

Correcting Corrections



By E. John Werner III, Nevada Inmate

April 14, 2008

About Mr. E. John Werner:

John is happily married and has two teen-aged children.

John has three siblings and one deceased.

John's parents are both deceased; however he is very loved and supported by his step-father. John has served more than 13 years on his first sentence of 10-life. When (or if) he is paroled, he will begin serving his second consecutive sentence of 5-20 years.

Advisory Commission on Admin. of Justice

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Imposition of Sentences

The Influence of Legal Representation

Our judicial system is heavily weighted on the legal representatives 'power of suggestion'. While it is true that the defendant does indeed have a brain and CAN make their own decision, the defendant is in a very cornered and disadvantaged position to make a clear decision. It should be obvious that they are perhaps NOT the best decision makers, given their position in the first place. The intimidation and fear imposed by the legal representative's threat of a lengthy sentence if they don't take a plea only compounds confusion and distorts the offenders sense of reason. The question is hardly that of innocence or guilt, it is a question of TIME, and the decision is based on fear rather than ration and justice. When a judge is making a decision on a sentence, EVIDIENCE should be looked at as well as the plea that the defendant has agreed to take based on 'representation'. Too often the representation can not be afforded by the defendant and therefore may NOT be a vested interest in the defendant as in individual.

Terms

While I agree that there should be guidelines as to the ideal sentence for specific crimes, rarely if ever are two crimes the same, much LESS are the individuals who commit them. While it would be unreasonable to sentence one man to one year for murder of one person and sentence another man death for the murder of one person, there should be some flexibility given to the law based on circumstances and evidence. I fully understand that with the exception of self defense, it is never right to take another life, however there are as many explanations as there are individuals make-up of those who commit the crimes.

Appropriate Punishment

The prison system is clogged and over crowded with stacked consecutive sentences that serve no penalogical purpose. Does 70 years of a criminal's life repay an assault? Does 30 years repay an armed robbery? Does 20 years repay a kidnapping that consisted of asking an adult man to drive himself somewhere for a nefarious purpose?

Once someone is proven to be guilty of a crime, consideration for appropriate rehabilitation, punishment, and/or removal from society/forfeiture of life must be properly determined. How long does it take to rehabilitate someone, or is each individual different? What IS the likelihood of re-offense? Are they 'fix-able'? In today's fast changing world, 10 years is practically an entire generation. Why is it that as the world advances, Nevada's criminal justice system goes in reverse? If the system does not improve with the times, how do you expect the criminal to? Think about the person you are putting IN this system, and then think about the person who will eventually return to society to live in your neighborhood. What kind of person do you want to come OUT of this system? Someone who has not been 'fixed'? Someone who may be more dangerous due to the environment of prison then they were before they went in? If they can't be 'fixed' in prison then something else must be done to protect society, which IS the main concern, correct?

The answer is spending adequate time for allowing the TRUTH and EVIDENCE to be first, before negotiations begin on sentencing terms by the defendant and the legal team (representatives and judge) before a rational common sense decision is made. This should be happening now, but it is grossly swept under the carpet to allow for swiftness in processing criminals like cattle.

Predetermine Parole Dates with a Realistic Points System

The Problem

The Parole Board's budget of millions of dollars could be better used in several other areas such as the hiring and training of more Parole Officers, GPS Tracking, re-entry programs, etc. With a comprehensive and realistic point system which determines an inmate's parole eligibility and parole date, the Parole Board becomes no longer necessary.

A point system now exists but it is only an unofficial guideline the Board is not required to consider or follow. The Case Workers in the prisons currently compile and create the Parole Board Reports and track the inmates along the point system, therefore the workload of prison staff would not increase as this is a function they already perform.

As it is now, no amount of rehabilitative programming, education, or vocational training makes any difference towards an inmate's parole eligibility, as the Parole Board does not have to consider any of it, and they don't, as is proven by their record of not granting parole to those who do qualify under the current system.

Solution

With a comprehensive point system determining when an inmate is granted parole, there is no question; and places an inmate in the position to take more responsibility for his own rehabilitation. It would provide for a more structured and productive term of incarceration, while weeding out those with no desire to rehabilitate and who do not deserve a parole.

Parole is a privilege; an early release to supervision for those who earn it. The current prison overcrowding and need for new prisons is a direct result. The simple act of granting parole to those eligible would alleviate this strain.

With an overriding and comprehensive point system, upon entering the system an inmate would know the exact date of his earliest possible release to parole supervision, as well as the latest, depending on adherence to clear and understood expectations.

Knowing an inmate's earliest date of release also allows for the development of pre-release programs and Parole Plans much more effective than what is currently in place.

Solid Parole Plans and quality supervised parole:

- Serve to protect the public interest and safety
- Open up hard beds to reduce the strain on City and County Courtrooms and Jails as well as the prison
- Increase the efficiency of the Prison/Parole & Probation Systems
- Reduce recidivism and create more productive citizens who re-enter society
- Eliminate an expensive and unnecessary government department (the Parole Board) and put tax/budget dollars to better use, not just within the Department of Corrections, but throughout the state.

Having a system that is structured and actually adhered to, would also enable the NDOC to perform more accurate budget forecasting.

Proposal

With a few simple changes to the current parole success likelihood factors worksheet, a realistic, comprehensive system for granting parole can be established; thus eliminating the need for the Board of Parole Commissioners.

1. The system should deal primarily with the instant offense and prison record on that offense and NOT combine prior convictions with the current incarceration.
2. Consecutive sentences/lesser included offenses stemming from the same crime which resulted in the current incarceration should not be counted as separate.
3. An institutional parole to a consecutive sentence when there is no release should not count against the inmate as a prior conviction/incarceration.
4. Credit should be given, not taken, for success with institutional paroles.
5. Victim impact is already calculated into crime severity level and shouldn't be counted twice.
6. Good time/meritorious time credits should be considered.
7. There should be no point cap on positive programming credits as this reduces the incentive and desire to continue to improve.
8. Programming points, programs taken and good time/meritorious credits should carry over to consecutive sentences as it is one continuous incarceration. Credits are often not given to the inmate if they have previously taken the class, so by not carrying the credits over to a consecutive sentence detours inmates from taking much needed classes on their first sentence.
9. Good time/work/meritorious time should count towards parole eligibility date otherwise it is useless as an incentive, and those serving life sentences should not be excluded from having earned credits apply to their sentences.
10. Consideration should be given to behavior improvements/declines and length of time between disciplinary sanctions and severity.
11. Recidivism risk assessment factors should also be considered towards eligibility.
12. The 'GRM' time factor and points per time category should be more reflective of each other and more realistic. A point system that, at the start, makes it impossible for anyone to qualify for their earliest parole date is unreasonable and directly disregards the judges minimum imposed sentence.

In Summary

The current point system is not only defective; it is not being utilized correctly, if used at all. The system limits rewarding positive behavior and allows for penalizing institutional paroles, which stifles motivation for success of rehabilitation. A clear and comprehensive point system that is used as a tool for both the Prison Case Worker and the Inmate, throughout the duration of incarceration from beginning to end, is essential to the success of the rehabilitation of the inmate. The ability to clearly identify inmates who have earned parole, as well as those who haven't, provides for the least amount of burden to the public in many ways.

This tool, when used properly, also aides in better understanding and guidance by the Parole Officer assigned to the Parolee. Amending the current point system to evaluate parole eligibility is not only long overdue but is essential to the success of the Department of Corrections as well as Public Safety.

Parole Reform

Require Inmates to Serve their Sentence Imposed by the Judge

There is a huge storehouse of people who have a debt to pay. Allow them to pay it; REQUIRE IT! Example: An inmate serving a minimum 10 year sentence with little or no violence, no drug use, a relatively disciplinary free record, and has programmed positively; He has spent a decade in prison, worked to improve and rehabilitate himself and earn a parole. What is the purpose in denying his parole after 10 years? He has earned it, and now its time for him to make a productive repayment to society.

Set realistic guidelines that are realistic for ALL inmates and enforce those guidelines. Take the decisions out of the hands of people predisposed to an adversarial posture.

More Parole Officers = Less Prison Construction

It is common knowledge that both the prison system is overcrowded and Parole Officers are overburdened with Parolees. It is CRUCIAL to the success of the released inmate, and even MORE important to public citizens, that the released person is successfully rehabilitated, and can be a productive member of society. For this reason, among many others, the case load of Parole Officers needs to be seriously addressed.

The spending of government money is always tricky to say the least, but it is simple math really: Lets just say an average Parole Officer has 20 cases (parolees), that's seeing one person a day. I am quite sure that Parole Officers (although I they probably think they earn it) don't make \$400,000 per year (the cost to house 20 inmates per year), and I bet Parole Officers can, and do, see more then one parolee per day.

It would be more economical to double or even quadruple the number of Parole Officers then to build prisons to house inmates who have served the minimum sentence imposed by the judge, programmed positively, and earned parole.

If Parole Officer case loads were at a reasonable number, they could actually do what they are meant to do which is HELP the parolee succeed at becoming a contributing member of society. Building more prisons and overloading a minimal Parole Officer staff is NOT the answer and serves NO ONE.

The answer is simple: Actually adhering to the systems that are currently in place, make the NDOC and the Parole Board accountable to the same laws they are enforcing, and hire more Parole Officers to ensure the parolees succeed and the public is safe.

Inmate Outreach - Education through Blogs

One of the keys to addressing both crime prevention, as well as our growing prison population, is to educate our youth on the consequences of crime. The 'Scared Straight' programs didn't work, the success of the current 'Dare' programs have recently been challenged, and the NDOC has cancelled most, if not all, of the 'at-risk' youth programs.

We MUST educate today's youth about drugs, alcohol, gangs, and crime in such a way that they will be receptive to the information. The most cost effective and universal way to do this by utilizing the internet.

The NDOC currently has all the tools needed to develop an education system for at-risk youth including an established informational website, computers, computer classes for inmates, and an abundance of inmates wanting to reach out to our state's youth in an effort to help keep them out of prison.

The addition of an Inmate Web Log (Blog) to the NDOC website would be a tool that today's youth and the general public could both benefit from. This Inmate Blog could provide important information by creating discourse about crimes from the most minor to the extreme major, from details of prison life, to the circumstances of the crime, including impact on victims, family, and society.

