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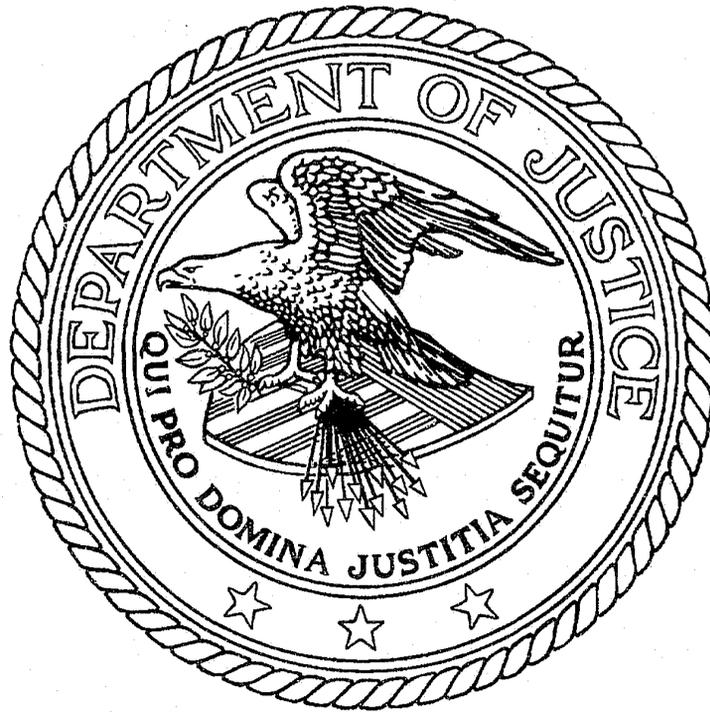
U.S. Department of Justice  
Office of Policy and Communications  
*Office of Policy Development*

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# The Case for More Incarceration

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1992



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## Office of the Attorney General

Washington, D.C. 20530

October 28, 1992

In July, I released a report entitled *Combating Violent Crime: 24 Recommendations to Strengthen Criminal Justice*, setting forth a comprehensive strategy for making state criminal justice systems more effective in achieving their central purpose -- the protection of our citizens. As I stated then, there is no better way to reduce crime than to identify, target, and incapacitate those hardened criminals who commit staggering numbers of violent crimes whenever they are on the streets.

Of course, we cannot incapacitate these criminals unless we build sufficient prison and jail space to house them. Revolving-door justice resulting from inadequate prison and jail space breeds disrespect for the law and places our citizens at risk, unnecessarily, of becoming victims of violent crime.

As part of the preparation of *Combating Violent Crime*, the Office of Policy and Communications circulated this report, *The Case for More Incarceration*, as an internal working paper. Because it discusses in detail the reasoning behind some of the most important recommendations in *Combating Violent Crime*, I have now asked the Office to publish it.

I would like to acknowledge the efforts of Steven R. Schlesinger and Edward Himmelfarb in preparing this significant document.

William P. Barr  
Attorney General

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## ***Introduction***

Ask many politicians, newspaper editors, or criminal justice "experts" about our prisons, and you will hear that our problem is that we put too many people in prison. The truth, however, is to the contrary; we are incarcerating too *few* criminals, and the public is suffering as a result.

Every violent criminal who is in prison is a criminal who is not committing other violent crimes. Too many violent criminals are sentenced to probation with minimal supervision. Too many violent criminals are sentenced to prison but are released early on parole or simply to relieve the pressure of prison crowding. None of us is naive enough to think that these criminals will suddenly become upstanding, law-abiding citizens upon release. And indeed they do not. Much violent crime is directly attributable to our failure to sentence violent criminals to prison and our failure to keep them in prison beyond a fraction of their sentence.

Yes, we would have to build more prisons to implement a policy of more incarceration. Yes, this would cost money. But it would plainly reduce crime and help to protect the public -- which is the first responsibility of any government. State and local governments are spending a growing but still modest portion of their budgets on corrections, and it is time to consider our priorities. How much does our failure to incarcerate cost our communities when released offenders commit new crimes? How much does it cost in victims' medical expenses and lost wages, in lost opportunities in inner cities, in lost jobs for the community? How much do government treasuries suffer from the resulting lost tax revenues?

The argument for more incarceration makes three basic points. First, prisons work. Second, we need more of them. Third, inadequate prison space *costs* money. Correspondingly, the most common objections to incarceration do not hold up under scrutiny. Prisons do not create criminals. We are not over-incarcerating. In fact, we could reduce crime by simply limiting probation and parole -- by putting criminals in prison for a greater portion of their sentences.

Finally, amid all the concern we hear about high incarceration rates for young black

men, one critical fact has been neglected: The benefits of increased incarceration would be enjoyed disproportionately by black Americans living in inner cities, who are victims of violent crime at far higher rates than whites and persons who live outside the inner cities.

## I. Prisons work.

How do we know that prisons work? To begin with, historical figures show that after incarceration rates have increased, crime rates have moderated. In addition, when convicted offenders have been placed on probation or released early from prison, many of them have committed new crimes. One can legitimately debate whether prisons rehabilitate offenders; one can even debate whether, and how much, prisons deter offenders from committing crimes. But there is no debate that prisons incapacitate offenders. Unlike probation and parole, incarceration makes it physically impossible for offenders to victimize the public with new crimes for as long as they are locked up.

### A. Incarceration rates and crime rates.

In the 1960's violent crimes reported to police more than doubled, but the nation's prison population declined by almost 8% from about 213,000 to under 197,000 in 1970.<sup>1</sup> If the prison population had simply kept pace with the crime rate during this period, the population would have been over 495,000 by 1970 -- about 2½ times the actual figure.<sup>2</sup> How can it be that so few persons were in prison during a period of soaring crime rates? The answer is that the chances of imprisonment for serious crimes fell dramatically. At the beginning of the decade, for every 1,000 adults arrested for a violent crime or burglary, criminal courts committed 299 offenders to a state prison; by 1970, the rate had dropped to 170.<sup>3</sup>

Table 1

Prisoners sentenced to more than one year		
Year	Total Prisoners (State and Federal)	Imprisonment Rate (per 100,000)
1960	212,953	117
1970	196,441 (- 8%)	96 (- 18%)
1980	304,692 (+ 55%)	134 (+ 38%)
1990	713,216 (+134%)	282 (+110%)

**SOURCE:** Bureau of Justice Statistics

This drop in the incarceration rate was no accident. The prevailing attitude among policy-makers at the time was that social spending and not imprisonment was the answer to crime.

By the 1970's, it had become painfully apparent that the anti-punishment policies of the 1960's had failed. There was a change of direction in criminal justice toward tough law enforcement -- arrest, prosecution, *and incarceration* -- a change that continued through the 1980's and continues today.

This change was reflected in two different ways. First, there were more inmates sentenced to prison (traditionally measured by the rate per 100,000 population). In 1960, the rate of imprisonment (state *and* federal) per 100,000 was 117. This rate fell during the 1960's, and by 1970 was 96 per 100,000. As a result of the new direction in criminal justice during the 1970's and 1980's, the imprisonment rate rose to 134 per 100,000 in 1980 and to 282 per 100,000 in 1990.<sup>4</sup> (Table 1)

Second, the changed attitude toward incarceration was reflected in an increase in the chance of incarceration after arrest. In an article in *Science* magazine, a scholarly journal published by the American Association for the Advancement of Science, Patrick A. Langan, a Bureau of Justice Statistics statistician, has shown that the most important factor in the increased prison population between 1974 and 1986 was the greater likelihood that an arrest would result in a conviction and a sentence to prison. This factor was far more important than any increases in crime-prone populations, increases in reported crime and arrest rates, or increases in drug arrest and imprisonment rates.<sup>5</sup>

#### SIDEBAR

Prosecutors in Arizona have come to similar conclusions about the relationship of tough punishment policies and crime rates:

"Fact: Over the past three decades the rate of serious crime in Arizona has tended to move up as we imprisoned proportionately fewer offenders and down when we imprisoned proportionately more offenders."

