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Dr. O'Brien

Global Studies: Product #3 Interview with Attorney Jim Bergenn

**Preliminary Questions:**

**1. What is your current occupation (title & description):**

Partner in a law firm of about 100 year duration and 180 attorneys. My experience includes representing those accused of, harmed by or affected by alleged criminal conduct.

**2. Have you ever worked in any other sector of the criminal justice/disciplinary system?:**

For my first year after law school, I worked as a law clerk, supporting the chief federal judge for the District of Connecticut, which involves helping the judge preside over criminal case prosecutions and related proceedings.

For 2 years, 1981-1983, on leave of absence from this law firm, I served as an Assistant Federal Public Defender, where I handled exclusively the representation of those accused of federal crimes without the ability to afford private counsel. Since then, 1983-2018, I've worked on other such cases as an appointed counsel from a panel of attorneys available for such cases, paid at steeply discounted rates.

I once served as a Special Prosecutor to investigate the State Police in connection with its handling of a murder investigation.

**3. What do you believe is the #1 cause for the United States being the #1 jailer in the world is? :**

As a democracy with a unique history, establishing itself independently on a different and expansive continent with diverse cultures with unfortunately deep clannish tendencies, the body politic so enjoys its freedom that it wrongly presumes depriving others of freedom will incentivize the behavior it wants and remove from its view those who fail to conform. Freedom permits this ignorance and selfishness, and implicit racism perpetuates it.

**4. I recently did an analysis of incarceration in Norway and the United States (see attached) Norway's system of criminal justice focuses on the rehabilitation of offenders through reconciliation with victims and the community at large with a**

**guiding system of normality while in prison. Could this system of justice work in the United States? Why or why not?**

It could absolutely work. In fact, it completely matches my view, based on my 39 years in the criminal justice system. The real problem is political. We have a very unusual political tradition in this country. Rugged individualism. Very strong overlay of "moralism," bereft of morality.

The best chance we have is for people who are purely practical. Those who do not like high taxes, and don't like spending all the money on prisons, and drug programs, and underemployment problems, should be sick of how our criminal justice system creates and perpetuates problems and not solutions.

There are many actors in the system, including prosecutors, defense lawyers, probation officers, and Judges, who swim upstream, but the system itself and the majority of actors are free to list it and just marking time.

**5. There are a disproportionate number of incarcerated African American men with minor non-violent charges from the prison boom during The War on Drugs, what issues remain from that era of incarceration?**

I am pretty confident that we will never fully recover for the damage that was done. It impacts every individual. Not only does it hurt those who were incarcerated, it has helped to seal and perpetuate the implicit bias of the rest of the population. This breeds resentment on both sides of this issue.

**Criminal Justice Questions:**

**1. Economics professor, Michael Mueller-Smith believes that long prison sentences cultivate more crime upon release than they prevented. Do you agree or disagree? Explain**

I agree completely. The longer someone is incarcerated without the habits of hard work and it's reward, the more difficult is for someone to get started.

**2. What do you attribute to the growth of our corrections system?**

Politicians going for cheap votes with "lock them up" fear-mongering political strategies.

**3. Do you believe that we currently warehouse prisoners? Explain.**

Yes we do. And it is ridiculous. People do not see how much of their tax dollars are being completely wasted, not only in the short term but in the long term. Out of sight equals out of mind. Ironically, even some liberals (Ted Kennedy) fell for this back at the beginning of the war on drugs.

The employees at the department of corrections have no skills or talents at improving people's lives. There is a very small percentage of people with some social service

educational background. The rest are simply under educated people at the bottom of the social structure who get some satisfaction out of being “better“ than the inmates. When I think of a warehouse, I think of security guards. That’s exactly how our prison system runs.

**4. Do you believe that the current criminal justice system in the United States deters crime? Why or Why not?**

It is very plain when you look at the legislative history that the centuries old purpose of the criminal law is to deter. It is just explain that it has only marginal effect. Most criminals have given up hope and are not tuned into opportunities and rational choices. On the other hand, there are definitely some crimes for which criminal sanctions serve to deter misconduct. I am thinking for example of drunk driving laws and the reduction of drinking and driving deaths based on very strict criminal provisions for drinking and driving. Regulated industries, such as securities, also benefit from the deterrence of the criminal justice system. Someone who’s making a good living Fear is getting a felony record because it’s strips him or her of a certain livelihood for the rest of their lives.