Schools, college educators, parents, and law enforcement could access this information and use it as a training tool anytime and anywhere, to share with their students, children, and offenders. With the use of Inmate Blogs, and even the use of supervised live discussions, education would be more comprehensive as it would include information from subject matter experts on crime, and clearly illustrate its negative repercussions. This could be a valuable and memorable dialog presented in a safe environment between those who are paying for their mistakes, and those who still have a chance, through education and knowledge, to make better choices.

This tool could also aid in educating the general public by way of information that might help keep them safe, to protect themselves from becoming victims of crime, and help them better identify at-risk behavior in their children, students, and others.

Permitting inmates to contribute through this valuable informative tool, would enable them to give something back to society; a productive way to rehabilitate and repay for their crimes.

Utilizing current resources to supervise, review, and control this process would be a progressive step in educating our youth. This tool could be easily implemented at minimal cost, with unlimited potential for maximum effect. Nevada's youth need REAL education about the results of drug use, alcohol abuse, gangs, and all forms of violence and criminal behavior, while getting a clear picture about the reality of the consequences.

Victims of crime might also find this to be a valuable tool to be used as a communication bridge to answer questions and possibly help with the healing process.

I hope you will strongly consider implementing this very valuable and much needed educational tool. I promise you will have no shortage of volunteers, starting with myself, who would love the opportunity to try to help others not make the same mistakes we did.

Clarifying Nevada's Kidnapping Law

4/14/08

The Kidnapping law, although it seems to 'capture' many ways of defining the possibilities, it leaves out the defining clarity of 'force' or 'against a person's will'.

According to Wikipedia:

In criminal law, kidnapping is the taking away or asportation of a person against the person's will, usually to hold the person in false imprisonment, a confinement without legal authority. This is often done for ransom or in furtherance of another crime. **A majority of jurisdictions in the United States retain the "asportation" element for kidnapping, where the victim must be confined in a bounded area against their will and moved. Any amount of movement will suffice for the requirement, even if it is moving the abductee to a house next door.** In the Commonwealth of Massachusetts, however, the asportation element has been abolished. Note that under early English common law, the asportation element required that the victim be moved outside the realm of England or overseas in order for an abduction to be considered "kidnapping."

According to the dictionary:

- To steal, carry off, or abduct by force or fraud, esp. for use as a hostage or to extract ransom.
- An act or instance or the crime of seizing, confining, inveigling, abducting, or carrying away a person by force or fraud often with a demand for ransom or in furtherance of another crime.
- To take (any one) by force or fear, and against one's will, with intent to carry to another place.

Nevada's Causalities of Kidnapping

Two inmates are currently serving sentences of 5-20 years in Nevada Prisons because one of the two inmates 'invited' a grown man to a party. The man drove himself, by himself, of his own free will to the party. The man *was* murdered by one of the inmates, however the murder was not planned. A 'kidnapping' did NOT occur as there was no 'force' used to lead the victim to the location, nor prevent him from leaving in his own vehicle at any time until he was killed.

In 2007, when the kidnapping law was challenged on the television news, the District Attorney on the OJ Simpson case stated: "he told someone to MOVE, and in this state, that's kidnapping."

How many people are currently in prison and charged with kidnapping by over-zealous District Attorneys, who were coerced into accepting pleas by overworked Public Defenders and Court Appointed Attorneys?

Attached are experts from 10/23/07 Las Vegas Review Journal article:

ANALYSIS: Despite witnesses, prosecutors might face tough task in Simpson kidnapping case

Teresa Werner
P.O. Box 21067
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Experts from Las Vegas Review Journal article:

ANALYSIS: Despite witnesses, prosecutors might face tough task in Simpson kidnapping case

By ALAN MAIMON
REVIEW-JOURNAL
Oct. 23, 2007

FIRST-DEGREE KIDNAPPING CASES IN CLARK COUNTY DISTRICT COURT DURING 2006

57

Total cases

41

Kidnapping charges dismissed

3

Guilty pleas on first-degree kidnapping charges

1

Guilty verdict on first-degree kidnapping charges

2

Not guilty verdicts on first-degree kidnapping charges

1

Dismissal of first-degree kidnapping charges and not guilty verdict on other first-degree kidnapping charges

4

Kidnapping charges still pending

Source: Review-Journal analysis of Clark County District Court data

WHAT THE LAW SAYS

NRS 200.310

1. A person who willfully seizes, confines, inveigles, entices, decoys, abducts, conceals, kidnaps or carries away a person by any means whatsoever with the intent to hold or detain, or who holds or detains, the person for ransom, or reward, or for the purpose of committing sexual assault, extortion or robbery upon or from the person, or for the purpose of killing the person or inflicting substantial bodily harm upon him, or to exact from relatives, friends, or any other person any money or valuable thing for the return or disposition of the kidnapped person, and a person who leads, takes, entices, or carries away or detains any minor with the intent to keep, imprison, or confine him from his parents, guardians, or any other person having lawful custody of the minor, or with the intent to hold the minor to unlawful service, or perpetrate upon the person of the minor any unlawful act is guilty of kidnapping in the first degree which is a category A felony.

Despite expected guilty pleas today from two men planning to testify against him, O.J. Simpson has little chance of being put away for life on kidnapping charges. A Review-Journal analysis of Clark County cases from 2006 shows **only two of 57 defendants similarly charged with robbery, extortion, or carjacking and first-degree kidnapping have gotten life sentences. In fact, kidnapping charges were dismissed more than two-thirds of the time, and more than half of the defendants in those cases eventually got probation or no punishment at all.**

Lost in the frenzy of Simpson's arrest are questions about the legitimacy of charging the defendants with first-degree kidnapping, a crime that carries a possible sentence of life in prison, with possibility of parole.

According to police, Simpson and his co-defendants, two of them with handguns, barged into a room at Palace Station and swiped sports memorabilia, some of which Simpson has claimed are rightfully his.

On an apparent audiotape of the incident, Simpson is heard saying, "Don't let nobody out of this room."

To justify the first-degree kidnapping charge, District Attorney David Roger, who is prosecuting the case, used language in state law about holding or detaining victims against their will even for a brief period. He opted against charging Simpson and the others with lower-level crimes such as second-degree kidnapping or false imprisonment.

Gabriel Grasso, Simpson's local attorney, said he plans to file a motion to have the kidnapping charges dismissed. "We're going to put the kidnapping charges to a serious test," Grasso said.

Stephanos Bibas, a professor at the University of Pennsylvania Law School who has written about the plea bargaining process, said Roger is using **a common strategy to gain leverage in possible negotiations. "A prosecutor throws in everything the law entitles him to, and then gives everyone a discount. . . . If you throw enough mud, some of it will stick,"** he said.

Local defense attorney Richard Wright, who is not involved in the case, said Simpson appears to be the subject of **overzealous prosecution. "They simply loaded it up,"** Wright said. **"This is not what the layman views as kidnapping."**

Roger makes no apologies, however, for how he charges cases. "We allege all charges we think we can prove beyond a reasonable doubt," he said in an interview earlier this year about his office's general policy for charging cases. **"I know some people suggest there's vindictive prosecution, but if we're operating within the perimeters of the law,** I don't think our prosecutors are being vindictive."

The newspaper's analysis of recent cases shows Roger's **office routinely pursues kidnapping charges in robbery cases, but rarely gains convictions on them.**

In the 53 cases from last year that have been resolved, **only one saw a defendant convicted of kidnapping at trial. Defendants pleaded guilty to the charge just three times.** In 28 cases, the accused got probation or less.

The two who got life sentences were a carjacker who pleaded guilty to kidnapping and a repeat felon who was convicted at trial on other charges.

Many of the kidnapping cases from last year were assigned to public defenders or court-appointed attorneys, who are paid \$100 per hour for the cases because of the possible life sentence they carry.

Formal challenges of the district attorney office's use of the kidnapping statute have been rare because so few of the cases have gone to trial.

The occasional test, however, has shown Roger's office **might be too broadly applying the law.**

The Supreme Court this year overturned a jury's guilty verdict on kidnapping against Juan Garcia, a Las Vegas man who robbed an auto shop in 2003. During the robbery, Garcia restrained two victims with duct tape, but the Supreme Court ruled that was not enough to sustain a kidnapping conviction. The Garcia ruling followed an earlier state high court decision that sought to better define kidnapping.

To support a kidnapping conviction, the court ruled in *Mendoza v. Nevada* that movement or restraint of victims during a robbery "must substantially increase the risk of danger to the victim over and above that necessarily present" in a robbery.

The ruling was accompanied by a new jury instruction for those crimes. **Most of the kidnapping cases from last year didn't explore the legal basis for the charges.** Samaja Funderburk's case did. Funderburk was charged in May 2006 with dozens of kidnapping counts stemming from a string of convenience store robberies.

Deputy District Attorney Linda Lewis argued in a written court filing that kidnapping could be charged because potential harm to the victims was increased when the defendant herded them into walk-in refrigerators or break rooms. Funderburk's attorney, John Parris, cited the *Mendoza* ruling and argued those acts were incidental to the robberies.

Two months later at the opening of Funderburk's trial, Lewis asked that the kidnapping charges be dropped. **"We have determined it would be a waste of the court's time and resources, and ultimately if there should be a conviction, a waste of the Supreme Court's time in reviewing the issues pertaining to the kidnapping charges,"** Lewis told a judge. Lewis declined to elaborate on her decision.

Robert Dennis Rentzer, Alexander's attorney, said it often is best for a client to plead guilty to a low-level felony rather than risk being convicted of a more severe crime. **"It might be in a client's interest to enter a plea to the least significant offense ... even if the person feels they were not guilty and would probably be acquitted at trial,"** Rentzer said.

Edward Miley, Cashmore's attorney, said the possible penalty for a kidnapping conviction "weighed heavily" on his client during plea negotiations. Though kidnapping charges are common, the Simpson case is about as atypical as they come because of the defendant's past and resources.

"Simpson can hire good attorneys, so there's more likelihood it will go to trial," he said. "O.J. is not about to do prison time. ... **Most people don't have a dream team, so O.J. justice is not typical justice.**"

The Nevada Prison Project

Curtis L. Downing, Nevada Inmate

April 14, 2008

Curtis has been in prison more than 20 years.

