

## Transcending the Stigma of a Criminal Record: A Proposal to Reform State Bar Character and Fitness Evaluations

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**ABSTRACT.** This Essay is rooted in the author's experience as a formerly justice-involved individual who overcame numerous barriers, including addiction and incarceration, to become an attorney. The Essay takes aim at one barrier in particular: state bar character and fitness evaluations. The author, whose bar application was initially rejected despite her extraordinary accomplishments as a law student, notes that the bar admissions process needlessly deters countless other formerly justice-involved individuals from attempting to join the legal profession, and argues that state bar associations should use a conditional approval process that informs such individuals whether the bar intends to admit them before they begin law school. This reform would benefit society at large, since formerly justice-involved individuals have unique and important contributions to make to the legal system.

How we treat citizens who make mistakes (even serious mistakes), pay their debt to society, and deserve a second chance reflects who we are as a people and reveals a lot about our character and commitment to our founding principles.

—President Barack Obama<sup>1</sup>

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1. Barack Obama, *The President's Role in Advancing Criminal Justice Reform*, 130 HARV. L. REV. 811, 812 (2017).

## I

For far too many people in the United States, a conviction history is a brand for life. The rapid rise in the number of incarcerated individuals<sup>2</sup> coupled with the increased accessibility of their criminal records<sup>3</sup> and an expansion of collateral consequences has created challenging obstacles to societal reintegration of those individuals. This increased access to criminal records has limited the economic opportunities for individuals attempting to reintegrate and, as a result, raised their recidivism rate. Of course, public safety must be a priority, but the systemic exclusion of individuals with a criminal record from accessing basic needs such as housing and employment leads to a continued cycle of poverty and crime, one that is itself contrary to public safety.<sup>4</sup> Furthermore, criminal records close off civil rights such as voting, leaving the most vulnerable without a voice to change the system in which they are entangled.<sup>5</sup> This combination leaves people powerless and pushes them into the underground economy, further contributing to mass incarceration.<sup>6</sup> And this cycle punishes more people than just the formerly justice-involved individual (FJI).<sup>7</sup> Their families and communities suffer when they are unable to reintegrate after incarceration, and our society is robbed of the unique contributions that FJIs could make.

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2. Jacob Kang-Brown et al., *The New Dynamics of Mass Incarceration*, VERA INST. 8 (2018), <https://www.vera.org/publications/the-new-dynamics-of-mass-incarceration> [<https://perma.cc/F56W-M83B>] (noting that the national incarceration rate increased by about 400 percent between 1970 and 2000, and that, since the incarceration rate peaked in 2007, “its decline has been far less pronounced . . . than its rise”).
  3. *The Wild West of Employment Background Checks*, NAT’L EMP. L. PROJECT 2 (2014), <https://nelp.org/wp-content/uploads/2015/03/Wild-West-Employment-Background-Checks-Reform-Agenda.pdf> [<https://perma.cc/H54E-BMLV>].
  4. Mark T. Berg & Beth M. Heubner, *Reentry and the Ties that Bind: An Examination of Social Ties, Employment, and Recidivism*, 28 JUST. Q. 382, 405 (2011).
  5. Anthony Jamal Phillips & Natalie Deckard, *Felony Disenfranchisement Laws and the Feedback Loop of Political Exclusion: The Case of Florida*, 20 J. AFR. AM. STUD. 1, 1 (2016).
  6. Lucius Couloute & Daniel Kopf, *Out of Prison & out of Work: Unemployment Among Formerly Incarcerated People*, PRISON POL’Y INST. (2018), <https://www.prisonpolicy.org/reports/outofwork.html#recommendations> [<https://perma.cc/NHA9-PD8X>].
  7. Throughout this Essay, I use the term “formerly justice-involved individual” to refer to an individual with a criminal arrest or conviction record. Words like “offender,” “ex-con,” or “felon” used in statutes, academic research, and the media continue to stigmatize people who have been involved in the criminal legal system. See Eddie Ellis, *An Open Letter to Our Friends on the Question of Language*, CTR. FOR NULEADERSHIP ON URB. SOLUTIONS, <https://cmjcenter.org/wp-content/uploads/2017/07/CNUS-AppropriateLanguage.pdf> [<https://perma.cc/M3UD-T3MT>].

