

2016

The Culture of Mass Incarceration: Why "locking them up and throwing away the key" Isn't Working and How Prison Conditions Can Be Improved

Melanie M. Reid, *Lincoln Memorial University - Duncan School of Law*

The Culture of Mass Incarceration: Why “locking them up and throwing away the key” isn’t a humane or workable solution for society, and how prison conditions and diet can be improved

By Melanie Reid*

I. Introduction

According to a recent survey listing the ten worst prisons in the world¹, five out of the ten worst prisons were located in the United States.² These five prisons, Louisiana State Penitentiary (Angola Prison), San Quentin State Prison, Maricopa County Jail in Phoenix, Arizona, the super-max U.S. penitentiary in Florence, Colorado, and Pelican Bay State Prison in California share the list with horrible, dangerous prisons in Syria, Russia, Georgia, Venezuela, and France.³ This is unacceptable, and we can do better.

It is challenging to write about prison reform. Many suggestions have previously been made to no avail despite general agreement on the possible benefits. Unique and novel ideas have been proposed but they were so outside the mainstream and established procedures that they were never even considered. Unfortunately, many of the people with the best ideas on reform are rarely those in a position of authority to enact changes for the better. Each prison has its own warden and team of administrators who have significant discretion as to how the individual prison is run. Many administrators feel changes should be made but are unsure what should be changed or how the changes should be implemented.

The simple fact is that the United States incarcerates more people, per capita, than any other nation (Russia is a distant second).⁴ The United States holds “more than 2.4 million people in 1,719 state prisons, 102 federal prisons, 2,259 juvenile correctional facilities, 3,283 local jails, and 79 Indian Country jails as well as in military prisons, immigration detention facilities, civil commitment centers, and prisons in U.S. territories.”⁵ And with approximately 10 percent of prisoners suffering from severe psychiatric disorders, the nation’s jails and prisons have become the nation’s largest psychiatric hospitals.⁶

* Associate Professor of Law, Lincoln Memorial University-Duncan School of Law. I would like to thank Gary Hilton and Ann Walsh Long for their invaluable research assistance on this article, Pat Laflin for his editorial comments, and Virginia Harper for inspiring me to write this article. I would also like to thank the panelists and audience members at the SEALS Discussion Group, *Reversing Mass Incarceration: What Reforms Are Working (or Could Work) and Why?*, especially Vida Johnson, for all their comments and advice.

¹ Andrew Freeman, *10 of the Worst Prisons in the World-Only 5 are American*, TAKEPART, Sept.26, 2012, <http://www.takepart.com/photos/worst-prisons-locked-up/la-sante-prison-paris-france>. The designation of “worst” prisons was based upon rates of torture, severe prison conditions, corruption, solitary confinement, and prisoner deaths.

² *Id.*

³ *Id.* The specific prisons include Tadmor Prison in Syria, Petak Island Prison in Russia, Gldani Prison in Georgia, Maracaibo Prison in Venezuela, and La Sante Prison in France.

⁴ Peter Wagner & Leah Sakala, *Mass Incarceration: The Whole Pie, A Prison Policy Initiative Briefing*, Prison Policy Initiative, Mar. 12, 2014, <http://www.prisonpolicy.org/reports/pie.html>.

⁵ *Id.* “In addition to the 688,000 people released from prisons each year, almost 12 million people cycle through local jails each year.” *Id.*

⁶ TREATMENT ADVOCACY CENTER, *Jails and Prisons: The Nation’s Largest Psychiatric Facilities*, <http://www.treatmentadvocacycenter.org/resources/consequences-of-lack-of-treatment/jail/1371?task=view>. “There are now more severely mentally ill individuals in the Los Angeles County Jail, Chicago’s Cook County Jail, or New York’s Riker’s Island Jail than there are in any single psychiatric hospital in the nation.” *Id.*

Not only are U.S. prisons overcrowded, an inmate's typical sentence is extremely long, especially in the federal system. The majority of inmates sentenced in the federal system receive sentences in the 5 to 20 year range, with 25.5% in the 5-10 year range, 20.4% in the 10 to 15 year range, 11.2% in the 15 to 20 year range, and 12.4% in the more than 20 year but less than life range.⁷

Yet, despite the astronomical numbers of individuals incarcerated every year, the majority of Americans have become desensitized to this dismal statistic. Despite the enormity and gravity of the mass incarceration problem, we simply have become disconnected. Let someone else figure out a solution. After all, most Americans view inmates as dangerous criminals who should be incarcerated, punished for their misdeeds and isolated from society. Aren't we busy enough figuring out our own lives, contending with our own problems?

Ironically, those most closely associated with prisoners are those who work within the criminal justice system, and it is these individuals who tend to become the most desensitized and inured to the detrimental effects that prison life has on inmates. The system is designed as such. Judges can rely on the sentencing guidelines rather than their own intuition and discretion and turn the words "144 months," "258 months," or "life imprisonment" into a simple, impersonal statement. Prosecutors are not permitted to ever speak to the defendant and rely on law enforcement to learn personal details about the defendant. Defense attorneys are overwhelmed and juggling enormous caseloads with too many clients and not enough financial resources. Prison employees are underpaid and focused on maintaining order, surviving the next shift, and keeping the violent and aggressive inmates out of trouble. Once the defendant is convicted and becomes an inmate, his needs and personal growth take a back seat to punishment and vain expectations that that this experience will lead to eventual rehabilitation and re-integration into society. These lofty goals of rehabilitation are elusive and difficult to achieve without the proper motivation from the inmate.

Whatever the troubling issues and events might be that predated and contributed to the motivation for the criminal behavior, one thing is clear: prison will not improve matters. In fact, the inmate has very little incentive or opportunity to change his lifestyle or behavior. Making poor choices in life is culturally very habit forming and will only be exacerbated in prison.

Our disinterest or forgetfulness as to the inmate's plight within the prison system is short-sighted, since shared experiences during the incarcerated years will ultimately shape and determine for good or ill the lives that these prisoners will lead within society upon their release. There are those inmates who are violent, even sadistic and have committed extremely heinous, perhaps unforgiveable crimes. They are a true danger to society and should be incarcerated for the rest of their lives. At the other end of the spectrum are those inmates who have learned their lesson, accepted the punishment meted out to them, and have vowed to serve their time and get back to their family, friends, and lives on the outside. This latter fortunate group of inmates have enough of a support group on the outside that they should encounter only minor difficulties in the re-integration process and will become productive members of society once again. However, most of the prison population lies within the middle spectrum which is where the bulk of prison reform and rehabilitation resources should be spent: inmates who do not have strong, positive connections on the outside and who will look to their time in prison as their training ground and moral compass for life on the outside. It is for this group of inmates that prison reform will do the most good.

⁷ FEDERAL BUREAU OF PRISONS, *Sentences Imposed*, Jun. 27, 2015, http://www.bop.gov/about/statistics/statistics_inmate_sentences.jsp.

Part I of this paper will focus on the culture of mass incarceration and why it is so detrimental to the physical, mental, and emotional well-being of the inmates. Part II will address what is working in prison and focus on certain programs that assist in an inmate's rehabilitation and eventual re-integration into society. Part III will examine the prisoner's diet and how changing prison food might be an initial stepping stone in creating a more balanced environment for prisoners to consider positive change. Lastly, Part IV concludes by arguing that the criminal justice system cannot fix the mass incarceration problem by itself; prison administrators can make small changes to improve inmate diets, offer more work and educational opportunities, and work harder to change the culture of violence, alienation and despair that permeates the prison environment. Meanwhile, there is a glaring need for more community buy-in for prison reforms, sponsorship and mentoring programs, and better second-chance opportunities for ex-convicts.

II. The Culture of Mass Incarceration and Why It is Detrimental

We all know life in prison is not fun. Both researchers and prisoners alike have written various accounts of prison life. It appears to be an extremely aggressive, competitive environment with strict rules and "prison codes" where vulnerability and weakness are exploited and not tolerated. Prison has been labeled a breeding ground for future criminals – one may enter a petty thief and exit a hardened criminal.⁸ Prisoners share ideas for future criminal activity and brainstorm about new illegal ideas to earn a living on the outside. Some keep their head down, wait it out, serve their time, and never re-offend again. Others continue crime while in prison, from stealing prison food to ordering confederates inside or outside the prison to commit crimes. Those individuals will clearly take up where they left off when they are released and continue a life of crime. However, it is virtually impossible to stereotype the typical inmate. Each human being has a conscience and free will; one's personal decisions will help shape what the future might hold, a person's fate for good or ill to be determined.

Unfortunately, prison rarely helps the inmate make the transition back into society easier. Originally, American prisons in the 19th century were meant to rehabilitate inmates by isolating them, removing them from their criminal environment, and allowing them time to meditate on their misdeeds and decide to improve themselves when faced with re-integration.⁹ Currently, due to severe overcrowding, the lack of rehabilitative programs while in jail, and the length of sentences, true rehabilitation and reintegration are next to impossible. The inmate must address his or her most immediate needs. Do I need to join a gang in order to receive protection from other inmates (especially if it is a violent environment)? Is there enough money in my account to pay or bribe other inmates for safety or basic amenities? Will I be forced to hurt another to prove my worth and gain respect among others? Will I spend today watching TV, reading in the

⁸ *Prisons: Prisoners – Inmate Subcultures and Informal Organizations*, <http://law.jrank.org/pages/1796/Prisons-Prisoners-Inmate-subcultures-informal-organizations.html>. "Prisoners claim that an *inmate code* (or a set of values and beliefs distinctive to prisons) binds this subculture together. This code is the unofficial rule book for the informal organization of inmates. In particular, the code depicts prison as a chaotic, violent, and predatory jungle; inmates call penitentiaries *gladiator schools*, where only the strong survive (Abbott). The code admonishes *fish* (or newcomers to prison) to avoid entanglements and disputes with other prisoners, especially those that involve debts. One inmate's version of the code is: "Don't gamble, don't mess with drugs, don't mess with homosexuals, don't steal, don't borrow or lend, and you might survive" (Hassine, p. 52). Weaker inmates who ignore this advice often become *mules* for manipulative predators, using their body cavities to smuggle drugs into prison, or they may be *turned-out* as jailhouse prostitutes." *Id.*

⁹ *Id.*

library, playing cards, or working out in the yard? Am I in my cell at the prescribed time? How do I stay inconspicuous? How do I earn respect? How did I get caught and end up in here?

