

Genetic Essentialist Biases of Judges Towards Offenders with Mental Disorders: The Exacerbation of Stigma and Potential Influences on Judicial Decisions

COLLEEN BERRYESSA

UNIVERSITY OF PENNSYLVANIA



Background

- Evidence that genetic explanations for mental disorders can sometimes reduce traditional stigmas associated with mental disorders, but very often exacerbate stereotyping/negatively affect the ways in which people think about mental disorders and act towards the diagnosed.
- The way in which genetic explanations for mental disorders are thought to exacerbate stigmas towards those diagnosed with mental disorders has been attributed to the broader psychological process of *psychological essentialism* (Atran, 1987) – associated with how people think about mental disorders (Ahn et al., 2006; Haslam, 2000).
- Adding knowledge of genetic influences to mental disorders, of which are already perceived as stable and immutable characteristics, has been thought to result in additional psychological biases that potentially amplify the stigmatization resulting from psychological essentialist thinking - **genetic essentialist biases** (Haslam, 2011).

Background

- The term **genetic essentialism** encompasses the reductionist view that an individual's genetic makeup is an added immutable characteristic, in addition to the individual's mental disorder, that determines aspects of a person's character and behavior (Haslam & Ernst, 2002).
 - Examples (Haslam, 2011; Haslam & Ernst, 2002):
 - Immutability (i.e. "a person's genetics cannot be changed or cured")
 - Uniformity (i.e. "people with similar genetic characteristics are very similar to each other.")
- Existing literature has reported that the exhibition of genetic essentialist biases produces significant negative implications/produce negative outcomes for those with mental disorders (e.g. Bastian & Haslam, 2006; Lam & Salkovskis, 2007; Phelan et al., 2002)

Background

- Although genetic essentialist thinking is thought to be a natural psychological tendency, it is also significantly reinforced by how genetic research is portrayed by the media and consumed by the public (Condit, Ofulue, & Sheedy, 1998; Dar-Nimrod & Heine, 2011).
- Since the media is the platform by which most of the public learn about genetics and genetic influences on individuals' characteristics, genetic essentialism is tremendously influential regarding how laypeople understand genetics and conceptualize how genetics are associated with character and behavioral outcomes (Dar-Nimrod & Heine, 2011; Haslam, 2011).
- Existing experimental literature has reported that the endorsement or exhibition of these genetic essentialist biases further exacerbates existing stigmas associated with mental disorders (e.g. social distance, pessimism about treatment, dangerousness) and can result in negative outcomes for those with mental disorders (e.g. Bag, Yilmaz, & Kirpinar, 2006; Bastian & Haslam, 2006; Lam & Salkovskis, 2007; Phelan, 2005; Phelan et al., 2002).

Background

- Ultimately, the ways in which laypeople psychologically organize and conceptualize their views of how genetics affects character and behavioral attributes and outcomes of those with mental disorders dictate societal reactions to and treatment of those with mental disorders, which can have serious implications and consequences for the diagnosed in a variety of societal realms, including the legal system.
- It is important to understand potential negative consequences of such genetic essentialism in the thinking of laypeople toward mental disorders in different social realms, why they occur, and through what processes these consequences arise (Haslam, 2011).
- This project looks at the legal system: how and why genetic essentialist thinking might result in sentencing disparities and negative effects to judges' punishment decisions for offenders with mental disorders known to be genetically influenced.

Background

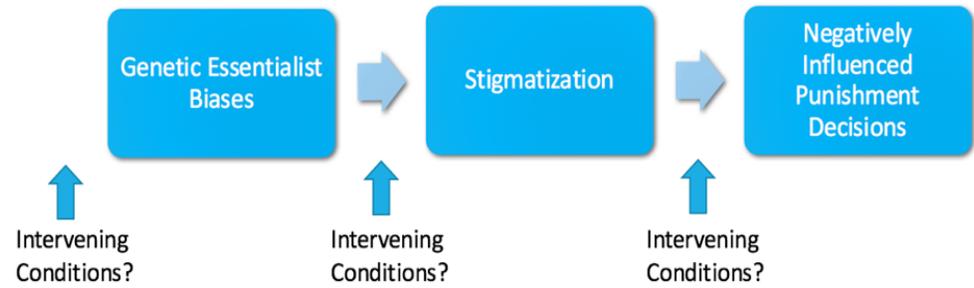
There is reason to think that judges exhibit these biases and that their effects on punishment are an important area of research for many reasons.

