The Crime Control of True Crime Best-Sellers

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Abstract

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In criminology, social and legal eras are often referred to as dominated by either due process or crime control narratives. In general, crime control narratives focus on the need for tough-on-crime policies and on the terror of criminals wreaking havoc in society. By contrast, due process narratives focus on the need to move slowly and methodically through our justice process to avoid mistakes and violations of human rights. These eras swing back and forth, neither wholly related nor unrelated to the conservative/liberal pendulum of broader politics. Arguably, despite a conservative and nationalist moment in US politics, our criminal justice policy pendulum is again swinging in the due-process direction. This is evidenced in policy reforms and popular calls for policy reform such as monitoring the police, ending cash bail, legalizing marijuana, and so on. Contrary to prevailing trends, best-selling true crime books remain crime control oriented regardless of the historical/cultural era.

Key words: due process; crime control; true crime; criminal justice policy; tough-on-crime; crime and popular culture; cultural criminology; popular criminology; mass media; best sellers

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Both true crime writing and academic criminology theory are less focused on providing a factual account of events than they are about framing what we should pay attention to - what elements should have central stage and who the main villains are. Academic criminology has the advantage of claiming empirical validity but like the true crime 'non-fiction novel',[1] criminology theory weaves together the social and built environments, the order of events, and casts a probable villain - whether that be parents, peers, capitalism, or neurobiology. True crime writing *is* criminological theory in this way; it casts certain events, characters, interactions, environments, and outcomes as central to understanding the sequence of events, causation and problem-solving. The non-fiction novel and its true crime descendants arguably aim to tell a story that is more true than an assemblage of facts - a truthier truth, which explains society and what ought to be done about it. [2]

Criminologists, attorneys, and legal scholars have engaged in considerable handwringing over the misinformation about the system and the law perpetuated by crime fiction and true crime writing.[3] However, I argue here that it is not the misinformation on particular aspects of the criminal justice system,[4] but rather the overarching impression of the extent of danger,[5] where the danger lies, and appropriate responses, that is the most salient information conveyed by true crime writing. True crime writing invites average people to the table to consider the role

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[1] Truman Capote arguably invented a new style of storytelling he called the 'non-fiction novel'. While this is disputed, it is undeniable that *In Cold Blood* was a best selling work that shaped true crime writing to come. See Ralph F. Voss, *Truman Capote and the Legacy of In Cold Blood* (The University of Alabama Press 2011).
[2] See ibid.
[3] See Megan Boorsma, 'The Whole Truth: The Implications of America's True Crime Obsession' (2017) 9 Elon Law Review 209.
[4] e.g. legally not-guilty v. factually innocent.
[5] '[H]omicides account for almost 80 percent of the total crimes recounted in the true crime books'. Alexis M. Durham III, H. Preston Elrod and Patrick T. Kinkade, 'Images of Crime and Justice: Murder and the "True Crime" Genre' (1995) 23 Journal of Criminal Justice 143, 146.

of the state in the maintenance of order. We read true crime, at least in part, because it promises answers to serious questions about human behavior[6] and society.

This analysis explores the crime and justice imaginings of best-selling true crime books, filling a gap in the existing literature. This research was inspired by a question from a student during a criminology course focused on pop culture. The student asked if true crime was like popular crime film in mirroring the pop criminology trends of its era or if it was more forward-thinking, aligning with due process - as her favorite podcasts seem to do today. An extensive search was conducted and surprisingly, while a great deal has been written about the modern era of true crime podcasts and documentary films, no studies were located on ideology in historical true crime. While true crime may currently be experiencing its golden age, its popularity extends far beyond the present moment and interest in older books is often reignited by film adaptations or media coverage of high-profile cases (e.g. Bundy) demonstrating their enduring significance and impact. These texts are also the cultural template that guides modern true crime storytelling and primes audience consumption.[7] By examining the historical context and orientations of best-selling true crime books, this study aims to contribute to our understanding of the long-term relevance of true crime in reflecting and shaping evolving attitudes towards crime and justice.

The analysis presented here demonstrates that the answers suggested by true crime best sellers overwhelmingly suggest a need for a criminal justice system focused less on due process and individual rights and more focused on increased state powers and the aggressive repression of crime. Although the books reflect other cultural concerns and trends of their time, such as an

[6] Jean Murley, *The Rise of True Crime: 20th-Century Murder and American Popular Culture* (Praeger Publishers 2008) 3.
[7] Diana Rickard, 'Truth or Doubt: Questioning Legal Outcomes in True-Crime Documentaries' (2022) 17 Law and Humanities 1, 3.

anti-establishment sentiment in the 70s and the rise of the citizen detective movement[8] in the 2010s,[9] the crime control theme is fairly consistent across decades regardless of broader cultural and political shifts. I begin with a brief overview of Herbert Packer's models for understanding cultural moods towards the criminal justice system, then turn to an examination of the themes and orientation of true crime best-sellers throughout the decades and how they align with the justice 'mood' of the era.

Due process v. crime control

'Due process' and 'crime control' as they are used here are terms derived from Herbert Packer's models of the criminal process and are used in academic criminology to describe social and political attitudes towards crime and justice as well as the machinery of existing justice systems.[10] Packer intended these terms as a model of the value choices reflected in the functioning of the criminal justice system, a description of a social 'mood'[11] and for his models to be used as a tool to 'appraise the system as a whole in terms of its capacity to deal with the variety of substantive missions we confide to it'.[12] The crime control model as Packer imagined it, is a conveyor belt of efficiency – an assembly line of justice delivered and crime abated through swift action. The due process model is an obstacle course of quality control focused on fairness to the accused and protection from the government.[13] Packer believed that any existing system reflects both models.

[8] Also called websleuths, armchair detectives, and cyber detectives.
[9] Elizabeth Yardley and others, 'What's the Deal with 'Websleuthing'? News Media Representations of Amateur Detectives in Networked Spaces' (2018) 14 Crime, Media, Culture 81.
[10] See Herbert Packer, *The Limits of the Criminal Sanction* (Stanford University Press 1968); Herbert Packer, 'Two Models of the Criminal Process' (1964) 113 University of Pennsylania Law Review 1.
[11] Packer, 'Two Models of the Criminal Process' 12.
[12] ibid 5.
[13] ibid 13.

The crime control model's central concern is the repression of crime, viewing it as a key aspect of maintaining public order and, by extension, preserving human freedom. This model underscores efficiency, emphasizing high rates of arrest and conviction.[14] Speed requires informal and routine decision-making and limited challenges to convictions or arrest. Guilt is the assumed outcome of the process (plea of guilty) and faith is high in police and prosecutors to fairly and efficiently determine guilt and screen out the innocent. In the case of errors, the crime control model values efficiency over reliability and desires to avoid restrictions on informal (police) factfinding. In contrast, the due process model stresses the possibility of error in the criminal justice process. In the due process model, accuracy and fairness are central to social control. The due process model centralizes individual rights, equity under the law, and limits to government power. Because this model values reliability over efficiency, the formal and methodical fact-finding of the court is preferred. In the case of errors, the due process model prioritizes that an innocent person is not convicted.

Written in the 1960s amidst a due process legal revolution in the US, Packer's models are now incomplete and dated[15] as models of how the US system actually functions. They have received considerable criticism over the decades for Packer's assumptions of procedure and politics.[16] For example, underlying Packer's notions of efficiency, and the crime control orientation in general, is the assumption that police and prosecutors can and do reduce crime and that crime is reported.[17] However, Packer's models have a long second life, these identified values are now debated and advocated models as well as attitude measurements, 'at a discursive

[14] ibid.
[15] Kent Roach, 'Four Models of the Criminal Process' (1998) 89 Journal of Criminal Law and Criminology 671.
[16] ibid 692.
[17] It is beyond the scope of the work here but most crime is not reported, and most reported crime is never solved. This is one of the insights that makes Packer's models unworkable as models of an actual system.

level, Packer's models have become self-fulfilling prophecies'.[18] The two models remain useful for describing individual, political and social attitudes towards the criminal justice system, or what Packer described as a social 'mood'.[19]

