

Michigan Journal of Race and Law

Volume 21

2016

Foreword: Innocent Until Proven Poor

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Recommended Citation

Sara Zampierin, *Foreword: Innocent Until Proven Poor*, 21 MICH. J. RACE & L. 183 (2016).
Available at: <https://repository.law.umich.edu/mjrl/vol21/iss2/1>

<https://doi.org/10.36643/mjrl.21.2.foreword>

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FOREWORD: INNOCENT UNTIL PROVEN POOR

*Sara Zampierin**

One of the core tenets of our criminal justice system is the presumption of innocence until proven guilty. As the title of the Symposium recognizes, we have allowed our justice system to ignore that presumption for people living in poverty in a variety of ways. Instead, it often inflicts additional and harsher punishment on individuals because of their poverty.

This is best understood through the stories we heard during the Symposium:

Crystal, a woman from San Francisco, California, did not have enough money to post the \$150,000 bond she was told was necessary to get out of jail. Because she needed to take care of her elderly grandmother, she borrowed money from her family and signed a promissory note to pay a bail bond company a non-refundable \$15,000 fee, plus interest. Even though all charges against her were dropped the next day, she is still responsible for paying that money.

Jack, a man from Norwalk, Ohio, was picked up on warrants four separate times and incarcerated for a total of sixteen days for his inability to pay a \$1500 fine on old municipal court cases. These warrants and incarceration plagued him for almost two decades after he received the fines.

Vera, a woman from Bainbridge, Georgia, was required to report to a for-profit probation company solely because she could not pay for her traffic ticket. The company detained her in the courthouse on the day she was sentenced and demanded an initial \$50 fee to avoid jail, which she was only able to pay by pawning her engagement ring and her fiancé's weed trimmer.

A woman in Ferguson, Missouri, received two parking tickets and ended up owing \$1500, spending six days in jail, and losing both her children and her job, all as part of a scheme designed by city officials to increase revenue from the criminal justice system.

The profit motive that permeates many of our local justice systems means that cash is the ticket out of the criminal justice system for the wealthy, and those who do not have money remain stuck in its talons. A person living in poverty is more likely to spend time in jail before trial

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because she cannot afford bail and thus ends up taking a plea deal with a longer sentence, is unable to access diversion or other programs that would help her avoid criminal charges because of the fees that are required, gets appointed counsel who is overworked and underfunded (and is then assessed additional fees to pay for that representation), faces additional monitoring and financial punishments because of her inability to pay the fines immediately, and ultimately ends up in jail for failure to pay.

It is hard to hear stories like these from across the country and not be outraged about, as Vanita Gupta stated in her keynote address, the “unjustifiable, counter-productive—and frequently unconstitutional—treatment of the poor in our nation’s courtrooms.” But I am also encouraged by the growing awareness of these problems and the reform efforts that have already developed from this outrage. Officials from Lucas County, Ohio, spoke about their efforts to study the population involved in the criminal justice system and to change policies that caused disparities based on wealth, like eliminating the fee to participate in a pre-trial diversion program. Collecting data in other communities will raise awareness of this problem and help root out injustices facing the poor, as Colin Reingold advocates in his essay. The ACLU of Ohio’s research and stories of individuals imprisoned for their inability to pay court debts spurred the Chief Justice of the Ohio Supreme Court to issue guidance to judges about the constitutional problems with these practices, as Jocelyn Rosnick and Mike Brickner discuss in their essay. Many cities across the country have abandoned similar debtors’ prison policies and have reformed their bail systems in the face of lawsuits. The for-profit probation industry, once entrenched in more than 100 cities in Alabama, has largely abandoned the state. The City of Ferguson has decided to enter into a consent decree to reform racially biased police practices and court and policing practices that were driven by a desire for increased revenue.

But the fight is far from over. Unlawful and harmful practices that unfairly punish the poor are common in courts throughout the country, as the Department of Justice recognized in a recent letter to state court judges. Communities also continue to demand police department reforms, as Jonathan Smith explores further in his article. Justice will not come without a fight in places that have long used the criminal justice system as a cash register to raise money for cities and to generate revenue for private companies.

The Symposium speakers and authors in this issue have pushed us to be mindful of the ways in which persons in poverty are punished under our current system and to identify alternative, non-discriminatory methods for meeting the same goals. For instance, we can set up a bail system that does not discriminate against indigent persons through its reliance on money but instead provides them with the services they need to appear at a subsequent court date. We can assess fines at sentencing that match their ability to pay and give them a reasonable schedule of payments, instead of

hauling those who have not paid into court years later for punishment. And we can identify and resolve barriers that keep people from making their court dates instead of issuing more warrants or suspending their drivers' licenses when they miss a hearing. Maximilian Bulinski and J.J. Prescott explain how one such reform—online case resolution systems—may help reduce barriers to accessing our courts while enhancing fairness, especially for the poor.

Of course, any reform efforts will continue to involve educating our communities, especially those involved in the criminal justice system, about the ways in which our current system criminalizes the poor and homeless and wreaks havoc on our most vulnerable communities. We must all continue to make sure that city, county, and court officials understand what it means to set bail at \$150,000 for Crystal, to continue issuing warrants and calling Jack into court to pay debt he cannot afford, and to assign Vera to report to a for-profit probation company. I appreciate the all the work of those on the *Michigan Journal of Race and Law* and all those involved with the Symposium and this issue to help with this critical mission.