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A Nation of Laws

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The Introspective Advocate: Signs You Might Be an Introvert

by Christina M. McCabe, Alumnus

Christina.Mccabe@wne.edu

Law school, though rewarding, is stressful. One of the most important things you can do for yourself is acknowledge your personality type, and ascertain what school strategies work best for you. A good place to start is thinking about where you fall on the introversion-extroversion scale.

“Introverted” does not mean shy, socially-anxious, or misanthropic – it means that to recharge, you need to time to retreat into yourself. By contrast, extroverts recharge and gain energy by interacting with others.

Maybe you wander down the halls and sit in lecture wondering if you are the only one who needs solitude. After all, it is hard not to notice the students who radiate charisma and wonder if you will fare as well in the legal profession. *Psychology Today* estimates that introverts comprise anywhere from 16% to 50% of the population.¹ However, more than half of all lawyers are introverted (60%).² Regardless of the exact number, you are not alone – *that* many introverted lawyers equates to many introverted law students.

So, how can knowing whether you are introverted or extroverted help you in law school? Regardless of your personality type and individual quirks, knowing yourself can help you develop better study and work

habits. Below is a list of traits that suggest introversion, ways they cause obstacles, and how to make them work to your advantage.

1. You Process Things Internally

Put simply, you think – *A LOT*. Whether you review cases for Evidence or reflect on the last Game of Thrones episode, you have a rich inner dialogue and prefer processing your thoughts before you speak. In the law school context, it is advantageous to mentally tackle difficult concepts before class and thoroughly read cases. Nevertheless, where it is a strength in study mode, it can put you at a disadvantage in classroom mode.

Countless times in class, I knew the answer to a question posed by the professor but kept my hand at my side to think about my answer longer. *Is there a better way to word it? Does it remind me of a case? Wait - ... what was the outcome in the case it reminds me of?* Unfortunately, by the time I finished my mental gymnastics, the professor was on to a new case or concept.

It is a good idea to put the deep-thinking aside and raise your hand in class once in a while. True, most law school grades come

¹Dan Buettner, *Are Extroverts Happier Than Introverts?*, Psychology Today (May 14, 2012), <https://www.psychologytoday.com/blog/thrive/201205/are-extroverts-happier-introverts>

²Leslie A. Gordon, *Most Lawyers Are Introverted, and That's Not Necessarily a Bad Thing*, ABA Journal (Jan. 2016), http://www.abajournal.com/magazine/article/most_lawyers_are_introverted_and_thats_not_necessarily_a_bad_thing

from one or two large exams – however, speaking up shows professors that you know the material. Your comments might clarify the concept for your classmates, or put cases in a different perspective. Additionally, some professors grade your classroom participation.

In a nutshell: Take advantage of your introverted thinking while studying but put the deep-thinking aside sometimes to participate in class. This is something I still have to consciously remind myself to do, but pays off tremendously.

2. You do your best thinking alone.

Unsurprisingly, even though you spend all day thinking, you are best able to analyze cases and apply new legal concepts to facts when you are by yourself.

To some extent, I think this is true for extroverted students, too. Traditional study groups did not work out well for me, because talking and background noise easily distract me. Moreover, I put immense pressure on myself not to hold the group back by thinking through concepts for too long.

If this is true for you, too, it does not mean that you can never study with other people – it only means that you should think carefully about what type of study environment works best for you. I prefer to read cases and brief them alone, but talk about them with friends afterwards. During

finals season, I prepare my outlines alone – but love exchanging them with people and slowly comparing our outlines. If a large group makes you want to curl up with Netflix and a pint of Ben & Jerry's, try studying with one or two people.

In a nutshell: Whatever learning methods and environments work best for you, use them. As an introverted law student, you might need more time alone than your peers, but that does not mean you *always* have to study alone.

3. If you go too long without alone time, you feel drained or irritable.

If you feel cranky and exhausted despite several cups of coffee, it is possible that you are not scheduling enough alone time for yourself. When you are introverted, planning ahead for the week and making sure you schedule alone time is essential. Analogous to a charged cell phone, you only have so much battery life to expend.

Unlike the cell phone analogy, becoming a lawyer means networking in law school, connecting with lawyers and clients at internships, and applying for post-graduation positions.

Remember – you are *not* flawed or a lesser student because you need down time. Whether you are introverted or extroverted, law school takes a tremendous amount of energy and it is important to work at self-care just as often as resumes and case briefs. When you are rested and recharged, you

will feel ready to tackle networking opportunities rather than tired and frazzled.

4. **In a nutshell** { Schedule time alone so you are ready to socialize, network, and work towards your future. }

Getting cold-called stresses you out.

Introverts are not the only students who get stressed out by the cold-calling Socratic method, especially during 1L year when the whole law school environment is new. However, it is likely to stress out even the most prepared introvert because it includes something we dread: getting put on the spot and needing to talk without thinking excessively first.

