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Visiting Faculty, University of California, Los Angeles

SPEAKER: Peter Greenwood
Director, Criminal Justice Research Program, The Rand Corporation

EXAMINERS: Norman Abrams
Professor of Law, University of California, Los Angeles

Richard Berk
Professor of Sociology, University of California, Santa Barbara

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Associate Director, Urban Systems Institute School of Urban and Public Affairs, Carnegie-Mellon University

Sheldon Messinger
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PANEL 3
WHAT IS THE ROLE OF INCREASED CRIME PENALTIES ?

nes Q. Wilson, Chairman

WILSON: I also want to thank John Van de Kamp for organizing this conference. In many states, if the Attorney General noticed a drop in crime rate, he wouldn't organize a conference to consider what it means – he would issue a press release taking credit for it. This doesn't preclude Van de Kamp from doing this at a later time, though I think he must be somewhat puzzled about what he has heard today.

If he is puzzled, it's only because of a small failure in the work of his staff, which has otherwise done an admirable job. The staff failed to instruct the participants to speak in English. Since that is the only tongue Peter Greenwood and I know, that is the language into which we now intend to move.

I would like to summarize the morning's discussion with an essentially true story. 1968 was the last year in which I offered partisan political advice to a presidential candidate who wanted to know what policy to take regarding crime. He accepted my advice and he lost. Since Hubert Humphrey's defeat, I have not offered advice to anybody else.

Perhaps the reason was not his defeat so much as the nature of my advice. As I reflected on what I had said then, I realized I had not offered a sufficiently compelling account of what an adequate public policy toward crime might be, so I devised such a strategy and offered it to candidates who subsequently called me up seeking my opinion.

I said I have a policy which I guarantee will work, for which you can take credit, and on the basis of which you will get re-elected. There are only two conditions. At this point, the candidate whose undivided attention I had now received, began to suspect that I was simply seeking an ambassadorship to a small Caribbean island. I said, "No, the two conditions are as follows: first of all, you must promise not to run until 1980 or preferably 1984 – then when you run, you announce, 'if elected, I will bring down the crime rate.' During this period the crime rate will come down and you can seek re-election." Already the politician's interest was flagging because, like most seekers after public office, he was intensely present-oriented and would like to run immediately – not 15 years from now.

Note: Jacqueline Cohen's data were presented by Alfred Blumstein.

The second condition was: during the time you are in office, you will have to admit candidly the rate at which an *individual* offender is committing crime has probably gone up steadily during your term of office. That, I think, with some important qualifications and demurrers, is essentially what you may have heard today. Over the long run, the publicly-available data on crime trends are probably as accurate as one would want, if all one wants to know is whether crime is trending up or trending down. What is called a "long period" is a matter of some dispute. Some would say three years, some 10, but in that range, I think we have little quarrel.

We have also heard convincing evidence that a significant component of the increase in the crime rate and a significant component in the apparent decrease in the crime rate is the changing age structure of the population.

Finally, we have heard that this changing age structure explains substantially less than half the variation from year to year in the crime rate. Something else is going on. That "something else" may turn out to be a list of many other things or some one big thing which is even more important than the age structure of the population.

To consider one of those possibilities, namely, the operation of the criminal justice system, we are convened here this afternoon to hear from Peter Greenwood and various panelists who will talk about the effect, if any, of the criminal justice system on bringing down the crime rate.

Peter Greenwood is known to almost all of you because of his work at the Rand Corporation where he has been a senior researcher for many years and published a number of important studies with colleagues on police and detective practices, on juvenile crime, on the career criminal and, most recently and perhaps most significantly, on the policy of selective incapacitation.

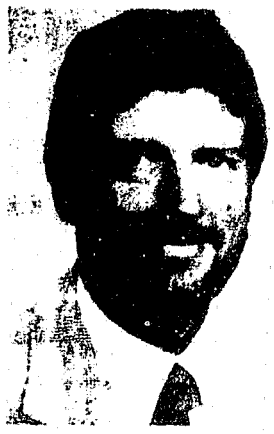
I promised we would speak English and already I've broken that promise. "Selective incapacitation" does not refer to the Saudi Arabian practice of cutting off the limb that offends society; it means locking people up, but being choosy about who you lock up.

Here to discuss the possibility that locking people up, choosily or not, has had an effect on the crime rate, is Peter Greenwood.

GREENWOOD: Before I pick up this burden of justifying law enforcement and corrections in California, which is my wont, I just wanted to continue a little bit in the vein that Jim started out, mentioning the work of and thanking John Van de Kamp and his office for sponsoring this conference.

For those of you who don't know, the Office and the Bureau of Criminal Statistics and researchers in California get together quite a lot. This isn't the first time John or his staff has heard this information. In fact, at least three members of this panel serve on an advisory board to the Attorney General on this data use. Not only do they use it, they react to it; they discuss it; and they have even recently hired some graduate fellows to work in that office to help. When someone suggested it would be nice if they analyzed some data, they actually hired some graduate students to do that.

This also carries over to other areas of crime data; there are police chiefs, probation chiefs, and prosecutors here. Things have changed in the last 10 years. Anyone who had been out in the field looking at



Peter Greenwood

"To the extent that we know anything about deterrence, it seems like the certainty of sanctions is much more important than their severity."

those agencies and remembers what they were like 10 or 15 years ago will realize they are a lot more sophisticated in their ability to look at the big picture; to think of crime control strategies instead of what to do today about what happened last night. Things have changed a lot.

I have divided my talk into four different parts that I will try to remind you about as I go through. First of all, I'll begin with theory, because we've spent a lot more time thinking about that topic than the later ones. What does theory say about the effects sanctions ought to have on crime? Particularly, what aspects of sanctions are important?

Then I will address the question: have sanctions changed over time and if so, how? I will do this by looking at some of the present data which come out of the Book of Curves that you have. I will then try to use that data to estimate in a couple different ways what I think the crime reduction effects have been on the changes in sanctions.

Please, right up front, a caution that those estimates are very rough. We still have very crude, rough models that estimate very complicated phenomena. I accept Al Blumstein's caution from an earlier panel that they shouldn't begin to try to estimate changes until they have controlled for differences in age distributions and what-have-you. I have not done that. I expected Al to have done it for me in the earlier section. I'll have to wait until I read that paper and find out, but trying to control for differences in age structure and differences among the races (factors which also affect how sanctions are applied) is a complicated job. We will make a rough stab at it and then draw some conclusions about where we ought to go.

The first piece of theory I would like to get out of the way is, "how does incarceration affect crime rates?" There are basically three different mechanisms we can think about as the possibilities: rehabilitation or special deterrence, general deterrence, and incapacitation.

Rehabilitation and special deterrence, of course, work on the individual offender to whom you apply the sanction. The idea is he will get better; he will do less crime. It's supposed to suppress his crime rate in the future.

