



Hearing the Cries

FAITH AND CRIMINAL JUSTICE



Evangelical Lutheran Church in America

God's work. Our hands.

Hearing the Cries

FAITH AND CRIMINAL JUSTICE



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Hearing the Cries

FAITH AND CRIMINAL JUSTICE

TOWARD A SOCIAL STATEMENT ON CRIMINAL JUSTICE

Hearing the Cries: Faith and Criminal Justice is a study written by the Criminal Justice Task Force of the Evangelical Lutheran Church in America (ELCA) and published by the ELCA. It is an invitation to join this church's moral deliberation on a major social issue that not only affects millions of our neighbors whom we are called by God to love and serve, but also many in our congregations. Your participation is crucial.

The ELCA does not have a comprehensive teaching and social policy document on criminal justice. *The Death Penalty* (1991) social statement deals with only one important area of the system. The social message *Community Violence* (1994) adds further, but still limited, reflection on the system as a whole. Neither of these two documents provides a framework for approaching the wide-ranging and complex issues associated with criminal justice. In response to concerns raised by numerous synods, the 2007 Churchwide Assembly authorized development of a comprehensive social statement on criminal justice for consideration at the 2013 Churchwide Assembly.

Those who urged the development of this statement observed that Jesus tells his disciples that ministry to individuals in prison is ministry to him (Matthew 25:40). They also noted that

this church's interest in criminal justice is based on its long-held concern for:

- the dignity of all;
- just and fair laws;
- the common good;
- the protection of the innocent;
- justice in matters of crime and punishment;
- the support of those who live their callings in assuring justice;
- the care of those who suffer the effects of crime; and
- the restoration of those who commit crimes.

This study engages these issues as it seeks to assist the church in thinking about both criminal justice in our society and the church's ministry with victims, the accused, offenders, families and communities, and those who work in the criminal justice system. Your use and response

to this study will aid the task force as it begins to write a draft social statement for members of the ELCA to consider in the near future. The deadline for response is October 15, 2011.

THE ELCA AS A COMMUNITY OF MORAL DELIBERATION

ELCA congregations are called to be communities of moral deliberation. “Such a community can be defined as a context for and contributor to both personal and public morality. It stresses the responsibility of members of this church to engage together in thoughtful, well-informed deliberation about questions and problems that are theological and moral in nature.”¹ This study is designed to put into practice this understanding of what it means to be a community of moral deliberation with respect to issues of criminal justice.

We acknowledge the fact that Christians of good will can and do disagree about moral questions, even though they share many basic values and convictions. Deliberation is difficult sometimes because social concerns like criminal justice are complex and have institutional and structural implications as well as a personal dimension. In the process of moral deliberation, conflicting ideas should be freely offered. In listening to others and allowing our ideas to be tested in discussion, the Spirit of Christ guides our discernment and deepens our insights

But a caution is necessary. Members of the ELCA are committed to address social ills through the use of human reason and in conversation with all the faithful. This commitment, however, should not be used as an excuse for postponing corporate action until consensus is achieved. This is especially true when the inaction legitimated by the supposed need for “more

study” has the effect of insulating the *status quo* from change. This church needs to reclaim its Reformation heritage of doing and talking at the same time, of simultaneously nailing provocative ideas to the door and thinking about how these ideas might be publically defended.

READ, REFLECT, DISCUSS AND RESPOND

When people think of crime, they tend to think of the kinds of violent offenses they hear about in the news; and most people believe that crime in the United States is increasing. In fact, most crime is not violent and crime rates have been declining in the United States since the early 1990s.² Surveys also show that many people believe that courts treat offenders too leniently, but in fact, the United States has the highest incarceration rate in the world. Misconceptions about crime and the criminal justice system sometimes derive from news sources and popular crime dramas that leave viewers with the impression, for example, that most offenders are apprehended by police, when in fact the majority of offenses do not result in arrest. Another common misconception is that most cases involve jury trials, when only a small percentage does.

The purpose of this study is to inform, challenge and guide the church in action. The study addresses the needs and concerns of victims, the accused, offenders, their families and communities, and those who work in the criminal justice system. It considers the human impact of crime (chapter 1); the three areas of the criminal justice system: law enforcement (chapter 2), the judicial system (chapter 3), corrections (chapter 4); and life after crime for all stakeholders (chapter 5). The five chapters are framed by prayer and Scripture, and include stories, faith reflections, and discussion questions.

If you would like to sing hymns, consider the following suggestions:

CHAPTER 1

Listen, God Is Calling—#130 *This Far by Faith (TFBF)*

If You But Trust in God to Guide You— #453 *Lutheran Book of Worship (LBW)*

Listen, God Is Calling—#513 *Evangelical Lutheran Worship (ELW)*

CHAPTER 2

There Is a Balm in Gilead—#185 *TFBF*; #614 *ELW*

O Christ, the Healer, We Have Come—#360 *LBW*

CHAPTER 3

In Christ There Is No East or West—#214 *TFBF*; #650 *ELW*; #359 *LBW*

CHAPTER 4

Jesu, Jesu, Fill Us with Your Love—#83 *TFBF*; #708 *ELW*

Blest Be the Tie That Binds—#370 *LBW*

CHAPTER 5

Savior, Like a Shepherd Lead Us—#254 *TFBF*; #789 *ELW*; #481 *LBW*

The study concludes with the story of one Lutheran family's experience of the work of the church in the aftermath of crime and provides suggestions for congregations wanting to get further involved.

LEADER'S GUIDE TO THE STUDY

Hearing the Cries: Faith and Criminal Justice is meant for group discussion as well as for individual study. You are encouraged to use it as a resource to talk about criminal justice in your setting. You are also encouraged to study it with the intention of contributing to the churchwide discussion on criminal justice as part of the process of preparing a social statement on the topic. The task force is eager

to receive your responses to this study. Please record key insights and views as you participate in the study sessions or have someone do this informally for the group. A response form is provided at the end of the study for you to complete and submit. You may also fill out and submit your response online at: www.elca.org/criminaljustice.

This study provides a variety of options for group use and individual reflection. It provides for selection according to the interests, time constraints and situation of an individual or particular group and setting. This point bears repeating: use as much or as little as makes sense given your particular circumstances.

PREPARING TO LEAD A STUDY GROUP

IF YOU HAVE BEEN ASKED TO LEAD A STUDY GROUP, you will find below the answers to commonly asked questions that you might want to consider as you plan for the study and prepare to lead the sessions:

1. Who can lead this?

Anyone can. A leader does not need to be a pastor or an expert! Discussion leaders from within the congregation can be recruited and prepared. The leader or leaders should have a thorough knowledge of the study. They should read through each chapter and consider the questions at the end of each chapter before each session. Leaders will need to take the time to plan carefully in order to be able to facilitate discussion.

2. Who should participate?

Invite people of all ages—from youth to older adults—to participate. Though the study is not specifically geared to youth, high school students may well have experiences that will add to the discussions, and they will certainly benefit from exposure to these pressing issues.

3. How should the study be done?

The ideal is for all participants to have their own copy of the study, read the designated material before the session, and use the session time to review the reading and discuss the issues raised. If participants do not read the material before the session, then the leader should summarize the reading for that day and select portions of it for reading and discussion within the group. In setting expectations, be realistic but challenging. To discuss the five chapters of the study, a group will normally need to meet at least five times. When this is not possible, a group should feel free to select certain parts or topics of special interest to the group for discussion.

4. What are the ground rules and timeframe?

People may have strong views on some issues in this study. Create an open and respectful environment so that passionate, fair and constructive dialogue can occur. Stress the importance of listening to different views and of making one's own remarks brief. Ensure that people who have studied the topic before and those who are doing so for the first time are welcome and encouraged to talk. Chapters can be adapted for use in a variety of timeframes, but it is probably best to plan for 60- to 90-minute sessions on each chapter.

5. Are the stories and anecdotes real?

No. They are fictionalized accounts based on true stories reported by the task force. We are grateful to the task force for sharing these stories. One exception: Jack and Fran Munday, members of an ELCA congregation, have graciously shared their personal stories with the task force. See especially the conclusion to this study. Thank you, Jack and Fran, for your faith, courage, love and hope.

6. Do we have to discuss all the questions?

No. The point has been to provide a variety of questions that can foster group discussion or individual reflection. It is best when the questions following each chapter work as a springboard to your own questions, so feel free to ask and discuss questions that arise during group discussion. Feel free as well to use just one question or to have break-out groups discuss different questions and report responses to the larger group.

7. How do I or my congregation take the next step?

Resources for action and further study can be found at www.elca.org/criminaljustice. We encourage group leaders to take a look at these additional resources as they prepare for each session.

CHAPTER I

Many Voices Crying Out

PRAYER

Gracious and merciful God, give us ears to hear and hearts to respond to the suffering of your beloved people. In our sinful and broken world, we pray for justice, mercy and peace. We ask this in the name of your Son, Jesus Christ. Amen.

SCRIPTURE

PSALM 102:1-2

Hear my prayer, O Lord; let my cry come to you. Do not hide your face from me in the day of my distress. Incline your ear to me; answer me speedily in the day when I call.



INTRODUCTION

IN THIS CHAPTER, we will take a broad look at the impact of crime and its consequences on a variety of people. Although we normally focus first on victims and criminals when considering the impact of crime, we need to remember that there is a larger network of people who also bear that impact and need our attention. In this chapter, we will listen to the cries of all involved: the victims, the wrongly accused, offenders, families, communities and people who work in the criminal justice system. As people of faith, we bring our faith commitments to the table when considering complex social issues such as criminal justice. In this chapter we will reflect on how our belief that humans have been created in God's image and are loved by God informs our approach to issues of criminal justice.

STORIES

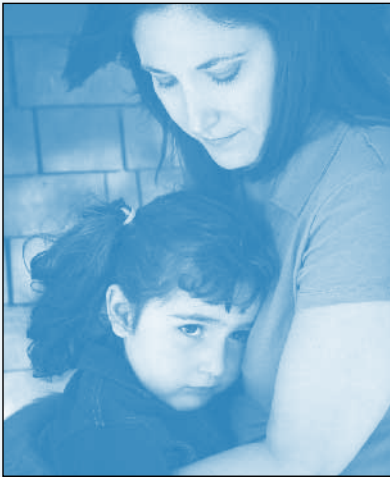
Story 1: Beth, a Victim of a Nonviolent Crime

In my 53 years on this earth, I've never been so afraid for so long. I can't even sleep in my own bed alone now. I sleep on the couch until my husband gets home. He works late. I double check, triple check every door and window every night and still really worry that they're not locked.

You might say that it really wasn't a big deal. It was just three older boys, who said they were bored, breaking into neighborhood houses. What if I had been home? What would I have done by myself? I'll never forget coming home, thinking that my husband left the door wide open. Walking in and seeing drawers thrown on the ground and stuff all over the floor. Seeing the TV smashed and suddenly realizing that someone has broken into our house. Quickly running back outside, afraid that they might still be there to attack me.

Story 2: Maggie, a Family Member of an Incarcerated Individual

We aren't a bad family, and I'm not a bad mother. I know it looks that way. I've got problems, but so does everybody else. When my husband Don left for prison, our son Tim tried to help me keep the younger kids under control. But then he started getting into trouble. After a few months, he was caught selling drugs and put in a juvenile facility. I wish I could talk to Don about what's going on. I was told we could talk once a week, but the calls never seem to happen and no one gives me an explanation. I need to see Don. But I don't have a car, and the prison is too far away. A neighbor took us to visit one Sunday afternoon but it was awful. The guards stayed with us and the kids were scared to be there and see their dad that way.



Tim is in a juvenile facility two hours away in the other direction. The only time I get to see him is in family therapy sessions at the facility. But that has only happened twice, because I can't get rides there either. The sessions are always in the middle of the week. Everyone who has a car has a job, so nobody can take me then. Maybe if the sessions were on a weekend...

CONTEXT: MANY VOICES CRYING OUT

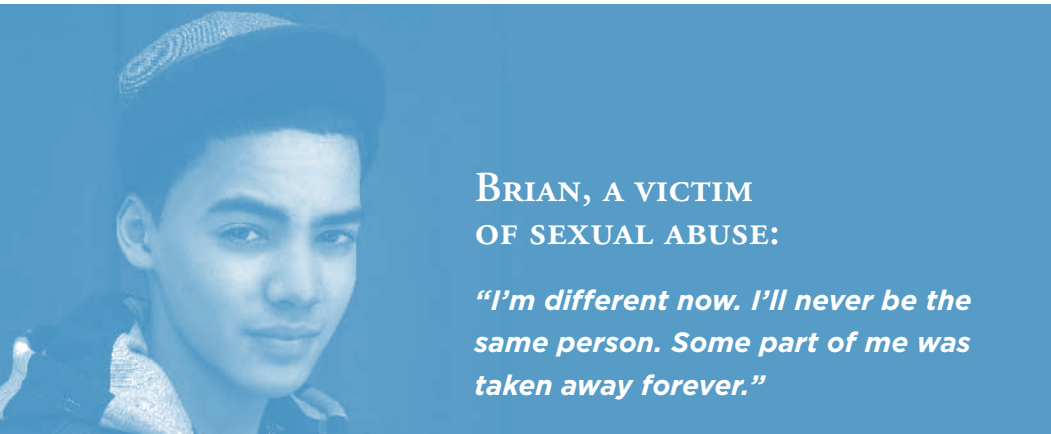
Crime touches many lives in many ways, and different people have different understandings of what happened. Holding more than one perspective in our awareness at once can create tensions. We naturally want to simplify complex issues by establishing one perspective as more valid than another. In this study, however, we listen to many voices, allowing each one to teach us something about the human being behind the voice and helping us to respond to what we hear.

The Voices of Those Victimized by Crime

All crime—violent or nonviolent—does harm. Some harm is immediate. Some is delayed. Some harm can be long-term or even lifelong. People victimized by crime can suffer financial losses from legal fees, medical or psychological care costs, or the inability to work, as well as from the loss of property. Those suffering harm can become paralyzed with fear and unable to leave their homes. Some become wracked with

emotional pain; others feel emotionally numb. Some cannot get relief from the constant mental reliving of the crime.

Some people harmed by crime suffer again at the hands of the criminal justice system, feeling invisible or insignificant, like their voices do not matter. Some suffer at the hands of their own faith communities. They may feel angry with God, misunderstood by fellow members, or lose faith altogether. Some feel blamed for what happened to them or pressured by family, friends or other members to forgive when they are either not ready or the idea of forgiveness is just too at odds with their experience.



BRIAN, A VICTIM OF SEXUAL ABUSE:

“I’m different now. I’ll never be the same person. Some part of me was taken away forever.”

MARIA, A VICTIM OF FINANCIAL FRAUD:

“You’re lucky if you ever get a penny back. I was told that nothing could be done. It felt like I was the one being punished.”

