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US PRISON SYSTEM

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History:

During the 1960s the US prison population was shrinking, so much so that by 1975 it had fallen to 380,000, having declined steadily for the previous 10 years. The talk of the time was of emptying the prisons, of alternatives to imprisonment and of reserving jail sentencing for criminals who posed a serious threat to society. Those criminals accounted for only 10-15% of the prison population. Some people even predicted that we were headed for a prisonless society. But the trend quickly and dramatically changed. By 1985, there were 740,000 prisoners and by 1995 the number soared to 1.6 million. By yearend 2008 we will have over 2.5 million people in prison, almost a sevenfold increase in 30 years.

This dramatic increase of the prison population in so few years is unprecedented in a democratic society.

Now, the US has the highest reported incarceration rate in the world. The average rate, world wide, is 166 prisoners per 100,000 persons. The US average is 750 per 100,000 persons. This is about 5 times higher than average.

The only countries even close to us are China and Russia with about 600 prisoners per 100,000. 61% of the countries in the world have rates below 150 per 100,000 people.

Approximately 13.5 million adults pass through the US prison system each year.

In 2006, 1 in every 31 adults were incarcerated or on probation or parole at yearend.

White males : 736 per 100,000. Latinos: 1862 per 100,000 and Blacks: 4789 per 100,000 people. One in 9 African American men between the ages of 20 and 34 is behind bars.

South Africa (1993 under apartheid: 851 per 100,000) US: 4789

There are more than 2000 Americans serving life sentences with no parole for crimes that they committed as juveniles. The entire rest of the world has 12 juveniles locked up for life.

Regarding costs:

The combined expenditures of local, state and federal government for law enforcement and corrections total over \$200 billion annually.

In addition to these costs, the incarceration rate has significant costs associated with the productivity of both prisoners and ex-offenders. The economic output of prisoners is mostly lost to society while they are imprisoned. Previous imprisonment can reduce the wage growth on young men by 30 % and make it very difficult to even get a job. Sixty percent of employers report that they would not hire a person who has been incarcerated.

In 2006, states spent an estimated \$2 billion on prison construction, 3 times the amount that they were spending 15 years earlier.

Since 1986, the Federal Bureau of Prisons budget has increased by almost 2000%. Its budget jumped from \$220 million in 1986 to more than \$4.3 billion in 2001.

To summarize: over the last 25 years, the US has experienced a massive increase in the number of prisoners and has also had a massive increase in associated costs to contain the prisoners.

Actually, the number of prisons has not even kept up with the increase in the prison population as it was operating at 37% above its rated capacity by yearend 2006.

As for Michigan: Our state has one of the highest incarceration rates and associated costs in the union.

About 20 % of the state's \$9.8 billion general fund budget is spent on the Department of Corrections. That \$2 billion per year may rise to \$2.6 billion by 2012 according to the Citizens Research Council of Michigan.

One third of state employees work in Corrections. Michigan is one of only 4 states in the nation to spend more on prisons than on colleges and universities.

So what is going on?

Are we, as a society, committing more crimes? Did something turn us for the worse? No, actually not.

Growth in the prison population is due to changing policy, not increased crime. Changes in sentencing, both in terms of time

served and the range of offenses meriting incarceration, underlie the growth of prison populations.

Contrary to public perception that the incarceration of violent offenders has driven America's prison growth, The Justice Policy Institute found that almost 80% of the growth in prison intake is due to the incarceration of non violent offenders. These are crimes when no harm or intended harm happens to the victim.

Violent crime, including homicides, are on a steady decline and have been on a decline over the last 30 years.

So, what are the policy changes that are having such huge effects?

Mainly, they are: The War on Drugs, Three Strike laws, Truth in Sentencing laws and also President Bush's recent crackdown and imprisonment of illegal immigrants.

First: "The War on Drugs". In 1969, shortly after his inauguration, President Nixon declared a war on drugs and crime. Incidentally, he also declared war on Cambodia and Laos but failed to tell us about that for quite some time.

In 1970 the modern "War on Drugs" was born as the "Comprehensive Drug Abuse Prevention and Control Act".

Basically, the war consisted of imposing mandatory and harsh sentences for drug related crimes. Anyone who sold or used prohibited drugs would be subject to the new laws. Interestingly, marijuana was included in the prohibited substances even though the task force that set up the policies, recommended against it.

