

INTERVIEW WITH TARRA SIMMONS: FORGING THE WAY FOR FORMERLY INCARCERATED LAWYERS

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INTRODUCING TARRA SIMMONS

Tarra Simmons is a recent magna cum laude graduate of Seattle University Law School and a Skadden Fellow with the Public Defender Association of Seattle, where she helps individuals with criminal records overcome legal barriers to housing and employment and obtain relief from legal financial obligations. Ms. Simmons was released from prison in 2013 having served nearly two years in the Washington State Department of Corrections before pursuing her legal studies. Upon graduation from law school, Tarra received awards and honors including the 2016 Legal Foundation of Washington's Goldmark Internship, the Dean's Medal, and the Distinguished Graduating Student Award. She is the first Seattle University student to receive the prestigious Skadden Fellowship and was selected by National Jurist as National Law Student of the Year.

While in law school, Tarra interned with public interest organizations including the Northwest Justice Project, Disability Rights Washington, the ACLU of Washington, Columbia Legal Services, and the Public Defender Association. Tarra has also served on a variety of coalitions and task forces working on policy reforms, and was recently appointed by Governor Inslee to the Washington Statewide Reentry Council, where she was elected to serve as co-chair along with King County Prosecutor Dan Satterberg. Governor Inslee also appointed Tarra to the Public Defense Advisory Committee. She has worked with the grassroots organizing group Civil Survival since its launch in 2015 and is currently its Executive Director.

Tarra is a sought-after speaker and has spoken at judicial conferences, Supreme Court symposia, graduations, prisons, community meetings, treatment centers, and legislative hearings.

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Could you tell me about your work and your fellowship? What kinds of issues do you focus on and how do you address them?

My work has been focused on removing barriers for people who have been involved with the criminal justice system. I first started law school because I am formerly incarcerated. When I came out of prison, I was facing all sorts of barriers, like the court fines that had accrued while I was in prison and couldn't pay because I couldn't find a job. Even though I was a registered nurse—and I was able to keep my license—I wasn't able to find gainful employment. I was working at Burger King and had kids to provide for. The government started garnishing my paycheck to pay for court costs. I felt that it was just so difficult. I was being evicted because my house went into foreclosure because I was in prison, and I was fighting my family law case for my divorce from my husband. I had all these legal issues, and I was fortunate enough to get help from a legal clinic with reentry. I thought, wow this is really great. My friends who were in recovery with me were also facing similar issues, and there weren't enough resources to go around. And I thought, if this is a problem for me, this is a problem for lots of other people. So I'm going to go to law school and figure out how to change the system for myself and for others.

I was really excited to start law school and get involved with helping and supporting other people—working with Ban the Box for employment and reforming the Legal Financial Obligations (“LFO”) system, which is monetary sanctions and court fines. We call it Legal Financial Obligations here in Washington State. I started to realize that this is just one part of the criminal justice system.

We have so many different points in the system to help people. I think about it on a continuum. We can help people just by supporting families in general, so kids have better opportunities while they're in school. I've been working on school-to-prison pipeline issues, especially because my son was suspended a bunch of times for compulsive behavior related to his disability. He is African American, and I was thinking about the race equity around that; the white kids weren't being suspended but my son was. So, I started working on school discipline policy.

Next on the continuum: when people do encounter law enforcement, how can we divert them from the criminal justice system altogether? I was able to do a full-time externship with the Public Defender Association in Seattle, which is now my host organization for my Skadden Fellowship. That's where the law enforcement-

assisted diversion program¹ started, and now it's growing nationally. There are several other cities that have this program, where law enforcement, instead of taking people suspected of low-level drug crimes or prostitution to jail, diverts them to case management so they don't even touch the system. And there's no requirement for follow-up. They don't have to go to drug court or anything like that.

Then, next on the continuum, when people are in the system, having the time they serve be just and proportionate to other people. All of these long sentences—I haven't really worked on sentencing reform, but it is an area I'm interested in.

I have tried to raise awareness around conditions of confinement and what programming and services are being offered during this time of incarceration, because that very much feeds into supportive reentry outcomes. If people can access mental health treatment and substance abuse treatment while they're in prison, they'll have a better chance at reentry.