STACY, A VICTIM OF KIDNAPPING AND RAPE AS AN ADOLESCENT:

“I was shaking. I could barely speak. I was so scared. But telling the judge what happened relieved the pressure inside. I couldn’t keep living if I didn’t get that out of me.”

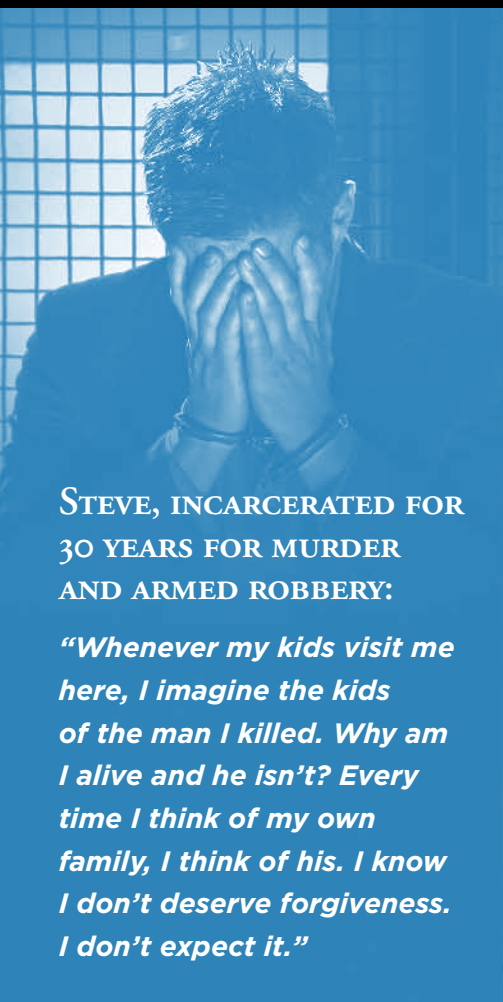
The Voices of Those Accused, Convicted and Imprisoned

The question of how to relate to people who commit crimes divides us. It is easy to agree that people should be held responsible for their actions. But while many people feel we should be as tough as possible, hoping that punishment or the threat of punishment will reduce crime in the future, others feel we should try harder to help offenders turn away from crime.

It is easy to forget that those who harm others are still human beings. Some have caused irreparable harm and will never change. Still, they have families and children. Many are people of faith. Many have been victims of crime

themselves. Many regret their crimes and yearn to make amends.

Society needs protection from those who are dangerous, have harmed others, do not take responsibility and lack regret. Yet incarceration, deserved or not, brings its own form of suffering. Life in prison can be brutal, dominated by isolation and fear. Sexual assault is not uncommon. Gang violence, with inmates competing for power over one another, can be just as real inside prisons as it is outside. Moreover, some people are wrongly convicted of crimes, spending decades in prison before new evidence proves them innocent. Release is welcome, but does not erase the harm already done—not just to the individuals, but also to



JOHN, A 16-YEAR-OLD AFRICAN AMERICAN YOUTH, INCARCERATED AT ONE OF OUR COUNTRY'S MANY JUVENILE CORRECTIONAL FACILITIES:

"This is my third time in. The first two times it was for skipping school a lot. This time I stole 20 bucks. White kids who skip school or shoplift get sent to cushy schools. Me and my friends come here. I don't trust nobody. I'm keepin' my mouth shut till I get out."

HARRY, IN JAIL AFTER BEING ARRESTED FOR SOLICITING SEX WITH A MINOR ON THE INTERNET:

"I was at the grocery store when the police came to the house. My wife answered the door and the cops showed her the warrant to search the house. Then they pushed her aside. When I got home, my wife was sitting on the couch crying and shaking while the cops tore the house apart looking for my laptop. She wouldn't look at me or speak. They pushed me against the wall, cuffed me, and dragged me out to the police car. That's the last time I saw or talked to my wife."

STEVE, INCARCERATED FOR 30 YEARS FOR MURDER AND ARMED ROBBERY:

"Whenever my kids visit me here, I imagine the kids of the man I killed. Why am I alive and he isn't? Every time I think of my own family, I think of his. I know I don't deserve forgiveness. I don't expect it."

their families and communities. Others wrongly convicted who are not proven innocent and released suffer injustice indefinitely.

While most incarcerated people eventually return to their communities, the longer they are incarcerated the more ties to the community

CHARLES, EXONERATED AFTER SERVING 14 YEARS IN PRISON:

“Wrong place, wrong time. That was a long time ago. Now, everything’s been destroyed: my reputation, my relationships and my future. New evidence proved what I was saying all along. Nothing can make up for what happened to me.”

have been lost and the more difficult it is to return. Many return to their communities without any education, job training, or other preparation, and so have little chance of success after release. Many end up back in prison, some because they repeat a serious offense, others because of a minor parole violation. Some give up, accepting life in prison, despite its difficulties.

The Voices of Families and Communities Harmed by Crime

The families of crime victims also have stories of suffering. Some parents who have lost a child to crime feel that they must bury their grief to care for their other children and continue working. They describe going through the motions of life while feeling numb. They feel isolated from friends and family who feel awkward around them. Different ways of grieving can bring great stress into the marriage relationship. Like victims, some families of victims feel pressured

by others to let go, move on, or forgive, leading to an even deeper sense of isolation. There are families that feel the need to talk about the crime, while well-meaning friends may avoid talking about it, not wanting to cause pain.

The impact of crime on communities is also profound. A single violent crime can leave members of a community feeling unsafe, and the sense of shattered safety can endure for years. People may consider moving away to feel safe again. Their day-to-day behavior may be entirely reshaped by fear and distrust following a crime. In some communities traumatized by crime, people stop trusting that the police will do their jobs. They start taking the law into their own hands, dispensing “instant justice” that results in riots and chaos that leave the community even more traumatized.

Crime and its impact are not spread evenly across our country. Some communities, such as disadvantaged, urban African American communities, have more than their share of crime and incarceration, leaving the communities even less viable economically and leaving social networks all the more fragile. Family structures already weakened by high rates of joblessness and other social problems are further devastated. In such communities:

- disproportionate numbers of men—fathers, grandfathers, brothers, uncles—are incarcerated, leaving disproportionate numbers of women raising children alone and causing young boys to grow up expecting jail or prison to be part of their own futures, as if incarceration were a normal life stage;
- the quality of public education suffers, with good teachers reluctant to seek jobs in these communities;
- teens suffer higher rates of teen pregnancies and births;

- youth suffer high rates of delinquency; and
- gangs have a greater hold on these communities and tragedies like innocent children getting killed or injured in the crossfire of gang violence are more common.

Life can also be a struggle for families of those in prison. Family connections become frayed. Children lose a parent’s daily participation in their lives. Parent-child visits, when they happen, are logistically challenging and awkward, and

children worry that a parent’s incarceration is their fault. Parents may try to protect children by lying to them about where the absent parent is. Families may lose their primary source of income. If a single parent is incarcerated, children are uprooted to live with a relative or forced into foster care. Although the system does not willfully harm family members of offenders, many describe feeling treated like outcasts or criminals themselves.

FRAN, WHOSE DAUGHTER MARYLS WAS MURDERED:

“Hell... that was my experience. I found my daughter on the floor of our home dying. That scene was in my mind every time I closed my eyes—for years.”

JACK, FRAN’S HUSBAND: *“It was a nightmare. I didn’t know what to do. I buried my own feelings trying to make sure Fran had what she needed. I would ask her, ‘What’s wrong?’ and she would say, ‘My daughter’s dead.’ In time, fortunately, I realized that I would have to take on her pain, become bereaved, or we would have become estranged. We both mourn Marlys and we both worked for justice.”*

JULIE, A FRIEND OF PARENTS WHOSE CHILD WAS MURDERED:

“I later learned that my friend really needed me, but at the time, all I could think about was getting away, taking my kids and leaving for awhile. Our community had always been a safe place. We never locked our doors. Now it feels like a war zone. How long will this fear and distrust last? How long will it be before I can once again let my kids out of my sight?”

CARSON, WHOSE SON DIED IN SOLITARY CONFINEMENT IN A PRISON:

“John was 19 when he was arrested for shoplifting. He had schizophrenia. Once he disappeared into prison, I was helpless to help him. It was like talking into a black hole. I don’t think he ever got back on the right medication. The more irrational he became, the tougher they got with him, like he was a problem inmate, not a person who was sick and needed help. One day he made a weapon from a bed spring and stabbed someone. They put him in solitary confinement. It was just supposed to be for a short time, but he never got out. We’ve never been told exactly how he died. He was there 24/7 for 10 years. I’ll live with my own mental picture of that for the rest of my life.”

The Voices of Those Who Work in the Criminal Justice System

Millions of people work in the criminal justice system. Many work in challenging circumstances, like prisons where violent offenders are locked up and inmates are on edge. Staff turnover in prisons is often high because of stress and low pay, and staff shortages are commonplace. In the most hostile prison environments, staff not only feel unsafe and anxious, but also are expected to respond to threats and abuse from inmates with calm professionalism. When they leave work, they may find that the challenges they face in their profession are neither recognized nor respected.

Those who work in victim services programs listen every day to painful stories, some unimaginable. On any given day, police must manage the stress of everything from extremely dangerous situations to minor violations involving unpredictable encounters. They are expected to intervene rationally, remain level-headed in highly charged situations, and to maintain a professional attitude in trying situations such as arresting a re-offender for the fifteenth time.

Those who work in the courts—judges, prosecutors, defense attorneys, jurors, and others—describe a heavy weight on their

shoulders. They want to earn public trust and they feel responsible to many, including victims and offenders, families and communities. Large caseloads compound the burden, making it difficult to treat people like individuals. Judgments and sentencing can have profound consequences not just for victims and offenders, but for the lives of children and families. Knowing the potential consequences, those making such decisions often cannot walk away unaffected.



SANDRA, A POLICE OFFICER: ***“When it comes to cops, there are a lot of bad feelings out there. I try to communicate to people that we’re here for their safety, to get them to understand we’re just trying to be helpful.”***

JAKE, A RETIRED PRISON WARDEN:

“In social situations where I meet new people, I’m reluctant to say what I did for a living. With so much negativity in the news about prisons, I feel ashamed. A lot of people assume that every prison is a rotten place and that everyone who works in a prison is an abusive person. There are problems, but that’s not the whole story.”

ELLEN, A JUDGE:

“I may think I already know how a case will go down, that I don’t need to hear from the victim. But that is always a fatal error that conveys: ‘The impact this had on you isn’t important,’ or ‘I don’t have time for you.’”

PETE, A PRISON MENTAL HEALTH COUNSELOR:

“Most of the men who come here have been so

underserved for so long. They expect us to not care. The first thing I say to a new inmate, no matter what he has done to get here, is ‘welcome.’ Working with these men is very satisfying. They come in with so little experience in healthy relationships. That means there is almost always a lot to work with.”

FAITH REFLECTION

Listening to these voices, the church gains a sense of the struggles and isolation of victims, the accused, offenders, families, communities and people working in the criminal justice system. Victims and the accused cry out for support, truth, justice, healing and protection. Offenders cry out for fairness, mercy, forgiveness, trust and freedom. Families and communities cry out for safety, understanding and reconciliation. And those who work in the criminal justice system cry out for hope, respect, security and wisdom. Together these voices echo voices throughout Scripture crying out for vindication, deliverance and peace.

All Are Created and Loved by God

The church learns in Scripture that all who cry out in suffering are created in the image of God and loved by God (Genesis 1:27; Psalm 8; John 3:16, Colossians 1:15-16). As such, every person

touched by crime, however broken, hardened, or despondent, is considered worthy and precious to God. The proper deference to and expression of such worth is a matter of justice. With regard to crime, justly respecting and honoring people bearing God’s image and loved by God consists of:

- *listening* to the particular cries of victims, the accused, offenders, families, communities and people working in the criminal justice system;
- *bearing* together the burdens associated with harm; and
- *advocating* for justice for all.

In other words, the image of God in others makes a claim on us—to serve and protect the other—and we have a responsibility to honor this claim. The dignity and worth of others “in God’s eyes,” including violent offenders who express no regret or remorse, compels us to respond with justice and with support, treating people equally, personally, accountably and humanely. Moreover, as people of faith, we are set free from anxious self-concern by God’s love, grace and power to care for our neighbors. Jesus makes clear in the story of the “Good Samaritan” that such care involves personal investment (Luke 10:25–37). Scripture further testifies that God is present in our neighbors, especially those in desperate need, such as those who have suffered or done harm (Matthew 25:31–46). This also compels us to respond.

Made to Live in Community

We believe there is one God as three persons living in community: Father, Son, and Spirit. Being made in God’s image thus means that we are created to live in community with God and others (Genesis 1:26). The church is truly the church when it lives in such community. Jesus of Nazareth embodied God’s image in his relationships with the Father in the Spirit, with his disciples, with his family and friends, and with others he encountered along the way, including the criminal crucified next to him (Luke 23:43; 2 Corinthians 4:4). It is thus not good for us to be without community, to live in isolation (Genesis 2:18). Extended periods of

separation from companionship dehumanizes us. Jesus’ solidarity with the vulnerable, especially those lacking such companionship, expresses what it means to be made in the likeness of God (Matthew 25:31–46).

As people bearing God’s image, we are connected to others and the world around us. We are connected to victims of crime, even when their pain frightens us. We are connected to offenders, whose lawlessness and violence we condemn and whose change we seek, even when we find it difficult to fight feelings of revenge, of wanting harm to come to them. We are also connected to the families and communities affected by crime in their fear, anger, suffering and hope. And we are connected to those whose vocations address crime and its aftermath in the often daunting challenges they face. We reach out from our isolation or enter into the isolation of others because it is not good to be alone. We affirm the importance of chaplaincies, congregations and faith-based social service agencies—who often work in partnership with one another—that provide pastoral care to any and all who are affected by crime.

While bearing together the burdens associated with harm can be comforting, those who have been harmed also desire healing. When we are harmed, we often reach out to the God who heals. Many people in prison have come to faith in Christ through their belief that he has taken away their addictions and forgiven their sins. Families and communities also seek healing after crime disrupts relationships. And people who work in the criminal justice system, well acquainted with the aftermath of crime, also cry out to the God who heals.

DISCUSSION QUESTIONS

- How do the context and faith reflection sections help you further understand the stories at the beginning of the chapter? What kind of support does Beth need? What kind of support does Maggie need?
- How do the voices you hear in this chapter connect with your own experience? If your life has been impacted in any way by crime, what kind of support have you needed from your faith community? What have you needed from God?
- What are some of the challenges of walking with (as an individual and as a congregation) victims, the accused, offenders, their families and communities, and those who work in the criminal justice system?
- What does being created in God's image mean to you? How does this concept affect your thinking about the criminal justice system?
- How have you experienced God's accompaniment in suffering?
- How do listening, empathy, shared suffering, bearing one another's burdens, and advocacy relate to the healing needed by those impacted by crime? Can we experience the church's abiding care itself as a form of healing?

