Root and Branch: Lawyers, Movements, and the End of Mass Incarceration

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Introduction

This lecture, which the editors of the *Harvard Civil Rights-Civil Liberties Law Review* have graciously agreed to republish, draws on various strands of scholarship and applied work.[1] My hope is to do three things. First, I offer an account of what mass incarceration is—what those words mean

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[1] *See* Andrew Manuel Crespo & John Rappaport, Criminal Law and the American Penal System (2025); Andrew Manuel Crespo, *The Hidden Law of Plea Bargaining*, 118 Colum. L. Rev. 1303 (2018); Andrew Manuel Crespo, *No Justice, No Pleas: Subverting Mass Incarceration Through Defendant Collective Action*, 90 Fordham L. Rev. 1999 (2022). For related advocacy work, see The Institute to End Mass Incarceration, https://endmassincarceration.org [https://perma.cc/P28W-N2CR] (last visited Mar. 6, 2025).

to me—and why I believe they describe a societal injustice that urgently needs to end. Second, I explore the role lawyers have played in building the current system of mass incarceration and consider two different models for how they might combat it. Finally, I make the case for one of those models, what I will call here *lawyering in service of organizing*, drawing on the work of Jennifer Gordon. I close by offering a suggestion for how our profession should think about the relationship between lawyers and anticarceral social movement actors.

I. Understanding the Problem

Mass incarceration is a phrase most people know. But people use it in different ways. When I use it, I want to be clear about what I mean, because there are three distinct but interrelated features of mass incarceration worth unpacking: its unprecedented scale; its hyper-concentration along lines of race, class, and place; and its genealogical connection to and present-day instantiation of longstanding systems of racial oppression.

A. A System of Unprecedented Scale

First, mass incarceration is a system of unprecedented scale. For a span of fifty years, the United States has incarcerated more of its own people than any country in the history of the world.[2] We have 5% of the world's population but nearly one fifth of its prison population.[3] In per capita terms, we incarcerate more of our own people by orders of magnitude than other countries with similar socioeconomic profiles, with incarceration rates five times higher, for example, than the other Group of Seven nations.[4] In fact, to get even close to our rate of incarceration, you need to compare the United States to countries that our leaders typically criticize for massive human rights violations or as authoritarian regimes.[5]

This overwhelming scale is not limited to people incarcerated in prisons and jails. Mass incarceration also encompasses a broad network

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[2] *See* Crespo & Rappaport, *supra* note 1, at 16-17 (citing Helen Fair & Roy Walmsley, World Prison Brief, World Prison Population List (14th ed. 2024), https://www.prison-studies.org/sites/default/files/resources/downloads/world_prison_population_list_14th_edition.pdf [https://perma.cc/EG5A-X7LZ]).

[3] *See id.* at 17, fig. 1.3 (citing Fair & Walmsley, *supra* note 2).

[4] *See id*. at 17, fig. 1.2 (citing Fair & Walmsley, *supra* note 2). The Group of Seven includes Canada, France, Germany, Italy, Japan, the United Kingdom, and the United States. The per capita incarceration rate for the United States is reported as 531 per 100,000. All of the Group of Seven countries save the United Kingdom have rates of 111 or lower, with the U.K. reporting a rate of 145 for England, Scotland, and Wales, and 98 for Northern Ireland. *See* Fair & Walmsley, *supra* note 2.

[5] Crespo & Rappaport, *supra* note 1, at 16 (observing that "the incarceration rate in the United States is roughly double or triple that of Russia, Iran, and Saudi Arabia") (citing *World Prison Brief data*, World Prison Brief, http://www.prisonstudies.org/world-prison-brief-data [https://perma.cc/7SLR-TFB8]).

of carceral control and supervision outside of physical carceral facilities, including a system of probation and parole under which people are placed under house arrest, electronic monitoring, or regular carceral supervision—all with a looming threat of incarceration or reincarceration. In fact, individuals revoked from probation or parole status constitute one of the largest sources of entry into prisons and jails.[6]

Taking this full scope of mass incarceration into view, the ripple effects of the system are staggering. Today, almost two million people are behind bars.[7] Ten million people will be sent to jail this year.[8] Nearly five million others have already spent time in a state or federal prison and have since been released.[9] Nearly twenty million people have been convicted of a felony in their lifetimes, and close to eighty million have a criminal record.[10] When you consider their children, their parents, their siblings, and their loved ones, you have a system in which almost *half* of the people in our country have a close family member who has spent time behind bars.[11]

These numbers capture the scale of the problem. But the numbers alone do not tell the full story. Here I recall the words of an incarcerated writer, Arthur Longworth:

> Outside prison, mass incarceration is measured in numbers . . . . But after more than 30 years in prison—my entire adult life—I have mass incarceration sewn into my flesh and bones. . . . It buries me. It keeps me from breathing.[12]

When I read these words, I think about my own former clients, the people I represented during my time working as a public defender in Washington, D.C. My oldest client was in his eighties. He needed help walking from the lock-up area behind the courtroom to counsel's table. I met my youngest client on his eighth birthday. He was so small that his legs did not touch the ground when he sat in the chairs in his jail cell or in the courtroom.

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[6] *See id.* at 36 (citing Ronald P. Corbett & Kevin R. Reitz, Robina Inst., Profiles in Probation Revocation: Examining the Legal Framework in 21 States 3 (2015), https://robinainstitute.umn.edu/sites/robinainstitute.umn.edu/files/2022-02/robina-report-2015-web.pdf [https://perma.cc/3KKT-RC4X]).

[7] Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2024*, Prison Pol'y Initiative (Mar. 14, 2024), https://www.prisonpolicy.org/reports/pie2024.html [https://perma.cc/7JG6-FXPY].

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] Crespo & Rappaport, *supra* note 1, at 16 (citing Peter K. Enns, Youngmin Yi, Megan Comfort, Alyssa W. Goldman, Hedwig Lee, Christopher Muller, Sara Wakefield, Emily A. Wang & Christopher Wildeman, *What Percentage of Americans Have Ever Had a Family Member Incarcerated?: Evidence from the Family History of Incarceration Survey (FamHIS)*, 5 Socius 1, 5-10 (2019)).

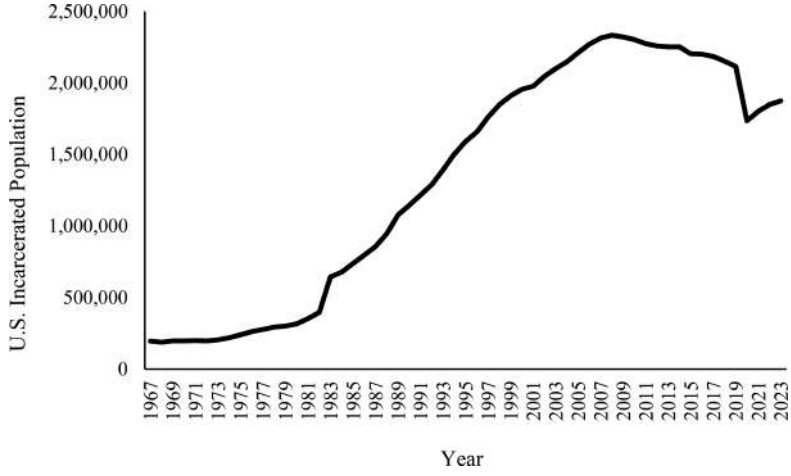
[12] Arthur Longworth, *Raised, and Imprisoned, by the State*, The Marshall Project (May 26, 2015), https://www.themarshallproject.org/2015/05/26/raised-and-imprisoned-by-the-state [https://perma.cc/2XGA-KMNA].

And yet, they were shackled together. He had an adult man's iron belly chain wrapped around him three times, with his hands cuffed together and tied to his waist.

These are the images, the people, I see in my mind when I read Arthur Longworth's words. Because in addition to its massive scale, our carceral system has a massive impact on individual people—on human lives—that is almost incomprehensible to those who have not lived it or been directly impacted by it.

And critically, this massive scale was created in our lifetimes.

FIGURE 1. U.S. Incarcerated Population by Year, 1967–2023[13]



After decades of relative stability, the American prison population started to increase in 1973. It exploded across the 1980s and 1990s and continued climbing until 2009, when it peaked. At that point, it began to decrease—*slowly*. I emphasize slowly because, as researchers with the Vera Institute of Justice have shown, if one were to extend that early rate of decline (from 2009 to 2017) outward into the future, it would take until *2091* before the prison population reached just half of its current peak—at which point it

[13] The data for Figure 1 are compiled from: Prison Policy Initiative, *Data Toolbox: State prisons, local jails and federal prisons, incarceration rates and counts, 1925-2022*, https://www.prisonpolicy.org/data/ [https://perma.cc/C3RH-GYRG] (last updated Mar. 17, 2025); DEREK MUELLER, BUREAU OF JUST. STAT., PRISONS REPORT SERIES: PRELIMINARY DATA RELEASE, 2023 tbl. 1 (2024), https://bjs.ojp.gov/preliminary-data-release-prisons-2023 [https://perma.cc/DDN9-QW8W]; ZHEN ZENG, BUREAU OF JUST. STAT., JAIL REPORT SERIES: PRELIMINARY DATA RELEASE 2023 (2024), https://bjs.ojp.gov/library/publications/jails-report-series-preliminary-data-release-2023 [https://perma.cc/HJD8-PSVA] (reporting that "[a]t midyear 2023, local jails held 664,200 persons in custody"). The increase beginning in 1983 is partially due to the inclusion of local jail data in the data sources beginning in that year.

