

2010

Symposium Report Voices from Inside: Whose System is it Anyway?

Monica Trigoso

American University Washington College of Law

Follow this and additional works at: <https://digitalcommons.wcl.american.edu/clb>



Part of the [Criminal Law Commons](#)

Recommended Citation

Trigoso, Monica. "Symposium Report Voices from Inside: Whose System is it Anyway?" *American University Criminal Law Brief* 6, no. 2 (2010): 50-53.

This Article is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in *American University Criminal Law Brief* by an authorized editor of Digital Commons @ American University Washington College of Law. For more information, please contact kclay@wcl.american.edu.

Symposium Report

Voices from Inside: Whose System is it Anyway?

BY MONICA TRIGOSO

The Criminal Law Brief would like to thank Ashley Prather, Criminal Law Society President; Alexis Overstreet, CLS Vice President; Allison Negrinelli, CLS Secretary; Robert Genovese, CLS Treasurer and Event Coordinator; and Julie Swaney, CLS Historian for all of their assistance in coordinating the Criminal Law Symposium.

PANEL 1: A HUMAN RIGHTS APPROACH TO PRISON CONDITIONS IN THE U.S.

Speakers:

Carl Takei, Staff Attorney at the National Prison Project of the American Civil Liberties Union. Mr. Takei received his B.A. from Brown University before graduating *magna cum laude* from Boston College Law School. He then served as a law clerk for U.S. District Court Judge Paul Barbadoro in the U.S. District Court for the District of New Hampshire. Mr. Takei has also worked as a Staff Attorney/Tony Dunn Foundation Law Fellow at the ACLU in D.C. where he primarily focused on issues related to police misconduct and criminal justice. Some of Takei's past projects include legislative advocacy against civil anti-gang injunctions and the "Secure Communities" program in D.C. He now litigates class action suits related to prison conditions in federal court and performs state-based advocacy to reduce the size of jail and state prison populations.

Charles Kirkland, Correctional Treatment Facility. Mr. Kirkland received his Master's degree in Guidance and Counseling from Trinity College in Washington, D.C. Much of his career has been dedicated to working with incarcerated youth and other vulnerable populations in correctional settings. He also has personally worked in correctional institutions, both as a warden of the Lorten Reformatory Youth Center as well as the Deputy Director of Programs for the D.C. Department of Corrections. Mr. Kirkland now oversees the school at D.C.'s Correctional Treatment Facility (CTF) by monitoring, counseling, and managing the instruction programs.

Moderator:

Ashley Prather, Washington College of Law Student and Criminal Law Society President.

The panel began with an overview of both Mr. Takei's and Mr. Kirkland's work within prisons systems and with prisoners. Mr. Takei first shared stories about his experiences working with prisoners who are commonly subject to violations of the 8th Amendment, such as those who are essentially punished for being HIV positive. He explained that HIV positive prisoners are required to wear an armband indicating their status and some were reprimanded for sitting in the same cafeteria as other prisoners who were HIV negative. Further, many prisoners suffer from some sort of mental illness, which commonly intersects with examples of excessive force. Furthering the cycle, Mr. Takei mentioned that solitary confinement may also cause mental illness if a prisoner is confined for years. As such, Mr. Takei addressed the need to eliminate solitary confinement, an issue which has recently drawn immense attention from human rights organizations.

Mr. Kirkland then explained how CTF provides social services for prisoners to better prepare them for release. For example, CTF offers courses in cosmetology and commercial cleaning so that after the prisoners are released, they can apply what they learned upon entering the work force. Prisoners also have access to a variety of programs including courses in GED prep, life skills, special education assistance, job interview training, and resume training among others. A law library is also available to prisoners who want to conduct legal research for their case.

To close, Ms. Prather posed a question to both panelists: why should we care about prisoners? Mr. Takei took the lead by explaining that one percent of Americans are currently imprisoned, which is the largest domestic count worldwide. He further stated that a high percentage of those imprisoned are African Americans males and the prison system functions as the new Jim Crow laws. It is not the problem of "small miscreants." Mr. Takei also explained that even if a prisoner committed a serious crime, he is still a person and deserves access to basic human rights, a lack of which may lead to security disruptions in the form of inmate resistance. Mr. Kirkland added that we should also undertake every endeavor to make prisoners more market-

able for when they are released in an effort to reduce reincarceration rates. Mr. Takei proposed a rewards system similar to that in Mississippi, where good behavior is a means to receiving more privileges, which would address both the security disruption and access to certain educational facilities.

