Paper for presentation at the American Society of Criminology, Baltimore, November 9.

QUESTIONS FOR DISCUSSION

1. Use this piece as a jumping-off point to once again consider the nature of social problems. If you are under 22 years of age, you may remember being involved in the “Just Say No” campaign or in a DARE program in your school. How did this shape your view of drugs?

2. Now consider the political nature of the law-making process generally. Can you link the passage of any recent laws to high levels of moral outrage?

3. Was the scope of the problem that the laws were intended to resolve ever clearly communicated to you?

THE REAL WAR ON CRIME

Report of the National Criminal Justice Committee

STEVEN R. DONZIGER

We are a nation both afraid of and obsessed with crime. Each day, newspapers tell another story of innocence shattered: the Oklahoma City bombing, the drowning of two young boys in a South Carolina lake by their mother, the brutal stabbings of Nicole Brown Simpson and Ronald Goldman. In the evenings, our televisions are saturated with real-crime dramas such as America’s Most Wanted and Unsolved Mysteries. Since the 1960s, hundreds of different crime bills have been passed by Congress and state legislatures. We have fought a war on drugs. Annual expenditures on police have increased from $5 billion to $27 billion over the past two decades. We have built more prisons to lock up more people than almost every country in the world. We are the only country in the West to employ capital punishment and to use the death penalty against teenagers. Yet Americans in record numbers still report that they feel unsafe in their streets and in their homes.

We have leveled our supposedly strongest weapons at crime, to the tune of about $100 billion tax dollars per year, but we have not accomplished much. Crime
rates have not gotten worse—as many would have you believe—but neither have they gotten much better. Yet still there is the feeling that the criminal justice system is not doing enough. Many suggest that we need more police, more prisons, harsher sentencing, even a return to the chain gangs. While we continue to take tougher and tougher stances, the underlying problem remains: our criminal justice system is failing to control crime in a way that makes Americans feel safe.

A hoax is afoot. Politicians at every level—federal, state, and local—have measured our obsession, capitalized on our fears, campaigned on “get tough” platforms, and won. Since the Willie Horton advertisement dashed the hopes of Michael Dukakis in the 1988 presidential race, almost every serious candidate has tried to appear tough on crime. But appearances are often deceiving.

We will first review the basic facts about crime in America. It is important to approach the facts with caution because you will see that they rarely tell the whole story. The Commission found that some baseline data about crime are simply untrue or are more complicated than they appear, even though they provide the foundation on which much of our crime policy is constructed.

Crime Rates: The Numbers Do Not Tell the Full Story

There is a widespread perception in this country that crime rates are rising. In most categories, crime rates over the last two decades have remained remarkably stable. What has changed is the nature of criminal violence. Partly because of the prevalence of firearms, one category of the population—young males in the inner city—is at an extremely high risk of being killed. This dan-

ger sometimes spills over to the suburbs and rural areas, creating fear throughout the country. Violence in the inner city is one of the most pressing issues facing our criminal justice system. But it is not the only issue. There are many other criminal justice issues that receive less media attention, but also have devastating implications for public safety—the difference between fear of crime and crime itself, violence, prisons, juvenile crime, domestic violence, policing, and the racial implications of crime policy.

Before delving into these issues, we must keep in mind several basic facts:

- Crime rates are higher today than they were in the 1950s. This is largely because crime increased significantly in the 1960s. But since the early 1970s, crime rates have remained remarkably stable even though they sometimes go up or down from year to year.
- The murder rate in this country dropped 9 percent from 1980 to 1992 and now is almost exactly the same as it was in the 1970s.
- The serious violent crime rate for the United States stands 16 percent below its peak level of the mid-1970s.

These statistics tell us only that certain categories of crime have remained remarkably stable over the last two decades. They should not be taken to mean that crime is not a major problem. Crime (particularly homicide) is widespread in this country, and among young people violent crime is expected to increase further in the next few years.

Two Measures of Crime

We have found that there is a huge difference between the public perception and the
FIGURE 1  Divergent Measures of Violent Crime. NOTE: Figures were scaled to 100 in 1973 and have been adjusted to take into account population increases. (Source: U.S. Department of Justice, Bureau of Justice Statistics (1994), Sourcebook of Criminal Justice Statistics—1993, pp. 247, 352.)

The reality of crime in the United States. For now, it is important to remember that most people perceive crime to be rising when in reality it has remained remarkably stable for many years.¹

One major source of confusion about crime rates in the United States is that there are two major methods by which crime is measured, the Uniform Crime Reports (UCR) and the National Crime Victimization Survey (NCVS) (see Figure 1). It may be startling that these two systems of measurement produce such different numbers. The UCR is tabulated by the FBI, based on arrest information submitted annually by each of the 17,000 different police departments in the United States. Because it is the only survey to provide a state-by-state breakdown of crime rates, the UCR is the measure of crime most cited by the media (who see it as a good local story) and politicians (who talk about it with their constituencies).

