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Professor Sherley Cruz's Comments - Panel 2

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**PROF. SHERLEY CRUZ'S COMMENTS – PANEL
II**
SHERLEY CRUZ¹

“The concentrated loss of life in low-wage industries during the pandemic created an urgent call to action to protect all workers – particularly our most vulnerable Black and Brown workers. It is an exciting time ...”

I want to thank Fran Ansley for reigniting a fire within me to return to my workers' rights roots by inviting me to participate in this symposium. My talk will focus on themes from today's conversation that intersect with my most recent law review article, *Essentially Unprotected*.² This article examines how systemic and structural racism, biased racial narratives, and the treatment of workers under racial capitalism led to a disproportionate number of COVID-19³ infections amongst low-wage Black and Brown “essential”⁴ workers during the pandemic.

While the pandemic disproportionately impacted all low-wage workers across the United States, *Essentially Unprotected* focuses on

1. Sherley Cruz is an Assistant Professor at the University of Tennessee College of Law. Prior to academia she was a worker's rights attorney for over a decade, representing low wage workers, immigrant workers, and undocumented workers as well as supporting low wage and immigrant worker centers.

2. Sherley Cruz, *Essentially Unprotected*, 96 TULANE L. REV. 637 (2022).

3. *Id.*

4. Brandon Wales, *Memorandum on Ensuring Essential Critical Infrastructure Workers' Ability During the COVID-19 Response* (Dec. 16, 2020); GUIDANCE ON THE ESSENTIAL CRITICAL INFRASTRUCTURE WORKFORCE, CYBERSECURITY & INFRASTRUCTURE SEC. AGENCY, <https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce> (last visited Jan. 23, 2022) (“CISA issued the guidance originally on March 19, 2020.”); *see also* Exec. Order No. 13917, 85 Fed. Reg. 26313, 2613–14 (May 1, 2020) (ordering meat plants to continue operation during the COVID-19 pandemic); Joshua Gallu & Jennifer Jacobs, *Trump Orders Meat Plants to Stay Open in Move Unions Slam (1)*, BLOOMBERG L. (Apr. 29, 2020), <https://news.bloomberglaw.com/trump-says-hes-issuing-order-for-tysons-unique-liability> (“Environmental Working Group called the order a potential death sentence. . . . At least 20 workers in meat and food processing have died, and 5,000 meatpacking workers have either tested positive for the virus or were forced to self-quarantine, according to UFCW.”).

the meat-packing⁵ industry to highlight how decades of racism, inadequate oversight, and a culture of profits over lives led to astonishingly unsafe working conditions for some of our most “essential” workers—the ones who were feeding the nation.⁶ The meat-packing industry is often viewed as a “periphery” labor market.⁷ It is known for employing workers who are marginalized from the “mainstream” job market due to immigration status, lack of education, criminal records, or other characteristics that create barriers to obtaining high-paying, secure jobs, with benefits and other workplace protections.⁸

Meatpacking, like other industries that employ marginalized workers, profits from the existence of a periphery or secondary labor market. The labor force is not identified by their skills or worker preferences to be engaged in a particular type of work. Rather, these industries foster and perpetuate labor markets where highly skilled and technical work is considered “unskilled” labor. Industry-wide systemic policies and practices exploit, isolate, and prey on workers based on their race, ethnicity, gender, and socio-economic status. As a result, the meatpacking industry enables (and profits from) the existence of a periphery workforce.

Industries that employ periphery workers have little incentive to invest in them or provide safe working conditions because they view the workers as unskilled, transient individuals who are hard-working, highly productive, eager to work—even for very low wages—and are

5. While the terms “meatpacking,” and “meat processing” are different, I use them interchangeably in this essay. I also refer to beef, pork, and poultry collectively as part of the “meat packing” or “meat processing” industry, unless otherwise specified.

6. Cruz, *supra* note 2.

7. Charlotte S. Alexander, *Explaining Peripheral Lab.: A Poultry Industry Case Study*, 33 BERKELEY J. OF EMPL. & LAB. L. 353, 356-57 (2012).

