

Economic Architecture Podcast – Episode: Fair Chance Hiring – Clean Slate Transcript:

The following transcript has been edited for clarity

Sharon Dietrich: If you don't have your record cleared, there's nothing in the law of the states or the United States, that says after seven years, this doesn't follow you anymore. It just really like, when you were a kid and they would tell you about your permanent record—it really is your permanent record, and it's so unfortunate that something you may have done in a spur of a moment is now defining your entire life.

Stuart Yasgur: I'm Stuart Yasgur, and this is Economic Architecture, the podcast.

Stuart Yasgur: One out of three adults in the United States has had an interaction with the criminal legal system.

Stuart Yasgur: For many of those people, the record of that interaction creates a barrier that can affect the rest of their lives.

Stuart Yasgur: It can prevent them from getting a job, securing housing, and even volunteering at their children's school. At Economic Architecture, we believe this is a problem of historic proportions, and we need to address it with structural innovations that can create change at the magnitude of the problem.

Sharon Dietrich: First so that we started to be able to seal misdemeanor convictions in Pennsylvania, way after most states were. And then we came up with what is our signature program called Clean Slate. And that is more of a method of delivering record clearing than it is like eligibility criteria. So basically, what Clean Slate is, is that you can get your record sealed up by a computer. You don't even have to ask for it.

Sharon Dietrich: If you are eligible for Clean Slate, a computer will do the work and seal your record without any action being taken by you. And that has been really a breakthrough.

Sharon Dietrich: We were the first state to do it, and our group thought this up and did the advocacy behind it, I'm proud to say. But the key thing about Clean Slate is the scale at which that can be done. So, since Clean Slate has gone into effect here in Pennsylvania, 56 million records and court cases have been sealed.

Stuart Yasgur: In today's conversation, I speak with Sharon Dietrich from Community Legal Services in Philadelphia. And while success has many parents, there is no doubt that Sharon has been the driving force behind a structural innovation called Clean Slate.

Stuart Yasgur: To date, Clean Slate has directly benefited more than one million people in Pennsylvania by sealing over 56 million criminal records.

Stuart Yasgur: This is a seismic shift for people who've had an interaction with the criminal legal system.

Stuart Yasgur: In today's conversation, we're gonna talk about clean slate, what it is, how it works, and where it came from.

Stuart Yasgur: But before we do, I wanna ask listeners to keep an ear out for Sharon's own story. Sharon's work created a massive positive impact, but her ability to create that impact was not the result of her title, her office, her authority, or her resources. Sharon listened as people described the challenges they faced in finding employment.

Stuart Yasgur: She heard from them that criminal records were creating an enormous barrier. She spent countless hours learning about the nuances and details of how it worked. Then, she gave herself permission to address the problem, and she addressed the problem at the structural level. Each of these elements are necessary.

Sharon Dietrich: Criminal records are really important to people's post-conviction lives and to our society as a whole because not only the amount of stigma that's attached to them and the negative consequences attached to them, but the number of people in this country who have criminal records of one form or another. So, nobody knows for sure exactly what that number is. But the estimates given are usually around the area, one in three American adults has a criminal record of some sort.

Stuart Yasgur: Yeah. That is mind-bogglingly a large number.

Sharon Dietrich: Yes.

Stuart Yasgur: And having a record, how does it impact people?

Sharon Dietrich: Virtually in a multitude of ways.

Sharon Dietrich: The things that might be most obvious are things like the difficulty of finding a job because virtually every job is background checked. Was not the case once upon a time, but it is now. So if you've got something on your record that hasn't been expunged or sealed, your employer to-be probably knows about it. To getting an apartment where they will check your background the same way. To things that people don't think about until they actually happen to them. One thing would be, uh, you wanna volunteer at your kid's school.

Sharon Dietrich: And that is really hurtful for a lot of folks that they're told, no, you can't come to the school to go to the field trip because you've got a record, and then they have to have conversations with their children.

Sharon Dietrich: Two, you go to buy life insurance. And even that may have some implications, and on and on and on the list goes. People are understandably frustrated that they think they've done their sentence, and they've moved on and they're trying to be good citizens, but the past keeps coming back time after time in unexpected ways sometimes.