But most of my work is on reentry and collateral consequences. The Governor appointed me to the Statewide Reentry Council,² where I have been the co-chair with our King County prosecutor. It's a diverse group of people: there's law enforcement, somebody from the prison, another directly-impacted person, community organizations, employers, and housing providers. We are charged with advising the legislature on reform needed to improve reentry outcomes in our state. At the point of reentry, I mentioned all the kinds of support that people can get in prison, including support in developing a solid reentry plan. What we see in Washington State is that people are released homeless, with \$40 and a bus ticket, and expected not to return. But we know that one in three people will return to prison within three years, so how can we help people be released into supportive environments, where their basic needs are cared for? Because if not, they're going to have to commit crimes to live. They're not going to be able to maintain their sobriety, or get access to mental health care, or continue anything they did in prison if they don't have housing.

And then when you have people like me, who are many years out of prison, and somehow we have support and services to help us in the first 24 and the first 72 hours, and the first three months, and the first year, and now we've moved forward with our lives, and we've accessed higher education, and we have been able to find meaningful employment, but we're still suffering with the 40,000 collateral consequences of the conviction—when is our end date? When do we get a clean slate?

¹ *LEAD Law Enforcement Assisted Diversion*, LEADKINGCOUNTY.ORG, <http://leadkingcounty.org/> (last visited October 22, 2018).

² *Washington Statewide Reentry Council*, DEPARTMENT OF COMMERCE, <http://www.commerce.wa.gov/about-us/boards-and-commissions/statewide-reentry-council/> (last visited October 22, 2018).

Now, with the New Hope Act,³ if we get that passed, people will have a meaningful route to vacate their criminal record. For example for me, I can never volunteer with my kid at school. I want to stop the generational cycle of incarceration. I want to be there for my children and show them that they matter to me. I want to show up to their class once a month and chaperone them and their friends on field trips, but I can't ever because of my conviction record. So, when do I ever really get to rejoin society? I'm still reentering even though I have a law degree. Even though the governor has appointed me to two boards, not just the Statewide Reentry Council but also the Public Defense Advisory Committee.⁴ And the whole situation with sitting for the bar exam, even though I graduated *magna cum laude* from my law school, with the Dean's Medal, with the Skadden Fellowship, I can't even sit for the bar exam because of barriers to the legal profession for people with criminal records. When do I ever really get to reenter, is the question.

Even when I want to apply for a house to rent, it comes up. When I want to apply to jobs. Even in law school, people have wanted to hire me, but their insurance wouldn't allow them to hire me, or there's a federal regulation that prevents them from hiring me. We have a friendly prosecutor's office; they see my perspective as needed in reforming their own practices within the prosecutor's office, and [the prosecutor] wanted to hire me but can't because of a federal regulation that won't allow me access to the federal database necessary to evaluate potential LEAD clients. There are so many collateral consequences—the ABA put out a report⁵ of the more than 48,000. I have friends who have 20-year-old convictions who can't get life insurance, because life insurance asks, "Have you been convicted of a crime?" People don't even realize how we are permanently branded, what that means, and how that plays out in our everyday lives.

Can you tell me more about the Statewide Reentry Council?

We decide what the goals are. We have complete autonomy to do that, but we have to get the legislature to agree with us. So, it is our duty to advise the legislature and the governor's office on reform issues that will improve reentry outcomes. But getting the legislators to listen to us is a different story. And that has been political, in some instances. I don't know why they don't respond to us, but it's politics I guess. We started last July, so we've only been a council for a little over a year. We had one legislative session with an interim executive director and fifteen

³ Washington House Democrats, *Hansen's New Hope Act removes barriers; provides hope for second chance*, HOUSE DEMOCRATS (Feb. 1, 2018), <https://housedemocrats.wa.gov/news/hansen-re-entry-bill-removes-barriers-provides-hope-for-second-chance/> (last visited October 22, 2018).

⁴ *OPD Advisory Committee*, WASHINGTON STATE OFFICE OF PUBLIC DEFENSE, <https://www.opd.wa.gov/index.php/about-opd/14-admin/23-advisory-committee> (last visited October 22, 2018).

⁵ *National Inventory of Collateral Consequences of Conviction*, JUSTICE CENTER, <https://niccc.csgjusticecenter.org/>.

volunteers who have full time jobs, so we weren't as active last year as we wanted to be. This year, I am making that my priority—to be in the legislature. I've changed the focus of my work to do more policy advocacy and part of that is recommending to the legislators the goals of the Reentry Council and what our suggestions are.