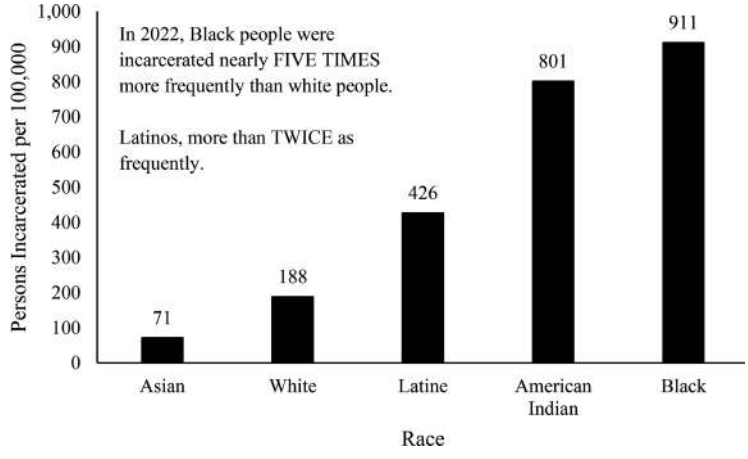
would still be one of the largest prison populations in the world.[14] Even that projection, though, may well be optimistic: as of 2022, the U.S. prison population has once again been on the rise.[15]

B. Race, Class, Place

Size is not the only issue. As sociologist Loïc Wacquant argues, the phrase "mass incarceration" is in some ways inapt because the American penal system is "finely targeted, first by class, second by race, and third by place."[16] It produces, in other words, not mass incarceration but rather "the hyperincarceration of (sub)proletarian African American men from the imploding ghetto."[17]

The racial disparities of mass incarceration are familiar but staggering.

FIGURE 2. U.S. Incarceration Rates by Race, 2022



[14] JACOB KANG-BROWN, OLIVER HINDS, JASMINE HEISS & OLIVE LU, VERA INST. OF JUST., THE NEW DYNAMICS OF MASS INCARCERATION 6, fig.1, (2018). For current international comparisons, see sources cited *supra* note 4.

[15] *See* CRESPO & RAPPAPORT, *supra* note 1, at 899 ("[I]n 2022, the national prison population increased by 2 percent — its first rise after roughly a decade of decline.") (citing ASHLEY NELLIS, SENT'G PROJECT, MASS INCARCERATION TRENDS 1 (2024), https://www.sentencingproject.org/app/uploads/2024/05/Mass-Incarceration-Trends.pdf [https://perma.cc/8M8T-WNER]); MUELLER, *supra* note 13, https://bjs.ojp.gov/preliminary-data-release-prisons-2023 [https://perma.cc/DDN9-QW8W] (reporting that "U.S. prison population was 1,254,200 at yearend 2023, a 2% increase from 2022").

[16] Loïc Wacquant, *Class, Race & Hyperincarceration in Revanchist America*, 28 SOCIALISM AND DEMOCRACY 35, 35 (2014).

[17] *Id.*

Black people are incarcerated five times more frequently than white people, with Native Americans' rate of incarceration not far behind.[18] Latinos are incarcerated more than twice as frequently as white people.[19] Those two groups—Blacks and Latinos—comprise one third of the U.S. population but more than half of the country's incarcerated population.[20]

As for class, a 2015 report from the Prison Policy Initiative entitled *Prisons of Poverty* describes the extent to which "incarcerated people are dramatically concentrated at the lowest ends of the national income distribution."[21] Underscoring this point, the federal Bureau of Justice Statistics once reported that more than 80% of criminal defendants across a range of large jurisdictions were represented by public defenders or appointed counsel—because they were too poor to afford a lawyer.[22]

Time in prison makes this problem worse. As multiple leading sociologists explain, incarceration compounds the poverty and economic inequality already disproportionately burdening people sent to prison because when they emerge with criminal records they "face significant legal and social barriers to finding employment," an adverse credential, to borrow from Devah Pager, that lasts "[l]ong after an individual completes his prison term."[23] In short, as the Prison Policy Initiative report concludes: "We send large numbers of people with low levels of education and low skills to prison, and then when they leave just as penniless as they were when they went in, we expect them to bear the burden of legally-acceptable employment discrimination."[24]

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[18] Figure 2 reports per capita prison incarceration rates per 100,000 people. *See* E. Ann Carson, Bureau of Just. Stat., Prisoners in 2022 – Statistical Tables 12 tbl. 5 (2024), https://bjs.ojp.gov/document/p22st.pdf [https://perma.cc/8MFT-RBRB]. Jail incarceration rate disparities are comparable. *See* Zhen Zeng, Bureau of Just. Stat., Jail Inmates in 2022 – Statistical Tables 10 tbl. 4 (2023), https://bjs.ojp.gov/document/ji22st.pdf [https://perma.cc/6PU3-FJQH].

[19] Carson, *supra* note 18; Zeng, *supra* note 18.

[20] *See* Carson, *supra* note 18, at 9 tbl. 3 (reporting that of 1,185,648 people incarcerated in prisons, 384,600 (32%) were Black and 273,900 (23%) were Hispanic); Zeng, *supra* note 18, at 8 tbl. 2 (reporting that of 663,100 people incarcerated in jails, 234,900 (35%) were Black and 93,700 (14%) were Hispanic). Combining these data, of the 1,848,748 people incarcerated, 619,500 (34%) were Black and 367,700 (20%) were Hispanic.

[21] Bernadette Rabuy & Daniel Kopf, *Prisons of Poverty: Uncovering the pre-incarceration incomes of the imprisoned*, Prison Pol'y Initiative (July 9, 2015), https://www.prisonpolicy.org/reports/income.html [https://perma.cc/XXB6-LJVJ].

[22] Caroline Wolf Harlow, Bureau of Just. Stat., Defense Counsel in Criminal Cases 1 (2000), https://bjs.ojp.gov/content/pub/pdf/dccc.pdf [https://perma.cc/E89N-CASP] ("82% of felony defendants in large State courts were represented by public defenders or assigned counsel.").

[23] Devah Pager, Marked 28-30 (2007); *see also* Bruce Western & Katherine Beckett, *How Unregulated Is the U.S. Labor Market? The Penal System as a Labor Market Institution*, 104 Am. J. Socio. 1030, 1031 (1999) (describing how incarceration distorts national unemployment data by "concealing joblessness" while simultaneously raising "unemployment in the long run by damaging the job prospects" of incarcerated people after their release). For more on the interrelationship between mass incarceration and socioeconomic inequality, including discussion of the impact of penal system fines and fees and on the issue of prison labor, see Crespo & Rappaport, *supra* note 1, at 10-11, 37-41, 455-61.

[24] Rabuy & Kopf, *supra* note 21.

Finally, in Wacquant's trio, there is the matter of place. In 1992, "Eddie Ellis, a pioneer Black Panther and convicted murderer" who was also a pioneer among "prison-scholars," reported that the vast majority of New York state's "entire prison population came from just seven neighborhoods in New York City."[25] By 2022, as mass incarceration expanded across the state, New York City's share of statewide imprisonment had fallen to a more proportionate level of 42%.[26] But *within* the City, incarceration remained highly concentrated in just seven neighborhoods, each of which had incarceration rates between five and *ten* times higher than the rest of the city.[27] These neighborhoods include Harlem, where my mother started her teaching career, and the South Bronx, where my father grew up. The same phenomenon repeats itself in cities across the country, including Chicago, where scholars working with the Million Dollar Blocks Project have mapped hyper-incarceration down to the city block level—identifying individual city blocks where the state spends more than $1 million a year incarcerating people.[28]

C. Not an Accident

Thus far, we have seen that mass incarceration is a system of unprecedented scale, the harms of which are acutely concentrated along lines of race, class, and place. But perhaps the most important thing to know about the system is that none of this is accidental. Rather, as Michelle Alexander, one of the most famous public critics of contemporary mass incarceration, has said, "mass incarceration is a massive system of racial and social control."[29]

Take first the racial component. As the title of Alexander's book, *The New Jim Crow*, suggests, mass incarceration is tied to a legacy of racial oppression. I am reminded here of Randall Kennedy, who writes:

> In many places, for several generations, it was a crime for [B]lacks to learn to read, to flee enslavement, or to defend themselves, their families, or their friends from physical abuse. It was a crime, in sum, for [B]lacks to do all sorts of things deemed to be permissible or admirable when done by others.[30]

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[25] Francis X. Clines, *Ex-Inmates Urge Return To Areas of Crime to Help*, N.Y. Times (Dec. 23, 1992), https://www.nytimes.com/1992/12/23/nyregion/ex-inmates-urge-return-to-areas-of-crime-to-help.html [https://perma.cc/2W6A-VVCA].

[26] Emily Widra & Nick Encalada-Malinowski, *Where people in prison come from: The geography of mass incarceration in New York*, Prison Pol'y Initiative (June 2022), https://www.prisonpolicy.org/origin/ny/2020/report.html [https://perma.cc/D3E5-B8PD].

[27] *Id.*

[28] Chicago's Million Dollar Blocks, https://chicagosmilliondollarblocks.com/ [https://perma.cc/RN3K-4YQT] (last visited Mar. 6, 2025).

[29] Sarah Childress, *Michelle Alexander: "A System of Racial and Social Control,"* Frontline (Apr. 29, 2014), https://www.pbs.org/wgbh/frontline/article/michelle-alexander-a-system-of-racial-and-social-control/ [https://perma.cc/4C8K-HRSE].

[30] Randall Kennedy, Race, Crime, and the Law 34 (rev. ed. 1998).

