

To Build a Better Criminal Justice System

25 Experts Envision the
Next 25 Years of Reform

Marc Mauer and Kate Epstein
Editors



This publication was edited by Marc Mauer, executive director of The Sentencing Project, and Kate Epstein, text editor.

Established in 1986, The Sentencing Project works for a fair and effective U.S. criminal justice system by promoting reforms in sentencing policy, addressing unjust racial disparities and practices, and advocating for alternatives to incarceration.

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Introduction

In October 2011 The Sentencing Project celebrated its 25th anniversary with a forum held at the National Press Club in Washington, D.C. That event, *Criminal Justice 2036*, was designed with two ideas in mind. First, to celebrate the accomplishments of our organization over a quarter century, of which we are indeed proud. Our contributions to public debate and public policy on issues of crime and punishment during the period, we hope, have helped in some measure to reduce harm and improve lives.

Secondly, and more importantly, we used the occasion to envision what our criminal justice system—and our approach to public safety—should look like 25 years into the future, in the year 2036. We did so because we believe there is a moment of opportunity now, and therefore it is timely to think broadly about directions for constructive reform.

In order to envision where we might go over 25 years, it is helpful to assess where we have come from in the last 25 years. In this regard, there are two very different stories we might tell.

The first is one of a policy climate in which punishment has been exalted in ways unimaginable not very long ago. The number of people in our prisons and jails has nearly tripled during this time, a half million people are incarcerated for a drug offense, and racial/ethnic disparities within the justice system are profound. Increasingly, we are gaining new insight into the varied ways in which high rates of incarceration in disadvantaged communities affect family formation, social cohesion, and life prospects.

The other story of the past 25 years is a more hopeful one. That analysis focuses on the steep drop in crime in recent years, the broad acceptance of the need for reentry programming, and increasing support for the concept of justice reinvestment. We also appear to be at a point where prison

populations are finally stabilizing (albeit at world record levels) after several decades, and are even declining substantially in a handful of states.

Both of these views are factually correct, which suggests that it is up to us to determine in which direction criminal justice policy will proceed over the next quarter century. Both for reasons of effectiveness and compassion, we hope that the nation will adopt the strategy that emphasizes opportunity rather than punishment as the guiding theme of our vision for public safety.

This volume aims to provoke a conversation about what that vision looks like and how we can begin to put it into practice. The collection begins with the text of Jeremy Travis' keynote speech at the 25th anniversary event. In this far-reaching overview of where we should go and how we might get there, Travis asks us to summon the “superheroes” of science and passion to guide our way forward. As he describes it, we call on science in our “quest for empirical truth” and passion for “the human impulse to seek justice.” Within this framework Travis lays out a scenario under which we can achieve five significant goals: help victims restore their lives, pursue a scientific crime prevention agenda, develop professional standards for the justice system, rethink the role of the criminal sanction, and fundamentally reconsider the level of imprisonment, which is “a stain on our national conscience.”

The 25 essays which follow are broad-ranging both in vision and strategy. They contain the perspectives of leading thinkers in the field, including academics, practitioners, and policy advocates. All the contributors look to a day where public safety is not premised on maintaining a world-record level of incarceration. But there is a diversity of views on how we might get to that point.

One author, for example, presents a compelling argument for how fiscal imperatives can focus policymaker attention

on evidence-based approaches to reducing institutional populations. But another author makes an equally compelling argument for why a reliance on fiscal arguments has little basis for success absent a shift in the political environment in which these issues are addressed.

A number of authors promote various public education strategies designed to encourage a more rational public debate on criminal justice. These include assessments about the potential leadership roles to be played by policymakers, practitioners, leaders in disadvantaged communities, and individuals who have been through the criminal justice system.

Equally significant are ideas on the means by which to convey convincing and comprehensive messages about the need for reform. Some contributors stress disseminating information about the success stories of recent years and the opportunity to engage in ongoing research to identify strategies for change. Others promote consideration of such critical issues as the strategic role of race in addressing criminal justice policy, the need to focus on issues specific to women, and how to frame juvenile justice policy under a rubric of a “my child” test that promotes compassionate and effective treatment for all.

Intriguing ideas are also presented on the broad framework by which we consider issues of public safety. For far too long, that discussion has focused on criminal justice initiatives, and enhanced incarceration in particular, as the primary means of addressing public safety issues. But as many of our contributors point out, that framework is seriously flawed, and downplays the many ways by which social cohesion can be encouraged.

One contributor, for example, proposes that we transform the criminal justice system by creating partnerships with the public health community to focus on prevention. Another suggests that it is critical to adopt a human rights framework for justice reform so that we establish a different standard

for measuring progress. Others call for a wholesale reconsideration of national drug policy in order to reverse the harmful impacts of recent decades. And we also hear from commentators abroad who assess the role of the United States in comparison to, and as influential, in developments in other nations.

Our reasoning in putting together this collection of disparate voices is that developing and implementing a strategy for transforming the criminal justice system is a complex process. Just as the social and political forces that produced mass incarceration have been varied, so too will be the strategies necessary to begin moving in a different direction. In recent years we have seen encouraging developments in policy and practice that hold the potential to create a shift both in the political environment in which public safety is addressed and in day-to-day outcomes. At the same time, we also recognize the still relatively modest scope of these changes, given the scale of the problem to be addressed. It is our hope that by contributing to public discussion about ways to build on these changes, we can help to broaden the conversation about crime and justice, and thereby envision a significantly transformed justice system 25 years from now.

—Marc Mauer
March, 2012

We hope that the nation will adopt the strategy that emphasizes opportunity rather than punishment as the guiding theme of our vision for public safety.



Summoning the Superheroes

Harnessing Science and Passion to Create a More Effective and Humane Response to Crime

By Jeremy Travis

I am honored to have been invited to deliver this keynote address as we celebrate the 25th Anniversary of The Sentencing Project. For the last quarter century, The Sentencing Project has been a beacon of light beaming through the dark clouds of our nation's debates over crime policy.

Under the inspired leadership of Marc Mauer, and Malcolm Young before him, The Sentencing Project has been able to achieve what few other organizations in the criminal justice policy world have achieved—to strike the right balance between hard-nosed, objective and trustworthy research, on the one hand, and principled, logical and strategic advocacy on the other.

We can only marvel at the outsized impact of this feisty, small-budget organization. Consider just three examples from a larger portfolio: in large part because of The Sentencing Project, our country has reduced the racial disparities in sentencing for offenses involving crack cocaine, begun to roll back our felony disenfranchisement statutes, and reversed many of the mandatory minimum sentencing schemes that needlessly put thousands of people in prison. What an impressive track record. We should be grateful for the work of The Sentencing Project, and wish them many more years of success. In very real ways, The Sentencing Project is helping us reclaim our position as a nation devoted to justice.

I have been given a challenging assignment today. While we are reflecting on the past quarter century, Marc has asked me to focus on the next quarter century—to envision the world of criminal justice policy in 2036. In taking on this assignment, one is tempted to paint a future world of peace and harmony, where lions and lambs lie together, our elected officials are all wise and enlightened, and debates over crime policy are resolved rationally, by referring to

agreed upon principles, shared values and scientific evidence. I doubt this ideal world will exist in 2036. But we can still set lofty goals for ourselves. I hope we can agree that, in the next quarter century, we should aspire to create a crime policy that is both more effective and more humane. By “more effective,” I mean that we should respond to crime in ways that produce socially desirable results—greater safety, less fear, less suffering, greater respect for the rule of law and less injustice—and that we do so efficiently, investing our precious financial and human resources in ways that maximize the results we desire. By “more humane,” I mean we should respond to crime in ways that recognize the humanity of those victimized by crime, those arrested and convicted of crime, and others who experience the ripple effects of crime and our justice system. This affirmation of humanity, as I see it, incorporates values we hold dear in our democracy, such as equal protection of the laws, access to the rights guaranteed by our Constitution, and our fundamental belief in the dignity of the individual.

I need not detail for this audience the many ways our current reality falls short of these goals. Too many victims have difficulty getting their lives back on track. Too often, our police use excessive force, fail to follow legal dictates, and undermine respect for the rule of law. Our system of adjudication too often coerces defendants to act against their interests, and excludes victims from meaningful engagement. Our jails and prisons are frequently full beyond capacity and too often resemble human warehouses rather

than humane places for reflection, rehabilitation and restoration. Our response to crime is marked by racial disparities that belie our commitment to equal protection of the laws. And we have become a society with a growing population of individuals with felony records, and prison experience, a population that we marginalize through legal barriers and social stigma.

If we want our response to crime to be more effective and more humane than this, we must summon the assistance of two powerful superheroes—two forces that, working together, can sweep away the cobwebs in our minds, clear the highest organizational hurdles and move political mountains. Our two superheroes are *science*—the quest for empirical truth—and *passion*—the human impulse to seek justice. People sometimes think that science and passion are opposite human endeavors, that they must be mutually exclusive. In my view, these superheroes are not rivals. In fact, the power of each is enhanced by the power of the other. To advance the cause of justice by 2036, we must be passionate about the importance of science, and must incorporate the lessons of science in our passionate advocacy for a more effective and humane response to crime.

So, let's think about the challenges that we face to see how science and passion can work well together. I nominate, for your consideration, the following five great challenges for the next quarter century:

1. We must help crime victims rebuild their lives.

When a crime is committed, the social contract is broken. Our typical response to that event is to focus our resources and energy primarily on finding the offender, prosecuting him, and providing an appropriate criminal sanction if he is convicted. Why do we overlook the legitimate needs of the victim? Why does our passion for justice not extend to those harmed by crime? What would science tell us about the experiences, needs, and life course of crime victims?

Let's begin with the science. First, one of the most important criminological discoveries of the past two decades concerns the phenomenon of repeat victimization, the research finding that for some crimes, once someone is victimized, there is a high probability that the same individual will be victimized again.¹ Indeed, the risk of re-victimization is highest in the period immediately following the first incident. In my view, this scientific finding, which applies to victims of burglary, sexual assault, and domestic violence, among other crimes, should create a social obligation to intervene to prevent the next crime. Second, science also tells us that for many crime victims, the crime causes long-term negative effects. Victims are more likely to experience mental illness, suicide, and substance abuse than the general population.² Victims of violent crimes suffer elevated levels of post-traumatic stress disorder (PTSD) and suffer from many PTSD symptoms, such as becoming fearful and withdrawn, and experiencing difficulties in professional, social, and intimate relationships.³ Given these social harms, why do we not intervene to help mitigate the damage caused by crime?

Third, research also tells us that child abuse and neglect frequently create an intergenerational “cycle of violence,” to use a phrase coined by Cathy Spatz Widom.⁴ Children who suffer in this way are more likely than a comparable peer group to engage in delinquent and criminal acts when they grow up. Given this fact, how can we not provide special interventions for these, our most vulnerable, to help them secure a brighter future, while simultaneously preventing future crimes?

Finally, we have known for decades that most victims never see their cases go to court because most crimes do not result in an arrest.⁵ In the small percentage of all reported crimes where an arrest is made—about 20 percent—most cases are resolved through plea bargains or result in dismissals, so victims play a minor role, if any. Even in cases that go to trial, where the crime victim may be a more active participant, the victim's immediate and long-term needs are rarely

1. Graham Farrell and Ken Pease, *Once Bitten, Twice Bitten: Repeat Victimization and its Implications for Crime Prevention* (Crime Prevention Unit Series Paper No. 46, Home Office Police Research Group, London, UK, 1993).

2. Dean G. Kilpatrick and Ron Acierno, *Mental Health Needs of Crime Victims: Epidemiology and Outcomes* (Journal of Traumatic Stress, 16, no.2, 2003)

3. Michael B. First and Allan Tasma, eds., *Anxiety Disorders: Traumatic Stress Disorders*, in *DSM-IV-TR Mental Disorders: Diagnosis, Etiology, and Treatment* (West Sussex, UK: John Wiley & Sons, Ltd., 2004, 927-8).

4. Cathy Spatz Widom, *The Cycle of Violence*, *Science* 244, no. 4901 (1989): 162.

5. Jennifer L. Truman, *Criminal Victimization, 2010* (US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, September 2011).

addressed. Given this statistical reality, why have we focused so much attention on the role of victims in criminal proceedings, at the expense of devising a societal response to all victims, whether or not the offender is ever arrested and prosecuted? Where is our passion, our concern for human suffering, our sense of justice?

My thinking on this topic has been influenced, I hasten to acknowledge, by the work of my wife, Susan Herman, who developed the concept of Parallel Justice.⁶ According to the principles of Parallel Justice, we should not conceptualize our response to crime victims simply as an act of charity, nor merely through the creation of rights in criminal proceedings. Rather, the concept of Parallel Justice requires that we respond to victims more effectively, and more humanely, because the pursuit of justice requires it.

The science is clear. A more effective response to victims will reduce repeat victimization and future offending. It will prevent long-lasting social harms and repair the social fabric. We can hypothesize that a more humane response to crime victims would enhance their respect for the rule of law and would reduce the overall retributive mood in our country. So we need to ask ourselves why we have not taken the needs of crime victims seriously. Unfortunately, we have created a two-track world that sees the interests of victims and offenders as oppositional, that counts individuals as either victim advocates or justice reform advocates, that pits the suffering of prisoners against the suffering of victims. We are a better nation than this history suggests. Between today and 2036, we must expand our concept of justice to embrace a societal obligation to those harmed by crime. Our passion for justice, working in tandem with strong science, will lead the way.

2. We must pursue a focused and scientific crime prevention agenda.

We are fortunate to be meeting at a time when the crime rates in America are at historic lows. There are two distinct narratives about crime trends in America. The story of violent crime is well known. After a decline in the early 1980s, rates of violence in America spiked upward starting

in the mid-1980s with the introduction of crack cocaine in America's cities.⁷ Then, as that epidemic subsided, violent crime rates started a historic decline, dropping to rates lower than those seen in the 1960s, with another 12 percent decline from 2009 to 2010 reported by the FBI.⁸ Less well known is the story of property crime, which has been in steady decline since the early 1970s. Our rates of property crime today are half their level when the decline started. These are remarkable stories. Who among us—particularly those working in this field for the past 25 years—would have thought we could stand in our nation's capital and say that crime rates are at their lowest levels in our professional lifetimes?

I draw three lessons from this story. First, we need a much better understanding of why this happened. I can think of no stronger indictment of our field than this: we do not have a satisfactory, much less a sophisticated, understanding of the reasons that crime has increased and decreased so dramatically. Imagine we were meeting at a medical convention, noting that the incidence of one type of cancer had dropped in half since 1970, and another type of cancer devastated

America's inner cities, particularly its communities of color, for several years, then dropped precipitously. Would we not expect the medical research community to have a deep understanding of what happened, what treatments worked, what environmental factors influenced these results, and which strains of these cancers proved particularly resistant? Of course we would.

So, the crime scientists among us need to get to work, with appropriate funding from foundations and the federal government, to help us understand our own history of crime trends. And, looking forward, we need to develop a

If we want our response to crime to be more effective and more humane, we must summon the assistance of two powerful superheroes... science—the quest for empirical truth—and passion—the human impulse to seek justice.

6. Susan Herman, *Parallel Justice for Victims of Crime* (National Center for Victims of Crime, 2010).

7. Arthur S. Goldberger and Richard Rosenfeld, Editors, Committee on *Understanding Crime Trends, Understanding Crime Trends: Workshop Report*, (The National Research Council, 2008).

8. Truman, 2011.

much more sophisticated data infrastructure to allow us to track crime trends in real time.⁹ Think about this the next time you hear about a business report on television: If economists can tell us which sectors of the economy were growing or declining last month, certainly we can build a data infrastructure to help us understand crime trends last year.

A second lesson: we need to rethink what we mean by “crime prevention.” Too often we narrowly define “crime prevention” only in terms of programmatic investments in young people to help them lead more productive, pro-social lives. But clearly, over the past forty years, this historic decline in crime rates has not come about because we invested massively in programs that helped our young people avoid criminal activity. Other policy choices have also made a difference. Let me give one example: according to a provocative new book by Frank Zimring on the crime decline in New York City, that city’s auto theft rate in 2008 is 6 percent—6 percent—of what it was in 1990.¹⁰ How were those crimes prevented? How much can be attributed to changes in safety practices and theft-prevention technologies developed by the auto industry, by new federal regulations requiring marking of auto parts to deter the operation of chop shops, and by more effective police investigations? My point is simple: a rigorous, scientific exploration of changes in crime rates will identify a broad set of practices that prevent crime, assign costs and benefits to those practices, and hopefully help us invest money and political capital in those crime prevention strategies that are proven to reduce harm. If we are passionate about reducing our crime rates even further by 2036, we will broaden our frame of reference and bring many more sectors of our society to the crime prevention table.

There’s a third, uncomfortable lesson of the great American crime decline: we have no reason to be complacent. The rates of lethal violence in America are still higher than in

Europe, by a factor of five. (Our rates of property crime are, we should note, lower than in Europe.) And, if we were ruthless about our science, we must confront the reality that violent crime is highly concentrated in a small number of communities of color in urban America, and in those communities is concentrated among a small number of young men. These men are at high risk of being both victims of violence and agents of violence.

Let me cite some data that make the point. A few years ago, John Klofas, a professor at the Rochester Institute of Technology, examined that city’s homicide data to determine who was at the highest risk of being killed.¹¹ At the time of his research, the homicide rate for the nation as a whole was 8 per 100,000. Among those aged 15–19, it was nearly triple that: 22 per 100,000. Among males in that age group, it was more than quadruple the national rate, or 36 per 100,000. For African-American males aged 15–19 in Rochester, it was 264 per 100,000. Finally, for African-American males aged 15–19 in the “high-crime crescent,” the most dangerous neighborhood in Rochester, the homicide rate was 520 per 100,000, or 65 times the national rate.

More recently, Andrew Papachristos of the University of Massachusetts, Amherst, took this approach one step further. Using a database including all young men involved in criminally active groups in a high crime Chicago neighborhood, Dr. Papachristos calculated that the homicide rate within these groups was 3,000 per 100,000, or 375 times the national rate.¹² This kind of social network analysis is not just about victimization rates. The 1,593 people included in Papachristos’ analysis were also responsible for 75 percent of the homicides in this neighborhood. This rate of killing constitutes a national crisis, yet we turn a blind eye to this reality, lulled into inaction by our self-congratulatory sense of progress and our collective unwillingness to get serious about the issue of violence in inner city communities of color.

9. At a minimum, a robust national data infrastructure to track crime trends would include: an expanded National Crime Victimization Survey (NCVS) so that the victimization trends could be tracked in the 75 largest cities of America; an expanded Arrestee Drug Abuse Monitoring (ADAM) system in those 75 cities, as proposed by the Department of Justice fifteen years ago, to track trends in drug use, gun use, intergroup violence and other variables among the arrestee population; and federally-administered annual recidivism reports for all 50 states to track arrest rates among those under community supervision.

10. Franklin E. Zimring, *The City that Became Safe: New York and the Future of Crime Control* (Oxford: Oxford University Press, 2011).

11. John M. Klofas, Christopher Delaney, and Tisha Smith, *Strategic Approaches to Community Safety Initiative (SACSI) in Rochester, NY* (US Dept. of Justice, National Institute of Justice, 2005) as referenced in: Jeremy Travis, *New Strategies for Combating Violent Crime: Drawing Lessons from Recent Experience* (Testimony before the U.S. Senate Judiciary Committee, Washington, DC, September 10, 2008).

12. Andrew Papachristos, *The Small World of Murder* (retrieved from the World Wide Web on October 7, 2011: http://www.papachristos.org/Small_World.html).

To reduce rates of violence in America over the next quarter century, we must tackle this phenomenon head on. I strongly recommend that we embrace and replicate the focused deterrence strategies developed by David Kennedy, a Professor at John Jay College of Criminal Justice.¹³ First tested in Boston 15 years ago to address youth violence, then expanded to drug markets in High Point, North Carolina, and now being implemented in 70 cities across the country through the National Network for Safe Communities, these strategies have been proven highly effective at reducing group violence—typically by 40–50 percent—and virtually eliminating overt drug markets. These strategies have two other benefits—they reduce incarceration rates, and promote a process of racial reconciliation between police and communities of color. If we are serious about creating communities that are safer and more just, we will insist that these strategies are replicated nationwide.¹⁴

A scientifically based crime prevention agenda would simultaneously expand our vision to incorporate the many ways crimes are prevented, while focusing laser-like on the neighborhoods and individuals at highest risk of the most extreme violence. On this latter point, strong science will direct us, but passionate advocacy is necessary to win the day. Unfortunately, American society is not sympathetic to the argument that, because young African-American men, many of them involved in crime themselves, are at greatest risk of being killed, we should therefore devote our greatest resources to preventing those crimes. To advance that agenda we must overcome barriers of racism, fear, and stereotyping. But if our crime policy is to be more effective and more humane, we must bring all our tools—science and passion—to the task.