Why were you prevented from sitting for the bar?

I was prevented from sitting for the bar exam because of my past history of substance use disorder and my involvement with the criminal justice system. I was really surprised that the Character and Fitness Board denied me, because I went to law school knowing that many people had even more serious past records than me and had been allowed to take the bar exam and become lawyers. What I have now learned through the process is that the Character and Fitness Board is really a subjective assessment. It's based on the board's gut feeling, because they are taking a record of someone's life and are asked to make a decision against 32 factors and sub-factors, such as time since last offense and whether they believe a person shows remorse for their past misconduct, etc. The board members change every three years and bring their own perspectives to the decisions, so it's really hard to predict what any particular board will decide. In the end, they said I didn't have enough time since my last conviction and that I had a "sense of entitlement" to sit for the bar exam. I do think that when women show any sense of being proud of their accomplishments, we have historically been viewed negatively about this. I didn't believe I had a sense of entitlement, but it may be that because I believe people in general should be able to work hard and earn a second chance, that came through, and people making the decision do not necessarily believe that. Again, it's just another example of all the things I have been working toward: an end date to the sentence. If we put people through rehabilitation programs but don't believe they can be rehabilitated, then why don't we just sentence everyone to a life sentence because that is essentially what is given.

What happened in your Washington State Supreme Court case?

In my Supreme Court case, it was really a "Hail Mary" to get me over this obstacle. It had been 35 years since the State Supreme Court had taken a bar admission up for appeal in a public way. So, the decision to appeal was really a stretch. However, I was so lucky to have an army of lawyers to help with this—hundreds of lawyers who believed in me and believed in rehabilitation and second chances. I was also lucky to have Shon Hopwood agree to argue my case. He had served 12 years in federal prison for armed bank robberies and had been admitted as a lawyer in Washington State. He is also a great personal friend. His argument was: if he and others with serious records of past misconduct got admitted, why not me? Also, he argued that people should be able to show proof of rehabilitation, because it is our current character that matters, and character is not static. In the end, the Supreme Court issued a unanimous order granting me the right to sit for

the bar exam.⁶ They issued the opinion within hours after the oral argument. I still get emotional thinking of how many people supported me, including the ACLU of Washington who wrote an Amicus Brief signed on by 48 other organizations and scores of notable attorneys and law professors. My goal is to make this process easier for others, and fight every day to ensure other people have the same level of access and support I did in overcoming these barriers to a second chance at life.

How did you decide to go to law school specifically, instead of doing other kinds of work related to criminal justice?

Well, I guess I just wanted to be a lawyer. I wanted to actually represent people because I'm seeing these stories play out in a very personal way throughout my own community, my recovery networks, my friends and family. I come from a low-income background where the criminal justice system personally affects the people in my neighborhood, the people around me, so I wanted to help them on an individual basis. That's why I went to law school, and that's still my hope and my dream. But I also realized that if I want to be a drug counselor or a reentry navigator or something like that, I always knew there was a systemic piece to it too. I wanted to learn how to navigate through the bill-making process to actually reform the system. I knew that law school would help me learn policy advocacy also.

On the legal piece—is there an unsettled legal question that really affects your work?

There are a lot of them. The biggest one for me is: at what point do people pay their debt to society? That has to do with the work I'm doing around clean slates. Back in the day, people would go to prison, and they would come home, and they would have a clean slate because we didn't have technology the way we do now. But now the records are so easily accessible. You can Google somebody and find newspaper articles from the day they were arrested. The question is legal and moral; about when do we reach the point of redemption, and how does that play out in the legal field?

Do you think that the debt has to be paid via prison?

No, I don't. I think that most people who even come into the system should be diverted away. I sat in a prison yesterday, and I was at a conference and doing a legal resource fair with seven women judges and me. We were sharing legal information with the women. We looked around the room. Even the judge sitting to my right said, "You know, Tarra, there's probably about a hundred women here, and probably eighty or ninety of them don't need to be there." We talked about the impact that has on their children. These are mothers, these are daughters. If we

⁶ *In re* Bar Application of Simmons, No. 201, 671-5 (Wash., 2018). Accessible at FINDLAW, <https://caselaw.findlaw.com/wa-supreme-court/1893322.html> (last accessed October 22, 2018).

want to stop these cycles, we have to support people. Most of them are there because they are victims of trauma, substance use disorder, or both. A lot of times those things go hand in hand.

