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The Justice System is Criminal

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UHON 301-006

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The Justice System is Criminal;

UHON 301-006 Term Paper

The United States is finally starting to recognize that it has a mass incarceration problem. Democratic candidates for the 2020 election debate which strategies are best to solve this issue (K, Allen), and states are trying alternative methods in lieu of prison to reduce the number of incarcerated Americans (Horton). In Albuquerque, New Mexico, Mayor Tim Keller is implementing community involvement programs and hiring more law enforcement to reduce violent crime (City of Albuquerque). New Mexico's incarceration rate is higher than the national average, with 829 people per 100,000 behind bars right now (Prison Policy). In 2018, the City of Albuquerque acknowledged in its own public statement that, "Albuquerque's crime rates are at historically high levels" (City of Albuquerque). I believe there are four main reasons behind these numbers: first, the failed drug war impacting impoverished communities and communities of color; second, the militarization of law enforcement; third, biased news coverage whose language vilifies the identities of incarcerated people; and, fourth, a lack of resources for formerly incarcerated people to reenter society. I will be arguing that tolerating these four events promotes the cycle of incarceration in the City of Albuquerque, and that this tolerance—not the criminals—is what makes our city unsafe.

To begin, allow me to clarify what is meant by 'toleration.' The political philosopher Michael Walzer states the premise of toleration very clearly: "Tolerating and being tolerated is a little like Aristotle's ruling and being ruled: it is the work of democratic citizens." (Walzer, xi).

Walzer created a five-dimensional framework around toleration which is as follows: 1) exhaustion after violent persecution, which then permeates a period of peace; 2) indifference to difference; 3) moral stoicism where “others have rights even if they exercise those rights in unattractive ways”; 4) curiosity; and 5) an enthusiastic endorsement of difference (Walzer, 10-11). Unfortunately, the issue of crime has been historically addressed through means of intolerance across the United States, beginning with the War on Drugs.

The War on Drugs’ earliest origin in the United States began with the passage of the Eighteenth Constitutional Amendment, which prohibited the manufacture, sale, and transport of liquor within the United States. This prohibition failed so horrifically that the Eighteenth Amendment was revoked in 1933 with the passage of the Twenty-First Amendment. Looking back, it seems trivial that the United States had attempted to combat the problem of widespread intoxication by banning alcohol altogether. Indeed, the Eighteenth Amendment is the *only* article revoked from the Constitution of the United States. Today, it’s almost impossible to imagine American culture without alcohol, as it is the cornerstone of every college party, television and billboard ad, and, arguably, American family dynamic. Yet, the Eighteenth Amendment had a very straightforward ideology: by banning alcohol, criminalizing intoxicated people and hustlers, and responding to dealers with violence, the United States issued its earliest ‘tough-on-crime’ policy—a policy that trusts criminalization of communities to deter people from selling and consuming illegal products. These policies, despite being considered “old-fashioned” by the scholarly community and negatively impacting the communities they were intended to serve, are still the United States’ primary way of promoting the politically-driven propaganda agenda known as “public safety.”

Far more renowned than the Eighteenth Amendment is the United States’ infamous international campaign known as the “War on Drugs.” This Congress-backed campaign was

funded by the legislature in 1971, a time where there was one drug overdose death per 100,000 people in the United States. That number has since risen to 14.7 deaths per 100,000 people by 2014, surpassing deaths caused by car crashes. In an official report entitled “New Mexico Police Officer’s Guide to the War on Drugs” by the Santa Fe Law Enforcement Academy from 2012, officers reported that New Mexico is number one in drug overdose deaths, with *20.7 deaths per 100,000* people (Law Enforcement Academy). Additionally, Congress allocates little to no funds toward the War on Drugs campaign—instead, taxpayers now pay for the War on Drugs, which has since surpassed its initial \$1 billion cost with \$51 billion *annually* (Coyne). The War on Drugs campaign is not only costly and ineffective in preventing drug overdose deaths, but it has also created a mass incarceration problem in all 50 states. More than half of all people in U.S. federal prisons are incarcerated on drug-related charges (Coyne). In fact, more than 80% of people in jail and who return to jail (known as “recidivating”) have a substance use disorder (Lee) and their arrests “... made on technical violations such as testing positive for drugs on a urine screen, or being arrested for possession, DUI, or intoxication.” (Horton). People of color are at the brunt of this consequence. Nationwide, African Americans are five times more likely to be incarcerated in a state prison than whites—in five states, they are *ten times* more likely to be incarcerated. Likewise, Hispanics are imprisoned at a national rate of 1.4 times more than whites. New Mexico’s rate is higher than the national average, with African Americans six times more likely and Hispanics two times more likely to be incarcerated than whites for the same offense (Nellis). This disparity is especially seen with drug offenses (Lee).