3. We must use science to develop professional standards for the justice system.

One of the most important recent developments in social policy generally—and in crime policy specifically—has been the embrace of the notion of “evidence-based practices.” The Office of Management and Budget has adopted this

mantra with gusto. The Office of Justice Programs in the Justice Department has joined the chorus. George Mason University now hosts a Center for Evidence-based Crime Policy. With some reservations, I applaud this development. Rather than discuss my reservations, however, I would like to challenge us to imagine the world of 2036, when we hopefully will have much more evidence about what works and what doesn’t, and ask ourselves this question: How will we enforce the science of effectiveness? How do we ensure that practice follows research, and criminal justice agencies are held to evidence-based standards?

In imagining this new world, we are immediately confronted with the realities of our federal system in which the states are primarily responsible for criminal justice operations. Granted, we have some national standards of practice imposed by federal courts through constitutional interpretations—think of the Miranda warnings, required of all police agencies. We have other standards imposed by federal oversight agencies—think of the FBI’s reporting guidelines for the Uniform Crime Reports. Yet, as a general matter, we shy away from federally imposed standards of practice. Must it always be so? Can we create a national framework in which certain standards of practice, validated by strong science, have equal force and effect across the country?

This dilemma was highlighted recently by a court ruling in New Jersey¹⁵ and a research report issued by the American Judicature Society.¹⁶ Both examined the same issue—the unreliability of eyewitness memory. As we know from hundreds of exonerations based on DNA analysis, errors attributable to faulty eyewitness memory can result in serious miscarriages of justice. Hundreds—perhaps thousands—of individuals have spent years in America’s prisons for crimes they did not

One of the most important recent developments in social policy generally—and in crime policy specifically—has been the embrace of the notion of “evidence-based practices.”

13. David Kennedy, *Don’t Shoot: One Man, A Street Fellowship, and the End of Violence in Inner-City America* (New York: Bloombury USA, 2011).

14. The National Network for Safe Communities, housed at John Jay College for Criminal Justice, is dedicated to working with jurisdictions to implement these focused deterrence strategies and to incorporating them into national practice. See www.nnscommunities.org.

15. *State v. Larry R. Henderson* (A-8-08)(062218) (2011).

16. Gary L. Wells, Nancy K. Steblay, & Jennifer Dysart, *A Test of the Simultaneous vs. Sequential Lineup Methods: An Initial Report of the AJS National Eyewitness Identification Field Studies* (American Judicature Society, 2011).

commit. Some may have been put to death. But we also know from strong scientific studies that eyewitness evidence can be gathered in a way that reduces the likelihood of error, without compromising our ability to identify the true suspect.¹⁷ This method is called “sequential, double-blind,” meaning that the witness sees possible suspects (either in lineups or in photos) one after another, and that the procedure is administered by someone with no connection to the investigation. The power of this method was conclusively demonstrated in the field experiment conducted by AJS.

But now we face a significant question: How do we, as a nation, ensure that all investigations involving eyewitness evidence are conducted according to this proven procedure? In the *Henderson* case, the New Jersey Supreme Court established standards for that state, with commendable reference to the strong scientific basis for those standards.¹⁸ Perhaps the U. S. Supreme Court will issue a similar, *Miranda*-like ruling, but let’s not count on this outcome. In the meantime, what should be the rule in states other than New Jersey? In those states, will we allow innocent defendants to be convicted and sentenced to prison terms based on faulty eyewitness identification as our sacrifice on the altar of federalism?

In less dramatic terms, we have faced this question before. To cite well-known examples, we continue to fund DARE, “scared straight” programs, and batterers’ interventions long after research has shown they are ineffective. On a broader scale, we fund programs of unknown effectiveness that have never been rigorously tested. And even when we have competent evaluations in hand, we care little about effect sizes (does the program make a big or small difference?) and even less about cost-benefit analysis (did the positive program effects more than offset the cost of the program?). In making the case for strong crime science, I turn again to the medical model for an analogy. Imagine that medical research had found an effective treatment of migraines. Wouldn’t we expect the entire medical profession to adopt that procedure? Wouldn’t we be shocked if a

migraine patient in Washington was told that, even though the treatment is available in New Jersey, we will wait until we validate it in Washington? Imagine if the Washington doctor said something we hear too often in the criminal justice world: “Well, migraines in Washington are just different and anything they learn in New Jersey won’t work here.”

We cannot alter our federalist structure of government, but we can develop a robust concept of justice professionalism, in which policies and practices of proven effectiveness are adopted by police, prosecutors, judges, corrections, service and treatment providers. We need a professional ethic that views failure to adopt those proven policies and practices as a form of justice malpractice.¹⁹ As our science becomes stronger, and our evidence base becomes deeper, we need to be passionate about demanding that the agencies of justice follow the dictates of science.

4. We must rethink the role of the criminal sanction.

One of the great advances in our profession came nearly a half century ago when the President’s Commission on Law Enforcement and Administration of Justice specified, for the first time, the complex interactions of the agencies that comprise the “criminal justice system.”²⁰ This system is now depicted in the famous chart, resembling a funnel, with the number of crimes committed on the left hand side, the operations of police, prosecutors, and courts in the middle, and prisons and community corrections on the right hand side.

This portrayal of the criminal justice system may have clarified the working relationships of those agencies, but it created a new problem: the “case” has become our unit of analysis. We focus our attention on the cases that move down the assembly line of the justice system, from the out-box of one agency to the inbox of another.²¹ Over the past 20 years, another metaphor has emerged, one that stands in stark contrast to the image of the assembly line. In this

17. Elizabeth F. Loftus, James M. Doyle, & Jennifer E. Dysart, *Eyewitness Testimony: Civil and Criminal* (Newark, NJ: Lexis Nexis, 2007).

18. *State v. Larry R. Henderson* (A-8-08)(062218) (2011).

19. Christopher Stone, Guggenheim Professor of Practice at Harvard’s Kennedy School of Government, and I outlined a similar approach to professionalism in policing. One of the cornerstones of this “new professionalism” is the emergence of a framework of “national coherence” in the work of police agencies. Christopher Stone, Jeremy Travis, *Toward a New Professionalism in Policing* (Harvard: Harvard Kennedy School of Government, 2011).

20. The President’s Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (Washington, DC: Government Printing Office, February 1967).

21. Jeremy Travis, *Building Communities with Justice: Overcoming the Tyranny of the Funnel* (Keynote address delivered at the Marquette Law School Public Service Conference on the Future of Community Justice in Wisconsin on February 20, 2009).

metaphor, the agencies of the justice system are organized around a problem, not a case. Rather than the assembly line, this approach envisions a collaborative table at which the assets of various agencies are deployed to address an underlying problem, not just to determine the outcome in a criminal prosecution.

This new approach was first championed by the police, inspired by the pioneering work of Herman Goldstein, titled *Problem-Oriented Policing*.²² Professor Goldstein said the unit of analysis for effective policing was a community problem, not a 911 call. This powerful insight led directly to the concept of “hot spots policing,” which focuses police resources on addressing crime problems that are spatially concentrated.²³ In a broader sense, the problem-centered approach to crime lies at the heart of community policing, with its emphasis on community partnerships to address community problems.

A problem-oriented focus also led to the creation of the first drug court in Miami in 1989, the first community court in Manhattan in 1993, and a generation of innovative problem-solving courts addressing issues such as mental health, domestic violence, and drunk driving.²⁴ This new way of thinking informs the work of David Kennedy, whose strategies were designed to address the problems of group violence and overt drug markets. It undergirds the premise of Project Hope, a highly successful project first launched in Hawaii designed to reduce drug use and crime among the community corrections population.²⁵ It lies at the heart of the restorative justice movement, which convenes victims, offenders, and other stakeholders to address harms and repair relationships. Finally, this pragmatic approach to problems, not cases, provides the framework for the reentry movement, which is bringing new partners to the table to address the challenges faced by individuals leaving prison.²⁶

In this new world, everyone’s role is changing. In the focused deterrence work, probation officers are part of a strategy designed with police, prosecutors and community

members in which their supervisory authority is used to achieve certain behavioral outcomes for probationers. In drug courts, prosecutors and defense attorneys collaborate with judges to impose minor criminal penalties on participants who violate their treatment terms. In Project Hope, drug tests are used explicitly to prevent drug use and cut recidivism, only secondarily to detect drug levels.

These initiatives challenge conventional wisdom. They envision a very different system, one that is more collaborative than adversarial. But they are even more revolutionary than that. At their core, they envision a very different role for the criminal sanction and the relationship between the criminal sanction and individual behavior. If, as in the case of drug courts, the behavior of drug addicts changes because of the possibility of the imposition of a criminal sanction, why would we not defer more prosecutions and suspend more sentences? If, as in the case of the focused deterrence model, gang members and drug dealers no longer engage in violence (or drug dealing) because of the combination of peer pressure, community influence, and a credible threat that they will be arrested if the violence and drug dealing continues, why would we not package the criminal sanction this way more frequently?

I believe we are on the verge of a fundamental conceptual breakthrough. These problem-oriented innovations are showing us that if we apply the criminal sanction in a very parsimonious way, in combination with other interventions, we can reap enormous benefits in crime reduction and enhanced legitimacy of the justice system. These innovations, in turn, require us to reconsider our approach to sentencing, to become less rigid and less punitive. Finally, these problem-solving approaches show us how to engage more effectively

We should consider our current level of imprisonment a stain on our national conscience.

22. Herman Goldstein, *Problem-Oriented Policing* (New York: McGraw-Hill, 1990).

23. David Weisburd and Cody W. Telep, *Spatial Displacement and Diffusion of Crime Control Benefits Revisited: New Evidence on Why Crime Doesn't Just Move Around The Corner* (in N. Tilley and G. Farrell (eds.), *The reasoning criminologist: Essays in honour of Ronald V. Clarke*, New York: Routledge, 2011). This body of research was highlighted at the 2010 Stockholm Criminology Symposium at which time Professor David Weisburd received the Stockholm Prize in Criminology.

24. For a discussion of the problem-solving court movement, see: Greg Berman and John Feinblatt, *Good Courts: The Case for Problem-Solving Justice* (New York: The New Press, 2005).

25. Mark A.R. Kleiman, *When Brute Force Fails* (Princeton, NJ: Princeton University Press, 2009)

26. Jeremy Travis, *Reflections on the Reentry Movement* (Federal Sentencing Reporter, 20, no. 2, 1-4, 2007).

the forces of informal social control—such as family, positive peer pressure, and community supports—so we can rely less on the forces of formal social control, such as arrest, prosecution and prison. In the future, if the science continues to support these interventions, and we are passionate about applying these lessons, the criminal justice system, as a mechanical assembly line, may be a relic of our past.

5. We must rethink a venerable American institution, the prison.

Anyone who follows the work of The Sentencing Project knows the sobering facts. The rate of incarceration in America nearly quadrupled between 1980 and 2009.²⁷ America holds one quarter of the world's prisoners, even though we constitute only 5 percent of the world's population.²⁸ An African-American man faces a 1-in-3 lifetime chance of spending at least a year in prison.²⁹ In 1972, there were 200,000 people in our nation's prisons; we now have over 140,000 people serving life sentences alone.³⁰ In California, 20 percent of the prison population is serving a life sentence. In 2007, we spent \$44 billion on corrections, up from \$10.6 billion in 1987.³¹ The number of people incarcerated in state prisons on drug offenses has increased at least by 550 percent over the past 20 years.³² This year, approximately 735,000 individuals will leave state and federal prison, compared to fewer than 200,000 in 1980.³³

We should quickly acknowledge that the era of prison growth in America might have ended. For the first time in nearly 40 years, the state prison population has actually declined.³⁴ In some states prison populations have actually

declined substantially, led by California, Michigan, and New York, which have seen declines of 4,257, 3,260, and 1,699 respectively between 2008 and 2009.³⁵ We should also note that a number of states have significantly reduced their juvenile detention rates.³⁶ But these slight decreases should not be a cause for celebration. We have a long way to go to bring our incarceration rate into line with other Western democracies, or even our own history.

As Americans, we should be deeply troubled by the current state of affairs. In fact, I think we should consider our current level of imprisonment a stain on our national conscience. We can certainly criticize our high rate of incarceration on any number of policy grounds: Prisons are a very expensive response to crime. As a crime control strategy, imprisonment is highly inefficient, requiring lots of resources for very little benefit in terms of crime control. They have become part of the national landscape—literally, scattered throughout the land—and have become embedded in local economies. They are supported by powerful unions, fueled by corporate interests and perpetuated by the reality that some elected officials have become dependent on the economic and political benefits of having prisons in their districts.

But I would hope that our critique of the American experiment with high rates of incarceration would begin with a consideration of the human cost—a recognition that we have wasted hundreds of thousands of lives, subjected thousands of our fellow citizens to the inhumane treatment of solitary confinement, separated families in a modern version of the slave auction block, and consigned millions of Americans to

27. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Incarceration rate 1980-2009* (retrieved from the World Wide Web on October 7, 2011: <http://bjs.ojp.usdoj.gov/content/glance/tables/incrttab.cfm>).

28. The Pew Charitable Trust Center, *1 in 100: Behind Bars in America 2008*. (Retrieved from the World Wide Web on October 7, 2011: http://www.pewcenteronthestates.org/uploadedFiles/8015PCTS_Prison08_FINAL_2-1-1_FORWEB.pdf.)

29. Thomas P. Bonczar and Allen J. Beck, *Prevalence of Imprisonment in the U.S. Population, 1974-2001*. Washington DC: U.S. Department of Justice; Office of Justice Programs; Bureau of Justice Statistics Special Report, 2003).

30. Ashley Nellis and Ryan S. King, *No Exit: The Expanding Use of Life Sentences in America* (The Sentencing Project, 2009, retrieved from the World Wide Web on October 7, 2011: http://www.sentencingproject.org/doc/publications/publications/inc_noexitseptember2009.pdf).

31. The Pew Charitable Trust Center, 2008.

32. Amanda Petteruti, Nastassia Walsh, and Tracy Velázquez, *Pruning Prisons: How Cutting Corrections Can Save Money and Protect Public Safety* (Justice Policy Institute, May 2009, retrieved from the World Wide Web on October 7, 2011: http://www.justicepolicy.org/images/upload/09_05_REP_PruningPrisons_AC_PS.pdf).

33. The National Reentry Resource Center, Reentry Facts (retrieved from the World Wide Web on October 7, 2011: http://www.nationalreentryresourcecenter.org/facts#foot_3).

34. The Pew Center on the States, *Prison Count 2010: State Population Declines for the First Time in 38 Years* (The Pew Research Center, retrieved from the World Wide Web on October 7, 2011: http://www.pewtrusts.org/uploadedFiles/Prison_Count_2010.pdf).

35. Ibid.

36. Jeffrey A. Butts and Douglas N. Evans, *Resolution, Reinvestment, and Realignment: Three Strategies for Changing Juvenile Justice* (John Jay College of Criminal Justice Research and Evaluation Center, September 2011).

a state of marginalized life, cut off from meaningful work, benefits, political participation and family support. Many years ago, as the system of apartheid was just being installed in South Africa, Alan Paton, a white South African author, wrote a novel describing the racial realities in that society with the memorable and powerful title, *Cry the Beloved Country*. When we look at our current imprisonment practices, we should have the same reaction: what has happened to our beloved country?

Turning around this quarter century experiment will take enormous help from our superheroes. We need strong science to show the impact of imprisonment on the people held in prisons, their families, and the communities they left behind. We need strong science to demonstrate the effectiveness of alternatives to incarceration, in-prison programs, reentry initiatives, and new approaches to community supervision.

But this is a policy area where even the strongest science will not be enough. We need to call upon our second superhero, passion, to play a primary role in promoting a system that is more humane. We need to remind people that prisons hold people, that millions of children are growing up without their parents, that corrections officers also live in prisons and must endure challenging circumstances, and that victims are not helped if the person who harmed them is simply incarcerated and neither the victim's nor the offender's needs are addressed.

Of the five challenges I have offered this morning, this is the toughest. I would suggest that we start with a clean slate, asking the deepest philosophical and jurisprudential questions. Why should anyone be sent to prison? Under what circumstances is the state authorized to deprive someone of their liberty? How long is long enough? If we had fewer prisons, how could the money saved be better invested—to help victims recover, provide alternatives to incarceration, to fund the tougher work of solving the problems that give rise to crime? Our biggest challenge will require our greatest feat of imagination. It will require the very best of our two superheroes, science and passion. It will require deep and sustained political work to persuade our elected officials that we need to reverse course and abandon our over-reliance on prison as a response to crime.

The work that lies ahead builds on some sobering lessons from the past 25 years. We punish too much and heal too little. Too often, we isolate, rather than integrate, those who

have caused harm. Too often, we neglect, rather than comfort, those who have been harmed. Our over-reliance on the power of the state rather than the moral voice of family and community undermines the promise of our democracy. Yet, despite these realizations, we still face the next quarter century with hope—a fervent hope that in the next chapter of our history we can be more effective, and more humane, as we respond to crime; we can address the compelling problem of violence in our inner cities while reducing rates of incarceration and promoting racial reconciliation between the police and the policed, and we can return to rates of imprisonment that are consistent with our values as a nation. We have every reason to be optimistic about our future. In fact, when you think about it, the greatest reason for optimism is that so many Americans, like the people in this room, working around the country with organizations like The Sentencing Project, are so fiercely committed to justice. Keep up the good work.

Thank you.

Jeremy Travis is President of John Jay College of Criminal Justice. Formerly, he directed the National Institute of Justice, the research arm of the U.S. Department of Justice, and was Senior Fellow affiliated with the Justice Policy Center at the Urban Institute.

A Visionary Criminal Justice System

Our Unprecedented Opportunity

By Alan Jenkins

I believe that the U.S. criminal justice system of 2036 will be a visionary one, rooted in pragmatic solutions and positive values. It will keep us safe, promote rehabilitation and redemption, and uphold basic human rights like due process, equal protection under law, and freedom from unnecessary confinement.

It will be built on facts and reason, rather than on political whims or sensational headlines. It will be smaller, smarter, and drastically less expensive—in large part because it will no longer be a substitute for social services, mental health care, drug abuse prevention, or immigration policy. And it will treat the people and communities it touches fairly and without bias. What a person looks like, her income or accent, will have no bearing on the justice she receives.

When people emerge from this modern system, they will have stronger skills and inner resources than when they entered, and they will have affirmative opportunities to succeed. Obstacles to higher education, affordable housing, gainful employment, and political participation that make up today's status quo will have toppled. And systems will exist affirmatively to aid in people's transition into free society. The American public will demand these changes as crucial to upholding our national values and advancing our societal interests.

Today, we are clearly far from that vision. Yet, research and experience show that we now have the best chance in generations of achieving it. American public opinion, political will, and media discourse are more open to transformative, positive reform of our justice system than anyone could have predicted at the end of the 20th century.

A 2006 survey by the National Center for State Courts, for example, showed that crime was regarded as the country's

top problem by only 2 percent of Americans, while another 2 percent considered illegal drugs to be the top problem. By contrast, in 1993, crime topped a majority of the U.S. public's list.

According to the NCSC survey, and others, 58 percent of Americans favor prevention and rehabilitation as the best way to deal with crime over enforcement and punishment, and 8 in 10 believe something can be done to turn someone into a productive citizen after they've committed a crime. By a huge margin (76 percent vs. 19 percent), the public prefers to spend tax dollars on programs that prevent crime rather than building more prisons.

While the death penalty remains popular standing alone, a 2010 poll commissioned by the Death Penalty Information Center found that 61 percent of voters favor clear alternatives like life in prison with restitution to victims' families.

And, more so than in past years, significant segments of the public also see bias based on race and income as real and troubling problems. Large majorities, moreover, see socioeconomic bias in the system. These are still tough debates, but ones we can win.

Low crime rates, diminished crime reporting by many news outlets, rising budget pressures, and smart communications by advocates have driven this shift in public opinion. That mix has made possible changes that seemed unthinkable a decade ago: reform of New York's Rockefeller drug

laws, reentry and drug treatment alternatives in Texas, restoration of voting rights in Rhode Island, abolition of the death penalty in multiple states, lessening of federal crack/powder cocaine sentencing disparities, and the bipartisan Second Chance Act.

Moving toward a model criminal justice system, then, is more achievable today than at any time in recent memory. Now is the time to build on public support and channel it toward more transformative change. That means adding a more effective and collaborative *communications strategy* to the innovative advocacy, organizing, litigation, research, and policy analysis that reformers are already pursuing around the country.

While the details of a 21st century communications strategy are beyond the scope of this essay, research and experience point to a number of important elements:

First is a compelling narrative rooted in shared values. A narrative is an overarching Big Story in which diverse audiences can see their own values. Through most of the last half-century, a law and order, “tough on crime” narrative dominated. A new, positive narrative would be rooted in the themes of prevention, rehabilitation, public safety, and opportunity. Values like equal justice, due process, redemption, and human rights also have a role in this new Big Story, as does a positive role for government. The new narrative must be informed by public opinion research and a rapidly evolving media landscape, but it must ultimately be crafted by advocates, experts, and people directly affected by the system, linking their values and experiences with those of their audiences.