"Fact: Since 1980 the rate at which we commit offenders to prison for serious crime has increased substantially and our rate of such crime has evidenced a general decline."

**SOURCE:** Arizona Prosecuting Attorneys' Advisory Council, *The Facts about Crime and Punishment in Arizona 1980-1990*, May 1992, at 21-22.

The increase in incarceration has been accompanied by a significant slowing of the increase in reported crime and by a decrease in estimates of total crime (reported and unreported crime combined). Using rates of crime *reported to police*, measured by the

Federal Bureau of Investigation's Uniform Crime Reports, we see that from 1960 to 1970, the murder rate per 100,000 Americans rose by 55%, and from 1970 to 1980, it rose by 29%. From 1980 to 1990, however, it dropped by 8%. From 1960 to 1970, the number of rapes reported to police per 100,000 Americans increased by 96%, and by 97% from 1970 to 1980. From 1980 to 1990, the increase was only 12%. The same pattern can be shown for rates of reported robbery, which increased by 186% from 1960 to 1970 and increased by only 2% from 1980 to 1990. The FBI's "crime index" offense rate, which includes not only violent crimes but also burglary, larceny-theft, and motor vehicle theft, has seen an even more pronounced trend. From 1960 to 1970, the crime index rate more than doubled, increasing by 111%; from 1970 to 1980, it rose by 49%; but from 1980 to 1990, it actually *declined* by 2%.<sup>6</sup> (Table 2)

Table 2

Uniform Crime Reports (crime rates per 100,000 population)						
	1960	1970		1980		1990
Murder	5.1	7.9 (+ 55%)		10.2 (+29%)		9.4 (- 8%)
Rape	9.6	18.7 (+ 95%)		36.8 (+97%)		41.2 (+12%)
Robbery	60.1	172.1 (+186%)		251.1 (+46%)		257.0 (+ 2%)
Aggravated assault	86.1	164.8 (+ 91%)		298.5 (+81%)		424.1 (+42%)
<b>All Violent</b>	<b>160.9</b>	<b>363.5 (+126%)</b>		<b>596.6 (+64%)</b>		<b>731.8 (+23%)</b>
<b>All Index</b>	<b>1887.2</b>	<b>3984.5 (+111%)</b>		<b>5950.0 (+49%)</b>		<b>5820.3 (- 2%)</b>

**NOTE:** Figures do not include unreported crimes. Definitions are given in Appendix A.

The National Crime Victimization Survey, sponsored by the Bureau of Justice Statistics, estimates total crime against persons age 12 and above -- both reported and unreported -- based on interviews with a representative sampling of households. In 1973, the first year in which the survey was taken, there were an estimated 94.7 rapes per 100,000 population. This rate remained virtually unchanged in 1980 but had dropped by 32% by 1990. Similarly, there were an estimated 674 robberies per 100,000 population in 1973. By 1980, that rate had dropped by 3% and by 1990, it had dropped by another 14%. Aggravated assaults, which occurred with an estimated frequency of 1006.8 per 100,000 population in 1973,

occurred at an 8% lower rate in 1980. By 1990, the rate had decreased by another 15%.<sup>7</sup> (Table 3)

Table 3

National Crime Victimization Survey Crime Victimization Rates (per 100,000 persons age 12 or older)			
	1973	1980	1990
Rape	94.7	94.3 (-0.5%)	64.0 (-32%)
Robbery	674.0	656.0 (-3%)	565.7 (-14%)
Aggravated assault	1006.8	926.0 (-8%)	787.6 (-15%)
<b>TOTALS</b>	<b>1775.5</b>	<b>1676.3 (-6%)</b>	<b>1417.3 (-15%)</b>

**NOTE:** Figures include estimates of reported -- and unreported -- crimes, based upon interviews of a sampling of households nationwide. In 1990, approximately 95,000 people in 47,000 households were interviewed. Murders are not included. Survey began in 1973. Definitions are given in Appendix A.

Imprisonment and prison-construction policies have had a demonstrable effect in individual states. In the early 1980's, the Texas legislature adopted an approach that reduced the time that prisoners served, in an effort to open up space for the next class of felons. Between 1980 and 1989, the average prison term served fell from about 55% of the sentence to about 15% of the sentence, and by 1989 the parole population grew to more than 5 times its 1980 level. The "expected punishment" -- average time served, reduced by the probabilities of arrest, prosecution, conviction, and sentence to prison -- for serious crimes (murder, rape, robbery, aggravated assault, burglary, theft) fell 43% in Texas between during the 1980's while it was increasing by about 35% in the nation as a whole, and the rate of these serious crimes reported in Texas rose by about 29%, while national rates fell by almost 4%.<sup>8</sup>

In Michigan, when funding for prison construction dried up in the early 1980's, the state instituted an early-release program and became one of only two states whose prison population declined from 1981 to 1984.<sup>9</sup> Between 1981 and 1986, the rate of violent crimes reported to police in Michigan rose by 25% at the same time national crime rates were de-

clining. In 1986, however, when Michigan embarked on a major prison-building effort, the state's violent-crime rate began to fall and by 1989 had dropped by 12%.<sup>10</sup>

It strains credulity to believe that the lowered crime rates have been unrelated to the unprecedented increases in the nation's incarceration rates, even if there may have been other causes as well. As Langan put it in his *Science* article:

Whatever the causes, in 1989 there were an estimated 66,000 fewer rapes, 323,000 fewer robberies, 380,000 fewer assaults, and 3.3 million fewer burglaries attributable to the difference between the crime rates of 1973 versus those of 1989 [*i.e.*, applying 1973 crime rates to 1989 population]. If only one-half or even one-fourth of the reductions were the result of rising incarceration rates, that would still leave prisons responsible for sizable reductions in crime.<sup>11</sup>

## **B. *A failure to incarcerate leads to increased crime.***

One proposition is abundantly clear: *Failure* to incarcerate convicted criminals will lead to additional crimes. There are two sources of direct evidence of this proposition. First, offenders placed on probation commit new crimes while on probation. Second, offenders who are released early commit new crimes during the period when they would otherwise have been confined in prison.

### **1. *Crimes by probationers.***

In theory, probation is a sentence meted out to an otherwise law-abiding person who has gone astray. The idea is that such a person deserves a stern warning, with the threat of more serious punishment if the person offends again. There are two main problems when this theory is put into practice. First, considerable evidence indicates that many "first-offenders" have committed crimes in the past for which they have not been caught and convicted, or for which they were treated as juveniles with the adult criminal justice system prohibited by law from seeing their records. Second, about one-fourth of probationers have prior adult felony convictions and are not "first-offenders" under any definition. Nevertheless, some states have determined that probation is a suitable, cost-effective alternative to incarceration. Let us consider what happens to the population of felons on probation.