But what *is* the War on Drugs? Officially declared by the Nixon Administration in 1971, the War on Drugs declared drugs and drug abuse as a national emergency and responded by criminalizing drug offenses, incarcerating drug users, and establishing tough-on-crime practices (Horton). Initially, the explanation for the campaign’s launch was as a response to a poll where

48% of Americans thought drugs were a “serious problem”—a suspicious statistic to prompt a federal response, as it is below the majority. Indeed, a 1994 interview with President Nixon’s domestic policy chief, John Ehrlichman, revealed that the War on Drugs was politically and racially motivated—not in response to the poll. He recalled,

We knew we couldn’t make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course, we did. (Baum)

The War on Drugs continued with the Reagan administration in the 1980s by increasing penalties for nonviolent drug crimes. This era was coined by First Lady Nancy Reagan, who launched her famous educational “Just Say No” antidrug campaign in public schools. In 1986, Congress established mandatory minimum prison sentences that allocated longer prison sentences for crack cocaine use than powder cocaine, the former which was found more often in African American communities than in white communities.

These intolerant measures of addressing drug crime—heavily criminalizing and hurting impoverished communities and communities of color—have left their mark on Albuquerque. The City of Albuquerque has a homelessness and substance abuse problem fueled by tough-on-crime policy. Albuquerque is a crucial intersection point in the illegal drug trade which makes the city a real-life *Breaking Bad*. This problem can be found in schools: one local study found that Albuquerque neighborhoods with high schools are 399% more susceptible to drug trafficking and drug crimes than neighborhoods without high schools (Willits). Other local studies have found that most of the homeless population and people incarcerated at the Bernalillo

Metropolitan Detention Center struggle with substance use disorder (Dashora; Narcisco; Lapham). One might think that the proper way to address this issue would be to medically and therapeutically treat the youth, homeless, and incarcerated struggling with substance use disorder. Unfortunately, indifference to difference was the approach that Albuquerque citizens took as their law enforcement further promoted intolerant measures.

In response to the War on Drugs' enhanced penalties for drug offenses, the drug market became violent and developed cartels. Prohibition laws automatically categorize anybody with drug possession or use as a criminal; buyers nor sellers can turn to law enforcement for any sort of help, such as in cases of theft or overdose. Violence quickly became the primary tactic to establish dominance and control over the drug market and is now used by cartels all over the world, having made quite the name for themselves. In response to violent drug cartel interaction, law enforcement copied the model of violence and militarized itself. Beginning in 1988, Congress passed a defense funding bill that placed the military in an active role to address antidrug efforts; at the same time, the Department of Defense was tasked with detecting and monitoring transit systems hustling illegal drugs into the United States. To ensure that these organizations were well-resourced, the 1033 program was created, and the mutually-beneficial relationship between the military and law enforcement was sealed (Radil). Law enforcement agencies may obtain firearms, armored vehicles, aircraft, or any other sort of military gear through a two-page application form to the Department of Defense with little community oversight aside from political leader approval (such as the mayor and local councils).

Public support for the 1033 program is largely from white people, while people of color have become disproportionately involved in aggressive police encounters, prompting public intolerance and thus advocacy movements such as "Black Lives Matter" (Coyne). In the wake of the Ferguson riots of 2014, President Obama issued an executive order to restrict law

enforcement access to the 1033 program. Those restrictions have since been uplifted by President Trump in 2017 over public safety concerns. This action from the Trump Administration prompted a study to investigate what causes police militarization; the researchers found that public perception of reduction in crime as well as political leader approval promote the militarization of law enforcement (Moule). Paradoxically, it is the tolerance of police participation in the 1033 program by the public and its political leaders that sustain and promote police militarization—*not* rates of violent crime. On the contrary; a nationwide study found that law enforcement participation in the 1033 program saw an *increase* in violent crime rates. To boot, the same study found that law enforcement agencies who participated in the 1033 program saw no rise nor fall in *drug* crime rates, but were found primarily patrolling Black and Hispanic neighborhoods more so than white neighborhoods, but not because Black and Hispanic neighborhoods had higher crime rates (Ramey).