Second is an echo chamber that repeats the basic narrative, in different forms and through different vehicles, to key audiences, conveying to Americans why it’s in their interest to demand smart reform. Criminal justice advocates and our allies include major civic organizations, faith and business leaders, high-ranking officials in both parties, scholars, law enforcement officers, celebrities, and others with a broad reach and significant credibility.

Third is being rigorously solution-oriented. Americans are in no mood to hear about new, unsolvable problems. But if offered understandable, positive approaches that connect with their values and advance genuine public safety, most will come to support those approaches over the status quo.

Fourth, is speaking explicitly and effectively about racial inequality and its solutions. Research by Drew Westen and others shows that while many Americans are uncomfortable talking about race, their conscious values around racial equality are far more positive and productive than their subconscious fears and biases. Americans are more aware of, and concerned about, racially disparate treatment in the criminal justice system than they are of bias in any other sector. Because opponents of criminal justice reform so often play on implicit biases, reformers must explicitly invoke the public’s conscious values of equal opportunity and the fair administration of justice in order to win the day.

The final point is remembering the power of culture. Throughout America’s history, cultural change has helped to usher in transformative policy change. Whether from books like *The Jungle*, icons like Jackie Robinson, images like those from Gordon Parks, or lyrics like those of Billie Holiday, culture has played an invaluable role in building movements and inspiring action. Today’s artistic landscape includes its own cultural pathfinders, and those of us in the profession of policy change must work harder to engage and support them, just as they clear the path for our own efforts.

The road toward a visionary criminal justice system is a rocky one, and could be washed away by changing events or attitudes. But I see an unprecedented opportunity to traverse it, and to achieve transformative change.

Alan Jenkins is Executive Director and Co-Founder of the Opportunity Agenda, a public interest organization dedicated to building the national will to expand opportunity in America. He has previously held positions at the Ford Foundation, the U.S. Department of Justice, and the NAACP Legal Defense and Education fund.

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The Human Rights Paradigm

The Foundation for a Criminal Justice System We Can Be Proud Of

By Jamie Fellner

Criminal justice reformers are optimists. Every day we confront misguided policies rooted in politics, prejudice, anger, and fear. Without optimism we would throw up our hands in despair.

Our optimism is, of course, tempered by skepticism. We have learned that politicians are loath to give up being “tough on crime.” They too often resist an honest cost-benefit analysis of the country’s decades-long experiment in mass incarceration. They refuse to acknowledge that many anti-drug law enforcement practices undermine rather than empower vulnerable minority communities.

In recent years, the dire straits of state budgets have begun to push public officials in the United States to consider cost-saving changes in the criminal justice system. Low crime rates help to provide political cover for such changes. It would be nice to think that aggressively (and senselessly) punitive crime policies may be nearing an end.

But I hope that in 25 years we will have accomplished more than a series of policy changes prompted by fiscal austerity. I hope we will also have persuaded the country that the nation deserves a criminal justice system it can be proud of, and that respect for human rights is the only way to get there.

As those who have read them know, the dry language of international human rights treaties isn’t riveting. But, the treaties express the inspired—and inspiring—affirmation of the dignity of every human being. Most important in terms of criminal justice, they affirm dignity for those on either side of the law.

But are human rights really needed for criminal justice reform if the United States has constitutional rights? The

short answer is yes. Constitutionally protected rights are narrower in scope than human rights and they have been eviscerated by courts all too willing to defer to legislators, public officials, and those they claim to represent. For example:

1. Race discrimination. Both international human rights law and U.S. constitutional law prohibit racial discrimination. While both are violated by laws that explicitly permit or require adverse distinctions on the basis of race, only human rights law recognizes that *de facto* discrimination can and does occur without conscious intent. For example, unwarranted racial disparities in arrests for drug law violations may constitute prohibited discrimination even if no law enforcement official consciously seeks to treat black and white people differently.

In contrast, under U.S. constitutional jurisprudence, the absence of malign intent precludes a finding of unlawful discrimination. In an era of structural racism and guarded speech, how often can racist intent be proven? The constitution as interpreted in the courts thus offers scant protection against discriminatory law enforcement.

2. Excessive sentences. Within a human rights paradigm, a criminal conviction is not a license for whatever length sentence legislators choose. The human rights to liberty and to be free of cruel punishment would have little meaning if they could be sacrificed willy-nilly to lawmakers’ whims. Sentences that are greatly disproportionate to the seriousness of the

crime and the culpability of the offender offend human rights. In contrast, under constitutional law, legislators have nearly unbridled discretion to mandate prison sentences. The U.S. Supreme Court has upheld as constitutional a mandatory sentence of life without parole for a first offense of selling a pound of cocaine and a 25-to-life sentence for a third offense of stealing a handful of videos.

3. Wretched prison conditions. Human rights law requires prison conditions to honor the basic humanity of those confined, prohibits torture and other cruel, inhuman or degrading treatment or punishment, and sets rehabilitation as a primary goal of incarceration. The dangerous and dehumanizing prisons and prolonged solitary confinement that are all too prevalent in the United States don't pass muster.

In contrast, under constitutional law, prisoners' dignity is protected almost solely by the Eighth Amendment's prohibition against cruel and unusual punishment. Deliberate brutality may be prohibited, but officials are free to impose punitive regimes of deprivation, idleness, extreme isolation and misery. Rehabilitation is an option officials can adopt or discard as budgets, political climate, and their own preferences dictate.

4. Disenfranchisement. Human rights law affirms the importance of being able to participate in a country's political life. Everyone has the right to vote, including those who are in prison or who have served prison sentences. While reasonable restrictions on the right to vote are permitted, broad brush disenfranchisement of everyone in prison or previously convicted of a felony is not. Although such felony disenfranchisement laws may be constitutional, they are a form of banishment from the polity that cannot be squared with human rights.

No doubt some who know little about international human rights law may suspect it is "soft on criminals" and fails to ensure justice for victims. But letting the bad guys off easy is not a feature of human rights. Human rights law insists on accountability for crime, but as importantly, it recognizes the difference between justice and egregiously disproportionate or discriminatory punishment. The rights and dignity of victims are not vindicated by laws that trample the rights and dignity of their victimizers.

The virtues of human rights law are unassailable. It is politically unbiased, comprehensive, sensible, internationally

respected and grounded in a rich historical understanding of the strengths and weaknesses of humanity.

In the United States, however, human rights have not been fully integrated in the criminal justice system. Although the United States is a party to important international human rights treaties, it has insisted the treaties do not create judicially-enforceable rights. Although they on rare occasion look to human rights treaties when interpreting constitutional standards, U.S. courts do not provide redress for human rights violations and do not insist public officials comply with their human rights obligations.

We do not have to wait for the courts, however, to bring human rights home. Human rights are unmatched as guideposts toward a truly just criminal justice system.

Advocates can look to them for a dignity-affirming template for progress. We can urge officials to turn to them for guidance in crafting policies that emphasize restraint in the exercise of the state's penal powers. We can teach the public how they offer a vision of justice that is truly for all.

I am optimistic enough to believe the country will eventually embrace not just cost-effective criminal justice policies, but human-rights respecting policies as well. The skeptic in me recognizes this will not be easy and 25 years may not be enough time. Let's hope the skeptic is wrong.

***Jamie Fellner** is senior advisor to the U.S. Program at Human Rights Watch. She has written extensively on U.S. criminal justice issues including felony disenfranchisement, racial disparities in drug law enforcement, sentencing policies and prison conditions.*

Human rights are unmatched as guideposts toward a truly just criminal justice system.

The Justice System in 2036

How States Ended the Era of Mass Incarceration

By Dennis Schrantz

DATELINE 2036: Since the Era of Mass Incarceration ended in 2020, all 50 states have reduced their prison populations and the nation's incarceration rate is the lowest in recorded history. Driven by extraordinary budget pressures and proof that the prison system was not delivering bang for the buck, governors elected in the 2016 election cycle spent less on the justice system than ever before recorded.

Thirteen states such as Michigan, New York, and New Jersey led the way. By 2012 they had proven that an investment at the beginning of the governor's election cycle in facilitated planning and implementation of evidence-based corrections practices will reap massive budget dividends. The Democratic and Republican Governors Associations jointly led newly elected governors and executive budget leaders through a series of policy agreements and sound implementation activities that led to the end of the long era of massive prison buildups. The associations and their partners realized that unless they did something different, corrections costs would continue to soar. The two associations obtained federal and foundation funding to gain the needed additional, long term competency and capacity to make the changes that were required—thus swinging the political pendulum toward smarter, sustainable corrections spending.

As a result of the 2016 *Joint Resolution for Justice Reinvestment and Crime Reduction*, the two gubernatorial associations, joined by the National Coalition of Criminologists and the National Association of University Presidents—which joined the effort after corrections spending surpassed university and research spending combined—worked with all states that had new governors taking office in January 2017. Using lessons learned from states with a history of successful corrections reforms, the associations mobilized a base of policy and political advocates to create individual state action plans that hold offenders accountable, improve

public safety, and use taxpayer dollars more effectively. The Association of Prosecuting Attorneys and the National Association of Chiefs of Police—which wanted funds for strategies that truly reduced crime—rounded out the national collaborative.

This unprecedented political base used the experience of 13 states that discovered that evidence-based approaches to reduce crime could save millions of dollars when coupled with individualized performance- and results-focused state management plans. Subsequently, corrections spending in every state that joined the effort was dramatically reduced in the eight-year political cycle from 2016 through 2024. More than \$2 billion was shifted from corrections to education and re-building states' crumbling infrastructure, creating hundreds of thousands of jobs across the United States.

The chair of the Association's Joint Resolution Committee, political elder Newt Gingrich, stated,

Our success required an honest assessment of what was needed, both external to each state's department of corrections and internal to their operations. Helping states achieve the competency and capacity they needed was the key to our success. We focused on new business models for the justice system and used the science and technology that was at our disposal to push the nation to the tipping point. There is no going back.

Together, in 2016, all newly elected governors and their state budget offices determined how to demand the changes in their state systems and deliver budget savings to the taxpayers in their first two years in office. These new governors inherited the reins of state government during an all-out budget panic. No one wanted to raise taxes. States faced unprecedented axing of programs critical to health and education. Lawmakers were stymied. Executive offices had said for years that without legislative action, there was nothing more they could do. Corrections budgets continued to increase even though the promise of investing in public safety was not being met. Newly elected governors demanded answers from their corrections departments and were told more prison space was needed—not less.

The new governors had only a general sense of what was needed to reverse the trends and were immediately sobered by the question of how to define, plan, and implement the reforms. The Democratic and Republican Governors Associations led the effort by working with them on a *strategy of reforms* and a *plan to implement* the reforms.

Three conditions existed in each of the states that succeeded in dramatically reducing corrections spending: 1. they were in the first of a four- to eight-year political cycle, giving them the time to plan and execute the reforms; 2. they documented the need to reduce corrections spending in ways that were supported by a base of reform advocates starting with universities, victims' rights organizations and law enforcement; and 3. they understood the need for competent assistance to plan and implement. The new governors were provided with the assistance needed during their transitions from candidate to leader. And thus the cycle began.

Each state developed an aggressive action plan that began by engaging in four simple steps:

1. Examining their *stated, documented need of record* to determine the corrections and political environments. Nearly all states had established a level of need.
2. Determining the degree of *competency and capacity* that the state's department of corrections had in order to perform significant assessment, analysis, planning, and implementation.
3. Considering with the newly elected governor's Transition Team the range and timing of consultancy services that would help facilitate the change process as *part of the*

transition. These services ranged from high-end strategic planning and education to further assessment of the various offender populations and specific implementation planning.

4. Based on this review, they each developed a work plan to reverse the trends that were driving the prison population higher and higher.

The governors first established their political will to reduce corrections costs and then established the competencies and capacity to plan, implement, monitor, adapt, and evaluate evidence-based approaches that improved performance and cut costs. Each state began reforming its corrections system to require evidence-based programs that increased reliance on community supervision rather than long prison terms. There were three points of reference: the *front end* (e.g. *community corrections activities*—focused on reduced admissions); *custody, control, classification and programming activities* inside institutions—improving and reducing the length of stay of prisoners and work on the *back end* (e.g. *prisoner re-entry and improvement in parole supervision* and offenders' post-prison performance).

These three areas control the size of prison populations, and addressing them led to unprecedented reform. The United States once led the country in mass incarceration; in 2036 it emerges as a paradigm for the entire developed world.

The United States once led the country in mass incarceration; in 2036 it emerges as a paradigm for the entire developed world.

Dennis Schrantz is the Vice President of Strategic Planning for Northpointe, Inc. He has served as the Executive Director of the Office of Community Corrections for the Michigan Department of Corrections, and led community corrections and jail populations control efforts in Wayne County (Detroit), Michigan.

What's Money Got to Do With It?

The Great Recession and the Great Confinement

By Marie Gottschalk

The Great Recession has sparked a major rethinking of U.S. penal policies and raised expectations that the United States will begin to empty its prisons and jails because it can no longer afford to keep so many people locked up.

But mounting fiscal pressures will not be enough on their own to spur deep and lasting cuts in the incarceration rate over the next 25 years. The construction of the carceral state was the result of a complex set of developments. No single factor explains its rise, and no single factor will bring about its demise.

If history is any guide, rising public anxiety in the face of persistent economic distress and growing economic inequalities might, in fact, spur more punitiveness. Spreading economic despair may fortify the “culture of control” that sociologist David Garland identified as the lifeblood of the prison boom launched nearly four decades ago. In his account, societal angst stemming from deep structural changes in the U.S. economy and society ushered in a new era of harsh punishment and extensive surveillance. Widespread perceptions of the government’s impotency to mitigate the economic upheavals of the 1970s further bolstered the punitive turn.

Washington’s failure to tame the economic demons in the current economic crisis (and its alleged culpability in releasing those demons) has once again cast doubt on the government’s efficacy, legitimacy, and *raison d’être*. This doubt has already tempted some public officials to promote highly punitive measures for their immediate symbolic value, such as Arizona’s new law permitting the police to arrest people suspected of being undocumented immigrants.

The same process leads government to exploit the popular stereotype of a marauding underclass. This helps explain why imprisonment rates tend to rise with the unemployment rate, even when the crime rate hasn’t increased.

Crime does not necessarily rise during periods of economic distress, but protests, strikes, and civil unrest often do. During the Great Depression, huge numbers of Americans took to the streets, fueling fears that the social and economic fabric of the United States was coming apart. It is still too early to tell whether the Tea Party and Occupy Wall Street movements herald the opening acts of wider civil unrest. But if they do, such unrest will likely be used to justify expansions of law enforcement and to delegitimize challenges to the prevailing political order.

The Depression provided an opportunity to legitimize the expansion of a number of federal and state powers, ranging from government control of the economy to law enforcement. The public was highly susceptible to calls from President Franklin D. Roosevelt and other government officials to get tough on criminals—whatever the cost—even as crime rates fell in the 1930s. Government officials also touted prison construction and the expansion of law enforcement as public works programs that would boost the flailing economy.

Likewise, in pushing the economic stimulus package in 2009 and the jobs proposal in fall 2011, the White House and other supporters highlighted how these measures would help law enforcement. Some states and communities used their economic stimulus money to maintain or expand their penal capacity.

The way to reduce spending on corrections is to incarcerate fewer people and to shut down penal facilities. But those who attempt to close penal facilities face powerful

interests that profit politically and economically from mass imprisonment. Thus, public officials have been making largely symbolic budget cuts that do little to reduce the incarcerated population—or save much money. Reports of inmates being fed spoiled or inedible food are rising nationwide. Charging prisoners fees for services like meals, lodging, and visits to the doctor is becoming more common. Budget cutters have also targeted prison-based educational, substance abuse, and vocational programs, which were already grossly underfunded. These cuts render life in prison and life after prison leaner and meaner.

These developments are part of a new war on the poor, as poverty is increasingly criminalized. A recent study by the National Law Center on Homelessness and Poverty found that the number of ordinances against the poor for acts of vagrancy, panhandling, and sleeping on the street has been rising since 2006, as has their enforcement. At the same time that poverty is being criminalized, states and the federal government are slashing social services for the poor, which is likely to fuel higher crime rates.

The current economic crisis presents an opportunity to redirect U.S. penal policy that opponents of the prison boom should exploit. But framing this issue as primarily an economic one will not sustain the political momentum needed over the next couple of decades to drastically reduce the prison population. Economic justifications also ignore the fact that successful decarceration will cost money. The people re-entering society after prison need significant educational, vocational, housing, health, and economic support, as do their communities.

Real change can only come from sentencing reform. We need to reduce the number of people who are sent to jail or prison in the first place and to reduce the time served of many of those who are sent away. This means ending mandatory minimums, repealing life without parole statutes, and establishing a meaningful parole process for all offenders. If we are to do this, economic arguments will not be sufficient.

Criminal justice is fundamentally a political problem, not an economic or crime-and-punishment problem. Framing the carceral state primarily as an economic issue may yield some short-term benefits. But we need more compelling arguments against the prison buildup and a durable movement to propel these arguments.

Focusing too heavily on the economic burden draws attention away from how the vast penal system has begun to fundamentally alter the operation of key social and political institutions and to pervert what it means to be a citizen in the United States. It also undercuts the compelling civil- and human- rights arguments that the carceral state raises as it removes wide swaths of African Americans, Latinos, and poor people from their neighborhoods. Mass incarceration raises troubling questions about the fairness and legitimacy of not only the criminal justice system but also of the political system more broadly.

Criminal justice is fundamentally a political problem, not an economic or crime-and-punishment problem.

To see a substantial change by 2036, we need a resilient reform movement. Efforts to substantially reduce the incarceration rate will inevitably spark a backlash. The Great Recession does not spell the beginning of the end of mass incarceration in the United States. To borrow from Winston Churchill, “It is not even the beginning of the end. But it is, perhaps, the end of the beginning.”

*Marie Gottschalk is a Professor of Political Science at the University of Pennsylvania. She is the author of *The Prison and the Gallows: The Politics of Mass Incarceration in America*, and is completing a book on the future of penal reform.*

Resetting Our Moral Compass

Devastated Communities Leading the Fight for a Just System

By Leonard E. Noisette

For 2036, I envision a criminal justice system that embodies the American notion of equal justice for all. Such a system would impose sanctions that are measured and proportional to the harm caused; would not try to use the courts to solve problems of poverty, mental illness, and other social issues; would deem far fewer behaviors as criminal; and would incarcerate people only under the rarest of circumstances.

To be sure, getting there will be no easy task. Over the last quarter century, our nation has grown a vast carceral infrastructure that reflects and reinforces a distinctly punitive and vengeful conception of justice, one that permeates our national psyche. We now live in a country where, in a nationally televised debate, the audience cheers a leading presidential candidate for having presided over a record number of executions as governor. We live in a country where it is readily accepted in the name of order and safety that hundreds of thousands of mostly black and brown young people every year must endure the indignity of being illegally stopped, questioned, and searched by the police. In today's America the absurd prosecution of one mother for the tragic accidental death of her child due to jaywalking and another for enrolling her daughter in the wrong district in desperate pursuit of a good education becomes little more than fodder for the tabloids, and a life sentence for shoplifting a bottle of vitamins or for a non-violent marijuana offense, due to prior convictions, barely raises an eyebrow. These are not anomalies or isolated incidents. They are part of a system that feeds off punishing people harshly, catering to a mindset that dismisses collective responsibility for the least among us and tells vast numbers of people in communities all over this country that they don't matter.

Changing this mindset requires more than expert policy analysis. Exhaustive research has been done. It requires

more than the recognition, made obvious by our current national recession, that wasted dollars could be better spent. And it requires more than championing evidence-based or promising practices, however sound they may be. All of these components are necessary, but they are not enough to right the course. Our nation must confront the harshness and unfairness that we have allowed to seep into and define our current conception of justice. To accomplish this, those upon whom the system wreaks its havoc, the people and communities most severely affected by this conception of justice and its practice, must be central to the movement. This is so not only because they have the most at stake. This is so because only their stories can reset our moral compass.

Recent progress on a number of fronts gives me hope. In places as diverse as Boston, Cincinnati, and Kalamazoo, the movement to "Ban the Box," which gives people who have been convicted of crimes an equal opportunity at employment, has gained legitimacy. Led in large part by formerly incarcerated people demanding a fair shake, this seemingly narrow issue has forced an evaluation of our willingness to impose lifetime punishments by banishing individuals with criminal records from the work world. In Oakland, the Ella Baker Center's "Books Not Bars" campaign is, at its core, a movement of families outraged at the systemic abuses in California's youth prisons, and equally outraged at a lack of investment in California's youth. This frustration and anger has been

channeled into concrete local and statewide policy victories. Directly affected individuals and families played a key role in the successful effort to modify the racially disparate federal crack/powder cocaine sentencing scheme, breathing life into a struggle that could have been about the science of narcotics, but instead was—rightly—about how racially based ignorance and indifference destroyed lives, manifested unfairness, and caused communities to lose faith in our system.

With our country's growing willingness to talk about our failed practices over the past quarter century, we have an opportunity to engage in a debate about the meaning of justice in a democratic society and make concrete reforms. In an encouraging sign, the NAACP's recent resolution to End the War on Drugs sends an unequivocal message that the broad-based constituency of this venerable institution understands that current criminal justice policies represent the major civil rights issue of our time. It is clear that the harms imposed on communities of color can no longer be ignored.