In 1988, the Office of National Drug Control Policy appointed its first drug Czar. He was William Bennett who ironically was a smoker, drinker and compulsive gambler.

Drug sentencing laws and drug eradication policies have had a critical growth in the prison population. In 1980, the incarceration rate for drug offenses was 15 inmates per 100,000 adults. By 1996 it was 148 inmates for 100,000 adults. Remember that the average incarceration rate world wide was about 150 persons per 100,000 population. We now imprison as many people for drugs as the majority of countries imprison for all offenses.

In federal prisons, 16% of inmates in 1980 were imprisoned for drug related offenses and in 2002 the percentage had risen to 55%.

Second: “3 strike laws”:

These are statues enacted by state governments in the US which require the state courts to hand down a mandatory and extended period of incarceration to persons who have been convicted of a serious crime on three or more occasions.

The practice of imposing longer sentences on repeat offenders is nothing new. New York State has a persistent felony law that dates back to the 19th century. But such sentences were not compulsory in every single case and judges had much more discretion as to what term of incarceration should be imposed.

The first true 3 strikes law was not enacted until 1993 in the state of Washington. California followed one year later. The initiative proposed to voters had the title of Three Strikes and You’re Out referring to de facto life imprisonment after three felonies had been committed.

By 2004, 26 states (Michigan and the Federal Government) had laws that fit the three strike statue.

California has the most sweeping 3 strike laws. As a result, some defendants have been given 25 year to life sentences for shoplifting if that was their 3rd strike.

In California, first, second and third strikes are counted by individual charges rather than individual events so a defendant can get to the third strike in just one crime.

A person there could rob a convenience store of \$250 (strike 1), push a guard out of the way on the way out of the store (strike 2) and steal a bicycle (strike 3) to get away any would be faced with a mandatory sentence of 25 years to life.

Or, that person could have robbed the convenience store and pushed the guard and been arrested with 2 strikes and set free. 10 years later he is arrested for possession of marijuana which is now the 3rd strike and receive a mandatory life sentence.

Note that as of 2007, the California state prison system held over 170,000 prisoners in a system designed for 83,000. Most California prisons hold more than double their capacity. From 1984 to 1996, California built 21 new prisons and only one new university.

Third: Truth in Sentencing

These laws require that a person complete a minimum percentage of their sentence.

In 1994, the Federal Government started giving grants to states to build prisons. The grant money demands that the state has Truth in

Sentencing laws that require prisoners to complete 85% of their sentence.

Michigan was one of the first states to adopt this law. (Are you noticing a trend here about Michigan?) 27 more states adopted the policy during the next few years.

The effect of the law is that it restricts parole boards from granting parole so more people stay in prison.

Fourth: Imprisonment of Illegal Immigrants:

The new Bush initiative to detain and deport illegal immigrants has given the US a whole new group of people to put into prison. Almost a half million illegal immigrants were in the US prison systems last year.

The Immigration and Customs Enforcement branch of the Department of Homeland Security has a budget of \$4.8 billion. It is estimated that just the cost to identify and deport illegal immigrants who have already been arrested, would cost more than \$3 billion per year.

So, what are the effects of having all of these people in jail? Is society better off?

Good: People are being punished for breaking the law. There are fewer criminals walking the streets.

There is, however, little proof that there is less crime.

Non violent crime has not decreased over the last 30 years and has, if anything, actually increased.

Violent crime has decreased by about 12% since the 1980s but this decrease has occurred pretty evenly throughout the US. There is no difference in crime rates between high incarceration states and those that have lower incarceration rates.

There has been some speculation about why violent crime has been on the decline. Not many people support the thought that harsh sentencing really deters violent crimes.

On a side note, a recently published book entitled, “Freakonomics”, proposed that legalized abortion has had a big effect on decreasing violent crimes. Most violent crime occurs in poor minority neighborhoods whose population is poorly educated. These are the same population of people that have had the most abortions over the last 25 years. It is proposed that the increased abortion rate would decrease the number unwanted children and of potentially violent criminals which, in turn, would account for the decrease in violent crimes.

So, what is the down side of having so many people in jail?

Be prepared, the list is long.

