

Working around the Law: Navigating Legal Barriers to Employment during Reentry

Dallas Augustine

Employment has been cited as one of the most effective protections against recidivism for formerly incarcerated people; however, job seekers with criminal records face barriers to employment after prison. They find themselves in a legal double bind where they are simultaneously compelled to obey the law (by finding “legit” work) but also legally barred from doing so. To navigate this conflictual legal positioning, job seekers with felony records develop strategies of working around the law to find employment. Through thirty qualitative interviews with people with felony records, I examine this alternative form of legal consciousness and detail the ways in which individuals navigate the legal barriers to acquiring “good” work. Ultimately, job seekers’ often extralegal strategies of law abidance blur the line between compliance with and defiance of the law.

A substantial body of literature is dedicated to understanding why people comply with the law or, conversely, why they break it. In the most black-and-white sense, we generally understand (non)compliance as two clear opposing processes: people want to obey the law and so they do, or instead, people want to disobey the law and so they do. But what happens when a person wants to obey the law but is unable to do so? How does a compliance-oriented person respond to obstructions to lawfulness?

The study of legal consciousness adds texture to our understanding of people’s relationships with the law; not only are there varying perceptions of the law and its power, but these varying perceptions guide individuals’ behavior in response (or in opposition) to the law. However, even within this scholarship, individuals are largely still depicted as operating within the law, against the law, or, in some cases, entirely outside the rule of law. Legal consciousness has helped to illuminate these three positions and the actions that result from them; however, we remain largely unable to explain a position wherein one wants to behave legally, but cannot. In addition to the three primary positions outlined in the legal consciousness literature, the present study offers an alternative legal consciousness: one of working *around* the law.

Dallas Augustine (daugusti@uci.edu) is a doctoral candidate in the Department of Criminology, Law, and Society at the University of California, Irvine.

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When formerly incarcerated people are released from jail or prison, they are often legally required to find employment, either as a mandated condition of their parole or probation, to work off pending criminal justice system debts, or to meet mounting child support obligations (Petersilia 2003, 2011; Zatz et al. 2016). Scholars also have consistently pointed to employment as a key protective factor against recidivism and a pivotal element in ensuring a successful reentry back into the community (Hagan 1993; Laub and Sampson 1993; Tanner, Davies, and O'Grady 1999; Uggen 2000; Visser and Travis 2003; La Vigne, Shollenberger, and Debus 2009). Despite employment's centrality to reentry and the corresponding legal compulsions to find work, formerly incarcerated job seekers face an array of barriers to obtaining and keeping work, including legal obstacles such as the requirement to report one's criminal record on job applications or being legally barred from certain occupations. These obstacles exist when attempting to find work of any kind, but they become almost insurmountable when the job seeker must obtain career-oriented, on-the-books ("good") work, rather than just any available wage-earning labor, such as temporary or off-the-books work (Peck and Theodore 2001).

Between the pressing need to find "good" work and the numerous legal restrictions on doing so, formerly incarcerated job seekers find themselves in a "legal double bind." Being simultaneously compelled and constricted by the law necessitates that job seekers with criminal records approach the employment process strategically, blurring the line between compliance with and defiance of the law. Through thirty qualitative interviews with felony record holders immediately following their release from county jail, the present study examines the ways in which these formerly incarcerated job seekers navigate this double bind. While the job seekers' strategies may not be entirely legal, they are pursued with the greater goal of ultimately complying with the law; until that time, they must work *around* the law in order to work within it.

BACKGROUND

Legal Consciousness and the "Double Bind"

Legal consciousness, broadly defined, describes the ways people perceive and interact with the law (Ewick and Silbey 1998). The thoughts, feelings, and behaviors that make up one's legal consciousness are influenced in part by "actual instrumental experience[s] with the law, as well as [by] popular cultural stories about law's promises, triumphs, and failures" (Levine and Mellema 2001, 194). An individual's legal orientation will not only shape their perceptions and beliefs related to the law, but also their actions and behaviors in response to it (Merry 1990). Ewick and Silbey identify three orientations of legal consciousness: before, with, or against the law (1998). A person who perceives herself to be "before the law" understands the law as a set of rational, just institutions operating outside of and acting down upon them. In comparison, someone who is "with the law" perceives the law as pliable and normative, and they engage directly with the law and its established channels of action (Levine and Mellema 2001, 177). Lastly, those that are neither "before" nor "with" the law find themselves

positioned “against the law.” For them, the law is arbitrary and antagonistic. Because they exist in an oppositional relationship to the law, those that are “against” it challenge it through acts of resistance, avoidance, or rebellion (Ewick and Silbey 1998; Fritsvold 2009). For those who understand themselves as “against” the law, their noncompliance is deliberate and perhaps even defiant.

Several studies identify the ways in which marginalized populations including the welfare poor (Sarat 1990; White 1990; Gustafson 2009, 2011), undocumented Latinxs¹ (Abrego 2011), women living on the street and participating in the illegal drug economy (Levine and Mellema 2001), the LGBTQ community (Harding 2006, 2010), and people on community supervision (Werth 2012) feel trapped by the law in a way that is not quite captured by an “against the law” orientation. In a study of the legal consciousness of the welfare poor, Sarat’s participants described feeling “caught” by the law due to its near-complete control over their everyday lives (1990, 343). A welfare recipient in White’s 1990 study similarly described feeling “boxed in” by the law, as “none of the formal rules of welfare set up boundaries to protect her . . . yet those rules confined her” (40). In all of these studies, the marginalized individual “caught” by the law simultaneously occupies both an insider and outsider status; the law “boxes in” marginalized populations by creating a pressing need (for work, welfare, basic commodities) and simultaneously restricting their opportunities to meet those needs (Werth 2012).

This constricting experience of being simultaneously controlled and excluded by the law puts marginalized populations in a conflictual legal position that I will refer to as a “legal double bind.” Yet, neither being before, nor with, nor against the law explains the ways these marginalized populations perceive this position or navigate it. While we intuitively may think that the oppressive nature of the double bind places subjects against the law because of the oppositional dynamic, this suggests that they reject the law and respond with rebellious, intentionally noncompliant acts. How do we understand the positioning of those who do not follow the law, but also do not outright resist it? How do we understand an internalized desire to follow the law pursued through extralegal actions?

Like the marginalized populations in the studies of legal consciousness above, formerly incarcerated job seekers experience a legal double bind in their search for work after incarceration. Beyond work’s established centrality to preventing recidivism, formerly incarcerated people are often legally required to get a job. People on community supervision are generally required to obtain and maintain employment in order to successfully complete (and avoid violating) their supervision (Petersilia 2003, 2011; Zatz et al. 2016). Reliable, sufficiently paying work also helps ensure that the formerly incarcerated person can afford basic living expenses in addition to the inevitably mounting legal fees they have acquired, including everything from court fees to child support to community supervision fees (Cammett 2006; Levingston and Turetsky 2007; Harris, Evans, and Beckett 2010; Wakefield and Uggen 2010; Cancian, Meyer, and Han 2011; Harding et al. 2014).