Stuart Yasgur: Yeah, because there is this kind of pervasive notion that everybody deserves a fair shot, that things happen, but then you address them, and then there's a chance to move on. But with records, it's following people.

Sharon Dietrich: That's right. Which is why in my organization we've focused on clearing records to the extent we can do that, because that is the most surefire way of moving on.

Sharon Dietrich: If you don't have your record cleared, there's nothing in the law of the states or the United States, that says after seven years, this doesn't follow you anymore. It just really like when you were a kid, and they would tell you about your permanent record. It really is your

permanent record and it's so unfortunate that something you may have done in a spur of a moment is now defining your entire life.

Stuart Yasgur: Yeah, absolutely. And I think let's dive into it right now. Could you just share with, for those who may not be familiar with the idea of what does it mean to clear your record?

Sharon Dietrich: So, it depends what state you're in whether it's called expungement or sealing or set aside or something else.

Sharon Dietrich: And even if it's called expungement, that may mean one thing in Pennsylvania—my state, where if you get your record expunged, the documents and the computer data is literally destroyed. So, the court file goes into a shredder, as a visual. In other places, that's called expungement in other states, but actually it what is called expungement in other states is not that.

Sharon Dietrich: It's more that your records are sealed off, so the public does not have access to them, but other entities might—like the police, for instance. So in Pennsylvania that is called sealing, but other states they may call that expungement. The idea behind it is so that at least for the major activities in your life, like getting a job and getting housing, it should not be available to the public, but law enforcement in particular, tends to retain access.

Stuart Yasgur: And you and your organization have been at the frontier of getting records cleared in Pennsylvania pioneering this work.

Sharon Dietrich: When I started working on record clearing, virtually nothing in Pennsylvania could be cleared. You could expunge cases that did not result in a conviction, which was still important to people because that one out of three includes people that have arrests that show up on background checks, non-convictions.

Sharon Dietrich: And then over time, we kept pushing the envelope. First, so that we started to be able to seal misdemeanor convictions in Pennsylvania, way after most states were.

Sharon Dietrich: And then we came up with what is our signature program, called Clean Slate. And that is more of a method of delivering record clearing than it is like eligibility criteria. So basically, what Clean

Slate is that you can get your record sealed up by a computer. You don't even have to ask for it.

Sharon Dietrich: If you are eligible for Clean Slate, the computer will do the work and seal your record without any action being taken by you. And that has been really a breakthrough. We were the first state to do it, and our group thought this up and did the advocacy behind it, I'm proud to say. But the key thing about Clean Slate is the scale at which that can be done.

Sharon Dietrich: So since Clean Slate has gone into effect here in Pennsylvania, 56 million records and court cases have been sealed.

Stuart Yasgur: That, so that's just an unbelievable number. Like just to kind of take a moment to think about that, so that these are the records of things that have happened automatically, it's almost as if they expire on their own automatically.

Stuart Yasgur: The computer says, okay, this is now eligible to be sealed and then it goes ahead and gets sealed and over 55 million records. It's unbelievable. And of course, everybody who's hearing that number, I think you instantly start to recognize, wait a second, there aren't 55 million people who live in Pennsylvania. So, there's a lot more records than there are people.

Sharon Dietrich: Yes, because a lot of them are non-convictions. You were arrested—not convicted. For some people, that happens quite often, depending where you live, and what your skin color is. It also includes minor things like summary offenses for things like harassment or things of that nature.

Sharon Dietrich: So, a lot of these are minor cases or cases that did not lead to conviction, but we're also sealing misdemeanors and, for the first time, felonies. I mean, that was the most recent development in our progress as of last year.

Sharon Dietrich: Pennsylvania, for the first time has sealing of felonies and Clean Slate will allow you to get a drug felony sealed—a single drug felony. Now, I should mention that if you can't get your records sealed by Clean Slate because you're not eligible for the rules there, you might still be able to get your record sealed through a petition process where you file papers with the court, and a DA and a judge get involved.

Sharon Dietrich: And so right now a lot of our sealing of the more serious stuff has to be done the traditional way by filing of papers with the court.