Former New York City Police commissioner and federal prison inmate Bernard Kerik described the prison culture he experienced as follows:

The only way to describe the daily environment in these camps is that it compares to a junior high school, but without classes and girls. Grown men sit around like teenage boys talking about old times, drugs, guns, cars, jewelry, women, and sports. Because they have limited contact with the outside world, the prison becomes their home, and the other prisoners their family. Then you have young, nonviolent, low-level drug offenders who are sentenced to five to ten years and wind up here in the same camp with the older prisoners who are serving out the final years of their sentences. This is a terrible circumstance for these younger men. Some of them have graduated from high school, a few attended college, but many are uneducated, some completely illiterate . . . However, once they arrive here and mix into their new surroundings and the fear of prison dissipates, they begin their ‘new education’ with the older, institutionalized inmates as their teachers. They learn how to lie, cheat, steal, con, manipulate, and gamble. Their vocabulary diminishes. They swagger more. Many of them seem to have no respect for the privacy of others. A normal conversation consists of yelling and hollering, and minor disagreements often result in threats of violence. Here they learn more about the drug trade than they did on the outside, and they make all the contacts they need to further themselves in criminal activity once back on the street. Over time, their surroundings begin to demoralize and demean them, and they lose respect, discipline, and responsibility.¹⁰

Attorney and author John Dewar Gleissner also described the detrimental effects of prison life:

Possessions are removed, family excluded, sexual desire frustrated. The sex ratio is at its most forbidding for normal sex, 100% of one sex versus zero of the opposite sex. Sexual deviancy increases. Life is unpleasant. Sanity depends upon mental toughness. Worries remain. Most prisoners are unhappy, many all of the time. Pagan, satanic, racist and occult religious texts are much more popular in prison than outside. Many contemplate, attempt or commit suicide or self-mutilation. The suicide rate for American prisoners is five to 15 times greater than it is for the general American population. Fewer chaplains and programs for inmates exist than in prior years. We take every prisoner away from spouses, friends and family, constantly replicating the awful fate of many antebellum slaves. The free world isolates and abandons prisoners with long sentences. Many prisoners do not receive any visits from friends or family. Six solid barriers separate the prisoner and any visitors during visits. Social isolation harms the prisoner's self-esteem, as rejection often does. Gangs then successfully recruit members in prison from among the isolates, metastasizing their anti-social ideas and breeding virulent racism and religious bigotry. Prisonization occurs, which is the process whereby prisoners take on the penitentiary's sick underclass values, codes and dogma. The longer the prison sentence, the more prisonization affects the prisoner. . . . Prisons harm people in

¹⁰ Bernard B. Kerik, FROM JAILER TO JAILED: MY JOURNEY FROM CORRECTION AND POLICE COMMISSIONER TO INMATE #84888-054, 258-59 (Threshold Editions, 2015).

several ways, but do not make enough of them "penitent." Incarceration teaches depravity, affects minds adversely, and then releases its damaged products into the free world on their mandatory release date or on parole. Prisons are warehouses for criminal minds. Criminals learn better how to commit crimes, but not how to be productive in the free world or how to abandon their selfishness. Solid evidence proves that returning parolees increase crime rates in their neighborhoods.¹¹

Many times, the relationship between prison guards and inmates does not create a positive environment either. The psychological effects of prison were demonstrated in an experiment designed by social psychologist Philip Zimbardo.¹² Zimbardo asked college students to enact the roles of prisoners or prison guards, and nineteen students were chosen to participate.¹³ Prisoners had to follow orders from guards, and guards were given no specific instructions other than to maintain order.¹⁴ Prison guards soon became authoritarian, verbally abusive, and ordered the prisoners to do pushups in the middle of the night.¹⁵ By the fifth day, all the volunteer prisoners asked to be released from the experiment.¹⁶ Many of the prisoners suffered from "uncontrolled crying, depression, fits of rage, and disorganized thinking."¹⁷ "One subject developed a skin rash over his whole body after having his appeal rejected by a mock Parole Board."¹⁸ On the sixth day, the experiment was terminated because "the experience dramatically and painfully transformed most of the participants in ways we did not anticipate, prepare for, or expect."¹⁹ The study showed how easily ordinary people could slip into a brutal and aggressive pattern of behavior, especially if it was approved by an authority figure.²⁰

Several prisoner accounts discuss the lack of respect shown to inmates by prison authorities. Former Wall Street lawyer and federal inmate Michael Kluger described how one fellow inmate appreciated the fact that Kluger did not talk down to him and treated him decently, "If you asked the 29-year-old who's bounced around, floundered around, basically done not much of anything, I think he would tell you, 'This is the smartest guy who'd ever respected me. And it feels good.'"²¹

In the Miami Detention Center Handbook, the first right all inmates enjoy is "the right to expect that you will be treated in a respectful, impartial, and fair manner by all staff."²² Similarly, the inmate's first responsibility to be "responsible for treating inmates and staff in the same manner."²³ Unfortunately, in prison, respect oftentimes only comes after violence and aggression, especially among inmates.

¹¹ John Dewar Gleissner, *Some Reasons Why Incarceration Does Not Work Very Well*, CORRECTIONS.COM, (Feb. 28, 2011), <http://www.corrections.com/articles/27870-some-reasons-why-incarceration-does-not-work-very-well>.

¹² STANFORD PRISON EXPERIMENT: A SIMULATION STUDY ON THE PSYCHOLOGY OF IMPRISONMENT, <http://www.prisonexp.org/> (last visited Aug. 4, 2015).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Daniel Roberts, *Life Behind Bars: Matthew Kluger Reveals All*, FORTUNE, (July 7, 2014), <http://fortune.com/2014/07/07/matthew-kluger-talks/>.

²² INMATE ADMISSION & ORIENTATION HANDBOOK FDC MIAMI FLORIDA (2014), http://www.bop.gov/locations/institutions/mim/MIM_aohandbook.pdf.

²³ *Id.*

In instances where the inmate is placed in solitary confinement, the situation is worse. One psychologist examining 100 inmates in Pelican Bay, California Security Housing Unit [the SHU] found “serious psychological disturbances in nearly every prisoner” in that “[m]ore than 70 percent exhibited symptoms of impending nervous breakdown; more than 40 percent suffered from hallucinations; 27 percent had suicidal thoughts. [The psychologist] noticed something subtler too: A pervasive asociality, a distancing. More than three-quarters of the prisoners exhibited symptoms of social withdrawal.”²⁴

This violent and aggressive environment can be exacerbated by the lack of activity inside prison. In the federal system, inmates are required to work.²⁵ However, while every inmate is given a work assignment, most of the jobs take little time to complete.²⁶ As Kluger describes, “Everyone has to have some sort of job. It’s not a real job—you know, with 1,100 people to do work and not much work to be done, they are make-work jobs. . . . [Kluger’s job wiping down the food line before breakfast is] about 20 minutes’ worth of work.”²⁷ A typical day in a federal prison consists of breakfast at 6 a.m., cell inspections, head counts, lunch at 11 a.m., more head counts, dinner at 5 p.m., and a final head count at 10 p.m. Unless the inmate is one of the lucky few that has a job that lasts several hours, the day is spent in the library, the cell, working out (weights are being phased out)²⁸, watching TV, or participating in board games or “leisure activities.”²⁹ In short, most of the time spent in prison is a complete waste of time (and taxpayer money) unless the individual is a true danger to society and needs to be isolated.

²⁴ Benjamin Wallace-Wells, *The Plot from Solitary*, NEW YORK MAGAZINE (Feb. 26, 2014), <http://nymag.com/news/features/solitary-secure-housing-units-2014-2/>.

²⁵ FED. BUREAU OF PRISONS, CUSTODY AND CARE, WORK PROGRAMS, http://www.bop.gov/inmates/custody_and_care/work_programs.jsp. “Institution work assignments include employment in areas like food service or the warehouse, or work as an inmate orderly, plumber, painter, or groundskeeper.” *Id.*

²⁶ John Dewar Gleissner, *Some Reasons Why Incarceration Does Not Work Very Well*, CORRECTIONS.COM (Feb. 28, 2011), <http://www.corrections.com/articles/27870-some-reasons-why-incarceration-does-not-work-very-well>. “Only a tiny fraction work hard behind bars. Former Chief justice Warren Burger called for making prisons ‘factories behind fences,’ but special interests thwarted most attempts to expand prison labor.” *Id.*

²⁷ Daniel Roberts, *Life Behind Bars: Matthew Kluger Reveals All*, FORTUNE, (July 7, 2014), <http://fortune.com/2014/07/07/matthew-kluger-talks/>.

²⁸ *Id.*

²⁹ INMATE ADMISSION & ORIENTATION HANDBOOK FDC MIAMI FLORIDA (2014), http://www.bop.gov/locations/institutions/mim/MIM_aohandbook.pdf. A typical day at Miami Federal Detention Center is as follows:

- 6:00 a.m. Wake-up call – Breakfast served – Clean cells
- 7:30 a.m. Rooms ready for inspection
- 8:00 a.m. AM census count, cell inspections, and room checks
- 11:00 a.m. Lunch meal served
- 1:00 p.m. PM census count
- 4:00 p.m. Official Stand-Up Count
- 5:00 p.m. Evening meal served
- 9:30 p.m. Recreation deck and leisure rooms secured
- 10:00 p.m. Official Stand-Up Count

Recreational programs include board games, leisure activities, such as “crocheting, step aerobics, stair stepping machines, calisthenics, exercise bikes, walking,” portrait drawing, and competitive tournaments on a weekly basis, which includes “basketball, soccer, handball, dominoes, spades, bingo, bowling, and hula hoops.” *Id.*

While these recreational activities hold some value,³⁰ it is critical to re-evaluate what is the best use of each inmate's time. What will assist the inmate in better transitioning back into his or her community? What will give him or her the best chance at obtaining and maintaining a job on the outside, develop positive connections within the community, and stay drug/alcohol/vice-free?

If we were to view imprisonment through the lens of legal due process, we would attempt to balance the government's stated purpose for incarceration against the inmate's right to life, liberty, and the pursuit of happiness. Admittedly when you break the law, you temporarily forfeit your right to life, liberty and pursuit of happiness, since justice calls for retribution. But prisoner rights should not be forfeited for all time, and inmates should have some expectation of a successful transition back into society once they have paid the price for their crime. Unfortunately, under the current penal system, inmates continue to pay and suffer even after their release since their prison years molded them into a person ill equipped to re-integrate into an unaccepting society. Most agree that the purpose behind imprisonment is, quite simply, to punish, to seek retribution for any victims of the crime, and to deter the inmate and others from committing similar crimes in the future.³¹ The deterrence aspect of this equation has not been very successful. Several studies have been done demonstrating that few people who commit crimes actually consider the consequences of their actions at the time they break the law, and rarely consider that their actions may result in incarceration.³² In other words, fear of incarceration and punishment does not appear to be a major deterrence to crime. Many who commit crimes never consider the consequences of their actions until after the fact. If imprisonment does not lower the crime rate or recidivism, i.e., the deterrence factor is inconsequential, then that leaves retribution and punishment as the foremost reasons behind imprisonment. However, if we solely concentrate on punishing the guilty with no consideration as to how these inmates will be empowered through this experience to re-integrate into society once they are released, are we not dooming them to failure and recidivism? Since prison life is a breeding ground for future crime, how do you motivate prisoners to become productive members of their communities once they are paroled or released? It appears that the longer the prison sentence, the more difficult it is for the inmate to re-integrate.³³

³⁰ Bernard B. Kerik, FROM JAILER TO JAILED: MY JOURNEY FROM CORRECTION AND POLICE COMMISSIONER TO INMATE #84888-054, 258-59 (Threshold Editions, 2015). "And, yes, the inmates have basketball and softball. But they are also subjected to humiliating strip searches, poor sanitary conditions, and unhealthy diet, and arbitrary and capricious administering of antiquated and draconian rules. There are people out there who say that inmates shouldn't have televisions, sports activities, or any other amenity. They have no idea how moronic that is. If you take away these small, basic things so that there is absolutely nothing for inmates to do, you just expedite the institutionalization of these men and women, diminish their social values even more, and really turn them into monsters before they return to society." *Id.*

³¹ *Bell v. Wolfish*, 441 U.S. 520 (1979); *United States v. Salerno*, 481 U.S. 739 (1987) (states, the purpose of prison is punishment).