1. There is little evidence that mass incarceration truly reduces crime.

Canada, with about as many citizens as the state of California, has about one fourth as many people behind bars, and provides contrast for judging the crime control value of mass incarceration. With 4.3 times as many prisoners, California has 4.6 times the

homicide rate as Canada. Between 1992 and 1996, Canada increased its prison population by 7.5% while California grew its prison population by 25%. During that period, both Canada and California homicide rates declined by the same rate.

Over the last 25 years, the US has built the largest prison system in the world. But despite a recent downturn in the violent crime rate, we remain far and away the most violent advanced industrial society on earth.

Michigan is among the 10 states with the highest prison growth since 1980. The Michigan prison system has swelled by 538% in the past 34 years. But Michiganders are hardly safer than the rest of the nation. Violent Crime rates in Michigan are the same as national averages.

2. **Cost and Exploitation:** The cost, as I have already discussed, is staggering. Remember that we are spending over \$200 billion per year on the prison system and are not even keeping pace with the space needs to house all of the new criminals.

As you can imagine, when there is a huge federal budget for something, it does not take long for private citizens to figure out that there is money to be made.

The Corrections Corporation of America (The Blackwater of Correction Facilities) is a company that builds and operates prisons for a profit. It built a huge facility near Austin, Texas. The place was virtually empty and losing money until 2006 when a very good thing, for them, happened. This was Bush's crackdown on immigrants. Historically, Mexicans caught illegally in the US were just returned back to Mexico. Immigrants from other countries were processed and released. Only those with criminal records were maintained here.

In 2006, the Immigration and Customs Enforcement agency ended its traditional catch and release policy and started to incarcerate non-Mexican immigrants.

The Corrections Corporation of America has spent \$10 million on lobbyists, among them was Philip Perry, VP Cheney's son-in-law. Mr. Perry who later became the general counsel at the Department of Homeland Security, and awarded millions of dollars to the Corrections Corp of America. Currently, the Austin site houses almost 30,000 prisoners on any given date.

3. Non violent prisoners are not rehabilitated in prison, they actually are likely to become violent.

When put in crowded jails with violent criminals, they learn bad behavior.

25% of those initially imprisoned for nonviolent crimes are sentenced for a second time for committing a violent offense.

60% of people in jail commit another crime once they get out.

4. Mass incarceration and overcrowding of prisons has led to poor prison conditions and resultant civil rights cases on the part of the inmates. In 1970, some 2,200 civil rights cases were filed in fed courts from an inmate population of 360,000 prisoners. By 1995, with a population of 1.6 million, nearly 40,000 new lawsuits were filed. This represented nearly 1/5 of the federal court docket.

5. There are now many more old prisoners that are very costly to keep in prison. The soaring number of aging inmates is now outpacing the prison growth as a whole.

The Supreme Court ruled in 1976 that prisoners have a constitutional right to health care but it is up to each state to provide it. Prisoners do not qualify for Medicare or Medicaid which are federal programs that share the cost of medical treatment. So states, left on their own, tend not to do a good job.

In 2006, a federal judge appointed a person to oversee the California prison system and he found that one inmate per week was dying of neglect or malpractice.

6. Mass incarceration takes money out of areas that need it for education and to fight poverty (biggest predictors of crime)

In 1998, Justice Policy Institute researchers found that it cost America \$24 billion to incarcerate its 1.2 million non violent offenders. That was 50% larger than the \$17 billion the federal government spends on a welfare program that serves 8.5 million people. The costs of incarcerating 1.2 million non violent offenders is 6 times more than the federal government spent on child care for 1.25 million children.

The location of prisons has also restricted federal money from going where it should go.

The Census Bureau counts people in prison as if they were residents of the communities where they are incarcerated even though they are legal residents of the communities where they lived before being incarcerated.

In New York State, for example, 1 out of 3 people who moved to upstate New York in the 1990s actually moved into newly constructed prisons. The state bars them from voting but their presence in the Census boosts the population of the upstate districts whose legislators favor upstate expansion. Without the phantom

population, 7 upstate NY state senate districts would not meet the minimum population requirements and would have to be redrawn.

Also, because they are not counted in their home communities, financial aid to those areas is lessened.

Cook County, Illinois, will lose nearly \$88 million in federal benefits during this decade because residents were counted in the 2000 Census in the county of incarceration.

