January 12, 2017

Greetings, APDs, PD CORE, & REN!

First, the news:

* Alice Speri of *The Intercept* [interviewed](http://readersupportednews.org/news-section2/318-66/41174-bryan-stevenson-qi-dont-think-were-free-in-americaq) Bryan Stevenson of the [Equal Justice Initiative](https://eji.org/), who says, “I don’t think we’re free in America — I think we’re all burdened by this history of racial injustice, which has created a narrative of racial difference, which has infected us, corrupted us, and allowed us to see the world through this lens.”
* The Marshall Project [covered](https://www.themarshallproject.org/2016/12/14/let-s-go-to-prison?utm_medium=email&utm_campaign=newsletter&utm_source=opening-statement&utm_term=newsletter-20161214-656#.nfPyBOdvd) a series of “field trips” to prisons in 17 states organized by the Vera Institute and touched on prison reforms in North Carolina, including a drop in the number of people in solitary confinement from 5,500 to 2,500 in the last year.
* The Sarasota Herald-Tribune investigated Florida’s sentencing schemes and [found](http://projects.heraldtribune.com/bias/sentencing/) rampant racial disparities in sentencing patterns for White and Black defendants. For example, “[n]early half the counties in Florida sentence blacks convicted of felony drug possession to more than double the time of whites, even when their backgrounds are the same.”
* Two stories in the New York Times cover the costs and inequalities of pretrial diversion programs, one [focusing on](http://www.nytimes.com/2016/12/13/us/alabama-prosecutor-valeska-criminal-justice-reform.html?partner=msft_msn&_r=1) an Alabama prosecutor and one [reviewing](http://www.nytimes.com/2016/12/12/us/crime-criminal-justice-reform-diversion.html) the issue nationally. The latter stated that the available research showed “that whites are far more likely to get diversion than blacks.”
* The Washington Post’s [Fatal Force](https://www.washingtonpost.com/graphics/national/police-shootings-2016/) project tallied 963 people fatally shot by police in 2016; 24% of them were Black although Blacks make up only 13% of the United States population.
* A Pew Research Center [survey](https://www.nytimes.com/2017/01/11/us/police-officers-pew-poll.html) of 8,000 police officers found large differences in attitudes towards race and policing between White and Black officers. The survey also shows attitudes of officers towards their profession in the wake of protests against police brutality.
* President Obama discussed race in his [farewell address](http://www.cnn.com/2017/01/10/politics/president-obama-farewell-speech/): “Race remains a potent and often divisive force in our society. . . . If every economic issue is framed as a struggle between a hardworking white middle class and an undeserving minority, then workers of all shades are going to be left fighting for scraps while the wealthy withdraw further into their private enclaves.”

As we begin a new year and a new administration, many are reflecting on the ongoing movement to end mass incarceration. Marc Mauer, executive director of [The Sentencing Project](http://www.sentencingproject.org/), [assessed](https://talkpoverty.org/2016/12/21/obama-legacy-chipping-away-mass-incarceration/) President Obama’s contributions, which included the Fair Sentencing Act of 2010, the use of prosecutorial discretion and executive clemency for people charged with federal drug offenses, and easing of barriers to reentry. President Obama notably [published](http://harvardlawreview.org/2017/01/the-presidents-role-in-advancing-criminal-justice-reform/) a commentary in the *Harvard Law Review* with his own summary of his efforts to eliminate mass incarceration and of what remains to be accomplished; in it, he noted that “many of the most tragic failings of the justice system are disproportionately felt by communities of color.”

               Nevertheless, mass incarceration “remains a durable monstrosity,” [argues](https://www.jacobinmag.com/2017/01/mass-incarceration-prison-bureau-justice-statistics/) Daniel Denvir at *Jacobin.* The improvements have been modest and “can be ascribed to idiosyncratic factors in a small number of states and Obama-era reforms.” The Brennan Center for Justice released a [report](https://www.brennancenter.org/publication/how-many-americans-are-unnecessarily-incarcerated) concluding that an “estimated 39% [of prisoners] (approximately 576,000 people) are incarcerated with little public safety rationale.” As for racial disparities in incarceration, we currently incarcerate Blacks at a rate 5.5 times higher than that of Whites, and “it would take 100 years for the disparity to disappear at the current trend.” The report’s authors further lay out a detailed sentencing approach designed “to create more uniform sentences and reduce disparities, while preserving judicial discretion when needed.” The Brennan Center’s report contains a wealth of information about how we got here and about the social science establishing the connections (or lack of connections) between incarceration and public safety. Its specific, evidence-based recommendations for reform should be taken seriously by advocates for change, and the charge-specific recommendations in Table 1 may bolster your arguments for reduced sentences for your current clients

               As part of a broader agenda for racial equity, reducing our reliance on incarceration is not in tension with a respect for victims’ rights. In “[Black Wounds Matter](http://www.newyorker.com/news/daily-comment/black-wounds-matter),” Sarah Stillman explores an emerging movement based on the idea “that we must adjust our shared understanding of crime demographics to account for the fact that those most routinely portrayed as perpetrators are often at equal or greater risk of being victims.” For example, analysis by the New York Times of 358 shootings with four or more casualties showed that “nearly three-fourths of victims and suspected assailants whose race could be identified were black.” Likewise, a [U.S. Department of Justice study](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwiiibuhsrrRAhUESyYKHcuEDnMQFggaMAA&url=http%3A%2F%2Fwww.ojjdp.gov%2Fpubs%2F239603.pdf&usg=AFQjCNGwZe3TlD6k2gpetI4vGJAeEkyCog&sig2=06MNRIhkESRUEY3wJK7tIg&bvm=bv.143423383,d.eWE&cad=rja) of detained juveniles found that “92.5 percent of youth had experienced at least one trauma, 84 percent had experienced more than one trauma, and 56.8 percent were exposed to trauma six or more times;” “[m]ore than 1 in 10 had PTSD in the year prior to the interview.”

               Incarceration “exacerbates trauma and is counterproductive to long-term community safety goals,” argues Professor Samantha Buckingham in her paper “[Trauma Informed Juvenile Justice](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2794718).” Indeed, this fact is recognized by people identified as crime survivors, who face the same cycles of violence, poverty, and inadequate social services as do those we incarcerate. A 2013 survey in California showed that “only twenty-three per cent of victims believed that more jails and prisons would help address crime. Twice as many thought that rehabilitation programs and probation should be central to California’s crime response.” (“Black Wounds Matter”)

               A trauma-based approach to sentencing reform as advocated by Professor Buckingham dovetails nicely with the efficacy-based efforts exemplified by the Brennan Center. In your current practice, each of these paradigms can inform and enhance your advocacy.

Elizabeth Gerber

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*We would love for you to join our committee! You will find the link to do so on the bottom right portion of the* [*webpage*](http://ncids.com/pd-core/)*. If you have feedback about Race Judicata, we’d love to hear from you; feel free to reply to the original poster.*