

# **The Intersection of Racial Justice and Criminal Justice in Massachusetts:**

## **Interview with Rahsaan Hall**

### **New England Journal on Criminal and Civil Confinement\***

*At a time when scores of impassioned debates at the intersection of criminal justice and racial discrimination are ringing throughout the United States, civil rights attorney Rahsaan Hall has taken an emboldened lead in local reform efforts as Director of American Civil Liberties Union of Massachusetts' Racial Justice Program. Attorney Hall has practiced in civil rights and criminal justice for over fifteen years, including eight years in the Suffolk County District Attorney's Office, one year with the Miami Dade County Public Defender's Office, and three years as the Deputy Director with the Lawyers' Committee for Civil Rights and Economic Justice.*

*In a decidedly warm office, with plenty of eager sunlight beaming through the window panes, Attorney Hall greeted me with excitement. "These are interesting times," he smiled wide and offered me a seat. Throughout the interview, Attorney Hall spoke with a deep, reassuring tone, perhaps borrowed from his many years as an ordained reverend. He spoke at length about the responsibility of legal advocates to be intentional about their understanding of race. "We may not all agree," he offered, "but we should at least all have the same facts and understanding of our history and its effect on race relations." The following is an edited transcription of our conversation about the intersection of racial justice and criminal justice in Massachusetts on November 24, 2015.*

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\* This interview was conducted by Tifanei Ressler-Moyer on November 24, 2015 at American Civil Liberties Union of Massachusetts. She is the Editor-in-Chief of the *New England Journal on Criminal and Civil Confinement*, Vol. 42. Ressler-Moyer is also the author of the Abstract and footnotes, with technical support from Britney Millay, an Editor member of the *Journal*.

## INTERVIEW WITH RAHSAAN HALL

*Ressler-Moyer*: What does racial justice mean?

*Hall*: Imagine a society where the likelihood of being poor, being in a failing school district, not owning a home, having greater health disparities, having a greater chance of being suspended from school, being stopped or killed by the police or thrown in jail had no correlation to race. Racial justice is the work of eradicating the institutional and systemic policies, practices, and behaviors that perpetuate racial disparities. In order to do that, we have to name the maladies that afflict us. Efforts within the scope of racial justice reveal that there are disparities and there is no rational justification for the disparities.

*Ressler-Moyer*: What does this mean for the criminal justice system?

*Hall*: Racial disparities manifest in every aspect of the criminal justice system; from who is stopped on the streets and who is arrested for which crimes, to what sentences are received and who is working in law enforcement, prosecution, and the judiciary.

*Ressler-Moyer*: How does this affect every aspect of the criminal justice system?

*Hall*: Racial biases, and in some instances racism, impact the full spectrum. The school-to-prison pipeline begins with school discipline and who is disciplined in school.<sup>1</sup> There are known racial biases that impact who gets disciplined and what level of discipline they receive.<sup>2</sup> There are disparities in who gets stopped on the streets; whether or not they are believed to be involved with any criminal activity.<sup>3</sup> There are disparities in the deter-

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1. CHRISTOPHER A. MALLETT, *THE SCHOOL-TO-PRISON PIPELINE: A COMPREHENSIVE ASSESSMENT* 3–4 (2015).

2. JOANNA TAYLOR, MATT CREGOR, & PRIYA LANE, *LAWYERS' COMM. FOR CIVIL RIGHTS AND ECON. JUSTICE, NOT MEASURING UP: THE STATE OF SCHOOL DISCIPLINE IN MASSACHUSETTS* 3–4 (2014), [http://lawyerscom.org/wp-content/uploads/2014/11/Not-Measuring-up\\_-The-State-of-School-Discipline-in-Massachusetts.pdf](http://lawyerscom.org/wp-content/uploads/2014/11/Not-Measuring-up_-The-State-of-School-Discipline-in-Massachusetts.pdf).