Think about that. Crime happens in Chicago and the resultant criminals are then moved to an industrious community that has built prisons because it is a good industry. It is certainly more stable than making cars or furniture. Federal money follows the inmates so more money flows to the cute little town and away from Chicago. More crime happens in Chicago and more inmates, and federal dollars keep coming to the cute town. It is a neat cycle. Unfortunately, the only winners are the people who work in the prison industry.

An interesting side note is that while the Census records where felons live, the people do not have a right to vote. In 2000, Bush won Florida by about 500 votes while over 60,000 people in Florida prisons did not get to vote.

7. Three strike laws make 2 strike persons more likely to do anything to avoid the third strike. Many theorize that a 2 strike felon will be more likely to commit a violent crime in order to avoid a third arrest. They have nothing to loose and they know it. Why get caught smoking marijuana when you get the same penalty for trying to kill the arresting officer?

8. -prisons are so overcrowded that there is little hope of administering effective rehabilitation programs.

In the desert city of Lancaster, just north of Los Angeles, there is a prison designed to hold 1350 inmates. It actually now holds nearly 5000 men. Many new prisoners stay in open gymnasiums holding triple bunks. They stay in the the room 22 hours per day. Vernon Bell, who was sent there for threatening a parole officer said, “We’re just warehoused. There is nothing to do at all.”

Many American prisoners return to the outside world with minimal support systems in place.

Nearly 70% of all released prisoners will be rearrested within 3 years.

9. Lengthy prison terms and automatic incarceration for even small violations have catastrophic effects. A woman was incarcerated for 16 years for a first time drug offense. Her mother had to try to care for her four children. By the time she got out, one daughter was deeply depressed, another filled with rage, a son was already in jail and the grandmother had died. Everyone was effected. This story could be retold a million times.

Even relatively short 6 month to 1 year sentence for a small parole violation will mean that the person will lose a job, possibly their children, their house if they have one, and the list goes on.

10. Finally, I have not addressed the injustices in the legal system but I would suggest that this is also a real problem. With so many cases before the courts, more mistakes will

be made. The Patriot Act has only compounded the problem as it greatly reduces individual rights.

As a result, there are many people who end up in the prison system that should not even be there in the first place.

What should be done?

First, I think that we need to consider this for 2 distinct groups, violent and non violent offenders.

Most people would agree that violent offenders should be imprisoned at hard labor and be fed only bread and water and we should throw away the key.

Basically, we are already doing that.

The real issue concerns nonviolent offenders.

The US needs to reevaluate its obsession with putting nonviolent criminals behind bars.

The nonviolent US prisoner population is larger than the combined populations of Wyoming and Alaska.

Imprisonment of these people just is not effective. It does not reduce crime, it does not rehabilitate them and in fact, often makes them worse, it costs way to much and it takes our focus off of finding ways to prevent their crimes in the first place.

So, what can be done to reduce the number of non violent prisoners?

First: We have to change the mandatory sentencing, truth in sentencing and 3 strike laws.

These laws have not reduced crime. Actually, a few states are now making some changes.

Since 2001, California has passed a few new laws which take away mandatory sentences and gives judgment back to judges. Minnesota did not go to mandatory sentencing in the 1980s. They pursued laws that reserved prison space for violent and more serious offenders, while establishing a network of support for less serious offenders.

We need to allow judges and to actually use judgment when handing out sentences and parole boards to use judgment when considering paroles.

We need parole reform:

In California, 51% of new prison admissions are parole violators who are back behind bars for technical violations. It only makes sense that if you put someone in jail for an unusually long time, give them little of no rehabilitation, they are going to make mistakes with parole violations.

In 2004, California announced a New Parole Model which was a combination of residential drug treatment, electronic home detention and half way houses that were designed to keep parole violators out of prison. This was finally defeated after strong opposition by the prison guard union and victim's rights groups.

Second: It is time to reevaluate our drug laws. Many recommend that we legalize marijuana immediately and then study how far to go to legalize other drugs.

When the original laws were passed about drugs, the committee recommended that marijuana be excluded. Too bad that it was not.

Marijuana is the most widely used illegal substance. About 15 million Americans smoke it and nearly half of all drug arrests are for marijuana. Over all marijuana use has been the same since about 1990 while daily use by high schoolers has tripled from 2% to 6%. There are almost 1 million arrests per year for marijuana use and 80% of these are for use not distribution. While many of these do not result in jail time, many still do.