1. The term *Latinx* is increasingly being used by scholars and activists as a gender-neutral alternative to *Latina/o* or *Latin@*. The term is intersectional in its use of “x” as opposed to the feminine “a” or masculine “o” to be inclusive of all gender identities, including those that are nonconforming to traditional binary conceptions of gender (Salinas and Lozano 2017).

Unfortunately, many formerly incarcerated people returning to their communities are struggling with substance use and addiction, mental health issues, and unstable housing (Massoglia 2008; Wakefield and Uggen 2010; Harding et al. 2014; Stuart 2016). Criminal justice-involved job seekers also find themselves in an additionally disadvantaged position on the job market as a result of their time in jail or prison because of substantial gaps in their work history, atrophied job skills, and deteriorating social and professional networks (Mukamal and Samuels 2002; Western 2002; Petersilia 2003; Visher and Travis 2003; Travis 2005; Sabol 2007; Wakefield and Uggen 2010). Together, these compounding barriers render formerly incarcerated job seekers noncompetitive or even unhirable in the eyes of employers.

Even when job seekers with criminal records manage to overcome these other barriers to employment, they are legally prevented from obtaining “good” work in a variety of ways. Many felony record holders are legally barred from obtaining licensure in their preincarceration field of work (such as health care, legal services, education, child care, etc.) where they may have relevant work experience and employment networks (May 1995; Mauer 2002). They may also be barred from licensure in fields that would otherwise be more accessible to people after prison, such as barbering and cosmetology (Harris and Keller 2005, 7).

Debt, which may already be high at the time of incarceration, accumulates further during time behind bars. While some of this debt may be related to court fees or other expenses, child support debt can reach unmanageable levels for formerly incarcerated noncustodial fathers (Holzer, Offner, and Sorensen 2005; Geller, Garfinkel, and Western 2011; Martin 2011). While jobs in the primary labor market are almost inaccessible to record-holding job seekers, noncustodial fathers that do successfully obtain formal work may have their earnings taxed as much as 60 to 80 percent and, in addition, may have wages garnished (Holzer, Offner, and Sorensen 2005). As such, formerly incarcerated men may be discouraged from taking on-the-books work and instead may turn to off-the-books labor or even illicit work as a means to pay their existing financial obligations without risk of taxation or garnishment (Turetsky 2007).

Most notably, the legal requirement to report one’s criminal record on job applications can (and often does) immediately eliminate people from job opportunities because of the stigma associated with a criminal record. To date, much of the reentry literature has focused on the ways in which stigma prevents employers from considering formerly incarcerated applicants for hire (Holzer, Raphael, and Stoll 2002; Pager 2003; Holzer, Raphael, and Stoll 2004, 2007; Stoll and Bushway 2008; Pager, Western, and Sugie 2009). Devah Pager describes a job applicant’s criminal record as a type of “negative credential” that may certify the record holder “in ways that qualify them for discrimination or social exclusion” (2003, 942). The negative credential of the criminal record marks job applicants as unfit for hire, especially for higher-status jobs requiring greater levels of trust or security (Nagin and Waldfoegel 1998; Western 2002; Sabol 2007; Burkhardt 2009; Harding et al. 2014).

This stigma-related exclusion from employment opportunities is grounded on legal bases aiming to prevent future workplace crime. These laws rely on the assumption that past behavior is predictive of future conduct, and that, therefore, past criminal convictions are indicative of future criminal behavior. The Enforcement Guidance for Title VII of the 1964 Civil Rights Act effectively permits employer rejection of

an applicant from a position so long as the relationship between the position and the nature of the conviction are strong enough to render the employee a liability in the workplace. Further, in some states, an employer could be found guilty in a negligent hiring suit should they fail to conduct state-mandated criminal record checks and consider the results (Harris and Keller 2005).

Navigating Barriers to Reentry Employment

While the literature detailing the barriers to reentry employment is substantial, there is a smaller but growing literature documenting the ways in which formerly incarcerated people navigate barriers and demonstrate resiliency in the face of these obstacles. Just as Anderson famously described the ability to navigate urban neighborhoods through strategic code-switching as “street wisdom” (1990) and Stuart depicted the ability of Skid Row’s homeless residents to evade police contact as “cop wisdom” (2016), Halushka refers to one’s ability to navigate barriers to employment as “work wisdom” (2016). In his ethnography of job readiness programming within a reentry organization, Halushka finds that organization employees coach participants on how to code-switch in a way that communicates employability.

This code-switching occurs through several “impression management tactics” (Harding 2003), most notably including the decision to disclose (or not disclose) one’s criminal record to potential employers. In a study of formerly incarcerated job seekers during reentry, Harding finds that most participants do not disclose their records to employers. He notes that most job seekers began their job search by honestly reporting their background, but, after a series of negative experiences, changed to a tactic of non-disclosure (2003). In contrast, Halushka’s job readiness instructors teach job seekers the art of “conditional discourse,” wherein participants assert control over the interview narrative through the strategically timed provision of limited information about their background (2016). Beyond the record disclosure decision, job seekers deploy several different narrative scripts to manage perceptions of their criminal past and assuage concerns about their future conduct. Most commonly, job seekers utilize redemption and rehabilitation scripts as a means of reconciling public conceptions of the “ex-con” image and the individual’s self-concept (Harding 2003; Winnick and Bodkin 2008; Hlavka, Wheelock, and Cossyleon 2015).

In the absence of a steady job, workers may find themselves relying upon informal or temporary labor in the complete absence of permanent job positions (Harding et al. 2014; Leverentz 2014). Unfortunately, temporary staffing and day labor positions are often characterized by poor pay, lack of benefits, and high turnover (Dodge and Pogrebin 2001; Peck and Theodore 2001; Hatton 2014), as the nature of temporary employment allows employers to avoid providing once-standard employment benefits and protections such as worker’s compensation or antidiscrimination measures (Peck and Theodore 2001; Hatton 2014). Disadvantaged workers (such as those with criminal records) are far more likely to engage in temporary work than their better-positioned counterparts (Hamersma and Heinrich 2008; Purser 2012a). Indeed, scholarship suggests that some agencies may rely upon formerly incarcerated laborers and, as a result, knowingly target and exploit them by situating themselves next to

“poverty management institutions” such as sober living homes and homeless shelters and by forming referral relationships with reentry organizations (Purser 2012a; Bumiller 2013).

In contrast to the relatively lawful navigational strategies described above, Werth (2012) finds that adults on parole employ a combination of legal and extralegal strategies in an attempt to follow the conditions of their supervision. However, whereas Werth’s participants often were performing compliance as a means to avoid violating parole, the present study shows that even formerly incarcerated people with an honest desire to follow the law must often operate within a legal grey area in the name of compliance. In the face of the legal double bind, job seekers with felony records utilize four primarily extralegal strategies in an attempt to work around the law. First, job seekers risk lying about their felony record (either explicitly or by omission) on job applications, hoping either to go undetected or to win over the prospective employer before their record is discovered. Second, after successfully passing through the application process, workers continue concealing their record during probationary work periods or by passing up opportunities for advancement. Third, despite explicitly wanting formal, career-oriented work that would allow them to build a legible employment history, people will settle for “bad” work such as off-the-books labor or placement through temporary staffing agencies. Lastly, out of necessity or desperation, some will return to illegal forms of making money—a decision that, though it results in illegal activity, is still grounded in a desire to meet other legal and financial obligations that would ultimately free the job seeker from the legal double bind. Rather than work with or against the law, job seekers must use these tactics to work *around* the law in order to comply with it.

