

Prisoner's Rights Profile: John Midgley

An interview with Washington social justice attorney John Midgley

by Todd Matthews

“The most important thing about prison work is it’s fundamentally about human rights,” says John Midgley, a Seattle attorney who has worked in the fields of social justice and prisoners rights for three decades. “It’s about how we are going to treat people we are incarcerating. I think that’s worthwhile.”

Midgley, 59, is executive director of Columbia Legal Services (CLS), a non-profit organization of lawyers and legal aids located in five offices throughout Washington State who provide assistance to low-income and special needs populations. CLS, in turn, is part of Alliance for Equal Justice, a coalition of legal service providers with a similar goal. His administrative role overseeing the organization’s operations is a departure of sorts (he’s used to being on the front lines of prisoners’ rights cases), though the spirit of his work is consistent with a moral concern he’s held since graduating from Michigan Law School in 1975.

Midgley’s interest in social justice issues was sparked in 1970, when news reports centered on students protesting the war in Vietnam. He recognized the importance of getting involved civically and, when he graduated law school six years later, enrolled in Volunteers in Service for America, or VISTA (a branch of the federal AmeriCorps program, a national network of non-profit organizations that assists communities and populations in need). The organization sent him to assist prisoners at a prison facility in Walla Walla, Washington through Spokane

Legal Services and Seattle Legal Services. He was assigned to the Institutions Legal Services Project (ILSP). The two organizations and their project eventually morphed into Evergreen Legal Services, which was involved in a landmark case -- *Hoptowitz v. Ray*. The 1982 ruling by the Ninth Circuit Court was in favor of the plaintiffs, who argued living conditions in the Washington State Penitentiary in Washington State were inadequate, specifically in the areas of substandard lighting, inadequate plumbing, food service that did not meet public health standards, vermin infestation, substandard fire prevention, and inadequate ventilation. The case is cited frequently by other attorneys representing prisoners, and made strides in improving conditions throughout U.S. prisons.

“I had never set foot in Washington State,” Midgley recalls of his early experience with VISTA and the ILSP, during a recent meeting at his office in Seattle’s Pioneer Square neighborhood. “I didn’t know much about Walla Walla. But it was a pretty amazing experience. A lot happened, and I learned a lot.”

In 1983, Midgley went into private practice. He partnered a law firm, Smith & Midgley, but continued to handle a small caseload related to prisoners’ rights. In 1989, he returned to Evergreen Legal Services. The organization eventually evolved into CLS.

In addition to his work as an attorney, Midgley also wrote *PLN’s Pro Se Tips and Tactics* column for several years before heading up CLS.

“People ask me, ‘What’s the deal?

Those people have committed crimes,’” he adds. “I think other people have said the same thing, but I always say, ‘Well, what somebody did to get themselves in prison says something about *them*. But what happens to them after they are *in* prison says something about *us*.’ Once you have the power, then you

have the responsibility. It’s important. People can be very harmed.”

Midgley spoke with *PLN* about his career, progress and challenges in the prisoners’ rights movement, and how his work has impacted prisoners incarcerated in U.S. prisons.

PRISON LEGAL NEWS: Looking at the prisoner’s rights movement over the past 30 years you have been an attorney, what are some of the hallmark achievements?

JOHN MIDGLEY: When I started in the mid-1970s, prisons were still run by people who really weren’t professionally trained, supervised, overseen, or held accountable. One really good example was the medical care at the prison in Walla Walla. It had one doctor. It also had this job category of mostly people who had been medics in the military, but they were not licensed healthcare providers. I’m sure some of them were fine, but it was just whoever they could get that had a little bit experience. There were really horrendous medical failures, and the medical care system was pretty bad.

There was a ‘mental health’ program there at Walla Walla that was a great example of one of the things that was ended by the prison movement. It was a mental health program ran by a guy named Dr. Hunter. Part of his program was really terror. They basically said they were going to fix peoples’ mental illnesses, including in some cases their homosexuality, by being mean to them. One of the ways they were mean to them was that they had inmate attendants. Some of the program was actually run by inmates supervising other inmates. These people who were inmate attendants ended up physically abusing some of the other prisoners. It was really a crazy program, but it was allowed to exist because people didn’t grasp there was a problem with this program. At one of the other prisons, I think it might have been in Arkansas and Texas, they had prisoners guarding other prisoners, and in some cases were given guns. You look at it now, and it’s just so incredibly off the map and beyond inappropriate.