While to date efforts to roll back the war on drugs have been largely limited to advocating for treatment as an alternative to incarceration, the requirement within national health-care reform legislation that access to substance abuse treatment be made more available presents the opportunity to build a response to drug use and misuse outside of the criminal justice system. The Supreme Court's recognition in *Brown v. Plata* that there are indeed limits to abuse and mistreatment of prisoners, and its order that California dramatically reduce its prison population, provides the opportunity—and challenge—to demonstrate how to begin to de-populate a massive prison system.

In pursuit of these short-term objectives, however, we must continue to have community-based stakeholders at the center of the effort, otherwise small incremental improve-

ments could obscure our long-term transformational goals. When the economy regains its footing (and we can, once again, “afford” to lock people up on a mass scale), or when a highly sensationalized crime prompts calls for systemic retribution, it is the communities that will suffer most who must be the bulwark against a return to—or retrenchment of—criminal justice policies and practices that have so clearly failed so many. It is these voices we must elevate because they will be our best hope to remind us of the missteps and mistakes of the past. It is them who we must not ignore, and whose strength we must foster, if we are to re-imagine and reinvent what justice means.

Our nation must confront the harshness and unfairness that we have allowed to seep into and define our current conception of justice.

Leonard E. Noisette is the director of the Criminal Justice Fund at the Open Society Foundations, US Programs, where he oversees criminal justice system reform efforts. Previously, he was the executive director of the Neighborhood Defender Service of Harlem.

Vital Discussions

How to Stimulate a Frank National Conversation About Race

By Robert D. Crutchfield

In 25 years, the demography of the U.S. Criminal Justice System should reflect the racial/ethnic distribution of the American population. This will produce a much smaller and more just system, and have ramifications for racial justice outside of the system as well.

To accomplish this goal we must address two issues: racial and ethnic differences in criminal involvement, and disparities in the system's treatment of those arrested. We must be willing to have a frank conversation about race and ethnicity in America.

Part of that conversation would focus on discussing the well-documented and yet still controversial factors that produce disparate imprisonment of some racial minorities. Some observers insist that there are virtually no meaningful racial differences in criminal involvement, while others strongly believe that the reason is that black and brown people commit more crimes than white people. Both positions are wrong.

African Americans do have higher rates of criminal violence, but do not have higher rates of property crimes, and good evidence shows that the racial and ethnic distributions of both users and dealers of illicit drugs mirror the general population. The picture for Latinos is even more complex. Among first generation immigrants violence rates are lower, but this may not be the case for subsequent generations. Puerto Rican rates of criminal involvement tend to resemble those of African Americans. Asian Americans have been labeled the "model minority" because of the perception of low crime rates (among other things), but crime rates vary considerably among Asian American groups, being higher among more recent immigrants. Research about Native Americans remains too thin to have confidence in our assessments of criminal involvement.

These differences in criminal involvement will persist until the United States gets serious about inequalities in education, labor market participation, housing, and income. This is unlikely to happen as long as we blame individuals for their social circumstance, turning blind eyes to the very real consequences of racially and ethnically different social structural realities. This must be an important part of a real discussion of race/ethnicity in America.

But addressing these disparities alone will not solve the problem of unequal incarceration. A wealth of research that takes into account differences in rates of offending shows there are significant racial/ethnic population differences in U.S. prisons that reflect disparate treatment of minorities. Across police contacts, arrest, prosecution, sentencing, and imprisonment, differential treatment of minorities has been documented. The evidence regarding drug offenses is instructive. Drug offenses have been important in the quintupling of the American prison population in recent decades. Based on good data, we know that there are not significant differences in drug use across races, and no meaningful racial/ethnic differences in drug sales have been reported. But according to the Bureau of Justice Statistics in 2009, of those incarcerated in state prisons for drug offenses more than 50 percent were black and 17 percent were Hispanic.

Our society cannot change the composition of prisons until we frankly and honestly discuss race. Now, in what some have called a post-racial America, meaning that "we've taken care

of that problem, after all we have a black President,” many believe the problems of the past have been resolved—or they’d like to believe it. And yes, there are still those among us who are simply bigots. Bigots are hard to reach, but we can have a meaningful conversation without them.

The rest of America must begin to realize that when they act as if America’s historic and contemporary problems with race have been resolved, even though substantial racial/ethnic inequalities remain, they are participating in what sociologists refer to as modern racism. These social ostriches are more of an impediment to addressing both differential criminal involvement and racial/ethnic disparities than are the outright bigots. Bigots will never support rectifying these problems, but many more Americans are modern racists. These modern racists need to realize that they too pay a price for continuing inequalities. Crime and our collective response to it are tremendously expensive for our society, and outside of communities where prisons are located, this is a nonproductive expense. They are drags on state and local governments, and on the general economy. How do we change their view? That is why we need frank and honest conversations about race.

How can this happen? President Clinton tried to begin such a conversation, but did not substantially shift the way the public thinks about race or ethnicity. President Obama can use the bully pulpit of the presidency to challenge us, and he did in his campaign speech responding to the controversy about his former pastor, Reverend Wright.

Fundamentally we need broader conversations, and there are three groups that should take responsibility in leading them. The first is university and college faculties. For too long we have been content to quietly do our research, remaining too silent outside of our classrooms. The second are the churches. None of the three great monotheistic religions allow believers to blindly turn their back on the

dispossessed. Within their theology is ample basis for calling our society to account for racial/ethnic disadvantages and inequalities. The third group who can help us be more honest about race are the people who work in the criminal justice system. They need to become less defensive about the institutions they serve; they need to step up and forthrightly talk about systemic failings. And because they regularly confront the bitter fruits of our society’s shortcomings, they need to call us out on them.

We will be a lesser nation if our criminal justice system looks in 2036 demographically as it does in 2011. We must do something different, and that will not happen until we are willing to acknowledge the problem, and then talk about it, and then act.

Differences in criminal involvement will persist until the United States gets serious about inequalities in education, labor market participation, housing, and income.

Robert D. Crutchfield is a Professor of Sociology at the University of Washington. His research focuses on labor markets, disadvantage, and crime, and racial disparities in the criminal justice system. He is a former probation and parole officer and is on The Sentencing Project’s Board of Directors.

The Elephant in the Room

The Necessity of Race and Class Consciousness

By Susan B. Tucker

Twenty-five years from now, when my grandsons are 26, will a third of black men their age be incarcerated or under some form of government control? Will mass incarceration continue to be the number one civil and human rights issue of the U.S. in the 21st century?

Tragically, history suggests this could well be so. As Michelle Alexander and Ian Haney Lopez, most recently, have reminded us, structural racism, inequality and exclusion are alive and well in the United States, written into our laws, social, economic and political policies and practices since before the beginning of the nation. On top of the solid foundation built by slavery and Jim Crow, in our lifetime, under our watch, and in spite of the best efforts and not insignificant accomplishments of The Sentencing Project and its many allies, the U.S. prison and punishment system has exploded since 1970. A determined and vehement backlash to the promises of the civil rights movement has relentlessly criminalized, stigmatized, and marginalized increasing numbers of people who are black, brown, poor, mentally ill, young and now undocumented. The harm is collective, as well as individual. Mass incarceration and the addiction to harsh punishment of poor people of color have disenfranchised and impoverished whole communities across multiple generations. Today, the resulting, race-based, rationalizing apparatus to “govern through crime,” as Jonathan Simon points out, extends far beyond the ghetto.

Given this existing reality, it’s difficult to imagine what a criminal justice system not structured by race and class might look like. Yet as philosopher Slavoj Žižek argues, it is an ethical imperative to make “the political miracle a part of our (Western) imagination.”

As we seek to create a political miracle that re-imagines the criminal justice system, we should look for ways to join the

rising global demand for justice and equality, not as a special interest add-on issue, but because the “criminalization of the ghetto” and the “ghettoization of crime,” as Loic Wacquant puts it, are blatant sites of injustice and inequality.

Some recent attempts to address and redress the effects of racialized (in)justice may be promising, if implemented fully and true to their originating visions. The Sentencing Project’s proposed Racial Impact Statement legislation is an excellent example of using race conscious instruments to pinpoint disparate racial effects of penal policies and practices; it should be implemented nationally at all levels of government. I’d like to think that Justice Reinvestment, with which I’ve been involved, and two related reinvestment initiatives, hold promise, as well.

Justice Reinvestment is a mechanism to repair and rebuild the human resources and physical infrastructure—the schools, healthcare facilities, parks and public spaces—of neighborhoods devastated by criminal justice policies. It grew from a recognition that a disproportionate number of U.S. prisoners come from a handful of poor, black communities, the “million dollar blocks” that have suffered a massive disinvestment in basic infrastructure while millions have been spent on incarceration. Now a national initiative, Justice Reinvestment has succeeded in reducing state prison populations and budgets, averting new prison construction, and redirecting state resources, albeit mostly to community corrections systems, but also on occasion to strengthen civil society institutions.

The Civic Justice Corps (CJC), the first national service initiative to affirmatively recruit young people with criminal convictions, exemplifies the Justice Reinvestment principle of seeking community level solutions to community level problems. Along with their neighbors, corps members (ages 16–24) work to improve the health, safety, beauty, and sustainability of their neighborhoods. They do work that is visible and valuable, establishing themselves as community assets. By participating in events such as The Dream Reborn Conference sponsored by Green for All in 2008, CJC members join other youth of color working for racial justice and climate justice.

The New York City Model of Probation, adopted in 2010–2011, is a two-part Justice Reinvestment strategy that matches supervision to clients' needs, interests, and level of risk to public safety, and reinvests in the communities where they live. The Model's signature reinvestment initiative is the Neighborhood Opportunity Network (NeON), which redefines how and where probation officers work with clients. At the heart of the NeON idea is a local network of partners—individuals and organizations, public and private—working together to create safe, vibrant, engaged communities. The first five NeONs are located in five million dollar block neighborhoods with high concentrations of people on probation. By 2013, clients will be served in community settings agency-wide. The Department of Probation has already begun to leverage additional public and private investment to strengthen local capacity to provide education, work and civic engagement opportunities.

New Zealand, Australia, and England, all countries where race has functioned in a similar way as in the United States, have begun to borrow the Justice Reinvestment model explicitly as a way to address and redress the plight of their racialized and criminalized indigenous and immigrant minorities. This kind of explicit race consciousness will be key to their (and our) success in transforming criminal jus-

tice systems, which will also require vigorous, organized demands for reinvestment from affected communities and civil society institutions.

As we create a strategy for the next 25 years, it is imperative not to seek compromise by refraining from talking about race. To achieve and sustain change, we may need to create mechanisms akin to the kind of transitional justice systems put in place where national conflicts have produced massive repression, trauma, family disruption and community dislocation. The perpetual legacy of slavery, Jim Crow, and mass incarceration requires a formal, organized process of testifying and bearing witness. The way forward may require official acknowledgment and atonement, and active commitment to repair the deep wounds and multiple sorrows of gross inequality. The penal policies targeting residents from poor communities of color are national, state and local; transitional justice strategies should be implemented at all levels of government and include related social, economic and political system actors.

We have to believe that a criminal justice system not structured by race and class is possible. What's the alternative? Working toward that "political miracle," as a courageous friend once told me, is, after all, the only game in town.

Susan B. Tucker is Director of Justice Reinvestment Initiatives with the NYC Department of Probation. She was previously the founding director of The After Prison Initiative, a Justice Fund Program of the Open Society Foundations.

We have to believe that a criminal justice system not structured by race and class is possible. What's the alternative?

The Promise of Prevention

Public Health as a Model for Effective Change

By Deborah Prothrow-Stith, M.D.

As a physician in training in a Boston emergency room in 1978, I realized that stitching people up and sending them out without addressing the violence that caused their injury violated any prevention agenda we had. Similarly, schools were suspending and expelling students and police and courts were arresting and incarcerating youth, all without attention to prevention.

Having made this connection I was intrigued in 1985, when Surgeon General Koop hosted the first conference addressing violence as a public health problem. Public health resources have been increasingly allocated to preventing violence since that conference, with remarkable results. The vision for the criminal justice system over the next 25 years has to build on what public health has learned.

We can't address the many challenges in the criminal justice system without reducing the number of people entering the criminal justice system in the first place. This means prevention must be on par with law enforcement and punishment. As a nation, we already promise to respond to violence with expensive and sometimes harsh solutions. We need a companion promise, the promise of prevention.

As a nation, we can prevent crime and violence, improve outcomes for individuals and communities, and reduce the burden on the criminal justice system through a complementary public health approach. We can save lives and money while build thriving communities. One of the contributions public health has made since the Koop conference is to evaluate prevention activities. We know what to do to prevent violence and are standing on some firm science as to what works.

Noteworthy examples:

- Public health-based programs such as CeaseFire Chicago, Baltimore's Safe Streets program, and the Urban Networks to Increase Thriving Youth (UNITY) programs have made significant impacts in violence and changed community norms. Baltimore saw a reduction in homicides of more than 50 percent, and Minneapolis showed a 40 percent drop in juvenile crime in its most violent neighborhoods in just two years after implementing UNITY'S four-point, public-health based approach.
- As documented in the *American Journal of Preventive Medicine* in 2007, schools can reduce violence by an average of 15 percent in as little as six months through universal school-based violence prevention efforts.
- The U.S. Department of Health and Human Services reported in 2001 that the Boys and Girls Clubs and the Big Brothers Big Sisters of America programs have effectively reduced violence among youth and violence-related outcomes; evaluations show reductions in occurrences of vandalism, drug trafficking, and youth crime.
- According to the national nonprofit Fight Crime: Invest in Kids, the Nurse Family Partnership decreased arrest rates by age 15 by half. The program trains public health nurses to make regular home visits to low-income, first-time mothers.

In our efforts to prevent violence, we have learned important lessons. These can inform our efforts not only to prevent violence but also to improve the criminal justice system.

The first lesson is to invest now in prevention instead of paying much more later. In these tough economic times, costs are often cited as the reason we are unable to do something. Fortunately, we're getting more and more scientific documentation of the monies that are saved by investing in prevention. I remember a 14-year-old patient of mine whose mother wanted him to get into an after school program, but was having trouble finding one she could afford. I reflected that if he were shot his medical care would cost the state at least \$100,000, and prosecuting the shooter would double the toll. But I could not get him into a \$4,000 after school program. A RAND study of the Nurse Family Partnership mentioned above demonstrated that the program saves at least \$4 for every \$1 spent.

The second lesson is that all violence is connected. Gang violence is connected to bullying is connected to school violence is connected to intimate partner violence is connected to child abuse is connected to elder abuse. Across the country, people working on child abuse are right across the hall from people working on violence against women without working together, even though the co-morbidity of the two problems is at least 30 percent. Many young men in prison for violent behavior have witnessed significant violence during their developmental years and have been victims of violence. Effective prevention activities must reflect the connections between the different types of violence and respond holistically.

The third lesson is that we have to offer young people an alternative to violence with healthy responses to the anger they feel about the social injustices they witness and the personal victimization they experience. Using my *Violence Prevention Curriculum for Adolescents* in a school in the Boston area I asked my students to list the things that made them angry. A young man said that his friend had been stabbed over the weekend and that it took the ambulance 20 minutes to get there and his friend died. His neighborhood had the longest 9-1-1 response times of any neighborhood in the Boston metropolitan area.

The class listed unhealthy things he could do with that anger: beat up the ambulance driver; take it out on somebody else; or, do nothing. Healthy responses included talking with someone who understands issues of race and class

about it, or writing the mayor a letter. However, the depth of his anger did not seem to be adequately addressed in those responses. The class decided that he should get so angry that he decides to finish high school, become an ambulance driver, and become an ambulance dispatcher.

As a society, if this is the outcome we want, then we need a school system that will prepare him to graduate and pass the test to become an emergency medical technician. The system has to hire and promote him. Affirming the option is an important start; then we have to make it possible for him to do it.

The time is right for a national violence prevention agenda supported by criminal justice, public health, and those concerned about the expense and efficacy of overcrowded prisons. There is a growing evidence base, grounded in research and community practice that confirms that violence is preventable. Through UNITY, we have been working with cities all over the country to implement approaches informed by public health. In partnership with them, we have developed a roadmap for what it takes, and identified strategies that prevent violence before it occurs. Communities have successfully reduced violence through strategic planning and coordinated efforts by many partners and with the community. In fact, cities with the most coordination and collaboration across multiple sectors have lower rates of violence.

It is time to transform our criminal justice system and build the partnerships with public health that focus on prevention and ensures that the criminal justice system is our last resort.

Deborah Prothrow-Stith broke new ground by defining youth violence as a public health problem. She served as Massachusetts Public Health Commissioner and is a member of the Institute of Medicine. She is currently a consultant at Spencer Stuart and adjunct Professor of Practice at Harvard School of Public Health.

As a nation, we already promise to respond to violence with expensive and sometimes harsh solutions. We need a companion promise, the promise of prevention.

Attica Futures

21st Century Strategies for Prison Abolition

By Angela Y. Davis

The most radical futures we can imagine are never entirely severed from their moorings in the past. So it can be instructive to revisit past struggles for major change in the policies and practices of imprisonment as we speculate about possible futures of the U.S. justice system.

This year, the 25th anniversary of The Sentencing Project, also marks the 40th anniversary of the Attica rebellion. A major turning point in the history of the U.S. criminal justice system, the Attica rebellion erupted in the aftermath of the Folsom prisoner strike and the killing of George Jackson at San Quentin. While Attica sharply focused public attention on the contemporary prison crisis, and especially its race and class dimensions, it also generated much-needed discussion on the relationship between urgent prison reforms and long-range strategies of prison abolition.

We should not forget that it was the radical activism of prisoners themselves that created the contours of this important historical conjuncture. Activists in prisoner rights and prison abolition struggles should always call attention to the considerable contributions prisoners themselves have made to the movement—from the Attica Uprising to the exposure by California women prisoners of the expansionist agenda underlying the strategy of “gender responsive prisons” and the most recent prisoner strikes in Georgia and California.

The four-day occupation of Attica—as brief as it may have been—anticipated, along with the Native occupation of Alcatraz and the U.K. feminist peace movement at Greenham Commons, the contemporary Occupy Wall Street Movement. The connection of the Attica Uprising with the OWS movement resides not only in the fact that there was a literal “occupation” of the prison but also in the way the analysis offered by the prisoners linked immediate demands like food, healthcare, and education for prisoners to global

struggles against capitalism. Moreover, in their efforts to create a functioning activist community within the four short days they controlled the prison, the Attica activists produced a precedent for future efforts to build small-scale radical democratic communities. Symbolically, the Attica Rebellion stood for and encouraged bold moves on the part of the anti-prison movement throughout the country, especially in the (unfortunately temporary) transformation of the prison system in Massachusetts, when guards walked off the job at Walpole in March 1973 and prisoners actually took over the day-to-day operations of the facility. Further, the occupation of Attica and surrounding developments constituted an essential moment in the evolution of the prison abolitionist movement and prefigured the ways later calls for abolition would be linked to campaigns against capitalism and for democracy.

During the late '60s and early '70s, prisoners' movements both reflected and contributed to struggles for economic, racial, and gender equality in the free world. They understood the importance of the labor movement and, in many cases, modeled their struggles after the most radical sectors of labor. One of the prominent demands raised by Attica activists and taken up during that era by prisoners in California and in other parts of the country focused on the unionization of prisoners. In the Attica Manifesto presented to Russell Oswald, Commissioner of Corrections, and to Governor Nelson Rockefeller some two months before the uprising, prisoners petitioned for the right to organize and join labor unions. In the 11th—and related—demand of

the manifesto, prisoners asked that “all institutions using inmate labor be made to conform with the state and federal minimum wage laws.”

While the actions of Attica activists helped to publicize the importance of labor organizing among prisoners, the United Prisoners Union in California was highly effective with respect to recruiting members and supporters, and the Walpole prisoners in Massachusetts demonstrated that labor takeovers by prisoners could lead to innovative strategies for prison abolition. Included in the Bill of Rights of the Convicted Class, as formulated by the United Prisoners' Union, was the claim that “the conditions of labor and employment for the Convicted Class shall include all the rights of working class union members in the outside world, e.g. minimum wage, disability compensation, vacation from work, vacation pay, retirement benefits, pension plans, retirement benefits, life insurance. *Involuntary servitude must cease!*” In Massachusetts, Walpole prisoners organized the National Prisoner Reform Association along the lines of a labor union.

