

2016

Keynote Remarks: How the Criminalization of Poverty has Become Normalized in American Culture and Why You Should Care

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Recommended Citation

Sarah Geraghty, *Keynote Remarks: How the Criminalization of Poverty has Become Normalized in American Culture and Why You Should Care*, 21 MICH. J. RACE & L. 195 (2016).

Available at: <http://repository.law.umich.edu/mjrl/vol21/iss2/3>

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KEYNOTE REMARKS:
HOW THE CRIMINALIZATION OF POVERTY HAS
BECOME NORMALIZED IN AMERICAN CULTURE
AND WHY YOU SHOULD CARE

Sarah Geraghty★

Thank you for the opportunity to be here today among such a distinguished group of scholars, advocates, and students. I am grateful to Christianna Kyriacou, Jessica Gingold, and others on the *Michigan Journal of Race and Law* for organizing this event.

The subject of my talk today is how the criminalization of poverty has become normalized in American culture and why you should care.

I would like to begin by sharing a story about a woman we represent in Georgia.

Rita Luse is a 62-year-old grandmother from a small town in north Georgia called Cleveland. She works with a group that provides counseling to people with mental illness, and she's about the nicest lady you'll ever meet. A couple of years ago, Ms. Luse received a traffic citation and pleaded guilty to driving while unlicensed in the county probate court. She owed a fine, and because she could not pay that fine when she appeared in court, she was put on probation with a private probation company, Sentinel Offender Services LLC.

Now Ms. Luse does not need "probation supervision" in the traditional sense of that term. She's no threat to public safety. It's difficult to conceive of any legitimate reason why her behavior would need to be monitored. Yet, under the system in Cleveland, as in so many places, Ms. Luse's inability to pay a fine resulted in her having a "probation officer," reporting to a probation office, paying "supervision fees," and submitting her urine for drug-testing at her expense.

On one occasion during the course of her probation, Ms. Luse, who does not have a lot of money, came up short. When she asked for extra time to pay, her probation officer told her that if she did not pay by the end of the day, a warrant would issue for her arrest. Ms. Luse secured an emergency loan from a relative, and she raced across town to borrow money and to convert the cash into a money order, fearful that she would be jailed if she did not deliver \$140 to the probation office before closing time.

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These remarks were presented at the Symposium "Innocent Until Proven Poor: Fighting the Criminalization of Poverty" on February 20, 2016, at the University of Michigan Law School.

We have reached a point in the culture of our system of justice at which it has become acceptable to make a senior citizen urinate under the watchful eye of a private probation officer and to threaten her with jail for nonpayment, all for driving while unlicensed.

I. ON USING MUNICIPAL COURTS FOR REVENUE GENERATION

Ms. Luse's experience is actually rather commonplace in Georgia and in many other places in this country. It has become acceptable to use our nation's traffic and misdemeanor courts explicitly for revenue generation. It has become culturally permissible to farm out municipal fine collection to private companies that make huge profits providing "supervision" to many people who do not need to be on probation at all.

People who come before the traffic courts in Georgia are often made to pay exorbitant fines, fees, surcharges, and costs. They owe money for the police officers' retirement fund, the clerks' retirement fund, the crime victims' emergency fund, and the jail law library fund. There are probation supervision fees, fees for drug tests, administrative fees, probation "start-up" fees, photo fees, convenience fees, and electronic monitoring fees. With all of these fines, fees, and add-ons, it is not long before a person's monetary obligation is totally out of proportion to the severity of his offense.

We represented Adel Edwards, a Black man from Pelham, a small town in southwest Georgia, which is home to a large state prison and little else in the way of industry.¹ Mr. Edwards has an intellectual disability and no income. He lives in a house without running water or other utilities. A few years ago, Mr. Edwards was called to court to answer to a charge of burning leaves in his yard without a permit. He left court on probation, with fines and fees totaling \$1,028. And he left in handcuffs, in a police van on its way to the jail, only because he could not make a \$250 payment.

A person of means can afford to purchase his way out of this kind of situation. People without money are the only ones who go to jail for offenses like burning yard waste without a permit.

A few years ago, in Cairo, Georgia, a misdemeanor court judge had an idea about how to make more money for his county. He decided to impose what he called "administrative costs" on people who came before his court, in addition to the fines and surcharges authorized by law. In many cases, these made-up costs were levied in the amount of \$700 or \$800 per defendant. The idea proved to be lucrative. The County brought in almost \$300,000 in "administrative costs" over the course of a year. The judge later bragged about his efforts to make money from the bench, stating in a letter to his county commission that he "work[ed] hard to maxi-

1. Carrie Teegardin, *Lives Upended as Judges Push Legal Limits*, THE ATLANTA JOURNAL-CONSTITUTION (May 2, 2015), <http://www.myajc.com/news/news/crime-law/judges-push-legal-limits-on-probation/nk5Fj/>.

mize what gets turned over, and that the judge must go beyond the call of the job to produce that much for the county.” He then requested a raise in his personal salary based on his efforts to “maximize” county revenues.