METHODS

During the spring of 2016, I conducted thirty semistructured interviews in Santa Ana, CA, with people being released from the Orange County jail system.² Study participants were part of the Orange County Sheriff’s Department’s Early Release Program (ERP), a program aimed at increasing program participation while reducing jail populations. To qualify for the ERP, jail inmates had to participate in at least one within-jail program or group; as a reward, they were released from jail three days earlier than their court-established release date and were dropped off at the Resource Center during business hours.

2. Orange County has a population of over three million residents, 41.4 percent of whom identify as white/Caucasian, 20.5 percent as Asian or Pacific Islander, 34.4 percent as Latinx, 3.3 percent as multiracial, 2.1 percent as black/African descent, and 1.1 percent as Native American (United States Census Bureau 2016a). 84 percent of Orange County residents over the age of twenty-five have at least a high school degree and 37.3 percent have at least a bachelor’s degree, which both fall relatively close to the national averages of 86.3 percent and 29.3 percent, respectively (United States Census Bureau 2016b). The county, however, has higher income levels than the national average, with a median household income of \$75,998 as compared to the national average of \$53,482. Further, Orange County’s economy is fairly reflective of the national averages, with a civilian labor force participation rate of 66.3 percent as compared to the nation’s 63.7 percent, and an unemployment rate of 4.1 percent (as of April 2015) as compared to the nation’s 4.9 percent.

The ERP sees an average of 1,440 people released to its facility annually. Each day, between one and twenty program participants are released from county jail and are dropped off at the Resource Center. To recruit study participants, I would briefly introduce myself to the groups and ask if any individuals with felony convictions were interested in participating in an on-the-spot interview about employment with a criminal record.³ Interested individuals were asked to stay behind, and all others were excused to continue with the release process. Over the course of two months, I approached 192 former inmates in the ERP; of those, thirty-eight (19.8 percent of the total sample pool) expressed interest and remained behind to learn more about the study.⁴ After further discussion about time commitment, logistics, and qualifications, thirty individuals chose to participate in the study.⁵

The Sample

The final sample includes thirty formerly incarcerated people with felony convictions, eight female and twenty-two male. Participants range in age from twenty-one to fifty-three years old, with female participants averaging thirty-eight years old and male participants averaging 34.5 years old. Thirteen participants identified as white/Caucasian, thirteen identified as Latina/o, one identified as black/African decent, and three identified as multiracial (two or more races). While no statistical data were available on the composition of either Orange County's overall jail releases or, more specifically, the ERP participants, the Inmate Reentry Supervisor for the Orange County Sheriff's Department affirmed that the demographic makeup of the program's participants was similar to that of the larger Orange County jail population. The racial, gender, and age compositions are presented here for contextual purposes; I will address this issue further in the Discussion section below.

Additionally, of the thirty participants, only two were serving time for their first felony conviction, while the remaining twenty-eight had prior felonies (including one participant who estimated that they had "somewhere around thirty-seven felonies"). Participants also had served different amounts of time during their most recent incarceration, with the longest being a release from serving two years on a prison sentence served in county jail.⁶ Twenty-three of thirty participants (77 percent) had a history of problematic substance use, and eighteen of those twenty-three (78 percent, or 60 percent of the full sample) described prior alcoholism or drug addiction. Lastly,

3. The University of California, Irvine's Institutional Review Board approved the study's human subjects research protocol.

4. Demographic data were not collected about the 154 individuals who declined participation, so we cannot know if these populations differed in systematic ways.

5. Though I never explicitly asked participants the details of their conviction(s), I did require interviewees to have at least one felony conviction on their record in order to participate. Of the eight individuals that declined further participation, five met the study's qualifications but were not interested in the time commitment; the remaining three were interested in participating but had not been convicted of a felony and, therefore, were not qualified to participate.

6. Because the sample population were released from county jail, many participants' most recent convictions were misdemeanors or community supervision violations; however, because of California's 2011 AB 109 Prison Realignment, some participants had been serving felony prison terms in county jail and had just been released from these terms at the time of the interview (Verma 2016).

TABLE 1.
Participant Characteristics

	Frequency	%
<i>Gender</i>		
Male	22	73
Female	8	27
<i>Age</i>		
21–25	4	13.3
26–30	9	30
31–35	6	20
36–40	2	6.7
41–45	3	10
46–50	3	10
>50	3	10
<i>History of Substance Abuse</i>		
Yes	27	90
No	3	10
<i>Housing Arrangement</i>		
With Partner or Alone	9	30
With Family	8	27
With Friends	2	6.7
Transitional Housing	5	16.7
Homeless	6	20

participants' housing plans varied, ranging from reliable housing with partners to those being released to homelessness (see [Table 1](#) for further details).

Because they were interviewed at the moment of their release (as opposed to during or after their reentry employment process), participants were asked to reflect on past employment experiences searching for work with a felony record. The few participants who had not looked for work prior to their most recent incarceration (whether because of drug use, continued participation in illicit activity, financial assistance, etc.) were asked to anticipate what their experience searching for work would be like. As such, these interviews likely provided less detailed data than interviews conducted during the job-seeking process would have. Also, those interviewees that reflected on more distant work experiences may have described situations that have improved over the years since the time at which they occurred. For example, one participant expressed that he believed employers were becoming more open to hiring individuals with records, and participants' anecdotal experience may reflect outdated attitudes, policies, or laws. However, because the interviews captured past events, the stories told by interviewees likely represented the more formative or emotionally powerful experiences of searching for work with a criminal record. While this study does not allow us to understand differential experiences at a single point during reentry employment, it helps us to better understand the ways that cumulative experience, advice, and collective wisdom shape participants' legal consciousness and job acquisition strategies.

Data and Analysis

The interviews were semistructured to simultaneously ensure consistency with regard to key questions and topics while also allowing for flexibility according to each participant's unique needs and experiences. All interviews addressed the following topics: general conviction and incarceration history; anticipated reentry plans including housing, transportation, and sources of social support; employment history and past experiences searching for work with a criminal record; the decision-making process behind choosing whether to report one's record to employers; alternatives to formal employment; and feelings or expectations about the future. Interviews averaged an hour in length and were conducted in a private area in the Resource Center to ensure confidentiality.⁷

My methodology followed in the tradition of postprison narrative-generating interviews (Irwin and Cressey 1962; Jones, Piccard, and Jones 2000; Maruna 2001; O'Brien 2001; Hlavka, Wheelock, and Cossyleon 2015), which allow the individual to highlight those retrospective experiences that are of the most personal significance to them (Maruna 2001). Study participants share the common experience of living with a felony conviction; however, outside this commonality, participants' conviction, incarceration, and employment histories differ. Rather than detracting from the quality of the data, this diversity adds to the data's richness, as participants draw upon a combination of past experiences, advice (from family, friends, reentry organizations, etc.), and communal knowledge to inform the ways they work around the legal double bind. I will return to this point in the Discussion section below.

