



Straight-A Guide Newsletter #8: An Injustice for Big Fly From Watts

May 15, 2012

Dear Straight-A Guide Participants:

I'm sure that each of you knows something about the injustice of America's criminal justice system. The question remains, however, what are you doing to change it? If you see injustice around you, you should use the skills you're developing as you work through the Straight-A Guide program to help others understand. Changing this system requires a social movement, mutual work by tens, then hundreds, then thousands, then hundreds of thousands who work in unison to call attention to injustice.

I received a copy of an article that Michael wrote about one of his fellow prisoners. It may serve as an example that each of you may use to reach beyond your boundaries in an effort to educate others about injustices within the world that you live.

I urge you to keep working. Add to your profiles so that you can document the efforts you're making to prepare for law-abiding, contributing lives upon release. Success requires an individual to power forward in spite of the obstacles wrought by a system designed to keep people down.

I send you all my best and look forward to hearing from you.

Sincerely,
Justin Paperny
Executive Director
Michael G. Santos Foundation

Title: An Injustice for Big Fly From Watts, by Michael G. Santos

Professor Michael Tonry published the chapter "[Race, Ethnicity, and Punishment](#)" in *The Oxford Handbook of Corrections and Sentencing*. The fact-filled chapter painted an appalling picture of how racial profiling by law enforcement influenced gross injustices that permeated our nation's criminal justice system. If we were to categorize population levels within our nation's prison system, it would seem that young black males bore the brunt of that injustice.

Professor Tonry relied upon statistics, graphs, and other scientific data to help readers understand the link between law-enforcement techniques and the overrepresentation of black Americans in U.S. prisons and jails. For example, he pointed out that the black

imprisonment rate increased from 593 per 100,000 in 1970 to 2,661 per 100,000 in 2006. Black men were five to seven times more likely than white men to be in prison. By the mid-1980s, blacks made up 50 percent of our nation's prison population even though they made up less than 13 percent of the nation's total population.

Those numbers, to me, provided compelling but abstract and anecdotal evidence of injustice. Marvin Smith, a black prisoner who served time alongside me at the Atwater Federal Prison Camp, told me a story that put a human face on the injustice. Many liked to believe that America's judicial system adhered to principles of fairness, but contrasting Marvin's story with the published data of some white offenders, one of whom I profile below, debunks that myth.

Marvin Smith grew up in the inner city of Watts, California. As a boy, he grew up wanting to emulate his dad. But Marvin's dad differed from the role model's of most boys. He described his father as being an old-school gangster who always carried a sawed-off shotgun. One of the reasons that Marvin admired his father so much, he told me, was because everyone in Watts feared him.

By the time Marvin turned 11, the streets of Watts became his primary influence. He grew up fighting and was no stranger to violence, deliberately cultivating a reputation for fearlessness. In time, Marvin became known on the streets as "Big Fly from Watts," and that reputation became an identity that he valued. To be like his dad, Marvin started carrying firearms before he finished junior high. Guns became a part of his life.

Marvin stood over six feet tall and he took pride in his muscular build. Despite being strong and physical, with a 350-pound bench press, his community did not sway him to participate in organized sports, where he might have learned valuable lessons of teamwork and leadership. In Watts, he told me, the streets kept pulling at him, inducing him to become a hustler, a thug, a gangster. Embracing the values of his community, he made choices that would influence the rest of his life.

By his late teens, Big Fly's exposure to the criminal justice system began. Arrests led to felony convictions for crimes like selling street-level quantities of crack cocaine and illegal possession of firearms. Over a 10-year period, the accumulation of those convictions resulted in two short stints in county jail, but no prison time. That changed in 1998, when he was 32. I asked him what happened.

"A lot of the homies," he said, "were scared to go into the projects. But they knew that was where they could buy dope cheap. Everyone knew me as Big Fly from Watts and the projects wasn't nothing to me. A homie called and said he wanted nine ounces of rock, said he'd pay me 10 g's if I would go into the projects and pick 'em up. I didn't hesitate to take the work. It wouldn't take me 10 minutes. But when I made the delivery, one-time snatched me up. Got me a sentence of more than 22 years."