A real-world example of how these due process or crime control attitudes impact the criminal justice system is juror behavior and selection. Fitzgerald and Ellsworth found that attitudes towards the death penalty were tied to a whole cluster of attitudes about crime control and due process which in turn means that people who are more due process oriented will be excluded from serving on death penalty juries. [20] Jurors must be 'death qualified' to serve. This means that those who are unwilling to vote for the death penalty will be excluded from serving on the jury at all. These excluded potential-jurors are more likely to have due process values and be less inclined to vote for guilt (a separate trial phase in the US). By excluding due process orientated individuals from the jury, you have 'stacked the deck' at the outset in favor of guilty and death verdicts.[21]

In politics, populism has been tied to the crime control attitude. Populism and the crime control perspective share 'a reliance on rhetoric appealing to superficial or easy emotions, a disregard for principles of consistency and precedent, and a disregard for procedural safeguards'.[22] Jones also notes that sexual offences and homicides are of particular utility to both populism and tough-on-crime rhetoric. Consuming nonfiction crime media has long been linked

[18] Roach, 'Four Models of the Criminal Process' (n 15) 672.
[19] Packer, 'Two Models of the Criminal Process' (n 10) 12.
[20] Robert Fitzgerald and Phoebe C. Ellsworth, 'Due Process vs. Crime Control: Death Qualification and Jury Attitudes' (1984) 8 Law and Human Behavior 31.
[21] M. Sandys and others, 'Stacking the Deck for Guilt and Death: The Failure of Death Qualification to Ensure Impartiality.' in J.R. Acker, R.M. Bohm and C. S. Lanier (eds), *America's Experiment with Capital Punishment: Reflections on the Past, Present, and Future of the Ultimate Penal Sanction* (3 edn, Carolina Academic Press 2014).
[22] Richard Jones, 'Populist Leniency, Crime Control and Due Process' (2010) 14 Theoretical Criminology 331, 335.

to punitive attitudes,[23] increased fear of crime[24] and anger about crime.[25] True crime has been specifically identified as a factor inspiring public demand for lawmakers to increase crime control and punishment despite decreasing crime rates.[26] This has race and gender implications as well. People of color are more impacted by tough-on-crime policy - which is in turn associated with racialized patterns of policing.[27] Conversely, women are more affected than men by fear of crime and the behavior limiting expectations of crime avoidance.[28] This is particularly relevant given that women and girls consume more true crime[29] and are thus the most exposed to true crime's highly sensational version of safety and danger discourse.

Does the consumption of popular crime control and/or due process narrative in true crime writing directly lead to our decisions as voters, jurors and neighbors? I share Nicole Rafter's view that the relationship is complicated and that pop culture primarily gives us narratives for thinking about the causes, effects and solutions to crime. [30] The argument presented here is that while the narratives of popular true crime books reflect other cultural concerns and trends of their time, they lean heavily towards a crime control orientation regardless of the broader cultural leanings of an era.

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[23] Laura Vitis and Vanessa Ryan, 'True Crime Podcasts in Australia: Examining Listening Patterns and Listener Perceptions' (2021) 30 Journal of Radio & Audio Media 1, 2.
[24] Lisa A. Kort-Butler and Kelley J. Sittner Hartshorn, 'Watching the Detectives: Crime Programming, Fear of Crime, and Attitudes about the Criminal Justice System' (2011) 52 The Sociological Quarterly 36, 48.
[25] Colleen M. Ray and Lisa A. Kort-Butler, 'What you See Is What you Get? Investigating how Survey Context Shapes the Association between Media Consumption and Attitudes about Crime' (2020) 45 American Journal of Criminal Justice 914, 928.
[26] Susan Weiner, 'True Crime: Fact, Fiction, and the Law' (1993) 17 Legal Studies Forum 275, 287.
[27] Walter Lee Campbell, 'From Tough-on-Crime to Smart-on-Crime: The Racial Impact of Policing Felony Drug Offenses in the 21st Century' (PhD dissertation. Rutgers University-Graduate School-Newark 2019) 5-10.
[28] Sara M. Walsh, 'Safety Spheres: Danger Mapping and Spatial Justice' (2015) 22 Race, Gender & Class 122, 123.
[29] Anita Biressi, 'Death in the Good Old Days: True Crime Tales and Social History', *Cultural Studies and the Working Class* (Bloomsbury Publishing 2000) 180; Amanda M. Vicary and R. Chris Fraley, 'Captured by True Crime: Why are Women Drawn to Tales of Rape, Murder, and Serial Killers?' (2010) 1 Social Psychological and Personality Science 81, 82.
[30] Nicole Hahn Rafter, *Shots in the Mirror: Crime Films and Society* (2nd edn, Oxford University Press, USA 2006).

Approach

To gain an understanding of true crime books within their respective period, my goal was to analyze books that were popular and widely read during their time instead of focusing on exceptions that didn't represent the mainstream view. A decade is an imperfect measure of an era, but it is widely used to discuss periods in criminal justice policy and thus I used this division as the framework for the book search. To understand the popularity of true crime books over time in the US, I began by exploring bestseller lists. However, two challenges arose early from this strategy. First, available lists primarily ranked books as best selling either across a range of weeks or solely within their distribution platform (e.g. Amazon). There are dozens of bestsellers lists and none of them use the same methods or are entirely accurate. Second, true crime has only recently become a distinct category ranked in book lists. After reviewing a few lists to get an overview of the data, I understood that I wanted to work with a definition that captures the modern everyday usage of the term 'true crime' and would exclude espionage, most personal survival narratives (memoirs of moving *forward* in life after tragedy), and political scandals/crimes (e.g. Watergate). As an arguably incomplete but effective way to narrow the search and exclude political narratives, which often dominate the lists, I worked with a definition of true crime drawn from Mark Seltzer,[31] Jean Muley,[32] and the FBI crime reporting (UCR) program.[33] Here, a true crime book is defined as a narrative of a real 'crime against a person', which returns to the crime, and is clearly shaped by the storyteller.

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[31] Mark Seltzer, *True Crime: Observations on Violence and Modernity* (Routledge 2013), 37.
[32] Murley, *The Rise of True Crime: 20th-Century Murder and American Popular Culture* (n 6) 2, 6.
[33] 'Each NIBRS offense belongs to one of three categories: Crimes Against Persons, Crimes Against Property, and Crimes Against Society. Crimes Against Persons (e.g., murder, rape, and assault), are those whose victims are always individuals. The object of Crimes Against Property (e.g., robbery, bribery, and burglary), is to obtain money, property, or some other benefit. Crimes Against Society (e.g., gambling, prostitution, and drug violations), represent society's prohibition against engaging in certain types of activity; they are typically victimless crimes in which

Publishers Weekly (PW) emerged as the most reliable source for identifying older popular books because it published the top ten bestselling non-fiction books of the year - which I then grouped by decade.[34] I began by searching for any true crime book on each yearly PW best-selling non-fiction list. Bestseller lists change over time to incorporate new formats or deal with challenges and eventually PW lists became less usable around the time they stopped publishing yearly lists and then moved to combined fiction and nonfiction lists (divided by hardcover v. paperback) when they switched to Neilson BookScan for data in 2012. For later decades, when PW was not available or the most inclusive choice I chose other lists, usually the New York Times (NYT)– whose lists also continued to change over the years (for example, to include audio books or exclude children's books).Working from my definition of true crime above I worked by decade to identify the top-selling true crime book of the decade for further analysis.

The method of using PW yearly nonfiction bestseller lists was effective for the 1960s, with only one true crime novel, Truman Capote's *In Cold Blood* (1966), making it onto the lists during the decade;[35] it will serve as the example for the 1960s. After the 1960s this method worked less well, and I turned to other sources to supplement the search. There were no evident true crime books on the PW top ten lists for the 1970s. The NYT has proclaimed *Helter Skelter* (1974) the bestselling true crime book ever[36] and records show that in 1975 *Helter Skelter* spent

property is not the object.' National Incident-Based Reporting System (NIBRS) Uniform Crime Reporting (UCR) Program, *Crimes Against Persons, Property, and Society* 2012).

[34] See Bergen Evans website: www.ocf.berkeley.edu/~immer/booksmain. His page 'The Books of the Century' contains, among other lists, the top ten bestsellers in nonfiction, by, year, as recorded by Publishers Weekly.

[35] Alice Payne Hackett and James Henry Burke, *80 Years of Best Sellers: 1895-1975* (New York: RR Bowker Company 1977), 198.

[36] David Stout, 'Vincent T. Bugliosi, Manson Prosecutor and True-Crime Author, Dies at 80' *The New York Times* (6/9/2015) <www.nytimes.com/2015/06/10/us/vincent-t-bugliosi-manson-prosecutor-and-true-crime-author-dies-at-80.html> accessed 07/12/2023.

