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Introduction to Symposim 2014: Vulnerable Defendants in the Criminal Justice System

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SYMPOSIUM 2014: VULNERABLE DEFENDANTS IN THE CRIMINAL JUSTICE SYSTEM

INTRODUCTION*

TAMAR R. BIRCKHEAD** AND KATIE ROSE GUEST PRYAL***

The *News and Observer* (Raleigh, N.C.) recently reported that, on a national scale, “studies estimate between 15 and 20 percent of jail and prison inmates have a serious mental illness.”¹ However, due to lack of state and federal resources and a punitive rather than treatment-oriented approach to misconduct, the mentally ill are often incarcerated rather than provided with appropriate therapeutic care.² Indeed, the mentally ill represent one of the most vulnerable groups that interact with the criminal justice system. Other particularly fragile groups caught up in the criminal justice system include people of color, undocumented immigrants, the physically and developmentally disabled, the homeless, and LGBTQ persons, including those who identify with more than one of these broad categories. Defendants from these groups face the challenge of not merely defending their liberty from the prosecutorial power of the state but attempting to do so from a place of extreme vulnerability.

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1. Craig Jarvis, *In “No-Man’s Land,” the Mentally Ill Pile Up in N.C. Jails*, NEWS & OBSERVER (Raleigh, N.C.) (May 4, 2013), <http://www.newsobserver.com/2013/05/04/2871740/in-no-mans-land-the-mentally-ill.html>.

2. E. FULLER TORREY ET AL., TREATMENT ADVOCACY CTR. & NAT’L SHERIFFS’ ASS’N, MORE MENTALLY ILL PERSONS ARE IN JAILS AND PRISONS THAN HOSPITALS: A SURVEY OF THE STATES 1 (2010), *available at* http://www.treatmentadvocacycenter.org/storage/documents/final_jails_v_hospitals_study.pdf (“We have now returned to the conditions of the 1840s by putting large numbers of mentally ill persons back into jails and prisons.”); *see, e.g.*, Clifton Adcock, *Prison Meds Reveal Disorders Severe for Mentally Ill Inmates*, OKLA. WATCH (Feb. 1, 2014), <https://oklahomawatch.org/2014/02/01/prison-meds-reveal-disorders-severe-for-mentally-ill-inmates/> (“In Oklahoma and nationwide, the remark is heard so often that it’s a truism: Prisons are now de facto mental institutions.”).

Another vulnerable group is juveniles—those who are under the age of eighteen and charged with criminal offenses. According to recent data, 1.5 million cases are prosecuted in juvenile court annually.³ Large numbers of these child defendants have suffered abuse, neglect, or other maltreatment; are from impoverished families; or suffer mental or emotional disabilities.⁴ Tens of thousands of these young offenders are ultimately prosecuted in criminal court, with sentences to adult prisons where they are at risk of physical, sexual, and psychological victimization by adult inmates and guards.⁵ Adolescents transferred to the adult system can also experience harmful disruptions in their social, emotional, and identity development.⁶

One such individual was Ismael Nazario, who, as a teenager, spent more than 300 days in solitary confinement—“the box”—at Rikers Island, a jail complex located in the middle of the East River in New York City.⁷ Nazario’s story of losing nearly a year of his childhood to solitary confinement provides an apt object lesson about the intersections of vulnerability and criminal justice.

During his days in solitary confinement, Nazario was held in a six-by-eight-foot cell containing only a bed, sink, and toilet, with a metal door and a small mesh window through which his food was

3. CHARLES PUZZANCHER, BENJAMIN ADAMS & SARAH HOCKENBERRY, NAT’L CTR. FOR JUVENILE JUSTICE, JUVENILE COURT STATISTICS 2009, at 6 (2012), available at <http://www.ncjj.org/pdf/jcsreports/jcs2009.pdf>.

