

Captive Afterlives in the Age of Mass Conviction

By Melissa Burch

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Abstract: Criminal records have become an increasingly important mechanism for managing and containing criminalized populations beyond prison walls. This ethnographic analysis of a formerly imprisoned woman's search for work explores how the feeling of captivity resonates not only with the imprisoned but also with the recently released.

Keywords: criminalization; criminal record; conviction; prisoner reentry; employment; captivity

More than a month had passed since Linda had been released from prison and still she counted the time in days. Much as a new parent often says, “she’s eighteen months,” rather than “a year and a half,” this daily increment underscored the event’s significance. I met Linda on day forty-five, at a nonprofit job centre in southern California that helps people with criminal convictions to find work. Her demeanour was unexpressive and her eyes blank, but, in low tones, she clearly wanted to talk. The dynamics of prison had “taken a toll,” she said. During four and a half years of confinement, she had barely spoken. While this strategy had helped her to avoid some of prison’s most immediate forms of harm, she had witnessed significant interpersonal violence and was traumatized by her powerlessness to intervene. Anxious to shake these memories, Linda had thrown herself into looking for a job.

Before her prison term, Linda had enjoyed working as a dispatcher in a major warehouse. Given our location between the ports of Los Angeles and Long Beach – the heart of southern California’s booming logistics industry – she set out to build on this experience by pursuing a career in the movement of goods. Linda had heard through the grapevine that Amazon would, in some cases, hire people whose convictions were a few years old. Nearly six years out from the incident, she decided to try her luck.

Those of us invested in the success and well-being of people who are coming home from prison tend to focus on outcomes: that is, will Linda get the job or not. We decry the injustice of using past criminal convictions as a basis for exclusion, highlighting the plethora of state-sanctioned barriers that preclude full integration and arguing for inclusion. Here, I temporarily suspend a focus on outcomes to foreground process: that is, how it feels to be under constant review. For Linda’s efforts at looking for employment offer a window into what can only be described as post-carceral captivity. While she was now “free” in the obvious ways she had

anticipated – to sleep and wake as she chose, eat what she liked, and decide with whom to spend time – this freedom proved to be partial, qualified, and ever-dependent on the near-constant assessment of people ostensibly unconnected to the criminal legal system. Teams of “experts,” relying increasingly on actuarial methods (Harcourt 2007), would repeatedly re-evaluate Linda’s suitability for inclusion or exclusion, forcing her to relive her past with an endless cast of post-carceral wards.

Anthropologists are increasingly contributing to a robust scholarship theorizing the nature, purpose, use, and impact of strategies of control, containment, and punishment (Burton 2015; Karpiak 2018; Lee 2016). Of greatest importance here is scholarship concerned with the percolation of carceral power beyond prison walls, including how carceral logics (Sojoyner 2016), sensibilities (Comfort 2008; Haney 2010), economies (Morrell 2012), and socio-spatial relations (Shabazz 2015; Story 2016) increasingly shape social life in the so-called free world. Significant is the lived experience of the six and a half million people in the United States who are not in prison, but who are under direct correctional supervision through systems of parole or probation, as well as the tens of millions more who have criminal records that show up on routine background checks. These are the lives held captive by what legal scholar Gabriel Chin has named the age of “mass conviction.” Popular concern with “mass incarceration,” observes Chin, mistakenly implies that the most common tool of the criminal punishment system is imprisonment, when in fact “the vast majority of people who have been convicted of crimes are not currently in prison” (Chin 2012, 1804).

Regardless of whether they have served time in prison, people who have been convicted of a crime face a permanent change in legal status that subjects them to a range of limitations on their rights and conduct. In the name of preventative risk management (Mayson 2015), people who have been convicted face innumerable consequences including reduced access to housing and employment (Oyama 2009; Pager 2007), mandatory registration and civil confinement (Lancaster 2011), disenfranchisement (Manza and Uggen 2006), loss of parental rights (Lee 2016), and, for non-citizens, detention and deportation (Stumpf 2006). Such legally imposed sanctions are further exacerbated by the more informal consequences associated with the stigma of a criminal record – in particular the diminished housing and economic opportunities engendered by this stigma – and the impact of all of the above on dependent children, family members, and friends (Logan 2013).

As we will see, “criminal law and criminal justice institutions increasingly represent only the most visible tentacles of penal power” (Beckett and Murakawa 2012, 222). Linda’s encounter with Amazon illuminates how these informal consequences are meted out by a range of actors, sites, and institutions well beyond its walls. Under the guise of an ethical corporation – one that takes seriously the burden of balancing public safety alongside the rehabilitative ideal – Amazon became Linda’s new warden, if only for a moment.

Linda was among the most directed and capable job seekers I had encountered. She had been living with her mother since she’d come home and had taken an active role in helping to care for her two young nieces. Whenever she wasn’t caretaking, or attending the appointments and classes required by parole and the nonprofit, she was looking for work. Her strong PC skills made for breezy online applications and the considerable warehouse experience reflected on her résumé ensured a foot in the door. But things came apart in the interviews when inevitably the person on the other side of the desk noticed she had checked “yes” in response to the

question on the application that asked whether she had ever been convicted and prompted for more information. Linda grew tense and the words didn't come out right, either revealing too much, or too little to set the employer at ease. Though her light skin, racial ambiguity, and small frame likely worked in her favor, she was nonetheless a woman of color convicted of a felony classified as violent. It also didn't help matters that her parole officer insisted she attend a domestic violence class on Monday mornings from 9 to 11 a.m., an essential time to be at work by most employers' standards.