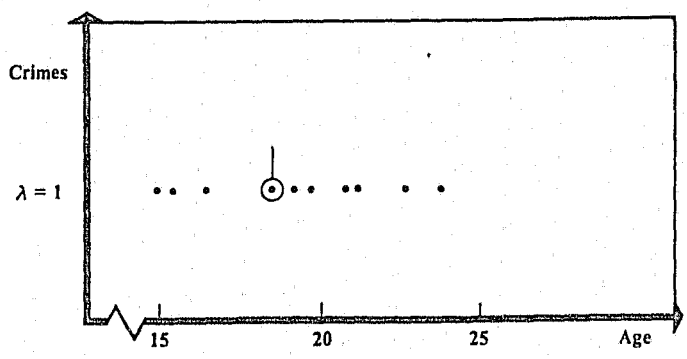
What do we know about that? Well, we know everybody gets better by age (you saw Al's curves on the participation by age). You take any group over 16 and look at them in the future and they are doing less crime. It doesn't seem to be due to imprisonment or to anything else we do to them. Whatever rehabilitation or special deterrence effects are tied up in our sanctions are also tied up with normal maturation. At least as far as prison is concerned, it doesn't look like prison by itself has any special crime reduction effect on the individuals who go there. We don't send them there to make them better people; certainly, not in the last few years as they got more crowded.

The second way in which prisons might affect crime rates is through deterrence. The idea is that when we sentence somebody to prison, it affects others who might be thinking about crime. Again, we don't know too much about exactly what deterrence effects are. The problem is, there haven't been the appropriate experimental conditions that allow one to pin that down. We basically compare states. Where sanctions are high, we find crime rates are lower, but we don't know how causality works, whether high sanctions reduce crime or high crime

THE IMPACTS OF SANCTIONS ON CRIME RATES

MECHANISM	EFFECT	PRIMARY FACTOR
REHABILITATION/ SPECIAL DETERRENCE	SUPPRESSES INDIVIDUAL CRIME RATE	ARREST
DETERRENCE	SUPPRESSES OTHER CRIME RATES	CERTAINTY
INCAPACITATION	SUBTRACT TIME AT RISK	TIME SERVED PER CRIME • INDIVIDUAL OFFENSE RATE

Incapacitation Theory



rates reduce the amount of sanctions that are applied to individual offenders.

To the extent that we know anything about deterrence, it seems like the certainty of sanctions is much more important than their severity. Translated to the use of prison, it would be much more important that all offenders go there for a short time and that the deterrent effect would not be sensitive to changes in the length of term served.

Finally, the last effect of imprisonment is incapacitation. That basically involves subtracting time out of the offender's career, at least while he is on the street. While he is locked up, he is not committing crimes against other members of the general public. We know a little bit more about that, because we are beginning to know something about how much crime people do on the street. The effects of incapacitation are sensitive to the amount of time they serve, when they are sent to prison, and how much crime they do when they are on the street.

Since we are going to talk mostly about incapacitation, I would like to go through a couple of quick diagrams to show basically how it works and what the assumptions are. Since Al's complicated graphs and formulas didn't show up well, I am going to start with a real simple picture.

Here's a plot of our offender. His career begins at about age 15 and continues until he's about 24. Lambda stands for the offense rate. He does crimes at the rate of about one a year. They occur randomly. Once in a while, he gets arrested, much less frequently than we would like (as symbolized by the circle).

If he is sentenced to prison, the assumption of the models we use to estimate incapacitation effects is that sending somebody to prison only subtracts those crimes that would have occurred while he is locked up; in this case, four. It doesn't do anything to the crimes that occur later. He doesn't do more; he doesn't do them more frequently. That's the assumption of no rehabilitation effect, no criminogenic effect.

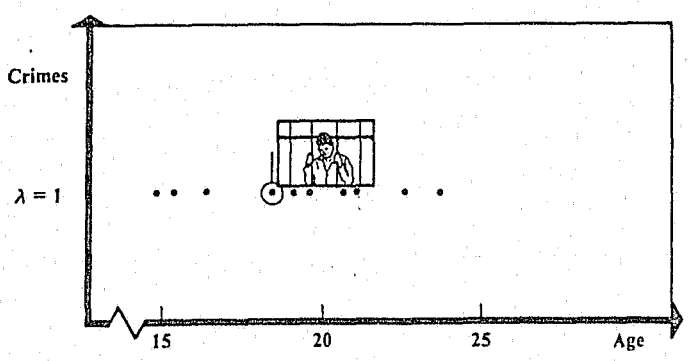
The next offender we show is more typical of the ones found in our studies. They do several kinds of crimes. They do a lot, and, of course, they get locked up several times. Everyone isn't like this, but there is a substantial number of offenders in California who are like that. Of course, the more crimes they do in any one period, the more the incapacitation effect of imprisonment.

All the mathematics of incapacitation theory come down to estimating for a given sanction policy, how often people will get locked up and how long these periods of time will be.

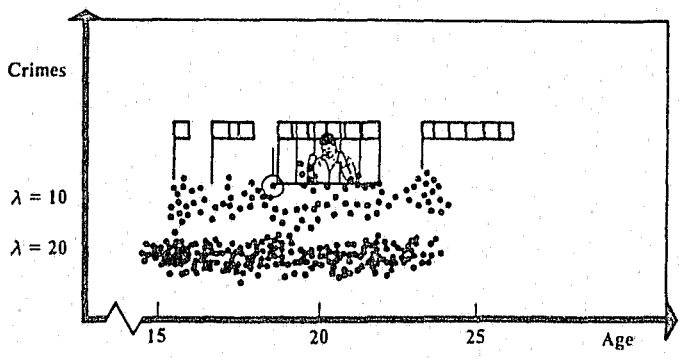
The key issue in estimating incapacitation effects – again, I will go back to it – is, how much crime do people do on the street? The principal reason I am up here talking is because I (and some of my colleagues at Rand) have been doing studies over the last few years to determine how much crime people do on the street.

This is a plot of burglary, individual burglary offense rates, that come from those studies. It is based on interviews with 2,200 offenders who were locked up in either prisons or jails in California, Michigan, and Texas. What this particular plot shows is that the median is 5.5 (this covers about 60 percent of all those people we interviewed, those who said they did burglaries in the year or two before they were arrested). Half the people who did burglary did less than five and a half per year; so yes, most offenders don't do very much crime.

Incapacitation Theory



Incapacitation Theory



People may say, "Well, if we lock those folks up, we won't prevent very much," but then you look out at that right-hand tail and the crime rates for all types of offenses we looked at seem to have this characteristic, the tail of the high-rate offenders. In this case, for burglary, the 90th percentile is out around 232, 10 percent commit 200 or more crimes a year. That may seem a large number to you; it's not shocking to police officers and prosecutors who interview such folks. They are out there. There are some people who do crime on a daily basis.

If incapacitation prevents the crimes that would have occurred while someone is locked up, it's fairly obvious (if you have limited prison space) who it is you would like to put in there.

The whole question is: can you identify those high-rate offenders? The answer is, simply, yes you can, but not very well. We can begin to sort out who they are.