4. See Tamar R. Birckhead, *Delinquent by Reason of Poverty*, 38 WASH. U. J.L. & POL’Y 53, 70–71 (2012); see also Shay Bilchik & Michael Nash, *Child Welfare and Juvenile Justice: Two Sides of the Same Coin*, JUV. & FAM. JUST. TODAY 17 (2008), <http://cjjr.georgetown.edu/pdfs/Fall%2008%20NCJFCJ%20Today%20feature.pdf> (discussing the effects of “childhood maltreatment,” including trajectories toward delinquency and the juvenile justice system).

5. Edward P. Mulvey & Carol A. Schubert, *Transfer of Juveniles to Adult Court: Effects of a Broad Policy in One Court*, JUV. JUST. BULL. 4–6 (Dec. 2012), <http://www.ojjdp.gov/pubs/232932.pdf>; see also NAT’L PRISON RAPE ELIMINATION COMM’N, REPORT 155–57 (2009), available at http://static.nicic.gov/UserShared/2013-03-29_nprec_finalreport.pdf (finding that juveniles accounted for twenty-one percent of all victims of substantiated incidents of inmate-perpetrated sexual violence in jails).

6. Mulvey & Schubert, *supra* note 5, at 5–6; see also ELIZABETH S. SCOTT & LAURENCE STEINBERG, RETHINKING JUVENILE JUSTICE 56–60 (2008) (discussing the fact that the period of adolescent development requires at least one supportive adult, a positive peer group, and participation in activities that promote autonomous decision making and critical thinking).

7. Trey Bundy, *Sixteen, Alone, 23 Hours a Day, in a Six-by-Eight-Foot Box*, MEDIUM (Mar. 5, 2014), <https://medium.com/solitary-lives/sixteen-alone-23-hours-a-day-in-a-six-by-eight-foot-box-26ab1e09632d>.

delivered.⁸ He was denied education, counseling, and other services necessary for an adolescent's growth, rehabilitation, and well-being. Ismael was initially sent to Rikers at age sixteen for getting into a fight with another student at school, and he spent two months there before the assault charge was ultimately dismissed.⁹ The following year he returned to Rikers when he could not afford to post bail for two alleged robberies.¹⁰ He was subsequently held in "the box" for hundreds of days—with his longest stretch lasting four months—for allegations of fighting with other inmates.¹¹ All of Nazario's time in solitary confinement at Rikers occurred before he was ever convicted of a crime, as a form of pretrial detention.¹²

Unfortunately, the troubling experience of Ismael Nazario at Rikers Island is not unique. In the United States alone, available data suggests there are at least 80,000 adult prisoners held in solitary confinement on any given day, including approximately 25,000 held in long-term solitary in "supermaximum" security prisons.¹³ Unfortunately, the number of minors held in solitary confinement is only an estimate, as the U.S. government does not require facilities to report how many minors are held in solitary or the duration of their confinement.¹⁴ What is known, however, is that the solitary confinement of youth harms young people in ways that are often more profound than its impact on adults, and the practice is used as a "long-term response to minor misconduct that does not threaten immediate harm to the youth or others, and is typically imposed for a minimum of twenty-four hours at a time, violating best practice standards for juveniles in detention."¹⁵

Nazario and so many other children should not have been legally subjected to this form of punitive solitary confinement for behaving in

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *See id.* ("Nazario first went to Rikers at 16, after an arrest on an assault charge. Before leaving at 19, he says, he had spent more than 300 days in solitary confinement—all before being convicted of a crime.").

13. *See* Jean Basella & James Ridgeway, *How Many Prisoners Are in Solitary Confinement in the United States?*, SOLITARY WATCH (Feb. 1, 2012), <http://solitarywatch.com/2012/02/01/how-many-prisoners-are-in-solitary-confinement-in-the-united-states/>.