In Georgia, the Council of State Court Judges recently published a fact sheet about its operations in which it referred to Georgia’s State Courts as “the Little Giant of the State Trial Court System.” The Council trumpeted that its courts “represent only 10% of the State Trial Judges, but Bring in 35% of Total Revenues!” The profit motive is not even hidden. It is front and center.

The reliance on courts for municipal revenue generation is deeply entrenched in many places. We saw this in Ferguson, Missouri, where the United States Department of Justice recently found that city and police leadership relied on “citation productivity” to fund the city budget and pressured line officers to write citations “independent of any public safety need.”² Officers were encouraged to write multiple citations for a single traffic stop, and their performance reviews were based, in part, on the number of tickets they issued.

In Ferguson and in many other places, court fines are pre-budgeted by city managers who count on income from traffic offenses that have not yet occurred. Courts and police officers feel enormous pressure to contribute to the city budget.

In 2015, Ferguson anticipated relying on its municipal court for about 23 percent of its income. Other cities rely on court fines to an even greater extent. It would be wise, for instance, to abide by the speed limit when driving through Warwick, Georgia. This tiny town of 400 people collected \$1.2 million in fines in fiscal year 2014, and relied on the court for 85 percent of its revenue that year.

All kinds of abuses and improprieties occur when our courts improperly prioritize fine collection over fairness and common sense. A headline in a recent *New York Times* article read: “For Offenders Who Can’t Pay, It’s a Pint of Blood or Jail Time.” The article described a judge in rural Alabama admonishing a courtroom packed with people who owed fines and fees for various offenses. According to a recording of the hearing, the judge ordered people who could not pay to “go out there and give blood and bring in a receipt indicating you gave blood.”³ He added that the “sheriff has enough handcuffs” for those who could not pay and opted not to give blood.⁴

2. U.S. DEP’T OF JUSTICE, CIVIL RIGHTS DIV., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 10 (Mar. 4, 2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf.

3. Campbell Robertson, *For Offenders Who Can’t Pay, It’s a Pint of Blood or Jail Time*, N.Y. TIMES (Oct. 19, 2015), http://www.nytimes.com/2015/10/20/us/for-offenders-who-cant-pay-its-a-pint-of-blood-or-jail-time.html?_r=0.

4. *Id.*

II. ON THE DAMAGE CAUSED

I want to be clear that there should be consequences and penalties for people who commit crimes. Many misdemeanor-level courts adjudicate family violence cases, impaired driving offenses, and other serious matters. But we do not address considerations of public safety or deterrence when we allow some people to buy their way out of the criminal justice system, while others are stuck in it solely because they cannot pay.

One of the challenges we face as advocates is the sheer number of little courts: mayors' courts, state courts, city courts, magistrate courts, and probate courts. They each have their own way of doing things. Many cities have their own police force and municipal code. The judge may be part-time and may not be a lawyer. Usually there are no defense lawyers for indigent defendants. Court is sometimes conducted in back rooms of municipal office buildings.

Vera Cheeks, a Black woman from Bainbridge, Georgia, went to a small court to answer to the charge of failing to come to a complete stop at a stop sign. The local judge put Ms. Cheeks on probation because she could not pay the \$135 fine on her court date. The private probation company added "supervision" fees to Ms. Cheeks's bill, increasing her total to \$267. Then a private probation officer detained Ms. Cheeks in a locked room behind the judge's bench—city police standing guard—because she did not have an initial payment of \$50.

Again, Ms. Cheeks's experience is not unique. In Bainbridge, city police and probation officers regularly steered people straight from the judge's bench into locked, inmate holding cells when they could not pay. Over the course of time, it had become routine and accepted that a private company should hold people for ransom at the courthouse until their loved ones scraped up the cash to pay for their release.

Ms. Cheeks had to call her fiancé to the rescue. He removed the engagement ring from her finger and took her ring along with some lawn equipment to the pawn shop, where he traded both for \$50 so that Ms. Cheeks could go home. These are the kinds of petty humiliations that people have to deal with.

But Vera Cheeks is smart, charismatic, and, by nature, intolerant of injustice, inequality, and nonsense of any kind. The next day she called our office, we took her case, and so began a productive partnership. The company that treated Ms. Cheeks and others so poorly is no longer in business today.