I have shown here that there is a total of seven predictors. Some come from the adult record, prior convictions for the kind of crime you are trying to predict. If you're trying to predict robbery rate, you look for prior robbery convictions. You see if they were recently incarcerated, which means they recidivated fairly fast; you look at their juvenile records. They may have been convicted prior to age 16 or have been committed to a juvenile state facility. You look for drug use, either currently or as a juvenile. Finally, you look at some measure of employment to see if they have had erratic employment in the last few years.

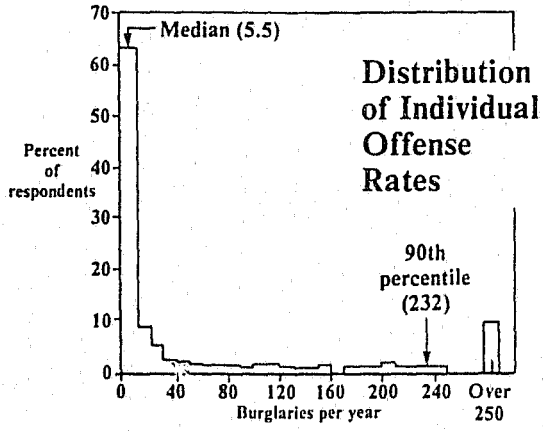
Those are all predictors. This scale has now been tested in a couple of other states. It does fairly well in predicting recidivism; it's not that different from other salient factor scores, but it's not very accurate. It explains, at most, about 50 percent of the variation; and it's particularly bad at the high end, identifying high-rate offenders. We can be much more certain who the low-rate offenders are, people who are not likely to recidivate or not likely to do crime at a high rate; but when we try to predict high-rate offenders, it's like trying to predict who is going to go out and kill again. We cannot do very well; we are going to have a lot of errors.

I think there have been enough people looking at the prediction problem from a variety of areas; that is, the current level of accuracy is something we have to accept. If we try to predict, we must accept that we won't do it very well.

The next slide shows what happens if we try to base a sentencing policy on those predictions. Again, the data are derived from our self-reports of offenders in California. This particular graph deals with robbery. It's based on figures that were available in 1978, and it's meant to show what would happen if we increase the prison population. It's not just prison; it's being locked up in any particular way, shape, or form (prison, CYA, jail, what-have-you).

If we increase the prison population, what will happen to the crime rate? The red sloped line farthest to the right is a fairly unselective policy. It involves sending more people to prison who are now not going, and since the system is already somewhat selective about who goes, marginally, those robbers who don't go tend to be low-rate offenders. Our estimate for robbery was (if we increase the number of robbers locked up in this way by 5 percent) we would get about a 3 percent reduction in the crime rate.

The lines to the left show what happens with more selective policies. The middle line shows what happens



Predictors of High Rate Offending

- Adult record
  - Prior conviction for current offense
  - Recent incarceration
- Juvenile record
  - Conviction prior to age 16
  - Commitment to state juvenile facility
- Use of hard drugs
  - Current
  - As juvenile
- Employment
  - Less than 50 percent

if we extend the terms of predicted high-rate offenders. With a 5 percent increase in the lock-up robbery population, we can get about a 10 percent reduction in crime by focusing on the high-rate offenders. We can move even farther to the left by letting out some of the predicted low-rate offenders or shortening their terms and concentrating on high-rate offenders.

This graph makes assumptions about the ability to predict. It's not clear that we'll ever be able to become as focused or as targeted as this particular model assumes. However, these figures show, at least as based on our estimates for 1978, that there was still room to get more selective. There are moral and political arguments (pro and con) whether or not we should do that. That's a whole different part of the argument.

Let's turn now to what's happened to sanctions in California. Have they changed? Let's look first at the conviction rate, which is the top line. These are numbers just pulled out of the Adult Felony Arrest Dispositions. Between 1975 and 1983, the conviction rate has gone up from 48.5 to 55.5 percent. Why has it gone up? Presumably, the police have gotten a little better, a little more systematic, in collecting evidence and what they present to the prosecutor; and somehow the case preparation has gotten better. That is a substantial increase in conviction rates, I think, compared to what people thought was possible.

Move down to the next line and look at what's happened in terms of sanction severity. It is the percentage of people who are sentenced to state institutions (which could be either prison or the CYA) as a percent of those convicted. You see it's gone up from 23.2 percent to 36.5 percent.

Move down the the next line and see the cumulative effect. These figures are based on felony arrests: 11 percent in 1975 resulted in a state term; 20 percent resulted in a state term in 1983. That's about an 82 percent increase in the probability of serving state time over those 10 years.

What's the effect of all that? Going back to what we know about deterrence, it looks like the probability of doing state time is much more certain. If there are deterrent effects, this change ought to have some crime reduction effect; and it feeds into an incapacitation effect.

We can see that clearer on the next slide. We'll look at the number of people who are locked up, again, relying on the figures in the Book of Curves.

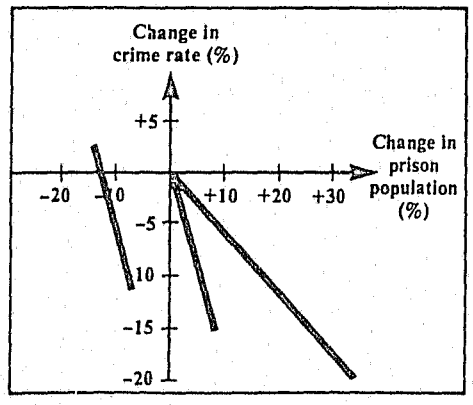
Let's focus first on the top line, which is the Department of Corrections prison terms. You will see numbers for 1974, 1980, and 1983. You see that they really began to jump up after 1980, going from 24,500 to 39,000. I am told it's over 42,000 now. That's up 62 percent in those 10 years.

Move down to the CYA on the next line. For those of you who don't know, the CYA held, in 1978, about half juveniles and half adults who were between the ages of 18 and 20, so it's a young-offender facility. They tend to be fairly hard-core or chronic offenders. You will see the CYA has gone up 29 percent in those 10 years.

Finally, looking at the next line, adults in jail are up from 25,000 to 42,000 (there are as many people in jail as in prison in California).

Come down then to the total population, up from 54,000 to 87,000, a 60 percent increase in the number of people locked up. That's directly a measure of the number of offenders who are off the street and the number that can produce an incapacitation effect.

Selective Incapacitation: Estimated Impacts for Robbery in California



CHANGES IN SANCTION SEVERITY

ADULT FELONY ARRESTS (pg 89)

	1975	1980	1983
CONVICTION RATE	48.5	55.8	55.5
SENTENCED TO STATE INSTITUTION			
% OF CONVICTIONS	23.2	32.4	36.5
% OF ARRESTS	11.0		20.0

UP 82%

I would like to drop down to the next line now and show how that compares to the general population because, of course, there are more people, and maybe that could drive it. The general population is up 18 percent in those years; and the high-risk population, those 15 to 24, is up only 7 percent. The rate at which offenders have been locked up certainly exceeds, by far, the growth in the general population. Even subtracting the growth in population, there is at least a 50 percent increase in the number of people locked up.