SENTENCING

Let the Punishment Truly Fit the Crime

It is time to separate first time offenders from 'convicts' (career criminals whom have no desire to change.) Most individuals become involved in crime between ages of 18-28 and are generally from dysfunctional families. These individuals did not function well in school or in employment. Occasionally there are those over 28 who get into trouble for the first time. These individuals generally are not unwilling to do their best, and many times, they ARE doing their best but lack the education or social skills to survive the structure and expectations of society.

FIRST TIME OFFENDERS

PROBATION

Second chance must begin BEFORE coming to prison via the city/county jail. The less chances someone has to learn better life skills in the society that they are expected to conform to, the more chance they will learn worse habits in the violent conditions in jail/prison. These 'skills' they MUST learn in jail/prison to survive will NOT be helpful, and may in fact be detrimental, for success.

Certain 'first time' convicts should NOT come to prison, but given probation instead. However, while on probation, they must receive three full opportunities to successfully complete probation, but these opportunities must not be made known to the probationer. While on probation, those whom haven't completed their high school education must do so, or must attend a vocational training program. Additionally, they should do considerable community service applicable to, and for the victim, family, friends, etc., so they understand the ripple effect and how one crime act effects so many.

Long term programs that assist in reprogramming their thinking are also crucial to their success. They should sign a contract which details, and clearly outlines what probation is, and sets forth what is required from them to successfully complete probation. Failure should not be an easy option. Every effort should be made by both the probationer as well as the officer to create a better member of society rather than another inmate.

Probationers (and parolees) must maintain their own progress report, applicable to their grant of probation and/or parole. This will allow any Probation Officer or court to easily determine the level, or lack, of progress. If there is NO progress, then a minimum of 180 hours of jail SERVICE is warranted (assist in cleaning, working in food service, laundry, washing floors, walls, etc.). The work time could be after work hours and on days off from their job so they won't lose any opportunities for success in society while they 'see' what their future holds if they do NOT succeed in probation. Probation Officers, Case Workers and Social Workers should also be assigned to probationers to address the tools needed for success.

PAROLE

Before a grant of parole is offered to an offender, the individual MUST complete needed educational requirements (i.e., GED and or High School diploma). Additionally, long term (two years minimum) programs addressing societal needs must be completed.

THERE SHOULD BE NO PRISON SENTENCE SHORTER THEN TWO YEARS.

During this minimum two year sentence, inmates should unlearn the behavior that brought them to this point and begin learning behavior that will change their thinking to lead them in a positive direction. Long term programming must include anger management, treatment for mental health and addiction problems, constructive thinking, parenting, and communication skills including alternatives to violence programs. Simple 'attendance' must not be tolerated, nor accepted; active participation and success is mandatory.

**Prison should not be viewed by the convict or public perception as a 'vacation'.
The goal of sentencing must be to achieve a desired behavior BEFORE release.**

CAREER CRIMINALS

Career criminals are individuals who MUST receive harsh sentences and extensive mandatory programming. They must also be required to obtain a college degree or at least five years of 'trade experience' before parole is granted. When considering parole release, evaluations should be conducted for aptitude testing for technical abilities, training, as well as life skills. Components of this evaluation must include knowledge of basic life skills such as home, auto, credit, banking, employment, child/family care, etc.

Sentencing must be fully and completely in the hands of the court, with the Parole Board and/or probation department, being utilized to enforce the structure set forth.

SENTANCING REFORM = SOCIAL REFORM

It is absolutely imperative that sentencing reform must move forward and seek appropriate punishment for first time offenders and repeat offenders. There should be a minimum of a three year parole period to monitor AND PROVIDE SUPPORT for successful rehabilitation into society.

Society needs to be reminded that someone who commits a crime is a human, just like someone who has not committed a crime (yet), and they should not be viewed as garbage that is 'going away'. There needs to be efforts to bridge the incarcerated with the outside world, and perhaps even their victims, in such a way that both parties LEARN from the unfortunate event. One suggestion would be for offenders to have their confessions video recorded and shown to middle schools, high schools, colleges, churches, treatment centers, juvenile detention centers, and domestic violence safe houses, as appropriate.

Only through hearing and learning directly from all parties involved in the acts of crime, can we truly get a better understanding of the picture and work together to find ways to REDUCE crime as well as curb judgment that might be tainted by the voice of the media, victims, and public perception.

Conducting a 'Video Voice' from the offender declaring what they did, who was impacted, and what the offender is willing to do to rehabilitate/reconcile, can be a valuable tool for both the victim and the offender in the punishment, healing, and correction process.

Metamorphosis

Correcting Convicts

Having a prison budget that is larger than the budget for education, obviously says 'we'd rather incarcerate your children, then educate them.' There is a large population of inmates who have fallen through the cracks of public education (and family support/learning) and are now being 'educated' in the prison system. For five times the cost for incarceration than education, the public should get a better return on their investment than releasing convicts back to society who have only learned from other convicts during their prison stay.

The NDOC must become the Nevada Department of Corrections and Rehabilitation. This will require the NDOC to provide comprehensive classes, programs and jobs that focus on addressing the needs of offenders who are serving both short and long term sentences.

Programming should be intense and require hard work and effort which will quickly weed out those who have no desire to be rehabilitated and therefore do not deserve parole. Programs, including work, should be structured from sun up to sun down, six days a week.

Pay should be earned similar to the federal system and/or Arizona DOC, that a portion of that pay goes into an account where at least \$1,500 can be saved so that upon parole or expiration, an offender can afford half-way house cost, self parole, or a transition back into a positive community.

The current 'savings plan' with its \$200 limit (if an offender is lucky enough to have that much), releases offenders out the gate in immediate hardship status, leaving them no other option than to seek whatever handouts they can find. Begging for help is not humbling; it is humiliating and can only lead to frustration, which leads to depression, anger, and fear. I am very sure that these are not the emotions the public wants someone fresh out of prison to have.

Building more and more prisons doesn't lower crime as there is a 'mythical relationship between incarceration and crime rates'. Information on this subject is available from the Partnership for Safety and Justice, from the prominent criminal justice researcher, Judith Greene.

Reach One - Teach One

A Positive Method for Teaching Today's Youth

We live in the information age, yet though we are inundated with information, many, especially our youth are drowning in ignorance.

The youth have put many things in life to the proposition of the question "Why?" "Why School?" "Why a job?" "Why community?" "Why respect for each other?" "Why this - why that?"

The largest fields of information gathering for our youth are the internet, TV, and friends. Information from friends can, and sometimes does transcend over authority figures, parents, etc.

Because our youth haven't learned that the original premise of a syllogism or logic train is critical, often their line of reasoning may seem compelling at each step in their limited logic. Should the original premise be faulty or incomplete, and often is, the whole line of reasoning will be flawed.

Flawed reasoning isn't always changed by adult logic, yet often can be changed by their friends. Flawed reasoning and thinking can be changed via informative, absolute information, not misleading, nor misunderstood information.

The most common method of influence is, and has always been, peer-to-peer. Youth's know what other youths are going through, how they think, how they feel, how they react, how they learn. Producing a youth-to-youth video containing interviews and stories of the successes and failures of other youth would be a very powerful tool.

With the oversight of leaders in the community who are already involved with the youth, and/or may have a success story of their own to share, and a few young adult volunteers, this could be a very effective method of educating at-risk youth.

In addition to a community leader, another effective teacher would be a former convict who has done hard time, has been rehabilitated, and is now leading a productive life. We have the most experience of 'at-risk' youth as we are ashamed to admit that we have excelled in the negative direction beyond 'at-risk' to convicted felon. This is something no one is proud of and most are extremely willing and eager to do everything in our power to prevent others from making the same mistakes.

The youth-to-youth presentation and video can be offered at schools, juvenile centers, youth centers, boys and girls clubs, etc. With statistics as high as 60% of children who are released from the foster care system when they are 18 end up in prison, and juvenile populations in prisons rising, we can't afford not to do everything in our power to divert our youth toward a more positive and productive future.

In closing, I applaud all of the members of the Advisory Committee for the Administration of Justice for having the insight, the courage, and the determination to achieve such worthy, and much needed goals.

**Reforming Nevada's Prison System: Some Reflections Based Upon 30+
Years in Nevada**

Randall G. Sheldon

Department of Criminal Justice

UNLV

March, 2008

Preface

Given the growing interest in the prison system of Nevada, I thought I would share some of my own thoughts, based upon living here for more than 30 years and the time spent studying and writing about criminal justice issues. I did not want to write a complete and thorough analysis, for this would be way too long. I have made a few recommendations, which should not be seen as exhaustive of all possibilities, but merely a start in discussions. (I have added some appendices and many references for those who wish to pursue some of these ideas further.) For those who receive this, feel free to use it in whatever way you wish.

Introduction

It is a truism that change comes slowly within any bureaucratic system, but change does happen nevertheless. The American prison system has been in existence for more than 200 years. During this time it has gone through several changes. In fact, a few historians have noted six major eras: 1) 1790-1830: early American prisons; 2) 1830-1870: the Pennsylvania and Auburn systems; 3) 1870-1900: Reformatories; 4) 1900-1946: the "Big House"; 5) 1946 - 1980: the "Correctional Institution"; 6) 1980 to the present: "warehousing."¹ Each of these eras witnessed many changes: changes in the kinds of prisoners, the way prisons were constructed, where prisons were located, the philosophy of daily operations, the philosophy of the types of punishment given to prisoners, etc. Despite all of these changes, the very nature of the prison has not changed at all: it is still a place of punishment, no matter if it is called a prison or a "correctional institution." More importantly, the prison remains largely a failure in terms of the final product – protecting the public from criminal activity. On the other hand, the prison can

just as easily be viewed as a success, if we define “success” in terms of providing jobs with benefits, revenues for the hundreds of vendors, re-election of public officials campaigning on a “get tough on crime” platform, etc.