Inspired by radical movements on both sides of the walls, North Carolina prisoners became involved in a court case that examined their right to recruit members into the Prisoners Labor Union. Having won at the District Court level, they were barred from further unionizing when the decision was overturned by the Supreme Court. Justice Thurgood Marshall's dissent [*Jones v. North Carolina Prisoners Labor Union, Inc.*, 433 U.S. 119 (1977)] provides an implicit message regarding the value of labor organizing within the context of the prison abolitionist movement:

Today...the Court, in apparent fear of a prison reform organization that has the temerity to call itself a “union,” takes a giant step backwards... “A prisoner does not shed... basic First Amendment rights at the prison gate. Rather, he ‘retains all the rights of an ordinary citizen except those expressly, or by necessary implication, taken from him by law.’ I therefore believe that the tension between today’s decision and our prior cases ultimately will be resolved not by the demise of the earlier cases, but by the recognition that the decision today is an aberration, a manifestation of the extent to which the very phrase “prisoner union” is threatening to those holding traditional conceptions of the nature of penal institutions.

I respectfully dissent.

Unfortunately, not even the “free” labor movement has recognized the importance of granting prisoners the right to organize labor unions. The most widespread tendency has been to regard prisoners exclusively as a threat to free labor. In this sense the opposition to prison labor recapitulates the historical animosity toward black workers, understood by the then overwhelming white labor movement to be potential strikebreakers and therefore a threat to labor unity.

As late twentieth century labor history demonstrates, the widespread organization of black workers was eventually a major boost for the labor movement. In the same way, the creation of prisoner labor unions today would help to strengthen a weakened labor movement. At the same time, prisoner unions could lead to such vital changes within punishment facilities as prisoners' capacity to earn minimum wage and to support their families on the outside, as well as to provide restitution to people who may have been their victims. The recognition of prisoners' First Amendment rights and the move toward a measure of economic equality that allows prisoners to enjoy the same rights as organized workers in the free world can help us imagine and work toward futures unpolluted by the pervasive presence of jails and prisons.

During the late '60s and early '70s, prisoners' movements both reflected and contributed to struggles for economic, racial, and gender equality in the free world.

Angela Y. Davis is Distinguished Professor Emerita of History of Consciousness and Feminist Studies at the University of California, Santa Cruz. She is known internationally for her political activism and longstanding commitment to prisoners' rights and prison abolition.

There Is No Juvenile Crime Wave

A Call to End the War Against Children

By Barry Krisberg

We need to declare an end to the War against the Young that has dominated criminal justice policy over the past several decades. Disingenuous or simply misinformed criminal justice officials, elected leaders and the media have promoted the myth that young people are responsible for the vast majority of violent crime.

The facts are otherwise. Teenagers commit about the same proportion of the most serious and violent crimes as their share in the population. In fact, young adults aged 25–35 years of age are the perpetrators of most violent crimes, especially homicide and armed robberies. Indeed, teenagers are the most likely demographic group to be victims of violent crime. Further, juvenile crime rates have been on a steady decline for over 15 years—there is no juvenile crime wave.

The images presented to the public are disturbing. The picture is that of out-of-control, disrespectful youngsters who obsess on hip hop music and violent videos. Boys who wear their pants below their waistlines and young girls who dress provocatively, both increasingly violent and sexually promiscuous. When teens do commit very serious crimes, feckless politicians such as the current Mayor of Philadelphia employ exaggerated and dangerous rhetoric to portray these children as less than human, their crimes as more than rare.

The moral panic over the young has led to more police on school grounds, metal detectors, closing off school campuses as well as the funding of untested, ineffective, and expensive anti-bullying, anti-drug and anti-violence curricula. While school districts cut budgets for school counselors, science classes, and sports and music programs, they preserved the new “crime fighters” on school campuses.

Worse yet, many school districts enacted “zero tolerance” policies imposing automatic suspensions and expulsions

that disregard due process rights, parental participation, and individual consideration of the circumstances surrounding the alleged infractions. Research suggests that most suspensions and expulsions are applied to youth of color and that the “crimes” generally involve defiance of teachers. School officials and teachers are increasingly willing to call police to make arrests for behavior that was previously dealt with by counselors or other school personnel.

Many jurisdictions have enacted laws and policies enforcing harsh penalties for truancy. There has been a rise in curfew laws that limit the movement of young people. Drug enforcement, especially those activities aimed at curbing marijuana use, has focused on arrests and searches of teenagers. Ironically, as the rate of arrests of juveniles for serious and violent crimes has gone down dramatically, referrals to the juvenile court have gone up—mostly for minor drug crimes, violations of school rules, truancy, and violations of probation. In order to transform the criminal justice system over the next 25 years, we need to rediscover some of the basic policy principles that guided juvenile justice reform over the past 50 years. First, that young people are protected by the Bill of Rights and that, in the words of Justice Abe Fortas in 1967, “the status of being a boy does not justify a kangaroo court.” Second, that pulling minor offenders into the juvenile justice system will increase any propensity to commit crime and that juvenile correctional facilities and detention centers are abusive and toxic for our youth. Third, that children are not little adults and that treating youngsters as if they were adults is morally

bankrupt and imposes cruel and unusual punishment. Fourth, that arresting more young people cannot solve the problems of gangs and community violence. We need to have the police focus on the most dangerous adult violent offenders and major dealers in drugs, illegal guns, and commercialized vice. Fifth, we need to understand that children are more often the witnesses to and victims of violence in their homes than the perpetrators of violence in their schools or on the streets. Finally, prevention is the key and we need to reduce the budgets of bloated criminal justice agencies and reinvest in community-based programs and services for at-risk families.

The federal Juvenile Justice and Delinquency Prevention Act (JJDP) of 1974 was enacted to encourage the expansion of what Lamar Empey called the Four D's—Decriminalization, Diversion, Deinstitutionalization and Due Process. Decriminalization was primarily focused on removing from the purview of the juvenile court status offenses such as truancy, curfew violations, running away and chronic conflicts with parents. There was also a movement to downgrade penalties for simple possession of small amounts of marijuana. Diversion meant creating options for police, prosecutors and the courts to refer youth to neighborhood programs in lieu of formal system processing. Deinstitutionalization involved removal of status offenders and other minor offenders from secure detention facilities, jails, and state youth facilities. In some cases, such as Massachusetts, Utah, and Missouri this meant the closure of traditional juvenile lockups. Expanding Due Process involved providing sufficient legal protections for the rights of children.

As an immediate step to achieving my vision, the JJDP must be reauthorized by the Congress. The Office of Juvenile Justice and Delinquency Prevention should be spared deep budget cuts and it needs to be returned to a preeminent national leadership role. In addition, we need passage of the Youth Promise Act, written by Representative Bobby

Scott, to encourage local community-based delinquency prevention planning. Moreover, the hundreds of millions of federal funds for youth development programs that were slashed during the George W. Bush years should be restored.

The U.S. Department of Education needs to challenge the current abuses of zero tolerance practices and use its civil rights enforcement powers to move schools away from zero tolerance policies. There needs to be training and technical assistance for teachers on evidence-based strategies to manage disruptive classroom behavior. Similarly, there is a need to better define an appropriate and constructive role for law enforcement in responding to school-based problems.

How would we treat vulnerable children if we thought of them as ours and not “other” peoples’ children?

The highest priority must be given to reducing the shocking disparities of how children of color are treated by the juvenile justice, child welfare and education systems. The horrible treatment of youth is wrapped up with issues of poverty and race. How would we treat vulnerable children if we thought of them as ours and not “other” peoples’ children? We would not tolerate long term incarceration for *our* children. We would not tolerate the current dropout and school failure rates. We would want the best for our children and would provide them with the compassionate care that they deserve.

Barry Krisberg is the Research and Policy Director for the Chief Justice Earl Warren Institute on Law and Social Policy at the University of California Berkeley School of Law.

Juvenile Justice in 25 Years

A System That Passes the “My Child” Test

By Bart Lubow

When the first juvenile court was established in Cook County, Illinois, a little more than a century ago, expectations were great that the new system, based upon the notion that children are inherently different from adults—less culpable for their actions and more amenable to rehabilitation—would emphasize the very things that parents want for their kids.

Indeed, the new court was explicitly expected to serve as “a kind and just parent,” dispensing individualized justice in a non-adversarial setting, helping delinquent youth find pathways to happy, productive adulthood.

Reality, unfortunately, proved more complicated. From the beginning, youth were denied fundamental legal protections, including the right to an attorney. Juvenile court judges, as recently as the 1960s, were, as often as not, lay people with no special training or understanding of adolescent development. Probation—the primary intervention—was under-funded and inevitably embraced the ineffective surveillance tactics dominant in adult community supervision for decades. Unnecessary and inappropriate reliance on secure detention centers and “reformatories” became commonplace, with conditions of confinement often brutal and largely unregulated. As the system descended further and further from its original vision, another profoundly disturbing characteristic became clear. Despite the fact that delinquency is almost universal among American adolescents, the formal juvenile justice system handled almost exclusively the cases of the nation’s most disadvantaged children, primarily poor youth of color. Parents with any resources, connections, or wiles manage to keep their kids out of this system’s clutches.

Could there be stronger evidence that this system fails the “my child” test? Our ambition in 25 years must be to operate a system where all parents can find positive interven-

tions if their sons or daughters are hauled before the court. Fortunately, winds of change are blowing strongly again in juvenile justice, driven by a growing consensus that the current system fails to reduce juvenile crime or to redirect delinquent youth. For example, recent studies reveal rearrest rates for incarcerated youth of approximately 75 percent within three years of release (despite annual average expenditures of \$88,000 per bed), while also exposing the system’s miserable failure to address the disproportionate educational, health and mental health problems presented by its wards. As convincing as the critique of the status quo has become, it has been amplified by a growing body of knowledge about what works to change youth behavior and the related recognition that greater emphasis on evidence-based programs, practices, and policies could fundamentally alter outcomes.

While the United States has uniquely embraced mass incarceration of adults as the key to public safety, there is now a movement for fundamental change in juvenile justice focused on reducing confinement. Practitioners, policy makers, community activists, and researchers have all fueled a substantial trend to limit juvenile incarceration—be it in local detention centers prior to adjudication or in state-operated correctional facilities following a delinquency finding—has emerged in the past decade. The (almost 150) jurisdictions that participate in the Juvenile Detention Alternatives Initiative, for example, have reduced reliance on local detention by an average of 41 percent and

lowered their commitments to state corrections facilities by approximately one-third. A growing number of states, led by California's astounding drop of almost 85 percent in ten years, have reduced youth incarceration dramatically. Between 1997 and 2007, the rate at which youth were confined in long-term secure institutions nationally decreased 41 percent. In the next five years, this trend should gain additional momentum, especially given the tough economic conditions faced by most state and local governments.

The movement away from wholesale reliance on confining juveniles is not merely promising: it is essential if a future juvenile justice system is ever to pass the "my child" test. It is essential that we begin that transformation by overcoming the current addiction to incarceration. Why? At least four reasons seem relevant.

First, incarceration is costly. As long as states spend the lion's share of their limited juvenile justice funds on confinement, dreams of better prevention and early intervention strategies will remain unfulfilled. How else, for example, can we scale up evidence-based interventions so that more than the current scant 5 percent of eligible youth actually receive them?

Second, as the best recent de-incarceration efforts have demonstrated, safely reducing confinement depends on multiple, inter-connected reforms that alter policy and practice up and down the case processing continuum. We can't change incarceration just by adding programs to the dispositional end of the system. Reducing incarceration, in other words, demands fundamental, broad system reforms, including limiting which cases require formal court involvement, improving community supervision, and implementing data-driven, structured decision making. Significantly limiting incarceration will force such changes.

Third, reducing incarceration is key to unleashing the creativity that the juvenile justice system has been missing. Incarceration is a safety net for juvenile justice practitioners. When all else fails—when kids violate probation rules, continue to misbehave despite treatment referrals, abscond from lousy group homes—the system always has an option: lock them up, even though they will be back in the community relatively soon. What would happen if that option were greatly restricted? What new approaches would practitioners invent? What innovations would emerge?

Finally, juvenile justice transformation triggered by reduced reliance on confinement will, at last, hold the system account-

able for results that really matter. As things now stand, the system measures success, or failure, by admissions to detention or corrections, by successful probation terminations, by restitution collected and urine tests failed. These are relevant indicators, but they are poor substitutes for what's really important: whether kids are well-behaved, learning, connected to the labor market, and prepared to be contributing members to families and communities. The current system has forsaken responsibility for improving the well-being of the youth it works with. But, if it can't incarcerate them, it will have to work to improve those long-term outcomes.

Ten years from now we should find half as many youth incarcerated as we do today. Though the United States' juvenile incarceration rate would still far exceed comparable nations, this downsizing would be a profound shift in the right direction. By then, the stage should have been set to bulldoze the last of America's old-style, large youth corrections facilities, burying forever the scent of scandal and abuse that permeates their history. And, with this kind of trajectory, it would be less hard to imagine a system that, a quarter of a century from now, addresses far fewer cases, much less punitively, and with far greater capacity to truly help troubled youth and their families. Reformers, by then, should have shifted their focus, too, from getting the system to do less harm to helping the system "do good." That paradigm shift will be the key to juvenile justice's passing the "my child" test.

The movement away from wholesale reliance on confining juveniles is not merely promising: it is essential if a future juvenile justice system is ever to pass the "my child" test.

Bart Lubow is the Director of the Juvenile Justice Strategy Group for the Annie E. Casey Foundation. He has previously served as the Director of Alternatives to Incarceration and Deputy Director of Probation for New York State.

A Worldwide Problem

The Roots of Mass Incarceration

By Andrew Coyle

The work we do in the International Centre for Prison Studies (ICPS) transcends many national boundaries and so my comments will deal with an international landscape.

Our most recent research has discovered that today there are over ten million men, women and children in prisons around the world. This is an increase of one million since ICPS began publishing the World Prison Population list in 2005. This is not the place to enter into a detailed academic analysis of why this increase has occurred, nor of why some countries lock up a greater proportion of their citizens. However, there are some useful indicators to help us in a discussion about what the criminal justice system should look like 25 years from now.

In the first place, there is little evidence that increased rates of imprisonment in many countries are a reflection of increased crime rates. In England and Wales, for example, the overall crime rate has been falling consistently since 1995, while the rate of imprisonment has been rising equally consistently. Nor can one argue that it is the increase in the rate of imprisonment which has led to the fall in crime since one can point to several countries where imprisonment rates have fallen or remained stable while crime rates have also fallen.

There are a number of interlinked factors which have contributed to the increase in prisoner numbers. The first is the use of the criminal justice system as one of the first responses to major social problems. This helps to explain why one finds a disproportionate number of people from minority groups inside prison in most countries: ethnic and cultural minorities, the disadvantaged and the marginalized. One of the results of globalization in recent years has been the increased movement of large numbers of people across international boundaries. An unforeseen conse-

quence of this is that in a number of countries, for example, of Western Europe, over 50 percent of prisoners are nationals of another country. The use of the criminal justice system as one of the major “weapons” in the “war against drugs” has been a major contributor to increased numbers in prison. In a similar manner, lack of health and welfare provision in the community for those who suffer from mental illness means that the criminal justice system is very often left to deal with them, with imprisonment being the default option.

Another factor is the manner in which governments have responded to the above issues. In the absence of a more strategic approach to these complicated challenges, the response has often been recourse to punitive legislation. Throughout most of the 20th century successive governments in the United Kingdom would introduce a major new criminal justice act every five years or so. In the decade between 1997 and 2007, the government enacted 23 of these acts, in the course of which it created 3,000 new criminal offenses, almost half of which included a provision for imprisonment. One example was an Education Act which provided for the imprisonment of parents of a child who refused to go to school.

All of these factors have meant a significant increase in the number of people who are being sent to prison for offenses which would not previously have attracted a prison sentence. In addition, in many cases the length of prison sentences has increased, with the obvious outcome that people are serving longer sentences. Linked to that is an increased reluctance on the part of the relevant authorities to approve conditional release for those who

are not considered to be a risk. A variation on this is the tendency on the part of parole and probation authorities to recall persons to prison for technical violations of their conditions of supervision. In some countries, including the United States, a significant number of those now being admitted to prison fall into this category.

In early September 2011 the U.K. Justice Secretary Kenneth Clarke referred to the “broken penal system.” If this is a true description, the reason for it is not hard to find. It is that the penal system has been overloaded and is now expected to deal with a wide variety of social and other problems which are beyond the purview of criminal justice. If the penal system is to be repaired then it will have to be relieved of matters which are much better dealt with elsewhere. In any democratic society there is an important role for the criminal justice system, but it is a very narrow role. The criminal justice system can be used to reinforce and to support the values of a society and to strengthen the bonds that hold a society together. However, it cannot and should not be used to replace these values and bonds.

So, the answer to the question as to what the criminal justice system should look like 25 years from now is that it should look much smaller and leaner. It should be used only when the use of other public mechanisms are inappropriate. It should be used as the ultimate means of expressing society’s disapproval of serious acts of criminality and to protect society from those who are a demonstrable threat to its well being. It should not be used as the default mechanism for dealing with health and social challenges.

In terms of laying the groundwork for that fundamental change, it may be that the current global economic crisis will force governments to make less use of the expensive criminal justice system and to find more innovative and inclusive means of ensuring public safety. There are already signs that this is happening. If this approach is to gain momentum,

the debate must be taken beyond the usual criminal justice agencies to involve a much wider audience at governmental and local level. That will be a real challenge for reformers and advocates over the next three to five years. It will not be easy, but the prize in terms of public confidence and safety will be well worth the effort.

Andrew Coyle is Emeritus Professor of Prison Studies in the University of London and Visiting Professor in the University of Essex. He was founding Director of the International Centre for Prison Studies and was for many years a Warden in the U.K. Prison Services.

There are a number of interlinked factors which have contributed to the increase in prisoner numbers. The first is the use of the criminal justice system as one of the first responses to major social problems.

Seeking Justice

A Crucial Role for Prosecutors in Reducing Recidivism

By Charles J. Hynes

The ultimate goal of our criminal laws and criminal justice system is to ensure that people are safe in their persons and property. While improvements in the system may help to cut crime, a nation *truly* committed to ameliorating public safety must tackle those many adverse social conditions, such as insufficient medical care, poor education, lack of housing and jobs, among others, which shred the fabric of community, provide an environment in which crime can take root, and exacerbate crime's destructive impact on individuals, families, and neighborhoods.

That said, a criminal justice system which better recognizes how social conditions are linked with criminal behavior and which addresses those linkages can have a significant positive impact on public safety. In this regard, criminal justice practitioners (those in law enforcement, the courts, and corrections) have already taken a big step forward from where they were 25 years ago. We need to continue moving the system in that same direction, especially so that 25 years from now, the system will respond better to reduce what has been called the “hard core of the crime problem”—namely, crime by repeat offenders.

Movement on two fronts will be crucial if the criminal justice system is to improve at curbing criminal recidivism—first, the efforts of criminal justice practitioners to involve community members, including non-profit social services providers, in achieving the goal of public safety; and second, the readiness of criminal justice practitioners to embrace scientific research and technological advances and incorporate these in how they do business.

On the first front, community engagement can be done in several different ways, and can have positive effects at several stages of the criminal justice process—from the investigation stage, all the way to a former inmate's re-entry into the community. Community policing, community

prosecution, problem-solving courts, re-entry partnership programs for the formerly incarcerated, and crime prevention programs for at-risk youth—with all these approaches, we can integrate the community, both individuals and organizations, in the overarching endeavor of enhancing public safety.

As to the second front, scientific research and technological advances have already had an enormous positive impact on every stage of the criminal justice process. For example, DNA evidence has increased the accuracy of arrests and convictions and has led to the exoneration of those wrongfully convicted. Social science research on such disparate subjects as identification procedures and risk assessments have helped criminal justice practitioners adopt better procedures and make smarter decisions. Technological advancements have revolutionized the criminal justice process by easing the recording of, access to, sharing of, and preservation of information.

While all types of criminal justice practitioners must engage on both these fronts, prosecutors, with their close ties to law enforcement as well as to the courts, are uniquely positioned to forge partnerships. Prosecutors have a mandate to “seek justice,” and by vigorously pursuing that goal through a proactive, holistic, and technologi-

cally- and scientifically-savvy approach to crime, they can, and should, take a leadership role.

In Brooklyn we emphasize community relations and partnerships with community-based service providers. We look to social science research for new practices that we might want to adopt and for ways to improve our existing programs. Three crime-reduction projects in Brooklyn draw their success from involving community and incorporating scientific research/technological advancements, and they show how a prosecutor's office like mine can lead the way for further system-wide improvement.

Diversion into treatment can be more effective and less costly than imprisonment in reducing the criminal recidivism rates of drug offenders. In 1990, guided by a then small but growing body of diversion research, we developed the Brooklyn Drug Treatment Alternative-to-Prison (DTAP) program, partnering closely with two community-based residential treatment providers, as well as with the court system, division of parole, and defense bar. The program's early success garnered the interest of the National Institute on Drug Abuse, which then funded a program evaluation by the National Center on Addiction and Substance Abuse (CASA) at Columbia University. The 2003 CASA report validated DTAP as an effective means to reduce crime and drug use. The program's sustained results spurred other district attorneys to recognize the crime-fighting value of this alternative to incarceration and it laid the groundwork for the proliferation of drug courts throughout New York State.

