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A Clean Slate Case Study of Community Lawyering

Theresa Zhen & Vinuta Naik*

Between 1990 and 2005, a new prison opened in the United States every ten days. Prison growth and the resulting “prison-industrial complex”—the business interests that capitalize on prison construction—made imprisonment so profitable that millions of dollars were spent lobbying state legislators to keep expanding the use of incarceration to respond to just about any problem. Incarceration became the answer to everything—health care problems like drug addiction, poverty that had led someone to write a bad check, child behavioral disorders, managing the mentally disabled poor, even immigration issues generated responses from legislators that involved sending people to prison. Never before had so much lobbying money been spent to expand America’s prison population, block sentencing reforms, create new crime categories, and sustain the fear and anger that fuel mass incarceration than during the last twenty-five years in the United States.

—Bryan Stevenson, Just Mercy: A Story of Justice and Redemption

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* Theresa Zhen and Vinuta Naik are Staff Attorneys and Clinical Instructors in the Clean Slate Practice at the East Bay Community Law Center. The Clean Slate Practice is indebted to the following people for their contributions to our practice: the founders of Clean Slate: Margaret Richardson and Tirien Steinbach; the directors of Clean Slate: Eliza Hersh, Jessie Warner, Sarah Crowley; the attorneys who have developed and contributed to Clean Slate over the years: Alex Bender, Alexia Mayorga, Ann Surapruik, Brandon Greene, Carol Bisharat, Jesse Hsieh, Maureen Kildee, Mirella Nieto, Osha Neumann, Rachel Johnson-Farias, River Abeje, Rudy Alejo, Sadie Wathen, Tammy Zhu, and Tanya Koshy; and program staff: Jael Myrick, Jessica Petznick, Jimmy Murillo, Julie McNulty, Kaitlin McCarter, Kerri Robertson, Serina Rankins, and Victoria Richey. The Clean Slate Practice would also like to acknowledge the tremendous work of our students, interns, and volunteers whose support has been critical to our development. We would also like to thank our clients for their unwavering perseverance and confidence in us.

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We have not ended racial caste in America; we have merely redesigned it.

—Michelle Alexander, The New Jim Crow: Mass Incarceration in the Age of Colorblindness

The United States has a long history of appropriation, forced movement, and penalization of indigenous people, minorities, and anyone perceived as “other.” From the colonization of the Americas, slavery, and forced movement of Africans to the “post-slavery” era that deprives civil rights and incarcerates people of color and indigent communities, this repression continues. Indeed, the most recent systemic iteration of controlling and policing these communities is through the legal “justice” systems that Michelle Alexander has aptly coined the “New Jim Crow.” As advocates in the Clean Slate Practice (Clean Slate) at the East Bay Community Law Center (EBCLC) in Berkeley, California, we witness firsthand the cascading consequences of criminalization that result from a simple traffic stop: that “simple” stop turns into an arrest, which then results in a criminal or traffic conviction—and with the flick of a wrist, a person’s life, economic stability, housing, and personal value are summarily ravaged. Many generations of Clean Slate attorneys, staff, and law students have worked tirelessly to fight against the last twelve years of expansion (and redesign) of mass incarceration. In the process, we have successfully improved the lives of those who exit the system and kept individuals outside of its grasp in the first place.

This Essay honors EBCLC’s Clean Slate Practice, which, from its inception, has blazed trails and explored new frontiers by confronting the various iterations of the expanding criminal justice system. In the spirit of true community lawyering, EBCLC’s ear and heart were tuned to the community. Combined with its organizational flexibility, the Clean Slate Practice pioneered how lawyers can open pathways to opportunity and wealth for those whose birth into poverty and subsequent entanglement in the criminal justice system has deprived them of the same. This Essay traces the history of EBCLC’s Clean Slate Practice: from its humble origins as a workshop, where over nine hundred people showed up seeking post-conviction remedies, to Clean Slate’s innovative use of impact litigation to enforce legal protections for people who are denied employment due to their criminal record, all the way to the Practice’s innovative and timely launch of our post-Ferguson fines and fees project to decriminalize poverty and eliminate pathways to incarceration.

THE ORIGINS OF THE CLEAN SLATE PRACTICE

In April 2005, Congressperson Barbara Lee, EBCLC, and other key community partners sponsored a Clean Slate Summit at Laney College in Oakland, California to assist attendees with dismissing criminal records. Summit organizers expected five hundred attendees; on the day of, more than nine hundred people—mostly African-American men—turned out for help with clearing the barriers placed in their path by a criminal history. The need for these services was unmistakable and, later that year, the EBCLC Clean Slate Practice was born. Our first clients taught us firsthand that the War on Drugs and its criminalization of a targeted group of individuals was really a war on people of color, poor people, people with mental illness, and homeless people—a lesson that would repeat itself in our work, time and time again.

In its early years, Clean Slate’s burgeoning legal practice was aimed squarely at reducing the lifelong consequences that follow a person’s mere contact with the monstrous criminal justice system. Clean Slate started in criminal court by filing for dismissals of convictions, sealings of arrests, Certificates of Rehabilitation, and Governor’s pardons. However, over time we realized that a simple court remedy was just that—a simple remedy—and it did not fully dismantle the compounded barriers created by the conviction in the first place.

