

"OVER-SENTENCING AND OVER-INCARCERATION: THE DEHUMANIZATION OF CRIMINAL JUSTICE"

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February 20, 2009 is a day I'll never forget. That's the day I stood in Norfolk Circuit Court before Judge Norman A. Thomas as he sentenced me to five consecutive LIFE terms plus 53 years in prison. Yes, you read that correctly. *Five consecutive LIFE terms...plus fifty-three years...with no time suspended!* I'm not a mass murderer, serial rapist, terrorist, or leader of some infamous criminal organization. I was given that sentence for committing three robberies. You might assume that some extreme, aggravating circumstances must have existed to warrant such a sentence, but you'd be wrong. There was absolutely no physical violence involved in either offense, no ancillary offenses were committed, and aside from three speeding tickets from a few years prior, I had no criminal record. I was an active college student at the time of my arrest, and I had just finished honorably serving four years in the U.S. Navy. Regardless of my background, Judge Thomas openly called me "evil," a "monster," and a "menace" (even stating that my mother – who was sitting right behind me in the courtroom – had done "a terrible job of raising [me]"), before capriciously deciding that I wasn't worthy of redemption, rehabilitation, or a chance to one day reenter society. He looked me in my eyes with pure hatred and contempt as he imposed those five LIFE sentences plus 53 years as if it weren't my actual *life* that was being snatched away from me. As if my future meant nothing; as if I had no potential to be anything more than the mistakes that had landed me in his courtroom; as if there was nothing meaningful that I'd ever be able to contribute to society or to the world; as if I didn't have children who needed me or a family who loved me. He regarded me as if the fact that I'd committed those three robberies meant I lacked humanity, and that I was *literally* an evil, menacing monster that needed to be permanently banished from society.

Ironically, Judge Thomas's attempts to dehumanize me left me wondering if *he* wasn't the one lacking in humanity. I'd expect a sociopathic murderer (for example) to regard another person's life with such callousity. I'd expect them to look at another person and think, "I don't care who you are. I don't care about your feelings. I don't care about your background. I don't care that your mother and children are in this room watching. I don't care who loves you, who needs you, or who's going to miss you. I'm gonna take your entire future from you *simply because I can!*" That wouldn't be surprising behavior at all. But as the chief executors of our criminal justice system, judges are supposed to be professional, parsimonious, impartial, and by their very title, "honorable." I would never have expected one of them to exhibit such heartlessness. How, I wondered, did our criminal justice system get to this point, where those who've been entrusted to enforce justice have become so dehumanized as to display the very behavior of the so-called "evil monsters and menaces" they perceive criminal offenders to be?

While speaking to a group of mayors and law enforcement officials in 2005, former U.S. President Bill Clinton admitted that some criminal justice policies, specifically those deriving from the Violent Crime Control and Law Enforcement Act he signed into law in 1994 had "gone too far."¹ "We basically took a shotgun to a problem that [only] needed a .22," he lamented. "We took a shotgun to it and just sent everybody to jail for too long."² Genuine or not, Clinton's renewed stance is a far cry from the man who once bragged, "I can be nicked a lot, but no one can say I'm soft on crime,"³ after implementing what has become widely regarded as the most devastating criminal justice policy in the history of the United States.

Largely attributable to the harrowing crack-cocaine epidemic, crime rates in the 1980's and early 1990's were at all-time highs.⁴ At their highest points in 1980, violent crime and property crime rates together peaked at approximately 6,000 incidents per 100,000 citizens.⁵ Nationwide, news stations competed for viewer ratings by broadcasting up-o-the-minute coverage of all the gang shootings, homicides, robberies, drug/gun rings, and other heinous offenses being committed, all while stoking the flames of fear and paranoia in concerned citizens. State and federal legislators were under tremendous pressure to find a solution to this growing problem. However, instead of addressing its roots (i.e., lack of treatment/rehabilitation for drug addicts; lack of education and public awareness about the dangers of drug abuse; lack of economic opportunities in inner-city communities, etc.), they began enacting hundreds of laws and policies designed with the single purpose of ensuring that more people would be arrested, charged and convicted of crimes, and that they'd be sent to prison much longer than previously required.⁶

Many of these new laws were directly rooted in the Violent Crime Control and Law Enforcement Act of 1994, which mandated that any state applying for federal funding for prison construction must show that it has:

1. Increased its percentage of convicted violent offenders sentenced to prison;
2. Increased the average prison time which will be served by violent offenders sentenced to prison; and
3. Increased the percentage of the sentence which will be served in prison by violent offenders.⁷

¹ Vallas, R. & Deitrich, S., 'One Strike and You're Out: How We Can Eliminate Barriers to Economic Security and Mobility for People with Criminal Records,' Center for American Progress (December 2014), p.49