CHAPTER 2

Law Enforcement



PRAYER

Merciful Creator, we live in a world in which crime prospers and violence abounds. Preserve and protect us from our own sin and the sins of others. Help us to care for and protect one another without falling into violence ourselves. Make us mindful of your will for the creation you love. Bless, guide and protect those whom you have called to protect us. We ask this through your Son, Jesus Christ. Amen.

SCRIPTURE

PSALM 59:1–2

*Deliver me from my enemies,
O my God; protect me from
those who rise up against me.*

*Deliver me from those
who work evil; from the
bloodthirsty save me.*



INTRODUCTION

IN THIS CHAPTER we will take a look at the challenges, trends and practices of law enforcement at the national, state and local level. We will look at the different functions of law enforcement and we will ask difficult questions, such as how does law enforcement at any level gain and maintain the trust and respect of the public; how do issues of race, ethnicity, gender and religious appearance impact law enforcement policy and practices; and how do we distinguish between the appropriate use of force and excessive use of force. As we continue to reflect on how our faith commitments inform our discussion of criminal justice, we will explore God's two distinct ways of governing the world, the purpose of civil government and law, and the vocation of law enforcement.

STORIES

Story 1: Tim, a Police Officer Making a Decision

The speed limit was 55, and he was going 73. Refusing to pull over, now he's doing 90 down two-lane roads, running red lights, and weaving in and out of traffic. I had a choice: I could chase this guy who was already driving recklessly, hoping I could catch him and stop him from killing someone, or I could let the guy go and hope and pray he didn't hit anybody. Either way, people can get hurt. It's a lose-lose situation.

I rammed the car, it rolled down an embankment, and the driver was left paralyzed. I'm still haunted by this. I have to live with what happened to the driver. And if I hadn't stopped him, I'd also have to live with those consequences. Like they say, hindsight is 20/20, especially when you're sitting in a courtroom and not out there trying to figure out what to do in a matter of seconds when a guy flies past you doing 90 through traffic.

Since then, my department reviewed the statistics, added some training in pursuit driving (there was almost none before), and changed our policies. We know more about suspect behavior and how to handle a chase. When we chase, which is less often, we're supposed to follow further behind. For the most part, suspects don't care about the safety of others, but we do. It's tough out there, making split-second decisions in life-or-death situations. Blaming the officer for making decisions that don't violate department policies is really unjust, and it harms us as officers.

Story 2: Edwin, a Man Convicted of Murdering a Police Officer

I'm a meth user. Not a dealer, not a gangbanger. Just a user. After searching my entire trailer, they found less than an ounce of meth and less than an ounce of marijuana. For this, a deputy died and I got life in prison.

They said they were the police, but I couldn't see anything, and they were breaking down my door. I had no criminal record—it's not like I was expecting a commando raid for smokin' weed. My wife called 911 and I fired a shot out the window to warn them I had a gun. I killed a deputy. For what? Because I had less than two ounces of drugs on my property? Thanks to an anonymous informant (who, it turns out, had two brothers who were sheriffs' deputies) two people lost their lives—the deputy and me.

Do they really need to send a SWAT team to arrest people like me who have never been in trouble? Based on one anonymous tip? So I was high. They come in like this and something bad is going to happen. I'm really lucky the police held their fire and didn't hit me or my family. I'm just trying to live and work and protect my family. Don't send the police to my house in the middle of the night with army surplus guns to break in. It's not worth it, just to arrest me.

CONTEXT: LAW ENFORCEMENT

Criminal justice systems include three types of agencies, law enforcement, the judicial system and corrections, which operate at national, state and local levels. Most criminal laws are enforced by local and state law enforcement agencies. Offenders who face charges typically do so in state courts where those who are convicted are sentenced to corrections at the state or county level, e.g., state prisons, county jails or probation. More than ten times as many offenders are sentenced to incarceration by state courts than by federal courts.³ At the national level, law enforcement is carried out by agencies such as the Federal Bureau of Investigation. Defendants face charges in federal courts, and convicted offenders are sentenced to federal prisons or probation.

Law Enforcement Is More than Catching Criminals

The primary functions of law enforcement agencies include:

- increasing public safety;
- enforcing laws;
- maintaining order; and
- providing services.

Today, police work is often guided by the philosophy of community-oriented policing, which involves cooperative efforts with residents and others, such as business owners and faith communities, to develop strategies to address public safety. Although people tend to think of the crime-fighting role of police, a great deal of police time at local levels is spent maintaining order, for example, responding to reports of disorderly conduct and providing services to the community. A recent survey shows that, in 2005, almost 44 million people age 16 or older in the United States (or 19 percent of the population age 16 or older) had face-to-face contact with a police officer; traffic stops were the most common reason for such contact.⁴

Law Enforcement Statistics Worth Thinking About

There are currently almost 900,000 full-time sworn officers in law enforcement agencies in

the United States. About 80 percent of these officers work at the local level (mostly in local police and county sheriffs' departments), 7 percent work in state agencies, and 13 percent work in federal law enforcement agencies such as the United States marshals.⁵ Nationwide, 88 percent of full-time sworn officers are male.⁶ In 2003 (the most recent data available), 76 percent of full-time sworn officers in local police departments were Caucasian, while 24 percent were racial or ethnic minorities. In the nation's largest cities, the proportion of racial and ethnic minority officers is higher; in 2003, in cities with populations of one million or more people, 39 percent of sworn officers were racial or ethnic minorities.⁷

The Challenges Facing Law Enforcement

Law enforcement personnel face several challenges, most notably, gaining and preserving the trust and respect of the public and maintaining appropriate attitudes toward victims, the accused, and offenders. Boundaries created by race, ethnicity, and social class often lead to negative attitudes toward police and sometimes contribute to inappropriate treatment and abuse of citizens by police. Research shows that African American and Hispanic people have more negative views of police than Caucasian people, and that these attitudes are based on individuals' own negative

experiences of policing (e.g., police disrespect in interactions, perceived illegitimacy of traffic stops, and perceived excessive use of force) and the experiences of others (family and friends).⁸ A recent survey shows that African American people are less likely than Caucasian people to report that police acted properly during traffic stops or when investigating a crime or a person suspected of wrong-doing. This same survey shows that, in 2005, the percentage of contacts with police in which force was used was almost four times higher for African Americans than for Caucasians, and was twice as high for Hispanics as for Caucasians.⁹

In recent years, significant controversy has surrounded law enforcement practices that are believed to target individuals based on race, ethnicity or religious appearance. The experience of “driving while black,” that is, being stopped by police only because of the color of one’s skin, has long been a grievance of African American people. In the decade since 9/11, people of Arab or South Asian descent and those who wear Muslim or Sikh apparel have raised similar concerns. A traffic stop or search may not involve physical injury, but it does cause harm, including stigma, embarrassment and antagonistic relationships with the criminal justice system, to a large number of people who are innocent of any offense.

Moreover, practices that target by race may well violate civil rights laws and they create significant opportunity for police decisions based on religious, ethnic and racial bias rather than objective signs of risk. A recent study showed that, among those stopped by police, African American drivers were less likely than Caucasian or Hispanic drivers to believe that police stopped them for a legitimate reason. This study also showed that stopped African American and Hispanic drivers were more than twice as likely as Caucasian drivers to be

searched and, compared to Caucasian drivers, African American drivers were twice as likely to be arrested.¹⁰ These disparities do not constitute proof of discriminatory treatment, but they provide cause for concern and they erode the mutual trust communities and law enforcement need to have.

Gender is also linked to law enforcement in complex ways. Consider, for example, the fact that arrests of female juveniles for violent crimes have increased in recent years. A recent study suggests that this increase is due more to changes in police responses to females’ actions (that is, officers are now more likely to arrest females than they were previously) than to actual changes in females’ behaviors.¹¹ For their part, police officers sometimes think that the public is hostile to their efforts, which can strengthen the bonds among officers, but can also lead to abuses of power. Officers may also be frustrated by dealing again and again with the same repeat offenders in a system that appears ineffective in holding individuals accountable and deterring them from re-offending. Police officers’ actions, such as the use of force, are also influenced by departmental policies that determine, for example, the nature and level of response to inappropriate police actions. Departmental policies also affect factors such as the selection of neighborhoods where resources are focused and the types of crimes that receive greatest police attention.¹²

Community-oriented Policing

Since the 1970s, local law enforcement efforts have focused heavily on community-oriented policing strategies (though priorities have shifted somewhat in the past decade to fighting terrorism). Community-oriented policing encourages greater interaction and cooperation between police and citizens as

they work together to identify and address community problems that contribute to crime. Examples include increased foot and bike patrols, increased use of school resource officers, and “neighborhood watch” meetings where police and neighborhood residents discuss issues of concern to the community. Greater police presence in the community and increased cooperation with residents is also said to increase the ability of police to detect and deter crime. Advocates of community-oriented policing believe it contributes to more positive citizens’ attitudes toward police. Unfortunately, it is in neighborhoods where residents are most alienated from police, such as areas of concentrated poverty with high proportions of racial and ethnic minorities, that it is also most difficult to develop effective community-oriented policing approaches.

Local law enforcement has also focused heavily in recent decades on maintaining order, that is, on preventing or responding to behavior that disturbs the public peace, for example, responding to noise complaints or public disputes. Some criminologists have argued that police should focus on maintaining order as a means of reducing more serious forms of crime. They reason that social and physical disorder, such as public intoxication, homeless people in public spaces, and abandoned buildings, signal that residents do not care about the community and thus make the neighborhood vulnerable to serious crime. The solution, they suggest, is to respond vigorously to signs of disorder with policing strategies such as increased arrests for offenses like disorderly conduct or loitering. This approach is controversial and it is unclear how effective it is.

On one hand, such policing strategies are sometimes part of community-oriented policing efforts that identify and respond to

community problems, often through the use of code enforcement. On the other hand, these strategies sometimes contribute to strained police-citizen relationships and alienate citizens who view such tactics as an oppressive means of targeting vulnerable groups such as the homeless and racial and ethnic minorities. The way in which such strategies are perceived likely depends heavily on the context in which they are used—poor urban neighborhoods vs. middle-class suburbs. Many police departments, including the New York City Police Department, have employed “quality of life” policing strategies such as strict enforcement of “public nuisance laws.”

Federal Law Enforcement

The role of the federal government in dealing with crime has expanded with the growth of federal law enforcement, the increased scope of federal courts, and the construction of more federal prisons, especially since September 11, 2001. Federal law enforcement efforts now focus more on terrorist threats and less on white-collar crimes than they did previously. The creation of the Department of Homeland Security, which integrates the terrorism prevention and investigation functions of other federal law enforcement agencies, epitomizes this shift in priorities. Nonetheless, the federal “war on drugs” continues, with significant law enforcement resources devoted to responding to drug-related crimes, including drug manufacture, distribution and use. In enforcing drug laws, law enforcement officials sometimes target racial and ethnic minority groups through, for example, heavier police presence in particular neighborhoods and searches during traffic stops. Greater federal resources have also been devoted in recent years to enforcing immigration law and to border patrol.

FAITH REFLECTION

Christians in the Lutheran tradition understand the work of law enforcement in light of God's two distinct ways of governing the world.¹³ For our spiritual well-being, God governs through the gospel's forgiveness of sins and promise of new and eternal life. For our many other needs, God governs through a wide variety of institutions, including civil authorities, families, schools, and even business corporations. God uses these institutions to give structure to human life and, within that structure, to provide food, shelter, nurture, education and many other material things that we enjoy. Although these institutions have a purpose very different from the gospel's, they are no less God's gifts to us. People who serve in these institutions act as God's agents, whether they recognize it or not, in distributing the institutions' benefits to all people. We see service in the institutions that support and sustain community life as callings from God, which indicate the deep significance of even the most ordinary of human tasks.

The Role and Importance of Civil Government

Like the family, civil government is an institution essential to any kind of human flourishing. Even if people were reliably unselfish and kind to one another, civil government would still be necessary to organize our common life. But we know that people are not reliably good to one another. As we look around the world, we see the harm and suffering that occur when civil government is absent, ineffective or corrupt. Disorder leaves people in fear for their persons and/or property and often without access to the most basic of human goods. Effective civil government reduces this fear by establishing a sense of security. Freed from this fear, people and communities can more easily develop and enjoy the full range of human goods, from basic

food, shelter and health care to recreation and the fine arts.

Civil government achieves these benefits chiefly through law. We recognize law, like civil authority itself, as a gift from God. A society governed by law avoids the perils of both anarchy and arbitrary rule. Through clear rules that are fairly and reliably enforced, individuals can conform their conduct to the law and trust that others—including the authorities—will do the same. Law enforcement, just procedures and impartial judges allow individuals to resolve their disputes through official and predictable channels rather than private conflict, while protecting individuals against injustice and abuse by those who have greater economic, political, social or physical power.

Law Enforcement: an Honored and Necessary Calling

The ELCA honors the vocations of those who serve in law enforcement, because their work makes it possible for us to enjoy the benefits of legal order. Laws on paper do not establish order, security or justice. These goods are achieved only through the people who implement legal authority in the community. Law enforcement officers are called to protect individuals and the community from wrongdoing by deterring those who would violate the law, responding to and diligently investigating acts of wrongdoing, and detaining suspects when sufficient grounds exist to do so. Where the peace has been broken by conflict, they are called to reduce the hostility and, if possible, help to resolve the dispute. When it is necessary to protect against harm to life, law enforcement officers have the legal authority to use appropriate force. In these and many other tasks, we recognize and give thanks for God's work through the vocation of law enforcement.

The Challenge of Racism and the Use of Force

In addition to affirming the work of law enforcement, the ELCA is called to challenge the ways society addresses crime on the basis of its commitments to justice, human rights, and the common good. This church is to morally accompany those who work in the criminal justice system by helping to discern ethical principles to guide vocations of service in that system.

Two matters should be mentioned at this point: racism and the appropriate use of force. The deep concern about racism pertains to all areas of criminal justice—law enforcement, the judicial system and corrections. Though consideration of the appropriate use of force also pertains to corrections, we will examine this issue in the context of law enforcement.

Because we believe that all people bear God's image and are loved by God, this church attends to race, ethnicity, and related issues with respect to the criminal justice system. Racist attitudes and behaviors are inconsistent with respecting people made in God's image. Racism—as “a mix of power, privilege, and prejudice”—“is sin, a violation of God's intention for humanity.”¹⁴ With regard to racial, ethnic or religious profiling, a traffic stop or search may not involve physical injury, but it does cause harm—stigma and embarrassment, at least to those who are innocent of any offense. When it is possible to identify objective signs of risk without basing one's response on racial, ethnic, religious or other sensitive attributes, law enforcement should do so.

Concerning the appropriate use of force, law enforcement officers should only use force against a suspected offender when it is necessary—that is, only in response to imminent threat by that person to the safety of civilians or law enforcement officers—and according to use-of-force continuum guidelines. Use of force against those who do not pose such a threat, including physical coercion during interrogation, always violates these guidelines, in addition to violating a person bearing God's image and loved by God.