I personally think there were two things in the movement. One is that due process came into prisons a little bit. There were disciplinary hearings. That

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was a big deal because it *does* limit some of the abuse of people being disciplined without any basis at all. But I actually think the biggest change brought about largely through lawsuits and other related things is that healthcare professionals, in general, have to be certified and licensed. There's a much higher level of professional expectation in the Washington system about what guards can do or should do. People are disciplined for abusing prisoners and kicked out for being corrupt. That level of professional expectation, training, and accountability is there. I don't mean to say in any way there aren't abuses. There are terrible medical conditions in prisons around the country. But it is an advance to have a standard, there is a standard, and the standard is higher than it used to be. I think that was a real accomplishment.

The other thing is the Supreme Court, as difficult as it has been and bad as has been in many ways, does recognize a lot of basic rights of prisoners. It recognizes a right to medical care, some level of personal safety, and those kinds of rights. Until the 1950s, the federal courts had this hands-off doctrine. Courts couldn't do anything for prisoners. Courts can now do things for prisoners. It's very limited, and much more limited than it should be, but there are some baseline standards. I don't, by any means, think it's adequate or enough. But it's better. To me, it's a little bit like race discrimination. We didn't get rid of race discrimination, but it's a big deal to make it illegal. That's kind of what's happened in prisons. The stuff that goes on now is actually illegal, where previously a lot of it wasn't really considered illegal. In some places, it has materially improved. I think those advances are real.

PLN: Where has the movement had its challenges or setbacks?

MIDGLEY: The place where the movement wasn't successful -- which I think largely has to do with who was sitting in the federal courts, and how the federal courts changed -- is that the fundamental nature of prisons has not changed at all. When the movement started and people started litigating about prisons, people thought things would change fundamentally: fewer people would be in prison, there would be more humane incarceration. One of the big issues was whether prisoners have the rights to work and rehabilitative programs, and courts have said no they don't have legal rights. In terms of fundamentally changing the

nature of prisons, I don't think the movement was successful at all. But in terms of establishing certain rights for prisoners and creating professional expectations for people who are supposed to be taking care of prisoners, I think there has been a fair amount of success.

PLN: Are there institutional things that you see and say, 'This needs to change'?

MIDGLEY: A fundamental problem in our prison system is the sentencing structure. People have these incredibly long prison terms. The number of people in prisons needs to change. There have been a few changes. Drug sentencing has been mitigated a little bit in Washington State. But it's a long and hard process. Mental health treatment is still a huge issue, and something we're looking at in Washington. Medical treatment is bad in a lot of places, but at least there are some baseline standards. I'm not sure it's the same for mental health treatment. Jails and prisons are the main mental health institutions. The King County Jail [in Seattle] is probably the biggest mental health institution in the state. People

that end up going in and out of jail have very serious mental problems, and there aren't adequate resources in the community to deal with them. Certainly, in prisons, for people there for a long time, their mental health treatment has not been dealt with in an adequate way. There is a practice in many prison systems of just putting people with very serious mental problems in segregation. Put them in a cell by themselves. Somebody might come in and see them once in awhile, but it's not really therapy. They have supposed treatment programs, but I don't think they're at the level they ought to be. I think that's a huge issue.

The other area is prisoner re-entry. When you have a lot of people in prison, most of them are going to get out. There aren't a lot of support systems in the community. Some people say there's not enough supervision, either. But you need both. Support, job training, and housing are

big issues. That's huge because it's about prisoners and their success. But it's also a big public safety issue. You don't want to create a situation where people can't get a job, can't get housing, and end up sometimes doing the same things that got them in prison before. I think public policymakers are waking up to the fact that all these people we stuck in there for all these years are coming out. We better do something.

PLN: Why did you decide to become

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John Midgley (cont.)

an attorney?

MIDGLEY: I really didn't have a long thought process about it. I got to the end of college and was thinking about what I wanted to do next. I thought maybe law would be good. I graduated from the University of Utah in 1970. It was a time of great social upheaval and fervor in the U.S. There was a lot going around about social justice. There were lawyers, of course, involved in that. I think 1970 may have been the year when there was a tremendous amount of Vietnam protests and buildings burned on campus. While that was going on, I thought I would go to law school and get involved in social justice and civil rights issues. I went to University of Michigan Law School at Ann Arbor. I was actually there for the first year and disappointed in law school. The focus at law school then, and probably at some law schools now, was not necessarily social justice. I actually left for a year-and-a-half and then came back and it was much more focused on what I wanted to do. One of the things that was going on then, not in prisons but in mental institutions, was the due-process revolution. The Supreme Court had made some decisions, and states were starting to say, 'You can't put people in mental institutions against their will without a full judicial hearing.' So I got involved in some of that in Michigan with a law professor there. One thing led to another, and I ended up getting interested in people who were in institutions.