However, most criminologists consider UCR figures inaccurate because they tend to exaggerate increases in crime—a fact that is at least partly responsible for the misperception that crime is rising.² The UCR overestimates increases in crime for several reasons. First, computers have led to marked improvements in police reporting of crime. Thus, "increases" in crime reported by police are often the result of improved record-keeping rather than actual increases in criminal activity. For example, in 1973 citizens reported 861,000 aggravated assaults to police, but the police recorded only 421,000.³ By 1988, citizens reported 940,000 aggravated assaults to the police, and the police recorded 910,000. The number of aggravated assaults did not go up much between 1973 and 1988, but the recording improved dramatically. The same pattern occurred for robbery and rape.

The UCR also is flawed because of the way many police departments tabulate their statistics. If two persons are arrested for a single assault, police usually count the two arrests rather than the one assault. Thus, one crime suddenly turns into two and the total number of crimes becomes inflated. This practice creates the most severe distortions in juvenile crime because juveniles are often arrested in groups.

Moreover, budgetary decisions based on police reports create incentives for police departments to skew their figures upward. The 1994 Federal Crime Control Act, for example, allocates more funds to states with higher levels of crime as recorded by the police. Given these problems, it is not surprising that the UCR reports an increase in violent crime in the last twenty years.

Despite its flaws, the UCR does provide an accurate measure of the homicide rate. This is because murders are rare and serious events that citizens tend to report quickly and accurately to the police, who record them with precision. The UCR indicates that the incidence of murder per capita is lower today than it was in the 1930s, when the rate of incarceration then was about one-fifth what it is today. The current homicide rate of 9.3 per 100,000 population is nearly iden-
tical to the rate of 9.4 per 100,000 recorded in 1973. The total number of murders in Boston, for example, was 135 in 1973. In 1993, it was 98. Our national murder rate is not increasing nearly as fast as many might claim.

We believe—as do most criminologists—that the figures produced by the National Crime Victimization Survey are more accurate. To conduct the survey, staff at the Census Bureau telephone a representative sampling of households around the country to determine how many people were victimized by one of seven crimes in the preceding year. The seven crimes are rape, robbery, assault, personal theft, household theft, burglary, and motor vehicle theft. The NCVS generally is considered more reliable because it uses scientific polling techniques similar to those that determine the Nielsen ratings in television. It does not measure murder because the victim cannot be interviewed. The NCVS does not break down crime data for each state, thus making it less interesting to members of the news media who want to find a local angle on crime trends.

The Threat of Violent Crime

It is important to distinguish between crime generally and violent crime specifically. Violent crimes are committed against people—murders, rapes, robberies, kidnappings, and assaults. Nonviolent crimes are usually committed against property—burglaries, auto thefts, embezzlement, check forgery, fraud, and trespassing. (Burglary, defined as breaking into a dwelling, presents a definitional problem. Though burglary is formally a crime against property, it carries the lurking possibility of violent confrontation and the psychological sense of intrusion associated with violent crime. It is therefore more serious than most nonviolent crimes.) Offenses involving the sale or possession of drugs are also nonviolent, but obviously a violent act associated with the sale or possession of drugs (such as a shooting to protect a drug market) would be a violent crime.

Much violence in our society is not a violation of the criminal law. For example, if someone kills another in self-defense, that person committed an act of violence but not a crime. There is also violence in the media and on television that shapes public perceptions and, according to some experts, actually influences people to commit violent acts. But violence in the media is not a crime. A violent crime is an act of violence that violates a criminal law passed by the Congress or a state legislature.

The vast majority of crime in America is not violent. One in ten arrests in the United States is for a violent crime. Only 3 in 100 arrests in the United States are for a violent crime resulting in injury. The distinction between violent and nonviolent crime is critical for understanding why the criminal justice system is not more effective at making Americans safe. When people think of locking up criminals, they usually have an image in mind of a violent offender—a murderer or a rapist. However, the vast majority of people filling our expensive new prisons are nonviolent property and drug offenders.

Violent crime is a major problem in localized areas of the inner city. In those places, firearms violence—especially against young people—has increased dramatically. During the 1980s, teenage boys in all racial and ethnic groups became more likely to die from a bullet than from all natural causes combined. During the time period from 1985 to 1991, annual rates of homicide for males aged 15 to 19 years increased 154 percent. For African-American male youths, the homicide rate is eight times that of white male youths. If you live in the inner city and are young—particularly young and African-American—your chance of being the victim
of a violent crime is incredibly high. And if
you are not living in the inner city, the local-
ized violence of some communities rever-
berates nationally, making everybody feel
less safe even though most people are more
safe than they were in the 1970s.