3. JEFFREY FAGAN, ANTHONY A. BRAGA, ROD K. BRUNSON, & APRIL PATTAVINA, *FINAL REPORT: AN ANALYSIS OF RACE AND ETHNICITY PATTERNS IN BOSTON POLICE DEPARTMENT FIELD INTERROGATION, OBSERVATION, FRISK, AND/OR SEARCH REPORTS* 8–10 (2015), <https://s3.amazonaws.com/s3.documentcloud.org/documents/2158964/full-boston-police-analysis-on-race-and-ethnicity.pdf>.

minations of who gets held on bail.<sup>4</sup> There are disparities in who pleads guilty, disparities in sentencing, and even disparities in charging decisions.<sup>5</sup> Disparities are identified in who gets put on parole or brought back into jail.<sup>6</sup> The disparities are rampant in educational funding and how parents can even be involved in the lives of their children.<sup>7</sup> That's what I mean in how it impacts the criminal justice system. The entire stream that flows through it—from beginning to end—is impacted by the disparities.

*Ressler-Moyer:* What is the greatest threat to criminal justice reform efforts?

*Hall:* The lack of public will to address criminal justice reform issues. As long as lawmakers and their constituencies feel that criminal justice issues don't concern them directly, there is a reluctance to transform the system.

*Ressler-Moyer:* I imagine the public affected by the policies have considerable amount of will to address the issues. Who is the public, and how do you measure its will?

*Hall:* Whether there is a distinction between public awareness, public desire, and public will, I think is an important question. But the question of “who is the public,” is important too.

From the standpoint of lawmakers, the public are the people who go to the polls and get them into elected office.<sup>8</sup> The public are the people who are going to call their constituent services and say, “you need to do something about this.” The public are the people who are going to make campaign contributions. And to lawmakers, public will is determined by which constituents and contributors have told them that something needs to change.

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4. ALEXANDER JONES & BENJAMIN FORMAN, EXPLORING THE POTENTIAL FOR PRETRIAL INNOVATION IN MASSACHUSETTS 3–4 (2015), [http://massinc.org/wp-content/uploads/2015/09/bail.brief\\_.3.pdf](http://massinc.org/wp-content/uploads/2015/09/bail.brief_.3.pdf).

5. Sonja B. Starr & M. Marit Rehani, *Mandatory Sentencing and Racial Disparity: Assessing the Role of Prosecutors and the Effects of Booker*, 123 YALE L.J. 2, 16–17 (2013) (describing variations in research regarding racial disparities in sentencing and “discretionary processes,” e.g., “charging, plea-bargaining, and sentencing fact-finding”).

6. See generally Stéphane Mechoulan & Nicolas Sahuguet, *Assessing Racial Disparities in Parole Release*, 44 THE J. OF LEGAL STUD. 39 (2015).

7. STEVE CHRISTIAN, CHILDREN OF INCARCERATED PARENTS 2 (2009), <http://www.ncsl.org/documents/cyf/childrenofincarceratedparents.pdf>.

8. See Charles A. Beard & John D. Lewis, *Representative Government in Evolution*, 26 AM. POL. SCI. REV. 223, 228 (1932).

More globally or holistically, the public is anyone who lives in this country; or anybody who lives in a particular jurisdiction that is impacted by the disparities of the criminal justice system.<sup>9</sup> I think there is a large awareness among *this* public about what is happening and what is wrong with the criminal justice system. I also think there is a large desire—a longing to see something change. But *this* definition of public will does not necessarily line up with the traditional definition of public will to the law-maker.

*Ressler-Moyer*: Attorney Hall, what is unique about the landscape of Massachusetts at the intersection of racial discrimination and criminal justice reform?

*Hall*: Massachusetts is unique in that compared to most of the nation we have some of the lowest incarceration numbers.<sup>10</sup> There is also a false sense of liberal exceptionalism that makes challenging the inequities in the criminal justice system more difficult. It takes a lot of work to convince people that there's an institutional problem when Blacks and Latinos make up less than twenty percent of the state population, but roughly fifty-four percent of the prison population.<sup>11</sup> There is a problem when, looking at drug convictions, Blacks and Latinos make up roughly forty-three percent of non-mandatory drug convictions but over seventy-four percent of mandatory minimum drug convictions.<sup>12</sup>

*Ressler-Moyer*: How does that fit within the exploding national dialogue about criminal justice?

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9. See *id.* at 224–25.

10. E. ANN CARSON, U.S. DEP'T OF JUST., PRISONERS IN 2013, 3 tbl.2, 5 tbl.4, 7 tbl.6 (2014), <http://www.bjs.gov/content/pub/pdf/p13.pdf>.

