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Justice Reform

Introduction

Stuthi Balaji*
Shekka Drayton**

The Penn State Law Justice Reform Conference, held in February 2016, was an organized effort to bring together practitioners, judicial officers, educators, legal professionals, and students for the purposes of acknowledging drawbacks in the current criminal justice system of the United States and sharing creative solutions to address these issues. The conference focused primarily on issues relating to mass incarceration, racial profiling, juvenile incarceration, and alternative sentencing and rehabilitation.

The Justice Reform Conference, like any great endeavor, began as an idea. Perhaps, the most exceptional thing about the conference is that it was largely the result of student initiative. Stuthi Balaji and Shekka Drayton, third year students at Penn State Law, had the unique opportunity of taking Criminal Procedure with a visiting professor, Professor Mae Quinn. With a robust background in public interest and juvenile rights, she integrated themes of intersectionality throughout the course and, as we learned, it is through this lens of

* Stuthi Balaji is obtaining a dual degree in law and international affairs from Penn State (JD/MIA expected 2018) and was one of the co-chairs for the 2016 Justice Reform Conference at Penn State Law.

** Shekka Drayton is obtaining a law degree from Penn State Law (JD expected 2017) and was one of the co-chairs for the 2016 Justice Reform Conference at Penn State Law.

race and socioeconomic status, that many injustices within the current system became apparent. What began as intellectual interest and a desire for progressive change engendered what is now a first of its kind conference, at Penn State Law. It is through the dedicated efforts of many, most notably the Penn State Law Student Bar Association, the Penn State Law Student Services Office, the University Park Allocations Committee, and countless students, faculty, and staff, that this vision was made a reality.

The speakers at the 2016 Justice Reform Conference represent an eclectic array of expertise in the criminal justice system. The conference comprised of seven speakers: Professor Tamar Birkhead of the University of North Carolina, School of Law; Honorable Rea Boylan of the Bucks County, Court of Common Pleas; Attorney Shannon Cumberbatch of the Bronx Defenders; Professor Rebecca Hollander-Blumoff of the Washington University, School of Law; Deputy Director Ana Kocur of the Executive Office of Immigration Review (EOIR); Professor Mae Quinn, formerly of the Washington University School of Law, now director of the Roderick and Solange MacArthur Justice Center; and Professor Donald Tibbs of Drexel University, Thomas Kline School of Law.

Three of the speakers, though not discussed in the following articles, deserve special mention. Professor Birkhead presented on the School to Prison Pipeline, which examines how educational institutions, particularly those in low socioeconomic neighborhoods, may serve as feeder programs into the criminal justice system through the increased presence of law enforcement in educational environments. The Honorable Rea Boylan spoke on the need for treatment-based solutions in the criminal justice system by examining the use of specialty courts, particularly drug courts, diversionary and community based programs, and youth offender programs in the Bucks County, Court of Common Pleas. And, Deputy Director Kocur spoke on the civil process of immigration and its interaction with the criminal justice system.

This volume contains four articles that explore the presentations of Attorney Cumberbatch, Professor Tibbs, Professor Hollander-Blumoff, and Professor Quinn. Each of the authors address issues concerning the compounded effects of encountering the criminal justice system, the criminalization of Black men through the

prosecution of rap culture, procedural justice, and the aftermath of Ferguson, respectively.

Attorney Cumberbatch, a Staff Attorney in the Criminal Defense Practice of the Bronx Defenders, has seen firsthand the unintentional and often dire effects that coming into contact with the criminal justice system has on individuals, their families, and ultimately the community at large. In her article,¹ Attorney Cumberbatch explores several instances where the collateral consequences of arrest, and even civil infractions, outweigh the intended consequences. These incidental and often-overlooked consequences of arrest or civil infractions exacerbate issues that marginalized communities already encounter. Her article examines how a summons hearing may lead to loss of employment, how a single infraction may lead to the loss of financial aid eligibility, how a mere civil infraction may implicate immigration consequences tantamount to criminal incarceration. She asserts that loss of income, loss of employment, loss of financial aid eligibility, loss of freedom, and loss of the family unit are all outcomes that ultimately punish the individual beyond the law's intended reach. She concludes that these outcomes undermine the goals of the criminal justice system, and that reform in civil, housing, immigration, and family law will ensure that individuals, and thus the community, will not be unduly criminalized by the justice system.