Few things do more to undermine public confidence in law enforcement than images of suspects being beaten by officers. Though rare, such incidents of excessive force can be devastating for the victim, law enforcement departments, the officers involved and the broader public. Only consistent professional training can minimize the chance for such violations of use of force policies, and only a commitment to zero tolerance in law enforcement agencies can ensure that those who violate use of force policies are prevented from doing so again in the future.

Tensions within Lutheranism

Finally, with reference to God's two distinct ways of governing the world through the gospel and social institutions, what challenge does this teaching pose to the Christian community's understanding of criminal justice? Some think that the difficulty with the idea of God's twofold governing is that it seems to limit the gospel's relevance to one's private spiritual life. Some Christians in the Lutheran tradition argue that the tradition has often failed to apply the gospel realities of grace, forgiveness and reconciliation to criminal justice issues. Others, however,

do not think that the gospel should apply to social issues at all, but rather maintain that Christians do not bring distinct perspectives to the table concerning criminal justice. In either case, the ELCA remains called to support a compassionate, just, and wise approach to criminal justice. In doing so, it seeks common ground with other citizens of goodwill and advocates for justice in the U.S. legal system. In searching for its voice, this church expresses its hope for the world to come, when, as Martin Luther believed, God's twofold governing will have served its course and we will be left with the gospel alone.

DISCUSSION QUESTIONS

- How do the context and faith reflection sections help you further understand the stories at the beginning of the chapter? Based on these sections, how might Tim have handled the situation differently? What could have led to a different result for Edwin?
- If you have had a personal experience with law enforcement, reflect on the experience. What was positive in the experience? What was negative? Do you have a clear understanding of why law enforcement officers did what they did?
- What are the public safety concerns and challenges facing law enforcement in your community?
- How could you and your congregation support law enforcement in your area?
- How does the concept of God governing the world in two distinct ways inform your understanding of what law enforcement should look like?
- Are there police officers in your congregation? If so, how can you provide more opportunities for them to share their stories and faith challenges with the congregation? How does their experience compare to what is on television?

CHAPTER 3

The Judicial System

PRAYER

Gracious God, author of all justice, you alone are truly just and utterly merciful. Give us wisdom to know what is right, and eyes to see what is wrong in our system. Teach us what is good and just; help us give dignity to your children, made in your image. Bless those whose vocation is to administer justice. In the name of Jesus we pray. Amen.

SCRIPTURE

LEVITICUS 19:15-16B

You shall not render an unjust judgment; you shall not be partial to the poor or defer to the great: with justice you shall judge your neighbor.... I am the LORD.



INTRODUCTION

IN THIS CHAPTER we move from law enforcement to the judicial system, the world of prosecutors, defense attorneys, judges and the many others who support them in their key roles in the criminal justice system. We begin with stories of a judge and public defender, and then consider the judicial system as a whole. We will examine the difficulties of publicly funded defense attorneys, the widespread use of plea agreements, and issues of sentencing. We will also take a look at the juvenile justice system and the issue of “transferring” juveniles to adult courts. Continuing our faith reflections, we will consider how our belief that God is a God of justice impacts both our understanding of the judicial system and what is involved in treating people justly. We will explore how Christian responsibility to pursue justice is grounded in our belief that justice for all matters supremely to God.

STORIES

Story 1: Roy, a Judge Working with Young Male Defendants

When I was first assigned to criminal cases, I took a lot of care. I noticed that most of the defendants were young African American and Hispanic men. I knew the neighborhoods they were from, so I felt like I knew something about their circumstances. I began interviewing parents and guardians, and ordering more complete background checks before sentencing. How could I just impose sentences on these young people without taking the full picture into account? Especially considering where I was sending them. In my state, youth prisons have been placed under federal oversight after staff were found using excessive force in restraining youth. Anything from stealing a cookie to starting a fight meant being forced to the ground and handcuffed, resulting in concussions, broken teeth and fractures.

They're finally hiring some mental health professionals, but previously the state was overseeing the treatment of 800 young people without any full-time or permanent mental health staff. So, I developed a network of community agencies that were willing to work with the court in supervising youth in cases where I had the discretion to sentence them to probation because they were first-time offenders.

But pretty soon my supervising judge took me aside. He informed me that my job was to move cases along as quickly as possible, not to waste time trying to uncover more than what was in the court documents in front of me. I learned to move my cases along and still send a substantial number of eligible young men to community agencies to perform community service in lieu of incarceration.

I wish I could say that I broke the cycle of poverty and despair in these young men's lives, and that referring them to community agencies meant real change. Unfortunately, many of the same young men were back in the criminal justice system within a year or two. Sometimes they escaped the system, but only if they were able to escape the environment that fostered their criminal behavior in the first place. Looking back, I see how little we take account of the circumstances of a person's life, and how little we offer them in the way of services. I also see how difficult it is to make real change without addressing those circumstances.

Story 2: Anna, a Public Defender

Like most law students, I graduated in debt, to the tune of \$70,000. The practice of law has been hit hard by the recession, but I found a job in a public defender's office. It pays really poorly, but I feel like it's important work. I believe people should have good representation no matter what they are accused of.

I have two problems with my job. The first one is the overwhelming amount of work for low pay. It's simply not possible to get it all done; and the pay is so low, I can barely make my rent and I'm already working 70 hours a week. The second is



my lack of experience. If I had 20 years of experience, maybe I could get most of it done. But I have basically no experience, no support, and no training for my specific job; and everything I do takes me three times as long as it takes more experienced attorneys.

I'm about to meet with a client. I wrote my client to try to set up a meeting, but I haven't gotten a response. Now it's too late—any information I could have gathered from my client won't help. It's a

huge job to try and sift through all of my cases to see whose case should be tried and who should accept a plea agreement. In this case, given the evidence, given how much or how little time I have to give this one case among many, and the fact that my client didn't contact me, accepting the plea agreement will provide the best outcome. It will feel like I betrayed my client, who will probably believe that most cases go to trial. But given all the factors in this case, this is what I'd recommend.

CONTEXT: THE JUDICIAL SYSTEM

The judicial system is responsible for determining whether or not a person should be charged with a crime, and whether or not a defendant is guilty. The key players in the judicial system are prosecuting attorneys, who represent the government; defense attorneys, who represent those accused or convicted of crimes; and judges, who are intended to be neutral arbiters in the contest between defense and prosecution.

The Challenges and Responsibilities of Prosecutors

Prosecutors decide whether or not to pursue criminal charges, what charges to file, when to drop charges, what types of plea agreements to negotiate, what sentences to recommend to the court, and whether to seek the death penalty. In making these decisions, prosecutors exercise considerable discretion. In most states, there is no higher authority that can challenge their decisions. Prosecutors face expectations to vigorously pursue charges against offenders, but also to seek justice and not violate the rights of the accused. They are required to provide the defense with all evidence that would negate guilt or reduce punishment and to disclose all information relevant for a convicted defendant's sentencing.

Federal prosecutors are appointed by the President. At the state level, the Attorney General and county-level chief prosecutors, also called district attorneys and state's attorneys, are typically elected. As elected officials, they may be subject to political influence; and to remain in office, they must satisfy constituents who often demand "tough-on-crime" charges. Prosecutors face additional challenges, including conflicting demands of "winning" cases by achieving convictions and pursuing justice by protecting the due process rights of defendants, as mentioned above, and heavy caseloads that

prevent prosecution of all possible cases and increase demands for plea agreements, in which defendants plead guilty to reduced charges. The vast majority of cases are resolved through plea agreements.

Prosecuting attorneys often depend on the cooperation of victims, and are generally reluctant to pursue cases in which the victims are unwilling to cooperate. Yet, prosecutors may pursue cases whether or not the victim wants to press charges. Victims may feel marginalized by their lack of control over the decision to bring charges. In recent years, the victims' rights movement has demanded a greater role for victims in the criminal justice system, including the opportunity to be heard during court proceedings (e.g., to comment on plea agreements and sentences). In addition, in some areas of criminal law such as domestic violence, there have been changes in the way law enforcement personnel investigate cases and develop evidence that are intended to reduce stress on victims.



The Challenges and Responsibilities of Defense Attorneys

On the opposing side, defense attorneys represent those accused or convicted of crimes, and work to protect the due process rights of their clients. Defense counsel advocates for pre-trial release of defendants on the least restrictive terms, independently investigate the facts of each case, make legal arguments to challenge the prosecution's case, provide the accused with information to help them make decisions about plea offers or trial strategy, zealously defend at trial, and explore additional information that would aid a convicted defendant at sentencing.

Most criminal defendants are represented by publicly funded defense attorneys. Some observers are concerned about the quality of counsel from public defenders, given their enormous caseloads and limited resources.¹⁵ Some privately funded counsel may be able to provide vigorous investigation, thorough research and extensive consultation with clients. But publicly funded defense counsel often lack the time or staff to match that effort, even in serious non-capital felony cases in which clients face very long prison sentences. In addition, compared to defense attorneys, prosecutors have advantages in the assistance they receive from law enforcement agencies and crime laboratories and in their ability to influence court dockets through their offers of plea agreements. The modest salaries and fees paid to public

defenders often discourage experienced lawyers from serving in this capacity. Yet there is usually little popular support for providing greater public funding for defense counsel. With great need in many other government programs, aid for criminal defendants generates little public sympathy. Racial and ethnic minorities, who are disproportionately likely to live in poverty, are more likely than Caucasians to rely on publicly funded defense attorneys.

The Upsides and Downsides of Plea Agreements

Heavy caseloads and limited resources intensify pressures on attorneys (both defense attorneys and prosecutors) to make plea agreements. In some cases, attorneys meet their clients only minutes before a plea is entered, leaving virtually no opportunity to obtain independent information about the charge or fully explain to the client the available options. Critics argue that plea agreements require defendants to forfeit constitutional rights, such as the right to trial by jury, undermine public interest in appropriate charges and sentences for crimes, and might actually increase wrongful convictions by pressuring defendants to plead guilty. Advocates contend that plea agreements promote efficient operation of the courts, are administratively necessary given heavy caseloads that prevent trials in all cases, and result in more individualized justice for offenders.

The Challenges and Responsibilities of Judges

In the judicial system, judges advise defendants of their constitutional rights and ensure that those rights are upheld, determine whether to grant pre-trial release (through bail or release on one's own recognizance), set the bail amount, make decisions regarding pre-trial motions, determine whether to accept guilty pleas, and impose sentences for convicted defendants. People often think of judges as presiding over jury trials, but only about 10-15 percent of cases proceed to trial. In addition, about half of trials involve no jury; instead, the judge alone hears evidence and makes determinations of guilt.¹⁶ At jury trials, judges oversee jury selection, rule on evidence and aspects of procedure, and instruct the jury. High caseloads pressure judges to move cases quickly through the court system by accepting plea agreements negotiated by prosecutors and defense attorneys.

Although judicial discretion in sentencing has been diminished somewhat in recent decades because of determinate sentences and sentencing guidelines (which we discuss in Chapter 4), judges have significant autonomy in making other decisions that have tremendous consequences for defendants, such as bail decisions. Pre-trial release through the use of bail or ROR (release on recognizance) is important because this decision has “spillover” effects on later decisions, including the likelihood of conviction and the harshness of sentencing. Research shows that individuals detained pre-trial are more likely to be convicted and more likely to be incarcerated, compared to those who are released prior to trial (even after factors such as the seriousness of the offense and the defendant's prior criminal record are taken into account).¹⁷

Poor defendants often await trial in jail because of their inability to post bail. There is also a racial and ethnic component to this process because people of color (esp. African Americans and Hispanics) are about three times more likely than non-Hispanic Caucasians to live in poverty in the United States. Studies have shown that people of color are more likely than Caucasians to be detained prior to trial, and that racial minorities are less likely than Caucasians to be released on their own recognizance and more likely than Caucasians to have bail set as a condition of their release.¹⁸

Cases that are not dismissed or resolved through plea agreements result in a trial by judge or jury. The decision to proceed to trial generally depends on the severity of the offense. If convicted, defendants have the right to appeal if they think errors of procedure or law were made during the investigation of the case, arrest or court proceedings, for example, if they think evidence admitted at trial was illegally obtained. If an appellate court finds that such errors were made, the conviction is set aside and the defendant may be retried.

The Juvenile Justice System

At the state level, separate juvenile justice systems exist apart from the adult criminal justice system. Juvenile justice systems were created in most states in the early 1900s, based on the view that juveniles, who lack the mental capacity to understand crime that adults possess, should be held less legally responsible for crime. The juvenile justice system is also based on the view that the response to juvenile offenders should focus on rehabilitation rather than punishment. Juvenile courts deal with cases involving delinquents, status offenders (those who commit offenses prohibited by law only for juveniles, such as running away and

truancy), and “youth in need of care,” who are abused, neglected or abandoned. Many cases are handled through informal procedures, such as involving social services in the treatment of the case. Since the 1960s, changes such as the provision of due process protections for juveniles have made juvenile justice systems more like the adult criminal justice system.

Transferring Juveniles to Adult Courts

In addition, all states have enacted laws that allow juveniles who are accused of particularly serious or violent offenses to be tried in adult criminal courts, though the percentage of

juvenile offenders actually transferred to adult court is relatively small.

The transfer of juveniles to adult courts is accomplished in three ways:

- Judges can select serious juvenile cases for transfer; about 1 percent of delinquency cases are waived to adult courts in this way.¹⁹
- Some prosecutors have the authority to file certain types of cases in either juvenile or adult court. Use of this form of transfer has grown significantly in recent years.

- In some states, statutes exclude certain offenses and juvenile offenders of particular ages from juvenile court jurisdiction, for example, 16- or 17 year-old offenders accused of robbery. Such cases originate in adult criminal court rather than juvenile court. This form of transfer has also become more popular in recent years, as many states have specified more age and offense categories as automatic transfer categories.

The effectiveness of transfer provisions has been questioned both in principle and in research findings. Although the research is not entirely conclusive, findings generally indicate that the transfer of juvenile offenders to adult criminal courts does not prevent serious juvenile crime, nor does it reduce recidivism among those who were transferred.²⁰

Emerging Help for the Mentally Ill

Special provisions also exist for mentally ill individuals, who are overrepresented in the criminal justice system and often cycle repeatedly through it. In the past decade, mental health courts have emerged in many counties to try to address some of the underlying causes of crime and to provide alternatives, such as intensive court-supervised treatment and individualized punishments and incentives, for mentally ill defendants accused of minor offenses. Because these courts are a relatively recent phenomenon, their effectiveness has yet to be fully evaluated.



FAITH REFLECTION


God is a God of justice. “For I the LORD love justice, I hate robbery and wrongdoing” (Isaiah 61:8). The psalmist says, “Mighty King, lover of justice, you have established equity; you have executed justice and righteousness in Jacob” (Psalm 99:4). God loves and does justice, not only in ancient Israel, but also beyond Israel, to the ends of the earth. “[T]he LORD sits enthroned for ever, he has established his throne for judgment. He judges the world with righteousness; he judges the peoples with equity” (Psalm 9:7-8). God’s justice is fulfilled in the gospel of Jesus Christ. As the apostle Paul puts it: “in [the gospel] the righteousness of God is revealed...” (Romans 1:17). In this verse, the Greek word *dikaiosune*, translated as “righteousness,” is better translated as *justice*.

