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Race to Incarcerate: The Causes and Consequences of Mass Incarceration

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Race to Incarcerate: The Causes and Consequences of Mass Incarceration

Marc Mauer*

Good morning and thank you so much for having me here. I appreciate the kind introduction; I have come to appreciate the importance of getting the introduction right. When my book “Race to Incarcerate” was first published, I was giving a talk in one of the book stores in Washington [, D.C.] and a newsletter went out promoting the talk, saying “Marc Mauer will speak about his new book ‘Race to Incinerate.’” Those issues are important as well, but I think we are going to talk about prison issues today if that’s ok with you.

It is a pleasure to be here for a number of reasons. Over the years, I have been happy to work with and watch the work of people in corrections, people in the advocacy community, and practitioners in Rhode Island and have been so impressed at the leadership [and] creativity employed here. It gives me ideas about what we can talk about in terms of addressing mass incarceration, what practitioners can do, and what policy makers should be paying attention to. I am hoping to learn from you as well as the day goes on. I am impressed as well [with] the variety of perspectives and positions that are here today. You may think it’s an easy thing to pull together all these different constituencies in the state, but there are not many law schools that have been able to pull off an event like this.

This convening comes at a very important time. I think it is increasingly clear that we are at a moment when the opportunity for criminal justice reform is probably greater than it has been in

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several decades. I just came from speaking at a summit event in Washington billed as a bipartisan summit on criminal justice reform. It was cosponsored by the ACLU and the Koch Brothers, so we are now living in a different world.

What I want to do this morning is talk about three main issues. First, what are the policies and practices that have produced mass incarceration over the past four decades? Second, what is the impact of mass incarceration on public safety and communities? And third, where do we need to go from here if we to address these issues in a fundamental way?

Let me say that I will be speaking primarily about national trends, which may or may not always apply to Rhode Island. But mass incarceration has been an American phenomenon and I think that most of what we will be looking at, to one degree or another, is probably very relevant to your situation.

If we want to think about the big picture of mass incarceration, we have to go back to 1973, the year when the prison population first began its historic rise. Let's imagine that we are back in 1973. Richard Nixon is President. And let's imagine that President Nixon comes on national television and here is what he says: "My fellow Americans, we have a serious problem of crime in this country, but I have a plan for dealing with it. Here's my plan. First we are going to build a million new prison cells and fill them as quickly as possible. Second, because we know that crime disproportionately takes place in minority communities, we are going to reserve 60% of those cells for blacks and Latinos. And third, we are going to put 3,000 people on death row and start to execute them as quickly as possible. That's my plan for dealing with crime."

What would have been the response to such a speech by an American President? Well, I think there would have been great outrage by civil rights and civil liberties organizations. We would have seen editorials in leading newspapers decrying this barbaric plan of building a million prison cells, killing people, locking up people of color in large numbers. I think there would have been great outrage. Well, Richard Nixon never made such a speech, but this is precisely what our criminal justice policy has produced over the last four decades. Let me show you what that looks like.

To start off . . . This is a picture of the prison population in the United States for a period of about fifty years, 1925 to 1972. And

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what we see here is a relatively steady number of people in state and federal prison. It goes up a little bit during the depression years, down a little during World War II, but no dramatic changes and we end 1972 with about 200,000 people in state or federal prison.

And then this is where we go. Indeed, we have added more than a million people to our system since then. We have a rise that was totally unpredicted, unprecedented over the last four decades. To put some context on that, a comparison of international rates of incarceration shows that the United States has come to lock up a greater portion of its citizens than any other nation on Earth. If we compare ourselves to other industrialized nations, we lock up our citizens at five to eight times the rate of those other countries. Whatever you may believe are the causes of this disparity in incarceration, it strikes me as a very profound problem that a society that prides itself on its democratic traditions, the wealthiest society in the world, has somehow come to be the world's largest incarcerator. There's something wrong with this picture.

This increase in the justice system is not confined to state and federal prisons. Here we have state prisons, jails, parole and probation. The criminal justice system overall has expanded at an incredible rate over these last four decades.

We know that incarceration does not cut across the population evenly, Bryan [Stevenson] referenced those figures from the Justice Department study, that if current trends continue one of every three black males born today can expect to go to prison in his lifetime, one in every six Latino males, one of every seventeen white males. The figures for women overall are lower, but we see racial, ethnic disparities there as well.