² Vallas, R. & Deitrich, S., p.50

³ Alexander, Michelle, 'The New Jim Crow' (March 9, 2010), www.thenation.com/print/article/new-jim-crow

⁴ The Sentencing Project, 'Incarceration and Crime: A Complex Relationship,' p.7

⁵ DOJ 2012; authors' calculations

⁶ National Academy of Sciences, 'The Growth of Incarceration in the United States: Exploring Causes and Consequences,' p.70

⁷ *Ibid.*, p.71

To achieve these goals, lawmakers made such policy changes as the abolishment of parole and the implementation of Truth-In-Sentencing, mandatory sentencing, and three-strikes laws. These new policies, in addition to an increased police force⁸ and the introduction of hyper-aggressive policing practices such as "zero tolerance," "stop and frisk," and "broken windows," cumulatively created the largest prison boom the world has ever seen.⁹ As observed by the National Academy of Sciences, "[W]hile individual laws clearly reflect a policy choice to increase the use and length of incarceration, it is unlikely that anyone intended, foresaw, or wanted the absolute levels of incarceration that now set the United States apart from the rest of the world."¹⁰

Despite large declines in the violent crime and property crime rates from their highest points nearly three decades ago (49% and 44%, respectively),¹¹ the incarceration rate has continued increasing.¹² As of 2012, the U.S. incarceration rate had climbed to an astonishing 707 residents per 100,000 population, which is more than four times the rate it was in 1972.¹³ Overall, this increase has yielded a total incarcerated population (including prisons and jails) of approximately 2.23 million people, which is *by far* the largest in the world.¹⁴ The U.S.'s mass incarceration practices have placed it under the microscope of international human rights and civil rights organizations for the arbitrary hastiness with which it's willing to incarcerate its own citizens (and non-citizens) for the single purpose of retribution, rather than social rehabilitation.¹⁵

In February 2009, The Virginian-Pilot published a front-page story on my sentencing. The article stated that I am the first person in Virginia to have ever been sentenced to multiple LIFE terms in prison for robbery offenses that did not involve physical violence. Thankfully, the public exposure my case received from that article allowed me to gain the advocacy I needed to get that sentence reduced to 33 years at a judicial Reconsideration hearing (which, by any measure, is still grossly disproportionate to the offenses). Nevertheless, my original sentence serves as an example of the outrageous and inhumane punishments allowed by the U.S. criminal justice system.

While I was in the local jail, it wasn't uncommon to see guys returning from court with their heads hanging down in despair after having just been sentenced to multiple decades in prison, often for offenses that didn't warrant such extreme punishments. It was also common to see juveniles as young as 14 years old in the jail. They were housed in the same cellblocks with us (adult offenders). It's a scientific fact that at such a young age, the human brain has not finished developing. This is why society generally holds youths to a lower standard of decision making than adults. But juveniles in our criminal justice system aren't always given such consideration. Often, they're charged and sentenced just as harshly as adults. Sometimes they're sentenced *more* harshly. In fact, around the same time I received my original sentence of five LIFE terms plus 53 years, a juvenile offender in the same jail I was in was sentenced to six LIFE terms in prison for a robbery he'd committed when he was only 15 years old. This was a child, not even old enough to watch an R-rated movie, yet our punitive criminal justice policies made it allowable for a judge, who clearly lacked human compassion, to rob him of his entire future. [Thankfully, in January 2018, this offender was granted executive clemency by Virginia Governor Terry McAuliffe, and was released from prison.]

Judges usually justify over-sentencing offenders as a method of deterring others from committing crimes.¹⁶ They want the public to believe that, by making examples of those who break the law, they're making society safer because other potential offenders will think twice before engaging in criminal behavior. But deterring crime isn't accomplished by over-punishing people *after* they've broken the law; it's accomplished by making people aware of the laws and the full legal ramifications of breaking them *before* it happens. I can honestly say that I would not have committed those robberies if I'd had prior knowledge of even a fraction of the things I now know concerning criminal justice policies. For starters, I had no idea that robbery was punishable by LIFE in prison. That alone would have deterred me from even thinking about going down that path. I didn't know that parole had been abolished in Virginia, or that no matter how many rehabilitative, vocational or college courses I completed while incarcerated, how many accomplishments I made, or how much of a model inmate I was, Truth-In-Sentencing would prohibit me from serving any less than 85% of my sentence (which is approximately 29 years). It should go without mentioning that I am extremely remorseful for committing those robberies and for the effects my actions have had on so many people, but I'll mention it anyway. Regardless of the laws, if I could go back in time I would not have committed those robberies simply because it was wrong. But my overall point here is that prior knowledge of the law would've further deterred me from breaking it. Just about every other first-time offender I've encountered in prison has expressed the same sentiment. People often just don't know how harsh our criminal justice system is until they're trapped in it.