With the next slide I will try and turn to the question of whether or not those who are getting locked up is at all selective. I don't have trend data on this, but this is a chart that comes from Joan Petersilia's recently-released study on probation that tries to look at the factors in California. These are data based on the Board of Prison Terms data for offenders sentenced in 1980; it looked at a probation sample and a prison sample and tried to identify the factors that are associated with going to prison.

Look at the top ones; these are factors that have a significant increased effect – a significant effect on increasing the probability of going to prison. On convictions for two or more counts, they are arrested and charged with multiple counts to which the district attorney makes them plead. That indicates that they are active offenders and it also indicates that the district attorney is going after them for that particular crime.

The next factors, having several adult prior convictions or on adult parole, are factors that are risk predictors. Another factor is drug influence; a drug addict has an effect on robbery. One variable not here is that being on parole from the CYA has an aggravating effect for both robbery and burglary. If a defendant has any one of the top three factors, he has an 85 percent probability or higher of going to prison. It certainly looks like, in the sentencing decisions between who gets probation and who gets jail, it's not a random draw. The more active offenders are going to prison.

I have another piece of data on the next slide that looks at recidivism rates for two samples. On the left is Joan Petersilia's probation sample, a 40-month follow up. You'll see, in 40 months, 65 percent of them were arrested; 34 percent were incarcerated; and 22 percent were sent to prison.

On the right-hand side is what happened to our inmate survey, those folks we interviewed back in 1978. Most of them were released from that. These are two-year follow-up data based on California rap sheets. For those who were in that survey because they were convicted of robbery or burglary, 80 percent were rearrested; 65 percent were reincarcerated; and 54 percent ended up back in prison within two years. The high recidivism rate for these folks and a substantial difference between the probation sample and prison sample shows, I think, fairly strong evidence of a good bit of selectivity in who goes to prison.

The only other thing I would like to add is that we have been studying in the past couple of years the effects of juvenile records on sentencing. To the extent that we can tell, in adult sentencing decisions, juvenile records do have an effect; they increase the probability of getting a state term for either robberies or burglaries. As one looks at what the effects of

NUMBER OF OFFENDERS INCARCERATED

	1974	1980	1983
CDC (pg 90)	24,741	24,569	39,372
CYA (pg 93)	4,569	5,320	5,870
ADULTS IN JAIL (pg 92)	25,217	30,045	42,211
TOTAL	54,527	59,934	87,453
% INCREASE		10%	60%

AT RISK POPULATION (pg 83)

TOTAL up 18%
15-24 up 7%

Basic Factors Associated with Imprisonment

	Assault	Robbery	Burglary	Theft	Forgery	Drugs
2+ conviction counts	+	+	+	+	+	+
2-5 adult convictions	+	+	+	+	+	+
On adult parole	+	+	+	+	+	
Related victim	−				−	
Armed with gun		+				
Used weapon		+	+			
Victim seriously injured	+	+				
Drug influence	+					
Drug addict		+		+		
Black	+	+	+	+		

determinate sentencing have been, those studies also show that the people who really bore the brunt of the increased sentences were the younger offenders.

When Al Blumstein showed his curves, we saw that the peak rate of imprisonment is quite a bit farther out from the peak rate of crime or criminal activities; we are getting more of those young offenders who tend to be active.

I want to turn now to my best guess of trying to estimate (and it is very rough) what the effects of the increased incarceration are.

You see from the title, I have assumed that the number of people locked up in California has increased by 50 percent over the last 10 years. That's after my discounting the growth in general population, discounting the 60 percent down to 50 percent.

My first source of data for an estimate comes from a paper that was done by Jacqueline Cohen for the National Academy Science Panel in 1978. In this paper she drew some curves that estimate what the effects of an increase in prison population would be on crime for different states, based on what their sentencing policies were in 1970. According to those curves, and using 1970 estimates of the expected time served per crime (which for California was .0127–.01 years per felony committed), there would be a 7 percent reduction in crime given a 50 percent increase in incarceration – not very much.

Come down to the next line. I have updated QJS, which is the expected sentence per crime, to more current values. It is the product of the probability of (1) getting arrested; (2) convicted; (3) sentenced to incarceration; and (4) the expected term to be served.

We estimated, when we wrote Selective Incapacitation[5] that in 1978 the average time served for our robbers and burglars was about .04 years per crime, four times greater than Cohen estimated for 1970. If you use that figure, it produced just about a direct proportional increase in the crime reduction effect. We'd have a 28 percent reduction in index crimes in California with a 50 percent increase in incarceration, four times more than Cohen's model predicted.

Move down to the next line. These figures are directly off the curves that are in Selective Incapacitation, that chart I showed you for California robbers. We have a similar one for burglars. It's hard for us to say exactly what our estimated lambda is, the rate at which offenders do crime, since it depends on the type of crime they most frequently commit. Cohen said it was for 10 crimes per year. Our estimate is between 30 and 90 crimes per year, depending on the crime type. For robbers, it's around 5 to 10 because people do robbery at lower rates. For the average burglar, the mean rate is up around 50 or 60. Using our model from Selective Incapacitation, we estimate that a 50 percent increase in incarceration without any selectivity would produce a 31 percent reduction in crime.

Finally, in the last line, we show a more straightforward calculation. There were about 30,000 more people locked up in 1984, compared to 1974, given those figures I presented earlier. We assume that on the average, each one of them committed 10 crimes per year if they were out on the street (that's a lambda of 10). That figure is consistent with the groups we are studying now. The people we have looked at who have come out of prison have arrest rates higher than

[5]*Selective Incapacitation,* Greenwood and Abrahanse. Santa Monica; Rand Corporation, 1982.

RECIDIVISM RATES (PERCENT)

	PETERSILIA 40 MONTH PROBATION FOLLOWUP	RAND INMATE SURVEY CALIFORNIA PRISONERS CONVICTED OF ROBBERY OR BURGLARY 2 YEAR FOLLOWUP
ARREST	65	80
INCARCERATED	34	65
IMPRISONED	22	54

ESTIMATED CRIME REDUCTION EFFECTS OF 50% INCREASE IN INCARCERATION

COHEN'S 1978 NAS PAPER $\lambda = 10$

7%

SELECTIVE INCAPACITATION BURGLARY AND ROBBERY ANALYSIS

$\lambda = 30 - 90$

31%

30,000 OFFENDERS WHO COMMITTED 10 CRIMES PER YEAR WOULD INCREASE THE CALIFORNIA CRIME INDEX BY 300,000 CRIMES OR BY 38%

one per year; and our estimates of the probability of arrest lead us to believe that each arrest represents about 20 crimes, on the average, so it looks like prison releasees commit at least 10 crimes per year when they are on the street.

If we let out 30,000 of these prisoners, we'd have 300,000 more index crimes, which (again, going back to the Book of Curves) would be something like a 38 percent increase in the crimes reported for the Index. Those are a couple of different ways one might estimate what the effects of incapacitation or the increase in incarceration have been, and they all lead to reasonably consistent answers.

I'd now like to reflect a little bit on what I think all this means – the bottom line! First of all, I believe, to the extent that we can interpret these figures, the data show that tougher sanctions are making a contribution to lower crime rates, through incapacitation, and probably through deterrence also. It's going to be very hard to estimate the effects accurately.