The challenge, the big question for us, is where does this dramatic change come from? One might think if we have about seven times as many people in prison today as we did four decades ago, maybe we have seven times as much crime and that is what explains it. "You do the crime, you do the time," that's why we lock up so many people now. If we go back to the early years of the prison buildup, there is a bit of truth in that explanation. There was a rise of crime from the mid-60s to the mid-70s. Part of this was due to the Baby Boom generation coming into the high crime rate years, part of this was increasing urbanization, which

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is often associated with crime, as well as other factors. So, we had an initial rise in crime rates that probably contributed to some of this increase, beginning in the 1970s.

But we know, beginning in 1980, the increase in the prison population has been a function of changes in policy, not changes in crime rate. The changes in policy essentially have been changes in sentencing policy, decisions made at a federal, state, and local level to send more people to prison and to keep them there for longer periods of time. Some of you may be familiar with the groundbreaking report produced by the National Research Council last year, looking at the causes and consequences of incarceration. Essentially, their analysis concluded that half the increase since 1980 resulted from an increased likelihood of a prison sentence upon arrest and half from an increase in time served in prison. If you break it down by decades, the 1980s was the decade of the “war on drugs” being formally launched, where we see the increase was primarily due to greater admissions to prison. It became far more likely, certainly for a drug offense, to be sentenced to prison. In the 1990s, the cause has shifted to an era where the amount of time a person served in prison began to increase dramatically. This was due to policies such as “Truth in Sentencing” to extend the time in prison and cutbacks in parole release in many states. In the 2000s we have seen somewhat of a moderation in these trends.

So what do these changes in sentencing policy look like? Well, they are very complicated and they vary depending on where you look. Broadly speaking it is the era of mandatory minimums, policies like “Three Strikes and You Are Out,” habitual offender laws, and the “Truth in Sentencing,” cutbacks in parole. Every state has adopted some form of mandatory sentencing, although it varies in the extent to which it is applied. The federal system has probably been the leader in this regard, and particularly for drug offenses.

One of the more extreme cases we have seen in recent years is a federal case in Utah, a man named Weldon Angelos in the early 2000s. Weldon Angelos was a 24-year-old music producer, and he was also a mid-level marijuana seller. On three separate occasions, he sold about \$300 worth of marijuana to an undercover agent. During the course of these transactions, he possessed a weapon, a gun that was stuck in his sock in his shoe. [He] never

used or threatened to use the gun, but it was visible to the undercover officer. So he's got three counts of selling marijuana and he is in possession of a weapon while he does it. For the first count because of the quantity of drugs, the judge had no recourse but to sentence him to five years in prison on a mandatory sentencing charge. For the second and third counts he is now a convicted drug offender based on the first conviction, and he's a convicted drug offender in possession of a weapon while committing a new drug transaction. So on the second and third counts he gets 25 years and 25 years. So Weldon Angelos is serving 55 years in prison for about \$1000 worth of marijuana sales. The sentencing judge in this case, Paul Cassell, a self-described conservative Republican, was essentially begging the defense attorneys to give him something to work with so he wouldn't be obligated to impose this 55-year sentence, but that's what mandatory sentencing is. Lawmakers did not want judges to have any discretion to get around these cases and there was nothing to work with. That's where Weldon Angelos is today.

About half the states adopted some form of three strikes policy in the mid-1990s. Typically, upon your third serious conviction, you could get a life sentence. The policy adopted in California was by far the most extreme. In California your first two strikes had to be serious or violent as defined in the statute, but your third felony could be any felony in the state of California. So there was a challenge to the policy that went to the U.S. Supreme Court in 2003, and the question was did the policy represent "cruel and unusual punishment?" There were two cases. In the first case the man's third strike involved stealing three golf clubs from a sporting goods store. He had on some baggy pants, he took the golf clubs, stuck them in his pants, walked out of the store, and was immediately apprehended. The second man's case involved stealing \$153 worth of video tapes from a Kmart store on two separate occasions. The Court looked at these cases and rejected the argument about being "cruel and unusual." Essentially, they concluded that if this is what the legislators in California believe is necessary to deal with the crime problem then we don't want to second guess them on that, and will defer to their judgment about whether this is a reasonable way to deal with a crime problem. So the golf club thief is serving a sentence of 25 to life, and the videotape thief is serving a sentence

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of 50 to life in California prisons. Now, I do not mean to suggest that most people in prison are there for stealing golf clubs and videotapes. We all know that there are many people who have committed very serious that have harmed the public and individuals, but this is one of just many ways in which the extremes, the restrictiveness of our sentencing policy has produced results that I think can only be described as bizarre, not to mention counterproductive.

