Crime and the Criminal Justice System

Perspective. Syracuse, NY: Maxwell School of Citizenship and Public Affairs, Syracuse University: Table A-2.

QUESTIONS FOR DISCUSSION
1. Consider Donziger’s policy recommendations. Does he make a convincing case that reducing social inequality in the United States will reduce the amount of crime more effectively than longer periods of incarceration?
2. Consider as well Donziger’s argument that politicians have engaged in “bait and switch” tactics to get the public behind “get tough” legislation. Could such tactics be effective if the public was better informed? What would it take for the public to become informed about crime?
3. Consider to what extent your perception of crime in the United States is factual or mythic. Give examples of each, if possible.

INJUSTICES IN THE JUSTICE SYSTEM
Does the Punishment Fit the Crime?
KATHRYN WATTERSON

Money talks, bullshit walks. If you’re a Kennedy and you get busted for dope, you never do time. If you’re the president of the United States, you can murder millions of people in Asia, you never do no time. If you’re a politician, you can cheat and conspire and steal money, you never do no time. I’ve watched about seventeen women go out of here after serving time for snuffing their babies, while hypes [drug addicts] still sit here. Society condones guns, but not addicts. I’m here for selling two nickel bags, yet the government is giving GIs whites to keep ‘em up and reds to put ‘em to sleep and getting ‘em addicted so they can keep fighting. And the Army and the government ain’t never taken to court or locked up. There’s a lot of contradictions—you know, a double standard. If you’re a corporation, you can fix prices and rip folks off every day, you never do no time.

Me, I’m a hype. I sold two nickel bags and I’m doing life, baby, a day at a time. I already been here three years. And you know, that’s like three lifetimes of psychological warfare. They call me a criminal. I ain’t no corporation, so I’m a criminal! I’d like to ask, just where are the real criminals?

MARY, an inmate
at the California Institution for Women

When we talk about crime in America, and when we talk about prisons, we are talking about powerlessness. We are talking about hopelessness and helplessness.

Crime makes most of us so angry that we don’t want to think about the people committing crimes as human beings with problems. We don’t want to imagine their
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lives, we want solutions to our own feelings of helplessness in the face of crime. We simply want to strike back at the people who rob us or hurt us. We want to beat them up, lock them up, throw them away.

The problem with this approach, however, is that it doesn’t work. It relieves our anger, but it doesn’t make us safer. In the long run, prisons not only fail to solve the problems that plague our communities, but create more crime.

You may wonder how this can be. For years, in our efforts to feel safe, we have looked to the criminal justice system to do the short-term and the long-term work of dealing with crime in our communities. We have depended upon the criminal justice system—with its layers of police, prosecutors, defense attorneys, grand juries, courts of law, diversion programs, probation departments, prisons and parole systems—to create justice and maintain order.

We lock people in our jails and prisons for years and plan for increased incarceration of men, women, and juveniles despite the mountains of evidence that refute the effectiveness of prisons, despite the very plain words of thousands of individuals and organizations that have conducted dozens and dozens of studies, including the President’s Commission on Law Enforcement and the Administration of Justice. Uniformly, these studies show that prisons do not reduce crime. With the exception of giving quarantine to a small percentage of predatory, violent criminals, they don’t protect the public.

The one thing prisons do—and they do it well—is to punish prisoners. Prisons strip them of their dignity, their health, and whatever self-esteem they once might have had. Prisons also punish the children and families of prisoners. But they don’t stop crime. Most particularly, they don’t stop the big crimes that skew our economy and threaten our security.

Detailed reports show that business and white-collar crimes cause more financial loss, injury, and death than any other crimes in America. In one year, for instance, price-fixing by twenty-nine electrical companies alone cost the public more than was reported stolen by burglars throughout the entire country in that same year. In 1994, Prudential Securities, the fourth largest brokerage firm in the United States, admitted it had illegally sold some seven hundred partnerships to more than 120,000 people. Only thirty-five of those partnerships involved the fraud of nearly one and a half billion dollars. Violations of safety laws and housing codes, as well as food and drugs sold in violation of the Pure Food and Drug Act, cause hundreds of thousands of deaths each year. Yet these crimes are rarely dealt with using the full force of criminal sanctions. Standards of right and wrong are less clear when they are committed in the course of big business transactions and production.