27 weeks on the NYT non-fiction bestseller list and won an Edgar Award that year.[37] Therefore, for the 1970s, *Helter Skelter* will be the selected example.

There were no true crime books in the PW yearly bestseller lists for the 1980s, with non-fiction bestsellers dominated by diet, exercise, and investment books. The uncommonly published 'Top 25 Best Sellers of the 1980s' list, exclusively released for that decade, also failed to yield any true crime literature.[38] I turned to the weekly NYT Times bestseller lists and Ann Rule emerged as a clear 80s bestseller. *The Stranger Beside Me* was published in 1980 ultimately selling more than 2 million copies.[39] However, it did not reach the NYT bestsellers list until 1989, the year Ted Bundy was executed. According to her publisher, Ann Rule went on to write 'thirty-five New York Times bestsellers, all of them still in print'[40] following the success of *The Stranger Beside Me* which was chosen for analysis here.

The 1990s presented a clear choice, *Midnight in the Garden of Good and Evil* was the PW #3 nonfiction bestseller for 1997.[41] Although the book was published in 1994, the film based on the book was released in 1997, no doubt increasing sales of the book. Books on bestsellers and published internet research on bestsellers mysteriously dwindles after the 1990s. Initially, I referred to the remaining PW lists, but numerous discrepancies in their published lists for this era made them unreliable. Some lists were reversed (nonfiction listed as fiction), and other years

[37] Keith L Justice, *Bestseller Index: All Books, by Author, on the Lists of Publishers Weekly and the New York Times Through 1990* (McFarland 1998).
[38] Publishers Weekly, *Top 25: Top 25 Best Sellers of the 1980s* (Deseret News 1989).
[39] Christine Mai-Duc, 'Ann Rule Dies at 83; True-Crime Writer Penned Account of Ted Bundy' *Los Angeles Times* (7/27/2015) <www.latimes.com/local/obituaries/la-me-ann-rule-dies-20150727-story.html>.
[40] Simon & Schuster, 'Ann Rule' <www.simonandschuster.com/authors/Ann-Rule/1692136> accessed 07/12/2023.
[41] Daniel Immerwahr, 'The Books of the Century: 1990-1999' <www.ocf.berkeley.edu/~immer/books1990s> accessed 07/12/2023.

appeared out of sequence.[42] Because of the inconsistencies in the PW list for this decade I turned to the NYT which has a list of paperback nonfiction bestsellers.[43] This measure differs from previous decades because this list accounts for book sales over a longer period. However, *The Devil in the White City* (2003) is ranked #3, with 353 weeks on the list, making it the top true crime book on this list and the only one published in the 2000s. Numerous other true crime books made NYT lists briefly, likely propelled by media coverage on the trials.[44]

PW lists for the 2010s are unavailable, making the New York Times' 'Combined Print and E-Book Nonfiction' lists the most reliable source for this period. These lists are available on the NYT webpage, and I systematically backtracked from 2019 to identify the true crime book that spent the longest time (in weeks) on the list. Two books emerged. *I'll be Gone In The Dark* by Michelle McNamara (2018) and *Killers Of The Flower Moon: The Osage Murders and the Birth of the F.B.I.* by David Grann (2017).[45] Both books have been adapted for the screen. *I'll be Gone in the Dark* was released as an HBO miniseries in 2020 and *Killers of the Flower Moon* was released in 2023 as a film directed and produced by Martin Scorsese. Because *Killers of the Flower Moon* reached peak popularity in the 2020s after the release of the film, I selected *I'll Be Gone in the Dark* as the representative for the 2010s for analysis.

In summary, the texts selected as representative true crime books are *In Cold Blood* for the 1960s, *Helter Skelter* for the 1970s, *The Stranger Beside Me* for the 1980s, *Midnight in the*

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[42] Publishers Weekly, 'Publishers Weekly Annual Adult Bestsellers 1990-2013' <www.publishersweekly.com/pw/by-topic/industry-news/bookselling/article/74149-publishers-weekly-annual-adult-bestsellers-1990-2013.html> accessed 7/12/2023.
[43] The New York Times Book Review, 'Paperback Nonfiction' *The New York Times* (3/4/2018) <www.nytimes.com/books/best-sellers/2018/03/04/paperback-nonfiction/>.
[44] *Witness* by Amber Frey (Jan 23, Jan 30, 2005), *Blood Brother* by Anne Bird (March 20, March 27, 2005), *A Deadly Game* by Catherine Crier (April 3, 2005), *The City of Falling Angels* by John Berendt (Oct 16, Oct 23, 2005), *For Laci* by Sharon Rocha (Jan 29, Feb 5, 2006).
[45] The New York Times Book Review, 'Combined Print & E-Book Nonfiction' *The New York Times* (4/29/2018) <www.nytimes.com/books/best-sellers/2018/04/29/combined-print-and-e-book-nonfiction/>.

Garden of Good and Evil for the 1990s, *The Devil in the White City* for the 2000s, and *I'll Be Gone in the Dark* for the 2010s. These selections provide us a valuable window into assumptions about the nature and reality of crime and the criminal justice system in best-selling true crime across the decades.

Best Selling True Crime Through the Decades

True crime writing has been critiqued as formulaic[46] - akin to romance novels, but this ignores that true crime writing spans a great number of writing styles and perspectives, particularly when we consider best sellers. Best-selling true crime books do, however, have conventions and these conventions tend towards the crime control orientation. Regardless of their subgenre or era, true crime best-sellers tend to have graphic depictions of brutality, bursts of violence into peaceful lives, victims with intensified innocence, and a detective hero who is often fighting due process barriers to justice.

Another core characteristic of true crime is the absence of mystery.[47] The crimes in these best selling books had already been solved and widely publicized long before the books were written. This allows the author to approach the subject matter with certainty – and certainty is a core crime control value. Indeed, it is the lack of certainty, rather than direct criticism of the system that is perhaps the most jarring due process shift in the 'new' true crime exemplified by recent podcasts such as *Serial.*[48] Only *Midnight in the Garden of Good and Evil* here raises the question of legal guilt – and that is a question about the degree of culpability rather than cause of

[46] Seltzer, *True Crime: Observations on Violence and Modernity* (n 31) 35.
[47] Weiner, 'True Crime: Fact, Fiction, and the Law' (n 26) 284.
[48] Stella Bruzzi, 'Making a Genre: The Case of the Contemporary True Crime Documentary' (2016) 10 Law and Humanities 249, 251; Elizabeth Yardley, Emma Kelly and Shona Robinson-Edwards, 'Forever Trapped in the Imaginary of Late Capitalism? The Serialized True Crime Podcast as a Wake-Up Call in Times of Criminological Slumber' (2019) 15 Crime, Media, Culture 503, 512.

death. These bestselling true crime books typically do not leave room for doubt about guilt, which contributes to their strong crime control narrative.

The very innocent victims of violence are another core crime control trait of true crime writing, they represent idea that 'none of us is really safe'.[49] The language of true crime is graphic about the contrasting nature of the killers as 'monsters, madmen, beasts'.[50] This particularly dangerous criminal often masquerades as normal, or better than normal. The killer as an attractive figure, charming their victims before leading them to their tragic end, is almost as central to true crime best-sellers as the theme of the perfectly innocent victim: 'One of the most conspicuous commonplaces in the popular discourses of serial killing concerns the terrifying normality of the murderer. Rather than appearing monstrously different, the serial killer displays a likeness that disturbs the dominant culture'.[51] It is telling that there is a scarcity of popular true crime writing on Black serial killers. If the killer does not surprise us as monstrously different, then the disruption of the placid normal façade must be manifested from the environment itself.[52]

Intriguingly, these best-selling true crime books lack a strong deterrence narrative. Deterrence is a central concept in modern crime control arguments and policies. Crime control policy typically assumes that punishment can either deter an individual from reoffending or prevent the public from emulating the behavior. However, instead of emphasizing rationality and calculated choices, these books tend to focus on deep psychological or societal issues. Such

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[49] Voss, *Truman Capote and the Legacy of In Cold Blood* (n 1) 147.
[50] Murley, *The Rise of True Crime: 20th-Century Murder and American Popular Culture* (n 6) 1.
[51] Brian Jarvis, 'Monsters Inc.: Serial Killers and Consumer Culture' (2007) 3 Crime, Media, Culture 326, 329.
[52] 'The conventions of true crime's forensic realism are immediately visible. That realism involves the sudden eruption of violence from beneath a therefore deceptively normal surface of things; that is, it involves the convention of penetrating beneath convention, beneath the clichés, of an everyday and statistical normality (a Wednesday, a school day, a neighborhood, a family). This is, more precisely, the stripping away of a fiction of normality-- the normal fiction: a normality that looks nothing but a self-exposing childhood fantasy of innocence, a Robin Hood story, a paradise lost'. Seltzer, *True Crime: Observations on Violence and Modernity* (n 31) 41-42.

portrayals suggest that heinous crimes cannot be deterred by the threat of punishment. In this way, these bestselling true crime books seem to reflect a cultural hope that truly terrible crime is not the function of a rational mind but that with enough police, forensic advances, and executions we can hold the monsters at bay.