8. *Blood, Sweat, and Fear: Workers' Rights in U.S. Meat and Poultry Plants*, HUM. RTS. WATCH (Jan. 24, 2005), <https://www.hrw.org/report/2005/01/24/blood-sweat-and-fear/workers-rights-us-meat-and-poultry-plants> (detailing how meat processing plant workers live in constant fear of retaliation and injury at work and the lack of protections and enforcement of health and safety regulations); Matt McConnell, *“When We’re Dead and Buried, Our Bones Will Keep Hurting:” Workers’ Rights Under Threat in US Meat and Poultry Plants*, HUM. RTS. WATCH (Sept. 4, 2019), <https://www.hrw.org/report/2019/09/04/when-were-dead-and-buried-our-bones-will-keep-hurting/workers-rights-under-threat> [perma.cc/U3JL-V8PG].

disempowered to complain about the poor working conditions.⁹ The industry depends on the eventuality that workers will move on to better jobs or be replaced by the next wave of immigrants or workers who have even less power to disrupt the power imbalances or improve working conditions.

These industries employ large numbers of vulnerable workers, pay low wages, and thrive under a business model built on systematic racism, racialized narratives, and a disregard for the value of human life, which has left peripheral workers *essentially unprotected*. The meat-packing industry has long held the belief that workers are replaceable commodities and there will always be a new set of workers who are ready and willing to be exploited.

In the book *The Jungle*, Upton Sinclair wrote about the plight and exploitation of recent Eastern European immigrants working in Chicago slaughterhouses at the turn of the 20th century.¹⁰ By the early 1900s, meatpacking plants regularly positioned white and Black workers against each other to avoid raising salaries or improving working conditions.¹¹ Meatpacking plants intentionally profited from African Americans who were fleeing the Jim Crow South by recruiting and employing them as “strikebreakers” who were willing to work in non-union shops that paid less and ignored the dangerous conditions that Eastern European immigrants would no longer tolerate.¹² In the 1980s, meat-packing plants started relocating from burgeoning cities like Chicago to the South and rural middle America to benefit from

9. WILLIAM G. WHITTAKER, CONG. RESEARCH SERV., RL33002, LABOR PRACTICES IN THE MEAT PACKING AND POULTRY PROCESSING INDUSTRY: AN OVERVIEW 3 (2006).

10. UPTON SINCLAIR, *THE JUNGLE* (Doubleday, Page & Co., ed., 1906).

11. National Archives, *African American Heritage – The Great Migration (1910–1970)*, <https://www.archives.gov/research/african-americans/migrations/great-migration#:~:text=The%20Great%20Migration%20was%20one,the%201910s%20until%20the%201970s>.

12. Warren C. Whatley, *African-American Strikebreaking from the Civil War to the New Deal*, SOC. SCI. HIST., 525–58 (1993), <https://www.jstor.org/stable/1171303>. See also Greeley Tribune, *Meatpacking Industry Has a Long History of Reliance on Immigrant Laborer*, GREELEY TRIB. (May 13, 2020, 3:19 AM), <https://www.greeleytribune.com/2006/12/22/meatpacking-industry-has-a-long-history-of-reliance-on-immigrant-laborer/>.

union-busting “right-to-work”¹³ laws and communities that were landing grounds for new waves of immigrant workers.¹⁴

Decades of systemic and structural racism have fostered a business model built on racial capitalism that is perpetuated by racialized rhetoric. Low-wage industries, like meatpacking, run on a fundamental practice of extracting economic benefits from vulnerable Black and Brown workers to make a profit.¹⁵ This belief in (false) racialized narratives allows these employers to justify their preference for and ill-treatment of Black and Brown workers. Black and Brown bodies are viewed as resilient. It is a theory that thrives not only with regard to employment, but it is also prevalent in the health industry, where medical providers prescribe fewer painkillers because they believe that Black patients have higher pain tolerance.¹⁶ These false narratives create industry-wide preferences where employers exploit Black and Brown workers and immigrant workers to increase their profit margins and keep costs low. They believe that Black and Brown bodies are better able to better endure harsh conditions and work through any pain or discomfort.¹⁷ They believe that Black and Brown bodies are more hard-working than their

13. Elizabeth Tandy Shermer, *The right to work really means the right to work for less*, The Washington Post, (April 24, 2018), <https://www.washingtonpost.com/news/made-by-history/wp/2018/04/24/the-right-to-work-really-means-the-right-to-work-for-less/>.