The last two eras have seen the greatest growth in the prison system. Thus, while in 1900 the prison population stood at around 50,000, by 1935 it was over 120,000. In 1900 there were 81 state prisons and reformatories, while at the end of the 1930s there were over 100. In 1990 there were a total of 1,287 prisons (80 federal and 1,207 state prisons); by 1995 there were a total of 1,500 prisons (125 federal and 1,375 state prisons), representing an increase of about 17 percent. The federal system experienced the largest increase, going up by 56 percent. In some cases, the *capacity within* the prison has increased - some “megaprisons” can hold from 5,000 to 10,000 inmates.² The most recent data show that as of December, 2006 there were more than 1.5 million in state and federal prisons. If we include those in jail, the total comes to more than 2.2 million. The overall incarceration rate (jails and prisons) in June, 2006 was 750 per 100,000 population (up from 601 in 1995), placing the United States as number one in the world.³ We are way ahead of other industrial democracies, whose incarceration rates tend to cluster in a range from around 55 to 120 per 100,000 population, with some well below that figure, like Japan's rate of 58. England is slightly above this range at 142.⁴ The average incarceration rate for *all countries of the world* is around 80. Thus, America's incarceration rate is almost nine times greater than the world average.⁵

As for Nevada, we are not alone in this incredible growth. In 1995 there were about 7,600 prisoners; currently we have almost 13,000. This is an increase of about 67%; it is predicted that we'll be at more than 15,000 by 2015. Our incarceration rate

stood at 467 as of 2005, above the nation average.⁶ I don't have the exact figures, but I recall back in the early 1980s when people in this state were talking about the incredible growth when the prison population was around 1,500! This means that the prison population in this state has grown by about 700% since that time!

Many others in this state have taken notice. A recent article in the *Reno-Gazette Journal* notes that prisoners at the Northern Nevada Correctional Center in Carson City will soon be moving into a 240-bed modular housing unit set up to relieve overcrowding. Currently there are 12,959 prisoners in a system that holds 12,753, at a cost of \$296 million annually. Despite the serious overcrowding, the prison in Jean (with about 500 prisoners) is being closed. In the meantime, bed space is being added at the Southern Desert Correctional Center near Las Vegas and at the Northern Nevada Correctional Center.⁷ The reasons Jean is being closed are not known to this author. It raises an obvious question, however: in a state overrun with prisoners and short on money, why close a 500 bed facility? And why close one so close to home to so many prisoners?

Clearly Nevada is not the only state facing this issue, as virtually every state in the country is facing its own prison crisis. California, to take just one example, is currently under a court order because of severe overcrowding, lack of medical care and many other issues. Similarly, the California Youth Authority has faced such severe problems that a huge lawsuit has forced the state to almost down most of youth facilities.⁸

The reader should notice that in order to begin taking some concrete steps toward meaningful reform it took two huge lawsuits, costing California millions of dollars. Other states have also had similar experiences with lawsuits.⁹ Will Nevada have to wait until a lawsuit forces it to make changes? (See Appendix A.)

What about the Children?

There is one thing to consider before talking about making changes in Nevada's prison system. According to the latest figures from the Nevada Department of Correction, there are at least 12,000 children with a parent in prison. I say "at least" because one of the categories displayed in a table found within the annual statistics report of 2006 is the number of prisoners with 6 or more children.¹⁰

I arrived at the 12,000 figure by adding up all the numbers reported in a table concerning "Distribution of Female (and Male) Offenders by Number of Children." Within each of these tables we have the number of prisoners with just one child, the number with two children, etc. The final category is "6 or more." We have no idea how many have more than 6 children. My guess is that there are at least 12,000 children in this state with a parent in prison. This does not include those with a parent who either is currently in one of the local jails and those with a parent currently on probation or parole. (In 2006 there were about 3,000 released on parole.) These figures alone should be a "call to arms" to make some drastic changes. Why? Simply because previous research has shown that the variable that is most significantly correlated with juvenile delinquency is "parental criminality."¹¹

Where do we start? Addressing the Drug Problem, Finally

A good place to begin is to examine the offenses that result in a prison sentence in Nevada. According to the 2006 statistical report (referred to above) during 2005 fully one-third of all females entering the system were convicted of a drug offense; for males it was 22%. This means that about 23% of the prisoners were convicted of a drug offense. It should be added that this does not include all the other offenses that may have been in

some way drug related. Prior research has noted that well over 50% of all crimes (higher for violent crimes) are in some way related to drug use.¹² After reviewing the extant research, one recent book noted that “research was almost unanimous in finding that drug users were more likely than non-users to be criminals and that criminals were more likely than non-criminals to be drug users.” Also, “high-rate drug users (particularly daily users) were more likely than low-rate users to commit crimes and to commit them at a higher rate.”¹³

We should not hastily conclude that “drug use causes crime,” for it is more complex than this. A report by the National Institute of Justice that urged caution, stating that “the drugs-crime link is best explained by the common cause model, in which any association of drugs and crime has a cluster of causes.”¹⁴ A recent report from Australia concludes, upon a review of the literature, that: “The common view, widely reflected in policy approaches here and overseas, is that at the very least drug use makes criminal involvement worse. Therefore action to reduce drug involvement (either through law enforcement or treatment) will probably reduce offending although it might not reduce the overall number of offenders.”¹⁵ A report from Ireland noted that there is even some evidence that serious drug use may begin *after* a prison sentence. In one study of prisoners it was found that the average age when they were first convicted of a crime was 16.8, while the average age of initiation into drugs was 18.¹⁶

In the state of Nevada, 90% of the male prisoners and more than 80% of female prisoners have used drugs, according to the Nevada DOC 2001 annual statistical report¹⁷ This same report notes that drug courts in Nevada have been operating since 1999 and prisoners started to qualify in 2001, yet only \$133,000 was budgeted for the Division of

Probation and Parole with just 50 slots opened in Washoe County and 100 in Clark County. This is a pittance for such an important problem.

The 2001 report also noted that Nevada law requires all prisoners who participate in a drug treatment program while in prison must participate in a community drug treatment program for one full year after release (NRS 209.4236 (3)(b)). Additionally, the law stipulates that the Director of Corrections must establish “one or more aftercare programs, working with the Bureau of Alcohol and Drug Abuse (NRS 209.4238). However, Nevada has not budgeted funds for the Director to comply with this statutory mandate.” The report also says that the DOC has two therapeutic drug treatment programs, so therefore funds should be provided for aftercare programs. One thing I find hard to believe is that there are only two drug treatment programs in the entire prison system for more than 11,000 prisoners, 90% of whom could theoretically use such a program!! In short, Nevada law requires drug treatment programs (plus alcohol and other rehabilitation programs) both within and outside the prison, yet few if any funds are made available.

Nevada is not unique for this issue has been identified throughout the country. One report estimated that “one-third of male and half of female inmates need residential treatment.” The report also noted that: “Treatment capacity in state prisons is quite inadequate relative to need, and improvements in assessment, treatment matching, and inmate incentives are needed to conserve scarce treatment resources and facilitate inmate access to different levels of care.”¹⁸ Another report concluded as follows:

Substance abuse appears to be inextricably interrelated to criminal behavior. For example, as many as 80% of those in the nation's prisons and jails may be seriously involved with alcohol and illicit drug use. Data from the national Arrestee Drug Abuse Monitoring (ADAM) program shows that the majority of

male (median of 64%) and female offenders (67%) test positive on a urinalysis for marijuana, cocaine, opiates, methamphetamine, or PCP at their initial booking into the criminal justice system, indicating very recent involvement with illicit drugs.¹⁹

According to a recent national survey of correctional institutions fully 80% of state and 70% of federal prisoners reported prior illicit drug use.²⁰ One half of state and federal prisoners said they were under the influence of alcohol or drugs when they committed their most recent offense.²¹

It is obvious that without seriously addressing the drug problem, any attempt to deal with the current prison crisis is bound to fail. This would also include a serious consideration of repealing some drug laws, especially marijuana. A good argument has been made about legalizing or decriminalizing some, if not all of these drugs.²² I would personally recommend that Nevada take the lead in legalizing marijuana, since there is no evidence that it is any more dangerous than alcohol and that no one has ever died from using it. Also, there is no evidence that it is a "gateway drug."²³ More on this subject is found in Appendix B.

What is most unusual about Nevada's prison population is that more than two-thirds (68%) never had a felony conviction in Nevada. It appears that the policy is "one strike and you're out" in Nevada. An additional 15% had only one prior felony conviction. In other words, 83% had less than two prior felony convictions. Some of these offenders had felony convictions in other states. Even so, as noted on another table, 48% of the male offenders and 51% of the female offenders still had no prior felony convictions *anywhere*.

As far as sentences are concerned, 83% had something other than death, life and life with and life without parole. So these individuals will be released eventually.

The Nevada DOC annual statistical report also noted that only 43% of Nevada's inmates had a high school diploma or GED at the time of admission. Also, nearly half of these inmates perform below the 8th grade in math and reading. This is a critically important statistic. For many years, criminologists have pointed out that education is an important variable in crime causation. Also, experts have constantly showed, through various research projects, that the more education a prisoner receives the greater will be his chances of succeeding.²⁴ A study of a group of prisoners who participated in an educational program with the Wyndham School District in Austin, Texas found that only 16% were back in prison within two years. The study found that those with the highest level of achievement scores within this program had the lowest recidivism rates. Consistent with prior research, it was also found that the older prisoners had the lowest recidivism rates (those 50 or older had a 7% recidivism rate and those 40-50 has a 13% recidivism rate, compared to those 17-25, who had a 20% recidivism rate).²⁵ Yet, in spite of these and other studies (too many to mention here) Pell Grants to prisoners were discontinued as a result of the Violent Crime Control and Law Enforcement Act passed in 1994.²⁶

It appears to me that those with the power to do something about reforming prisoners and protecting the public simply don't care to do what would help bring about changes. How else do we explain the failure to offer Pell Grants and other educational programs?

Too many minor offenders are locked up

A common reason for overcrowding is that too many are in prison who could just as easily be subjected to some form of punishment within a community setting. This is

the conclusion made by scores of criminologists over the previous two decades. A survey conducted by James Austin and John Irwin illustrates this problem. They examined a sample of prisoners in three states: Nevada, Illinois, and Washington. They first examined the crimes that the prisoners were convicted of and sent to prison for. They looked at the level of seriousness of these crimes.²⁷ The crimes fit into four general categories, ranging from most serious to least serious. The most common category, contrary to popular belief, was what Austin and Irwin considered as “petty crimes,” representing just over half (52.6%) of all the inmates. These the researchers describe as “crimes with no aggravating features”—that is, no large amount of money was involved, no one was injured, and so on. They included shoplifting and smoking a marijuana cigarette.

