

REVEALING THE PRISON INDUSTRIAL COMPLEX

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My name is Brett McClafferty, I am 32 years old, and I am in my final months of a three year prison term in the Ohio Dept. of Rehabilitation and Corrections for relatively minor white-collar financial crimes.

My story is a unique story, because prior to this unfortunate bout of incarceration I spent my entire adult life working on the other side of the law. I did my law undergraduate studies at Cleveland State University (Cleveland-Marshall School of Law) from 2006 - 2010, went on to earn an Ex.C.B.A. in Applied Laws from the University of Notre Dame (Mendoza College of Business) in 2014, and I later earned an Advanced Certificate of Public Administration from The Ohio State University in 2015.

In 2010 I was appointed by the then-Mayor of the City of Streetsboro (Ohio) as a City Commissioner, where I was tasked with enforcing the planning, zoning, and economic development laws of the City. In 2011 I resigned that post to begin a new role as a Special Assistant to the then-Mayor of the City of Akron (Ohio), where I worked on major economic development, educational, and criminal justice initiatives within the City. In 2014 I was appointed by then-Ohio Governor John Kasich (pursuant to resolution by the Portage County Board of Commissioners) to represent Area 19 on the Ohio Workforce Investment Board, and in the 2016 Democratic Primary Election I was elected by the citizens of Ohio to serve a second term on the Democratic Party Central Committee.

While serving on the DCC, I became a registered lobbyist, practicing in both the State of Ohio and Washington D.C., and made a substantial amount of money protecting liquor industry interests within the state and the federal government. While practicing, I developed relationships with other lobbyists, some of whom represented law enforcement associations and private prison corporations (like the private minimum security prison I am currently being held in).

I witnessed firsthand the power such lobbyists wielded over lawmakers and executive branch officials, and the millions of dollars that were funneled into the campaign coffers of politicians who harbored pro-incarceration sentiments. While I have always supported criminal justice reforms, I must admit, it wasn't until I found myself on the other side of the law that I fully comprehended the devastating impact such pro-incarceration policies have had on our State. These policies are the lifeblood of a prison industrial complex that is so massive, and now so systemic, that it has warped the very institutions that were created to protect the rights of citizens into something that is practically unrecognizable.

Let me be clear: I do not write this from a place of resentment. Our broken system has always benefitted me because I can afford justice (emphasis on the word "afford"). I do not dispute the financial transactions or the events that occurred in my life which led to my prosecution, nor do I harbor any ill-will for the Special Prosecutor who prosecuted me. While I was only convicted on eight (8) of fifty-two (52) criminal charges brought against me statewide - which included the dismissal of all serious charges like "pattern of corrupt activity" - I knew that I was operating in a financial grey area, and I have only myself to blame for the legal consequences that followed.

I was making millions of dollars through lobbying and in private enterprise; which included building the first self-sustaining solar-powered Bitcoin "farm" in the United States (Phoenix, Arizona). I owned an Audi R8, Maserati Grand Turismo, and a Cadillac Escalade. I purchased a NetJets membership so my buddies and I could travel the world by private jet on a whim. I bought a condo in the U.S. Virgin Islands and rented homes across the globe. I spent ungodly amounts of money on all of life's other excesses, and gave over one hundred thousand dollars to the Catholic Church to absolve the sins associated with those excesses. My life was ridiculous, and I knew it. You can't live that kind of life and not expect blowback. Simply put, I got what was coming to me. I accept that, and I feel no bitterness whatsoever.

I am disheartened, though. As an upper-middle class white guy, you cannot fully appreciate how skewed the system is against the poor and people of color until you live amongst the very people the system is victimizing. The entire criminal justice system is broken, and it operates more like an assembly line than it does a forum for justice. Our law enforcement agencies are broken, our grand jury process is broken, our system of cash bail is broken, our system of public defenders is broken, our procedures for how criminal cases are litigated are broken, our framework for criminal sentencing is broken, our corrections system is broken, and our systems of parole or probation are broken. They all have one thing in common, however: they are all symptoms of the same prison industrial complex.

As a quick synopsis of how this broken criminal justice system impacts a poor black 19-year-old from Cleveland, let me lay it out for you:

LAW ENFORCEMENT: A business is burglarized, and witnesses say it was burglarized by a young black man, approximately six feet tall, who was wearing a red hoodie. Officer stops a young black man wearing a red hoodie outside of a Circle K a block from the crime. This young man's name is Marcus. Marcus has a juvenile record for breaking and entering into the neighborhood swimming pool from years prior. Officer determines he has probable cause to arrest Marcus, given he fits the description of the burglar, was in proximity to the crime scene, and has a juvenile record for B&E.

BAIL: A municipal court judge sets Marcus' bond a \$25,000 cash. Marcus has no money because he's enrolled fulltime as a student of Cuyahoga Community College, and his mother is working two jobs to just get by. So he must sit in the county jail for up to 90 days waiting on his case to be presented to a grand jury.

GRAND JURY: Prosecutor stands before a room of twenty grand jurors (where no judge presides, where the defendant is not present, and where no lawyer may appear on the defendant's behalf) and presents a bunch of hearsay "evidence" and conclusions of law that are not admissible in a courtroom, but are allowed in a grand jury proceeding. This grand jury proceeding, like all grand jury proceedings, is secret; and its transcript will never be divulged to the defense. Prosecutor tells the grand jury that there is most certainly probable cause for an indictment, and asks the grand jury to return what is called a "true bill" against Marcus. The grand jury, as always, does what the prosecutors asks, and Marcus is indicted for burglary; a felony of the second degree in Ohio; carrying a maximum penalty of eight years in prison.

