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### LESSONS LEARNED IN PRISON

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#### TABLE OF CONTENTS

INTRODUCTION .....	74
I. LESSON ONE: GETTING INTO PRISON SEEMS ALMOST AS HARD AS GETTING OUT.....	75
II. LESSON TWO: “YOU’RE NOT IN KANSAS ANYMORE”—TEACHING CONDITIONS INSIDE OF PRISON ARE NOT THE SAME AS ON CAMPUS.....	77
III. LESSON THREE: PEP STUDENTS ARE THE MOST GRATEFUL STUDENTS THAT I HAVE EVER TAUGHT.....	79
IV. LESSON FOUR: INMATE-STAFF RELATIONSHIPS ARE VERY COMPLICATED.....	80
V. LESSON FIVE: IT’S OKAY FOR ME TO LEAVE MY TEACHING COMFORT ZONE .....	81
VI. LESSON SIX: PEP STUDENTS KNOW A LOT ABOUT CRIMINAL LAW ..	82
VII. LESSON SEVEN: THE SAME TEACHING TECHNIQUES THAT WORK BEST WITH LAW STUDENTS ALSO WORK WITH PEP STUDENTS .....	83
VIII. LESSON EIGHT: PEP STUDENTS TAKE GREAT PRIDE IN THEIR PERFORMANCE AND IN THEIR “BRAND” .....	84
IX. LESSON NINE: LIFE IN PRISON IS BETTER THAN I THOUGHT IN SOME WAYS, BUT WORSE IN OTHER WAYS .....	85

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X. LESSON TEN: THE PRISON SYSTEM IS ILL-EQUIPPED TO DEAL WITH THE TRANSFORMED INMATE.....	87
CONCLUSION.....	90

## INTRODUCTION

One way that I have tried to stay fresh as a teacher through the decades is to periodically force myself outside of my teaching comfort zone by trying something completely different. Sometimes these initiatives will end up being a one-time experiment. That was the case a little over ten years ago when I decided to teach a new course (Contracts) in a new format (online, but well before Zoom had become commonplace). Other times, my teaching experiment will prove to be more than just a frolic and detour, as was true eight years ago when I began offering a free ACT prep course to students at urban high schools in St. Louis and Chicago. That foray into teaching high school students has endured each semester.

When I recently turned sixty, I felt like I was ready for another outside-the-box teaching experience. That was part of my motivation to volunteer as a co-teacher of a three-credit “Introduction to Law and Society” course at Missouri Eastern Correctional Center (MECC) in Pacific, Missouri, as part of Washington University’s Prison Education Project (PEP).<sup>1</sup> The PEP at Washington University (“WashU”) began in 2014 and allows students who are inmates at MECC to receive a two-year Associate in Arts Degree or a four-year Bachelor of Science in Integrated Studies Degree. Kevin Windhauser, Director of WashU’s PEP, told me that there are currently forty students in the program at MECC and another eighteen students at the Women’s Eastern Reception, Diagnostic and Correctional Center in Vandalia, Missouri.<sup>2</sup>

Even though my academic fields are commercial law and bankruptcy rather than criminal law or procedure, I am certainly aware of the problem

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1. WashU’s Prison Education Project was one of three higher education programs that were offered in the Missouri state prison system at the time I taught my fall class. That will change in the summer of 2023 with the addition of at least three new programs in Missouri, thanks to the return of federal Pell Grant funding for inmates. Inmates had been ineligible for Pell Grant funding since 1994, but will soon be able to get up to \$7,000 in Pell grants annually beginning with the 2023–2024 academic year. *See Pell Grants in Prison: A New Effort to Fund Degrees for People Behind Bars*, NPR (Jun. 28, 2022, 5:00 PM), <https://www.npr.org/2022/06/27/1107782496/pell-grants-in-prison-a-new-effort-to-fund-degrees-for-people-behind-bars> [<https://perma.cc/97GW-MTF7>]. In WashU’s PEP, prison staff are also eligible to earn degrees through WashU’s University College. *See Prison Education Project*, WASH. UNIV. ST. LOUIS, <https://prisonedproject.wustl.edu/> [<https://perma.cc/RC85-E7MY>] (last visited May 10, 2023).

2. The women’s program in Vandalia started with twenty students, but two of those have since been released from prison. The Vandalia program is just a year old, and WashU plans to add a second cohort of students there in 2023. That will bring the Vandalia enrollment up to forty students to match MECC’s student population.

of mass incarceration in this country, as well as movements to reform or abolish our current prison system.<sup>3</sup> I appreciate that I lack the background to contribute meaningfully to high-level policy debates in this area, but I figured that I could at least make a small difference at the ground level in the lives of my PEP students by teaching in this program. I also hoped that through this experience, perhaps I could get a better perspective on some of the larger issues that dominate the national conversations around prisons and prison reform movements.

My co-teacher for the course, Mark Smith, had taught the “Introduction to Law and Society” course as part of the Freshman Seminar program at WashU for several years when he was Associate Vice Chancellor and Director of the Career Center for WashU. Mark had done some career counseling work at MECC with inmates<sup>4</sup> who were about to reenter society. I, on the other hand, had never set foot in a prison before. And while I was certainly quite supportive of the mission of the PEP at WashU, I had no idea what to expect about the teaching experience there or about the students that I would be teaching.