14. Bundy, *supra* note 7.

15. Tamar R. Birckhead, *Children in Isolation: The Solitary Confinement of Youth*, 50 WAKE FOREST L. REV. (forthcoming 2015) (manuscript at 4), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2512867##.

merely childish ways. This practice is yet another manifestation of how our criminal justice system criminalizes conduct that may, in fact, be a manifestation of a defendant's or inmate's vulnerability.

Vulnerable Defendants and the Criminal Justice System, the symposium that gave rise to this issue of the *North Carolina Law Review*, explored these and related issues, including the following: How does the criminal justice system handle vulnerable offenders from the moment they are initially processed through to the conclusion of their sentences? Why are these groups overrepresented within our courtrooms and prisons? Can we identify and propose strategies for reform?

This extraordinary event was one of the first law review symposia in the United States to bring together scholars who are working at the intersection of these disciplines—criminal law, disability law, critical race theory, juvenile justice, immigration law, developmental psychology, and prisoners' rights, among others. Against the backdrop of a culture of mass incarceration, the speakers created room for nuanced dialogue regarding the future of the criminal justice system with an emphasis on the vulnerable populations that are drawn into its wake. Ten of the symposium speakers have written articles for this volume: Carrie Griffin Basas of Saint Joseph's College; Cheryl Nelson Butler of Southern Methodist University Dedham School of Law; Frank Rudy Cooper of Suffolk University Law School; Shani King of the University of Florida Levin College of Law; Lisa T. McElroy of Drexel University Thomas R. Kline School of Law; Katie Rose Guest Pryal, attorney and author, Chapel Hill, North Carolina; Kathryn Sabbeth of the University of North Carolina School of Law; Leticia M. Saucedo of the University of California at Davis School of Law; Brenda V. Smith of Washington College of Law at American University; and Nicole Smith Futrell of the City University of New York School of Law. Also speaking were Tamar R. Birkhead of the University of North Carolina School of Law; Alexa Z. Chew of the University of North Carolina School of Law; Jeremy Collins, the Advocacy and Policy Counsel at the Southern Coalition for Social Justice, who focuses on community power building through criminal justice reform and voting rights advocacy; Karla McKanders of the University of Tennessee College of Law; and Erika Wilson of the University of North Carolina School of Law. Finally, three videos were shown in which individuals whose lives have been directly harmed by their interaction with the criminal justice system shared their stories, imbuing the discussion with a sense of urgency and

focus.¹⁶ The symposium was also live-streamed on the Internet and saved online for future viewing.¹⁷

As the articles in this issue make clear, awareness about the vulnerability of criminal defendants is increasing, but a critical piece is missing in the discussion of the ripple effects of a defendant's vulnerability: the nexus between the source of one's vulnerability—whether it is youth, gender, race, ethnicity, sexual orientation, immigration status, socioeconomic status, or physical or developmental disability—and the experience of imprisonment. In their groundbreaking empirical study of 989 women inmates in North Carolina's state prisons, *Deprivation and "Deviance": The Disability and Health Experiences of Women in North Carolina's Prisons*,¹⁸ Carrie Griffin Basas and Lisa Peters argue that any effort to cope with disability in the context of incarceration requires moving beyond narratives of prisoner "deviance" to consider broader issues of "stigma, poverty, trauma, comorbidity" and their management.¹⁹ By focusing on the impact that health, illness, and disability have on inmates, Basas and Peters challenge the premise that offenders should be reduced to their particular " 'risk factors' " in order to improve public health and, thus, reduce recidivism rates.²⁰ Instead, the authors emphasize that women who are or have been incarcerated experience a wide variety of disabilities that are "intersectional, multi-faceted, contextual, and complex[,] " which the " 'war' on crime[,] . . . drugs, or . . . HIV[] fails to capture."²¹ Their study serves as a compelling call for greater collaboration and creativity in

