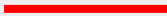




Unshackled: Stories of How We Can Both Hold Individuals Facing Serious Charges in the Criminal Legal System Accountable and Foster Their Rehabilitation



AALS Clinical Conference, San Francisco, CA

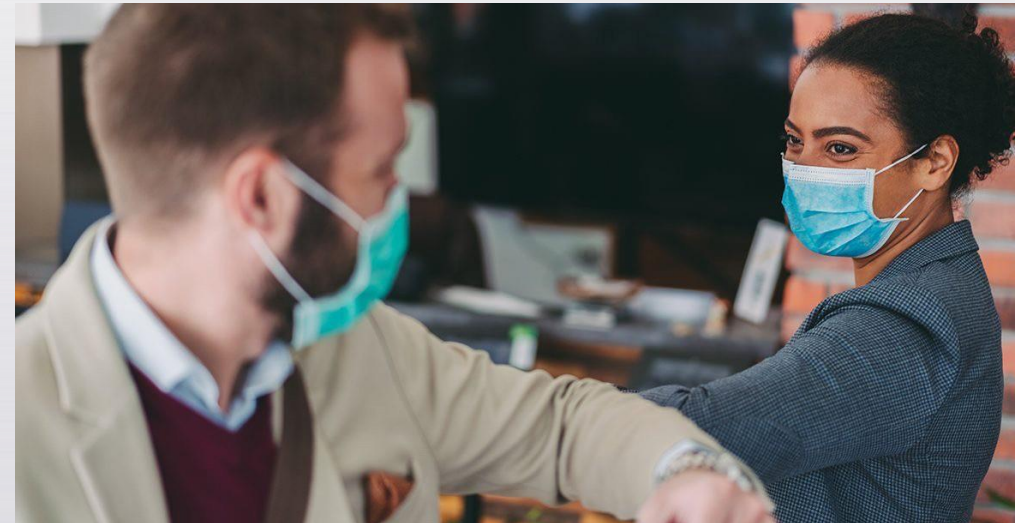
Julie E. McConnell, Director, University of Richmond School of Law Children's Defense Clinic

Mary Tate, Director, University of Richmond School of Law

Wrongful Convictions Clinic

During Covid-Focused on limiting court appearances for students

- Parole hearings provided the perfect opportunity to build skills and also help those who would otherwise not have access to counsel.



A little background:

In 1994, the Virginia General Assembly passed the
“**Truth in Sentencing Act.**”

- Abolished discretionary parole on 1/1/95.
Mandated 85 percent of sentence be served.

See Va. Code Ann. § 53.1-165.1 §§ 53.1-15

Parole in Virginia:

- Before we abolished parole, 41 percent grant rate.
 - After 1995, 2 to 6 percent grant rate depending on the makeup of the board.
- About 1700 eligible for “old law” discretionary parole.
- In 2020, expanded possibility of parole:
 1. **Fishback** cases.
 2. Individuals originally charged as youth and **incarcerated 20+ years**.

Va. Code § 53.1-134.1(2).

Patrick Wilson, *McAuliffe Replaces Parole Board Chairwoman in Effort to Speed Reforms*, Richmond Times-Dispatch (Jan. 10, 2017), http://www.richmond.com/news/Virginia/government-politics/mcauliffe-replaces-parole-board-chairwoman-in-effort-to-speed-reforms/article_c10dceb8-8549-55cb-9af8-a7c36f9a086c.html (citing Governor’s Commission on Parole Review, *supra* note 3).

- According to the Sentencing Project, one of every three Black boys and one of every six Latino boys born in 2001 will go to prison in his lifetime.
- At the same time, one of every seventeen white boys born that year can expect to go to prison.

Acculturated to Extreme Punishment

- Death Penalty. Virginia most efficient in the nation.
- In 1996, Virginia enacted option of **blended sentences** for serious crimes by minors.
- **Not a single one was sent to juvenile system first.**
 - Most sent directly to Supermax prisons.
 - Most of color.
 - One client, a woman, was only 14. Several 15.