The media has focused much of its
crime reporting on the tragic phenomenon
of youth homicide. As a result, a myth has
been created and projected that all Ameri-
cans have a “realistic” chance of being mur-
dered by a stranger. While it is always good
to take precautions to lower the risk of
crime, in reality almost all Americans have
an extremely remote chance of being killed
or victimized by a stranger. Most violent
crime is committed by friends and family.
The most common homicide is not random
but a person shooting someone he or she
knows, often in the home. A 1994 govern-
ment study of 8,000 homicides in urban
areas found that eight out of ten murder vic-
tims were killed by a family member or
someone they knew. Women are far more
likely to be assaulted by their husbands or
boyfriends than by a stranger in an alley.
Children are more likely to be molested by
family or friends than by strangers.

While a few neighborhoods are extraor-
dinarily dangerous, most are relatively safe.
Males are more at risk of criminal victimiza-
tion than females (because males commit
much more crime than women, they tend to
associate more with criminals and therefore
run a higher risk of being victimized by
them). Young people—particularly adoles-
cents—are much more at risk than elderly
people. The risk of being a victim of a seri-
ous violent crime is nearly four times higher
for a person 16 to 19 years old than it is for a
person aged 35 to 49. The chances of a
white woman 65 or older becoming a victim
of a serious violent crime (e.g., murder, rape,
robbery, or assault) are one-sixtieth the odds
of an African-American male teenager.

U.S. Crime Rates Compared
to Other Countries

Although it is often assumed that the United
States has a high rate of incarceration be-
cause of a high crime rate, in reality the
overall rate of crime in this country is not
extraordinary. The one exception is murder.
Largely because of the prevalence of fire-
arms, we have about 22,000 homicides per
year, about 10 times the per capita murder
rate of most European countries. Many com-
parable countries such as Australia and
Canada actually have higher rates of victim-
ization than the United States for some
crimes. For the crime of assault with force,
2.2 percent of Americans are victimized each
year, compared to 2.3 percent of Canadians
and 2.8 percent of Australians (see Figure 2).
For robbery, 1.7 percent of Americans are
victimized annually; in Spain, the number is
2.9 percent. For car theft, the U.S. rate is 2.3
percent; Australia is at 2.7 percent and En-
gland is at 2.8 percent. Thus, it is not our
higher violent crime rates that lead to our
high incarceration rates—the 22,000 homici-
cides per year cannot account for the 1.5
million people behind bars. Rather, Ameri-
can rates of incarceration are higher because
of our exceedingly harsh treatment of peo-
ples convicted of lesser crimes.

The Key to the Problem:
Understanding the Difference
Between Crime and Violence

We all want to protect ourselves from vio-

tent offenders, either by taking the steps
necessary to prevent violent crimes or by
sending to prison those who commit them.
But how do we begin to control violent
crime? We must start by understanding the
difference between crime and violence.
We cannot begin to control violent crime until we recognize that the primary reason most Americans live in fear is not crime but violence. The United States does not have more crime than other industrialized countries. Rather, it has a different character of crime. Criminologists in the Netherlands and the United Kingdom recently compared crime across industrialized countries. With the exception of homicide, the United States had the highest crime rate in only one of the fourteen offenses measured—attempted burglary. Because of the prevalence of firearms on our streets, however, America
leads the world in the proportion of violent crime resulting in injury. If a person is assaulted with a gun rather than fists, the chances are much higher that injury or death will result. This is why the United States is far and away the world leader in the number of murders.

It is not the amount of crime but rather the amount of violence that adds to our fear. It is the failure to recognize the distinction between crime and violence that diverts attention from finding more effective methods to make our country safer. In order to understand this important distinction, it is necessary to look at crime statistics a little more closely (see Table I).

**Violent Crime Is a Fraction of Overall Crime**

We have shown that violent street crime is but a small portion of overall crime. But even within this “violent” category the actual physical violence is often overstated. The vast majority of violent crimes are assaults where one person hits or slaps another or makes a verbal threat. Only about 8 percent of the victims of violent crime nationally went to a hospital emergency room. Most were released immediately or the same day. Of all the victims of violent crime nationally, slightly over 1 percent required a hospital stay of one day or more.

**Crime Policy in the United States**

Unlike many European countries, there is no cabinet official in charge of national crime policy in the United States. Each of the fifty state legislatures determines its own crime policy separately. Some states refuse to send a person to jail for having a small amount of marijuana, while others impose strict sentences. Some states choose to have the death penalty, while others shun it. Some states have mandatory minimum sentences for drug crimes, while others allow judges unfettered discretion to impose sentences. Though policies vary, most states in recent years have adopted tougher mea-
sures—longer sentences and more restrictive bail policies, both of which have led to higher rates of incarceration across the country.