The interviews were audio-recorded and transcribed.⁸ I inductively coded the transcripts using a grounded theory approach to allow theory to organically emerge from the data (Patton 1990). To do so, I first coded the transcripts for topics and themes. As patterns emerged in the data, I grouped these themes into "conceptual categories," observed the narratives surrounding them, and observed the ways in which the themes interacted with one another; I then applied theory to these emergent patterns (Glaser and Strauss 1967). This approach produced a common narrative in which job seekers, through a desire to comply with legal requirements to work, utilized extralegal tactics to work around legal barriers to employment posed by their criminal records.

7. To further build trust, all participants signed a consent form ensuring confidentiality and reiterating my role as an entity independent of law enforcement, despite holding our interviews in a space associated with the Sheriff's Department. No identifiable data other than basic demographic information were collected and participants either chose or were assigned pseudonyms at the start of the interview to prevent the documentation or recording of names. Participants were also informed that their participation in the interviews was voluntary and in no way an obligation related to their early release. In exchange for their time, participants were provided with gift cards to a nearby convenience store.

8. I took extreme care in transcribing participants' exact words and the quotations included below are precise representations of their statements. Because it is important to hear their experiences in their own voices, I did not alter the phrasing, language, or word choice in any quotations below, with the exception of the removal of some "likes," "ums," etc. to maintain a readable flow. As such, I do my best to provide a faithful representation of the interviewees' words, stories, and experiences.

FINDINGS

When asked what the most difficult part of reentry has been, participants almost unanimously said employment. Between past personal experience, anecdotes from peers, and communal narratives about the challenges of reentry employment, it is no surprise that there was a shared sense of anxiety about their impending job searches. Turtle (age thirty) worried about finding work long before his release: “I have had sleepless nights in my [jail] cell ‘cause my [release] date was coming up, thinking, ‘What am I gonna do? What am I gonna do?’” While the moment of release from jail can already be overwhelming (Who can you call? Where are you going next? How are you going to get there? Do you have money?), participants expressed even greater anxiety when asked about their employment plans. For several participants, the co-occurring stressors of reentry and job seeking heightened this anxiety.

Participants’ anxieties were intensified by their need for formal employment, as opposed to more attainable under-the-table or off-the-books work. Past scholarship has indicated that financial debt may discourage formerly incarcerated people—especially noncustodial fathers facing child support debt—from pursuing on-the-books work (Turetsky 2007). However, seven participants defied this expectation, explicitly wanting to create a legal “paper trail” by finding what Hunter (twenty-two years old) described as “a good job where [they could] pretty much pay taxes.”

Participants’ reasons for wanting formal employment varied. Dylan (twenty-eight years old) sought the medical benefits that would accompany employment with a company in the primary labor market. In contrast, for Scott (forty-nine years old) and Jacob (thirty-four years old), formal paychecks would provide proof of employment to satisfy community supervision conditions; as Jacob explained, he “just need[ed] a job to keep [his] PO (parole officer) happy and to maintain a stable living.” For Shawn (twenty-nine years old), the need to show a legal source of income was necessary in order to obtain rental housing, which would help in her attempt to regain custody of her children. And, for some, the desire to acquire taxable work was simply a desire to stay out of trouble with the IRS and/or law enforcement. John (thirty-five years old), a former participant in the underground drug economy, explained why drug sales were no longer a tenable option:

Once you grow up, you become an adult. I have to pay bills, I have to pay taxes. I have to be a tax-paying citizen now, so . . . I have to have a job. How am I gonna own this and this and that if— I gotta report it.

For John, participating in the underground economy was a risk factor for future law enforcement contact; now, however, this risk also included the IRS. It seems likely that, while John may indeed have been concerned about the IRS, reporting his income was also a symbolic act indicating reentry success. For John, a paycheck may have been tangible evidence of his “going straight.” Despite these intentions, participants’ felony convictions prevented them from obtaining the type of formal employment they sought. However, rather than defiantly turning “against the law,” they found ways to circumvent these restrictions by using extralegal strategies to work around the law.

Lying on Job Applications

Twenty-nine of the thirty participants (97 percent) explained that the requirement to report their felony record at the time of application had prevented them from consideration for hire in the past. Because of the frequency with which formerly incarcerated job applicants are rejected after honestly reporting their record, the communal wisdom among job seekers is to do whatever is necessary to get a foot in the door. Just as in Harding's 2003 study, the majority of participants reported that, after countless unsuccessful attempts to find "legit" work by honestly reporting their felony record on job applications, they altered their strategy and stopped reporting their record to prospective employers. Of the thirty participants, twelve (40 percent) intentionally lied to employers about their felony records during the application process, either by withholding information or by falsely marking that they did not have any prior criminal convictions.

All twelve participants who reported lying about their background had at one time approached the applications honestly, either because they had been advised to and/or because they wanted to turn a new leaf after release. Peers, job counselors, and family members advised Hank (fifty years old), Dylan (twenty-eight years old), and Aaron (thirty-four years old) to honestly report their record on job applications. For Hank, honesty was a recommended job search strategy, as well as part of a larger personal effort to leave his criminal behaviors and lifestyle behind:

In the beginning they say, "Be honest, be honest." But then I started marking—I'd say, "No, I don't have no felonies," and hope to God they didn't check. In the beginning you want to be honest, 'cause I was in AA and I'm going to church and I'm trying to do the right thing. Like, for six months you're looking for a job everyday, getting turned down. And eventually you get frustrated and start writing "no," and you still don't get it because they run a background check.

Hank viewed reporting his record as a reflection of his larger intentions to lead an honest life. And yet, despite encouragement from his various support networks, Hank was unable to secure employment by being honest. Unfortunately, even after Hank switched to a strategy of lying about his record, he was still unable to land a steady job.

Unlike Hank, however, many others experience better results when they switch to a strategy of lying. For example, when asked how he felt about reporting his record on job applications, Aaron explained: "[I feel] hopeless, like I know I'm not gonna get it [the job]. At the beginning, I was encouraged to go in there and tell the truth, but as soon as I did it [lied], I nailed the job real quick." For those like Aaron, withholding information about past felony convictions produced immediate positive results. These personal experiences of successful nondisclosure, combined with street knowledge of this strategy's efficacy, cement this approach as the necessary way to proceed when filling out job applications.

