LET’S GET FREE

A HIP-HOP THEORY OF JUSTICE

Paul Butler
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To my mother, Lindi Butler-Walton
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The title Let’s Get Free was inspired by, and is also the title of, the hip-hop artists Dead Prez’s debut album (Loud Records, 2000).
I am prosecuting a prostitute. She barely speaks English. We are in a room more like a cell than a courtroom. It’s in the corridor of the District of Columbia Superior Court devoted to “nonjury,” the venue for trials of minor crimes. When lawmakers don’t want people to have jury trials for certain offenses, they make the sentence for the crime less than six months in jail; then, according to the U.S. Supreme Court, the defendant is only entitled to a bench trial.

Judges, you see, are more likely to convict than juries. In this hallway, justice is processed with extreme efficiency—a good judge and prosecutor, working as a team, can get through four or five trials a day.

Crowded inside the little room are the prostitute, a court-appointed defense attorney, a police officer, the judge, me, and my mother. It is my mom’s first time seeing me in trial and I want to impress her.

The facts of solicitation for prostitution cases are always the same: plainclothes male officer encounters prostitute, she offers sexual favor in exchange for cash, and he arrests her. These are not your high-class call girls but rather streetwalkers—the old-fashioned, skanky kind, complete with pimp, drug habit, and tragic backstory.

It’s actually difficult to get arrested for prostitution in the District of Columbia, where it’s a crime but not a big police priority. Everybody—sex workers, customers, and cops—knows what’s where: Fourteenth Street is biological women, Ninth Street is transvestites, Fifth Street, not far from the courthouse, is male hustlers. On Friday and Saturday nights there are so many johns and other gawkers they create a minor traffic jam.

Generally nobody cares. It’s a business district anyway; at night the lawyers and lobbyists are home in the suburbs, so now it’s the streets rather than the offices that are devoted to service for hire. Sure, the police department has a vice squad, but how much can it do, really? The relationship between beat cops and habitual criminals is polite and semirespectful. Each understands that the
other has a job to do.

Sometimes, however, citizens complain, especially when they see the cops and the girls yukking it up. Then a showy crackdown happens for a few days. This is just an annoyance to all the principals. The world’s oldest profession certainly is not surrendering; if anything, it will temporarily switch corners. Police sweeps don’t eradicate crimes like prostitution and drug selling; they just make those activities less orderly.

Most of the girls know who the undercover cops (UCs) are, but my defendant has broken two rules. The police report says that she approached the plainclothes officer and offered to perform oral sex (she probably didn’t use those words) for $25. Rule number one: always recognize the UCs.

Second, she has the temerity to actually go to trial, when rule number two is: plead your case. Throw yourself on the mercy of the judge; unless you have an exceptionally long string of convictions, you most likely will get sentenced to probation and a drug treatment program, and you can be back on the street that same night.

You plead because there is basically no defense in these cases other than general denial. And who is a judge going to believe, an officer of the Metropolitan Police Department or a Vietnamese girl who happened to be on Fourteenth Street at two o’clock in the morning in hot pants, a bikini top, and stilettos? Please. And my mother is watching me? I cannot wait for my cross-examination. I am going to let this whore have it.

I am now prosecuting a United States senator. After practicing on the District of Columbia’s hookers, addicts, and assorted street thugs, I have graduated to the Department of Justice’s Public Integrity Section. Three years into it, I am assigned the biggest case of my career.

Senator David Durenberger, Republican of Minnesota, has rigged an illegal scheme to get the government to pay his mortgage. By the time the FBI catches him, he has defrauded the taxpayers out of a few thousand dollars. After three years of prosecuting public corruption cases, I’m not surprised that some big-time politicians are sleazes. The startling thing is how low their price is.

We have charged the senator with multiple felonies. It’s one of the most important prosecutions in the Justice Department. As a young lawyer, I’m lucky to be on the case; I am sure it didn’t hurt that I am black. We indicted Durenberger in the District of Columbia, where the jurors are mainly African American.