Stuart Yasgur: When you started, none of these records had been sealed. And now there's the sealing, Clean Slate is there, and that's a whole mechanism so that records will automatically get sealed if people are eligible.

Stuart Yasgur: And you're increasing who's eligible, from starting from misdemeanors, and now there's felony. How many of the possible cases that could be sealed are getting sealed now? How much of the universe of possibilities is this affecting?

Sharon Dietrich: I can't say that really, but I can give you a sense of how much more difficult it is when you have to do it by the paperwork route. We have statistics of the number of cases that have been sealed by petition since sealing by petition became a thing in Pennsylvania in 2016. The number is just over 6,600. Not 66,000.

Stuart Yasgur: Wow.

Sharon Dietrich: You know, not 660,000, you know, nothing in the ballpark of Clean Slate. My program in particular is well-resourced to do this work. We do as much work as we can. We've automated a lot of the processes. Um, and it's really important work because the way that eligibility works is that the state legislature decides what can be sealed by Clean Slate and what you have to do a petition for.

Sharon Dietrich: So, for instance, now in Pennsylvania, you can get a felony theft sealed after 10 years. But it can't be done by Clean Slate. Obviously, sealing a felony conviction is one of the more impactful things you can do for your life, but you have to get yourself into that process where you get lawyers and go to court.

Sharon Dietrich: And it can't be done nearly at the scale that the Clean Slate can be done.

Stuart Yasgur: Wow, that's incredible. Yeah, because you're comparing 6,600.

Sharon Dietrich: Yes.

Stuart Yasgur: To 55 million.

Sharon Dietrich: It's the percentage, if you do it, is something like 0.01, I think it might even be 0.001.

Stuart Yasgur: I think that's right.

Sharon Dietrich: I don't have the math in front of me, but it's remarkably...the difference between what you can do by computer and what you can do the old-fashioned way is unbelievable.

Stuart Yasgur: And that seemingly kind of like the nuanced difference that happens at the legislative level, whether it's Clean Slate or whether it's by petition makes this massive difference for people's lives.

Sharon Dietrich: Correct.

Stuart Yasgur: This was introduced by Pennsylvania, it's now, you're changing the kind of eligibility criteria.

Stuart Yasgur: Where does it go inside Pennsylvania? What's the journey forward?

Sharon Dietrich: In what do we do next for our next greatest hit? Obviously, we need to move some things from the petition side to the Clean Slate side. I think the good thing that Clean Slate has shown us when you get 56 million records sealed is that the idea works, the technology works, but the challenge then is to get the legislature comfortable with putting more serious cases on that automated list.

Sharon Dietrich: The reason some of these cases get put by the legislature on the petition side is that they are reluctant to have it go forward without a DA and a judge passing judgment on whether this person should be allowed to get it sealed or not.

Sharon Dietrich: Now mind you, we very rarely have a sealing petition denied. So the reality is, for us, that the DAs look at these cases, if you had to have been free of conviction for 10 years to get your record sealed, probably nobody's too worked up about it anymore because it, you know, it looks like in fact you've aged out of, um, committing crime.

Sharon Dietrich: And in fact, the scholarly research says that if you don't commit another crime in a four-to-seven-year period, chances are you're not gonna commit another crime. So, in reality, the DAs usually say, well, that's fine. Yep, go ahead, seal it up, but we go through this laborious, slow paper-pushing process that involves lots of human hours in order to get that done.

Stuart Yasgur: So, Pennsylvania's pioneered this. Can other states do this as well?

Sharon Dietrich: They can, and they have about 11 or 12 other states have adopted Clean Slate since we have here in Pennsylvania and other states have robust legislative campaigns going on.

Stuart Yasgur: And is that the model that you imagine that this is going to continue to be adopted by state after state, until it becomes a national kind of approach?

Sharon Dietrich: I hope so. I will tell you, Stuart, that one of the challenges is that Pennsylvania had the perfect technology environment to do this project. It's very lucky for the clean slate world that we did it first because it was already a situation where we have fairly good data to work with in our courts record system.