All participants who reported lying (or intending to lie) on job applications were aware that the omission did not guarantee job placement, as employers could run a background check in the future, resulting in termination. In contrast, while lying could not guarantee a job, participants perceived honest reporting as an almost certain

guarantee of disqualification from hire. If a participant lied about their background, there was still hope that the employer would not run a background check and would offer them a position. For example, Dylan stated, “I’ve gotten jobs where they say they’re gonna check but they don’t check so it’s like, a fifty-fifty chance that I just take.” Because he liked these odds, Dylan stopped reporting his record when applying for work. Though lying about one’s record is a gamble, participants like Dylan believe it is a gamble worth taking.

The shift to a strategy of dishonesty may be born out of an applicant’s hopelessness about the optics of their felony record. Aaron explained:

Getting a job and, like, having a job that I’m proud of— it’s hard to find with a felony. Nobody wants somebody that’s gonna go burglarize their business and go beat up their girlfriend. That’s what it looks like, though. That’s exactly what it looks like.

Similarly, Scott (forty-nine years old) asserted that, though he lies about his record, he only anticipates getting hired if the company does not actually perform a background check. I asked Scott if he thought he would be hired if a company ran his background. He replied, “Probably not. Because I know what I look like on paper. It’s not pretty.” Both Aaron and Scott were aware that employers would likely perceive them as liabilities based on their criminal histories. Because they understood the optics of their records, these two participants chose to lie.

Unlike Scott and Aaron, there were participants who risked lying because they believed they could win over the employer during a face-to-face interaction. Peers told Steven (twenty-nine years old) that he would have better luck revealing his criminal history to the employer during an interview than openly admitting it on the paper application. Whereas the application may result in an automatic disqualification, an in-person interview allows the applicant to control the narrative, “minimize damage,” and disprove any stigma-based assumptions the employer has about felony records.

Many interviewees in the present study believed that an in-person interview would allow the prospective employer to get to know the applicant as a person, beyond their record. Fourteen of the thirty participants (47 percent) argued that they are a different person now than at the time of their conviction. For Ron (twenty-one years old), the key to getting hired was sitting down face-to-face with a potential employer, “‘cause then [he] could tell them, ‘Well, I have a felony and have been convicted for such and such. But that’s my past, and I’m trying to change myself, right? To improve. And this [the job opportunity] is a start right now.’” With this interview narrative, Ron is explaining that his past convictions are not indicative of future behavior; instead, he is demonstrating an active desire to change and inviting the employer to be a part of that redemption process.

Similarly, seventeen interviewees believed that if they could get past the background check they could secure a job by wowing the employer with their strong work ethic. Alex (twenty-five years old) and Peter (thirty-seven years old) intentionally lied on their job applications in an attempt to prove themselves on the job before the employer learned of their felonies. Alex (twenty-five years old) discussed her approach to filling out a job application: “I feel like if I circle yes, they automatically throw [the application] away, but if there’s a ‘no,’ they’ll give you a chance. And I know

I have a really good work ethic, and if I were to work, they wouldn't turn me away." Peter furthered this by arguing that his felony convictions might not have anything to do with the job position at hand: "Sometimes it [the record] doesn't apply, sometimes it's irrelevant. Sometimes it's not an accurate portrayal of me as an individual, me as an employee, my work ethic, my capabilities, my knowledge." For Peter, his past convictions were not representative of the person he is today; instead, he believed they prevent employers from seeing how he might contribute as an employee. By working around the law in this fashion, interviewees can plan to "come out" about their criminal history while continuing to view themselves as complying with the law. Rather than perceiving withholding information as unethical, participants view it as creating an opportunity for the employer to see their potential value as an employee—value that might otherwise be overshadowed by the stigma of a criminal record.

Evading the Background Check after Hire

Even if a job seeker passes through the initial application stages, it does not guarantee that their criminal record will remain undetected; as such, interviewees explained that they must continue to hide their background even after they have been hired. Of the thirty participants, eighteen (60 percent) reported that they had been hired for a job, whether directly with a company or in a temp-to-hire position, and, after some duration of time spent working, were subsequently fired because of their criminal record. Of these eighteen participants, twelve were those above that reported lying about their felony conviction(s) on job applications. Kid (thirty years old), was one such participant. After years of honestly reporting his criminal background and experiencing continual rejection from potential employers, he switched tactics: "I was always denied, so I started lying, saying I never got convicted. And then I would go to work, and they would put me on a couple days out and then just fire me. It was crazy."

Beyond the loss of steady work and a stable income, participants felt that these delayed rejections were embarrassing, particularly when they occurred in front of coworkers. According to Dylan (twenty-eight years old), he had been hired for a position after withholding details about his record at the time of application. He was excited about the opportunity under the assumption that his offer of hire meant that he had successfully evaded the background check. However, this was not the case:

I got hired and I was stoked. They showed me around, I met everybody. And it was embarrassing, you know what I mean, when after a couple days, like "Man, what happened?" I kept calling them, and they sent a letter in the mail: it was a copy of my background check. They hire me and then they run it. They'll hire me, I'll work one day, and then they'll let me go. So now I don't even bother.

Dylan explained that the embarrassment and disappointment of sudden, unexpected termination was so disheartening that he gave up entirely and, instead, returned to extralegal work.

While these participants had made the conscious choice to withhold information about their convictions at the time of application, some reported experiences where they did not even have to lie. Instead, the employer or staffing agency had not inquired about the applicant's past criminal justice involvement during the application process but, rather, had conducted the background check at a later time. Participants explained that the employer then discovered the newly hired employee's felony record and terminated them, even though they had already begun working. Tony (thirty-one years old) explained that on multiple occasions he had been hired for a position and then fired after several days on the job. Though he intended to be forthright about his history of criminal convictions when asked, his employers' failure to inquire about his record at the time of application resulted in his early termination:

Most of the time, they don't ask me until I'm gonna get hired, so when I get hired is when I get fired. I get a job, they place me. They give me the ninety-day probation. And then once that company's actually gonna hire me, they look into my felonies and I'm fired.

Job seekers like Tony may find themselves in a frustrating situation: because the employer has not done a preliminary background check, the employee is able to work for some duration; however, when the employer finally decides to conduct the background check, the felonies are discovered and the worker is terminated. For Tony, though he earned some income during the probationary period, he still described the negative mental and emotional effects of job loss and instability following his termination.

For some, however, even this short period of wage-earning work is worth the experience of delayed rejection. During his interview, Aaron repeated numerous times that he wished he could be honest with employers about his background, but that mounting financial pressures meant that he needed to earn money any way he could. He explained:

I have to manipulate the truth to get the job, 'cause I don't want my family to starve, I don't wanna starve. I don't wanna keep on going back and forth to jail. I would be more than happy to go in and tell the truth, but until then, you gotta get by the way you get by.

Aaron, in so many words, described the legal double bind of reentry employment. Like Aaron, many participants wanted to be honest but needed to fulfill their legal financial obligations, or simply afford food and, hopefully, shelter. Like Aaron, Turtle (thirty years old) reported evading the background check out of pure necessity. Though his behavior was technically dishonest, Turtle saw this approach to applying for jobs as a last resort in his attempt to earn an honest income and make ends meet. When asked how he justified being dishonest about his convictions, Turtle explained succinctly: "It's just simple. Frankly, I needed those days of work."