PLN: Did you ever consider a law career outside the social justice field?

MIDGLEY: Not really. Since starting to work on prison issues and in legal services, I never thought that I wanted to do anything else. Actually, on the contrary, I feel that I'm lucky to be able to have been paid a salary to do things that I felt strongly were good things to do.

PLN: What cases have you been involved in that have impacted prisoners' rights?

MIDGLEY: I do think the case in the Walla Walla penitentiary had an impact. It's the case of *Hoptowitz vs. Ray*. I think it had an impact because it was a fairly early case in this part of the country -- there were a lot of them in the South -- that ex-

tended a lot of the things that were going on there into this part of the country. It's a case that has been cited a fair amount, and did establish a standard for medical care. I think that case did have a long-term impact in terms of standards and what kind of relief you can get. The ruling on the Ninth Circuit said you can get some pretty specific remedies if you can show the medical care in prison is insufficient. And you can get some pretty specific remedies if you show that safety is bad. In *Hoptowitz v. Ray*, there were a lot of private lawyers, and the ACLU, involved. I'm not sure we turned the legal standards in any direction. But we had at least that one case. That's a case that has certainly been used around the country.

PLN: You are now the executive director of Columbia Legal Services. Describe the organization.

MIDGLEY: Columbia is the successor of Evergreen Legal Services. We do a broad variety of things. In Washington, there is this organization called the Alliance for Equal Justice. It's basically a coalition of legal aid organizations that represent people who don't have money. People have different roles in the Alliance for Equal Justice. Columbia Legal Service's role is to do the work that other legal providers can't do. Most of the stuff they can't do is because of restrictions on their funding. We have some restrictions, but not the same. For example, we can do class action suits. We can represent clients in the Legislature, either defending against laws somebody is trying to change, or propose laws. We can do administrative rule-making. Other organizations can do a little bit of those things in some ways, but not much. We can also represent prisoners. I don't know if you know this, but organizations that get Legal Services Corporation money can't represent prisoners on anything related to their incarceration. We can also represent undocumented people. We do all those things. We do more systemic work, generally larger scale. A fair amount of class action work. The reason we are able to do that is because the Alliance for Equal Justice and the Access To Justice network in Washington -- and this is a quirky thing, because it really has to do with our ability to even exist -- and that is the Alliance has a set of values that says we're not going to write anybody off. There isn't an entire group of people we won't represent, and there isn't an entire area of relief that we're not going to do. Everybody got together and said we're

going to make sure somebody can do this. Columbia Legal Services is the one that gets to do it. It's really great to be part of a situation like that because some of the funding that legal aid people get, in fact most of it, prohibits use of the money for that. It's a way of saying we really are able to do this because everybody wants somebody to do it. One of the things I'm happy about is we have a very broad variety of stuff that we do. We had a big foster care case that we worked on for many years. We had a big case for services for the developmentally disabled. We handle prisoners stuff. We have done things to get relief for mobile home owners in the Legislature. All kinds of administrative processes for people to get wages that weren't paid. We really don't have a specialty. We do whatever needs to be done. We just had a big class action case go to a jury in a federal court in Yakima, and the jury came back in our favor. These were workers exploited by a company in California.

PLN: Do you think there are fewer attorneys today interested in social justice issues and prisoners' rights issues?

MIDGLEY: No. I think there are more. I know there are a lot. One of the things that was very interesting to me was that when I was in law school, we did a little bit of stuff talking about social justice and that sort of thing. But a lot of law schools now have these big public interest programs. People are very strongly encouraged to do it. There are fellowship programs and lots of support. We get resumes from people who have done amazing things. We would like to hire them. The difference when I came in was that if you wanted to get a job in legal services, you could just get a job in legal aid. Now, it's very competitive. The people who apply are very good. I think there are many more lawyers interested in these issues than there are jobs. I think there's certainly, not everybody coming out of law school is interested in social justice. But I think a lot of people really want to do this kind of work. It would be great if there were more opportunities. It's not hard to find good people who want to do this work. It's not hard at all. I think a lot of people who do more traditional forms of law really enjoy it. And some of the people who enjoy it would still like to do things more involved in social justice. 🐼

Todd Matthews is an independent journalist based in Tacoma, Washington.

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