

Testimony to the Charles Colson Task Force on Federal Corrections

Submitted by:

Glenn E. Martin

President and Founder

,JustLeadershipUSA

JustLeadershipUSA is dedicated to cutting the US prison population in half by 2030 while reducing crime. JLUSA empowers people most affected by incarceration to drive policy reform.

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My name is Glenn E. Martin and I am the President and Founder of JustLeadershipUSA. I want to thank Charles Colson Task Force on Federal Corrections for inviting me to participate today. I am delighted to be here. Some brief background on myself and my work: Nine years of incarceration, parole and probation supervision thrust me into the world of criminal justice reform. While incarcerated, I became intimately familiar with the destructive power of our penal system, in both human and economic terms. In 2013, thirteen years after exiting prison, I resigned from my position as Senior Vice President at the Fortune Society, one of power and prestige, to found JustLeadershipUSA (JLUSA); an organization dedicated to proving that those closest to the problem are closest to the solution. JLUSA dares to put new and authentic drivers in the seat of the reform locomotive. The vision is straightforward: the most compelling advocates of change are those that have been most affected by incarceration. JLUSA's mission is to cut the US prison population in half by 2030 while reducing crime.

We are supportive of and encouraged by the Task Force's mission and we hope to serve as a resource to the Task Force as it continues to examine the challenges in the federal corrections system and develop practical, data-driven policy responses. It is remarkable that leaders and institutions with such a demonstrable record of failure are only now receiving the vigilant scrutiny they deserve.

Poverty/Racial Impact:

People of color and poor people are heavily overrepresented among the incarcerated. In 2004, Hispanics represented approximately one-fifth of people in state prisons, and one-quarter of people in federal prisons. Slightly less than half of people in both state and federal prison were black. Today, for black males in their thirties, one of every ten is in prison or jail any day of the week. In addition, 70% of people in state and 58% of people in federal prisons had an income of less than \$2000 in the month prior to arrest.

The problem of disproportionate representation far exceeds the makeup of our jails and prisons. Police practices, courtrooms, and even our educational system have all adopted tactics that are inherently unjust and further advance the complicated structure of institutional racism. The unjust law enforcement policies that result in incarcerating people of color at an exponentially higher rate than their white fellow citizens has created a perception that the poor and people of color – individuals, families, and entire communities – are inherently at fault, diabolical, and deviant – a destructive perception that threatens both our founding principles and our future as a nation.

Unbeknownst to many, it's four decades worth of misguided public policy changes—such as the “war on drugs,” mandatory minimum sentencing, “Three Strikes” laws, Stop and Frisk, and reductions in the availability of parole or early release—that are, in fact, the main reasons for the quadrupling of the incarcerated population in the United States—not violent crimes.

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The consequence of systems cloaked in racism, fear and the pursuit of profit is a societal acceptance of systematic maltreatment of poor people and persons of color, and ultimately the creation of a caste system, with incarcerated individuals and their respective communities at the bottom of the socioeconomic hierarchy and educational access tier.

Overlap of Perpetrators and Victims:

These consequences compound themselves within the community. The punishments for being poor and black are manifold. The research into this question is legion. The Brookings Institution's Hamilton Project recently reported that the victims of crime are disproportionately people in low-income communities.¹

And we know those communities are disproportionately communities of color. Across all categories of crime, individuals living in low-income households are significantly more likely to be victims of crime. For families with incomes less than \$15,000 the victimization rate was over three times the rate of families with incomes of \$75,000. The sad reality is that poorer Americans are at greater risk of being on the receiving end of violence and predation than wealthier ones.

According to recent research by the Vera Institute, “data collected by the Bureau of Justice Statistics at the U.S. Department of Justice from 1996 through 2007 show that young black men were the most likely to be robbed every year, most likely to be victimized by violence overall in six of the 11 years.”² While mainstream commentary focuses on the alleged pathology of black men as perpetrators, we’ve ignored that black men are monstrously overrepresented amongst the harmed party. Moreover, for young men of color this victimization often occurs within a larger context of structural inequity, poverty, and disenfranchisement that greatly reduces their odds of success.

Lifetime Individual and Community Consequences:

The concept of “time served” is a misnomer, as the shackles of a lifetime of collateral consequences make a prison sentence a lifetime obstacle. Each year, more than 700,000 people are expected to reintegrate back into our communities, often with minimal education, no employment, no stable home awaiting them, substance abuse, medical needs and/or mental health problems. While these numbers are staggering on their own, they do not reflect the even larger number of people who cycle through the court system – those who take pleas to lesser charges in order to expedite their cases and return to society facing a myriad of statutory and practical criminal record barriers without support or resources. The consequences are staggering: according to Professor Bruce Western of Harvard University and a Board Member of

¹ Brookings Institution, Hamilton Project “Ten Economic Facts about Crime and Incarceration in the United States”

² Vera Institute of Justice: Young Men of Color and the Other Side of Harm: Addressing Disparities in our Responses to Violence

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JustLeadershipUSA, “serving time reduces hourly wages for men by approximately 11 percent, annual employment by 9 weeks and annual earnings by 40 percent. By age 48, the typical former inmate will have earned \$179,000 less than if he had never been incarcerated.”³ This impacts communities, schools, the labor force, and destabilizes communities and often putting persons at risk or in harm’s way.