For myself, the more exposure I get to something, the more that I warm up to it. Class is not the only place that you have to think on your toes – if you want to work as a litigator, judges will inevitably ask you questions that you have not thought about. As a 1L, I realized how terrified I was of speaking in court. Consequently, I signed up for the Legal Services Clinic with Attorney Gordon Shaw and worked in the Housing Court 2L year. I gained invaluable experience in the clinic, and was confident by the time I represented juveniles in arraignments over the Summer.

If you get nervous from cold-calling and answering questions on the spot, experience and exposure are helpful. Additionally, the more prepared you are, the less you will have

to think. Consider what a professor or judge might ask you

In a nutshell

{ If getting cold-called makes you anxious, prepare before class and gain more experience thinking on your toes. }

about a case, and jot down notes. I still jumble over my words when cold-called sometimes, but no one is perfect.

5. Small Talk is Challenging for You

No, this does not mean you get a pass not to make small talk (at least with legal colleagues).



Small talk is not challenging for introverts because they don't want to connect with others – it is challenging because they would rather talk about something deeper with a new friend. Where introverts have a limited social battery, they would rather use it getting to know a person's

personality or interests than chat about the weather. If you have a difficult time making small talk, especially with new contacts, you might be an introvert.

Unfortunately, every interaction does not call for a deeper conversation. Small talk is vital to connecting with other legal professionals. Luckily, law school gives you something that you do not have when strangers in other settings approach you – common ground. Everyone in the law school is either a student in a situation similar to yours, or a law professor

committed to helping you succeed. With that in mind, it is easier to make small talk that could become a meaningful connection later.

Of course, no trait is all negative. Deep-thinking and eagerness to delve into more substantial subjects can help you empathize with clients and see their situation from a different perspective. Interviewing clients for my clinic taught me that conversations can start about the snow outside, and end with something tragic that happened in their lives. Preparedness to talk about the “difficult stuff” and more importantly – *listen* – is essential.

In a nutshell: If small talk is challenging for you, remember that you have things in common with other law students and lawyers.

Despite the obstacles and benefits of introversion, it is no better or worse than extroversion, which has its own obstacles and benefits. Knowing yourself is the most important thing – it allows you to get the most out of law school and soon, a legal career.

Working with my introversion does not mean that I will never leave a party early again (because I will), or that my peers will not mistake me as stand-offish the next time I quietly debate a Dunkin’ Donuts run (it is possible). But, it does mean that I recognize my strengths and weaknesses, and work to improve both.

There are still misconceptions about introversion, and I hope all introverted students reading this embrace their introspective advocacy.



3 Things You Need to Know about Your ABA Membership

By: Tinuke Fadairo, ABA Representative

Whether you're an enthusiastic 1L or a soon-to-be sleepless graduate preparing for the Bar Exam, the American Bar Association is an excellent resource for law students. Start preparing now for a successful law career by using your ABA membership for freebies, legal resources, student-only discounts and networking tools. Here are three things you need to know about ABA student membership:

- 1. You're already a member!** Your law school cares about your future and already signed you up so take advantage! If you want to make a small investment to get more benefits from our partnerships with Kaplan, Quimbee, and Themis, you can upgrade to Premium membership for **\$25 a year**.
- 2. Save money on things you already use.** Premium members save over \$500 and get benefits such as a free trial Quimbee Gold-level subscription plan, free Themis practice sets and deals on West Academic study guides and casebooks. These benefits provide a hub of the best resources for Premium student members.
- 3. Find your niche.** Choose from more than 30 ABA Practice Specialty Groups. Learn what it takes to be a successful lawyer from experienced professionals and begin building your legal network. Each group centers on a specific area of law or career stage, facilitating more in-depth examination of issues, regulations, and trends.

Visit abaforlawstudents.com/gopremium for more information!

FALSE CONVICTION

BY: KESHINI SOBORUN

LUCKY I AM TO BE AMONGST THE LIVING
LUCKY I FEEL TO HAVE REGAINED MY **FREEDOM**.

SO I AM FORCED TO FEEL.

MY FALSE CONVICTION.

EXONERATED! THEY SAY.

EXONERATED. I SAY.

LUCKY THAT I MADE IT OUT BEFORE MY BONES WORE DOWN.
BUT THERE'S AS MUCH HOPE FOR ME AS THERE WAS IN THAT CELL

LOOKING AT THOSE WHITE CINDER BLOCKS

ONE BLENDING INTO THE NEXT,

WITH NO CHANGE IN PATTERN OR COLOR.

IT MIRRORS LIFE IN THE FREE WORLD AS A **CONVICTED** FELON.