Although there is little to no data readily available on Albuquerque Police Department patrolling patterns, complaints surmised when the City of Albuquerque hired fifty state police officers who were criticized to be patrolling what is known as Albuquerque’s South Valley and International District (also known as the “warzone”) more so than the “foothills and northeast heights”—where, in the former, there are more impoverished communities and communities of color and where, in the latter, locals often call the area “the northeast whites” (Proctor). It is not hard to see how the Albuquerque Police Department may become militarized, as the City is also renowned for its military base (located, ironically, or perhaps not, right by the warzone).

Interestingly, the Albuquerque Police Department statistics have shown a decrease in most violent crime, but drug crimes are not reported (City of Albuquerque). But more importantly, if *perception* of violent crimes, rather than drug crimes, increase public support for police militarization, then who is sounding the alarm to the public to rise from their indifferent state and

get angry at crime in the City, to the point that it is necessary to allocate fifty state police officers to public safety measures?

News media is a critical player in public perception of the world and local communities, particularly among Americans. This is especially true for reports on crime, with a plethora of well-documented studies confirming that, once again, people of color (African Americans and Hispanics) are overrepresented in crime stories (Bjornstrom; Dixon; Vaes). Language is *everything* in news coverage and reports. One study found that changing the phrase “an aggressive person” to “an aggressor” drastically impacted the person’s character for the worst (Kim). One might think that the tolerance for a crime may be universal, but this is not so. A thorough scholarly study found that media coverage is a key factor in crime policymaking as well as a relationship between the way the perpetrator of the crime and the victim of the crime were portrayed. Namely, there is more news coverage for homicides against white people, young or old, and more often female than male (Lin).

The scholarly evidence for biased news coverage on crime in Albuquerque is slim, and so I will now lay out my own case. Amongst the three most popular local news stations (KRQE-13, KOAT-7, and KOB-4), the more conservative KOB-4 tends to use more word count, harsher language, and have more crime stories on its homepage than its competitors do; however, KRQE-13 tends to report more on the same crime story than the other news stations. For example, a teenager who was fatally shot and killed in my old neighborhood at Bianchetti Park in October 2019 demonstrates this disparity. KOAT-7 reported one story on the matter regarding the teenager’s memorial (Evans); KOB-4 reported three stories, with one on the memorial (Nelson) and the other two focused on the suspect and police initiatives (Lopez, KOB Web Staff); and KRQE-13 reported *six* stories, two about the victim (Nguyen; Allen, C), one about

police investigations (KRQE media), two about the suspect and the case file (Allen, C; KRQE Media), and one about the neighborhood response by establishing watch parties (Knapp).

The language surrounding crime is imperative in local policymaking. In New Mexico's 2019 legislative session, local criminal justice activists used language to successfully pass Senate Bill 96, known as the "Ban the Box" bill (Ahearn). Several organizations seek to change the language surrounding people who have been incarcerated to level the playing field with organizations like the news. Known as "labeling theory" amongst scholars, policy initiatives from across the United States are using tolerable phrases such as "people with past convictions" in lieu of "criminal" or "offender." This is important not only because this shift in vocabulary is successfully reducing stigma for formerly incarcerated people (Denver), but also because if public perception either promotes or restricts law enforcement, then that same public perception will likewise promote or restrict people with criminal convictions, as well. A criminal record greatly impairs a person's ability to reclaim their life already lost by presenting obstacles in obtaining housing, employment, education, government-assistance programs such as healthcare and food stamps, a driver's license, and identification. This is especially true for people who abuse drugs and alcohol. As aforementioned, 80% of people in jail and who return to jail suffer from a substance use disorder. For those not serving life sentences, they will eventually have to re-enter society. In New Mexico, the resources available for released offenders are slim. SB96 is an incredible achievement for the state of New Mexico in making employment more accessible for people with prior history. However, there is still much to be done, especially in the way of housing. Across the city, there are shelters such as Joy Junction and St. Martin's to provide housing options for those without a home. However, these shelters are oftentimes full or, in some cases, not used by people because they're not allowed to use drugs in those vicinities. The homelessness and substance abuse in Albuquerque is at a point where the City of Albuquerque is

building a homelessness shelter and is currently in the process of identifying where to place it (Knapp).