There are some 45,000 collateral sanctions for convictions across the United States.<sup>8</sup> A collateral sanction is “a legal penalty, disability, or disadvantage . . . imposed on a person automatically upon that person’s conviction for a felony, misdemeanor or other offense, even if it is not included in the sentence.”<sup>9</sup> Collateral consequences amplify punishment beyond the direct consequences of conviction, such as incarceration, probation, or fines. They appear in a variety of contexts and take a variety of forms, including time-limited or lifetime bans on employment opportunities, professional licenses, public benefits, public or private housing, and financial aid or educational opportunities.<sup>10</sup> Criminal records also often interfere with the most meaningful relationships that many former prisoners have: those with their children. The presence of a conviction on a background check can cause difficulties in child-custody proceedings, or even prevent the parent’s participation in school-related activities.<sup>11</sup>

Although some of these prohibitions were enacted to promote public safety, “they may be counterproductive, increasing the likelihood of recidivism by making it all but impossible for some offenders to maintain the stable employment, housing, financial status, and family relations that enable successful reintegration.”<sup>12</sup> This is not surprising: when FJIs are able to maintain employment and healthy relationships with their families, their social networks are more likely to be comprised of prosocial and supportive individuals.<sup>13</sup> These support networks reduce the likelihood of future criminal behavior and give the FJI more to lose with each subsequent interaction with the criminal legal system.<sup>14</sup>

What’s more, a growing body of research shows that “if a person with a criminal record remains crime free for a period of about 7 years, his or her risk

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8. *National Inventory of Collateral Consequences of Conviction*, COUNCIL ST. GOV’TS: JUST. CENTER (Nov. 2, 2018), [https://niccc.csgjusticecenter.org/database/results/?jurisdiction=NaN&consequence\\_category=NaN&narrow\\_category=NaN&triggering\\_offense\\_category=NaN&consequence\\_type=NaN&duration\\_category=NaN&page\\_number=1](https://niccc.csgjusticecenter.org/database/results/?jurisdiction=NaN&consequence_category=NaN&narrow_category=NaN&triggering_offense_category=NaN&consequence_type=NaN&duration_category=NaN&page_number=1) [https://perma.cc/FL3J-66DZ].
  9. STANDARDS FOR CRIMINAL JUSTICE (THIRD EDITION): COLLATERAL SANCTIONS AND DISCRETIONARY DISQUALIFICATIONS OF CONVICTED PERSONS 19-1.1(a) (AM. BAR ASS’N 2004), [https://www.americanbar.org/content/dam/aba/publishing/criminal\\_justice\\_section\\_newsletter/crimjust\\_standards\\_collateralsanctionwithcommentary.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/crimjust_standards_collateralsanctionwithcommentary.authcheckdam.pdf) [https://perma.cc/XF38-R7RS].
  10. Ericka B. Adams, Elsa Y. Chen & Rosella Chapman, *Erasing the Mark of a Criminal Past: Ex-Offenders’ Expectations and Experiences with Record Clearance*, 19 PUNISHMENT & SOC’Y 23, 24-25 (2016).
  11. *Id.* at 26.
  12. *Id.*
  13. *Id.*
  14. *Id.*

of a new offense is similar to that of a person without any criminal record.”<sup>15</sup> Nonetheless, collateral sanctions – which usually mark FJIs no matter how many years they have been crime-free – are becoming more common. For example, employers have increasingly used criminal records in employment decisions, presumably to predict future behavior.<sup>16</sup> Our country’s overwhelming array of collateral consequences treats FJIs as if they are irredeemable for life. This new evidence demonstrates that these decisions are rooted in bias, not fact.

This Essay illustrates the harmful effects of collateral consequences through the lens of my personal journey from prison to bar admission. The journey has been riddled with almost-overwhelming barriers as I have fought to overcome the stigma of my criminal record. However, the support of countless friends and mentors allowed me to overcome these barriers – and has motivated me to work to ease the process for others.

Against the backdrop of my personal experience, this Essay proposes a solution to make bar admission more accessible for others with a criminal record: the creation of a conditional approval process. A process granting conditional approval for the bar *prior* to law school admission may reduce the deterrent effect of facing a “character and fitness” evaluation only *after* the massive investment of time and resources needed to complete law school. Increasing diversity in the law requires a hard look at reducing the barriers to entry into the bar for populations that are overrepresented in the criminal legal system and underrepresented in the legal profession.

## II

In 2011, I finally hit rock bottom.