I’m only the second chair; the senior lawyer, a white guy, is just a few years older than I am but has a lot more experience. As long as
I get to do a nice opening or closing statement, and a couple of juicy cross-examinations, I will be a happy camper. This is the kind of high-profile case that can make a lawyer’s career. Life, for this young prosecutor, is sweet.

Shortly before the Durenberger case is due to go to trial, I get arrested.

Simple assault is the crime I am accused of committing.¹

“There is nothing simple about simple assault.” That was the joke made, a few years before my arrest—as I was trained how to prosecute that crime—by the Misdemeanor Section Chief, who later directed my own prosecution. What I did not know then—what a man who makes his living putting people in prison cannot afford to believe—is that there is nothing simple about any accusation of crime. I had to learn that the hard way.

“Criminal justice” is what happens after a complicated series of events has gone bad. It is the end result of failure—the failure of a group of people that sometimes includes, but is never limited to, the accused person.

What I am not saying: prison should be abolished; people should not be held accountable for their actions. I don’t believe that. I have locked up thugs I hope never see the light of day. I will never deny that society needs an official way to punish the bad guys; otherwise, if somebody did the unthinkable—say, killed my loved one—I would kill him myself. The criminal justice system gives the state a monopoly on exercising that kind of retribution. It’s legal hate.

The problem with hate is that it’s hard to contain. In the United States the rush to punish is out of control. In addition to the violent creeps I put away, I sent hundreds of other people to prison who should not be there. Their incarceration only makes things worse—for them and especially for us on the outside. We would all be better off if I had lost those cases. We would be safer and more free.

But I was too good a prosecutor to lose much. And then I got locked up myself. So all I am saying is that the shit’s complex.

At the beginning of my trial—the trial in which I am cast in the lead role and someone else plays the prosecutor—the judge tells the jury, “This case arises from a dispute between two people about a parking space.” Dramatic pause. “Neither one of them drives a car.”

The newly sworn-in jurors have put on their serious faces, but a couple of them look amused. I would think it was kind of funny, too, if it was happening to somebody else. I’d joke about it at happy hour after a long day in court.
First, a quick biography, emphasizing the items that make arrest at age thirty-three unlikely: Yale College and Harvard Law School. Both cum laude. Prestigious clerkship with a federal judge. Cushy job at high-powered Washington, DC, law firm. Then, federal prosecutor in the most elite unit in the Department of Justice.

Now the counterstory, emphasizing the items that make lack of arrest by age thirty-three surprising: Raised by single mom in poor black neighborhood on the South Side of Chicago. When not at work, dress, in the current fashion, like a thug. Nice-sized chip on shoulder, afflicted with the black man’s thing for respect by any means necessary. Don’t like the police much, even though I work with them every day. Can be a smart-ass.

When I left the law firm to go to the Justice Department, I took a substantial pay cut. I had to downgrade my lifestyle, which included moving to a less expensive apartment. I found a great place in a sketchy neighborhood not far from downtown. Included in the rent was a parking space that I didn’t need.

I rode my bike everywhere I needed to go. The checkout clerks at the Safeway got a kick out of me coming into the store every night after work. A black man in a suit and tie stood out in this neighborhood anyway. I just added to the spectacle by jumping on my bike, tying my grocery bags to the handlebars, and riding off.

I was happy not to own a car, because parking issues in my new neighborhood were notorious. Leaving your vehicle on the street overnight risked a smashed window and a stolen radio. And that was only if you were lucky enough to find a legal spot in the first place.

So my bright idea was to rent out my parking space. It would guarantee a little extra money coming in every month. I noticed, however, that there was often a car parked in my assigned space. I figured it was just someone who noticed it was never used and had taken advantage of the opportunity. One evening I made a point of catching up with the guy who parked there. “It’s my space,” I told him politely. “I know it’s been vacant for a while, but it’s going to be used from now on.”

“Well,” he said, “I rent it from the lady who lives there.” He pointed to the apartment inhabited by a woman called “Detroit.”