The detective is also a central component of true crime writing. Often taking center stage, the detective (sometimes played by the author) comes to represent the state and how to deal with the problem of crime. The detective is often the literal embodiment of crime control, advocating for swift and certain justice[53] in the battle between good and evil. The killers are always caught and punished.[54] The criminal justice actors thus emerge as members of a system that 'triumphs over evildoers, mending the social fabric that has been torn by an act of extreme violence'.[55] Though there are exceptions to the crime control orientation of true crime writing through the eras, as demonstrated below, best-selling true crime writing remains essentially crime control in focus regardless of the larger social, political and legal context of the age.

In Cold Blood (1966)

The 1960s are a turbulent period in American history. City riots, counterculture, the Vietnam War, rising crime rates and political assassinations raised fears over the stability of the social order and anger against the state and authority drew to a head. Crime films and pop culture of the time questioned the machinery of the justice system (e.g. *Cool Hand Luke*) and redefined crime

[53] Rachel Franks writes that the detective came to replace God in true crime writing in the late 1800's, that the detective 'is uniquely equipped to identify, hunt down, and bring the abhorrent offender to justice… The detective is all-knowing and all-powerful against a world of corruption, crime, and sin but is also, like us, flawed and subject to failure'. Rachel Franks, 'True Crime: The Regular Reinvention of a Genre' (2016) 1 Journal of Asia-Pacific Pop Culture 239-254.
[54] Murley, *The Rise of True Crime: 20th-Century Murder and American Popular Culture* (n 6) 1.
[55] ibid 82.

as systemic in origin rather than individual.[56] On the legal front, Republican Earl Warren was the 14th Chief Justice of the US Supreme Court and would go on as Chief Justice for what is considered the major era of due process reform in the US legal system. The Warren Court issued rulings that helped bring an end to Jim Crow laws and handed down several landmark rulings which labeled that Court as a distinct era of due process decision making. Most famous of these ruling is perhaps Gideon v. Wainwright in 1963 (right to an attorney in a felony case) or Miranda v. Arizona in 1966 (police officers must notify suspects of their rights in police custody). Herbert Packer saw the Warren Court as a shift to a due process model - a shift from assembly line to obstacle course.[57] The year of the Miranda decision also marks the birth of modern true crime writing with *In Cold Blood.*[58]

In Cold Blood was a true crime writing pioneer. The first true crime book to make the non-fiction best selling lists,[59] it remains a popular book, no doubt at least in part because it is still assigned in college courses. As a type, *In Cold Blood* is a prime example of a book that made murders famous rather than a book about famous murders. Relying on good writing and a famous well-connected author, *In Cold Blood* is a story about the criminal justice process as much as it is about the central crimes. In considering the crime control or due process orientation of *In Cold Blood*, it is noteworthy that Harper Lee (*To Kill a Mockingbird*) was involved in the background interviews and introductions of Truman Capote to the people of the town[60] and

[56] Drew Todd, 'The History of Crime Films' in Nicole Rafter (ed), *Shots in the Mirror* (2nd edn, Oxford University Press 2006).
[57] See Packer, 'Two Models of the Criminal Process' (n 10) 239. Though at the end of his life Packer thought that this due process revolution had failed. Roach, 'Four Models of the Criminal Process' (n 15).
[58] Truman Capote, *In Cold Blood* (Vintage International 1965).
[59] Hackett and Burke, *80 Years of Best Sellers: 1895-1975* (n 35).
[60] Voss, *Truman Capote and the Legacy of In Cold Blood* (n 1).

undoubtably her hand shapes the orientation here. Capote himself was a capital punishment abolitionist.

It is easy to see the crime control nature of *Helter Skelter* with its vivid descriptions of senseless brutal crimes against beautiful people by a madman's devotees. It is less obvious amid Capote's deep descriptions of the landscape: 'It was apple-eating weather; the whitest sunlight descended from the purest sky, and an easterly wind rustled, without ripping loose, the last of the leaves on the Chinese Elms'.[61] But it is in this extreme of beautiful order ripped apart by mad disorder that Capote's crime control slant is most evident. This is bolstered by a particularly pointless crime (there was no money to be stolen in the robbery after all), and spectacularly innocent victims. However well written, and however vivid the landscape descriptions, Capote is still telling a story about ex-convicts who kill innocent victims in a senseless and brutal murder.

In Cold Blood does not raise serious questions of mistakes by the system. Despite the rather inept police work, there was no danger that the wrong men would be captured or punished unfairly. Rather, the public danger lay in the system's failure to act swiftly and finally. This is a crime that could have (implied 'should have') been prevented by the state since the culprits are ex-convicts; it is also implied throughout that at least one of the two men was an obviously and predictably dangerous man. The relative ineptitude of the police in apprehending the perpetrators who evaded capture over time and across countries does not advocate for a more restrained law enforcement approach. Rather, it underscores the need for more law enforcement.

The mixed ideological message of Capote's writing comes from his clear dislike of the death penalty and his very clear assertion that the trial and the jury were biased against the

[61] Capote, *In Cold Blood* (n 58) 11.

defendants from the beginning in a way that prohibited meeting the legal standards of a fair trial.[62] Capote's focus on the sad and troubled life of a seemingly redeemable man (Smith) who is ultimately put to death after an unfair trial *is* an indictment of punishment, and in this way *In Cold Blood* does contain a thread of due process narrative. It is difficult to see Smith as anything but pathetic given the way Capote writes him with a focus on his frailty, victimization, and childlikeness.

Through today's eyes, the strongest condemnation in *In Cold Blood* is perhaps not for the justice system but for a broader social system that could not recognize the impact of brain injuries and serious childhood abuse. In this sense, Capote was certainly ahead of his time – paying close attention to the trauma testimony of the courtroom witnesses which included a physician/psychiatrist with expertise in 'the criminally insane'.[63] In the end, what we have is a picture of a senseless crime committed by one (if not two) sympathetic but extremely dangerous defendant(s). Despite Capote's sensitive treatment of Smith, the narrative is still at its core a story of a vicious, senseless crime committed against true innocents by complete strangers who had been released by the prison system. It is also a story where the justice system worked accurately despite its bias. The unfair trial did not result in the wrong men being convicted and posed no threat to the social order or the innocent.

Helter Skelter (1974)

The 1970s gave us a change in the legal landscape away from due process as liberal Supreme Court judges were replaced by conservative presidents. Like other eras, there are many exceptions in the Court decisions and the Court of the 70s had not yet reached the conservative

[62] By today's standards. The courts ruled otherwise at the time in this case.
[63] Capote, *In Cold Blood* (n 58) 293.

level of the Rehnquist Court which would follow. Nor could the 70s be defined as *the* tough-on-crime decade, that title belongs to the 80s. However, the 70s were the beginning of a sentencing and corrections revolution – a revolution moving away from rehabilitation as an ideal and towards a model of less discretion that was fueled by arguments from both sides that the system was either not fair or not punitive enough to protect us. Andrew Burt maintains that this shift is one of the major currents that have defined the genre of true crime.[64] It is not surprising given the tumult and mistrust of the 60s that the 70s gives us perhaps the greatest crime control narratives in film: vigilante police as heroes (e.g. *Dirty Harry*) and the anti-hero vigilante film (e.g. *Taxi Driver*).[65] *Helter Skelter (1974)* is in keeping with these ideological messages. Charles Manson is the ultimate anti-establishment anti-hero and his story is written by the case prosecutor who pursues the killer while criticizing the establishment - providing us with a double narrative that is both anti-establishment and a call for law and order.