- The large majority of judges are thought to exhibit lay conceptualizations of genetics, known to be associated with genetic essentialism (e.g. Berryessa 2016).
- Genetic essentialist thinking affects judgments about capacity for free will and moral culpability of individuals with mental disorders (Ogletree & Archer, 2011), which are constructs argued to permit blame for and punishment of criminal acts (Clark et al., 2014).
- Behavioral genetics evidence, which most often includes evidence in order to establish an offender's genetic predisposition to a mental disorder, has been increasingly allowed, presented and considered in U.S. courts in recent years (Denno, 2011; Farahany, 2016).
- Literature has shown that judges are affected by the same psychological biases that influence the general public and these biases can extend and influence legal contexts and judicial decisions.
- Judges are affected by extra-legal punishment factors, many of which have the potential to be affected by genetic essentialist thinking and may result in sentencing disparities.

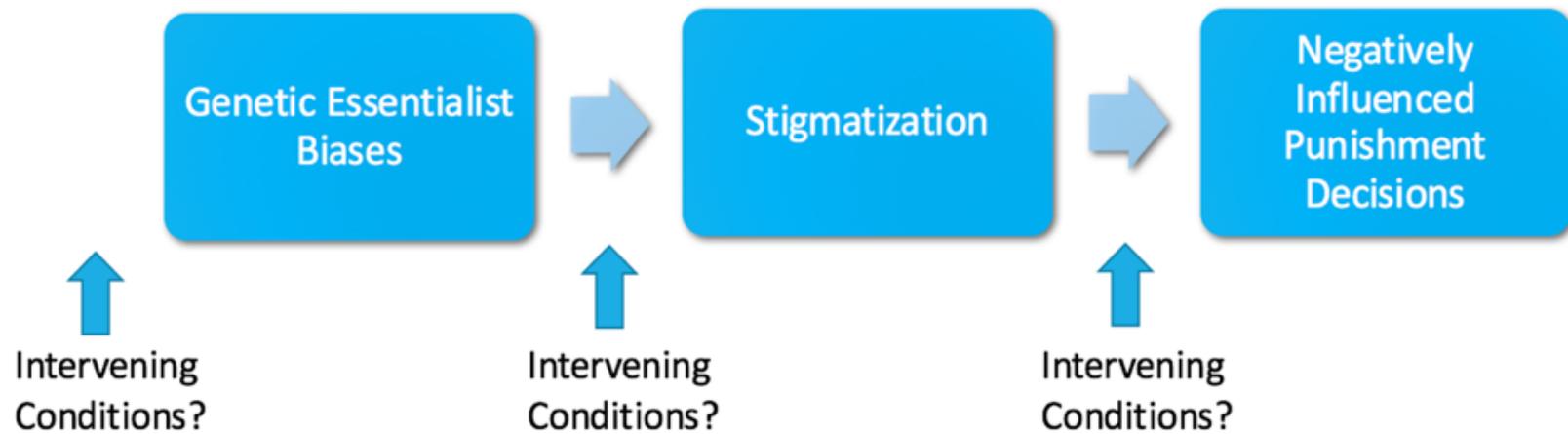
Background

- Thus, it is reasonable to think that some judges may exhibit genetic essentialist biases in the courtroom toward criminal offenders with mental disorders of which they know have genetic influences and they might negatively influence judges' punishment decisions for offenders based on extra-legal factors associated with genetic essentialism.
- Ultimately, better understanding *how* and *why* some judges may exhibit genetic essentialist biases towards mental disorders may provide valuable knowledge on methods or interventions that might best reduce potential negative social and legal consequences of genetic essentialist thinking.