God’s People: Called to Justice

The Hebrew Scriptures make clear that God’s people are also to be a people of justice, a community with a just judicial system. “Give the members of your community a fair hearing, and judge rightly between one person and another, whether citizen or resident alien. You must not be partial in judging: hear out the small and the great alike; you shall not be intimidated by anyone, for the judgment is God’s” (Deuteronomy 1:16-17). Key aspects of justice included: equality before the law, concern for individual circumstances, and impartiality. Elsewhere in Deuteronomy, Israel also testifies to the importance of vigilance against social, political and economic factors affecting judgments. “You must not distort justice...you must not accept bribes, for a bribe blinds the eyes of the wise and subverts the cause of those who are in the right” (Deuteronomy 16:19).

Addressing the perversions of justice and the judicial system, the prophets of ancient Israel cried out to God’s people. “Ah, you that turn justice to wormwood, and bring righteousness to the ground!” (Amos 5:7). “[You] hate the one who reproves in the gate, and [you] abhor the one who speaks the truth” (5:10). The practice of truth-telling, another key aspect of justice, is significant—the task of carefully establishing the facts, often in dispute, of a case. “[Y]ou who afflict the righteous, who take a bribe, and push aside the needy in the gate” (5:12). “[L]et justice roll down like waters, and righteousness like an ever-flowing stream” (5:24).

Consistently, and most importantly, prophetic testimony conveys God’s deep concern for the disproportional vulnerability of the marginalized to injustice. “Thus says the LORD of hosts: Render true judgments...do not oppress the widow, the orphan, the alien, or the poor...”



(Zechariah 7:9-10). This commitment to justice for the marginalized, as well as the commitment to their well-being, culminates in the ministry of Jesus of Nazareth (Luke 4:14-22).

The Judicial System Is Accountable to God

Doing justice in the United States judicial system involves a similar range of concerns. Christians believe that the system is accountable to God—whether or not participants in the system recognize that accountability. Acknowledging diverse and possibly conflicting understandings of the meaning and purpose of criminal justice—for example, retribution, deterrence and restoration—the judicial system should nevertheless be based on commitments such as:

- the right to the assistance of legal counsel at public expense when accused are unable to pay;
- the fair notice of charges against the accused, and the disclosure by the prosecutor of facts that tend to show the accused's innocence or point to a reduced sentence;
- the fair opportunity for pre-trial release;
- the adjudication of charges by an impartial judge and jury, offering the accused an

opportunity to confront adverse witnesses and other evidence; and

- the availability of an appellate tribunal to challenge the legal sufficiency of the trial process.

Advocating for the Vulnerable

Scripture also teaches that God's people are to advocate especially for justice for the vulnerable, like ancient Israel was called to do. Commenting on Leviticus 19:34, one biblical interpreter writes: "The idea is that those with social power in Israel are to render justice to the vulnerable bottom ones *as a public remembrance, as a memorial*, of Yahweh's deliverance of Israel from Egypt. Yahweh delivered Israel from its condition as enslaved aliens in Egypt; Israel is to render justice to the poor and lowly among her as a public memorial of her deliverance."²¹ Likewise, the church's advocacy for justice for the vulnerable neighbor can also serve as a public remembrance, as a memorial, of God's deliverance from the vulnerabilities of sin, injustice and death in Christ—an indirect witness to the gospel of the justice of God (Romans 1:17).

DISCUSSION QUESTIONS

- How do the context and faith reflection sections help you further understand the stories at the beginning of the chapter? Would you be discouraged if you were Roy? What might you do? What would be helpful to Anna and her client?
- What, if any, differences do you see between the way the judicial system understands justice and the biblical understanding of justice?
- What would you say is the purpose of punishment in the criminal justice system—retribution, deterrence, restoration and rehabilitation or a combination of these? Why do you feel this way?
- What is your perspective on the practice of plea agreements?
- Should judges have more or less discretion in sentencing? Why?
- Under what circumstances would you be in favor of transferring juveniles to the adult court system? Under what circumstances would you be against this practice?
- Are there any judges, prosecutors or defense attorneys in your congregation? If so, how might their stories be told to the congregation and how might you use them as resources in the study of the criminal justice system.
- How might God's call to the church to advocate for justice for the vulnerable be practically responded to in your congregation?

CHAPTER 4

Corrections

PRAYER

Humble and gracious God, you gave your only Son that we might be freed from the power of sin and death. But we are still overwhelmed and imprisoned by our sinfulness. Give us the power of Jesus to leave despair behind and treat each other as beloved children of God, sinful though we are. Bless those you have called to work in corrections—protect them and guide them. In Jesus' name we pray. Amen.

SCRIPTURE

ISAIAH 42:6-8

I am the LORD, I have called you in righteousness, I have taken you by the hand and kept you; I have given you as a covenant to the people, a light to the nations, to open the eyes that are blind, to bring out the prisoners from the dungeon, from the prison those who sit in darkness. I am the LORD, that is my name...



INTRODUCTION

IN THIS CHAPTER we consider a third area of the criminal justice system—corrections. We begin with stories of an incarcerated man and a correctional officer, and then move on to consider the broad reach of corrections. We take a look at what statistics can tell us about the realities of corrections in the United States. The incarceration rate in the United States is the highest in the world. We take a look at the possibilities and problems of two recent responses to this high rate of incarceration—the development of corporately owned and operated prisons and the growing use of community corrections alternatives for nonviolent offenders. We explore the relationship between sentencing and corrections and look at the disproportionate representation of racial and ethnic minorities and the poor in the correctional system. The problem of violence in jails and prisons is addressed as

are the unique issues surrounding juvenile corrections. As we continue to bring the resources of faith into our study of the criminal justice system, we compare and contrast two approaches to justice found in the Bible—justice as retribution and justice as restoration.

STORIES

Story 1: Mike, an Incarcerated Man

This is my fourth bid. I really don't give a rip anymore. Selling dope is my only way to make money and survive. The brothers are doin' time with me so it's all the same here or on the street. They can take me out while I'm doing my bid or once I leave this hell hole. Like I said, it's all the same.

I worry about my mom. She's constantly talking about God and me changing my life. I don't really have a choice. I do what I do. And, if there's a God, why is my life so screwed up? Sure, I love my mom, but in the end, all I got is me. I gotta' take care of business.

Story 2: Frank, a Correctional Officer

I've worked in this prison for 20 years. It's an old place, in the middle of nowhere. It's been a good job, but I've had my days when I think about working somewhere else. I earn a half-way decent living, and it's not like there are other jobs just around the corner, especially given the pay and benefits.



Sometimes I wonder if my thinking is messed up having worked here so long, given the things you see and hear. When I first started working here I was naïve. Over time I started to recognize I was less patient, less attentive, and I generally ignored the inmates—even if they needed something. You don't see a lot of kindness here. You do see distrust, suspicion and meanness. You've got to work at it if you're going to get through it.

Still some inmates have legitimate problems and they want to work through them. That's not easy in an environment where you're safer if you just act tough. And, some of the staff really do care. That's not easy either. It's hard to stay hopeful when you watch guys stay here forever or some who get released only to come right back. Some have no idea how to survive on the outside. Somehow, I've managed to keep at it—to believe that something good can come from this, for at least some of the guys. I'd like to think that I've made a small difference along the way, but you really never know.

CONTEXT: CORRECTIONS

Over 7.3 million people in the United States are under some form of correctional control, including incarceration (in prisons and jails) and community corrections (probation, parole, and intermediate sanctions such as community service, home confinement, and day reporting centers).²² That means that 1 out of every 31 adults is under some form of correctional control; this jumps to 1 in 18 if we focus only on males, and to 1 in 11 if we focus only on African Americans.²³ According to a recent report, “State corrections costs now top \$50 billion annually and consume one in every 15 discretionary dollars.”²⁴ What might all these numbers mean in your congregation?

Corrections Begins with Sentencing

Judges are responsible for sentencing convicted offenders to various correctional alternatives and they exercise discretion in the sentencing process, for example, in determining whether to suspend part of a sentence. In recent decades, however, judicial discretion has been reduced through the use of determinate and mandatory sentences and sentencing guidelines.

Determinate sentences specify a fixed term of incarceration, and offenders are released at the end of this term, regardless of factors such as participation in prison programs like educational or treatment programs. Mandatory sentences, used in the federal system and in all states, specify a minimum term of incarceration that must be served by individuals convicted of specific crimes, such as drug offenses or violent crimes. Mandatory sentences also apply to habitual offenders. Habitual offender or “three strikes and you’re out” laws, passed by the federal government and about half of the states, are a form of mandatory sentencing in which offenders convicted of three felony offenses are sentenced to lengthy prison terms.

Sentencing guidelines, intended to limit judicial discretion and reduce sentencing disparities, specify sentence lengths based on two key factors: the severity of the offense committed and the criminal history of the offender. Such

guidelines have been used in the federal court system since 1987, and are currently used in about half of the states. Critics contend that efforts to limit judicial discretion have simply given greater authority to prosecutors, who largely determine the course of cases depending on the charges they file. Despite determinate and mandatory sentencing and sentencing guidelines, racial disparities in sentencing persist. It should also be noted that, in terms of ethnicity, Hispanics tend to receive harsher sentences than non-Hispanics.²⁵ Research shows that racial minorities are sentenced more harshly than Caucasians if:

- they are convicted of drug offenses or less serious offenses for which greater discretion comes into play;
- they are convicted of crimes against Caucasians;
- they are convicted at trial rather than by plea agreement;
- they are detained in jail prior to trial; and
- they are young, male, and unemployed.²⁶

Victims may try to influence sentencing through victim impact statements. The federal government and many states ensure victims’ right to be heard during proceedings involving sentencing, plea or release.



Levels of Correctional Institutions

Prisons are classified in terms of the level of security: minimum, medium, maximum, and “supermax.” Generally, minimum-security prisons hold the least violent offenders and those nearing the end of their sentences, while maximum-security prisons hold more violent offenders and place less emphasis on rehabilitative and reintegrative programming than medium- and minimum-security prisons do. “Supermax” facilities exist in most states and hold the most violent and disruptive inmates—currently an estimated 20,000 inmates.²⁷ “Supermax” inmates are under constant surveillance and typically spend about 23 hours per day in isolation in their cells.

Our Prison Population Keeps Growing

More than 2.3 million people (or 1 out of every 100 adults) are currently incarcerated in the United States, in either prison or jail.²⁸ There are 1.6 million offenders in prison, including 1.4 million in state prisons and 210,000 in federal prisons.²⁹ In addition, local jails currently hold about 770,000 people.³⁰ Jails are volatile places because of the mix of individuals confined: convicted offenders (typically serving sentences of up to one year), those awaiting trial who cannot afford bail or who are denied the opportunity to post bail, and those whose behaviors are perceived to upset the social order, such as the homeless and the mentally ill. Treatment programs are severely limited in jails. Incarceration rates (which measure the number of people incarcerated per 100,000 people in the population) have more than quadrupled in

the United States since 1970, while crime rates, which rose in the 1970s and 1980s, have been declining since 1991. In 2008, the incarceration rate in the United States was 754, the highest in the world.³¹ For comparison, in 2008, the incarceration rate in Mexico was 207, in Canada it was 116, and in Germany it was 89.³²

The tremendous growth of United States prison and jail populations is due primarily to changing public attitudes that demand more punitive responses to crime and to policy changes influenced by these demands. Mandatory minimum sentencing, habitual offender laws, lengthier sentences and reduced parole releases due to truth-in-sentencing laws, and increases in returns to prison for parole violations have all contributed to the massive increase in incarceration.

The greatest increases in incarceration in the past three decades have not been for violent crimes (currently, half of inmates in state prisons have been convicted of nonviolent crimes), but rather for drug offenses (currently, half of inmates in federal prisons and 20 percent of those in state prisons have been convicted of drug offenses).³³ Several states have begun to decrease prison populations by using community corrections alternatives for nonviolent offenders and for probation and parole violators, reducing the scope of mandatory minimum sentences for drug offenses, and shortening the required amount of time served.³⁴ The impetus for these changes has been primarily economic, rather than philosophical; states simply cannot economically sustain continued increases in incarceration rates.

Males, racial and ethnic minorities, and the poor are disproportionately represented in prison and jail populations. About 88 percent of jail inmates and 93 percent of prison inmates are men, although the female prison population is growing faster than the male prison population. Challenges for female inmates are intensified by their separation from children for whom they are often the primary caregivers prior to incarceration, and by the relatively small number of women's prisons, which means that women are often incarcerated far from family and friends. Female inmates are much more likely than male inmates to report histories of sexual and physical abuse that likely contributed to their involvement in offending.³⁵

In state prisons, 36 percent of current inmates are Caucasian, 45 percent are African American, and 17 percent are Hispanic.³⁶ The racial and ethnic composition of the jail population is similar, and has been impacted by the fact that, in the past decade, the number of people jailed for immigration violations has grown by 500 percent.³⁷ In federal prisons, 58 percent of current inmates are Caucasian and 39 percent are African American; in terms of ethnicity, 33 percent of current federal inmates are Hispanic and 67 percent are non-Hispanic.³⁸ As you consider the racial and ethnic composition of the incarcerated population, consider also that non-Hispanic Caucasians currently make up 65 percent of the United States population, African Americans make up 13 percent, and Hispanics make up 16 percent.³⁹ The war on drugs has had a particularly detrimental effect on African Americans; the growth of the inmate population attributable to drug offenses has been much greater for African Americans than Caucasians.⁴⁰ Research shows that the racial disparity in incarceration rates is not fully explained by the fact that African Americans are overrepresented among those arrested.⁴¹

What Are the Conditions Often Experienced by the Incarcerated?

We have looked at corrections from the perspective of sentencing and statistics. Now we turn to the real life experiences of those who are incarcerated. Their experiences, of course, are as varied as the individuals incarcerated and depend to some degree on the context (federal or state prison or local jail), but there are common experiences:

- isolation and loneliness that result from being incarcerated hundreds of miles from families and from being unable to show emotional vulnerability;
- having control over *only* your own effort and attitude in responding to others' treatment of you, and lacking control over even the most mundane decisions, for example, when to awake, shower, or step outside for fresh air;
- powerlessness in interactions with correctional officers, some of whom degrade inmates through the use of derogatory language and physical violence;
- continual threats of sexual violence, which may be limited to a single instance of rape or may extend to periods of brutalization lasting months or years;
- daily fear of physical violence ranging from simple assault to murder, and threats of future violence if reported to prison staff;
- being guaranteed only food and shelter ("three hots and a cot"), and having all else (including visits with family and possession of personal property) be seen as a privilege that can be denied;
- having the course of your days determined partly by the conduct of other prisoners, whose actions might lead to restraints and restrictions for all inmates;

- existing in a pervasive, negative social order that reinforces crime and criminal thinking;
- the perceived need to join gangs for protection from pervasive gang violence and high rates of gang-influenced personal and property crime;
- lack of privacy, including in the shower and restroom;
- impersonal context where people typically interact with each other only in terms of *roles*—inmate or staff—but not as people;
- inability to control costs of goods, such as toiletries, and services, such as phone calls, which are often excessively high;
- lack of sufficient medical services and mental health care to meet the needs of increased numbers of inmates; and
- volatility created in part by the incarceration of those with special needs, including the mentally ill. (In 2005, more than half of all prison and jail inmates had a mental health problem. Such problems are more common among female inmates than male inmates.⁴² Yet, correctional staff are often unprepared to deal effectively with the mentally ill.)