Helter Skelter is an account of the history, murders, and trials of the Manson family written by the case prosecutor Vincent Bugliosi. [66] In earnest true crime fashion, Bugliosi details the crimes and the victims in vivid detail. In fact, he gives us the crimes repeatedly – first to set the stage of the story, then in the interrogations and pursuit, and then again at the trials. Bugliosi repeats the claim several times that Manson or the family was responsible for 35-40 murders. If ever there was a case made for trusting a prosecutor's judgment and decisions, Vincent Bugliosi makes it here. As the prosecutor of the primary case, Bugliosi weaves a story about the methodical, fair and just nature of criminal prosecution. He does not extend this high opinion to

[64] Andrew T. Burt, 'True Crime Does Pay: Narratives of Wrongdoing in Film and Literature' (PhD dissertation. Northern Illinois University 2017).
[65] Todd, 'The History of Crime Films' (n 56) 47.
[66] Vincent Bugliosi and Curt Gentry, *Helter Skelter: The True Story of the Manson Murders* (W.W. Norton & Company 1994).

police work however. Bugliosi stops short of calling the police corrupt but his indictment of them as incompetent runs throughout the text. Specifically, he writes about the incompetence of older police[67] but his criticism also extends to the policing system at large, which is split by jurisdiction and by competing goals - unable and unwilling to share details and work that would have furthered the larger investigation. It is important in the context of considering the due process or crime control orientation of *Helter Skelter* that the police are bungling rather than dangerous or corrupt.

Police incompetence is not a due process argument. The due process orientation is not 'anti-law enforcement' so much as it is for the prevention of error and the reduction of street level decision making. That the police in *Helter Skelter* are incapable of detecting, let alone solving, crime is hardly a critique or warning of overzealous or overreaching police. If we infer any call to action here it is one for a more professional and efficient police system – a crime control value. The danger in *Helter Skelter* is not too much policing but too little.

Bugliosi also incorporates a bit of legal education along the way, but the tone is decidedly one-sided. For example, he makes much of the difficulty of proving a man guilty in a court of law which implies that the rules of the court which are designed to protect us from the system make it difficult, 'and sometimes insurmountable',[68] to convict the guilty. To understand why this is a partial and ideological truth we must know that it ignores the reality of the US system which is built on plea bargains. Most cases never result in trial and the vast majority of convictions are obtained by plea bargains. This has been the case for a very long time. Dating

[67] He offers his respect to the methods and procedures of the younger, more educated police investigating one of the murders.
[68]Bugliosi and Gentry, *Helter Skelter: The True Story of the Manson Murders* (n 66) 167.

back to 1921 we have a rate of 77% of all convictions by guilty plea,[69] following World War II the rate held at about 80%, and after the drug laws and crime rates of the 1980s the rate began to rise to its current rate of 95%-97% of all convictions obtained by plea bargains.[70] Cases that are plea bargained are largely without the robust factfinding expeditions of trial preparation and those who plea cannot appeal their case.[71]

Another reoccurring crime control theme in true crime books is that due process protections lead to the release of suspects and prevent key evidence from being admitted in court. As the prosecuting attorney in the case, Bugliosi's tone is slightly different than others—likening the case to a chess game that he wins due to his superior skill. This narrative simultaneously extols Bugliosi's expertise and instills in the reader a distinct impression that due process protections combined with the incompetence of the police would ordinarily have let very dangerous criminals out to roam the streets and hack up beautiful innocent pregnant women in their bedrooms. As his game to win, Bugliosi details his bluffs to the court and defense. For example, had Manson (serving as his own attorney at the time) invoked his right to a speedy trial then the prosecution would have been unprepared for trial,[72] but Bugliosi successfully tricks the defense into thinking that the prosecution wants to move forward as soon as possible. According to Bugliosi this causes the defense to delay because they assume that the prosecutor has an advantage if the trial begins sooner. This pride in tricks also extends to an incident where Bugliosi gets a suspect to refuse to submit for handwriting analysis knowing that the handwriting could not be analyzed but wanting the refusal on record to make the suspect appear guilty in

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[69] Albert W. Alschuler, 'Plea Bargaining and its History' (1979) 79 Colombia Law Review 1.
[70] Jed S. Rakoff, 'Why Innocent People Plead Guilty' The New York Review of Books <www.nybooks.com/articles/2014/11/20/why-innocent-people-plead-guilty> accessed 07/12/2023.
[71] There are a few exceptions, but this is beyond the scope here.
[72] Bugliosi and Gentry, *Helter Skelter: The True Story of the Manson Murders* (n 66) 281.

court[73] and again when the police lie to a suspect to get a confession. These examples treat the process as a contest and the hero of the story is Bugliosi, the case prosecutor. In this context, law enforcement intentionally making meaning out of the meaningless is not framed as something that should terrify the reader but rather make them feel safe.

The Stranger Beside Me (1980)

In the 1980s we see a cultural turn towards tough-on-crime. Timothy Lenz points to three changes that compelled this shift: a growing crime problem that challenged the system's ability to respond, an emerging assumption that violence is a necessary response, and a decreased confidence in the government, which all lead to a reaction against liberal techniques and a tendency to privilege control and punishment over due process and individual rights.[74] The 1980s also gave us a pop culture fixation with vigilantes taking to the streets to defend where the law could/would not, as well as a crop of questions about the legal and social treatment of women. Popular films such as *The Accused* (1988) focused on questions of rape and victim culpability[75] and serial killer films rose in popularity, solidifying as a sub-genre and emphasizing the serial nature of the crime.[76] Other media increased coverage of serial crimes at this time as well.[77] Ann Rule and the Ted Bundy story in *The Stranger Beside Me* (1980) are thus culturally and politically in line with the times. [78]

The killers of *In Cold Blood* were men who could charm people for a short period of time at best, just long enough to hock at a pawn shop. These were ex-cons with evident strange

[73] ibid 376.
[74] Timothy O. Lenz, *Changing Images of Law in Film & Television Crime Stories* (Peter Lang Inc. 2003).
[75] Todd, 'The History of Crime Films' (n 56) 49.
[76] ibid 20.
[77] See Lenz, *Changing Images of Law in Film & Television Crime Stories* (n 74).
[78] Ann Rule, *The Stranger Beside Me* (Gallery Books/Simon & Schuster 1980).

behavior and appearance, they were not the type of men you could befriend, love or live with without ever suspecting something was seriously amiss. Charles Manson and his clan from *Helter Skelter* certainly don't pass the normality test. Manson is described as a shapeshifter, but Manson and the family are also repeatedly shunned and shut out of society for appearing creepy even from a distance. In a decade increasingly obsessed with serial killers, Ann Rule shapes the genre with *The Stranger Beside Me* by making Ted Bundy's ability to pass, blend, and infiltrate society a focal point of the story. Rule gives us a solid crime control narrative with a genre twist taken from self-help,[79] writing directly to women with an explicit warning about their own level of caution and trust.[80]

The Ted Bundy story might be difficult to tell from a due process orientation, but it could be less crime control oriented. For example, one *could* tell Bundy's story as one of police failure by focusing on the numerous unexamined tips, near misses and jail escapes. We *could* use these same events to explain that added police and/or policing powers do not make us safer. Despite the difficulty of catching and keeping Bundy, the police are not cast as incompetent (as they are in *Helter Skelter*) nor are these failures written as a critique of the system or an account that policing is poorly suited to prevent crime.[81] Rather, this failure is chalked up to Bundy's

[79] Ann Rule is a female crime writer explicitly addressing a largely female audience, while the vast majority of known serial killers are men. Brian Jarvis writes that 'from a feminist perspective it could be argued that serial killing is not so much a radical departure from normal codes of civilized behavior as it is an intensification of hegemonic masculine ideals...The serial killer is driven by the desire to achieve mastery, virility and control: his objective is to dominate and possess the body and the mind of his victims'. If we know anything about violence against women, it is that it is prevalent and largely private. In this way, violence lurking under a normal facade is part of women's everyday and collective lives. It is no surprise that true crime writing, and Ann Rule in particular, is read by more women than men. Indeed, it is in Ann Rule's writing that we see Ted Bundy as not just a man but 'men' - women are both sexually attracted to Bundy and drawn to his pleas for help, which puts the women's lives in danger. Laura Browder found that many women revealed that they read true crime to help them deal with violence in their past and manage current fears. Laura Browder, 'Dystopian Romance: True Crime and the Female Reader' (2006) 39 The Journal of Popular Culture 928; Jarvis, 'Monsters Inc.: Serial Killers and Consumer Culture' (n 51) 333.

