

Katie Kern

Poverty 423

22 April 2009

Capstone

Racial and Economic Discrimination in the American Criminal Justice System:  
An Investigation of and Alternatives to Judicial Sentencing  
in Criminal Courts in Non-Capital Cases

**Introduction**

This past summer, I worked at the Public Defender Service of the District of Columbia as an intern investigator. Each day, my duties as an investigator entailed meeting with clients, locating and interviewing witnesses, canvassing rough neighborhoods, visiting inmates at the DC Jail, obtaining police and Court documents, photographing crime scenes, and subpoenaing records. I performed these duties for largely African-American and Hispanic clients who had been charged with Murder, Rape, Assault with Intent to Kill, Assault with Intent to Rob, and other serious felonies. While my summer was full of lessons, realizations, and epiphanies, one experience still sticks out vividly in my mind.

The first time I visited the DC Jail, I went with my investigative partner, Mario. After we had jumped through the hoops of signing in, being patted down, and waiting for hours until the

inmates were not on “count,”<sup>1</sup> we finally had the chance to speak with our client, who had not been released after his initial Status Hearing. When the inmates were released from “count,” those who had been requested by visitors filed out together into a secure room, separated from the waiting room by huge glass windows. Family members could speak with their loved ones on phones through the glass barrier, but we (as representatives of our client’s counsel) were permitted to speak with our client in a small room nearby in which we could all sit together, speaking privately but still clearly visible to all. I looked up when the inmates all filed into the glass room, and I was overwhelmed. Every single inmate that walked out was an African-American male. Granted, regarding the gender disparity, the DC Jail (formally known as Central Detention Facility) housed only male inmates;<sup>2</sup> but why were they all black? While I realized our nation’s capital had a very large African-American population, I knew that this dynamic could not be proportionate to the number of white men and black men who were engaging in criminal activity. What was causing this racial disparity of inmates, and did this disparity carry over across socio-economic boundaries? If so, are poor individuals discriminated across racial groups? Was this discrimination at the level of arrest by police officers? Could it be discrimination during court proceedings and leading up to a verdict? What about sentencing by judges after conviction? The best answer to these questions is that it is most certainly a combination of all of these factors; discrimination occurs at each level of the criminal justice process. I focus my attention in this essay solely upon the level of judicial sentencing in non-

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<sup>1</sup> At the DC Jail, the inmates were routinely counted in their individual rooms; during this time, the Jail is on lockdown, and none of the inmates could meet with visitors. We called this time, “count.”

<sup>2</sup> The female inmates, along with lower-risk male inmates, were housed at the privately-owned Correctional Treatment Facility – a much nicer, cleaner, safer, and more rehabilitative facility.

capital criminal cases. I choose sentencing because I feel that it is the least-explored level of the criminal justice system in terms of racial and economic discrimination, especially in comparison to the huge amount of research done at the level of arrest. I eliminate capital crimes from my investigation, as a large aspect of my capstone deals with alternatives to sentencing in terms of reforming the offender. The large majority of the data in this essay discusses racial discrimination in judicial sentencing; there is a huge lack of research in terms of economic discrimination in non-capital, criminal sentencing. Racial discrimination, however, is quite likely masked economic discrimination; African-Americans, to a certain extent, allow us to put a face onto economic discrimination in sentencing, as African Americans are more likely to be poor.

My experiences as an investigator at the Public Defender Service for DC sparked my interest in this topic of racial and economic discrimination in the criminal justice system. I examine previous research and case studies from different states across the United States dealing with sentencing disparities at various levels of severity in non-capital criminal behavior and draw conclusions. I then consider alternative sentencing options, including programs for drug rehabilitation, mental health institutions, counseling, education programs, job training, and other community outreach programs that might offer a better chance at reforming those convicted of criminal behavior. These alternatives will provide a greater capability for criminals to reform themselves and to improve their lives; judges, as I later show, discriminate based upon race during sentencing, and thus, decrease the capability of achievement, in Amartya Sen's terms, for those convicted of criminal behavior based upon race. Some may claim, in