³² John Dewar Gleissner, *Some Reasons Why Incarceration Does Not Work Very Well*, CORRECTIONS.COM (Feb. 28, 2011), <http://www.corrections.com/articles/27870-some-reasons-why-incarceration-does-not-work-very-well>. "The criminal mind works differently, with less foresight and conscience. Criminals enjoy the excitement and risks, do not anticipate capture, and instead focus on what they want. By one computation, only 1.2% of burglaries result in the burglar going to prison. A low risk of punishment increases crime. Successful burglars celebrate their accomplishments. Good deterrents are certain, severe and swift." *Id.*

³³ Daniel Roberts, *Life Behind Bars: Matthew Kluger Reveals All*, FORTUNE, (July 7, 2014), <http://fortune.com/2014/07/07/matthew-kluger-talks/>. "You see a lot more people here where the government is wasting its time and money. I mean, this is a guy who got 18 months for letting a friend mail him some marijuana at his house. There were probably better ways to give him the wake-up call." *Id.*

A distaste and fear of prison life does not appear to be a determining factor in recidivism rates for ex-convicts, i.e., fear of incarceration is not a motivating factor that keeps most people from committing additional crimes.³⁴ True deterrence comes from a conscious decision to do the right thing, a respect for oneself and others, a sense of belonging to a community. Unfortunately, prison life erodes the very values upon which deterrence is based. Deterrence can best be achieved through rehabilitation and not alienation. Disrespectful treatment from corrections officers and others, long sentences, solitary confinement, a lack of ties to the outside, and hostility and aggression among inmates and prison gangs all lead to an inmate's sense of isolation, rejection by society, lack of self-worth, and a sense of despair. Once on the outside, ex-convicts tend to fall back into their old patterns; oftentimes, their previous criminal environment is all they know, or understand.

III. What is working: Programs that Assist in Rehabilitation

There appears to be a movement to decrease harsh sentences and shorten incarceration stays. Federal drug defendants can request a two level decrease on their guideline sentence beginning November 1st of this year which will significantly shorten their prison stays.³⁵ The United States Sentencing Commission estimates 30,000 inmates will be eligible for a sentence reduction, and 6,600 of them will be released this November.³⁶ The SAFE Justice Act, a criminal justice reform bill, was recently introduced in June of this year and includes measures to modify the mandatory minimums to exclude people who committed drug trafficking offenses but only had a minimal role in the commission of the offense.³⁷ What I fear is that this is motivated by the amount of money that is spent housing and caring for these inmates³⁸ and that the money saved housing these defendants will be spent in other areas of government rather than used to fund programs that might better assist in an inmate's personal growth and rehabilitation.

How should the money that is saved from shortening an inmate's prison time be spent? Spend the money on programs that help inmates better transition back into society: programs that develop life skills, coping skills, counseling programs, how to handle stress, how to gain a positive sense of self, work skills, advanced education, mentoring programs linking inmates with outside contacts, and bringing the penal system back to its roots as a "penitentiary" where meditation, reflection, empathy, and forgiveness are the norm.

These changes would not require a complete overhaul of the prison system. On the contrary, there are several such programs in existence. The problem is aptly described by a former federal prisoner, Matthew Kluger, who explained: "In this system, the biggest consistency is all the inconsistency." The key is to compile all these programs, determine which ones have been the

³⁴ *Id.*

³⁵ UNITED STATES SENTENCING COMMISSION, FREQUENTLY ASKED QUESTIONS, RETROACTIVE APPLICATION OF THE 2014 DRUG GUIDELINES AMENDMENT, http://www.ussc.gov/sites/default/files/pdf/amendment-process/materials-on-2014-drug-guidelines-amendment/20140724_FAQ.pdf.

³⁶ FEDERAL BUREAU OF PRISONS, http://www.bop.gov/about/facilities/residential_reentry_management_centers.jsp.

³⁷ *U.S. Adopt New Criminal Justice Bill: Federal Sentences Would be Fairer, More Rights-Respecting*, HUMAN RIGHTS WATCH, <https://www.hrw.org/news/2015/07/02/us-adopt-new-criminal-justice-bill> (last visited Aug. 4, 2015).

³⁸ Marc Santora, *City's Annual Cost Per Inmate is \$168,000 Study Finds*, THE NEW YORK TIMES (Aug. 23, 2013), <http://www.nytimes.com/2013/08/24/nyregion/citys-annual-cost-per-inmate-is-nearly-168000-study-says.html>. "The Vera Institute of Justice released a study in 2012 that found that the aggregate cost of prisons in 2010 in the 40 states that participated was \$39 billion. The annual average taxpayer cost in these states was \$31,286 per inmate." *Id.*

most successful, and offer them in all prison settings (subject to security concerns) to those who wish to participate. There is no need to reinvent the wheel, rather, provide more opportunities for inmates to participate in personal growth.

One study of modern prison programs listed several such programs. Religious charities have been encouraged to provide social services.³⁹ Florida operates “‘faith and character-based institutions’ – entire prisons that provide religious programming aimed at rehabilitation.”⁴⁰ In some prisons, inmates are offered the opportunity to raise and train guide dogs for the blind, a program that has “‘been proven to reduce violence among inmates and foster a sense of responsibility.’”⁴¹ There are prison contemplative programs which include meditation, yoga, or contemplative prayer, which offer stress relief as well as a more positive outlook on life.⁴² California offers an Honor Program which “‘create[s] an atmosphere of safety, respect, and cooperation, so that prisoners can do their time in peace, while working on specific self-improvement and rehabilitative goals and projects which benefit the community. Prisoners wishing to apply for the program must commit to abstinence from drugs, gangs, and violence, and must be willing to live and work with fellow prisoners of any race.’”⁴³

Individual state prisons compared to the federal system are the experimental breeding grounds for new programs as individual state prisons seem to be better equipped to adapt to the successes and failures of new programs and suffer from less bureaucracy.

The Ohio Department of Rehabilitation and Correction (DRC) is to be commended for the amount of programs offered to inmates. Community service programs include the Assistance Dogs of America, Prisoners Helping Dogs, Quilting-Knitting Program, Art/Air Brush Program, Bicycle Repair, and Mats for homeless. Apprenticeship programs to become an alteration tailor, animal trainer, carpenter, janitor, plumber, or quality control inspector are also offered.⁴⁴ The DRC’s largest program is its farm operations. The farms are located on 19,000 acres on ten prison grounds.⁴⁵ “Farm Operations include dairy, finished beef and feeder cattle, corn, soybean, wheat, oats, rye, sorghum, hay and garden row crops. The Farm Operations produce raw milk and cattle for the Ohio Penal Industries to process for use in the DRC Food Service operation. . . . The various farm operations currently employ 68 staff and 225 inmate workers.”

The California Prison Industry Authority provides jobs for 7,000 of the 116,000 Californian inmates.⁴⁶ “More than 10 percent of those work food-related jobs, from coffee roasting to food

³⁹ *Top 10 Modern Prison Programs*, LISTVERSE (Aug. 14, 2008), <http://listverse.com/2008/08/14/top-10-modern-prison-programs/>.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* “In its first year of operations [in 2000], there was an 88% decrease in incidents involving weapons and an 85% decrease in violent incidents overall on ‘A’ Facility; the Honor Program saved the California Department of Corrections and Rehabilitation (CDCR) over \$200,000 during the first year alone in costs related to the management of violent and disruptive behavior.” *Id.*

⁴⁴ OHIO DEPARTMENT OF REHABILITATION AND CORRECTION, ALLEN OAKWOOD CORRECTIONAL INSTITUTION, <http://www.drc.ohio.gov/Public/ocf.htm> (last visited Aug. 4, 2015).

⁴⁵ OHIO DEPARTMENT OF REHABILITATION AND CORRECTION, ALLEN OAKWOOD CORRECTIONAL INSTITUTION, <http://www.drc.ohio.gov/Public/ocf.htm> (last visited Aug. 4, 2015).

⁴⁶ Lisa Morehouse, *Prison Dairy Gives Inmates Job Skills – And a Sense of Purpose*, NPR (Nov. 5, 2014), <http://www.npr.org/sections/thesalt/2014/11/05/358120272/prison-dairy>. The Prison Industry Authority “reports that their former employees return to prison about 30 percent less frequently than the general prison population, though it’s a little hard to compare those groups, since Prison industry workers are carefully selected in the first place.” *Id.*

packaging to almond farming.”⁴⁷ At Corcoran prison, a high-security facility in California’s Central Valley, inmates are involved in dairy and milk processing programs while working in a dairy that sits on 30 acres of prison grounds.⁴⁸

The Northeastern Correctional Center, a minimum security prison outside Concord, Massachusetts, houses the Fife and Drum Restaurant which is open to the public for lunch.⁴⁹ The restaurant provides a “hot, tasty meal” for \$3.21 for their customers and inmates are given culinary training and different job opportunities in the restaurant every five weeks.⁵⁰

One example of private institutions working with locals prisons is Thistle Farms. Thistle Farms is an institution that focuses on assisting “women who are recovering from abuse, trafficking, addiction, and life on the streets” and consists of a two year residential program called Magdalene, a bath and body-care company, a paper and sewing studio, the Thistle Stop Café and their new shared trade initiative called Thistle Farms Global.⁵¹ Thirty-six women are a part of the residential program, including 6 inmates participating in *Magdalene on the Inside*, and the residence offers housing, food, medical and dental needs, therapy, education and job training.⁵² “[R]esidents of Magdalene participate in therapeutic workshops where they learn to make bath and body oils, candles, and papers.”⁵³ “All of the women are trained in manufacturing, packaging, marketing, and sales and administration, and employees have the option of putting a percentage of their earnings in a matched savings account.”⁵⁴ “After four months, the women find work, return to school and/or enter the job training program through [the Thistle Farms’] social enterprise. . . Women who remain in recovery two years post-graduation are eligible for a new home buying program administered by two local congregations and the residential program.”⁵⁵

The Cornell Prison Education Program (CPEP) sends Cornell faculty and students to Auburn Correctional Facility, a maximum-security prison, and the medium-security Cayuga Correctional Facility near Ithaca, New York.⁵⁶ The program began in 1999 when these prisons began offering Cornell credit for completed courses.⁵⁷ “In 2008 Cornell made an agreement with Cayuga Community College (CCC): Cornell waives tuition and fees; CPEP supplies instructors and pays for books, school supplies and the program’s administration; and CCC grants associate degrees.”⁵⁸ “Today CPEP offers for-credit courses to nearly 100 men per year at Auburn and

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Shannon Mullen, *Prison Meal Deal: Where The Staff Serves Lunch . . . And Time*, NPR (Feb. 3, 2012), <http://www.npr.org/sections/thesalt/2012/02/03/146110728/prison-meas>.

⁵⁰ Shannon Mullen, *Prison Meal Deal: Where The Staff Serves Lunch . . . And Time*, NPR (Feb. 3, 2012), <http://www.npr.org/sections/thesalt/2012/02/03/146110728/prison-meas>. “The culinary program spends about \$500 a week on food, offset by what customers pay.” *Id.*

⁵¹ THISTLE FARMS, <http://www.thistlefarms.org/index.php/about-magdalene>. (last visited Aug. 4, 2015).

⁵² THISTLE FARMS, <http://www.thistlefarms.org/index.php/about-magdalene>. (last visited Aug. 4, 2015). “72% percent of the women who join Magdalene are clean and sober 2 1/2 years after beginning the program. Magdalene does not charge residents nor receives any government funding.” *Id.*

⁵³ Molly Theobald, *Thistle Farms Cultivates a Better Alternative to Life on the Streets*, CS MONITOR (Feb. 8, 2012), <http://www.csmonitor.com/World/Making-a-difference/Change-Agent>.