A recent Bureau of Justice Statistics study found over half of the estimated 583,000 state felony convictions in 1986 -- or 306,000 -- resulted in a sentence of probation. Of these, about three-fifths received straight probation, and about two-fifths received probation combined with a period in jail or prison (a so-called "split sentence"). Based on a survey of 79,000 felons sentenced to probation in 17 states -- over one-fourth of the nation's total -- BJS estimated that 12% of all probationers had been sentenced to probation after being convicted of a violent offense (one out of every 40 probationers among this 12% had been convicted of murder); 34% of a drug offense; 29% of burglary or larceny; and 3% of a weapons offense.<sup>12</sup>

#### SIDEBAR

We are concerned here only with convicted offenders, but high rates of recidivism have also been found among persons arrested on felony charges and released pending trial. In one sample, during the first year after pretrial release, one in six violent felony defendants released in 1988 and one in five drug felony defendants were rearrested on felony charges. Thirty percent of felony defendants with 5 or more prior convictions were rearrested on felony charges, while 15% of those with no prior convictions were rearrested. Nearly two-thirds of all rearrested felony defendants were rearrested within 3 months. **SOURCE:** Bureau of Justice Statistics

BJS estimated that 43% of the 79,000 probationers studied were arrested at least once on a felony charge within 3 years after being placed on probation, and that 62% had either a felony arrest or a disciplinary hearing during that period. The 34,000 arrestees counted for a total of 64,000 arrests, with about 8,000 having 2 felony arrests in the 3-year period, and about 7,500 having 3 or more felony arrests. About 8.5% of probationers were arrested for violent crimes; those arrests represented 20% of felony arrests of probationers.<sup>13</sup> Extrapolating the 43% arrest rate and the proportions of multiple arrests and violent crime arrests in the sample to the group of all 306,000 felons sentenced to probation in 1986, this means almost 132,000 probationers were arrested on felony charges about 248,000 times (including nearly 50,000 times for violent felonies) over the following 3 years.

Although these figures sound high, the number of crimes actually committed by felony probationers is almost certainly higher. The most important reason for this is that the survey tallied only *arrests* of probationers, not the total crimes they committed. Arrests on multiple

charges were listed only under the most serious charge. Considering that arrests account for only a portion of all crimes, it is likely that the probationers committed other unreported or unsolved crimes as well. In addition, the survey did not include either out-of-state arrests or arrests after 3 years from the start of probation. Also, some probationers were deported, had absconded, or had died.

Even after a person on probation for a felony conviction is convicted after a new felony arrest, there has been a lukewarm reaction by the courts. Of probationers who were convicted after a first new felony arrest while on probation, 42% were sentenced to prison, 10% to jail, 36% to probation with some jail (split sentence), and 9% to straight probation (3% were "other"). Thus, a full 45% of these repeat offenders received a new sentence of probation.<sup>14</sup>

## **2. *Crime by prisoners released early.***

Quite a few states have parole systems that release prisoners before they have served their full sentences. Others have implemented early-release programs -- either on their own or pursuant to a court order -- that are specifically designed to keep down their prison populations. As a result of all these arrangements, crimes are committed by prisoners released early that would not have been committed if the prisoners had remained in prison for the duration of their sentences. These are avertable crimes.

In 1989, the Orlando *Sentinel* conducted a survey of almost 4,000 prisoners released early in Florida because of prison crowding and found that nearly one-fourth were rearrested for a new crime at a time when they would otherwise have been in prison. (In a follow-up survey, the number rose to about 31%.) The 950 prisoners rearrested were charged with 2,180 new crimes, including 11 murders or attempted murders, 63 armed robberies, 6 sexual assaults, 7 kidnapings, 104 aggravated assaults, 199 burglaries, and 451 drug offenses. Some were rearrested more than once; 33 were released early, rearrested, convicted, incarcerated, released early again, and rearrested again, all within a two-year period.<sup>15</sup>

This experience in Florida should not be surprising. In a study of the effects of incapacitation on crime, sponsored by the National Academy of Sciences and published in

1986, a research panel concluded that incarceration has a definite incapacitative effect on crime:

Under 1970 incarceration policies, incapacitation was estimated to have reduced the number of FBI index crimes by 10 to 20 percent. For robberies and burglaries, incapacitation is estimated to have reduced their number by 25-35 percent in 1973; in 1982, after the national inmate population had almost doubled, the incapacitative effect for these offenses is estimated to have increased to about 35-45 percent.<sup>16</sup>

This general conclusion is bolstered by other evidence. The Bureau of Justice Statistics surveyed a sampling among the approximately 108,000 persons released from prison in 11 states in 1983, and found that 62.5% were arrested for a new felony or serious misdemeanor within 3 years. The estimated 68,000 prisoners who were rearrested in these 11 states were charged with over 326,000 new offenses, including about 50,000 violent offenses, 141,000 property offenses, and 46,000 drug offenses. Of those who were rearrested, 40% (representing one-fourth of all prisoners released in those states) were rearrested within the first 6 months of release.<sup>17</sup>

Another BJS study looked at male prisoners entering state prisons in 1979 and found that approximately 28% of all males admitted to prison that year (or 46% of the male recidivists admitted to prison) would still have been in prison at the time of their new admission if they had served the maximum of the sentence range imposed by the court instead of being paroled.<sup>18</sup> For example, if those prisoners who had been sentenced to 3 to 5 years in prison had served the full 5 years instead of one-third of that time, they would still have been in prison at the time they reentered prison after having been convicted of a new crime committed while on parole. Notice that we are not talking about persons who would have been in prison at the time they *committed* their new crimes; nor are we talking about persons who would have been in prison at the time they were *arrested*, or *convicted*. These numbers would be even higher. The figure we have cited -- 28% of all persons admitted to prison in 1979, or over 43,000 offenders out of a total of about 153,500 -- represents persons who had committed crimes, had been arrested, prosecuted, and convicted, and had been re-committed to prison, all within the time they would have served on their original sentences.

Further evidence comes from a BJS study of recidivism among young-adult parolees. Based on a sampling of 17- to 22-year-olds paroled from prison in 22 states in 1978, the study estimated that about 69% of all such persons were rearrested and charged with a felony or serious misdemeanor within 6 years of release from prison, and that about 29% of new arrest charges occurred before the parolees were first eligible for discharge from parole on the original conviction.<sup>19</sup> In other words, had these offenders remained in prison pursuant to their original sentences instead of being paroled, they would not have been able to commit the new crimes.

A different way of estimating the extent of crime prevention through incapacitation is based on self-reporting of offenders in prison. In 1982, the Rand Corporation conducted a sophisticated survey of a sampling of inmates incarcerated in California and Michigan prisons and jails, as well as in Texas prisons. The survey contained a variety of internal and external checks in an effort to validate inmates' responses. According to the inmates' self-reports, inmates on average committed between 187 and 278 crimes per year, *excluding drug deals*. But the distribution was skewed; about half the population claimed to have committed fewer than 15 crimes per year, while about 25% claimed more than 135 crimes and about 10% claimed more than 600 crimes per year.<sup>20</sup> A more recent study by the Treasury Department's Bureau of Alcohol, Tobacco and Firearms showed, similarly, that a group of career criminals had committed an average of about 160 crimes a year.<sup>21</sup> These individual crime rates represent the incapacitative effect of prison on the particular offender. Even if we reduce these numbers by one-half or two-thirds on the theory that the inmates were simply boasting of their criminality, incapacitation of such offenders would, by their own admission, prevent them from committing numerous crimes. If released early, however, they would become free to return to wholesale criminality.

This "avertable recidivism" -- crime that could have been avoided simply by following through on a sentence of imprisonment on an earlier conviction -- proves that prisons work.

### **C. *Prisons do not create criminals.***

We hear all the time that prisons create crime -- that imprisonment turns first-time

offenders into hardened criminals. If this argument were true, then two other propositions would have to be true as well: first, that many offenders sentenced to prison are not already hardened criminals; and second, that the rate of recidivism increases with the length of time served in prison. Both of these propositions are false.