There's no doubt in my mind that Judge Thomas intended for my original sentence to be one of those "example sentences" meant to deter others, but it didn't. People didn't stop committing crimes after I was sentenced to those five LIFE terms, nor did the local, state or national crime rates drop. It was just a cruel, inhumane act, encouraged by a harsh criminal justice system and imposed by an equally harsh judge who lacked humanity.

⁸ See Kearney, M., Harris, B., Jacome, E. & Parker, L., p.4 ("In the 1990s the number of police officers per capita increased by approximately 14%.")

⁹ The Sentencing Project, 'Black Lives Matter: Eliminating Racial Inequity in the Criminal Justice System', p.3-12

¹⁰ *Ibid.*

¹¹ Subramanian, R., et al., 'Incarceration's Front Door: The Misuse of Jails in America,' VERA Institute of Justice (February 2015), p.2

¹² The Sentencing Project, 'Incarceration and Crime: A Complex Relationship,' p.7

¹³ National Academy of Sciences, p.33

¹⁴ *Ibid.*

¹⁵ ACLU, 'A Living Death: Life Without Parole for Nonviolent Offenses,' p.200

¹⁶ Wray, Christopher A., DOJ Assistant Attorney General, remarks made in response to the Supreme Court's 2005 ruling on *Booker/Fanfan*, (January 12, 2005)

With such extreme sentencing practices, it's not difficult to see how a nation with such a small percentage of earth's inhabitants holds nearly a quarter of its incarcerated population.¹⁷ As stated, the U.S. incarcerates its citizens at a much higher rate than any other nation. The previously mentioned 2012 incarceration rate of 707 per 100,000 is a shining example, particularly in comparison to other developed nations. That rate was more than six times higher than the average rate of around 115 per 100,000 for other member nations of the Organisation for Economic Development (OECD).¹⁸ Even the western European democracies on which the U.S. modeled its criminal justice system together average incarceration rates of only around 100 per 100,000, which is one-seventh the rate of the U.S.'s.¹⁹ It's not that more Americans are committing crimes; more of us are being sentenced to lengthy prison sentences instead of given alternatives to incarceration, such as drug court, electronic monitoring, and probation,²⁰ which, despite being *less* costly to taxpayers, have proven to be *more* effective at reducing crime and recidivism.²¹ Too much emphasis is placed on punishing criminal behavior instead of correcting it. A typical U.S. judge is likely to impose the same sentence (in terms of the number of years to be served in prison) on a drug offender, a sex offender, and a physically violent offender without placing any focus on their individual rehabilitative needs. After serving their sentences, these offenders would simply be released back into society (likely to reoffend, given our nation's high recidivism rate).

Contrarily, many developed nations outside the U.S. would opt to address the individual rehabilitative needs of each class of offender.²² For example, sex offenders may be given mental health treatment, violent offenders may be given anger management/life skills education, and drug offenders would receive some form of medicalization. The ultimate goal would be to correct their errant criminal behavior and reintegrate them into society as productive, law-abiding citizens. This is how criminal justice is supposed to work, but the U.S.'s overly retributive system sees incarceration *itself* as the end-all solution to criminal behavior, as evident in the 500% growth in our prison population between 1970 and 2000, despite our nation's entire general population growing by only 40%.²³

When I was assigned to my first housing unit (called a cellblock) in the local jail, the first thing I noticed was how ridiculously overcrowded it was. The cellblock itself was small in size, with about 20 sets of double-stack bunk beds and just enough room for us to walk between them. Despite being made to house no more than 40 inmates, there were about 60 of us cramped in there. Some of us "overflow" inmates were given Stack-A-Bunks (plastic, lightweight, mobile platforms about the size of a twin-size mattress) to sleep on, since there weren't enough bunk beds. Others had to sleep on the floor. Because of all the Stack-A-Bunks and mattresses scattered everywhere, there was no walking space in the common area. No care was given to our comfort, so long as we "fit" in the cellblock. There were only two toilets, two single showers, and two telephones that we all had to share. No one was hired to clean up, so the cellblock – particularly the shower – was filthy. Inmates regularly contracted skin boils, rashes, MRSA and other staph infections. I personally contracted fungal infections on my neck, chest and forehead. Anytime someone got sick, almost everyone else in the cellblock ended up sick as well. These types of problems just couldn't be avoided with so many people densely packed in such a small living space.

After being tried, convicted, sentenced, then re-sentenced, I was notified by the jail's administration that there was an estimated eight month wait period before I'd be transported to the Department of Corrections Receiving Unit (henceforth referred to simply as Receiving), which is a processing center to which offenders are temporarily transferred before being assigned to a prison that matches their security level. That extensive backlog was a direct result of so many offenders being sentenced to prison, instead of probation or other alternatives to incarceration. Keep in mind that, in addition to the jail in which I was housed, there were approximately 66 other jails in Virginia full of offenders also waiting to be transferred to Receiving. Meanwhile, people all over the state continued being arrested and jailed, seemingly at a faster rate than others were being released from the jails. This became such a huge problem in my jail, the administration had no choice but to remove all of the double-stack bunk beds and install triple-stack bunks to accommodate the overcrowded inmate population.