After completing the sixteen-week PEP semester, I am pleased to report that this teaching experiment exceeded all my expectations. Mark and I have already decided to offer the course again at MECC next fall, and we hope after that to alternate offering the course each fall at MECC and then at Vandalia in the women’s prison. I learned more this past semester than I have for quite some time. Not only did I cover areas of the law that I had not studied for almost forty years, but more importantly, I learned about our criminal justice system up close and personal: what day-to-day life in prison is like, and what life was like for a number of my students before they became incarcerated. What follows is a summary of ten of the lessons I learned about teaching, prison life, and my students who are incarcerated.

#### I. LESSON ONE: GETTING INTO PRISON SEEMS ALMOST AS HARD AS GETTING OUT

I needed to take two separate steps to realize my goal of teaching in the PEP at WashU: first, I had to get our course approved by the curriculum committee members who help administer the program at WashU; and second, I needed to be approved as a Volunteer in Corrections (VIC) by the Missouri Department of Corrections (DOC). The first step was pretty

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3. See, e.g., Andrew D. Leipold, *Is Mass Incarceration Inevitable?*, 56 AM. CRIM. L. REV. 1579 (2019); Thomas Ward Frampton, *The Dangerous Few: Taking Seriously Prison Abolition and Its Skeptics*, 135 HARV. L. REV. 2010 (2022).

4. Throughout this essay, I will refer to the students that we taught either as “students” or “inmates.” I appreciate that some prefer the terms “individuals who are incarcerated” or “incarcerated individuals,” but, for brevity’s sake, I will use the one-word terms noted above.

straightforward once Mark and I had chosen which undergraduate Introduction to Law textbook we were going to use for the course. The second step was a lot more involved than I imagined it would be.

It seemed like it took a good chunk of my summer to jump through all of the hoops required by the Missouri DOC in order to qualify as a VIC. Looking back, I should have expected a rather rigorous process, given the security risk that the DOC takes each time it allows a new individual access to “the yard” and therefore access to inmates outside of the tightly controlled areas for non-VIC visitors. Smuggling of drugs and other contraband is clearly a major issue for most prisons these days, and one source of those illegal items is outsiders who have direct contact with the inmates.<sup>5</sup>

The clearance process for VICs consisted of many parts. There were paper forms and background checks, as one would expect. In addition, Mark and I each had to do an in-person interview at the prison with MECC’s Institutional Activity Coordinator. Then we needed to come back to the prison to get our ID pictures taken so our ID badges could be made. We were also required to attend a six-hour training session that included homework that needed to be completed beforehand. Finally, we had to get two separate Tuberculosis (TB) tests, which meant four trips to the health clinic, because each TB test involves first getting the injection in your arm and then coming back two days later to see if there has been a reaction.

The training session that we had to attend, which was also required for any new DOC staff member, was eye-opening. The biggest emphasis of the training was making sure that we did not give anything to or receive anything from any of the inmates. The overriding theme was that the inmates were master manipulators who would try to befriend us and then exploit our connection to the outside world in order to get what they wanted (usually drugs or money). I have no doubt that this must be a recurring problem for the DOC in Missouri and in other states or else they would not devote so much attention to it during the training sessions. On the other hand, that turned out not to be an issue for Mark or me during our semester at MECC. In fairness to the DOC, our students may not be typical of the prison population in that only forty students get selected to participate in the PEP through a competitive process, and there are 1,100 inmates in total who are housed at that site.<sup>6</sup>

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5. Most of my students claimed, although I could not verify this, that the majority of illegal drugs that enter the prison are brought in by staff rather than by visitors.

6. The PEP application process for inmates at MECC consists of a personal statement essay, a handwritten exam, and a personal interview with program administrators. One of our students told me that the previous warden had referred to the PEP students as “an elite group” of inmates who should be considered role models for the rest of the prison population at MECC.

Each time we arrived to MECC to teach a class, there were a number of steps that we had to take in order to get into the secure part of the prison. There is an airport-like metal detector even to get into the public lobby area. From there, we would get a body alarm that we had to wear before we passed through the “air lock” room by using our ID cards. Later in the semester, the staff at MECC switched out the body alarms for large radios just like the ones that the prison staff carry around to communicate with each other. These radios were big and bulky, but we needed to affix them to our clothing anyway. Once during the semester, we had to have an additional full-body scan done in a separate room adjacent to the airlock room. The staff explained that this was just a random procedure, but our students told us they suspected the reason was that there had been an inmate drug overdose death a couple of days before.

## II. LESSON TWO: “YOU’RE NOT IN KANSAS ANYMORE”—TEACHING CONDITIONS INSIDE OF PRISON ARE NOT THE SAME AS ON CAMPUS

On the first day that Mark and I were scheduled to teach, I was not really sure what to expect in terms of classroom facilities. We dutifully arrived at MECC about forty-five minutes before our scheduled 8:00 AM start time, figuring that would give us plenty of margin to do the necessary security screening to get us to the educational building across the prison yard. Following security checks, we arrived to the classroom annex at about 7:40 AM that morning, and we saw a dozen or so students congregating around the door. Mark and I were conspicuous by our “civilian clothes,” so one of the students approached us and said, “Don’t expect to start class on time. The guards usually don’t open the doors until about 8:20 AM And some of your students might be late, depending on whether the movements are running on time or not.”

