

**I**N EARLY 2014, Alec Karakatsanis, J.D. '08, used some of the money that he and a law-school classmate had recently received from the school's Public Service Venture Fund seed grant to buy a plane ticket to Birmingham, Alabama, and rent a car. He planned to visit the judge he had clerked for in Montgomery after graduating, as well as other people he'd met during his time as a clerk and federal defender. Along the way, he was stopping in at local courts to see what was going on. "I would just go places with my hooded sweatshirt on," he recalls, "and sit there and watch and interview people."

One of the courtrooms was in Montgomery. It was a winter morning, and Karakatsanis saw that 67 people were set to be called in front of the judge. As he would later tell it, "All of them were African American; not a single one of them [was] accused of a crime. They were all in jail because they owed money to the city of Montgomery for unpaid traffic tickets."

When Karakatsanis met her, she showed him that piece of paper, now stained with tears, on which she had been scribbling calculations, "desperately trying to figure out" how quickly she could return to her children.

Karakatsanis also saw a man named Lorenzo Brown called in front of the judge that day. Brown, as Karakatsanis's complaint put it, was a "58-year-old disabled Montgomery resident" who "was arrested early in the morning on January 24, 2014, when City police came to the dilapidated boarding house in which he lives with a number of other impoverished people and took him into custody for failure to pay court fines, fees, and surcharges arising from traffic tickets issued in 2010." As Karakatsanis remembers Brown's court appearance: "He got down and was begging for mercy—he asked the Lord for mercy. The judge told him something like, 'Well, I'm going to put you in jail if you don't pay me.' And the judge put him in jail to sit out a \$2,000 debt for traffic tickets."

# Criminal Injustice

One of the people Karakatsanis saw called in front of the judge was Sharnalle Mitchell. She had been watching TV one Sunday night with her one-year-old on her lap and a four-year-old beside her when the Montgomery police burst into her home and arrested her—"not because she was a violent criminal or any kind of predator, but because she had some unpaid traffic tickets from 2010."

As the complaint that Karakatsanis and his co-counsel filed in federal court asserts, Mitchell "was brought to the City court and was told that she would not be released from jail unless she could pay the total amount"—now more than \$4,500—or "serve [it] out... at a rate of \$50 per day." After being brought to jail, however, "she was given a sheet of paper stating that her jail term had been reduced to 58 days 'or' payment of \$2,907." And she was told "by jail guards that she could 'work off' an additional \$25 per day toward her debt to the City if she agreed to perform labor consisting of janitorial tasks, including cleaning floors and wiping jail bars."

Struck by what he had seen, Karakatsanis went to the jail attached to the courthouse and called out Brown's name. The court officers brought Brown to the designated holding area to meet him, but Brown was "skeptical" at first—which made sense, Karakatsanis recalls, since he "was wearing a hooded sweatshirt inside out" (he has worn his clothing that way for years to avoid providing free advertising) and "didn't look like a lawyer." Brown refused to talk to Karakatsanis unless his pastor said it was OK, so the two called Brown's pastor on speakerphone from the holding cell and the pastor proceeded to Google Karakatsanis. Fortunately, Harvard had just posted a news release about the public-service grant, and the pastor read the release aloud over the phone. He then advised Brown to "let this man help you."

Mitchell and Brown became two of Karakatsanis's first clients—and named plaintiffs in a 2014 federal lawsuit. The suit challenged the de facto debtors' prison that Montgomery was running, more

