

The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES 1843-2020

PHILADELPHIA, MONDAY, OCTOBER 19, 2020

VOL 262 • NO. 77

An **ALM** Publication

PUBLIC INTEREST

Cleaning Up Criminal Records, and Rebalancing the Scales of Justice

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Special to the Legal

In the seemingly never-ending tumult that is 2020, I have found some respite in the formulaic logic of TV detective series, where the motives are clear, and the bad guy always ends up behind bars. TV justice isn't messy. There is no doubt, once the perp is caught, that justice is satisfied. We are not exposed to, much less challenged to contemplate the systemic, trans-generational cycles of trauma and oppression that so often inform real-world law enforcement.

It's true: fiction often reveals truth. The TV whodunit mirrors and helps insulate a common misperception of crime and punishment: that the removal of bad apples addresses the root cause of the rot. Generations of people have been harmed by this convenient and comforting view of a government system that fairly and effectively disposes of those who are undesirable or a threat. But recent events—captured and shown on TV thanks to cell-phones—coupled with “13th” on Netflix (plus The 1619 Project, “The New Jim Crow,” and “Waking Up White,” among others) have revealed just how the “justice” system sits on a shaky foundation constructed of prejudice, stereotype and categorizations that can only be charitably termed arbitrary. The mass incarceration of people of color—of which Pennsylvania is a world leader—is an example of this.

Growing up as a cisgender white male comfortably in suburban Boston comes with the privilege of being able to ignore



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the inequitable realities of larger society. Though I considered myself “woke” and progressive as a young person, my knowledge of criminal justice was limited to the experience of folks I knew personally, most of whom were white and in comfortable possession of both cultural and economic wealth. For me and many of my peers, doing bad things and getting caught was understood to be a formative and often edifying experience—after a sharp talking to and a bearable suspension of privilege, you were expected to have learned your lesson. Often as a result of connections or sometimes just a respectful pantomime of contrition, one was let off the hook without major ramifications. If one did have a criminal record that followed them, it was easy enough to explain away in a culture that often accepts the ubiquity of illegal acts as formative experiences for white boys, as long as we didn't seriously hurt someone.

I am not an attorney. After working in social services for a few years after college, I joined Philadelphia Lawyers for Social Equity (PLSE, pronounced “pulse”) this past July and began working in criminal law, a field I knew nothing about. It's taken me no time to learn that what were

“innocent passages of youth” for me often begin for people of color an iterative cycle of arrest, charges, hearings, supervision, confinement and more supervision that affects them and their families for generations. A rapidly expanding number of “us” have come to assume that whether one gets the benefit of the doubt likely depends on the color of one's skin.

We work with clients whose entire lives and futures are defined by the worst day of their life, even when it is far in the past. In almost everything they do, they have to ‘check the box’ and disclose they have a record.

Recent events have put race into the spotlight, shocked consciences across the country, and elevated to the mainstream the conversation around criminal “justice” (and the need for reform). For those of us who now hope we are “woke,” this provides some hope that there is a path forward that focuses on a more holistic and restorative attitude toward crime and punishment and which favors corrective action instead of retribution.

But hope is really not enough. Not nearly. I have now seen hundreds of rap sheets. I am frequently struck by the low-level nature of offenses that begin an

individual's chronic relationship with the criminal justice system. Perhaps it was jumping a subway turnstile, smoking a joint or pocketing a can of tuna. Crimes of poverty and survival. Crimes for which I probably would not be arrested, let alone prosecuted. I regularly think of a friend of a friend who drunkenly crashed his car into an NYPD cruiser when he was in college. The son of a prominent attorney, he ended up without a record after participating in classes and completing some community service. For him, privilege meant getting to walk away from a serious accident without a single long-term consequence. That's the world I live in. Our worlds—mine, and those of PLSE's clients—could not be further apart.

It is easy to focus on long-term goals while ignoring the lived reality of people caught up in the system who cannot escape it, no matter what they do. In some low-income, high-arrest, primarily nonwhite neighborhoods in Philadelphia, upward of 60% of the adult residents are thought to have criminal records. Even for those whose charges end up being dropped, dismissed or not proven, the record of the arrests remain permanent, putting a stop (legally or not) to employment, housing, credit, education—even coaching t-ball and going on field trips with your kids. “Clean Slate” is absolutely no help if you are walking, talking, driving or living while Black.

We are simply not “all in this together”: white folks expect to be given (and very often are) the opportunity to tell their side of the story, and a record can be seen as evidence of personal growth and resilience, not the demonstrated risk or “moral failing” it is for people of color. For whites, even if doors are shut, others often open. For people of color, the doors don't open, the interviews never occur, the offers are not made. Denials are consequential. Self-definitions matter. Hope (and the lack of it) matters. Despair and continued poverty matter. They are trans-generational traumas which saddle those caught in the criminal justice system and their loved ones.

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in the past. In almost everything they do, they have to “check the box” and disclose they have a record.

Though we can't undo the injustice in our criminal justice system, we can help reduce the harm caused by its inequities. The Economy League, Auditor General, and the Workforce Development Board all recommend the same remedy—eliminating criminal records—and doing so as quickly and broadly available as possible. They see this as a community investment and a workforce development strategy, not just doing right by the individuals and their families

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A court can order all nonconviction data (and convictions for summary offenses) permanently erased (expunged) from one's record. For about a third of the people with criminal records (at least according to our eight years of experience), that gives them a completely clean slate. For the others, it leaves the convictions, but the rap sheet has been reduced from pages and pages of allegations to maybe one—typically making it easy to see that the event occurred years, often decades, ago.

Private lawyers typically charge thousands of dollars to expunge what they can of a client's record—it typically takes four or more petitions—and then thousands more to represent someone seeking a pardon. At PLSE clients never pay for our services. We show them, and help them through, processes that, in the past, were entirely unknown, and always beyond their financial reach.

In Pennsylvania, the responsibility of recommending individuals to the governor for a pardon is vested in a Board of Pardons. Lt. Gov. John Fetterman and Attorney General Josh Shapiro, both members of the Board of Pardons, are leaders

in actively transforming the pardon process from the rare event to an increasingly ordinary remedy. That is precisely the kind of social response that we all should understand is necessary to deal with the consequences, and the legacy, of the policies that led to mass incarceration. A recent study published by PLSE proves that pardons pose no public safety risk and the Economy League recently recommended pardons as a “no-cost community reinvestment policy.” Both expungements and pardons help balance poorly calibrated scales of justice that too often favor the white and the wealthy.

It remains to be seen whether the current conversations regarding police accountability and criminal justice reform will bear fruit. Successful examples of alternative rehabilitation and restorative justice already implemented in our communities offer hope. While we work on long term solutions to the social and institutional inequities that surround us, we can use currently available remedies like expungements and pardons to help end, and hopefully reverse some of the harm caused by a criminal justice system and develop and strengthen our communities.

Real life is not as it appears on TV. Our attitude toward criminal justice should reflect that. PLSE will continue to fight for the rights of citizens of this commonwealth and help ensure our justice system truly promotes the common weal and treats everyone equitably. •

For more information about PLSE, its Pardon Project and how you can help, write info@plsephilly.org.