⁵⁴ *Id.*

⁵⁵ THISTLE FARMS, <http://www.thistlefarms.org/index.php/about-magdalene>. (last visited Aug. 4, 2015).

⁵⁶ David Skorton and Glenn Atlschuler, *College Behind Bars: How Educating Prisoners Pays Off*, FORBES (Mar. 25, 2013), <http://www.forbes.com/sites/collegeprose/2013/03/25/college-behind-bars-how-educating-prisoners-pays-off/>.

⁵⁷ *Id.*

⁵⁸ *Id.*

Cayuga Correctional Facility, on subjects ranging from genetics and poetry to economics and medical anthropology. In a typical semester, about a dozen Cornell faculty members and graduate students make the two hour round trip to teach the courses, aided by 40-50 undergraduate teaching assistants. All but the graduate students, who receive a small stipend, teach voluntarily.”⁵⁹ The students were “hungry for an education and grateful for their efforts.” “Given the relatively low cost—roughly \$1,800 per CPEP student—and manifold benefits, it’s hard to fathom why there isn’t a national, fully funded prison education program in every facility.”⁶⁰

At the federal level, several educational and apprenticeship programs are offered to assist inmates in later obtaining advanced degrees and the necessary job skills to find employment on the outside.⁶¹ These programs include educational programs with varying certificates of completion and apprenticeships to become: heating, air conditioning, and refrigeration mechanics and installers, food preparers and servers, barbers, hairdressers, and cosmetologists, customer service representatives, animal care and service workers, electricians, agricultural workers, library technicians, financial clerks, receptionists, welders, cutters, solderers and brazers, painters, construction and maintenance workers, structural iron and steel workers, carpenters, cooks, line installers and repairers, janitors and building cleaners, fishers and related fishing workers, quality control inspectors, general office clerks, upholsterers, automotive body and glass repairers, automotive service technicians and mechanics, dental laboratory technicians, electrical and electronics installers and repairers, industrial machinery mechanics and maintenance workers, teacher assistants, desktop publishers, secretaries and administrative assistants, diesel service technicians and mechanics, wholesale and manufacturing sales representatives, sewers and tailors, home appliance repairers, painters, plumbers, pipefitters and steamfitters, grounds maintenance workers, accountants and auditors, retail sales workers, brickmasons, blockmasons and stonemasons, career and technical education teachers, bookkeeping, bill and account collectors, budget analysts, purchasing managers, buyers and purchasing agents, medical equipment repairers, food processing occupations, logisticians, fitness trainers and instructors, bakers, substance abuse and behavioral disorder counselors, social and human service assistants, material recording clerks, power plant operators, distributors, and dispatchers, machinists and tool and die makers, dentistry health educators, pest control workers, and painting and coating workers.⁶² The Federal Bureau of Prisons has found that “the more educational programs successfully completed for each six months confined, the lower the recidivism rate.”⁶³

“All [federal] institutions offer literacy classes, English as a Second Language, parenting classes, wellness education, adult continuing education, library services, and instruction in leisure-time activities.”⁶⁴

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² FEDERAL BUREAU OF PRISONS INMATE OCCUPATIONAL TRAINING DIRECTORY BY INSTITUTION (2014), http://www.bop.gov/inmates/custody_and_care/docs/inmate_occupational_training_directory.pdf.

⁶³ *Id.*

⁶⁴ FEDERAL BUREAU OF PRISONS, CUSTODY AND CARE, EDUCATION PROGRAMS, http://www.bop.gov/inmates/custody_and_care/education.jsp (last visited Aug. 4, 2015).

UNICOR, the trade name for Federal Prison Industries (FPI), assists inmates with acquiring marketable job skills.⁶⁵ Inmates create over 80 products and services in several industries, including fabrics and materials, metals, office equipment, vehicles, wire/plastics, and wood.⁶⁶ The Post-Release Employment Project compared UNICOR inmates with those who did not participate and found that those who participate “were 24% less likely to revert to criminal behavior as much as 12 years following release and 14% more likely to be gainfully employed following release from prison.”⁶⁷ Unfortunately, approximately 25,000 inmates [] are waiting to work in UNICOR” and “only 8% of work-eligible inmates participate in the program.”⁶⁸

Brazil has some interesting and rather creative prison programs. In one Brazilian prison in Santa Rita de Sapucaí, prisoners volunteer to pedal stationary bikes for eight hours a day.⁶⁹ “Energy created by the bikes [which are hooked up to car batteries], in turn, powers lamps in the town’s promenade at night. For every three eight-hour days of pedaling, prisoners get a day dropped from their sentences.”⁷⁰ Four other federal prisons in Brazil began a “Redemption Through Reading Program” which cuts 48 days off an inmate’s sentence for every 12 books the inmate reads annually.⁷¹ “Inmates must write a summary of each book they read, which is then reviewed by a judge. The judge decides whether or not to shave time off the inmate’s sentence, up to four days for each book.”⁷²

There are several existing programs, some with community participation, that could substantially affect the lives of inmates for the better and assist them in rehabilitation. There are simply too few programs or too few slots available to the majority of inmates. More effort is needed to offer them to a greater number.

In Kerik’s words, “In municipal, county, and state correctional systems around the country, the staff is supposed to focus on care, custody, and control. The three Cs. In the federal system, from my “bird’s-eye” view, it was custody, some control, and absolutely no care at all. As for the law and order and tough-on-crime advocates who are skeptical of reform, I suggest that they are probably under the same assumption I was until I experienced prison from the inside: that the system makes every effort to rehabilitate the incarcerated. But it does not. For decades now we have been spending billions to simply warehouse inmates. The effort at rehabilitation is nugatory at best.”⁷³

IV. What can easily be fixed: Prison Food

⁶⁵ FEDERAL BUREAU OF PRISONS, CUSTODY AND CARE, EDUCATION PROGRAMS, http://www.bop.gov/inmates/custody_and_care/education.jsp (last visited Aug. 4, 2015).

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Kelly Zhou, *Brazil’s Prisoners Pedal Their Butts for Time Off*, TAKEPART (July 19, 2012), <http://www.takepart.com/article/2012/07/19/brazils-prisoners-escape-reading-books-and-biking>.

⁷⁰ Kelly Zhou, *Brazil’s Prisoners Pedal Their Butts for Time Off*, TAKEPART (July 19, 2012), <http://www.takepart.com/article/2012/07/19/brazils-prisoners-escape-reading-books-and-biking>.

At the time of this article, the program was still in its early stage with only eight participants and four bikes. *Id.* The fact that there are only eight participants is understandable considering pedaling for eight hours a day seems excessive. One inmate had shaved 20 days off his sentence and had lost nine pounds. *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ Bernard B. Kerik, *FROM JAILER TO JAILED: MY JOURNEY FROM CORRECTION AND POLICE COMMISSIONER TO INMATE #84888-054*, 258-59 (Threshold Editions, 2015).

A. The Possible Link Between Crime and Diet

If the environment in prison could be changed to create more positive, beneficial experiences and be designed to assist the inmate in self-improvement and growth, the inmate's food choices while in prison must be evaluated as well. Enough studies have shown that environment AND food are primary in determining behavior.⁷⁴

Diet has been shown to be a significant factor in several illnesses, including heart and cardiovascular illness, cancer, diabetes, and other chronic illnesses. Isn't it also possible that diet can also impact our moods and behavior? Could our food exacerbate our insecurities, anxiety, or depression? "Overconsumption of sugar, soft drinks, chemicals, antibiotics, alcohol, ice cream, and drugs can weaken or destroy" T-cells, specialized cells that are involved in the body's immune response.⁷⁵ "The over-intake of more extreme yang foods such as meat, eggs, poultry, and hard cheeses can cause an excess of testosterone to be secreted . . . men with an oversupply of testosterone often behave in an aggressive or hostile manner, and may suffer from uncontrollable or violent urges."⁷⁶ If it is one environment where a sense of balance is needed, it would be inside prison walls.

Many prisoners report their diet before prison consisted of many refined carbohydrates and low in many essential nutrients. This is nothing new. One prisoner in the Federal Bureau of Prisons in 1978 recalled that he primarily existed on cola sodas, chocolate products, and potato chips.⁷⁷ The same could be said of many federal inmates today.

Many studies were conducted in the 1970's and 80's attempting to find a connection between diet and crime. While the results have been debated and hotly contested, the core interest in physical health, nutrition, and diet remains a hot topic today. The food studies of the 70's and 80's warrant future research into a possible link between diet and aggressive, violent behavior that may lead to crime.

Bernard Gesch, a senior researcher at Stein's Oxford laboratory and former director of the charity Natural Justice in northwest England, supervised repeat offenders and was struck by their diets and has for many years led the charge to continue conducting more food studies in relationship to delinquency.⁷⁸ For example, one young offender under his charge who had been sentenced by the British courts on thirteen occasions for stealing trucks had a daily diet that consisted of the following:

Breakfast: nothing (asleep)

Midmorning: nothing (asleep)

Lunchtime: 4 or 5 cups of coffee with milk and 2 ½ heaped teaspoons of sugar

Mid afternoon: 3 or 4 cups of coffee with milk and 2 ½ heaped sugars

⁷⁴ *New Studies Show Strong Links Between Diet, Behavior*, CRIME TIMES, <http://www.crimetimes.org/98a/w98ap2.htm>.

⁷⁵ Michio Kushi, *CRIME AND DIET: THE MACROBIOTIC APPROACH*, 42 (Harper & Row, 1987).

⁷⁶ *Id.* at 45. "[D]ifferent prisoners have different physical and mental conditions, some worse than others. General imbalance comes from an excessive consumption of sugar, alcohol, drugs, and animal food. Intellectual crimes involving premeditation often result from excessive consumption of meat, eggs, and other animal foods, together with fruit juice, soft drinks, and stimulants such as caffeine. Sexual crimes often follow overconsumption of animal food, and other fatty and greasy foods, including dairy, together with stimulants and sugar. In each case, specific dietary adjustments are required to meet the needs of each prisoner." *Id.* at 118-19.

⁷⁷ Alexander G. Schauss, *DIET, CRIME AND DELINQUENCY*, 8 (Parker House, 1980).

⁷⁸ Felicity Lawrence, *Omega-3, Junk Food and the Link Between Violence and What We Eat*, THE GUARDIAN (Oct. 12, 2006), <http://www.theguardian.com/politics/2006/oct/17/prisonsandprobation.ukcrime>.