response, that these poor, African-American criminals previously had the opportunities to succeed, but have squandered these opportunities through the decisions that they made to engage in criminal behavior. Sen would argue that “freedom and well-being not always move in the same way, or even in the same direction,” and thus, we must ensure that each individual has the freedom and capability to achieve regardless of what he or she has done or proceeds to do with this capability.<sup>3</sup> I agree with Sen’s philosophy (across the board), and I advocate for the fulfillment of each individual’s capability to achieve, regardless of how he or she uses this capability; in some criminal cases, the best way to increase the offender’s capability to achieve is not through sentencing, but through alternatives such as addiction rehabilitation, counseling, job training, education, and community service. I am certainly not suggesting that every poor criminal should not be punished for his or her crimes. Rather, I am urging that the punishments for these crimes should not be discriminatory based upon race or economic status, and that the goal of these punishments should be the increased capability and reformation of criminal offenders.

In poor neighborhoods, it is difficult to escape the constant cycle between arrest, incarceration, and criminal behavior. Many times, low-income offenders do not have the same quality of legal representation as do other, more privileged members of society, and thus, are falsely convicted for crimes that they did not commit. Additionally, discrimination occurs at every level of the criminal justice system; beginning with the arrest, onto court hearings, and finally onto sentencing, the focus of this study. Finally, probationers who live in poor

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<sup>3</sup> Amartya Sen, *Inequality Reexamined* (Cambridge: Harvard University Press, 2002), 59.

communities may not have access to the types of programs necessary to prevent recidivism, such as drug treatment programs and job training. Studies have shown that this diminished access of such individuals to treatment programs “could make them more likely to commit crimes, exposing them to more arrests and convictions, and increasing the likelihood of a prison sentence because of the relationship between the length of criminal histories and sentences to prisons.”<sup>4</sup> Before I examine alternatives to sentencing, however, I will cite previous research, supporting the claim that judges discriminate in criminal sentencing. In the next section, I will discuss a number of studies that have dealt with discrimination in sentencing.

### **Discrimination in Sentencing: An Examination of Current Research**

The first of the studies that I will address, “The Disproportionate Incarceration of African Americans for Drug Offenses: The National and Illinois Perspective” examines exactly what its title suggests. In 2000, a Human Rights Watch report classified Illinois as the state with the highest racial disparity in drug-related incarceration in the United States.<sup>5</sup> In response to the findings of this report, “a disproportionate minority confinement (DMC) working group was formed to investigate further the nature and extent of racial disparities in the incarceration of drug offenders in Illinois.”<sup>6</sup> In the introduction of this study, the authors note that while more stringent drug laws have been passed, the use and sale of illegal drugs has not slowed;

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<sup>4</sup> Arthur Lurigio and Pamela Loose, “The Disproportionate Incarceration of African Americans for Drug Offenses: The National and Illinois Perspective,” *Journal of Ethnicity in Criminal Justice* 6, no. 3 (2008): 237.

<sup>5</sup> *Ibid.*, 223.

<sup>6</sup> *Ibid.*

additionally, these new, rigorous drug laws “have disproportionately affected persons of color, especially African-Americans, who are significantly more likely than other racial groups to be arrested, prosecuted, convicted, and sentenced to prison for drug offenses.”<sup>7</sup> In 1992, “African-Americans constituted 12% of the population in America, but they accounted for 35% of those arrested, 55% of those convicted, and 75% of those sentenced to prison for drug possession.”<sup>8</sup> These statistics, while clear and seemingly conclusive, reflect an array of variables that play into sentencing, including prior criminal history and differences in gravity of charges (and the correlative sentencing guidelines). We must be careful to recognize that these statistics do not tell us whether African-Americans are more likely to be involved in this type of criminal behavior.

In terms of socio-economic discrimination in drug-sentencing, the study notes that those individuals who were charged with the possession or sale of crack cocaine (more common in poor neighborhoods) as opposed to powder (more common in wealthier neighborhoods) were much more likely to face mandatory prison terms.<sup>9</sup> A recent article in *Wilmington, Delaware’s News Journal* notes that “it takes 100 times more powder cocaine than crack – the cheaper ‘rock’ and more quickly addictive form – to trigger the five- and 10-year mandatory minimum sentences under federal law.”<sup>10</sup> Why would the possession and distribution of pure cocaine call for a lesser punishment? The study proceeds to discuss the

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<sup>7</sup> *Ibid.*, 224.