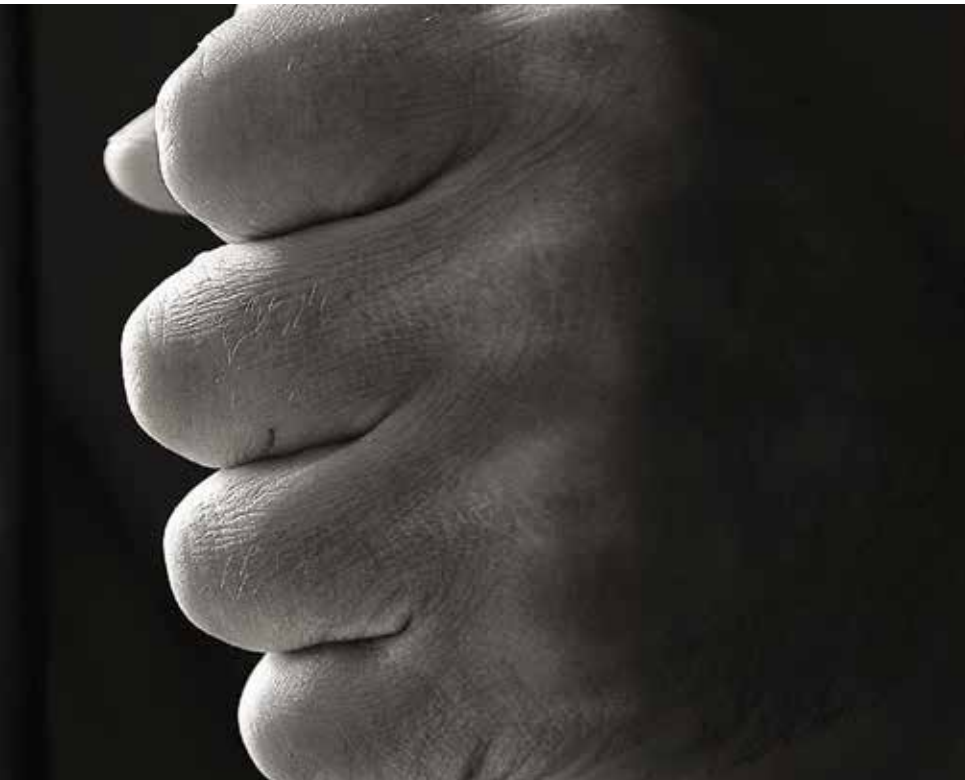
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than 30 years after the Supreme Court had made clear, in *Bearden v. Georgia* (1983), that “if the State determines a fine or restitution to be the appropriate and adequate penalty for the crime, it may not thereafter imprison a person solely because he lacked the resources to pay it.”

Within weeks, the city had released everyone in Mitchell and Brown’s situation. In fact, they did so right after the judge in the case had summoned Montgomery city leaders to try to justify the system: rather than try to defend it, they just decided to let everyone go. Karakatsanis emphasizes the absurdity of imprisoning them in the first place: “There was no good reason those people were in jail—such that the government could just release them all on one day. They were all there just because they couldn’t afford a few hundred dollars.”

Karakatsanis collaborated with the Southern Poverty Law Center (SPLC), which had filed individual cases on behalf of two debtors

one de Beauvoir under senior lecturer Boris Kapustin—caused him to start “questioning what I’d been told about our society.” (That study, he remembers, juxtaposed strikingly with watching classmates “go to work for corporate investment banks and consulting firms and things like that.”) Though he entered Harvard Law School (HLS) in 2005 hoping to tackle school desegregation and education policy, volunteer work with the student-practice organization Harvard Defenders as a first-year student reshaped his trajectory, exposing him to how the legal system often treats people accused of crimes—and “how difficult it was for people without resources to get any kind of help.” “I couldn’t really believe how the process was functioning,” he recalls. The more cases he took through Defenders, the more he read about the system, and the more he saw of it as a third-year student providing legal defense to indigent clients through HLS’s Criminal Justice Institute clinic, the more astonished he was.



## Alec Karakatsanis puts “human caging” and “wealth-based detention” in America on trial.

by MICHAEL ZUCKERMAN

jailed under the same scheme, on negotiating a settlement with the city. “[H]e was a passionate, effective advocate,” writes Sara Zampierin, J.D. ’11, an SPLC staff attorney who worked with him on the effort, by email. “He was able to focus on the details of how the settlement would impact each person that owed money to the court while never losing sight of the larger goals for reform.”

“Within months,” Karakatsanis recalls, “we had designed a whole new municipal court system to prevent this from ever happening again.” The 16 named plaintiffs also settled their individual claims for undisclosed sums.

### AGAINST “HUMAN CAGING”

**K**ARAKATSANIS GREW UP in a well-to-do neighborhood in Pittsburgh, the son of a lawyer and a chemist at a large pharmaceutical company. At Yale, study in philosophy—particularly reading critical social theory like Frantz Fanon and Sim-

In October 2016, accepting at an award at the University of Pittsburgh in front of family members and many of his elementary- and high-school teachers, Karakatsanis discussed the importance of understanding his cases in a broader context. He began by noting, “[T]his country is putting human beings in cages at rates that are unprecedented in the recorded history of the modern world.” The current rate of incarceration, he explained, is “about five times the historical average from the time this country was founded until about 1980” and “five to 10 times the incarceration rate of other comparably wealthy countries.”

And this “human caging,” he continued, is not random: “We’re doing it to human beings and bodies that belong to particular groups. We’re doing it at astronomical rates to people of color and impoverished communities. We are putting black people in cages at rates six times that of South Africa at the height of apartheid.”