Once I was finally transferred to Receiving, I was thrown for another loop when I learned that it, too, was extremely backlogged. Some offenders had been there for more than a year waiting to be transferred to their prison assignments. The problem was that the state prisons are almost always filled to capacity, and the Receiving Unit couldn't transfer anyone until bed space (vacancies) became available at the prisons when other offenders were released. This posed another problem because the large number of offenders serving lengthy sentences, coupled with the lack of parole in Virginia, meant that a lot less offenders were actually being released from prison. Yet they continued pouring in. DOC seemed to be running out of room to house everyone. There were just too many people being incarcerated, and not enough room for all of us.

In 2010, I was finally transferred from Receiving to my "permanent" prison assignment, which was Sussex II State Prison. For the first time in years, I wasn't on any wait lists to be transferred anywhere else. All of the offenders were settled in and day-to-day operations ran more smoothly than in jail and Receiving. On the surface, there seemed to be no problems of overcrowding, however, about a year after my arrival I had an experience that showed me just how worthless and insignificant I am as an offender in the criminal justice system.

¹⁷ Clinton, H., Remarks at Columbia University (April 29, 2015), www.c-span.org/video/?325657-1/hillary-clinton-remarks-criminal-justice-reform

¹⁸ Kearney, M., Harris, B., Jacome, E. & Parker, L., 'Ten Economic Facts about Crime and Incarceration in the United States,' The Hamilton Project (May 2014), p.10

¹⁹ National Academy of Sciences, p.37

²⁰ Weissman, M., 'Aspiring to the Impracticable: Alternatives to Incarceration in the Era of Mass Incarceration,' NYU Review of Law & Social Change' (2009), p.235-36

²¹ See *ibid.*, p.243-44; See also FAMM, 'Alternatives to Incarceration in a Nutshell'

²² See Ward, K., Longaker, A., Williams, J., Naylor, A., Rose, C. & Simpson, C., 'Incarceration Within America and Nordic Prisons: Comparison of National and International Policies'

²³ The Sentencing Project, 'Incarceration and Crime: A Complex Relationship,' p.1

This experience began in 2011 when I received a disciplinary infraction for which I was penalized with 15 days in the Segregation Housing Unit (also known as solitary confinement or "the hole"). I served my two week punishment with no problem, and the day before I was to be released I woke up early, packed all of my belongings, and prepared to be released back into the general population. Imagine my shock when one of the counselors came to my cell and slipped a paper under the door, stating that the Institutional Classification Authority (ICA) had held a meeting and determined that, due to my "poor behavior" while in Segregation, I was not eligible to return to general population. The report further stated that they were imposing an additional 15 day penalty, and that I would be reevaluated after that period. I was just as confused as I was angry because I hadn't exhibited any poor behavior to warrant that additional penalty. I'd spent the entire 15 days reading, sleeping, and listening to music on my radio. I hadn't been unruly or disrespectful to any of the C/O's, nor had I incurred any additional infractions. That ICA report was completely bogus, but there was no way of appealing their decision, so I had no choice but to spend another 15 days in the hole.

Two weeks later, the same counselor who'd slipped that first ICA report under my door came by and slipped me another one stating that the ICA had reevaluated me, and had again come to the decision that I would not be returned to general population due to my "poor behavior." They tacked on another 15 day penalty and stated that I'd be reevaluated thereafter. At that point I assumed there had to have been some type of error. I figured maybe they had mistaken me for another offender who really was causing trouble, because I still hadn't done anything to warrant any extra punishment. But again, as angry as I was I had no choice but to serve the additional penalty.

Things came to a head two weeks later when that counselor came by and tried slipping yet another ICA report under my door, telling me the same thing as the previous two. At that point, I had been in the hole for about 45 days and I'd began talking to myself, hallucinating, losing weight, and feeling as if the walls were closing in on me. I felt like I was literally losing my grip on reality. I didn't know what the ICA was up to, but I refused to continue playing along. I started loudly banging on my cell door, yelling at the top of my lungs, and demanding to speak to the Warden, Assistant Warden, Unit Manager, or some other "big wig." The C/O's who worked in Segregation ignored me for hours until one of them finally got annoyed and came to my door to see what the problem was. After I told him what was going on, he pseudo-sympathetically explained to me that those ICA reports were not being erroneously issued to me. He told me that the real reason I was being kept in the hole was because there wasn't any bed space available in general population. Apparently, there were more offenders at the prison than there were available beds in general population, so those fabricated ICA reports were periodically issued by the administration to falsely justify holding offenders in Segregation until more bed space became available.

