

## **An Essay on Comprehensive United States Criminal Justice Reform**

In a bygone era in America cops would utter infamous phrases like “I’m immune” as they warred around with their hand on their service weapon ready to blow away anything in their path. I’ve also been victim to cops proclaiming “I’m the law” and “I tell you what the law says I can do” numerous times.

In recent times, I’ve been told by at least one law enforcement officer “you think your life is more valuable than mine?”. I’ve also been victim to police inciting touch, which to them is the equivalent of use or means of deadly force by John Q. Public, in order to provoke an arrest or justifiable murder.

The average person without means doesn’t stand a chance without being on camera.

The following is an authoritative essay I wrote for a college class:

The United States criminal justice system is fundamentally flawed. Over 50 years after the passage of the 1964 Civil Rights Act the criminal justice system still seems to prefer incarcerating persons of color disproportionately to their Caucasian counterparts. In the inner cities, criminal gang activity dominated by minorities and in the suburbs white collar and transplanted non-violent drug offenses and related drug crime draw the focus of most police efforts. Even assuming whites, asians, blacks, and hispanics, all end up convicted of essentially the same crime, sentencing disparities continue to exist because disparate justice in two equal cases is not offensive under the law. Thus, lady justice proves to be blind, but not impartial, and in 21st century America, she is often meting arbitrarily heavy-handed justice which serves to not only punish but also to exact unnecessary retribution.

### **Access to Justice**

Police on the street are the first line of enforcing the law that most citizens ever face. Their judgment in the field follow a defendant’s case through to any sentencing recommendation should a case proceed past judgment to punishment. Most offenders prove poor and in need of the Office of the Public Defender, who carries a heavier caseload and must go up against the limitless resources of the state.

The major advantage any defendant has, poor or monied, is pleading the 5th Amendment privilege against self-incrimination, which may not be used against him or her in any way, and making “through fifth” statements by counsel.

Prosecutors, who convict with absolute immunity when performing their prosecutorial function, may knowingly lie to the jury, cover-up or destroy exonerating evidence (and deny it ever existed), and suborn perjury, in the name of proving “their case” beyond a reasonable doubt against a defendant. Defendants, whose public defenders are overworked compared with any prosecutor, are at a distinct disadvantage.

Society doesn't condone larger budgets for the Office of the Public Defender year over year, in the name of helping indigent criminal defendants, whereas the District Attorney's Office has an insiders' say in an ever-increasing budget to fund its services to society, because its funds are being obviously used in the name of a public good. Defendants who cannot afford private counsel to handle every aspect of their case from "A" to "Z" get screwed by the United States criminal justice system in all but the rarest of cases.

### **Stigma of Conviction**

Without a pardon or a statutory remedy to expunge arrest and conviction data, a conviction follows an offender for life. Under the law, any conviction means an offender is likely to reoffend, regardless of whether this presumption of lifelong criminality is true or not. Offenders are unlikely to be leading candidates for any future employment, and in fact if they are hired they may be paid less than their non-convicted counterparts because the employer may surmise he or she has no other options when in need of a job.

### **Sentencing Reform**

Sentencing guidelines, at least in Pennsylvania, call into account any conviction on an offender's record regardless of how long ago it occurred. In Pennsylvania, a "prior record score" is computed based upon all conviction data, even the temporally distant and unrelated, to calculate how aggravated any new imposition of sentence is going to be. Also, two exactly similar cases may receive, quite arbitrarily, two wholly different sentences.

Sentencing also takes into account a definite period of retribution, which is additional time in custody or under supervision on probation or parole, strictly for the purpose of exacting punishment for the sake of punishment, without achieving any meaningful treatment objective.

Judges may also knowingly allow convictions against obviously innocent defendants against the weight of either the law or evidence.

### **Meaningful Treatment**

Once convicted, a criminal generally faces custody in prison or supervision at liberty on probation or parole. Prison time may be in either a local county jail for shorter sentences (in Pennsylvania less than 24 months) or in a state penitentiary (in Pennsylvania, for any sentence 24 months or longer). Treatment in county prisons is typically not as comprehensive as in a longer stay facility. Jail overcrowding in either instance often means inmates are subjected to unusual conditions, such as housing more inmates per cell than is designed for its occupancy. Overcrowding creates a dilemma for treatment staff, and for the security needs of the institution alike. Inmates in either the state or the county may have to wait

months, or a year or longer, just to enter mandatory treatment programs they are stipulated to successfully complete prior to release on probation or parole.

Therapeutic communities, group therapy, vocational rehabilitation, educational correction and self-directed learning efforts (to include voluntary participation in religion) comprise the core of rehabilitation for an incarcerated offender.

Therapeutic communities are treatment centered living and learning arrangements (i.e. a subset of assigned prisoners living in segregated quarters from the general population grouped together by treatment need). Therapeutic communities are primarily designed for offenders with drug or drug related crime, but may also include for sex offenders. They often take a year or longer to successfully complete, and are about long-term behavior modification calculated to carryover with the offender upon his or her re-entry to society. They encompass group therapy, whether as part of a 12-step recovery program, or guided by a facilitator from prison treatment staff assigned to the subset community.