Over the last two days, we've heard about the damage caused by overzealous efforts to collect money from people who owe criminal court debt: the loss of jobs, the evictions, the parents separated from their children. There is another, deeper-level damage to the public perception of our courts. Most people have had a traffic ticket at some point. These lower-level courts are the courts that most people see in action. In too many places, the focus on revenue generation influences people's experi-

ence of these courts. A mercenary court culture undermines citizens' faith in the justice system, the courts, the government, and the rule of law.

The good news is that we are at a pivotal moment. There is recognition across the political spectrum that it is unfair to imprison poor people for debts they cannot pay. In Georgia, the Governor's Criminal Justice Reform Council is focused on making practical, workable reforms to preserve the integrity of our misdemeanor and traffic courts and to rethink the purpose of probation in our state.

There are also new ways to share the stories of people who have been sent to debtors' prisons. We have all seen that cell phones have brought to light tragedies regarding lethal conduct by police officers that may otherwise have been hidden.

We have started to see that cell phones can expose unfair treatment of indigent people in courts as well. In Bowdon, Georgia, the municipal court judge had a practice of demanding large, initial payments from indigent defendants and threatening to detain those who could not pay. A local citizen activist recorded the judge in action on her cell phone. In the video recording, the judge tells one woman who could not pay, "[Y]ou can call whoever you need to call, go to an A.T.M. if you need to, do what you need to do. Call friends, call family, call your employer. But until you get \$300 here tonight, you won't be able to leave."⁵ He warns another person, "You're going to have to figure out a way to get this paid, do you understand me? Or you're going to go to jail. One or the other. You understand?"⁶

These kinds of things happen in city and county courthouses around the country. The only difference is that this one was caught on video.

III. ON LOSING SIGHT OF THE PURPOSE OF PROBATION

In too many places, criminal justice actors have lost sight of the purpose of courts as places for the administration of justice. Relatedly, we've lost sight of the purpose of probation. Probation has become untethered to its traditional role as a form of community supervision for people who pose a threat and need monitoring.

In *Gagnon v. Scarpelli*, the United States Supreme Court wrote that "[t]he probation . . . officer's function is not so much to compel conformance to a strict code of behavior as to supervise a course of rehabilitation."⁷ This could not be further from reality in many places today.

The State of Georgia leads the nation in placing its citizens on probation. According to the latest figures from the Bureau of Justice Statistics,

5. Shaila Dewan, *A Surreptitious Courtroom Video Prompts Changes in a Georgia Town*, N.Y. TIMES (Sept. 4, 2015), http://www.nytimes.com/2015/09/05/us/a-surreptitious-courtroom-video-prompts-changes-in-a-georgia-town.html?_r=0.

6. *Id.*

7. 411 U.S. 778, 784 (1973).

Georgia has the highest sheer number of people on probation and the highest percentage of people on probation by population—four times as high as the next highest state.

Georgia leads the nation in the number of people on probation, in part because of Georgia's booming private probation industry. About 80 percent of people on misdemeanor probation in Georgia are supervised by private companies. These companies have a profit motive to have as many people on probation as possible for as long as possible.

Here's how it works in many cases. If you get a traffic ticket and can pay your fine on the day of court, you are finished with your interaction with the criminal justice system. If you cannot pay, you are placed on probation with a private company that charges between \$35 and \$50 per month to "supervise" you while you pay your fine over time. As we have discussed, people are put on probation with all of its attendant consequences for the most minor infractions—rolling through a stop sign, not renewing one's car tag on time, not keeping one's yard tidy.

The emergence of private probation companies is the next logical step in the normalization of courts-for-profit. And more likely than not, the industry is coming, or trying to come, to a courtroom near you.

The same company that supervised Rita Luse recently used a "March Madness" bonus program to encourage its employees to meet collection goals. The program offered the possibility of cash bonuses and a beach vacation to employees who collected the most money from people on probation.

Reasonable minds may differ on the wisdom of the privatization of various government functions. From a decade of observing private probation companies at work in Georgia, my deeply held view is that this industry is incompatible with the fair and impartial administration of justice.

IV. ON JAILING INDIGENT PARENTS FOR CHILD SUPPORT DEBT

The unfair use of jail to punish indigent people for their poverty takes many forms. We see tremendous inequality and unfairness in the incarceration of parents for child support debt.

Now, everyone agrees parents must support their children. Parents have a legal and moral imperative to do so. And sadly there are some who have the ability to pay, yet shirk their responsibilities. But in many places in this country, the government focuses its efforts to collect child support from the poorest citizens. There is a startling statistic, cited in the U.S. Supreme Court's opinion in *Turner v. Rogers*, that 70 percent of child support arrears nationally are owed by parents with either no reported income or income of less than \$10,000 per year.⁸

8. 131 S. Ct. 2507, 2518 (2011).

So often in our law practice, we see that parents are subject to court orders requiring them to pay amounts so high they will never get out from under the debt. As a result, they cycle in and out of jail.

