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JUSTICE
FOR
ALL?

How the fallout from
the war on drugs has
led to the highest
incarceration rate
in the world.

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As a child growing up in the inner city of Los Angeles in the early 1980s, I saw firsthand the gripping and debilitating effects of poverty, crime, and joblessness on poor families of color. Much to the dismay of parents and community members, many of the young men in my community cycled in and out of the criminal justice system or wound up dying prematurely due to gang violence and other types of conflict. I knew then that what was going on was a travesty of justice, but I was unable to articulate the root of the problems or possible solutions.

It was not until decades later, in 2001, when I took a class in law school focused on the war on drugs that I gained a clearer picture of how the cycles of poverty and incarceration that I witnessed in my community were a part of a larger pattern. In 1980 about 500,000 adults were incarcerated in the United States. Today, according to a report by the Pew Center on the States, that number has ballooned more than fourfold to more than 2.3 million—one in 100 adults in the United States are currently incarcerated. Indeed, the United States has the highest rate of incarceration in the world—we represent 5 percent of the world’s population, but about 25 percent of its prisoners. The economic impact of incarceration is immense, costing states about \$50 billion per year and the federal government \$5 billion annually.

How did our nation become the world’s leader in incarceration within just the last twenty to thirty years? The most evident reason for the dramatic shift in our prison population was the advent of the war on drugs.

The war on drugs began in the mid-eighties amid reports and perceptions that there was an exploding drug problem in the United

States, which focused primarily on the use of crack cocaine. The media had issued a series of reports regarding the negative and purportedly dramatic effects of crack cocaine in inner-city communities. Additionally, in 1986, two days after being chosen by the Boston Celtics as the second overall draft pick, basketball star Len Bias died of a drug overdose. At the time his death was thought to be caused by crack cocaine. (Later reports confirmed that it was actually caused by powder cocaine use.)

Other reports included accounts of pregnant women who were using drugs and giving birth to so-called “crack babies,” as well as reports of

sons why this shift occurred. First, the law made a huge distinction between those who were caught trafficking crack cocaine versus those caught trafficking powder cocaine. In essence, a person found with five grams of crack cocaine (roughly the size of a teaspoon) was eligible for a five-year mandatory minimum sentence, while a person caught with 500 grams of powder cocaine (roughly the size of a loaf of bread) could receive the same sentence. This was known as the 100-to-1 sentencing ratio between crack and powder cocaine.

Many questioned the differential treatment in the sentencing, and the underlying racial implications.

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gang violence linked to trafficking of crack cocaine in poor communities. Around-the-clock news coverage of these events caused widespread alarm and panic. Public frenzy surrounding the purported effects of crack cocaine induced Congress to take swift action by creating federal legislation that provided harsh, lengthy prison terms for drug trafficking and other types of offenses. Numerous states soon followed suit and created their own drug war statutes that mirrored federal drug laws. These steps produced a huge boom in our nation’s prison population.

The initial goal of federal drug war legislation was to make it easier to catch and incarcerate higher level drug dealers and kingpins. However, in the years that followed the enactment of the drug laws, reports showed that the majority of those sentenced to mandatory minimum prison terms had committed lower level, nonviolent offenses.

There are at least a couple of rea-

Crack cocaine can only be made with powder cocaine, and the street value between the two is significantly different—powder cocaine is several times more expensive than crack. Allegations of racial bias in the law were based on the fact that blacks were more likely to be found trafficking crack cocaine and whites were more likely to traffic in powder cocaine.

Significant frustration developed regarding the vastly differential treatment between the two forms of cocaine, and the U.S. Sentencing Commission made recommendations to narrow the gap. Yet the law remained virtually unchanged until 2010, when the ratio was reduced from 100-to-1 down to 18-to-1.

