Return on Investment   
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Affirmative Case by Travis Herche

**Summary**

The standard affirmative case this year is some expression of the idea that we should care about prisoners and make decisions in their interest. In turn, expect many negative cases to pivot on the core idea that we shouldn’t. But this basic compassion versus justice conflict only scratches the surface of the resolution.

This case preempts much of the persuasive momentum of negatives by agreeing right away that we should do what’s best for the law-abiding population. It then argues that what’s best for us also happens to be what’s best for prisoners.

While this case does contain some of the trappings of a standard inmate-advocate case, don’t let them distract you. Elements like the intro are merely intended to remind judges that prisoners aren’t a lost cause – and thus, that investing in them can yield rewards.

Win the round by staying as practical as possible. Don’t get caught up in philosophical questions on justice or vengeance or the nature of man. Your core argument is intuitive and powerful: as long as we’re spending all this money, we may as well get something out of the deal.

Return on Investment

The following is an open letter from Maria Lloyd to the judge who gave her father 15 life sentences for his non-violent drug offense.

I’m not one to make excuses for anyone’s poor decisions, including those of my own family. They broke the law, so they deserved punishment. I get it. I also get the point you were proving in punishing them: Drug trafficking is not tolerated in the state of Illinois. It’s quite obvious you were taking a very personal stand against the War on Drugs. Well, as you can imagine, I have too, but I’m sure our views differ. Even if one argues that my family deserved to go to prison for the distribution of drugs, does my father deserve to be incarcerated for life? Do you really think he deserves to die in prison? My four siblings and I have literally faced hell because of our father’s incarceration. I truly believe my eldest brother, who is now deceased, wouldn’t have died at the hands of violence if my father wasn’t incarcerated.

You have no idea how much embarrassment, confusion, and heartache a child faces when handed an Emergency Contact Form requesting contact information for mom and dad. For years, I’d write my father’s name and ask my mom if I could write the prison’s information on the lines requesting his address and phone number. “Daddy-Daughter” socials were the worst. Instead of enjoying the festivities, I would stay home in shame because of my father’s incarceration. I’m still haunted by those experiences to this very day, and I have yet to recover emotionally.

I can’t believe the word “Honorable” is placed before your name and title. What’s honorable about your work? Nothing. Because of you, I haven’t recited the Pledge of Allegiance in years. Liberty and justice aren’t for “all”, it’s reserved exclusively for the wealthy which are generally of European descent.

I know my dad deserved to be punished for his crimes- I accept that. But, for a non-violent, first time offense, 15 life sentences is far too harsh. By giving a life sentence to my father, you also sentenced me to a lifetime of misery that comes from losing the man I’ve loved since birth. My father has spent 23 years of my life in prison. Now, I pray that men like you will never be allowed to ruin a family again.[[1]](#footnote-1)

Stories like Maria’s are tragic when they happen even once. They’re horrifying when they’re part of a system that throws away lives and money in the name of revenge. That’s why I am resolved: *Rehabilitation ought to be valued over retribution in criminal justice systems.*

# Value: Return on Investment

Return on Investment is operationally defined as: “The amount of benefit provided by an expenditure.” This is a pretty familiar idea in the business world, giving rise to principles like “Buy low, sell high.” But it also applies to criminal justice. Here’s why:

## Value Link: Responsibility to Taxpayers

Incarceration is a very expensive prospect. It involves not just providing prisoners’ basic needs, but also running prisons with elaborate overlapping security measures to make sure no one escapes.

According to a 2012 report by the Vera Institute of Justice, the Average Annual Cost per Inmate in the US is over thirty-one thousand dollars.[[2]](#footnote-2)

That’s equivalent to how much the inmates would make if they were being paid fifteen dollars an hour in full-time jobs. Justifying that cost to taxpayers isn’t easy. We have a responsibility to use the approach with the soundest return on investment.

# Contention 1: Rehabilitation offers Positive ROI

Rehabilitation means we don’t give up on the staggering sums of money we’re spending on prisoners. We’re determined to minimize the number of people who commit more crimes and go back into the system.

Rehabilitation used to be a pretty unpopular idea. That’s because criminal justice systems tended to ignore it. They treated prisoners so badly that they were *de*habilitated. When the prisoners were released after years of violent treatment and no employable skills, they’d commit another crime and come back. Strangely, this was used as proof that rehabilitation doesn’t work. It does – but you have to be trying.

James Gilligan is a clinical professor of psychiatry and an adjunct professor of law at New York University. He wrote in the New York Times in 2012:

When people are dangerous to themselves or others, we restrain them – whether they are children or adults. But that is altogether different from gratuitously inflicting pain on them for the sake of revenge or to “teach them a lesson” – for the only lesson learned is to inflict pain on others. People learn by example: Generations of research has shown that the more severely children are punished, the more violent they become, as children and as adults. The same is true of adults, especially those in prison. So the only rational purpose for a prison is to restrain those who are violent from inflicting harm on themselves or others, while we help them to change their behavior from that pattern to one that is nonviolent and even constructive, so that they can return to the community.

He continues later in the article:

Prisoners should be treated with exactly the same degree of respect and kindness as we would hope they would show to others after they return to the community. As I said, people learn by example.[[3]](#footnote-3)

That means a prison system very different from what we use today – a system that teaches cruelty and traps prisoners in a cycle of violence. But we know that it doesn’t have to be that way.