BUT MY FALSE CONVICTION -

HOLDS NO WEIGHT

ON THE SCALES OF JUSTICE.

TRAPPED IN THE FREE MAN'S WORLD,

I'M AT THE MERCY OF THE **FREE** MAN'S PEOPLE.

MONTHS TURNED TO YEARS.

YEARS TURNED INTO TIME.

ONE DAY ESCAPING INTO THE NEXT.

THEY TALK ABOUT THIS ROAD OF **HOPE**.

BUT IT LEADS TO NOWHERE IN THIS MATERIALISTIC WORLD.

I WAS DAMNED IN THAT COURT

AND DAMNED AFTER TOO.

WITHOUT A DIME IN MY POCKET,

MY ONE HOPEFUL ROAD IS BACK HOME

WHERE THE FOOD SHOULD NEVER BE CALLED FOOD.

WHERE THE BARS ENCLOSE YOUR THOUGHTS.

WHERE THOSE CINDER BLOCKS MAKE YOU SAY,

HOME SWEET HOME.

LUCKY I AM TO BE BACK HERE

LUCKY BECAUSE THIS IS WHERE I'M MEANT TO BE

I'M A STATISTIC - 1 IN 6

LUCKY I WAS BORN ONE.

6th Amendment: “The Right to a 3 Year Speedy and Public Trial”

by Jevonne Brace, 4L

Jevonne.tillery@wne.edu

Constitutional Law is a required course for an ABA Accredited Law School. *Marbury v. Madison* decided in 1803, is a commonly taught case amongst the law schools.

In *Marbury* the Court, “declared unanimously that a certain law passed by Congress should not be enforced, because the law was opposed to the Constitution.” My idea of *Marbury* is the United States Constitution is the law of the land and any action contrary to the Constitution is illegal and should not be enforced.

Was this message not conveyed to Bronx County Law Enforcement and Court system of lawyers who wrongfully arrested and detained a juvenile, for 3 years for a crime he did not commit?

Article VII, Amendment 6, Rights of the Accused. The Amendment reads, “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public

trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.”

The language sings a beautiful carol of protection and fairness for individuals accused of crime.

The right to a speedy trial is non-existent for the many individuals who remain incarcerated without a trial, and sometimes without formal charges. The need to blame for this level of violation soothes the conscious for those who have one. Is it poverty and social economic inequality that produced an unjust system? Is it blatant disregard for the rights of others? Are these Constitutional

protections only applicable to people with economic resources?

Many court dockets are swamped with hundreds, and at times thousands of cases to adjudicate. Does this backlog create judicial mayhem forcing a triage method for court cases just to decrease the caseload? Is it illusory adjudication? Is it over zealous law enforcement, arresting individuals with little to no reasonable grounds for small and petty offenses? Yet, meanwhile violating citizens' Constitutional rights.

In *Barker v. Wingo*, the Supreme Court established a four-prong analysis with a case-by-case balancing test to determine if the defendant's speedy trial right has been violated. The four factors are:

Length of delay. A delay of a year or more from the date on which the speedy trial right "attaches" (the date of arrest or indictment, whichever first occurs) was termed "presumptively prejudicial," but the Court has never explicitly ruled that any absolute time limit applies.

Reason for the delay. The prosecution may not excessively delay the trial for its own advantage, but a trial may be delayed to secure the presence of an absent witness or other practical considerations (e.g., change of venue).

Time and manner in which the defendant has asserted his right. If a defendant agrees to the delay when it works to his own benefit, he cannot later claim that he has been unduly delayed.

Degree of prejudice to the defendant which the delay has caused.

One heinous example of a 6th Amendment violation, is the Kalief Browder Case. He was arrested and charged for stealing a backpack. Later, findings showed Kalief never stole a backpack. The court granted him bail

for \$900.00. Kalief's father was in the position to post the bond for the teen, yet refused. Finally, his mother, and siblings retrieved the bail from their neighbor. At the time of the arrest, Kalief was on probation for joyriding in a bread truck. While the family started the process of posting bail, he was placed on Probation Revocation. Kalief Browder was held for over 3 years in the notoriously, sadistic, isolated island of pain, blood and death, known as Rikers Island Jail. Rikers Island Jail: abuse, extortion, torture, broken facial bones, broken limbs, open white flesh wounds underneath chins and across faces from ear to ear, or ear to mouth, broken eye sockets, jaws and noses. Years inside a solitary confined environment with below temperatures in the winter and unbearably hot summers with a known incident (Jerome Murdough, a homeless veteran with mental illness was arrested for trespassing, sleeping in a public building for warmth was remanded to Rikers Island, baked to death in a cell, because the heating system was broken), hundreds of suicide attempts are hidden, actual suicides occur, self-mutilation, with a dull object or a sharply made object, corrupt officials, sadistic officers, starvation, rodent infested, broken toilets, feces on the wall, urine stench, dried blood on the walls, demonic screams, excessive noises, molded food, rat poison in food, lack of or no medical attention, extreme gang violence.