Research Questions



1. This research seeks to develop a theory explaining the relationships/processes between the following three sequential research questions (as illustrated by):
 - How do judges exhibit genetic essentialist biases toward criminal offenders with mental disorders known to be genetically influenced?
 - How do genetic essentialist biases relate to or exacerbate judges' existing stigmas toward these criminal offenders?
 - How and in what ways could judges' existing stigmas, exacerbated or affected by genetic essentialist biases, potentially negatively affect judges' punishment decisions and outcomes in cases involving these offenders?



Research Questions

2. What are the intervening factors that influence how judges exhibit this process/these processes, and why do these intervening factors influence this process/these processes?
 - It is important to identify factors that influence *why* some judges may or may *not* exhibit the theory developed in this research (e.g. why some judges may not exhibit genetic essentialist thinking or, even if exhibited, how that line of thinking may not result in stigmatization of offenders/negatively affect their punishment decisions for offenders with mental disorders).
 - In grounded theory methodology, these factors are called *intervening conditions*, referring to factors that can “bear down” or influence the developed theory, “mitigate[ing] or otherwise impact[ing] causal conditions on phenomena” being studied (Strauss & Corbin, 1998, p. 131).
 - Three potential intervening factors may influence the ways in which and why judges exhibit genetic essentialist biases and the theoretical process(es) developed in this research: *judges’ previous media exposure and background related to genetics, judges’ views on free will, and judges’ personal experiences with mental disorders.*

Method

- Grounded theory methods will be utilized for this research because it not only allows for rich contextualization of the phenomenon being studied, but is used explicitly for theory development and developing causal models and processes (Strauss & Corbin, 1990).
- Qualitative methods were chosen for this research because their use focuses on individual perceptions to form an important overall narrative of the topic being studied, emphasizing the value of portraying the reality of the area being examined (Hewitt-Taylor, 2001).
- Semi-structured interviews were chosen to allow me to identify new ways of understanding and perceiving different areas and concepts during the interview process, and to allow participants to discuss issues not explicitly addressed in the interview protocol at their discretion (Bernard, 2012).
- A constant-comparative analytic approach, derived from grounded theory, was utilized for this analysis (Boeije, 2002; Strauss & Corbin, 1998), in which the nature of each participant's opinions and perceptions are inductively captured, recalled, and presented in relation to the research questions addressed in the study (Hewitt-Taylor, 2001).

Sample/Sampling Strategy

Purposive random sampling of judges who sit on the the Minor Courts, Magisterial Court, and the Court of Common Pleas in the state of Pennsylvania.

- 1,124 judges (not counting vacancies)
- 800 randomly chosen for interview requests because previous interview request response rate was around 5% (Berryessa, 2014a; Berryessa, 2014b; Berryessa, 2016a; Berryessa, 2016b).
- Aimed for sample of 40 to 60 judges (ideal size for a grounded theory study)
- Interview requests sent via U.S. mail (addresses available online publically).
- **Total Sample is 59 Judges (demographics upon request).**

Interviews

Conducted via telephone, recorded, transcribed – about 45 to 60 minutes each.

- Interview protocol covers five areas of questions utilized in qualitative research (Patton, 2015):
 1. *Experience and Behavior* questions
 2. *Opinion and Values* questions
 3. *Feeling* questions
 4. *Knowledge* questions
 5. *Background/Demographic* questions

Interviews

Questions covered questions related to three potential intervening conditions:

1. **Judges' previous media exposure and background related to genetics.**
 - Media conceptualizations of and lack of scientific background or knowledge on genetics and genetics related research has been argued to reinforce genetic essentialist thinking and biases (Condit, Ofulue, & Sheedy, 1998; Dar-Nimrod & Heine, 2011).
2. **Judges' personal experiences and feelings towards individuals with mental disorders.**
 - Judges' personal experiences and emotions, more generally as well as towards offenders with mental disorders, have been shown to influence legal contexts and judicial decisions (e.g. Berryessa, 2014a; Glynn & Sen, 2015; Hochstedler, 1987; Wistrich, Rachlinski, & Guthrie, 2014).
3. **Judges' general views of free will.**
 - Individuals' views on free will, including biological determinism, affect genetic essentialist thinking (Ogletree & Archer, 2011).