Big Fly was convicted of participating in a cocaine transaction that involved nine ounces of crack cocaine. At the time, Congress legislated penalties for crack cocaine (associated with

black communities) that were 100 times more severe than penalties for powder cocaine (associated with white communities). He began serving his sentence inside the high-security penitentiary at Lompoc. The prison system didn't offer him any hope and he settled into the normal routine of passing time. Since then, the United States Sentencing Commission changed the sentencing guidelines that pertained to his case. They reduced the disparity in sentences between crack and powder cocaine, but did not eliminate the disparity. Instead of authorizing sentences for convictions related to crack that were 100 times more severe than convictions for powder, the U.S. Sentencing Commission reduced sentences for crack so that they would be 18 times more severe than sentences for powder. This sentencing disparity existed despite the two drugs being pharmacologically identical.

Had Big Fly been convicted today, the guidelines would've called for a sentence of 15 years. Although justice would seem that Big Fly should have received relief because of the lowered sentencing guidelines, the judicial system denied him relief, citing his youthful convictions to categorize him as a career offender. That same system of justice, however, didn't give any consideration to the lack of opportunity in Big Fly's background, or to the influences that led to his earliest convictions.

When Marvin told me about his experiences of growing up, with his only role models being gangsters, it would seem that he was predestined for a lifetime of entanglements with the criminal justice system. No one expected or encouraged Marvin to educate himself, to build a career, to become a model citizen. He embraced the values of his Watts community, following in the footsteps of the role models who made the strongest impressions upon him.

In Marvin's case, however, the judicial system didn't consider what kind of background led to his many youthful convictions. All that mattered was that his criminal record included convictions for selling crack cocaine in less than \$50 amounts. That criminal history made him a career offender, resulting in his being denied relief from sentencing-law changes that otherwise would've applied to him.

I contrast the justice that Marvin Smith received with the justice received by Kent Robert Stewart. I don't know Kent Robert Stewart, but a recent decision by an appeals court brought his case to my attention. Unlike Big Fly, I doubt whether Mr. Stewart used a nickname. The legal opinion that I read indicated that rather than being influenced by gangsters, Mr. Stewart had a "very good" childhood which was free of any type of abuse. The report indicated that he has three siblings with whom he has a good relationship, and three children with whom he is very close. As expected, Mr. Stewart graduated from high school and college. Since 1982 he was employed in the concrete industry, and his most recent employment was as president of a concrete company that provided him with a total monthly income of \$56,999, or more than \$670,000 per year. His personal financial statement reported a net worth of more than \$3.9 million.

Mr. Stewart, who was 51 years old at the time of his sentencing, seemed to have a background that was a portrait of success and stability. He was well educated, white, and wealthy. Unlike Big Fly from Watts, Mr. Stewart had every advantage in life and society

rightfully expected him to live as a role model, not the type of role model that influenced Big Fly, but as a citizen who abided by laws. Instead, Mr. Stewart pleaded guilty to breaking society's laws to further enrich himself.

Mr. Stewart pleaded guilty to violating the Sherman Antitrust Act. According to the U.S. Supreme Court, The Sherman Antitrust Act prohibits price-fixing agreements and, in doing so, provides protection against the threat of harm to "the central nervous system of the economy" by such agreements. The social use of the Sherman Act in preventing price-fixing agreements would, therefore, appear to be at least as great, if not greater, than laws that protect against consenting adults who mutually agree to participate in illicit drug transactions. After all, antitrust violations go to the heart of America's free enterprise system because they have the possibility of negatively affecting the entire economy. Yet the penalties for the Sherman Act violations are disproportionately lower than those for consenting adults who buy or sell drugs.

A reasonable person might ask why Congress legislated laws that punished violators of the Sherman Act so leniently while the lawmakers punished consenting adults who violated drug laws so severely. One reason may be that powerful business people with influential political connections violated Sherman Antitrust laws while uneducated people who lived on the margins violated drug laws. Also, the people who served time for violating drug laws usually had darker skin color than people who violated Sherman Antitrust laws. Even if Big Fly wanted to violate Sherman Antitrust laws, he couldn't do it.