Because the various police agencies aren’t organized to halt complex business crime or organized crime, single agencies continue to deal with simpler, individual crimes that have a frightening but much less damaging effect on our total society. Police, the courts, and the prisons focus on people who commit individual street crimes—not on organized criminals or investment bankers or others involved in fraud, who sit in secure, comfortable places and cause the greatest harm.

And just as it is difficult for police to focus on complicated systems of organized or corporate crime, it is difficult for us to focus our anger on a corporation or an illegal, interwoven web of activity we don’t understand or can’t really see. But because we want to feel safe and believe that something is being done about crime, we stubbornly maintain that criminals are caught and go to prison. In fact, some really bad people are
caught and do go to prison, but they are a minority.

The vast majority of criminals do not go to prison.

People who do go to prison are a minute number of the lawbreakers—less than 2 percent in the entire country. Statistics compiled by the National Council on Crime and Delinquency show that Americans report millions of crimes to police annually. More than twice as many crimes presumably go unreported. Yet police make arrests on only 12 percent of all reported crimes. Of the number arrested, only half are found guilty. After suspended sentences, probation, and other alternatives to prison are used up, slightly more than 1.5 percent of all reported lawbreakers are sentenced to prison.

The vast majority of men and women sentenced to prison are not violent or predatory. Murderers—the people we fear the most—make up a minority of the prison population, and most of them have killed a mate, not a stranger. Our fear of death from strangers, in fact, is exaggerated. Eighty-four percent of all known murders in this country are committed by someone known intimately to the victim, usually a family member. Likewise, most of the sexual predators who molest and threaten our children are trusted authorities, “friends” of the family, or the fathers, stepfathers, uncles, or brothers of the child; most don’t go to prison—and those who do constitute an even smaller portion of the prison population.

Surprising as it may seem, most of the people in this country who wear prison uniforms, are locked in cells, and answer to a number, not a name, have been convicted of nonviolent crimes. They are not who we imagine them to be. They have broken the law and many of them have cheated, lied, and done unethical and despicable things, but they haven’t used weapons or physical violence against others. The vast majority of prisoners are not in prison because they are a danger to the community; they’re in prison because of sporadic or habitual crimes basically against themselves—such as prostitution, vagrancy, and illegal drug possession—or for property crimes against others such as shoplifting (larceny), fraud (bad-check writers), or theft. Some are mentally ill. Substance abuse and drug problems, which drive the lion’s share of their crimes, could have been and still should be treated medically.

Most of America’s prisoners are economically impoverished, poorly educated people who need to learn how to solve their problems—which usually are medical and economic, including addiction, poor physical health, lack of education, and lack of job skills, literacy, or psychological balance—within the community. They are employees or would-be employees, not employers, and we send them away to repressive, hostile, and unhealthy places far from home, where security is the first and foremost priority, and where they get no treatment, no counseling, and no training—no help with their problems. Being locked up hastens the breakdown of their relationships with their families and communities, further damages the fragile balance of their lives, removes them from their responsibility for their behavior, and then returns them ill-equipped to live a normal, crime-free life. Despite changes in sentencing guidelines, and despite efforts to make the system more equitable, it seems clear to me there are two separate systems of criminal justice in America: a system for “intellectual” crimes and a system for “physical” crimes.

As I sat in many courtrooms and watched chaotic proceedings during trials of accused shoplifters, prostitutes, burglars, purse snatchers, I was always startled at the contrast when a “professional” (usually a white, middle-class male) came to trial for embezzlement, fraud, or bribery. A calm
dignity would fall over the courtroom. The prosecution and defense would always be thoroughly prepared. Witnesses would be present. The judge would seem more focused, more thoughtful.

At first I attributed the difference in approach solely to the economic status of the defendants. The process seemed like an administrative rather than a criminal proceeding for white-collar criminals, middle- or upper-middle-class defendants. Sentences were always much lighter, even for people who had embezzled huge sums of money. A person who robbed someone of twenty dollars usually got more prison time than someone who had extorted more than two hundred thousand dollars.