In Michigan, it is a misdemeanor to use marijuana but a felony if you use it in a public place. This could result in a 2 year imprisonment. It is also a felony to cultivate even one marijuana plant. This could result in a \$20,000 fine and a 4 year prison sentence.

California has similar laws. Ms. Renee Boje, who has no criminal record is currently living in Vancouver because if she returned to the US, she would receive a minimum 10 year sentence for watering a marijuana plant on a California high rise balcony.

Currently 27 states have some form of medical marijuana access law. Michigan just voted to let it in...by a 2 to 1 margin.

It is estimated that there would be a prison savings of up to \$10 billion per year if marijuana were legalized. In addition, there may be an additional \$6 billion in tax revenue with 100,000 new jobs and 60,000 new retailers.

Imagine the billboards and neon signs: “Stop in for some love weed and a cup of joe”. Or “A reefer a day keeps the frowns away.”

It is troubling that we have legalized alcohol which is far more dangerous to our health and society than marijuana and still we imprison people for using marijuana.

If all drugs were legal, our prisons would be emptied of hundreds of thousands of nonviolent people who have never done any harm to anyone. Police resources would be available to fight violent crime, instead of being used to chase people who may harm themselves but are no threat to the rest of us. Much of the street violence would end, as it did after Alcohol Prohibition ended, because gangs and organized crime would no longer fighting over drug territories.

Third: Let old, sick prisoners out of jail. Governor Granholm actually tried to do this last year in Michigan but was rebuffed by the congress.

Fourth: Explore alternate form of punishment and rehabilitation. In 1997, the Rand Corp released reports showing that drug treatment and education was 7 times more cost effective than criminal interdiction.

The most accurate predictor of a successful return to society is the inmate's connection to family. Prisons should try to build this relationship.

Rehabilitation is also dependant on education. In 1994, congress eliminated Pell Grants for prisoners. This effectively ended almost all of the 350 prison college programs across the country. Education has been proven to reduce recidivism.

Kansas, North Carolina and Michigan have recently tried reentry initiatives which target limited resources to the highest risk offenders with job training, treatment and counseling.

In Kansas, there is a program which helps ex felons to find and keep jobs. There are hundreds fewer people in prison there for parole violations at a savings of almost \$14 million in prison operating cost.

Even modest improvement in healthcare and rehabilitation could significantly reduce recidivism.

Fifth: We need to reverse the trend of reducing funding for community services while increasing funds for jails. Poor education and poverty are the biggest predictors of crime. If we do not pay more attention to those areas, we cannot be surprised that our jails will continue to be filled to overflowing.

Sixth: We need to reverse the thinking that led us into the problems in the first place.

A big reason for all of the strict laws centers stems from fear. In the 1970s, we were just coming out of the “Cold War,” A time when we feared the Russians and nuclear attack. It did not take long for us to start fearing the Middle East. Certainly, many recent political advertisements focused on fear. Some politicians are masters at making Americans fear anyone that is out of the mainstream...Muslims, gays, liberals, drug users and, of course, criminals. So one thing that we can do is put some of these people in jail and feel somewhat safer.

We, as a society, and as individuals have to break free from the grips of fear and start making decisions based on logic and thought.

Conclusion:

Human behavior has not changed significantly over the last 30 years but we, as a society, have chosen up the bar on what is considered criminal behavior. Behavior that will land you in jail.

Our penal system is not equipped to deal with the increased number of criminals, especially non violent offenders. As a result, society is hurt rather than helped. We are in the business of creating career criminals with a system that is neither fair nor healthy and costs way too much.

A private commission on Safety and Abuse in America's prisons devoted 15 months of research and concluded in a report to congress, "We should be astonished by the size of the prisoner population, troubled by the disproportionate incarceration of African Americans and Latinos and saddened by the loss of human potential."

Once again, we the leaders of the free world, need to take a long look at what is going on right here in our own country.

We can and must do better.

Note:

Prohibition ultimately failed in 1933 because it tried to eliminate the supply of alcohol without decreasing the demand. The economic law of supply and demand tells us that this will result in a price increase and bid incentives to break the law.

18th amendment call for prohibition

21st amendment repealed it.