

A Reply to Professor Lubet's Critique

Professor Lubet of Northwestern University has published a review of my book, *On the Run: Fugitive Life in An American City*, which questions its ethics and credibility.

The book centers on a group of friends: Mike, Chuck, and their neighbors, who are coming of age in a mixed income Black neighborhood that, like many such neighborhoods across the United States, has become the focus of aggressive, disproportionate, and at times violent policing.

I am a sociologist and an ethnographer; the kind of research I do is called participant observation. The method involves observing and participating in the lives of the people one is trying to understand, often over a long period of time, with the goal of representing a particular social reality as it is lived. Here I spent six years with Mike, Chuck, and their friends, trying to understand what it means to come of age in the neighborhoods that have become a target of the US war on crime. How were Mike, Chuck, and their families dealing with the police stops, the interrogations and late night raids, the trips to the court house and to the parole office, and the low level warrants routinely used to arrest Black young men? What does it mean to grow up in a neighborhood where the fear of capture and confinement looms heavy over everyday life?

Professor Lubet argues that I committed a felony during the research—conspiracy to murder the person who killed Chuck. Moreover, Professor Lubet claims that I did so without remorse. Professor Lubet also suggests that some of my accounts of policing in Philadelphia are not credible. These charges are serious, but mistaken. I did not conspire to commit any crime and my accounts of policing in Philadelphia are accurate.

First, let me say as plainly as possible: at no time did I intend to engage in any criminal conduct in the wake of Chuck's death. The passage in question comes at the end of a methodological appendix, in which I was describing the community reaction to his death as well as my own reactions in this difficult period. The summary account in the book does not include significant points that are relevant to the claim that I was engaged in a criminal conspiracy. Most important, I had good reason to believe that this night would not end in violence or injury.

Chuck and Mike were best friends growing up; by the time I met them, Chuck was in his late teens and Mike in his early twenties. We got to know each other while I was in college, becoming quite close friends over that period. In the months before he died, Chuck was actively working to preserve a precarious peace between his friends and a rival group living nearby. His sudden death was a devastating blow not only to his friends and family, but to the whole neighborhood.

After Chuck was shot and killed, people in the neighborhood were putting a lot of pressure on Mike and on Chuck's other friends to avenge his murder. It seemed that Chuck's friends were expected to fulfill the neighborhood's collective desire for retribution. Many of the residents in the neighborhood were emphatic that justice should be served, and the man who killed Chuck must pay. But they weren't actually doing anything.

Talk of retribution was just that: talk.

In the weeks following Chuck's death, his friends occasionally drove around, ostensibly looking for Chuck's killer. But these drives, like the talk of the residents, also came to nothing. This was so because it was common knowledge that Chuck's killer had fled right after the shooting. These drives seemed to satisfy the feelings of anger and pain; they were a way to mourn a dear friend, and showed people in the neighborhood that Chuck's friends were *doing* something.

One night, when Mike could not find anybody else to go with him, I agreed to drive. I felt ambivalent, but I went because I knew these drives were about expressing anger and about grieving, not about doing actual violence. I had talked Mike down from violence in the past, as did many other women in his and his friends' lives.

Professor Lubet claims that I was "unrepentant," about this drive and uses this quote from my book:

"Looking back, I'm glad that I learned what it feels like to want a man to die."

But in the second part of that paragraph, I make clear that I was utterly shaken by that car ride and by my own feelings of vengeance:

"At the time and certainly in retrospect, my desire for vengeance scared me, more than the shootings I'd witnessed, more even than my ongoing fears for Mike's and Tim's safety, and certainly more than any fears for my own."

Second, Professor Lubet questions the credibility of my reporting of contacts and conflicts between people in the community and the police. He argues that the account of Chuck and Tim being charged with receiving stolen property after they were stopped in a car that turned out to be stolen, in which Tim, a minor, was only a passenger, is implausible. He claims that there is no legal basis to charge a passenger in such circumstances and that a specific probationary sentence could not be imposed on a juvenile.