Nineteen years earlier, after overcoming a childhood consumed by poverty and victimization, I had found myself homeless and pregnant at fourteen years old. Many would see pregnancy as another adversity for me to contend with. But I was energized by finally having another human to connect to, and I was motivated to provide a better life for the infant growing inside me. I had finally found hope. I returned to school, became a registered nurse, and purchased my own home before I turned twenty-two.

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15. Megan C. Kurlycheck, Robert Brame & Shawn D. Bushway, *Enduring Risk? Old Criminal Records and Predictions of Future Criminal Involvement*, 53 *CRIME & DELINQ.* 64, 80 (2007).

16. Marine Duane et al., *Criminal Background Checks: Impact on Employment and Recidivism*, JUST. POL’Y CTR., at vii (Mar. 2017), [http://www.urban.org/sites/default/files/publication/88621/2017.03.01\\_criminal\\_background\\_checks\\_report\\_finalized.pdf](http://www.urban.org/sites/default/files/publication/88621/2017.03.01_criminal_background_checks_report_finalized.pdf) [https://perma.cc/6ZEH-C3LW].

But I lacked the support system to process the sexual trauma I had endured in the past, including the trafficking I had experienced as a child. I repeated cycles of toxic relationships, and I found comfort in the use of drugs and alcohol. Fueled by a need to support my habit, I stole and sold drugs.

By 2011, I had finally succumbed to the addiction that every person in my family had suffered before me. For many years, I thought I had escaped that predisposition, because I was the first in my family to graduate from either high school or college. I was wrong. It seemed that no matter how hard I tried to connect to a positive and healthy support system or fight the psychological trauma lingering from abuse, my self-worth was rooted in my early childhood experiences. I believed the acts of violence I had watched and endured were normal, and therefore deserved. I thought it was commonplace for parents to sell food stamps for drugs, as mine did. Eventually, I succumbed to what I believed were society's expectations of me. I followed my parents' footsteps on the path to incarceration and prison.

It was not the slamming of my cell door, the dehumanizing language hurled at me, or the humiliating and traumatizing strip searches that caused me the most pain during my incarceration. By far the most excruciating part was the guilt and shame of leaving my children without resources. I had been their caretaker and bread-winner, and when I was gone, they suffered in ways big and small. There was no money for Christmas or birthday gifts—and money was tight for necessities like food and utilities. I thank God the eviction notice did not come until I was back. Even my older child, then 18 years old, still needed me. He was in his first year of college on a football scholarship; when he broke his collar bone on the field, I could not help him, comfort him, nag him to take care of his recovery, or be sure that he would be okay. I yearned to hug my children, but could not figure out how to make them feel loved while I was behind bars. The policies governing visitation made me angry; I resented the bureaucratic hurdles I needed to clear just to hug my own children.

For the first time in my thirty-three years, I was powerless. Before my incarceration, I had experienced more than many people do in a lifetime. I had survived abuse of the most volatile kind. I had overcome homelessness to become a homeowner. I had gone from high school drop-out to college graduate. I gave birth to two sons, divorced twice, and experienced sexual assault once again as an adult. I also harmed others. But outside of prison, if I needed medical attention, I could go to an emergency room, and, if my children needed me, I could show up for them—even if at times showing up for them was not the best option because of my substance use disorder. In prison, however, I lost every liberty. I did not have any power to provide for my own basic needs. I was powerless to make a phone call to check on my children's welfare. I didn't have the choice to comfort them when they were yearning for the love of their mother. In prison, I

often felt forgotten at the outermost margins of society. I didn't have an accessible way to advocate for myself, or even to connect with the outside world. I did, however, experience a deepening of my faith and a commitment to persist.

### III

I found hope when a group of Seattle University law students organized a group called the Incarcerated Mothers Advocacy Project and visited my prison.<sup>17</sup> In working with them, I slowly learned to shed the layers of shame that did not belong to me – and to meet the ones that did with forgiveness. This process was transformative. I learned to take responsibility for my part in the situation I found myself in, while at the same time, I came to understand how the criminal legal system itself was flawed. Meanwhile, the law students empowered me to face the legal battles that lay ahead: child custody, foreclosure, consumer debt, and professional licenses. These law students taught me my rights and how to advocate for them. They helped me prepare legal filings and taught me to represent myself in proceedings. Without the information they provided, I would have fared much worse on the civil legal issues I faced because of my incarceration. Just as importantly, they planted a seed of hope that one day – despite where I sat at that time, devastated and in prison khakis – I too could become a lawyer.