<sup>8</sup> *Ibid.*, 226.

<sup>9</sup> *Ibid.*, 227.

<sup>10</sup> “Congress should follow state’s lead in reducing drug penalties,” *News Journal* (Wilmington, DE), March 31, 2009.

existence of racial differences in sentencing, finding that “persons of color were three times more likely than Whites to be sentenced to prison for any drug violation. Therefore, it appears that race has an independent effect on prison sentences for drug law violations in Illinois.”<sup>11</sup> While this study was conclusive about the examination of racial disparity in drug sentencing in Illinois, what about the rest of the nation? Will this trend hold, and will it hold across other felony charges?

A similar North Carolina study charts a summary of the findings of 21 additional studies from across the nation of findings as to discrimination in drug-sentencing; fifteen of these studies showed that African-Americans received harsher punishments than whites, and the remaining six concluded with data that was not statistically significant.<sup>12</sup> The North Carolina study found that “race came into play only when judges were faced with deciding between traditional options of standard probation (or some other type of community punishment, such as a fine or community service) and incarceration.”<sup>13</sup>

The next study that I will address moves across the nation to California, examining whether or not the state’s Three Strikes Law discriminates against racial and ethnic minorities. Most mandatory sentencing guidelines are enacted in order to decrease and eliminate discretion by judges in the criminal justice system. The Three Strikes Law, which promotes such mandatory sentencing guidelines, consists of two main components: first, a defendant who is convicted of a felony, who has previously been convicted for a violent or serious felony, is given

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<sup>11</sup> Lurigio, 236.

<sup>12</sup> Pauline K. Brennan and Cassia Spohn, “Race/Ethnicity and Sentencing Outcomes Among Drug Offenders in North Carolina,” *Journal of Contemporary Criminal Justice* 24, no. 4 (2008): 376-379.

<sup>13</sup> *Ibid.*, 392.

double the sentence for the current conviction. Second, an individual who is convicted with a felony, who has had two prior serious or violent felony charges, is mandated a sentence of 25 years to life in prison, regardless of the severity of the third felony charge. According to Chen, African-Americans are significantly over-represented among second and third strike inmates: “they make up about 35% of second-strikers and 45% of third strikers, among California inmates, despite the fact that African-Americans constitute only slightly more than 6% of California’s adult population.”<sup>14</sup> This investigation roots itself in two theoretical frameworks: the focal concerns theory and the liberation hypothesis. The focal concerns theory states that sentencing decisions made by judges are majorly based upon “legally relevant variables,” like criminal history and severity of offense; in addition to these legally relevant variables, however, judges are also influenced by their assessment of three main focal concerns: the defendant’s blameworthiness, dangerousness, and practical constraints and consequences.<sup>15</sup> The liberation hypothesis states that criminal trial jurors are more likely to deviate from the facts of the case when the charge is less severe or when the evidence is less conclusive of guilt.<sup>16</sup>

After a complicated statistical investigation, the study concludes that sentencing in Three Strikes cases is discriminatory against Africans Americans, “even when several key legally relevant variables are controlled. African-American offenders appear to be significantly more likely than whites to receive third-strike sentences, even when the nature of the offense, the

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<sup>14</sup> Elsa Y. Chen, “The Liberation Hypothesis and Racial and Ethnic Disparities in the Application of California’s Three Strikes Law,” *Journal of Ethnicity in Criminal Justice* 6, no. 2 (2008): 85.

<sup>15</sup> *Ibid.*, 86.

<sup>16</sup> *Ibid.*, 88.

defendant's prior record, and parole status are controlled."<sup>17</sup> It seems quite logical, as well, to hypothesize that judges might assess a poor defendant negatively within the focal concerns theory (especially within the "practical constraints and consequences" category, which includes such factors as "courtroom workgroup dynamics" and "local politics and community norms)."<sup>18</sup> Poor defendants often have less-acclaimed attorneys who may not make a positive impression in a courtroom dynamic. Additionally, the liberation hypothesis was supported, as racial disparities in sentencing were greater in property and drug cases than in violent crimes.<sup>19</sup> A surprising finding from this study, however, is that Latino offenders experienced sentencing disparities, but in their favor.<sup>20</sup>

What are the causes of this racial discrimination, in the presence of mandatory sentencing laws? The study notes that the Three Strikes Law allows for some flexibility; "prosecutors can move to dismiss prior convictions that might count as strikes, 'in the furtherance of justice.'"<sup>21</sup> The discriminatory actions of these prosecutors, however, appear to be far from just. From this study, we can conclude that even when measures are taken to eliminate discretion by judges through mandatory sentencing requirements, racial sentencing disparities still exist; these disparities appear in the actions of other agents, such as prosecutors. Just because racial disparities still exist, however, does not mean that mandatory

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<sup>17</sup> Ibid., 97.