Tea: chips, egg, ketchup, 2 slices of white bread, 5 cups of tea or coffee with milk and sugar

Evening: 5 cups of tea or coffee with milk and sugar, 20 cigarettes, £2 worth of sweets, cakes and if money available 3 or 4 pints of beer.⁷⁹

Studies conducted at the Morristown, New Jersey Rehabilitation Center in the 1970's "suggested that low blood sugar can contribute to criminal behavior."⁸⁰ Many inmates were sugar addicts, ate a lot of candy, drank large volumes of sugar-sweetened coffee and Kool-Aid, and added too much sugar to foods.⁸¹ Due to the large length of time between dinner at 5 p.m. and breakfast at 7 a.m., many inmates would supplement with candy to tide them over.⁸² The studies at Morristown showed there existed "an usually high rate of hypoglycemia among offenders (averaging 80 to 85 percent)" yet no treatment through diet or diet education.⁸³ "The usual response [was] to prescribe medication when a delinquent or prisoner complain[ed] about dizziness, cold sweats, nervousness and fatigue—all potential signs of hypoglycemia."⁸⁴

In a much more recent study, researchers observing teenagers in grades 9 through 12 in 22 public schools found a "strong association between soft drinks and violence."⁸⁵ Teenagers who "consumed 14 or more cans of soda a week carried a gun or knife, and 15 percent had perpetrated violence toward a partner. . . Similarly, violence towards peers rose from 35 percent to 58 percent while violence toward siblings rose from 25.4 percent to 43 percent."⁸⁶ Coffee, sugar, candy, and sweet drinks are still found and offered in prisons. Since 1930, all federal prisons have had commissaries where inmates can purchase additional food, clothing, toiletries, and personal hygiene and over-the-counter medical products. The prison commissary offers "all manner of junk food" including "a lot of little Debbies, doughnuts and Nutty Bars," "sodas," "basic 7-Eleven fare."⁸⁷ If one wanted to go on a junk food binge, the prison commissary would be your best bet. For example, the Lexington federal prison offers apple zingers, dyno-bites cereal, Cheetos, sour cream and onion chips, pork rinds, carmel puffies, marshmallow crème, vanilla pudding, vanilla wafers, oreo cookies, chocolate chips cookies, lemon cookies, strawberry cookies, animal crackers, several flavors of poptarts, cinnamon grahams, kettle corn, almond joy, reese's cup, fast break, payday, snickers with almonds, starlight mints, jolly ranchers, Hershey's Kisses both regular and almond, jelly beans, tootsie roll pops, caramels, chick-o-stick, now & later, green apple twizzlers, different flavors of Hawaiian Punch, Pepsi,

⁷⁹ Alexander G. Schauss, *DIET, CRIME AND DELINQUENCY*, 8 (Parker House, 1980).

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.* See also C. Peter W. Bennett & Jonathan Brostoff, *The Health of Criminals Related to Behaviour, Food, Allergy and Nutrition: A Controlled Study of 100 Persistent Young Offenders*, *J. OF NUTRITIONAL & ENVTL. MED.*, 359-366 (1997). After utilizing questionnaires covering diet, health and behavior, researchers found that "deleterious health was a common feature in persistent criminals and of greater incidence than in comparable non-offenders. *Id.*

⁸⁵ *Study: Teens Who Drink Soda More Prone to Violence*, *HOUSTON CHRONICLE* (Oct. 25, 2011) <http://www.houstonchronicle.com/news/houston-texas/article/Study-Teens-who-drink-soda-more-prone-to-violence-2236294.php>.

⁸⁶ *Id.*

⁸⁷ Daniel Roberts, *Life Behind Bars: Matthew Kluger Reveals All*, *FORTUNE*, Jul. 7, 2014, <http://fortune.com/2014/07/07/matthew-kluger-talks/>. The store also offers healthier items such as packages of Chicken of the Sea tuna. *Id.* "And you can spend up to \$300 a month on that stuff." *Id.*

Diet Pepsi, and Mt. Dew.⁸⁸ The healthiest items on the commissary list appear to be mostly processed food as well: instant oatmeal, wheat thins, peanut butter crackers with honey, tortilla chips, rice cakes, peanut butter bars, light popcorn, mixed nuts, cashews, tea bags, sugar free kiwi strawberry drink, V-8 juice, and orange pineapple juice.⁸⁹

The meals served in the Federal Bureau of Prisons' cafeterias also seem to be fairly processed and pre-packaged. In comparison to sixty years' ago, there is less variety and less fresh fruits and vegetables. For example, according to a Week 1 certified food menu from 2012, breakfast (arguably, the most important meal of the day) would consist of a piece of fresh fruit (apple, orange, or banana), a pre-packaged breakfast item consisting of bran cereal, grits or oatmeal, three slices of bread, two cups of skim milk, two packs of jelly, and two packs of margarine.⁹⁰ At Alcatraz Federal Penitentiary for the week of September 2-8, 1946, the breakfast fruit varied, including stewed prunes, apple sauce, half a cantaloupe, an orange, stewed peaches, to canned pears and plums.⁹¹ Some of the grains were pre-packaged and others were served hot and in a more whole grain form, including bran flakes, cracked wheat, shredded wheat, hot griddle cakes, farina, rice Krispies, and rolled oats.⁹² The breakfast pastry appeared to be different every day, including a mint roll, orange roll, peanut roll, "mapeline" roll, raspberry bun, and fresh milk, sugar, and coffee served every day.⁹³ Bread, an efficient and inexpensive filler, appears to be the common staple at every meal – both in 1946 and today.⁹⁴

It costs \$8.12 to feed the average American compared to \$2.32 to feed the average prisoner in Florida or \$2.45 to feed the average prisoner in California.⁹⁵ Sheriff Joe Arpaio, who is in charge of the Maricopa County jail in Phoenix, Arizona, brags that the prison meals cost between 15 and 40 cents apiece, and prisoners are fed only twice a day.⁹⁶ Many prisons are attempting to further reduce the food cost in prisons by offering "brunch" on the weekends,

⁸⁸ FED. BUREAU OF PRISONS, FMC LEXINGTON, COMMISSARY LIST, http://www.bop.gov/locations/institutions/lex/LEX_CommList.pdf.

⁸⁹ *Id.*

⁹⁰ FED. BUREAU OF PRISONS, NAT'L MENU, http://www.bop.gov/foia/national_menu_lun_din.pdf.

⁹¹ John Boone, *Alcatraz Menu from 1946*, E!, <http://www.eonline.com/news/448198/alcatraz-s-menu-from-1946-sounds-delicious-and-super-fancy-for-prison-food>.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Paolo Lucchesi, *A Vintage Menu from Alcatraz-1946*, SF GATE, Jul. 24, 2013, <http://insidescoops.sfgate.com/blog/2013/07/24/a-vintage-menu-from-alcatraz1946/>. Federal Bureau of Prisons, National Menu, *supra* 89. Lunch and dinner appear to have much more variety than breakfast. *See* Federal Bureau of Prisons 2014 National menu. Daily lunch consists of items such as chili dogs, burgers, baked chicken, fish sandwiches, kielbasa sausage, cottage cheese, baked fish, PB&J sandwiches, soy burgers, braised chicken, and meatless chili. *Id.* These items are accompanied by bread items, beverages and side dishes such as potatoes (fried or boiled), fresh fruit, mixed veggies, rice, beans, carrots, French fries, or macaroni salad. Dinner may consist of main dishes such as roast beef, meat loaf, vegetable soup, chicken salad, pork chops, hummus, lasagna, or spaghetti. *Id.* This is accompanied by sides such as mashed or baked potatoes, corn, peas, green beans, spinach, broccoli, and garden salad. *Id.* All meals are accompanied with bread and margarine. *Id.* "Every prison mess hall, including in a minimum-security camp, is a part of the system that helps institutionalize the inmates, where much of the food is outdated and wouldn't be eaten on the outside. . . . I eat in my cubicle again, chicken or tuna from commissary." Kerik at 14-15. "On Friday nights we would get crazy in the cubicle and make Mexican-style tortillas with mozzarella cheese, pepperoni, and tomato sauce. Looking back, it was completely disgusting, but back then it was not so bad, something different from the monotony of our food and all our days." Kerik at 39.

⁹⁵ PRISON POLICY INITIATIVE, DAILY COSTS TO FEED PRISONERS AND THE AVERAGE AMERICAN, <http://www.prisonpolicy.org/graphs/foodcosts.html>.

⁹⁶ Alysia Santo and Lisa Iaboni, *What's in a Prison Meal*, THE MARSHALL PROJECT, <https://www.themarshallproject.org/2015/07/07/what-s-in-a-prison-meal?ref=hp-1-111>.

thereby eliminating breakfast and serving only two meals.⁹⁷ In order for the cost to be so low, the food must be heavily processed – canned, frozen, or fried.⁹⁸ Food costs are also kept down if the inmate is served “nutraloaf,” a bland, brownish loaf that meets nutritional guidelines and is either derived from grinding leftovers into a dense mass or is made out of shredded and mashed unseasoned vegetables, beans and starches.⁹⁹ “At least 12 states – including California, Texas and New York – serve it in state-run institutions, as do dozens of municipal and county jails across the country.”¹⁰⁰

Excessive alcohol consumption and ‘poor’ diet are seen as factors common in criminal lifestyles which can contribute to low or unstable blood sugar levels. Alcohol increases susceptibility to hypoglycemia through its capacity to increase insulin secretion. And it seems that hypoglycemia is by no means a rare condition. Studies of prison populations in America have shown that up to 85 percent of inmates are often hypoglycemic. D’asaro [a researcher on a

⁹⁷ Shannon McCaffrey, *States Slimming Down Inmate Meals*, CORRECTIONS ONE, Jun. 5, 2009, <http://www.correctionsone.com/corrections/articles/1844086-States-slimming-down-inmate-meals/>, *Everything You Never Wanted to Know about Prison Food*, Jan. 17, 2014, <http://www.huffingtonpost.com/thrillist/everything-you-never-want-b-4617225.html>; Manny Fernandez, *In Bid to Cut Costs at Some Texas Prison, Lunch Will Not Be Served on Weekends*, NEW YORK TIMES, Oct. 20, 2011, http://www.nytimes.com/2011/10/21/us/texas-reduces-weekend-meals-for-prisoners.html?_r=0.

⁹⁸ Eliza Barclay, *The Latest in Adventurous Tastings? Prison Food*, NPR, Jun. 11, 2013, <http://www.npr.org/sections/thesalt/2013/06/11/190685479/the-latest>. Prison food in 1830 was of higher quality and more nutritious. *Id.* “A typical meal was salted and broiled beef, served with ‘Indian mush,’ or boiled cornmeal flavored with molasses.” *Id.*

⁹⁹ Eliza Barclay, *Food as Punishment: Giving U.S. Inmates ‘The Loaf’ Persists*, NPR, Jan. 2, 2014, <http://www.npr.org/sections/thesalt/2014/01/02/256605441/punishing>. “[P]risoners who misbehave don’t just get it once. They have to eat it at every meal, for days or weeks at a time. That’s why it works as a deterrent . . .” *Id.* Here is one recipe for the nutraloaf:

Each meal contains 996 calories for a total of 2,988 calories per day.

INGREDIENTS:

- 6 slices Whole Wheat Bread, finely chopped
- 4 ounces Non-dairy Cheese, finely grated
- 4 ounces Raw Carrots, finely grated
- 12 ounces Spinach, canned, drained
- 4 ounces Seedless Raisins
- 2 cups Great Northern Beans, cooked and drained
- 4 tablespoons Vegetable Oil
- 6 ounces Tomato Paste
- 8 ounces Milk, powdered, instant nonfat/skim
- 6 ounces Potato Flakes, dehydrated

PREPARATION:

The above mixture will be divided into 3 loaves, providing 1 loaf per meal. Mix all ingredients together in a 12-quart stainless steel mixing bowl. Make sure wet items are drained. Ingredients may be kneaded with hands (wearing plastic gloves) or mixed with a spoon. The mixture should be stiff and just moist enough to spread. Form loaf in glazed bread pan. It is suggested that the loaf pan be placed in the oven on a sheet pan containing water. This will help keep the bottom of the loaf from burning. Bake at 325 degrees for approximately 45 minutes until each loaf reaches an internal temperature of 155 degrees. The loaf will start to pull away from the side of the bread pan when baking is completed. <http://www.wcax.com/story/10002909/the-recipe-for-nutraloaf>.