Upon my release from prison, however, the stigma of my criminal record left me unable to find any meaningful employment that would provide for my children. In recovery groups, I was surrounded by countless others who shared the same struggles. I saw common themes in the stories of those who had a criminal record. We had been imprisoned for a term of years, but we were sentenced to a lifetime of poverty. We lacked access to economic opportunities because employers would not hire us on account of our criminal record. We could not obtain many professional licenses or insurance policies. We even struggled to find stable housing because landlords refused to rent to us.

But I again saw the power of the law firsthand as I pieced my life together, overcoming one challenge at a time. Because of the law students' help, I secured my nursing license; reunited with my children; found stable housing; cleared my consumer debt through bankruptcy; and persuaded the court to waive the interest on my court-imposed fines and fees. My hope began to grow again. Fueled by a burning desire to fight the employment and housing discrimination I faced, I embarked on the long and complicated journey from prisoner to lawyer.

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17. *Incarcerated Mothers Advocacy Project*, SEATTLE U. SCH. L. (2019), <https://law.seattleu.edu/student-life/student-organizations/incarcerated-mothers-advocacy-project> [https://perma.cc/R2SK-N9MA].

## IV

Like many law students, I was terrified during my first law school class. Although I'd done the reading, I mustered every ounce of good luck I could to avoid being called on. The class was contracts. I had not read many contracts in my life, and the law of contracts was a completely foreign concept. But beyond my lack of experience with the subject matter, I felt that I did not belong in that room at all; I felt like an imposter. Just fifteen months earlier, I had been caged in a cell.

It took a tremendous amount of support and time before I started to feel comfortable discussing legal theories or briefing a case. It took even longer to share my lived experiences. My perspective was often met with resistance from people who did not have the same background I did. I remember the way my classmates would talk about people in prison during my criminal law class. The words they used to describe people who had committed offenses activated my trauma. Once again, I felt the stigma that society placed upon me and the people to whom I am closest. I would reach outside of the classroom into my support network to calm the anxiety I felt because of my personal connection to the criminal system. Eventually, I learned to come back with strength, and to debate complex and nuanced legal questions such as the disproportionate sentencing of people of color even with classmates who intended to become prosecutors. It was in these settings that I first found the courage to advocate on behalf of the marginalized community I identify with.

During my second year in law school, I started to build the confidence to become an effective advocate for criminal legal system reform outside the classroom. After being invited to speak at a few judicial conferences and legislative hearings, I started to recognize the power I held to change hearts and minds by combining my personal story with my new understanding of the law. I excelled academically, networked continuously, and became the first person from Seattle University School of Law to earn a Skadden Fellowship.<sup>18</sup> I graduated with the Dean's Medal and the Graduating Student Award.

While in law school, I also organized a movement of FJIs in Washington through a nonprofit called Civil Survival,<sup>19</sup> where directly impacted individuals continue to work towards ending mass incarceration. And I transitioned from student to teacher, passing along advocacy skills that we used collectively to change the laws that stigmatize FJIs for life. Working with other allied organizations in Washington, we recently helped pass legislation to reform the overwhelming legal financial obligations (LFO) debt imposed upon people convicted

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18. SKADDEN FELLOWSHIP FOUND., <https://www.skaddenfellowships.org>.

19. CIVIL SURVIVAL, <https://civilsurvival.org/> [<https://perma.cc/3D7G-KDSP>].

of an offense,<sup>20</sup> and to create fair chances for employment<sup>21</sup> and higher education<sup>22</sup> by banning questions about criminal history from applications.

But none of that seemed to matter when the time came for me to join the legal profession. Legislators, judges, and prominent legal practitioners vouched for my character. Even so, the Washington State Bar Association (WSBA) denied my application to take the bar exam.

## V

Every state bar association has rules and standards governing bar admissions, including a test of moral character.<sup>23</sup> In some states, such as Kansas, Mississippi, and Texas, an applicant with a felony conviction is automatically denied.<sup>24</sup> In Washington, the bar admission process is guided by court rules that take into account over thirty factors and sub-factors to determine whether an applicant meets the “character and fitness” requirements necessary to practice law.<sup>25</sup> For applicants with criminal convictions, the rules take into account mitigating factors such as evidence of rehabilitation.<sup>26</sup>

I thought I had offered overwhelming evidence of rehabilitation – nearly one hundred letters of support, six years of sobriety, academic achievement, financial repair, and a resume that reflected my commitment to public interest lawyering. I was shocked and devastated when my application was rejected.