Mr. Stewart conspired with other concrete suppliers to artificially inflate the price of the concrete he sold. The conspiracy enabled those in the conspiracy to profit at the expense of many victims. At sentencing, Mr. Stewart's judge found that the price of concrete determined the price of all projects in which it was used and had a secondary effect on our economy. Excess monies spent on overpriced concrete deprived the concrete purchasers of the option and ability to spend those lost monies on other products. By rigging bids on public works projects, Mr. Stewart's conspiracy robbed several local governments of monies that could have been used for the betterment of their communities, including educating people like Big Fly from Watts.

The sentencing judge reprimanded Mr. Stewart and his codefendant, stating that although they dressed in the attire of hard working businessmen, they were nothing more than common thieves. They stole from friends, acquaintances, businesses, and local governments. Their actions were clever and cunning, but taken with full knowledge and intent to violate this nation's criminal antitrust laws.

The court found that Mr. Stewart's case involved more than \$1.6 million worth of commerce, and it estimated that Mr. Stewart's criminal actions caused victim's to lose more than \$166,000. To punish Mr. Stewart, the judge imposed a sentence of 12 months and one day, the additional day being significant because it entitled Mr. Stewart to receive credit for good conduct time. With time off for placement in a halfway house, the sentence would result in Mr. Stewart serving approximately seven full months in prison. Further, because of the \$1.6 million in commerce that Mr. Stewart's crime involved, and more than \$166,000

in losses to victims that he caused, the court also imposed monetary penalties of less than \$115,000. To complete the sanction, the sentencing judge ordered Mr. Stewart to perform 100 hours of community service.

I contrast the sentence Mr. Stewart received for his criminal activities with the sentence imposed on Marvin Smith, whose cumulative criminal history involved less than \$10,200 in total. Whereas the court found that Mr. Stewart's crime victimized more than 10 people, Marvin Smith's offense did not identify any victims because it only involved consenting adults. Mr. Stewart's crime violated antitrust laws that he--as a well-educated, wealthy, white businessman with powerful and influential connections--clearly understood. Marvin Smith did not have such an education. He was not wealthy and powerful, influential connections meant something different in Marvin Smith's community. As a young black man from Watts, Marvin Smith knew gangsters and thugs, and his crime was for selling a different kind of rock from Mr. Stewart, not concrete but crack. The judge in Marvin's case, however, imposed a term of 262 months. In contrast to the sentence Mr. Stewart received, I sensed an injustice. Compounding the injustice, when the sentencing law changed to require no more than 15 years for Marvin's offense, our judicial system denied him justice again because of the criminal background of Marvin's youth.

If an individual came into the system today with a conviction for the same quantity of crack as Marvin, and if that individual had an identical criminal background as Marvin's, including the career-offender enhancement, that individual would receive the benefit of the 18-1 sentencing law, exposing him to a sentence of no more than 15 years. Marvin rightfully felt as if he's been mistreated. He understood that he couldn't change his past, but his case reeked of injustice. It was wrong to treat similarly situated offenders differently, requiring Marvin to serve an additional four years beyond what other prisoners with the same background would serve simply because of the timing that lawmakers took to rectify a bad sentencing law. That injustice interfered with Marvin's ability to cope productively with his sentence.

Whereas Mr. Stewart had every privilege imaginable and lived a charmed life, with a \$4 million net worth and a monthly income in excess of \$56,000, he didn't receive much more than a tongue lashing at sentencing for his crime. The judicial system seemed to give him a pass for his indiscretion, even while recognizing the magnitude of his crime. In contrast, our criminal justice system expected more from Marvin Smith. Mr. Stewart reported close family relationships with his siblings and children. Big Fly from Watts, on the other hand, had a brother pulling 30 years in Soledad, and a son serving 20 years. Like many black Americans, Marvin's was a family of intergenerational recidivism, as if the system itself was keeping them in chains.

Marvin told me that when he finished serving his sentence, he would be finished with crime and the criminal justice system. The unanswered question was whether the criminal justice system would ever be finished with him. As a black man in America, problems with the law could surface at any time. Big Fly from Watts, it seemed, faced a different version of justice than Kent Robert Stewart and other prosperous white-collar offenders.