Kennedy, of course, is writing about slavery. Now, I remember learning about slavery in middle school—and learning that it was abolished after the Civil War by the Thirteenth Amendment, which states: "Neither slavery nor involuntary servitude shall exist within the United States . . . or any place subject to their jurisdiction."[31] Except, of course, as I would later learn in law school, that is *not* what the Thirteenth Amendment says. What it actually states is that neither slavery nor involuntary servitude shall be permitted within the United States "*except as a punishment for crime whereof the party shall have been duly convicted.*"[32]

Reading these words with a lawyer's eye, there is a straightforward, textual argument that the Thirteenth Amendment did not abolish slavery at all. Rather, it *codified* it—so long as the person enslaved is first convicted of a crime. And in fact, this exception clause of the Thirteenth Amendment was immediately put to use in the aftermath of the Civil War to create what historian Douglas Blackmon famously called "slavery by another name."[33] As Blackmon writes, beginning in the late 1860s and accelerating at the end of Reconstruction, "every southern state enacted an array of interlocking laws essentially intended to criminalize [B]lack life."[34]

The plan worked. "[S]outhern prisons," Wacquant writes, "turned [B]lack overnight."[35] Consider Virginia. Prior to the Civil War, prisons in Virginia had almost no Black people (because the vast majority of Black people in Virginia were enslaved). But by 1871, just six years after the Thirteenth Amendment and its exception clause were enacted, Virginia's prisons were more than 80% Black.[36] In Georgia, by 1899, the prison population was nearly 90% Black.[37]

This programmatic re-instantiation of Black oppression is what made it possible to see infamous pictures like the one below, which the Library of Congress captions "Juvenile Convicts at Work in the Fields."[38]

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[31] U.S. CONST. amend. XIII, § 1.

[32] *Id.* (emphasis added).

[33] DOUGLAS A. BLACKMON, SLAVERY BY ANOTHER NAME: THE RE-ENSLAVEMENT OF BLACK AMERICANS FROM THE CIVIL WAR TO WORLD WAR II (2008).

[34] *Id*. at 53.

[35] Loïc Wacquant, *The new 'peculiar institution': On the prison as surrogate ghetto*, 4 THEORETICAL CRIMINOLOGY 377, 384 (2000).

[36] CRESPO & RAPPAPORT, *supra* note 1, at 12 (citing LAWRENCE M. FRIEDMAN, CRIME AND PUNISHMENT IN AMERICAN HISTORY 156 (1993)).

[37] *Id*.

[38] Detroit Publishing Co., *Juvenile Convicts at Work in the Fields*, LIBR. OF CONG. (1903), https://www.loc.gov/item/2016818521/ [https://perma.cc/Z2H9-MPUM].

FIGURE 3. Juvenile Convicts at Work in the Fields, circa 1903

If you showed this picture to anyone in a civics class today and asked them what it depicted, they would probably tell you it depicts slavery, but for the recognizable prison uniforms the children are wearing.

This image has always been striking to me. Not only for what it shows, but also because it reminds me of another picture, taken over a century later:

FIGURE 4. Angola State Penitentiary, 2015

Taken in 2015, this is an image from Angola State Penitentiary.[39] Built on a former slave plantation, Angola is home to the largest per capita share

[39] Whitney Benns, *American Slavery, Reinvented*, THE ATLANTIC (Sept. 21, 2015), https://www.theatlantic.com/business/archive/2015/09/prison-labor-in-america/406177/ [https://perma.cc/42DM-2YAN].

of people in the world serving life sentences without parole.[40] The picture, snapped by a journalist 150 years after the Thirteenth Amendment was enacted, shows a familiar and recurrent scene in our national history: an armed overseer sits on horseback, superintending people of color, all deprived of their freedom, working the fields.

Plus ça change.

Now consider again Alexander's phrase: "mass incarceration is a massive system of racial and social control."[41] The word *social* here, as I take it, underscores the imbrication of race and socioeconomic structure. It points to the many ways in which mass incarceration is inextricably tied into our economic order. In the words of sociologists Bruce Western and Katherine Beckett, "the penal system [i]s a labor market institution."[42] It absorbs, hides from view, and forcibly controls large segments of the American underclass. Consider some salient characteristics of the population incarcerated in state prisons, where pre-incarceration unemployment and homelessness rates significantly exceed national averages.[43] Where more than 60% of people have not finished high school.[44] Where four out of ten incarcerated people in state prison received public assistance as children. Where 20% of all incarcerated people also spent time in foster care.[45]

Taken together, these intergenerational and interwoven cycles of incarceration, homelessness, joblessness, and precarity underscore a point made by W.E.B. Du Bois over a century ago: "[Crime] is a phenomenon that stands not alone, but rather as a symptom of countless wrong social conditions."[46] Mass incarceration, in other words, can best be understood as a

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[40] On Angola's history, see Joanne Ryan & Stephanie L. Perrault, *Angola: Plantation to Penitentiary*, U.S. Army Corps of Eng'rs, New Orleans Dist. (2007), https://www.crt.state.la.us/Assets/OCD/archaeology/discoverarchaeology/virtual-books/PDFs/Angola_Pop.pdf [https://perma.cc/FU27-7YWE]. On Louisiana's world-leading imposition of life-without-parole sentences, see Ashley Nellis, *Life in Prison Without Parole in Louisiana*, The Sent'g Project (Jan. 2024), https://www.sentencingproject.org/app/uploads/2024/01/Life-in-Prison-Without-Parole-in-Louisiana.pdf [https://perma.cc/RF7P-AC7R]. On Angola's unique role housing people living under such sentences, see, e.g., Marcus Kondkar, Calvin Duncan, Annie Nisenson, Daryl Waters, Ron Hicks & Everett Offray, *Ambassadors to Freedom*, Inquest (Feb. 6, 2024), https://inquest.org/ambassadors-to-freedom/ [https://perma.cc/8KXE-JHNV].

[41] Childress, *supra* note 29.

[42] *See* Western & Beckett, *supra* note 23; *see also* Ivan Jankovic, *Labor Market and Imprisonment*, 8 Crime & Soc. Just. 17, 17-20 (1977) ("Given the persistence and the magnitude of . . . surplus [labor] in advanced capitalist countries, imprisonment may serve to contain a fraction of it and to manipulate its size.").

[43] Leah Wang, Wendy Sawyer, Tiana Herring & Emily Widra, *Beyond the Count: A Deep Dive Into State Prison Populations*, Prison Pol'y Initiative (Apr. 2022), https://www.prisonpolicy.org/reports/beyondthecount.html [https://perma.cc/L232-CH33].

[44] *Id.*

[45] *Id.*

[46] W.E.B. Du Bois, The Philadelphia Negro: A Social Study 241-42, (U. Pa. Press reprt. ed. 1996) (1899).

massive system of *racialized* social control. It is a product and reproduction, to quote sociologist Elliot Currie, of "the whole range of historical and current patterns of deliberate discrimination and disinvestment that have profoundly shaped [B]lack life in America."[47] For that reason, Currie writes, "a century's worth of [sociological] research" confirms that our country's hyper-incarceration along racial lines "is not a symptom of community failure: it is a symptom of social injustice," of what many today would call systemic racism.[48]

That phrase—*systemic racism*—can sometimes sound diffuse. After all, the whole point of the phrase is to underscore the extent to which racism is immanent in social structures. But it is important to recall that there has been *overt* racism evident in some of the major policies driving mass incarceration.

Consider as just one example the federal War on Drugs. People incarcerated for drug offenses make up close to half of the federal prison population, which itself is the largest prison population in the country.[49] The phrase "war on drugs" is associated most frequently with President Richard Nixon who, during his campaign for the White House in 1968, argued that "[d]oubling the conviction rate in the country would do far more to cure crime in America than quadrupling the funds for [the] War on Poverty."[50] Later, while in office, he insisted that drug dealers should be "hunted to the end of the earth."[51] Nixon's War on Drugs shaped federal drug policy for the next four decades, as Presidents Ronald Reagan, George H.W. Bush, Bill Clinton, and George W. Bush pursued new penal legislation, massive funding and infrastructure growth, and systematic enforcement practices that together fueled the explosion in the federal prison population.[52]

Given this history, we cannot ignore an interview given by John Ehrlichman, the primary architect of Nixon's domestic policy agenda, decades after Nixon left office. Asked about Nixon's 1968 campaign and what it was all about, Ehrlichman responded:

> You want to know what this was really about? . . . The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and [B]lack people. . . . [B]y getting the public to associate the hippies with marijuana and [B]lacks with heroin,

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[47] Elliot Currie, A Peculiar Indifference 159 (2020).

[48] *Id.* at 10.

[49] Bureau of Just. Stat., Drug Offenders in Federal Prison (Oct. 2015), https://bjs.ojp.gov/content/pub/pdf/dofp12_sum.pdf [https://perma.cc/6PU3-FJQH].

[50] Ta-Nehisi Coates, *The Black Family in the Age of Mass Incarceration*, Atlantic (Oct. 2015), https://www.theatlantic.com/magazine/archive/2015/10/the-black-family-in-the-age-of-mass-incarceration/403246/ [https://perma.cc/35CJ-FQ9J].

[51] Robert B. Semple, Jr., *The 1972 Campaign*, N.Y. Times, Sept. 19, 1972, at 38, https://timesmachine.nytimes.com/timesmachine/1972/09/19/81959903.html?pageNumber=38 [https://perma.cc/VH42-VXC3].

[52] *See* Crespo & Rappaport, *supra* note 1, at 675-78.

> 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.[53]

Mass incarceration is a massive system of racial and social control. And I submit to you, it is not an accident.

D. A Set of Radically Obvious Ideas

Let me pause here to say a bit about the word *radical*. Somewhat ironically, this word tends to be both claimed by and wielded against people working to build anticarceral futures. "[T]hose who wear the word as a badge of honor and those who attempt to wield it as a weapon generally use it to mean the same thing: extreme, or far outside the mainstream."[54]

I acknowledge that is an accepted meaning of the word. But when I use the word *radical* I mean something different. I am using it the way the Oxford English Dictionary describes it—the way that Angela Y. Davis describes it, when she reminds us that "*radical* simply means 'grasping things at the root.'"[55] *Radical*, in other words, means *fundamental*.

Now, let's talk about some radically obvious ideas that flow directly from the account of mass incarceration offered thus far. I speak here of ideas that are simultaneously obvious, in so far as they are hard to deny, and radical, in so far as accepting them would entail fundamental changes to the state of the world. Radically obvious ideas are essential to social movements precisely because they help us capture the difference between the world as it is and the world as it ought to be. The idea that people ought not be enslaved is obvious. But it was radical in the 1860s because to accept it would require a fundamental reordering of society—and, in fact, ultimately caused a civil war. Likewise, the idea that Black people deserve equal dignity and flourishing is obvious. And it is radical, insofar as the Civil Rights Movement of the 1960s had to once again strive to reorder American society in an effort to make the idea real—insofar as realization of the idea would entail fundamental reordering of certain aspects of our society today.