Almost 30 percent (29.3%) of the inmates had been convicted of “moderate crimes.” These included acts that resulted in minor injury, use of heroin, selling marijuana, use of a weapon, and theft of more than \$1,000. The next most common category was “serious crimes,” which constituted 13% of the inmates. These crimes included theft of more than \$10,000, attempted murder, and sale of heroin. Finally, less than 5% were “very serious crimes.” These included rape, manslaughter, homicide, and kidnapping.

Austin and Irwin also examined the “criminal careers” of these offenders, taking into account not only the current offense but offenses committed in the past. As they properly note, the notion that the “career criminal” is a crazed person who commits one felony after another is simply not accurate. What Austin and Irwin found was quite the opposite. They identified five distinct patterns of crime among these offenders: (1) “into

crime" (43%), (2) "crime episode" (19%), (3) "being around crime" (18%), (4) "one-shot crime" (14%), and (5) "derelicts" (6%). These patterns are remarkably similar to those identified by Irwin and others in studies conducted around thirty years ago.²⁸

Individuals in the "into crime" category (the most common) were heavily involved in a wide variety of criminal behaviors, almost on a daily basis. They are described and describe themselves as "dope fiends," "hustlers," "gang bangers," and the like. More than half of these individuals were in prison before, and about a third of them served time as juvenile offenders. Yet most of these very active criminals were convicted of "petty crimes" and did not fit the popular image of the "vicious predator." Rather, in the words of Austin and Irwin, they were "disorganized, unskilled, undisciplined petty criminals who very seldom engaged in violence or made any significant amounts of money from their criminal acts."²⁹

Space does not permit a detailed summary of each of these categories (interested readers should consult their book). What Austin and Irwin found corroborates what so many other researchers have found over the years when they probed beneath the surface of the "crimes" people commit that land them in the prison system.³⁰ Each person that is sent to prison is unique, and the crimes they commit are done under unique circumstances.

In fact, detailed studies of actual crimes show that there is a lot missing from the crime category itself: someone charged with "kidnapping" when they were not directly involved in the crime, but just in the same general area attending a party; some convicted of "burglary" who stole a candy bar; some "three strikes" offenders in California who

stole a pizza or VHS tapes or something similarly minor. Austin and Irwin give this account of one of Nevada's prisoners:

Edmond is a 50-year-old white carpenter who works in Florida in the winter and Seattle in the summer. He had been arrested once 22 years ago for receiving stolen property. He was passing through Las Vegas on his way to Seattle and says he found a billfold with \$100 on a bar where he was drinking and gambling. The owner, who suspected him of taking it, turned him in. He was charged with grand larceny and received three years.³¹

Then there are the huge numbers of people sent to prison all over the country who did little more than possess a small amount of an "illegal substance." In Nevada today, among those sent to prison last year, 22% of the male offenders and one-third of the female offenders are in on a drug conviction. Similarly, among parole violators, 18% of the males and 35% of the females were convicted of drug offenses. Among the total population of Nevada prisoners (new commits plus existing prisoners) 13% of the males and 25% of the females are in for drug charges.³² These percentages translate into a large number of people who may better be dealt with by something other than a prison sentence. Finally, 20% of the women and 40% of the males in Nevada prisons were convicted of lesser felonies classified as C, D, and E.³³

It is clear some alternatives should be explored and efforts to release those who are eligible because of "good-time" credits. Specifically, Assembly Bill 510 has resulted in freeing up beds. This is a bill that allows inmates to accrue "good time" credits faster than before.³⁴ I wonder if this bill will apply retroactively, as many prisoners have complained about errors in the computation of "good time" credits. I have heard numerous stories of prisoners who have served many months beyond the time they should have been released. I even heard from a reliable source that there is only one

person within the prison system in charge of computing these credits.³⁵ I suspect that many of these prisoners are well beyond their “crime-prone” years where the likelihood of re-offending has diminished considerably.³⁶ Currently more than one-third of all Nevada Prisoners are over 40 (about 4,500). Clearly most of these offenders are past their prime in terms of criminality. Let’s suppose that we could release about half or more of this group with little or no threat to public safety. In raw numbers this would mean a release of about 2,200 prisoners. We could also take a close look at those convicted of level D and E crimes, plus most drug offenses. In a recent report Jim Austin strongly urged granting probation to all of those convicted of class E crimes.³⁷

Probation and Parole Issues

Consistent with other aspects of the criminal justice system in Nevada and elsewhere, system probation and parole has succumbed to the “get tough” philosophy that has become dominant in the past couple of decades. Both of these systems were founded on principles based for the most part within the social work tradition. In other words, they were systems that were set up to actually help offenders.

In recent years, however, probation and parole has become more and more law enforcement oriented. In fact, in most jurisdictions both probation and parole officers are either encouraged or are required to carry a firearm with them. Most of these officers see themselves as law enforcement agents or “peace officers.” Many seem to enjoy this orientation much more than being a social worker. Former Commissioner of the Massachusetts Youth Corrections Department Jerome Miller tells the story of a sign posted on the wall in the office of a Chief Probation Officer’s which read “trail ‘em, nail ‘em, and jail ‘em.”³⁸

While conducting a study of jail overcrowding in Las Vegas in the late 1980s, a colleague and I were told by the director of the State of Nevada Department of Parole and Probation that “we train our agents to catch violators.” In other words, the current system of parole has been transformed from its original aim of assisting parolees (playing the role of “social worker”) to a system that is strictly law enforcement. One Las Vegas parole officer continually bragged about the absconders he had gone after and captured. In one case he traveled all the way to New Orleans to catch one of his parolees who had committed a couple of technical violations. He was, in common parlance, a gung-ho type of agent who could not wait to catch someone violating a rule.

What factors weigh most heavily in the decision to parole? A recent survey by the Association of Paroling Authorities found nine factors considered important. A close look at these factors reveals that the prisoner’s behavior *prior* to going to prison looms large, meaning that the person is was still being judged long after conviction and sentencing. The most important factor is the nature of the most recent offense, followed closely by “history of prior violence” and “prior felony convictions.” Other factors, in order of importance, are: possession of a firearm, previous incarceration, prior parole adjustment, prison disciplinary record, psychological reports, and victim input.³⁹ In short, whether the offender has been “rehabilitated” (however this is defined) is irrelevant.

An article in the Reno Gazette-Journal two years ago noted that Nevada is ranked number one in the country in the number of prisoners who are denied parole. The story noted that “a national study by the U.S. Department of Justice found that while the nation's parole population grew 2.7 percent in 2004, in Nevada, it dropped by 12.5 percent -- the biggest decrease in the country.”⁴⁰ Notice that this was two years ago and

nothing has been done to alleviate the situation. I keep getting e-mails from family members of prisoners who have been sharing stories of these denials and problems with the computation of "good time" credits.

An easy solution to this might be to set up a special ad hoc panel of experts to review every pending case of prisoners who have experienced problems with the computation of "good time" credits and to review cases that may be coming up for parole. Yes, I know that I am stepping on the toes of the parole board, but they do not seem to be doing their job very well, given all the complaints I have read about. If it is determined that they are eligible for parole, then release them so they can go home to their families and get on with their lives, while giving them all the support they need to turn their lives around.

Some Concluding Comments

I could continue with a more detailed review, and I know that Jim Austin has more of the same information in his various reports on Nevada (and other prison systems). I could also easily add several pages about recent changes in sentencing laws (e.g., Mandatory Sentencing, Truth in Sentencing, etc.) that have contributed to our current problems. All of this and more can be found in any standard textbook on criminal justice or corrections.

One of the biggest problems in dealing with crime via legislation is that the punishments are made to "fit the crime," as originally postulated by Cesare Beccaria whose book *On Crime and Punishment*, written in the late 18th century became the standard theoretical bedrock of our entire criminal justice system.. The problems inherent in this philosophy have become all too real over the years. This approach is inconsistent

with the real world. This is because not every crime is alike, just as not every person is alike. It is not true that a “robbery is a robbery,” a “burglary is a burglary,” etc. Yet we treat all robberies and all burglaries and all other crimes as if each and every representative acts are exactly alike – in surrounding circumstances, motivation, etc. This is why when we create overly broad legislation like “Three Strikes” and “use a gun and go to prison” they not only fail to have an impact on crime, they invariably lump together quite disparate kinds of human actions.

One big problem with how we respond to crime is that we continually pass legislation making punishments more severe, thereby ignoring two of the three elements of deterrence, namely swiftness and certainty, which Beccaria stressed more than severity. However, whenever legislators begin to discuss what to do about crime, they invariably try to outdo one another and their predecessors in getting tough. (We tend to choose the same approach when dealing with international crises.)

Frankly, to me this is becoming a laughable, tragic comedy. We keep doing the same things, yet expecting different results. This sounds like a common definition of insanity!

Currently there is a movement by a few public officials and concerned citizens within this state to seriously address the problem of Nevada’s prisons. I seriously doubt if anything substantial will be done to alleviate the problems. Sure, we may commission another study, which will probably arrive at findings and conclusions already done in this state and in virtually every other state in the country. We’ll end up making a few cosmetic changes here and there, but five or ten years from now there will be more outcries about the sorry state of affairs within the prison system and more discussions

about what can be done. Someone else will be called in to conduct yet another study which will arrive at almost identical conclusions, and again, nothing will improve or change.

Call me cynical, if you will, but history is on my side on this issue. We've gone down this road before and we can still see the tracks from prior journeys. Why is this? I'm willing to tell you why, but will anyone listen?

The reason is fairly simple: we keep tinkering with the existing system, like fixing an old car that should be relegated to the junk yard. More importantly, we never seriously address the most important issue of all, something that politicians are afraid to touch. Prisons are overcrowded for two reasons: too many people are going in and too many are staying there too long. The reason too many are going in have to do with two things: too many are committing crimes but also, too many are being arrested for violating laws that should not even be on the books in the first place. The former stems from the many causes of crime that we fail to seriously address. This also stems from what amounts to useless legislation that is more based on exceptional cases than the real world – especially drug laws and sentencing enhancements – which have done little or nothing to seriously reduce criminality.