Thus, Linda was pleasantly surprised when, despite these barriers, she progressed quickly through Amazon's hiring process. She was invited to several rounds of interviews and apparently made a good impression – the hiring manager made a conditional offer of employment and set a tentative start date. Linda waited, quietly optimistic. While the offer was contingent on passing a drug test and background check, Linda was drug free and had already discussed her conviction in the interview, including its recency – six years – and nature. There had been a dispute with a domestic partner, she explained, and although no one had been harmed and her ex preferred not to press charges, Linda had been convicted of Assault on a Person with a Firearm and sentenced to five years in state prison. The judge acknowledged this was a relatively stiff sentence, but justified it by emphasizing that "someone could have gotten hurt" and insisting on the importance of using the case to "send a message." Though shocking for Linda, the outcome was consistent with current trends: many states are lightening penalties for criminal acts labeled as "non-violent, non-sex-related and non-serious," but at the same time, expanding harsh penalties for others (Gottschalk 2015) – including women caught at the crossroads of intimate, community, and state violence (Richie 2012).

Luckily, none of these details seemed to bother the hiring manager. He seemed to genuinely like Linda and it was clear that her administrative skills and familiarity with warehousing were an excellent fit for the job. "A criminal record is not a bar to employment at Amazon," he had said reassuringly, with a wide company smile.

But little did Linda know, unless accompanied by deeper commitments, liberal reforms like "fair chance" hiring often turn out to be more procedural than substantive (Murakawa 2014). A decade ago, Amazon likely would have eliminated Linda's application from the beginning. Employers with too many applications to review simply set those with "checked boxes" aside. For this reason, a grassroots initiative led by former prisoners who were part of the political organization *All of Us or None* launched the Ban the Box campaign, requiring employers to delay consideration of criminal records until later in the hiring process. Combined with increased enforcement of other laws,¹ companies are now forced to "individually assess"

¹ The Fair Credit Reporting Act regulates how consumer reporting agencies such as credit reporting and background screening firms gather and report individuals' private information. It requires employers (among other things) to ask applicants' permission to conduct a background check and to provide a copy of the report so that candidates may contest any errors (for more details, see <http://www.consumer.ftc.gov/articles/0157->

the nature, recency, and special circumstances surrounding convictions and to make their process for doing so transparent. In large, high profile corporations, the public message is non-discriminatory, even encouraging. The hiring process is orderly and consistent and everyone gets fair consideration. But as Murakawa painstakingly demonstrates, increased attention to proceduralism and rights has a way of crowding out the more ambitious goals that precipitate activism and entrenching the idea that any remaining discrimination is justified.

Linda felt sideswiped by the email that appeared in her inbox, rescinding the offer. The legalese flew in the face of the interpersonal exchanges she'd had with the hiring manager and somehow the reassurance of due process only added insult to injury:

We are writing to inform you that in evaluating your application for employment we have received the enclosed consumer report. We may make an adverse decision based in whole or in part on this report. We are hereby informing you of certain information pursuant to the Fair Credit Reporting Act (FCRA). The report was procured pursuant to your signed authorization at the time of application. A summary of your rights as a consumer is enclosed. If you have any questions regarding this report or believe that it may contain incorrect information, you may contact the Consumer Reporting Agency shown.

A few days later, as required by law, a copy of her background report arrived in the mail, announcing an unequivocal correction: she was not simply a dispatcher looking for a new position, but rather a post-carceral subject whose presumed riskiness warranted careful consideration by all those with whom she came in contact. It was as if she was held captive at the behest of a mysterious set of arbiters, some of whom had not even met her.

employment-background-checks). The Equal Employment Opportunity Commission's 2012 "Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions" prohibits criminal record-based discrimination in employment if it leads to differential treatment or disproportionate impact on people who belong to protected categories based on race, sex, and national origin. The Guidance requires employers to conduct individualized assessments of criminal records that consider the nature, circumstances, and age of conviction, and evidence of rehabilitation, etc. (for more detail, see https://www.eeoc.gov/laws/practices/inquiries_arrest_conviction.cfm).

Linda was still infuriated a few days later when I met her in the parking lot outside the job centre. Struggling to make sense of what had happened, she questioned:

Why did they waste my time . . . and theirs? Why pay for my background check? . . .
I told them about it! Couldn't the person who interviewed me have surmised that I
wouldn't pass?

You see, it wasn't just the disappointment of not getting hired. It was the way the company had raised her hopes and then scuttled them and the frustration in the certainty that she would have been a great fit for the job.

The feeling of being held captive resonates not only with the imprisoned, but also with those who have been released. Though she was no longer held in a cage, Linda continued to be tracked, managed, and contained through captivity's reach to people and places with no formal connection to the criminal punishment system. Through widespread public access to legal records, captivity's rhizomes extend well beyond prison walls. The number of wardens proliferate, with Amazon only one of many. In this context, captivity's powers – to contain or release, to include or exclude – are taken up by individual decision-makers, who, from a position of higher relative status, lay claim to the conditions of the criminalized's full humanity. The fate of people like Linda becomes dependent on the willingness of others to share power and privileges (Cacho 2012).

Despite significant scholarly and public attention, re-entering prisoners continue to face a multitude of profound, overlapping, and unaddressed barriers. These obstacles persist because, as we know, successful re-entry is more than a technical problem to be solved; its roots extend to the unequal relationships of power that inform imprisonment (Burch 2016; Nixon et al. 2008). Anthropology is uniquely suited to expand comprehension of carcerality and its afterlives, beyond a purely social problems approach. Perhaps through deeper excavation of that which is made visible through the ethnographic – the daily textures, micro-aggressions, and structures of feeling that compose this widely-lived phenomenon – we may help to elucidate some of captivity's less theorized dimensions.

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