As mentioned in the above list, violence is an ever-present reality inside prisons due to many factors, including the presence of racial and ethnic gangs and overcrowding that increases the instability of prison life. As gang members are incarcerated, gangs that exist outside prisons emerge and exist inside prisons, too. Gangs are a significant problem in federal and state prisons. They not only increase the level of violence, but also control the underground economy in prisons (e.g., drug trafficking) and provide protection for members. Overcrowding also contributes to prison violence. Despite steady prison construction in the past few decades, rapidly increasing incarceration rates have meant that prisons typically fill as quickly

as they are built. Prison construction is often welcomed by local officials who see the opportunity for jobs during the construction and subsequent staffing of prisons. Overcrowding not only fuels prison violence, it has also led to controversial early release programs and the need in some states to hold maximum-security prisoners in medium-security prisons.

The Growth of the Corporate Prison—Problems and Possibilities

Prison construction and management, once seen as solely the responsibility of the government, has been handled increasingly by corporations that build and operate prisons for profit. An example is Corrections Corporation of America, which owns 44 facilities and manages more than 60.⁴³ The connection between the economic interests of such companies and criminal justice policies has raised concerns about a “prison-industrial complex” in the United States. Critics of for-profit prisons are concerned about:

- government’s rejection of its responsibility for punishment;
- the loss of rehabilitation and deterrence as goals of incarceration if greater profit can be achieved through high recidivism rates, reductions in medical care and legal aid for inmates, low pay and benefits for employees;
- high rates of violence among prisoners and between prisoners and staff; and
- lack of public oversight.

In addition, critics have noted that corporations involved in prison construction and management exert tremendous influence on federal and state policies, such as sentencing laws, early-release guidelines, and parole requirements.⁴⁴ The use of prison labor by private companies has also drawn considerable criticism. Incarcerated individuals currently produce clothing, furniture,

computer circuit boards and car parts for as little as 17 cents per hour. Several companies have relocated overseas operations to United States prisons to take advantage of this low-cost labor pool.⁴⁵ While some prison labor programs have been tightly regulated by the government and directed toward rehabilitation and job-training for prisoners, many programs are loosely regulated and directed toward increasing corporate profits, rather than the good of prisoners or the common good of society.



“An American worker, who once upon a time made \$8 per hour, loses his job when the company relocates to Thailand where workers are paid only \$2 per day. Unemployed, and alienated from a society indifferent to his needs, he becomes involved in the drug economy or some other outlawed means of survival. He is arrested, put in prison, and put to work. His new salary: 22 cents per hour. From worker, to unemployed, to criminal, to convict laborer, the cycle has come full circle. And the only victor is big business.”⁴⁶

Juvenile Corrections

Juvenile corrections involves extensive use of probation and other community corrections, such as community service and restitution, and more limited use of placement in group homes, detention centers, state training schools, and residential treatment centers. The small percentage of serious juvenile offenders who are transferred to adult court are held in adult jails and, if convicted, are sentenced to adult prisons. The disproportionate confinement of racial and ethnic minority youth has long been an issue in juvenile corrections. African American youth are more likely than Caucasian youth to be petitioned to juvenile court for formal processing, to be detained in secure facilities before they are adjudicated (judged in juvenile court), and to be sentenced to secure confinement after adjudication. Hispanic and American Indian youth are also overrepresented at various stages of the juvenile justice system, given their shares of the population.⁴⁷ In keeping with the widespread use of informal procedures in juvenile justice, restorative justice, which emphasizes community involvement and offender accountability, has been used more extensively in juvenile justice than in the adult system.

FAITH REFLECTION

Philosophers, theologians and jurists have long debated the primary meaning and purpose of criminal justice. While many stress the retributive side of justice, others emphasize a restorative side. The former maintain that wrongdoers should receive punishment that is proportionate to their offense. Retribution, they argue, corrects a moral order that has been ruptured by the wrong. By punishing the offender, the state treats both offender and victim as people deserving of equal respect. Punishment signifies that the offender is responsible for his or her acts, and that the state takes the victim's injury as a serious matter.

Those emphasizing the restorative side of justice observe that wrongdoing disrupts relationships and claim that the process and sanctions of criminal justice should be aimed at restoring those relationships. This commonly involves activities such as hosting safe "conferences" or structured conversations that include victims, offenders and the community, working toward restoration and community safety together. Retribution and restoration—which are not mutually exclusive—offer rich possibilities for reflection.

Justice and Retribution

"The punishment fits the crime." Some part of us wants to be able to say this after we have been wronged, and another is punished.⁴⁸ One basic principle of our criminal justice system is that offenders should be punished according to the severity of their crime. Justice requires that offenders "get what they deserve." If punishment is not severe enough, or too severe, some part of us feels that justice has not been done. What "this part of us" is will be discussed below.

Punishment means inflicting pain, suffering, discomfort or loss on an individual in response to that individual's actions. The word itself

means "to lay a burden upon."⁴⁹ In order for a sentence to count as "punishment," the offender must be worse off than he or she was before. If a man steals \$10,000, and then is forced only to pay back the money that he has stolen, he has not really been punished. The idea that punishment should be directed to the offender in proportion to the crime committed, and only on the grounds that a crime has been committed, is called *retributive justice*.

For some Christians, practices of retributive justice are drawn from the Bible. When a crime has been committed, it is not just a victim who has been harmed, but something deeper has been disrupted. We might speak of a "moral

order” that has been violated. This moral order is understood to be woven into the very fabric of reality, such that its restoration requires a balancing act of punishment on the one who disturbed it. We read in Exodus 21:23-25, “If any harm follows, then you shall give life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, stripe for stripe.”⁵⁰ This law was probably intended as a maximum limit, not a required command. If one family has a member murdered and they tried to avenge the death by killing ten of the members of the offending family, chaos would ensue. Proportionality of punishment thus makes practical sense.


Moreover, an important strand in Western thinking about justice insists that to punish someone for their crimes is, in a sense, recognizing the worth of the offender. A parent would not punish a 1-year-old for drawing on the wall with crayons. The child is not yet advanced enough to know right from wrong. But if a 15-year-old did the same thing, we would expect punishment. To do so respects the abilities of reasoning and conscience of the adolescent. When a criminal justice system inflicts punishments on offenders only for the purposes of making society safer, or in hopes that the offender will reform, we are saying that punishing the offender is an instrument or a means to some greater end. But we should not treat individuals only as means to another end. By punishing them for what they have done, we declare to the offender and to society that the offender is a morally capable actor whose actions we take seriously enough not to ignore. Part of us wants the punishment to fit the crime. Christians might ask themselves whether this impulse is part of our fallen human nature, or part of our God-given thirst for justice. After all, there is often a countervailing attitude in the minds of many that “two wrongs don’t make a

right.” Out of the depths of pain that we suffer when harmed, we want the world to understand what we are feeling, and especially for the offender to know something about the pain that has come from his or her actions. Victims need information and want to know why they were harmed so that they can begin to move toward feeling safe again. Victims, however, frequently express regret that the offender is still being punished after the pain of the offense recedes. Understanding punishment from the subjective perspective of the victim of the crime, rather than from the objective perspective of the violation of an abstract moral order, represents a shift in thinking about justice from retributive models to restorative ones.

Justice and Restoration

“Justice has been done.” We want desperately to say these words after an arrest, trial, conviction and sentencing. Yet, while the desire for justice is good, our ideas about justice can over simplify complex situations. We argue that justice fixes what has gone wrong, returns victims to the lives they had known before, and turns hurt back on the offender. These are high ideals. Yet reality has a way of undermining them. Victims do not find that life snaps back into place once the offender is sentenced. Lawyers, judges and juries question whether their procedures guarantee justice. Offenders who have owned up to their actions find their guilt is not removed by “paying their debt to society.” For these reasons we need a way of thinking about justice that can deal with the complexity of reality.

We must advocate for equality and fairness, of course, but we also need to recognize the unique nature of each conflict and the histories of the individuals involved. Scripture teaches both advocating for equality and recognizing the unique nature of each event (Deuteronomy 1:16-17; Deuteronomy 16:19a; Acts 10).



In seeking equality and fairness, justice operates above the circumstances it addresses. Take for example the idea of fairness in “eye for eye” or in the prophets’ indignation (see Amos’ especially) over the miserable state of the poor as the rich luxuriate. In these instances, a principle (fair distribution) seeks to order human lives. A powerful challenge to this model of justice is King Solomon’s risky directive to cut the baby in half (1 Kings 3:17-28). This was, strictly speaking, an equitable settlement and thus pushes the concept of justice as fairness to its limit. This monstrous proposal called fairness into question, challenging the very idea that justice can operate above individuals in conflict.

Attending to individual circumstances, stories of persons or communities have more weight than abstract principles such as fairness or equal distribution. Israel’s story of wandering in the wilderness had a huge impact on biblical justice. Once settled in the land, the people are reminded by God of their prior homelessness. Memory becomes the basis of justice. Justice springs from empathy for marginalized, isolated and vulnerable individuals who are living reminders of Israel’s identity (Deuteronomy 10:17-19). Justice as fairness is certainly present in the moral reasoning that says that we should treat those without shelter, speaking physically and emotionally, as though they were us.

Yet a new perspective has been introduced that changes everything. No longer do those who are safe and in a position of power apply a principle to order the world. Rather, acting out of memory people of power open themselves to the vulnerabilities of others and share with them the chaos of dying and sinning which, if one is honest, marks everyone. The Bible calls this second form of justice “hospitality to the stranger” (Genesis 18:1-15; Romans

14-15). “Hospitality” in contemporary usage no longer evokes the depth of emotion that its cousin “hospice” still does. How does justice as hospitality work with the complexities of life? It is 3:00 a. m. There is a knock on the door and an unknown person asks for shelter. The many risks to you and your household are obvious. Even if things go well, the household will never be the same again. The guest will change it forever.

Navigating between Principle and Solidarity

Two approaches to justice in the Bible have been described. One sees in justice a principle for organizing social and personal chaos. The other begins in chaos by standing with individuals in need and sharing their suffering. These two approaches are not in opposition to one another; we do not need to choose between them. We have been called by God to live in their tension. To do that, the church must advocate strenuously for the equality of all individuals before the law, for due process, the presumption of innocence, and other practices that strive to insure that individuals receive their due. On the other hand, the church should remind the criminal justice system that it is a system and that its procedures for promoting fairness often overlook the relationships involved, erase individuals, and silence their cries to be recognized as unique individuals.

Is there anything else congregations can do to live in this tension? The practices of *restorative justice* may provide opportunities for congregations to put the justice of hospitality into action. Critics of American criminal justice, both outside of and from within the system, have proposed that victims, offenders and their families and communities would be more justly served when, in cases of admitted

guilt and when the personal and emotional safety of victims is protected, resolution takes place in conversation removed (or partially removed) from the court's direction. A number of jurisdictions have found restorative justice a promising alternative in juvenile justice and in adult cases not involving violence.

The key to these conversations—in which offenders are confronted with the harm done and victims, communities and families tell of their experiences—is the hosting and guiding of the conversations. Might congregations welcome these guests? Might they host the telling of painful stories, hold off from pushing easy solutions, gently but persistently press for accountability, and all the while silently hope for reconciliation, knowing that even the smallest gains are better than the isolation of extended periods of incarceration and the perpetual silencing of victims?

Justice as Hospitality and Criminal Justice

Finally, relating the theme of justice as hospitality to the issue of criminal justice raises an important concern. The glaring problem that courts face is that the very procedures that create equal justice also diminish the significance of personal histories. Both the accused and victims encounter this double bind. The implication of the hospitality motif in this study is that prosecutors, judges and parole officials ought to be encouraged to discover and take into account the personal circumstances of those who find themselves under their authority.

Unless the dangers of welcoming the stranger are fully faced though, hospitality has the potential of romanticizing away danger to the public. Recall the 3:00 a. m. knock at the door. Is it safe to let the stranger in? Is it fair to the other members of the household that they should bear the consequences of your opening

the door? We should be asking questions, not extending thoughtless invitations. Officers of the court ask questions every day as they assess, for example, the family situation of juvenile offenders or the influence of chemical



addictions on individuals convicted of robbery. How much risk does this person pose to the community? How much risk is acceptable? How might potential risk be managed?

Where is this critique of hospitality taking us? Before the ELCA asks the criminal justice system to take risks, it must take some of its own. A congregation must assess and welcome the strangers at its own door. The isolation and shame victims of crime and their families suffer must be owned and recognized. Neighborhoods decimated by poverty and racism now stand knocking at the doors of congregations. So do victims and offenders with their families. And, in a humbling twist of perspective, the church must realize that it is itself a community of strangers. The dangers are not just “out there.” In knowing ourselves, we Christians are acquainted with sin and evil, hurt and suffering, in our midst. And then we remember who we really are: strangers, whom God, taking an unimaginable risk, welcomes (Deuteronomy 10:19; Romans 15:7; John 14:1-3).

DISCUSSION QUESTIONS

- How do the context and faith reflection sections help you further understand the stories at the beginning of the chapter? What might give Mike hope? What would it take to sustain Frank in his vocation?
- In what practical ways might your congregation help family members of incarcerated men and women?
- In what ways could your congregation support the vocations of correctional officers?
- What are the pros and cons of for-profit prisons? What are the pros and cons of building prisons in rural communities in need of jobs?
- Do you support determinate and mandatory sentences and sentencing guidelines or do you feel judges should have more discretion in sentencing? Why?
- Describe the tension between retributive justice and restorative justice. What practical steps can your congregation take to live creatively in that tension?
- In what ways might justice as hospitality inform both relationships within your congregation and the mission of your congregation in the larger community?

CHAPTER 5

Life after Crime

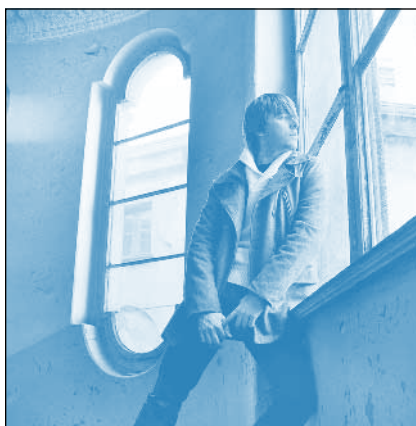
PRAYER

Gracious God, we live in despair knowing of our sinfulness, but we live in hope of restoration knowing what you have promised to us. Teach us to be just. Teach us to be merciful. Teach us to restore our relationships with each other and with you. In the name of Jesus we pray. Amen.