Aaron, who described lying out of desperation above, had been successfully hired at two separate chain restaurants without being discovered; however, despite this success, he perpetually worried about being "found out." Aaron believed that, should

his employers discover his criminal convictions, he would be terminated from his position. In addition to feeling constant anxiety about his job security, Aaron also felt trapped in the entry-level position into which he had originally been hired. He believed that if he pursued opportunities for advancement with his company his employers would run his background check again. Whether or not a promotion would have actually resulted in an additional background check, Aaron's fear of discovery prevented him from seeking the managerial positions he otherwise desired. Aaron described a performance review at his restaurant:

They did an evaluation on us to give us raises and stuff. I was at the top three of the whole kitchen, and that was nerve-wracking, too. 'Cause I was like, "Oh, man, they're gonna ask me [if I'm interested in a promotion], and I'm gonna have to tell 'em, 'Uh, I just want to be a cook.'" And I didn't really—I would love to be a manager at a place like that.

Those like Aaron who secure a job by lying on applications may still find themselves stuck in low-level positions, because of either *de jure* or *de facto* discrimination, or because of the fear and anxiety record holders experience in anticipation of this discrimination.

Accepting "Bad" Work

When asked to describe his work experience after receiving his first felony conviction, Scott (forty-nine years old) replied, "my jobs have been remedial." Scott used the word "remedial" in this context to describe low-skill manual labor conducted for minimal pay. Like Scott, study participants explained that, because they often found themselves legally excluded from "good" work, they had to settle for this type of remedial or "bad" work. What is more, participants reported that these "bad" jobs were almost always outside their preincarceration field of work. The job seekers in this sample had worked in a variety of industries prior to their felony conviction(s), including health care, wireless telecommunications, counseling, business administration, sales, caregiving, corporate construction, child care, overseas trade and manufacturing, and California's medical marijuana industry.⁹ Prior to incarceration, participants had been working toward careers in these fields and, in many cases, had relevant specialized education or licensure. However, participants explained that, after incarceration, they were unable to continue working in their original fields. According to the interviews, most participants then abandoned the possibility of career work and, instead, searched for whatever employment was available.

It would seem that education would provide a direct pathway out of the world of "bad" work; however, many interviewees asserted that incarceration had also interrupted their educational career. Though many participants reported dropping out of school after their conviction(s), some had obtained their high school diploma or

9. At the time of the interview, California had legalized medical marijuana use but had not yet legalized the sale and purchase of marijuana for recreational purposes.

GED in jail or prison. In order to move beyond the limited “remedial” job opportunities, seven interviewees (23 percent) planned to pursue higher education or vocational training as a way to open doors to better, higher-paying positions. John (thirty-five years old) explained: “I gotta further my education so I can get a job—a good job—instead of working at these dead-end jobs, the only ones I can get.” Though education was commonly understood to be a means of qualifying for better employment opportunities, two participants believed that their felonies would prevent admission into educational institutions. Regardless of whether or not their records would have actually barred them from further education, this belief prevented the two applicants from applying for school.

Many of the “bad” jobs available to participants were not only low-skill, low-wage positions, but were also typically short-term informal or temporary staffing work. Twenty-seven percent of participants (or eight of thirty people) discussed having relied upon on off-the-books work, including construction, maintenance, fixing cars, or providing informal child care. These participants described the off-the-books positions as “side jobs” meant to supplement income they had hoped to earn through formal employment. More often, participants explained that temporary employment and staffing agencies (“temp agencies”) were the only places they felt they would have a chance at finding employment with their felony record. Perhaps surprisingly, many interviewees expressed difficulty finding temp agencies that were either explicitly “felon-friendly” or that did not routinely perform criminal background checks themselves. Even if they found temp agencies that would place record holders, the job opportunities remained temporary; thus, even when these job seekers finally secured work, it was only a matter of time until the “gig” ended and they were back to searching for work.

Seven interviewees described the negative experiences they had with temp agencies, even after they were successfully placed in wage-earning temporary positions.¹⁰ When asked about his experience with temp agencies, Dylan initially responded that they had been helpful. He then qualified this statement, stating that employers take advantage of temp workers, treating them as disposable sources of cheap labor:

It’s how these employers get away with saving money, so to speak, like, on medical and all that stuff. That’s why a lot of companies are teaming up with agencies: for the sole purpose of hiring temporary workers ‘cause they’ll never run out. They don’t have to give nobody raises. Just constantly, it’s like a revolving door: next, next, next, next, next.

When discussing this type of predatory employer/employee relationship, five participants explained that telemarketing companies specifically target vulnerable job seekers who, because of their low job prospects, are willing to work in otherwise undesirable environments. Hank (fifty years old) described multiple occasions where temp agencies

10. Both male and female participants reported having experience with predatory temp agencies. This exploitative employment of formerly incarcerated people was not gendered, even for those stories involving telemarketing agencies. This finding speaks to prior research, including Gretchen Purser’s ethnography of formerly incarcerated men at an Oakland day labor center (2012a) and Edin and Shafer’s depiction of precariously (under)employed female workers across America (2015).

had told him they had placed him in positions in construction or warehousing. Hank explained that, upon arrival at the job location, he had discovered that these were false leads; rather than arriving at a construction site, he had been sent to work at telemarketing agencies. Sometimes, even though they had not initially intended to work in telemarketing, participants reported attempting to stay in these jobs out of desperation and financial necessity. After a stint in jail on a drug charge, Carol (fifty-three years old) was placed in a sober living transitional housing facility as part of her probation requirements; along with other facility residents, she was directly recruited from the sober living home to work at a telemarketing agency. Though she escaped being personally victimized, Carol recounted troubling criminal activity that occurred on the job. For example, she explained that her male supervisor, who was often high on drugs, would frequently sexually harass the female employees who had been recruited from nearby transitional housing, sober living, or drug treatment facilities. Because of this toxic environment, Carol eventually quit working at the telemarketing company and returned to the challenging process of searching for work with a record.

Returning to Illicit Work

As many interviewees described, finding a job was difficult, regardless of whether they honestly reported their record or withheld information about their felony conviction(s). When job seekers did manage to secure a job, it was generally a “bad” job and the income earned was insufficient to support the worker or their family. As such, participants described having felt pressured to return to illegal (but more reliable and often more lucrative) means of making money, despite wanting to “go legit.” What complicates this familiar narrative of returning to crime is that, for the study participants, this decision was rarely a simple “rational” choice made after weighing the risks and benefits; rather, they explained that the return to illegal work was driven by feelings of necessity and desperation, which, for many, interacted with preexisting struggles with addiction and substance use. Participants argued that they had wanted to work within (or around) the law but had been legally shut out from it and so, necessarily, found other ways to generate an income.