I later came to understand that the “movements” are the set times when the inmates are allowed to move as a group from one location within the prison to another. But all of those movements require the shift commander to facilitate the movement. The timeliness of movements is therefore dependent on who is given this task on any given day, and what that person’s attitude is towards the idea of inmates receiving a free college education. Some of our students would skip breakfast in order to join the 7:00 AM movement which, even if it were late, would allow the students in that movement to get to the classroom building well before the 8:00 AM class time. The other challenging aspect for those waiting outside the classroom building is that sometimes it is quite cold, and you are still outside rather than inside a hallway waiting for a classroom door to be opened.

Ironically, this perpetual late start for each our classes was one of the highlights of our teaching experience. During that thirty- to forty-five-minute wait, Mark and I would get to know our students and their stories. We did not pry into their personal lives, but many of our students were happy to share with us where they grew up and what their lives were like before coming to prison. We also learned a lot during these waiting periods about daily life in prison, both the positive and the negative. It was during these times that we were able to connect on a human level with our students rather than on just a teacher-student level.

When we were finally allowed in the classroom building and then our individual classroom on that first day, I was surprised to see how small the space was for the number of students that we were teaching. I would say that the classroom would comfortably fit about twelve students, but we had nineteen in our class. One student noted my puzzlement over the small classroom size and cheerfully greeted me, “Welcome to prison!” The students in our class clearly had a lot of experience with challenges like this and were great at improvising. They moved the desks into a U-shape and then had students sitting on both the inside and the outside of the U. Mark and I shared our own tiny desk at the front, and one student was parked in the corner of that same small desk at the front with us for the entire semester because that was the only space that was left.

At WashU School of Law where I teach for my “day job,” the modern classrooms are all equipped with cameras, drop-down screens, fancy white boards, computer-equipped podiums, teacher microphones, and speaker systems. Luckily, I am mostly “old school” in my use of technology in my law school classes, so I was not daunted by the single small white board in our MECC classroom. I brought my own whiteboard markers and eraser each time to make sure that we had something to write with on the board that was not dried out. The students at MECC (like all Missouri DOC inmates) are given small electronic tablets that they can type on and use for limited intranet (but not internet) access, including exchanges with WashU’s PEP program administrators and faculty members. MECC uses an electronic teaching platform called Lantern that enabled us to post assignments and other files, and also allowed us to email back and forth with our students, which was very helpful at times.

One final “welcome to prison” moment that occurred during our first session is that Mark and I had planned to split up our three-hour session with two ten-minute breaks. However, when we mentioned that at the start of class, a few of the students noted that there was only a single toilet in the education building for all of the students, so ten minutes would probably not be enough time for everyone to get their turn at the bathroom. So, we agreed with the students that they would get a single twenty-minute break in the

middle of our class time so that all of the students would have a chance to answer nature's call before we resumed class.<sup>7</sup>

### III. LESSON THREE: PEP STUDENTS ARE THE MOST GRATEFUL STUDENTS THAT I HAVE EVER TAUGHT

Probably my biggest unknown coming into this teaching opportunity was the students. What would they be like? Would they be resentful because they were in prison and I was not? Would they be disruptive during class? Would they bother to do the readings? Would they be willing to participate during class?

It did not take long for all of these concerns to be allayed. I would say that my students at MECC, based on the class that Mark and I taught this past semester, were probably the most eager and engaged students that I have had the privilege of teaching during my thirty-five years in the profession. When I compare them with my students at WashU School of Law, who are excellent in their own way, the biggest difference, I believe, comes down to this: my WashU law students are primarily in class as a means to an end; for my MECC students, by contrast, being in class is an end in itself.<sup>8</sup> My WashU law students know that there is a big payoff for them if they endure the rigors of a three-year law school program, but in the meantime they also know that they have attractive alternative options in their lives besides sitting in my class learning about the intricacies of the UCC. For our MECC students, being in class is probably the highlight of their day in prison, given that there is really nowhere else for them to go.

That may help explain why my MECC students are the most grateful set of students that I have ever taught. Perhaps part of it is that my WashU law students know that teaching them is how I make my living, and they are responsible for sizable tuition payments to support that. In that respect, they are like my customers. My MECC students, on the other hand, know that I am there because I am choosing to be, not because I need to be there to enable me to make the next mortgage payment. And I think that the MECC students are also appreciative because Mark and I treat them and what they have to say in class with respect. Our sense is that not everyone in their lives right now is treating them with respect, and the fact that someone they might view as important is taking them seriously also makes them feel important.

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7. Mark and I were allowed to use the separate restroom in the Correction Officers' office in the education building.

8. In fairness, attending these classes is also a "means to an end" for our PEP students, because they hope that earning their degree through this program will give them a better future upon their release.

When our sixteen-week class was finished, we received a number of grateful and unsolicited emails from our students. Here are some excerpts from two of those messages:

The fact is, we students here don't really exist beyond the province of your awareness of us and the awareness of other professors who enter the 'belly of the best' intent on helping to save those of us who want to be saved. Therefore, on behalf of the PEP students—'Peppers' as we call ourselves—I want to thank you and the others involved with PEP for your compassion and devotion to the cause of rehabilitation.