I spent a total of 51 days in the hole before I was finally released back into general population. I'd gone in weighing 183 lbs., and I came out weighing just 161 lbs. Remember, the original penalty for my infraction was only 15 days. I was forced to spend an extra 36 days isolated in solitary confinement with no human contact, no phone use, and no visitation due to no fault of my own. It was all because the prison was overcrowded and had nowhere else to house me.

That was the experience that really forced me to start critically thinking about the ethics of mass incarceration. It made me wonder how many policymakers were aware of just how crowded our prisons are. I wondered how many cared. I wondered how many judges were aware of the overcrowding. The fact that they continue sending people to serve disproportionately lengthy prison sentences when there's barely enough room for the offenders already in prison led me to believe they weren't. I'm not attempting to argue that incarceration is never an appropriate option to combat crime. No one wants to live in a society where criminals have free reign to run amok, terrorizing law-abiding citizens and influencing negative behavior. As the popular saying goes, "freedom for the wolves means death for the sheep." Indeed, incarceration serves a vital public safety function by punishing criminal behavior and incapacitating offenders from committing more offenses. The problem is that incarceration is being *overused* to the point where the safety, human rights, and living conditions of prisoners are being compromised. If for no other reason, that should be enough to compel policymakers to consider reforming the strict, overly retributive criminal justice policies currently in place.

The reasons for the rise in incarceration – and the coinciding explosion in the prison population can be found in many of the punitive criminal justice policies that originated in the 1980's and 1990's, mainly: Truth-In-Sentencing, which, as per the Violent Crime Control and Law Enforcement Act of 1994, increased the percentage of prisoners' sentences that must be served in prison; three-strikes, which lengthens the sentence – sometimes to LIFE without parole – for offenders with prior criminal convictions; and mandatory sentencing, which sets a minimum period of incarceration that *must* be imposed by judges, without their usual discretion. By 2000, 24 states had enacted three-strikes laws, 29 had enacted Truth-In-Sentencing, 16 had abolished parole,²⁴ and all 50 states had adopted mandatory sentencing.²⁵ Due to these harsh policies, more people convicted of crimes in the U.S. are being sent to prison, and the prison terms imposed have grown to draconian lengths, blatantly defying the principles of proportionality and parsimony (and by extension, numerous international treaties on the treatment of prisoners, as well as the decisions of several international human rights bodies²⁶). The abolishment of parole and other good behavior-based early release programs means that less prisoners are being released back into society, even after the means of their incarceration have been satisfied. At the time of this writing, I've been incarcerated for more than ten years. I can say, with all humility, that there is nothing more that can be gained, personally or societally, by continuing to keep me imprisoned. There's no more rehabilitation, behavioral correction, maturation, life lessons, or anything else that I haven't already received to the fullest possible extent. I'm not a threat to society, even according

²⁴ Subramanian, R. & Delaney, R., 'Playbook for Change? States Reconsider Mandatory Sentences,' VERA Institute of Justice (February 2014), p.7

²⁵ National Academy of Sciences, p.83

²⁶ See International Covenant on Civil and Political Rights (ICCPR), Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), European Court of Human Rights (ECHR), Universal Declaration of Human Rights, and U.N. Standard Minimum Rules for the Basic Treatment of Prisoners.

to the Virginia Department of Corrections' own COMPAS recidivism risk assessment. Yet, I still have at least 19 years left to serve in prison. All that's left for me in punishment, punishment, and more punishment. In a sense, America's prisons have come to be seen and used by policymakers as proverbial trash dumps where the law breaking detritus that the criminal justice system has given up on are discarded so that society doesn't have to see us o deal with us.