We know that beginning in the 1980s, the most significant change in the system for a period of about 20 years was what we call the “war on drugs.” Here’s a brief overview. We see that in 1980 about 41,000 people were in prison or jail, either serving time or awaiting trial for a drug offense; today that figure is nearly 500,000 people behind bars for a drug offense. We have more people behind bars for drug offense today than the entire prison and jail population back in 1980. We know that the composition of the people serving time for drug offenses is very disproportionate, about 60% African American or Latino, far out of proportion to the extent that those groups use or sell drugs. These disparities are produced by a mix of law enforcement strategies, sentencing policies, and prosecutorial decision-making.

In other areas of sentencing we see results that can only be described as extreme, particularly the imposition of long term sentences. Over a period of years, the use of life imprisonment has become a defining feature of the American prison system, to the point today where one of every nine people in prison is serving a life sentence, nearly 160,000 people. Of this group, about a third are serving life without the possibility of parole. Even for those who have the possibility of parole, in far too many states Governors or Parole Boards are now adopting policies where they say that “life means life.” So the sentencing judge may have believed that when this person was sentenced to life with the possibility of parole, that the person might be eligible for parole in 15, 20, or 30 years, but now the parole board is saying “no, that is not our policy.” This is very contradictory to what everyone in the courtroom believed was happening on the day of sentencing.

Population increases in other parts of the system are not necessarily a result of changes in policy, but changes in practice. We can see this particularly in probation and parole systems around the country, in large part due to the increased numbers of

people going to prison on a parole or probation revocation. In 1980, one of every six people admitted to prison came in on a violation; that proportion is now doubled to one of every three people admitted to prison. About 29,000 people entered prison on a violation in 1980; today that figure is 232,000. Some of them are for new charges, some of them for technical violations, but in many cases we can see the impact of decision making by practitioners.

One development that may seem odd in looking at these figures is that beginning in the 1980s and continuing today there has been a great deal of creativity in many courtrooms and communities in developing alternatives to incarceration. Before 1980, in most courtrooms on the day of sentencing, a judge had a choice between prison or probation and not much in between. Over the course of several decades, I am sure that there is no court in America that does not have some type of community service program, some type of restitution to victims programs, and in many cases, much more creative initiatives such as drug courts and mental health courts. This has all been very encouraging, as courts and communities are responding to the perceived needs in the court room. But what is difficult to understand is if we had such an expansion of alternatives to incarceration, how can we explain the trends in the prison population, which have continued to go up for nearly four decades now? It seems to me that there are three possible explanations. One is that the development of alternatives has varied quite a bit from state to state and even localities within a state. Depending on how these alternatives are established may tell us a good deal.

A second possible explanation is that it is possible that without these alternatives, the rise of the prison population would have been even more dramatic than it already is. It is hard to imagine, but perhaps that would have taken place if we didn't have this creativity.

A third part of the explanation is that as we've seen this flowering of new programs, many of them have been well-intended but are not necessarily are serving as alternatives to incarceration. We see this in far too many drug and other specialty courts, as well as in diversion programs. The criteria for admission to many alternatives to incarceration programs are often on the low end of the scale, so there are many programs set

up for first time offenders, nonviolent offenders, young offenders, and the like. This is understandable in many respects, based on an idea of helping people change their lives before they get too deep into the system. There is certainly a need to do that, and some programs do this well so that it becomes the last contact that the person has with the system. But if we want to see if alternatives to incarceration can really have an impact on the prison population, then we also need to extend the categories of people—the criteria—in terms of who we are admitting into the programs. We know from a good deal of research that the more we work with higher risk people, who have a higher chance of incarceration, the more the benefits there are to the community. If we can stop what might be a budding criminal career, if we can help people to turn around who have a greater likelihood of committing harm, we can make a big difference. It doesn't mean that it is easy to do this, but we need to be very clear about how we target our interventions and what we are trying to accomplish.

This has been an overview of the development of changes in policy explaining where mass incarceration comes from, but what has been the impact of mass incarceration? There are some people who will look at the experience of the last 15 or 20 years, a time when crime rates have been declining around the country while the prison population has continued its rise, and will conclude that “Well, it looks like it works, the prison population went up, crime went down. It may be unfortunate that we have two million people behind bars, but that's just what we needed to do in order to control crime.” So what do we know about that? First, we know that prison does have some effect on crime. Each of us can think of a particularly high profile case of serious violence and the person behind bars today makes us all, at least a little bit, safer. But as we look at the research on what the impact of prison is on crime it turns out that that impact is much more modest than one might initially think.

Here is the conclusion of the report from the National Research Council last year where they say the growth in incarceration rates reduce crime but that the magnitude of the crime reduction remains highly uncertain and the evidence suggests it is unlikely to have been large. In many ways, this seems counterintuitive. Whether or not you're a proponent of mass incarceration, one might think that if we had two million

people behind bars, if we lead the world in incarceration, we should be the safest country on Earth. But with so many people incarcerated, why have we not seen even a greater effect on crime? There are a number of factors that help to explain this.