I really just want to say thank you. Thank you for seeing us. A lot of times I have believed the lies the system says about me, and sometimes the lies I tell myself, but thank you for seeing the real us. You and [Mark] were awesome and full of life. Every class was a journey to something new and exciting. Please keep an open eye and heart for the underrepresented. I'm pretty sure that a lot of the PEP students do their best to put their best foot forward every day. Thank you for noticing that.

#### IV. LESSON FOUR: INMATE-STAFF RELATIONSHIPS ARE VERY COMPLICATED

Having spent the last semester teaching at MECC, I have a new appreciation for the challenges that are faced by prison staff. I already knew that their pay is low and that they are understaffed. Turnover among staff is rampant, and working conditions are less than ideal. Through my time at MECC, I came to appreciate that staff members have a very difficult job to do, and that they tread a fine line between treating the inmates respectfully as fellow human beings and maintaining a necessary professional distance in their interactions with the inmates. With one exception, Mark and I were treated well by all of the staff members with whom we came in contact, and we even got to know a couple staff members fairly well by the end of our time there.

The one exception was a staff member who, we were told by our students, had already made plans to move on to a different job outside of this prison. He was the guard responsible on most mornings for opening the classroom building and the individual classrooms within. Mark and I would smile at and greet him each day, but he rarely responded or acknowledged our greetings. I finally gave up any attempts to engage with him, although Mark continued to the end to try to "kill him with kindness." One of our students who noticed these awkward interactions shared with me privately, "He treats you guys like that because he thinks that you think that you are



better than him.” I suspect there was a lot of truth to this student’s observation of why this guard was wary of us. He did not seem like he was a generally anti-social guy. During class breaks I would often see this same guard having animated and friendly conversations with students who were in the education building.

The biggest recurring complaint that I heard from my students about their relations with staff members was that “one day they are your buddy, but then the next day if they’re having a bad day, they’ll write you up with a violation for being disrespectful.” “Respect” is a big theme within the prison walls, but some of our students would claim that respect is not always a two-way street in their relationships with staff. Words and titles matter in this setting, and the inmates are told in no uncertain terms that they are not to refer to the security staff as “guards,” but instead as “corrections officers” or “COs.” Inmates are to be referred to as “offenders” rather than as “prisoners” or “inmates” (and certainly not “students!”).<sup>9</sup>

#### V. LESSON FIVE: IT’S OKAY FOR ME TO LEAVE MY TEACHING COMFORT ZONE

One of the biggest challenges of this opportunity for me was having to teach a brand-new course that was markedly different from anything I had taught up to that point. If you think of the field of law as a long line across a page, my teaching career has consisted mostly of focusing on about two percent of that line and then digging down very deeply into the details of that tiny portion of the whole. This “Introduction to Law and Society” course, on the other hand, covered essentially the whole line, but did so by just skimming the surface rather than going very deep at any point. For me, it was like being a law student all over again, or worse yet, like studying for the bar exam.

In order to hedge my bets, I chose as our textbook an overview of law from the perspective of a business. This book still included chapters on the standard law topics like Torts, Criminal Law, Civil Procedure, Employment Law, and Constitutional Law, but it had a heavier focus on business topics like Contracts and Sales of Goods.<sup>10</sup> Preparing for a new course was indeed a challenge for me, and fortunately I had the benefit of being on sabbatical from my law school teaching for the semester. That sabbatical allowed me

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9. Kevin Windhauser, Director of WashU’s PEP, told me that the policy of calling inmates “offenders” began in the Missouri DOC only within the past twenty years or so. Prior to that, the DOC referred to inmates with the much more neutral term “residents.” Kevin said that nobody at the DOC has ever been able to explain to him why they chose to switch to the stigmatizing term “offenders.”

10. Mark and I have decided for next fall to switch to an Intro to Law textbook that does not have a specific business focus like the book we used this time.

the luxury of enough time to devote to relearning things that I had long since forgotten since law school.

After more than three decades of teaching mostly the same topics, I am used to entering each class with the confidence that I can probably answer almost any question about the topic that a student might raise. By contrast, when Mark and I would cover such topics as Constitutional Law or Employment Law, I knew that the depth of my knowledge was quite limited. In time, though, I came to see the advantages to that limitation of my own expertise. First, it was fun to learn something new and to remember what attracted me to the law in the first place: each area of law has its own fascinating twists and turns. Second, if a student asked a question to which we did not know the answer, we would promise to look it up and let them know the next class. Third, the new areas that I taught outside of my main area of expertise were usually the ones that had the most real-world impact and coverage in the news, which is what the students were most interested in. This meant that current cases before the Supreme Court and other current issues in popular culture were natural subjects for discussion in class.