Our Congress, state and local legislatures, and many administrative agencies have promulgated an array of counterproductive laws, regulations, and policies that make it more difficult for formerly incarcerated people and others with criminal records to reenter society successfully. As a result, these men and women find themselves struggling to reintegrate even after they’ve completed their sentences, demonstrated that they are not a threat to public safety and expressed their commitment to becoming productive tax-paying citizens. Thus, upon reentry, for many, the vicious cycle of struggle and instability begins, which in turn destabilizes communities.

Our current systems result in eager, yet ill-equipped individuals failing to reintegrate, leading many to reoffend, ultimately resulting in re-incarceration. Today, one in three black men will be in prison or jail at some point in their lives, leaving many families without fathers, both as income providers and as role models. The increased financial strain on those families leads to myriad collateral consequences, such as missed opportunities to continue education, poor health and nutrition, and more that impact both their perception of themselves and reinforce the American stereotypes that are misinforming our public policies. Children who grow up in these environments often feel pressure – both from inside their communities, and - in the form of negative and systematized expectations – outside their communities – to commit crime. Research from the Urban Institute indicates that nearly 2 million children in this country currently have at least one parent incarcerated, often leading to long-term emotional and behavioral challenges.⁴ The harm is not only felt by victims and the re-incarcerated, but by their families, communities and indeed the entire country. Without a major shift in strategy, America will continue to contribute to valuable lives wasted, erosion in public safety and diminished justice. More broadly, mass-incarceration compromises the integrity of our national institutions. According to the National Research Council of the National Academies, the growth of incarceration has undermined the quality of important socioeconomic databases, produced misleading findings about trends in employment, civic participation and public health. Furthermore, the criminal justice serves as a “major gateway to a much larger system of stigmatization and long-term marginalization” that parallels earlier patterns of legal discrimination.⁵

³ Prison Legal News: Western and Pettit Incarcerations Effect on Economic Mobility 2010

⁴ Urban Institute: Broken Bonds: Understanding and Addressing the Needs of Children with Incarcerated Parents

⁵ National Research Council of the National Academies: The Growth of Incarceration in the United States

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With a renewed focus on reform, spurred by the lifetime consequences of mass-incarceration, mass-reentry and a recent economic crisis, the moment has arrived for America to check her moral compass. We must ask ourselves how hyper-incarceration fits into our nation's fundamental values of liberty, opportunity, and hope. So far, our reform efforts have succeeded mostly in reinforcing an underclass of citizenship, ceremoniously removing an array of rights at sentencing, and failing to provide an equivalent mechanism or process to restore one's status to full citizenship.

Reform Snapshot:

Criminal justice reform has been approached in many different ways over the years. The work of strategic groups like The Sentencing Project, Legal Action Center, Justice Policy Institute, the ACLU, the Urban League, NAACP, the National Action Network, the Vera Institute and the more recent success of Michelle Alexander's "The New Jim Crow" have assisted in elevating empirical analysis to a national conversation. Organizations like Human Rights Watch have provided a lens into the horrific and inhumane conditions American citizens have had to endure while under correctional supervision. Work done by the Innocence Project highlights how fallible our justice system is, and how no one is immune from being profiled and wrongly convicted. Conservative groups, like Right on Crime, have begun to scrutinize policies that have resulted in economic disaster for all Americans. And practices like solitary confinement and the death penalty challenge everyday people to revisit our common humanity as we grapple with the definition of what really constitutes "cruel and unusual" punishment. Yet four decades later, in spite of all the research and subsequent advocacy efforts, significant and widespread reform in our criminal justice arena has yet to be actualized. In fact, recent success notwithstanding, our system continues to operate at full throttle, consuming individuals, families and entire communities in its wake.

Even with the aforementioned seven million Americans under supervision the voice of people directly affected has not been adequately elevated as part of current reform efforts. Most constituents, who have a desire to be engaged in reform efforts, remain primarily relegated to roles of service provision or symbolism. As a result, although we've witnessed a number of meaningful reforms over recent years, we are in the dawn of a potential social justice movement with no critical mass of directly impacted leadership. The time is ripe for the field to create the support and infrastructure needed to assist the growth of clear and authentic leaders who can, and should, participate in creating the vision for reform.