SCRIPTURE

LAMENTATIONS 3:31-33

For the Lord will not reject forever. Although he causes grief, he will have compassion according to the abundance of his steadfast love; for he does not willingly afflict or grieve anyone.



INTRODUCTION

This chapter begins with stories of life after incarceration, and considers the ways people—victims, offenders, families and communities—live with the consequences of crime. We will take a look at the many programs that Lutheran organizations and congregations provide to address the consequences of crime and we will encourage you to find ways in which you and your congregation might participate. We will also look at community strategies for restoring formerly incarcerated individuals to the community while at the same time tending to the need of victims to have validation, voice and continued support. A final reflection on how our faith informs our engagement with issues of criminal justice will look at our responsibility to advocate for justice for all. And we will dare to suggest (with the help

of Paul's idea of a "new creation in Christ") the possibility for civil society to move to a place where relationships and responsibility work hand in hand to reintegrate offenders into the community.

STORIES

Story 1: Jim, a Pastor of a Congregation with a Registered Sex Offender

A long-time member of my congregation just came to see me. Amy is an elementary school teacher, teaches Sunday school, organizes vacation Bible school, and was a youth leader when her children were teenagers. She asked me if I knew that Tony, a new parishioner who's just volunteered to go to the synod's youth gathering next weekend, was on our state's sex offender registry. Amy says that if he goes, she will leave the congregation.

I checked the registry and there he is, his picture and everything. It says that he was convicted of exposing himself to a child five years ago. According to the registry, he has served his sentence and is no longer on probation.

I want to be a good pastor to Tony, to help him become a law-abiding, contributing member of society and our congregation. But I need to protect the children in the congregation too. There is no way he can go on the youth trip next weekend. I think I need to talk to the chairman of the congregation council, but do I need to tell the whole council? You know how people talk! Should we tell the congregation? I want to have Tony as part of our congregation; he shouldn't have to be labeled for the rest of his life. But I need to be sure our church is a safe place for the children too. What do I tell Amy?

Story 2: Bill, a Story of Re-entry and Mentoring

I spent 19 years in prison because I did a lot of stupid things like stealing, but mostly because of alcohol and drugs. All that time I just tried to survive. I almost forgot my name. I was just Number 68531. In all those years, I got nothing to prepare me for when I got out. I mean, I had family, but nobody I could really turn to. Over the years, much of my family died, moved away, or they just stopped visiting or writing back years ago. But six months before my release, I was told I could have a mentor if I wanted one. There weren't many, so I had to make a quick decision. I had no idea that having this mentor, Ted, would be so life changing.

Ted took me out to a restaurant, an experience that was much more than a nice meal. It was an education, training for real life. He took me grocery shopping and showed me how to plan my meals and live on a budget. He helped me get a bank account, showed me how to balance a checkbook, write checks, and pay bills. Ted helped me with finding work and a decent place to live. People don't want to hire or live next door to ex-cons. Ted filled out the first few job applications with me, putting me in touch with people who were willing to give me a break regarding a place to stay. I had to start with tossing burgers at a fast food joint, but it was a job.

I wish I could say this had a happy ending, but Ted moved after a few months. The program he'd been working with simply didn't have enough mentors to go around, and I couldn't be assigned a new mentor. I lost my job and couldn't pay my rent, so I lost the apartment I was living in. I was back to where I was straight out of prison, except without Ted to help me find housing and employment, without anyone who would treat me like a person, not a number. To the world, it seems that all I am is an "ex-con," not someone worth spending time with. It just feels like no one cares.

To the world, it seems that all I am is an "ex-con," not someone worth spending time with. It just feels like no one cares.

CONTEXT: LIFE AFTER CRIME

Efforts are taking shape across the country to make our criminal justice system more fair and effective. The Lutheran presence in criminal justice work is growing. Thousands of Lutherans are living out vocational calls in this system. Many Lutheran social ministry organizations and congregations operate prison or community programs related to criminal justice, including:

- pastoral care programs in prisons and jails;
- prison visitation ministries;
- participation in Bible studies and worship services;
- prisoner family transportation services;
- residential and community-based treatment programs for at-risk youth;
- youth detention services, case management and monitoring services for youth offenders;
- suspension alternative programs to help youth who have been suspended from school;
- in-home crisis services;
- community re-entry programs that provide transitional and ongoing support to incarcerated individuals returning to the community;
- specialized support programs for incarcerated women;
- in-prison job training;
- educational programs to teach and promote the principles of restorative justice; and
- public policy advocacy programs.

What steps can you take to make your faith community an active and reliable source of support, comfort, and strength for victims of crime, former offenders, families of both victims and offenders, and those who work in the criminal justice system?

Helping Victims after Crime

In the past, most criminal justice efforts have focused on services for offenders. Victims of crime, though, also need support. What they need most from their communities is validation. They want to know that the community stands in solidarity with them, denouncing the crime and vindicating them of blame or dishonor. They want the community to be prepared, ready to respond, and to reach out to them, rather than feeling awkward, staying distant, or waiting for the victim to ask for support. And they want the community to accept their personal emotional response to the trauma, not pressure them to let go of anger, seek reconciliation, or offer forgiveness. They want their communities to accompany them on the journey back to wholeness, while honoring their need to self-determine the direction and pace of the journey.

The success of bereavement groups that provide friendship and understanding to victims or their families goes a long way in informing us about possible steps for congregations that want to be helpful, comforting communities for victims of crime. For instance, a congregation might develop a program to train congregational members in responding effectively to other members and their families who are traumatized by crime. They might organize a “first responders” group of congregational members who have participated in the training and do immediate outreach to members who have been touched by crime.

Victims have long memories of the crimes that harmed them. They need their communities to share the experience of long memories. Congregations can help ease victims’ suffering when they remember the anniversary

of a crime, openly acknowledge the day, or reach out with extra affection.

Restoring Former Offenders to Full Community Participation

The consequences of having a history as a criminal offender are substantial, even for offenders who have taken full responsibility, regret their crimes, made amends, and restored their moral character. Sometimes the consequences when released from prison are greater than those during incarceration. Former offenders endure what are sometimes called “invisible punishments,” such as restrictions on employment, housing, contact with children, being identified in public sex offender registries, and loss of voting rights, for the rest of their lives. Communities can play a central role in easing some of the suffering of former offenders.

Former offenders need communities that welcome them back. They need communities to reach out in concrete ways to help them successfully meet the overwhelming challenges of returning home. Many were incarcerated far from home and have lost community ties. Many entered with poor job histories and little education. Many entered with mental illness or addiction. Yet, they are expected to adjust to life back in the community, find work, support themselves, and not return to crime. To succeed, re-entry support must begin long before release from prison. By identifying needs, such as job-skill and educational needs, psychological and addiction treatment needs, up front when an individual is sentenced, and then comprehensively addressing these needs during incarceration, the likelihood of successful transition back into the community is heightened.

While some congregations already operate in-prison ministries that help incarcerated individuals maintain ties with families and communities, more could build this kind of ministry. And less formally, congregations can reach out to incarcerated individuals and their families on birthdays and other special dates. They can support family ties by taking family photographs and sending them to incarcerated loved ones. They can help keep family connections alive by frequently mentioning the incarcerated person’s name to their children. Sometimes grandparents or other relatives step in to care for children of incarcerated parents. Congregations can reach out to these families, support them, and invite them into the congregational community.



Mentoring programs, in which incarcerated individuals are matched with mentors from the community, can sometimes make the difference between successful re-entry and returning to crime. Typically, mentors and inmates are matched several months before release—the earlier the better. Mentors play the critical role

of a caring adult with pro-social attitudes. They provide practical advice, information and encouragement, along with the expectation of accountability. Mentoring is particularly helpful if the relationship can continue into the community after the inmate's release. Through their relationship, mentors teach inmates social skills. They convey genuine caring through small gifts or buying and sharing a meal at a restaurant. Unless an inmate chooses to disclose the crime that led to incarceration, mentors are not privy to that information. As a result, the relationship can be built on a new foundation: human to human rather than good citizen to criminal. Mentoring prepares incarcerated individuals for the real world and is an ideal volunteer ministry for congregations.

A critical component of re-entry is the consideration by both offenders and communities of victims' needs. When asked to think about what it might be like for victims when their offenders return to the community, both offenders and communities become more accountable.

Full Community Strategies

There is an increasing sense of the importance of communities having a major role in restoring peace and safety after crime. From the full-community perspective, restoration of peace and safety includes, whenever possible, welcoming and supporting victims and former offenders alike, as well as the families of both. It means integrating everyone as full participants in the community, full participants in the process of making the community safe and making things right again after crime. This involves, but is not limited to: victims, former offenders, families, law enforcement, courts and merchants. It means commitment to making sure no one suffers ongoing marginalization or stigmatization. Instead,

making sure that community conversations take place thoughtfully and thoroughly enough to surface and resolve any discomfort, fear, misconceptions and bias, so that re-entering offenders feel genuinely welcomed home, but not at the expense of increased suffering or silencing of victims and their families.

Restorative justice is one approach to solving problems at the community level that has grown in acceptance in recent years. Restorative justice does not replace traditional components of criminal justice systems—police, courts, incarceration, etc.—but it can be effective as a more grassroots strategy for resolving some conflicts and for repairing the harm done by some crimes. Some experts suggest that it is most effective in lower risk cases of non-violent crime. Restorative justice is based on three principles:

- the importance of repairing the harm done by crime;
- the importance of involving as many stakeholders as possible: victims, offenders, families, police, community members, etc.; and
- rethinking the roles and responsibilities of government so that the community plays a greater role in efforts to restore peace on the local level.

While restorative justice is not without controversy, it has been embraced successfully by many communities over the past few decades. Many, but not all, victims of crime have expressed satisfaction with the outcomes after participating in processes such as professionally facilitated restorative justice conferences in which an offender may apologize, agree to make restitution, or agree to community service, and a victim may express the pain and suffering caused by the crime. In some types of conferences, other community members are also present and both speak about the impact

of the crime on behalf of the community and work together toward accountability and safety.

Two of the most compelling aspects of the restorative justice perspective are: 1) the possibilities for reconciliation, for making things right again, for attending fully to the needs and experiences of those harmed by crime, but without the long-term or irreversible condemnation and rejection of those who have

offended; and 2) the possibilities for broader notions of accountability and responsibility, based on the idea that every one of us is a stakeholder in the safety, fairness and responsiveness of our communities. If we accept these ideas, we should not sit back and define the work of criminal justice as the work of others, as the work of those in traditional roles in the criminal justice system. It is everyone's work.

FAITH REFLECTION

Justly respecting and honoring people bearing God's image and loved by God involves advocating for justice for all. We listen to the cries of victims, offenders, families, communities and people working in the criminal justice system and bear together the burdens associated with harm. We are also called as Christians and citizens to evaluate laws and institutions according to their God-given purpose; and—like the prophets of ancient Israel in the presence of kings and priests—we are to advocate for a more just, orderly, and humane society. To advocate is to speak out for the cause or concerns of others *with* them and on their behalf,⁵¹ especially the vulnerable and those who lack significant participation in social, political and economic decisions. Advocacy, like accompaniment, is something every Christian is called to do. In response to God's love for us in Jesus Christ, we are to advocate for public policies that honor the dignity of all: victims of crime, people incarcerated, family and friends of both victims and offenders, and communities devastated by crime.

Rethinking Incarceration and Advocacy Issues

The modern prison is a phenomenon that has much to do with Christianity. The very word *penitentiary* implied that a prison was essentially a place where an incarcerated person would have time to reflect on what has happened, experience penitence for those actions, and come to see the time spent in prison as a kind

of penance. Cultures across time and place, though, have dealt with the form punishment might take in a variety of ways. Relocation, for example, was once a common strategy. Great Britain used North America and Australia as penal colonies; criminals were literally removed from the societies they had harmed, rather than incarcerated within them. Bodily harm was

frequently inflicted, often in a very public way, on those who had committed crimes. A variety of forms of restitution, financial and otherwise, have also been employed.

Raising the questions of whether and how to punish and the goal of punishment forces us to re-examine our motivations and beliefs. Ascribing to a more retributive or restorative view of justice may bring us to different conclusions about these questions. We are required to ask ourselves why we hold these beliefs, and how our faith is related to them. Mass incarceration is so common in our nation today that it has come to seem natural; that incarcerating those convicted of crimes in order to punish them is a logical and even necessary system. When we realize that incarceration of nonviolent offenders is simply one strategy among others that we have chosen, rather than something necessitated by “justice,” we become freer to challenge its logic, and possibly more able to envision better alternatives.

Incarceration, especially as it is experienced in the present-day United States, increasingly seems at odds with concerns for just, orderly and humane treatment. Members of the ELCA affirm, with Christians everywhere, that human beings are created in the image of God (*imago dei*); and that the Triune God Christians worship is, in God’s very own self, constituted by relationships. God is God in being Father, Son, and Holy Spirit—three persons in relationship. This means that to be human is to exist in relationships. We are parents, siblings, sons or daughters, friends, colleagues, and so on. To isolate by means of incarceration is thus potentially to dehumanize, denying the image of God in people by cutting them off from the relationships that are life-giving and identity-creating.

“Super max” facilities, where offenders may spend 23 hours a day in solitary confinement,

sometimes for months or years, are a clear example of such dehumanization. In the penal tradition, which still informs corrections in the United States, we witness the very opposite of God’s way of being-in-relationship: we see isolation of the body and the soul. An implication of our understanding of being created in the image of God is clear. Except in the case of truly dangerous offenders, there needs to be less incarceration, less isolating forms of it, and more preservation of family and community ties, or helping to build them when they are absent.

In the minds of prison reformers of the 18th and 19th centuries, isolation was not so much punishment but an opportunity for individuals to discover themselves, to make themselves over in the restricted company of God, the Bible, and the prison chaplain. And today, not everyone in the United States is convinced of the primary importance of relationships. For many people, inside and outside the church, individual responsibility is what makes us human. Positive social relationships flow from self-ordering selves and not the other way around.

In whatever way our criminal justice system decides to deal with corrections—whether by incarceration, rehabilitation, or some still-unforeseen alternative—the system put in place will have to be staffed by citizens, many of whom will be Christians. Those who work in corrections, such as prison workers and parole officers, need to be supported by their communities, and they also need to be able to see the work that they do as being consistent with their faith. Those who work in corrections sometimes feel like accomplices in a profoundly broken system. They need and deserve encouragement and support from their communities as they seek to work positively in what is often a morally ambiguous context.