Although it is difficult for these reasons to define the exact parameters of a national crime policy, a national "get tough" trend has been evident over the last fifteen years. Since 1968, six major anticrime bills have passed Congress and been signed into law by presidents. In one way or another, all of these bills have been used by elected officials to convince the public that Washington was getting "tough" on crime by increasing sentences for certain types of offenses. Many of the bills were used to influence crime policy by withholding money from the states unless they adopted certain "get tough" policies favored by the federal government. For example, under the 1994 federal crime bill, a state can receive part of the $9.7 billion set aside for new prison construction only if it requires inmates to serve at least 85 percent of their sentences before parole (in effect doubling sentences for many classes of offenders). The frequency with which Congress passed anti-crime legislation increased in the 1980s, when prisons were expanding most rapidly.

At the time it was signed into law, the 1968 Crime Control and Safe Streets Act was the most extensive anti-crime legislation in history. It provided for emergency wiretapping, tightened controls over interstate firearms transfers, and allocated hundreds of millions of dollars to localities to upgrade their law enforcement capability. The 1984 anti-crime legislation increased penalties for drug offenses, established mandatory sentences for certain firearms offenses, and reformed bail laws to allow for increased pretrial detention of dangerous offenders. In 1986, Congress passed another bill that established stiff mandatory sentences for possession of crack cocaine. The bill made such powder cocaine, even though there was little or no difference between crack and powder except the race of the people using them. A 1988 bill increased funding by billions of dollars for federal drug control efforts. The federal crime bill of 1994—the most expensive in history—added the death penalty to dozens of federal offenses, allocated $23 billion for law enforcement (this includes the $9.7 billion for prisons), and directed another $6.1 billion for crime prevention programs. Although the full impact of the 1994 crime bill has yet to be felt, it will almost certainly contribute to higher rates of incarceration in the federal prison system.

Nonviolent Offenders Fueled the Prison Expansion

Since 1980, the United States has undertaken one of the largest and most rapid expansions of a prison population in the history of the Western world. Between 1980 and 1994, the prison population tripled from 500,000 to 1.5 million. The number of people under some form of correctional supervision (in prison or jail, on probation, or on parole) surpassed 5 million people at the end of 1994, or 2.7 percent of the adult population.

Most of the increase in the prison population during this time was not accounted for by violent offenders. Fully 84 percent of the increase in state and federal prison admissions since 1980 was accounted for by nonviolent offenders.13 Legislative changes in sentencing laws in the 1980s made it routine to send nonviolent offenders to prison for long terms. A person arrested for a drug offense in 1992 was five times more likely to go to prison than a person arrested in 1980.14 In California, people who committed lesser offenses such as car theft and larceny went to prison at much greater rates than those who committed the serious violent crime of robbery.15 Even for petty offenses,
rather than civil penalties. A county board recently passed legislation imposing thirty days in jail for illegal camping or allowing a dog to run loose.\textsuperscript{16}

The state of Texas recently completed an exhaustive study of its felony sentencing patterns and found that 77 percent of all prison admissions were for nonviolent crimes.\textsuperscript{17} The most frequent crime resulting in a prison sentence was drug possession. In the federal system, the overwhelming majority of inmates—89 percent—are convicted of nonviolent offenses.\textsuperscript{18} We will see shortly that many of these nonviolent offenders do not need to be in prison at all, yet each one may consume tens of thousands of tax dollars per year.

One reason nonviolent offenders are crowding our prisons is because we continue to broaden the definition of crime. Historically, the term applied only to those acts that violated the rules of civilized conduct—murder, theft, and the like. Today, we classify as “criminal” conduct that which is merely undesirable or that which breaks an administrative rule (e.g., laws that ban pan-handling). The increasing failure to recognize the distinction between the truly wrong and the minor infraction—and to address minor infractions outside the formal and expensive criminal justice system—at least partly explains why our jails and prisons are overcrowded.

Many state corrections leaders and prison wardens have voiced objections to the fact that nonviolent offenders take up so much space in their facilities. Bishop L. Robinson, Maryland’s public safety chief, recently recommended that 32 percent of the prisoners in his state could be paroled immediately or put into alternative programs.\textsuperscript{19} James A. Gondles, executive director of the American Correctional Association, agreed with Robinson. “It’s not a question of being soft,” he said. “It’s a question of solving a problem before it eats us alive.”\textsuperscript{20} One consequence of this policy is that the system occasionally releases violent criminals early because prison space is crammed with new nonviolent offenders.

