

## **Let's Act Now to Disrupt the Pipeline to Prison**

Why does America imprison 2.3 million people, a higher percentage of its population than any other free society on earth? And why does this group disproportionately represent African-American and Hispanic men?

In large part, it is because the public defense system in this country is constitutionally inadequate. Eighty percent of all individuals faced with criminal charges cannot afford a private lawyer, forcing them to rely on public defenders. And 97 percent of these people, even the innocent, plead guilty to some offense and in most cases are sentenced to serve jail or prison time. Add to this that in excess of 60 percent of these individuals are black or Hispanic, and the answer becomes clear.

The plea bargaining and pre-sentencing process is controlled almost exclusively by prosecutors, and this drives our jail and prison populations. Public defenders, generally well-intentioned but with varying levels of commitment and qualifications and almost always overworked, are essentially relegated to the role of walking their clients, mostly poor and of color, to their cells. Our judges are constrained by harsh and rote sentencing laws, and our federal post-conviction remedy apparatus has all but been eliminated. We consign our children to adult prisons and hardly even differentiate how we punish violent and non-violent offenders and those who are mentally ill.

America has become obsessed with crime and punishment over the last three decades, and the costs in human and financial terms are incalculable. A host of problems we face—misaligned juvenile justice, police and race relations, excess spending on the justice system and prisons, and crises in our families, schools and communities—can in large part be traced to how we adjudicate criminal matters in this country.

America's current criminal justice and penal policies and practices are a grave threat to the welfare and future of our children and our families. If you doubt this, spend an hour or so in an adult prison visiting room and watch a small child sobbing in her father or mother's arms asking why they can't go home with her. Look on as heartbroken parents take leave of their 16-year-old son as he returns to his cell and the unspeakable dangers of a violent men's prison. This would be your wakeup call, especially when it dawns on you that it could be your family or loved ones going through this.

I have witnessed firsthand the hardship caused to individuals and families, especially when they try to undo the damage and injustices resulting from

ineffective trial counsel, overreaching unjust plea agreements, and wrongful convictions.

Once placed in a prison facility, these individuals either continue to be represented by public defenders or are, as in most cases, left to challenge their convictions pro-se from the prison law libraries. I have witnessed the despair caused by a procedurally insulated state appellate and post-conviction process that provides relief in less than three percent of the matters reviewed. Federal judges, once considered to be the ultimate guardians of a state prisoner's federal constitutional rights, have been effectively rendered powerless to intervene by Clinton-era habeas corpus legislation that now prevents them from upsetting state convictions, even in the face of the most blatant violations of federal law.

If this does not persuade you, consider the financial waste. Criminal justice expenditures in this country exceed \$80 billion annually, the single largest state expenditures other than Medicaid—and the cost is growing. The taxes that come out of paychecks, assessed on purchases, and paid to municipalities for property assessments are much higher than they need to be because we are supporting an exorbitant and wasteful criminal justice industry and prison sub-culture. This money would be better spent on our children's education or our retirement. Instead, we throw it away on a destructive system that breeds disorder and destruction and discourages rehabilitation and reconciliation.

It's time for a change. The first priority is to create programs for public education and awareness. Parents, teachers, prosecutors, corrections officials, judges, defense lawyers, church and community leaders, and representatives from business and the financial industry need to work together. They must create better policies, overhaul sentencing laws, create robust and independent public defense systems, improve fairness in investigations and prosecutions, and develop alternative mechanisms, such as restorative justice, for disposing of criminal cases without the unnecessary and costly imposition of jail and prison sentences. Where punishment is required, we need to learn how to do it without destroying. The goal is to provide a blueprint for the restoration and renewal of offenders and victims alike.

The fact that these issues are now in the national spotlight and are building a movement is encouraging. From George Soros to the Koch brothers on the financial side, to Hillary Clinton, Bernie Sanders, Jim Webb, Martin O'Malley, Rand Paul, Carly Fiorina and John Kasich in the presidential arena—right and left, liberal and conservative, Democrat and Republican—people are coming to the same conclusions. This may be one of those rare occasions when fiscal conservatives and libertarians can join with mothers and fathers, progressives, advocates, academics,

faith communities and correctional officials in calling for new policies and laws to address this serious and uniquely American problem.

If the public begins to understand what goes on in our states' and nation's criminal and juvenile justice systems and prisons, they will not tolerate it and will demand change. Let's hope that this time has finally come.

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