Karakatsanis was being honored for his work at both Civil Rights

Corps (CRC), a legal nonprofit that he founded in 2016, and Equal Justice Under Law (EJUL), a legal nonprofit that he co-founded with law-school friend Phil Telfeyan J.D. '08 in early 2014. (He had left EJUL the month before to found CRC; Telfeyan still runs EJUL.) With his small band of colleagues—CRC just hired its tenth staff member—Karakatsanis, now 33, has swashbuckled around the country, partnering with local legal nonprofits and community groups to file lawsuits challenging egregious forms of such “human caging” across the balkanized constellation of local authorities in which the vast majority of American criminal procedure plays out each day.

Though he had clerked in Alabama, served as a federal public defender there, and practiced as a lawyer with the District of Columbia’s storied Public Defender Service (PDS), co-founding EJUL was Karakatsanis’s first foray into tackling what he calls “the American criminal system” more broadly. (He’s observed that “if you say things like ‘the criminal justice system,’ people might get the sense that you’re talking about a system that does justice.”)

For a year and a half after he and Telfeyan founded EJUL in early 2014 with their seed grant, the two of them worked out of their Washington, D.C., apartments. Karakatsanis often used his bed and a small standing desk next to it as his workspace. Juliana Ratner, J.D. '17, who first met Karakatsanis when they worked together at PDS, recalls that she “used to joke to him: ‘Do these cities that you’re suing know that it’s one man in a bed?’”

Their challenges to date have focused on the jailing of poor people for failing to pay municipal fines and fees, and the jailing of poor criminal defendants who cannot afford to pay the bail amounts that would allow them to be released from jail before trial. In challenging

“That kind of aggressive self-confidence has catapulted Alec into being a leader in the criminal-justice reform movement.”

these two forms of what CRC and other groups have termed “wealth-based detention,” Karakatsanis and his colleagues have launched two frontal assaults at a broader system of criminal punishment that keeps 2.3 million people locked away from the rest of society. It may sound amazing to attack something so Goliath-like with the organizational equivalent of sticks and stones. But so far, at least, they are winning.

## SUING FERGUSON, MISSOURI

FROM THAT FIRST SUIT in Alabama, Karakatsanis has barnstormed the country, bringing 12 class-action lawsuits in 12 cities in the first 10 months of 2015 alone—a staggering caseload. “They’re this very small team, and there’s just a constant drumbeat of new cases they’ve filed—in small jurisdictions, and now in some really big jurisdictions,” says Larry Schwartztol, who met and worked with Karakatsanis while serving as executive director of the HLS criminal-justice policy program from June 2015 through May 2017.

Alexa Shabecoff, HLS’s assistant dean for public service and director of its office of public-interest advising, recalls being worried about Karakatsanis’s brashness when he and Telfeyan first applied for the school’s seed funding. “But,” she reflects, “it turns out that kind of aggressive self-confidence allowed them to fearlessly file multiple federal civil-rights cases in a short amount of time and has catapulted Alec into being a leader in the criminal-justice reform movement.”

After reading about municipal-court practices in St. Louis County in the wake of the protests following the death of unarmed black teenager Michael Brown, for example, Karakatsanis connected with a local legal nonprofit, ArchCity Defenders, which had already been fighting those practices. He and executive director Thomas B. Harvey became friends (Karakatsanis stayed at Harvey’s house while working on the case) as they investigated and eventually worked together to bring several federal lawsuits against municipalities.

“I drove him around to a couple different courts and a couple different areas in St. Louis that I thought would be ripe for some investigation,” Harvey recalls, “and he spent days if not weeks going and meeting people in their community, in their house, spending all day listening to people’s stories, watching court, really just diving into it.”

“In the legal profession, unfortunately, that is very atypical,” Harvey notes. “We knew right away that he was the right person to partner with.”

One story that sticks out in Karakatsanis’s mind comes from one of a number of house meetings in Ferguson that he helped convene. A woman had been sitting with her children, talking about how she had struggled with schizophrenia and had amassed a number of outstanding warrants for unpaid traffic tickets. “Every time she left the house,” he says, “she was worried about being pulled over. And Ferguson averaged 3.6 arrest warrants per household before we sued

them—most of them for unpaid debt....And it wasn’t just a Ferguson problem, it was the whole St. Louis County region—so she had outstanding tickets in neighboring towns.”