The U.S.'s overuse of incarceration can't even be justified by the crime rate, which has remained stable at low levels throughout the 2000's.²⁷ Yet, incarceration rates continue climbing! Proponents of "tough on crime" policies such as Truth-In-Sentencing, three-strikes, and mandatory sentencing have maintained that the low crime rate is a direct result of increased use of incarceration.²⁸ Their flawed logic is that less crimes are being committed because more of the criminals who would otherwise be committing them are behind bars and thus, incapacitated. I say this logic is flawed because criminal inclination is not a biological trait that exists only in some individuals and never in others (i.e., sickle cell anemia). If it were, then the logic of separating the carriers of this "crime trait" from society to lessen or eliminate crime would be sound. But criminal inclination clearly isn't unique to any individual or group of individuals, which is why mass incarceration is not the answer to crime control. Researchers have spent decades studying the relationship between crime and incarceration, and the criminal justice policies that link the two. The overwhelming majority have outright debunked the theory that the growth in incarceration is primarily responsible for the reduction in crime.²⁹ In fact, a study of the changes in crime and incarceration in all 50 states yielded no consistent relationship between the rates at which incarceration increased and crime decreased.³⁰ Some states that increased incarceration by high percentages actually experienced smaller drops in crime than states that increased incarceration by lower percentages. Take Texas and New York for example: In one year, Texas increased its incarceration rate by 144% and experienced a 35% decline in crime.³¹ New York, on the other hand, increased its incarceration by only 24% and experienced a 43% drop in crime.³² Similar inconsistencies occurred in most other states throughout the years. Between 1991 and 1998, the states that increased their use of incarceration at rates *lower* than the national average saw bigger declines in their crime rates than the states that increased their use of incarceration at rates *higher* than the national average.³³ It is clear that those "tough on crime" policies meant to reduce crime by increasing incarceration have not been successful. As the National Academy of Sciences has noted, "[M]andatory minimum sentences and three-strikes laws have little or no effect on crime rates, [and only] result in the imposition of sentences that are unjustly severe."³⁴ The Virginia Department of Corrections conducted its own study, after which it concluded that Truth-In-Sentencing has had "no significant impact" on crime and recidivism rates.³⁵

Not only is mass incarceration an ineffective (or at best, minimally effective) method of reducing crime, it's also very expensive. The annual cost of housing inmates in state and federal prisons is around \$25,000 per inmate,³⁶ though it can be much higher in some states and can reach as high as \$100,000 per inmate for juveniles³⁷ and offenders with special medical needs.³⁸ Total correctional expenditures (which includes the supervision, confinement, and rehabilitation of criminal offenders and defendants [*Kycckelhahn]) in 2010 exceeded \$80 billion dollars, with the majority of this spending occurring at the state and local levels (57% and 33%, respectively).³⁹ These expenditures, which are funded with taxpayers' hard-earned money, have left most states scrambling for solutions to the strain being placed on their budgets. Some have resorted to cutting much-needed funds from Public Education, Housing, Transportation, Healthcare, and other vital Departments, and allocating them toward the costs of operating jails and prisons.

Unfortunately, due to the excessive number of people behind bars, underfunding is still a huge issue in our prison system. In every prison in which I've been housed throughout my incarceration, the living conditions were deleteriously affected by inadequate funding. Sometimes prisons are forced to sacrifice the safety of the prisoners in order to save on operational costs. For example, the majority of the prisons in which I've been housed lack air conditioning. Some people might consider A/C a luxury to which prisoners aren't necessarily entitled. However, with the advent of climate change, spring and summer temperatures regularly exceed 100 degrees. The temperatures inside these small prison cells are often higher than they are outside, and prisoners are locked inside of them for up to 24 hours a day. Keep in mind that these are not the same types of cells portrayed in old prison movies such as "Shawshank Redemption," where the walls and doors are made of bars that allow air to circulate freely. Most modern prison cells are constructed with solid walls and doors made of concrete and metal (which both conduct and trap heat), so there's very little air circulation. Do not be mistaken; it is *very* unsafe for prisons to lack air conditioning. Inmates have died because of this issue! On several nights I've laid in my bunk sweating profusely, unable to sleep because of the sweltering heat and humidity. I've gotten severe headaches because it was so unbearably hot in my cell. I've witnessed inmates faint, have heat strokes, and go into seizures due to the extreme heat. In each of the A/C-less prisons in which I've been housed, I wrote the administration to inquire why there was no air conditioning and if it could be installed. I was always told that the installation and maintenance of air conditioning would be

²⁷ National Academy of Sciences, P.44

²⁸ The Sentencing Project, 'Incarceration and Crime: A Complex Relationship,' p.1

²⁹ National Academy of Sciences, p.44

³⁰ The Sentencing Project, 'Incarceration and Crime: A Complex Relationship,' p.3

³¹ *Ibid.*

³² *Ibid.*

³³ Gainsborouh, J & Mauer, M. 'Diminishing Returns: Crime and Incarceration in the 199's,' Washington, DC, The Sentencing Project (2000), p.10

³⁴ National Academy of Sciences, .83

³⁵ Justice Policy Institute, 'Virginia's Justice System: Expensive, Ineffective, and Unfair,' (November 2013), p.10

³⁶ See Congressional Research Service (2013); See also Justice Policy Institute, 'Virginia's Justice System: Expensive, Ineffective, and Unfair,' (November 2013), p.1

³⁷ Justice Policy Institute, 'Virginia's Justice System: Expensive, Ineffective, and Unfair,' (November 2013), p.1