While states have a number of tools at their disposal to encourage parents to comply with their child support obligations, the sanction of imprisonment has become a routine part of child support enforcement practice in many places. Between January 1, 2010 and October 2011, at least 3,538 parents were jailed in Georgia, without counsel, in state-initiated child support contempt proceedings. The jailing of indigent people for child support debt has become normalized.

Under Georgia law, a court may incarcerate a parent for non-payment of child support if it finds that the parent wilfully failed to comply with a child support order. At state-initiated child support contempt hearings, the state is represented by state-funded counsel. These attorneys file complaints for contempt, issue discovery demands, call witnesses, and affirmatively seek incarceration.

On the other side of the courtroom are the indigent parents, alone and without counsel. Some have mental illness, physical disabilities, limited education, or limited English proficiency. Others are veterans who returned from military service to communities with few job prospects. Many of these parents are unschooled in the court rules, the rules of evidence, the legal standard to show contempt, and the legal defenses to contempt. They may be held for months or longer—their release often contingent on payment of enormous “purge fees”—even though they have no money and no reasonable way from their jail cells to earn money to secure their release.⁹

A few weeks ago, I met Margaret Fisher¹⁰ in a Georgia jail. Ms. Fisher is indigent and has two children and some mental health conditions. Her older daughter had spent a brief period of time in foster care, for which Ms. Fisher owed financial reimbursement to the state.

Police showed up at Ms. Fisher’s home just days after she gave birth to her second child. Ms. Fisher was hauled off to jail. She had not yet recovered from childbirth. She was bleeding and leaking milk through her jail uniform. She sat in jail for a week, missing those irreplaceable, first days with her newborn baby, until her family could raise the money to purchase her freedom. How inhumane to incarcerate the mother of a 2-day-old infant for a civil debt owed to the government. Yet this sort of thing is accepted, as though there is no other way to deal with such problems.

9. See Ethan Bronner, *Right to Lawyer Can Be Empty Promise for Poor*, N.Y. TIMES (Mar. 15, 2013), http://www.nytimes.com/2013/03/16/us/16gideon.html?_r=0.

10. A pseudonym is used here.

V. ON CULTURE CHANGE IN OUR COURTS

It goes without saying that judges, probation officers, prosecutors, and others who work in the courts perform a vital public service under difficult circumstances. Questions of how to deal with people who commit crimes and how to fund court operations are challenging and intractable. Judges and law enforcement officials are confronted daily with a world of social ills and with people who, for a variety of reasons, do not comply with court orders or probation conditions.

But we can, and must, do so much better. We cannot tolerate the normalization of a justice culture in which one's income so explicitly determines one's experience. We cannot tolerate the existence of courts that prioritize the collection of money over fairness and public safety. All sorts of improprieties flow from this perversion of priorities.

We in the legal profession have a special responsibility for the way our courts operate. It is our responsibility to object when we see people jailed and otherwise mistreated just because they do not have money.

Changing an entrenched, mercenary court culture is enormously difficult. The most effective approach we've found is collaborative, and involves litigation, community organizing, policy reform, legislative advocacy, and especially investigative journalism.

We have heard many grim stories of injustice and personal suffering over the last two days. Once you know these things are happening, you feel a moral imperative to be part of the solution. I don't know how to combat Racism with capital "R," but I do know how to investigate, review documents, and litigate cases when necessary. These are the little things I can do.

To the students in the audience: Before you know it, you and your peers will be running this country. This may not seem plausible at present. But it will happen, and sooner than you may think.

We are fortunate to live in a time when a single individual—maybe you—can do things that have a great impact. Look at Deputy Assistant Attorney General Vanita Gupta and her colleagues at the Department of Justice, Civil Rights Division, who have done so much to expose racially discriminatory, revenue-generating policing in Ferguson. Look at the work of Professor Cynthia Jones and Alec Karakatsanis, who have brought the race and class inequities of money bail into national focus. Look at the work of Sara Zampierin and Sam Brooke at the Southern Poverty Law Center and Nusrat Choudhury at the ACLU's Racial Justice Project who work tirelessly to stop modern day debtors' prisons across the country.

So I'm leaving this conference with new ideas. I'm thinking of Michael Steinberg's presentation on "homeless kidnapping" in Detroit and the ACLU's powerful public education videos on this and related subjects. And there is the work of Chief Justice Maureen O'Connor of the Ohio Supreme Court, Mike Brickner, Jocelyn Rosnick, and others to ensure that Ohio's courts are institutions of justice and integrity rather than jailors

of indigent debtors. I'm borrowing from these and other ideas and bringing them home to Georgia.

I want to thank the members of the *Journal of Race and Law* for bringing us together to work toward a future where it is no longer culturally acceptable to jail indigent people for their poverty.