What I finally realized is that discretion seems to operate according to unconscious criteria as well. When a crime is unsophisticated and "primitive," the punishment is primitive. The more primitive the crime, the more primitive the punishment. Crime in America is equated with primitive physical actions. The more intellectual synthesis, abstraction, and creativity in a crime, the less it is perceived as a crime and the more it interests lawyers, prosecutors, and judges—who basically live by the intellect, rather than by action. The same is true of the general public, who condemn a crime of violent action before an intellectual crime that results in an equal or greater harm to the victim.

Looking at these two standards of justice explains a lot of things that probably work on an unconscious, cross-cultural level. It can be "fascinating" when a banker, an executive, or a high-profile celebrity has been arrested for having embezzled money through an intricate mental process. It is a challenge for the judge to dissect and understand the highly specialized case and its motivations. He can unravel and empathize with the pressures that drove a privileged person to commit a crime—even a violent crime. Likewise, a judge can understand how the arrest and the attendant publicity affects the reputation of a person like himself and how the defendant is already being punished by the shame of exposure, loss of status, loss of income, or loss of employment.

On the other hand, when an indigent person who has robbed someone, snatched a purse, or offered to sell her body to a stranger comes before the bench, there is no basis for empathy from the legal profession. The judge usually doesn't understand the culture or class realities of the economically powerless person standing before him. Even the writing of a bad check reflects a "lack of control." The mental or emotional duress of an indigent person driven to committing a crime is not easily comprehended and thus she is condemned. The judge can see that this person of little status has probably been arrested before; she has a chaotic lifestyle, a lack of discipline, and she hasn't seemed to learn that crime doesn't pay. He considers her hopeless. He doesn't understand her world, and he tries to "make the punishment fit the crime."

The varying standards lead to discretion readily interpreted as discrimination: one person gets out on bail; the other is locked up before trial. The same thing happens when it comes to prosecution and sentencing: one woman gets five years' probation for her part in a $750,000 hoax that was basically an intellectual game, while another woman is sentenced to ten years in prison for her part in a robbery that netted $56.43.

Two crimes might be quite similar, quite brutal; the mental duress of each person involved might be equally severe—but after the arrest, public and judicial response differs. For illustration, look at the cases of two young women charged with murder: Heidi Fletcher, a twenty-one-year-old white woman, was arrested for killing a policeman in the process of robbing a savings and loan association in Washington, D.C. She pled
guilty to first-degree murder, armed robbery, robbery, and illegal possession of dangerous weapons.

Before her trial, Heidi was released without bail for four and a half months in the custody of a high District of Columbia official with the stipulation she get a job and be in by 10 p.m. each night. The official was a friend of her father's, Thomas W. Fletcher, former deputy mayor of the District. A week before her twenty-second birthday, Heidi was sentenced to a maximum of nine years in prison, with the possibility of release any time before then. Her defense attorney said she was "starved for love." The judge ordered that she serve her sentence in California so she could be closer to her mother and father, who was the city manager of San Jose.

On the other hand, Rose Marie Dinkins, a twenty-three-year-old black woman, was arrested for killing two policemen in the process of attempting to rob a grocery store in Pittsburgh, Pennsylvania. She pled guilty to two counts of first-degree murder in a Pittsburgh court. The mother of four children, Rose was held in the Allegheny County Jail, without bail, awaiting trial. She had no money. When the judge sentenced Rose Marie Dinkins to two concurrent life terms in prison, he didn't make any stipulation for her to get to live close to her four children so she could see them. Rose probably won't get out of prison for twenty years or more. There's a good possibility she'll never get out. Was her crime worse? Couldn't she also have been "starved for love"? Was she more of a "threat" than Heidi Fletcher?

It seems we are slow to condemn a productive person of high status—even when he or she is arrested or convicted for committing a violent crime. We are shocked when an intellectual or a bureaucrat is sentenced to prison, but pay little attention when a have-not is locked up. No one would have been so shocked by Angela Davis's arrest and detention, for instance, had she not been a professor from the University of California at Los Angeles. Thousands of uneducated, indigent women are arrested every day and no one winks an eye; their arrest is "normal."