[80] Rule, *The Stranger Beside Me* (n 78) xvii.

[81] Policing is generally reactive in nature. That is, police enter the scene after the crime has been committed.

brilliance and the difficulty of getting good information in a sea of too much data (i.e. phone calls/tips). Rule as narrator and former police officer comes out strong as pro-police, describing them as sensitive and competent. Bundy, however, is written as having little respect for the police.[82] As the villain's perspective this strengthens the general crime control tone. When Ted Bundy's girlfriend reports him to the police, Rule tells us that the police suspect she is exaggerating and near-hysterical. This opportunity to contemplate how sexism might permeate every aspect of the case is instead presented as follows: 'Without physical evidence, without solid information, detectives cannot rush out and arrest a man. It goes against the grain of our whole philosophy of justice'.[83] The impression then, is not that the police pursued the wrong suspects or failed to a take a woman seriously but that the system is working poorly because of due process protections. If the police had taken Bundy's long-term girlfriend seriously when she called, she could have given them access to the shared residence and useful information; due process protections would not have prevented this but Ann Rule avoids this insight in favor of explaining that the justice system protected Bundy.

At length we also learn that Bundy abuses what due process protections he is afforded after capture to make his life in prison agreeable and ultimately to escape.[84] Much of *The Stranger Beside Me* is a detailed exploration of the way that due process protections can be exploited by dangerous men to gain luxury and freedom. Ted Bundy gets access to phone calls, help from crime laboratories, a law library, and three meals a day by serving as his own attorney.

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[82] Ironically, Ted Bundy seems to be a big fan of law-and-order politics. Rule tells us about his participation in Republican politics, and his deep dislike of anarchy and the general mayhem of student protests on college campuses. Had he succeeded in his Republican political ambitions of the time he likely would have been a 'law and order', 'tough on crime', conservative candidate running on a crime control platform.
[83] Rule, *The Stranger Beside Me* (n 78) 130.
[84] He escapes during a law library visit and is aided by an area map he obtained during discovery while acting as his own attorney.

Ann Rule writes these things as extraordinary: 'His requests were granted. Somehow, Ted Bundy had managed to elevate the status of a county jail prisoner to that of visiting royalty'.[85] According to Rule, it is the lengthy court fact-finding process (and jurisdiction rules) that allow Bundy to live, to escape, and to go on to kill more women after having been initially caught. Over and over, Bundy slips through the fingers of law enforcement because due process requires too much evidence, too much proof, and too much information shared. This is the core mythology of crime control – that due process protections are loopholes and niceties ripe for exploitation by the criminal element. Ann Rule's central themes are in keeping with both the tough-on-crime/crime control focus of the era and its renewed focus on violence against women.

Midnight in the Garden of Good and Evil (1994)

The 1990s brought major attention to the failures of the US criminal justice system as well as an acceleration of the tough-on-crime policies of the 80s. The Rodney King beating and subsequent L.A. riots were big news and among criminologists it became common to cite the US as having the highest incarceration rate in the world.[86] The policy shifts, embraced in a bipartisan way, that had begun in the 70s and 80s which reduced discretion, limited parole boards and moved towards fixed sentencing (rather than rehabilitation) had resulted in shifted discretion (rather than reduced) and overcrowded prisons by the 1990s. The changed political landscape of the 80s brought us crime and sentencing as major rallying points and by the early 90s it was a standard political cry to call for mandatory minimum sentences and habitual offenders laws (e.g. three-strikes).[87] The prison system swelled rapidly. In crime-related pop culture, the 90s gave us a lot of postmodern and absurdist works (*Pulp Fiction, Natural Born Killers*)[88] and alternative

[85] Rule, *The Stranger Beside Me* (n 78) 245.
[86] See Thomas G. Blomberg and Stanley Cohen, *Punishment and Social Control* (2nd edn, Aldine de Gruyter 2003).
[87] ibid.
[88] Todd, 'The History of Crime Films' (n 56) 53.

tradition films challenged dominant ideological views of the crime problem with some works suggesting that police and 'upstanding citizens' (e.g. *Falling Down*) are as much a problem as street criminals. [89] It is perhaps not surprising then that an ambiguously due process and gothic true crime book, *Midnight in the Garden of Good and Evil,*[90] became a decade best seller.[91]

At its core, *Midnight in the Garden of Good and Evil* is a story of a man guilty of at least manslaughter who manages to 'get away with it'[92] because he is rich enough to defeat the system with good lawyers who exploit legal protections - particularly appeals and protections against unfair trials. This is a story of a man who is both guilty and framed by the system. Jim Williams is tried four times and eventually found not guilty; justice is served when he promptly drops dead after acquittal. In a nod to the Sothern Gothic, spirits of the dead are implicated in his demise. This is also a story about a lot of colorful, though mostly horrible, people. Savannah residents are essentially cast as rich, heavy drinking, gun loving, racists who are also very concerned with propriety.

Jim Williams's guilt is as ambiguous as his social standing. He is a wealthy man and a center of high social life in Savannah. Yet, despite having lived in Savannah for some time and throwing glamorous parties, he maintains a slight outsider status because he is gay, self-made (new money), and not a native to Savannah. The man he kills (Danny Hansford) is ambiguously his sexual partner and employee; he is unambiguously a poor man with mental health issues and a history of violence. That Jim Williams killed Danny Hansford is clear. The mystery revolves around whether it was self-defense, manslaughter, or pre-meditated murder. A case is made for

[89] Rafter, *Shots in the Mirror: Crime Films and Society* (n 30) 78.
[90] John Berendt, *Midnight in the Garden of Good and Evil* (Vintage Books 1994).
[91] Voss, *Truman Capote and the Legacy of In Cold Blood* (n 1) 49.
[92] If you consider being tried four times 'getting away' with something. The author seemingly sides with yes.

each throughout, but the author leans heavily on the evidence that there was at least some planning and a definite lie by Williams. To complicate the narrative, it is also made clear that the police and prosecutor frame Williams and that the prosecution is political in nature. The story as a whole, makes less of an attempt to untangle the guilt than it does to detail William's manipulation of the justice system and the misconduct of the police and prosecutor.

Midnight in the Garden of Good and Evil straddles the line of due process and crime control narratives. This is not a crime control narrative because the victims are 'innocent' or because the general public is in grave danger. The single victim is not written sympathetically - his is a story of a man who brought a violent end upon himself. Rather, the crime control thrust here relies on a story about justice for sale to the rich. Due process protections are not here to protect an innocent man from the state but to be purchased by the wealthy to protect them against actual justice. The defendant, by his account, spends millions to appeal and defend his case and is ultimately successful.[93]

On the due process side is the general tone that the defendant has been overcharged for political reasons – a critique of the power and behavior of the prosecutor's office. However, that the prosecution has clearly overcharged the defendant as a political maneuver seems to be put down to southern backwardness and closed communities rather than a critique of the way the general system works. There are other critiques of the local justice system along these lines. A judge sleeps through a trial, the jury is deeply biased against gay men, and prosecutorial misconduct is discovered when it becomes clear that police statements were edited before being presented as evidence in court.[94] Another strong critique of the system is the deplorable

[93] 2 guilty verdicts, 1 mistrial, 1 not guilty.
[94] Berendt, *Midnight in the Garden of Good and Evil* (n 90) 237.

conditions of the prison and jail. However, because of his wealth, the accused manages to avoid the worst conditions (a transfer to prison) and runs his lucrative antiques business from the jail while incarcerated. Seemingly, the general public is not in danger from the system unless s/he happens into Savannah - and even in that case one would fair fine unless you were gay, Black or poor.[95]

Devil in the White City (2003)

Incarceration rates in the early 2000s slightly decreased as a bipartisan movement across states argued for decarceration[96] and state level drug policy reform began in earnest.[97] The 2000s are noticeably different in tone. For example, the late 2000s began a wave of states abolishing the death penalty with nine states abolishing between 2007-2019; an additional 4 states currently have a moratorium on the death penalty.[98] Arguably, national politics both reflect and shape the cultural landscape and as such we might see the successful presidential political campaign of Barack Obama as indicative of the shift in the mid-2000s with respect to tough-on-crime politics. President Obama's campaign was markedly youth oriented in style but also noticeably different in its lack of fear/crime-based messages. The mid-2000s have been called an end of the tough-on-crime era and while there is certainly a noticeable difference in tone carrying through to the 2010s, the attempt at disassembling mass incarceration is no easy feat with major pushback coming from every political and financially benefiting party, of which there are many. It is interesting that two crime control oriented books covering historical crimes mark the decades:

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[95] The author is a New Yorker and there is a distinct tone here that racism and classism are Southern issues.
[96] David Dagan and Steven M. Teles, 'Locked in? Conservative Reform and the Future of Mass Incarceration' (2014) 651 The Annals of the American Academy of Political and Social Science 266.
[97] Katherine Beckett, Anna Reosti and Emily Knaphus, 'The End of an Era? Understanding the Contradictions of Criminal Justice Reform' (2016) 664 The Annals of the American Academy of Political and Social Science 238.
[98] DPIC Death Penalty Information Center, 'State by State' (2019) <https://deathpenaltyinfo.org/state-and-federal-info/state-by-state> accessed 09/07/2019.