PANEL 2: COLLATERAL CONSEQUENCES: HOW TO ADVISE YOUR CLIENT

Speakers:

Nicole Evers, Office of Rehabilitation & Development, Public Defender Service for the District of Columbia. Ms. Evers has worked with PDS since 2001 as a Forensic Social Worker working primarily with adult clients. Ms. Evers formerly worked at the Child and Family Services Agency in the traditional foster care division. She received her MSW at Tulane University, during which she also served as a case management and counseling intern at Families in Need of Services with the Juvenile Court program in New Orleans. She has also worked with individual and group counseling, and classroom instruction programs at Project Return in New Orleans, which acts as a multifaceted rehabilitation program for former offenders.

Philip Fornaci, Director, DC Prisoners' Project, Washington Lawyers' Committee for Civil Rights. Mr. Fornaci has served as an advocate for issues such as improving prisoner access to medical care, limiting the inmate population in D.C. jails, expanding rights for parole-eligible prisoners, and other similar matters affecting prisoner populations in local jail facilities and with the Federal Bureau of Prisons. Mr. Fornaci currently directs the Project's ongoing litigation assignments on behalf of D.C. prisoners and those formerly incarcerated with regards to issues relating to the conditions of their confinement. He also manages the Project's extensive public policy and advocacy efforts, which have included successful legislative lobbying to reverse parole rules that unfairly punish parolees and to provide them with the opportunity to terminate their parole. In this capacity Mr. Fornaci has frequently testified before the U.S. Congress and the D.C. Council regarding these issues.

Gwendolyn McDowell Washington, Immigrant Defense Project, Public Defender Service. Ms. Washington is an immigrant defense expert and has presented training programs to the American Bar Association, the National Legal Aid and Defender Association, the D.C. Bar Pro Bono Program, the Public Defender Services Criminal Practice Institute, and other legal service providers and civic organizations. She is featured in *Padilla and Beyond*, a nationally distributed ABA training video addressing the constitutional rights of non-citizen defendants. Ms. Washington is recognized nationally as an expert in the

intersection of criminal and immigration law. She also mentors members of the bar and the judiciary on immigrant defense issues by providing individual consultations.

Moderator:

Jenny Roberts, Washington College of Law Associate Professor.

The panel commenced with a discussion of some relevant facts to the topic of collateral consequences; for example, most people are incarcerated in D.C. for parole violations as opposed to felony convictions, and one quarter of former prisoners become homeless upon release. Mr. Fornaci explained how difficult it is for a person released from prison to find affordable housing or even public housing, especially due to D.C.'s extremely long waitlist.

Ms. Washington addressed common immigration issues regarding criminal defendants. Non-citizen defendants not only face conviction and loss of their liberty, but they might also be deported. This is a huge challenge, particularly given that some defendants are not even aware they are not citizens because most of their lives have been spent in the U.S. Ms. Washington also discussed the evolution of immigration laws. Since 1996, these laws have become even more stringent with the development of the Illegal Immigration Reform and Immigrant Responsibility Act.

The Supreme Court recently responded to these challenges in *Padilla v. Kentucky*, which established that criminal defense attorneys have a constitutional duty to advise their non-citizen clients of how a conviction could affect their immigration status. She explained that this issue not only isolated adults but also young children who are also subject to deportation proceedings. She emphasized the need for defense attorneys to understand such collateral consequences for their clients, but noted that many are waiting for legislation to clarify their specific obligations. Ms. Washington also discussed the involvement of Immigration and Customs Enforcement agents in going to jails and interviewing prisoners, and the recent movement to increase accessibility of juvenile records for immigration purposes.

The panelists also addressed the potential benefit to employers who attempt to hire persons with a criminal record in order to help them be productive in society. The panelists discussed efforts made to provide stability for such individuals upon their hire, such as the provision of some insurance benefits for approximately one year after a person with a criminal record is hired. Also discussed was a method of tax credit given to employers as a hiring incentive. More incentives could likely help decrease recidivism rates and assist the individuals with getting their lives back on track.

PANEL 3: COLLATERAL CONSEQUENCES: WHAT CAN YOUR CLIENT DO POST-CONVICTION?

Speakers:

Mary Denise Davis, *Related Services Attorney, Neighborhood Defenders Northwest—Maryland Office of the Public Defender.* Ms. Davis advises both clients and attorneys about possible collateral consequences to convictions, primarily by focusing on the expungement of criminal records. Each year she represents over 800 clients in their expungement matters, provides workshops to service agencies, works with the Department of Legislative Services, and conducts weekly open houses at the Office of the Public Defender for clients seeking expungements. Ms. Davis currently has multiple cases pending at the Maryland Court of Special Appeals.

Reginald Williamson, *Community Reentry Program, Public Defender Service for the District of Columbia.* Mr. Williamson graduated from American University as a Frederick Douglas Scholar in the School of Public Affairs, and later graduated from Ohio State University College of Law. He first entered into private practice, but has been working at the Public Defender Service since 2001. Currently, Mr. Williamson is a Staff Attorney where he responds to the social and legal service needs of recently released individuals and helps them to successfully transition back into the community.