14. Donald D. Stull & Michael J. Broadway, *Killing Them Softly: Work in Meatpacking Plants and What it Does to Workers*, in ANY WAY YOU CUT IT: MEAT PROCESSING AND SMALL TOWN AMERICA 62 (1995); see also Cherrie Bucknor, *Black Workers, Unions, and Inequality*, CTR. FOR ECON. & POL'Y RSCH. (Aug. 29, 2016), <https://www.cepr.net/report/black-workers-unions-and-inequality/> (explaining that unionization rates have been falling for African-American workers across sectors by noting that “[t]he decline has been especially steep for those in the manufacturing sector, which has historically been a stronghold for union organizing. In 1983, 42.3 percent of Black workers in manufacturing were unionized, compared to only 13.3 percent in 2015”).

15. Nancy Leong, *Racial Capital*, 8 Harv. L. Rev. 2153 (2013).

16. Linda Villarosa, *How False Beliefs in Physical Racial Difference Still Live in Medicine Today*, N.Y. TIMES (Aug. 14, 2019), <https://www.nytimes.com/interactive/2019/08/14/magazine/racial-differences-doctors.html> (detailing how myths and misconceptions about pain tolerance, exploited by pro-slavery advocates, remain rooted in modern-day medicine).

17. Kelly M. Hoffman et al., *Racial Bias in Pain Assessment and Treatment Recommendations, and False Beliefs About Biological Differences Between Blacks and Whites*, 113 PROCS. NAT'L ACAD. SCIS. U.S. 4296, 4297 (2016).

White-American counterparts. They believe that Black and Brown bodies are willing to put up with working conditions because they need to “send money home” or because of their immigration status.

The meatpacking industry treats its workers like disposable commodities. At the height of the pandemic, the news headlines were filled with examples of low-wage industries placing profits over lives—particularly the meat-processing plants. At JBS FOODS USA and Tyson Foods, two of the world’s largest and most profitable meat processing companies, processing plants created policies that incentivized working while sick and penalized workers for being absent.¹⁸ The work-while-sick culture that existed prior to the pandemic only became stronger during the pandemic because companies wanted to cash in on the increased demand for meat products.¹⁹ Tyson Foods managers placed bets on the number of workers who might contract COVID-19.²⁰ The government turned a blind eye by not promulgating safety measures and exacerbated dangerous working conditions by allowing poultry plants to increase the speed of their production lines—resulting in environments where workers had to stand more closely together to keep up with production, had less time for breaks or sanitation, and increased their chances of being harmed by sharp and fast-moving processing equipment.²¹

18. See Deena Shanker & Jen Skierritt, *Tyson Reinstates Policy that Penalizes Absentee Workers*, BLOOMBERG (June 3, 2020), <https://www.bloomberg.com/news/articles/2020-06-03/tyson-reinstates-policy-that-penalizes-absentee-workers>; see also Cuyler Meade, *Whistleblowers: JBS’ COVID-19 Screen Process Encouraged Employees to Work While Sick, Discouraged Accurate Screening*, GREELEY TRIB. (Oct. 9, 2020), <https://www.greeleytribune.com/2020/10/06/whistleblowers-jbs-covid-19-screening-process-encouraged-employees-to-work-while-sick-discouraged-accurate-screening/>.

19. Nicole Greenfield, *COVID-19 Has Exposed the Gross Exploitation of Meatpacking Workers*, NRDC (October 30, 2020), <https://www.nrdc.org/stories/covid-19-has-exposed-gross-exploitation-meatpacking-workers>.

20. Complaint at 9, *Fernandez v. Tyson Foods, Inc.*, 509 F. Supp. 3d 1064 (N.D. Iowa 2020) (No. 6:20-cv-02079-LRR-KEM).

21. See *Meat and Poultry Processing Workers and Employers, Interim Guidance from CDC and OSHA*, U.S. CTR. FOR DISEASE CONTROL & PREVENTION (June 11, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/meat-poultry-processing-workers-employers.html> (hereinafter *Meat & Poultry Interim Guidance*); see also Deborah Berkowitz & Shayla Thompson, *USDA Allows Poultry Plants to Raise Line Speeds, Exacerbating Risk of COVID-19 Outbreaks and Injury*,