#### VI. LESSON SIX: PEP STUDENTS KNOW A LOT ABOUT CRIMINAL LAW

When we were first organizing a syllabus for this course, Mark and I had decided to omit criminal law as a topic of coverage. We feared that maybe this topic would hit too close to home for our students. I also vaguely remember someone warning me several years ago that if you ever visited a prison and the inmates knew that you were a lawyer, you would be inundated with requests to either file or review their various habeas corpus petitions. Somehow, I thought that teaching criminal law might prompt a slew of such requests.<sup>11</sup>

Ultimately, we thought better of it and changed our minds, deciding to include criminal law as a topic on which we would spend an entire class. In retrospect, I am so grateful that we decided to include this subject. We were right in our assessment that this topic would hit close to home for our students, but that ended up being a good thing rather than a bad thing. If I was impressed with the students' engagement generally, I got to see their engagement level reach new heights during our criminal law discussions.

Each student possessed a deep expertise concerning the elements of the offense that sent him to prison. Collectively, the classroom possessed a lot of knowledge of a wide range of the standard crimes that one would cover in a criminal law overview. At one point, we were discussing the law of criminal attempt, which some of the students had little familiarity with. We

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11. This would not have been a problem for me, in any event, because I have never been licensed to practice law in Missouri.

were outlining exactly what the state would have to show to get a conviction for attempted robbery, when one incredulous student blurted out, “Is there even such a thing in Missouri as attempted robbery?” To which another student responded matter-of-factly, “Duh, I’m doing time for that right now.” Afterwards, on our drive home, Mark wryly noted to me, “Now that was certainly a moment that I never saw in my WashU seminar version of this class.”

When the discussion that day turned to the main purposes of criminal law, our students understandably had strong opinions. They were skeptical about the deterrence rationale, noting that in most cases they neither knew nor cared about the possible punishment when they committed their crime. As some of them explained, they were not planning to get caught anyway. Our students were also skeptical about how much the rehabilitation goal of criminal law was a part of how the system actually played out in practice. As one student described his experience after more than ten years in confinement, “The goals here seem to be punishment, punishment and punishment.”

#### VII. LESSON SEVEN: THE SAME TEACHING TECHNIQUES THAT WORK BEST WITH LAW STUDENTS ALSO WORK WITH PEP STUDENTS

In the Commercial Law and Bankruptcy courses that I teach at WashU, I have evolved through the years to the point where I now exclusively teach all of my courses through the problem method. Under this approach, students are assigned a set of reading materials followed by problem sets in which they apply the law they have learned through the readings to solve the legal problems posed at the end of the assignment. Class time then consists of me guiding the students that I call on that day through their analysis of the assigned problems. As I remind my law students, applying law to facts is a higher level of learning than, say, merely memorizing the law or even understanding the law in the abstract.

When Mark and I began teaching the PEP course, we used a more traditional college-type approach in which we would lecture about the topics that were covered by the book for that day’s assignment, occasionally pausing to take questions or to pose policy questions to the class. We used this method for the first three classes, which seemed to go well enough, particularly because the students did ask a lot of questions and also volunteered to answer whenever we posed questions.

For the fourth class, which was Torts, we decided to try an experiment. For the first thirty- to forty-five-minutes of class, we conveyed through lecture the key black letter legal rules that were explained in their textbook reading. After that, we handed out a sheet with about twenty short

hypotheticals that forced the students to apply the legal principles that they had studied in the readings and that we had just summarized in our mini-lecture. The remainder of the class time was spent by having the students read one hypothetical at a time and then letting them analyze, with our guidance, how the law of torts would resolve the problem.

Our students, who I think had already enjoyed the class well enough when we used the more traditional college approach, were even more enthusiastic about the new method. Several of them asked us following that class, “Can we do ‘hypos’ again next class?” For the remainder of the semester, that is the format that we used: brief lecture followed by multiple hypos on the topic of the day. For many of the topics we covered, the “hypos” were actual cases and controversies that were in the news or before the Supreme Court, particularly the material on constitutional law. In the end, I discovered that the technique that seems to work best for my law students also worked best for our PEP students.

#### VIII. LESSON EIGHT: PEP STUDENTS TAKE GREAT PRIDE IN THEIR PERFORMANCE AND IN THEIR “BRAND”

Before I started teaching in this program, I wondered how seriously the participating students would view the program. Would they see it as merely a “fake” version of real college, just a way for them to kill time while they served their time? Would they approach their preparation for class and class exams and assignments with the same level of intensity as my law students generally do?

If I had any doubts on these issues, they were quickly erased. The students in our class took great pride in both their preparation for class and their performance on the exams. They stressed out about exams just like my law students do. I would occasionally overhear students telling another with pride about their overall GPA in the PEP so far. It was also clear to me that many of the students took a special satisfaction in being part of a program with Washington University on its name, because they well knew the national reputation that this name carries. One student shared with me that some of his fellow inmates wrongly perceived that this student and others in the PEP felt they were better than other inmates because they were doing this “fancy WashU college program.”

Another example of the pride displayed by our students was when we set up a quiz-show competition as a way to review for both the midterm and the final exam. We divided the class into two sides, and I alternated questions to each team, even allowing the opposing team to “steal” a question that the first team answered incorrectly. I was the moderator posing the questions, and Mark was the scorekeeper. Let’s just say that the competitive juices

were flowing on these days, sometimes to a fault. For example, if a student's answer was close but not quite right, we had to make judgment calls. Sometimes we had our "classroom lawyers" arguing their case against our decision. Maybe this was just an example of classroom "law in action."