Community justice centers seeks to resolve cases in ways that recompense the community, address the needs of victims, and change defendants' behavior. My office helped plan the Red Hook Community Justice Center in Brooklyn, which opened its doors in 2000. At the Center, most cases result in sentences that incorporate one or more of the myriad programs and/or services available on site—intensive drug and alcohol treatment, mediation, anger management classes, GED classes, youth groups, and more. Prosecutors staffing the Center are active in the community, attending community meetings, participating in local events, and performing such roles as coaching Little League. The Center brings justice, as well as a slew of services, directly to neighborhood residents—about 70 percent of whom live in public housing. The Center uses computer technology to operate efficiently, keep track of the progress of all the defendants in various programs, and stay connected with the rest of the court system in Brooklyn. Because of the Center's success,

we're planning a similar community justice center in the Brownsville section of Brooklyn, where the persistence of youth crime is especially troubling.

Reentry programs are crucial to reducing recidivism. ComALERT (Community and Law Enforcement Resources Together), is a collaborative reentry program run by the Kings County District Attorney's Office to address the needs of the formerly incarcerated in Brooklyn. In partnership with an outpatient substance abuse treatment provider, a non-profit transitional work and housing agency, Medgar Evers College of the City University of New York, and over a dozen other community-based social service providers, ComALERT delivers intensive treatment and services designed to meet the individualized, often complex needs of its clients. An evaluation by Professor Bruce Western of Harvard University found the program to be effective in slashing the recidivism rates of parolees who complete it. That validation by a social scientist has helped us greatly in securing continued funding for the program and in convincing other jurisdictions to replicate the collaborative re-entry model. Social science research has also helped us further improve ComALERT.

These three programs demonstrate how a prosecutor's office, by involving community and embracing research and technology, can enhance the criminal justice system's ability to reduce recidivism. And if we really succeed in reducing recidivism, the nation will be a much safer place 25 years from now.

Charles J. Hynes has been the District Attorney of Kings County Brooklyn, New York, since 1990. He is the Immediate Past Chair of the Criminal Justice Section of the American Bar Association, and also an Immediate Past Vice President of the National District Attorneys Association.

Diversion into treatment can be more effective and less costly than imprisonment in reducing the criminal recidivism rates of drug offenders.

What We Did in Dane County

How Reform Saved Money and Increased Public Safety

By Kathleen Falk

In my 14 years as Dane County Executive in Wisconsin, responsible for the annual budgets for the courts, the sheriff and the district attorney, I implemented reforms in the criminal justice system that I believe, if implemented broadly, could significantly improve the criminal justice system in the future.

I'm not an academic expert or a professional working in the system, and I hold these groups in utmost respect—but my particular lens on the system allowed me to make some very useful changes.

I didn't get into politics to make these reforms. I got into politics after practicing law for almost 20 years because I wanted to make a difference in the lives of kids in my community. As the county executive, I was able to improve human services programs that make a difference, but I immediately faced a growing jail population and a County Board resolution calling for the construction of a \$46 million addition to the jail at annual additional costs of about \$10 million.

My parents taught me early on about frugality. I vetoed that resolution so that I could do the homework to figure out who was in jail, what it cost, and whether we were getting our public safety goal of bang for the buck. That homework, which included dialogue with folks in the criminal justice system and community, collection and analysis of data, and lots of thinking, produced many questions, including:

Would the one out of five inmates with mental illness get the health care needed in jail and were our deputies trained to protect themselves and inmates from the behavior of mentally ill persons?

If almost half the sentenced inmates were in jail because of driving while intoxicated and had a significant recidivism rate, how had we made the community safer?

If alcohol, drug, and mental health treatment each cost about \$7000 a person, while it costs about \$31,000 a year to incarcerate, where should we invest in order to prevent recidivism?

I quickly saw it wasn't smart to invest a lot of money in a system that doesn't do enough to keep us safe, when less expensive and more effective sanctions exist.

For the next 14 years, I invested a lot of my time, energy, and agenda to changing the system. I funded more detailed studies of the entire system, with even more follow up of key components, such as the Sheriff's department. We created targeted programs for mentally ill persons to get them into care and created a unique program for young Latino offenders whose language barrier problems too often lead to incarceration. We expedited and implemented efficiencies in the court system to reduce trial delays and save jail costs. We improved automation, scheduling, and discovery processes in the District Attorney's Office. We added more than 100 new deputy positions and we significantly expanded electronic monitoring of offenders so that a larger number of offenders would live in the community, instead of jail, while working and caring for their families. We expanded our drug court for first-time offenders and created a unique new program for repeat alcohol offenders that involves some jail-time followed by six to nine months of treatment, with significant success in preventing re-offending and with securing housing and jobs. All in all, we have over a dozen such targeted "criminal sanction programs."

Given that few of us like to change—and the criminal justice system is no different—how did we do this?

As we came up with these ideas, we went straight to the 500,000 citizens in my county, speaking to Rotary groups over lunch, visiting with editorial boards and opinion makers, presenting the case for being “smart on crime” and why we weren’t getting our moneys’ worth with the existing system. People got it; citizens are always ahead of politicians. Citizens gave me a chance and in doing so, they held other elected officials’ feet to the fire to change, too. The reforms are working and they are lasting. The community “buy in” was key.

Now 14 years later, despite the fact that the population of the county grew by more than 20 percent during that period, our jail population is the same size as it was in 1997. There are multiple reasons for this, including that crime is down nationwide and in Wisconsin, but the changes in our local system have made a profound difference in improving public safety and reducing costs.

The reforms we implemented in Dane County provide evidence and hope that the system as a whole can be changed nationwide. The system as a whole cries out for answers to the bookended questions of how we can prevent crime and reduce recidivism.

If we focus on prevention, we *can* reduce crime and we *can* save money in the future. This is because we know more about how to help people succeed than we do about how to change them after they have failed. And with the advent of new thinking from conservatives such as Newt Gingrich and former Attorney General Edwin Meese launching “The Conservative Case for Reform” last December, we *can* improve this 200 year old system.

I have hope that what appears to be a growing trend across the nation to adopt best practices, to create pilot programs

of reform, to improve the use of risk assessments to better distinguish between those that need to be behind bars from those that don’t, that America can have a cost-effective and fair criminal justice system in the next 25 years.

Kathleen Falk served as Dane County Executive in Wisconsin for 14 years. She was elected a record four times by 500,000 citizens.

We know more about how to help people succeed than we do about how to change them after they have failed.

“Remember the Ladies”

The Problem With Gender-Neutral Reform

By Meda Chesney-Lind

As criminal justice advocates look forward to the next 25 years, it's vital that we keep in mind Abigail Adams' 1776 admonition to her husband to “remember the ladies.” Girls and women's situations have long been ignored in discussions of law, justice, and crime.

That has meant that their experiences of victimization, crime, and punishment (sometimes extremely harsh) have been rendered invisible by long accepted patterns of sexism.

Instead of promoting safer families and communities for girls and women, the criminal justice system in the United States has been involved in a far more deeply troubling project—the enforcement of racial privilege. Hijacked by politicians interested in pursuing racist goals largely for political gain in the last half of the twentieth century, crime became a code word for race, with dire consequences for our country.

Largely as a result of these political forces, the U.S. now imprisons more people, in aggregate, than any other nation in the world. And, predictably, the burden of incarceration has fallen most dramatically upon African Americans. The disparate impact of incarceration on African American men was the first consequence of this terrible distortion of justice to come to national attention since the numbers there were so shocking.

Activists' and reformers' concern about the plight of young men of color, while understandable, has tended to obscure the dramatic impact that mass incarceration has had on girls and women, particularly girls and women of color. More than one million women in the U.S. are under some form of criminal justice supervision in the U.S. By 2009, the number of women imprisoned in the U.S. had increased 800 percent over the past three decades, bringing the number of women

in prison to over 100,000. While the number of men incarcerated continues to dwarf the number of women, failing to address women's needs in the next 25 years will limit our ability to create a fair and effective penal system by 2036.

Recent figures suggest that with little fanfare, the “war on drugs” has contributed to the explosion in women's prison populations. Women in state prisons are considerably more likely to be serving time for a drug offense than men, 25.7 percent compared to 17.2 percent, as of 2009. In a related development, more accurate drug testing of parolees has compounded the impact of incarcerating drug users on women's prisons. Many women parolees are being returned to prison for technical parole violations because they fail to pass random drug tests, guilty of only of drug relapse, not a new crime.

Race as well as gender figures prominently in women's imprisonment. The numbers indicate that nearly half the women in the nation's prisons are women of color; notably 27 percent are African American and 17 percent are Hispanic. The number of Latinas incarcerated increased by 65 percent in the first decade of this century, a figure that reflects a general population increase, but also the increasing involvement of the criminal justice system in the criminalization of immigration, as well as policies and practices relating to the war on drugs.

Nor has this pattern of punitive incarceration been restricted to the adult criminal justice system. Arrests of girls have been

soaring in recent decades; now girls account for about one in every three juvenile arrests, up from one in every five in the 1970s, due largely to increases in arrests for simple assault. And, girls, particularly girls of color, are increasingly incarcerated for what turn out to be relatively minor offenses, such as shoving parents or getting in school yard tussles.

According to federal data, between 1995 and 2005, girls' detention commitments grew by 48.6 percent compared to 7.3 percent for boys. The evidence is also very clear that African American girls are dramatically over-represented among those detained and incarcerated. The National Council on Crime and Delinquency reviewed juvenile incarceration rates in 2003 and found that African American and Native American girls were held in custody at three times the rate of white girls. Latino girls were also more likely to be incarcerated than their white counterparts.

A policy of remembering the ladies would clearly need to interact with sensitivity to racial issues. For activists and advocates, remembering the ladies could take on any number of forms—for example, whether we are designing treatment programs in a public health approach to drug use that could replace the war on drugs or restructuring parole, it is essential to design programs that work for people who may be the primary caretakers of children. When we design work programs to address the hopelessness and poverty that can exacerbate criminality, we need to be aware of the jobs that traditionally employ women as well as those that traditionally employ men. If sentencing is to be truly equitable, it must take into account the “girlfriend” problem—women who become involved in criminal activity as adjuncts to their more connected and involved boyfriends—as well as the particular circumstances of women who may have a history of being abused and an obligation to minor children.

Remembering the ladies holds promise for activism as well. The American people are not particularly conscious of girls in the juvenile justice system. Drawing attention to the sexual and physical abuse scandals that have recently haunted facilities jailing girls would be very compelling. Groups advocating for girls as well as those concerned with the rights of African Americans constitute a huge and untapped resource for those seeking reform in the criminal justice system and re-directing it to focus on public safety instead of race and gender privilege.

It is hard to think our way out of a criminal justice system that has lost its way. Nonetheless, it is important that those

of us who imagine a better world, try to enlist the aid of women's advocacy organizations as well as organizations committed to racial equality to help return our criminal justice system to integrity. Some of this work has already begun in the area of gender responsive programming and culturally informed programming within the juvenile and criminal justice systems, both policy and programmatic shifts that have strong support in many states. Building on that momentum, we need to continue to push for gender and race informed approaches that acknowledge the harms of victimization and crime while also seeking responses that minimize further social damage. By doing so, we can increase individual and community safety while restoring justice to both public and private life by 2036.

Meda Chesney-Lind is Professor and Director of Women's Studies at the University of Hawaii at Manoa. Nationally recognized for her work on women and crime, she has just published *Fighting for Girls: Critical Perspectives on Gender and Violence*.

Girls and women's situations have long been ignored in discussions of law, justice, and crime.

Retire the Leeches

The Promise of Evidence-Based Solutions

By Seema Gajwani

Four hundred years ago, doctors treated epileptic patients with leeches, heat blisters and induced vomiting. Two hundred years ago, “bleeding patients to health” was the most common medical practice performed by physicians around the world.

Only a few decades ago, medical experts believed that all pregnant women should be X-rayed to measure their pelvic bones. Of course, doctors used the best information they had at the time. And every surviving patient reaffirmed the efficacy of the treatment. But just because something has been used for years does not mean it works. And what doctors used to think was the best thing to do might, in fact, have been harmful.

Not surprisingly, when *researchers* study a disease, they look at many more patients than individual doctors will ever treat. Over time, the medical profession abandoned antiquated practices and embraced evidence, evaluation, and research to improve treatment outcomes and relieve pain. Now, using their version of evidence-based practices, medical researchers deduce methods and policies that produce the best outcomes for large populations given limited resources.

Today, the criminal justice system is moving beyond leeches as well, and this change holds promise for the next 25 years. Emerging research shows that we can assess the chances of an arrestee returning to court after a first appearance, of a probationer committing another crime, and—under a given type of supervision—of a parolee engaging in new criminal activity. Using risk analysis, criminologists can make predictions with increasing certainty about how much supervision and what types of intervention for which offenders can reduce the level of recidivism in a population of probationers and parolees.

Some community corrections systems already use evidence-based practices and risk analysis to substantially

reduce recidivism, and thus incarceration rates. These concepts are not limited to just the back end of the system. Risk analysis can predict the likelihood of pretrial defendants returning to court. Judges and prosecutors can improve the odds that defendants will not commit more crimes by using evidence-based sentencing. Faithful implementation of evidence-based principles throughout a criminal justice system can reduce jail and prison populations, save money, and decrease victimization.

More importantly, implementing evidence-based principles can limit the degree to which low-risk offenders become future medium- or high-risk offenders. Rigorous, long-term studies of hundreds of thousands of offenders show that locking up low-risk offenders with medium- to high-risk offenders, while also separating them from their families and communities, turns low-risk offenders into more serious offenders, not the other way around. Some estimates show that up to one third of the offenders in federal prison are low-risk. We are likely making them worse by locking them up.

In fact, research shows that people with a low risk of recidivism often have the ability and the resources to change on their own. When we over-supervise them, we disrupt many positive behaviors that make them low-risk, such as tending to their children or working at a job. By adding to their burden, we make it more difficult for them to address whatever problems contributed to their entry into the criminal justice system. We’re causing more harm than good.

Some practitioners are paying attention. The director of the probation agency in Austin, Texas, realized that her

department was putting too many low-risk probationers under supervision for too long. Using a validated risk assessment analysis tool to determine the risk profile of her population, she assigned her low-risk offenders to probation officers with caseloads of 400 and stripped all supervision requirements. Recidivism rates dropped by 77 percent with no associated increase in crime. The director used the money saved by reducing staff to provide the medium- and high-risk probationers with intensive supervision and cognitive behavior therapy. Recidivism rates among that population decreased by 50 percent and 9 percent, respectively. Six years later, those rates remain. Overall, felony revocations dropped by 20 percent, saving the state almost \$5 million in jail costs.

Science and evidence-based practices might not solve all the problems with the criminal justice system. But, looking 25 years ahead, broad adoption of these concepts would reduce the prospects of low-level offenders becoming involved in more serious crime—and reduce both costs and incarceration rates to boot. It's time to retire the leeches.

Seema Gajwani is the Program Officer for Criminal Justice at the Public Welfare Foundation. Prior to her work at the Foundation, she spent six years as a trial attorney at the Public Defender Service in Washington, DC.

Some community corrections systems already use evidence-based practices and risk analysis to substantially reduce recidivism.

Reaping What We Sow

The Impact of Economic Justice on Criminal Justice

By Elliott Currie

The most important change we could make in our criminal justice system over the next 25 years would be to bring our level of incarceration down to something resembling that of the rest of the advanced industrial world. Whether we can do that, however, is an open question.

Our exceptional incarceration rate is driven primarily by two things—unusually punitive sentencing policies, especially towards low-level offenses, and high levels of serious crime, especially violent crime. With respect to the possible futures of criminal justice in America, there is moderately good news on the first front and mostly worrisome news on the second. Some states—most notably Michigan—have taken significant steps to reduce prison populations in the past few years, primarily by lightening up on low-level offenders, especially drug offenders. That trend is positive, long overdue, and potentially enduring. But there are more troubling trends as well.

For one thing, the same budget crises that have finally fostered the willingness of some state governments to reduce prison populations have also decimated resources for already meager programs in rehabilitation and crime prevention. The savings from prison population declines have thus mainly been swallowed up in the black hole of gaping budget deficits. And so the people we send out of prisons are, as always, mainly going back to bleak futures in the communities from which they came, but now with even less help.

That problem is enormously exacerbated by the current economic crisis, which has rendered those communities even more bereft of resources, opportunities, and social supports than they were before, while simultaneously eroding our already minimal efforts to address the longstanding social sources of America's extraordinary level of violence—including wide and growing economic inequal-

ity, the advanced industrial world's deepest and most concentrated poverty, and mass joblessness that is only partly captured by our conventional unemployment rate. In a very real sense, our swollen prison system has functioned as a costly and ineffective alternative to serious efforts to address those enduring social deficits. And it isn't easy to discern much movement today to change that reality.

The latest Census Bureau figures on poverty are genuinely bleak, with the number of poor people in America at its highest since we began collecting these statistics in 1959. Those figures are all the more troubling because they are driven heavily by stubborn long-term unemployment, suggesting that we are in real danger of pushing more and more Americans into the ranks of the permanently excluded, who are precisely the people who have filled our prisons from the beginning. It is sometimes argued, especially in the media, that the fact that violent crime has not risen even in the face of increasing poverty and joblessness means that these social disadvantages have nothing to do with crime. But that position is shortsighted and misguided. The impact of concentrated poverty and long-term unemployment on crime mostly happens in the long-term, not in the short, as their corrosive effects on families and communities begin to shape the values and behavior of the next generation. We are very likely to reap what we have sown some time down the road.

What does this mean for the future of criminal justice in America? It's always risky to try to predict the future when it comes to crime and violence, because there are so many,

often conflicting, factors involved in producing a nation's (or city's) crime rate at any given point. But the long-term prognosis is not pretty. Whatever the specifics of our crime rate 25 years from now, in the absence of fundamental shifts in our social priorities, the United States will likely still be the most violent of advanced industrial societies. At worst, we could see significantly growing violence in an even more deprived and insecure America 25 five years on. If that happens, we could see, in turn, renewed demands to "get tough" on crime and a reversal of the mild progress some states have made in inching towards more rational sentencing policies.

Is that future avoidable? Yes, of course: if we seriously invest in some fundamental strategies that, so far, we have mostly rejected or ignored—strategies to reduce the deepening poverty, widening inequality, growing concentration of disadvantage and obliteration of opportunities for a productive and inclusive life for too many of our citizens. Chief among those policies must be a commitment to full employment at living wages—a commitment that, as we increasingly understand, is highly unlikely to be fulfilled by the private economy alone. That means we will need a publicly funded employment program that centrally includes direct job creation as well as relevant training. We know from recent program evaluations that we can give people, even those who have been out of the labor force for a long time or who have never joined it, the skills and motivations that would enable them to take on a serious job. But we also know that these gains turn out to be short-lived and meaningless if the jobs don't exist.

Building a movement that can finally put these issues at the forefront of political debate and action is necessarily a long-term process. But it is never too soon to get started. There is a self-defeating tendency in our public life to put off dealing with these crippling disadvantages—whose magnitude continues to mark off the United States from every other advanced industrial society—in the name of deficit reduction, military intervention, or tax cuts. But if we truly want a

criminal justice system that a quarter century from now will play a smaller, more effective, and more honorable role in our collective life, we will need to begin here and now.

Elliott Currie is Professor of Criminology, Law and Society at the University of California, Irvine. He is the author of Confronting Crime, Crime and Punishment in America, and The Roots of Danger, among other works on crime and social policy.

Whatever the specifics of our crime rate 25 years from now, in the absence of fundamental shifts in our social priorities, the United States will likely still be the most violent of advanced industrial societies.

Marching Upstream

Moving Beyond Reentry Mania

By Glenn E. Martin

Poverty and addiction are treated as incurable diseases in the United States, and prisons are the fear-driven quarantine facilities that have allowed us all to sleep at night, but they are not solutions.

While reentrymania has created renewed momentum for progressive criminal justice reform advocates, it's a *downstream* strategy. For every body we're able to pluck out of the river and save, thousands of others are swept away. In the next 25 years, we must think and act more boldly, and recognize that mass incarceration will be judged by our children as an indelible stain on our generation's legacy.

The United States currently has the highest documented incarceration rate and highest total prison population in the world. The magnitude of incarceration and the stark disparity in rates of incarceration by race means that a black man in this country has a one in three chance of going to prison during his lifetime. While women are incarcerated at lower rates, the rate of incarceration of women of color has been on the rise in recent decades. To our shame, these rates do not correlate with criminal behavior along racial lines and reflect real injustice.

We, as a society, have made—and continue to make—a deliberate choice to address a history of poverty, neglect, racism, and classism by creating penal codes rather than addressing these fundamental inequities. As one segment of America is taught *to learn and earn*, another segment of society gets *stopped and frisked*. While there has been some measurable progress in recent years, including the passage of the Second Chance Act and the successful reduction of the crack/cocaine sentencing disparity, the nation has schizophrenically persisted in tough on crime policies.

Furthermore, our nation's thirst for punishment and revenge does not end when people leave prison. There are

700,000 people due to be released from incarceration this year and try as they may to reintegrate into mainstream society, these individuals will face a maze of policies and regulations that keep them from accessing the very things they need to rebuild their lives and become functioning members of society. Legal and statutory restrictions, inadvertent and deliberate discrimination practices, and the cultural stigma associated with having a criminal record restrict formerly incarcerated people from filling their basic needs.