Table 2 and Figure 3 demonstrate how few people in the system are violent. The

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{fig3.png}
\caption{Nonviolent Offenders Fueled Prison Expansion: New Court Commitments by Type of Crime to State Prisons, 1977–1992. (Sources: U.S. Department of Justice, Bureau of Justice Statistics (May 1993). \textit{Prisoners in 1992}, p. 10, Appendix Table 1; Department of Justice, Bureau of Justice Statistics (June 1994), \textit{Prisoners in 1993}, p. 10, Appendix Table 1.)}
\end{figure}
TABLE 2  Persons Admitted and in Custody—How Many? How Violent?

<table>
<thead>
<tr>
<th></th>
<th>Population</th>
<th>Violent</th>
<th>Nonviolent</th>
<th>Annual Admissions</th>
<th>Violent</th>
<th>Nonviolent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jails</td>
<td>490,442</td>
<td>23%</td>
<td>77%</td>
<td>9,796,000</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td>State Prisons</td>
<td>958,704</td>
<td>47%</td>
<td>53%</td>
<td>431,279</td>
<td>27%</td>
<td>73%</td>
</tr>
<tr>
<td>Federal Prisons</td>
<td>100,438</td>
<td>11%</td>
<td>89%</td>
<td>38,542</td>
<td>6%</td>
<td>94%</td>
</tr>
<tr>
<td>Juvenile</td>
<td>93,851</td>
<td>15%</td>
<td>85%</td>
<td>823,449</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td>Total*</td>
<td>1.5 million</td>
<td>35%</td>
<td>65%</td>
<td>11.1 million</td>
<td>n/a</td>
<td>n/a</td>
</tr>
</tbody>
</table>

NOTE: Data are the most recent available. Population figures represent the number of persons under jurisdiction in each category.
*Totals have been adjusted to account for double counting of individuals under more than one jurisdiction.
n/a = not available.

chart makes the crucial distinction between the population of the system and admissions into the system. A facility's population is the number of people in that facility on any given day. Admissions count the number of people entering the facility during a certain period of time, usually a year. Admissions shows the dynamic nature of the system, with people entering and exiting continually. For example, a short-term holding pen in a county jail may hold 10 people on any given day, but admit 2,000 people over the course of a year.

Bait and Switch

A policy that pretends to fight violence by locking up mostly nonviolent offenders is an inefficient use of taxpayer resources. The scam works like the classic “bait and switch” marketing ploy, in which customers are “baled” into a store by an advertisement for an item at an extremely low price. Once in the store, the salesperson “switches” the customer to a higher-priced product that the scheme was designed to promote. In the criminal justice field, the “bait” is citizen fear of violent crime. The “switch” occurs when public officials fight crime by building more prisons but then fill the new cells with nonviolent offenders. This scheme profits those who wish to appear “tough” on crime but in reality are failing to make America safe. One consequence of this policy is that the criminal justice system spends tens of billions of dollars on prisons and then underfunds effective drug treatment, educational programs, and violence prevention programs by asserting that there is not enough money.

Criminologists Franklin Zimring and Gordon Hawkins first applied the term “bait and switch” to this aspect of criminal justice policy. Under the bait and switch, people who commit lesser infractions have borne the brunt of the anti-crime fervor by getting sent to prison at much higher rates and serving much longer sentences. But as the data show, violent crime is undiminished even as we engage in the largest increase in incarceration in American history.
The Bait and Switch in Practice in California

California is a good example of the “bait and switch” in practice and is illustrative of similar trends around the country. In 1980, 60 percent of the 24,569 inmates in the state had been committed to prison for acts of violence—a relatively efficient use of prison space. California increased its prison population by 400 percent between 1980 and 1993 (to 125,605 inmates), yet only 27 percent of the additional prison space confined people convicted of violent offenses. The remaining 73 percent were convicted of nonviolent crimes. Today, California has more persons incarcerated for drug offenses than the entire prison population in 1980. If crime policy was intended to combat violence, then its effectiveness in California dropped considerably as the prison population expanded.

Michael Garcia shoplifted a package of meat valued at $5.62 from a grocery store in Los Angeles. At the time, Garcia was temporarily out of work and his mother’s Social Security check had failed to arrive. Garcia stuck the package of chuck steak down his pants: one piece for his mother, one for his retarded brother, and one for himself. For this offense, he faces twenty-five years to life in prison under California’s “three strikes” legislation. His other “strikes” also involved small sums of money and no physical injury; they were integrally related to a heroin addiction he had never been able to control. In fact, Garcia’s parole agent said, “Michael is not a bad guy. He had some problems with dope use, but he’s not dangerous.” The agent said he would have sent Garcia to a residential drug treatment program, but a slot was not available.

