

Denver Law Review

Volume 94
Issue 3 *Symposium - Justice Reinvestment*

Article 2

December 2020

Vol. 94, no. 3: Foreword

Jenny Arwade

Jim Freeman

Follow this and additional works at: <https://digitalcommons.du.edu/dlr>

Recommended Citation

Jenny Arwade & Jim Freeman, Vol. 94, no. 3: Foreword, 94 Denv. L. Rev. 445 (2017).

This Front Matter is brought to you for free and open access by Digital Commons @ DU. It has been accepted for inclusion in Denver Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

FOREWORD

JENNY ARWADE[†] & JIM FREEMAN^{††}

In recent years, a remarkable consensus has developed in the United States, among political leaders from across the ideological spectrum as well as the general public, that our justice system is dramatically oversized.¹ There is now broad recognition that over the last few decades, the United States has invested excessive resources on a narrow set of “tough-on-crime” strategies to address not only public safety issues but also public health concerns such as the effects of poverty, mental illness, and drug use.²

As described in the report *The \$3.4 Trillion Mistake: The Cost of Mass Incarceration and Criminalization, and How Justice Reinvestment Can Build a Better Future for All*, the U.S. already had an expansive justice system in the early 1980s.³ For example, if police, corrections, judicial/legal, and immigration enforcement expenditures are combined, the United States totaled \$90 billion in justice spending in 1982 (note that all justice spending figures have been adjusted for inflation and presented in

[†] Jenny Arwade is Co-Executive Director of Chicago-based Communities United (CU), which brings together young people and adult allies to advance social change and systems transformation through a racial justice framework. CU’s approach is centered on the creation of intentional healing and justice spaces, transformative civic engagement and leadership development approaches, and the development of broad-based alliances. Jenny has sixteen years of organizing experience during which time she has supported young people and adult allies in dismantling the school-to-prison pipeline, addressing mass incarceration and advancing community-led justice reinvestment efforts, and promoting health and housing equity. Jenny is a graduate of Princeton University, serves as Vice Board Chair of the Edward W. Hazen Foundation, and is a field representative on the Board of Advisors for the Funders Collaborative on Youth Organizing.

^{††} Jim Freeman is the Founder and Executive Director of Grassroots Action Support Team, which assists community-based organizations and coalitions in their efforts to create large-scale, transformative social change around key social, racial, gender, and economic justice issues. He assists grassroots-led efforts to address mass incarceration, promote justice reinvestment, and dismantle the school-to-prison pipeline, among other issues. Freeman was formerly a Senior Attorney at Advancement Project where he directed the *Ending the Schoolhouse-to-Jailhouse Track* project. He is a graduate of Harvard Law School and the University of Notre Dame and has been an Adjunct Professor of Law at the Georgetown University Law Center and the University of Denver Sturm College of Law.

1. See, e.g., Alex Altman, *Koch Brother Teams Up with Liberals on Criminal Justice Reform*, TIME (Jan. 29, 2015), <http://time.com/3686797/charles-koch-criminal-justice>; Russell Berman, *The Moment for Criminal-Justice Reform?*, ATLANTIC (July 10, 2015), <http://www.theatlantic.com/politics/archive/2015/07/congress-obama-criminal-justice-reform/398045>.

2. See, e.g., NAT’L RESEARCH COUNCIL OF THE NAT’L ACADS., THE GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING CAUSES AND CONSEQUENCES 15–16 (Jeremy Travis et al. eds., 2014); *Criminal Justice Facts*, SENT’G PROJECT, <http://www.sentencingproject.org/criminal-justice-facts> (last visited Jan. 28, 2017).

3. CMTYS. UNITED ET AL., THE \$3.4 TRILLION MISTAKE: THE COST OF MASS INCARCERATION AND CRIMINALIZATION, AND HOW JUSTICE REINVESTMENT CAN BUILD A BETTER FUTURE FOR ALL 7 (2016), <http://www.reinvest4justice.org/report> [hereinafter THE \$3.4 TRILLION MISTAKE].