¹⁰⁰ Eliza Barclay, *Prison Gardens Help Inmates Grow Their Own Food and Skills*, NPR, Jan. 12, 2014, <http://www.npr.org/sections/thesalt/2014/01/12/261397333/prison-gardens-help-inmates-grow-their-own-food-and-skills>.

Diet-Vitamin Program for Jail Inmates] points out that many inmates are sugar addicts who consume a lot of sweets and large volumes of sugar-sweetened coffee and soft drinks.”¹⁰¹

Doctor Michael Lesser in *Diet, Crime and Delinquency* stated, “Our brain is no different than the rest of our body. Brain cells require proper feeding in order to function correctly. In fact, the brain is the body’s most chemically sensitive organ. Starved for the right nutrients, or ‘gummed up’ by toxic pollutants, the brain can and does go haywire. . . sugar starvation, vitamin deficiencies, lead pollution and food allergies can convert a normal brain into a criminal mind.”¹⁰²

In 1986, Michio Kushi, founder of the Kushi Institute which educates the public on the macrobiotic lifestyle,¹⁰³ wrote the book *Crime and Diet* and discussed how food and lifestyle choices can support health improvement:¹⁰⁴

The key to understanding the real cause of so-called criminal behavior lies in knowing the effect of daily lifestyle—especially dietary practice—on the way we think and act. Daily food and drink play a decisive role in influencing thought, emotion, and behavior. We see those who drink alcohol go through a change in personality while intoxicated. The foods we consume daily also influence our thinking and behavior in varying degrees. Criminal thought and behavior can be prevented and corrected through a balanced natural diet and the adjustment of environmental conditions. . . People in prison can be encouraged in two ways through education: first, they need inspiration and guidance in developing an

¹⁰¹ Alastair Thompson, *Diet and Delinquency*, NUTRITION AND FOOD SCIENCE (1990). “Since the brain uses nearly 25 percent of all the available glucose, or blood sugar, it follows that major reductions in glucose levels can affect the brain adversely. The underlying rationale is that hypoglycemia disrupts those messages from the brain which control mood, motivation and learning. The result may be a sudden burst of temper, aggression, destructive outbursts, as well as depression, changes of mood, confusion, fatigue and irritability. Normal individuals will experience episodes of mild hypoglycemia associated with decreased blood glucose after eating a heavy meal, and a characteristic group of clinical symptoms (sweating, palpitation, and trembling). Those who undergo reactive or postprandial hypoglycemia perhaps may develop, inter alia, the symptom of irritability, and conceivably this increased irritability may be seen as the first step in the development of a full blown aggressive outburst. *Id.*

¹⁰² Michael Lesser, *Diet, Crime & Delinquency*, INSTITUTE FOR OPTIMUM NUTRITION, xi, <http://www.ion.ac.uk/information/onarchives/dietcrimedelinquency>. “There is little doubt that such biochemical imbalances play a large part in behavior disorders. There are at least nine types of imbalance that can result in violent behavior. These include pyroluria – the combined deficiency of B6 and zinc; blood sugar problems and eating too much refined sugar; high levels of histamine and other neurotransmitters; excess lead, copper, mercury or cadmium; raised testosterone levels associated with race; premenstrual syndrome, or then the result of deficiency in B6, zinc or magnesium; cerebral allergies; and iron or B1 deficiency both of which control impulsive behaviour.” *Id.*

¹⁰³ “During the last generation, macrobiotics has been the catalyst for many of the dramatic dietary and lifestyle changes now taking place. Rooted in the traditional technique of East and West, the term *macrobiotics* derives from the Greek root words *macro*, meaning “long” or “great” and *bios*, meaning “life.” It was coined by Hippocrates, the father of medicine, nearly 2,500 years ago, whose approach to health and healing was based on his famous proverb “Let food be thy medicine, and thy medicine be food.” As the foundation of a great or long life, modern macrobiotics has introduced and popularized a way of eating based on brown rice, millet, sushi, mocha (sweet rice cubes or dumplings), seitan (wheat-meat cutlets), whole-wheat sourdough bread, vegetable sushi, pasta salads, rice cakes, and other whole grains and grain products; tofu, miso, tempeh, and other soy foods; a cornucopia of fresh garden vegetables; nori, wakame, and other sea vegetables; and a variety of seasonings, condiments, snacks, and other foods and beverages. Macrobiotic-quality foods are organically grown as much as possible, traditionally or naturally processed, and contain no sugar, dairy, white flour, chemicals, or other harmful ingredients.” Michio Kushi and Alex Jack, *THE MACROBIOTIC PATH TO TOTAL HEALTH*, viii, (Ballantine Books, 2003).

¹⁰⁴ KUSHI INSTITUTE CENTER FOR NATURAL HEALING, *WHAT IS MACROBIOTICS?*, <http://www.kushiinstitute.org/what-is-macrobiotics/>.

understanding of cosmology and human life. Their sense of social solidarity will be nurtured through this understanding. Secondly, they require biological and biochemical improvement, from which psychological improvement will follow. To accomplish this, prisons and similar institutions need to serve carefully prepared, delicious meals. In adopting a macrobiotic diet based upon whole grains and vegetables, in combination with regular educational programs, most prisoners will arrive at physical health, psychological soundness, and spiritual wholeness.¹⁰⁵

In 1979, a study was conducted in Central Prison, a maximum security facility in Linho, Portugal.¹⁰⁶ Thirty inmates began eating primarily whole grains, vegetable, and beans (the macrobiotic diet)¹⁰⁷ and attending lectures on Oriental philosophy and medicine.¹⁰⁸ Prison officials permitted the inmates to use a large kitchen where they cooked and ate together several times a week.¹⁰⁹ As a result of attitude and behavioral changes, most of the prisoners attending classes and eating the food received commutations and were released early.¹¹⁰ “[T]here is a great difference in them, especially in those who have left the prison,” Senhor Alfonso, a prison administrator, noted, commenting on the macrobiotic group. “It is not easy to describe—for one thing I can say that now they take more initiative. Actually, there is no problem here with anyone who is macrobiotic; this way of life enjoys a very good reputation. I believe the food and the outside stimulus both helped. The food can change people.”¹¹¹

Similarly, Barbara Reed, a Cleveland probation officer, reported a low rate of recidivism among youthful probationers given nutritionally balanced meals.¹¹² Out of 318 youth offenders she supervised, 252 had “serious dietary deficiencies.”¹¹³ Reed had the group “reduce or eliminate red meat, eat more whole grains and vegetables, and strike from their diets completely all refined sugar and flour products.”¹¹⁴ After two and a half years, none of those who maintained and stayed on the diet were rearrested or returned to court.¹¹⁵ After more than 1,000 offenders went through her dietary program, 89 percent had not been rearrested over the past five years.¹¹⁶

A “sugar study” was conducted for three months in 1981 at the Tidewater Detention Home, a minimum security juvenile facility in Chesapeake, Virginia, where sugar was

¹⁰⁵ Michio Kushi, *CRIME AND DIET: THE MACROBIOTIC APPROACH*, 42 (Harper & Row, 1987). “In many severely overcrowded, understaffed young offender institutions prisoners receive their evening meals between 4pm and 5pm. Many will eat this meal in a shared cell originally designed for one prisoner, sitting on a bunk bed next to an unscreened, or partially screened, lavatory. Later in the evening most will receive a small snack and a pre-packed breakfast to eat the next morning. If, like most teenagers, they eat this straight away, they will have to go hungry until lunchtime. Research and common sense tell us that children need a decent breakfast. Why are young people in prison deprived of nourishment or nurture?” Juliet Lyon, *Prison Reform Trust: Research Findings on Crime and Diet*, LONDON TIMES, (Jul. 19, 2002).

¹⁰⁶ Meg Seaker, *Fighting Crime with Diet: Report from a Portuguese Prison*, EAST WEST JOURNAL, p.26-34 (Jul. 1982), http://www.macrobiotics.nl/encyclopedia/encyclopedia_c.html.

¹⁰⁷ For more information on macrobiotic dietary guidelines, see KUSHING INSTITUTE CENTER FOR NATURAL HEALING, <http://www.kushiinstitute.org/what-is-macrobiotics/>.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² Barbara Reed, Statement Before the Select Committee on Nutrition and Human Needs of the U.S. Senate (June 22, 1977) and in Michio Kushi, *CRIME AND DIET: THE MACROBIOTIC APPROACH*, 42 (Harper & Row, 1987).

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

significantly reduced from the juvenile offenders' diets.¹¹⁷ Researchers found a 45% decline in formal disciplinary actions and a 55% drop in misbehavior among the twenty-four boys who participated in the low sugar diet.¹¹⁸ The same researchers were asked to conduct other larger studies and other institutions.¹¹⁹ The assistant warden at Powhatan Correctional Center, a maximum security prison in State Farm, Virginia, heard of the success at Tidewater through prisoners at Powhatan who wanted the opportunity to eat a more natural, whole foods diet consisting of whole grains, beans, fresh fruits, and vegetables.¹²⁰ After much red tape, the inmates eventually succeeded, and the assistant warden found "the men were happier, had better attitudes, and handled themselves better. They were able to work together and help each other."¹²¹

In 1978, the prison administrator at the United States Naval Correctional Center in Seattle, Washington attempted to eliminate refined carbohydrates (white flour) and sugar from prisoners' diets. Pastries, cakes, ice cream, soft drinks, and Kool-Aid were removed, and white flour was replaced with whole wheat.¹²² Within a year, disciplinary reports were down 12% and fewer prisoners reported any illness.

¹¹⁷ S. Schoenthaler, *The Effect of Sugar on the Treatment and Control of Antisocial Behavior*, 3 INT'L J. OF BIOSOCIAL RES. p.1-9 (1982). The boys, aged 12 to 18, were jailed for offenses that ranged from disorderly conduct, larceny, and burglary to alcohol and narcotics violations. Coke machines were removed from the premises and fruit juice substituted in vending machines for soft drinks, while honey and other milder sweeteners were substituted for refined sugar. The three-month trial was designed as a double-blind case-control study so that neither the detention center personnel nor the inmates knew that they were being tested. *Id.*

¹¹⁸ Michio Kushi, CRIME AND DIET: THE MACROBIOTIC APPROACH, 42 (Harper & Row, 1987). Stephen J. Schoenthaler, *The Effects of Sugar on the Treatment and Control of Antisocial Behavior on an Incarcerated Juvenile Population*, 3 INT'L J. OF BIOSOCIAL RES. p.1-9 (1982). ("Strength: The pilot study showed that the psychological effects of changing diet could be controlled with elaborate deception. Thus, positive results could not be properly dismissed as simple psychological effects. Weakness: A simple before-and-after design cannot be conclusive since other important unknown factors may have changed at the same time the diet changed. Thus, at best, the results call for further examination.") See also Jo-Anne Bachorowski, Joseph P. Newman, Dian A. Gans, Alfred E. Harper, Sharon L. Nichols & Steven L. Taylor, *Effects of Sucrose Ingestion on Juvenile Offenders with Low, Borderline, and Normal Nadir Serum Glucose Values*, PERGAMON, (Oct. 7, 1993) (finding that "the relations among short-term sucrose consumption, biochemistry, and behavior are complex and highlight the need to rigorously test presumptions regarding the effects of sucrose on the behavior of juvenile criminal offenders").