First, so-called "first-offenders" are often nothing of the sort. In some cases, "first-offenders" have lengthy juvenile records that are unavailable by law to the adult criminal justice system. These "first-offenders" are already hardened criminals. In other cases, offenders get probation for their first adult offense, and sometimes, as we have seen, even for subsequent offenses committed while on probation. In a report on inmates in state prisons in 1986, the Bureau of Justice Statistics found that only about 5% of all state prisoners were non-violent first-offenders.<sup>22</sup> This figure would have to be adjusted downward to take into account those who had simply been *caught* for the first time. Former Attorney General Hal Stratton of New Mexico has summed it up: "I don't know anyone that goes to prison on their first crime. By the time you go to prison, you are a pretty bad guy."<sup>23</sup>

Second, as a BJS study of prisoners released in 1983 has shown, the rate of recidivism has little to do with the length of time served in prison before release. In fact, those who had served over 5 years before release had *lower* recidivism rates than those who had served less than 5 years.<sup>24</sup> (Table 4)

Table 4

Time served (in months)	% Rearrested within 3 years
0-6	61.2%
7-12	64.6%
13-18	63.0%
19-24	64.6%
25-30	60.7%
31-36	61.3%
37-60	59.0%
61 +	48.3%

**SOURCE:**  
Bureau of Justice Statistics

In the BJS study, the recidivism rate was linked most closely with the offender's age when released and the number of prior arrests. For example, in the 18- to 24-year-old age-of-release group, 48.6% of prisoners with one prior arrest were rearrested within 3 years after release, whereas 94.1% of prisoners with 11 or more prior arrests were rearrested within 3 years. Among inmates with the same number of prior arrests, the rearrest rate declined as the release age of the releasee increased. For example,

among prisoners with 4-6 prior arrests, 72.8% of 18- to 24-year-olds were rearrested within 3 years, whereas 57.9% of 25- to 29-year-olds, 51.0% of 30- to 34-year-olds, 41.6% of 35- to 39-year-olds, and 30.1% of those 40 or older were rearrested.<sup>25</sup>

Prisons simply aren't responsible for turning unsophisticated young wrongdoers into hardened criminals. To put it differently, prisons don't commit crimes; criminals do.

## **II. *More prisons are needed.***

It is not news to anyone familiar with prisons that many state prison systems are seriously overcrowded. Nor is it news that many other systems that are *not* overcrowded have kept their inmate populations low by letting criminals go free -- either by not incarcerating them in the first place or by releasing them early from prison to make room for the next group of criminals. It is also not news that there is a solution to this problem: Build more prisons.

### **A. *Prison crowding.***

As we have seen, prison population has increased enormously in recent years. Although this increase has been accompanied by a considerable amount of construction of new prison space, the building has not kept pace with the expanding inmate population. As of the end of 1991, state prisons in the aggregate were at about 123% of average capacity.<sup>26</sup>

In a real sense, this figure understates the problem. Some of the states with populations at or below capacity have reached that position only after being put under court order. Instead of building new prisons to house their prisoners, these states have chosen (or been ordered) to create a revolving door by releasing enough prisoners to meet a cap on population. The "real" inmate population of these states would have to be computed by including in the total those inmates who are released early to make room for others.

### **B. *Prisons are a critical link in the criminal justice system.***

When crime rates are intolerably high, the public and many elected officials say that more police are needed. And indeed more police usually *are* needed. Yet this common re-

response focuses on only one part of the solution, at the front end of the criminal justice system, and ignores the need for prison space, which is a critical link in the system at the back end. Even if we have more police, and therefore more arrests, and even if we have more prosecutors and courts, and therefore more prosecutions, trials, and convictions, we will ultimately make no dent in crime if we have so little prison space that we have to send convicted offenders back out on the street well before they have completed their sentences.

**Table 5**

<b>Time served: 1st Release from State Prison</b>		
<u>Most serious offense</u>	<u>Max. sentence (median)</u>	<u>Time served (median)</u>
All crimes	4 yrs.	1 yr. 1 mo. (27%)
Violent	5 yrs.	2 yrs. 2 mos. (42%)
Murder	15 yrs.	5 yrs. 6 mos. (37%)
Rape	8 yrs.	3 yrs. 0 mos. (38%)
Robbery	6 yrs.	2 yrs. 3 mos. (38%)
Drugs		
Trafficking	3 yrs.	1 yr. 0 mos. (33%)
Weapons	3 yrs.	1 yr. 1 mo. (36%)

**NOTE:** A sentence length is the median if half the sentences are longer and half are shorter.

**SOURCE:** Bureau of Justice Statistics

Table 5 is based on maximum sentence lengths and actual time served by persons released from state prison in 1988. One can see that the length of time served in prison was a mere fraction of the length of sentence imposed. The me-

median offender received a maximum sentence of 4 years but the median time served was only 1 year and 1 month, slightly over one-quarter. (The *average* maximum sentence length is 5 years and 9 months, while the average time served in prison is 1 year and 10 months, or 32%.)<sup>27</sup> Parole decisions are, in theory, based on an evaluation that the offender has been adequately rehabilitated, but these figures show that such decisions are also driven by prison crowding. If prisons are already above capacity, it would be impossible to hold offenders for much longer without placing a severe strain on the prison system.

Given these circumstances, a state that fights crime by increasing arrests, prosecutions, and convictions, but refuses to build more prison space, will see one or more of three

possible outcomes: first, judges who are forced to grant probation to felons who deserve hard time; second, an increase in prison crowding that is difficult to manage; and third, earlier release of more prisoners. The choice, then, is simple: more prisons or more crime.

**C. We are not over-incarcerating.**

**Table 6**

<b>Prior Sentences of State Inmates 1986</b>	
<u>Probation and/or incarceration</u>	<u>percent of inmates</u>
None	18.5%
Juvenile	10.6%
Adult	35.9%
Both	34.9%
<u>Number of times</u>	
0	18.5%
1	19.8%
2	16.5%
3-5	26.0%
6-10	12.6%
11 or more	6.6%
<b>SOURCE:</b>	
Bureau of Justice Statistics	

Opponents of incarceration often release studies purporting to show that we have too many people in prison or that our incarceration rate is too high. Typically, American incarceration rates are shown to be higher than those of most, if not all, other nations surveyed. These studies, however, take little notice of the high crime rates that plague our country, almost as if imprisonment were unrelated to crime. If differences in national crime rates were taken into account, much of the difference in incarceration rates among nations might disappear.

For example, *arrest*-based imprisonment rates yield results far different from those trumpeted by the opponents' studies. The rate of imprisonment among those who have been arrested for certain crimes does not vary greatly between the United States and comparable Western democracies. The Bureau of Justice Statistics estimated that arrest-based imprisonment rates for robbery were 49% in the United States, 52% in Canada, and 48% in England.<sup>28</sup> To the extent arrests are proportionate to crime, these data would suggest that we are not over-incarcerating, at least not in comparison with England or Canada.

In fact, as high as American incarceration rates appear to be, only a fraction of all criminals under supervision are in prison at any time. In 1990, an estimated 4.35 million

Americans were under correctional supervision, of whom about 745,000 were in prison, 403,000 in jail, 531,000 on parole, and 2.67 million on probation. In other words, nearly three-quarters of those under correctional supervision were being supervised in the community.<sup>29</sup>

Moreover, if we were actually over-incarcerating, surely we could find numerous prisoners who do not deserve to be in prison. When the Bureau of Justice Statistics examined profiles of inmates who were incarcerated in state prisons in 1986, it found that almost 55% were serving time for a violent offense and that another 11% had a prior conviction for a violent offense. Still another 29% were non-violent recidivists, having a prior sentence to probation or incarceration as an adult or juvenile. In sum, 95% of all state inmates were either violent or repeat offenders. Over half of the remaining 5% had been convicted of drug trafficking or burglary.<sup>30</sup> (Preliminary results for state inmates in 1991 are similar.<sup>31</sup>) Which of these offenders should we not incarcerate?