Sharon Dietrich: The other system that needs to be sealed is the state police records, where FBI records and state police background checks come out of. They communicate with each other and they have; there had been a good amount of resources invested in making that data good. Prior to us coming up with this idea.

Sharon Dietrich: So it was pretty much bound to work technologically here in Pennsylvania. There have been some challenges in other places where the technology is not as advanced, and sometimes that means, that you might need to invest in some technology, you know, and even, get to the place where you might consider doing this in other places, it may mean that maybe some work needs to be done to scrub data or what not, in order to make it work.

Sharon Dietrich: So, I'm not going to tell you that immediately, you know, in the next five years we're gonna have the United States of America all clean slated, but theoretically it can, and it should be at some point.

Stuart Yasgur: Yeah, so, there's the issue of kind of political will, and then there's the complexity that comes with this, and that complexity is gonna require resources.

Stuart Yasgur: As I understand, there's some kind of, you know, each state is a little bit different and different states have different kind of relationships between localities and state level authorities and record keeping and as a result.

Stuart Yasgur: So, there's a lot of complexity that might be in some places, a lot of complexity that needs to be navigated to make this work and to make it work in a way that's automatic, like Pennsylvania did. That's remarkable. What are the biggest kind of challenges besides that complexity and the political will? Are there any other really major challenges that people should have on their radars?

Sharon Dietrich: Frankly, I think another challenge is the revenue impact that Clean Slate has on certain entities that get funded through filing fees. So, if somebody goes and files an expungement petition, if they're not poor—which most of them are, if they're poor, they probably don't have to pay, they can get it waived.

Sharon Dietrich: But if you're not poor, you pay a filing fee and part of it goes to the courts and part of it goes to, you know, maybe the sheriff's association and here and there. It goes all over the place. Now with clean slate, you don't pay anything because it's just a computer doing the job. And that has caused a consternation for the courts that revenue that they previously collected no longer exists.

Sharon Dietrich: And they are challenged to figure out where they're gonna get it from instead.

Stuart Yasgur: That's a very interesting point, right? I think there's maybe relatively small, but still a vested interest that is used to having that resource of revenue and this removes that source of revenue, even though that source of revenue certainly doesn't justify the obstacles that it puts in the path.

Stuart Yasgur: For somebody who doesn't have record cleared. That's fascinating. I imagine, 'cause on the macro level—for one thing, removing barriers to employment is both better for employers and employees. It's better for the local and state economies. I imagine the

fact that this is automatic also lessens the burden on the courts and the court systems as well as the DAs—everybody involved in this.

Sharon Dietrich: You would be surprised though that sometimes it does not reduce the work for the courts. Now they're not dealing with the 56 million cases, but it, when Clean Slate gets passed, it raises the whole awareness in the community that this remedy exists.

Sharon Dietrich: So, then some of those people come forward and say, oh, I've been told I need to file this paperwork to get my record cleared. The local court staff in Philadelphia jokes with me. You told us that this would shut us down and it's not, we're still doing big numbers. You know, I think what this shows is that with one outta three Americans having records, there's just an insatiable need for people to be able to get out from under them after a certain amount of time.

Sharon Dietrich: And, yeah, it seems to swallow any resources you can come up with. So Clean Slate can go a long way. I still, I don't know that any state is close to 56 million cases other than Pennsylvania. And yeah, I'm very proud of that because I like to say that I think we've done more clearing in Pennsylvania than in the, probably the rest of the world combined since the dawn of time.

Sharon Dietrich: I'm sure other states will catch up to us soon, but because of some of the challenges, we're pretty much ahead on that number.

Stuart Yasgur: Well, it's a remarkable number. You know, the magnitude of it is hard to wrap your head around. It is a testament also to just how many records are being created for people around the country. When you say one outta three, it seems somewhat more kind of like you can start to imagine it, one state has 55 million. You start to put that across the country. It's an inordinate burden that's being put on society. The court has all of this to deal with all this policing that's happening.

Sharon Dietrich: True.

Stuart Yasgur: Would you be willing to share some reflections? And you have pioneered so much of this work and been doing it for decades and decades, in a moment of reflection before the transition, how are you thinking about it today?