Analysis

Constant comparative analysis (inductive/iterative) conducted in three stages (open coding, axial coding, selective coding) (Strauss & Corbin, 1998), in order to develop core categories and its links to all component categories to result in a grounded theory.

- Interrater reliability.
- **Theory Development:** the process by which some judges exhibit genetic essentialist biases towards offenders with mental disorders with known genetic influences, if and how these biases exacerbate or influence judges' existing stigmas towards these offenders, and if and how exacerbated stigmas may negatively influence the punishment decisions of judges + intervening conditions.
- Qualitative validity strategies employed (Ravitch & Carl, 2016).

Codes – Genetic Essentialist Biases

- **Immutability/Determined** (i.e. “a person’s genetics cannot be changed or cured”)
 - **Discreteness** (i.e. “a person either has certain genetic attributes or they do not”)
 - **Inherence** (i.e. “beneath the surface, people with similar genetics are all inherently the same”)
 - **Invariance** (i.e. “certain genetic characteristics exist and they always will exist”)
 - **Uniformity** (i.e. “people with similar genetic characteristics are very similar to each other.”)
 - **Necessary features** (i.e. “all people with similar genetic characteristics have certain attributes that if they did not have, they would not have those genetic characteristics”)
 - **Informativeness** (i.e. “knowing that a person has certain genetic characteristics tells us a lot about a person”)
 - **Specific Etiology**: genes are the fundamental reason that a behavior or outcome has occurred for an individual (offender) and that the presence of certain genetic attributes proves the existence of a behavior or outcome that cannot be affected by external factors.
 - **Naturalistic Fallacy**: black or white judgments (e.g., it is either totally right or totally wrong) of an outcome or behavior of an individual (offender) depending on how natural the characteristic underlying the behavior or outcome is perceived to be (e.g. view an offender’s criminal behavior, if influenced by genetic predispositions, as either completely morally right, or, more likely, completely morally wrong).
- 

Example Preliminary Results - Biases

Informativeness:

“I think that it's becoming quite clear that genetics is very, very important here...it's pretty easy to see that genetics plays a very large role in crime in general as well as in mental illness and crime. It just seems that it plays a huge role...I think that determining whether or not somebody lives an honest life free of criminal activity or whether somebody lives a life with criminal actions, I think that genetics plays a biggest role in that. I'm sad about that because I don't want it to be that way. I don't like the idea of punishing people for bad genes. I like the idea of punishing people for bad choices.” (Judge 1)

Immutability/Determined:

“Certainly if it's a genetic disorder it would weigh in on a sentence because it's like having blue eyes. There's nothing you can do about it, but you have it, would have to deal with it.” (Judge 15)

Uniformity:

“When you see three generations of the same family, I prosecuted three years ago and now I'm adjudicating their case as a judge, how else does that happen? How else do being to three generations of the same family, committing the same crimes over at thirty year period? It is my feeling: that it could be environment, could it be that the son saw dad in this drink and drive so the son decides to do it? Or it is just predisposed for them to drink and drive or it is predisposed for them to take heroin based on their genetics? I lean more toward the genetics than the environment: it plays a role in it but both of them combined leads to a generation of crime. In our area, you see the same names over and over again. It's a generational thing here, just a way of life to commit crime.” (Judge 22)



Codes - Stigmatization

- **Social Distance:** perceived or desired degree of remoteness/distance between one person (offender) and other people/society.
- **Dangerousness:** individual (offender) poses a risk of endangering self/others now or in future
- **Pessimism**
 - Lack of Treatability: untreatable or unlikely to be treated
 - Life Outcomes: anticipated poor life outcomes
 - Lack of Recovery: anticipated that one will not recover/get better
- **Blame / Personal Responsibility**
 - Behavior: blame for behavior/holds person (offender) responsible for how they are
 - Outcomes: blame them/ holds person (offender) responsible for their life outcomes
 - Disorder/Genetics: blame someone/holds person (offender) responsible for having their disorder and/or genetics
- **Internalized stigma:** person (offender) is aware/affected by other people's stigmatization of them
- **Family stigma:** behavior/life outcomes for individual (offender) is similar to those in one's family (either anticipated outcomes/behavior or exhibit behavior/outcomes because they are a part of a family with those attributes/outcomes)