What is more, the word recidivist does not tell the whole story. Nearly 62% of state inmates had two or more prior sentences to probation or incarceration; about 45% had 3 or more; over 19% had 6 or more; and 6.6% had 11 or more.<sup>32</sup> (Table 6) Which of these offenders should we not incarcerate?

The problem, then, is not too much incarceration; the problem is too much crime, and the simple fact is that the best way to stop crime is to put criminals in prison.

### **III. *Failure to incarcerate costs money.***

Much of the opposition to prison construction is based on cost. But this concern about cost ignores the costs that are imposed on society by our failure to incapacitate convicted criminals.

#### **A. *Expenditures on corrections.***

State and local expenditures on prisons, while increasing, are modest portions of the budget. In fiscal year 1990, per capita state and local direct spending on corrections -- including not just construction but all aspects of running prisons and jails -- was only

\$94.50.<sup>33</sup> This represented only 2.4% of state and local direct spending. (States alone spent only 3.9% on corrections.)<sup>34</sup>

Construction costs per bed vary tremendously, from about \$11,000 to close to \$100,000. But whatever the cost, we must remember that prisons have a useful life of decades. On an annualized basis, construction costs are relatively small; they are a fraction of operating costs, which in fiscal year 1990 averaged \$15,513 per inmate.<sup>35</sup>

More important, figures on expenditures for corrections inherently overstate the costs of building and operating prisons. The monetary benefits of prisons -- the expenditures that are saved and the revenues that are retained or increased -- are left out of the calculus. A proper evaluation of the cost of increasing prison space must include an analysis of the cost of *not* increasing prison space. This requires us to examine the cost of crime, and the cost of crime that could be averted.

#### **B. *Cost of crime that could have been averted.***

It is not easy to give a precise figure for the true cost of crime, but we will suggest a few ways of putting together some estimates. The point to remember when reading this discussion is that even if our estimates are *twice* as high as the true figures, the cost of crime -- and in particular the cost of *avertable* crime -- is intolerably high. While prisons may be costly to build and operate, those who say they cost *too* much have the burden of showing that the cost of avertable crime is a price we should be willing to pay.

Let us begin with an estimate compiled by the Bureau of Justice Statistics of the direct economic costs to crime victims. (Table 7) In 1990, according to these estimates, victims had total out-of-pocket losses of \$19.2 billion.<sup>36</sup> This sounds large, but it represents a modest cost per crime on average. What, after all, are the direct costs to the victim of a mugging (robbery) at gun-point? Perhaps some cash, maybe a watch or a ring. Suppose the victim loses one day of wages in working with police and prosecutors; this amounts to \$120 for a person earning \$30,000 a year. Let us make a crude estimate of \$500 direct economic costs per mugging at gun-point. Does anyone seriously believe that \$500 is the true value of such a crime -- that if the cost of averting the crime is over \$500 we should affirmatively

Table 7

Total direct economic loss to victims of crime, 1990	
Type of crime	Gross loss (in millions)
All crimes	\$19,216
Personal crimes	4,575
Crimes of violence	1,338
Rape	63
Robbery	618
Assault	657
Crimes of theft	3,237
Personal larceny	
With contact	141
Without contact	3,096
Household crimes	14,641
Burglary	4,340
Household larceny	1,752
Motor vehicle theft	8,550

**SOURCE:**  
Bureau of Justice Statistics

**NOTE:** Figures do not include justice system costs, pain and suffering, personal anti-crime expenditures, or "macro" costs, such as lost sales, lost jobs, or lost tax revenues.

choose to let the crime happen?

Suppose the mugger flees before taking the cash and goods. Is there *no* cost to this crime? Suppose the mugger takes no cash, but puts his gun to the victim's head, pulls the trigger, and the gun backfires. Should we spend *no* money to avert this crime? Plainly, there are other costs of crime.

One analyst, Mark Cohen, has tried to compute the costs of pain, suffering, and fear that the victims endure, based in part upon how juries have apportioned damages between direct economic losses and pain and suffering. While criminal justice professionals may never agree about methodology, we present some of Cohen's findings because his analysis includes

some factors that are ordinarily left out of the estimation of costs of crime.

Cohen estimates the average per-crime cost to victims in 1984 (using 1985 dollars) as follows: rape, \$51,058; robbery, \$12,594; assault, \$12,028; personal larceny, \$181; motor vehicle theft, \$3,127; burglary, \$939; and household larceny, \$173. In the aggregate, he writes, the estimated total cost of these crimes to the victims in 1984 was \$92.6 billion in 1985 dollars.<sup>37</sup> (Table 8) This figure would obviously be far higher if computed today. Between 1984 and 1990, the direct economic costs of crime to victims, as estimated by BJS, rose by 54%;<sup>38</sup> if intangible losses simply kept pace with victims' direct, out-of-pocket losses, the total cost of crime as computed by Cohen's method would have been over \$140 billion by 1990.

Table 8

Per-Crime Cost of Crime to Victims (1985 dollars)				
<u>Crime</u>	<u>Direct Losses</u>	<u>Pain and Suffering</u>	<u>Risk of Death</u>	<u>Total Cost</u>
<b>Personal</b>				
Rape	\$4,617	\$43,561	\$2,880	\$51,058
Robbery	1,114	7,459	4,021	12,594
Assault	422	4,921	6,685	12,028
Larceny	179	-----	2	181
<b>Household</b>				
Motor vehicle	3,069	-----	58	3,127
Burglary	939	*	*	939*
Larceny	173	-----	-----	173
Aggregate cost of crime to victims in 1984: <b>\$92.6 billion</b>				
* For burglary Cohen values pain and suffering at \$317 and risk of death at \$116, but he excludes these because burglary with personal contact becomes a more serious crime, accounted for elsewhere in the table.				
<b>SOURCE:</b> Mark Cohen, <i>Pain, Suffering, and Jury Awards: A Study of the Cost of Crime to Victims</i> , 22 Law and Society Review 537 (1988).				

Consider what these figures mean. If it costs about \$15,500 in operating costs plus a few thousand dollars in annualized construction costs to keep one rapist in prison for only one year, and we thereby prevent him from committing only one rape, we have prevented a crime at bargain-basement prices. This would remain true even if Cohen's figures were twice the "true" costs of the crime. And we are working on the assumption that one year of incarceration prevents only one rape; indeed, as noted earlier, studies indicate that most offenders, when out of prison, commit *numerous* crimes for which they are not caught.

The same kind of reasoning applies to crimes other than rape and to criminals other than rapists, although the precise cost savings of incarceration will differ. Incarceration of certain offenders will result in massive savings, whereas incarceration of others will simply reduce the *net* cost of incarceration. The fundamental point is that one cannot analyze the cost of incarceration without also considering the cost of *non*-incarceration.

Cohen's study shows that we tend to underestimate the cost of crime, but even Cohen leaves out some of the important, though indirect, costs of crime. These indirect costs are the larger societal costs, and they include:

- lost sales, when people are afraid to go out to do their shopping;
- lost jobs, when businesses move out of high-crime areas;
- lost opportunities, when schools become the playgrounds of gangs and drug dealers, rather than places where inner-city kids can learn their way out of poverty; and
- lost tax revenues, when sales, businesses, and jobs evaporate.<sup>39</sup>

Table 9

<b>Summary of Costs and Benefits of Incarceration</b>		
<u>Costs (Most Plausible Range)</u>	<u>Low</u>	<u>High</u>
Annualized construction costs	\$ 4,094	\$ 5,333
Annual operating costs	18,826	20,912
Inmate's lost legitimate income	8,653	8,653
Annual avg. welfare costs	<u>2,715</u>	<u>2,715</u>
	\$34,289	\$37,614
<b>Benefits</b>		
Avg. annual costs to victims from crimes committed by a currently imprisoned felon	\$ 49,019	\$ 525,326
Est. social costs (250%-350% of direct costs to victims)	<u>122,547</u>	<u>1,838,641</u>
	\$171,566	\$2,363,967
<b>SOURCE:</b> David P. Cavanagh & Mark A.R. Kleiman, <i>A Cost Benefit Analysis of Prison Cell Construction and Alternative Sanctions</i> , May 1990.		