Also referred to as "The Island" the facility is a deep seeded history of violence and capture. The demonic inhumane facility that isn't conducive for animals, let alone people has forced many of the accused into pleading guilty for charges that are wrong and/or false, just to be release to probation or a state prison.

Article VII Amendment 6, Rights of the Accused in the case of Kalief Browder: Crime, "Stealing a Backpack"

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial.” Kalief was held for over 1000 days, including 700 days in solitary confinement. Where was his “right to a speedy and public trial?”

He was offered a plea deal that would have allowed him to be released immediately. In spite of the inexplicable abuse he endured, he refused to plead guilty to a crime he did not commit. With 31 court appearances, in 3 years I will ask this again, “What happened to “the right to a speedy trial?” Kalief never had a trial.

“By an impartial jury of the State and district wherein the crime shall have been committed” — of course he didn’t have an impartial jury. Jury selection is a part of the trial process, there was no trial for Kalief to select a jury. Are jurors, the sadistic, abusive guards, violent gangs, and fellow inmates, who repeatedly told him “he’s stupid” for not taking a plea, just to be released from Riker’s Island.

“The district wherein the crime shall have been committed.” The jail is located on a landfill in the East River between Queens and Bronx mainland. The place of the alleged crime was in Bronx, NY. Kalief is a resident of Bronx, NY. He was arrested and detained in Bronx at the 48th Precinct. The now former, Bronx Detective who was known for being highly forceful pursued Kalief’s case knowing that it had no merit, or probable cause. This entire case was wrong at its inception. The alleged crime, the arrest and detention were all within the proper jurisdiction of Bronx County.

“Which district shall have been previously ascertained by law?” Formal criminal charges are generally named, such as: robbery, burglary or petty larceny, in various degrees

measuring the severity of the offense. Through his entire case the charge stated was “stealing a back pack.” Stealing a backpack, what is the New York Model Penal Code number for stealing a backpack? There are criminal penal codes in New York State for theft of property related crimes. For example, New York Law Penal Article 165: Offenses Related to Theft, “stealing a backpack” was not listed under 165:40, 45, 50, 54. Aside the fact that he was held hostage for over 3 years. What were the formal charges for the court to proceed accordingly? These ad-hoc criminal procedural tactics of the Bronx’s Criminal Court System, ignored New York State Procedures. The court also ignored our US Constitution’s 6th Amendment “right to a speedy and public trial.” Would 3 years and 2 weeks, incarcerated without a trial and no formal charge a “right to a speedy trial?”

“To be informed of the nature and cause of the accusation:” Was he informed of the nature and cause of the accusation? Answer, he “stole a backpack.” Here’s a brief general explanation of Article 30 of the New York State Penal Law Code for Timeliness of Prosecution and Speedy Trial. This state statute specifies distinct time frames based on the classification of the crime. For example, 6 months one or more felony charges; 90 days for one or more misdemeanors punishable by 3 months or more, which none of the charges are felonies; 60 days for one or more misdemeanors punishable by a sentence of 3 months or less; and 30 days for violation, none which are not “crimes.” If one were to add 80, 90, 60, and 30, the sum doesn’t equal over 1000. In conjunction with the US Constitution, the New York Criminal Procedural Law was violated as well.

“To be confronted with witnesses against him” The witness could not positively identi-

fy Kalief. The victim's brother called 911 and said, "2 males black stole my brother's book-bag." The witness could not and did not make a positive identification for any other suspect. The witness' complaint could not be corroborated. The witness changed his story. After all, the accusation had been made a week or two after the alleged robbery, and the victim had later changed his mind about when it occurred. (The original police report said "on or about May 2," but Bautista (the complainant later told a detective that it happened on May 8th.) Despite the attempts to connect to the witness who ultimately returned to Mexico, the prosecution had no case. The District Attorney's office, had many excuses from "having trials on docket to on vacation." The D.A's office also lied to the court stating, "we are getting the witness a flight" that should have been a red flag. Once Judge Di Mango from Kings County, Brooklyn agreed to assist with Bronx County's inexplicable backlog in cases, she discovered that the prosecution had no case. Her reputation and tactic was an iron fist approach in order to obtain a defendant's plea. Kalief appeared before Judge Di Mango. He continued to maintain his innocence and refused to plead guilty to a crime he didn't commit. As in the previous 30 times he was shipped back to Riker's Island and continued to sustain the sadistic abuse that resulted in, broken facial bones, fractured back bones, being starved, and being denied medical attention in order to prove his innocence. Judge Di Mango finally ordered Kalief to be released. He was transported back to Riker's Island and released in the late hours of the morning with a Metro Card.