Devil in the White City (2003)[99] - a historical account of an American 'Jack the Ripper', and *I'll Be Gone In the Dark* (2018)[100] - an account of a serial killer from the 1970s.

Devil in the White City is an unusual sort of true crime book. Set in late 1800s Chicago, the book weaves together two stories, one of the men who created the Chicago World's Fair and the other of Dr. H. H. Holmes, a prolific and charming serial killer so established in his booming Chicago neighborhood that he constructs a 'murder castle' with secret passageways and gas chambers. Holmes is a variation on a common theme, the conman and murderer masquerading as normal and charming; he's excellent with children, young women and the elderly. Holmes kills unsuspecting women who visit his hotel or travel to Chicago alone, as well as his many wives and their children. Holmes is a man who lived and killed in plain sight.

Erik Larson draws from the Capote tradition by reenacting a few murders to set a tone but relying on a broader story which he sees as illuminating men's fantastic ambitions, both good and evil.[101] This theme of men's great ambitions, as creators of the World's Fair or as a prolific serial killer, overshadows much of the criminal justice themes that we see in books like *Helter Skelter*. Themes of the justice system are muted as the crime story focuses mostly on the killer and his machinations to build and use his 'murder castle'. It is noteworthy that the social chaos of a booming Chicago and the World's Fair contributes to the crimes; the crime control perspective highly values order. In the Chicago of *Devil in a White City*, the public and the police are preoccupied with other things in a city under constant change and chaos.

[99] Erik Larson, *Devil in the White City* (Vintage Books 2003).
[100] Michelle McNamara, *I'll Be Gone in the Dark* (HarperCollins 2018).
[101] Larson, *Devil in the White City* (n 99) 395.

In this absence of the police and the justice system the most crime control theme of the book emerges. For the most part, Holmes kills without worry of detection, he mostly tries to conceal his actions from the insurance companies and businesses he is defrauding and in the end it is insurance fraud which does him in. The critique is only that the police were not involved earlier or perhaps at worst that the police are, like everyone else, charmed and bought by Holmes: 'Far from being suspicious, the officers had become friendly, even protective. Holmes knew each man by name. A cup of coffee, a free meal in his restaurant, a fine black cigar- policemen valued these gestures of affinity and grace.'[102] Holmes's murders eventually come to light when he is investigated while incarcerated for insurance fraud – but this is the conclusion to the story and the detective investigating him is a fair, efficient, and kind man. After Holmes is imprisoned for fraud the story becomes focused on the investigation and is one of great affinity for the persistence and will of the police detective who solves the case with difficult leg work and clever reasoning. This is a story about police arriving too late on the scene, a story about what happens in the absence of attentive law enforcement.

I'll Be Gone in the Dark (2018)

The 2010s were marked by a low crime rate but an ever-increasing number of mass shootings.[103] Criminal justice reform continued forward, with certain states and major cities pushing for decarceration. However, crime control narratives steeped in xenophobia and conspiracy theory surged for much of the U.S. during the Trump presidency, and Trump's appointment of conservative and deeply religious judges to the Supreme Court will undoubtedly continue to have profound effects on crime policy into the 2020s. In the literary world, the 2010s saw a shift

[102] ibid 85.
[103] John Gramlich, 'What the Data Says About Gun Deaths in the U.S.' (*Pew Research Center,* 2023) <www.pewresearch.org/short-reads/2023/04/26/what-the-data-says-about-gun-deaths-in-the-u-s/> accessed 07/20/2023.

from fiction to non-fiction in print and e-book sales. 'In 2010, nearly 80 percent of the top-selling titles were fiction, and by 2019 that percentage dropped to 32 percent.'[104] It can be challenging to definitively identify the most salient characteristics of an era we are so close to, but *I'll be Gone in the Dark* captures the modern 'citizen detective' movement against a backdrop of historical crime, aligning with some of the most defining trends of the 2010s.[105]

Like much true crime writing that fits solidly in the genre, *I'll Be Gone in the Dark* focuses early and extensively on the horror of the crimes and the difficulty of solving them. Self-described as obsessive about solving the crime, the primary author, Michelle McNamara, takes a role as detective and writes in first person about her hunt to assemble, compile and analyze the immense amount of data on a prolific serial killer and rapist, The Golden State Killer. The crime is solved but it is after her death and the publication of the uncompleted book.[106]

Rather than underscoring the peaceful and safe nature of the space which is broken by a brutal crime, the general dangerousness of the city at the time of the crimes in 1970s-80s California is highlighted. It is a city so dangerous that this serial rapist (and later killer) is initially merely part of the crowd of violent criminals roaming the streets.[107] This impression is bolstered with snippets of other crimes - nonviolent but unsettling instances of peeping-toms with zoom lenses, men without pants, and men with knives roving the streets in great numbers.[108]

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[104] NPD, "'Fifty Shades of Grey" Was the Best-Selling Book of the Decade in the U.S., The NPD Group Says' 2019) <www.npd.com/news/press-releases/2019/fifty-shades-of-grey-was-the-best-selling-book-of-the-decade-in-the-u-s-the-npd-group-says/> accessed 7/20/2023.
[105] Yardley and others, 'What's the Deal with 'Websleuthing'? News Media Representations of Amateur Detectives in Networked Spaces' (n 9).
[106] Rachel Monroe, *Savage Appetites: True Stories of Women, Crime, and Obsession* (Scribner 2020) 56.
[107] McNamara, *I'll Be Gone in the Dark (n 100) 83.*
[108] ibid 237.

The police and the crime lab technicians are the extent of the criminal justice system's representation here. The detectives of this story are of the 'hard boiled' type from noir novels - compassion fatigue has set in but they possess excellent instinct based on vast experience.[109] These are men with dogged determination foiled by a complicated case and too much information. Like with *The Stranger Beside Me*, not being able to find the right suspect is repeatedly chalked up to a lack of evidence and a lack of available science and technology. The hunt for the 'Golden State Killer' covers decades, and over the years the frustration over evidence evolves from an unsortable volume of tips to a frustration that DNA cannot be submitted to genealogy databases.[110] There is no attention to the due process concerns of having police access a private genealogy site. The privacy and potential error implications here are also unexplored and the implications are vast; for example, juries and the general public tend to think that DNA is infallible (it isn't). Other techniques that led to wrongful convictions and have long been discredited, such as hair analysis, stand here not as a warning about our faith in the technology of the government but analogous to harmless and laughably outdated technology such as first-generation mobile phones.[111] Despite the heavy emphasis on DNA throughout the book, only one paragraph of the text is devoted to DNA exonerations.[112] The exoneration is from a different case and according to the author the man was released and cleared – yet the book does not dwell on the potentially life-altering impact of his wrongful conviction and the 16 years he spent behind bars.

As the book details the hunt, we come to know that there are many suspects across the decades – some more serious than others. The author leads us through over forty years of wrong

[109] ibid 105.
[110] It is eventually submitted and used to capture the killer, but this is after publication and the author's death.
[111] McNamara, *I'll Be Gone in the Dark* (n 100) 303.
[112] See ibid 102.

leads pursued and wrong suspects investigated but we spend no time with them or the way this may have affected them. Once they are cleared, they are discarded from the narrative. Never do we read about who the police have harassed, or the courts wrongfully convicted, in their search for the Golden State Killer. Instead, the author is sympathetic – writing that it is 'understandable' to have the wrong suspect: 'The feast of data means that there are more circumstances to bend and connect. You're tempted to build your villain with the abundance of pieces. It's understandable. We are all pattern-seekers, all of us.'[113] If being a suspected serial killer was a problem for any of these numerous men, we will never know from this text.