³⁸ *Ibid.*, p.10

³⁹ Kearney, M., Harris, B., Jacome, E. & Parker, L., p.2

"too expensive," regardless of the dangerous and potentially lethal heat risks. That sort of deliberate indifference to the harm – or potential harm – caused by extreme heat conditions in prisons should be considered a violation of the Eighth Amendment's ban on cruel and unusual punishment, but these protections aren't always extended to prisoners. Again, there's that underlying notion that prisoners are less than human, and therefore not deserving of a humane level of consideration, compassion, respect and treatment. In Texas alone, at least 23 offenders who were housed in prisons without A/C have died due to the heat.⁴⁰ U.S. District Court Judge Keith Ellison (Houston) berated the Texas Department of Criminal Justice for subjecting inmates to extreme heat conditions, but because of budgetary constraints 75% of Texas prisons still have no air conditioning.⁴¹ And Texas is not alone! Most other states are faced with this same issue. What does it say about these states that, although prisoners are dying due to extreme heat, they're unwilling to make the necessary sacrifices to have air conditioning installed in all of their prisons? An even better question is, what does it say about the U.S. as a whole that there are so many people incarcerated, our safety, human rights, and constitutional rights must be compromised in order to house us all?

Food service is another major area in which budgetary concerns take precedence over inmate safety. It obviously costs a lot to feed the millions of people incarcerated. In fact, it is so expensive that corrections administrators must constantly find creative ways to stretch their tight budgets in order to feed their overcrowded inmate populations. It has been reported that the average allotted expenditure to feed prisoners is a measly \$2.35 per offender per day. This includes all three meals plus sporks, cups, napkins, and other non-consumables. By comparison, it costs approximately \$8.12 per day to feed the average American adult in society.

By law, the food served in jails and prisons must meet standard dietary requirements (three nutritionally balanced meals that total 2,000 calories per day), but you can imagine how difficult it is to adhere to those requirements with a \$2.35 daily budget. It's nearly impossible! During my two years in the local jail, these dietary requirements were circumvented altogether. This was likely due to the jail being packed so far beyond normal capacity. Because there were so many inmates, the food had to be "stretched" to accommodate us all. One of the most frequently served meals consisted of about four ounces of rice and gravy, two slices of bread, and half of an orange for dessert. This was served for lunch and dinner several times a week. Breakfast was almost always a four ounce serving of grits, two slices of bread, and a small pack of jelly. Given the tiny portions of those meals, I'm certain they weren't nutritionally complete, and three of them definitely didn't add up to 2,000 calories. Contrary to popular belief, most people don't gain weight/muscle in jail. A lot of inmates actually lose weight as a result of being undernourished. I still remember how all the guys in my cellblocks would crack jokes on each other for being "bony" and looking "anorexic." Only the guys who could afford to purchase commissary food to supplement the jailhouse meals were able to maintain their normal weight. I wasn't one of them. By the time I was transferred from jail (to Receiving), I weighed about 15 lbs. less than when I'd arrived.

Prison food service departments do a much better job of meeting the dietary requirements. They do a better job of staying within budget by purchasing the least expensive food possible and by having some food donated to the institutions. However, prisons often obtain cheap food even if it's not safe for consumption. This happens more than people think, and it poses an even greater risk to inmates' health than undernourishment. 99% of the meats (as well as the majority of the other foods) I've been served in prison has been processed. It's been proven that years of even casual consumption of processed foods can lead to cancer and a host of other serious health problems. Now imagine the risks that inmates serving lengthy sentences, being served processed foods every day for breakfast, lunch and dinner, are faced with.

Even worse is the fact that sometimes the food served by prisons is expired. This is usually the food that stores can't legally sell (and restaurants can't legally serve) to people because if they do, they may face legal action. But incarcerated people have no such legal protection, so instead of throwing the expired food away, stores and restaurants donate or sell it to prisons at a steep discount to be served to us. Sometimes, only the inmates who work in the kitchen are aware that the food being served is expired, but it's also common for prisoners to be served packaged foods with the past-due expiration date clearly visible. Spoiled milk, molded bread, and rotten, pesticide-covered fruit are also frequently served to prisoners. Again, this isn't done as a punishment, it's because these foods are very inexpensive (or free), and with so many people incarcerated this is often the only way prisons can afford to feed all of us. This is a relatively minor, yet very serious effect of mass incarceration that's not only unsafe, it's unethical. It's also another example of there being so many people incarcerated, our safety, human rights, and constitutional rights must be compromised so everyone can be fed. If less people were incarcerated, this problem simply would not exist!