11. See UMASS DONAHUE INSTIT., SUMMARY OF U.S. CENSUS BUREAU'S 2014 COUNTY CHARACTERISTICS ESTIMATED FOR MASSACHUSETTS COUNTIES (June 25, 2015), <http://www.massbenchmarks.org/statedata/data/countrychar14/UMDI%20County%20Characteristics%20V2014.pdf> (“Massachusetts is less racially and ethnically diverse than the U.S. as a whole, with a minority population of just 25.7% compared to 37.9% in the U.S. . . .”); Peter Wagner, *Tracking State Prison Growth in 50 States: Massachusetts Profile*, PRISON POLICY INITIATIVE (May 2014), <http://www.prisonpolicy.org/profiles/MA.html>.

12. EXEC. OFFICE OF THE TRIAL COURT, DEPT. OF RESEARCH AND PLAN., SURVEY OF SENT'G PRACTICES FY 2013, 53 (2014), <http://www.mass.gov/courts/docs/admin/sentcomm/fy2013-survey-sentencing-practices.pdf> (“44.1% of defendants convicted of non-mandatory distribution offenses were white and 55.0% were racial/ethnic minorities; and, 25.3% of defendants convicted of mandatory distribution offenses were white and 74.7% were racial/ethnic minorities.”).

*Hall:* It shows that Massachusetts is really no different than most states with racial disparities in incarceration rates.<sup>13</sup> However, there is a growing trend in more conservative states that looks at the cost savings in reducing incarceration rates and preventing recidivism. Massachusetts is like many states in that we struggle to overcome the inertia of the racially disparate status quo. However, given the overwhelming intellectual and financial resources of Massachusetts, there is a greater chance of developing criminal justice reforms that will help move the country forward in this area.

*Ressler-Moyer:* What is liberal exceptionalism?

*Hall:* Liberal exceptionalism is the idea that Massachusetts is without need for reform because we are such a progressive and blue state. We get it right on a lot of the issues like same-sex marriage and conversations around gender equality,<sup>14</sup> but then when we look at some of the other failings in racial disparities, we are not doing that well. That sense of liberal exceptionalism allows people to think we don't have a real problem.

*Ressler-Moyer:* What's an example that you have come across in your practice?

*Hall:* A perfect example are the district attorneys who refuse to budge on mandatory minimum sentences for drug offenses in light of the gross disparities that exist between People of Color that make up certain communities and the number of people incarcerated under mandatory minimum sentences. They are steadfastly "dug-in" on their positions.<sup>15</sup>

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13. Massachusetts has lower incarceration rates than all but five states and one territory; however, Massachusetts has higher incarceration rates than 161 entire countries with populations over 500,000. *See, e.g.,* Peter Wagner, Leah Sakala & Josh Begley, *States of Incarceration: The Global Context*, PRISON POLY INITIATIVE, <http://www.prisonpolicy.org/global/> (last visited Jan. 2, 2016); *see also* TAYLOR, CREGOR & LANE, *supra* 3; *cf.* Press Release, MassINC, New Research Finds Wide Racial and Ethnic Variation in Cash Bail in Massachusetts (Sept. 28, 2015), <http://massinc.org/2015/09/28/for-immediate-release/> ("While the Commonwealth has one of the lowest incarceration rates in the US overall. The state's incarceration for black residents is much closer to the national average; for Latinos Massachusetts has one of the highest incarceration rates among the 50 states."); JONES & FORMAN, *supra* note 5.

14. *Goodridge v. Dep't of Pub. Health*, 798 N.E.2d 941, 968 (Mass. 2003) ("Limiting the protections, benefits, and obligations of civil marriage to opposite-sex couples violates the basic premises of individual liberty and equality under law protected by the Massachusetts Constitution.").

15. *See, e.g.,* Katie Lannan, *DAs: Justice Focus Should be on Recidivism*, LOWELL SUN (Nov. 15, 2015, 9:13 AM), [http://www.lowellsun.com/news/ci\\_29138439/das-justice-](http://www.lowellsun.com/news/ci_29138439/das-justice-)

*Ressler-Moyer:* How do we explain the lower incarceration rates in Massachusetts, if Massachusetts is no different than other states?