Tennessee is home to some of the nation's largest meat processing companies. Tyson Foods, Perdue Farms, Koch Foods and JBS all have processing plants in Tennessee.²² With the large number of processing plants, a growing immigrant population, and the promotion of laws and regulations that benefit employers and deter the creation of unions, Tennessee is an ideal state for employers who want to maximize profits by exploiting workers. Since the 1990s, Tennessee's immigrant population has been growing consistently from 60,000, or 1% of the population, in 1990 to over 370,000, or 5% of the population, in 2021.²³ A 2020 report on unsafe working conditions in low-wage industries from the Food Chain Workers Alliance highlighted that 78% of the people who work in these factories are people of color and at least 50% are immigrant workers.²⁴ The workers face language barriers and discrimination, and are silenced into exploitation because of fears of retaliation from their employers.²⁵

As a clinical professor, a former workers' rights attorney, and a first-generation immigrant, I see an opportunity for change. We are experiencing a post-pandemic (COVID and racial) moment of reckoning. We can no longer stand still or quiet watching racial inequities, exploitation, and the loss of dignity of some of our most vulnerable and marginalized workers. The concentrated loss of life in low-wage industries during the pandemic created an urgent call to action to protect all workers—particularly our most vulnerable Black and Brown workers.

It is an exciting time to be engaged in workers' rights advocacy and building a workers' rights clinic—especially in East Tennessee. The work, however, is not without its challenges. Tennessee employment laws are a far cry from Massachusetts or Washington

NAT'L EMP. L. PROJECT (June 17, 2020), <https://www.nelp.org/publication/usda-allows-poultry-plants-raise-line-speeds-exacerbating-risk-covid-19-outbreaks-injury/>.

22. *Poultry plants in Tennessee*, Propublica, <https://projects.propublica.org/chicken/states/TN/>; see also Tyson Foods, *Tyson opens \$425 Poultry Plant in Tennessee*, FOODMANUFACTURING.COM (April 12, 2021), <https://www.foodmanufacturing.com/capital-investment/news/21378135/tyson-foods-opens-425m-poultry-plant-in-tennessee>.

23. TENNESSEE STATE IMMIGRATION DATA PROFILES, MIGRATION POLICY INSTITUTE, <https://www.migrationpolicy.org/data/state-profiles/state/demographics/TN>.

24. WE ARE NOT DISPOSABLE, FOOD CHAIN WORKERS ALLIANCE (2021) <https://foodchainworkers.org/wp-content/uploads/2021/02/Food-Workers-Organizing-on-the-COVID-Frontlines-FINAL.pdf>.

25. *Id.*

DC, where I previously practiced law. Working across a wide geographic landscape, accessing rural communities that have few resources, lack efficient and reliable public transportation, lack workers centers or legal aid offices that assist immigrant workers, have a small plaintiffs-side bar, and exist in a “right-to-work” state that is hostile to the existence and development of worker protections has been challenging. Policies and practices are management friendly to the detriment of our workers. There’s no state minimum wage, the minimum wage in Tennessee, like the federal minimum, is \$7.25 an hour.²⁶ The Tennessee State Department of Labor has limited enforcement capacity.²⁷ Unemployment insurance benefits are at national lows—maxing out at \$275 a week.²⁸

The stories and reports that we have heard at this symposium give me hope. Not only does East Tennessee have a legacy of fighting for workers’ rights, but there is also momentum to continue to fight for workplace dignity, fair pay, and safe working conditions. We have to continue to support the efforts of worker centers like Workers Dignity;²⁹ build coalitions across racial, ethnic, and geographic boundaries; challenge our hostile legislature; and unite to improve working conditions for all workers in Tennessee.

26. 29 U.S.C. § 206 (2018); *see also* U.S. DEPARTMENT OF LABOR, STATE MINIMUM WAGE LAWS, <https://www.dol.gov/agencies/whd/minimum-wage/state>.

27. T.C.A. § 50-2 (2023); *see also* TN DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT: WAGES FRINGE BENEFITS, PAYCHECKS AND BREAKS, <https://www.tn.gov/workforce/employees/labor-laws/labor-laws-redirect/wages-breaks.html>.

28. T.C.A. § 50-7 (2023); *see also* TENNESSEE UNEMPLOYMENT INSURANCE FREQUENTLY ASKED QUESTIONS, <https://www.tn.gov/content/dam/tn/workforce/documents/TNUnemploymentFAQS.pdf>.

29. *See* WORKERS’ DIGNITY, <https://www.workersdignity.org>.