Sharon Dietrich: So, I've been doing this work for 37 years, and in a couple of months I'm going to retire and take things a little bit easier than I have for the last 37 years.

Sharon Dietrich: Part of what I think about is how far we've come from when the first time I met a person with a record who told me they needed help was at a community education event that I did in the city of Philadelphia back in the late 1980s. And the guy came up to me and said, hey employment lawyer, I am a person with a record. I can't get a job. Can you help me?

Sharon Dietrich: And it was like a bombshell going off in my brain because I, as an employment lawyer, I had never heard about that before—that being a problem. And I knew there were no sort of, there was no toolkit for that. There wasn't even awareness in my world that this was a thing.

Sharon Dietrich: And I started to think about, in that moment, what might be a remedy here, and I didn't know if records could be cleared—found out they could. We've just talked about that. I didn't know whether Title VII, the race discrimination law might apply, but I thought it might, and it ended up that it did. In fact, it ended up that Clarence Thomas, now of the Supreme Court, had put his name on a guidance on criminal records back in the early 1980s when he was the chair of EEOC, which was one of the best tools I had to work with for a long time.

Sharon Dietrich: In any event, my point here is that there was nobody else to talk to about this virtually. I mean, when I started doing this work, we all knew each other, and every time there was an article in a paper, you know, we cut it out. It says a lot about the times too, right? So, from that, we have reached a point where I think there is great public knowledge about this issue.

Sharon Dietrich: There is recognition that people need a chance to move on. That was, even that concept was hard to develop. I mean, part of this was a communications job, right? To explain why somebody who committed a crime might deserve a second chance and why you shouldn't worry about them doing something nasty again.

Sharon Dietrich: So we've come up with so many remedies for hiring, for being able to get your record cleared. And my program has filed a lot of lawsuits on laws that prevented people from working, you know, not

employers, but in fact, I was working in one of those lawsuits today. In Pennsylvania, security guards are not allowed to work if they've been convicted of a whole range of things, including—believe it or not—sodomy, something that is not really thought of as a crime anymore.

Sharon Dietrich: But this law is still on the books and, and lots of people can't go to Rite Aid and be a security guard. So we developed that pathway. We sued a lot of background screeners for having terrible product they put out under the Fair Credit Reporting Act. And I think the industry is better for that, having to be done, having been done.

Sharon Dietrich: So that's kind of where we are now, which is you know, we had here in my program a conference last week of advocates who do this work from around the country, and it's a wonderful thing to get a bunch of people in a room who I don't know. I mean, in the old days I knew them all because there were so few of us, but there were a lot of people there I didn't know, which both says this area continues to grow.

Sharon Dietrich: Young people are coming in to take the place of folks like me. And the work's, the work's gonna go on, and the work needs to go on because while we've made a lot of progress, I don't think there are a lot of people with a record who are gonna tell you that they're living in Nirvana right now.

Stuart Yasgur: I think that's true. For folks who are coming in who are kinda looking at, okay, this is how far we've come—but we still have so far to go. What's your advice?

Sharon Dietrich: I guess my advice would be you gotta be creative. And you've gotta believe you can get things done. So, I teach a course every year over at Penn Law School with Jordan Harris, the Chairman of House Appropriations in Pennsylvania, who was our, one of our main Clean Slate sponsors.

Sharon Dietrich: And we're talking with the law students, and he would look at me and say, did you really think we would get this done? I didn't think we'd get this done. And I said, of course I thought we would get this done because if you don't think you can get it done, that's obstacle number one. You have to believe there's a pathway and you have to think outside the box about how to get something done that really meets the need.

Sharon Dietrich: That's why we came up with Clean Slate. We were filing expungements one after the other back in the day, and every year we would figure out a way to file another thousand of them, and we still weren't making a dent. And so, my staff and I sat around, I remember taking two of my young lawyers out for coffee to talk about what are we gonna do about this?

Sharon Dietrich: How are we gonna scale this up. Scaling up—important concept. And so, we came up with this concept and we sold it and, uh, it became a bill, and then it became a law, and then it became a reality. So, it's important for people to think big and to sit back and reflect because just keep your nose in the every day.