Racism, sexism, and class discrimination also play major roles in who is arrested and who goes to prison. When a law has been broken, the stereotypical suspect is African American or Hispanic. Poor people of every color are stereotyped as "criminals" simply because they lack economic power, but blacks bear the brunt of this prejudice. Disproportionate numbers of African Americans are arrested, detained, and imprisoned throughout this country. But this does not mean that there are, in fact, more black criminals than white criminals. Nor does it mean that blacks are more likely to commit crimes than whites, as some people choose to believe. It only means what many studies have shown: police focus harsher attention on black neighborhoods; prosecutors are not as apt to drop charges against blacks or agree to plea bargains; judges are less likely to grant bail that black defendants can meet and are more apt to sentence a black person convicted of a crime to prison instead of to an alternative program. Once imprisoned, blacks spend longer periods of time behind bars before being granted parole.

When immigrants from Europe came to America in the 1800s and lived in ghettos under the same meager conditions that still exist for the urban poor today, they were arrested and imprisoned at the same disproportionate rates as today's African Americans. The problem is that discrimination has continued against African Americans. While there has been some progress, blacks have not been granted the same assimilation; they can't just "lose the accent." Because of their indelible appearance and the persistence of racism, even African Americans of high economic status are still looked upon suspiciously by white strangers, as though all blacks are still in the same desperate state.
of need as poverty-stricken inner-city residents. The stigma of slavery of the ghetto, remains in the unconscious mind, and the assumption follows that because of poverty and resentment, almost any black person is likely to commit a violent crime at any moment. This discriminatory attitude has not changed in the 1990s; college professors, doctors, lawyers, and authors are often stopped by police in their own neighborhoods for “driving too slowly” or harassed in other ways simply because of the color of their skin.

Upper- and middle-class black people also are subject to arbitrary arrests because they look “suspicious” to white policemen who have been trained to look for anything “unusual.” A black person with economic or social power can usually clear up the “misunderstanding,” be released on the arraignment level, or prove his case. But it is indigent black people living in crowded and deteriorated conditions who experience the harshest effects of prejudice on a sustained basis because they haven’t the economic or political power to defend themselves effectively.

In Washington, D.C., for instance, administrators say that every class of woman is arrested—white, black, rich, poor. But after the initial hearings, the destitute woman, usually black, is held in jail. As an example, let’s look at two women caught for shoplifting and charged with larceny and petty theft. Bail is set at ten thousand dollars, and the white woman with economic means is out of custody within hours. The destitute black woman spends months in jail awaiting trial. Statistics back up this scenario: black women have a one-and-a-half times greater chance of being returned to jail after their initial hearing than white women.

Another study in forty-one counties in Pennsylvania determined that bail and fines tended to be higher and sentences longer for black women than for white women on similar charges. One exception was that the courts seemed to be more offended when white women practiced prostitution, and thus set their bail higher than that of their black counterparts.

Does this mean the judge is racist? Is criminal law racist? Or is society racist? The intention of individuals involved may not be consciously racist, but the process is, the effective reality is. Our adversary system is an unequal contest, and indigent whites and blacks lose because they don’t have the economic or social power to compete. Wealthy people are funneled out of the system. Poor people remain. As one observer in the 1990s said, “Rich women have the Betty Ford clinic; poor women have prison.”

Prison administrators see and comment on the gross inequalities in our criminal justice system. Former San Mateo County Sheriff Richard Hongisto put it simply: “We can’t talk about jails unless we talk about the inequitable distribution of wealth in society, the haves and the have-nots. We have to look at the emotional and cultural patterns that evolve out of the conditions of poverty.

“We have to remember that people in jail are inevitably the poor and the powerless. They don’t have the power to change the system by themselves or they wouldn’t be in jail. We have to change that balance of power through responsiveness and responsibility in the communities. . . .

“Jail sentences do not stop alcoholics from being alcoholics, prostitutes from being prostitutes, or heroin addicts from being heroin addicts,” Hongisto said. “It never has and it never will. Jailing people as a way to solve social problems is very expensive, ineffective, and inhumane. We’ve had rotten, stinking miserable jails for years and years, and the crime rate has gone up and up. They’re counterproductive.

“Stopping crime is keeping families together, building better schools, better housing, distributing the wealth. If we encourage
loving families to stay together, we discourage crime. If people feel useful and constructive, they'll be useful and constructive. Day after day, change after change, little things can be done in the jails to make the quality of life better and relieve tensions, but the real work has to be done out here."