*Hall:* Our rates are lower than many states, but being the best of the worst is not anything to brag about. There are many ways to speculate about the lower incarceration rates. Massachusetts has a higher income than many other states.<sup>16</sup> There are more educational opportunities in Massachusetts.<sup>17</sup> I also think there is a correlation between incarceration rates and racial isolation. What I mean by that is, as a state, our minority population is relatively low.<sup>18</sup> That may be different in Boston at fifty-three percent,<sup>19</sup> but in Massachusetts the minority population is about twenty-six percent.<sup>20</sup> I think larger numbers of People of Color, high concentrations of poverty, low education, and where opportunities are greater for interactions with law enforcement lead to higher incarceration rates.

*Ressler-Moyer:* In September, ACLU released a model policy regarding body-worn cameras for Massachusetts police departments and municipalities.<sup>21</sup> The model policy, citing experiences of other cities, concluded that

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focus-should-be-recidivism#ixzz3wJe96HI8 (“While district attorneys said that mandatory minimum sentences remained an important tool for fighting drug trafficking and the opioid epidemic, advocates and people who have served time in prison told the commission that the mandatory minimums can hinder attempts to re-establish a productive life after prison.”).

16. *Massachusetts Household Income*, DEP’T NUMBERS, <http://www.deptofnumbers.com/income/massachusetts/> (last visited Jan. 21, 2016).

17. *Colleges in Massachusetts*, U.S. NEWS & WORLD REPORT, <http://colleges.usnews.rankingsandreviews.com/best-colleges/ma> (last visited Jan. 21, 2016).

18. *Massachusetts State & County QuickFacts*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/25/2507000.html> (last visited Jan. 21, 2016).

19. *See, e.g., Boston (city), Massachusetts State & County Quick Facts*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/25/2507000.html> (last visited Jan. 21, 2016); Peter Schworm & Matt Carroll, *In Census, a Decade of Growth by State’s Minorities*, BOS. GLOBE (March 23, 2011), [http://boston.com/news/local/massachusetts/articles/2011/03/23/bay\\_state\\_minorities\\_numbers\\_increase\\_census\\_says](http://boston.com/news/local/massachusetts/articles/2011/03/23/bay_state_minorities_numbers_increase_census_says) (“Statewide, the number of minorities rose approximately 40 percent, from about 1 million to 1.4 million. About 80 percent of Massachusetts residents identify themselves as white, 6.6 percent as black, and 5.3 percent as Asian. Slightly fewer than 10 percent say they are of Hispanic or Latino origin.”).

20. U.S. CENSUS BUREAU, *supra* note 19.

21. AM. CIVIL LIBERTIES UNION OF MASS., MODEL BODY-WORN CAMERA POLICY, ORDINANCE, OR BYLAW FOR MASSACHUSETTS POLICE DEPARTMENTS AND MUNICIPALITIES (2015), <http://aclum.org/app/uploads/2015/09/ACLUM-Model-Municipal-Body-Camera-Policy-9-16-15.pdf>.

“body camera programs enhance police accountability, deter misconduct by officers and civilians alike, and support rather than undermine positive police-community relations.”<sup>22</sup> The model policy does not mention race relations, but of course many attribute the push for body cameras to the Black Lives Matter movement.<sup>23</sup> When is it appropriate for policies to acknowledge race as a separate empirical matter?

*Hall:* Whenever the racial composition of the police department does not reflect the composition of the municipality the department is charged with serving, there should be discussions, analysis, and data related to any existing or perceived racial disparities.

For instance, the Civil Service Commission is responsible for entrance and exit exams for the sole purpose of having an objective process for the selection of candidates for these civil service positions.<sup>24</sup> In the 1970s, Black police officers, with the NAACP, sued the Commission, challenging the use of the civil service police entrance examination, because it resulted in racially discriminatory hiring practices.<sup>25</sup> The U.S. District Court invalidated use of the test scores because of their discriminatory impact and many municipalities ultimately came under a consent decree.<sup>26</sup> The decree allowed them to use a hiring rubric that brought on one Black person and one person with a Hispanic surname for every three White candidates until they filled all the vacant positions they were hiring for.<sup>27</sup> Many subsequent lawsuits followed this decree in an attempt to dismantle the progress—but there was progress. Officers representing the community had risen from 2.3% of the Boston police to 11.7% where the Boston minority population had increased to 30%.<sup>28</sup>

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22. *Id.* at 1.