Example Preliminary Results - Stigmas

Dangerousness:

“...I don’t think a genetic condition is likely to get better, is likely to be improved with counselling. So sentencing might be longer, if I thought the person was a danger. And most of the person with mental health problems that I see are not a danger, they’re sort of pests. And they’re not violent, they are just anti-social. But if I thought the person was a danger to society, it might influence the length of my sentence because I’d recognize that no amount of treatment is going to make them be or conform to societal norms.” (Judge 55)

Family Stigma:

“They don’t come from families that are loving, supportive, disciplined, intact, stable. So I think that there’s always many factors, not just the mental illness. I mean, I can’t even think of a family of defendant who’s been in here and they came from a good family. As far as good, meaning both parents, showed up at the hearing. Both parents were supportive and had good discipline techniques as parents. And probably, a large part of that is because their own parents are mentally ill.” (Judge 51)

Pessimism – Life Outcomes

“...I believe that [genetics] takes over. I mean it becomes who that person is, in the negative way, actually. With no impulse control, sometimes there's a break with reality. And because of that, I think it overshadows what the person's real personality, real behavior is or how it is without the disorder. So I think it completely negatively impacts it.” (Judge 31)



Codes - Sentencing

> Effects of Genetics on Sentencing

- **Negative effects** of knowledge about genetic aspect of mental disorders on judges' decision to sentence or how to sentence
- **Positive effects** of knowledge about genetic aspect of mental disorders on judges' decision to sentence or how to sentence
- **No affect** on judges' sentencing decisions/punishment

> Priorities in Sentencing for Judges (in cases involving mental disorders generally vs. with added known genetic influences to mental disorder)

- Punishment / retribution
 - Deterrence
 - Incapacitation
 - Treatment / Medication
- > **Emotions** when thinking about presiding or interacting with offenders with genetically influenced mental
- > **Initial Reactions** to knowledge/evidence on genetic influences to disorder during sentencing
- 

Example Preliminary Results - Sentencing

Negative Effect:

“Just because the person may not have the ability to rehabilitate themselves. But at the same time if it's something which pose a threat to the community then my sentencing might be more restrictive because if it's a genetic problem then maybe nothing that I do in terms treatment is going to change their behavior.” (Judge 3)

Positive Effect:

“Sometimes when there is awareness that there is a genetic influence there may be some treatment possibilities for the person that the person hasn't tried yet, so I suppose if I knew that then I would enquire what... since we know this about this illness, what are the treatment possibilities for someone with this illness.” (Judge 53)

No Effect:

“I'm not sure that that [genetics] really has a lot of bearing on the public safety question. Again, whatever the cause of the illnesses, if the individual presents danger to others, we need to take that pretty seriously. I don't know whether the root of cause has much to do with public safety. Again, except to the extent that it can be controlled. If the situation can be controlled then that's different. But whether it's because it was genetic or because of drugs that they were taking or a traumatic experience or whatever might have caused it, if they're dangerous, then they're dangerous and then you need to take the next best precautions.” (Judge 47)



Codes – Intervening Mechanisms

Judges' Experiences/Knowledge + Media

- Judges' background knowledge of genetics (rating from 1-10)
- Judges' personal experiences with mental disorders
- Judges' personal experiences with genetics
- Judges' sources of knowledge about mental disorders
 - Academic classes
 - Media
 - Work/Professional
- Judges' sources of knowledge about genetics
 - Academic classes
 - Media
 - *How much* learned have judges learned?
 - *What* have judges learned?
 - Work/Professional

Free Will

- Genetics plays a large role in crime (agency/control)
- How genetics influences character/behavior/outcomes/agency generally
- How genetics influences character/behavior/outcomes/agency to criminal offending
- Judges' views on mental health genetic research (changed on mental disorders due to genetic research?)
- **Judges' Free Will Score** - Seven validated measures from the Free Will and Determinism Plus scale (FAD Plus) (Paulhus & Carey, 2011) that will measure judges' views on free will and scientific causation (determinism).