A few recent legislative victories give us hope that there is an opportunity to build on the foundation of those wins. For instance, with significant bipartisan support, The Prison Rape Elimination Act of 2003 (PREA) became the first US federal law passed dealing with the sexual assault of people in prison. In addition, during his 2004 State of the Union Address, President George W. Bush stated that, "America is the land of the second chance, and when the gates of the prison open, the path ahead should lead to a

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better life.” This led to the creation of the President’s Prisoner Re-Entry Initiative⁶, and ultimately to the passage of the Second Chance Act of 2007—a bi-partisan effort which authorized \$362 million to expand assistance for people currently incarcerated, those returning to their communities after incarceration, and children and parents in prison. One limited example of a successful campaign driven by those who are directly impacted, an effort called “Ban the Box” affords applicants a better chance of being evaluated for employment based on one’s qualifications and skill-set, instead of preemptively precluded from consideration due to a background check that reveals a criminal offense.⁷

In addition, the Obama Administration has publicly addressed the disparities that currently exist in our criminal justice system, and has employed several federal agencies to simultaneously investigate solutions to address the impact of incarceration. In 2010, President Obama signed into law the Fair Sentencing Act, which reduced the disparity between the amount of crack cocaine and powder cocaine needed to trigger certain United States federal criminal penalties.⁸ The Act also eliminated the five-year mandatory minimum sentence for simple possession of crack cocaine. In 2011, Attorney General Eric Holder launched a Cabinet-level "Reentry Council" in Washington to identify and to advance effective public safety and reentry strategies. In 2012, the Department of Labor held an Employment Reentry Summit, and in April 2013, made \$20 million in grant funds available to help adults successfully re-enter the workforce after leaving prison. On August 12, 2013, Attorney General Eric Holder announced the “Smart on Crime” program, a sweeping initiative by the United States Justice Department that renounces several decades of tough-on-crime anti-drug legislation and policies.⁹ Holder strongly encouraged U.S. attorneys to reevaluate how defendants are charged, as well as highlighting the economic burden of over-incarceration.

On the state level, attitudes have shifted since the 1973 implementation of “Rockefeller drug laws,” one of the seeds of our modern prison system championed by New York Gov. Nelson Rockefeller 40 years ago. In April 2009, these laws were revised to remove the mandatory minimum sentences, allowing judges to

⁶ White House Faith-Based and Community Initiatives, Prisoner Re-Entry Initiative, <http://georgewbush-whitehouse.archives.gov/government/fbci/pri.html>.

⁷ Several jurisdictions have made “Ban the Box” a standard for public employment, including Massachusetts, Philadelphia, Maryland, New Jersey, and California. “Ban the Box” does not apply to positions where background check is mandated and directly related to the job such as public safety and positions dealing with vulnerable populations (i.e., children, elderly).

⁸ The disparity reduced from 100:1 weight ratio to an 18:1 weight ratio.

⁹ Carter, Terry, "Sweeping reversal of the war on drugs announced by atty general Holder". ABA's 560-member policy making House of Delegates. American Bar Association. p. 1., August 12, 2013.

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sentence individuals convicted of drug offenses to treatment or short sentences.¹⁰ Moreover, in Michigan, in an effort to downsize the prison population, 22 prisons were closed within a decade. California, in an effort to alleviate overcrowding, has started diverting people with low-level felony offenses and parole violations to county jail, rather than state prison (AB109). In 2011, six states – Texas, Mississippi, Kansas, South Carolina, Kentucky and Ohio –have passed significant bipartisan reforms that promote diversion from prison.

This is a watershed moment for criminal justice reform: both the American public and our elected officials are having severe buyer's remorse with regards to institutional punishment. We're presented with a remarkable opportunity to reexamine the wisdom of correctional institutions and to reconsider our fair-weather commitment to alternative forms of rehabilitation. Yet while highlighting the economic waste inherent to mass-incarceration has become fashionable within the reform movement--with prominence given to easily digestible research and the horrors of fiscal instability--the equally urgent moral argument for decarceration has languished.

Data can be crucial to understanding what similarly situated individuals might do, but lives remain deeply individualized and, thus, cannot be quantified. No policy should be given our uncritical support. I believe that we can simultaneously advocate for the prudent investment of our limited public resources while also affirming the essential humanity of the currently and formerly incarcerated. We can adopt evidence-based practices without marginalizing the community-centered practices that we already know improve people's lives. If our efforts have any positive impact on the life of our society, it will be because we have centered the lives of humans, and not fiscal discipline, in our vision for reform. The progress I've mentioned is mightily significant, but we can, and we must, leverage our collective power towards robust and transformative change.

¹⁰ Canfield, Dave, "Drug law reforms in place," *The Record*, October 8, 2009.

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