2016 dollars).⁴ Indeed, our incarcerated population then, 621,885, would still rank as fourth highest in the world today, behind only China, Russia, and Brazil.⁵ Nevertheless, we continued to aggressively expand both the size and role of our justice system. Thus, by 2012, total justice spending had increased by 229% to nearly \$297 billion.⁶ Cumulatively, over the thirty-year period from 1983 to 2012, we spent \$3.4 trillion more on the justice system than we would have if spending had remained steady since 1982.⁷

Alongside the growth in spending has been a dramatic increase in the number of people who are under the control of the justice system. As of 2013, there were nearly eight million adults and youth behind bars or within the probation and parole systems in the United States.⁸ In other words, one in forty U.S. residents was either in prison, in jail, on probation or parole, or otherwise under control of the justice system.⁹ For Black and

4. JUSTICE MGMT. DIV., U.S. DEP'T OF JUSTICE, BUDGET TREND DATA: FROM 1975 THROUGH THE PRESIDENT'S 2003 REQUEST TO THE CONGRESS 105 (2002), https://www.justice.gov/archive/jmd/1975_2002/2002/pdf/BudgetTrand.pdf (citing immigration enforcement spending for 1982–2002); TRACEY KYCKELHAHN, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, JUSTICE EXPENDITURES AND EMPLOYMENT, FY 1982–2007, at 2 (2011), <https://www.bjs.gov/content/pub/pdf/jee8207st.pdf> (citing police, corrections, and judicial and legal services expenditures). The figures were adjusted to 2016 dollars using the CPI conversion tables produced by Professor Robert Sahr. *Individual Year Conversion Factor Tables*, OR. ST. U., <http://liberalarts.oregon-state.edu/spp/polisci/faculty-staff/robert-sahr/inflation-conversion-factors-years-1774-estimated-2024-dollars-recent-years/individual-year-conversion-factor-table-0> (last visited Feb. 11, 2017). Note that some civil judicial functions are included in the judicial/legal category (for example, state appellate and supreme courts hear both civil and criminal cases, and those expenditures were not differentiated by the Bureau of Justice Statistics). However, the Bureau of Justice Statistics figures do not take into account many additional spending areas. See CHRISTIAN HENRICHSON & RUTH DELANEY, VERA INST. OF JUSTICE, THE PRICE OF PRISONS: WHAT INCARCERATION COSTS TAXPAYERS 2 (Jules Verdone ed., 2012), <http://archive.vera.org/sites/default/files/resources/downloads/price-of-prisons-updated-version-021914.pdf>.

5. *Highest to Lowest – Prison Population Total*, WORLD PRISON BRIEF, http://prisonstudies.org/highest-to-lowest/prison-population-total?field_region_taxonomy_tid=All (last visited Jan. 29, 2017).

6. THE \$3.4 TRILLION MISTAKE, *supra* note 3, at 7.

7. *Id.*

8. LAUREN E. GLAZE & DANIELLE KAEBLE, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, CORRECTIONAL POPULATIONS IN THE UNITED STATES, 2013, at 1 (2014), <https://www.bjs.gov/content/pub/pdf/cpus13.pdf> (counting adults living under supervision by probation or parole and those in local, state, and federal detention facilities); ERINN J. HERBERMAN & THOMAS P. BONCZAR, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, PROBATION AND PAROLE IN THE UNITED STATES, 2013, at 1 (rev. 2015), <https://www.bjs.gov/content/pub/pdf/ppus13.pdf> (counting adults in probation, parole, or any other post-prison supervision (note that Oklahoma did not report 2103 probation data and thus its 2012 data was used)); JOHN F. SIMANSKI, OFFICE OF IMMIGRATION STATISTICS, DEP'T OF JUSTICE, IMMIGRATION ENFORCEMENT ACTIONS: 2013, at 1 (2014), https://www.dhs.gov/sites/default/files/publications/ois_enforcement_ar_2013.pdf (counting detained aliens); *EZACJRP: Year of Census by Sex for United States*, OFF. OF JUV. JUST. & DELINQ. PREVENTION, <https://www.ojjdp.gov/ojst-atbb/ezacjrp/asp/display.asp> (last visited Feb. 11 2017) (counting juveniles detained, committed, or supervised in 2013).

9. *Data: National Population Totals Tables: 2010–2015*, U.S. CENSUS BUREAU, <http://www.census.gov/data/tables/2015/demo/popest/nation-total.html> (last visited Feb. 5, 2017).