23. Jon Swaine, Lauren Gambino, & Oliver Laughland, *Protesters Unveil Demands for Stricter US Policing Laws as Political Reach Grows*, *GUARDIAN* (Aug. 21, 2015, 7:00 PM), <http://www.theguardian.com/us-news/2015/aug/21/protesters-unveil-police-policy-proposals>.

24. EXEC. OFFICE FOR ADMIN. AND FIN., EMP., EQUAL ACCESS, DISABILITY: CIV. SERV. INFO., <http://www.mass.gov/anf/employment-equal-access-disability/civil-serv-info/> (last visited Jan. 11, 2016).

25. *Castro v. Beecher*, 334 F. Supp. 930 (D. Mass. 1971), *judgment rev'd in part and affirmed in part*, 459 F.2d 725 (1st Cir. 1972).

26. *Id.* at 944 (“In view of the history of police examinations in Massachusetts and their effect in minimizing the proportion of employees from minority groups, it seems important to the court not to permit hereafter the use of any discriminatory testing requirements that are easily avoided.”).

27. *Bos. Chapter, NAACP, Inc. v. Beecher*, 371 F. Supp. 507, 522 (D. Mass. 1974).

28. Jeanne M. Woods, *High Court Avoids Ruling*, *BLACK ENTERPRISE*, Aug. 1983, at 20. See a recent Boston Globe article detailing extant issues in hiring and retaining practices within the Boston Police Department, Travis Andersen, *Panel Orders Police Recruit Rein-*

There is a difficult and challenging reality that many in the country find conversations about race and racism to be uncomfortable and in some instances unnecessary. Oftentimes, it has a chilling effect and stifles productive conversations, because many do not know how to talk about race and reconcile this nation's racial history and its connection to current racial disparities.

*Ressler-Moyer*: Do body cameras make sense for race relations?

*Hall*: What body-worn cameras do is create another accountability measure that will produce more opportunity to uncover misconduct, identify best practices, and increase accuracy in reporting of controversial incidents. Body-worn cameras are by no means a panacea, but they are certainly another piece in a larger mosaic of criminal justice reforms that promote police accountability and transparency.

*Ressler-Moyer*: You were quoted by the Bay State Banner, regarding racial profiling by police, as saying: "We can't manage what we don't measure. It's one thing to say racial profiling is happening based on anecdotal reports, but it's another to have empirical data."<sup>29</sup> Your words imply that data collection is an effective legislative tool in criminal justice reform. However, once the data is gathered, giving credence to the anecdotal reports, is police reform, prison reform, or judicial reform truly affected by those efforts? And if they are, what can impede subsequent action?

*Hall*: There is an anecdote for just about any scenario that can be promoted as the justification for introducing, supporting, or passing any piece of legislation. Empirical data, however, is somewhat malleable. The numbers are what the numbers are. That said, the analysis, methodology, and controls used in presenting the data can serve as a structure to support the human story that is brought to life by anecdotes. There are few more effective ways of persuading lawmakers than the personal accounts that breathe life into the data. This is why I believe there has been some movement in the discussion about criminal justice reform.

Nevertheless, overcoming the political inertia or the fear of strong politi-

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*stated*, BOS. GLOBE (Jan. 7, 2016), <https://www.bostonglobe.com/metro/2016/01/06/state-commission-finds-bias-boston-police-academy/So4Pp3x73ZhSWp6iPKXD9M/story.html> ("[Commission hearing officer Betty E. Waxman] also ordered the Police Department to 'cease and desist from the disparate treatment of recruits based on race.'").

29. Sandra Larson, *Legislators Advanced Profiling Bills: Bills Would Require Police to Report on Pedestrian Stops*, BAY ST. BANNER, (Oct. 7, 2015, 10:50 AM), <http://baystatebanner.com/news/2015/oct/07/legislators-advance-profiling-bills/>.



cal constituencies that have a vested interest in the status quo cannot be achieved by empirical data alone. Educating, mobilizing, and organizing constituents is the most effective means of succeeding.

*Ressler-Moyer:* Attorney Hall, you worked both in a public defender's office and the district attorney's office. In our point of view, this gives you a unique perspective. With this dual perspective, what can you share with attorneys and legal advocates about the need for criminal justice reform?