The reader might reasonably ask: what are these causes you are talking about? I could fill an entire book (and many have done this) about these causes, which have been amply documented for more than 100 years. A rather simple test will identify some of these causes. Ask yourself the following question: why am I not a criminal? And don't just say "because I chose not to be" for it is far more complex than this (besides, I would immediately ask you why you did not choose to become a criminal). As you begin to list

some of these reasons (family background, local environment, education, etc.) you are compiling the various causes that should be addressed. These factors determined your life of non-involvement in crime; the absence of such factors helped determine the involvement in crime of those currently incarcerated. Give others the same advantages you have been given. There is your solution to the crime problem in America. Apparently most other countries have been successful at this (especially European countries, plus Canada, Australia, New Zealand, etc.). Why can't we do this too, especially if we want to be a leader in education and community rather than imprisoning our citizens?

Appendices

Appendix A: Alabama Case

ACLU and Alabama Prison Project Release Report Urging Community Corrections as Cost Saving Measure (4/29/2003)

MONTGOMERY, AL-Citing Alabama's budget crisis and dangerously overcrowded prisons, the American Civil Liberties Union and the Alabama Prison Project today released a new budget analysis highlighting a potential savings of \$300,000 to \$400,000 if the state accepted prisoners living with HIV into existing community-based corrections programs.

"I commend Governor Bob Riley and the state legislature for passing emergency legislation earlier this month and for considering additional legislative efforts this week that reduce corrections costs by utilizing community programming," said Lucia Penland, director of the Alabama Prison Project.

"But problems continue to plague Alabama's prison system," Penland added. "In light of the findings that support admission of HIV-positive prisoners into diversion and community corrections programs, the time is right to explore more cost-saving measures and stop the needless segregation of HIV-positive prisoners."

Alabama currently bars all prisoners living with HIV/AIDS from participating in activities with other prisoners and offers few alternative opportunities for rehabilitative programming. No other state in the country completely segregates prisoners with HIV/AIDS in this way.

Alabama's misguided HIV/AIDS segregation policy applies to both in-prison programs -- such as education, jobs, vocational training, and religious services -- as well as to community-based programs run by the state or outside organizations. Community-based options include work release, supervised intensive restitution, boot camp, and other programs.

Today's analysis examines the Alabama Sentencing Commission's findings that the state pays \$26 a day to house an individual in prison but only \$11 a day to divert a prisoner into intermediate sanctions. Another recent report on Alabama's corrections system by Carter Goble Associates found that the state pays \$9000 per person per year for incarceration versus \$2000 for community corrections programs.

The analysis goes on to illustrate that if HIV-positive prisoners could participate in these programs at the same rate as other Alabama prisoners, 56 men and women could be transferred resulting in a cost savings to the state of \$300,000-\$400,000.

"Governor Riley has publicly announced his commitment to expanding community-based correctional programs as an effective low-cost criminal justice sanction," said Jackie Walker, HIV/AIDS/Hepatitis Information Coordinator at the ACLU's National Prison Project. "His swift response to this new analysis could redress a misguided and expensive one-of-a-kind policy in Alabama."

Today's briefing paper, *Cost of Excluding Alabama State Prisoners with HIV/AIDS from Community-Based Programs*, was written by Dr. Rachel Maddow, an expert consultant for the ACLU's National Prison Project. Copies of the report are available on line at [/prison/medical/14698pub20030429.html](http://prison/medical/14698pub20030429.html)

ACLU Applauds Alabama Governor for Prison Reform Efforts and Suggests Ways to Further Positive Steps (4/9/2003)

**Statement of Margaret Winter, Associate Director
ACLU National Prison Project**

WASHINGTON-The American Civil Liberties Union today commends the actions of Alabama Governor Bob Riley and state legislators who moved to address the crisis in the state's prison system by approving an emergency appropriations bill for the Alabama Department of Corrections.

In today's emergency appropriation, the governor and legislature directed new resources to expand community corrections. Alabama's prisons are dangerously overcrowded, and community corrections programs afford an important opportunity to reduce costs while balancing the need for punishment and rehabilitation. But other problems plague Alabama's prison system and the governor and legislators should continue in this vein to address them.

The Alabama Department of Corrections has long prohibited an entire class of inmates -- those who are HIV-positive -- from accessing programs like community corrections. HIV-positive men and women are forbidden from participating with other prisoners in any corrections department programs including those that divert offenders from prison into alternatives to incarceration programs like 'boot camp' or 'work release.'

No other prison system in the nation has a total segregation policy for inmates with HIV/AIDS -- including the Tennessee Department of Corrections, which was until recently headed by Alabama's Corrections Commissioner Donal Campbell.

There is no reason that HIV-positive inmates should be excluded from these important programs, and the state's decision to keep them in prison while diverting other similarly qualified inmates, is an anachronistic and expensive mistake.

Both of the above are found on this web site: <http://www.aclu.org/prison/overinc/index.html>

Appendix B

Ending the “War on Drugs”⁴¹

The “war on drugs” has had a devastating toll on American citizens, especially the poor and racial minorities. The negative consequences of this “war” have been far-reaching: the exploding prison population, the targeting of racial minorities (and their disenfranchisement), the enormous costs to taxpayers, little or no impact on drug use. Before any meaningful changes can come about and before any sort of “justice” can be achieved—however “justice” is defined—we recommend the end of the “war on drugs” or, at the very least, a sort of “ceasefire” until other options are studied and tried.

The drug war has helped create and perpetuate a prison-industrial complex, which in turn is the result of an economic system driven by a “free market” philosophy that places profits above people. In this “free market” everyone is “free” to earn a buck any way they can. The fact that it may be illegal is often beside the point; the fact that it may be downright unethical is largely irrelevant. One of the key aspects of a capitalist, “free market” economic system is that the production and distribution of “commodities” are the major goals. Commodities create profits, pure and simple. And the production and distribution of commodities are based on the “law of supply and demand,” which dictates that where there is a demand for a commodity, someone willing to take the risks will engage in the act of supply. And when the commodity has been considered a “vice” and attempts are made to limit access to it by the criminal justice system, there appears to be even a greater demand. Such has been the case with all sorts of “vices”—prostitution, gambling, alcohol, drugs ...you name it. When we have made attempts to reduce either

the supply or the demand of something that is desired through the law, we have always had drastic consequences and have always failed miserably.

What many do not seem to understand is that by making something illegal that is at the same time highly desired by the general public, we open up all sorts of opportunities for not only bribery (the usual scandalous variety where cops receive payoffs to look the other way, judges fix things if they get that far, etc.) but also a great deal of money made very legitimately via working in the criminal justice system. Indeed, largely as a result of fighting the drug war, the “criminal justice industrial complex” (of which the prison is one part) has become a booming business. Currently we taxpayers shell out in excess of \$200 billion per year for the police, the courts, and the correctional system—up from a paltry \$10 billion at the state of the 1970s. Fighting the drug war is big business. The same can be said of the “war on gangs.”

The fact is we do not seem to be winning the drug war. At least, we are not winning in the usual sense of the word: the drug problem is not getting any better, people are finding it easier and easier to obtain drugs, street prices of illegal drugs have dropped considerably, and hardly a dent has been made in the amount of drugs coming into the country. But in another sense many are in fact “winning”—if we define *winning* as making huge profits, the expansion of drug war bureaucracies, and so on. Aside from the jobs created and the money made actually “fighting” the war (lucrative contracts to build prisons, providing police cars and various technology to fight crime, drug testing, etc.), there is plenty of money to be made on the supply side.

Part of the problem is that drugs are a huge business enterprise. Consider these facts:⁴²

- A United Nations report notes that drug trafficking is a \$400 billion per year industry, equal to about 8 percent of the world's trade. One example: one kilo of raw opium in Pakistan averages \$90 but sells for \$290,000 in the United States. Another example: there are about \$7 billion in drug profits coming out of Colombia each year (legitimate exports are only slightly greater at \$7.6 billion); Colombian cartels spend about \$100 million on bribes to officials each year; 98 percent of Bolivia's foreign exchange earnings from goods and services came from the coca market in 1993.
- The estimated economic cost of alcohol abuse is around \$148 billion, compared to drug-abuse costs of around \$97 billion. Concerning this \$97 billion, 60 percent of the costs are related to law enforcement and imprisonment; only 3 percent were from the victims of drug-related crime. An estimated 85,000 die each year from alcohol abuse, plus an additional 16,000 from motor vehicle accidents where alcohol was involved.
- And speaking of costs: in 1969 the Nixon administration spent \$65 million on the drug war; in 1982 the Reagan administration spent \$1.65 billion; in 1998 the Clinton administration requested \$17.1 billion (more money for drug war bureaucracies). The most recent data show that during 2005 the combined total money spent at the state and federal levels was about \$50 billion.
- Our government steadfastly continues to focus on the supply side rather than the demand side of the equation, with horrible results. Interdiction efforts intercept only 10 to 15 percent of the heroin and 30 percent of the cocaine. United States expenditures to counter drug operations in Colombia come to about \$1.3 billion, with negligible results. In fact, Colombia has recently passed Peru and Bolivia as the number-one producer of coca.

It looks as if the "spirit of capitalism" helps perpetuate the demand for and the supply of drugs. Drugs, whether legal or illegal, are profitable commodities—profitable for the supplier, the seller, and the "drug warriors" who are supposedly trying to "win" this "war." But these "drug warriors" are not really interested in truly "winning" in the sense of eliminating the drug problem or even reducing it to any significant degree.⁴³ After all, careers are at stake, as are promotions and other perks. Further, we must consider the thousands of businesses, large and small, that benefit from the existence of jails and prisons. Consider the number of contractors needed to build a prison or jail (engineers, architects, builders, electricians, mortgage companies, those providing

security measures such as locks and fences, furniture, computers, etc.) and then those who benefit from everyday maintenance (suppliers of linen, food, medical supplies, etc.). Billions of dollars are to be made in the “prison industry,” not to mention salaries and benefits for those working in the system (police officers, court workers, judges, prison guards, etc.). Then, too, there are the education and training for the next generation of “drug warriors” in various criminal justice programs in more than three thousand colleges and universities, plus law enforcement training academies.