Every time the woman was arrested, Karakatsanis recalls, “she’d spend a few days in Ferguson, and they’d try to get money out of her; she couldn’t pay a couple hundred bucks bail, so after three days they’d send her to another town. And she couldn’t pay there,



COURTESY OF ALEC KARAKATSANIS

**Alec Karakatsanis in Montgomery, Alabama, with plaintiffs Lorenzo Brown, Sharnalle Mitchell, and Tito Williams after winning an injunction to stop the city from collecting court fines.**





**Karakatsanis at the Orleans Parish Criminal Courthouse, in New Orleans, where he is litigating against the money-bail system: “I love that the courthouse has inscribed, ‘The impartial administration of justice is the foundation of liberty.’”**

so they’d send her to another town. At the third or fourth jail,” he remembers her saying, “I wasn’t getting my meds, and I just didn’t see a way out. And I love my children so much, but that’s when I tried to strangle myself with my bra.”

Karakatsanis and Harvey, working with the St. Louis University School of Law Legal Clinics, sued both Ferguson and the nearby city of Jennings. As the opening paragraph of their Jennings complaint alleged: “In each case, the City imprisoned a human being solely because the person could not afford to make a monetary payment.” Ultimately, the city of Jennings agreed to overhaul its practices and pay \$4.75 million in compensation to people it imprisoned and attorneys’ fees—likely the largest settlement ever in a debtors’-prison case. Their litigation against Ferguson continues.

## FROM FINES AND FEES TO BAIL AND JAIL

THE ALABAMA AND Missouri cases are emblematic of Karakatsanis’s work to confront the jailing of people too poor to pay fines or fees assessed against them in municipal courts. But that is just one way in which poor Americans can find themselves locked behind bars for being unable to pay a certain price for their freedom.

As he was litigating the debtors’-prison cases, Karakatsanis recalls thinking that “the basic legal principle that we’re vindicating in these debtors’-prison cases, that no human being should be kept in a cage because she can’t make a payment, applies with equal if not *greater* force prior to trial”—when all people are still presumed innocent. To apply that basic legal principle fully and faithfully would strike at the “the entire foundation of the American money-bail system” as currently practiced.

To appreciate the power of Karakatsanis’s challenge, it’s important to understand how money bail is generally used in criminal adjudication. “In any state court system in America,” as Judge Truman Morrison, a senior judge in Washington, D.C., explains it, “if any one of your readers is arrested tonight, it will be determined whether they go home until their trial on the basis of how much money they have.” That’s because, while judges *can* hold someone in jail prior to trial on the ground that the person is a danger to the community, doing so triggers extra procedural hurdles. Instead of dealing with those hurdles, Judge Morrison says, “What happens almost everywhere is that a judge who is frightened about the prospect of releasing this person imposes a money bond.”



**Meeting with client Yolanda Carney outside her home in Murfreesboro, Tennessee**

a court without taking “a position on the facts alleged or the ultimate merits of the cases.” Rather, the filings “lay out our view of the correct constitutional framework and the proper way to analyze the plaintiffs’ claims.” As Bains, who worked on the filings while serving as senior counsel to the assistant attorney general for DOJ’s civil-rights division, noted in an email, “We said that any bail system that results in jailing people because of their poverty—without consideration of their ability to pay or alternatives to incarceration—violates the Constitution.”

Though Karakatsanis started small in attacking bail, he has since become more ambitious. In May 2016, Civil Rights Corps and lawyers from the Texas Fair Defense Project and the firm Susman Godfrey filed a federal suit against Harris County, Texas. Its jail, per their complaint, is “the largest jail in Texas and the third largest jail in the United States” and “books on average 120,000 individuals per year”—77 percent of whom are “kept in jail cells prior to trial, despite the presumption of innocence, because they cannot afford to pay money bail.” The *Houston Chronicle* reported that in the five years prior to the lawsuit, 55 people, all presumed innocent, had died there while awaiting their trials.

After considering what she described as “an extensive record consisting of hundreds of exhibits, thousands of hearing recordings, and eight days of arguments and briefing,” Chief Judge Lee Rosenthal, a federal judge for the Southern District of Texas who was appointed by President George H.W. Bush, issued an historic ruling on April 28, 2017, that granted the legal team’s motion for a preliminary injunction. That means that Harris County cannot continue to jail misdemeanor defendants (the suit did not apply to defendants charged with felonies) without considering their ability to pay during the time it takes Karakatsanis, the county, and the courts to reach a final legal resolution. In other words, the case was strong enough, and the harm of allowing the current practices to continue serious enough, that Harris County had to stop right away—even while the litigation proceeds.

How long the case itself will go on is unclear. On June 7, U.S. Supreme Court Justice Clarence Thomas denied the county’s motion to suspend Chief Judge Rosenthal’s order, and the *Chronicle* reported the next day that the county had begun releasing scores of people charged with misdemeanors—including Andre Medina, a 17-year-old high-school senior jailed after being arrested for trespassing. (As of June 13, the *Chronicle* reported, more than 600 such people had been released.) But the county, which has hired prominent D.C.-based appellate lawyer Charles J. Cooper to help with its appeals, may well fight on. (As of July 3, 2017, the *Chronicle* reported, the county had spent nearly \$3.5 million to defend the case.)