After facing constant rejection from potential employers, one-third of participants (ten of thirty) reported giving up on formal employment entirely and turning to other forms of material support. In the absence of income-generating employment, some participants were able to find sufficient financial assistance through legal nonwork methods such as unemployment insurance or the support of friends and family. But reports of external support were rare; instead, in the absence of any other financial options, most participants reported returning to illicit work.

The majority of participants who described returning to illegal activity tied the decision to feelings of hopelessness and desperation after repeated failures to find and keep work. Casey (thirty-seven years old) described the interaction between the pressures of daily life and barriers to reentry that had driven her back to old habits in the past:

You are changing, and you're trying to do the right thing and get work and support yourself. You have on the other side, which is your [parole/probation]

supervision that's like, "You need a job, you need a place to stay. What are you gonna do?" And you can't find a job and you're putting out ten to fifteen applications a day. Something's gonna give, and for the person that's not really there yet to say, "Ok, I can handle this rejection," it's kinda like, "Forget it, I'm just gonna go back to what I normally do," because at some point you have to eat, sleep, and, you know, normal life things.

Just as other participants described the decision to lie about their record as driven by practical necessity and hopelessness about formal employment, Casey argued that these same factors may drive formerly incarcerated job seekers back to illegal sources of income.

Beyond the near impossibility of acquiring steady work, high rates of homelessness among formerly incarcerated people further complicate this process, as the challenges of searching for work intersect with difficulties in meeting the most basic of needs. Jacob (thirty-four years old), who resided in a local homeless encampment prior to his incarceration and planned to return there after release, experienced these challenges. Though he had a job interview scheduled for two days after our interview, he expressed concern about his ability to make it to the interview and, if he did arrive, to make a strong impression because of his lack of clean clothing, reliable transportation, a place to shower/shave, etc. Jacob explained that the resulting anxiety, stress, and self-doubt also function as an addiction trigger for him and he was concerned he might return to drug use. Despite having the job interview ahead, Jacob had little hope about landing the job for all of these reasons plus, of course, the obstacle of his felony record; he dejectedly admitted that, as a result, he would likely return to drug use and petty theft as he had done in the past.

Even the most tenacious of criminal record holders may fold after feeling defeated by their continually fruitless job search. For Hunter (twenty-two years old), who also described job instability as an addiction trigger, past employment challenges had become a chain reaction where frustrations and hopelessness about work led him back to drug use; he then returned to old social circles and got caught up with illegal activities. This cycle not only prevented Hunter from searching for work, but it also jeopardized positions he found after the cycle had already been initiated. Hunter went on to explain that he had lost work several times because of this return to using and selling drugs, either because he had intentionally abandoned work or had been terminated due to his changing behavior. Ultimately, the cycle ended with Hunter "getting busted" (and ultimately, reincarcerated) for his illicit activity.

DISCUSSION

Formerly incarcerated job seekers are trapped by the law in a double bind where they are legally compelled to acquire on-the-books work while being legally obstructed from doing so. Because of the double bind, we might expect this legal boxing-in to result in an "against the law" perspective for job seekers, with corresponding behaviors such as outright defiance, resistance, or rebellion against the law. However, rather than a rejection of the law (as is characteristic of those positioned "against the law"), the study's participants expressed an honest commitment to comply with their legal obligations

toward employment. This was bolstered by their explicit desires to build a “paper trail” through formal employment and to remain honest about their record as long as possible. Because the participants largely want to acquire “good” work (as opposed to avoiding on-the-books work in favor of under-the-table or illegal activities), they described several tactics that allow them to work *around* the law, rather than stand in direct opposition against it. Participants articulated the four primary strategies for navigating the double bind, which often would occur simultaneously or would be continually returned to (though the sequential order varied). Almost all participants in the study reported that they had turned to dishonesty about their records, withholding information or not reporting their felonies on job applications. If they succeeded and passed the application undetected, they could move on to longer-term evasion of the background check, which became an ongoing project of maintaining discretion. However, if either strategy failed, the worker was ejected from the employment opportunity and had to begin the process again. Some participants reported that they had then accepted “bad” work, either as a complete alternative to “good” employment or to make ends meet while continuing to search for career-oriented jobs. Unfortunately, those that returned to illegal means of making money generally described having abandoned aboveboard work entirely, rarely returning to the other three strategies. Whereas people often switched back and forth between lying, going undetected, or accepting “bad” work, once participants returned to crime, the only exit pathway seemed to be reincarceration.

Participants explained that they did their best to remain proximate to the law, moving further into legal grey areas (or outright illegal activity) only as desperation and necessity required them to do so. Many who returned to illicit work described feeling pressure to return to easier, more reliable sources of income, as the other navigational tactics were insufficient for meeting their financial obligations. In the absence of legal employment, job seekers sought other ways to meet their most basic needs, including paying for food and, hopefully, shelter; for them, the decision was one of practical necessity. However, some reported that the hopelessness of their job search led them back to crime in a more insidious way; rather than a conscious choice driven by desperation, the seeming hopelessness of reentry drove some participants with prior histories of addiction back to drug use.

Within the sample, twenty-three of thirty (77 percent) reported prior problematic substance use, and eighteen of those twenty-three (78 percent, or 60 percent of the full sample) described their substance use as having reached the level of alcoholism or addiction. For these participants, substance use was a major theme that undergirded all aspects of the interview, one they perceived as posing an additional threat to their ability to find and maintain employment. Indeed, all six participants who reported being homeless also battled with substance use. Addiction and homelessness compounded the already challenging barriers to employment, making it nearly impossible for them to pursue “legit” work. Even for those with reliable housing, a return to substance use after release marked the beginning of a slide back to illicit activity. Participants explained that, after returning to substance use and street life, they were more easily drawn back into drug sales and petty theft as sources of reliable income. Further, unhoused participants also become subject to arrest or citation for status offenses that result from homelessness, such as sleeping on benches, public urination or, when substance use is also present, public

intoxication. For many participants, the hopelessness about their employability encouraged a return to drug use, then to crime, and then also ultimately to reincarceration. What is more, based on these interviews, the experience of reincarceration seemed most common among those struggling with addiction and homelessness.

Despite the proliferation of organizations that provide transitional services to formerly incarcerated clientele, it is dubious how effective these organizations are at collectively improving reentry outcomes, particularly with regard to employment. When describing the sources of job search advice, participants continually cited reentry organizations as encouraging honest reporting of their criminal records. While it is unsurprising that organizations would not explicitly encourage their clients to be dishonest or to lie (as this could easily be viewed as encouraging illegal behavior), there could be an alternative strategy that would better position their clients at the time of application.

Despite their best intentions, this imperfect advice may have larger implications for workers given the larger context of the reentry industry and its relationship to “bad” employers. Of particular concern is the predatory nature of some temporary and day labor agencies, which may rely on and benefit from the highly exploitable formerly incarcerated labor pool (Purser 2012a, 2012b; Bumiller 2013). Purser’s work demonstrates the intentionality behind some staffing agencies’ geographic proximity to “poverty management services,” and also points to the strategic referral relationships some agencies form with incarceration-focused service providers such as reentry organizations, sober living homes, etc. (2012a). The present study’s findings provide additional evidence of this predation, as participants reported being directly recruited from transitional reentry spaces into toxic work environments that jeopardize participants’ sobriety and encourage recidivism.