16. See generally Ctr. for Investigative Reporting, *The Box: Teens in Solitary Confinement in U.S. Jails, Prisons and Juvenile Halls*, YOUTUBE (Mar. 1, 2014), <https://www.youtube.com/watch?v=jA1LkgyQ4Iw> (relating the story of Ismael Nazario, which was shared by Professor Birkhead and Dr. Pryal during the symposium Introduction); S. Coal. for Soc. Justice, *People Change*, VIMEO (July 22, 2014), <http://vimeo.com/101411535> (documenting the stories of people with criminal records who have faced barriers to employment, housing, and education, and shared by Jeremy Collins of the Southern Coalition for Social Justice); *The Scars of Stop & Frisk*, VIMEO (June 6, 2012), <http://vimeo.com/43516529> (exploring the impact of New York's stop and frisk policing on a young man who was stopped more than sixty times before he was eighteen-years-old, and shared by Professor Nicole Smith Futrell).

17. See *Symposium Media*, N.C. L. REV., <http://www.nclawreview.org/symposium/symposium-media/> (last visited May 6, 2015).

18. Carrie Griffin Basas & Lisa Peters, *Deprivation and "Deviance": The Disability and Health Experiences of Women in North Carolina's Prisons*, 93 N.C. L. REV. 1223 (2015).

19. *Id.* at 1268–69.

20. *Id.* at 1226.

21. *Id.*

approaching both health and disability issues, and their article demonstrates that state prisons and jails as well as postrelease programs must consider the impact that trauma, poverty, and stigma have upon a vulnerable inmate population.

Cheryl Nelson Butler continues the exploration of vulnerability with *Bridge over Troubled Water: Safe Harbor Laws for Sexually Exploited Minors*,²² a critique of recent laws that have been touted as providing a “groundbreaking legal response” to the scourge of child commercial sexual exploitation in the United States.²³ Proponents of these laws assert that they represent a “paradigm shift” in the way the legal system treats prostituted children—from a punitive approach to a protective one.²⁴ Butler, however, closely analyzes these legislative schemes and finds that while their goal of providing specialized rehabilitative programs for sexually exploited minors is well intentioned, the laws fail to provide meaningful legal protection and instead threaten criminal prosecution if the young person fails to cooperate.²⁵ Acknowledging the fiscal challenges inherent in providing comprehensive services to a vulnerable and ever-growing population, Butler draws on state, federal, and international law to propose best practices for achieving true safe harbor for prostituted youth.²⁶

Frank Rudy Cooper, in *Always Already Suspect: Revising Vulnerability Theory*,²⁷ addresses the vulnerability of young men of color to the implicit biases and suspicions of police officers.²⁸ He takes as his starting point the, “disproportionate[] hound[ing of] young men of color . . . [that is] not justified by any disparities in arrest or crime statistics.”²⁹ Rather, young men of color are incarcerated at disproportionate rates because they are targeted by police suspicion—that is, racial profiling.³⁰ In searching for ways to address racial profiling, Cooper first turns to Martha Fineman’s vulnerability theory, which he then rejects, in its current state, for its colorblind,

22. Cheryl Nelson Butler, *Bridge over Troubled Water: Safe Harbor Laws for Sexually Exploited Minors*, 93 N.C. L. REV. 1281 (2015).

23. *Id.* at 1286–87.

24. *Id.* at 1285–86.

25. *See id.* at 1285–88, 1334–37.

26. *Id.* at 1287–88, 1331.

27. Frank Rudy Cooper, *Always Already Suspect: Revising Vulnerability Theory*, 93 N.C. L. REV. 1339 (2015).

28. *Id.* at 1340–41, 1347.

29. *Id.* at 1341.