<sup>18</sup> Ibid., 86.

<sup>19</sup> Ibid., 98.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid., 84.

sentencing requirements are worthless; do mandatory sentencing laws succeed in diminishing racial discrimination in sentencing? If so, what else can be done to close the gap?

According to the May 22, 2008 publication of the *Daily Press*, in Newport News, VA, “state sentencing guidelines virtually erase discrimination in criminal punishments, regardless of how much judges are allowed to deviate from recommended prison terms, according to a study released [on that] day.”<sup>22</sup> The study, conducted by the National Center for State Courts, examined the effects of different mandatory sentencing guidelines in three states: Virginia (with voluntary guidelines), Michigan (which allows for some judicial discretion), and Minnesota (which requires strict adherence to mandatory sentencing laws).<sup>23</sup> It concluded that the sentencing guidelines in each of these states were successful in reversing previously inconsistent and discriminatory sentencing patterns. We have now seen examples of how mandatory sentencing laws can work both in favor of and to the detriment of minorities when it comes to reducing discrimination based upon race and economic status in non-capital criminal cases. What elements of these mandatory sentencing laws influence whether or not the laws will be successful in eliminating discrimination through ending judicial discretion?

Next, I will address the recent repeal of the infamous, discriminatory Rockefeller Drug Laws in New York, which had been the nation’s toughest drug laws over the past 35 years. The Rockefeller Drug Laws, passed in 1973 in response to a sharp rise in heroine abuse and property crimes in New York, bound judges into a sentencing structure in which the possession of small amounts of heroin or cocaine required a minimum of a one-year sentence. Until 2004, when

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<sup>22</sup> Larry O’Dell, “Sentencing Guidelines Ease Discrimination,” *Daily Press* (Newport News, VA), May 22, 2008.

<sup>23</sup> *Ibid.*

previous amendments were made, some drug charges required mandatory life sentences. The New legislation backed by New York Governor David Patterson “repeals many of the mandatory minimum prison sentences now in place for lower-level drug felons, giving judges the authority to send first-time nonviolent offenders to treatment instead of prison. The plan also expands drug treatment programs and widen the reach of drug courts.”<sup>24</sup> Additionally, judges would also have the option of sending repeat serious drug offenders to treatment instead of prison, given that these offenders prove to be dependent upon the drugs in an evaluation.<sup>25</sup> In order for these defendants to receive treatment as a sentence, however, they must plead guilty to the charges; if they do not complete the treatment program, their cases will proceed to move back into court proceedings.<sup>26</sup> With the passage of this bill, some current inmates will also have the opportunity to apply to have their sentences commuted.<sup>27</sup> Opponents of the Rockefeller Drug Laws claim that “the racial and ethnic disparities among the population incarcerated for drug offenses in New York do not reflect higher rates of offending among Africa-Americans and Latinos,” and that these disparities are “the consequence of unequal treatment at each stage of the criminal justice process.”<sup>28</sup> Proponents of Paterson’s legislation insist that “judges – not just prosecutors – should be able to pick among the remedies for nonviolent people who violate the drug law. For some, the judges say, that will be prison. For others, it will be

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<sup>24</sup> Jeremy W. Peters, “Albany Reaches Deal to Repeal ‘70s Drug Laws,” *New York Times*, March 26, 2009.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> Demetria Irwin, “Rockefeller Drug Law turns 35,” *New York Amsterdam News* 99, no. 23 (2008): 6.

treatment programs overseen by the courts.”<sup>29</sup> The anticipated cost of the additional treatment programs approaches \$80 million, but supporters are confident that this money will be more than paid for by the decrease in prison costs (which near \$45,000 per inmate, per year).<sup>30</sup> Since these developments in repealing these discriminatory laws, media across the nation have shown support for the new legislation; numerous newspaper articles call for the continuance of this trend in other states with such mandatory sentencing laws and into the national arena. I will return to this cost-benefit analysis of sentencing alternatives later.

