

# **SMOKE** **AND** **MIRRORS**

*By: John Gargano*

An essay written by a federal inmate serving a 20 year mandatory minimum sentence for various narcotic violations. The viewpoint and perspective of a present day inmate regarding the criminal justice system in this country. The untold truths about our correctional facilities and how we can do better.

John Gargano 56134-066

L.S.C.I. Butner Low

P.O. Box 999

Butner, NC 27509

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Individuals who commit crimes and are eventually prosecuted all have their own personal histories and mitigating factors that ultimately place them in correctional facilities. Society believes the legal system is firmly grounded on the three principles it was designed to achieve—retribution, deterrence, and rehabilitation. That is an extreme fallacy; the criminal justice system in this country today has become nothing more than a magician's act of **Smoke and Mirrors**. The administrators of these facilities are currently charged with the one and only task of warehousing inmates for the duration of their sentences. Recidivism rates are through the roof and still climbing. Common sense allows anyone to deduct the status quo is just not functional and efficient. An overhaul of the entire system is long overdue. When will the politicians of this era have the creativity and courage to challenge this issue head on? Promises are made every election cycle only to be bogged down and barreled over in the great bureaucracy we call Washington. My journey and the practical experience dealing with the inner workings of the criminal justice system in this great country we call America has fueled a new motivation from within to shed some light on the improvement needed dealing with crime and punishment.

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The sophisticated people of the era of our founding fathers coined retribution as one of the cornerstones of criminal justice. The ideal of Punishing people for a sufficient amount of time for committing crimes so that it deters others from deciding to commit crimes themselves, here, objectively comes into play, begging that certain crucial issues be addressed. What is a sufficient amount of time? Who determines this? What constitutes felonious crimes? The majority of Americans would say our Honorable Federal Judges make this determination, but that is not the case. Every criminal act should not be prescribed the same punishment. The relevant conduct of every crime is not exactly the same and the mitigating and aggravating factors of every criminal episode are not identical. This is why judicial discretion is so important. This is why allowing the educated individuals who have elevated themselves into the positions of federal judgeships should not be bound and tied to the submissive roles they currently hold in federal criminal proceedings. Retribution in the manner currently distributed is not acceptable, nor is it universally equal. Laws are created on the federal level in the spirit of maintaining fairness and universal treatment of defendants regardless of an individual's race, gender, or socioeconomic status. Yet federal laws are interpreted in a specific manner in one circuit and disregarded in another. Over the last



few decades a major shift has taken place in the federal courts in this country. Prosecutorial discretion has risen to the only important element in the prosecution of a defendant. Judges no longer have any power or ability to determine what a defendant should be sentenced to. The shift in power from Judge to prosecutor has been a dangerous event. It is self-serving future politicians acting as prosecutors in today's federal courts who have all the say in the length of incarceration for defendants. In many instances, judges are simply the hit man or executioner for the prosecutor. Mandatory minimums and recidivist statutes now dwarf the discretionary options that were once available to the judges sitting on the bench. There is no judicial discretion. We no longer have independent thinking and educated Judges determining what they believe is fair punishment for violating our federal laws. The purpose of our judges today has strayed from the vision of our founding fathers. I concur that every action has a consequence and every criminal act deserves a punishment. I just believe it should be in a fair and non discriminatory manner. These fundamental rights were granted to us by the Constitution of the United States of America. This country was built and thrives on a system of checks and balances, the criminal justice system should operate under this same premise. The United States of America is responsible for 5



percent of the world's population and 25 percent of the world's prison population. That is a cold hard fact that validates the position that criminal justice today in America has swung the pendulum too far to the right. When history repeats itself, as it always does, correction will take place and criminal acts will once again intersect with appropriate punishment.

The main goal of deterrence is to deter future behavior. To successfully thwart behavior, you must direct your target to an alternative route. You must demonstrate and solidify that your position is not only the socially acceptable one, but also attainable and desirable. Whether we are talking about the United States of America discouraging North Korea from exploring and advancing their nuclear ambitions, or society as a whole communicating to the defendants caught in the criminal justice system to change their ways, the prescription is the same. This is not necessarily the case in today's federal correctional system. The War on Drugs has sent more and more people to jail for longer and longer periods of time. Discouraging future crimes entails showing an offender that there is another answer, that their behavior is not how it has to be. Ask a criminal justice expert the following question: What do you believe a 25 year old male from a disadvantaged environment is to do after being sentenced

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to a 20 year sentence for his first offense? The popular and optimistic answer would be that they would be rehabilitated, learn a trade, get an education, and correct the mindset and decision making abilities they once lacked. Thus, returning to society as a functioning and productive member of society. The realistic answer is that you have just taken an immature, uneducated individual and threw them into a prison environment filled with career criminals and the only thing they will learn in jail is how to be a more advanced and complex criminal. Would you sentence the leader of a rogue nation seeking to learn how to build a nuclear weapon to a nuclear weapons seminar? No, you would not! Well, that is exactly what is currently taking place in today's prisons. Programs including vocational, occupational, and those rare ones offering higher education have fallen victim to the latest round of budgetary butchery passed down from Washington. The surviving programs have waiting list and eligibility requirements that rival Ivy League entrance examinations. You can not deter future crimes while bypassing the ladder out of the gutter that placed them there, or by placing cinderblocks on the feet of the imprisoned effectively keeping them in the never ending cycle of recidivism. To deter future criminal behavior you must provide the recipe and ingredients to change behavior. Changing

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behavior does not come from warehousing people like some inhumane puppy mill, and continuing to treat them with little worth. If deterrence is indeed still a driving principle of the criminal justice system, then people need to be lifted up, not kept down. Worthwhile higher education should be more readily available. You need to isolate and rehabilitate the low level drug users who are not criminals by nature, but became criminals as the result of their addictions and poor decision-making. You need to implement change from the top down, and start using common sense approaches to not only curbing criminal behavior in this country, but defining it as well. A complete overhaul of this broken system is long overdue.