Vocational rehabilitation, at least in Pennsylvania, only exists in any meaningful way in the state prison system. Inmates are afforded opportunities which commence with educational correction (to the end of achieving his or her general high school equivalency degree) and terminating with successful acquisition of real-life job-skills in fields such as general and skilled construction and barbering. Programs to acquire a skill-set, at least in Pennsylvania, come after the completion of any mandatory treatment objectives, and the waiting list to get into job training behind the prison walls may take over a year.

The irony is, completing treatment objectives allow a prisoner to be readied for parole long before he or she ever even starts a job skills program in prison. Longer sentences do lend themselves, in the overcrowded prison environment, to job training, however with good behavior state parole looks for reasons to release once the prerequisites for release are achieved. Some long-term stay facilities do have options to earn a college degree, but these programs are typically also only for long-term offenders who are qualified, and apply by special application. Lastly, the parole people, who have release authority, generally refuse to discharge any inmate who is part of a vocational rehabilitation program until it's successfully completed, and upon any unsuccessful completion of voluntary vocational rehabilitation an inmate will be denied for a definite period. Thus, the incentive for an inmate is to get out faster - before commencing any non-mandated job-skills training - because it will hold them beyond their minimum and if he or she should fail out of job-skills training for any reason he or she will serve additional time out of pure retribution, where he or she may have had a prior opportunity for instant release.

In essence, some inmates face needing to "opt in" to continued incarceration in order to get training in job skills, which if they can't pass muster in may lead to an extended stay. Most inmates, faced with the above choice, roll the dice they'll be okay and choose for the fastest possible discharge to the street. By

this author's observation, job-skill training is most beneficial for prisoners serving a definite sentence of about 5 years or longer.

In total incarceration in the county jail system, achieving a High School Equivalency Degree is perhaps the most meaningful rehabilitation for any inmate. The mean educational achievement for any inmate in the county or state prison system (at least in Pennsylvania, believed across the United States) is the GED.

### **Recidivism**

Convicted offenders are likely to reoffend. Once branded with the stigma of conviction, regardless of whether one was caught his or her first time or thousandth time while committing crime, the individual is defined by his criminal act as long as the conviction data stands. Assuming an offender successfully completes community supervision, he or she must surmount the statistical likelihood of returning to prison for new charges within the first three years. Without enduring meaningful treatment outcomes an ex-offender is almost certainly doomed.

It is beyond the scope of this paper to discuss circumstances individual to an offender's life which lend themselves to his or her re-offending.

It can be fairly generalized about prisoners that motivation to change (i.e. not be a criminal anymore) must come from within, and thus prison treatment must be entirely founded in building an offender's honest awareness about everything that took him or her to prison in the first (and any subsequent) instance with provision for mentoring, and self-directed conscious awareness of endlessly being better today than they were yesterday. Criminality is a choice.

### **Comprehensive Reform**

At its core, comprehensive criminal justice reform must start on the street with more highly trained law enforcement. Also, starting with the police, through to the sentencing judge, discretion is often arbitrarily applied based upon the personal opinion of the men and women of law enforcement through to the sentencing judge.

Beyond increasing funding for public defenders and increasing training of the police, this author can discern nothing that can be done systematically to guarantee equal treatment pre-conviction. When the accused is incarcerated pre-conviction the only people who will see him or her out of prison uniform is the trier at trial. Judges are not immune to the appearance of a defendant in a county prison uniform.

Judicial immunity is blanket immunization for a judge's decisions which encompasses punishing a defendant upon conviction. Equal justice under law is supposed to be a self-perpetuating ontological

statement. It proves otherwise in cases where equal facts or similar circumstances result in different outcomes. In Pennsylvania, the sentencing guidelines call for only a recommended minimum “front number” with no stipulated maximum “back number”. The sentencing scheme in Pennsylvania thus allows judges to impose wildly differing sentences well within the guidelines for equal material facts in similar cases, which is not considered arbitrary by imposing wildly differing “back numbers” and/or subsequent probation.

In any event, *treatment in prison* is about the state providing tools for all-encompassing, often self-directed learning, such as comprehensive libraries, and letting inmate’s figure it out (if they ever do) during their incarceration. Mandatory treatment programs and self-directed learning, to include utilization of rights, such as meaningful access to legal material, for purposes such as reading the crimes code so-as to not reoffend, is a cornerstone of any meaningful corrections. When a prisoner takes advantage of every rehabilitative remedy available to him or her for his or her life situation he or she will have a better treatment outcome.

It is this author’s opinion that as a general rule incarceration out of pure retribution is not useful to long-term rehabilitation of an offender and instead structured, goal-oriented rehabilitation, even if over necessary years of punishment, is wherein the hope lies in the United States prison system.

I am of the opinion comprehensive reform to the criminal justice system would include updates to firearms laws, as well as expungement schemes, not just every proceeding from arrest through punishment by incarceration.

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James A. Blatt