Miller v. Alabama

- Mandatory life without parole constitutes cruel and unusual punishment because no consideration of these factors:
 1. **Immaturity**, can't appreciate risks/consequences.
 2. **Can't extricate themselves** from dysfunctional family.
 3. **Susceptibility to familial and peer pressures.**
 4. **Poor ability to work with police officers and attorneys.**
 5. **Significant capacity for rehabilitation.**

- See *Miller v. Alabama*, 567 U.S. 460, 477-78 (2012).

Our focus for Parole Board hearings:

1. How the *Miller* factors apply to our clients.
2. Evidence of remorse.
3. The individual's re-entry plan.
4. Any community support or opposition.
5. Institutional record & positive achievements
6. Mitigation around original offense.



Since 2020, we have represented @ 25 incarcerated individuals sent to prison when they were children.

- We have earned 6 parole grants and one compassionate release.
- We are awaiting decisions in many more.
- Handling multiple second appearances.

Grants:

- More than 25 years in prison.
- Transformation as they grew up.
- Developed empathy and remorse.
- Became positive role models.
- Embraced educational opportunities.
- Prosocial approach to life.
- All had at least one consistent person.
- Endeavored to move beyond the worst thing they ever did.



First Step Act case

- J.S. offered a plea to 3 years for selling a weapon he legally owned that was later used in a bank robbery where two guards killed. Not present.
- Turned down the offer and got a mandatory life sentence.
- We filed a motion for release under the “extraordinary and compelling circumstances” clause of the Act.
- After 25 years, he walked out of prison.
- Now reunited with family, working, and adjusting to life in the community.



Clemency Case

Y.B. pleaded guilty to 11 federal counts of wire fraud, theft of public money, aggravated identity theft; conspiracy, mail fraud and access device fraud resulting in a sentencing of 324 months, as well ordered to pay restitution amounting to \$493,506.60 to the Internal Revenue Service.

Y.B. was born to 15 yo mother and raised by grandmother. She was molested by father. At 14, she started smoking marijuana and using cocaine. Attempted suicide by overdose. Turned to petty theft to provide basic necessities such as food and clothes for herself and her siblings, and then out of school after eighth grade. Adopted friend's autistic son who is now 13 and has not seen him in 8 years.

While incarcerated Y.B. has taken a myriad courses to deepen their understanding of trauma and how it manifests, while also maintaining a pristine disciplinary record with no serious infraction and collaborated on community-building initiatives.



Charges

On May 15, 2013, a federal grand jury returned an indictment with the following counts:

- Counts 1 – 6: Wire Fraud (18 U.S.C.1343)
- Counts 7 – 11: Theft of Public Money (18 U.S.C. 641)
- Counts 12 – 17: Aggravated Identity Theft (18 U.S.C 1028A)
- Count 18: Conspiracy (18 U.S.C. 371, i/c/w 18 U.S.C. 287, 42 U.S.C. 1320d-6, and 18 U.S.C. 641)
- Count 19 – 24: Theft of Public Money (18 U.S.C. 641)
- Counts 25 – 30: Aggravated Identity Theft (18 U.S.C 1028A)
- Count 31: Mail Fraud (18 U.S.C. 1341)
- Count 32: Aggravated Identity Theft (18 U.S.C 1028A)
- Count 33: Access Device Fraud (18 U.S.C. 1029(a)(3))



Plea Agreement

Pleaded guilty to the following charges and faced the respective jail time and fines:

- **Count 3:** Wire Fraud; 18 U.S.C. § 1343; Class C Felony - 20 Years Imprisonment/\$250,000.00 Fine
- **Counts 9, 21, 24 :** Theft of Public Money; 18 U.S.C. § 641; Class C Felony - 10 Years Imprisonment/\$250,000.00 Fine
- **Counts 14, 27, 30, 32:** Aggravated Identity Theft; 18 U.S.C. § 1028A; Class E Felony - 2 Years Imprisonment/\$250,000.00 Fine
- **Count 18:** Conspiracy; 18 U.S.C. § 371 i/c/w 18 U.S.C. §287, 42 U.S.C. §1320d-6 and 18 U.S.C. §641; Class D Felony - 5 Years Imprisonment/\$250,000.00 Fine
- **Count 31:** Mail Fraud;18 U.S.C. § 1341; Class C Felony - 20 Years Imprisonment/\$250,000.00 Fine
- **Count 33:** Access Device Fraud; 18 U.S.C. § 1029; Class C Felony - 10 Years Imprisonment/\$250,000.00 Fine