"To have a compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense." During his interrogation, he stated, "I didn't rob anyone" the night of his arrest. The alleged offense occurred 2 weeks before his arrest, he also stated, "I had to have been home." Be-

cause during the interrogation the Detective told him the time the off the alleged offense was after 2 am. He didn't have the opportunity, nor access to obtain witnesses that would have provided testimony on his behalf. Based on his relentlessness to prove his innocence, that should have been a "red flag" for the court to say, "let's hear the defendant."

Unfortunately, he was not in the ideal position to obtain friends or family to testify on his behalf.

Due to his economic position his mother could not afford to hire a lawyer. Kalief was appointed a Public Defender. He repeatedly told his court-appointed lawyer, that he would never plead guilty and that he wanted to go to trial. His court-appointed lawyer assumed that his courtroom defense would be, "Listen, they got the wrong kid." He never visited Kalief in Rikers and never had a lengthy conversation relative to his case. The Public Defender's caseload was unreasonable.

In *Strunk v. United States*, 412 U.S. 434 (1973), the Supreme Court ruled that if the reviewing court finds that a defendant's right to a speedy trial was violated, then the indictment must be dismissed, and/or the conviction overturned. The Court held that, since the delayed trial is the state action which violates the defendant's rights, no other remedy would be appropriate. Thus, a reversal or dismissal of a criminal case on speedy trial grounds means that no further prosecution for the alleged offense can take place.

Kalief's charges were dismissed after 3 years and 2 weeks.

The 1979 Amendment of the Speedy Trial Act of 1974's purpose was to extend time limitations set for various criminal trial procedures, including an increase from 100 to

180 days in the arrest-to-trial time limit. The Bill also establishes a 90-day time limit for high-risk criminals and those persons detained pending trial, and allows the Chief Judge of a district court to suspend certain limitations.

The article's main focus is on a 6th Amendment Right violation. While awaiting over 3 years for his "speedy trial" Kalief spent over 700 days in solitary confinement. The torture, he endured was so unbearable. It was 2 years after his released from Rikers Island, Kalief committed suicide. His story was so compelling and emotionally devastating, it gained the attention of our country's 3 branches of government.

The Executive Branch: President Barack Obama. President Obama issued an executive action that prohibits solitary confinement for juvenile and low level offenders. His quote on Solitary Confinement, "Today, it's increasingly overused on people such as Kalief, with heartbreaking results — which is why my administration is taking steps to address this problem."

The Judicial Branch: Supreme Court Justice Anthony Kennedy invoked Kalief Browder's experience in his opinion regarding the *Davis v. Ayala* case: "There are indications of a new and growing awareness in the broader public of the subject of corrections and of solitary confinement in particular." In his dissent he cited Jennifer Gonnerman's article. "See, e.g., Gonnerman, Before the Law, The New Yorker, Oct. 6, 2014, p. 26 (detailing multi-year solitary confinement of Kalief Browder, who was held—but never tried—for stealing a backpack)."

The Legislative Branch: Senator Rand Paul learned of Kalief's suicide and quoted, "He

was arrested, accused of a crime, and put in Rikers Island for three years without a trial. He spent two of those years in solitary confinement, he was beaten to a pulp by a gang in the prison, without ever being convicted of a crime! Even if you're convicted of a crime in America for goodness sakes, are we going to let people be raped and murdered and pilaged in prison just because they're convicted? He wasn't even convicted!"

Kalief's Law:

An Act to amend the criminal procedure law, in relation to time limits

for a speedy trial New York's Senate Bill S-9588.

SUMMARY OF SPECIFIC PROVISIONS:

Section 1: Establishes that this act shall be known as "Kalief's Law"

Section 2: Section 30.30 of the Criminal Procedure Law is amended by:

*Requiring a representative of the People to prove readiness for trial

by affirming that the People's evidence is imminently available.

*Requiring a valid statement of trial readiness be accompanied or

preceded by a certification of compliance with the disclosure

requirements set forth in section 240.20 of the Criminal Procedure

Law.

Kalief The Martyr:

There were some A-List celebrities such as Rosie O'Donnell who featured him on her show. She maintained a personal relationship with Kalief until his suicide.

Business Man, Rap Mogul, Shawn Jay-Z Carter executive produced a documentary on his story that can be seen on Netflix called, Time: The Kalief Browder Story.

Grammy and Oscar Award Winning Singer/Songwriter John Legend wrote a critical essay on Kalief's story.

There are many more unnamed supporters in the pursuit of justice for Kalief.

Conclusion:

Kalief Browder was a 16-year-old kid at time of his wrongful arrest and an adult when he was released.