Training/Workshops

- Judges' previous experiences with training seminars/workshops

Example Preliminary Results – Intervening Mechanisms

Judges' Personal Experiences with Mental Disorders:

"I have family members that have suffered and do suffer from depression and anxiety and I know that those can be very debilitating, so I think I'm sympathetic to that. I've realized how prevalent that is, the depression and anxiety, like you said. And one of the factors, like I said, for bail is and this is what's in the rules to criminal procedure, one of the things you look at is the mental health issues. So part of the questions that I ask during a bail interview is, do you have some mental health conditions I should be aware of. I would say a very substantial proportion of them will say that they suffer from anxiety and depression. [My experiences have] made me realize how common and how prevalent that is, that condition is." (Judge 47)

Judges' Media Exposure:

"I think the media, there's a lot that you read about and you hear about everyday about genetics and it is, like you said, it really seems i get to feel that there's a lot of breakthroughs, a lot of new knowledge coming out all the time about the impact of genetics on our behavior. I do think we have to come to a conclusion that's -- it really explains a lot, like you said. It tells you a lot about so many -- it's an interesting subject but then again, I was never really much a science person." (Judge 47)

Views on Free Will:

"I think it potentially can completely impact it. The actions are not really the person's free will. For me, I look at it that's just by the nature of the disorder. That it's out of the person's control. And also I'm not sure but I look at it like it could also be almost of 100% impact, which is why before I look at retribution or punishment, it's like let's see what we can do to get compliance for treatment. But I also know that because of the nature of the condition, it becomes even more difficult for the person to stay compliant with treatment." (Judge 31)



Free Will Score Ranges

Free Will and Determinism Plus scale (FAD Plus) (Paulhus & Carey, 2011)

> Range from -4 to 5, with higher the score the more belief in free will.

A score below 0 shows deterministic views.

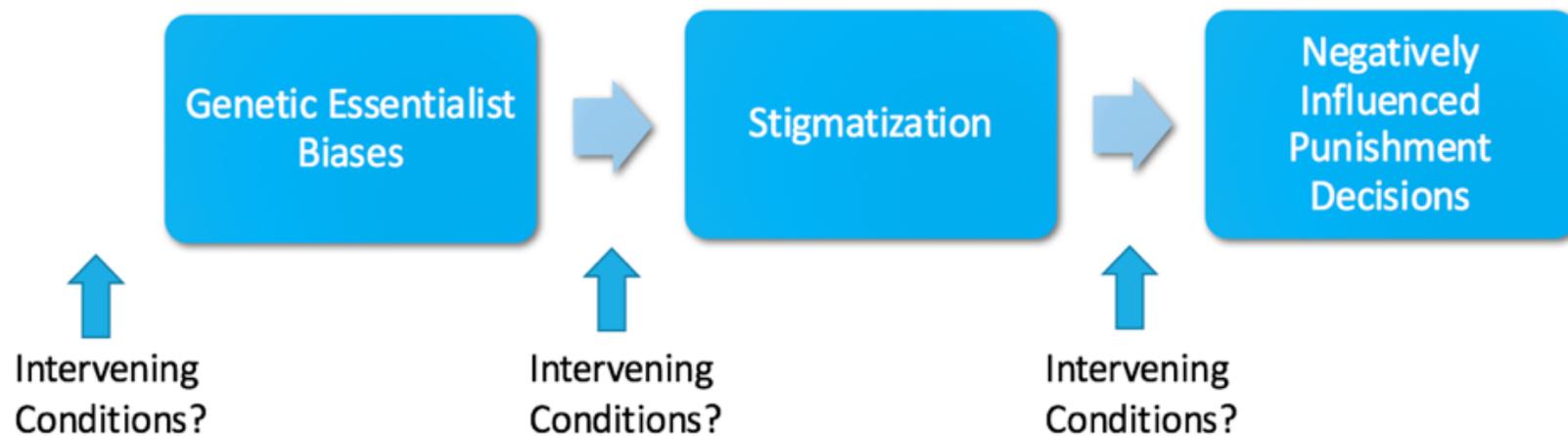
- 3 judges had scores from -2 to -1.
 - 10 judges had scores from -1 to 0.
 - 2 judges had a score of 0.
 - 26 judges had scores from 0 to 1.
 - 14 judges had scores from 1 to 2.
 - 3 judges had scores from 2 to 3.
- 