In the future I would think of her as Crazy Lady, or the Neighbor from Hell, but actually, Detroit is just as descriptive. In one of several bizarre moments during her cross-examination, my defense attorney asked Detroit how she came to be named after the Motor City. She said, with pride, “The government gave me that name.” The jury, which by this point had discerned that this was going to be
a funny trial, cracked up.

Ironically, that was one of the few things she said during her testimony that was probably true. Barbara Waters was a snitch, or “confidential informant” in law enforcement parlance, and Detroit was probably the code name the cops gave her for protection. However, because Ms. Waters was also a police groupie, she couldn’t keep her secret identity to herself. Thus everyone in the neighborhood knew her as Detroit.

She looked to be in her late thirties. She stood about five feet three inches and weighed maybe two hundred pounds. She lived with her elderly uncle and two large German shepherds, whom she referred to as “K-9s.” It was not a terrible neighborhood, but it was also not the most hospitable one for a heavyset black woman who walked around trying to look tough. Almost every time Detroit stepped out of her apartment she took her dogs with her.

I met her when I first moved to the complex. The backs of our apartments faced each other across the parking lot. We introduced ourselves and exchanged pleasantries. That was the extent of our acquaintanceship until this guy told me she was renting out my parking space.

Detroit didn’t drive either, but I guess we both had a bit of hustler in us: we recognized an opportunity for entrepreneurship when we saw one. The difference was that she had no legal right to the lot. Squatter’s rights really don’t count for much outside of the Old West.

I knocked on Detroit’s door and told her politely but firmly that I needed my space. She replied it was her space. In my best lawyer voice, I announced that I had a document to show her, and produced my lease with space number nine clearly marked as belonging to my apartment. She slammed the door in my face.

Not to be deterred by some crazy lady with delusions of parking grandeur, I rented out space nine to Donna, a twenty-something social worker who walked through the neighborhood with a jaunt intended to communicate “I’m a baaad white girl so don’t fuck with me.” She had responded to my flyer advertising the parking space the first day I’d put it up, and had been thrilled to find a safe place for her car.

Right away Detroit started accosting Donna, claiming that she couldn’t park there. I showed Donna my lease and she said she could deal with Detroit. But then someone started leaving notes on Donna’s car that warned of harm to both Donna and the vehicle if she continued to use the parking space.

Making threats, I knew from my day job, is a crime. We both suspected who the culprit was, but we didn’t have any proof. If there were evidence, we knew we could get the police involved. So I started to look out my back window, waiting to catch Detroit putting
one of the notes on the car. I kept my camera next to me. Maybe I got a little obsessed with it. I am, after all, a prosecutor.

During this time the wood floors of my apartment were being refinished, creating bags and bags of sawdust. On a Tuesday night the workmen left the bags at my building’s garbage pickup spot, which happened to be on the street right in front of Detroit’s apartment.

I manned my post at the window, watching on and off most of the evening, but didn’t catch anyone leaving a note. I woke up early the next morning and, as had become my practice, looked out the window.

There was sawdust all over Donna’s car. I was pissed. Throwing on jeans and a T-shirt, I ran outside. No one was in the lot, but right in front of her apartment stood Detroit. Guarded as ever by her two “K-9s,” she was sweeping something from her porch. Something that looked like sawdust. I yelled, “I’m calling the police.” I might have added “bitch.”

First I went over to Donna’s car to inspect it for damage. I remembered from my prosecutor training that DC police take claims of destruction to cars more seriously than other kinds of minor crimes. The joke among prosecutors was if your boyfriend beats you up, don’t say “He hit me and I’m bleeding” when you call 911. The police will take hours to come. Say “Somebody put sugar in my gas tank” and they’ll be there in three minutes.

Donna’s car didn’t look seriously damaged; there was just sawdust all over it. I headed back inside to call the police when all of a sudden there was no longer a need to do so. Three police cars, sirens blaring, flew into the parking lot. Several cops jumped out, yelling at me, “Put your hands in the air, motherfucker! Lean against the car!” Then came the words that I’d spent my whole life trying to avoid: “You’re under arrest.”