No matter how the case develops, observers praise Karakatsanis’s role in helping galvanize a movement to confront the way money bail operates today. “It’s pretty likely that some version of these questions will end up in the Supreme Court in the coming years,” notes Schwartztol, the former director of HLS’s criminal-justice policy program.

“It’s very hard for me to talk about Alec’s role without sounding like I’m exaggerating its importance,” adds Judge Morrison. “I’ve been [working on bail issues] for eight to 10 years...it’s absolutely

The process, he points out, is not transparent: “They don’t say, ‘I think you’re frightening to me and we can’t afford to release you.’” Instead, the judge effectively says, “I’m going to set your money bond so high that you can’t actually make it—that’s what judges are doing every day in courtrooms across America.”

“Any fourth-grader can understand,” Judge Morrison continues, that a person doesn’t become “less risky or dangerous” just because he’s “left his money at the clerk’s office.” But not everyone has the money to deposit at the clerk’s office in the first place—so it’s the poor who end up languishing.

The scope and consequences of this system of pretrial detention are huge. As Chiraag Bains, J.D. ’08, a visiting senior fellow at HLS’s criminal-justice policy program, notes, “There are 450,000 people in our nation’s jails today pretrial,” and “the vast majority of them are there not because they pose a flight risk or a danger to society, but simply because they can’t afford to post a monetary bond.”

“These people are legally innocent, and yet they are deprived of their liberty and subjected to often deplorable conditions,” Bains continues—which in turn makes them “more likely to plead guilty, to be convicted at trial, to be sentenced to prison time, and to be given longer sentences” (alongside other socioeconomic harms such as lost wages and difficulty in finding or keeping housing). “And all of these metrics,” he adds, “impact racial minorities more severely.”

Fred Smith Jr. ’04, an assistant professor at Berkeley Law School, writes in an email that he will “never forget when, just a few years ago, Alec tilted his head, looked at me and said, ‘I think the way money bail operates in the United States is unconstitutional.’” Smith, who now sits on CRC’s board, recalls that the argument “was as persuasive as it was ambitious and creative. And just look at what has happened since. The United States Department of Justice [DOJ] and federal courts across the country agree.”

In referencing the DOJ, Smith is alluding to the department’s decision in February 2015 (under different leadership than today’s) to file a “statement of interest” in the suit that Karakatsanis brought against Clanton, Alabama, for “jailing some of its poorest people because they...cannot afford to pay the amount of money generically set by” the city’s bail schedule. He was also referring to the DOJ’s later decision to file an amicus brief in a similar suit that he and the Southern Center for Human Rights brought against Calhoun, Georgia.

Bains explains that DOJ chooses to file those documents with



accurate to say that there is no person for my money, pardon the pun, who has done more to advance the cause of pretrial justice in America.”

“Years from now when our country is no longer deciding pretrial freedom based on money,” says Cynthia Jones, a law professor at American University and member of CRC’s board who previously served as PDS’s executive director, “Alec’s work will be cited as the impetus for this massive criminal justice reform.”

## A ZEALOUS ADVOCATE

**T**HE ILLS AFFLICTING the American criminal system were not created by any one person, and they will not be undone by any one person, either. Particularly in the case of institutions that disproportionately harm the poor and people of color, there is a danger, in focusing on the work of a privileged white man like Karakatsanis, of falling into the great-man-theory-of-history trap, or its cousin, the white-savior trap.

For whatever it’s worth, Karakatsanis seems fully alive to these concerns. He is quick to point out that “it’s really the people who have been subjected” to this system who can describe it best. He is equally quick to note that the way to a “fundamentally more just system” must ultimately be led by those most directly affected by the current system—not people like himself. In any case, he disclaims that there’s been much progress at all.

Perhaps consequently, his approach has been highly collaborative. “The real energy for replicating [a success],” he notes, “comes from building local relationships and partnerships with people in different jurisdictions”: partnering with those who “can co-counsel the case” and those who can, for example, “organize around the issue.”

“Certainly our work is lawyer-driven in a lot of ways,” he admits, “but we make a real effort to situate [it] in the context of a broader movement. Winning a couple cases is not going to fix these broader problems...it’s the kind of thing that lawyers need to look to other people for leadership on.” Others confirm that assessment. “His organization works with a very broad group of allies: big established advocacy organizations, smaller grassroots organizations, law firms, policy folks, researchers,” says Schwartztol. “I think he understands that for this work to be effective, it’s got to be engaged” effectively with that broad spectrum of actors.