The courts deal daily with people police have brought them from the streets—people alienated from mainstream economy and production, people who are breaking the rules but who often are abusing themselves more than they have abused others. Concerned judges often feel as powerless as anyone else to change what they see as a cyclical process. Sometimes they are frustrated by people who show no willingness to help themselves or to take advantage of other options.

"What can I do?" said Philadelphia Municipal Court Judge Paul A. Dandridge after sentencing a woman to six months in the House of Correction. "This woman is brought in the first time for a robbery and she's on heroin. I know her chief problem is drugs, so I give her probation and arrange for her to get into a drug program. She messes up that program and is brought back here before the court for violation of probation. I decide that what she needs is to go to Phoenix House in New York—something she wants to do, too. But she goes to New York and blows that program and comes back here and gets arrested again for something else—still having a fifteen-bag-a-day habit. What can I do?

"I've put her in programs and she's violated probation three times. She's out there in the street hurting herself and doesn't have any place to stay or anyone to go to. So I give her six months at the House of Correction. There aren't any other alternatives. And I'm sending her there only because there's nothing for her in the community. At least in there she's safe—at least being there gives her a chance to dry out and have a place to sleep. I know it stinks, but I don't know what else to do."

Dandridge was a rare judge to be aware of the kinds of problems the woman faces. He is black; he grew up in the city. And unlike the majority of judges in this country, he had visited all the jails and prisons to which he sentenced people. He saw that imprisonment is ineffective and tried to use constructive alternatives. But the available alternatives are limited. Sensitive people in the criminal justice system are aware that they're dealing with people who reflect the problems and effects of social disorder, racism, poor housing, poor education, poor health care. They know alternative programs within our communities need to be developed.

Pat Taylor is superintendent of a jail that books, processes, and incarcerates all the women arrested in Washington, D.C. More than 75 percent of her prisoners are awaiting trial. The rest are serving sentences, including two doing life. Eight percent of the women are drug addicts. She estimates 3 percent of the population are "seriously emotionally disturbed." She says that 80 percent of the women are kept on some kind of medication such as Thorazine or Librium—tranquilizers that make them easier to control in the overcrowded, physically deteriorating jail.

On Taylor's desk is a sign: NOTICE: DUE TO LACK OF INTEREST, TOMORROW WILL BE POSTPONED.

"Look, there's an emotional need to attain money in our society," she says. "There is nothing more important. We're all money oriented. Television, magazines, billboards—they all advertise things. We see the perfect family as having one or two cars at least, color televisions, pretty clothes, perfume, jewelry, money, and carpets on their floors.

"All of a sudden we're supposed to tell these women, 'Don't grasp for money."

"But I know they want money in their life. They're going to keep trying to get it somehow."

"Women in jail," she says, "are a special problem. They have nothing but a life of crime behind them. They have to be treated differently."

"What I really need," she says, "is a better society, sooner or later.
Money isn’t as important as high moral values. Be a square. It’s a bunch of bull! Earning money as a prostitute, a boozer, or a hanger, there are no taxes, no schedules, no time cards to punch. You expect a woman who can make up her own schedule and earn enough money to survive to take a factory job for a dollar sixty-five an hour or look forward to working over an industrial sewing machine?

"Society’s taught that everyone has a right to have things—and that everyone should have nice things. They don’t give these women any respectable way to get them, and then when they go out and get them the best way they know, we’re telling them it’s wrong. The community has just got to make up its mind what it wants. They’re punishing these women for the very values they taught them."

When police, lawyers, judges, and prison administrators—people in positions of power—feel frustrated, angry, and even helpless about the criminal justice system and its effects, you can begin to imagine how defendants feel.

NOTES

1. Fred P. Graham, writing for the U.S. National Commission on the Causes and Prevention of Violence, pointed out that rather than the FBI’s publicizing the fact that a person is murdered each forty-eight minutes, it could be telling the public the average person’s chance of becoming a homicide victim on a given day is about one in two million. His chance of being a victim of violent crime is once in four hundred years.


QUESTIONS FOR DISCUSSION

1. Donziger and Watterson both come to the conclusion that the brunt of crime policy is borne by the least powerful in American society. Yet, because of their attention to different contributing factors, each may suggest different solutions. How do you think Watterson would respond to Donziger’s suggestion that we focus on opening up educational and economic opportunities to solve the problem?

2. Who else might Watterson argue could benefit from education?