In the context of mass incarceration, given everything I have done to describe what that phrase means, I believe two radically obvious ideas come to the fore.

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[53] Dan Baum, *Legalize It All*, Harper's Mag. (Apr. 2016), https://harpers.org/archive/2016/04/legalize-it-all/ [https://perma.cc/4LSE-EVFT].

[54] Andrew Manuel Crespo, *The Year in Books*, Inquest (Dec. 19, 2023), https://inquest.org/the-year-in-books-2023/ [https://perma.cc/B9X4-2GAG] (discussing these usages of the word "radical").

[55] Angela Y. Davis, *Let Us All Rise Together: Radical Perspectives on Empowerment for Afro-American Women, in* Women, Culture, & Politics 3, 14 (1989); *see also Radical*, Oxford Eng. Dictionary, https://www.oed.com/dictionary/radical_adj?tab=meaning_and_use#27277825 [https://perma.cc/7YTY-HZYW] (last visited Mar. 7, 2025).

First, mass incarceration should not exist. The United States should *not* incarcerate more of its own people than any country in the world. The United States should *not* continue a system of racial and social control with a genealogical tie to slavery. We should end mass incarceration.

And second, if we understand that mass incarceration is not an accident, then we must accept that ending mass incarceration requires more than just persuasion—more than merely educating policymakers and stakeholders until the scales fall from their eyes and they take actions of their own accord to eradicate this system, root and branch. Ending mass incarceration will instead require power, what Ben Sachs and Kate Andrias refer to as "countervailing power," wielded by "mass-membership organizations" that aim "to equalize the political voice of citizens who lack . . . political influence."[56] Put more simply, it will take the power one finds in social movements. This prompts a question: what role ought lawyers play in that work?

II. The Role of the Lawyer in the Movement to End Mass Incarceration

In discussing the relationship between lawyers and mass incarceration, I want to start by arguing that lawyers are—uniquely—part of the problem. From this premise, I will then offer two different models for how lawyers might do something to combat mass incarceration: as harm mitigators and as lawyers acting in service of organizing. And I will make a case for the importance of the second of these two models.

A. Lawyers as Carceral Constructors

Let's take first the idea that lawyers have been uniquely part of the problem of constructing mass incarceration. Our profession has done this in three different ways: as legislators, as judges, and as prosecutors.

Start with legislation. At the beginning of the 1900s, the Federal Penal Code did not have mandatory minimum sentences.[57] Fast forward ninety years, and mandatory minimums—captured most vividly by so-called "three strikes" laws—were widespread across the country.[58] Largely because of these statutes, prison sentences exploded in length.[59]

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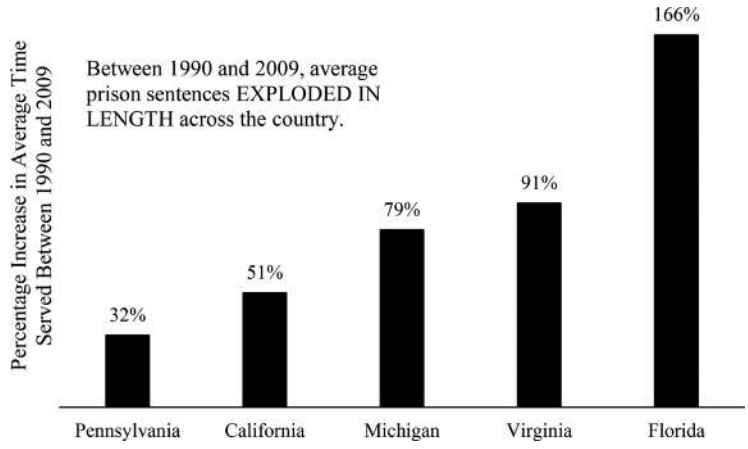
[56] Kate Andrias & Benjamin Sachs, *Constructing Countervailing Power: Law and Organizing in an Era of Political Inequality*, 130 Yale L.J. 546, 551 (2020-21).

[57] *See* Charles Doyle, Cong. Rsch Serv., RL32040, Federal Mandatory Minimum Sentencing Statutes 5 (2013) ("The 1909 federal criminal code revision eliminated most mandatory minimums[.]").

[58] *See* Ewing v. California, 538 U.S. 11, 15 (2003) ("Between 1993 and 1995, 24 States and the Federal Government enacted three strikes laws.").

[59] *See* Crespo & Rappaport, *supra* note 1, at 18 (citing Alfred Blumstein, Michael Tonry & Asheley Van Ness, *Cross-National Measures of Punitiveness*, 33 Crime & Just. 347, 348 (2005)).

FIGURE 5. Increases in Average Time Served, 1990–2009[60]



In Florida, sentence lengths more than doubled in a decade.[61] This is especially significant because comparative scholars say it is America's relatively severe sentence lengths that most set us apart from other countries.[62] Today, 63% of people in prison are serving sentences longer than ten years, sentences that would be rare if not unheard of in many other countries.[63] And the number of people serving those long sentences in this country has tripled since 1999.[64]

Much of that jump was fueled by legislation increasing the maximum sentence lengths associated with crimes and, in many instances, mandating that severe minimum sentences be imposed. Of course, all those statutes were enacted by legislators—many of whom were lawyers. Specifically, throughout the prison boom, roughly 40-50% of the legislators in Congress were lawyers.[65] In California, our most populous state, almost half of the

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[60] PEW CTR ON THE STATES, TIME SERVED 13 tbl.1 (June 2012), https://www.pewtrusts.org/-/media/assets/2012/06/06/time_served_report.pdf [https://perma.cc/ES7D-FEGF].

[61] *See* CRESPO & RAPPAPORT, *supra* note 1, at 22 (citing PEW CTR. ON THE STATES, *supra* note 60).

[62] Alfred Blumstein et al., *supra* note 59 ("[T]he high U.S. imprisonment rate results primarily from much greater lengths of prison sentence . . . than are imposed in other countries.").

[63] *Long Sentences by the Numbers*, COUNCIL ON CRIM. JUST., https://councilonj.foleon.com/tfls/long-sentences-by-the-numbers/ [https://perma.cc/4GYV-5CZG] (last visited Mar. 1, 2025); *New Analysis Shows U.S. Imposes Long Prison Sentences More Frequently than Other Nations*, COUNCIL ON CRIM. JUST. (Dec. 20, 2022), https://councilonj.org/new-analysis-shows-u-s-imposes-long-prison-sentences-more-frequently-than-other-nations/ [https://perma.cc/45JA-ZBJW].

[64] Mike Wessler, *Updated charts provide insights on racial disparities, correctional control, jail suicides, and more*, PRISON POL'Y INITIATIVE (May 19, 2022), https://www.prisonpolicy.org/blog/2022/05/19/updated_charts [https://perma.cc/TK6V-HYDH].

[65] Nick Robinson, *The Decline of the Lawyer Politician*, 65 BUFF. L. REV. 657, 671 fig.1 (2017).

legislators were lawyers when the prison boom commenced.[66] Midway through the most explosive decade of incarceration in Virginia, nearly half of the legislators were lawyers.[67] Simply put, our profession was—and continues to be—a major force in passing the laws that fueled the explosion in prison sentence lengths and thereby enabled mass incarceration.

But of course, legislation is only part of the story. We have a system of checks and balances, which means that sometimes the judiciary can act as a check on laws that are too severe or too punitive. And the judiciary is composed entirely of lawyers. In the context of severe sentences, one might think the Eighth Amendment naturally invites such a check, given its explicit declaration that "cruel and unusual punishments" are unconstitutional.[68]

But this language has been rendered a dead letter—once again by lawyers, this time in robes. This much is clear from the case of Leandro Andrade.[69] Mr. Andrade was a nine-year Army veteran and father of three, who, in 1995, was arrested for stealing five videotapes worth a total of $84.70. Under a three strikes law tracking the previously mentioned statutes, Mr. Andrade was sentenced to between fifty years and life in prison—a de facto life sentence given his age at the time.[70]

"If Andrade's sentence is not grossly disproportionate, the principle has no meaning."[71] So writes Justice David Souter, trying to persuade his colleagues on the Supreme Court not to write the Eighth Amendment's proportionality principle out of the Constitution. His efforts were unsuccessful. Andrade's life sentence for stealing five video tapes was upheld—by a quintet of robed lawyers who left behind "little remaining hope that any sentences of incarceration would be deemed disproportionate under the Eighth Amendment."[72]

Massively high sentences like Andrade's lay the foundation for the final way in which lawyers have contributed to, and in many ways driven, the rise of mass incarceration—because prosecutors are allowed to trade those excessively high sentences away in exchange for pleas of guilt. I have spent much of my academic career writing about plea bargaining, the legalistic mechanism "at the root of American mass incarceration," which is "both

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[66] Robert J. Derocher, *Keeping a Presence in the Statehouse: Bars Must Work Harder as Number of Lawyers in Office Declines*, 33 ABA Bar Leader (2008), https://www.americanbar.org/groups/bar-leadership/publications/bar_leader/2008_09/3301/presence/ [https://perma.cc/J3V9-WPMJ].

[67] Beth Bazar, Nat'l Conf. of State Legislatures, State Legislators' Occupations: A Decade of Change 2 (1987).

[68] U.S. Const. amend. VIII.

[69] Lockyer v. Andrade, 538 U.S. 63 (2003).

[70] *See* Erwin Chemerinsky, *Cruel and Unusual: The Story of Leandro Andrade*, 52 Drake L. Rev. 1, 3 (2003).

[71] *Lockyer*, 538 U.S. at 83 (Souter, J., dissenting).

