

PRISONS FOR PROFIT AND THE WAR ON DRUGS: WHO IS LOSING AND WHO STANDS TO GAIN?

BY TOM PITARO, ESQ.

Many people believe that the criminal justice system in the United States is the envy of the world. If it is, it is not for the right reasons. We incarcerate more people at a greater cost and for longer periods of time than any other country in the “civilized” world.

To grasp the sheer magnitude of our seeming insatiable desire to incarcerate, consider that by the end of 2011 we had 2,266,800 people in state and federal prisons, with an additional 4,814,200 adults on parole or probation.¹ To put it another way, the United States contains 5 percent of the world’s population and nearly 25 percent of the world’s prisoners.

For example, the incarceration rate in the United States has been a whopping 716 persons per 100,000, compared with our neighbor Canada at only 118 per 100,000 or a minuscule 79 per 100,000 in Germany.² My American pride will not allow me to ever believe that we as a society are nine times more prone to criminal activity than the Germans. Yet by our own statistics, we would appear to be the most criminal, violent society in the industrial world. However, this is not a result of our criminal propensities or an increase in crime rate, but rather a result of drastic changes in sentencing laws and policies, otherwise known as the “War on Drugs.”

Over the past 35 years, the years following America’s declaration of its War on Drugs, the number of people incarcerated for drug offenses has multiplied by 10. When the War on Drugs began in 1980, there were approximately 41,000 (40,900) people incarcerated for drug-related offenses in the U.S. By 2013, that number had grown to nearly half a million people (489,000).³

Those convicted are also spending significantly more time behind bars for drug offenses. In 1986, the average prison sentence for a drug-related



offense was 22 months. By 2004, the average sentence had inflated to 62 months. In 2013, 50.7 percent of our federal prison population was made up of those convicted on drug-related charges.⁴

America's annual prison system expenditures have been estimated at \$74 billion.⁵ That means our national prison budget is greater than the total GNP of 133 countries!

Using the above numbers, times and costs as the metric to evaluate success, it appears we are really at the bottom of the barrel. Our justice system is in serious need of an overhaul. The phrase "American Exceptionalism" takes on a new, sinister meaning when used to describe our justice system.

In law school, criminal law was taught as an almost static field. Yet in many respects the criminal justice system is the most political of all areas of the law. Let's consider one relatively new phenomenon in our justice system: the privatized jail/prison industry.

Futuristic movies, such as "Fortress" (1992) told stories of dyspeptic societies where businesses ran prisons. That future is now. While prisons are becoming overcrowded and more people are spending significant amounts of time incarcerated, private corporations are making billions of dollars running privatized prisons throughout the United States.

There are approximately 2.2 million prisoners behind bars in the United States, costing the federal government about \$55 billion each year.⁶ Ten percent of all prisons in the United States are now privately operated, and that number is steadily increasing. Corporations are spending millions of dollars lobbying politicians to get prison contracts sent their way.

According to the Associated Press, the three largest private, for-profit prison corporations: Corrections Corporation of America (CCA), The GEO Group and Management and Training Corp. have spent at least

\$45 million combined on campaign donations and lobbyists, at the state and federal level, during the last decade.⁷

These donations have paid off in a major way. CCA and The GEO Group made \$1.7 and \$1.6 billion respectively in annual revenue in 2012. CCA operates 67 federal and local facilities and has about a 40 percent market share, while the GEO Group operates 95 prisons in the U.S. and abroad. The biggest private prison owner in America, CCA, has seen its profits increase by more than 500 percent in the past 20 years,⁸ (years during which the War on Drugs was in full swing).

The cost of corrections has increased substantially over the past 30 years. In 2013, the U.S. spent

\$51.9 billion on criminal corrections; compared to \$6.7 billion in 1985. In Nevada it costs approximately \$20,000 annually for each inmate in state custody, and approximately \$29,000 per year for a single inmate in federal custody.

In 2012, CCA offered to buy and operate 48 governors' state-funded prisons. Within the wording of that offer was an occupancy requirement: a clause demanding the state keep those newly privatized prisons at least 90 percent full at all times, regardless of whether crime rates were rising or falling.⁹ It will always be in the best interest of these private corporations to have people incarcerated; their profits are entirely based on the number of inmates they oversee.

This means that, where there are private prisons, there is an incentive to keep people incarcerated regardless of whether or not the crime rate is decreasing. If the government cannot keep these prison beds full, it must foot the bill for those empty beds.