There are conclusions to be drawn from the results of these states’ unprecedented efforts. First, different states have very different policies as to mandatory sentencing requirements and the level of discretion allowed to judges at the level of sentencing. Many claim that while mandatory sentencing claims to remove discretion, it actually moves the discretion out of the hands of the judges and into the hands of the prosecutors. “Prosecutors can charge in a way that makes it likely that the offender will get less than the mandatory minimum sentence.... The system is run by the U.S. Attorneys. When they decide how to indict, they fix the sentence. And discrimination persists.”<sup>31</sup>

Another element that struck me amount these studies was the absence of a clear study dealing solely with discrimination based upon socio-economic class in sentencing. The studies that mentioned such discrimination were a part of a larger study concerning discrimination

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<sup>29</sup> Jim Dwyer, “Letting Judges Have Say in Sentencing,” *New York Times*, March 25, 2009.

<sup>30</sup> Peters.

<sup>31</sup> Jeffrey Reiman, *The Rich Get Richer and the Poor Get Prison: Ideology, Class, and Criminal Justice* (Boston: Allyn and Bacon, 2004), 135.

against race, sex, ethnicity, etc. I understand that it is quite difficult to come across this type of data. Just because I was not able to find the exact study I was looking for, however, does not indicate that the investigation was fruitless; this lack of research says a lot in itself.

Additionally, as I mentioned earlier, the data on racial discrimination may also speak for economic discrimination, with disparate effects on African-Americans, who tend to be poor. I recommend that further research be done on this issue.

My biggest response to this investigation is that the criminal justice system needs a very close look. An incident that occurs in one state will be treated completely different in another state; this just does not seem fair. A significant remodeling must occur in the structure of the United States criminal justice system before it will ever deliver fair and uniform treatment and punishment to those suspected of violating the law. The next step does not have to entail the complete elimination of discrimination, though; it will surely take a good amount of time and reform to do so. We must look, then, to what policies and legislations will work at *reducing* discrimination. Mandatory sentences, we must remember, were initiated to *reduce* discrimination in the criminal justice system; as we have seen, these sentences did not always do so. In this new legislation to end mandatory sentences, we must acknowledge that judicial discretion will once again play a role in sentencing decisions. This discretion could be just as biased as the previous situation under mandatory sentencing guidelines. Discretion can also be beneficial for an offender; a judge that uses discretion to determine what type of sentence would do the most benefit toward increasing an offender's capability to function in society is truly delivering *justice*.

I do not intend to advocate that every criminal should face the easiest sentence possible; rather, I hope that every man or woman convicted of a crime is issued a sentence that will be productive and rehabilitative toward that individual's future endeavors, *regardless* of age, sex, class, race, ethnicity, or sexuality. This is the only way for our criminal justice system to become *just*. In order for this to happen, the criminal justice system must operate on a national, equal playing field. States will most likely never agree on a national set of standards to guide the judgment of criminal behavior; and as we have seen, such mandatory standards sometimes backfire against the cause. Discretion does not need to be denied to justices or attorneys. The root cause of the problem is the racism and classism inherent in these primary players in the criminal justice system. Until these preconceived judgments disappear, we will not see a fair and equal criminal justice system. I do not think that this is impossible, by any means; I just think that it will take time.

### **Alternatives to Sentencing**

In addition to Governor Paterson's recent New York legislation, Virginia Senator Jim Webb, along with two Republican and thirteen Democratic colleagues in the Senate recently "sponsored legislation for a high-level National Criminal Justice Commission. This could be the official eye-opener, the crucial re-examination of America's penal and drug policies that the nation has so sorely needed for years."<sup>32</sup> Prisons are overcrowded, prison budgets are soaring, ex-convicts are poorly reintegrated into society, gang violence is growing, and discrimination

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<sup>32</sup> "Prisons, drugs: A turning point," *Daily Hampshire Gazette*, April 6, 2009.