In other words, the “war on drugs” is too profitable to end, for too many people and too many government agencies, and corporations are reaping profits from this war. In spite of the obvious obstacles that may lie in the way of ending this war (and remember that it is really in the best interest of the average citizen to end this “war”), we nevertheless insist that some attempt be made to do so.

The first thing to consider is the options that are available. Do we simply legalize all drugs? Do we legalize them with some regulations and restrictions (e.g., minors prohibited from using)? Do we legalize only some drugs (e.g., marijuana)? Do we “decriminalize” some or all drugs by limiting the penalties or some other options? Do we involve the criminal justice system in only indirect ways, such as having drug courts or drug treatment sentences instead of jail or prison (as stipulated in a recent California referendum, known as Proposition 36)? First, let’s review some myths and realities about drugs and crime.⁴⁴

Myths and Realities about Drugs and Crime

First, we must be aware of the extent of illegal drug use (leaving aside the widespread use of both tobacco and alcohol—the two most dangerous drugs in the world, responsible for

perhaps 500,000 deaths each year). Most experts on drug use have come to the conclusion that there are *two drug problems*, one related to the general population, the other related to those living in extreme poverty, including those caught up in the criminal justice system. In recent years, while the use of illegal drugs by the general population has declined, there has been a significant increase in drug use among the poorest segments of our society.

The connection of drugs to crime is a complex issue, but generally we can say that there are three aspects of the drug–crime connection. First, there are *drug-defined crimes*—possession and sale of illegal drugs. Second, there are *drug-related crimes*, such as those (e.g., robbery) committed to support one’s habit or violence associated with the pharmacology of the drug. Third, there are *crimes associated with drug usage*, meaning that the offender was using drugs around the time the crime was committed but the crime was not directly caused by drug use. What is important to note is that while the majority of high-rate offenders use drugs, most started their criminal careers *before* the onset of drug use, and some started their criminal careers and their drug use about the same time. It must also be stressed that *the overwhelming majority of those who used an illegal drug sometime in their lives became neither drug addicts nor career criminals*. Thus, reducing illegal drug use will not guarantee a lowering of the crime rate.⁴⁵

What about the dangerousness of illegal drugs? It is beyond the scope of this final chapter to explore the harmfulness of the various drugs on the market—both legal and illegal. We know for a fact what alcohol and tobacco usage does to individuals, their families, and their communities. The extent of the harm done by substances that have been made illegal is not known with any degree of certainty, although some studies

document the negative long-term consequences of the use of such drugs as cocaine and heroin, especially heroin.⁴⁶ Nevertheless, one set of statistics underscores the dramatic differences between tobacco and alcohol on the one hand and illegal drugs like cocaine and heroin on the other. Every year, on average, there are between 400,000 and 450,000 tobacco-related deaths, between 80,000 and 100,000 alcohol-related deaths, roughly 32,000 deaths from prescription drugs, and 17,000 deaths are related to the “hard drugs” (cocaine, heroin, etc.). And how many deaths are attributed to marijuana? Zero!⁴⁷

There is continuing controversy over marijuana use. Although marijuana is not a totally benign substance, the negative consequences of marijuana use are far less than most other drugs. To be sure, there are some harmful effects, such as the ingestion of carbon monoxide (one marijuana cigarette delivers three times more tar to the system than one tobacco cigarette).⁴⁸ However, most hard-core tobacco smokers go through a pack a day or more, compared to the typical casual marijuana smoker. And contrary to popular myth, marijuana is not a “gateway” drug—leading to the use of more serious drugs. Most of those who use marijuana do not progress to the harder drugs. Besides, THC (the main ingredient for marijuana) ranks lowest in addictive potential of all commonly used substances, including caffeine.⁴⁹

We have not learned some of the valuable lessons of history about using the criminal law to attempt to control something that is in great demand. First, we have to consider the law of supply and demand, which says that when you have a large demand for a product (e.g., drugs, alcohol) or a service (e.g., prostitution), there will always be someone willing to provide it, despite the risks involved. Second, any effort to prevent the supply from getting to those who demand these goods or services inevitably results in

the creation of criminal syndicates and widespread evasion by those who want what is offered. Third, any attempts to enforce these laws will have some very negative side effects, such as corruption within the criminal justice system (especially the police), the violation of individual rights, and turf wars between rival street gangs, not to mention widespread disrespect for the law.⁵⁰ Fourth, any intensification of law enforcement efforts will result in many people either substituting other illegal products or transferring the “service” to people who are more willing to take the risks—after all, the profits are always quite high.

A Modest Proposal

Short of legalizing all drugs (which may be the ultimate solution but is politically infeasible for the foreseeable future), we recommend at the very least two things. First, legalize marijuana, with some restrictions for youth (as there are for alcohol). This makes the most sense to us, because about half of all drug arrests are for marijuana, mostly possession.⁵¹ In the year 2005 (the latest figures available as of this writing), 43 percent of all drug arrests in the United States were for marijuana, and almost 90 percent of these were for simple possession. Of course, even this modest proposal will receive considerable resistance, especially from those in charge of enforcing the drug laws and those profiting from the prison-industrial complex. The usual argument is that such a policy would mean that we condone the use of marijuana, to which we reply, so what? We condone the use of alcohol and, until recently, we condoned the use of tobacco. We can discourage use of marijuana—and other drugs as well—by using the methods that were so successful in reducing the demand for tobacco. Further, because there is no

evidence that marijuana use leads to any serious problems (with some exceptions, to be sure)—and no one dies from it—why criminalize it?⁵²

Second, for those addicted to drugs, treatment options should be made available.⁵³ There are plenty of relatively successful treatment options. It is clear that providing treatment instead of jail or prison is much more cost-effective. One study noted that every dollar spent on drug treatment results in an overall \$3 social benefit (less crime, more employment, etc.). One illustration is the *Treatment Alternatives to Street Crime (TASC) project*. Under this plan, instead of going to jail or prison, an offender is placed under community-based supervision in some drug treatment program.⁵⁴

Notes

¹ The first five were suggested by Irwin, J. (1980). *Prisons in Turmoil*. Boston: Little Brown, while the last period (covering the years since Irwin's book), was suggested by prison expert Robert Weiss (personal communication).

² Austin, J. and J. Irwin (2001). *It's About Time: America's Incarceration Binge* (3rd ed.). Belmont, CA: Wadsworth, p 66.

³ Sabol, W. J. and T. D. Minton (2007). "Prison and Jail Inmates at Midyear 2006." Washington: US Department of Justice, Bureau of Justice Statistics, June; Sabol, W. J, H. Couture and P.M. Harrison (2007). "Prisoners in 2006." Washington: US Department of Justice, Bureau of Justice Statistics, December.

⁴ "U.S. prison population continues rising." CNN, April 24, 2005. <http://www.cnn.com/2005/US/04/24/prison.population.reut/index.html?section=cnn.us>

⁵ Kuhn, A. (2001). "Incarcerations Rates Across the World." In M. Tonry (ed.), *Penal Reform in Overcrowded Times*. New York: Oxford University Press.

⁶ Nevada Department of Corrections Fiscal Year 2006 Statistical Abstract. <http://www.doc.nv.gov/stats/annual/fy2006.pdf>

⁷ Farley, M. (2008). "Prison crowding targeted in state." *Reno-Gazette Journal*, February 29.

⁸ There are literally dozens of studies and news reports documenting the California prison crisis. A good summary can be found in the Little Hoover Commission (2007). "Solving California's Corrections' Crisis: Time is Running Out." <http://www.lhc.ca.gov/lhcdir/report185.html>; for documentation on the California Youth Authority problems see the following: Rothfield, M (2008). "Advocates urge a judge to appoint a receiver to take over a system they say remains broken despite long-standing promises to fix it." *Los Angeles Times*, February 18 (http://www.sheldensays.com/advocates_urge_receiver_take_over_CYA.htm); Abrams, J. (2007). "Study finds youth facility 'recipe for tragedy'." *Los Angeles Times*, February 27 (http://www.sheldensays.com/study_finds_youth_facility.htm); see also my commentary: "Troubles in the CYA Nothing New." <http://www.sheldensays.com/Com-two.htm>, February 10, 2004.

⁹ Some examples can be found on the ACLU web site: <http://www.aclu.org/prison/index.html>. Here's a specific example from California concerning medical care: "ACLU Calls on Nevada Governor to Address Grossly Inadequate Prison Health Care" (12/6/2007): <http://www.aclu.org/prison/medical/33011prs20071206.html>.

¹⁰ See the following web site: <http://www.doc.nv.gov/stats/annual/fy2006.pdf>.

¹¹ Documentation can be found in just about any delinquency book. See my own book, Shelden, R. G. (2006). *Delinquency and Juvenile Justice in American Society*. Long Grove, IL: Waveland Press, pp. 280-281; see also Dryfoos, J. G. (1990). *Adolescents at Risk: Prevalence and Prevention*. New York: Oxford University Press. There are many references about the issue of children of incarcerated parents. Some examples include: Gabel, K. and D. Johnston (eds.) (1995). *Children of Incarcerated Parents*. New York: Lexington Books; Gabel, S. (1992). "Children of Incarcerated and Criminal Parents: Adjustment, Behavior, and Prognosis." *Bulletin of the American Academy of Psychiatry Law* 20: 33-45; Gaudin, J., and R. Sutphen (1993). "Foster Care vs. Extended Family Care for Children of Incarcerated Mothers." *Journal of Offender Rehabilitation* 19: 129-147; Seymour, C. (1998). "Children with Parents in Prison: Child Welfare Policy, Program and Practice Issues." *Child Welfare Journal of Policy, Practice and Program* (Special Issue: Children with Parents in Prison), September/October.

<http://www.cwla.org/programs/incarcerated/so98journalintro.htm>.

¹² There is ample documentation. See, for instance, the following: Mumola, C. J. and J. C. Karberg (2006). "Drug Use and Dependence, State and Federal Prisoners, 2004." Washington, DC: Bureau of Justice Statistics, October. <http://www.ojp.usdoj.gov/bjs/pub/pdf/dudsfp04.pdf>;

¹³ Bennett, T. and K. Holloway (2005). *Understanding Drugs, Alcohol and Crime*. New York: Open University Press, p. 150.