**5. Does our current system of imprisonment make punishment an enduring status for an ex felon? Explain your answer.**

I just was engaged today by a man from North Carolina, with a wife and three kids, who is paying me \$2500 to try to get his drug conviction of 16 years ago expunged. He moved away from Connecticut after he was released from prison and move back to a small town in North Carolina where he has been fully employed and has raised a family. I believe he is “under employed“, because he still feels so bad about having a record. Like the answer I gave you about smoking marijuana, minorities who get prosecuted for something that is even more commonplace among upper middle class whites have their fragile confidence shaken. The false bravado of ghetto culture is, ironically, predicated entirely on a genuine lack of confidence (that they can make it in this world), based on a criminal record that is due more to their class background than to any moral deficit.

**6. The prison/correctional system is a gigantic bureaucracy with over 2 million prisoners, 428,000 correctional employees, and an annual \$74 billion price tag to confine inmates. Are private prisons the answer? Explain.**

Private prisons are a disastrous idea. It would then create an even more dramatic incentive system to keep the prisons fully populated. We need to go almost the opposite way. We need to have systems of financial incentive built to train and motivate prisoners, not present managers, so they can understand how to succeed when they finish their sentence.

**7. What do you see as necessary improvements to our criminal justice programs in order to reduce the United States high recidivism rate of 76.6% --State prisoners five-year recidivism rate and 44.7% Federal prisoners five year recidivism rate?**

The two key components are better psychological counseling and better development of habits of working and its rewards.

**8. Does our current prison system turn prisoners into career offenders? Explain.**

Although it is not across the board, the very fact it might be true for about 30% of prisoners is itself ridiculous. Any other business or organization that has such a high rate of complete failure would go out of business.

**9. Being employed in the Hartford/Hartford County, what issues in the criminal justice system profoundly revolve around race?**

It starts with Bond. Many judges, and prosecutors, presume that the imposition of bond is appropriate when it very rarely serves a positive purpose. It costs society more to incarcerate someone pretrial than to have them monitored and out in the community with supervision and drug testing. A significant number of these people lose jobs and lose whatever positive relationships they may have developed in their employment or their housing. Recently, Malloy, has taken the lead on pushing for change, and he has succeeded. I expect it will play out well over the next couple of years. Implicit Bias, of course, effects of the players in the criminal justice system, from prosecutors, two defense lawyers, to probation officers, and to judges. Social science test could be done any day to prove this point. Accordingly, at every stage of the system, a minority is going to lose an advantage that will be available to a white defendant who has some acculturation.

**10. What do you see as the damage to families and urban communities?**

We are so passed "damage". The family in urban communities is fundamentally destroyed. There are many wonderful exceptions, but they are all exceptions.

**11. Michelle Alexander, author of the 2010 *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* condemns mass incarceration as a "well disguised system of racialized social control..." like Jim Crow laws and slavery. Do you agree? Why or Why not?**

I agree completely. That is what the system was designed to do, as revealed during a review of the inner documents of the Nixon presidency. It is also how it actually functioned over the last 40 years.

**12. Alexander goes on to describe ex-cons as a stigmatized under class. Do you agree or disagree? Why or why not?**

This is beyond dispute. These ex-cons have been unable to get gainful employment, in the main. Just this past week, for the first time in 20 years, there are as many jobs as there are people looking for work. This can help *mitigate* the problem, but the harm is permanent.

**13. What are your opinions on the retributive system or the punitive philosophy that is embedded in our criminal justice system compared to a system of restorative justice like the country of Norway?**

Our system simply does not work. People age out. The system in Norway, from what I have read and observe, actually begins to make changes in individuals on day one and throughout their sentence.

**14. Could Norway's system work here in the United States? Why or why not?**

It would be easy to do, if we could have the political will. I do not foresee having the political will, even though to me the need is very self evident.