Moderator:

Jenny Roberts, *Washington College of Law Associate Professor.*

Ms. Davis opened by reviewing the uniqueness of her position, as she serves as the only Maryland-based professional who works as a related services attorney. She explained how expungement cases are a constant battle and dispositions of not guilty, dismissals, and nolle prosequi may still require a waiting period before the process can move forward. The waiting period is three years, which Ms. Davis contends is significant for people trying to return to self-sufficiency. While the waiting period may be lessened if the individual waives the ability to file civil suit against the police department, civil suits already filed must be concluded prior to the filing of an expungement.

Expungement was discussed to provide a better perspective of how this process works. Panelists explained the difference between a case being sealed and a case being expunged, as sealing a case means the court takes the conviction and hides it from the public, while expungement means taking the conviction and destroying it altogether. This distinction is important because background checks for employment are commonly permitted under federal law. Particular jobs require them, and one's findings can affect the decision to hire an individual or even simply to move them through to the next level of the hiring process.

Expungements can be granted for a variety of reasons including actual innocence or for public policy reasons. For example, a person may argue that their record should be expunged because it is in the interest of all parties involved.

Panelists stressed the importance of lobbying for legal reform, even mentioning how they encourage their clients to do the same by informing them who their congressmen and senators are. Furthermore, they stressed that the community's mindset should be changed in order to better allow progress in this area.

PANEL 4: GANG INJUNCTIONS

Speakers:

Johnny Barnes, *Director of American Civil Liberties Union of the District of Columbia.* Mr. Barnes has spent over twenty-five years in various congressional staff positions, including positions as Chief of Staff for three members of Congress. With the ACLU he has led several successful efforts to conserve the Constitution and preserve the Bill of Rights; some of these efforts include resisting the proliferation of video surveillance cameras in D.C., advocating against proposed warrantless searches by the police, opposing unconstitutional police checkpoints in the Trinidad neighborhood, and pushing back against the Secure Communities program on behalf of the immigrant population. Mr. Barnes has recently worked with several ACLU interns to author and update an upcoming law review article on D.C. Statehood addressing unfinished human rights business in America.

Jeffrey Wennar, *Assistant State's Attorney for Montgomery County, Maryland.* Mr. Wennar has been practicing law since 1979 and began his career as an Assistant State's Attorney in Prince George's County, Maryland. In 1993 Governor Schaefer appointed him to the Governor's Executive Advisory Council specifically to study gangs in Maryland. From the results of this study the Governor presented, "A Report on Gang Violence in Maryland," written by Mr. Wennar and other participants in the study group. In 2001, Mr. Wennar joined the Montgomery County State's Attorney's Office as a Gang Prosecutor, where he has since garnered a unique expertise on gangs.

Moderator:

Stacy King, *Washington College of Law Student, Managing Editor of the Criminal Law Brief.*

The panel began with the opening clip from the documentary "Crips and Bloods: Made in America," which illustrated the initial formation of two of the most notorious gangs and the steady increase of gang violence in claiming some 15,000 lives over the past twenty years in Los Angeles alone. Then a clip from the Oakland Prosecutor's Office was played, which discussed gang injunctions as a particularly relevant issue today.

Mr. Wennar discussed the process of filing gang injunctions and what it entails. Gang injunctions require an arduous process that can approximately take between nine months and two years. These gang injunctions create a geographic safety zone where identified gang members are not allowed to congregate or socialize, are subject to time restrictions, and cannot carry weapons.

Mr. Barnes responded by heavily opposing gang injunctions, as the ACLU takes the stance that they are a simple mechanism to cast aside constitutional issues. He mentioned that gang injunctions “use young people to promote technical toys,” since they limit the civil rights of those individuals identified in the injunctions. Mr. Barnes brought forth the idea that gang injunctions encourage gang activity by highlighting a quote from the documentary shown: “We don’t die. We multiply.” Using Los Angeles as an example, he argued that gang injunctions do not eliminate gangs as Los Angeles utilizes injunctions yet still experiences significant gang activity.

ABOUT THE AUTHORS

Monica Trigoso graduated from University of California-Irvine with a Bachelor of Arts in Sociology in 2009. She will earn her Juris Doctor degree from American University, Washington College of Law in 2012. In the summer of 2010, she worked as a law clerk in the Los Angeles District Attorney’s Office, Long Beach Juvenile Division. Monica has been a junior staff member of the Criminal Law Brief since September 2010 and will be the Editor-in-Chief of the Brief for the 2011-2012 academic year.