Conclusion

Despite some executive branch crime-and-punishment rhetoric in the late 2010s, the broader cultural and legal tone of the US has not yet reverted to the tough-on-crime movement of earlier decades.[114] The 2000s trend of due process reform to the criminal justice system continues in the present day. Calls for reform to cash bail policies, police oversight, reduction of the death penalty, drug decriminalization, and civil asset forfeiture continue to be bipartisan issues culturally and at a state legislative level. This is, in part, reflected in recent crime media such as podcasts (e.g. *Serial*) and films (e.g. *Making a Murderer*) that focus on errors of the state.[115] There are also due process exceptions in recent crime books such as John Grisham's *The Innocent Man* (2006)[116] which was made into a Netflix mini-series in 2018 and *Just Mercy* (2015)[117] by Bryan Stevenson which was made into a film in 2019. These works highlight the

[113] ibid 271.
[114] Yardley, Kelly and Robinson-Edwards, 'Forever Trapped in the Imaginary of Late Capitalism? The Serialized True Crime Podcast as a Wake-Up Call in Times of Criminological Slumber' (n 48) 505.
[115] Rickard, 'Truth or Doubt: Questioning Legal Outcomes in True-Crime Documentaries' (n 7) 3.
[116] John Grisham, *The Innocent Man: Murder and Injustice in a Small Town* (Dell 2012).
[117] Brian Stevenson, *Just Mercy: A Story of Justice and Redemption* (Random House Publishing Group 2014).

failure of the system to protect individual rights and miscarriages of justice,[118] and implicitly or explicitly call for a slower, more deliberate justice system with more checks on power and decision making.

However, given the recent popularity of best-selling crime control narratives describing historical serial killers, despite the larger due process social and political movement, it seems likely that we will see true crime writing continue to be dominated by the crime control perspective. Since at least the late 1700s, texts that focused on crime, death and violence have been among the most popular choices.[119] Halttunen observes that true crime writing became more gruesome and focused on body horror as visible death and violence receded from everyday life in polite society.[120] This raises an interesting question about recent best sellers revisiting historical crimes in this era of historically low homicide rates,[121] but more probably reflects the ever-growing fear of crime across decades despite lower violent crime rates. As Monroe notes, 'as the US murder rate has approached historic lows, stories about murder have become culturally ascendant.'[122] In other words, the revisitation of the most horrific historical crimes likely reflects our anxieties rather than our reality.

Rachel Franks, however, highlights the potential for change in the genre, arguing that true crime is remarkably adaptable: 'The genre is, in fact, incredibly resilient and sophisticated as it takes the simple structure of crime, investigation, and (usually) punishment, working to continually adapt, modify, and reinvent this formula. In this way, the true crime genre ensures

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[118] See Lili Pâquet, 'Literary Forensic Rhetoric: Maps, Emotional Assent, and Rhetorical Space in Serial and Making a Murderer' (2018) 12 Law and Humanities 71.
[119] Karen Halttunen, *Murder Most Foul: The Killer and the American Gothic Imagination* (Harvard University Press 1998) 36.
[120] ibid 78-79.
[121] Alexandra Thompson and Susannah N. Tapp, *Criminal Victimization, 2021* (U.S. Department of Justice- Office of Justice Programs 2023).
[122] Monroe, *Savage Appetites: True Stories of Women, Crime, and Obsession* (106) 1.

there will always be a market for murder.' [123] Thus, it may be that in the same way that *Helter Skelter* gave us a way to understand the social chaos of the 1970s,[124] a due process focus may emerge to offer us a way to make sense of the filmed death of Eric Garner and other Black lives lost at the hands of police in the 2010s. The genre may also turn towards due process regardless of any cultural thrust simply as a way to reinvent itself – less an indication of a social shift than a hunger for fresh monsters. The criminal justice system's punishment is horrifying in the same way that brutal crime is horrifying, and a true account of punishment should make us recoil from its frequency and misuse.

The due process orientation does appear to be gaining traction as a strong counter-narrative in this golden-age of true crime and we may be witnessing an emerging split in modern true crime towards the due process orientation. However, I am skeptical of calling this due process narrative in recent true crime a substantive shift. While *Serial* and other due process-focused true crime podcasts made a dramatic entrance and generated significant buzz,[125] they primarily catered to a suddenly booming market, fueled in part by technology changes, dominated by public radio fans[126] and younger listeners.[127] A younger demographic tends to lean more toward due process orientation because of their generally lower trust in the criminal justice system.[128] As of 2023, there are 5 million podcasts on Spotify,[129] with *Crime Junkies* topping the

[123] Franks, 'True Crime: The Regular Reinvention of a Genre' (n 53) 251.
[124] Murley, *The Rise of True Crime: 20th-Century Murder and American Popular Culture* (n 6) 3.
[125] Yardley, Kelly and Robinson-Edwards, 'Forever Trapped in the Imaginary of Late Capitalism? The Serialized True Crime Podcast as a Wake-Up Call in Times of Criminological Slumber' (n 48) 504.
[126] Richard Berry, 'A Golden Age of Podcasting - Evaluating Serial in the Context of Podcast Histories Symposium - Podcasting: A Decade in the Life of a New Audio Medium' (2015) 22 Journal of Radio & Audio Media 170, 174.
[127] Elisa Shearer and others, 'Podcast Use Among Different Age Groups' (*Pew Research Center,* 2023) <www.pewresearch.org/journalism/2023/04/18/podcast-use-among-different-age-groups/> accessed 07/12/2023.
[128] Yolander G. Hurst and James Frank, 'How Kids View Cops: The Nature of Juvenile Attitudes Toward the Police' (2000) 28 Journal of Criminal Justice 189.
[129] Spotify, 'About Spotify' <https://investors.spotify.com/about/> accessed 07/17/2023.

Spotify chart.[130] *Crime Junkies* has 10 million listeners every week across platforms.[131] This podcast seems to share more with the pulpy *True Detective Magazine* (circa 1950) than with the due process-oriented narratives produced in the burgeoning podcast market of the 2010s. Furthermore, after a brief review of the podcast's featured episodes, the highlighted victims appear to be predominantly 'innocent' white women,[132] continuing to ignore the victimization of marginalized groups[133] like traditional crime media.[134] Recent research tells us that listeners prefer podcasts about serial killers,[135] a trend that reflects the bestseller lists from previous decades. Nevertheless, while many of these popular podcasts revert to the traditional focal points and format of true crime it does appear that deprioritizing the institutional source (e.g. the police) may have some staying power in the 'new true crime'.[136] The 'new true crime' is certainly interesting, but I'm reminded here of the term borrowed from statistics, 'regression to the mean', which implies unusual events are not real changes and that the future is more likely to look like the past than any one outstanding point in time.

[130] Daniel Ruby, 'Spotify Stats 2023 — Subscribers, Revenue & Other Insights' (2023) <www.demandsage.com/spotify-stats/> accessed 07/17/2023.
[131] Scott Swan, "Queen of True Crime' Expands Podcasting Business in Indianapolis' *WTHR 13* (11/2/2022) <www.wthr.com/article/news/local/crime-junkie-podcast-ashley-flowers-indianapolis-business/531-01c72a63-24f3-42d0-98e9-db8d72b88439>.
[132] See Monroe, *Savage Appetites: True Stories of Women, Crime, and Obsession* (n 106) 6-7.
[133] Yardley, Kelly and Robinson-Edwards, 'Forever Trapped in the Imaginary of Late Capitalism? The Serialized True Crime Podcast as a Wake-Up Call in Times of Criminological Slumber' (n 48) 509.
[134] Danielle C. Slakoff, 'The representation of women and girls of color in United States crime news' Sociology Compass 2.
[135] Vitis and Ryan, 'True Crime Podcasts in Australia: Examining Listening Patterns and Listener Perceptions' (n 23) 16.
[136] See Rickard, 'Truth or Doubt: Questioning Legal Outcomes in True-Crime Documentaries' (n 7).