I had taken a calculated gamble when I decided to earn a law degree and join the legal profession. Seattle University professor John Strait is a leader in the

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20. See, e.g., Arvind Dilawar, *Legal Financial Obligations Are the New Debtors’ Prison*, PAC. STAND-ARD (Apr. 12, 2017), <https://psmag.com/news/legal-financial-obligations-are-the-new-debtors-prison> [<https://perma.cc/PU2K-DD8F>] (“The day Tarra Simmons walked out of Mission Creek Correctional Center for Women in 2013, she owed \$7,500 to Kitsap County in Washington state . . . ‘It caused a lot of anxiety and depression,’ Simmons says of her LFO debt. ‘I thought about selling drugs again to provide for my family.’”).

21. See *Governor Inslee Signs Fair Chance Act Banning the Box on Job Applications in Washington*, CIVIL SURVIVAL (Mar. 16, 2018), <https://civilsurvival.org/governor-inslee-signs-fair-chance-act-banning-the-box-on-job-applications-in-washington> [<https://perma.cc/HQ4X-85RF>].

22. See S.B. 6582, 65th Leg., Reg. Sess. (Wash. 2018), <http://lawfilesexst.leg.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/Senate/6582.SL.pdf> [<https://perma.cc/9LE4-F9LW>] (providing that “an institution of higher education may not use an *initial* admissions application that requests information about the criminal history of the applicant” (emphasis added)).

23. *Comprehensive Guide to Bar Admission Requirements*, NAT’L CONF. B. EXAMINERS & ABA SEC. LEGAL EDUC. & ADMISSIONS BAR 16-17 (2018), <http://www.ncbex.org/pubs/bar-admissions-guide/2018/mobile/index.html> [<https://perma.cc/245C-V396>].

24. *Id.*

25. WASHINGTON STATE BAR ASS’N, PRACTICE AND ADMISSION RULES §§ 20-26 (2008).

26. *Id.* § 21(b)(9).

field of bar admissions and explained that my conduct would be scrutinized, but that I would have a very good chance to overcome it through continued sobriety and exemplary conduct. The precedent was favorable.<sup>27</sup> Shon Hopwood served as my greatest inspiration to begin the arduous process from prison to the law.<sup>28</sup> He spent over a decade in federal prison for armed bank robbery and became a licensed attorney through the Washington State Bar Association, and he is now a professor at Georgetown Law School and an advocate for criminal justice reform.<sup>29</sup>

However, the volunteer members of the Character and Fitness Board who make these decisions did not have access to the cases of Shon Hopwood and others whom I looked to as mentors and friends. The WSBA does not keep demographic data on the applicants who are admitted or denied, and the confidential nature of the process does not allow for them to have access to prior Board decisions.<sup>30</sup> Furthermore, the Washington Supreme Court had not issued any guidance on how the Board should interpret the rules that have governed admissions since 1984.<sup>31</sup> With so few legal constraints, the Board's decision was highly subjective, and the predictable result was driven by bias—a bias that affected my life in a very real way.

The WSBA Character and Fitness Board rejected my application to even take the bar exam for two primary reasons. First, the majority of the Board concluded that my six years of rehabilitative efforts were not enough; rather, my efforts were “tender,” “still fragile,” and “still in their infancy.”<sup>32</sup> Second, the Board con-