One major way these private prisons are meeting their prisoner quotas is by housing undocumented immigrants. Private prisons bring in about \$3 billion in revenue annually, and over half of that comes from

When the War on Drugs began in 1980, there were approximately 41,000 (40,900) people incarcerated for drug-related offenses in the U.S. By 2013, that number had grown to nearly half a million people (489,000).³

continued on page 10

PRISONS FOR PROFIT AND THE WAR ON DRUGS

holding facilities for undocumented immigrants. Private operations run between 50 percent to 55 percent of immigrant detention facilities.¹⁰

In 2012-2013, major private prison companies CCA and the GEO Group spent at least \$4,350,000 on lobbying the federal government for the purpose of winning immigration-related contracts.¹¹ In 2011, the federal government paid \$1.4 billion to the two corporations, making up nearly a third of their total profits.¹²

Every time I visit a federal prisoner, I must travel from Las Vegas to Nye county. It is a round trip of about 120 miles. Each visit takes about four hours. On an average visit, for a court appointed case (CJA), I get \$60 for mileage and \$500 for attorney time. Why do I have to go to Pahrump and why does it cost so much to do so? Because that is where CCA has the contract to house federal prisoners. CCA is one of the private, for-profit contractors funded by the American taxpayer to privately operate jails.

The politics of private incarceration are bipartisan. Consider Vice-President Cheney's son-in-law as a lobbyist for CCA in the 2000s,¹³ and a July 2015 Daily KOS article detailing Hillary Clinton's campaign contributions from CCA and the GEO Group, the other giant in the private prison industry.¹⁴ These companies have been lobbying and contributing to our elected officials on behalf of increased incarceration for decades; increased sentences result in increased profits.

The jail/prison crisis starts with the bail system. In Nevada, as opposed to the federal system, we have a constitutional right to bail. With such a fundamental right you would think that pretrial detention would be minimal. Think again; the jails are overflowing. The Clark County Detention Center, for example, has a reported budget of \$184 million but is running a deficit of \$28 million in 2015.¹⁵

The problem is quite simple. The bail system is broken. First, the courts set up unrealistically high "standard bail" schedules. Second, the bail bond industry lobbied the legislature to increase bail-bond premiums (the amount of cash the bail bondsman charges the individual

as a non-refundable fee in order to post the bond), from 10 percent to 15 percent. Third, the value of real estate used to collateralize the bonds fell. The result: more people remain detained.

Any financially-based bail system unfairly penalizes the least affluent of a state's citizens. While persons of means have the ability to post bail and be released from custody, poorer people are forced to remain in custody.

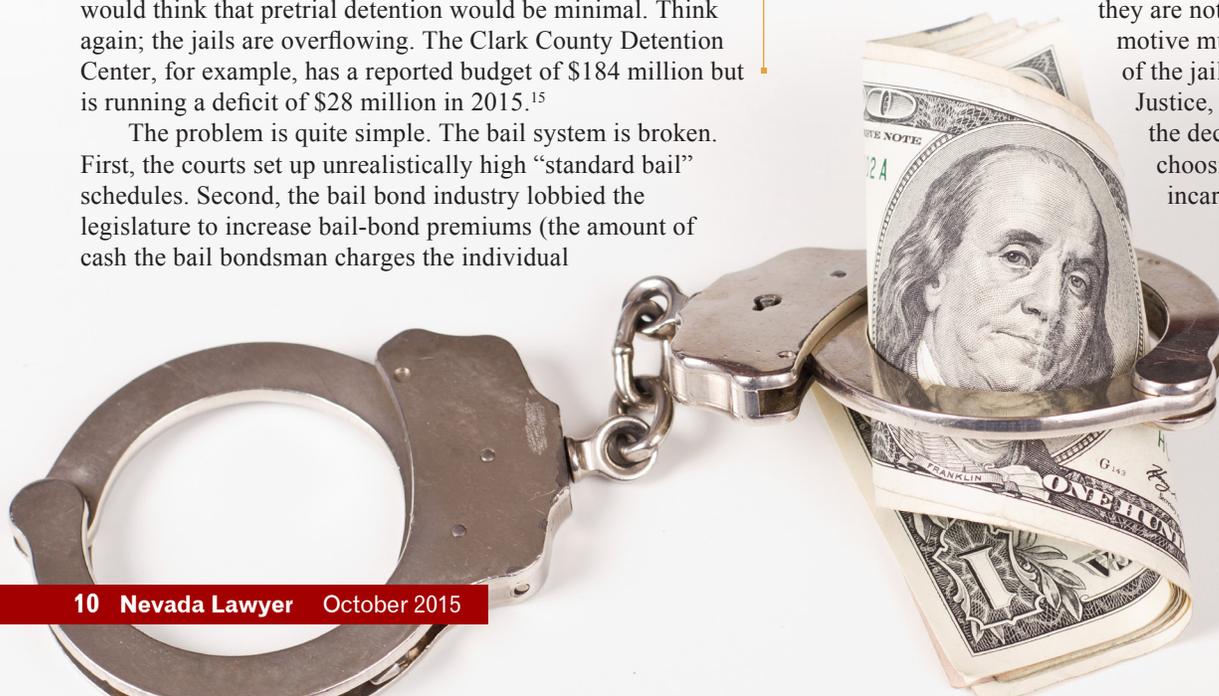
Release or detention becomes a function of income: a constitutionally prohibited result.