LIMITATIONS

There are several limitations to this study’s findings. Due to the small sample size, I am unable to distinguish differential experiences among participants by race/ethnicity, gender, or age. Similarly, I am unable to make generalizable arguments about differential experiences based on total time incarcerated, length of most recent incarceration, or time periods spent searching (or not searching) for work. Rather than attempting to provide a representative sample that may be generalizable to other locales, the present study raises a theoretical issue that I hope will give rise to further research.

With regard to race and ethnicity, much of the criminological literature focuses on black and white racial dynamics and differential criminal justice experiences across these racial lines, though the present sample includes a large proportion of Latinx participants. Recent work by Muller and Wildeman finds that the relative risk of incarceration for different racial/ethnic groups varies by region within the United States, with Latinxs most likely to have been incarcerated in the West (2016). However, there is research indicating that Latinxs may fare better on the job market than black applicants but worse than white applicants.¹¹ Thus, the study sample, which includes twenty-five

11. An audit study by Pager, Bonikowski, and Western has shown that Latinx job seekers are more likely to receive job offers than black applicants, but are less likely to be offered a position than their white counterparts (2009). Further, black applicants are more likely to be “channeled down,” or encouraged to apply for a lower-skill position than the advertised job than their Latinx counterparts or their white

of thirty participants who identify as white or Latinx, may actually underestimate the negative impacts of felony records on job seekers' experiences while overestimating the extent to which their navigational strategies result in hire. It is possible that the additional discrimination experienced by black applicants would require them to employ navigational strategies differently or with less success than the study's participants. As such, future research should systematically address differential use and success of these extralegal strategies across racial/ethnic lines. Similarly, though the sample includes a diversity of ages and genders, the study's small sample size poses challenges to asserting differential experiences along these lines. As such, future research should also address the ways in which age and gender impact job seekers' experiences with the legal double bind.

Additionally, my subjects were recruited entirely from the Sheriff's Department's ERP, participants of which may differ from the general jail population because of their self-selection into the program. Inmates that choose to participate in in-prison programming may have different orientations toward reintegration than their nonparticipant counterparts, including, for example, higher levels of motivation or more positive emotional states (Brewster 2014). The additional self-selection into participating in the present study's interviews could compound these traits when comparing the sample to the larger Orange County jail population. Further, existing research shows that, regardless of the motivation for participation in prison programming (i.e., a sincere desire to better oneself as a person or simply wanting an early release), prisoners experience positive benefits because of their participation (Petersilia 2003, 188). As such, participants in the ERP (and, therefore, participants in my study) might experience benefits during their reentry experiences that their nonparticipant counterparts do not, especially if they took part in employment readiness, cognitive behavioral therapy, anger management, or other relevant courses that could impact their ability to succeed in and/or cope with the reentry process. However, there is little scholarship on the effectiveness of these shorter-term within-jail programs (as opposed to longer-duration prison programming) on postrelease outcomes including employment and recidivism.

CONCLUSION

The legal double bind simultaneously requires formerly incarcerated people to acquire work while making it nearly impossible to do so. Whether required as a condition of their probation or parole, paying off criminal justice system-related debts, or meeting child support obligations, formerly incarcerated people are legally compelled to find "good" work. At the same time, job seekers with felony records find themselves legally barred from a variety of occupations, disqualified from hire because of their criminal record, or so restricted by the terms of their community supervision that they are unable to maintain their job. In an attempt to comply with legal obligations to work, formerly incarcerated job seekers work around the law in an attempt to bypass these legal barriers to "good" work.

counterparts; conversely, white applicants are more likely to be "channeled up" as compared to their Latinx or black counterparts (2009, 791). Though white applicants fare better than their counterparts of color, Latinx applicants are more likely to be hired (and for better jobs) than black applicants.

While felony record holders' strategies of working around the law allow them to navigate these legal barriers to good work, they are imperfect, short-term solutions. Withholding information about one's felony record often results in delayed termination or relegation to low-level positions, and accepting "bad" work is inherently accepting job instability, financial insecurity, and possible exploitation at the hands of predatory employers. These strategies may allow some job seekers to obtain formal employment, but even these relatively successful workers will likely find themselves restricted from promotions or advancement. If one turns to an illegal (but likely more accessible and reliable) means of making money, they run the risk of becoming involved with drugs, violating the conditions of probation or parole, and, ultimately, facing reincarceration.

Because increasingly relied-upon background checks bar felony record holders from consideration for hire, both scholarly and policy attention has focused on improving postincarceration job acquisition as a means to both reduce recidivism rates and, more broadly, to reduce systemic disadvantage. A notable example is the growing policy initiative to "Ban the Box," which aims to remove the question about past criminal convictions ("the box") from initial application forms and delay background checks until a later point in the hiring process (Henry and Jacobs 2007). The present study shows that these Ban the Box initiatives would help a greater number of felony record holders bypass the immediate "gatekeeping" function of reporting their criminal record on the initial job application, but that the long-term impact on employment may be minimal. This initial moment of disqualification is only one of the hurdles facing formerly incarcerated job seekers within the double bind of postincarceration employment; while Ban the Box means that job seekers do not have to confront the ethical question about whether or not to disclose their record on applications, it in no way guarantees an offer of hire. Further, though job seekers may pass the initial paper application, job candidates may continue to experience delayed rejection or restriction from internal advancement when they reveal their criminal records at a later time in the hiring process. Even with Ban the Box policies, many workers will likely continue to rely upon temporary or day labor agencies as a way of addressing immediate financial needs, thereby reproducing job instability, worker exploitation, and inequality.

An additional policy approach to improving postincarceration employment is to incentivize employers to hire people with felony records. These employer-focused policies take several forms, including tax incentive programs or the Federal Bonding Program, wherein the government provides employers with cost-free insurance to mitigate concerns about legal liabilities associated with potential future criminal behavior (Hillyer 2015). The success of these incentive policies requires that we identify the underlying reasons behind employer aversion to hiring people with felony records and address those sources of aversion.

In contrast, rather than relying on external employers to accept felony record holders (either by minimizing the effect of stigma or by minimizing risk to employers), social enterprise may be a promising alternative solution to barriers to employment. The creation of companies or organizations staffed primarily (if not entirely) by formerly incarcerated people will bypass all the aforementioned barriers to employment without relying on a revolution in employer perceptions of criminal records. The growing Homeboy Industries in Los Angeles, for example, employs formerly incarcerated men and women in its eateries and craft production operations. While the present study

cannot speak directly to social enterprise's ability to free workers from the legal double bind, it is a promising option that would hopefully eliminate the need for extralegal navigational strategies in the name of good work. Rather than being forced to work around the law, perhaps formerly incarcerated people would be able to work confidently and securely within the law.

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STATUTE CITED

- Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. §§ 2000e et seq. (Pub. L. 88–352) (Title VII), as amended.