or a broken home, low socioeconomic status, and high crime neighborhoods. Even when controlling for these factors, according to one contributor, black male violence remains at a higher level, a fact requiring further research towards an explanation. These risk factors may have different meanings for different ethnicities, or may be qualitatively more severe and longer lasting for African-American juveniles. Future research should examine whether developmental processes are different for African-Americans and Caucasians in experiencing these factors. If so, more appropriate intervention strategies should be developed. Racial disparity in official reporting of crime must also be investigated. Questions include whether there is discrimination at the arrest and court referral stage and whether violent acts by African-Americans are perceived as more serious. Another contributor looks at various criminological theories that black personality traits or subculture pre-dispose blacks to violence. These theories should be carefully scrutinized to see if they are supported by the evidence. Underlying these descriptions is the assumption of the psychological state as a fixed personality trait, present in a large segment of the black population. The subculture producing and reinforcing the violent predisposition is also assumed to be unchanging. The contributor points out problems in the theories, including the fact that the number of potentially violent confrontations that end without violence raises doubts about descriptions of a determinative violent predisposition, even in frequently violent individuals. Another contributor challenges the notion that violence stems from personal amorality and cultural decay, and offers frameworks to study violence within the context of African American culture and morality, as well as of the larger society. Culturally based intervention programs developed from such research may provide a better basis for prevention of violence committed by African-Americans. Finally, another contributor looks at cultural and structural factors—including societal racism—leading to dysfunctional manhood roles, which in turn further reduce access by black males to the networks and training necessary to adapt to a changing market. These dysfunctional manhood roles also lead to definitions and interpretations of encounters and conflicts that tend towards violent responses. Proactive programs to develop market adaptability are needed, as well as efforts to socialize at-risk males. Another contributor looks at the generally accepted notion of a "culture of honor" in the pre-

and post-bellum South, and the similarities of male behavior then and male behavior in the contemporary inner city. It is not clear whether these similarities come from a direct inheritance, or from similar socio-economic conditions (the contributor notes parallels to male behavior on the frontier of the American West), or are merely coincidental, research has established that white Southern males of all classes in the 19th Century were acutely concerned with "honor" and "reputation." Among males of the lower classes this attitude was manifested in a mercurial willingness to fight and avenge even slight insults. Some scholars argue that a perceived need to protect "honor" affects lower class males of all races in contemporary America, and contributes to the level of violence in our society.

### HOMICIDE CASES

JACK P. DESARIO & WILLIAM D. MASON, DR. SAM SHEPPARD ON TRIAL: THE PROSECUTORS AND THE MARILYN SHEPPARD MURDER (Kent OH, Kent State University Press, 2003) 388 pp.

This book concerns a civil suit over a crime committed almost fifty years before the civil trial. The murder of Marilyn Sheppard in 1954 immediately became, and remains, one of the most famous criminal cases in American history. Her husband, Dr. Sam Sheppard, who said he was sleeping downstairs that night, awoke when he heard his wife call, and ran upstairs. He said he was struck unconscious by a stranger. Upon regaining consciousness some time later and seeing his murdered wife in the bedroom, he ran outside to pursue the intruder and fought with someone who may have been a different person than the one inside the house. The police discounted the existence of an intruder because they found no evidence of forced entry, nothing of value was taken, and the scene seemed to have been deliberately arranged to indicate burglary. Sheppard was tried and convicted, but the case remained controversial and several books were written arguing for his innocence. In 1966, the case set constitutional precedent when the Supreme Court reversed on the grounds of pre-trial publicity. Sheppard was acquitted in a re-trial, but was unable to re-establish his medical practice and died in 1970. In the 1990's, new developments brought the case into the courts again. It was reported that the new technology of DNA analysis, used on preserved crime-scene blood samples, indicated the presence of blood from someone other than Sam and Marilyn Sheppard. Also, the theory was advanced that the actual murderer was a contractor employed by the Sheppards at the time, Richard Eberling, who was now imprisoned for another murder. Eberling denied involvement and died in 1998. The Sheppard's son brought suit against the Prosecutor's Office of Cuyahoga County, Ohio (which encompasses Cleveland, where the murder occurred and Sam Sheppard was convicted) seeking damages for wrongful prosecution and for declaratory relief that Dr. Sheppard was innocent and that Eberling was the actual murderer. To defend this civil suit, the chief Cuyahoga prosecutor, William Mason, and the assembled trial team reviewed the entire case with two primary questions in mind: was the evidence at the first trial sufficient to support the conviction, and, if so, why was Sheppard acquitted at the second trial? They also needed to determine how the numerous advances in forensic science, applied to the old evidence, would be used by both sides at the new trial. The prosecution's theory at the first trial was that Sheppard killed his wife during an argument when she confronted him with his infidelities. At the second trial, however, evidence of Sheppard's infidelities was

excluded by the judge, and the prosecution gave no plausible motive to the jury. The defense, in 1966, presented a forensic expert who testified that Marilyn's murderer had to have been left-handed, which Sam was not. At the second trial, the defense argued that Marilyn was having an affair with a married neighbor and that his wife discovered them and killed Marilyn by striking her with a flashlight. The reviewing team further concluded that Sheppard's testimony in his defense at the first trial had harmed his case and noted that he did not testify at the retrial. The murder weapon was also a problem for the prosecutors at both trials. Prosecutors had theorized that Sheppard used a surgical instrument but could not identify one consistent with the injuries, which seemed to have been inflicted by a heavy, blunt object. This problem was solved when a member of the reviewing team, after studying the picture of a blood stain on one of the bedroom pillow cases, concluded that the weapon had been a lamp. This theory was buttressed by the fact that, although acquaintances had previously noticed a lamp in the Sheppard's bedroom, none was found by the crime scene investigators. (At the third trial, which was a civil trial, the defense showed the jury a second-hand store lamp similar to the one described by the Sheppard's friends, for comparison with the stain on the pictured pillow.) This book excerpts portions from the testimony at the civil trial, where important forensic questions included the blood-typing of the crime scene samples and the blood-splatter patterns in the bedroom, around the house, and on Marilyn's and Sam's clothes. (An important factual question was whether the blood pattern on Sam's watch was consistent with his claim that his watch was stained when he felt for Marilyn's pulse, or whether it was, in fact, stained by flying blood.) Other questions included: the lapse between the estimated time of the murder and the time of Sam's first call reporting the crime; the consistency of his injuries with his testimony of the two fights; whether Marilyn was having an affair; the failure of Sam ever to identify Eberling, whom Sam knew, as the intruder; whether Sam was psychologically capable of murder; and even why the family dog did not bark that night. The jury in the civil trial found for the defendant, the State of Ohio.