¹¹⁹ *Id.* Stephen J. Schoenthaler, *Diet and Crime: An Empirical Examination of the Value of nutrition in the Control and Treatment of Incarcerated Juvenile Offenders*, 4 INT'L J. OF BIOSOCIAL RES. p.25-39 (1983). ("The incidence of antisocial behavior resulting in formal disciplinary actions was lowered 48% using a 'double-blind' design over a 2-year period with a sample of 276 incarcerated juveniles by reducing the quantity of sugar the juveniles consumed. The primary dietary revisions involved (1) the replacement of soft drinks and junk food snacks with fruit juices and nutritious snacks as well as (2) the elimination of high sugar content desserts and cereals. The percentage of well-behaved juveniles increased 71% and the percentage of chronic offenders decreased 56%. Adding controls for gender, race, age, and type of offender (violent, property, or status) did not diminish the results.") For a discussion of Schoenthaler's research and subsequent studies, see Alastair Thompson, *Diet and Delinquency*, NUTRITION AND FOOD SCIENCE, (1990).

¹²⁰ *Id.* at 170. "The menu at Powhatan today includes miso soup, made from cultured soybeans; brown rice; millet, the staple grain of Africa; polenta, or corn mush baked into cakes; tofu stew; fish teriyaki; stir-fried vegetables; salad; and kukicha tea. Pear crunch and ice cream made without sugar or dairy products will be the dessert. . . . [One prisoner commented] Everybody who eats with us or around us has no problems . . . there is no aggression People who eat right think right. Believe me." *Id.* at 175.

¹²¹ *Id.* at 170.

¹²² Alexander G. Schauss, DIET, CRIME AND DELINQUENCY, 6 (Parker House, 1980).

In 2002, British researchers, including Bernard Gesch, conducted a double blind trial and studied the behavior of 231 inmates at a maximum security prison in Aylesbury, England.¹²³ “Half of the group received daily capsules containing vitamins, minerals and essential fatty acids, while the other half took dummy pills. Antisocial behavior among inmates was recorded before and during the trial. The supplement group broke prison rules 25 percent less than those on the placebo. The greatest reduction was for serious offenses—instances of fighting, assaulting guards or taking hostages dropped 37 percent.”¹²⁴ In a study conducted by the Dutch Ministry in Holland, prisoners that received nutritional supplements showed a 34% reduction in violent behavior.¹²⁵ Another study found that nutritional supplements were more powerful in preventing recidivism than counseling.¹²⁶

Of course, we must take these findings with a grain of salt. Around the same time as this research began to surface in the 1970s and ‘80s, the National Council Against Health Fraud¹²⁷ (NCAHF) released a position paper stating that “[v]alid evidence is lacking to support the claim that diet is an important determinant in the development of violence and criminal behavior” and “the hypothesis that reactive hypoglycemia is a common cause of violent behavior.”¹²⁸ These beliefs have been founded on “anecdotal case reports, and reports of studies that have not been conducted under carefully controlled conditions.”¹²⁹

Whether the link between crime and diet is proven to be strong or weak or simply one factor among many, the fact remains that the food we eat impacts our overall health and wellbeing. Why not educate inmates on the benefits of good health, nutrition, and a whole grain,

¹²³ John Bohannon, *The Theory? Diet Causes Violence. The Lab? Prison*, 325 SCIENCE p.1614-16, (Sept. 25, 2009), <http://www.sciencemag.org/content/325/5948/1614.full?sid=f17a8d10-851c-4e03-96c0-3f11e729bbe8>. See also C. Bernard Gesch and David Ramsbotham, *Crime and Nourishment: Cause for a Rethink?*, PRISON SERV. J., p.3-9 (Mar. 2009).

¹²⁴ Willow Lawson, PSYCHOLOGY TODAY, p.22 (Mar.-Apr. 2003) <http://www.psychologytoday.com>. “Previous studies have linked low levels of omega-3 fatty acids, found mainly in fish, to higher rates of depression, bipolar disorder and suicide. Essential fatty acids are vital for building and maintaining brain cells. Other nutrients such as B vitamins and magnesium are crucial to the chemical processes that produce the neurotransmitters like serotonin and dopamine, which affect mood.” *Id.*

¹²⁵ *Link Between Diet and Crime?*, VEGETARIANS OF WASHINGTON (July 24, 2011), <https://vegetariandispatch.wordpress.com/2011/07/24/link-between-diet-and-crime/>

¹²⁶ *Id.* See also Felicity Lawrence, *Omega-3, junk food and the link between violence and what we eat*, THE GUARDIAN (Oct. 17, 2006). <http://www.theguardian.com/politics/2006/oct/17/prisonsandprobation.ukcrime>. “The proposition that greater dietary intake of omega-3 fatty acids reduces violent and aggressive behaviors is also consistent with several epidemiologic, observational, and interventional studies. In double-blind, placebo-controlled trials, combinations of docosahexaenoic acid and eicosapentaenoic acid (together with a multi vitamin) reduced felony-level violent offenses among 231 prisoners by 37% (Gesch, et al 2002), reduced the increases in hostility measures seen in the placebo group of Japanese university students exposed to exam stress (Hamazaki, et al 1996), and reduced verbal and physical aggression among women with borderline personality disorder (Zanarini and Frankenburg 2003). Joseph Hibbein, Garth Bissette, John C. Umhau, & David T. George, *Omega-3 Status and Cerebrospinal Fluid Corticotrophin Releasing Hormone in Perpetrators of Domestic Violence*, 56 BIOL PSYCHIATRY, p.895-897 (2004).

¹²⁷ THE NATIONAL COUNCIL AGAINST HEALTH FRAUD (NCAHF), POSITION PAPER ON DIET AND CRIMINAL BEHAVIOR (Apr. 17, 1983), <http://www.ncahf.org/pp/diet.html>. “NCAHF is a private nonprofit, voluntary health agency that focuses on health misinformation, fraud and quackery as public health problems.” *Id.* “The NCAHF position paper on diet and criminal behavior has been endorsed by the California Nutrition Council, the California Dietetic Association, and the American Dietetic Association.” *Id.* For an in-depth review of many of these studies, see David Benton, *The Impact of Diet on Anti-Social, Violent and Criminal Behaviour*, 31 NEUROSCIENCE AND BIOBEHAVIORAL REV. p.752-774 (2007) <http://www.sciencedirect.com>.

¹²⁸ *Id.*

¹²⁹ *Id.*

natural diet? Why not assist inmates in making positive, healthy choices by improving their diets and providing them with nutritional, well-balanced meals?

The quality of prison food has deteriorated such that several inmates in various prisons have instituted hunger strikes, protests, and even riots to protest food shortages and the cold sack lunches provided by Aramark, the nation's largest private provider of prison food and recipient of multimillion dollar contracts with many state department of corrections.¹³⁰

Interestingly enough, many judges and prison officials have honored prisoner petitions as to diet restrictions if they are requested for religious reasons.¹³¹ However, civil lawsuits brought forth requesting better, more nutritious food, including more fruits and vegetables, have been summarily dismissed.¹³² Better to couch nutritional demands in terms of religion rather than out of a desire for a healthier physical and mental self.

B. Garden Programs

Alcatraz had the first known garden program.¹³³ In 1869, military inmates began tending the gardens which included a rose garden and brightly colored flower terraces.¹³⁴ When the military left the island to the Federal Bureau of Prisons in 1933, a few, carefully selected maximum-security inmates were permitted to tend the gardens.¹³⁵ Garden programs seem to have disappeared in the 1970's and were reborn fairly recently.¹³⁶

If we are concerned that a fresher, healthier prison menu may cost more than \$2.32 a day, consider the many garden programs in prisons that not only educate inmates and provide valuable job skills, but in many instances, the garden program is able to supply the entire prison complex and local food pantries and soup kitchens with fresh produce.

The Sandusky County, Ohio Jail Gardening Program began in 2009 with inmates working in a 1.5 acre garden growing pumpkins, raspberries, and other fruits and vegetables, and raising hundreds of boiler chickens.¹³⁷ In 2010, they donated 375 pounds of produce to local food pantries and soup kitchens.¹³⁸ The Roots to Re-entry Program began in 2006 by the Pennsylvania Horticulture Society, City of Philadelphia, and other private institutions and allows

¹³⁰ George Lavendar, *Private Contractor Accused of Skimping on Prisoner Food*, (Jan. 30, 2014), http://inthesetimes.com/prison-complex/entry/private_contractor_accused_of_skimping_on_prisoner_food; Alan Pyke, *Private Contractor for Michigan Prisons Repeatedly Failed to Give Inmates Enough Food*, <http://thinkprogress.org/economy/2014/06/30/3454874>.

¹³¹ See Jack Ryan, *Jails/Corrections Inmates and Freedom of Religion*, LEGAL AND LIABILITY RISK MANAGEMENT INSTITUTE, http://www.llrmi.com/articles/jails/jail_religion.shtml (citing *Berry v. Waushara County Jail*, 2008 U.S. Dist. LEXIS 91540 (ED Wis. 2008)); Prisoner Diet Legal Issues, 2007(7) AELE Mo. L. J. 301, Jail and Prisoner Law Section July 2007, at <http://www.aele.org/law/2007JBJUL/2007-07MLJ301.pdf>, and Religious Freedom in Correctional Facilities (I), 2007 (3) AELE Mo. L. J. 301 – Legal Standard, Jail and Prisoner Law Section March 2007, at <http://www.aele.org/law/2007JBMAR/2007-03MLJ301.pdf>.

¹³² See Prisoner Diet Legal Issues, 2007(7) AELE Mo. L. J. 301, Jail and Prisoner Law Section (Jul. 2007), <http://www.aele.org/law/2007JBJUL/2007-07MLJ301.pdf>; see also Terry Nichols, *Food Lawsuit Dismissed by Denver Judge*, HUFFINGTON POST, (Oct. 18, 2010), http://www.huffingtonpost.com/2010/08/18/terry-nichols-food-lawsui_n_685992.html.

¹³³ THE GARDENS OF ALCATRAZ, <http://www.alcatrazgardens.org/inmate-gardeners.php>.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.* “[C]ompared to the general Sandusky County Jail inmate population, which has a recidivism rate of 40 percent, only 18 percent of inmates who participate in the garden program are rearrested.” *Id.*

two dozen inmates in the Philadelphia Prison System to produce fruits and vegetables for community gardens, local food pantries, and soup kitchens.¹³⁹ The GreenHouse program began in 1996 and allows 125 inmates in Rikers Island, New York City to participate in classes, job counseling, and work in the greenhouse and 2 ½ acres of gardens built by inmates.¹⁴⁰ In 2003, the Insight Garden Program (IGP) began conducting classes in a 1,200 square foot organic flower garden in San Quentin State Prison yard in northern California.¹⁴¹ “A 2011 recidivism study of 117 IGP participants who paroled between 2003 and 2009 found that less than 10% returned to prison or jail.”¹⁴²

The Evergreen State College and Washington Department of Corrections have partnered up to create the Sustainability in Prisons Project which includes programs in various correctional facilities throughout the state of Washington.¹⁴³ These programs include not only garden projects but master gardening classes, food waste composting, firewood donation program, a prairie restoration crew, a pet program, tilapia and aquaponics (approximately 60,000 fish are in 22 tanks at Stafford Creek Correctional Facility and harvested at regular intervals for the prison menu), woodshop projects with reclaimed wood, a forestry program, house plants in living units, water use reduction and water catchment, a project feeder watch (bird identification and data collection), salmon habitat restoration, vermiculture and vermicomposting, ponds for every living unit at Olympic Corrections Center, bicycle repair, medical equipment refurbishment, a conservation nursery, shoe and clothing recycling, food bank crop donations, beekeeping and an endangered species conservation program.¹⁴⁴

¹³⁹ ROOTS TO RE-ENTRY, <http://phsonline.org/greening/roots-to-re-entry>.