His potential in life was unmatched. He enrolled in Bronx Community College and earned his GED. He continued into college courses and had a GPA above 3.30. Kalief had written an essay for one of his classes, that can be found on line, <https://www.scribd.com/doc/269483253/A-Closer-Look-at-Solitary-Confinement-in-the-United-States-By-Kalief-Browder>.

The legal officials of Bronx County who trampled on his 6th Amendment rights remain licensed attorneys involved in careers. In an interview with former Judge, now demoted to Bronx D.A. Ms. Darcel Clark, feels all parties involved played a role in Kalief's case. Kalief appeared before her court more than 6 times.

The question was posed to her by the reporter, *who is responsible for Kalief's bungled case?* The wise response would have been "no comment" or "I can't comment on the case." Instead she accepted no responsibility, and stated a general inclusion of others. His lawyer Paul Prestia filed suit against New York City. The suit may have precluded Kalief from receiving any formal apologies from officials, or outside financial assistance.

His mother who adopted Kalief and his siblings when Kalief was a toddler Veneida Browder has since passed from heart complications. Many have called his mother's death that of a broken heart, because she found Kalief's body after he committed suicide. His birth mother was a crack cocaine addict. Kalief was born into Child Protective Services and automatic product of the system to deliver a message to the world. Veneida adopted Kalief and his siblings formally. He stood up and endured the unthinkable to prove his innocence meanwhile displaying the violations of criminal trial process, the misuse of solitary confinement, New York City's version of Guantanamo Bay's Prison called Riker's Island and The US Constitution 6th Amendment Right violations.

The word "fail" is synonymous with Kalief Browder's case. Systemic failure is indicative of a mistake that can be corrected. Kalief's case is more than an occasional "fall between the cracks of the system case." His case was an expose' of a criminal justice system that incarcerates citizens, children and violates The U.S. Constitution.

In Memory of Kalief Browder: May 25, 1993-
June 6, 2015

IN BETWEEN CASES

This past spring, a few Western New England University School of Law students participated the School of Law Basketball Tournament.



Child-Victim of Sex Trafficking Gets Life in Prison After Killing Predator

by Sophia Castillo, Alumnus

A wise old woman told me once, “there’s three sides to every story: my side, your side, and the truth.” I like to believe the same is true for criminal cases — there’s the prosecution’s side, the defense’s side, and the truth. A celebrity has recently resurfaced a case decided in 2014 and has caused quite the media-frenzy over it. The criminal prosecution of Cyntoia Brown, a 16-year-old victim of sex trafficking who killed a 43-year-old predator, has gone viral and no one knows how to digest the injustice that has been done. The facts may not be as black and white as they may seem, however.

The first time that I read about Miss. Brown was on Instagram, in a small snippet that someone posted on their page. The post read:

Imagine at the age of 16 being sex-trafficked by a pimp named “Cut-throat.” After days of being repeatedly drugged and raped by different men you were purchased by a 43-year-old child predator who took you to his home to use you for sex. You

end up finding enough courage to fight back and shoot and kill him. You’re arrested as a result, and tried and convicted as an adult and sentenced to life in prison. This is the story of Cyntoia Brown. She will be eligible for parole when she is 69 years old. (sic)¹

Naturally, I was deeply angered by such a post and made sure to “share” her story so that all of my social media connections could share in my fury over such an injustice. Over the next few days, Miss Brown’s story went viral and I saw multiple accounts of the case from different media outlets. With the media looking to invoke reactions, several media outlets conflicted over whether Cyntoia was really a victim or a predator. I read one Facebook article that claimed she had placed herself in that situation by pursuing a prostitution career and another that claimed that the Black-American celebrity who raised the issue of Cyntoia Brown had only made her sound so much like a victim because she was a young woman of mixed race.

As a law student who has spent most of her

¹ See Robyn Rihanna Fenty. Free Cyntoia Brown. *Instagram*, 21 November 2017, <https://www.instagram.com/p/Bbwi26PjHf7/?taken-by=badgalriri>

Editor’s Note: Brown sat before a Tennessee parole board on May 23, 2018, pleading for a clemency recommendation. The parole board remains split. Christine Hauser, *Parole Board Is Divided on Cyntoia Brown, Trafficking Victim Serving Life Sentence for Murder*, THE NEW YORK TIMES (May 23, 2018), <https://www.nytimes.com/2018/05/23/us/cyntoia-brown-clemency-hearing.html>.

time studying social (in)justice, I was intrigued to find more facts surrounding the Cyntoia Brown case in efforts to find as much truth as possible. I was fortunate enough to find the original docket, a functional assessment of Cyntoia's mother, a quantitative EEG Analyses, an affidavit by a doctor who examined Cyntoia, and a forensic psychiatric examination of Cyntoia. In going through the materials, I found that the actual facts point to a story much more grey than depicted in the media.