*Hall:* When I worked in the public defender's office representing indigent defendants, I thought I had the best job. When I moved on to the district attorney's office and prosecuted individuals accused of serious crimes, I thought I had the best job. Now as a civil rights attorney, who handles a wide variety of matters on behalf of individuals whose rights have been violated, I believe I have the best job. What is best about all of these experiences is that I have been able to help people. What I have recognized over the years is that all of the people I have helped, whether as a defendant, a victim, or someone aggrieved by racial injustices, have been overwhelmingly People of Color and people who are poor. They are all victims of systems, institutions, and government that has enacted policies that may have been well-intentioned, but were ultimately short-sighted. The condition of many people in the criminal justice system is a result of these short-sighted laws that have created these racial disparities or law enforcement practices that have been intentionally discriminatory at worst or implicitly biased at best. What lawyers should know or consider is how their own biases or privileges may contribute to the perpetuation of these disparities. What they should know is that the people touched by the criminal justice system deserve a more compassionate, racially-just, and evidence-based alternative to the status quo. We need twenty-first century criminal justice, and there are many proposals on how to accomplish it. Lawyers should be a part of the conversation.

*Ressler-Moyer:* What is your most thought-about experience?

*Hall:* One person stands out: Jose Semedo.<sup>30</sup> Jose is a Cape Verdean man in Brockton. At the time, he owned his own business cleaning restaurants. There was a Brockton Police Officer who arrested him on a warrant that had been previously cleared. But during the arrest, the officer got in the man's face and told him "look here, you African jungle bunny. You people

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30. See generally Complaint at \*1–8, *Semedo v. Elliott*, No. CIV.A. 10-11976-RWZ, 2012 WL 2449912 (D. Mass. June 28, 2012) (providing the factual background contained in the plaintiff, Jose Semedo's complaint).

are destroying my city.” As he was escorting him out, the officer was making monkey gestures and sticking out his bottom lip.

A few things are really profound about that case. First, there were other officers that were disturbed by his conduct. Although they didn’t volunteer the information prior to the investigation, during the investigation the other officers shared what he actually did to Jose. They were clearly bothered by the actions of the other officer, but they didn’t do anything about it.<sup>31</sup> There is some tension there: there is this glimmer of hope that they recognize it was clearly wrong, but then the disappointment that they had not done anything about it.

The other thing was just how deeply that incident impacted this man’s life. He prided himself in being someone who came to this country. He worked hard and made good relationships with people. He was the kind of guy who would be at the Dunkin’ Donuts and buy Brockton officers coffee—just because they were police officers. And then for him to be treated like this by someone from an organization that he held in such a high regard, it was just demoralizing and embarrassing. I think that had an enormous impact on his life. I think often about how many people had these types of experiences; who up until this certain point, had this faith in law enforcement and people who are charged with a tremendous opportunity to protect us.

*Ressler-Moyer:* What happened after the investigation?

*Hall:* The officer was ultimately fired. Jose sued the Brockton Police Department, and we settled.

*Ressler-Moyer:* In racial justice and criminal justice as they converge, what will prevailing look like?

*Hall:* Prevailing looks like the elimination of racial disparities in every aspect of the criminal justice system and a significant reduction in the pris-

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31. At least one (now former) officer, Ken Williams, advised Jose Semedo to file a complaint and testified during a disciplinary hearing against the offending officer. Williams later filed an unsuccessful action against the Brockton Police Department claiming he was a victim of retaliation from the Department for recommending Semedo file a complaint. *Williams v. Brockton*, No. CV 12-10430-JGD, 2015 WL 7185435, at \*18 (D. Mass. Nov. 13, 2015) (“Williams has not presented sufficient evidence to show that the Police Defendants retaliated against him for advising and supporting Semedo, and even if he had, such conduct on the part of the Defendants would not have been adequate to support a substantive due process claim.”); *see also* Ed Donga, *Former Brockton Cop Sues City Claiming Discrimination*, ENTERPRISE (Feb. 2, 2014, 12:01 AM), <http://www.enterpriseneews.com/article/20140202/NEWS/140209624>.

on population. It looks like a system that is invested in rehabilitation and alternative sentencing practices that increase an incarcerated individual's ability to reintegrate into society.