Mr. Smith summed up his experience with the enduring impact of his criminal record that he faced while pursuing an occupational license:

I’ve been convicted and I’ve gotten every dismissal for my convictions I can. I’m no longer the same person I was. I want to grow myself and my career, but the way the system works, I won’t ever be able to get my license to sell insurance. I’m expected to work at McDonald’s for the rest of my life because my record keeps coming up and preventing me from getting a job. You tell me, Ms. Vinuta, is that growth and success?

Mr. Smith’s frustrations are almost universal among the people we serve. Research shows that permanent employment and steady housing are the two strongest predictors of reduced recidivism. Among individuals employed during the first year following release from incarceration, the rate of recidivism is just

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4. Names of all clients in this Essay have been changed for the purpose of confidentiality.
5. Interview with John Smith, East Bay Community Law Center Client, in Berkeley, Cal. (June 27, 2016).
8 percent compared to a statewide average rate of 54 percent. At the same time, people who require clearances, exemptions, or licenses to work in their chosen field of employment are routinely denied the same due to their conviction histories. In this state alone, more than two million Californians apply for required licensure or clearance to work in any of some two hundred occupations.

Clean Slate adapted its practice to represent clients at administrative hearings to appeal employment denials and defend the right to obtain professional certification. To date, Clean Slate has assisted over ten thousand people in work ranging from obtaining criminal court remedies and employment advocacy to representing clients at administrative hearings—including Mr. Smith, who successfully obtained his life-insurance-agent license.

In an effort to respond to the needs of people like Mr. Smith, Clean Slate also created the Background Check Advocacy Project (BCAP). BCAP aims to respond to background check companies that improperly disclose protected criminal history information (e.g., convictions that have been dismissed through criminal record remedies or convictions more than seven years old). BCAP was an exemplar of forward thinking and innovative lawyering. In fact, in January 2014, newly amended California Labor Code Section 432.7 began prohibiting prospective employers from asking about or considering a conviction that has been dismissed per California Penal Code Section 1203.4.

Despite newly enacted favorable policies, consumer reporting agencies nevertheless continued to routinely (unlawfully) disclose dismissed convictions. Employers, in turn, relied on that unlawful information. Courts went so far as to report that information publicly. Spurred by the lack of compliance and a goal to obtain wide relief, Clean Slate brought on an experienced litigator, Sarah Crowley—a wolf in sheep's clothing, to direct a Clean Slate impact litigation practice with a partner, the Social Justice Law Project, in 2013. Advocates had consistently observed patterns of unlawful reporting by public agencies and private employers, as well as the unlawful use of criminal record information to vet applicants. For individual clients, advocates obtained positive outcomes, such as ensuring that consumer reporting agencies and employers relied only on the information that they were entitled to see, i.e., only convictions that were not dismissed within the prior seven years. Nevertheless, we faced the same barrier

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7. Art Lurigio, Loyola University, Presentation at 135th Congress of Correction: Safer Foundation Recidivism Study (Aug. 8, 2005).
of unlawful reporting with repeat employers and actors; thus, Clean Slate pioneered an impact litigation arm in 2013. Because of Clean Slate’s extensive direct legal services work, we were optimally positioned to challenge systemic barriers in court. We knew the nuts and bolts of where and how the system unlawfully prejudiced individuals. As a result, our impact litigation exactingly addressed those flaws in the law, and we continue this work today.

Where the law itself is problematic and fails to promote better outcomes for the formerly incarcerated, Clean Slate engages in relevant policy advocacy: from the “ban the box” movement and increasing civic service knowledge and participation for formerly incarcerated individuals, to fixing the broken sex offense registration laws, Clean Slate advocates for better, more just laws. Indeed, this advocacy successfully bolstered the language of California Labor Code Section 432.7 (Senate Bill 530) to prevent employers from asking about or considering judicially dismissed convictions, and it implemented a ban the box requirement for public employers.11 Additionally, Clean Slate helped achieve wide-scale implementation of new, expanded criminal court remedies that further decriminalized eligible convictions (e.g., theft offenses under $950, simple drug possession, and marijuana offenses) and worked with community partners to ensure that the savings were reinvested into schools and communities (Propositions 47 and 64).12 When Proposition 47 first passed in November 2014, it was set to expire in November 2017.13 In conjunction with community partners, Clean Slate also successfully supported extending Proposition 47’s sunset deadline from November 2017 to November 2022.14

CLEAN SLATE 2.0: DECRIMINALIZATION OF POVERTY

Through our individual representation and our clients’ stories, we know that mass incarceration is inextricably connected to the ubiquitous police state. In fact, they coexist in explicit and subtle ways. If we want to reverse the pattern of mass incarceration, then it is imperative that we respond first to the constant threats from police encounters that our client communities face. These threats start with being stopped by law enforcement and lead to being fined for minor infractions and even arrested, simply because our clients exist in a world where being black and poor is synonymous with being a criminal.