PUBLIC DEFENDER: Marcus is appointed a public defender to defend him in court. Marcus pleads not guilty at an arraignment, and does not see his public defender again for four months; all the while sitting in the county jail in lieu of bond awaiting trial.

LITIGATION PHASE: Marcus finally meets with his public defender to discuss his case, and the public defender continuously confuses facts of Marcus' case with one of the other hundred felony cases he is defending. Marcus feels like he has no chance of prevailing with this clown. The public defender starts using fancy legal terminology Marcus can't understand; telling Marcus he's been defending criminal cases for twenty years, and that if Marcus goes to trial, that he will lose, and will likely be sentenced to eight years in prison. He tells Marcus that he is "lucky" to have this particular public defender, because he is friends with the assistant prosecuting attorney handling Marcus' case. The public defender tells Marcus that if he agrees to plead guilty to "breaking and entering" - a felony of the fourth degree - he can guarantee him probation, and after spending seven months in the county jail awaiting indictment and trial, he will go home that same day. Marcus needs to get home to his family, and is scared about the prospect of spending eight years in prison, so he agrees to the deal (although he did not commit this crime).

SENTENCING: Judge accepts Marcus' plea, sentences Marcus to 18 months in prison, suspending the sentence on the condition that Marcus completes three years of probation and pays restitution for damage to the burglarized business.

PROBATION: After three years of probation with no violations other than a dirty urine for marijuana usage, Marcus goes to meet with his probation officer for what he thinks will be the last time. Marcus' probation officer tells Marcus that he is extending Marcus' probation for two more years because Marcus has not completely paid the restitution owing on his case. Marcus becomes upset, feeling like this is unfair, and leaves the Probation Office before saying something he would regret. The probation officer issues a warrant for Marcus' arrest and he is picked up by officers days later.

BACK IN FRONT OF JUDGE: Judge tells Marcus that he failed to pay the restitution he owed as a condition of probation, and that by leaving the Probation Office unexcused after being informed that probation was being extended, that the Judge no longer believes Marcus is amenable to community control sanctions (probation). Judge revokes Marcus' probation, imposes the full 18 month suspended sentence, and Marcus is taken into state custody to begin serving a prison sentence for a crime he never committed.

PRISON: Marcus is overwhelmed by the disorganization of prison. After a few months in prison, he finally figures out how to request an attorney phone call. It takes another three months for the prison to coordinate a call with Marcus' public defender. The public defender does not remember Marcus or his case but refers him to the Ohio Public Defender's Office for an "appellate packet" if Marcus wants to appeal. Marcus contacts the Ohio Public Defender's Office and requests an appellate packet. He receives said packet a month later, fills it out, and submits it to the Court. After spending 8 months in prison, along with the 7 months of jail-time credit he received for his pretrial detention (for a total of 15 months time-served on an 18 month sentence), the Court of Appeals finally appoints Marcus an appellate attorney to file a direct appeal of Marcus' conviction and sentence.

APPEAL DISMISSED: The appointed appellate attorney calls Marcus at the prison and tells him the appeal of the sentence will be moot because Marcus will be released from prison long before the Court of Appeals makes a decision. He tells Marcus, that even if the conviction itself is not moot, it makes no sense for Marcus to appeal it because if he wins the appeal, he will return to the pretrial stage of the case which will put the full eight year sentence back on the table along with the likelihood of Marcus being re-held on another \$25,000 cash bond -- when practically speaking -- Marcus' original sentence will have already been completed. Too much risk for too little reward, the attorney tells Marcus. Marcus agrees to dismiss his appeal, and after being released from prison, he will live out his days as a convicted felon for the crime of wearing a red hoodie to buy a Polar Pop from the local convenience store.

This is not some abstract hypothetical. You would be surprised how common such a story is, or stories like it are. The system has a vested interest in convictions, both from a political standpoint and for judicial economy purposes. Lawmakers, doing the bidding of their prison industrial complex benefactors, have made laws to criminalize every aspect of human life. Things such as letting one's grass grow too high can now put the property owner in jail for up to thirty days. As a direct and proximate result of criminalization, the volume of cases before the courts has become absurd. Criminalization has made it impossible for the proper adjudication of cases on the merits, so the system operates akin to a commodities market trading floor; where sentences are negotiated in plea bargains with very little consideration for the "truth".

This sentiment is shared the U.S. Supreme Court. "Criminal justice today is for the most part a system of pleas, not a system of trials," Justice Anthony M. Kennedy wrote in a 2012 majority opinion for the Court. "The right to adequate assistance of counsel cannot be defined or enforced without taking account of the central role plea bargaining takes in securing convictions and determining sentences."

This is not the criminal justice system our founding fathers envisioned for this nation. In fact, I would argue that the founding fathers wouldn't want to be within ten city blocks of the abomination that has become the state of criminal justice in America. Lobbyists, through their political sycophants, have turned this nation into a police state. One that injects \$600 billion a year into the economy, of which \$200 billion is swallowed by private industry; private industry that employs lobbyists. It's a vicious cycle of money, power, and politics that is actively corrupting our institutions.

We as a people must demand a constitutional amendment that ushers in comprehensive campaign finance reform. Money is both the chicken and the egg in this broken system of administering justice. Until money is taken out of politics, we will continue to see the expansion of a dangerous prison industrial complex that is destroying millions of lives each year. In my opinion, this is the greatest existential threat to American democracy, and to the sacred notion of due process under the law.