#### IX. LESSON NINE: LIFE IN PRISON IS BETTER THAN I THOUGHT IN SOME WAYS, BUT WORSE IN OTHER WAYS

As I mentioned earlier in this essay, until this teaching experience I had never set foot in a prison. Like most people, I had seen life in prison portrayed in TV shows or movies, but I was of course dubious about how accurate a portrayal that was. I appreciate, too, that each prison has its own rules and culture, and so whatever I learned about this prison could not necessarily be generalized to the hundreds of other prisons in this country. That reality notwithstanding, one of the things that I fully expected to get from my participation in this program was a more accurate sense of what life is like for the inmates in this prison.

I did indeed learn a lot, partly from physically being in the facility and seeing things with my own eyes, but more from my pre-class conversations with our students as we waited for the classroom building to be opened. I would say that there were surprises for me in both directions: some ways in which prison life was better than I expected, and some ways in which it was worse than I imagined.

On the positive side, I was impressed to learn that inmates at MECC have access to a community microwave in their cell buildings and can have televisions in their cells, assuming that they could afford to purchase them.<sup>12</sup> They even have access to a limited cable package that has about thirty-five channels, including ESPN and ESPN2 as well as the major news stations.<sup>13</sup> Outside in the yard, there are basketball courts, handball courts, and a baseball field. There is an indoor workout room (poorly equipped, I was told) and, of course, the education wing in which we taught. Besides WashU's PEP, there are other career-related and educational programs at MECC. These include an extensive computer coding program that is administered by LaunchCode, a St. Louis-based nonprofit that offers free computer education to those who otherwise would lack access to such

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12. The prison has a canteen that is effectively a small convenience store where inmates can purchase food, toiletries, shoes, and clothes. There is a limit of \$87.50 per week that can be spent by an inmate at the canteen in any given week. Inmates can receive funds either from friends or relatives on the outside, or from prison jobs that pay in the range of \$40 to \$80 per month. Inmates without a job get \$8.50 per month for use in the canteen.

13. One of my students shared with me that the cable costs are paid separately from the inmates' canteen fund, so that way it cannot be said that the DOC is providing free cable to the inmates.

training.<sup>14</sup> From conversations with my students, I learned that there is also other programming, including religious services for various denominations and a number of twelve-step meetings that are regularly offered inside the prison walls.

On the negative side, the two most common complaints that I heard from our students were about the food and the medical care. As more than one student emphasized, it wasn't so much what was served in the mess hall but how it was prepared. Fresh fruits are available each day, but are usually old and bruised. Fresh vegetables were said to be a rarity.<sup>15</sup> Some inmates who had access to funds through relatives or prison jobs would purchase food from the prison canteen and prepare most of their meals in their cell. As one of my students told me, "You'd be amazed at the interesting things you can make with a microwave." Medical care is available but often in short supply. Mental health care, I was told, is even in shorter supply. While some areas of the prison have air conditioning, the cell-block buildings that serve as housing units do not, which means that temperatures in the cells during the hot summer days often exceed one hundred degrees. No wonder the daily "ice distribution call" was such a significant event for students during the early-semester hot days on which we taught!

Beyond the more practical things like food, medical care, and room temperature, I sensed two bigger challenges of living as an inmate that I had not previously appreciated. First, there is the fundamental issue that you are largely not in control of your own movements and options for activity. As a person who is not incarcerated, I tend to take that freedom for granted. Yes, I have responsibilities that often dictate my choices. But for the most part, I can decide at any given moment where I want to be and what I want to do. That is a critical freedom that an individual forfeits once they set foot in prison as an inmate. That reality, by itself, is a very significant form of punishment, no matter what other amenities a particular prison might offer to its inmates. If an inmate is placed "in the hole" (i.e., solitary confinement) for rules infractions, obviously their freedom is even more restricted and individual autonomy is reduced to almost nothing.<sup>16</sup>

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14. LAUNCHCODE, <https://www.launchcode.org/community-programs> [<https://perma.cc/R5ZH-S7V8>] (last visited May 10, 2023).

15. Kevin Windhauser noted to me:

It's interesting how much this varies by facility even within a single state. When we held a small end of year party for the students at [the Vandalia women's prison] recently, several students told us that the fruit platters we were able to bring in were the first fruit that they had had since becoming incarcerated, although they said they had regular access to vegetables. One thing that consistently surprises me about this work is how little standardization there truly is within an institution (the DOC) that I had always imagined would be extremely standardized.

16. One of our students was placed "in the hole" shortly after our midterm exam, and as far as we know, he was still in the hole when the semester ended. Another interesting wrinkle with this is that

Second, the inmates can sometimes feel a sense of powerlessness about their own treatment by other inmates or by staff. Yes, there are official protocols to report such transgressions, including complaint forms and appeals processes, but what if the inmate believes that these procedures on the books have not been followed? To whom can they go for recourse and truly expect that justice will be served? This reminds me of one of my personal rules of travel: I never want to visit a country where the rule of law does not strongly prevail. Or, to use another common maxim, I always want to be in a place where there is “the rule of law and not of man.” One big problem with being in prison, I sense, is that you are in a place where your legitimate grievances are not always given what we on the outside have come to expect as due process of the law.<sup>17</sup>

#### X. LESSON TEN: THE PRISON SYSTEM IS ILL-EQUIPPED TO DEAL WITH THE TRANSFORMED INMATE

Based on what they have shared with me in pre-class conversations, most of the students in our class are in prison for having committed some pretty serious crimes: armed robbery, sexual offenses, and even second-degree murder. Almost all of them were sentenced to at least ten years in prison, and a number of them have already served well in excess of ten years. And yet, in my own interactions with these students inside and outside of class, I found most of them to be interesting, intelligent, thoughtful, respectful, and polite.