Without employment nor housing, people released from jail are at a much greater risk of engaging in delinquent behavior. A study conducted across three states—Texas, Florida, and New Mexico—and their ten counties reveals how fees and fines are yet another obstacle that released offenders face. As aforementioned, most of recidivism comes from technical violations, such as failing a urine test. Another technical violation is failing to pay a fee or fine. In New Mexico, a first offense for a DUI or drug conviction may go up to \$300, increasing with more repeated offenses. If the person misses three payments without making a court appearance, the state of New Mexico issues a warrant out for their arrest and they are jailed. Of the three states assessed, New Mexico had the most outstanding debt and lost the most money in trying to obtain unpaid fees and fines (Menendez). Furthermore, like the War on Drugs, imprisoning people is costly. At the Bernalillo Metropolitan Detention Center, it costs around \$40,000 annually to keep a single person locked up. Although New Mexico passed SB96, it still lacks comprehensive services to help released offenders re-integrate into society. A nationwide study investigated five states who were the most successful in reducing their incarcerated population and *keeping it that way*, of which New Mexico was not a part. For example, the Chesterfield County Jail in Virginia created a program known as HARP (Heroin Addiction Recovery Program) which places inmates suffering from substance use disorder, and with six months or less on their sentences, into “recovery pods” where they undergo forty hours of mentor work and active recovery with their peers. Upon release, the inmates could choose to remain a part of HARP where they were provided with “access to housing, food, clothing, peer support, employment, transportation, friends, and a loving/caring recovery community. They were also allowed to stay in the program for as long as they wished.” (Horton). The HARP program saved almost \$8 million in the span of

three years—a number that reflects the reform efforts from a single jail alone. Imagine if the City of Albuquerque did just this.

The City of Albuquerque is trying its best to address the issue of crime and substance abuse. However, this is not an issue that can be left up to our political leaders and law enforcement alone. As we have seen, the failed War on Drugs and militarization of police only worsened the problem of incarceration and has made communities, especially communities of color, unsafe. Crime is a community problem, not a political one. In order for the City of Albuquerque to truly reform and make its communities safer places to live, it's going to take public engagement to take a stand on what is and is not tolerable. From the South Valley to the foothills, people in Albuquerque must no longer tolerate tough-on-crime policies from the War on Drugs era, as this has only led to more deaths in drug overdoses and arrests. People in Albuquerque will need to continue their awareness of which communities are being policed more than others, and hold law enforcement accountable when there is an obvious disparity. I sincerely hope that the language around crime and people impacted by crime continue to change in order to promote more comprehensive legislation. People should opt for honest language in lieu of vilifying language, and have a conversation around contemporary events instead of simply reacting. Finally, rather than stigmatize people released from jail, the public needs to support treatment programs to help others re-integrate back into society. Not only are treatment programs effective, as is the case of Virginia's HARP program, but they also save time and money—the latter of which New Mexico, as seen with its difficulties gathering fines and fees, so desperately needs.

Above all, the people of New Mexico, and Albuquerque specifically, must recognize that we have a mass incarceration problem. Rather than continue intolerant (and often violent) policy measures from the War on Drug era which have failed our community in so many ways, we must

engage in the community involvement programs which our political leaders are implementing to help law enforcement reduce crime in a smarter, more informed way. We need to be there for the people who will eventually return to this society, because the story does not end when somebody gets locked up. We need to help improve our schools so that neighborhoods with high schools aren't more at risk for drug crimes than those without high schools. We need to treat our homeless and those suffering from substance abuse instead of leaving them to fend for themselves in the streets. It might sound cool to describe Albuquerque as a real-life *Breaking Bad*, but only for a little while: the reality of being last and the worst in the nation will eventually catch up. Albuquerque isn't an unsafe place because of crime and criminals: it's an unsafe place because our indifference towards each other is, in fact, tolerating the intolerable.

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