First, we are well past the point of diminishing returns, in terms of what we get out of incarceration as a public safety strategy. If we had a prison system of 100 beds, and we had to prioritize who is incarcerated in those 100 beds, I assume that most of us would say, "Well, let's look at people convicted of murder, rape, and armed robbery and we'll use the prison cells to keep those people behind bars for a long period of time." But if we have a prison system of a million beds, we no longer have to be very selective, since there is more than enough space for all of the people convicted of murder, rape and robbery. Now we have got enormous amounts of space for drug offenders of various levels. We don't have to lock up just the high-rate burglars, we can lock up low-rate burglars if we want. What we have done through the expansion of the system is that each successive person going to prison, each incremental jump in incarceration rate means that we often have increasingly less serious people going behind bars and therefore in terms of the impact on public safety, on crime commission, we have been getting a diminishing impact for quite some period of time.

A second factor is what criminologists would call the "replacement" effect. Think about two offenders we send to prison. Offender A is a serial rapist who is terrorizing a neighborhood. The police finally catch the person, take him to court, he is convicted, and sent off to prison. In this case we put one person in prison, and we have clearly had an impact on crime, at least in that particular neighborhood. Offender B is a kid on the street corner selling drugs. The police come by, do a drug sweep, catch him in the act of selling drugs, take him to court, he is convicted, and maybe sentenced to prison for five years on a mandatory drug charge. Just as in the case of the serial rapist, we have now sent one person to prison, but what have we done for public safety? If we go back to that street corner where he was picked up selling drugs, how long do you think it is going to take for somebody else to step up to that corner and try to meet the demand for drugs in that community? I think it is going to take about 20 minutes in most neighborhoods. If there is a demand for

drugs, there is a virtually endless supply of people willing to step up and try to make a little bit of money. We know there is always an endless supply based on the numbers of drug offenders who have been convicted and sent to prison over the last thirty years.

So in this case we have also increased the prison population but we haven't necessarily done anything about the drug problem on that street corner. In a sense we have created a new job opportunity, for somebody else to step up to that street corner. But we have also done something else when we send that person to prison. Conservatively speaking, it costs about \$25,000 to keep a person behind bars, and considerably more in some states. A five-year prison sentence for that street corner drug seller means that we as tax payers have just committed to spending \$125,000 to keep him locked up.

Now suppose I was the mayor of this particular town where he was picked up and I come and have a meeting of the residents of the community and I say to them "You know, you have got a drug problem in your community. We need to do something about it. I am going to give you \$125,000 and you tell me what you want to do with that money to deal with the drug problem." Well, what would people come up with? I think that we would hear a broad range of ideas. Some people would want a law enforcement officer on the street corner 24/7 to deter people from selling drugs, others would want more treatment programs, and some people would want summer jobs for their kids in high school. We could have a pretty vigorous conversation about what might bring safety to that community. But it is hard to imagine any neighborhood in America saying they want to spend that entire amount of money locking up one person for five years and then pat themselves on the back for what a good job they did in dealing with the drug problem in this neighborhood. Now we never say this in the courtroom. We don't say, "I'm sending you to prison for five years and I'm glad the tax payers are coming up with \$125,000 to make this possible." But we are doing this tens of thousands of times, over and over again, without asking any questions about the range of ways that we might approach this issue.

The third factor that I think tells us something about the limited impact on public safety of these sentencing policies that we have adopted has to do with the nature of deterrence. Deterrence has always been one goal of the justice system, and it

certainly produces a degree of deterrence. What too many lawmakers have become confused about, and much of the public too, is research over many decades tells us that deterrence is much more a function of the certainty of punishment, rather than the severity of punishment. That is, if we can increase the odds that someone will be apprehended—whether it is a shoplifting, or a murder—then at least some people will think twice about it. But if we merely increase the amount of punishment that we are going to impose for people who don't think they are going to be caught anyway there is very little effect. We can think of how this plays out in our daily lives. We are out driving on the highway, it is a holiday weekend; I don't know about you, but I occasionally go over the speed limit by a little bit or so. If there are a lot of state troopers on the highway that day I am going to slow down a little bit to below the speed limit, because the certainty of apprehension and punishment has just increased due to a greater law enforcement presence. But if the state legislature last year increased the penalties for speeding, first of all I don't know what the penalty is, how much the fine is, and secondly I am not normally planning to get caught. If I inch over the speed limit I am not really worried about that.