“Three Strikes and You’re Out”

We all acknowledge that the crime problem in most cities is severe, and that safety is the primary concern. People want tough sentences for repeat offenders, regardless of whether they are violent or nonviolent. But “three strikes and you’re out”—though a great slogan—is untested and potentially disastrous. It threatens to drain billions of tax dollars to incarcerate lesser offenders for long periods of time.

The current popularity of “three strikes” legislation is in no way related to its record of success. Cases such as those of Larry Fisher and Michael Garcia appear to be typical. A survey by the legislature in California, the state to pass one of the strictest and broadest “three strikes” provisions, shows that few people sentenced under the new scheme are repeat violent offenders. Fully 70 percent of all second- and third-strike cases
filed in California in 1994 were “nonviolent and nonserious offenses.”27 In Los Angeles County, only 4 percent of second and third felony convictions were cases of murder, rape, kidnapping, or carjacking. Although “three strikes” proposals typically arise from fear of violent crime, they often ensnare nonviolent offenders. The “three strikes” proposal is essentially a political ploy. Many voters who are frustrated with violent crime supported the proposal, but as we see again and again in the criminal justice system, it is doubtful they will get their money’s worth. “Three strikes” proposals cast a very wide net, and most of the people caught in it do not require the kind of punishment the proposals mandate.

The Costs Run into the Billions

The costs of “three strikes” schemes are staggering. Every year an inmate spends in prison—be it under a “three strikes” law or a regular sentence—costs taxpayers an average of $22,000. As the prisoners get older, the cost of maintenance rises, ultimately reaching an average of $69,000 per year per prisoner for those over the age of fifty-five. In other words, the cost of imprisoning a person under the “three strikes” law will eventually triple. A study by a Stanford University professor estimated that the cost of a life term for an average California prisoner is $1.5 million.28 Multiplied by the expected increase in prison population between now and the year 2020, the study projected total costs to California taxpayers in the hundreds of billions of dollars. While almost every other discretionary line item in the California budget is being slashed—including funds for higher education—the state still ranks first in the country in money spent to build and operate prisons.

The Rand Corporation found that the new “three strikes” law will cost between $4.5 and $6.5 billion every year to implement.29 This is five times more than the state originally estimated. “Three strikes” will consume every dollar of new money the state expects to receive during the next six to eight years and will drain money from health and education spending. The Rand researchers concluded that the cost of the new legislation is so high that it will be impossible to implement fully. As a result, it is likely that the law will be applied haphazardly across the state. Such partial implementation can lead to dangerous, unplanned results, such as petty offenders spending decades in prison for lesser crimes while dangerous offenders are released early for lack of space.

Other unanticipated consequences already are starting to develop. One report concluded that plea bargaining is down because more felony offenders are opting to go to trial rather than risk getting a strike under the new legislation.30 The increase in the number of trials is creating massive backlogs in the judicial system and causing court and attorney costs to skyrocket. Moreover, uneven enforcement of the law paves the way for racial and ethnic disparities to develop. Data from the Los Angeles Public Defender’s office suggests that minorities with roughly the same criminal history as whites are being charged under “three strikes” at seventeen times the rate of whites.31

Truth in Sentencing

Prison populations in many states will increase more rapidly in coming years because of a proliferation of so-called “truth in sentencing” laws. Truth in sentencing requires the prisoner to serve the full sentence without being released early on parole. The laws are the result of public frustration with sentencing systems that do not tell the
“truth” about sentence length—certainly a valid concern for all Americans who want to know how their tax dollars are being spent.

Tired of being told one thing and seeing another, the public has supported truth in sentencing enthusiastically without understanding the dramatic impact it will have on prison populations. Such laws take advantage of legitimate public frustration to instantly double and even triple prison sentences for all offenders. What the public is not told is that truth in sentencing will dramatically increase the amount of money going into prisons, largely to incarcerate the more numerous nonviolent offenders for longer periods of time.

The Old System of Indeterminate Sentencing

Under the old “indeterminate” sentencing system, a judge could hand down a sentence within a permissible range: Once found guilty, a person might receive a maximum of ten years in prison with the expectation that he would be released after five years if he conformed to the rules of the prison. The prospect of early release was designed to induce good behavior so inmates would be easier to manage and more likely to succeed after release. If inmates violated rules while in prison or on parole, they could be additionally punished by incarceration for the remainder of the original sentence plus any sentences for new charges. Judges usually doubled the maximum potential sentence so that the actual time served was about what the judge wished it to be and the threat of additional sentence was substantial.

This was not a straightforward way to sentence offenders. But it did serve the managerial needs of the prison system by affording parole boards the discretion to release inmates when ready or when conditions became overcrowded.