Part of the price of progress is how much Karakatsanis pours into fights in which he and his comrades in arms tend to be massively outgunned by their adversaries—compare Harris County’s \$3.5 million in spending on the suit to CRC’s annual budget, which just recently approached \$1 million—not to mention the size and entrenchment of the existing system. For three years, essentially all of his time has gone to “developing this network and community so that we can bring really, really good cases that are really effective and really tied to each community.”

“I think zealous is a good word to use,” says Lark Turner, J.D. ’18, who met Karakatsanis in March 2016, on an HLS-sponsored public-service spring break to help with a case he was litigating against Rutherford County, Tennessee, and the private company that ran its misdemeanor-probation system. (The company surrendered its license to do business in Tennessee a few months later.) “He is driven by—he realizes that—his hours are finite, and he wants to use them for this cause.”

Though Karakatsanis tries to sleep seven hours a night, he hasn’t taken a vacation in years. During his first 30 months of public-in-

The ills afflicting the American criminal system were not created by any one person, and they will not be undone by any one person, either.

terest lawyering, he didn’t pay for a single hotel room in any of his travels, opting to stay with friends or co-counsel instead. (In Nashville, for example, he stays at the home of a blues musician, the father of a former PDS intern, who plays for Karakatsanis when he comes home after a long day of legal work.)

That intense dedication and work ethic also characterize the people who work with him at CRC, based in Washington, D.C. Says Premal Dharia, the organization’s new director of litigation, “[W]e believe we’re

working toward critical, meaningful change in our culture and in our legal system. So yes,...we are always working.”

Part of that endless work is driven by the fact that CRC’s mission is much broader than overhauling the use of money bail. “In the medium term,” Karakatsanis says, “we’re not interested in just money bail, we’re interested in changing the way that our society thinks about human caging and connecting a lot of these problems to bigger problems of inequality in our society, whether it’s economic or racial—really helping to resensitize everyone to the brutality of the criminal system more generally.” That’s why they have their sights set on everything from prosecutorial misconduct to underfunded indigent defense to immigration enforcement and sentencing schemes. Before all is said and done, if there is a place where “the operation of the system has been functioning really effectively for the purpose of warehousing and transferring bodies,” Karakatsanis wants to use civil-rights litigation to disrupt it.

## “THE VERY NAKED MEANING OF WORDS”

**T**HIS BROADER MISSION helps explain something that many of Karakatsanis’s admirers note immediately: his focus on the power of words. “One of the wonderful things that Alec does,” observes Judge Morrison, “is the way he uses language....He refers to the process of jailing people as what it actually is, which is human caging—he refers to judges sending people like animals to live in cages before their guilt or innocence is actually determined.”

Though his legal filings generally omit such potentially inflammatory phrases, they too are, as Harvey (Karakatsanis’s co-counsel in the Ferguson and Jennings cases) points out, “written in a way intended to get at these problems in straightforward, commonsense language”—a virtue that is not common to all lawyers. Consider this excerpt from the second paragraph of his Jennings complaint:

Once locked in the Jennings jail, impoverished people owing debts to the City endure grotesque treatment. They are kept in overcrowded cells; they are denied toothbrushes, toothpaste, and soap; they are subjected to the stench of excrement and refuse in their congested cells; they are surrounded by walls smeared with mucus, blood, and feces; they are kept in the same clothes for days and weeks without access to laundry or clean undergarments; they step on top of other inmates, whose bodies cover nearly the entire

uncleaned cell floor, in order to access a single shared toilet that the City does not clean; they huddle in cold temperatures with a single thin blanket even as they beg guards for warm blankets; they develop untreated illnesses and infections in open wounds that spread to other inmates; they sleep next to a shower space overgrown with mold and slimy debris; they endure days and weeks without being allowed to use the shower; women are not given adequate hygiene products for menstruation, and the lack of trash removal has on occasion forced women to leave bloody napkins in full view on the cell floor where inmates sleep; they are routinely denied vital medical care and prescription medication, even when their families beg to be allowed to bring medication to the jail; they are provided food so insufficient and lacking in nutrition that inmates are forced to compete to perform demeaning janitorial labor for extra food rations and exercise; and they must listen to the screams of other inmates being beaten or tased or in shrieking pain from unattended medical issues as they sit in their cells without access to books, legal materials, television, or natural light. Perhaps worst of all, they do not know when they will be allowed to leave.