We could have, with some money, diverted them away from the traumatizing experience of being in prison, having to be strip-searched constantly, having to be dehumanized, and the trauma to their family and their children who might be in foster care now, or crying at night because they don't understand why mommy is away. We could have, for a lot less money, paid their rent for a whole year, provided them with wraparound services, supported these families, and given them a better chance of a lifetime of no crime and prosocial behavior—all things we want people to be engaged in. We should have invested and diverted them away, but that's not the way our legal world operates.

Then we try to say, "Some people are more deserving than others." Maybe if it's just a drug crime, we'll divert them to a different option. But then when we go to drug court, they don't understand the nature of substance use disorder. The person isn't fully supported. If you relapse, you are given the maximum amount of prison time you could have been given for the crime for which you were diverted to drug court. People don't understand that the woman who committed the violent crime was actually defending herself from a husband who was beating her. People don't understand that men who commit violent crimes were probably abandoned or abused as children. Their repressed anger causes them to be aggressive. If someone took the time to actually get below all those layers, they would find a young man who is vulnerable and feeling inadequate in whatever way, not feeling good enough. We can help that person to learn how to be okay and not need outside validation. We can help people, but we think, "That behavior might not be deserving."

Victims think that they will find justice from the criminal justice system, but it's not working for victims either. Victims are never made whole. The criminal justice system is not healthy for victims. I am a survivor of a crime too. It is not healthy for me to want to see my perpetrator be harmed. It's more healthy for me to try to find a supportive environment to heal some of the trauma I experienced. The way that we justify long sentences for violent crime is that victims should have justice. But, that is not justice for the victim. The whole system is not working.

Could you say more about what you think in terms of victim healing? Would you want that to include a restorative justice model, which includes the perpetrator? Alternatively, do you think the victim should heal in their own community, apart from the perpetrator?

Either. I haven't really thought a lot about this. But, for me, I do respect the victims' rights, and I want to give them options. For instance, you can heal within your own community, but if you would like to participate in restorative justice, let me tell you all the reasons why it's helpful for you and for the perpetrator. That

might be the only thing that ever gives you closure. I think that it should be an option for victims if they want to participate. For me, that might be the only way I could ever get closure. I think it's totally appropriate for the perpetrator to come and understand they might hear a lot of horrible things. But what I have seen over and over and over again: once a person has gone through a recovery program, they will want to participate in that too, and it's also healing for them. It lets them be accountable for their mistakes.

Is there any bias or discrimination that you encounter, as a woman, that you want to talk about?

Women are still seen as traumatized and broken. Men generally are committing more violent crimes than women. Women generally commit more crimes related to trauma and substance use disorders. The difference, even in advocacy, is that most of the leaders we read about in the newspaper and the media are men, but there are so many women I've met who are also leaders, and who have also become lawyers. For a long time, I didn't even know of one single formerly incarcerated woman who had become a lawyer. I had no role models to look to that were like me. I've been super grateful for all my women allies and supporters, but they're not given the attention that the men are, because maybe their crimes are not as sensationalized. Men who committed violent crimes are sensationalized more by the media. It's also been my experience that, because women come from a place of sexual abuse and trauma, they have to deal with those issues. Men might not be as willing to talk about those things. They might have committed violent crimes because of a lapse in judgement in their youth or because of repressed anger, but that's not brought to the center of the conversation. Women are still seen as broken. People don't understand the process to recover. They don't understand the whole thing.

If you could give advice to other formerly incarcerated women who are pursuing legal education or careers, what would you say?

Surround yourself with a lot of different types of people and friends, because you will need different perspectives to help navigate through and stay strong. I love my network of friends. I have men who are friends who really truly get sexism in the legal tradition and find ways and opportunities to elevate a woman in their work. I do have some of those, and I'll never be able to say how grateful I've been for that. But also surround yourself with other women to help you process the sexism that you'll walk through. It's there. We have to have each other's backs. Make sure your support network is solid. And always speak truth to power. Don't be shy. Don't play into the narrative around women who are somehow not deserving or not capable. I know some women lawyers who will shred their male adversaries. Be that woman. Stand in your power.