I think that contribution is significant, but I want to point out that the effects of incapacitation are due, in large part, to the existence of chronic offenders. Professor Wilson alluded to that. There are probably fewer people doing crime, but those who do it probably do more of it. We have these people who come back time after time after being caught and run through the system. It's a fact that they are there, and they have fairly lengthy careers. That means, by locking them up, we can prevent crimes.

Many of these chronic offenders begin their criminal activities at fairly young ages; 12, 13, 14 years old is not unusual when you begin to look at juvenile rap sheets. Their antisocial behavior begins even younger.

This observation has led us (and it's certainly led others before us) to look at the question of: where do chronic juvenile offenders come from? Where do these kids come from that get into crime and are doing robbery, assault, and burglary at 13 or 14 years of age? Relying on other people's work (not on ours), the primary predictors of chronic juvenile delinquency (I will say four) are: (1) The criminogenic characteristics of their families. If their father has a criminal record or is an alcoholic and their mother is psychotic, or they have criminal siblings, are predictors. (2) Incompetent or inadequate parenting. If they don't have adequate supervision or attention at home. (3) Learning disabilities, both social and academic, are basically a physiological component to all this; and (4) Poor behavior or low achievement in school, a result largely predicted by the earlier three factors.

Chronic offenders can be predicted to about 50 percent accuracy when you look at these four predictor variables and the first arrests at 13 or 14. The same accuracy we get later on we can get at around 16 years of age with these chronic juvenile offenders.

The point is, the high crime rate and apparent need for heavy reliance on incapacitation are directly related to the kinds of conditions in which we allow some children to be raised and educated; and these are primarily conditions experienced by the poor.

The ability to predict high-risk delinquents can be used to either incapacitate them around 15 or 16 years of age or to focus remedial programs on these groups. The question is, what programs? There is some evidence that some types of programs help. I will name three. One type is pre-school programs like Head Start. The evidence for the one particular program with a random assignment evaluation design, where they tracked kids through 19 years old, was that Head Start reduced subsequent arrest rates by about 50 percent between the experimental and the control group.

Another is parent training programs, which try to do something with parents who are willing to listen. Finally, effective schools; we can do better than we are doing now to reduce the 20 to 50 percent drop-out and truancy rates we have in the schools these chronic offenders typically attend.

Early intervention and incapacitation are not mutually exclusive strategies. We can do both. In a forthcoming study we've done at Rand, we looked at these chronic offenders and reviewed some of the modeling we have done with selective incapacitation. We estimate that if you had intervention programs for 15- or 16-year-olds that would reduce their subsequent offense rates by 35 percent and cost less than $29,000 per subject you treated, this kind of remedial program would be just as effective in reducing crime rates as a selective incapacitation policy for that group in which we doubled the terms of predicted high-rate offenders. Additionally, the high false positive rate that looks inevitable when you focus on high-rate offenders would probably be much more acceptable when you are talking about remedial programs, rather than the use of confinement for this particular group.

The problem, of course, is in developing and maintaining effective programs. Technologically, it's much easier to set up a prison and make sure somebody doesn't walk away from it than it is to run a school in which 20 or 50 percent of the kids don't walk away or fail to read.

The alternative is there. We can accept the high rate of incarceration we have, the 90,000 or so locked up in California, on and on into the future, and can expect that. We can look at what the characteristics of that population are: predominantly black or Hispanic, predominantly poor, or we can do something about these other programs.

It looks like incapacitation is working. Whether or not we want to rely on it in the future is certainly problematic; we might want to look at something else. Thank you.

WILSON: I ask the panelists to come up, including Al Blumstein, who is here representing Jacqueline Cohen. Jackie was here this morning, but apparently has become ill and cannot appear. Al will speak from her notes in a few moments.

Our first panelist is Norman Abrams, who teaches law at UCLA. In addition to having published a case book on evidence, he has written a number of articles primarily in the field of white-collar and corporate crime.

Norm.

ABRAMS: I might begin by putting my presence here in a certain context. Many years ago, my first dean happened to chair a panel composed of several distinguished judges and me; he proceeded to introduce the judges one by one, then he came to me, a very junior member of his faculty. He said, "This is Professor Abrams. He is not a judge of anything."

I thought I might adapt that today, because, appropriately, if my former dean were here today, on a panel composed of sociologists and criminologists, persons interested in numbers and statistics, he probably would have introduced each one of them, and come to me and said, "This is Professor Abrams. He doesn't count." In fact, I think I am more given to discounting than counting.

I want to make a few comments about Pete's remarks and then re-introduce the subject of deterrence (it's not as if he left it off the agenda). In a gathering such as this, where numbers do count, where statistics are important, where proof, to the extent that it is available, is highly valued, a subject like deterrence, which we know is not subject to proof or disproof (at least, in the present state of our knowledge) tends not to be given as much attention as it might.

Pete mentioned that the most important thing with respect to deterrence is the certainty of punishment. I would only add that we ought to keep in mind that if we really believe in deterrence (and it almost has to be a matter of belief akin to a religious belief) what we must address is not simply the various aspects of the system of criminal penalties that may deter, that may have a deterrent effect, but also the perceptions of people in the general public, and particularly the perceptions of people who might commit crimes.

The perceptions of the general public are probably shaped most by the law on the books, the statutory penalties, even though those penalties are quite different from time served. We ought to be very cautious about this, however, because there may be parts of the population that

Norman Abrams

"To engage in prediction using a statistical approach based only upon the numbers (although it would appear to be a more scientific approach) may violate our sense of how we ought to be doing things, our sense of dealing with a defendant as a person . . ."

are more sophisticated about this feature of the criminal justice system. They may know how much time is being served. They may know what kind of penalties are being meted out.

The trend with respect to criminal penalties on the books, which are therefore not irrelevant to the subject of deterrence, has been upward in many jurisdictions. Certainly, in the jurisdiction I am most familiar with, the federal, the trend has been decidedly upward. The average maximum statutory penalty in the federal system 15 or 20 years ago was five years. Today we have a large number of federal crimes with much higher penalties, not the least of which is the Racketeering Influence Corrupt Organizations (RICO) umbrella crime, which has a maximum penalty of 20 years; it is not uncommon for a RICO charge to be combined with a conspiracy to commit a RICO offense, which adds another 20 years; the maximum penalty on a RICO charge thus can be 40 years. Add to that the penalties for the so-called predicate offenses in the RICO context, and the possible total penalties escalate.

Is this increase in the applicable statutory maxima having an impact upon deterrence? We don't know for certain. One can speculate that it may be having some effect. The increase in penalties does reflect, I think, the current public attitude and concern about crime. There is, of course, a connection between the public fear of crime and the extent to which we are prepared to legislate large penalties.

There are various other aspects of the criminal justice system that are being affected by the same public concern. If one is talking about deterrence in the broad sense, one should also take into account changes in legal rules and changes in legal doctrines that may affect the likelihood of conviction. Clearly here, too, we are moving in a direction, in the current era, toward greater harshness and stricter rules.