Part of Karakatsanis's purpose in "using the very naked meaning of words" (as Harvey puts it) in lieu of more polite euphemisms may be that it helps persuade decisionmakers or potential allies in individual cases. But his friends also see a broader political idea at work. "Alec loves 1984 by George Orwell, so it's not just some advocacy skill that he's picked up and realized it works," says Salil Dudani, who worked as an investigator at EJUL and now attends Yale Law School. "I think he has a theoretical commitment about... how language can be used politically to downplay the interests of certain people and magnify the interests of others."

Karakatsanis himself has indicated this commitment to countering groupthink, citing Hannah Arendt's *Eichmann in Jerusalem* and resisting the temptation to think in terms of good and bad apples when confronting the American criminal system. "I think all of us are deeply complicit in the social injustices that we've allowed to fester," he explains. "I don't think a lot of the people who work in the system are bad people at all; I think that they've become cogs in a system that very few people have really scrutinized and they've become desensitized to a lot of the harm that they're doing." (He admits to being part of the problem himself when he worked as a public defender, and to "participating in" all sorts of injustices today by "not attacking" them.) He views CRC's task "not as finding and getting rid of the bad apples," but rather "convincing everybody that the whole system is deeply flawed and that we'd all be better off if we radically changed it."

**"We do not act like a society that treats brutal human caging as a narrowly tailored remedy of last resort. The failure to require reasons and evidence has been a sad chapter in American legal history."**

He is accordingly loath to write off other individuals, even those who sometimes restrict his clients' liberty. "I've found that a lot of police officers and sheriffs are really opposed to the stuff that goes on in the criminal system," he says. "They see some of the worst aspects of it": "women giving birth on the jail floor because they couldn't afford money bail," "people being tortured" by abuse and poor jail conditions "because they can't afford a traffic ticket." Consequently, he explains, he has "a lot of sympathy with people on the front lines...who are being asked to enforce some of these policies that our society has decided to inflict on the most marginalized people."

## SURPRISINGLY UNSTRICT SCRUTINY

PART OF Karakatsanis's premise here—perhaps further following Arendt—seems to be that what's gone wrong in the American criminal system can be traced back, at least in part, to a failure to actually think hard about it in the first place. Karakatsanis made that point in a 2015 essay in the *Harvard Law Review Forum* (the print law journal's online companion). Referencing the foundational constitutional doctrine of "strict scrutiny" (that the state can't deprive someone of a "fundamental right" unless that deprivation is "narrowly tailored" to meet a "compelling governmental interest"), he argued:

[L]awyers never forced us to ask the fundamental question:

*Are we sure that putting human beings in cages is absolutely necessary to creating a world with fewer people walking around smoking marijuana? And, more broadly, that it is necessary to creating the kind of flourishing society that we want to live in? All of this makes the failure of the legal system to apply strict scrutiny to criminal punishment all the more bizarre. We do not act like a society that treats brutal human caging as a narrowly tailored remedy of last resort. The failure to require reasons and evidence has been a sad chapter in American legal history.*

Lawyers' failure to scrutinize a bloated, Kafkaesque, often inhumane system of criminal investigation and adjudication is a question he seems to have begun wrestling with in law school. As a second-year student and member of the *Harvard Law Review*, he published a comment on a case in which a panel of Ninth Circuit judges had affirmed a stack of mandatory-minimum sentences totaling 159.75 years. The person sentenced was a mentally ill woman, Marion Hungerford, who had helped someone who was giving her a place to stay plan a series of armed robberies, though Hungerford was not physically present for any of the robberies and "never touched a gun." (A 2010 settlement with the Montana U.S. Attorney's office eventually lowered the sentence to about seven years.) Karakatsanis observed that the panel had "dutifully" affirmed the heavy sentence, even though that decision clearly "troubled" at least one concurring member of the panel, Judge Stephen Reinhardt. As Karakatsanis wrote: "Judge Reinhardt believed that he 'lack[ed] the authority' to reform statutory penalties or Eighth Amendment precedent. He called upon those with 'both the power and the responsibility to do so' to take action. Ironically, Judge Reinhardt did not recognize that he and his colleagues on the federal bench fit this description."

If Karakatsanis has not yet persuaded the entire federal judiciary that it has the power and responsibility to reform the American criminal system, he—alongside a growing movement of other dedicated lawyers and activists—is at least chipping away at the mission. Says Schwartz, "They're generating these amazing court

rulings that are not only destabilizing the practice of money bail in a number of jurisdictions, but providing a legal framework for other courts to adopt.”