There are minimal rehabilitative opportunities in today's prison environment. Now, some may say that statement is just not true, but it is. Sure, we all read the prison handbooks and Bureau of Prisons propaganda about the vast array of occupational and vocational programs available to inmates. Investigate the waiting list or the entrance criteria that limits participation to these programs and you will see my point of view. Most entrance eligibility requirements to occupational and vocational programs are based upon release dates. This means an inmate is not eligible until they are nearly released. So, someone like me,

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with 17 years of imprisonment to serve, receives the generic and repetitive answer of, "I am sorry, but entrance to this program is based upon your release date and priority is given to those inmates who are preparing for release back to society." Let us consider the Residential Drug Abuse Program which reduces your sentence by up to one year for many non-violent offenders upon completion of the 500 hour program. This, however, is operated under the same release-date stipulation. Now the problem becomes that one becomes eligible to enroll in all available programs at basically the same time arises. To participate in one is to forego the opportunity to participate the other. The system is designed to limit participation while still being able to waive the flag of Opportunity and Self Improvement, all the while, fulfilling the Public Perception of Offering Programming to Rehabilitate. The truth of the matter is that such a small percentage of people actually learn state-of-the-art, meaningful trades that can help them reintegrate back into society. Somewhere along the way, some elected official thought it was a much better investment to spend \$36,000 a year to incarcerate me than it was to loan me \$3000 a year to get a distance learning degree that I could utilize to succeed when I am released. Why not offer some proactive sentence reduction program that would reward an inmate with additional good



time for earning a college degree through an accredited institution? It is a proven fact that criminals who receive an education while behind bars are less likely to repeat offend. Do not take my word for it, ask Warren Buffett, who utilized his foundation in New York State at the state penitentiary Singh-Singh to conduct an experiment that educates convicts through distance learning. The latest data suggests that every convict who received a degree had not returned to prison. Those are some staggering statistics. You can not dispute the facts; they are black and white and plain as day. These facts are swept under the rug and kept from mainstream media. You will never hear these truths while listening to a political speech or watching CNN.

My personal story validates my viewpoint. After receiving the "very harsh sentence", as it was described by my sentencing judge, it became crystal clear to me that society was not going to accept my antisocial behavior. The once vivid dreams of self realization and happiness I possessed had transitioned into nothing short of a figment of my imagination. Change was necessary if I ever planned to live a normal, healthy and rewarding lifestyle. I made a conscious decision to take the



corrective measures necessary to change the flawed mindset that placed me in my situation. I committed myself to engage in every educational and occupational opportunity afforded to me. I began to gather information about the Bureau of Prisons and what was available to inmates serving time. It was very shortly that I understood if I was to educate myself and prepare myself for some sort of career upon my release, I would have to do it outside the confines of the Federal Bureau of Prisons. I sought out institutions of higher learning throughout this country that offered distance learning. I realized rather quickly that tuition was not realistically affordable and I would need outside help if I was to improve my skill set behind bars. I contacted FAFSA, only to be informed that federal funding for incarcerated individuals was cut out several years back and that I would be eligible for federal student aid and grants upon my release 17 years in the future. I applied for and received a partial scholarship from an education foundation out of the State of New Jersey. This feat was a stroke of luck and rarely heard of in the Bureau of Prisons. I utilized the funds I received from the foundation and from family support to nearly earn an Associate's degree in Arts and Humanities from the College Program for the Incarcerated at Ohio University in Athens, Ohio. I am the exception to the rule. I am the only person I know of who has



actually received funds for educational purposes from outside sources. Being incarcerated carries a stigma that is not easily overcome. Educational foundations are reluctant to offer funds to an incarcerated person with an already bad track record when many other students are applying and do not carry the same risk as we do. I am thankful for the opportunity I received. I am committed to creating a movement for change to help my brothers and sisters who are or will be incarcerated. I see vast potential behind these walls and fences. Opportunity in the Bureau is uncommon at best. Sure, we are offered industrial sewing classes where we are taught how to sew clothing for the many Unicorn textile factories. Which, by the way earn top grade pay of \$1.15 per hour. Truthfully speaking, the ability to sew clothing will not increase my propensity to earn a respectable living unless I plan to abandon my family once again and move to China and work in a sweatshop sewing clothing only to be sold back to the United States of America. That is not an option for me. Prison has given me the motivation and determination to make a difference. To take a stand and make our issues relevant to the general public is my mission. I will accomplish this goal and I will not fail. I implore the "tough on crime" politicians out there promoting their agendas to do the same. Take responsibility for your actions. Most importantly, when the



criminal justice system in this country fails or bankrupts Washington, use the same resolve and perseverance; do not waiver. Position yourself behind that podium, look out into the crowd, and loudly acknowledge your culpability and participation in its demise. Maybe you can use the same *Smoke and Mirrors* to camouflage your blunder.