Aside from the economic costs, the social costs of mass incarceration are far reaching, long lasting, and in a lot of instances, irreparably damaging. Emotional, academic, and behavioral issues have been shown in young children and school age children of incarcerated parents.⁴² Fortunately, I've been able to stay in contact with my children throughout my incarceration via phone calls, letters, visits and emails. From my very first day behind bars, I've been determined not to let these circumstances change me, my children, or our relationship. However, I was quick to learn that my physical absence from their lives would unavoidably affect us all. Beginning very early in my incarceration, my children all began displaying the above-mentioned issues. I first noticed behavioral deviations in my two oldest sons, who were only five and six years old when I was incarcerated. They both began developing anger and temperament issues. The older they grew, the more they rebelled against me, their mother, school teachers and other authority figures. In their adolescent years, they began getting into fistfights in their neighborhood and smoking marijuana, and by the age of 15 they were both sexually active. As of this writing, my oldest son has been placed in an alternative school due to his behavior and poor academic performance.

My youngest son, who was four years old when I was incarcerated, has not shown any behavioral or academic deviations that I'm aware of. However, my daughter, who was three at the time of my incarceration and is now 14, has become uncharacteristically antisocial over the

⁴⁰ Virginia Prison Justice Network Newsletter, Issue #10 (July 2, 2018), p.1-2

⁴¹ *Ibid.*

⁴² Kearney, M., Harris, B., Jacome, E., & Parker, L., p.14

years. I believe *this may* be linked to the stigma of having a parent in prison. She is extremely reclusive and seems to have self-esteem and confidence issues. I'm particularly bothered by the fact that she has no friends and doesn't care to make hem. I often worry about her mental health. I've purposely kept this section brief for the sake of my children's' privacy, but there's so much more I can say on this subject. It may not be possible to know all the ways my incarceration has affected (or will affect) my children, but I do know they've been psychologically and impacted in a lot of ways, and there are no words to describe how painful that is for me. I made the choice to break the law, so I'm ultimately to blame. But I can't help asking how much blame lies with our insanely punitive criminal justice system, particularly the judge who sentenced me to spend the entirety of my children's formative childhood years I prison. It's especially frustrating knowing I was handed this strict sentence for offenses that in no way warranted such an extreme measure. A fair, proportionate sentence – say, five years in prison – would have been a sufficient punishment. Such a sentence would have also allowed ample time for my rehabilitation while also giving me the opportunity to return home to my children in time to prevent some of the damages they've incurred as a result of my lengthy imprisonment. Unfortunately, this is not how our criminal justice system works. The policymakers who enact "tough on crime" legislation, which allows over-sentencing and fuels mass incarceration, don't care that the effects of these harsh policies extend beyond the targeted criminal offenders and have negative, long lasting impacts on our children. Collateral consequences (for offenders, our families, our communities, and society as a whole) are ostensibly irrelevant so long as retribution is achieved.

It has been made clear, through several studies in all 50 states and the federal government, that the practice of increasing incarceration has minimal effectiveness on reducing crime. Yet, according to a 2014 study conducted by The Pew Charitable Trusts, the U.S.'s overall prison population is projected to continue increasing!⁴³ But even with that troublesome projection, I have hope that positive change can occur. This is why I decided to write this essay. I want to make it known to all "tough on crime" proponents that although I broke the law, I'm not the carrier of some nefarious "crime trait" that makes me this evil, subhuman "thing" from which society needs to be protected at all costs. I'm not a statistic or an inmate number or a random body to be shuffled around an overcrowded and underfunded penal system, belittled by correctional officers, imperiled by prison food services, neglected by prison medical services, ignored by the correctional education department, and exploited by private phone, commissary, and money deposit businesses. I am a person! I'm a fallible, imperfect human being who has done good things I'm proud of and bad things I regret, just like everyone else. I'm just as capable of learning from my mistakes as I am of making them. I have a heart. I have a conscience. I feel remorse. I have dreams, hopes and aspirations. I have children who look up to me, friends who miss me, and parents who love me unconditionally. Intrinsicly, I'm no different from you. But on that day I stood in Judge Norman Thomas's courtroom about to be sentenced to five LIFE terms plus 53 years behind bars, none of those qualities that define my humanity were acknowledged. In his eyes, and in the eyes of the criminal justice system, I was nothing more than a beast that needed to be locked in a cage. This has been the prevailing mentality driving our criminal justice system for decades, which is why over-sentencing and mass incarceration exist. Maybe if Judge Thomas had seen me, not as "evil," or a "monster," or a "menace," but as a human, his own humanity would have compelled him to be more fair and just in the punishment he imposed. Maybe if President Clinton or the countless other lawmakers who've enacted "tough on crime" legislation" since the Violent Crime Control and Law Enforcement Act of 1994 saw criminal offenders as humans who need help *as well as* punishment, those insanely harsh policies that allowed my sentence would never have existed in the first place. That element of humanity is what our criminal justice system desperately needs! That's the only way the practice of over-sentencing and over-incarceration can end. Ask yourself...without humanity, are the executors of justice really any different than those they seek to punish?

⁴³ The Pew Charitable Trusts, 'States Project 5% Increase in Prisoners by 2018' (November 2014)