Codes - Demographics

Judges' Demographics

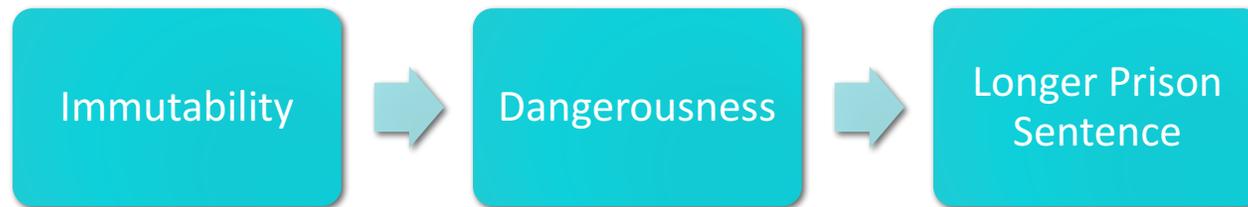
- Age
 - Years as judge
 - Educational background
 - Cases handled per day
 - Nature of cases
- 

Next Stop, Theory Development!



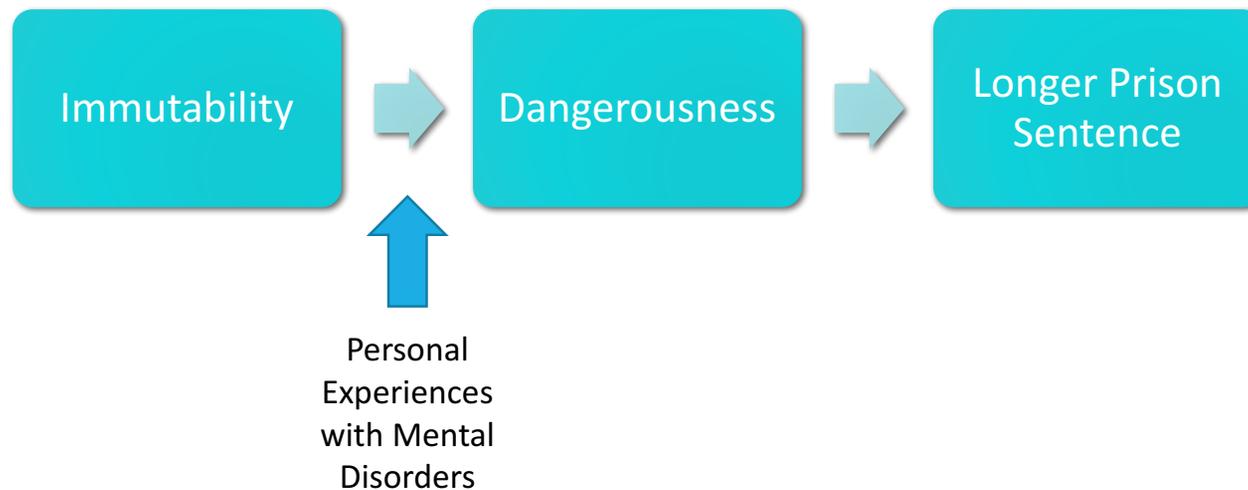
Next Stop, Theory Development!