According to the Tennessee District Court's disposal of Cyntoia Brown's Habeas Corpus petition for post-conviction relief, the facts of the case are as follows:

The victim [Johnny Allen] picked [Cyntoia] up at a... drive through restaurant... took her to his home, intending to have sex with her. [Cyntoia] spent a good deal of time stalling... Finally, they laid down together... [Cyntoia denied having sex with [Allen]. She told [police] "I didn't think the dude was gonna do somethin', he seemed like a pretty nice guy." Docket Entry No. 14-6 at p. 26 Nevertheless [Cyntoia] claims she felt threatened by him and shot him as he laid in the bed with a pistol she had in her purse. She admitted to police that [Allen] never had a gun in his hand. *Id.* at p. 37 She got up and dressed, took cash from the victim and some rifles he owned. [Cyntoia] grabbed [Allen's] keys to his truck and drove to a nearby Wal-Mart parking lot where she abandoned the truck. She got a ride from a stranger to a room at a motel that she was sharing with a male companion. [Cyntoia] admitted to shooting [Allen]. She told her mother in a telephone conversation that she had "executed" [Allen] Docket Entry No. 14-15 at p. 75 [Cyntoia] told

a nurse... that "I shot the man in the back of the head one time, bitch, I'm gonna shoot you in the back of the head three times. I'd love to hear your blood spatter on the wall." Docket Entry No. 14-12 at p. 23 A fellow inmate testified "... [S]he basically said she shot the man just to see how it felt to kill somebody." Docket Entry No. 14-13 at p. 26

Cyntoia was convicted by a jury of first degree premeditated murder, first degree felony murder, and aggravated robbery. She received a life-sentence for the two murder convictions (merged) and a concurrent sentence of 20 years for the robbery. The Tennessee Court of Criminal Appeals affirmed and Brown's petition for post-conviction relief was denied. Brown tried to claim ineffective assistance of counsel, that prosecution was unable to prove the requisite mens rea to kill, actual innocence, ineffective appellate counsel, unconstitutional reasonable doubt instruction, and court error in failing to consider a claim for *coram nobis*. The court dismissed most of these claims through procedural default or exhaustion, highlighting her admittance to having killed Allen. As for the fact that she was tried as an adult and received a mandatory life sentence at the age of 16 — only mandatory life sentences *without the possibility for parole* were found unconstitutional in Miller v Alabama — Cyntoia was given the possibility for parole.

While the Court seems to practically demonize Brown, convicting her as an adult and depicting her as a cold-blooded murderer, the media paints a different picture. A CNN article says about Brown, "after a childhood marked by abuse and drugs, she was raped and forced into prostitution by a pimp, and ended up killing one of her clients out of self-defense when she was just 16-years-old.

Despite her youth, she was tried as an adult and given a life sentence.”² A Fox News article highlights how the court ignored evidence in her trial of her having been a child victim of sex-trafficking.³

Although Brown’s true motives seem fuzzy, there are a few things we know for sure. According to medical reports, Brown was headed down a dangerous path. She was diagnosed with Conduct Disorder, Dysthymic Disorder, Early Onset, and Rule Out Bipolar Disorder with Psychotic Features. A letter to the Court suggested that she meets the criteria for involuntary commitment to a psychiatric facility if she weren’t placed in a locked residential facility. Brown was born into dangerous circumstances to begin with, having been the result of the rape of a minor. Her mother abused crack-cocaine and alcohol throughout her pregnancy with Brown and was incarcerated on multiple occasions during Brown’s young childhood. Cyntoia’s mother would have her on the streets during occasions of homelessness and would leave her, even as an infant, with untrustworthy strangers.⁴ As a result, Cyntoia has been affected by Alcohol Related Neurodevelopmental Disorder and learned to survive by selling herself and following the order of the only people she has been able to turn to — abusive pimps. With her mother as an influence, and no one to turn to, Cyntoia has abused drugs since the age of 13, cigarettes since the age of 12 and alcohol since the age of 10.⁵

However dangerous this young woman (now 23) may seem, the fact remains that she was 16-years-old at the time of her crime. She had already been accustomed to things like “loss of consciousness from being choked by a man,”⁴ and regular beatings by her pimp [Cut-throat] because she had been placed into a dangerous lifestyle by a mother who couldn’t teach her any better

than a life of drugs and crime. This young woman was a child who has been used as a prostitute for abusive pimps from a prepubescent age. The victim of her crime was a 43-year-old man who was attracted to her as a child prostitute.