The story of my former client Teresa is illustrative. After 32 arrests for drug possession and prostitution, Teresa had decided to change her life. Within five years, Teresa earned her GED on Rikers Island and overcame her drug addiction. She did not stop there. She went on to earn her undergraduate degree at Baruch College and a Masters Degree in Social Work at New York University. She put these hard-earned credentials to work at a job helping others regain their lives and dignity. Teresa was great at her job and her supervisor promoted her to a management position, a role that required a social work license from the State of New York.

Teresa applied for the license and was denied because of her criminal history. After years of taking the positive, affirmative steps she was told would change her life, and giving back to society, she was told she lacked *good moral character*. The State of New York got it wrong.

Teresa was lucky in that she was even able to access higher education. Individuals in prison are now ineligible for Pell grants, which leaves them with no significant federal program

to fund education. Other legal barriers include barriers in accessing public housing, other public benefits, and the right to vote. When reentering individuals fail to reintegrate, they are not the only ones who suffer. Much of American society is impacted by the consequences of over-incarceration as hundreds of thousands return each year to millions more family members, many of whom are already burdened by poverty and neglect. Every year there is an exponential impact as valuable lives are wasted, communities are strained, the public is less safe, and dreams are deferred.

In his 2004 State of the Union address, President George Bush provided a ray of hope and transcended traditional partisan rhetoric when he announced his Prisoner Reentry Initiative and declared that “America is the land of the second chance, and when the gates of the prison open, the path ahead should lead to a better life.” That important pronouncement led to a number of meaningful shifts in the distribution of scarce resources, and in local and national policy. Bipartisan dialogue in Congress culminated in the passage of the Second Chance Act, states and localities adopted reentry as a critical component of efforts to increase public safety, and many jurisdictions began to revisit the myriad collateral consequences that mostly serve to alienate and unfairly diminish opportunities for formerly incarcerated people.

Over the eight years since that important speech, reentrymania swept across our nation as people hoped reentry programs might cure our country’s addiction to mass incarceration. Bipartisan attention to reentry was inspiring; it could have signaled a tipping point on the way to a redefined, race-neutral, and equitable criminal justice system in America, one that viewed victimization and subsequent incarceration as not just the failure of the defendant, but also as a failure of society. But reentry programs, if not combined with front-end strategies, rely on the banks downstream to collect and mend the bodies of young, poor, black and Latino men and women who are chewed up and spit out by our unforgiving prison system. *We need to march upstream.*

In the same communities in which government officials and law enforcement have embraced a new focus on reentry, policing, enforcement, prosecution, and incarceration policies remain racialized and class-biased. For example, law enforcement’s approach to certain communities designated as “high crime” is often fear-driven, short sighted, and sends a strong message about the devaluation of the residents of certain communities. These communities are composed of residents who could help law enforcement to

maintain safety, but instead are seen as threats, and stopped regularly and frisked. These policing strategies reinforce mass-incarceration and centuries of story-telling about the legitimization of racism by law enforcement.

Over the next 25 years, we must take on this bigger “upstream” challenge even at a time when we are at a critical juncture and risk backsliding. It is critically important that as we fight to sustain and build on the reentry momentum, we demand that reentry be a concern at all junctures of the criminal justice system.

At sentencing, we must ask our judges, “And then what?” When the head of our police department decides that aggressive policing is the way to public safety, we must ask “And then what?” When our governors tinker around the edges by right-sizing prisons instead of downsizing the system, we must ask “And then what?” We should all ask ourselves this question and begin our next 25 years of criminal justice reform advocacy by first marching upstream. If not, the ultimate indictment will come from our children.

As one segment of America is taught to learn and earn, another segment of society gets stopped and frisked.

Glenn E. Martin is Vice President of Development and Public Affairs for The Fortune Society and Director of the David Rothenberg Center for Public Policy. He works to support policy reform initiatives intended to remove roadblocks facing individuals reintegrating into their communities.

Addicted No Longer

Breaking Away from Incarceration as a Primary Instrument of Social Control

By James Bell

The people that first landed on these shores from across the Atlantic brought with them deeply embedded beliefs that inform our jurisprudential system today. Those beliefs were filled with dialectics that are clearly difficult to overcome.

For example, they believed the state should have limited power over individuals, but that it should mete out retribution and punishment to maintain social control. They also believed in “Spare the rod and spoil the child.”

Our jurisprudence as created and maintained by society’s elites has lurched in fits and starts between mercy and revenge. Throughout history reformers have tried to intercede against and mitigate the forces of retribution, but the alchemy is too powerful.

John Augustus, considered the father of probation, was one of the first to fight against the American addiction to retributive justice. He believed that the object of the law was to “reform criminals, prevent crime and not punish maliciously, or from a spirit of revenge.” Between 1841 and 1858 he provided bail for almost 2,000 people and acted as their volunteer probation officer. Jane Addams and Lucy Flowers of Hull House in Chicago interceded on behalf of children in the late 19th century by creating the first juvenile court whose mission was to rehabilitate rather than punish. While historic and forward thinking, neither of these efforts was sufficient to prevent retributive interests from becoming dominant.

Today, the “tough on crime” mantra and its related legislative agenda have led to unprecedented levels of incarceration in the United States. Public policies and practices entrench racial disparities. By their very nature these policies and practices, embedded in federal, state and local laws,

are drivers into the youth justice system with disparate and high impacts on youth of color. In practice, drug free school zone laws, the identification and handling of gangs, zero tolerance in schools, and the transfer of youth to adult court all have greatest impact on youth of color. Indeed, youth of color represent 39 percent of the overall youth population but 69 percent of youth in detention facilities.

Expenditures for incarceration for all populations in the United States have increased exponentially since 1970. These rising costs have naturally led to cuts elsewhere, including agencies that serve children and the mentally ill. Practitioners in the justice community have noted the increase in young people with behavioral health issues. Indeed, child serving agencies have been gutted, and there are more mentally ill people in jails and prisons than in hospitals.

If the justice system is to become more effective in the next 25 years, we need to create and implement a different vision. For young people we must move to break the addiction to using incarceration as a primary instrument of social control. As with any addiction we must take small but strategic steps away from the addictive substance.

First, we must enact legislative barriers to the use of detention as a first resort. That means that entire cohorts of minor offenses would be directed away from the justice system and towards community case managers and program supports. Indeed, approximately 60 percent of referrals to the youth

justice system would be handled informally or through case managers located in the community. Services to young people and their families would be provided by social workers.

Case managers would be required to demonstrate how using incarceration benefits a child, his family, and his community, before using it as a tool. Youth serving professionals would be rewarded for keeping youth out of detention and for improving their life outcomes as measured by employment, school attendance, reduced family disruption, and violence reduction.

For those cases that are more serious, we would strengthen community mediation and arbitration. In almost all cases a hearing process would involve professionals, community members, and the perpetrator and the victim to try to resolve the matter with restorative principles that require accountability without destroying human dignity.

Except perhaps in cases of sexual assault, child molestation, or domestic violence, restorative methods would precede court processes. The court processes would vary significantly from our current practice. Hearings would be before a combination of judicial officers and community members. The focus would be to make decisions about appropriate services that the young person needs and to determine which community service provider is most appropriate.

In 2010, the Bureau of Justice Statistics released a report documenting abuse of young people in secure confinement facilities, reminding us in stark detail that incarcerating youth is expensive, unproductive and *harmful*. In 25 years we will no longer implement retributive policies that we know do not work. Public policy will reflect that using locked cells to change the behaviors of teenagers is ineffective, expensive, and more likely to increase crime.

As the numbers of youth of color and the resources needed to confine them increase at astronomical rates it is time to re-examine how we as a society respond to young people in trouble with the law. There is no need for us to be addicted to a system that is structurally incapable of meeting the needs of youth and families. Let's imagine and construct a new system of justice for youth that is equitable, effective, restorative and appropriate.

James Bell is the Director of the W. Haywood Burns Institute. Since 2001, he has been spearheading a national movement to address racial and ethnic disparities in the juvenile justice system.

We must enact legislative barriers to the use of detention as a first resort.

Prisons that Look Like America

Applying the Principles of Affirmative Action to the Criminal Justice System

By Paul Butler

Of course there are too many people of every race in prison in the United States. For African-Americans, though, the numbers are particularly reprehensible. We have one black president and nearly one million black people in prison.

Our twin goals for the next 25 years should be the reduction of all incarcerated persons in the United States, and the dramatic reduction of the number of black inmates. Accomplishing the second goal will go a long way towards achieving the first.

Some of our criminal laws are, or have been, based on race-conscious constructs of criminality. The “black codes” that punished crimes by African-Americans more than the same crimes by whites are a historical example, and the more severe punishment for crack cocaine than powder cocaine is a contemporary one.

Simply reducing anti-black bias in the law will not be enough to make our criminal justice system racially just. As U.S. Supreme Court Justice Harry Blackmun said, “In order to get beyond racism, we must first take account of race. There is no other way.” The goal of creating, for the first time in American history, prisons that reflect the diversity of the nation will require a new, race-conscious way of thinking about public safety and individual morality.

The idea of using a progressive race-consciousness as a super-remedy against discrimination, and as a way to compensate for race discrimination in the past, and as a way to create more diverse public spaces is not new. It is the inspiration for affirmative action, which is probably the most successful racial justice intervention of the post-civil rights era.

Affirmative action created the new black professional class, and probably deserves some of the credit for the circumstances that lead to the election of the first non-white president in U.S. history. It demonstrated that to promote racial justice, standards sometimes have to change, but that they can be changed in a way that doesn't defeat their purpose; indeed the change might even be for the good. When, for example, Harvard Law School placed less emphasis on LSAT scores in order to admit more African-American and Latino students, the result created a better legal education for all students.

What would it mean to change the standards for who qualifies for prison, with the goal of ending the extreme racial disparities that now exist? First, we would have to evaluate the utility of those criminal laws that are now, through overt or unconscious bias, selectively applied to minorities. The war on drugs and the criminalization of immigration law are the most obvious examples. Both have had devastating consequences for racial disparities in incarceration.

So decriminalization of both drugs and immigration would be a good first step. Beyond that, we might think more broadly about where the threats to our health and safety come from, which could lead to criminalization of some torts like product liability or professional malpractice.

To be sure, I think we need fewer criminal laws, not more. But I also cannot imagine that the United States would actually incarcerate white people at anywhere near the rate that we lock up blacks. This is why working explicitly to reduce

the mass incarceration of African-Americans ultimately would benefit all Americans by dramatically reducing mass incarceration generally (although, it is a worthy goal even without this benefit).

The current administration's strategy to reduce mass incarceration, and its attendant racial disparities, is based on the theory that "a rising tide lifts all boats." The hope is that if the President fixes social and economic problems like unemployment, lack of access to health care, and failing schools, then the crime rate will fall, and, along with it, the number of incarcerated African-Americans. While these kinds of interventions are important, and the problems they address do disproportionately burden African-Americans, they will not significantly reduce racial disparities in incarceration, possibly not at all, and certainly not within 25 years.

To understand why not, let's return to the affirmative action context. Let's say that the goal was to increase the number of African-Americans at elite medical schools. We can imagine that one approach might have been to try to improve factors, like lower standardized test scores or inferior preparatory education, that caused the low numbers of black students. The most effective strategy, however, has been to change the admissions criteria of the medical schools themselves. It worked. Medical schools are now much more diverse than they were before affirmative action, and by all reports there has been no diminution in the quality of the doctors they train.

To accomplish this, medical school leaders had to be thoughtful about the changes they made. They kept their eye on their core mission, but broadened their vision of what was necessary for accomplishing it. The same kind of careful planning would be necessary to revise the "qualifications" for prison. If punishment really can protect life and property, we need it to continue (or start) doing that,

but with a broader vision of how this goal might be accomplished, a vision more attuned to racial justice.

In Canada, for example, where native peoples are disproportionately incarcerated, judges sentencing native defendants are required to consider the effect on the native community. In the United States, we might impose such a requirement for sentencing of African-American defendants. Since African-Americans do not disproportionately commit drug offenses, but they are disproportionately arrested, prosecuted, and incarcerated for these offenses, prosecutors might be forbidden from charging more cases against black defendants than their percentage of the local population. Studies have conclusively proved that black defendants convicted of killing white victims are most likely to get the death penalty.

To prevent race discrimination that kills, literally, we could forbid imposition of the death penalty in these cases (substituting life without parole instead).

These proposals would be as controversial as affirmative action in education and employment. I submit they would also be as effective. Affirmative action has helped us understand that if we are blind to race, we are blind to justice. Criminal law is no exception.

Simply reducing anti-black bias in the law will not be enough to make our criminal justice system racially just.

Paul Butler is the Carville Dickinson Benson Research Professor of Law at George Washington University. A former federal prosecutor, he is the author of the award-winning Let's Get Free: A Hip-Hop Theory of Justice.

Defending the Future

The Fundamental Right to Effective Defense Counsel

By Randolph Stone

Twenty-five years from now, every indigent person accused of crime will be defended by a lawyer who provides zealous and loyal representation. Depending on your familiarity with the American legal system, you probably either assume such representation already occurs—or that the prospect is a pipe dream. Either way, you're wrong.

Criminal defense for the poor is chronically ineffective, a product of institutional racism. It exhibits inadequate funding, high caseloads, sketchy training and supervision, failure of vision, and insufficient structural support. In too many instances, the defender is a cog in the plea bargain assembly-line, processing convictions and sentences. Despite the chronic inadequacies, there are beacons of light pointing to effective criminal defense for all and, further, a fair, functional, and rational criminal justice system.

What will be the key ingredients of an effective indigent defense system in 2036? In most jurisdictions, a professionally administered system of appointed private counsel will supplement an institutional public defender office. Keeping the private bar involved (through appointments and/or *pro bono* programs) increases the possibilities for client choice of counsel and safeguards the integrity of the criminal justice system. To exercise the privilege of defending the poor, all lawyers will meet minimum standards of performance. Required rigorous and periodic training will focus on advocacy skills, cultural competency reflecting changing demographics, and client centered representation. Lawyers with a commitment to the clients will be recruited and encouraged to join public defender offices aided by expanded student loan forgiveness programs. The administrative structure of the indigent defense system will ensure appropriate caseload limits, supervision, and sufficient investigative, clerical, social service, and other support. An effective system will feature early entry and vertical representation (meaning a single attorney represents a client from arraign-

ment through trial). Finally, staffing of the public defender office will reflect the diversity of the community.

The chief public defender and other leaders of indigent defense systems will provide vision and leadership by participating in the public conversation regarding crime policy, crime prevention, and social justice. Indigent defense offices will more actively involve non-governmental organizations and community groups in their operations by situating their offices in the community and utilizing community representatives on their advisory boards and as staff. Public defenders will educate the public about the theory and practice of criminal justice policy, the collateral consequences of criminal conviction, the importance of the role of the defense lawyer in a democratic system defined by the rule of law, and the potential racial implications of incarceration. The public defender will be at the table in a leadership position with other institutional players of the criminal justice system in developing, reforming, and defining criminal justice policy.

By 2036, partly as a result of a dynamic, vision driven, and articulate defense function, the criminal justice system will have dramatically reversed its impulsive reliance on incarceration. The prison population will be in continual decline and the recidivism rate will be at an all time low. Prison construction will cease and in fact many states will close prisons, relying instead on alternatives to incarceration for non-violent offenses, drug cases, and property crimes. Restorative justice programs will be a common and effective

option for violent offenders. Reentry programs will prohibit housing, employment, and educational benefit discrimination against ex-offenders. Opportunities for participation in treatment and counseling will be mandated for most offenders prior to release and available to all. Racial impact statement requirements for all criminal justice legislation and the involvement of an informed community in law enforcement policy will be among measures decreasing disproportionate minority confinement.

Some strides in the direction of effective indigent defense representation are already emerging. The Public Defender Service for the District of Columbia delivers quality defense services; heavy emphasis on training, national recruitment of attorneys committed to its mission, reasonable case-loads, a community satellite office, a systemic reform litigation unit, a social services unit, and other innovations have been transformative. Further, the Neighborhood Defender Service of Harlem and the Bronx Defenders have expanded the concept of quality legal representation to reflect client and community needs. The Knox County Public Defender Community Law Office is noted for its emphasis on holistic representation. The Racial Disparity Project of the Defender Association in Seattle addresses the disproportionate impact of drug law enforcement on minorities. The Southern Public Defender Training Center recruits, trains, and mentors young public defenders in the south and in conjunction with Equal Justice Works has launched a national initiative to place dedicated public defenders across the country. There are many other examples of innovative programs in the public defender community.

What can we do in the short term to make these examples the rule rather than the exception? Many have argued we need a movement to dismantle our system of mass incarceration and reform the criminal justice system. What better place to start such a movement than in the public defender community? As we educate each other and our constituents, we can influence our politicians and policymakers to recognize effective indigent defense representation as an integral piece in restoring integrity to the criminal justice system and eliminating mass incarceration and its attendant human and economic costs.

Leveraging support from the federal government should be another short-term objective and there is precedent. In the 1970's the Justice Department funded an experimental alternative neighborhood public defender office in Chicago. Recently, Attorney General Eric Holder (and

in the 1990s Attorney General Janet Reno) expressed support for an effective system of indigent defense, recognizing the costs to the integrity of the system and the likelihood of injustice when the defense is ineffective. Now is the time to resurrect the office of Defender General with a federal mandate to provide support to the states in creating model indigent defense delivery systems.

Another step in the short term would be increased collaboration between the National Legal Aid and Defender Association, the American Bar Association, the National Association of Criminal Defense Lawyers and other relevant organizations in creating a strategic plan demonstrating to states and counties the human and economic costs inherent in a dysfunctional and ineffective system of indigent defense.

Finally, the foundation world and the social justice research community should be encouraged to look anew at the relationship between the failure to provide quality, client centered, and holistic representation to the poor and the collateral consequences of criminal justice system involvement.

The right to counsel is a fundamental, constitutional and human right essentially denied to poor people every day in this country. The ramifications of that denial are deep and meaningful, affecting not only the life and liberty of the accused, but also family, community, and society. We can and must do better.

Randolph Stone is a Clinical Professor of Law at the University of Chicago Law School providing students the supervised opportunity to participate in policy reform and to defend accused persons. He is on the board of directors for The Sentencing Project.

Many have argued we need a movement to dismantle our system of mass incarceration and reform the criminal justice system. What better place to start such a movement than in the public defender community?

The “Iron Law” of Prison Populations

Reducing Prison Admissions and Length of Stay to End Mass Incarceration

By Todd Clear

Any desirable vision for a new penal system over the next quarter-century will start with the premise that the penal system must shrink in size. To do that, both laws and policies have to change in ways that we have long recognized.

Five years ago, there was little reason for optimism that changes needed to really reduce the size of the penal system would be feasible. But in this country, change can be astonishing. We have seen, over the last couple of years, some early steps toward a significant reduction in the size of the penal system. For the first time in 35 years, the size of all correctional populations—prisons, jails, and probationers/parolees—is dropping, at about 2 percent annually for the last two years. A lot of people have hoped for this kind of change, but few of us had any reason to think it was on the horizon.

No doubt the current fiscal crisis is a main driver of this turn-about. States face dire fiscal choices, and big prison populations increasingly look like luxuries that need to be trimmed back. But the fiscal realities have just been the wake-up call. For a decade, evidence has mounted that the massive penal system was not only costly, but also ineffective (and in important ways, counterproductive). These arguments have been persuasive to people on all points along the political spectrum. They were central to the conservative *Right on Crime* position paper, where they carried more weight than mere cost arguments. So I think it is fair to say that a combination of fiscal and empirical realities has brought us to this moment.

The question is, how do we get the most out of this opportunity?

The answer to this question is simple but daunting. The principle Jim Austin and I have dubbed the “Iron Law of

Prison Populations” holds that prison populations are entirely produced by two statistics: *flow*, how many people go to prison, and *LOS*, their length of stay. The corollary, then, is that to reduce prison populations one must reduce either the number of people who go to prison, how long they stay, or (for maximum effect) both.

The current emphasis on strategies that address imprisonment after an initial conviction and imprisonment addresses these two factors, but unfortunately has a low ceiling for producing potential large and sustained reductions in the penal system. These strategies attempt to decrease LOS by speeding up release for specially designated groups who are behind bars (such as those who are “low-risk”) and to reduce flow by reducing their rates of return to prison.

There are several mechanisms now in play to speed up the release of people from prison. For example, states are experimenting with accelerated parole of certain subgroups, increased rates of “good time” or other sentence reduction strategies, and special early releases of cohorts of near-end-of-term prisoners. There are important distinctions among these strategies, of course, but they all are vulnerable to two limitations; one political, the other, practical.

The political limitation is that any policy or practice that puts a person on the streets before the end of the sentence is held responsible for any crimes that person commits after release. This is a hard-learned lesson of a quarter century of crime politics. Since no imaginable system of release will

prevent all crimes by those who leave prison, release-based programs are a kind of political Russian roulette. No matter how well-conceived and run, it is only a matter of time before someone placed in the community will commit the kind of brutal, senseless crime that has (in the past) always brought these release programs down.