Are these changes having an impact? Again, we don't know, but one can observe that, if the premises of deterrence have any validity, there is likely to be some effect. Particularly, given the degree and number of such changes, one would anticipate that there would be some increase in deterrence.

I also want to talk a little bit at this point about incapacitation, a subject to which Pete devoted most of his time. He gave us figures relating to the chronic offender, the person who commits a great number of crimes, and he suggested that if we could identify and incapacitate these chronic offenders, the effectiveness of incapacitation would go up without increasing the prison population significantly. The policy implications of that finding are very exciting on one level and, at the same time, very disturbing on another. I put aside the questions of the validity of the data and questions that have been raised about the sources of information for identifying persons with a potential for a high rate of criminality. These are, I think, important issues, but issues I do not wish to address here.

I do want to focus on some larger issues, however, issues that may not have much appeal to the general public. It seems to me that if we were to decide to engage in a process of selective incapacitation, attempting to identify individuals based upon the kinds of criteria suggested in the Rand studies, for example, going back to juvenile records, finding evidence of drug addiction, and so on, and were we to rely upon such data as a basis for "throwing the book" at particular offenders, we would be engaging in a kind of adjudication in the criminal process that has disturbing implications.

It would involve us in making predictions based upon items of information that do not deal with the offender in his current state, that are not the result of a recent investigation of the offender but rather would rely on facts in his background, including his early background, that have appeared in official records. The response, of course, may be: Well, we do that all of the time, and we engage in prediction all of the time. Judges do that.

I think the response to that would be, yes, we do that but always incidentally, to a limited extent, and as a secondary function of the criminal process while the principal function is a condemnation function, looking to the past based upon a determination of recent criminal conduct. When we do engage in prediction, we do it based upon an individualized assessment of the offender *at the time*, based upon recent probation reports, based upon everything we are able to find out about him at the time.

To engage in prediction using a statistical approach based only upon the numbers (although it would appear to be a more scientific approach) may violate our sense of how we ought to be doing things, our sense of dealing with a defendant as a person, and it may thereby violate a community sense of justice.

Such a system would begin to move us in the direction of a very anonymous, numbers-oriented type of adjudicative determination. If one really has confidence in the ability to predict, based upon a statistical approach, one begins to wonder whether we really need prior criminality before acting against an individual. Do we really have to wait to incarcerate people until after they have committed crimes if we can, in fact, make such predictions?

I am concerned about departing from a system that emphasizes individualized determinations of past conduct and shifting into one which emphasizes predictive judgments. The criminal process serves functions in addition to processing persons who commit crime in order to remove them from society. It is a process that reflects many other societal values. Among other things, it serves an educative function, and that is why the condemnation function is such an important part of the process. Any adjudicative process we use should also reflect those other values and perform those traditional functions.

WILSON: Thank you.

Our next speaker is Sheldon Messinger, Sociologist, and a member of the law faculty, University of California at Berkeley. He has many distinctions, but one that is particularly appropriate is that he is the first panelist to appear today, other than the panel chairman, who has a last name whose first letter comes in the second half of the alphabet. I regard this as deeply revealing, since I regard the second half of the alphabet by far the superior half.

MESSINGER: I will try to tailor my remarks to such distinction.

I know, from having talked with other panelists, that many of us were concerned that this is an area of discussion which has been gone over many times; what were we going to say that hadn't been said before? I have decided to abandon any pretense to novelty. I am convinced, in advance, that everything I have to say has been said before, sometimes by me several times.

The discussion in which we are engaged, the discussion as a whole, is one which has at least been going on since the beginning of the 19th Century. Sometimes the terms have changed, but the essence of the debate remains. We are now talking about "incapacitation." We were talking about "rehabilitation" 20 years ago. Incapacitation, I put it to you, is the flip side of those schemes for rehabilitation that were said to provide the rationale for the indeterminate sentence. Lately, I have heard from some of the people in this audience that we are about to get the indeterminate sentence back, in California anyway, in full measure. This may serve to suggest the little distance we have moved.

Still, there is an arguably new note in the discussion. First consider the language we are using, the discourse in which we are engaged, the ideas we are playing with here; not just this panel, but the previous panel and the panel before that and the one to follow. We are focusing on groups and not on individuals. Terms like "cohort" are marching among us. Furthermore, we are focusing on the stable characteristics of the members of such groups. Peter Greenwood told us that the people in the models he uses are assumed to commit crimes at a

Sheldon Messinger

"We are beginning to think about life in general and the criminal justice system in particular as a place where we calculate risk and take action on the basis of that calculation without worrying much or even thinking much about what's happening to the people involved."

certain average rate. What is done under an incapacitation model is aimed at affecting that assumed average rate. The group, and not the individuals composing it, is the target.

Second, the language we are using expresses a concern to predict future risk. It is less concerned to probe the sources of the risk.

Third, the sanctions are shaped to that risk. They are not any more conceived or at least not primarily conceived as a sign that a moral trespass has taken place.

Finally, the language of our plans calls for moving culprits to a safe place – a place where *we* will be safe, whether *they* are or not, and not to a site in which we even conceive any more than any productive change in them might take place.

Now, whether one is for or against all this, I will leave for further discussion and another time. I want to suggest that we are beginning to use in the criminal justice area a kind of language that has been used in other areas for some time. The tables we are looking at remind me most of all of insurance tables, actuarial tables. We are beginning to think about life in general and the criminal justice system in particular as a place where we calculate risk and take action on the basis of that calculation without worrying much or even thinking much about what's happening to the people involved.

Peter and I have been on podiums like this more than once. Today there was a feature in his presentation that I have never heard before, namely, the notion that we should move into prevention and that one of the reasons we should do this is because false positives might be less troublesome in such a context. I agree that we might be less conscious of and, thus, bothered by false positives in a preventive regime. (Indeed, the notion of "false positives" becomes more obscure in a preventative context.) I simply want to point out that the idea of moving into prevention, which is also part of what Mr. Abrams talked about, fits with the notion of the actuarial table and thinking in insurance terms. It's part of that kind of rationale. The kind of prevention talk Peter gave us in very short compass, continued within the same metaphor, if it is a metaphor, talking about groups who are particularly subject to risk and the programs that we could apply to whole groups. Maybe that is bad; maybe that is good. I don't know. As I say, that's for another time. I just want to raise the point.

A last point. Insofar as we are engaged currently in selective incapacitative policies, I don't think they are working quite as advertised to focus on "dangerous risks." I don't think we are doing much selection; and, indeed, my impression is that, contrary to the implication that might be taken from one of the tables presented earlier, the chances are increasing that less serious offenders will be imprisoned. This is not inconsistent with, for the time being and perhaps for a long time, disproportionately imprisoning persons with more prior offenses or those convicted of more serious crimes because it's also the case, based on such thin data as I have yet seen, since sentencing policy in California has become much more severe, in particular since around the mid-70s, the largest *increases* in the probability of going to prison are associated with being a minor offender, using whatever criteria one wants to use. The largest rates of increase, rates of growth in imprisonment rates, at least in California (but I think it's all over the country) are occurring to people who have not committed offenses before, have not been in prison before, have committed lesser offenses rather than greater offenses. If that's selective incapacitation, it's working in the wrong direction.