Sharon Dietrich: And, and I often give my boss of back then credit for this because she used to say to me, why do you keep going to expungement court on all these cases? Can't you just file a class action? And I told her, no, you don't file a class action. But essentially Clean Slate is like a class action, right?

Sharon Dietrich: You're doing something in bulk. So, I challenge people to think big, that they can do things. You know, I'm a legal aid lawyer in Philadelphia and I got a law passed that has 56 million cases sealed. You can too if you believe in yourself and have the opportunity to do that kind of work, and guess what, it's very fun and rewarding.

Stuart Yasgur: I think that's a great part to add. I mean, as someone from the outside looking in at some of the work that you've done. Part of what's unique is, one that you believe that you could do it. Two is you, you found a mechanism that's really elegant. There's a lot that needs to be done, but this really cuts to the heart of a lot of it.

Stuart Yasgur: It makes the default setting is that this is gonna get cleaned if you meet these kind of criteria. So, it really kind of is effective and elegant in that way. And then you brought together, it's a policy change, it's a legislative change, it's also a technology change.

Stuart Yasgur: You can write the law, but then you also need to get the systems to work together to actually have this all happen. So, it's, it really uses a lot of different tools in the toolbox. And as you point out, it's not like you were elected to be the Clean Slate person.

Stuart Yasgur: You did this from the role that you happen to have, and you recognize this is an issue that needs to be addressed and gave yourself permission to do it.

Sharon Dietrich: I will say that one of the things I've been reflecting on and that my program asks me to talk about these days is the question of why I stayed at Legal Aid for 37 years.

Sharon Dietrich: When I could have probably, well, I know I could have gone to other jobs that people consider more influential or high profile or what not. And the answer is that I believe that to really get things done in a policy space, you are best equipped if you actually know what's going on. And I don't think that Clean Slate could have gotten passed by a policy shop in Washington.

Sharon Dietrich: What made us able to do it was that we represent clients every day. And not only do we know their issues and their experiences, but we also knew the system. So, we knew what the database setup was with the courts, with the state police. I had a lawyer working for me who was a coder before he went to law school.

Sharon Dietrich: That was helpful, but even I knew from doing some database work in my program, what databases were and how to make 'em work. Being close to the ground is a way to do things like this that I've found to be very effective and there aren't a lot of opportunities to do work in this way, and I encourage anyone who's listening who might be interested in this kind of work to consider doing something like, like I have done.

Sharon Dietrich: If you can find something that bridges both impact work and um, on the ground work with people. And let me be clear, we have a lot of clients who have criminal records who come in here for representation. In the last 12 months, it's been over 1800 people. By far the single most common employment problem people come to Philadelphia legal aid with.

Sharon Dietrich: So that's what gets us to be knowledgeable about how things work and I would go to meetings in Washington where I had a whole different set of information to convey then to a lot of the advocates that were there. And I enjoy policy too, as much as the next person.

Sharon Dietrich: But having the grounding and people, their experiences and the systems that they deal with have really been an important part of my work.

Stuart Yasgur: That's great, Sharon. I think there's a fantastic kind of guidance for the next generation of people that are coming to fill your, fill the role and kind of contribute behind you, and that we need to start doing that.

Stuart Yasgur: So, I wanna say thank you. Thank you for this fascinating conversation. It's been thoroughly enjoyable, and thank you for spending, you know, being gracious and generous with your own time and sharing about your work with us. We really appreciate it.

Sharon Dietrich: Thank you for having me. I've enjoyed it as well.

Stuart Yasgur: Her story is an invitation for each of us to get involved. A generation that can help carry this work forward. As far as it's come, we still have so much further to go.

Stuart Yasgur: So, I hope that after listening to this fascinating conversation, you'll think to yourself, what can I do to carry this work forward? How can I listen to people and learn about the most important problems they're experiencing? How can I give myself permission to act, and how can I start to address those problems at the structural level?

Stuart Yasgur: I'm Stuart Yasgur, and this is Economic Architecture, the podcast. Stay tuned for episode four of our Fair Chance Hiring series out next Wednesday with another structural innovator, Noella Sudbury, who is carrying forward this work in a new and innovative way.