Relationships, Responsibility and New Creation

Might we think our way, perhaps with the help of Paul's idea of "new creation in Christ" (2 Corinthians 5), to a new point where relationships and responsibility work hand in hand? If so, ex-offenders would not simply return to the social world they had before incarceration (sometimes it is prudent not to do so), but, in recognition that often for them there is no going back, they would be accompanied (by Christians if they chose) in new relationships in school, jobs and support groups while at the same time facing the issue of personal responsibility through mentors, spiritual guides, or psychological counselors.

DISCUSSION QUESTIONS

- How do the context and faith reflection sections help you further understand the stories at the beginning of the chapter? What would you do if you were in Pastor Jim's position? What could you offer as a mentor to someone returning to the community after incarceration?
- Have you ever advocated with or for someone? What criminal justice issues particularly interest you? How might you become an advocate with respect to those issues?
- How do you envision your congregation getting further involved in criminal justice issues and with the lives of people affected by the criminal justice system?
- In what practical ways might your congregation become involved in helping to develop community policies and practices that responsibly help to reintegrate formerly incarcerated individuals while supporting victims?
- What group of people (victims, offenders, their families and communities, those who work in the criminal justice system) are you drawn to reach out to and why?
- What risks are you personally willing to take to get further involved with those touched by crime?

Life after Crime: CONCLUSION

Strategies for the Faith Community after Crime: The Voice of One Lutheran Family

We briefly heard the voices of Fran and Jack in Chapter 1. Fran came home one day to find her 18 year-old daughter dying, having been brutally attacked by a serial killer. For 19 years, looking for both answers and justice, Fran and her husband, Jack, pressed for the murder to be solved. Their experiences with the criminal justice system and journey from unimaginable suffering to peaceful, hopeful hearts are chronicled in *Justice for Marlys*, a book authored by Jack.⁵²

Every faith community has members who are victims of crime or who have lost someone they loved to crime. These members, like Fran and Jack, suffer pain and isolation, often even within their church communities. But faith communities can also be places that end isolation and foster healing. They can hold the memories of people lost to crime and reach out to families on crime anniversary dates. Faith communities can convey: “We want to hear about it,” even long after a crime, and they can resist suggesting: “It’s been long enough; it’s time to move on.” Faith communities should openly use a crime victim’s name, not avoid it out of fear that it will remind a family of what happened. Indeed, if we listen to Fran and Jack, we know that families rely on the faith community to help keep memories alive.

Bereaved parents and others who have lost someone to crime need to talk with others who have experienced similar trauma. The congregation can help make those connections, establishing structures and processes for putting families in touch with one another after a crime-related loss. It is important that this

outreach be proactive, that faith communities do the outreach. Families themselves should not have to ask for it, and most often will not ask.

Fran and Jack have found that effective healing is a three-step process. As Jack explains: “Step one involves our real need to tell our story. This leads to step two and a decision that we eventually make that we want to be healed, out of love and respect for the memory of the lost loved one. Having made this decision, we begin to find healing in step three as we reach out to help others and in so doing become able to function again in society.” One’s congregation can be the place where victims are free to take these steps.

Faith communities can learn about the work of bereavement groups; they can establish teams of members trained in how to respond effectively to victims of crime and their families, and who function as first responders committed to being among the first at a member’s home or the hospital after a crime has occurred. Faith communities can establish mechanisms for tracking how people are doing following the trauma of crime, making sure they know they are not forgotten. Most congregations do well caring for those who are ill. They need to do the same for crime victims and, also, for the families of the accused.

During the 19 exhausting years that Fran and Jack sought justice in the murder of Fran’s daughter, they never wanted to put the situation to rest, accept it and just move on. To the contrary, they wanted to scream from the roof tops cries of anger and anguish, along with desperate calls for others to join

them in their outrage. They also found that justice is achieved when three separate but necessary forces combine, much like a three-legged stool that cannot support anyone without all three legs. Modern law enforcement efforts, cooperating with a positive media, and urged on by proactive family members are all necessary to work together for justice. And, a nurturing congregation will sustain the family as it takes part in the process. In Fran and Jack's case, a friend donated a carillon chime for the church steeple to ring out over the valley, reminding everyone that the journey was not over, sounding the voice of hope that someone would hear and come forward with information. That is what people harmed by crime need from their faith communities; they need to be joined in their anguish and outrage; they need people of faith to walk with them, not apart from them, and to listen to their stories, not once but over and over again, even when they are accompanied with raw emotion.

Here are just a few suggestions for how faith communities can be healing communities for victims, the accused, offenders, families, communities and those who work in the criminal justice system:

- *Be a praying community.* Pray for everyone touched by crime. Pray for a more just criminal justice system. Develop prayers and rituals to support victims and their families in their anguish. Use prayer and ritual to keep alive people's hopes for the future, to remember and honor those lost to crime, and to support victims if and when they freely decide to move toward forgiveness. Also pray for the accused and the incarcerated, for their families, and for the communities they have harmed. Pray for those who have been released and for those who support and mentor them as they reintegrate into the community.

- *Be an informed community.* Learn about the criminal justice system through studies such as this one. Conduct adult forums on specific topics like prison ministry and mentoring. Seek training from organizations like Compassionate Friends so that pastors and lay members alike are prepared to respond to those harmed by crime.
- *Be a safe community.* Encourage people harmed by crime to tell their stories, with no fear of being blamed for what happened or judged for their emotions. Let victims set the pace for their healing. Resist pressuring them to forgive and move on.
- *Be a visiting community.* Visit people who are incarcerated and help their family members and friends visit them too.



- *Be a remembering community.* Just as victims have long memories about the crime that harmed them or someone they love, faith communities should have long memories too. Speak openly about those harmed or lost to crime and speak their names.
- *Be a welcoming community.* Warmly welcome victims, the accused, the formerly incarcerated, their families and communities, and those who work in the criminal justice system into your congregation.
- *Be a resourceful community.* Learn about what is available in the community to help victims

of crime and proactively connect victims with those resources, including connecting victims and families of victims with others who have had similar experiences. Learn about what is available in the community to help formerly incarcerated individuals in their re-entry (e.g., housing and employment services). Offer volunteer and financial support to ministries and organizations working to help victims and formerly incarcerated individuals.

- *Be a mentoring community.* Seek training in mentoring to walk with those just released from prison and help them re-establish their lives in the community. Providing support in

finding a place to live and finding a job would be important priorities.

- *Be a first-responder community.* Establish practical protocols for helping victims with daily life in the tumultuous days immediately after a crime, helping with meals, shopping, house cleaning, child care, transportation, etc.
- *Be an empowering community.* Convey a consistent message to victims of crime that crime, even when minor, is unacceptable and that victims are supported in their expectation that the criminal justice system will act swiftly and fairly in response to crime.

As this study of the criminal justice system comes to an end, spend some time thinking in practical terms of steps your congregation can take to implement these and other suggestions.



ENDNOTES

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- 10 Matthew R. Durose, Erica L. Smith and Patrick A. Langan, *Contacts between Police and the Public, 2005*. Bureau of Justice Statistics Special Report. (Washington, D.C.: U.S. Department of Justice, 2007) <http://bjs.ojp.usdoj.gov/content/pub/pdf/cpp05.pdf> (accessed September 5, 2010).
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- 15 Results of empirical studies on how type of attorney (publicly appointed vs. privately funded) influences case outcomes have been mixed. For example, one study found that defendants represented by private attorneys were more likely to be released before trial and received more lenient sentences than those represented by public defenders, while another study found that type of attorney did not affect the likelihood of incarceration once factors such as seriousness of the crime and offender's prior criminal record were taken into account. See Samuel Walker, Cassia Spohn, and Miriam DeLone *The Color of Justice: Race, Ethnicity, and Crime in America*. 4th ed. (Belmont, Calif.: Thomson Wadsworth, 2007). Also Malcolm D. Holmes, Harmon M. Hosch, Howard C. Daudistel, Dolores A. Perez, and Joseph B. Graves, "Ethnicity, Legal Resources, and Felony Dispositions in Two Southwestern Jurisdictions." *Justice Quarterly* (1996) 13:11-30. And Cassia Spohn, and Miriam DeLone, "When Does Race Matter? An Examination of the Conditions Under Which Race Affects Sentence Severity." *Sociology of Crime, Law, and Deviance* (2000) 2:3-37.

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Response Form for the Study on Criminal Justice

Please return your response by **October 15, 2011**.

Send to:

ELCA Task Force on Criminal Justice
Office of the Presiding Bishop
8765 W. Higgins Rd.
Chicago, IL 60631

Or e-mail to:

criminaljustice@elca.org

Respond online at:

www.elca.org/criminaljustice/respond

Please indicate the following about this response:

- This response comes from an individual.
- This response comes from a group.
If so, how many are in the group?
 - 2-5
 - 6-10
 - 11-20
 - 21 or more

Thank you for completing this form. Your response will contribute to the process of developing a draft social statement on criminal justice.

1. HOW HELPFUL DID YOU FIND “CHAPTER 1: MANY VOICES CRYING OUT”?

| | Not Very Helpful | | | Very Helpful | |
|--|------------------|---|---|--------------|---|
| | 1 | 2 | 3 | 4 | 5 |
| Story 1: Beth, a Victim of a Non-Violent Crime | 1 | 2 | 3 | 4 | 5 |
| Story 2: Maggie, a Family Member of an Incarcerated Individual | 1 | 2 | 3 | 4 | 5 |
| The Voices of Those Victimized by Crime | 1 | 2 | 3 | 4 | 5 |
| The Voices of Those Accused, Convicted and Imprisoned | 1 | 2 | 3 | 4 | 5 |
| The Voices of Families and Communities Harmed by Crime | 1 | 2 | 3 | 4 | 5 |
| The Voices of Those Who Work in the Criminal Justice System | 1 | 2 | 3 | 4 | 5 |
| All Are Created and Loved by God | 1 | 2 | 3 | 4 | 5 |
| Made to Live in Community | 1 | 2 | 3 | 4 | 5 |
| Discussion Questions | 1 | 2 | 3 | 4 | 5 |

What do you see as strengths and weaknesses of Chapter 1?

2. HOW HELPFUL DID YOU FIND “CHAPTER 2: LAW ENFORCEMENT”?

| | Not Very Helpful | | | | | Very Helpful | | | | |
|---|------------------|---|---|---|---|--------------|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 5 |
| Story 1: Tim, a Police Officer Making a Decision | 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 5 |
| Story 2: Edwin, a Man Convicted of Murdering a Police Officer | 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 5 |
| Law Enforcement Is More than Catching Criminals | 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 5 |
| Law Enforcement Statistics Worth Thinking About | 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 5 |
| The Challenges Facing Law Enforcement | 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 5 |
| Community-oriented Policing | 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 5 |
| Federal Law Enforcement | 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 5 |
| The Role and Importance of Civil Government | 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 5 |
| Law Enforcement: an Honored and Necessary Calling | 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 5 |
| The Challenge of Racism and the Use of Force | 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 5 |
| Tensions within Lutheranism | 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 5 |
| Discussion Questions | 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 5 |

What do you see as the strengths and weaknesses of Chapter 2?

3. HOW HELPFUL DID YOU FIND “CHAPTER 3: THE JUDICIAL SYSTEM”?

| | Not Very Helpful | | | | | Very Helpful | | | | |
|--|------------------|---|---|---|---|--------------|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 5 |
| Story 1: Roy, a Judge Working with Young Male Defendants | 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 5 |
| Story 2: Anna, a Public Defender | 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 5 |
| The Challenges and Responsibilities of Prosecutors | 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 5 |
| The Challenges and Responsibilities of Defense Attorneys | 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 5 |
| The Upsides and Downsides of Plea Agreements | 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 5 |
| The Challenges and Responsibilities of Judges | 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 5 |
| The Juvenile Justice System | 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 5 |
| Transferring Juveniles to Adult Courts | 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 5 |
| Emerging Help for the Mentally Ill | 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 5 |
| God’s People: Called to Justice | 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 5 |
| Advocating for the Vulnerable | 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 5 |
| Discussion Questions | 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 5 |

What do you see as the strengths and weaknesses of Chapter 3?

4. HOW HELPFUL DID YOU FIND “CHAPTER 4: CORRECTIONS”?

| | Not Very Helpful | | | Very Helpful | |
|--|------------------|---|---|--------------|---|
| Story 1: Mike, an Incarcerated Man | 1 | 2 | 3 | 4 | 5 |
| Story 2: Frank, a Correctional Officer | 1 | 2 | 3 | 4 | 5 |
| Corrections Begins with Sentencing | 1 | 2 | 3 | 4 | 5 |
| Levels of Correctional Institutions | 1 | 2 | 3 | 4 | 5 |
| Our Prison Population Keeps Growing | 1 | 2 | 3 | 4 | 5 |
| What Are the Conditions Often Experienced by the Incarcerated? | 1 | 2 | 3 | 4 | 5 |
| The Growth of the Corporate Prison: Problems and Possibilities | 1 | 2 | 3 | 4 | 5 |
| Juvenile Corrections | 1 | 2 | 3 | 4 | 5 |
| Justice and Retribution | 1 | 2 | 3 | 4 | 5 |
| Justice and Restoration | 1 | 2 | 3 | 4 | 5 |
| Navigating between Principle and Solidarity | 1 | 2 | 3 | 4 | 5 |
| Discussion Questions | 1 | 2 | 3 | 4 | 5 |

What do you see as the strengths and weaknesses of Chapter 4?

5. HOW HELPFUL DID YOU FIND “CHAPTER 5: LIFE AFTER CRIME”?

| | Not Very Helpful | | | Very Helpful | |
|---|------------------|---|---|--------------|---|
| Story 1: Jim, a Pastor of a Congregation with a Registered Sex Offender | 1 | 2 | 3 | 4 | 5 |
| Story 2: Bill, a Story of Re-entry and Mentoring | 1 | 2 | 3 | 4 | 5 |
| Helping Victims after Crime | 1 | 2 | 3 | 4 | 5 |
| Restoring Former Offenders to Full Community Participation | 1 | 2 | 3 | 4 | 5 |
| Full Community Strategies | 1 | 2 | 3 | 4 | 5 |
| Rethinking Incarceration and Advocacy Issues | 1 | 2 | 3 | 4 | 5 |
| Relationships, Responsibility and New Creation | 1 | 2 | 3 | 4 | 5 |
| Discussion Questions | 1 | 2 | 3 | 4 | 5 |
| Conclusion | 1 | 2 | 3 | 4 | 5 |

What do you see as the strengths and weaknesses of Chapter 5?

Overall, how well does the study on Criminal Justice provide useful material to help this church discern what it means to respond faithfully to the multi-faceted issues of criminal justice?

| | | | | | |
|------------------|----------|----------|----------|----------|--------------|
| Not Very Helpful | | | | | Very Helpful |
| 1 | 2 | 3 | 4 | 5 | |

Comments:

Thank you for reading the study and responding.



Evangelical Lutheran Church in America

God's work. Our hands.