From the time the 100-to-1 ratio between crack and powder cocaine was put into effect, tens of thousands of African Americans were sentenced to mandatory minimum

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prison terms and sometimes even lengthier sentences of ten-, fifteen-, twenty-five-year, and life terms under the sentencing guidelines. The effects of these laws are still evident in the African American community today. African Americans comprise about 13 percent of our nation's population, but African American men comprise roughly 40 percent of those who are incarcerated. The mass incarceration of African American men has had a devastating, and some would argue irreversible, impact on African American children and families, and the community at large. The severing of black men from their families through the criminal justice system has caused untold impact as a generation of children has grown up without their fathers present in the home. The loss of income and stability that occurs when the male figure is perpetually absent from the home produces a significant economic impact on the family unit as well. Sadly, the majority of the men who have been caught in our nation's drug war were poor even prior to their incarceration, leaving their children and families doubly vulnerable during their prison stay.

According to the Bureau of Justice Statistics, of those incarcerated in state prisons, about 53 percent are serving time for a violent offense, 19 percent are serving time for a drug offense, 18 percent are serving time for a property related crime, and 9 percent are serving time for a public order offense. As for the federal prison system, about 51 percent (108,000) of incarcerated persons are serving time for drug-related crimes, and less than 10 percent are serving time for violent offenses. Interestingly, men and women incarcerated in state prisons for drug offenses more often report having children than those convicted of violent crimes or property crimes.

In terms of racial impact, at year-end 2009, there were 242,900 persons incarcerated in state prisons for

drug-related crimes. Blacks accounted for more than 50 percent (122,600) of this total, whites accounted for about 30 percent (73,900), and Latinos accounted for about 17 percent (41,400) of those in state custody for drug-related crimes.

One little known effect of the war on drugs has been the impact on women in general and single mothers in particular. The language used in drug war legislation means that anyone connected to a drug ring can be charged as being part of a conspiracy. If convicted, those peripheral players can be incarcerated for lengthy periods of time. This legislation has led to thousands of women, many of them poor single mothers, being charged with drug trafficking violations for marginal involvement in drug-related crime. Such offenses could include such acts as answering telephone calls related to drug deals or stashing drugs on behalf of members of a drug ring. Since 90 to 95 percent of criminal cases end in guilty pleas, it is not surprising that women who are peripherally involved in drug trafficking may wind up serving decades behind bars.

In 2006 I interviewed a young African American woman who had been sentenced to serve 24.5 years in federal prison in the 1990s on drug conspiracy charges, even though she had never sold, used, or handled drugs. As a college student, Kemba Smith had been involved with a man, Peter Hall, who ran a large drug trafficking ring. She was afraid of Hall and had experienced domestic and emotional abuse at his hands. As federal agents honed in on Hall and his cohorts, he was murdered. Shortly after his murder, Smith, who was seven months pregnant, was charged as a participant in Hall's drug conspiracy ring. She was just twenty-three years old at the time, and she had no prior criminal history. After being convicted, she gave birth to her son while she was incarcer-

ated. In 2000, after serving 6.5 years behind bars, she was granted executive clemency by President Bill Clinton and released from prison. Now Smith is an advocate for drug policy reform and travels around the country educating people about draconian drug laws and the plight of thousands of mothers who remain incarcerated due to drug-related convictions.

Smith was fortunate in that, unlike most incarcerated women, she came from a middle-class background and her parents had the resources and community support to bring national attention to her case. After she gave birth to her son, her parents took immediate possession of the baby and raised him until she was released. Typically, when a mother is incarcerated, her children are sent to live with grandparents, other relatives, or placed in the foster care system, where their chances of being adopted are extremely limited, especially if they are older children of color. Increasingly, the incarceration of a mother, coupled with the previous incarceration of a father, means that thousands of children in the United States have two parents who are incarcerated. About 2.7 million children have at least one incarcerated parent, and African American children are nine times more likely than white children to have a parent who is incarcerated.