**Conferring with Harvard Law School students during a spring-break trip to investigate private probation abuses in Tennessee**



The specter of a CRC lawsuit may also be persuading municipalities to reform on their own. The American criminal system is not a monolith—rather, it’s an agglomeration of federal, state, and especially local authorities, many of which operate in practice as individual fiefdoms. (The United States contains, for example, roughly 6,000 detention centers and 15,000 state and local courts spread across 3,000 counties.) Changing them one by one, in other words, is hard. But what Karakatsanis accomplishes when he wins in “a small town in Alabama,” Judge Morrison points out, goes beyond the city limits. Other judges, city counselors, and mayors, he explains, look at the litigation, “see that Alec is winning,” and suddenly realize that they’re vulnerable, because they do things the same way. “And so rather than wait to have Alec ride into town,” he continues, local officials figure, “[W]e better see if we can proactively try to avoid being called to account.”

At the same time, Karakatsanis seems to be persuading two other constituencies of their own power and responsibility to address the system’s failings: his clients, and aspiring lawyers.

He notes with pride, for example, a story about Lorenzo Brown, the man he met that winter morning in Montgomery. Right after the federal judge in Brown’s case had called in the city’s top officials and ordered them to come up with a bail system that would comply with the Constitution, the SPLC’s Sara Zampierin recalls holding the door for Brown as he left the courtroom. “He was walking out with his cane,” she remembers. “He smiled and said, ‘Wow, I never knew I had this much power.’”

Aspiring lawyers are moved by Karakatsanis’s dedication. “His work really drives home for me this idea that where there are no lawyers, there is no Constitution,” says Lark Turner, who joined the March 2016 HLS spring-break trip to help him in Tennessee. “Alec is single-mindedly dedicated to this work,” says Ryan Cohen, J.D.-M.P.P. ’17, another student on the trip. “That is something that’s inspiring to me as a citizen of this country who wants to improve it, and as a law student dedicated to public interest.”

Persuading budding lawyers to take their vocation’s responsibilities particularly seriously is not a new goal for Karakatsanis. In 2010, he published an unconventional essay in the *NYU Review of Law & Social Change*, mostly drafted while he was still a law student. He worried about how someone could become a “human lawyer”: one who “remembers that all abstract policy debates are about real people,” who is “sensitive to forgotten stories,” who “challenges conformity” and, in deciding how to live her life, “litigates all her moral decisions.”

The essay contains a string of vignettes, each meant to help think through part of the journey. In one, Karakatsanis tells the story of law students descending on New Orleans post-Katrina and meeting a public defender named Julian. “Julian’s house,” he relates, “had been flooded and destroyed. A fallen tree had almost evenly divided his pick-up truck in half, and he was using the bed of the truck as a makeshift office. He didn’t have a working phone.” The students watch aghast, in “a hurricane-ravaged courtroom,” as one person is told he has to remain in jail despite not being “the right ‘Dwayne

Jackson,” and then as Julian is appointed to defend his “twenty-first pending capital murder case”—an absurd caseload. Afterward, they find Julian and “tell him how appalled they were at what they had seen.” Julian recasts what they’re seeing as a difference in degree rather than kind: he and his colleagues have never had the resources that they need, and his clients have always languished in jail against reason and common sense.

“The hurricane brought many to the front lines, but it didn’t seem at all to change the nature of the battle Julian was fighting there in the trenches,” Karakatsanis wrote. “In the fight to improve the lives of marginalized people, the human lawyer has always worked from a broken truck, and every day is hurricane season.”

• • •

TODAY Karakatsanis is in the trenches, but he is also “one of the most important figures litigating issues related to the criminalization of poverty,” according to Smith, who notes that Karakatsanis’s cases “have deeply impacted” his own scholarship at Berkeley. “Indeed,” Smith adds, “one could make the strong case...that he is the most important figure working on those issues in the United States.”

But while planning future projects (for example, the “prosecutor accountability project” that will use strategies he’s honed to “go around the country and change the way that district attorneys are prosecuting cases”) and raising money to fund them (though CRC brings in some revenue through attorneys’ fees, the lion’s share of its budget comes from charitable donations), Karakatsanis continues to target intangible change as well.

“I think everybody should...make a decision about how they want to live their life, and how they can have the most impact on other people while they’re here,” he says. “The great thing about being a human being is that at any moment you can do something different—and you can use a lot of things that you’ve learned, and skills that you have, and wealth that you’ve accumulated, and do a great deal of good to really change our society. And what we need is a whole movement of people doing that. Because there’s a tremendous amount of suffering in the world and in this country that would be easily alleviated with a broader movement of people really caring about it.”

*Michael Zuckerman ’10, J.D. ’17, graduated this past May. While in law school, he represented indigent criminal defendants through Harvard’s Criminal Justice Institute clinic and served as the 130th president of the Harvard Law Review.*





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