I work in Washington, and I go to hearings on Capitol Hill and you hear policy makers of both parties—less now than it used to be—say, “We are going to send a message to these offenders that if you so such and such, we are going to punish you. We are going to increase the penalty.” It is not clear who is listening to the message and it is not clear that the message is really getting across very well.

So we see that prison has some effect on public safety. That effect it is more limited than many people believe, and it is certainly one of diminishing returns. But we also see a variety of other effects.

None are more significant than the profound racial and ethnic disparities in the system. Today, nearly 60% of the prison population is African American or Latino. The intersection of race, poverty and social class is most profound among black male high school drop outs. By the age of 34, 70% of this group have already been to prison. So if you are a black male who drops out of high school it is almost a guaranteed admission to your state or federal prison system.

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How do we explain these profound disparities? It is a complicated question. At first glance, it seems like race. Yes, there is greater involvement in certain crimes among people of color. But among African Americans, we don't have to dig very deep to see that what might appear to be a racial effect is essentially one of socio-economics. What we are looking at is concentrated poverty and the disadvantages that come along with that, along with growing inequality that takes place during this time period. We see what is often called the impact of race-neutral sentencing policies. Such policies have no explicit intent to have a disproportionate racial effect, but in practice and ways that we could have predicted, absolutely have a racial effect. We see it certainly in the drug war, such as the crack-cocaine, powder-cocaine sentencing disparities at the federal level, where 80% of the people charged with crack offenses receiving higher sentences than powder offenses, were African American. In 2010, Congress narrowed, but did not eliminate, that disparity. But it goes much deeper than that.

Every state also has a set of policies of school zone drug laws. These come from the very defensible goal that we do not want drug dealers selling drugs to our kids on the playground at lunchtime. It turns out that that is already illegal, even before we had school zone drug laws, but again legislators wanted to show how tough they could be. So we now have penalties that enhance the punishment for crimes committed in or near a school zone. Now, why would this have a racial effect? If you think about geography, in urban areas which are densely populated, the school zone laws typically extend 500 feet, 1,000 feet, sometimes as much as a half mile. So in a densely populated urban neighborhood almost every block may be within a defined school zone. You can have a drug transaction between consenting adults that may take place several blocks from a school where the two parties do not even know that there is a school. Yet, technically, they are within the school zone and could be charged with higher penalties for the offense. So we see much greater likelihood of a drug transaction in an urban area being a school zone offense compared to suburban or rural areas. People of color are more likely to live in urban areas and, therefore, the same offense in one neighborhood is treated very differently than in another. New Jersey had a very huge disparity in their application of the school zone. A study

conducted a few years ago found that 95% of the people charged with a school zone offense were African American or Latino. As a result of that finding the legislature revised the policy substantially.

We see as well the impact of implicit bias among policy makers and practitioners in the system. And just to be clear, this is not to say that everyone who works in the justice system is a racist. We all grew up in America, we all grew up with the history of what Bryan has just reminded us this morning. We all carry elements of that bias within us and it is not necessarily conscious all of the time, but it affects how we make decisions and what policies result from that.

As practitioners do their job and establish policies and practices we need to be very careful that such implicit bias doesn't carry over into how we make decisions and allocate resources. Here are some examples of what that looks like.

The Annie E. Casey Foundation has done well-regarded work on reducing juvenile detention over many years. In one of the jurisdictions they worked with, Multnomah County (Portland, Oregon), they examined the risk assessment criteria being used to determine which kids needed to be detained and which could be sent home. One of the criterion was: does the young person have a "good family structure"? Now, some of us were fortunate enough to be born into a good family structure, but that was pure luck for us. Many people are not so fortunate. As they reviewed this they changed their criterion from "good family structure" to asking whether there was a "responsible adult" who could look after the young person. The "responsible adult" might be a teacher, a minister, a baseball coach, or someone else. When they changed that they had a dramatic rise in the number of kids of color who were not viewed now as needing to be behind bars. It was a very simple change, but very profound.

A study of the juvenile justice system in a northwest state examined reports submitted by probation officers in terms of recommending to a judge what the sentence should be for a particular juvenile. The study looked at the narrative portions of the probation officers report, essentially the assessment of the young person. What they found was that when they looked at the white kids, they tended to be described as having environmental problems; they were not getting along with their family, they were

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not doing well in school, they were truant, getting into fights, and things like that. The African American kids were more likely to be defined as having antisocial personalities. Now what is the implication here? Well, if you are having problems with your family or school, there are things that we can try to do about that. We can get teachers and counselors and tutors and social workers to try to deal with your anger and try to deal with these relationships and help you get through it. If you have an antisocial personality, there is not much that we can do about that. We cannot give you a new personality, and so therefore decision makers may say, "Well, for reasons of public safety, we cannot allow this kid to be out on the streets." Not necessarily anything conscious, but a reflection of the bias that we may bring to these issues.

