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President's Column

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Meet Marcel Johnson

By Cynthia Hujar Orr

I met Marcel Johnson at a Greater San Antonio Chamber of Commerce meeting. A tall, sharply dressed Black man with a deep and impressive voice, his calm and thoughtful manner is striking. Marcel is the Vice President of Economic Development at The Chamber. His job is to promote San Antonio to new businesses, and he is doing a great job. While jobs are shrinking in the rest of the country, San Antonio continues to gain companies and jobs. Marcel's excellent people skills allow him to seamlessly interact and coordinate with the other divisions of The Chamber. So he benefits our city's military, congressional, state legislative, and numerous other goals. He is also an armed robber.



As I make my way to Washington, D.C., to testify before the U.S. Sentencing Commission, I am hopeful that Marcel's story and others like his make an important point. Locking up people with draconian "one size fits all" sentences has earned the United States a population of bitter, disenfranchised, and ill-equipped felons. Marcel should have been one of them.

Marcel had a good upbringing in a tough Detroit neighborhood with a single mom who worked at night as a nurse. He attended a school for the gifted and talented. Marcel and his family moved to San Antonio when he started high school. Seeing that his friends back home were living the high life selling drugs, he yearned for the same instant gratification and relief from the drudgery that his single mom's work life and absent father meant for his family.

One thing I remember about my youth was the constant feeling of insecurity. Things never felt right. Money was always tight. Watching my mom struggle and sacrifice deeply affected me. It wasn't fair, in my opinion, for her to have to live the way she lived. My mom is the most honest person I have ever known, yet it seems she never received what an honest, hard-working person deserved. As a child, I had already formed in my mind what I wanted from life and what I was willing to sacrifice. There were also a lot of honest, hard-working people who lived in my neighborhood, and they all looked like saps to me. Something just didn't make sense. So here is where I began to believe the only way I was ever going to be wealthy, heck, comfortable, was through illegal means.

Despite his mom's best efforts, Marcel started drinking, smoking pot, and doing stupid things. It culminated in the worst night of his life when he accompanied friends in the armed robbery of a restaurant.

We had two guns among the four of us and we entered the restaurant in pairs. I was the last person to enter. I did not carry a weapon, as my only "job" was to collect money from the patrons.

The group was quickly apprehended.

Under Texas law, Marcel was told to expect a sentence of more than 40 years. His life should have been over. He received a 30-year sentence and began to change, living under prison rules with a long timer's mentality. Marcel was adept at winning everyone else's commissary and selling it back to them for double what they had paid for the items. He negotiated peace with the more violent cellmates and neighbors without engaging in violence. And two weeks into his sentence, he was back in court.

Though there was no Texas procedure that warranted it, Marcel was being resentenced to a much shorter term. It was inexplicable. There was no newly discovered evidence. His trial was fair and he was guilty. But his lawyer, the court personnel, and the probation officers who processed him for sentencing saw his potential and convinced the judge to take a chance on him and have mercy. He served only five years and nine months.

After receiving the shorter sentence, Marcel's outlook and hope for his future improved. His goal was to make something of himself as he served his time, and prepare as best he could for his future. One of Marcel's friends died in prison; the other two continue to work toward productive lives after their incarceration. Marcel has graduated from college and proved himself at a job where he has become a top performer. He wears his felony conviction like a badge of courage and is quick to tell anyone about the second chance he was given.

This is not a fluke. It is true that those given alternatives to lengthy incarceration, like probation, are substantially less likely to relapse into criminal behavior. Marcel is a testament to the fact that we are neglecting the needs of quality young people. And it is costing us dearly. Dropouts populate our prisons. A cradle-to-school trajectory results in productive lives.

Moreover, we should consider the offender, as well as the offense, to ensure that the guilty are punished and do not become a burden to society or to themselves. That is the message NACDL and others will take to the Sentencing Commission.

Sentencing must be geared to achieve success and address crime. Where something else is going on, prison is not the remedy. Prisons stopped trying to rehabilitate inmates long ago. Further, they have never been the appropriate place for persons with addictions, mental health problems, or serious handicaps.

The Bureau of Prisons always tells sentencing courts that it can take any inmate and that it can accommodate any handicap, mental health issue, or physical illness. However, it is high time that courts stop accepting these empty promises. While the Bureau can theoretically provide medical care, it will never put a representative on the stand to testify that it will provide the care required. It sets its own substandard regimen of care and cannot guarantee that it can even meet this substantially lowered treatment plan. In fact, it seldom does.

A fair justice system needs to account for coincidental circumstances that result in the higher incarceration of a large segment of the community. It is a reality that the police more heavily patrol poor urban neighborhoods where the majority of the population is Latino or Black. And more poor families are single-parent families with poor support systems. Children make due with less supervision and have fewer resources at home.

Affluent neighborhoods and college campuses are not generally frequented by police patrols. And, affluent persons generally have more resources at home, more time for parenting, and better support systems. Affluent and college populations are predominantly white. Thus, minorities are far more likely to be caught committing crimes related to drugs or substance abuse than their white contemporaries — even though the affluent neighborhoods and college campuses have as many drug exchanges and petty thefts as the poor neighborhoods.

Marcel's case shows that wise judges can fashion sentences that fit the crime and the offender.

Equipped with laws that will allow it, these judges can also divert persons who do not belong in criminal court to places that provide health care for addiction, substance or behavior abuse, mental illness, and physical illness.

An example is Judge Orlando Garcia, who recently sentenced a client of my firm for possession of child pornography. The experts on both sides agreed that he was not a pedophile and had never had contact with a child. Exposed to a 10-year sentence, the client is socially immature because of his physical limitations, has a spastic gait and unintelligible speech, and has cerebral palsy caused by the malpractice of a government doctor when the client's father was active duty military.

The Bureau of Prisons reported to the probation office that it could handle his health care needs. This was true, but only if you consider it adequate or even wise to rely on another inmate for diapering and assistance with eating, clothing, and cleaning. It is true only if you believe that doctors will pay higher premiums for the malpractice insurance required to treat inmates. Given the medications my client had to take and his physical limitations, he was vulnerable to manipulation. His inability to communicate and life-threatening asthma made his existence in prison precarious at best. Judge Garcia sentenced him to a day incarceration, time served, and lengthy supervised release. My client will graduate from college this year, attend postgraduate school, and God willing, live to accomplish great things — like Marcel. These things will happen not because the sentencing guidelines allow it or because the Bureau of Prisons will adequately care for him, but because a federal judge fashioned a sentence that provides serious punishment and allows safety and rehabilitation.

The taxpayer will not pay for substandard care for my client, and he will not die in prison. Instead, he will receive the medical care prescribed to help him live as long as possible without taxpayer expense. In addition, he will receive the counseling and mental health care that he needs to deal with the underlying problem that caused his contact with the criminal justice system.

Whether individuals in the criminal justice system are disadvantaged by racial discrimination, poverty, mental or physical illness, youth, poor coping skills, or limited intellect, their circumstances and characteristics, as well as their offenses, must weigh in the balance. It is only then that seasoned jurists can let mercy fall like gentle rain, blessing both those who receive it and dispense it. It is only then that society will gain doubly from what we lose under draconian sentencing schemes. Just ask Marcel Johnson.

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