Mass detention has more costs, though, than just the burden to taxpayers in jail costs. The economic effect can be, and often is, catastrophic not only for the individual detained, but for his or her family as well. Job loss is common, thus the economic and social stability of the family is adversely affected, and all the while the incarcerated pretrial detainee has the comfort of his "presumption of innocence" to console him in his jailhouse cell. It is apparent that the current monetary-based bail bond system must be replaced by a true pretrial release program similar to the one used in the federal courts, while still keeping our state constitutional right to bail.

After 41 years of jousting at the windmills of criminal justice, some might think I'm a cynic who sees no hope for the system. That is not true. Hope does spring eternal.

There has recently been a recognition on both the political right and the left that the War on Drugs was a failure. Mass incarceration did not and will not work. Legislative measures are being proposed to reduce the prison population both at the state and federal levels. These efforts must continue, but they are not enough. The profit motive must be taken out of the jail/prison industry. Justice, not profit, must be the deciding factor when choosing whether or not to incarcerate. **NL**

It will always be in the best interest of these private corporations to have people incarcerated; their profits are entirely based on the number of inmates they oversee.



1. Bureau of Justice Statistics: www.bjs.gov.
2. International Centre for Prison Studies. World Prison Population List (10th edition), by Roy Walmsey.
3. The Sentencing Project. Sourcebook of Criminal Justice Statistics Online; Carson, E.A. (2014). Prisoners in 2013. Washington, D.C.: Bureau of Justice Statistics.
4. *Id.*
5. www.reuters.com. "States seek to escape rising prison costs," by Lisa Lambert.
6. www.smartasset.com. "Economics of American Prison System," by Thierry Godard.
7. <http://www.truth-out.org>. "Private Prisons Spend \$45 Million on Lobbying, Rake in \$5.1 Billion for Immigrant Detention Alone," by Aviva Shen.
8. www.smartasset.com. "Economics of American Prison System," by Thierry Godard.
9. www.aclu.org. "ACLU Urges States to Reject CCA Offer to Privatize Prisons."
10. www.finance.yahoo.com. "Top 5 Secrets of the Private Prison Industry", by Nicole Goodkind.
11. <http://grassrootsleadership.org>. "Meet the private prison industry's lobbyists who could shape immigration reform," by Piper Madison.
12. *Id.*
13. <http://miroundtable.org>. "Who Profits from the Prison Boom?"
14. <http://www.dailykos.com>. "Private Prison Corporations Stand With Hillary Clinton."
15. <http://lasvegassun.com>. "How Clark County's jail deficit tripled in three years", by Ana Ley.

THOMAS F. PITARO has been practicing in Las Vegas since 1974. He consistently maintains the highest rating (AV) for a criminal defense attorney, according to Martindale Hubble Lawyer rating services. He has successfully tried every type of criminal case in Las Vegas, from misdemeanors to capital murder. Pitaro is one of the founding members of the Nevada Attorneys for Criminal Justice. He currently sits as one of the select few judges on the Police Use of Force Review Board and is an adjunct professor at UNLV's Boyd School of Law, where he instructs in trial advocacy.

WRONG Marriage?



RIGHT LAWYERS

*We offer a generous referral fee,
pursuant to RPC 1.5e, for
divorce, and family law referrals.*



Stacy Rocheleau, Esq.

You can trust me with your family law referrals. For over a decade, I have focused on divorce and family law cases. I personally meet with each client, charge a reasonable retainer, mediate when beneficial and litigate when necessary.

Contact me at (702) 914-0400 or email me at stacy@rightlawyers.com if you would like to discuss how I can help your friends or family.