Possible Example:



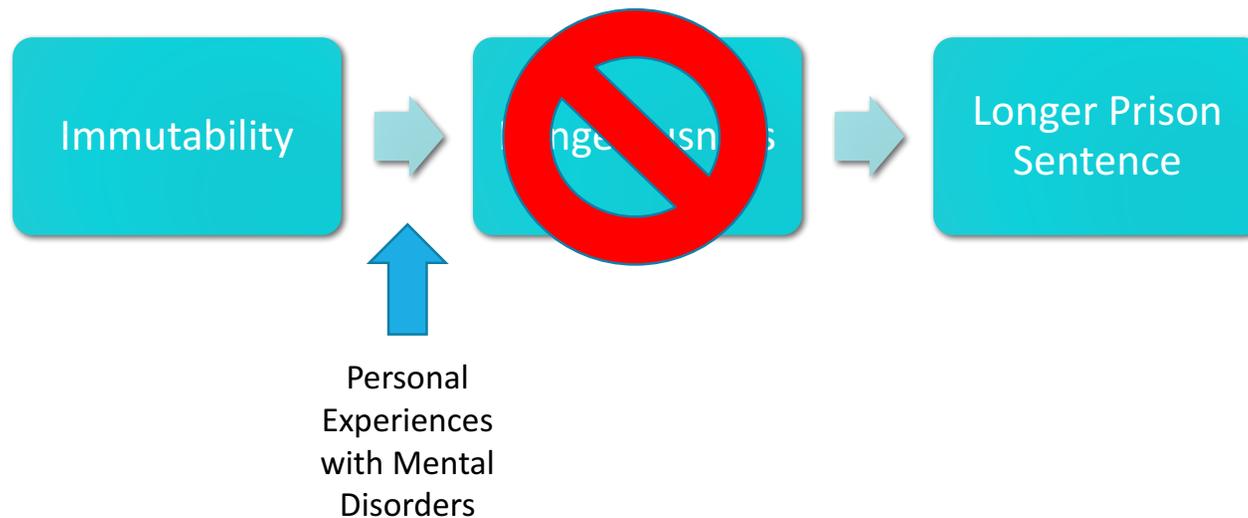
Next Stop, Theory Development!

Possible Example:



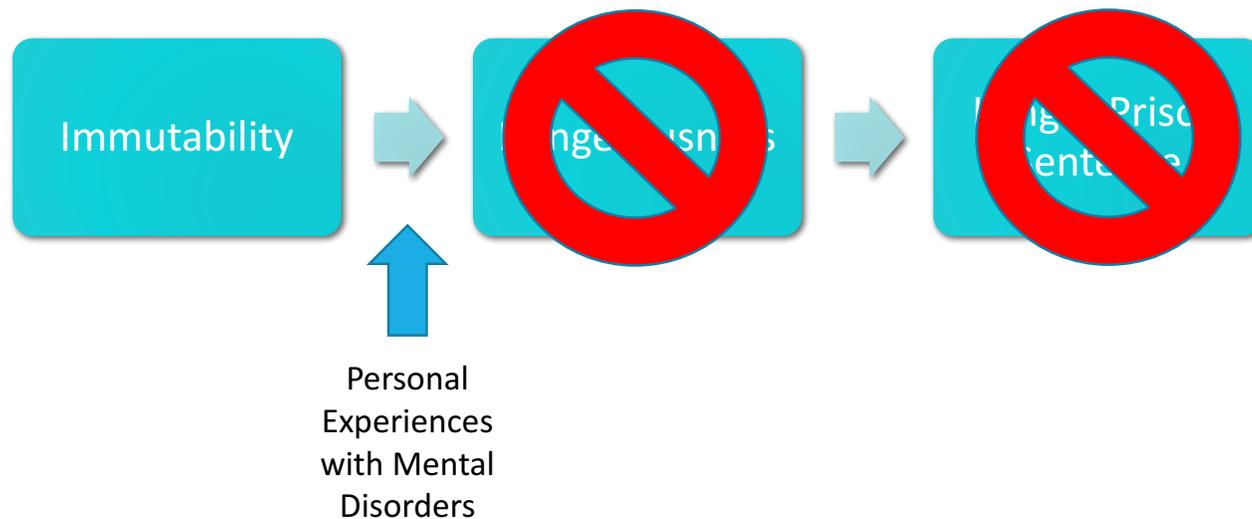
Next Stop, Theory Development!

Possible Example:



Next Stop, Theory Development!

Possible Example:



Thanks!

Works Cited Available Upon Request

Questions can be sent to berrco@sas.upenn.edu