Latino residents, it was approximately one in eighteen and one in thirty-four, respectively, compared to one in fifty-five White residents.¹⁰

However, despite all of the additional resources devoted to the expansion of the justice system, it is not at all clear that this approach has been effective at promoting public safety.¹¹ Indeed, there is substantial evidence demonstrating that the harms caused by this approach have far exceeded whatever benefits have been realized.¹² That is especially true within the communities of color where law enforcement resources have become highly concentrated.¹³ Moreover, the evidence suggests that the policies that have produced mass incarceration and criminalization are far less effective than other options available to us.¹⁴

Fortunately, some progress has been made in addressing this misallocation of resources.¹⁵ In recent years, several “justice reinvestment” initiatives have been successful in beginning to “right-size” and reprioritize our justice system, and reallocate resources to address other community

10. THE \$3.4 TRILLION MISTAKE, *supra* note 3, at 3.

11. See, e.g., NAT’L RESEARCH COUNCIL OF THE NAT’L ACADS., *supra* note 2, at 16; RYAN S. KING ET AL., THE SENTENCING PROJECT, INCARCERATION AND CRIME: A COMPLEX RELATIONSHIP 8 (2005), <http://www.sentencingproject.org/wp-content/uploads/2016/01/Incarceration-and-Crime-A-Complex-Relationship.pdf>.

12. See sources cited *supra* note 3. See generally *About*, VERA INST. JUST., <https://www.vera.org/about> (last visited Feb. 11, 2017); *About the CSG Justice Center*, COUNCIL ST. GOVERNMENTS JUST. CTR., <https://csgjusticecenter.org/about-jc> (last visited Feb. 11, 2017); *About the Justice Policy Center*, URB. INST., <http://www.urban.org/policy-centers/justice-policy-center/sound-strategies-combating-crime-and-promoting-public-safety> (last visited Feb. 11, 2017); *About Us*, SENT’G PROJECT, <http://www.sentencingproject.org/about-us> (last visited Feb. 11, 2017); *Mass Incarceration*, ACLU, <https://www.aclu.org/issues/mass-incarceration> (last visited Feb. 11, 2017); *Public Safety Performance Project*, PEW CHARITABLE TR., <http://www.pewtrusts.org/en/projects/public-safety-performance-project/about> (last visited Feb. 11, 2017).

13. THE \$3.4 TRILLION MISTAKE, *supra* note 3, at 10–13; see also *Intro*, CHICAGO’S MILLION DOLLAR BLOCKS, <http://chicagosmilliondollarblocks.com/#section-1> (last visited Feb. 11, 2017); *Publications*, JUST. MAPPING CTR. (Oct. 5, 2010), <http://www.justicemapping.org/archive/category/news>.

14. CONNIE RICE ET AL., ADVANCEMENT PROJECT, A CALL TO ACTION: LOS ANGELES’ QUEST TO ACHIEVE COMMUNITY SAFETY 3 (Mike Areyan et al. eds., 2013), <http://www.advancementproject.org/resources/entry/a-call-to-action-los-angeles-quest-to-achieve-community-safety>; JAMES AUSTIN ET AL., ENDING MASS INCARCERATION: CHARTING A NEW JUSTICE REINVESTMENT 2–3, 17–18 (2014), <http://www.sentencingproject.org/wp-content/uploads/2015/12/Ending-Mass-Incarceration-Charting-a-New-Justice-Reinvestment.pdf>; WILLIAM CHRISTESON ET AL., FIGHT CRIME: INVEST IN KIDS, PROVEN INVESTMENTS IN KIDS WILL REDUCE CRIME AND VIOLENCE (2014), <https://strongnation.s3.amazonaws.com/documents/37/3293c393-2978-4bc6-aa02-9d8fb62430cf.pdf>; COUNCIL OF ECON. ADVISORS, ECONOMIC PERSPECTIVES ON INCARCERATION AND THE CRIMINAL JUSTICE SYSTEM 52–54 (2016), https://obamawhitehouse.archives.gov/sites/default/files/page/files/20160423_cea_incarceration_criminal_justice.pdf; KIM GILHULY ET AL., HUMAN IMPACT PARTNERS, REHABILITATING CORRECTIONS IN CALIFORNIA: THE HEALTH IMPACTS OF PROPOSITION 47, at 3–5 (2014), <http://www.humanimpact.org/downloads/hia-full-report>; SARAH LYONS & NASTASSIA WALSH, JUSTICE POLICY INST., MONEY WELL SPENT: HOW POSITIVE SOCIAL INVESTMENTS WILL REDUCE INCARCERATION RATES, IMPROVE PUBLIC SAFETY, AND PROMOTE THE WELL-BEING OF COMMUNITIES 54–58 (2010), http://www.justicepolicy.org/images/upload/10-09_REP_MoneyWellSpent_PS-DC-AC-JJ.pdf; see sources cited *supra* note 3; see also President Barack Obama, *Weekly Address: Building a Fairer and More Effective Criminal Justice System*, WHITE HOUSE (Apr. 23, 2016), <https://obamawhitehouse.archives.gov/photos-and-video/video/2016/04/23/weekly-address-building-fairer-and-more-effective-criminal-justice>.