In his article,² Professor Tibbs focuses on the phenomenon of infiltrating rap culture to secure criminal convictions, and critically examines the intersection of rap and policing. He uses Los Angeles Assistant District Attorney Alan Jackson's published statements, which supports the use of rap lyrics in pursuit of criminal prosecutions, as the backdrop for his article. He argues that Attorney Jackson's commentary clearly demonstrates the grave misunderstanding and misinterpretation of Black art and highlights the fundamental issue of punishing Black speech.

1. Shannon A. Cumberbatch, *Enforcement and Enmeshed Consequences: The Limitations of Conventional Criminal Justice Reform*, 52 WASH. U. J.L. & POL'Y 7 (2016).

2. Donald F. Tibbs & Shelly Chauncey, *From Slavery to Hip-Hop: Punishing Black Speech and What's "Unconstitutional" About Prosecuting Young Black Men Through Art*, 52 WASH. U. J.L. & POL'Y 33 (2016).

In the article, Professor Tibbs digests the complexities of this conundrum in three parts, providing (1) an historical context to policing of Black speech, with analogizes and connections of modern day methods to those used in slavery; (2) an anecdotal account of Mr. Vonte Skinner, a young Black man convicted of murder and sentenced to thirty years of imprisonment in a case where the prosecution relied on thirty pages of hip hop lyrics Mr. Skinner wrote in a notebook; and (3) an examination of the constitutional protections that combat the criminalization of Black men and Black speech through analyzing the Supreme Court opinion *Elonis v. United States* (2015). Taken as a whole, the article is a critical critique of the systematic, targeted criminalization of Black art, Black speech, and Black bodies.

In her article,³ Professor Hollander-Blumoff examines the unique role that procedural justice plays in criminal justice reform, most notably in improving relations between police officers and the communities they serve. As she explains, procedural justice in psychology examines an individual's perception of the fairness in a decision making process. Thus, the focus of procedural justice is on the perception of fairness as opposed to actual outcomes. In the article, she discusses several emerging initiatives in procedural justice, including President's Obama's Task Force on 21st Century Policing and the Department of Justice's The National Initiative for Building Community Trust and Justice. She argues forcefully that procedural justice, in spite of the fact that it does not concern actual outcomes, can lead to progressive change in how communities interact with the police as well as how individuals accept proposed solutions to community issues.

In support of her argument, she explores four directions in which procedural justice may be applied to policing: (1) she examines the potential of self-control and procedural justice in police-community interactions to foster more self-control by potential criminal actors, as well as more self-control in a police officer's own behavior; (2) she examines antecedents of procedural justice that take place in third party setting in light of the unique dynamic of intimate and dyadic

3. Rebecca Hollander-Blumoff, *Procedural Justice and Policing: Four New Directions*, 52 WASH. U. J.L. & POL'Y 67 (2016).

interactions between police and members of the public; (3) she examines the bilateral exchange of procedural justice between police and individuals of the community in light of interpersonal nature of the interactions and the power dynamic between police and individuals; and (4) she examines how the acceptability and satisfaction of proposed solutions may be affected solely by the proposer of the solution, as opposed to the content of the solution, among polarized groups.

In the fourth article,⁴ Professor Quinn examines the unconstitutionality of civil arrest and the need for criminal justice reform, particularly among municipalities and policing in communities of color in Ferguson, Missouri, and across the country. She situates her article in the wake of the tragic death of Mike Brown, who died at the hands of Officer Darren Wilson during the course of a pedestrian stop. She highlights that, ironically, community protests of injustice were answered with increased arrests and further acts on violence on people of color by law enforcement.

Professor Quinn addresses the unconstitutionality of civil arrest through analyzing the rights and protections afforded to individuals by the Fourth Amendment. She also examines how the unlawful practice of civil arrest in Ferguson went largely unnoticed prior to 2014. In the conclusion, she examines how several actors, including state legislatures, courts, attorneys, and local officers, may effect change and eradicate the practice of civil arrest.

CONCLUSION

These articles, in congruence with the goals of the Penn State Law Justice Reform Conference, explore the current challenges of the criminal justice system of the United States and present potential solutions to moving closer to a fair, just system.

4. Mae C. Quinn & Eirik Cheverud, *Civil Arrest? (Another) St. Louis Case Study in Unconstitutionality*, 52 WASH. U. J.L. & POL'Y 95 (2016).