In 1988, the Academy of Criminal Justice Sciences released a report mathematically analyzing more than 200 studies on rehabilitation. They were quoted in the Washington Post saying:

Our reviews of the research literature demonstrated that successful rehabilitation of offenders had been accomplished, and continued to be accomplished quite well ... reductions in recidivism, sometimes as substantial as 80 percent, had been achieved in a considerable number of well-controlled studies. Effective programs were conducted in a variety of community and (to a lesser degree) institutional settings, involving pre-delinquents, hard-core adolescent offenders, and recidivistic adult offenders, including criminal heroin addicts. The results of these programs were not short-lived; follow-up periods of at least two years were not uncommon, and several studies reported even longer follow-ups.[[4]](#footnote-4)

So again: modern prisons are very problematic, but rehabilitation works. It gets prisoners back into society where they can contribute rather than drain taxpayers with crimes and incarceration expenses.

Of course, retribution does none of that.

# Contention 2: Retribution offers Negative ROI

Retribution has the worst-possible ROI because it effectively gives up on success. It throws away the lives of prisoners and the staggering financial investment; it says: “we’re not even going to try to make this worthwhile.”

Meanwhile, it encourages treating prisoners cruelly – making them suffer. As we’ve already learned, that just makes prisoners more cruel. Throwing an offender in a concrete jungle where he must fight to survive, where he is treated like an animal, where he learns nothing but how to fit in among criminals, is a perfect recipe if our goal is to perpetuate violence. Retribution has a negative ROI because it means your taxpayers dollars are actually being spent to make citizens more violent and more likely to commit crimes. That’s outrageously bad policy, and Americans are right to be upset.

In 2010, Crime in America released a review of a 20-year controlled study of a rehabilitation program called Cognitive Behavioral Treatment. It said:

Without treatment, 82 percent returned to prison. With treatment, 61 percent returned to prison. Our View: If employed nationally, then Cognitive Behavioral Treatment “could” result in a 21 percent difference in the incarceration rate, which (if you could apply the results each year) means that 147,000 released offenders would not go back to prison (based on a national average of 700,000 offenders released from prison every year). If employed nationally, that means that [nearly 3 million] 2,940,000 offenders would not have returned to prison over the course of 20 years. Statistically speaking, it’s crude (ok-inaccurate) to look at things this way, but the bottom-line is that it’s a 20 year study based on large samples with a control group (nope, it wasn’t random assignment). The study tells us three things: We could save hundreds of thousands of crimes if we employed Cognitive Behavioral Treatment nationwide. We could save hundreds of millions of dollars in reduced prison costs if we employed Cognitive Behavioral Treatment nationwide. We continue to be astounded by the high arrest and incarceration rates of those who inhabit prisons.[[5]](#footnote-5)

That comes out to 91 billion dollars squandered because of our irrational cruelty-focused justice system. Rehabilitation at least tries to provide an ROI, and we’re making progress toward better and better approaches to restore prisoner’s dignity and respect for the rule of law. That’s the only rational approach. Taxpayers deserve nothing less. And along the way, maybe girls like Maria can grow up with dads. Thank you.

Negative Brief

As with all strong cases, the best part of this one is also its greatest weakness: it depends on a practical approach to the resolution. Your best bet is a value-centric case that digs deep into the philosophical underpinnings of the justice system.

Most of your NC time should be spent on your value reasons to prefer. Indignantly disagree that criminal justice should be evaluated like a business investment. We imprison people to uphold your well-supported value, not with the same mindset we’d use to decide whether to open a new restaurant! If it makes sense with your value, point to all the other things government does – like maintain a standing army, or protect national parks – that don’t make sense when evaluated using ROI. Good cross-ex question: “Would it ever be okay for government to do something that caused a net loss in taxpayer dollars?” Follow-up: “Why/why not?”

If your case isn’t value-centric, you have a murkier path to victory. You may benefit from arguing that most criminals are such lost causes that investing in them is hopeless, and thus that we should have a system that spends as little as possible to minimize loss. You’re basically arguing: return on investment will always be close to zero, so let’s invest as little as possible. This is a more complex line of argument and it’s downright depressing, but it can work.

1. Maria Lloyd, Open Letter to Judge Marvin E. Aspen, Kulture Kritik, 2015.

   <http://kulturekritic.com/2012/06/news/woman-writes-open-letter-judge-who-sentenced-her-father-15-life-sentences-non-violent-first-offense/> [↑](#footnote-ref-1)
2. Christian Henrichson and Ruth Delaney, “The Price of Prisons: What Incerceration Costs Taxpayers,” Vera Institute of Justice, July 20, 2012.

   <http://archive.vera.org/sites/default/files/resources/downloads/price-of-prisons-updated-version-021914.pdf>

   Taken from a table. Average from the 40 states examined was $31,286. [↑](#footnote-ref-2)
3. James Gilligan: “Punishment Fails. Rehabilitation Works.” The New York Times, December 19, 2012.

   <http://www.nytimes.com/roomfordebate/2012/12/18/prison-could-be-productive/punishment-fails-rehabilitation-works> [↑](#footnote-ref-3)
4. Gendreau, Paul and R. Ross (September 1987). "Revivification of Rehabilitation: Evidence from the 1980s," Justice Quarterly, Academy of Criminal Justice Sciences, Vol. 4.

   <http://www.prisonpolicy.org/scans/rehab.html>

   Elipsis in original. [↑](#footnote-ref-4)
5. Crime in America, “20 Year Prison Study—Treatment Works: Crime Statistics,” March 18, 2010

   <http://www.crimeinamerica.net/2010/03/18/20-year-prison-study-treatment-works-crime-statistics/> [↑](#footnote-ref-5)