plagues courts, evidenced by uneven and unfair sentencing.<sup>33</sup> As Webb notes, “we’re ‘warehousing’ the mentally ill in our prisons” where they receive scant professional treatment.<sup>34</sup> The article also makes note of the drastic increase of drug incarcerations over the past three decades. “In 1980, the U.S. incarcerated 41,000 drug offenders; today the figure tops 500,000 – a 1,200-percent increase.”<sup>35</sup> The United States holds the highest incarceration rate internationally. Whereas higher education costs have increased a mere 21 percent over the past twenty years, prison budgets have increased by 127 percent.<sup>36</sup> According to the Pew Center on the States, incarceration surpasses every major spending area in the United States other than health care.<sup>37</sup> In today’s struggling economy, states are facing serious dilemmas as to where to cut back on spending.

Various states have chosen to cut back spending in correctional facility budgets.

Colorado and Kansas are closing prisons; New Jersey has replaced jail time with community service alternatives, and also offers parole violators sanctions instead of re-incarceration.<sup>38</sup> In New Jersey, rather than returning ex-offenders to jail, who have broken minor, technical clauses in their paroles, “those former inmates are sent to a center for a clinical assessment of their risks and needs. With that change, the state is on track to save \$16.2 million this fiscal year.” Even California governor Arnold Schwarzenegger, a staunch defender of strict prison

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<sup>33</sup> “Reviewing Criminal Justice,” *New York Times*, March 30, 2009.

<sup>34</sup> “Prisons, drugs: A turning point.”

<sup>35</sup> Ibid.

<sup>36</sup> “Reviewing Criminal Justice.”

<sup>37</sup> Jennifer Steinhauer, “To Trim Costs, States Relax Hard Line on Prisons,” *New York Times*, March 25, 2009.

<sup>38</sup> Ibid.

policies, has called for a \$400 million cut in the state's corrections budget. Many studies have found that longer sentences do not reduce recidivism for many non-violent criminals. Kansas' decision to replace incarceration for some offenders with drug treatment and housing assistance should be deemed a success, as prison populations and recidivism have fallen.<sup>39</sup> As each of the aforementioned states made efforts to cut prison costs, recidivism has fallen. Why would states continue to pay more money for a higher rate of recidivism? If ex-criminals are more likely to commit another crime and end up back in prison than are ex-criminals who receive sentencing alternatives, these alternatives *must* be explored. In the next section, I will discuss a variety of options of sentencing alternatives, in addition to a preliminary assessment of their levels of success at rehabilitating individuals from recommitting criminal behavior.

As noted above, many states that have shifted their focus away from incarceration and toward alternative sentences, such as community programs and professional drug treatment, have been quite successful not only in cutting back on correctional facility costs, but also in recidivism rates for offenders. What is the best way to reform ex-criminals? When judges decide sentences after conviction, which options prove to be the most beneficial for the individual's rehabilitation, for his or her re-initiation into society, and for the safety of others? I will begin this section by outlining the types of alternative sentencing offered by judges. "Recent renovations in the field of probation include a number of specific variations in the practice of probation," including intensive supervision probations, split sentences, boot camps, restitutions, fines, forfeitures of property, community service requirements, day reporting

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<sup>39</sup> Ibid.

centers, job training facilities, counseling, drug rehabilitation opportunities, and community resource management teams.<sup>40</sup> As stated earlier, studies have shown that lengthened sentences often do not reduce recidivism in non-violent crimes. In addition, “In a statewide study of probation recidivism in Illinois, Olson and Lurigio (2006) found that probationers with drug use problems who received treatment during probation were significantly less likely to be rearrested after their probation sentence, compared with those who received no treatment during probation.”<sup>41</sup> While many jails offer drug rehabilitation programs, they are limited, and often do not provide the same level of service as programs could outside of the confines of the jail. If these offenders do not find a way to conquer their addictions, they will remain trapped in the vicious cycle of drug abuse and incarceration. In order for these individuals to escape this cycle, they must have the opportunity to receive quality treatment.

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In addition to drug treatment, other community development programs, like job training, counseling, and community service projects would not only benefit the individual, but also the community at large. If there is a way to keep convicted criminals out of jail by providing them these necessary services, while helping the community, and cutting back corrections facility costs, it seems like a no-brainer. Charles Colson, writing for USA Today, claims that the criminal justice system is flawed in four vital respects. “First, prisons are not rehabilitating criminals or deterring crime...Second, the system virtually ignores the victims of crime...Third, the current system fails to bring peace to our communities...Finally, the system

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<sup>40</sup> Richard Enos, John E. Holman, and Marnie E. Carroll, *Alternative Sentencing*, 2<sup>nd</sup> ed. (Bristol: Wyndham Hall Press, 1999), 38-39.

