



# PULITZER PRIZE WINNER JAMES FORMAN JR.

## The Murray Excellence in Scholarship Lecture

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When Yale Professor of Law and Pulitzer Prize-winning author of *Locking Up Our Own: Crime and Punishment in Black America* James Forman Jr. visited Duquesne University as the School of Law's Murray Excellence in Scholarship Lecturer in March, he captivated a near-sold out crowd of students, alumni, educators, faculty and legal professionals. Forman's focus on a society that has become too punitive offers important lessons to anyone concerned about the future of race and the criminal justice system in this country. He brought to bear on the audience his portrait of a criminal justice system gone terribly wrong and its devastating effects on young African-Americans. Issues of sentencing laws and mass incarceration led to a lively Q&A. His lecture, which will be published in the *Duquesne Law Review*, poses excruciating questions for any conversation around criminal justice reform.

### The Book

Forman's book was released to wide acclaim, winning the 2018 Pulitzer Prize for nonfiction and leading to some muggy national conversations. Who is complicit in the deeply disproportionate incarceration of African-Americans? All of us?

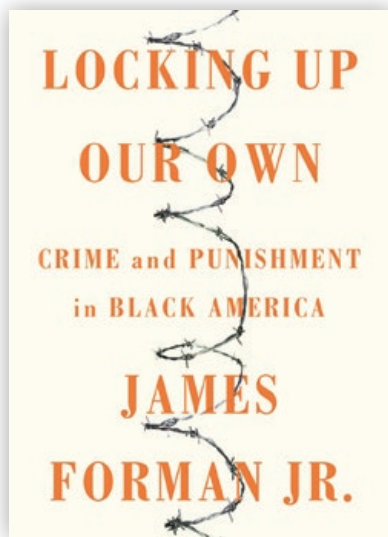
Those who are over-charged, over-prosecuted and over-convicted in our country suffer from a system of siloed actors, too often unthinking about the content of the character of those accused. The case could be made that *Locking Up Our Own: Crime and Punishment in Black America* is, at its heart, about good intentions gone wrong. Like the succession of disparate actors in the lifecycle of criminal justice, readers who skim the book synopsis alone may dismiss its contents as antithetical to black empowerment. But the whole point, then, is missed. It's too tempting not to parallel judge this book by its cover with the reality of millions of human beings processed and punished for their surface offense without thought about what is deeper inside.

Forman is acutely aware that people may be quick to dismiss the book as strictly critical. "Early on I was very encouraged by a *New York Times* review of my book by Harvard scholar Khalil Gibran Muhammad. Not just because he was positive, but because he was saying, 'Listen reader, don't think this guy is saying that racism isn't part of the story. But the fact that he said it, given the relevant academic perspective, is important.' That he (Muhammad) gave the book a close and fair reading was really important," said Forman. An excerpt from that review summarizes the vantage point nicely:

*In "Locking Up Our Own," James Forman Jr. explains how and why an influx of black "firsts" took the municipal reins of government after the civil rights movement only to unleash the brutal power of the criminal justice system on their constituents.... Forman has written a masterly account of how a generation of black elected officials wrestled with recurring crises of violence and drug use in the nation's capital.*

The resonance for the law school audience is affecting because it compels all of us to think more deeply about our roles in an accused person's life. As Forman conveys, "In the disaggregated system, we all have to take responsibility to think through the impact of our own actions every step of the way. Not just impugn people based on one piece of the picture."

Inspired by his frontline experience as a public defender in Washington, D.C. during the height of mandatory maximum sentencing, he speaks from a place of empathy. And frustration. "There were many African-Americans who not only supported these policies, but who enforced them. Were they racist? I don't say that. What I think is each actor in the story focuses solely on their role." In his book he recalls constantly being in court surrounded by African-Americans in different positions to impact the defendant. "A judge. A prosecutor. A parole officer. All black people playing critical roles in a black defendant's life who maybe don't see the whole picture and therefore make some wrong decisions," said Forman.



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Forman with students, L-R, Claude Ngatchou, Ann Booth, Alexandra Jones, Dominique Wiggins, Oluwaseyi Odunaiya and Azhiare Goodwin-Rowe.

## The Judges

Some of the more powerful players and those who have the ability to make the biggest difference, according to Forman, are judges. With 141 Duquesne University School of Law alumni serving as judges at some point in their careers, what does he say to them about impacting the lives of people? “First I would say we need to speak about the appointment of judges in the first place. We have elections coming up and I have heard no one talk about where they stand on judicial appointments in 2020.”

Hon. Elliot Howsie, L’98, Allegheny Court of Common Pleas judge and former chief public defender of Allegheny County, agrees. “Our judges have the best intentions. They try to identify what will keep people safe, while ensuring decreasing the likelihood of repeat behavior. But when we talk about outcomes, I don’t think the approach secures the outcomes. There are collateral consequences of decisions.” Those decisions become data points for future decisions and he feels, like Forman, that we aren’t considering that enough.

Forman pointed out that judges set the ground rules under which so many actors operate, saying, “I mean, examples abound of how their decisions impact us every day. Decisions like Whren and the Fourth Amendment have an effect on African-American drivers. Or theoretically speaking, what about having an underqualified public defender? Is that cruel and unusual punishment?” There are so many ways of thinking both legal and anecdotal that need to be considered.

## Mandatory Minimums

Forman notes that state court judges have the ability to use their discretion where there are more limits and restrictions on how police behave. When it comes to mandatory minimums, is there a state that does it right? “No,” he said. “Doing it right means not having them. A judge needs to look at the charge, and we have overwhelming evidence that mandatory minimums exacerbate racial disparities. People who are in the system have gotten used to doing things a certain way. Think about it, if you are a prosecutor and have been requesting mandatory sentences

for 20 years. Now someone says it’s ineffective and has proven racial disparities. This means for 20 years you’ve been doing things wrong.

“So, I’d say to judges, when you are faced with police issues or parole, you have to take ownership in the part you play in all of this. This is my pitch to any actor in the whole system,” said Forman. He called for more conversation around how judges exercise discretion while also noting no one person is fully responsible.

In his role as professor, he often feels the shock of students as they discuss his work, citing how out of control sentencing has gotten. Forman noted, “They say I’m not hard enough on that generation. They ask how people could not have known their policies would create such disparities.” He thinks a lot of students are interested in issues of mass incarceration, but even his sharpest and most passionate don’t understand how exactly it came to be that the United States surpassed Russia and South Africa to have the largest prison system in the world. “My law students were born into this reality in the aughts. Sometimes they are baffled. They are looking for explanations. I always tell people my work, my book is only part of the story. I say read other books at the same time.”

Part of the education of his students and peers that he considers essential is social justice work. The misconception that it can be left to the people who chose to do it as a full-time job needs to be changed. “I think you have an obligation as a member of the legal profession to do it. Society has passed a set of laws that gives you access to things like being a judge or an attorney to write out a piece of paper called a subpoena. You have the authority to represent someone in court and access to wealth and power. Taking time out of law school or your practice is a commitment that I believe is essential,” said Forman.

What does he have to say to those who still might dismiss his work as counterproductive? “It’s a misunderstanding not of the person who has read the book but one of who chooses *not* to read the book.”



Forman at the book signing with Judy Hale Reed, L’14, left, and Melissa Ruggiero, L’03.

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