Children of incarcerated parents are more likely to drop out of school, experience serious mental and emotional effects, and are themselves more likely to experience incarceration at some point in their lives. According to a study by the Vera Institute of Justice, when a parent becomes incarcerated children suffer a condition known as "ambiguous loss." This condition results in a lengthy grieving process that is akin to experiencing the death of a parent. "Ambiguous loss" may lead children to act out in school and engage in other types of disruptive behavior. Unfortunately, schools are usually ill-

equipped to address these issues and may treat such behavior in a punitive manner, which may only exacerbate the situation. Further education and training on these issues is important in learning to take a holistic approach to addressing the needs of children whose parents are incarcerated.

In light of the billions of dollars that have been spent on the war on drugs since it began, coupled with the human cost of mass incarceration, we must ask whether our nation has yielded any tangible benefits from this war. It would seem the opposite is true. Today drugs are cheaper than they were twenty-five years ago, easier to obtain, and arguably more potent than before the war on drugs began. The increase in incarceration rates in the past twenty-five to thirty years has also impacted countless numbers of children and families who have been forced to live without a father in the home and sometimes without a father or a mother. Incarceration has caused a rapid deterioration of family and community stability, especially in the African American community, where on any given day a large percentage of young men are caught in a vicious cycle of incarceration, unsuccessful re-entry, and recidivism. According to a Pew Center report, more African American men ages twenty to thirty-four without a GED or high-school diploma are incarcerated (37 percent) than employed (26 percent).

Without some form of intervention to break these devastating cycles, the situation will only become worse. According to a report by the Children's Defense Fund, a black boy born in 2001 has a one in three chance of going to prison in his lifetime. This bleak statistical prediction is not the result of a black male pathology, but is a symptom of the effects of generational poverty, incarceration, racial discrimination, and economic disenfranchisement in the African American community. The uneven educational

success of poor children of color also factors in to criminal justice trends, as several states now use third-grade reading scores to project the number of prison beds they will need ten years into the future—presumably because of the correlation between illiteracy and incarceration.

One aspect of the incarceration crisis to keep in mind is that irrespective of the crime a person has committed, he or she is likely to return home at some point. In fact, about 95 percent of prisoners eventually return home, and about 700,000 are released from prison each year. For many prisoners, coming

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home from prison is rife with challenges and obstacles that prevent successful re-entry into the community and may lead to re-entry into the criminal justice system. According to recent estimates, two-thirds of persons released from prison return to prison within three years of being released.

A major reason for the high rate of recidivism is the extreme difficulties that persons with criminal histories have finding gainful employment and stable housing. In some circumstances finding a job and/or a place to live may be a condition of a person's probation or parole. Failing to secure employment and housing could result in a violation of probation or supervised release, thus resulting in a return to prison. In my work as a civil rights lawyer, I receive calls on a regular basis from people recently released from prison who are unable to find employment due to a gross misdemeanor or felony record. One eighteen-year-old man shared the fact that after being released from a juvenile facility, he applied for dozens of jobs and received not one call

back from potential employers. These challenges are referred to as collateral consequences.

Landlords often refuse to rent to a person with a criminal history, and both public and private employers are typically reluctant to hire someone with a blemish on his or her record. Some state statutes prevent employers from hiring people who have committed certain gross misdemeanor or felony level offenses. The result of these collateral effects makes it difficult, if not impossible, for a person with a criminal history to successfully reintegrate back into society. If a person with a criminal history cannot find stable housing or employment

opportunities, then his or her chances of becoming a law-abiding citizen are diminished and consequently, there is an increased likelihood of recidivism.

As I learned during my last semester of law school, the incarceration crisis in America deserves our urgent attention. This crisis has become one of the most important moral issues of our day, just as ending Jim Crow laws and segregation was the issue that led to the civil rights movement of the 1960s. Unfortunately, rather than yielding to the urgency of a call to action, we too often sit back and wait for someone else to address these concerns. Our faith in God and his kingdom should compel us to ask the tough questions, seek the not-so-obvious answers, and look beyond the surface to discover what is really happening and why. We are poised with the resources, the voices, and the courage to take a stand for justice and to put our faith in action to help end this human suffering and misery and fix our criminal justice system. ■