How do I reconcile the seeming disconnect between the offense that brought them there and my own positive interactions with them? This is obviously a complicated question that many people spend their entire professional lives studying. So I begin by saying that I don’t pretend to have authoritative or highly informed answers, just my own thoughts from a very limited experience. With that disclaimer, I will nevertheless share my two cents here.

My first observation is that many of our students committed their crimes when they were relatively young, in their early twenties or even late teenage

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at the women’s prison in Vandalia, any students who are in segregation are allowed access to their tablet. That means that instructors in the PEP program can continue to communicate with those students, send them assignments and reading material, and receive assignments back from them. By contrast, MECC does not allow access to a tablet when a student is in isolation. This is another case where the restriction of freedom varies rather arbitrarily based on location and facility policy, even though both facilities are part of the Missouri DOC.

17. This is how one of my students described the prison version of due process:

The grievance procedure made available to us is one in name only. There is no legitimate recourse. At the end of the day, it is by definition the “police policing the police,” and we all know how well that works out. With no outside authority to hold them accountable, there is no accountability. Those with power do what they will, those without any power suffer for it.

years. I suspect that most of our students were raised in a family background of great trauma, which in turn affects impulse control. Many of them got involved early in a street culture that prioritized loyalty to the gang over adherence to the law. In many cases, our students effectively came to maturity while serving their sentences. As more than one of our students has shared with me, “I’m not the same person today who committed the crime that got me here.”

Second, my sense is that drugs and/or alcohol may have played a significant role in many of the offenses that got our students where they are today.<sup>18</sup> Addiction and even substance abuse can create a kind of “Dr. Jekyll/Mr. Hyde” dynamic with a lot of individuals. Some of those individuals end up getting caught in their worst Mr. Hyde moment. Some people drive while drunk and kill somebody; others get lucky and drive while drunk without hurting anyone. Luck is part, but obviously not all, of the reason why some people are in prison and others are not.

Third, as many criminal law theorists have persuasively argued, race plays a major role in determining who gets arrested and incarcerated, and who remains free.<sup>19</sup> As just one example, ever since this nation began its “war on drugs” in the early 1970s, black defendants have been incarcerated at a much higher rate than whites for drug-related offenses, greatly contributing to the overall problem of mass incarceration.<sup>20</sup>

Finally, I have a better appreciation for what many criminal law theorists argue is a system that, in practice, emphasizes lengthy sentences and incarceration rather than rehabilitation as a solution to our nation’s crime problems. We had one student who grew up in a major city and was sentenced to many years behind bars after committing multiple felonies. While in prison, this student had a spiritual conversion experience that changed his entire mindset. He ended up authoring a book while he was in prison that explored and explained the “rules” of the criminal culture and

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18. On this issue, Kevin Windhauser observed to me:

It has been revealing in my time doing this work in Missouri to see how attitudes and practices toward chemical dependency treatment have changed. Many older students who have been part of the DOC’s treatment programs describe them as consisting of hours and hours of watching after-school specials about the dangers of alcohol and drugs on VHS tapes. More recently, however, students have reported that this has improved, and that now students at least have some opportunity in these programs to meet with a therapist. From an educational perspective, I do find myself frustrated that the DOC’s only treatment model is to send people to a centralized treatment prison (in Farmington), which means they have to choose between a PEP education and addiction treatment.

<sup>19</sup> See generally MICHELLE ALEXANDER, *THE NEW JIM CROW* (2010); Daniel S. Harawa, *The False Promise of Peña-Rodriguez*, 109 CALIF. L. REV. 2121 (2021); Trevor George Gardner, *Police Violence and the African-American Procedural Habitus*, 100 B.U. L. REV. 849 (2020).

<sup>20</sup> Alana Rosenberg, Allison K. Groves & Kim M. Blankenship, *Comparing Black and White Drug Offenders: Implications for Racial Disparities in Criminal Justice and Reentry Policy and Programming*, 47 J. DRUG ISSUES 132 (2017).



how he can see clearly now that those rules fail to measure up to timeless biblical principles. That book is even available for purchase on Amazon.<sup>21</sup>

We had another student, the youngest in our class at age twenty-four, who was sent to prison at age nineteen for an armed robbery. At twenty-four, that student already feels like he has become a changed person. He described to me how he had to look himself in the mirror each day and take responsibility for what he had done in his past, but more importantly, to take responsibility for what he would do that day. He explained that different inmates choose to do their time differently. Some spend much of their day on the phone with people on the outside, and others watch a lot of TV in their cells. But the way he chooses to spend his time is on productive pursuits. He gets up at 3:30 AM each day to work his shift in the mess hall, then he works out in the exercise room, and on top of that he takes three PEP classes each semester. He shared with me that if he continues at this pace, he can earn his bachelor's degree at WashU right before he is set for release in his late twenties.