[72] Carol S. Steiker & Jordan M. Steiker, Courting Death: The Supreme Court and Capital Punishment 307-08 (2016).

an outgrowth of and *dependent upon* plea bargaining for its existence."[73] To appreciate this point, consider the overwhelming resource constraints defining the system's basic operation:

> In courthouses across the country, [individual] prosecutors routinely handle over one thousand felony cases each year. This translates to hundreds of open cases at any given time and multiple cases scheduled for trial *every day*. . . . No prosecutor can try multiple cases in different courtrooms at once, let alone prepare hundreds of cases for trial at the same time. It is thus impossible for the system to do what the Sixth Amendment and countless television dramas suggest should be or is the norm: provide people charged with crimes "the right to a speedy and public trial" in "all criminal prosecutions."
> . . . .
> . . . Plea bargaining is how the system bridges that resource chasm[, converting] millions of "potential trials into guilty pleas," which "are not simply cheaper than trials" but "enormously cheaper." And with roughly 95 percent of all convictions arising from guilty pleas, the alchemy works.[74]

Critically, this alchemy can also be extraordinarily coercive. To appreciate this point, all you really need to know is the case of Paul Lewis Hayes. Mr. Hayes was indicted for passing a forged check in the amount of $88.30.[75] The prosecutors in his case told him that if he pled guilty, they would charge him under a statute that would expose him to a sentence in the range of two to five years in prison. But if he did not plead guilty—if he insisted on his right to trial—they told him they would instead charge him under a statute with a *mandatory life sentence*.[76]

In a famous article about plea bargaining, historian John Langbein argues that these sorts of threats are no different than threatening to torture someone with disfigurement or the rack and screw.[77] If you tell somebody, "If you plead guilty, you will get a $1 fine, but if you go to trial and get convicted, we will cut off both of your hands," all of us would recognize that as an unconscionable threat of torture. We would say, "Gosh, that seems inconsistent with the due process of law." Langbein's point was that such a threat is not all that different from telling someone, "If you plead guilty, you will face two years, and if you do not and get convicted at trial, we will lock

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[73] Andrew Manuel Crespo, *Defendants, United, Could Strike the State Blindsided*, LPE Blog (Apr. 17, 2023), https://lpeproject.org/blog/defendants-united-could-strike-the-state-blindsided/ [https://perma.cc/T6X9-MPQN].

[74] *Id.* (quoting William J. Stuntz, *The Pathological Politics of Criminal Law*, Mich. L. Rev. 505, 536 (2001)).

[75] Bordenkircher v. Hayes, 434 U.S. 357, 358 (1978).

[76] *Id.*

[77] *See* John H. Langbein, *Torture and Plea Bargaining*, 46 U. Chi. L. Rev. 3, 12 (1978).

you up for the rest of your life." It is no different, in other words, than what happened to Mr. Hayes.

The lawyers on the Supreme Court, here again, saw things differently. Authoring the majority opinion in Mr. Hayes's case, Justice Potter Stewart writes:

> [I]n the "give-and-take" of plea bargaining, there is no such element of punishment or retaliation so long as the accused is free to accept or reject the prosecution's offer . . . so long as the prosecutor has probable cause . . . the decision whether or not to prosecute, and what charge to file or bring . . . rests entirely in [the prosecutor's] discretion.[78]

The power to decide when, how, and against whom to threaten extremely long sentences, in other words, is an entirely discretionary power, entrusted by the Court to a special breed of lawyer. We call these lawyers prosecutors, but as Rachel Barkow writes, they are in truth "the final adjudicators in the vast majority of cases" because they alone hold the power to threaten torture-adjacent sentences and to trade them away.[79] These lawyers, in other words, "control the terms of confinement in this vast penal system."[80] And they have used that power to build American mass incarceration.[81]

B. Lawyers as Harm Mitigators

In sum, across all three branches of government—legislative, judicial, executive—lawyers have been among the primary architects of mass incarceration. To me, that means lawyers have a special obligation to do something about the problem. But there are different ways of going about that. And for me, this is the part of the lecture that gets both more personal and a bit uncomfortable. Because one way for lawyers to push back against mass incarceration is to try to mitigate the law's harms, which is precisely the work I did as a public defender.

I still remember the first time I saw a picture of the handwritten petition for certiorari, written in a prison cell by Clarence Earl Gideon.[82] Morty Horowitz (whose office I later occupied when joining the Harvard Law School faculty) projected it onto a screen while delivering a lecture in a college class that I enrolled in as an undergraduate on the history of the

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[78] *Bordenkircher*, 434 U.S. at 363-64.

[79] Rachel E. Barkow, *Institutional Design and the Policing of Prosecutors: Lessons from Administrative Law*, 61 Stan. L. Rev. 869, 871 (2009).

[80] *Id.*

[81] *Cf.* John F. Pfaff, Locked In 6 (2017) ("The primary driver of incarceration is increased prosecutorial toughness when it comes to charging people . . . .").

[82] Jessie Kratz, *Featured Document: A Right to a Fair Trial*, Nat'l Archives Pieces of Hist. Blog (Dec. 23, 2016), https://prologue.blogs.archives.gov/2016/12/23/featured-document-a-right-to-a-fair-trial/ [https://perma.cc/U2X7-G27T].

Warren Court. Even then, I remember feeling inspired by Gideon's case, the seminal Supreme Court precedent that established a simple, fundamental idea: everyone should have the right to a lawyer.[83]

It was not until law school, though, that this inspiration would become something I felt more as a calling, in the almost religious sense of the word—a calling to a vocation. My first-year criminal law class was taught by one of the most famous public defenders in the country's history, Charles Ogletree. If you ever heard "Tree," as we all lovingly called him, talk about being a public defender, which he had been before becoming a law professor, it was hard not to feel called to that work. I remember sitting in his classroom and later in his office listening to him talk about what public defense meant to him. He had written about it in a famous *Harvard Law Review* article, where he explained that, for him, public defense was about two things: "empathy and heroism."[84]

When Tree talked about the heroism, it was stirring. "I saw myself," he wrote, "as a kind of 'hero' of the oppressed, the one who fights against all odds, a sort of Robin Hood figure who can conquer what others cannot."[85] But when he talked about the empathy, it would touch you right in your soul. "I did not think about what [my client] had done," Tree said, "nor did I feel responsible for what he might do if released. I knew that at that moment I was my client's only friend, and that my friend wanted to go home."[86]

Still today, when I read those words, I feel called. And yet, if I am being truly honest with myself, while I was practicing as a public defender, I also felt an uneasiness—a dissonance—that at the beginning was hard to place. Although, if I had really read *Gideon* more closely, I might have seen at least some of those discordant notes already at play in the Supreme Court's opinion. The seeds of this dissonance can be seen, for example, when the Court explains that one of the reasons the right to counsel is so important is to protect those who are *innocent*: "Though he be not guilty, [a person without a lawyer] faces the danger of conviction because he does not know how to establish his innocence."[87] The Court goes on to emphasize fairness exclusively in procedural terms, saying that "fair trials before impartial tribunals . . . cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him."[88] Nowhere in the opinion does the Court express concern over whether the imprisonment itself might be *substantively* unfair. To the contrary, the Court writes that "governments,

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[83] *See* Gideon v. Wainwright, 372 U.S. 335 (1963).

[84] Charles Ogletree, Jr., *Beyond Justifications: Seeking Motivations to Sustain Public Defenders*, 106 HARV. L. REV. 1239, 1239 (1993).

[85] *Id*. at 1275.

[86] *Id.* at 1271.

[87] *Gideon*, 372 U.S. at 345.

[88] *Id*. at 344.

both state and federal, quite *properly*, spend *vast* sums of money to *establish machinery* to try defendants accused of crime."[89]

These are the discordant notes I heard playing as I represented clients, one after another, in my time as a public defender. Distilled this way, *Gideon* seemed to say my job as a lawyer was to assist my clients in *navigating* a vast machinery of incarceration. To afford them procedural justice, on the road to a "quite proper" destination: prison. Played that way, the song sounded less heroic.

No one has captured this point better than Paul Butler, who in an essay about *Gideon*, writes:

> The reason that prisons are filled with poor people, and that rich people rarely go to prison, is not because the rich have better lawyers than the poor. . . In criminal cases poor people lose most of the time . . . because in American criminal justice, poor people are losers. Prison is designed for them.[90]

But if the criminal justice system is designed to punish poor people of color, one has to question the public defender's role in that machinery. For is there not a risk that lawyers who make the system's processes fairer are failing to address the core issue? Indeed, a risk that they (that I) also add a patina of legitimacy to that system of oppression?

This account, in some ways a critique of public defense, requires us to hold a real tension in our minds and in our hearts. As Premal Dharia writes in her own essay about *Gideon*, "there is no question: having good, resourced counsel has deeply positive effects on the lives of the people ensnared in the criminal legal system. . . . There is critical value to that work."[91] In fact, Butler himself says he wants to make sure people reading his essay do not get the wrong message. "People should still become criminal defense attorneys," he writes.[92] At the same time, he wants to emphasize that "*Gideon* is a narrative about individual rights rather than a plea for class-based or race-based relief."[93] And that, Butler makes clear, "will not solve the problem."[94]

C. Lawyering in Service of Organizing

I felt this conflict intensely when I was practicing. As I have written, when I was a lawyer counseling my clients about their plea offers, I knew I could calculate their sentencing ranges and give them good advice about the

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[89] *Id*. (emphases added).

[90] Paul Butler, *Poor People Lose*: Gideon *and the Critique of Rights*, 122 YALE L.J. 2176, 2178 (2013).

[91] Premal Dharia, *Gideon Turns Sixty*, INQUEST (Mar. 8, 2023), https://inquest.org/gideon-turns-sixty/ [https://perma.cc/9ULR-UD8A].

[92] Butler, *supra* note 90, at 2202.

[93] *Id.* at 2195.