30. *Id.* at 1340–41.

post-identity approach to identity-based problems such as racial profiling.³¹ He uses *Floyd v. City of New York*³² to define the problem of racial profiling, in light of which vulnerability theory must be revised.³³ Cooper concludes that, because “[w]hen it comes to men of color, we are always already suspect,” vulnerability theory must be revised to take into account the nonuniversal condition of racial identity.³⁴

Shani King shifts the discussion’s focus to the impact of incarceration on the children of incarcerated teenagers in *Cost-Effective Juvenile Justice Reform: Lessons from the Just Beginning “Baby Elmo” Teen Parenting Program*.³⁵ After reviewing the literature on the devastating effects of mass incarceration on individuals, families, and communities,³⁶ King profiles a model intervention program developed by the Youth Law Center in San Francisco, California.³⁷ This “cost-effective, sustainable program of parental instruction and structured child visitation” has been shown to foster the parent-child relationship by heightening the quality of interaction, facilitating secure attachments, and maintaining strong bonds between children and their incarcerated parents, with the goal of improving psychosocial developmental outcomes for both groups.³⁸ While recognizing the salutary effect of the visitation program on inmates’ children, King also highlights the underappreciated effects on the young prisoners themselves, such as reduced recidivism rates as well as a lower rate of behavior infractions when incarcerated.³⁹

Lisa T. McElroy, a long-time advocate for lawyers with psychiatric disabilities (i.e., mental illnesses), argues in *Is It Crazy to Think that Attorneys with Mental Health Disabilities Are Uniquely Situated to Help Prisoners?*⁴⁰ that such lawyers have a particular gift to

31. *See id.* at 1342, 1344–46.

32. 959 F. Supp. 2d 540 (S.D.N.Y. 2013).

33. Cooper, *supra* note 27, at 1346.

34. *Id.* at 1363–64.

35. Shani King, Rachel Barr & Jennifer Woolard, *Cost-Effective Juvenile Justice Reform: Lessons from the Just Beginning “Baby Elmo” Teen Parenting Program*, 93 N.C. L. REV. 1381, 1383–84 (2015).

36. *See id.* at 1384, 1385–407.

37. *Id.* at 1407–12 (detailing the Just Beginning “Baby Elmo” Teen Parenting Program).

38. *See id.* at 1408, 1411–12.

39. *Id.* at 1411–12.

40. Lisa T. McElroy, *Is It Crazy to Think that Attorneys with Mental Health Disabilities Are Uniquely Situated to Help Prisoners?*, 93 N.C. L. REV. 1419 (2015).

give to the profession of law.⁴¹ As research reveals high rates of mental illness in prisons and jails,⁴² research also reveals similarly high rates of mental illness among lawyers.⁴³ These lawyers with psychiatric disabilities, McElroy points out, may be particularly effective counselors for defendants and inmates with psychiatric disabilities.⁴⁴ For example, lawyers with psychiatric disabilities can perhaps more effectively advocate for and educate prison officials about the needs of mentally ill clients, and they may be more likely to advocate for better mental health care for their clients.⁴⁵

In the medical context, a diagnosis of psychiatric disability (i.e., mental illness) typically arises for treatment purposes. But all too often, as Katie Rose Guest Pryal points out in Heller's *Scapegoats*,⁴⁶ in a legal context, such disabilities become an excuse to criminalize, or quasi-criminalize, a person.⁴⁷ For example, in *District of Columbia v. Heller*,⁴⁸ the majority of the Supreme Court of the United States agreed that gun rights could be acceptably stripped from both felons and the mentally ill—implicitly criminalizing medical diagnoses and permanently criminalizing felons.⁴⁹ Similarly, emergency involuntary civil commitment proceedings often lack the minimum due process protections afforded criminal defendants,⁵⁰ even though civil commitment has far-reaching consequences.⁵¹ In our new era of hypermedia, “spree-killings” and speculations about the mental illness of the shooters have created a frenzy of fear around mental illness and guns, unifying the political left and right.⁵² All seem to agree that greater mental health care—an argument for easing the process for involuntary civil commitment—will prevent gun violence, a red herring that ignores that the vast majority of gun violence is *not* perpetrated by people with psychiatric disabilities.⁵³ In short, people

41. *Id.* at 1432–34.

42. *Id.* at 1430.

43. *Id.* at 1426–27.

44. *Id.* at 1433–34.