“What? Why?” I was in a state of disbelief. This had to be a joke.

“Simple assault.”

Detroit had called 911 and said that somebody spread sawdust on her porch. She claimed that, as she was sweeping it up, I ran up to her and pushed her and she fell down. She was now suffering from back pain.

That’s ridiculous, I told the police. They should call Donna to get the history of the whole dispute. Anyway, who would go anywhere near Detroit with those two big German shepherds standing guard?

The police weren’t listening. My arresting officer was a muscular bald man who looked like a Nazi, if the Nazis had accepted applications from Puerto Ricans. So I played my trump card: “I am a prosecutor.” The cop looked interested. I hoped this would be an opening. I needed one badly. I couldn’t get arrested. I did not go to Harvard Law School to end up just another nigga with a record.
I showed the officer my Justice Department ID. He inspected it carefully. Then he smirked and said, “So I’m sure you know this already. You have the right to remain silent. Anything you say can and will be used against you. You have the right to an attorney. If you can’t afford an attorney one will be provided for you.”

I was handcuffed and placed in the back of a squad car. I thought, this cannot be happening. It felt like one of those dreams professional people have where their most feared public humiliation comes true.

At the police station I told the cops that I was afraid to be in a cell with the other arrestees because I might have prosecuted some of them. No problem, I was told. Just sit in the waiting room.

They inventoried the contents of my wallet, took my mug shot, fingerprinted me—all the things that, like white people, I would know only from TV if I wasn’t, in fact, a prosecutor. I didn’t have any money for the pay phone, so my arresting officer gave me a quarter to make my proverbial phone call.

That’s when the privilege kicked back in. I know so many lawyers it actually took me several minutes to decide which one to call. I chose Mark Srere, one of my best friends. Since I was to be taken downtown for “processing,” he said he’d meet me there.

Two cops—male and female, both black—transported me to the courthouse. The only police officers who have ever given me breaks are African American women. By the end of the ride this one was on my side. I got her to read me the police report from my arrest file. She announced that she doubted the case would go anywhere. It’s “he said, she said,” and anyway, the arresting officer didn’t follow procedure. He was supposed to call a supervisor before locking up someone from another law enforcement agency.

It was my first time walking through the prisoners’ entrance at the courthouse. My handcuffs made it seem especially authentic. Normally, at the main entrance, I don’t even have to go through the metal detectors. The U.S. marshals require defense attorneys to do that, but we prosecutors just show our ID’s and breeze through. Not that day.

Inside the courthouse I was placed in a holding cell, alone. I was officially behind bars. My friend Renée Raymond, a public defender, came to see me. Apparently it was all over the courthouse that a prosecutor was locked up. Three lawyers volunteered to represent me.

Renée said that Michele Roberts, a black woman considered by many to be the best trial lawyer in the District of Columbia, was trying to get the case dropped. Everyone expected that this would happen, but they were proceeding cautiously to make it clear that I was not getting special treatment. Special treatment? I almost laughed.
In the meantime a guy from Pretrial Services came to interview me and take my urine sample for drug testing. Filling out his form, he asked me the highest grade I completed. I told him law school. He looked like he didn’t believe it but dutifully wrote it down.

A few hours passed. The cell was so filthy I couldn’t even sit on the metal bench. I just didn’t trust those stains. I wondered what Senator Durenberger would have said if he could have seen me then.

Then lunchtime. A courthouse employee came in, looked at me like I was a piece of shit, and literally threw a paper bag through the bars of my cell. Lunch meat, of uncertain origin, on white bread, and an apple. I was not hungry.

Finally Michele Roberts arrived, with bad news: “I don’t believe it, but they are going to prosecute this. You are going to be arraigned in a few minutes. They probably won’t ask for bail. Let me do all the talking.”

Thank God I didn’t know the judge in arraignment court. I thought everybody would be staring at me, but nobody even looked interested. I was just one of the hundred black men on the lockup list that day. A trial date was set, the judge ordered me to stay away from Detroit, and I was free to leave. Michele gave me money for a cab, and finally, in the privacy of my home, I cried.