So, where do we go from here? I think there are some very good opportunities now. Let me just sketch out a bit of the direction I think we should go and what this political moment looks like. Sentencing reform, not just because I am the Director of the Sentencing Project, but because I think it really is critical, this is what got us here and this is what we need to do if we want to change it. There is a range of things that we need to do at both the federal level and the state level regarding who goes to prison and how long they stay there.

In regard to the range of alternatives to incarceration, as I have discussed, we need to get more creative and ask ourselves difficult questions about the goals of our policies and programs. What we are trying to accomplish and how we will know if we are doing so?

I would also say we need to level the playing field. In far too many cases we have two systems of justice, one for the rich and one for the poor. And while we made great strides in recent decades those disparities are all too prevalent. It may be the role of money bail determining release, the quality of your defense attorney, or your ability to access treatment programs.

We also need to realign our approach to public safety. Some of you may be familiar with research done some years ago by people doing geomapping, where they describe what they term as "million dollar blocks." Initially this was done in Brooklyn, New York, where it was determined that that in many densely populated blocks taxpayers were spending a million dollars a year

to incarcerate people just from that one block. So whenever people say, “Well, money is tight, there is nothing that we can do,” we need to recognize that we have already made a decision to spend a million dollars on each of these blocks on public safety. It does not mean that we should necessarily open the prison gates and tell all the people from those blocks that they can go home, but it does raise questions about how we allocate resources for public safety.

We have a lot of challenges, but I think that the political environment is beginning to change. I probably realized this five years or so ago when I received a dinner invitation to meet with a small group of people to talk about what we should do about our prison system. Surprisingly, the invitation came to me from Newt Gingrich. Those of you who know me know that I am not the sort of person who thinks that he is going to get invited to dinner by Newt Gingrich very often, but I went to the dinner. There were a few of us “liberal” types there, but many of the people in the room were household names on the conservative right. Gingrich, Grover Norquist, Michael Steele, at the time head of the Republican National Committee, and a number of others. We had this very free flowing, very intriguing conversation over three hours of dinner about drug policy and federal, state, and local partnerships and relationships, how to spend money and how to know what is working and what is not. I do not want to suggest that we agreed on everything and I do not want to suggest that we solved all of the world’s problems, but it was a very eye-opening event. Out of that and other developments you may be familiar with, there is now an organization called “Right on Crime,” which is essentially a high profile group of self-identified right-wing people who have a statement of principles that says that there are too many people in prison.

I should say that it is not only right-wing conservatives, we ha[d] an Attorney General, Eric Holder, who in a major speech to the American Bar Association said, “We have too many Americans in too many prisons serving far too long in prison.” We are in a moment now, where for some fifteen years we have had an explosion of interest in reentry programming and initiatives going on in every state around reentry. We are still learning what that means. We have a range of challenges to the collateral consequences that have erected even more substantial barriers to reentry for people coming home from prison, we are beginning to

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recognize that. At the same time, we do not want to lose sight of the scale of the problem. It took us 40 years of harsh policy to build up mass incarceration, and I hope that it doesn't take 40 years to undo it. We are not going to address it just by a program here and there or a new drug treatment initiative. It has got to be much more substantial.

Let me just close with an image Bryan referenced in the terminology that was raised in the 90s of "super-predators." This came from a small group of high profile commentators who published op-eds in the Wall Street Journal, testified in Congress, and warned of a coming crime wave. They were not very good social scientists, and shortly after they made predictions, crime rates started to come down. They came down faster for juveniles than adults and they came down equally for white, black and Latino kids. So they really didn't know what they were talking about, but nonetheless it was very damaging.

But think for a moment, suppose we had reason to believe that there was a coming generation of high rate offenders. They were basically talking about five-year-old black boys, and ten years later they would become these "super-predators." Suppose we had reason to believe that in ten years we would be facing this crime wave. What would we do about that?

It seems to me that we have two choices. One would be to start to build prisons as quickly as possible to make sure we have enough space to lock them all up when they turn 15 or 16. The other way approach would be to say the good news is that we have a ten-year window of opportunity. So what can we do with their families and communities to create opportunity to address their disadvantages, so that we could at least moderate the scale of the problem. If it's my kid that we are talking about it is pretty clear which approach I am going to take. I want to do everything I can to intervene, to improve my kid's prospects in life. But when we think of it as someone else's kid, that is when we start to break down, that is when we start to think about punishment. So I think our job is to consider how we can create a community and a discussion where we are talking about everyone's kids as if they were our kids. If we can do that then I think that we are on a much better path.