She only shot and robbed him because she was conditioned to live as a ruthless and lawless person, always trying to be one step ahead of a predator — always in survival mode. The outcome of the court in this case serves justice for no one as it poses retribution on a young woman who needs rehabilitation and guidance, rather than focusing attention on the widespread issue in America of child sex-trafficking. So many children in America are born into poverty, surrounded by sex, drugs, and alcohol at a young influential age, causing them to lead lives of crime and violence only to become demonized by authorities for their conditioned behaviors. While the psychiatric reports of Cyntoia Brown diagnose her with many mental illnesses and deficiencies, IQ tests have also shown her to score within the high average to superior range, intellectually, and has even been classified as gifted.⁵ Had she been brought up in different circumstances, Brown likely would not have gone down such a downtrodden path, now studying to complete an Associate's Degree while incarcerated. With proper guidance, she could have been “somebody.” Considering the facts as a whole, I contemplate the black and white question of Cyntoia Brown: victim or victimizer? My thought is, perhaps a bit of both?

² Willingham, AJ, “Why Cyntoia Brown, Who Is Spending Life in Prison for Murder, Is All over Social Media” CNN, Cable News Network, 23 Nov. 2017, www.cnn.com/2017/11/23/us/cyntoia-brown-social-media-murder-case-trnd/index.html.

³ Carbone, Christopher. “Will Cyntoia Brown Be Paroled? Ace Lawyer Joins Team to Free Sex-Trafficked Teen Serving Life Sentence for Killing John.” Fox News, FOX News Network, 27 Nov. 2017, www.foxnews.com/us/2017/11/27/ace-lawyer-joins-team-to-free-cyntoia-brown-from-life-sentence-for-killing-john-as-sex-trafficked-teen.html.

⁴ Forensic Psychiatric Examination of Richard S. Adler, M.D., BROWN, v. FREEMAN., 2013 WL 12080132 (M.D.Tenn.)

A NATION OF LAWS

by John Magistro, 3L

John.magistro@wne.edu

As we progress through our legal studies, we repeatedly confront the historical context of our nation's laws. This context helps us gain an understanding of how our legal system has evolved over time into the powerful, versatile tool we see today. Regardless of which corner of law each of us will work in, we all will have a responsibility to see the laws of this country upheld as fairly and impartially as possible. It is important to keep this ethical and professional responsibility in mind even now, before we have graduated, to prepare us for the reality that awaits us once we enter our varying practice areas.

As a school and a nation, we have been made aware of far too many instances of individuals behaving in ways that run contrary to our principles of law and order. Most recently there was an incident where a nurse in Utah who was, by all accounts, acting completely within the scope of her job responsibilities and the law, arrested for not allowing a police officer to draw blood from an unconscious suspect at a hospital. This came on the heels of not one, but two, separate cases where officers of the Baltimore Police Department were arrested relating to allegations that they planted evidence prior to arresting suspects. Worse still is that these are only the most recent incidents we have been made aware of over the last several years.

It would be "easy" to excuse this behavior by saying they simply thought they would never be caught. The Baltimore officers had a slam-dunk defense; it was the word of several officers versus one suspect. But that is not the case here. The police officers in both incidents were wearing body cameras; in fact, in one case an officer switched their body camera off after recording the alleged act before turning it back on to record his

fellow officer finding the evidence under the seat of a car. In the Utah case, the body camera was running for nearly the entire encounter with the nurse in question, including her eventual arrest.

So what gives? Surely these officers must have thought someone would see the videos of their conduct. Indeed, the Utah nurse was confronted in a busy emergency room with several colleagues and patients to witness the officer's actions. Surely, there must be some other explanation?

With recent calls for greater transparency among police departments, many people believe the response to this question is that the officers simply had no fear of being punished for their actions. Either fellow officers would help bury the footage and deny the allegations against them, or if they were found out, they would likely receive a slap on the wrist or some other nominal disciplinary action.

At this point I want to be clear about something: this is not a declaration that all police officers or departments shirk the rules. Indeed, I think most could agree that police officers and departments in general are transparent and ethical in their regular law enforcement activities. What this is is a statement that there are those in our society who believe that the law does not apply to them. Police officers are not alone in this group; they are merely the most highly exposed and therefore arguably the ones most likely to be discovered violating the law in this way. They are also the ones with the greatest opportunity to bend or break the rules as they see fit, as the very nature of their jobs involves enforcement of the law.

Why am I writing this, you ask? As I stated at the outset of this article, we all have an ethical and professional responsibility to ensure that the laws of this nation are enforced fairly and impartially. This is true

whether you find yourself in a criminal courtroom, a real estate office, the UCLA, or the corner office of a big firm in NYC. And while it is also true that, as lawyers, we are supposed to be zealous advocates for our clients, we must be sure that our clients remain within the boundaries of the law. If we allow our clients to run afoul of the law, the law means nothing, and our jobs likewise become meaningless.

Only by enforcing the laws of our nation against all people equally can we function as a nation. It is our job as future lawyers to see this done. We are a nation of laws, and as it has been said countless times before: no one is above the law.



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