[94] *Id*. at 2196.

pros and cons of their different options. But my clients needed more than information and advice. What they needed was the power to fight back. And they were not going to get that from a lawyer.[95]

Practicing with this tension, this dissonance, buzzing in my head, I soon came to realize that it arose not just from *Gideon*'s discordant notes. For me, it sprang forward as well from an essay I had read a decade or so earlier, in a college seminar I took on the theory and practice of organizing, taught by Marshall Ganz. As I remember it, the class opened in its first week with a set of readings that included a short essay by a man named John McKnight that stayed lodged in my head through law school and into the early years of my career.

Its title was *Services are Bad for People*.[96] Now, that really is a discordant title if you are working in legal services, as I was as a public defender. But McKnight's lesson was an essential one. The crux of it is that there is a fundamental difference between offering one's own expert professional services to people and, instead, helping them figure out how to generate power on their own. "[R]eally powerful citizens make power by coming together and take power by acting together," McKnight writes.[97] By contrast, "[s]ervice systems act on the premise that the professional has expertise and the client has the problem" for a professional to solve.[98] This distinction points to the difference, McKnight concludes, between a service provider (like a conventional lawyer) and an *organizer*—a person who "tells the people that they have problem solving abilities" of their own and that "they can change their community."[99]

Or as Marshall Ganz so often puts it, organized communities learn to strategize about how they can turn the resources they have into the power they need to get the change they want.[100] They do, in other words, movement work. And over the span of the last century, time and again, that work has been the essential ingredient for effectuating fundamental, radical social change—from the women's suffrage movement, to the Civil Rights Movement, to the labor movement, to today.

I became a law professor in January of 2015, a few months after the Ferguson uprisings. Over the ensuing years, I watched the Black Lives Matter movement become one of the largest social movements in U.S. history.[101]

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[95] *See* Crespo, *supra* note 73.

[96] John McKnight, *Services are Bad for People*, ORGANIZING 41, 41 (Spring/Summer 1991).

[97] *Id.*

[98] *Id.*

[99] *Id.*

[100] *See* MARSHALL GANZ, PEOPLE, POWER, CHANGE: ORGANIZING FOR DEMOCRATIC RENEWAL 19 (2024) (defining organizing as "a form of leadership" that asks three questions: "First, who are my people? . . . Second, what change do they want? . . . Third, how can people work together to turn the resources they have into the power they need to win that change?").

[101] Larry Buchanan, Quoctrung Bui & Jugal K. Patel, *Black Lives Matter May Be the Largest Movement in U.S. History*, N.Y. TIMES (July 3, 2020), https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html [https://perma.cc/2TRB-DDM7].

It is a movement with many aims and goals. But, as Amna Akbar writes, it is a movement intensely concerned with structural racism in the carceral system.[102] As such, it draws inspiration from ideas half a century old. Ideas like Angela Y. Davis's call "to abolish the prison system in its present form," as part of a broader "struggle against all dimensions of racism."[103] Distilled and simplified, it is a movement trying to shrink, as much as possible, the "size, scope, and power of the carceral state,"[104] while simultaneously "creating conditions that improve people's health, safety, and security."[105] It is a movement, in other words, that is trying to "reduc[e] harm and build[] responses to harm that do not rely on imprisonment, surveillance, or policing."[106]

Given the role lawyers played in building that system of harm, an essential question for me—animated by McKnight's cautionary exhortation against service provision—has always been: how might lawyers help this decarceral movement?

It is here that I would like to suggest an alternative to the essential, but largely atomized work public defenders do as harm mitigators. It is a model that scholars of law and social movements have long studied and that I, borrowing a phrase from Jennifer Gordon, like to call "lawyering in service of organizing."[107] For the better part of the past decade, trying to understand how this model might work in the struggle to end mass incarceration has been the focal part of my work. Some of that work has been academic. Carrying forward scholarship on plea bargaining and braiding together lessons from the Civil Rights Movement and the labor movement, I have been trying to ask what would—what might—it look like to build collective defense practices among people facing prosecution? What would it look like if criminal defendants were organized into something approximating a union? Could they leverage their solidarity to bargain collectively? Perhaps even go on strike?[108]

But beyond this scholarship, exploring the practice of "lawyering in service of organizing" has been central to the advocacy and teaching work that Premal Dharia and I do through the Institute to End Mass Incarceration.

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[102] *See* Amna A. Akbar, *Toward a Radical Imagination of Law*, 93 N.Y.U. L. Rev. 405, 426 (2018).

[103] Angela Y. Davis, *Political Prisoners, Prisons and Black Liberation*, *in* If They Come in the Morning: Voices of Resistance 19, 31, 35 (1971).

[104] Rachel Herzing, Erica R. Meiners & Nuri Nusrat, *Abolitionist Practices, Reformist Moments*, 19 Upping the Anti (Aug. 2, 2017), https://uppingtheanti.org/journal/article/19-abolitionist-practices-reformist-moments [https://perma.cc/RF9T-BS8U].

[105] Dan Berger, Mariame Kaba & David Stein, *What Abolitionists Do*, Jacobin (Aug. 24, 2017), https://jacobin.com/2017/08/prison-abolition-reform-mass-incarceration [https://perma.cc/2NLR-Y3NU].

[106] Herzing, et al., *supra* note 104.

[107] *See* Jennifer Gordon, Suburban Sweatshops: The Fight for Immigrant Rights 294-302 (2005).

[108] *See generally* Crespo, *No Justice, No Pleas*, *supra* note 1; Crespo, *supra* note 73.

Our approach is straightforward. Carrying forward and building upon models described by Gordon, Michael Grinthal, and other scholars, we try to operate as something like the in-house counsel to grassroots anticarceral organizers leading campaigns against mass incarceration.[109] In doing that work, we try to model effective and responsible lawyering in service of organizing. And we try to teach it to our students.[110]

1. Reimagining Legal Practice

In part, we teach that to do this work well, one has to reimagine what lawyers do. As Gordon writes, the lawyering in service of organizing model sees law as subordinate to and supportive of an organizing-driven theory of change.[111] Litigation is useful in this model, but only insofar as it helps "achieve organizing aims."[112] In this respect, it is a mode of litigation that can be and often is "essentially indifferent to the outcome in court," so long as the lawyering skills and tactics being deployed are useful to your organizing campaigns for other reasons.[113] Legal tactics in this vein can help craft narratives that assist in framing the strategic goals or story of a campaign. They can draw in new resources, including media attention, strategically valuable information, or funding. They can yield important strategic delay that opens up space for other organizing tactics and efforts. In short, they constitute a mode of lawyering that, in the words of Jules Lobel, flips the relationship between law and politics: instead of politics shaping law, the goal is to use the law to facilitate, bolster, amplify, and enhance political contestation—not abstractly, but in the context of real, live organizing campaigns as they unfold on the ground.[114]

I want to be clear: this is not fluffy lawyering. One has to be really, really good at law to pull it off. As the students in our Institute to End Mass Incarceration clinic can attest, they have delved deeply into issues ranging

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[109] *See* GORDON *supra* note 107; Michael Grinthal, *Power With: Practice Models for Social Change*, 15 U. PA. J.L. & SOC. CHANGE 25 (2011).

[110] For examples of some of our work from a current campaign, where the Institute to End Mass Incarceration is in coalition with organizers working to prevent the construction of a proposed new federal prison in Letcher County, Kentucky, see Jared Bennett, *Eastern KY activists bought land where feds wanted to build a prison*, LOUISVILLE PUB. MEDIA (Jan. 22, 2025), https://www.lpm.org/investigate/2025-01-22/eastern-ky-activists-bought-land-where-feds-wanted-to-build-a-prison [https://perma.cc/GP6G-6CDR]; Sylvia Ryerson, *Building Community*, INQUEST (Mar. 28, 2024), https://inquest.org/building-community/ [https://perma.cc/967Q-KZ25]; Artie Ann Bates, *Letcher Is Us*, INQUEST (May 21, 2024), https://inquest.org/letcher-is-us/ [https://perma.cc/Q5ZQ-TJRC]; Katie Myers, *Back to Appalachia*, INQUEST (Apr. 11, 2024), https://inquest.org/back-to-appalachia/ [https://perma.cc/8U4V-KWHS].

[111] *See* Jennifer Gordon, *Concluding Essay: The Lawyer is Not the Protagonist: Community Campaigns, Law, and Social Change*, 95 CAL. L. REV. 2133, 2133 (2007).

[112] *Id.* at 2139.

[113] *Id*.

[114] *See generally* Jules Lobel, *Courts as Forums for Protest*, 52 UCLA L. REV. 477, 488 (2004).

from the federal appropriations process, to eminent domain law, to restrictive covenants, to FOIA, to creative Eighth Amendment litigation. They have become excellent writers and legal thinkers. And they have become incredibly flexible—because none of those subject-matter topics have anything directly to do with criminal law, the subject they likely had front of mind when signing up for a class about ending mass incarceration. But lawyering in service of organizing requires the flexibility, knowledge, and skill to be able to pivot quickly and develop meaningful tactical *lawyering* ability in whatever areas will be most useful to an organizing campaign given the contingencies at hand.[115] Always, though, with the understanding that those legal tactics are subordinate to the bigger picture and part of the broader political campaign—that law is not "the engine of change itself."[116]

2. Reimagining Lawyers' Relationships

Lawyering in this model requires more than reconceiving the lawyer's practice. We also need to reimagine the relationships between the lawyers and nonlawyers partnered in the work. One illuminating case study capturing this reimagined relationship is Gordon's terrific essay describing the legal department of the United Farm Workers Union ("UFW"), led by Cesar Chavez, Dolores Huerta, and other renowned organizers, including Marshall Ganz. In that study, Gordon emphasizes the "internal relationship between" the organizers and the lawyers, highlighting the careful balance—an elusive but essential equilibrium—between lawyers and organizers that lies at the heart of a successful lawyering in service of organizing approach.[117]

As my own work with the Institute to End Mass Incarceration has made clear to me, this balance sits in a place between two competing pitfalls. On the one hand, lawyers must learn to refrain from leaning in too much—they have to avoid dominating the space or taking over. Most fundamentally, they need to learn how not to *clientize* their comrades and partners in the work. As Gordon writes: "Concern about lawyer domination is a recurring theme."[118] The real and ever-present threat is that the lawyer will forget that collective people power, not law, is the engine of the change. Indeed, the more proximate the lawyer is to the organizing strategy formation, the greater the risk. As Michael Grinthal writes, a lawyer "closely involved in

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[115] Gordon, *supra* note 111, at 2142 ("This sort of lawyering requires a high degree of legal expertise . . . [and] the flexibility[] and the capacity to master new areas of law as community groups develop new campaigns.").