Thank you again for having me here, and thank you for all your work.

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RACE TO INCARCERATE

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PRESENTATION

THE SENTENCING PROJECT
RESEARCH AND ADVOCACY FOR REFORM

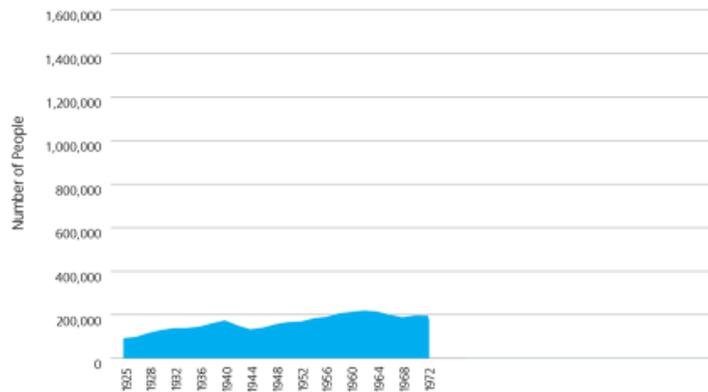
The Causes and Consequences of Mass Incarceration

Marc Mauer
The Sentencing Project

Sounding the Alarm on Mass Incarceration
Roger Williams University School of Law Symposium
March 27, 2015

THE SENTENCING PROJECT
RESEARCH AND ADVOCACY FOR REFORM

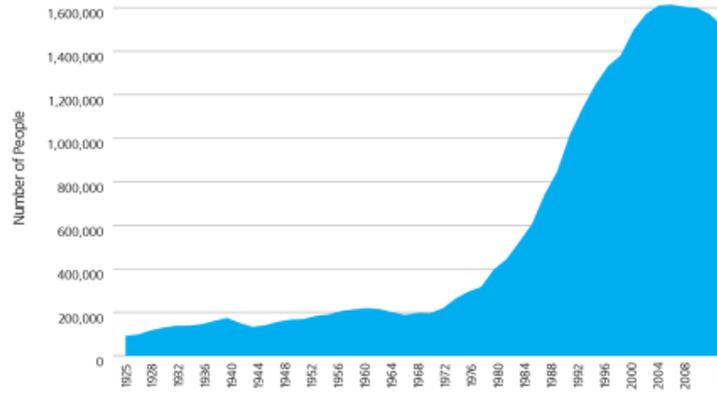
State and Federal Prison Population, 1925-1972



Source: Bureau of Justice Statistics Prisoners Series.

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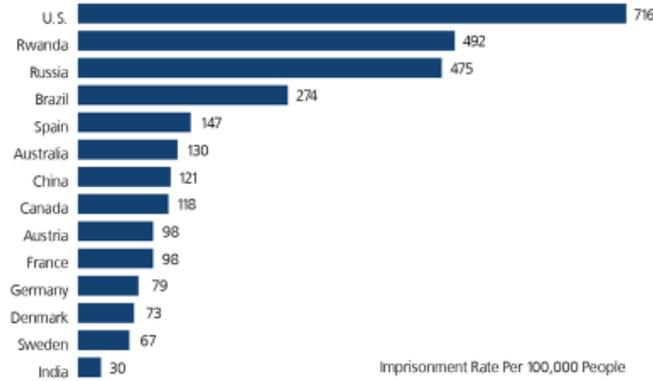
THE SENTENCING PROJECT
RESEARCH AND ADVOCACY FOR REFORM
State and Federal Prison Population, 1925-2013



Source: Bureau of Justice Statistics Prisoners Series.

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International Rates of Incarceration

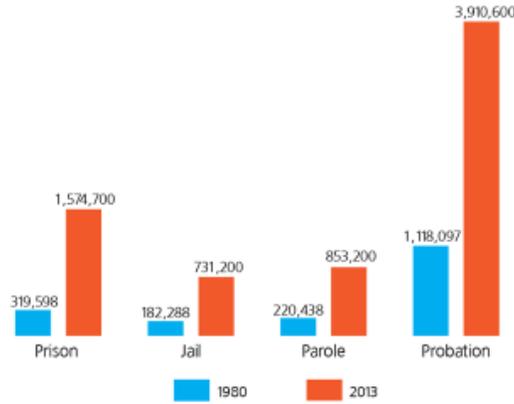


Source: Walksley, R. (2013). *World Population List, 10th Ed.* Essex: International Centre for Prison Studies.