Two Main Attacks on the Old System

Indeterminate sentencing schemes have been subjected to two attacks in recent years. First, it is said that offenders only spend a portion of their actual sentences behind bars. This makes it appear that the offender gets off easy.

Although it is true that offenders often serve only a portion of the sentence, it does not follow that the offenders get off easy. Judges in indeterminate sentencing systems customarily impose longer sentences, expecting an early release.

Second, if released inmates commit another crime after being paroled, politicians charge that the crime could have been avoided if the inmate had served his full term. While this is a valid point in some cases, under the old sentencing regime the second half of the prison term is not designed to incapacitate because it is not supposed to be served. It is designed only to intimidate the inmate into better behavior. This political attack is often coupled with claims that parolees are running the streets and victimizing innocent citizens. Such claims are usually unwarranted. People paroled from prison or serving probationary sentences commit only 4 percent of offenses known to police each year for the most serious violent crimes of murder, rape, robbery, and assault.

Truth in Sentencing as the Answer

In order to cure these supposed flaws, many politicians wish to require inmates to serve all or almost all (usually 85 percent) of the full sentence no matter how well they behave in prison. Under these truth in sentencing proposals, a person sentenced to ten years in prison would not be eligible for release after the four to six years customary under indeterminate sentencing systems, but would have to serve at least eight and one-half years. This single change in parole
policy would effectively double most prison sentences. Although there might be reasons to tighten the old indeterminate system, it does not appear that careful tightening is the purpose of the new proposals. Truth in sentencing tends to mix violent and nonviolent offenders, and particularly for nonviolent offenders, it often increases sentences far beyond what is needed to ensure public safety.

Truth in sentencing has become such a powerful slogan that the federal government is trying to impose it on unwilling states. Most of the $10 billion in federal money available to states for prison construction under the 1994 federal crime bill will only be granted on the condition that states adopt truth in sentencing. This represents a significant shift in the traditional balance between the state and federal governments and a significant federalization of a traditionally local issue.

The Economic Cost of Truth in Sentencing

If the longer sentences are not carefully targeted to reach only the offenders who deserve them, they can be a terrible drain on public funds. Virginia, which is considering adoption of a new truth in sentencing plan, is a case in point. The Virginia plan to abolish parole and establish truth in sentencing originally called for construction of twenty-five new prisons at a cost of nearly $2 billion. The state legislature estimated that the new prisons would cost $500 million per year to operate, double what the state pays for its current system. There was little discussion about how to pay for the plan, although Governor George Allen Jr. pointed toward parks and schools as possible sources of revenue.

Governor Allen claimed that the plan was necessitated by the "rapid rise of violent crime" in the state, even though violent crime fell in the two years preceding introduction of the plan. He claimed that "putting dangerous predators back on the streets" is a leading cause of criminal victimization, despite the fact that only 9 percent of robberies, 4 percent of murders, and 2 percent of rapes and aggravated assaults in Virginia are committed by people on parole. Most importantly, the governor claimed that the plan targeted "violent career criminals," although his own projections showed that the plan would capture almost four times more nonviolent offenders than violent offenders.

Mandatory Minimum Sentences

Mandatory minimums were a sentencing reform popular among elected officials during the height of the "war" on drugs in the late 1980s. The effect of mandatory minimum sentences on the criminal justice system has been long-term, and is still being felt by thousands of nonviolent drug offenders, many of whom are spending a decade or more behind bars for relatively modest offenses. The Rockefeller drug laws in New York, passed in the 1970s, have been so harsh on drug offenders that current Republican governor George Pataki has sought to repeal some of their provisions.

Mandatory minimums always require offenders to spend time in prison for at least a certain number of years. They are similar to truth in sentencing laws in that they increase the length of sentence, but they differ in that they allow parole after the minimum number of years is served. In the federal system, there are currently more than 100 provisions for mandatory minimums. Most states have mandatory minimum sentencing as well. The following illustrates the injustice and waste of tax dollars that can result from mandatory minimum sentences:
In Mobile, Alabama, Nicole Richardson fell in love at age twenty with a small-time drug dealer who worked out of a local bar. One day, an undercover agent asked her where he could buy some drugs. She told him to talk to her boyfriend. For that degree of involvement, she was sentenced to ten years in prison with no possibility of parole. Her boyfriend had information on other drug dealers to trade. After cooperating with authorities, he received a prison sentence of five years.

Michael Irish was a carpenter from Portland, Oregon, whose life savings had been wiped out to pay for the medical bills of his cancer-stricken wife. Irish, who had no criminal history, was caught and convicted of unloading boxes of hashish from a boat. Under the mandatory minimum law, he was sentenced to twelve years in prison with no possibility of parole—an incarceration that will cost at least $250,000.