15. See, e.g., THE \$3.4 TRILLION MISTAKE, *supra* note 3, at 19.

needs.¹⁶ However, despite this undeniable progress, it is vital that these initial steps be kept in perspective. The advances made thus far represent only a tiny fraction of the overall distance that must be traveled if we are to address our oversized justice system while actively building safer and healthier communities across the country.¹⁷

To cover the rest of that distance, we submit that there are four essential steps that must be taken:

1. Justice reinvestment initiatives must be pursued at the federal, state, and local levels.

Of the nearly \$297 billion spent nationally on the justice system in 2012, local budgets accounted for 45% of the total, state budgets comprised another 30%, and federal spending contributed 25%.¹⁸ All three areas have expanded dramatically over the past few decades and will require attention if we are to effectively reform our justice system.¹⁹

2. Future justice reinvestment initiatives should address all areas of excessive justice spending.

Previous justice reinvestment initiatives have focused almost exclusively on reducing corrections spending.²⁰ However, that represents only 29% of what the United States spent on the justice system in 2012.²¹ Successful justice reinvestment will require a comprehensive approach that also addresses over-spending on police (45%), judicial/legal functions (20%), and the fastest-growing component of the justice system: immigration enforcement (6%).²²

3. Justice reinvestment initiatives should prioritize the meaningful involvement of the communities that have been most affected by mass incarceration and criminalization.

Justice reinvestment efforts can have profound “on-the-ground” consequences, yet one of the key weaknesses of many existing efforts is the lack of participation by individuals and organizations from the most affected communities.²³ Creating more inclusive processes, with ample opportunities for meaningful grassroots involvement, is critical to ensuring that justice reinvestment efforts are able to accurately diagnose the most critical community needs and design appropriate and community-specific solutions.

16. *Id.* at 18–19.

17. *Id.* at 19.

18. *Id.* at 9.

19. *Id.*

20. *Id.* at 11.

21. *Id.*

22. *Id.*

23. *Id.* at 5; AUSTIN ET AL., *supra* note 14, at 19.

4. A substantial portion of the savings realized should be reinvested, not in other areas of the justice system, but rather in addressing the root causes of unsafe and unhealthy communities, particularly in the communities that have been most affected by mass incarceration and criminalization.

To date, many justice reinvestment efforts have not produced substantial reinvestment, and many of the funds that have been reinvested have gone toward other programs within the justice system.²⁴ As such, they neglect the harm caused by decades of mass incarceration and criminalization policies as well as the root causes of crime and violence.

To create safe communities, we must of course be able to respond effectively to violence and crime. But the most effective response to such actions need not involve the justice system, and our understanding of public safety should not begin nor end with the justice system.²⁵ We must recognize that communities cannot be safe if:

- There are not enough good jobs and affordable housing opportunities for the people who need them;
- Children are not being provided with high-quality educational opportunities, wraparound supports, and access to good after-school and employment opportunities when needed;
- There are significant unmet mental, physical, and behavioral health needs;
- They are facing the threats posed by environmental degradation and climate change; and
- There is deep social, economic, and political inequality within them.²⁶

Addressing these basic needs will result in far less crime and violence and far fewer people entering the criminal justice system, yet we have continually neglected these other key components of safety.²⁷ However, if we are truly to end the devastating cycle of crime and incarceration that continues to plague communities all across the country, we must stop using so many of our resources to merely *respond* to crime and the symptoms of unhealthy communities and instead focus more on *preventing* crime and addressing its root causes.

* * *

There are many who will be resistant to the type of robust and comprehensive justice reinvestment initiatives described above. In particular,

24. THE \$3.4 TRILLION MISTAKE, *supra* note 3, at 19.

25. *Id.* at 14.

26. *Id.*

27. *Id.*

many policymakers will be reluctant to support the substantial reallocation of resources from the justice system to meeting other acute needs, especially within the communities of color that have been most affected by overinvestment in the justice system. What they must recognize is that we are already making massive investments in those communities. However, instead of investing appropriately in the education, employment, or health of individuals from those communities, we have been allocating far too many of our resources to their criminalization and incarceration.²⁸

So we face a choice. Do we continue to invest public dollars in destructive mass incarceration strategies that overwhelmingly affect our most vulnerable and marginalized residents? Or do we seek a new path forward that is focused on making positive investments in the long-term health and safety of our children, families, and communities?

It is our hope that the articles that follow can help to chart such a path.

28. *Id.* at 20.