45. *Id.* at 1436–37.

46. Katie Rose Guest Pryal, *Heller's Scapegoats*, 93 N.C. L. REV. 1439 (2015).

47. *Id.* at 1441–48.

48. 554 U.S. 570 (2008).

49. *See id.* at 626; *see also* Pryal, *supra* note 46, at 1450–53 (describing the *Heller* majority opinion and its discussion of acceptable gun rights limitations).

50. Pryal, *supra* note 46, at 1460–62 (describing the standards governing emergency civil commitment).

51. *Id.* at 1441 (sketching the consequences of involuntary commitment).

52. *Id.* at 1442 & n.7.

53. *Id.* at 1444–45.

with psychiatric disabilities are quasi-criminalized and stripped of rights in ways that most Americans are willing to accept because they are afraid of people with psychiatric disabilities.⁵⁴

Kathryn Sabbeth steps back from the focus on the vulnerable defendant to examine the societal role of lawyers, asking whether a client's vulnerability might permit zealous acts of representation that would otherwise violate ethical norms in *Zeal on Behalf of Vulnerable Clients*.⁵⁵ She examines the meaning of "zeal" and defines it as "the dedication with which the lawyer pursues her client's interests," acknowledging that lawyers' zeal is expected to be contained within the bounds of the law.⁵⁶ She then explores who will be included among the "vulnerable," drawing on the work of Martha Fineman to conceive of new ways to imagine the legal system and lawyers' role within it.⁵⁷ Sabbeth implicitly argues that lessons about zealous representation of criminal defendants ought to be translated into the context of civil representation where the "basic human needs" of vulnerable clients are at stake.⁵⁸ Essentially, she argues that the vulnerability of a client should allow for an expanded approach to lawyering.⁵⁹

In *The Making of the "Wrongfully" Documented Worker*,⁶⁰ Leticia Saucedo implicitly begins from the premise that detaining and deporting immigrants for their criminal activity has become a rallying cry in the past decade and that both sides of the political spectrum at federal, state, and local levels agree that noncitizens who commit crimes should be detained and deported.⁶¹ Recognizing that the rise in

54. *Id.* at 1441–43.

55. See Kathryn A. Sabbeth, *Zeal on Behalf of Vulnerable Clients*, 93 N.C. L. REV. 1475, 1483 (2015).

56. *Id.* at 1480, 1482.

57. *Id.* at 1477–79, 1497–503.

58. *Cf. id.* at 1497–503 (noting that ethicists consider criminal defense a special case and arguing that this is so because of criminal defendants' vulnerability—a vulnerability shared by some clients in the civil context, particularly those whose "basic human needs" are at issue).

59. See *id.* at 1477 ("[S]ubstantive equality requires . . . heightened zeal on behalf of vulnerable clients.").

60. Leticia Saucedo, *The Making of the "Wrongfully" Documented Worker*, 93 N.C. L. REV. 1505 (2015).

61. *Cf. id.* at 1517–20 (noting that the Obama administration deported the largest number of immigrants in U.S. history while focusing particularly on immigrants who have committed crimes). Because there is widespread agreement that criminal undocumented immigrants should be deported, state efforts to criminalize immigrant work effectively constitute an end run-around the prerogatives of the federal government in setting immigration policy. See *id.* at 1506–08.

this rhetoric coincides with the criminalization of behavior typical only in immigrant communities, Saucedo examines identity theft laws in the context of the immigrant workplace and their effects on efforts to detain and remove already vulnerable immigrant populations.⁶² She argues that state identity theft laws affecting regulation of immigration are preempted because Congress has occupied the field of immigration law.⁶³ Saucedo concludes by “call[ing] for a return to” the intent of Congress to address the employer pull for workers “rather than plac[e] the blame on the” immigrants pulled “into the migration stream.”⁶⁴