Stories like these are so numerous they have undermined much confidence in mandatory minimum sentences. Ninety percent of federal judges and 75 percent of state judges think mandatory minimum sentences are unsound. On the U.S. Supreme Court, Chief Justice William Rehnquist and Associate Justice Anthony Kennedy are among those who have spoken against mandatory minimums. They have been joined by the United States Sentencing Commission, the American Bar Association, and the National Association of Veteran Police Officers.

Mandatory minimums create a number of problems. First, they apply to everybody regardless of whether the punishment fits the crime or the offender. Second, mandatory minimums create what is known as sentencing "cliffs" for drug offenses. For example, possession of five grams of crack is punished with no less than five years in prison; possession of 5.01 grams of crack is punished with no less than five years in prison.

Third, mandatory sentences do not produce an equal sentence for everybody who commits the same offense. If a drug defendant decides to cooperate with the prosecution and turns in other people, the prosecutor will often choose not to charge that person with a crime carrying a mandatory minimum sentence, thus allowing the defendant to get out of prison early. Through this process, high-level drug dealers with the most information often get off with light sentences, while lower-level dealers receive the longer mandatory minimum sentence.

The Relationship Between Poverty, Family Breakdown, and Criminal Justice

The Commission members feel strongly that crime is an act of personal choice and that an effective criminal justice system holds individuals accountable for their criminal behavior. Nevertheless, those who wish to prevent crime before it occurs cannot ignore the fact that the majority of the people filling our prisons come from impoverished backgrounds and lack a formal education. Research shows that children from low-income families who are placed in early childhood development programs such as Head Start have lower rates of crime and higher rates of marriage than those who are not in the program. We need to recognize that investing money in early childhood development produces a safer and healthier society over the long run. Unfortunately, the United States is the wealthiest nation on earth but has the highest child poverty rates of any industrialized country. More than fifteen million children live in poverty in the United States, and up to twelve million children are malnourished.
Research consistently demonstrates that a disproportionate amount of violent street crime occurs in areas that have the lowest incomes and the most desperate living conditions. Furthermore, medical research suggests that children who are malnourished are more apt to engage in high-risk behavior when they get older. Regardless of what one thinks of our high rates of incarceration, it is also clear that they have had a negative impact on family stability. In some cities, more than half of all young men are under criminal justice supervision on any given day. With so many men in prison, the pool of people available for marriage has dwindled. This is a two-edged sword: while it is good for public safety to take a violent criminal off the streets, it is bad for public safety to incarcerate so many petty offenders that family life is disrupted. It is two-parent families that are least likely to live in poverty and more likely to cushion young people from the temptation to adopt a criminal lifestyle. Eleven percent of children who live in a two-parent family live in poverty, while 60 percent of children who live with a single parent live in poverty.

It troubles the Commission that the size of the American prison population and the number of people living in poverty both increased dramatically in the 1980s. Worse, the growth of each seemed to feed off the growth of the other. This is because funding for prison expansion came largely at the expense of programs designed to alleviate poverty.

Reducing Poverty Can Reduce Levels of Crime

Poverty is not an excuse for crime, nor is crime the exclusive province of low-income persons. But overall, countries with the highest ratio of poverty have the highest rates of crime. The same correlation holds true for cities. It does not follow that an increase in poverty will translate immediately into an increase in crime. It does strongly imply that if overall poverty is reduced, then in the long run the amount of street crime associated with poverty will be reduced as well.

The increase in poverty in the United States during the 1980s was significant. The average rate of poverty in the United States during the decade was 17 percent higher than the average for the 1970s. The poverty rate for African-American children is an astonishing 44 percent. For Latinos it is 38 percent, and for whites it is 16.2 percent. In Sweden, the poverty rate for children is 2.7 percent; in Canada, it is 13.5 percent; and the overall United States rate is 21.0 percent.

The Tradeoff Between Prisons and Opportunity for Youth

The massive prison construction represented a commitment by our nation to plan for social failure by spending billions of dollars to lock up hundreds of thousands of people while at the same time cutting billions of dollars for programs that would provide opportunity to young Americans. The result of our social and criminal justice policies is that today among developed countries, the United States has the highest rates of incarceration, the widest spread of income inequality, and the highest levels of poverty. If we are serious about reducing crime, we need to create effective anti-poverty programs and fund them adequately as part of an overall approach to crime policy.

NOTES


8. Ibid., p. 28, Table 10.


10. Ibid.


12. Ibid., p. 91, Table 88.


20. Ibid.


26. Ibid., p. 17.


31. The data presented by the Los Angeles Public Defender’s Office were based on the first six


38. Ibid.


47. Ibid., p. 17.


51. Ibid.