¹⁴⁰ *Id.* “Once released, GreenHouse offers 9- to 12- month paid internships as part of the Green Team, where individuals maintain gardens at public libraries and in other spaces throughout the city, earning \$7 to \$10 an hour.” *Id.* “The recidivism rate for graduates of the program is 5 to 10 percent, compared to 65 percent for the general inmate population.” *Id.*

¹⁴¹ *Id.* According to the Insight Garden website, “Lisa Benham completed her graduate level research study *From Utility to Significance: Exploring Ecological Connection, Ethics and Personal Transformation Through a Gardening and Environmental Literacy Program within San Quentin Prison* in 2014. Using both qualitative and quantitative methods across control groups, Lisa found:

- Prison gardens and environmental programming contribute profoundly toward transformative values re-identification, which is integral to a rehabilitative experience that inspires lasting change.
- An individual’s sense of personal control or inner-agency (Locus of Control) was improved where deepening environmental understanding was also observed.

In 2004, Executive Director Beth Waitkus completed her Master’s Thesis entitled, “*The Impact of a garden on the physical environment and social climate of a prison yard at San Quentin State Prison.*” Her study found:

- IGP’s garden on an open prison yard is the only place where different races can congregate and work in teams without fear of violence from others.
- Gardens invite attention, use, and refuge.
- Being in or near a garden reduces stress.
- Gardeners gain benefits from directly working with nature, creating the possibility for hope and further change.”

<http://insightgardenprogram.org/research-studies/>.

¹⁴² INSIGHT GARDEN PROGRAM, <http://insightgardenprogram.org/research-studies/>.

¹⁴³ THE EVERGREEN STATE COLLEGE AND WASHINGTON STATE DEPARTMENT OF CORRECTIONS, SUSTAINABILITY IN PRISONS PROJECT, <http://sustainabilityinprisons.org/what-we-do/spp-programs-in-washington-state-prisons/>.

¹⁴⁴ *Id.*

At Maryland's Eastern Correctional Institution, inmates are growing food for people living in Somerset County on Maryland's Eastern Shore, an area that has "some of the highest poverty and childhood obesity rates in the state."¹⁴⁵ The only rule to be a part of the garden team is that the prisoner must have no gang affiliation and a clean discipline record.¹⁴⁶

In 2012, Minnesota passed a law allowing state prisons to institute gardening programs providing there is sufficient space and security regulations allow for it.¹⁴⁷ In 2011, the Red Wing correctional facility donated 7,000 servings of food to the local Red Wing Area Food Shelf.¹⁴⁸ Twenty-eight prison facilities have garden programs in Wisconsin, and the inmates in those facilities harvested 75,000 pounds of produce in 2011.¹⁴⁹ These garden programs have been found to save money and cut down on recidivism.¹⁵⁰

The oldest running program is the Garden Project which began in 1982 by Catherine Sneed, an inmate counselor, and the local sheriff "as a way to teach life lessons and skills to inmates through organic vegetable gardening."¹⁵¹ "By 2002, the Garden Project had employed more than 4,300 ex-prisoners and served thousands of incarcerated men and women, teaching them essential job and life skills and providing literacy courses and computer training."¹⁵²

Garden programs are just another type of innovative, relatively new program to have been found to reduce recidivism, educate inmates on horticulture and allow them to develop new landscaping and gardening skills, assist in rehabilitation, and provide healthy, nutritious foods to the inmates and the community at large.¹⁵³ They are worth the investment.

V. Conclusion

According to the Stanford School of Medicine, Institute for Stem Cell Biology and Regenerative Medicine, "[e]very one of us completely regenerates our own skin every 7 days," and "[e]very single cell in our skeleton is replaced every 7 years."¹⁵⁴ As our bodies are designed

¹⁴⁵ Michael S. Rosenwald, *A Growing Experience: Prison Gardens Transform Inmates Who Tend to Them*, WASHINGTON POST (Jun. 7, 2014), http://www.washingtonpost.com/local/can-gardening-transform-convicted-killers-and-carjackers-prison-officials-get-behind-the-bloom/2015/06/07/bf5c4cf0-0afb-11e5-a7ad-b430fc1d3f5c_story.html.

¹⁴⁶ *Id.*

¹⁴⁷ Julie Siple, *Garden Programs Grow at State Prisons*, MPR (July 31, 2012), <http://www.mprnews.org/story/2012/07/31/human-interest/red-wing-prison-garden>. High security prisons oftentimes have rules regarding the availability of certain tools used for gardening and control the amount of inmates permitted in one area at one time. *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ Emily Gilbert, *Five urban garden programs that train inmates and help communities* (Mar. 2, 2012), CHRISTIAN SCIENCE MONITOR, <http://www.csmonitor.com/World/Making-a-difference/Change-Agent/2012/0302/Five-urban-garden-programs-that-train-inmates-and-help-communities>. Of course it is critical that the inmates are permitted to eat what they've grown.

¹⁵² *Id.* While the typical recidivism rate is approximately 55 percent, those who complete the Garden Project have a recidivism rate of 24 percent. *Id.*

¹⁵³ Emily Gilbert, *Five urban garden programs that train inmates and help communities* (Mar. 2, 2012), CHRISTIAN SCIENCE MONITOR, <http://www.csmonitor.com/World/Making-a-difference/Change-Agent/2012/0302/Five-urban-garden-programs-that-train-inmates-and-help-communities>. Of course it is critical that the inmates are permitted to eat what they have grown.

¹⁵⁴ STANFORD SCHOOL OF MEDICINE, INSTITUTE FOR STEM CELL BIOLOGY AND REGENERATIVE MEDICINE, <http://stemcell.stanford.edu/research/>.

to heal and regenerate, so too can our mental and emotional well-being regenerate with the appropriate care and compassion given to the whole person. Good food, exercise, time spent outside, education, respect from others, and visits from friends, family members, and mentors from the community can all have a significant impact on an inmate's psyche.

The culture of prison should be one that assists in re-integration and assimilation into society. Unfortunately, the current thought is that once a person has already entered the criminal justice system and spent time in prison, he or she is already lost. Prison culture takes over – if they were not hardened criminals beforehand, the isolation from the outside and the affirmation of the criminal code inside turns them into hardened criminals.

While we cannot change what has already happened in an inmate's life prior to prison--lack of a stable family life, violent and dysfunctional peer groups, alcohol or drug abuse, etc.--we can change how they are treated while in prison. Certain documented programs exist which help inmates build self-worth, respect for others and strengthens their ties to the community. Programs that provide technical training, job skills, educational opportunities, spiritual growth within the prison system pay huge dividends on the outside with better job opportunities and successful re-integration into society.

Not only must prisons provide a positive environment to allow for self-improvement, but we need to consider significantly cutting down on sentence lengths when an inmate is not a danger to the community and has the potential to re-integrate back into society. Facing prison time is a punishment in itself. For the most part, whether the inmate must complete 144 months or 268 months is irrelevant. There are so many collateral consequences to any sentence of imprisonment that the exact length of time to be served is merely superfluous.¹⁵⁵ With a conviction (some would even say mere arrest or indictment) comes a certain amount of shame, disgrace, possible loss of friends, family, financial loss (both from attorney's fees or job loss), stress, anxiety, and at times, despair. What is worse than one's loss of liberty and one's reputation?

In 1998, a quantum physics experiment was conducted in order to determine how a beam of electrons would be affected if they were observed by scientists.¹⁵⁶ The experiment showed “that the greater the amount of ‘watching,’ [by the scientists], the greater the observer's influence on what actually takes place.”¹⁵⁷ Similarly, by placing our energies and interest on inmates and prison reform and assisting in creating positive change in the prison system, we may be able to change the trajectory of inmates' lives. Spend the money saved in cutting prison sentences on selective hiring of prison employees, better prison meal plans, and rehabilitative programs for *all* inmates that want to participate while encouraging more private interest groups to become involved. We need more prison authorities to take note of these programs and be willing to try to implement a few new ones at their facilities. Without prison administrator participation, the culture will not change. Only with community buy-in and compassion, a willingness to forgive

¹⁵⁵ “Already it has been longer than I would have liked it to last. And that's one of the silly things about these sentences: I get it. I mean... I can't reoffend. No one's going to let me near sensitive merger information again and I was a pretty law-abiding citizen other than that. So, you know, I am no threat to anybody. I've lost my license to practice, and even if I had my license to practice, no one's going to hire me to be an M&A lawyer. They're not going to hire me to be some other kind of lawyer. I'm not going to do something else. So my career is gone. I was embarrassed publicly. Really, they got what they needed. I get it. So all this other time is kind of superfluous.” Daniel Roberts, *Life Behind Bars: Matthew Kluger Reveals All*, FORTUNE, (Jul. 7, 2014), <http://fortune.com/2014/07/07/matthew-kluger-talks/>.

¹⁵⁶ Weizmann Institute of Science, *Quantum Theory Demonstrated: Observation Affects Reality*, SCIENCE DAILY (Feb. 27, 1998), <http://www.sciencedaily.com/releases/1998/02/980227055013.htm>.

¹⁵⁷ *Id.*

and provide jobs to former prisoners who have completed rehabilitative and educational programs, will released inmates successfully transition back into society.

Today, teachers and school administrators are held accountable for how effectively they educate students, even disadvantaged and high-poverty students. If students get a failing grade on standardized test scores and show no improvement in mastering the essentials such as reading and math, then the educators are held accountable and may face disciplinary action to include possible removal or loss of income and resources. So why are prison wardens and staff from conspicuously troubled correctional facilities being treated differently from failed educators? Prison administrators for the most part appear to be immune from disciplinary action when inmates in their particular corrections facility are forced to survive in a jungle environment, treated inhumanely and given no opportunity for true rehabilitation. There is no reason why the criminal justice system like the department of education should not be held accountable for the safety, security and rehabilitation of inmates.

Prison administrators are the best equipped to identify what works and what does not work in efforts to rehabilitate prisoners. The recidivism rates among released and paroled inmates should serve as a possible litmus test for a grade of “excellent” or “needs improvement.” Of course, inmate treatment and rehabilitation programs are not the only measure of how the criminal justice system should be graded, but if there are glaring deficiencies in these basic areas then those in authority should not be immune from being held partially responsible.

These ideas and recommendations represent small changes, but the results may surprise us. These practices and changes may even help achieve the deterrence factor currently lacking within the judicial system, and offer inmates a better chance at true rehabilitation and give them a feeling that their communities care about their future well-being. I think we would be remiss in not changing course by adopting new programs, explore new concepts and stop doing what has proven to be ineffective. As Albert Einstein once said, “Insanity is doing the same thing over and over again and expecting different results.”¹⁵⁸

¹⁵⁸ BRAINY QUOTE, ALBERT EINSTEIN QUOTES,
<http://www.brainyquote.com/quotes/quotes/a/alberteins133991.html>.