<sup>41</sup>Lurigio, 237.

fails the taxpayers.”<sup>42</sup> He continues to say that “it would be one thing if the failure to rehabilitate offenders, restore victims and provide security for communities was a cheap one. Instead, however, this failure is a budget-busting behemoth.”<sup>43</sup> Colson does a fantastic job in pointing out the faults of the criminal justice system. He recommends alternative sentencing in the form of drug rehabilitation and community service as a means of decreasing costly incarcerations which do nothing to rehabilitate the offender.<sup>44</sup> The programs necessary for alternative rehabilitation must be quality, accessible, and reliable. While a great amount of funding will be required in the initial startup of these programs, they will more than pay for themselves not only in prison costs, but also in the value of a society with less criminal behavior.

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### **Conclusions**

My first conclusion is that this essay is not simply about racial discrimination in sentencing. Rather, it is about how sentencing creates poverty for offenders of all races. When looking at national unemployment rates, those who are imprisoned are not typically considered. However, when these incarcerated individuals *are* considered, unemployment rates soar. When a member of a family is incarcerated, the remaining family members are left without a primary source of care-giving and income. Sentencing for non-violent crimes works not only against rehabilitation of the offender (especially in addiction-related cases), but also

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<sup>42</sup> Charles Colson, “Alternative Sentencing: A New Direction for Criminal Justice,” *USA Today* (May 1991): 64-66.

<sup>43</sup> *Ibid.*, 66.

<sup>44</sup> *Ibid.*

towards the augmentation of poverty. Alternative sentencing options have proven to be more successful and efficient in reforming non-violent criminal behavior. Looking back at Sen, a judge is only just when he or she delivers a sentence that work toward ensuring the offender's capability to function in society. By incarcerating non-violent criminals, judges often decrease the individual's likelihood of refraining from further criminal behavior and of becoming functional, important members of society. The question that I should have asked when I walked into the jail this past summer is, "does incarceration cause poverty?"

While many jails offer education opportunities, drug rehabilitation programs, and counseling, enrollment in such programs are limited and expensive. The Central Treatment Facility, the privately-owned jail in the District of Columbia for women and low-risk men, boasts its successful drug rehabilitation and counseling services. This past summer, I had the opportunity to take a tour of CTF, talking with some of the inmates about the facility and its wide-range of programs. As I was walking through the jail, I felt very safe. The classrooms were very nice, and the teachers were enthusiastic and experienced. We were shown different job training opportunities within the jail, including a program that trained inmates as barbers. We toured the clean medical facilities and spoke with its seemingly professional and qualified doctors. We spoke with members of the drug rehabilitation programs, who testified to the success of the program through individual accounts of addiction and recovery. As I walked through the jail, I thought about the types of neighborhoods in DC where many of the inmates had lived prior to conviction. I could not help but think that I would rather live at CTF than in some of the more dangerous, crime-ridden, community-resource-deprived areas of Anacostia.

After walking through these neighborhoods, examining their medical facilities, and noticing the state of public schools in poor areas of DC, it almost seemed as if living at CTF may have been a reward; it offered safety, cleanliness, sound education and job training opportunities, and reliable (and free) medical treatment. These programs, however, are expensive, especially when considered as additions to the minimum expenses assumed by correctional facilities in housing, clothing, and feeding inmates. The best way to offer these programs in the most cost efficient manner is to offer alternative sentencing opportunities to criminals who qualify. The research must continue; as studies are continuously published in the *New York Times*, as they have been throughout the past month, the topic will gain recognition and support. With enough recognition, changes can be made. With enough change, hopefully when I visit the DC Jail as an attorney twenty years down the road, I will see white folks; hopefully, I won't see as many folks; and hopefully, the criminal justice system will have undergone the reform needed to provide fair and equal justice to those who need it most.

On my honor, I have neither given nor received any unacknowledged aid on this essay.

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4/22/09

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