3

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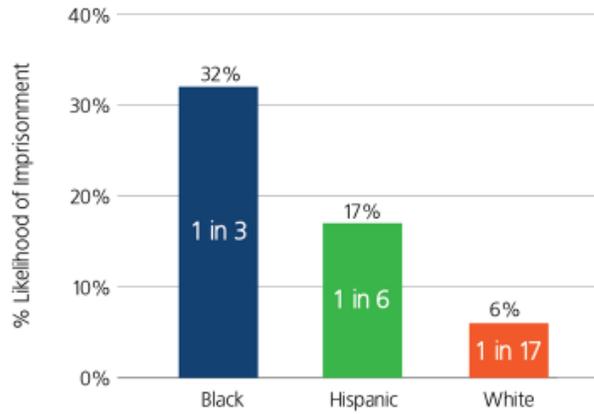
Population Under Control of the U.S. Corrections System, 1980 & 2013



Source: Glaze, L. E. and Herberman, E.J. (2014). *Correctional Populations in the United States, 2013*. Washington, D.C.: Bureau of Justice Statistics; *Corrections: Key Facts at a Glance*. Washington, D.C.: Bureau of Justice Statistics.

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Lifetime Likelihood of Imprisonment for Males Born in 2001



Source: Bonczar, T. (2003). *Prevalence of Imprisonment in the U.S. Population, 1974-2001*. Washington, D.C.: Bureau of Justice Statistics

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Rise in Incarceration in State Prisons, 1980-2010

Changes in Policy, Not Crime

- 49% increased likelihood of prison sentence per arrest
- 51% increase in time served in prison

— National Research Council

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Changes in Sentencing Policy

- Mandatory minimums
- “Three strikes” and habitual offender policies
- “Truth in sentencing” and cutbacks on parole

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Rising Incarceration of Drug Offenders, 1980 & 2013

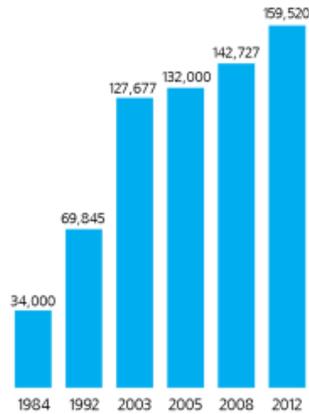
- 1980: 41,000 individuals
- 2013: 489,000 individuals



Sources: Carson, E.A. (2014). Prisoners in 2013. Washington, D.C.: Bureau of Justice Statistics; Mauer, M. and King, R. (2007). A 25-Year Quagmire: The War on Drugs and its Impact on American Society. Washington, D.C.: The Sentencing Project; Glaze, L. E. and Herberman, E.J. (2014). Correctional Populations in the United States, 2013. Washington, D.C.: Bureau of Justice Statistics.

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Rise in Life Sentences, 1984-2012

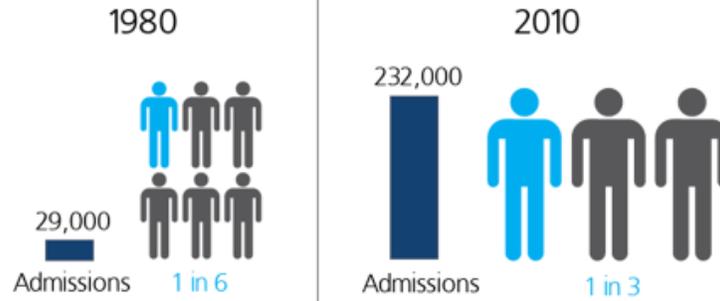


- One of every nine prisoners today is serving a life sentence

Source: Nellis, A. (2013). Life Goes On: The Historic Rise in Life Sentences in America. Washington, D.C.: The Sentencing Project.

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Impact of Probation and Parole Revocations on Prison Admissions



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Impact of Mass Incarceration on Public Safety

“...the growth in incarceration rates reduced crime, **but the magnitude of the crime reduction remains highly uncertain and the evidence suggests it was unlikely to have been large.**”

— National Research Council

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RACE TO INCARCERATE

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Understanding the Limited Impact of Incarceration on Crime

- Diminishing returns
- “Replacement” effect
- Deterrence a function of certainty, not severity

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Mass Incarceration and Racial Disparity

- Prison population:
 - 36% African American
 - 22% Latino
- Black male high school dropouts:
 - 70% imprisoned by age 34

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Factors Contributing to Racial Disparity

- Greater involvement in certain crimes, related to socioeconomic disadvantage
- “Race neutral” sentencing policy impact
- Implicit bias

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Reversing Mass Incarceration

- Sentencing reform
- Expand range of alternative sentencing and alternatives to revocation
- “Level the playing field”
- Realign approach to public safety

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