Sentencing Factors

At sentencing, Y.B. faced a dramatically different guideline range than the one provided by the Probation Dept., and upon which she based her decision to plead. For these offenses, Y.B. received a base offense level of 7 for sentencing purposes.

Y.B. adjusted offense level amounted to 40. She received eight types of sentencing enhancements:

- **14 Points**, because \$550,150.60 in fraudulent claims was filed;
- **6 Points**, because she obtained and used over 350 stolen identities to advance her scheme;
- **2 Points**, because the offense involved “sophisticated” means under USSG §2B1.1(b)(10)(C), insofar that she generated false W-2s and created and filed false tax returns;
- **3 Points**, because she selected elderly and infirmed victims due to the “actual or perceived disability” under USSG §3A1.1(a);
- **4 Points**, because she was an organizer or leader of a criminal activity that involved five or more participants under USSG §3B1.1(a);
- **2 Points**, because she willfully obstructed or impeded justice with respect to an investigation under USSG §3C1.1, in that she allegedly threatened a witness and made threats to burn down the office of the investigating agency; and
- **2 Points**, because her conduct was “reckless” under USSG §3C1.2, insofar as she fled from authorities on several occasions and trespassed into a private apartment to facilitate escape. PSR at 9, ECF No. 45.

Because Y.B. demonstrated acceptance of responsibility for the offenses under USSG §3E1.1(a), and because Y.B. entered a guilty plea in a timely manner under USSG §3E1.1(b), her offense level was decreased by three levels at 10. In total, Y.B.. total offense level was 37.



Final Sentence

- On January 22, 2014, Y.B. was sentenced to a total of 324 months' imprisonment, consisting of:
 - 240 months on Count Three,
 - 60 months on Count Nine, and
 - 24 months on Count Fourteen.These were to be served consecutively.

- All other counts—Counts Eighteen, Twenty-one, Twenty-four, Twenty-seven, and Thirty through Thirty-three—were to run concurrently.

- She was additionally ordered to pay restitution amounting to \$493,506.60 to the Internal Revenue Service.

- Under USSG § 2B1.1, a defendant convicted of an offense under 18 U.S.C. § 1343, 18 U.S.C. § 641, 18 U.S.C. § 1029, and 18 U.S.C. § 1341 shall have a base offense level of seven.



Institutional Adjustment

- Taken myriad courses to deepen understanding of trauma and how it manifests in her.
- Participated in offense-specific programming to attenuate the impact of trauma on how it may express itself.
- Maintained a pristine disciplinary record with no serious infraction.
- Collaborated on community-building initiatives, as well as delegated housekeeping duties and responsibilities on Unit.



Family Background

- Born to 15 year old mother and raised primarily by grandmother
- Molested by father from 10 to 15 years old. Started smoking marijuana at 14 and started using cocaine. Attempted suicide by overdose.
- At a young age, Y.B. turned to petty theft to provide basic necessities such as food and clothes for herself and her siblings. Y.B. ultimately dropped out of school after eighth grade. She worked many odd jobs over the years, using the money to support herself and her siblings. .
- Her boyfriend of six years physically assaulted her culminating in breaking her nose with severe trauma and bruising to her eyes, sending her to the emergency room.
- Adopted friend's autistic son who is now 13 and has not seen him in 8 years.



Release Plan

- Housing and caretaking support from her mother
- Financial support and employment from her brother, who has extended an offer of employment to Y.B. as a dispatcher for his company, performing primarily remote work that connects truckers with driving assignments.
- Mentorship through an acquaintance, a current employee at FedEx Ground, who has promised to help her locate felon-friendly warehouses and assemble a competitive employment application for FedEx.