Two years ago, David Cavanagh and Mark Kleiman of BOTEC Analysis Corporation, a Cambridge, Massachusetts consulting firm, performed a complex cost-benefit analysis of incarceration that tried to include as many indirect, societal costs and benefits as possible. Cavanagh and Kleiman estimated the most plausible range of costs for incarceration of one inmate per year at \$34,000 to \$38,000 and the benefits of incarcerating that *one inmate* for a year at between \$172,000 and \$2,364,000. They did not even include homicide (except where committed in the course of a felony), rape, or drug crimes when evaluating the

benefits of incarceration.<sup>40</sup>

Decisions about the cost of building prisons must necessarily take both intangible costs and the broader societal costs into account. Those who think that building prisons is too expensive have the profound moral burden of justifying the additional crimes -- and the costs of the additional crimes -- that will certainly result from a failure to build.

**C. *A failure to incarcerate hurts black Americans most.***

Many well intentioned people argue that we are incarcerating too many blacks, particularly young black men. Some argue that reducing the numbers of blacks in prison is more important than pushing tough law enforcement policies -- indeed, that tough law enforcement has the effect, and perhaps the intent, of putting more blacks in prison. But a failure to incarcerate criminals would result in disproportionate harm to law-abiding black citizens.

Blacks are victims of crime at rates far in excess of their proportions in the general population. The FBI reported that in 1990 more blacks were murdered than whites.<sup>41</sup> This does not mean murder rates; it means actual murder victims. Blacks constitute only about 12% of the American population. In 1985, the lifetime risk of being a homicide victim was 1 in 179 for white men, but 1 in 30 for black men; it was 1 in 495 for white women, but 1 in 132 for black women.<sup>42</sup> In 1987, murder was the 12th leading cause of death in the United States but was the leading cause of death among young black men aged 15 to 24, accounting for 42% of all deaths in that group. Among persons aged 15 to 24, the 1987 murder rate for black men was 4.8 times the rate for black women, 7.7 times the rate for white men, and 21.9 times the rate for white women.<sup>43</sup>

**SIDEBAR**

The riots in Los Angeles last April have revived charges that the criminal justice system in this country treats blacks worse than whites. Various studies have been cited in support of this thesis, but the most reliable evidence tends to refute it. See Appendix B to this report.

Although the murder figures are the most striking, blacks for many years have been victims of almost all crimes at greater rates than whites. From 1979 to 1986, the rate of violent crime victimization was 44 per 1000 blacks, and 34 per 1000 whites.<sup>44</sup> In 1990, the rate

of violent crime victimization was 40 per 1000 blacks, and 28 per 1000 whites.<sup>45</sup> Robbery victimization rates from 1979 to 1986 were 7 per 1000 white men, but 18 per 1000 black men; they were 4 per 1000 white women, but 9 per 1000 black women.<sup>46</sup> In fact, black crime victimization rates were higher for each crime other than simple assault and personal larceny without contact.<sup>47</sup> In central cities, blacks suffered higher rates of robbery and burglary than whites regardless of age group or income group, and higher rates of aggravated assault in most age and income groups.<sup>48</sup>

The vast majority of violent crimes against blacks were committed by other blacks. For murders in 1990 in which there was a single offender and a single victim (about 53% of murders known to police), 93% of the black murder victims were murdered by a black offender.<sup>49</sup> In 1990, 83.9% of black violent crime victims reported that the offender was also black.<sup>50</sup> From 1979 to 1986, blacks were victims of about 13% of all single-offender violent crimes other than murder nationwide, but in about 11% of all cases (that is, in over 80% of black-victim cases) the offenders were also black. During that same period, blacks were victims of about 17% of all multiple-offender violent crimes other than murder, but in about 13% of all cases (over three-quarters of black-victim cases) all the offenders were black, and in another 1% (roughly 5% of black-victim cases) more than one race was represented in the offender group.<sup>51</sup> White offenders accounted for only 8.9% of violent crimes against blacks in 1990.<sup>52</sup>

Color-blind incarceration of violent offenders does not portend a disproportionate increase in black incarceration rates. These rates have changed little during the massive increase in incarceration during the 1980's. In 1980, 46.6% of state prisoners and 34.3% of federal prisoners were black. In 1990, 48.9% of state prisoners and 31.4% of federal prisoners were black.<sup>53</sup>

In short, while increasing incarceration might result in higher *numbers* of black men in prison (just as it would with white men), it would disproportionately benefit innocent black victims of their crimes. It is time that those who are concerned for the welfare of black Americans pay more attention to their right to be free from crime.

#### **D. *How to pay for prisons.***

Recognizing that prisons reduce crime is easy. Finding the money to pay for them is sometimes more difficult. Likewise, it is easier to say that controlling crime is so important that existing budget priorities should be re-examined than it is to follow through. But that cannot relieve policy-makers from the hard work of finding the resources.

Many states have made commendable efforts to build prisons, and many have made a considerable effort to find cost-effective methods of prison construction. Much information about the successes (and failures) is available from the National Institute of Justice's Construction Information Exchange. NIJ and the National Institute of Corrections can also provide funds and technical assistance for the design and planning of new or enlarged state prisons. The responsibility for funding the construction remains with the states.

Some of the possible strategies that states have already used for keeping costs low include a direct supervision design, in which corrections officers are stationed inside housing units and have direct contact with inmates; modular construction, the use of prefabricated concrete units; and lease-purchase, or buying on installment.

Proper classification of inmates is also essential to keeping costs down, since costs increase as the level of security increases. Thus, if inmates are housed in higher-security facilities than warranted, the state is bearing unnecessary costs. (Conversely, if inmates are housed in lower-security facilities than required, the state is bearing unnecessary risks.)

States should make sure that they have adequate statutory authority for asset forfeiture. The Department of Justice has used hundreds of millions of dollars from its Asset Forfeiture Fund and the Office of National Drug Control Policy's Special Forfeiture Fund, to support construction of new federal prisons. There is true poetic justice in forcing criminals to pay for prisons.

The federal government does not supply direct funding for the construction of state prisons and local jails, a function that is fundamentally an obligation of state and local government. But we will continue to make available surplus federal properties at no cost, and

we stand ready to provide advice and assistance to encourage and facilitate this most important of state and local government responsibilities.

## APPENDIX A

### Uniform Crime Reports: Violent Crimes

*Murder and nonnegligent manslaughter* "is the willful (nonnegligent) killing of one human being by another. The classification of this offense, as for all other Crime Index offenses, is based solely on police investigations as opposed to the determination of a court, medical examiner, coroner, jury, or other judicial body. Not included in the count for this offense classification are deaths caused by negligence, suicide, or accident; justifiable homicides; and attempts to murder or assaults to murder, which are scored as aggravated assaults."

*Forcible rape* "is the carnal knowledge of a female forcibly and against her will. Assaults or attempts to commit rape by force or threat of force are included; however, statutory rape (without force) and other sex offenses are excluded."

*Robbery* "is the taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear."