The next day, at work, was worse. I was the only black male prosecutor in my office and the only lawyer in the history of the section ever to have been arrested. Everybody knew. My boss at the Justice Department got a call from the U.S. attorney for the District of Columbia—the head of the office that was prosecuting me. There was no love lost between our two agencies.

The U.S. attorney reminded my boss that I prosecuted a case against a clerk in his office, a guy who was stealing film and then selling it. We had arranged a sting against him.

It was actually one of my favorite cases. We videotaped the guy offering to sell film to an undercover agent. He worked as a supply clerk in the prosecutor’s office and said he could steal as much film as the undercover agent wanted. Under the law, the higher the dollar value of the crime, the more time the bad guy gets, so our agent strung this dude along, getting him to offer to sell more and more film. Every time the man offered to sell more, his sentence increased. When the perp got up to the quantity of film that could send him to jail for about twenty years, we arrested him, just to put an end to his self-destruction. Then we had a good laugh—what a dumb-ass.

Now the U.S. attorney was telling my boss that he sure would have liked to have known about that case in advance. It embarrassed him. And now here we were with the tables turned.

My boss was pissed—at them, not me. He kept me on all my
cases, including the high-profile one against Senator Durenberger. “Just make sure you get a good lawyer,” he said. I told him about Michele Roberts. Later the same day he called me into his office. He’d checked on her and said I’d made the right decision. She’s the best.

The DC criminal court had so much business that it took fifteen long months to get to my trial. During the days I continued to put bad guys in jail. At night I worked with my lawyer and investigators to try to keep my ass out.

Finally, the day of reckoning. The bailiff calls the case: “The United States of America versus Paul Butler.” No joke. I am very familiar with the phrasing: it’s how all federal criminal cases are styled: the U.S. against the defendant. It’s just that I never before had a reason to ponder how bizarre it sounds—you know, the most powerful nation in the history of the world against you. I think I could handle Rhode Island or North Dakota, maybe even the District of Columbia versus Paul, but the frigging United States of America! I feel a little overpowered.

The jury is ten blacks, two whites. The prosecutor who says he doesn’t consider race when choosing jurors is either stupid or a liar. That’s like the myth that lawyers want an impartial jury. Bullshit. Like any other lawyer, a prosecutor wants a jury that is predisposed to decide the case in favor of his client. In that equation, of course race makes a difference.

While virtually every criminal lawyer agrees that race matters, there are different schools of thought about how. Some of my fellow prosecutors believe that in your average black male defendant case, you try to avoid black male jurors. The fear is they’ll be overly sympathetic. Others think just the opposite—a black man is just the juror you want, because he’ll want to distinguish himself from this black man on trial. He’ll prove he’s different by voting to convict the defendant. It’s similar to another theory that almost every prosecutor would endorse: women jurors are harder on female defendants (and even female victims) than they are on males.

In any event, my thoughts on this issue are irrelevant because Michele doesn’t consult me. She’s made it clear that she is the one in charge. In criminal court in DC, as in most other jurisdictions, both sides have “preemptory challenges” that allow them to exclude a few jurors for virtually any reason. Race actually isn’t supposed to be one of the reasons, but it’s an easy rule to get around. You just have to offer a “race neutral” reason. My favorite of these was in a case in which the defense claimed the prosecutor was striking Latinos. The prosecutor answered that it wasn’t Latinos he was challenging, it was people who spoke Spanish. That case went all
the way up to the Supreme Court, which agreed with the prosecution that it was a race-neutral explanation.

So it would have been easy for Michele to exclude them, but she allows a couple of young black men to stay in the jury pool. I don’t know whether to throw them a black power salute or avoid their gaze. I just hope that I haven’t prosecuted them for anything.