[116] Lobel, *supra* note 114, at 480 ("[A] significant point of many of the cases is to inspire political action."). For an excellent discussion, grounded in concrete examples, of some of actions this mode of lawyering can entail, see Jennifer Gordon, *Law, Lawyers, and Labor: The United Farm Workers' Legal Strategy in the 1960s and 1970s and the Role of Law in Union Organizing Today*, 8 U. Pa. J. Bus. L. 1 (2005), and Grinthal, *supra* note 109.

[117] Gordon, *supra* note 116, at 46.

[118] *Id.* at 47.

the core organizing process may begin to dominate decision-making and agenda-setting," or can "easily come to be seen as the spokesperson for the organization" when speaking in courts or litigation-adjacent public fora and press conferences.[119] If the nonlawyers in a campaign become merely plaintiffs, class members, or clients—if they exist primarily as passive recipients of legal services—they *might* gain some tactical, legalistic wins. But they won't be building enduring power. They will, at best, be waiting on the lawyer's elite, top-down, juridical power.

Many lawyers familiar with organizing and its caution against service-dependency are aware of this danger. But critically, such lawyers often overcorrect, and in so doing inadvertently fall into the other pit. They lean *out,* too much. And this, I submit, is just as big of a problem. Because if lawyers withdraw too much, deferring entirely to the organizers, they will shrink into legal task rabbits. "You tell me what to do," such a lawyer might deferentially say to the organizers. "Give me the legal jobs you want done, and I will punch through them." Here again, a lawyer's operating in this mode might provide some useful legal services. But they are not truly lawyering *in service of organizing*, because they are depriving the organizers of their most *valuable* resources: their knowledge and expertise about the legal system and their co-creative insights into the myriad ways that *law itself* can be a powerful strategic resource for a campaign. As Gordon writes, lawyers bring something very important to the organizers' strategy table: "recognition of the power of law," including, potentially, the power of law *within an organizing campaign.*[120]

The key, then, is to find the elusive but essential balance—the point of synthesis between lawyer domination and lawyer diminution. As Jessica Govea, an organizer with the UFW says in an interview with Gordon:

> I think you need to have both, right? You need to have someone who's confident enough in their organizational skills and in their leadership position, to give room to the person who brings another kind of knowledge into the thing. And then you need to have this person who brings that other knowledge, in this case, legal knowledge, understand that they're not the president of the union but they have a very important role to play from their perspective.[121]

Lawyers, in other words, need to guard against taking up too much space or subconsciously inviting or accepting undue deference to their *specific* forms of knowledge and expertise, while simultaneously recognizing they have something important to offer—and that they must offer it. For this to work,

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[119] Grinthal, *supra* note 109, at 51.

[120] Gordon, *supra* note 116, at 9 (discussing the importance of "recognition of the power of law").

[121] *Id.* at 49-50.

Gordon writes, it is essential to develop "mutual respect among lawyers and organizers."[122]

Gordon developed these insights studying a legal department operating within a formally structured labor union, the UFW. That was an advantage for the lawyers she studied, whose in-house structure facilitated the formation, over time, of the mutual respect and interdependent relationships she describes as key to their success.[123] From experience, I can tell you that this structure is much harder to build and sustain within the scrappy, organic, nascent, amorphous coalitions of grassroots organizers that are core components of the modern anticarceral movement.[124]

This is the work our Institute seeks to model, hone, and teach. For the past year and a half, we have been integrated and fully interwoven into the organizing team leading a coalition working to stop the construction of a proposed new federal prison in Eastern Kentucky.[125] The work has required us to imagine novel structures, figuring out how to create a space within this coalition where nonlawyers and lawyers could work hand-in-hand to develop and co-own legal strategy. Early on, we facilitated the creation of such a structure by helping to found within the coalition a Legal Strategy Group that, at our insistence, can never have more than half of its members be lawyers, and which is always facilitated or co-facilitated by a nonlawyer. The purpose of this structure, from the outset, was twofold. First, we wanted to ensure that the campaign's legal strategies and tactics were integrated into and subordinate to its organizing strategy and tactics. Second, we wanted to demystify the law and to decouple it from lawyers—demonstrating in practice that the development of sophisticated, thoughtful legal strategies can be led by nonlawyers, supported but not driven by lawyers on the team.

For nonlawyers to fill this role authentically, it is essential for lawyers to empower them with legal knowledge. And so, after facilitating the formation of the Legal Strategy Group, we turned our attention to an iterative learning-and-teaching phase of the relationship. Here, the lawyers on our team spent time embedded within the early strategy brainstorming sessions within the coalition. From that vantage point, we listened to understand the nascent coalition's organizing goals, which were framed in nonlegal terms but often had points of intersection with legal systems and potential legal tactics. From those conversations, we could see domains of legal knowledge that the nonlawyers needed and wanted to learn—from property law, to environmental law, to federal appropriations law, to constitutional law, to any number of additional areas that cropped up in the serially unfolding conversations. We then set off to prepare detailed but accessible demystification

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[122] *Id.* at 9.

[123] *Id.*

[124] For an insightful account of the role different organizing contexts play in structuring lawyer-organizer relationships, see Grinthal, *supra* note 109.

[125] *See supra* note 110.

documents—what we called "playbook chapters"—that explained the relevant legal frameworks and highlighted the potential ways in which related legal tactics might be of use to the campaign, along with potential downsides or drawbacks.

The goal, and in practice the end result, was that nonlawyers gained an understanding of the relevant legal complexities that empowered them to understand how one set of tactics might compare to another, and how each potential path might resonate, or not, with their related organizing goals and strategies. Armed with that knowledge, we then participated alongside the nonlawyers in genuinely collaborative strategic decisions about the legal strategies and tactics to pursue. Only at that point did we then move forward—still in partnership with the nonlawyer organizers—to begin executing on that tactical work, always remembering that the law itself is not the engine of change.[126]

3. Reimagining Legal Education

Through this work, we have also realized that for lawyers to practice effectively in support of organizing, it is also important to rethink legal education. As Gordon writes, social movements "need attorneys who are also—not instead, but also—sophisticated in their understanding of how law and organizing work together."[127]

For that reason, we have spent the past few years integrating into our Institute's clinical seminar an intensive introductory module that teaches students what organizing really is. Drawing on now two decades of learning and collaborating with Marshall Ganz, we've designed a curriculum that helps law students understand how organizers use "emotion and narrative to *build* . . . motivation . . . in the face of threats and hardships,"[128] and how they then "reinforce that motivation and solidarity by taking real, concrete, strategic action that turns community resources into tactical wins."[129] Critically, we try to impress upon them that this work is a craft—that it involves the mastery and use of concrete, learnable, usable skills that are just as sophisticated and learnable as the skills and practices they learn in law school.[130]

To teach those skills, our Institute has partnered with Marshall Ganz and colleagues affiliated with the Leading Change Network to teach organizing

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[126] For examples of tactics that emerged from this collaborative process, see Myers, *supra* note 110 and also ray levy uyeda, *One way to stop a prison? Return the land to Indigenous stewards*, PRISM (Feb. 20, 2025), https://prismreports.org/2025/02/20/kentucky-prison-letcher-county-indigenous/ [perma.cc/YZG4-5EKQ]; Katie Myers, *Bison, not prison: Activists buy a prison site to rewild the land*, GRIST (Feb. 3, 2025), https://grist.org/justice/bison-not-prison-activists-buy-a-prison-site-to-rewild-the-land/ [perma.cc/W8KZ-RNLZ]; Bennett, *supra* note 110.

[127] Gordon, *supra* note 111, at 2142.

[128] Crespo, *No Justice No Pleas*, *supra* note 1, at 2018.

[129] Crespo, *supra* note 73.

[130] *Id.*

to law students. For the past four years, we have taught a twenty-four-hour course over three days that is a requirement for everyone participating in our Institute's clinic. In it, they learn the five essential practices of organizing: how to tell stories that motivate others; how to build relationships that allow them to grow collective power; how to structure those relationships into teams that can work effectively; how to create strategies that leverage their power for change; and how to take actions that implement strategy and grow resources.[131] We have shared this learning with over fifty students to date, including, over the past two years, students outside of our clinic and beyond Harvard Law School, thanks to support from Harvard's Program on Law and Political Economy and the Law and Political Economy Project based at Yale Law School.

My hope, in years to come, is to see courses of this nature open to a broad range of students, because I think it is something that all law students should be able to learn. Indeed, it is something many of them already know they *need* to learn. As Morgan Sperry and Devon Shewell have so eloquently written, today's law students are "looking outside the court to build justice with staying power" and asking "how lawyers might have partnered with organizers and built collective political and moral power [to do it]."[132] It is the job of law schools to help our students answer this question.

III. The Movement to End Mass Incarceration

This brings me to a few final thoughts about the relationship between lawyers and the movement to end mass incarceration. For some, working in or alongside this movement will be your life's work. And to those of you already engaged in it, I feel so buoyed to get to do this work alongside you. For others, your careers, your scholarship, and your interests will take you to places where this is not your day job. But I would like to close by inviting all of us, as public citizens, to reflect on the ways lawyers and movement actors sometimes think about radical social change differently.