WILSON: Thank you.

As I said earlier, Jackie Cohen is ill and cannot join us. It is a pity, since she has devoted a great deal of her career to a close examination of the issues of incapacitation. I would commend to you in particular an essay[6] she wrote in a recent issue of *Crime and Justice* edited by Norval Morris and Michael Tonry, in which she summarizes intellectual debate on the subject. A brief summary appears in a National Institute of Justice bulletin.[7]

Speaking, possibly for her, but certainly from her notes, is Al Blumstein.

BLUMSTEIN: Thank you.

Jackie had prepared some notes and some materials to get at the question of how much of the crime rate is attributable to collective incapacitation. I think it's important to highlight the distinction between selective incapacitation focused on by Shelly Messinger and Professor Abrams, which is trying to find the most appropriate person, as opposed to whatever policy prevails, and simply taking the existing characteristics of people in prison as a means of getting an estimate. She ran through some analyses; and what I would like to do is present some of those to you briefly.

[6]Cohen, Jacqueline (1983a) *Incapacitation as a strategy for crime control: possibilities and pitfalls.* In M. Tonry and N. Morris (eds.) *Crime and Justice: an Annual Review of Research,* Vol. 5. Chicago: The University of Chicago Press.

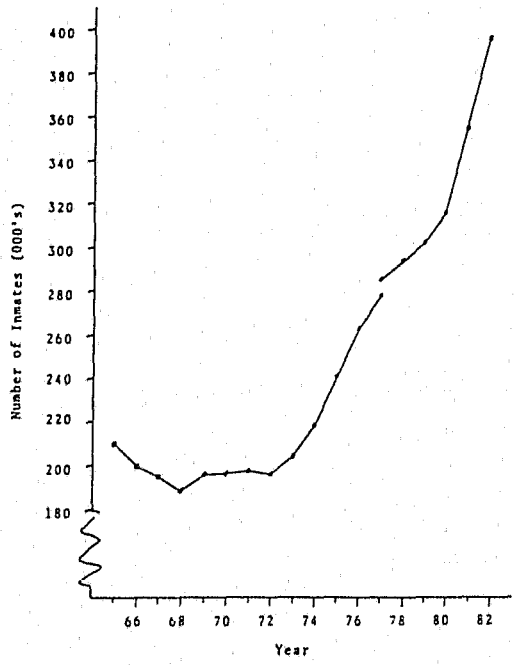
[7]Cohen, Jacqueline (1983b) *Incapacitating Criminals: Recent Research Findings.* National Institute of Justice, Research in Brief, December 1983. Washington, D.C.: U.S. Department of Justice.

I might point out that these analyses are based on an attempt to get an estimate of the effects of incapacitation in United States prisons on crime rate in the United States. It's related somewhat to the materials I have talked about this morning.

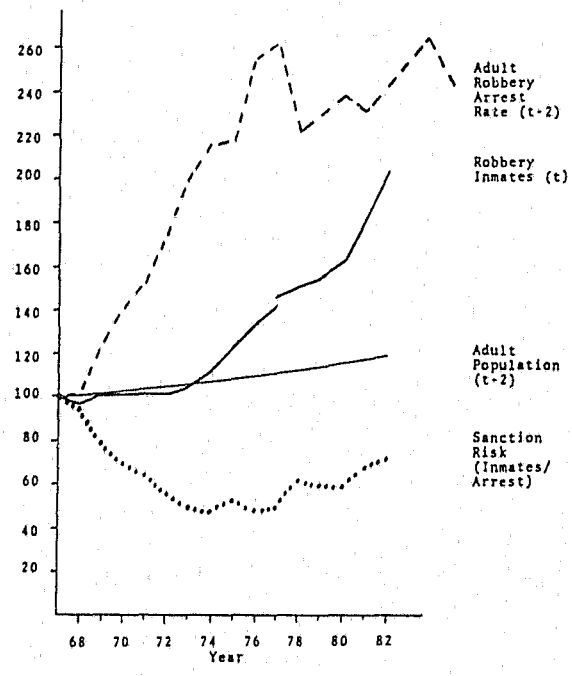
This, of course, is the familiar picture of number of United States inmates by year, highlighting the growth in that number. She tried to get an estimate of the factors contributing to the change in inmates, among them change in the size of the population over this period we were looking at (1965 to 1983); the increase in the adult arrest rate; an estimate of the changes in sanction risk based on changes in the arrest rate and incarceration rates resulting in a period when sanction risk went down until the early 70s and then started turning up. Up until 1975, the increase in arrest rates is offset by a decline in sanction risk resulting in little change in the number of inmates. After 1975, the arrest rate levels out and the rise in inmates is due primarily to an increase in sanction risk.

We have here a graph that tries to depict what the reported crime rate is for burglary and the prevented crime rate associated with the number of people in prison who might have been committing burglary if they were out on the street. Now that, obviously, is a calculation that requires a considerable number of assumptions, measurement of certain key variables, and taking into account some of the important factors. The factors that are important, first, the fraction of crimes committed that are reported to the police because UCR measures crimes reported to the police, so one has to do that discounting; a recognition and taking account of the fact that there will be multiple offenders per crime; a recognition that not all offenders in prison, if they were on the street, would be committing crimes. This involves a recognition that many of the people in prison, if they were let out, would have terminated their criminal careers and would no longer be committing burglaries; and a recognition that many of those in prison would not be committing burglaries. Only a portion of all inmates actually do burglaries.

Finally, a key variable, the one that Peter mentioned: how many crimes per year people would be committing if they were out on the street. That's a key one. There is a variety of attempts to measure that, designated by lambda. Peter used a variety of numbers. The one Jackie used in her calculation for burglary was 14; that is, each inmate who would be active in burglary on the street would be contributing about 14 burglaries per year. This is then the percent of increment to burglary from the inmates, which, in the initial years, represented a decrease, because there



INMATE POPULATION IN THE U.S.



Components of Inmate Change 1975 to 1982:

Pop'n	Arrest Rate	Arrests	Sanction Risk	Inmates
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

FACTORS CONTRIBUTING TO CHANGE IN ROBBERY INMATES IN U.S. (1967 = 100)

was a reduction in the number of inmates during the 60s, then it started increasing. The numbers are running in the neighborhood of 10 to 20 percent increase in crimes by inmates, somewhat lower than the numbers Peter reported; in part, I think, because some of the factors Jackie took into account didn't enter into the models Peter reported on, including reporting rate to the police, multiple offenders per crime, the fraction of inmates who actually participate in crime, and the career termination.

Jackie ran through some similar assessments for robbery. Again, here was the reported UCR crime rate and a calculation of the increment to robbery rates if the people in prison were on the street and taking appropriate discounting for those who would or would not have been committing robbery. The value of lambda during that period is about five crimes a year, about five robberies a year by active robbers, also taking account of the multiple offenders, the percent who do the crime, the percent who would still be active, recognizing that robbery careers might be terminating.