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27. Although there was limited case law available in published opinions, I knew others with multiple felony convictions who were successfully admitted to the bar in Washington State, including my friends Cleodis Floyd and Kelly Orr. Cleodis Floyd was indicted on sixty-five felonies before becoming a lawyer. Mary Pilon, *Should Ex-Convicts Be Lawyers?*, BLOOMBERG (Nov. 14, 2017), <https://www.bloomberg.com/news/features/2017-11-14/ex-cons-trying-to-be-lawyers-find-law-school-bar-exam-off-limits> [https://perma.cc/3G6V-ZBX5].
28. Form more on Professor Hopwood's experience and work regarding criminal reform, see Shon Hopwood, *The Effort to Reform the Federal Criminal Justice System*, 128 YALE L.J.F. 791 (2019).
29. Susan Svrluga, *He Robbed Banks and Went to Prison. His Time There Put Him on Track for a New Job: Georgetown Law Professor*, WASH. POST (Apr. 21, 2017), [https://www.washingtonpost.com/news/grade-point/wp/2017/04/21/bank-robber-turned-georgetown-law-professor-is-just-getting-started-on-his-goals/?noredirect=on&utm\\_term=.b9ca4c342999](https://www.washingtonpost.com/news/grade-point/wp/2017/04/21/bank-robber-turned-georgetown-law-professor-is-just-getting-started-on-his-goals/?noredirect=on&utm_term=.b9ca4c342999) [https://perma.cc/99V5-ACMD].
30. Sara Niegowski, *Fit to Practice Law: Examining the Character and Fitness Review Process*, 72 NWLAWYER 12, 52, 54 n.6 (2018).
31. *In re Wright*, 690 P.2d 1134 (Wash. 1984).
32. *In re Bar Application of Simmons*, 414 P.3d 1111, 1118 (Wash. 2018).

cluded that I possessed an attitude displaying “a sense of entitlement to privileges and recognition beyond the reach of others”<sup>33</sup> based on my advocacy for admission and the public recognition I had received because of some of my accomplishments.

I appealed to the Washington Supreme Court, where I was represented by my mentors John Strait and Shon Hopwood. It must have surprised both the court and the public that the brilliant attorney arguing on my behalf had himself been convicted of armed bank robberies just a few years prior. The court reversed the Board’s rejection. It embraced evidence-based practices for evaluating how long a person must show rehabilitation from substance use disorder and refrain from crime before they pose no substantial risk of recidivism. Although the court declined to adopt a bright-line rule for admission to practice law,<sup>34</sup> it cited to research showing that five years of sobriety and exemplary conduct should be given great weight in determining whether a person has transformed her life.<sup>35</sup> The court refused to adopt our suggested presumption that five years of law-abiding conduct establish the character and fitness necessary to practice law, giving flexibility for people with less time of documented desistance or sobriety. In retrospect, I agree with the court and view this flexibility as important. Through my personal experience mentoring and supporting others in substance use recovery, I understand that a relapse can prompt one towards recovery and result in profound change. A rigid rule could have mistakenly left out those who are equally committed to overcoming their history of abuse and equally qualified to be members of the legal profession.

The court also specifically rejected the finding that my demeanor displayed “entitlement,” and disagreed that it was appropriate to deny my application based on something so subjective. I felt vindicated when the court stated that I had “earned everything [I had] through dedication, talent, and a staggering amount of hard work,” and further, that I “rightly t[ook] pride in [my] extraordinary accomplishments, but there is no evidence that [I] expect[ed] special treatment.”<sup>36</sup> And the court issued a stern warning to the Board on the issue of potential gender bias: “Although every bar applicant is unique, we do not believe there is a sufficient basis on which to differentiate between Hopwood’s and Simmons’ respective attitudes toward their prior misconduct and the publicity they

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33. *Id.* at 1120.

34. *Id.* at 1117.

35. *Id.* at 1118 (citing Michael L. Dennis, Mark A. Foss & Christy K. Scott, *An Eight-Year Perspective on the Relationship Between the Duration of Abstinence and Other Aspects of Recovery*, 31 EVALUATION REV. 585, 604 (2007); John M. Nally et al., *Post-Release Recidivism and Employment Among Different Types of Released Offenders: A 5-Year Follow-up Study in the United States*, 9 INT’L J. CRIM. JUST. SCI. 16 (2014)).

36. *In re Bar Application of Simmons*, 414 P.3d at 1120.

have received, except for their gender.”<sup>37</sup> The court unanimously granted my application, affirming that “for purposes of bar admission, a moral character inquiry is determined on an individualized basis and . . . there is no categorical exclusion of an applicant who has a criminal or substance abuse history.”<sup>38</sup>

## VI

There are many lessons that bar associations across the country can take from my experience. Everyone agrees that the volunteer lawyers who give generously of their time to serve on character and fitness boards deserve appreciation, and they play an important role in protecting the profession. But we must do a better job of providing them with the skills necessary to make these complicated decisions. After all, most lawyers are neither social scientists nor substance use disorder counselors.