The prosecution calls its first witness: my arresting officer. The famed defense attorney Alan Dershowitz once claimed that 99 percent of police officers lie under oath. I don’t know if it’s that high, but every prosecutor has faced the situation of having to put a cop on the stand whose testimony is questionable. The relationship between the prosecutor and a lying police officer is more complicated than you’d think. On the one hand, you don’t want to sponsor perjurious testimony. On the other hand, you don’t want to get the cop mad at you for believing some defendant over him. So, unless you have compelling evidence that the officer is lying, you tend to go along to get along. Your conscience is absolved, however, because Dershowitz has another hypothesis prosecutors definitely endorse: that 99 percent of people accused of crimes are guilty.

The one time I am in a position to know absolutely whether a police officer is telling the truth, because I am the subject of his testimony, he lies through his teeth. My arresting officer claims that when he drove up, he saw me vandalizing Donna’s car. Under oath, he testifies that I cursed him out and threatened Detroit, then told him that he couldn’t arrest me because I worked for the Department of Justice.

On cross-examination, my lawyer asks him a series of questions he can’t answer: Why were there no other witnesses who reported seeing me vandalize Donna’s car—not even the other police officers who had arrived at the same time? Why, if I had damaged the car, hadn’t he arrested me for destruction of property? Why would I have pushed Detroit and then run to the parking lot and start putting sawdust on Donna’s car? The jury starts looking at me a little more sympathetically.

The next witness is Detroit. Now, while it should not matter to jurors that a witness is unattractive, it absolutely does. When I was prosecuting misdemeanors, it was a commonplace that if you had a defendant charged with a drug possession offense, and the dude was a good-looking black man, DC jurors were not going to send him to jail. Detroit is so short and heavy that as she walks down the courtroom’s aisle to the witness chair, she lists from side to side. The jurors look at her and then look at me. Score one for the defense.

As a prosecutor, you try to make your victims sympathetic, but sometimes that’s harder than you might think. Victims are often as mistrustful of the system as the defendant, and it comes across in
their testimony—even, or maybe especially, the testimony of pretend victims. On the stand, Detroit is belligerent, confused, and occasionally incoherent. She does not appear to tell the truth, even about tangential matters. She claims to be a teacher, but the school where she says she teaches denies this. She says that she is a special police officer, but again there are no official records to verify this. She says that she has no plans to sue me in civil court, but Michele produces a letter from the lawyer that she hired for just that purpose. She simply does not come across as a credible person. At the end of her testimony, the prosecutor asks for time to find more witnesses. He says that “the cross-examination was obviously very effective” and that the government case needs bolstering. The judge denies the motion; in misdemeanor court each judge has about six cases scheduled for trial every day, so there is no time for delay.

The prosecution’s final witnesses are a boyfriend and girlfriend who live downstairs from Detroit. They hadn’t seen or heard anything, but Detroit had told them that I assaulted her. If it is possible to have a favorite moment at your own criminal trial, here is mine. My lawyer asks Detroit’s downstairs neighbor if he believed Detroit when she claimed that I had pushed her. His answer: “No. She lies about everything. I don’t believe anything she says.”

After this the prosecution announces that it rests its case. A juror gasps. Loudly.

From my professional point of view, it is one of the worst prosecutions I have ever seen. A very good prosecutor has the skills to convict some innocent people—not every single person, but some. In our private lives we have all been made to look guilty of some transgression that we didn’t actually commit. An excellent trial lawyer can do that, not always enough to prove a case beyond a reasonable doubt, but enough to give the jury something to chew on. For the record, if I had been the prosecutor in my trial, the government’s case would have been a lot stronger.

At home the next morning, as I prepare to take the stand in my own defense, I get dressed as if I am headed to the greatest performance of my life. Because I am. The only person who can mess this up now is me. If I get convicted of this crime—this stupid little misdemeanor—life as I know it is over.

When I raise my right hand and swear to tell the truth, the whole truth, and nothing but the truth, I get that surreal feeling again. This was never supposed to happen to me.

I look each jury member in the eye and I tell them the story. The apartment, the rented parking space, Detroit, the sawdust. With all my heart I resent being in this position, but it’s not the jury’s fault. It is the goddamned prosecutors’ fault. When it is time for their stupid cross-examination, I let them have it. I am angry and self-