*Aggravated assault* "is an unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault is usually accompanied by the use of a weapon or by means likely to produce death or great bodily harm. Attempts are included since it is not necessary that an injury result when a gun, knife, or other weapon is used which could and probably would result in serious personal injury if the crime were successfully completed."

### Uniform Crime Reports: Nonviolent Crime Index Offenses

*Burglary* is "the unlawful entry of a structure to commit a felony or theft. The use of force to gain entry is not required to classify an offense as burglary. Burglary in this Program is categorized into three subclassifications: forcible entry, unlawful entry where no force is used, and attempted forcible entry."

*Larceny-theft* "is the unlawful taking, carrying, leading, or riding away of property from the possession or constructive possession of another. It includes crimes such as shoplifting,

pocket-picking, purse-snatching, thefts from motor vehicles, thefts of motor vehicle parts and accessories, bicycle thefts, etc., in which no use of force, violence, or fraud occurs. In the Uniform Crime Reporting Program, this crime category does not include embezzlement, 'con' games, forgery, and worthless checks. Motor vehicle theft is also excluded from this category inasmuch as it is a separate Crime Index offense."

*Motor vehicle theft*, "[d]efined as the theft or attempted theft of a motor vehicle, . . . includes the stealing automobiles, trucks, buses, motorcycles, motorscooters, snowmobiles, etc. The definition excludes the taking of a motor vehicle for temporary use by those persons having lawful access."

#### **National Crime Victimization Survey: Violent Crimes**

*Rape* -- "Carnal knowledge through the use of force or the threat of force, including attempts. Statutory rape (without force) is excluded. Both heterosexual and homosexual rape are included."

*Robbery* -- "Completed or attempted theft, directly from a person, of property or cash by force or threat of force, with or without a weapon."

*Aggravated assault* -- "Attack or attempted attack with a weapon, regardless of whether or not an injury occurred, and attack without a weapon when serious injury results. Serious injury includes broken bones, lost teeth, internal injuries, loss of consciousness, and any injury requiring two or more days of hospitalization."

## APPENDIX B

Considerable evidence supports the view that blacks and whites are treated similarly within the criminal justice system -- that is, that they are charged on the basis of crimes they have committed and sentenced according to the nature of their crimes and the extent of their criminal history. The charge that systemic racial discrimination results in disproportionate incarceration of blacks and in longer sentences, a charge that is often accompanied by misleading statistics, is simply not sustainable. Nor is it more justifiable than the claim that the criminal justice system is biased against men and in favor of women because well over 90% of prisoners are men.

We will briefly summarize here the evidence that tends to refute the charge of bias against blacks.

1. Alfred Blumstein, *On the Racial Disproportionality of United States' Prison Populations*, 73 *Journal of Criminal Law and Criminology* 1259 (1982). Prof. Blumstein, a highly regarded criminologist, tried to find an explanation for the high black population of state prisons. He compared the racial arrest statistics in the Uniform Crime Reports for those crimes punishable by imprisonment with the racial composition of the inmate population. The arrest figures for blacks were far above their percentages in the general population but were within about 5% or 6% of their percentages in the prison population. Blumstein concluded that about 80% of the observed racial disparity in prison population was the result of differential involvement in crime. He acknowledged, however, that the decision to arrest could be infected with bias.

2. Patrick A. Langan, *Racism on Trial: New Evidence to Explain the Racial Composition of Prisons in the United States*, 76 *Journal of Criminal Law and Criminology* 666 (1985). Patrick Langan, a BJS statistician, tried to eliminate this possibility of bias at the arrest stage by relying on the description of offenders provided by crime victims in the National Crime Victimization Survey. He used the racial percentages from victims' reports to derive an estimate for the percentage of blacks among those admitted to state prison and then compared this estimate with the actual percentage of black prison admissions. The estima-

ted percentage was only a few points below the actual percentage:

<u>Year</u>	<u>Est. Black Pct.</u>	<u>Actual Black Pct.</u>
1973	48.1%	48.9%
1979	43.8%	48.1%
1982	44.9%	48.9%

3. Rand Corporation, *Race and Imprisonment Decisions in California* (1990). This study of sentencing decisions in California analyzed data on over 11,500 offenders. Rand attempted to control for factors that previous studies had not factored in, such as conviction offense, criminal record, and demographic factors. The study concluded that one could predict with 80% accuracy whether an offender would be sentenced to probation or prison. *Adding the offender's race to the equation did not improve the accuracy of this prediction.* Race was also unrelated to the length of prison term imposed. Rand, in discussing Langan's earlier study, said that Langan had not controlled for "legitimate sentencing factors (such as the offender's prior record and victim injuries) that might explain" even the small difference he found.

4. Rand Corporation, *Predicting Criminal Justice Outcomes: What Matters?* (1991). In a survey of robbery and burglary defendants in 14 large urban jurisdictions across the country, Rand found that a defendant's race or ethnic group "bore little or no relation to conviction rates, disposition times, or other key outcome measures."

5. Bureau of Justice Statistics, *Prison Admissions and Releases, 1983* (1986). BJS examined racial differences in sentence lengths for inmates admitted to state prison nationally in 1983. When criminal histories and geography (differences in state laws where black populations are high) were factored out, "the estimated mean sentence length for blacks is 63.6 months, nearly 3 months shorter than the actual mean observed for whites." More recent data are discussed immediately below.

6. Bureau of Justice Statistics, *National Corrections Reporting Program, 1988* (1992). Data recently published show fairly similar statistics on sentence length and time served for white and black state prisoners -- *without even factoring in criminal histories.* For

example, for violent offenses:

	White		Black	
	<u>Median</u>	<u>Mean</u>	<u>Median</u>	<u>Mean</u>
Sentence length	72 mos.	110 mos.	72 mos.	116 mos.
Time served	24	33	25	37

For additional information, see William Wilbanks, *The Myth of a Racist Criminal Justice System* (1987).

## ENDNOTES

1. Figures are based on comparisons of 1960 and 1970 statistics from U.S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States, 1975*, August 1976, at 49; U.S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States, 1979*, September 1980, at 41; and U.S. Department of Justice, Bureau of Justice Statistics, *Historical Statistics on Prisoners in State and Federal Institutions, Yearend 1925-86*, May 1988, at 10-11 (NCJ-111098).
2. The FBI's Uniform Crime Reports show that the rate of "crime index" crimes (murder, rape, robbery, aggravated assault, burglary, larceny-theft, and motor vehicle theft) rose by 111% from 1960 to 1970. To take account of the increase in population during this period, the 495,000 figure in the text is based on a hypothetical 111% increase in the incarceration rate.
3. U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 1990*, May 1991, at 7 (NCJ-129198).
4. *Historical Statistics on Prisoners in State and Federal Institutions, Yearend 1925-86*, *supra* note 1, at 10, 11, 13 (figures for 1960, 1970, and 1980); U.S. Department of Justice, Bureau of Justice Statistics, *Correctional Populations in the United States, 1990*, July 1992, at 81 (NCJ-134946) (1990 figures). All figures are based on prisoners in custody of the jurisdictions.
5. Patrick A. Langan, *America's Soaring Prison Population*, *Science*, March 29, 1991, at 1568.
6. *Crime in the United States, 1975*, *supra* note 1, at 49 (1960 rates); *Crime in the United States, 1979*, *supra* note 1, at 41 (1970 rates); U.S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States, 1989*, August 1990, at 48 (1980 rates); U.S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States, 1990*, August 1991, at 50 (1990 rates).
7. U.S. Department of Justice, Bureau of Justice Statistics, *Criminal Victimization in the United States: 1973-88 Trends*, July 1991, at 15, 20, 31 (NCJ-129392); U.S. Department of Justice, Bureau of Justice Statistics, *Criminal Victimization in the United States, 1990*, February 1992, at 16 (NCJ-134126).
8. See generally Eugene H. Methvin, *An Anti-Crime Solution: Lock Up More Criminals*, *Wash. Post*, October 27, 1991, at C1. Figures for parole population are from U.S. Department of Justice, Bureau of Justice Statistics, *Probation and Parole 1981*, August 1982, at 2-3, and U.S. Department of Justice, Bureau of Justice Statistics, *Probation and Parole 1990*, November 1991, at 3. Figures for "expected punishment" are taken from Morgan O. Reynolds, *Crime in Texas*, National Center for Policy Analysis Report No. 102, at 4 (1991), and Morgan O. Reynolds, *Why Does Crime Pay?*, National Center for Policy Analysis Policy Backgrounder No. 110, at 5 (1990). Figures for reported crime rates are taken from U.S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States, 1980*, September 1981, at 57 (1980 Texas rates), and *Crime in the United States, 1989*, *supra* note 6, at 48, 54 (1989 Texas rates and 1980 and 1989 national rates).
9. *Historical Statistics on Prisoners in State and Federal Institutions, Yearend 1925-86*, *supra* note 1, at 13.
10. U.S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States, 1981*, August 1982, at 50 (1981 figures); U.S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States, 1986*, July 1987, at 56 (1986 figures); *Crime in the United States, 1989*, *supra* note 6, at 62 (1989 figures).
11. Patrick A. Langan, *supra* note 5, at 1573.