The practical limitation is a product of mere math. Many—about half—of those released from prison end up recycling back there quite rapidly. If an especially aggressive early release program reduces a prison population by, say, 10 percent, the recycling effect will mean that effective reduction in population is actually only 5 percent or thereabouts. Indeed, policies such as intensive supervision and mandatory drug testing, often necessary to sell early release programs, can accelerate recycling. Moreover, advocates often assure the public that these early release strategies are used for only the “low-risk” people who are behind bars. Fair enough. But this sort of low-hanging-fruit approach soon runs out of fruit.

Release strategies also promise to reduce the rate of return-to-prison through treatment programs. This, too, has a low ceiling of possibilities. A solid body of research now tells us that the most effective programs reduce recidivism rates by only around 20 percent. That means that a return-to-prison rate of 50 percent becomes, through treatment programs, a 40 percent rate. It will take a long time to build large reductions of prisons systems through treatment programming alone, even under the most optimistic assumptions of program effectiveness and availability.

These strategies are welcome, and I applaud those reformers who have built them. They have given us a largely unforeseen and dramatic start on the agenda for the next quarter century. But if we are to build on their work, we need more aggressive strategies to address both flow and LOS.

Some of the work on reducing *flow* is being done for us by the continuing drop in crime. Absent compensatory changes elsewhere in the system, fewer people convicted of crimes will naturally lead to fewer people behind bars. But nothing will pack the punch of a new emphasis on the front end, on imposing fewer and shorter prison sentences. In 1972, three-quarters of those convicted of felonies received sentences to probation. Today, only one-fourth get probation. There is a lot of room to work on the front end, and an aggressive front-end strategy can make rapid and deep cuts into the prison population.

Average length of stay today is about double what it was in the 1970s. Even a modest reduction in LOS would translate into substantial near-term reductions in the size of the prison population. Reducing sentences would be a less politically vulnerable way to reduce LOS than release-based strategies. The massive increase in LOS has been quite recent. A team of criminologists recently calculated that a return to the LOS of 1980, for example, would reduce the prison population by more than one-fourth.

The bottom line of this discussion is not surprising. If we want to reduce the size of the penal system, we have to accomplish sentencing reform that reduces sentence length and increases the rate of non-custodial sentences. But we already knew that.

Todd Clear is Dean of the School of Criminal Justice at Rutgers University. He is the author of *Imprisoning Communities: How Mass Incarceration Makes Disadvantaged Places Worse*.

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Surrender the War on Drugs

The Massive Impact We Can Expect from a Public Health Approach

By Vanita Gupta

In 2003, I represented dozens of African-Americans who were charged and convicted of very low-level cocaine offenses in Texas. My clients received sentences of 20, 40, 60, and even 90 years. They spent four years in prison for crimes they did not commit while we worked to clear their names against a stubborn backdrop of entrenched racial bias and fear-driven drug war policies. Several of my clients suffered from serious depression upon their release from prison and developed significant substance abuse problems.

The director of the only drug treatment center in the region for indigent patients told me he had no available beds and that I should perhaps have my exonerated clients re-incarcerated to get them treatment. The absurdity was apparent: it was harder to find a treatment center in West Texas than a prison.

The path to an effective and just criminal justice system in 25 years is to end the “war on drugs.” Abolishing harsh state and federal sentencing schemes would dramatically diminish the staggering racial disparities in our criminal justice system. Removing police and prosecutors’ perverse incentives to arrest and convict low-level offenders in order to keep their numbers high would drastically reduce incarceration. We would end draconian mandatory minimum and habitual offender sentencing schemes that send nonviolent drug offenders to prison in this country for longer terms than people might get for murder in other countries.

Texas’ example is instructive. From 1993 to 2003 Texas spent billions of dollars to build new prisons. By 2007, severe budget shortfalls created the impetus for the state to cease building new prisons, stabilize its incarceration rate, and invest in drug treatment and alternatives for drug offenders. Texas

saved \$2 billion in just five years, and is now experiencing its lowest crime rates since 1973. Historically notoriously “tough on crime,” Texas embraced a more compassionate and effective policy. Unfortunately, 2010 saw a spike in prison beds in Texas thanks apparently to a state law that requires excess capacity to protect against crowding. Because empty beds invariably get filled, this development threatens to undermine recent progress. Yet advocates continue to push for deeper reforms that would put the Lone Star state back on track.

Policies calibrated to addressing substance abuse and addiction that are based in science had begun to transform Texas and could transform the rest of the United States. In such a system we would treat substance abuse as a public health problem, and try to combat it using science-based interventions, just as we do with other forms of addiction such as alcoholism. We would have effective policies that would strengthen families and communities, increase high school graduation rates, expand employment opportunities, and build the capacity of community-based supervision to treat those with substance abuse. The new agenda for public safety would involve a broader approach to keeping communities safe and healthy that would not rest purely on

criminal justice sanctions. And we would cease restricting access to housing, education, the ballot, and public benefits to those with drug convictions in recognition that they make us less, rather than more, safe.

Texas is not the only state in which lawmakers seem to be coming to a consensus that the war on drugs needs to be reoriented. Some politicians are beginning to recognize that we can better protect public safety using data-driven, science-based policies over the fear-fueled ones that have relied almost exclusively on criminal justice sanctions and cost our society a great deal, financially and morally. Evidence-based arguments have begun to overshadow fearful anecdotes in policy making.

The recent fiscal crisis has persuaded a wider scope of policymakers to set aside fears and accept that the United States could incarcerate fewer people without raising crime rates. Politicians are talking about being “smart on crime” and legislators are enacting bills supporting evidence-based programs—like diverting people charged with lower-level drug offenses into treatment and imposing non-prison sanctions on those who violate the technical terms of their probation and parole instead of simply returning them to prison.

But cost-based arguments alone cannot result in a more rational, racially just, and fair criminal justice system. We need more moral outrage on the part of the public to reverse decades of overly punitive policy making. Thus far mobilization has centered on particular cases. We’ve failed to inspire multiracial masses to march in the streets around the country for a sustained period of time to demand new criminal justice policies. Yet, there is no doubt that breaking our decades-long addiction to incarceration and our complacent attitudes to the racial disparities in the system will require nothing short of a seismic shift in thinking.

If we abandon our futile “war” it won’t take 25 years for the criminal justice system to be a fraction of its current size. Crime rates would decrease as well. It would be commonly understood that mass incarceration is not necessary to protect public safety. If prisons became an option of last, not first, resort, we could decrease the prison population by at least half. We have had a 40-year failed experiment in mass incarceration, and we now have evidence that we can be more effective using alternatives to criminal justice sanctions. What we are missing is sufficient courage and outrage to produce the level of change we need to see. For criminal justice reform and civil rights advocates, that is the work ahead.

We need more moral outrage on the part of the public to reverse decades of overly punitive policy making.

Vanita Gupta is Deputy Legal Director of the ACLU, overseeing the organization's criminal justice work. She is also an adjunct clinical professor at NYU Law School. Prior to the ACLU, she was assistant counsel at the NAACP Legal Defense Fund.

The International Challenge

The Movement Against the War on Drugs

By Vivien Stern

After an unrelenting rise in the prison population in the United States there is at last a slight downturn. The imprisonment rate per 100,000 of the U.S. population in 2007 was 758. By 2010 it was 731.

The battle to show that the U.S. experiment in mass incarceration is unjust, racist, costly, and self-defeating is beginning to reap rewards. We have every reason to hope that the next 25 years will signal a move away from mass incarceration and consequently a safer and more just society.

It is no coincidence that the mass incarceration experiment has coincided with the expansion and intensification of the U.S.-led war on drugs, legitimated by the U.N. Single Convention on Narcotic Drugs signed 50 years ago and heavily influenced by the U.S. government of the time. The war on drugs and the rapid rise in the number of prisoners in the U.S. and many other countries are very clearly linked.

Yet just as the growth of incarceration in the United States seems to be slightly in retreat at last, so the regime of the U.S.-backed U.N. drug conventions is being seriously challenged. An initiative with extremely eminent supporters recently hit the headlines. The Global Commission on Drug Policy brought together a heavyweight list of public figures. Former presidents of Colombia, Brazil, Mexico, and Switzerland joined Kofi Annan, George Schultz, Javier Solana, Paul Volcker, Mario Vargas Llosa and others in signing a report published in June, 2011, with an unequivocal message: the war on drugs is a failure. Huge expenditures on repressive measures have not reduced supply or consumption. When one source of supply or supplying organization is eliminated another rapidly takes its place. Criminalizing those who use drugs hinders health efforts to curb the spread of infections, and reduce deaths by overdoses. Public money spent on reducing supply and on

incarceration lessens the money available for investment in demand and harm reduction.

The report goes on to make some rather radical recommendations. It proposes an end to criminalizing, marginalizing, and stigmatizing people who use drugs or are at the lower levels of cultivation, production, and distribution. It suggests that governments should put more accurate information in the public domain about drug markets, drug use, and dependence. It recommends more treatment services for those in need, such as methadone and other substitutes, and needle exchanges, as well as respect for the human rights of drug users. Most radically, it proposes experimentation with models of legal regulation of drugs, particularly but not only for cannabis.

Over the years these ideas have appeared in many reports and have been expressed at many conferences. In some countries they have been implemented in part. In Switzerland, for instance, in 2008 two thirds of voters supported a proposal to implement throughout the country projects to provide heroin to addicts on prescription under medical supervision. In Portugal in 2001 the possession and use of all illegal drugs was decriminalized. These ideas are certainly not new. What is new is the standing of the eminent persons making these proposals and their willingness to speak out and put their names to what is often said in private but less often in public by well-known political figures.

It is perhaps also a sign of the changing times that a 2011 issue of *Time Magazine* had a large feature on Mexico (“The drug war is Mexico’s tragedy”), carrying an article by a for-

mer Mexican Foreign Minister calling for a more receptive approach by the Americans to the case for legalization. It seems that South American politicians are beginning to wonder whether their countries have to go on suffering so much because of the demand for these illegal substances in the great power to the north.

Ending the war on drugs would reduce violence and corruption worldwide. It would also decrease incarceration and improve conditions behind bars. Filling prisons with people who are drug dependent, and with utterly disposable small vendors (who are replaced on the streets before the day is out) creates a broader drug market within the walls and increases the spread of deadly diseases through injection needles. The battle to stop the illegal drugs entering the facility requires the authorities to take measures that greatly worsen the treatment of prisoners and respect for their human rights.

The worldwide movement to end the war on drugs has many powerful supporters. In the United Kingdom, for instance, a former head of the domestic security service and a former Director of Public Prosecutions are leading proponents of drug policy reform. Many law enforcement officials speak out once they have left office about the damage caused by the policies they were required to implement. No other single policy change would have so much impact on the vast machine of the criminal justice system, on the wastefulness, human misery, damage to health, and destruction of communities that the current system produces. Criminal justice reformers would do well to give their support to this vital movement. If the next 25 years witnesses a serious improvement in the penal system in the United States, United Kingdom, and elsewhere, it will be a credit to this movement's success.

Ending the war on
drugs would reduce
violence and corruption
worldwide.

Vivien Stern is a Visiting Professor at Essex University and a member of the House of Lords, the upper house of the British Parliament.

The Light of Freedom

The Transformative Power of a Free Press

By Wilbert Rideau

I spent most of my life in the Louisiana State Penitentiary (“Angola”), once the bloodiest prison in the nation. Nothing in my life had prepared me for the kind of savagery I found there: from 1972 to 1975, 67 prisoners were stabbed to death and more than 350 others suffered serious knife wounds. Homosexual rape and enslavement were common.

And I will tell you this: it is because prisons operate in secrecy that abuses thrive and violence flourishes. If we are to transform the penal system in the next 25 years, allowing freedom of expression to those who live and work in prison is the single reform that will produce the most dramatic improvement for the overall good of both the inmates and the staff.

America’s penal institutions are cloaked by censorship, and prisoners are routinely denied the freedom to speak critically about their keepers or the conditions of their confinement. Although no evidence has ever been presented to demonstrate a security need for censorship, courts have upheld this practice out of deference to prison authorities who are keeping over two million individuals locked in silence behind closed prison gates.

For one 20-year period at Angola, we had transparency and freedom of the press. At the nation’s largest maximum security prison, censorship was lifted and freedom of expression—for both inmates and staff—flourished. There was no public information officer: every employee was instructed to answer reporters’ questions truthfully. Prisoners had confidential mail communications with the media and governmental agencies, just as they have with their attorneys, which enabled any inmate to blow the whistle on abuses or wrongdoing without fear of reprisal by the prison administration. There were 5,000 inmates and 2,000 employees empowered to report problems. Bad behavior began to decline and morale improved almost immediately.

Even more remarkable was the existence of a free press in prison. It came into being in the wake of a federal court order requiring penal authorities to end the rapes, the murders, and the gang warfare, and to operate Angola in a constitutional manner.

I had already been assigned to *The Angolite* as its editor when C. Paul Phelps became warden of Angola and the state’s director of corrections in 1976. A remarkable visionary and politically astute man, he thought that trying to hide the horrific conditions in the overcrowded prison was both stupid and counterproductive. He felt that if the public knew the ugly realities of life at Angola, they might be moved to improve things.

Phelps thought a free press could serve the same role inside prison that it does in outside society: be a credible source of information for all, help dispel misconceptions, and transfer the power that comes from possessing information from a criminal grapevine to a more legitimate and accountable avenue. I agreed, we shook hands, and I became the first prison editor in American history to operate without censorship. *The Angolite*’s staff of self-taught journalists were free to photograph, investigate, and publish any story they could substantiate.

Freedom of the press depends on reliable information. My staff and I were given unprecedented access to all data about the prison and its prisoners, except what directly concerned security operations or contained private, personal informa-

tion about prisoners or employees. Employees were required to answer any question we asked about the prison or their job.

In the beginning, of course, we met resistance from employees and prison officials, who balked at the idea of answering questions put to them by inmates. But as we established ourselves as responsible and fair to both sides—the keepers and the kept—we got cooperation from inmates, prison personnel, governmental agencies, law enforcement officials, anybody. In 1989, we extended our reach into radio and broadcast journalism. We were blessed to have a succession of wardens who believed in the value of what we were doing and, when asked why they allowed us such freedoms, told the media that they had “nothing to hide.”

Responsible journalism contributed to the overall safety of the prison by dispelling rumors and by educating and humanizing those who lived and worked in prisons. Employees and administrators gained a better understanding of the problems—both physical and psychological—that prisoners cope with. Prisoners got to see the human being beneath the employee’s uniform and got to know the difficulty that personnel faced because of budget cuts or short-staffing. Our journalism fulfilled Phelps’s vision of reducing the *us-against-them* tension that prevails in most prisons and his goal of giving the public a window into our hidden society.

Our greatest satisfaction came from being able to help solve a lot of problems and make a difference in the quality of life in our caged world. For example, our reports on mentally ill and mentally retarded inmates got them treatment and services; we impacted the quality of medical care at all penal facilities in the state; by telling the truth about it, we helped change the culture that made rape and enslavement acceptable “macho” behavior.

The absence of censorship during that 20-year period caused no deaths, no escapes, and no disturbances. In fact, America’s

most violent maximum security prison became the safest; and freedom of expression, along with improved security and a crackdown on violence, played an important role.

The public has a right to know what is going on inside its public institutions, But when it comes to prisoners, both the media and the public get distracted by official rhetoric that prisoners don’t have “rights,” or that some mysterious security need would be jeopardized if inmates were allowed to express their views, unfiltered, to the public. Muzzling prisoners is not necessary for security. The only purpose of suppressing information going out of a prison, especially to the media, is to shield officials from accountability and public scrutiny.

Prison censorship is not only needless, it is also dangerous. Unchecked, arbitrary power exercised in secret over a generally despised class of people is a recipe for abuse, brutality, and worse. History has shown time and again that the surest remedy for the evil that thrives in darkness is the light of freedom, and if we do that the next 25 years will witness a true transformation of American justice.

Wilbert Rideau is the author of *In the Place of Justice* (Knopf), which recounts his 44 years in Angola and his 25 year editorship of *The Angolite*. He lectures at legal conferences and universities, and is a consultant to capital defense teams.

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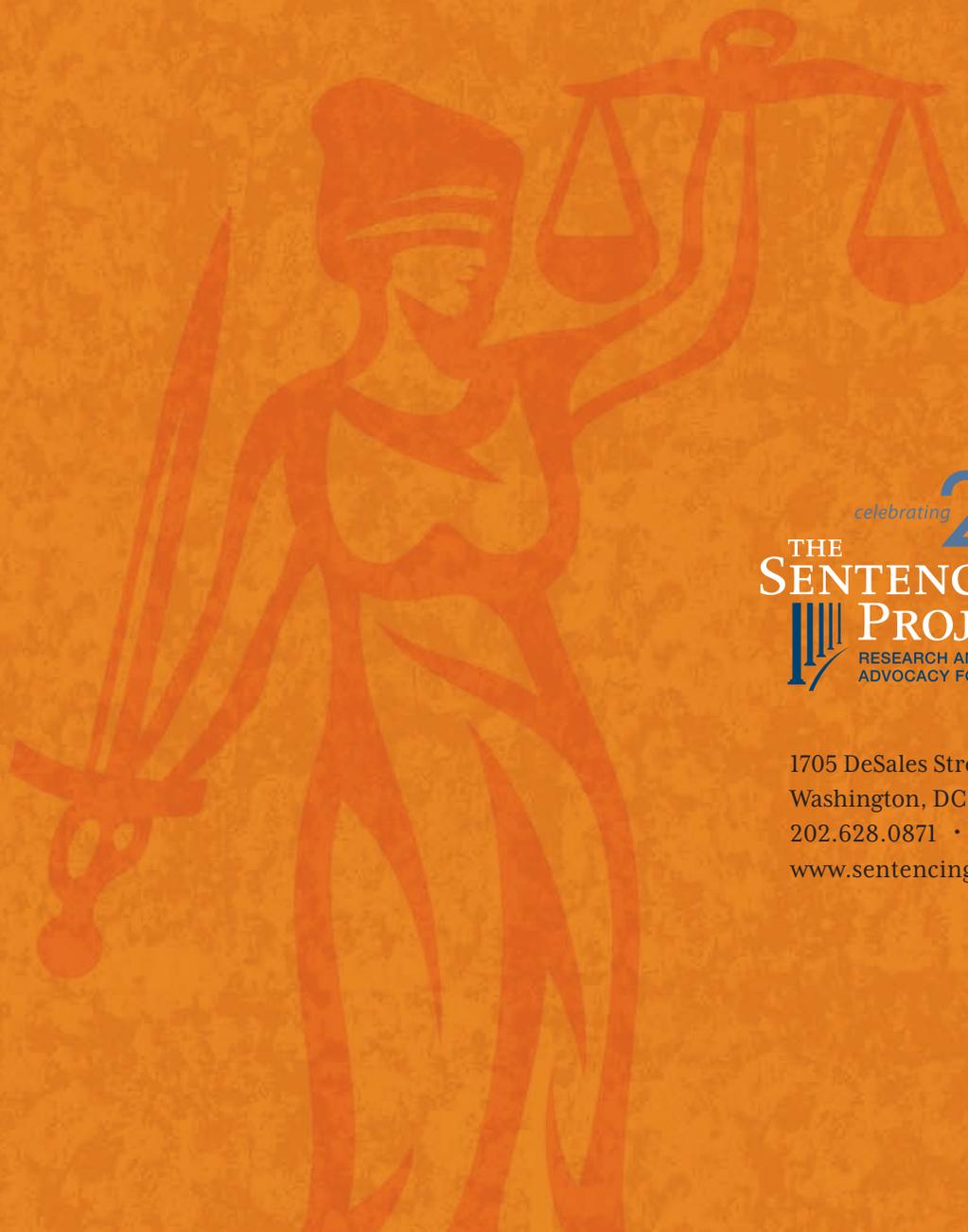
The Sentencing Project was founded in 1986 to provide defense lawyers with sentencing advocacy training and to reduce the reliance on incarceration. Since that time, The Sentencing Project has become a leader in the effort to bring national attention to disturbing trends and inequities in the criminal justice system with a successful formula that includes the publication of groundbreaking research, aggressive media campaigns and strategic advocacy for policy reform.

As a result of The Sentencing Project's research, publications and advocacy, many people know that this country is the world's leader in incarceration, that one in three young black men is under control of the criminal justice system, that five million Americans can't vote because of felony convictions, and that thousands of women and children have lost welfare, education and housing benefits as the result of convictions for minor drug offenses.

The Sentencing Project is dedicated to changing the way Americans think about crime and punishment.

A large, semi-transparent watermark of the number '25' is centered on the page. The '2' is on the left and the '5' is on the right, both rendered in a bold, sans-serif font. The background is a solid dark blue, and the top of the page features a solid orange horizontal band.

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Washington, DC 20036
202.628.0871 • 202.628.1091 (fax)
www.sentencingproject.org