Professor Lubet is wrong on the facts and the law. It may seem quite unfair to charge a passenger in such a situation, but the police sometimes do just that.

Here is a defense attorney in Pittsburgh, writing on his [website](#) (emphasis supplied):

We were at a Preliminary Hearing last week when a small argument between myself and the arresting officer broke out. The gist of the argument was whether my client could be charged with Receiving Stolen Property because my client was suspected to be in the stolen vehicle.

...

Under the Pennsylvania Criminal Code, Receiving Stolen Property requires someone receive, retain, or dispose of movable property of another knowing, or believing, that the property has been stolen.

...

My defense began with the simple argument that my client cannot be guilty of either Theft or Receiving Stolen Property because he was simply along for the ride, had no control over the car, and had no reason to know it was stolen. Then, *the officer admitted to me that he charged my client only because my client was riding in the car.*

Indeed, not only do police arrest passengers in these situations, but the courts have upheld these kinds of charges.¹

Professor Lubet also takes issue with my account of Alex being arrested at a hospital where he was attending the birth of his child. He argues that Alex could not have been arrested at the hospital on a warrant, because a “police spokesperson” claims that the police are not allowed to examine visitor’s logs or run the names for warrants. Furthermore, Professor Lubet asserts that HIPAA guidelines would prevent this type of surveillance.

Once again, Professor Lubet has it wrong. Many hospitals in Philadelphia require visitors to show ID at the registration desk and register as a visitor; some, like the Children’s Hospital of Pennsylvania, selectively run the names of these visitors in criminal databases. Maternity wards often have tighter security than hospitals as a whole and involve additional ID checks and visitor registration. HIPAA protects *patients*, not visitors, and so does not prohibit the police from reading and running visitors’ names for warrants.

Aside from Professor Lubet’s factual and legal errors, there is a more important failure in his commentary. Even if the law prohibited the arrest of a passenger for theft of the car and even if the law prohibited the police from running the names on hospital visiting logs, this can hardly mean that illegal and unconstitutional practices do not occur—and in some places routinely. Have the disclosures of massive illegal law enforcement and judicial conduct over the past several decades not made clear that law is one thing and the on-the-ground “war on crime” as it is practiced in some communities something quite different?

¹ In *Sanders vs. City of Philadelphia*, 209 F. Supp. 2d 439, the court stated: “A prudent person is perfectly justified in believing that a passenger is somehow involved in the theft [of a car].”

In *Whose Side Are We On?* sociologist Howard Becker wrote that there is a hierarchy of credibility in society. The people at the top “have a right to define the way things really are,” while the claims and experience of the people at the bottom are seen as morally and factually questionable. The accounts of people at the top tend to be taken as true, their perspectives validated and upheld, while the perspectives and experience of people at the bottom are presumed to be implausible, biased, and self-serving.

Professor Lubet’s critique is based on just this hierarchy. He uses the expertise and authority of people at the top – police, lawyers, and law professors – to discredit the experience of people at the bottom.

Let me be clear: we need the police, prosecutors and courts to deal with criminal conduct. However, it is also true that the criminal justice system too often uses illegal and unconstitutional methods in the name of crime control. Just this year, a court-filed report on stop and frisk practices in Philadelphia documented tens of thousands of unconstitutional stops and frisks, disproportionately conducted on persons of color.

In the years I was conducting the research for *On the Run*, public coverage of our historically high incarceration rates and the aggressive policing that has helped produce them was limited. The tough on crime position still held considerable sway in the press and in Washington. Since then, we’ve seen a critical shift. Politicians on both sides of the aisle are joining with activists, journalists, and practitioners to confront the fact that we are sending too many people to prison and that police conduct can be violent and dehumanizing. Creating a criminal justice system that upholds the rights and dignity of all of us will not be swift or easy. But the events of this past year do give some hope.