FJIs are uniquely equipped to find meaningful careers as lawyers. Their clients may have more faith in them because of their shared experiences. People who have personally lived through the criminal legal system bring different perspectives regarding the actual effects of the decisions made at every stage of the proceedings.<sup>39</sup> We understand the logistical barriers a person faces while trying to accomplish anything from a prison cell, and the demoralizing effect this can have on those incarcerated. And we know the effect of collateral consequences, because we’ve lived with them. Moreover, lawyers who have been marginalized may provide exceptional legal services because they are motivated by their own hard-earned second chance at life.

Since my character and fitness denial, I have spoken in a variety of venues about the need to equip volunteer decision-makers with training on substance use recovery, recidivism, and implicit bias. It appears that the WSBA has not taken its mistake in my case lightly. Recently, the WSBA hired an inclusion and equity specialist who will begin to provide ongoing, mandatory trainings to various boards. The Character and Fitness Board will be a top priority.<sup>40</sup> Implicit-

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37. *Id.* at 1122.

38. *Id.* at 1112.

39. Reginald Dwayne Betts, *Could an Ex-Convict Become an Attorney? I Intended to Find Out*, N.Y. TIMES MAG. (Oct. 16, 2018), <https://www.nytimes.com/2018/10/16/magazine/felon-attorney-crime-yale-law.html> [<https://perma.cc/8N72-MYG3>] (telling the story of Dwayne Betts, a Yale Law School graduate and criminal justice scholar, who was initially denied admission to the bar); *see also* *Apodaca v. Raemisch*, 139 S. Ct. 5, 7 n.8 (2018) (Sotomayor, J., dissenting from denial of certiorari) (citing Reginald Dwayne Betts, *Only Once I Thought About Suicide*, 125 YALE L.J.F. 222 (2016)).

40. Niegowski, *supra* note 30, at 54.

bias training is a start, but I will keep advocating for other reforms until the profession allows room for lawyers that represent the community it serves. This includes people who come from marginalized backgrounds and have criminal records.

If we are to create an inclusive legal profession, a conditional character and fitness approval process may be necessary. For many FJIs, passing the moral character and fitness test can be a gamble. This uncertainty functions as a strong deterrent to investing the time and money necessary to earn a law degree. Through a conditional approval process, an individual may be given a realistic appraisal of their likelihood of passing prior to beginning law school—ideally, before even applying. Those who receive a conditional approval might then receive support from the bar association they wish to join by being relieved of the character and fitness examination, and instead receiving approval so long as the applicant has had no further convictions. This would relieve applicants of the burden of an uncertain and traumatic character and fitness hearing only after they have already invested so much towards joining the profession. Only in a scheme such as this can the legal profession achieve the goal of building a diverse profession that reflects the community it serves.

Further, all decision-makers who determine moral character and fitness should have implicit bias training and be educated on substance use disorder, mental health, and recidivism data. In the era of mass incarceration, we must be vigilant about the risks of subjective judgments about an individual's past misconduct if we are truly to be a nation of second chances. Of all places, the legal profession should not be exempt.

## VII

Across the legal system, laws and policies push the most marginalized communities into a greater degree of invisibility.<sup>41</sup> The collateral consequences of a conviction are one set of these laws and policies. The legal profession takes pride in attempting to balance the scales of justice by advocating for the powerless. We as lawyers should be leaders in combating bias and injustice, and reforming our own professional admission standards is a badly needed start.

If we are to become a profession that reflects the values of inclusion and justice, we must start our efforts by looking in the mirror. We must value the lived

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41. See Courtney Cross, *Reentering Survivors: Invisible at the Intersection of the Criminal Legal System and the Domestic Violence Movement*, 31 BERKELEY J. GENDER L. & JUST. 60, 62-65 (2016); Bill Quigley, *Fourteen Examples of Racism in the Criminal Justice System*, HUFFINGTON POST (July 26, 2010, 7:45 AM), [https://www.huffingtonpost.com/bill-quigley/fourteen-examples-of-raci\\_b\\_658947.html](https://www.huffingtonpost.com/bill-quigley/fourteen-examples-of-raci_b_658947.html) [https://perma.cc/4RGH-6XZ4].

experiences and professional insight of the diverse communities we serve, including, but not limited to, people with a variety of cultural or racial identities, people with disabilities, people of various sexual orientations and gender identities, *and* people who have been involved with the criminal legal system. The single best way to balance the scales of justice is to empower individuals who have seen both sides of the law to reach out into our own communities and help other individuals climb up with us. That is the type of profession I want to contribute to and the kind of world I want to live in.

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