Movements, as I have tried to suggest, are about the manifestation of radically obvious ideas. They are engaged in the essential work of trying to turn the world as it is into the world as it ought to be. Lawyers, by contrast, often tend to focus on governance, policy, risks, and the details of implementation. All of this is valuable. But these two ways of approaching difficult problems can also be in tension. If movements sing the songs of poetry, lawyers are often writing the essays of prose. And that juxtaposition can make lawyers uncomfortable with calls for radical change—including calls to end the American carceral state. As Dan Berger, Mariame Kaba, and

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[131] *See generally* Ganz, *supra* note 100 (describing five leadership practices in organizing).

[132] Devon Shewell & Morgan Sperry, *Gen Z Lawyers Will Fight for Justice Outside the Supreme Court*, Bloomberg L. (July 24, 2023), https://news.bloomberglaw.com/us-law-week/gen-z-lawyers-will-fight-for-justice-outside-the-supreme-court [perma.cc/Q9GR-29JW].

David Stein write, such demands often discomfit "those who hope for resolution of intractable social problems within the confines of the existing order. To them, abolition is unworkably utopian and therefore not pragmatic."[133]

For many lawyers grappling with this seemingly utopian idea—with the radically obvious claim that mass incarceration ought not exist—skepticism often seems to boil down to a simple question: *but what about crime*?

It is here, though, that I would like to suggest that many critics of the movement to end mass incarceration get the movement wrong. Contrary to many assumptions, folks in this movement care a great deal about personal safety. They recognize it as a basic human need. And they want *more of it*.[134] As Derecka Purnell writes, "[w]hen people dismiss abolitionists for not caring about victims or safety, they tend to forget that" many proponents of abolition are themselves "those victims, those survivors of violence."[135] Nor should this be a surprising fact. The concentration of mass incarceration's harms, *and the concentration of crime*, in systematically oppressed communities are what Alexandra Natapoff calls "twin symptoms of a deeper democratic weakness of the criminal system: its non-responsiveness to the needs of the poor, racial minorities, and the otherwise politically vulnerable."[136] In other words, the state's willingness to let crime flourish in certain communities, or at least to tolerate levels of crime that would be unthinkable in affluent, white neighborhoods, is as much "part of this dynamic" as "mass imprisonment, excessive sentences, and racially skewed enforcement practices."[137] "Indeed, it would be surprising," John Rappaport and I write, "if a society marked by systemic [and structural] racism did *not* see social harms concentrated among the most vulnerable communities[,] including the harms associated with criminal offending itself," given the criminogenic nature of poverty—and the concentrated impact of poverty along racial lines.[138]

Once we recognize a desire for safety, including safety from criminally harmful behavior, as a central concern of the modern abolitionist movement, we can recognize what is perhaps the movement's core challenge—because everything we know about the empirical relationship between

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[133] Berger, et al., *supra* note 105.

[134] Mariame Kaba & Andrea J. Ritchie, *Reclaiming Safety*, INQUEST (Aug. 30, 2022), https://inquest.org/reclaiming-safety/ [perma.cc/L3GS-QZUM] ("Contrary to assumptions that abolitionists don't care about safety, we care a great deal about it. We recognize that safety is a basic human need. We think, talk, and strategize about it constantly in order to bring more of us closer to it.") (reprising MARIAME KABA & ANDREA J. RITCHIE, NO MORE POLICE: A CASE FOR ABOLITION (2022)).

[135] Derecka Purnell, *How I Became a Police Abolitionist*, ATLANTIC (July 6, 2020), https://www.theatlantic.com/ideas/archive/2020/07/how-i-became-police-abolitionist/613540/ [perma.cc/YM53-9WV4].

[136] Alexandra Natapoff, *Underenforcement*, 75 FORDHAM L. REV. 1715, 1719 (2006).

[137] *Id.*; *see also* CRESPO & RAPPAPORT, *supra* note 1, at 156-59 (discussing relationship between race and crime); *id.* at 166-170 (discussing relationship between race and violence).

[138] CRESPO & RAPPAPORT, *supra* note 1, at 158.

crime and incarceration points in a complicated direction. First, we know, as the Council of Economic Advisors has written, that "increased incarceration[] fail[s] a cost-benefit test."[139] Prisons and police, in other words, are just about the worst ways to deal with crime. If you are going to spend an additional public dollar on something, the Council report says, spend it on *everything else* that we know works better.[140] Invest in education. Invest in public health. Invest in housing security. Invest in income security. Every dollar spent in those areas will do *more to prevent crime* than investing in more incarceration.[141]

And yet, at the same time, the best available evidence also shows that policing and incarceration decrease civilian-on-civilian criminal offending—including, as noted above, in communities where the interpersonal harms associated with crime is itself a manifestation of systemic injustice.[142] Carcerality, in other words, can be thought of like chemotherapy. You would not prescribe chemotherapy to everyone, for every ailment. You would never prescribe it to even a single person for an extended period of time—certainly not indefinitely. And you would be foolish to confuse it with a cure for cancer. And at the same time, if you eliminated chemotherapy in one fell swoop today, it almost certainly would be the case that a lot of people would suffer.

If the same basic insight holds true for carcerality, the movement to end mass incarceration is perhaps best understood as a project of transitional justice. And this, too, is something that the people leading and working in that movement know well. Abolition is not "a fever-dream demand to destroy prisons tomorrow."[143] Rather, as Rachel Herzing, Erica Meiners, and Nuri Nusrat write, it is a challenging but essential effort to do two things at once: to reduce harm, increase safety and flourishing—all while simultaneously building responses to harm that do not depend on carceral systems.[144]

That project can be a tightrope. You can fall off a million different ways on either side. For lawyers, that can be scary. The path across is uncertain. The footing is unsure. But the important thing I would like to suggest to our cautious profession is that it is just as dangerous to stay put. To *not* try to cross the rope, when you know that what you've got on your side is the current system of mass incarceration. This is why, for me at least, the poetry is just as important as the prose. Organizers are comfortable with the idea of being in the middle of a process without definitive answers.[145] It is

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[139] Council of Econ. Advisers, Exec. Off. of the President, Economic Perspectives on Incarceration and the Criminal Justice System 5 (2016).

[140] *Id.* at 4-6, 34-56.

[141] *See* Crespo & Rappaport, *supra* note 1, at 90-91 (citations omitted).

[142] *See, e.g.*, Ben Grunwald, *Toward an Optimal Decarceration Strategy*, 33 Stan. L. & Pol. Rev. 1, 12 (2022).

[143] Berger, et al., *supra* note 105.

[144] Herzing, et al., *supra* note 104.

[145] Raj Jayadev & Pilar Weiss, *Organizing Towards a New Vision of Community Justice*, L. & Pol. Econ. Project (May 9, 2019), https://lpeproject.org/blog/organizing-towards-a-new-vision-of-community-justice/ [perma.cc/SKF4-LC52] ("[A]s organizers, . . . [w]e don't assume

important when trying to walk across that rope to listen to some of the things that they tell us. That even though the goal may be far away, if you do not "name it and fight for it today, it will never come."[146] And that the work of making radically obvious ideas real in the world—of building the world as it should be instead of the world as it is—"always seems impossible, until it's done."[147]

Postscript: A Question from the Audience

Professor Benjamin Eidelson: So, this is great, and it should make people like me question the life choices we've made. And in that spirit, I guess when I hear you talk this way, and when I hear others on our faculty sometimes talk this way, there's one way of taking it that is like: given that we're all lawyers and law professors, how can we best turn that to the benefit of this problem? And you're making a maybe strong case that it's better to do this kind of help-the-organizers thing than to be a public defender.

But there's a different kind of question, which is like: suppose you're not yet stuck in that constrained option set of you're a lawyer or you're a law professor—so how can we make the best of that? Suppose you just care about these issues. Would you actually advise somebody who cares about these issues to become a lawyer in the first place? It seems like there's a more radical version of the radicalism: It's not just to do lawyering this way. It's maybe that what we need is not lawyers.

Professor Crespo: It's a great question, Ben. It's basically the question that's the focus of the last session of our Institute's clinic seminar. One of the things we read is a letter from Dean Spade to a young person considering law school, in which Spade basically says, pretty strongly—I mean, not totally—but the answer seems to be "don't go."[148] And then we read other pieces, from folks who say, "actually look, social movements are multifaceted, diverse undertakings that inherently draw their strength from that diversity." What I am trying to do here—I hope this does not come off as a "don't be a lawyer" talk. Because I mean almost the opposite. If it is not clear, I love being a lawyer. I have loved every minute of being a lawyer. My mom would say that I loved being a lawyer since I was five. I still love being a lawyer. The trick for me has been how to do it in a way where the

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that there are any definitive answers at this point, but instead that we are in the middle of a process of finding ways to take power and define what justice in the name of 'community' actually means.").

[146] Hans Bennett & Rose Braz, *Organizing to Abolish the Prison-Industrial Complex*, Dissident Voice (July 11, 2008), https://dissidentvoice.org/2008/07/organizing-to-abolish-the-prison-industrial-complex/ [perma.cc/87KD-68WL].

[147] This quote is often attributed to Nelson Mandela.

[148] Dean Spade, *For Those Considering Law School*, Dean Spade (Oct. 2010), https://www.deanspade.net/wp-content/uploads/2010/10/For-Those-Considering-Law-School.pdf [perma.cc/6Z8U-D2DC].

dissonance I described experiencing resolved itself into a key that did not feel like banging the wrong notes on the piano.

So, what I am trying to suggest with this argument for "lawyering in service of organizing" is not to try and erase the first part. It is *lawyering* in service of organizing. And, by the way, this is just one of the models. Again, I am not saying "don't be a public defender." Students come into my office all the time saying, "Professor Crespo, I'm thinking about becoming a public defender" and I respond, "That's great! I loved it! Sometimes I want to go back." I think the point is, to tie this to my experience sitting in Tree's class, and my experience sitting in Marshall's class: If you are lucky, you find a way to do your work that feels like a vocation. And law can be a vocation that is incredibly powerful in social movement work. So, I think Spade's point is well taken for folks who don't see law as their vocation, who don't feel called to it. But if you do *feel* it, do it. Do it well. Do it in a way that feels moving to you, and in a way that is moving to others.