This system of cash-register justice could not have been made more evident than in the summer of 2014 when residents of Ferguson, Missouri took to the

14. Id.
streets after the killing of Michael Brown, a Black teenager. The protests ignited a national uproar over police violence in Black communities and shed light on how law enforcement extorts revenue by wantonly issuing traffic tickets to poor people of color to fill government coffers. #BlackLivesMatter became a rallying cry for those seeking to dismantle the criminal justice system. The uprising became known as “Ferguson,” but the racially motivated traffic stops that ended tragically were not just a Ferguson problem. Shortly thereafter, in July 2014, Eric Garner, a Black entrepreneur, was strangled to death in New York by a New York Police Department officer for selling cigarettes. In July 2015, Sandra Bland, a Black woman, was killed in a jail cell in Texas after being pulled over for failing to turn her turn signal on. In July 2016, Philando Castile, a Black father, was later killed in front of his child and girlfriend during a routine traffic stop in Minnesota.

At home in California, Clean Slate had begun to observe a disturbing pattern of disproportionate issuing of citations to Alameda County’s residents of color. Clean Slate’s veteran community lawyer, Osha Neumann, had represented homeless clients in traffic court on quality-of-life offenses for more than a decade. Hundreds of Alameda County residents, largely Black and Latino, came in to EBCLC with driver’s licenses that had been suspended for failure to pay a traffic fine. The fines originated from vehicle and pedestrian police stops for minor infractions like sleeping on the sidewalk, not having valid registration, or driving with a broken taillight. Accompanied by steep add-on fees and compounding late penalties, these fines were unaffordable for our working poor people, homeless people, or unemployed people. To make matters worse, those who were unable to pay were punished harshly for their poverty: arrested, detained, placed on probation, had their driver’s licenses suspended, convicted of misdemeanors for “driving with a suspended license,” and suffered car tows.

15. See MARC LAMONT HILL, NOBODY: CASUALTIES OF AMERICA’S WAR ON THE VULNERABLE, FROM FERGUSON TO FLINT AND BEYOND (2016).


A study assessing cities’ reliance on fines and fees to fund government found that in California the average city charges $16.45 per resident in fines and fees. In Alameda County, the average city charges $30.27 per resident. In Berkeley, it is as high as $85; $72 in Oakland.

John R. is a victim of this predatory system. At nineteen, John got a ticket before he was able to apply for a driver’s license. Unable to pay for the ticket due to his status as an orphaned, unemployed youth, he let the fine payment deadline pass, and his driving privileges were suspended. When he came to Clean Slate’s traffic clinic at the age of thirty-two, he was in court facing a potential criminal conviction and jail time for a second offense of driving with a suspended license. On top of that, John’s lack of a driver’s license precluded him from getting a job. John’s story illustrates the nadir of our criminal justice system—punishing and jailing people whose only offense is poverty, furthering a government that balances its budgets on the backs of the poor, and erecting false barriers to success for young Black men.

Michelle Alexander has emphasized that the problem is no longer mass incarceration; it is mass criminalization. Indeed at Clean Slate, we have seen, on a grand scale the mass criminalization of people who are poor. For years, Clean Slate lawyers saw people at their breaking point—firmly ready to escape their poverty circumstances but thwarted by their court-ordered debt and living with the constant fear of being stopped by law enforcement. Long-term, well-paying employment was unattainable without a valid driver’s license. Assets—cars, bank accounts, wages—were all vulnerable to government seizure in order to satisfy debts. And after assets were seized, law enforcement came after people’s freedom.

In response to the lessons from Ferguson and the unsettling enormity of a similar monster in Alameda County, Clean Slate joined with our community partners to write two groundbreaking reports documenting the experiences of our communities and the racial disparities in the systems that govern their financial security. Those reports led to sweeping changes in traffic court, including the end of license suspensions for failure to pay traffic fines and the Traffic Ticket.

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Amnesty Program to reduce outstanding debt.\textsuperscript{24} The Clean Slate Practice launched the Fines and Fees project in 2016 to ensure that those reforms were implemented in a way that keeps people out of jail and beyond the grasp of the criminal justice system for being too poor to pay a fine. We have started five new clinics each month in which we are assisting clients in reinstating their driver’s licenses, navigating the complex web of collections agencies and institutions that prey on their poverty, and leveraging Clean Slate’s role as a specialist on driver’s license suspensions to mitigate harsh sentences or obtain continuances in criminal court.

CONCLUSION

As we look ahead to the future of the Clean Slate Practice, we reflect on the flexible and transformative community-focused lawyering that has preceded us. From the days of working in the post-conviction space, to championing the innovative impact litigation, to preventing “on-ramps” into the system, we are now the custodians of a practice that is dynamic and ever-changing. It is our work to develop strategies that protect people against the ever-evolving, pernicious redesign of the criminal system, and ultimately, to dismantle it altogether. How can we work with our collaborative partners and affected people to help communities achieve financial independence and extricate themselves from court debt? How can we abolish reliance on inaccurate and racist background checks and replace them with a reliable evaluation process that assesses applicants to see if they are fit for a job based on who they are today? These are the questions that push us onward and upward, always in the service of our communities who are fighting for their empowerment and liberation, and always toward resisting—and changing—systems that diminish all of us.