The oldest student in our class, who is sixty-eight, has spent forty-seven years at various prisons for multiple felonies that he committed when he was in his late teens and early twenties. During his time in prison, he became fluent in Spanish, wrote a couple of screenplays, and mentored dozens of younger inmates who are now finding success outside of prison. This student's biggest fear now is that he will die in prison, because his current sentence will not allow him a parole hearing until he is almost ninety.

Based on my limited interactions with these and many of the other students in our class, I would enthusiastically recommend them for a job if and when they reentered society. Yet, the criminal justice system as it is now constituted does not have an effective way of accelerating the release of these "transformed inmate" cases. Perhaps the system does not want to. Maybe the retributive aspect of the criminal justice system would not adequately be served by fast-tracking even such model prisoners. After all, the victims or victims' families in such cases might understandably object.

Putting aside the retribution aspect, the other risk to a penal system that allowed for accelerated release of a seemingly transformed inmate is that sometimes that assessment will prove incorrect, and the early-released individual will commit another crime. Perhaps such an individual won't have a strong enough support network upon reentry, or maybe this person cannot readily transition from the hyper-structure of incarceration to the

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21. THA PROFESS+OR, *THE G.A.M.E.: YOU REAP WHAT YOU SOW* (Create Space, 1st ed. 2019) (ebook), [https://www.amazon.com/M-You-Reap-What-Sow-ebook/dp/B07N1MVRJL/ref=sr\\_1\\_1?zcrid=2K853DKDFUQ81&keywords=The+G.A.M.E.+3A+You+reap+what+you+sow&qid=1680556356&prefix=the+g.a.m.e.+you+reap+what+you+sow%2Caps%2C100&sr=8-1#detailBullets\\_feature\\_div](https://www.amazon.com/M-You-Reap-What-Sow-ebook/dp/B07N1MVRJL/ref=sr_1_1?zcrid=2K853DKDFUQ81&keywords=The+G.A.M.E.+3A+You+reap+what+you+sow&qid=1680556356&prefix=the+g.a.m.e.+you+reap+what+you+sow%2Caps%2C100&sr=8-1#detailBullets_feature_div) [https://perma.cc/EZM4-W9K8].

lack of structure in the non-prison world. And, of course, the kind of publicity that would come with a case of recidivism for a special and discretionary early release is never good for any politician who would support such a program. For all of these reasons, I can understand—without necessarily agreeing—why the safer route for criminal justice policymakers in such matters is usually to err on the side of caution.

### CONCLUSION

Not everyone is a supporter of prison education programs like WashU's PEP. Some people feel that it is unfair for inmates to get a free education while equally situated law-abiding citizens do not have that opportunity.<sup>22</sup> Others may believe that prison should be a place where the inmates are punished, and that it is unjust to the victims of their crimes that inmates should get to enjoy a luxury such as a high-quality education.<sup>23</sup> These are not unreasonable arguments by any means, but it seems to me that those opposed to programs like the PEP fail to account for the benefit to society of any effort that helps prepare ex-offenders for a successful and productive reentry into their communities. After all, recidivism continues to be probably the single biggest challenge of our criminal justice system. Any program that helps equip ex-offenders for reentry seems like a “win-win” proposition. In a world where the vast majority of inmates will ultimately reenter society, programs like PEP benefit both the individual who is leaving prison and the community in which they are going to reestablish their life post-incarceration.

Thankfully, it is not my role to resolve these policy debates, nor could I do so in a way that would make all sides happy, even if I was assigned that task with unlimited time and resources. My goals in volunteering for the PEP program are much more modest and much more attainable: I simply want to make a positive impact in the lives of the individual students that I teach, and also to make myself more aware of the unique challenges faced by the many individuals in this country who are currently incarcerated. In a story about the PEP that appeared in the Washington University student newspaper, one of the students in our class summed up the difference that this program has made in his own life, which helps capture the main reason that I plan to return to MECC's classrooms: “You've got DOC telling you

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22. See, e.g., Michael K. Greene, Note, “*Show Me the Money!*” *Should Taxpayer Funds Be Used to Educate Prisoners Under the Guise of Reducing Recidivism?*, 24 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 173 (1998).

23. Cf. Carl Campanile, *More Americans Say US Not Tough Enough on Crime Rather than Too Tough: Poll*, NY POST (Nov. 16, 2020, 11:34 AM), <https://nypost.com/2020/11/16/more-americans-say-us-not-tough-enough-on-crime-poll/> [<https://perma.cc/3XSZ-UMXG>].

you're never going to amount to anything," he said. "Then you have WashU staff saying, 'Look at what you did! You did that yourself.'"<sup>24</sup>

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24. Sanchali Pothuru, *Earning a Degree Behind Bars: WU Prison Education Project Changes Lives*, STUDENT LIFE (Nov. 3, 2022), <https://www.studlife.com/scene/2022/11/03/earning-a-degree-behind-bars-wu-prison-education-project-changes-live/> [https://perma.cc/8VR4-6AUR].