¹⁴ National Institute of Justice (2003). "Toward a Drugs and Crime Research Agenda for the 21st Century." <http://www.ncjrs.gov/pdffiles1/nij/194616.pdf>.

¹⁵ Australian Institute of Criminology (2004). "Does drug use cause crime? Understanding the drugs-crime link." <http://www.aic.gov.au/publications/crm/crm022t.html>.

¹⁶ O' Sullivan, E. and I. O'Donnell (nd.). "Drug and Crime: Evidence and Trends." <http://www.ndc.hrb.ie/attached/820-0771.pdf>.

¹⁷ <http://www.doc.ny.gov/gsc/docs/Report%20Appendices.pdf>.

¹⁸ Belenko, S. and J. Peugh (2005). "Estimating drug treatment needs among state prison inmates." *Drug and Alcohol Dependence* 77 (3), March: 269-281.

¹⁹ Hiller, M.L. (2005). "Prisoners with substance abuse and mental health problems: use of health and health services." *American Journal of Drug and Alcohol Abuse* (February). This quote refers to the (recently discontinued) Arrestee Drug Abuse Monitoring (ADAM) project, which reported annually on the results of drug testing among those arrested. Concerning alcohol use, the same report noted that: "Adult male arrestees drank heavily. Among the sites, the proportions who had five or more drinks on at least one occasion in the month before their arrest ranged from a low of 35 percent to a high of 70 percent." To view this report go to this web site: <http://www.ncjrs.gov/pdffiles1/nij/193013a.pdf>.

²⁰ Mumola C.J. (1999). "Substance Abuse and Treatment, State and Federal Prisoners, 1997." Washington, DC: U.S. Department of Justice, Office of Justice Programs.

²¹ Weisner, C. and L. Schmidt (1995). "The community epidemiology laboratory: studying alcohol problems in community and agency based populations." *Addiction* 90(3):329-341.

²² Miron, J. A. (2004). *Drug War Crimes: The Consequences of Prohibition*. Oakland: The Independent Institute; for a very balanced perspective on the legalization/decriminalization debate, see Inciardi, J. (2002) *The War on Drugs III*. Boston: Pearson/Allyn and Bacon.

²³ A good review of these issues, including the "gateway" theory, is provided in the following web sites: <http://www.drugwarfacts.org/index2.htm>; <http://www.drugsense.org/html/index.php>; <http://stopthedrugwar.org/>.

²⁴ For a good review see Karpowitz, D. and M. Kerner (nd). "Education as Crime Prevention: The Case for Reinstating Pell Grant Eligibility for the Imprisoned." Anandale-on-Hudson, NY: Bard Prison initiative, Bard College. http://www.bard.edu/bpi/pdfs/crime_report.pdf.

²⁵ Fabelo, T. (2000). "Impact of Educational Achievement of Inmates in the Wyndham School District on Recidivism." Austin, TX: Criminal Justice Policy Council, August. <http://www.windhamschooldistrict.org/cjpc/wsdrec10.pdf>.

²⁶ For details see this web site: http://en.wikipedia.org/wiki/Violent_Crime_Control_and_Law_Enforcement_Act.

²⁷ Austin and Irwin based the "seriousness" of crime on that of the general public, which was measured by the Center for Studies in Criminology and Criminal Law at the University of Pennsylvania.

²⁸ Irwin, in his earlier research on a sample of offenders in California, found eight criminal identities (see our discussion of typologies of criminal behavior in Chapter 2): (1) the *thief* (8% of his sample); (2) the *hustler* (7%), the *dope fiend* (a term used by many drug users; 13%), the *head* (user of psychedelic drugs, such as marijuana and LSD; 8%); (5) the *disorganized criminal* (one who pursues “a chaotic, purposeless life, filled with unskilled, careless, and variegated criminal activity”; they “make up the bulk of convicted felons”; 27%); (6) the *state-raised youth* (the young offender who has served one or more terms in youth institutions and, in a sense, has been reared, during the formative years, in various kinds of state institutions; 15%); (7) the *lower-class man* (the man from a lower-class background who has not had a long criminal career but who just happened to have committed a felony; 6%); (8) the *square John* (the conventional person from a stable working-class background who simply made a mistake and ended in prison; 16%). See Irwin, J. *The Felon*. Englewood Cliffs, NJ: Prentice-Hall, 1970.

²⁹ Austin and Irwin, *It's about Time*, p. 41.

³⁰ For a completely different look at prisons and prisoners see a book written mostly by ex-convicts: Ross, J. I. and S. Richards (2002). *Convict Criminology*. Belmont, CA: Wadsworth.

³¹ Austin and Irwin, *It's about Time*, p. 27. In this specific example, it is important to note that this incident occurred in Nevada, where just about any offense committed within a gaming establishment is treated much more harshly than would otherwise be the case. One reason is that the state of Nevada wants to maintain an image suggesting that it is not only “tough on crime” but, more important, casinos are legitimate enterprises where people can come and have fun while feeling safe (see Farrell, R., and C. Case. *The Black Book and the Mob*. Madison: University of Wisconsin Press, 1995).

³² <http://www.doc.nv.gov/gsc/docs/Report%20Appendices.pdf>.

³³ Class C = minimum of one year and maximum of five years in prison; Class D = minimum of one year and maximum of four and the court may impose fines; Class E is the same as Class D except that the judge may suspend the sentence and grant probation. The exact percentages for each of these is: 14% of the males and 9% of females are in on Class C crimes; 17% of males and 8% of females are in for Class D crimes; 9% of males and 3% of females are in for Class E crimes.

³⁴ Farley, “Prison crowding targeted in state.”

³⁵ A constant flow of e-mails comes my way from friends and family members of prisoners complaining about this process. It's become so bad that there is probably a few lawsuits in the making.

³⁶ There is a considerable amount of research showing that criminal behavior declines significantly with age. Data from the FBI's annual Uniform Crime Report shows this quite clearly. According to the 2006 annual report more than three-fourths (77.8%) of all of those arrested were under 40. Table 38 of this report clearly shows the declining arrest rates as people age: http://www.fbi.gov/ucr/cius2006/data/table_38.html.

See the following study for further documentation: Srivastava, S. et al. (2003). “Development of Personality in Early and Middle Adulthood: Set Like Plaster or Persistent Change?” *Journal of Personality and Social Psychology*, Vol. 84, No. 5.

³⁷ Austin, James and La Toya McBean (2008). “Justice Reinvestment Project: February Update.” Carson City, NV: Presentation to the Advisory Commission on the Administration of Justice, February 11.

³⁸ Miller, J. G. *Search and Destroy: African American Males in the Criminal Justice System*. New York: Cambridge University Press, 1996, p.131.

³⁹ Runda, J., E. Rhine, and R. Wetter. *The Practice of Parole Boards*. Lexington, KY: Association of Paroling Authorities, 1994.

⁴⁰ Bellisle, Martha (2006). "Report discovers state leads U.S. in parole denials." *Reno Gazette-Journal* March 12.

⁴¹ This is taken from the following source: Sheldon, R. G., W. B. Brown, K. S. Miller and R. B. Fritzler (2008). *Crime and Criminal Justice in American Society*. Long Grove, IL: Waveland Press, chapter 18.

⁴² A variety of sources have been consulted for this information, especially a web site called *Drug War Facts* (<http://www.drugwarfacts.org/>). See also the following web sites: <http://www.drugpolicy.org/homepage.cfm>; <http://www.drugsense.org/html/>; http://www.pbs.org/newshour/bb/latin_america/jan-june01/colombiadrug_03-02.html; <http://www.pbs.org/wgbh/pages/frontline/shows/drugs/charts/>.

⁴³ Miller, R. L. *Drug Warriors and Their Prey: From Police Power to Police State*. Westport CT: Praeger, 1996.

⁴⁴ The following sources were consulted for the following discussion: Walker, S. (2006) *Sense and Nonsense about Crime and Drugs*. (6th ed.). Belmont, CA: Thompson/Wadsworth, Chapter 13; Inciardi, J. (2002) *The War on Drugs III*. Boston: Allyn and Bacon, Chapter 10; Miron, J. (2004). *Drug War Crimes*. Oakland: The Independent Institute.

⁴⁵ Walker, *Sense and Nonsense about Crime and Drugs*, pp. 264–265.

⁴⁶ Inciardi, *The War on Drugs III*, pp. 283–285; see also Clark, T. "Heroin: The Problem with Pleasure." Online (<http://world.std.com/~twc/heroin.htm>), and "Keep Marijuana Illegal—For Teens." Online (<http://world.std.com/~twc/marijuan.htm>).

⁴⁷ These data are taken from the following sources: "Governor Pushes Legalization of Drugs during U. of Mexico Speech." *Daily Lobo*, September 25, 2000; Duhigg, C. "Token' Reformer." *The New Republic*, April 3, 2000; Pierce, N. "Prison Reform: A Moment to Seize?" *Nation's Cities Weekly*, March 6, 2000; see also the following web sites: <http://www.drugwarfacts.org/causes.htm#item1>; <http://drugpolicy.org/homepage.cfm>.

⁴⁸ Inciardi, *The War on Drugs III*, p. 282.

⁴⁹ <http://www.drugwarfacts.org/addictiv.htm>.

⁵⁰ Walker, *Sense and Nonsense about Crime and Drugs*, p. 272. See Sheldon, R., S. Tracy, and W. B. Brown, *Youth Gangs in American Society* (3rd ed.). Belmont, CA: Wadsworth, 2004.

⁵¹ *Drug War Facts* (<http://www.drugwarfacts.org/marijuan.htm>).

⁵² One of the best books concerning the legalization of drugs is Miron, *Drug War Crimes*.

⁵³ Documented in Inciardi, *The War on Drugs III*, Ch. 10 and pp. 305–308, and Walker, *Sense and Nonsense about Crime and Drugs*, Ch. 13. See also Miron, *Drug War Crimes*.

⁵⁴ Inciardi, *The War on Drugs III*, pp. 306–307.