In *Boys, Rape, and Masculinity: Reclaiming Boys’ Narratives of Sexual Violence in Custody*,⁶⁵ Brenda V. Smith relies on a decade of data from the U.S. Department of Justice to establish a pattern of female-staff involvement in sexual interactions with boys in custody.⁶⁶ She finds that although such interactions violate agency policies and the laws of every state, agency officials and the boys themselves rarely perceive them as abusive sexual conduct.⁶⁷ Drawing on masculinities scholarship and feminist theory, Smith examines “how common narratives of masculinity . . . and feminism [work to] silence boys’ stories of victimization . . . by women.”⁶⁸ This societal blind spot not only harms boys by failing to recognize their vulnerability, but it also fails to recognize female power.⁶⁹ Smith concludes with policy prescriptions related to prevention, punishment, education, and training.⁷⁰

In our final entry, Nicole Smith Futrell reflects on the ways in which personal narrative can empower vulnerable communities and advance a movement against aggressive policing practices in *Vulnerable, Not Voiceless: Outsider Narrative in Advocacy Against Discriminatory Policing*.⁷¹ Building on scholarship from critical race

62. *See id.* at 1517–20, 1529–34, 1546–50.

63. *Id.* at 1507, 1554–56.

64. *Id.* at 1507–08, 1556–57.

65. Brenda V. Smith, *Boys, Rape, and Masculinity: Reclaiming Boys’ Narratives of Sexual Violence in Custody*, 93 N.C. L. REV. 1559 (2015).

66. *See id.* at 1565–66.

67. *See id.* at 1566–71.

68. *Id.* at 1562.

69. *See id.* at 1562, 1589–92.

70. *Id.* at 1592–94.

71. Nicole Smith Futrell, *Vulnerable, Not Voiceless: Outsider Narrative in Advocacy Against Discriminatory Policing*, 93 N.C. L. REV. 1597, 1598–99 (2015).

theory and clinical legal scholarship,⁷² Smith Futrell draws lessons from *Floyd* and the anti-stop and frisk movement about the role that narratives of vulnerable populations can play in social justice mobilization.⁷³ She argues that such narratives can be used to combat marginalization, particularly as it relates to civic engagement, and demonstrates that the narratives in *Floyd* encouraged mobilization, supported litigation, and gave distinct texture to the legal and social discussion of the race-based tactics used by law enforcement in New York City.⁷⁴

Ismael Nazario, who spent the equivalent of ten months in “the box,” is now in his twenties and has found meaningful work counseling adults and teenagers who have been recently released from Rikers.⁷⁵ Nazario recognizes that growing up within the confines of Rikers should have left him irreparably damaged, but remarkably, he was not broken. “I used to see a lot of adolescents go home, and they would be back on Rikers Island in two or three weeks’ time,” he has explained.⁷⁶ “I came to the realization that Rikers is their real home, and that’s real sad.”⁷⁷ Nazario is a father now, and he imagines that one day he will share his experience with his daughter—but not until she is old enough.⁷⁸

With *Vulnerable Defendants and the Criminal Justice System*, we hope to shine light on the plight of individuals like Nazario and others whose stories we have shared. Whether it is solitary confinement, the prosecution of minors for prostitution, racial profiling, criminalizing the mentally ill, or sexually abusing children in custody, the common denominator is that these practices are all by-products of the systemic problems that continue to plague our criminal justice system. Confronting the issues discussed during the symposium and elaborated upon in this volume is a critical step toward addressing such broader systemic problems as the vanishing social safety net, generational poverty, implicit bias, the school-to-prison pipeline, and mass incarceration. We hope that the symposium as well as this special issue will help move the conversation forward.

72. *Id.* at 1605–16 (using critical race theory and clinical legal scholarship to develop a theory of the potential for outsider narrative to impact movements against aggressive policing).

73. *Id.* at 1616–31.

74. *Id.* at 1631–39.

75. Bundy, *supra* note 7.

76. *Id.*

77. *Id.*

78. *Id.*

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INTRODUCTION

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