12. U.S. Department of Justice, Bureau of Justice Statistics, *Recidivism of Felons on Probation, 1986-89*, February 1992, at 2 (NCJ-134177).
13. *Id.* at 5-6.
14. *Id.* at 8.
15. Mark Vosburgh & Sean Holton, *Florida Prison Failure Churns Out Crime Before Its Time*, Orlando Sentinel, August 13, 1989, at A-12; Mark Vosburgh, *Florida's Early Releases: Flood of Rearrests May Sink Crowded Prisons*, Orlando Sentinel, December 17, 1989, at A-1.
16. 1 *Criminal Careers and "Career Criminals"* 6 (Alfred Blumstein, Jacqueline Cohen, Jeffrey A. Roth & Christy A. Visher eds. 1986).
17. U.S. Department of Justice, Bureau of Justice Statistics, *Recidivism of Prisoners Released in 1983*, April 1989, at 3 (NCJ-116261).
18. U.S. Department of Justice, Bureau of Justice Statistics, *Examining Recidivism*, February 1985, at 4 (NCJ-96501).
19. U.S. Department of Justice, Bureau of Justice Statistics, *Recidivism of Young Parolees*, May 1987, at 3 (NCJ-104916).
20. Jan M. Chaiken & Marcia R. Chaiken, *Varieties of Criminal Behavior* 215 (1982).
21. U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, *Protecting America: The Effectiveness of Federal Armed Career Criminal Statutes*, May 1991, at 27.
22. U.S. Department of Justice, Bureau of Justice Statistics, *Profile of State Prison Inmates, 1986*, January 1988, at 2 (NCJ-109926).
23. Panel discussion during Attorney General's Summit on Law Enforcement Responses to Violent Crime: Public Safety in the Nineties, March 5, 1991.
24. *Recidivism of Prisoners Released in 1983*, *supra* note 17, at 9.
25. *Id.* at 8.
26. U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 1991*, May 1992, at 7 (NCJ-134729). Capacity can be measured in several different ways. Average capacity refers to the average of the highest and lowest capacity figures reported by the jurisdictions.
27. U.S. Department of Justice, Bureau of Justice Statistics, *National Corrections Reporting Program, 1988* May 1992, at 28 (NCJ-134929).
28. U.S. Department of Justice, Bureau of Justice Statistics, *Imprisonment in Four Countries*, February 1987, at 2 (NCJ-103967). The report lists a range for West Germany (23%-58%) because that country does not have a practice exactly equivalent to an arrest. *Id.*
29. U.S. Department of Justice, Bureau of Justice Statistics, *Probation and Parole 1990*, November 1991, at 4-5 (NCJ-125833).
30. *Profile of State Prison Inmates, 1986*, *supra* note 22, at 2-5.

31. Of inmates in state prison in 1991, 20.6% had no prior conviction; 8.1% had at least one prior conviction as a juvenile; 41.1% had at least one prior conviction as an adult; and 30.3% had prior convictions both as a juvenile and as an adult. About 20% had one prior sentence to probation or incarceration; about 16% had two prior sentences; and about 44% had three or more prior sentences. About 45% had a current conviction for a violent offense (note that drug crimes are considered non-violent), and about another 14% had at least one prior conviction for a violent offense. Still another 33% were non-violent recidivists. Thus, about 93% of state inmates in 1991 were either violent or repeat offenders. (Figures do not add up because of rounding.) U.S. Department of Justice, Bureau of Justice Statistics, *Prisons and Prisoners in the United States*, April 1992, at 15-16 (NCJ-137002).
32. *Profile of State Prison Inmates, 1986*, *supra* note 22, at 4.
33. U.S. Department of Justice, Bureau of Justice Statistics, *Justice Expenditure and Employment 1990* (forthcoming).
34. *Id.*
35. U.S. Department of Justice, Bureau of Justice Statistics, *Census of State and Federal Correctional Facilities, 1990*, May 1992, at 17 (NCJ-137003).
36. *Criminal Victimization in the United States, 1990*, *supra* note 7, at 148.
37. Mark A. Cohen, *Pain, Suffering, and Jury Awards: A Study of the Cost of Crime to Victims*, 22 *Law & Society Review* 537, 539 (1988).
38. BJS estimated that the direct economic costs of crime to victims in 1984 were \$12.473 billion. U.S. Department of Justice, Bureau of Justice Statistics, *Criminal Victimization the United States, 1984*, May 1986, at 123 (NCJ-100435).
39. *See, e.g.*, James K. Stewart, *The Urban Strangler: How Crime Causes Poverty in the Inner City*, *Policy Review*, Summer 1986, at 6.
40. *See generally* David P. Cavanagh & Mark A.R. Kleiman, *A Cost Benefit Analysis of Prison Cell Construction and Alternative Sanctions*, May 1990 (prepared under contract with the National Institute of Justice).
41. *Crime in the United States, 1990*, *supra* note 6, at 11.
42. U.S. Department of Justice, Bureau of Justice Statistics, *Report to the Nation on Crime and Justice* 28 (2d ed. 1988) (NCJ-105506).
43. Centers for Disease Control, *Homicide Among Young Black Males -- United States, 1978-1987*, 39 *Morbidity and Mortality Weekly Report* 869-73 (December 7, 1990).
44. U.S. Department of Justice, Bureau of Justice Statistics, *Black Victims*, April 1990, at 2 (NCJ-122562).
45. *Criminal Victimization in the United States, 1990*, *supra* note 7, at 24.
46. *Black Victims*, *supra* note 44, at 4.
47. *Id.* at 2.
48. *Id.* at 6.

49. *Crime in the United States, 1990, supra* note 6, at 11.
50. *Criminal Victimization in the United States, 1990, supra* note 7, at 61.
51. *Black Victims, supra* note 44, at 9. Figures showing percentages of black-victim cases with black offenders were derived from these same data.
52. *Criminal Victimization in the United States, 1990, supra* note 7, at 61. According to victim reports, white offenders account for 71.5% of violent crimes against whites. *Id.*
53. *Prisoners in State and Federal Institutions on December 31, 1981, March 1983, at 35 (NCJ-86485) (1980 figures); Correctional Populations in the United States, 1990, supra* note 4, at 83 (1990 figures).