The final set of calculations is related to the picture I showed earlier, which was the increment to crime rates associated with the demographic contribution. You may remember, in the discussions this morning, we showed demography making positive contributions to crime rates, keeping on growing then turning around, still positive, cutting through, and becoming negative in about 1976 or 1977, and coming down.

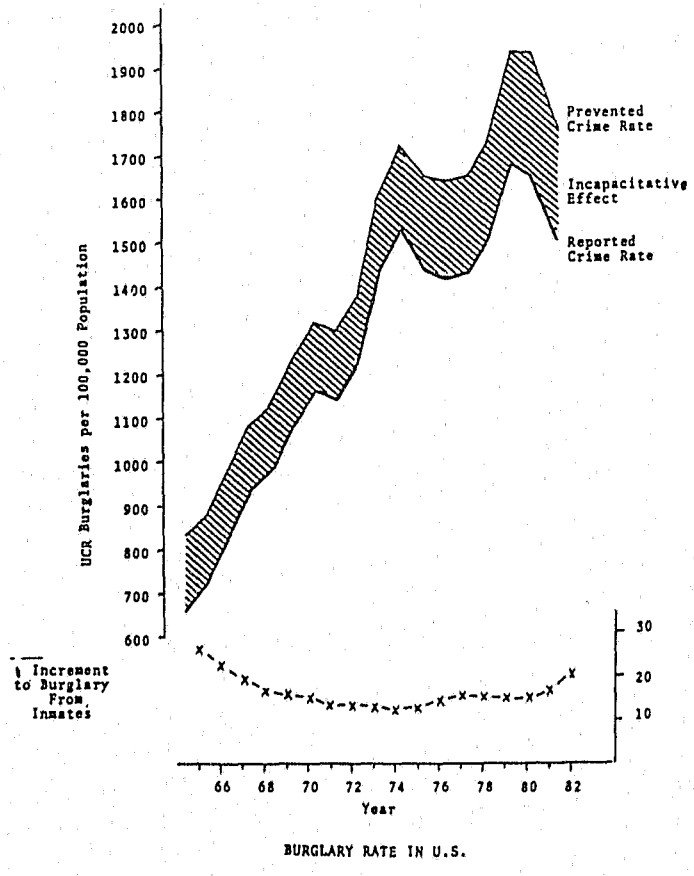
This, then, is the increment associated with the incapacitation effect; about 25 to 30 percent of the age mix contribution to burglary rates. By "demographic," I mean the contribution of changing age compositions to crime rates. All of these estimates are based on numbers and assumptions, most of which derived from a variety of available data, on duration of career, length of time served, percent active. Much of the data were derived from research we have done at Carnegie-Mellon and Rand has done in trying to get estimates of the rates at which offenders commit crimes while they are on the street. For robbery, the incapacitative effect is about 40 percent of the demographic contribution.

WILSON: I would like to call on Dick Berk, who is a Professor of Sociology at the University of California at Santa Barbara and the co-author of a very important book, *Money, Work and Crime.*[8]

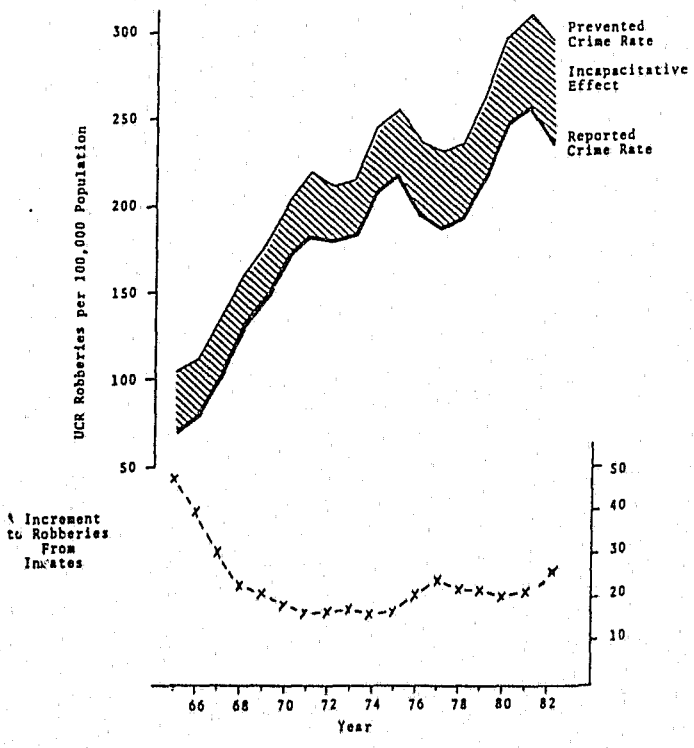
BERK: With Peter's talk, we've observed a substantial change in the content of the conference.

If you recall, we began with the opening panel asking the question: has crime gone down? If so, how much? A basically descriptive issue, for which the

[8]Peter Rossi, Richard Berk, Kenneth Lemhan. *Money, Work and Crime.* New York: Academic Press, 1980.



BURGLARY RATE IN U.S.



ROBBERY RATE IN U.S.

data, while perhaps not great, still allow us to draw some conclusions worth considering.

We then moved more toward an explanatory mode in the second panel and became concerned about the impact of changing population mixes and how these affect crime. Again, the data were flawed, but I think the results in many ways were quite compelling.

With this panel, however, we have shifted two gears. First, we have openly and explicitly taken on policy questions, because while age is not a manipulable policy-relevant variable, the kinds of variables implied by Peter's material clearly are, so we are now head-on into policy.

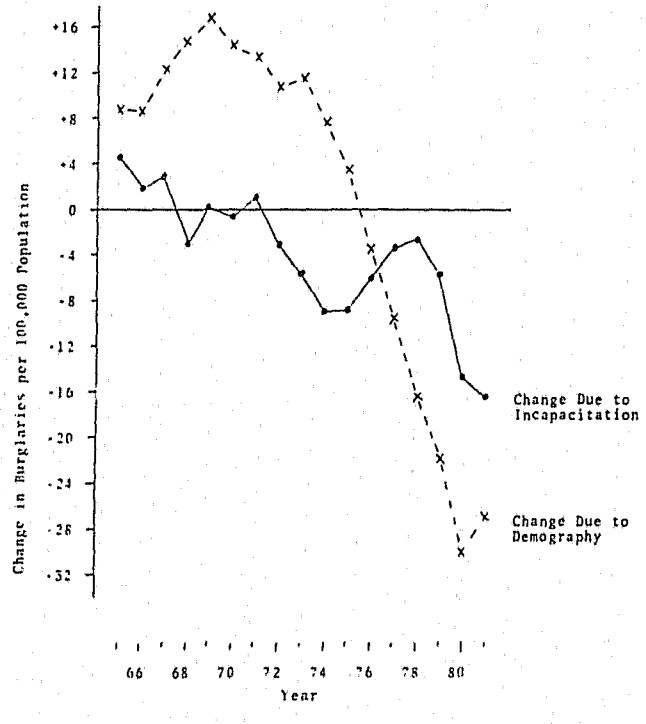
Second, we have taken on the question of crime and its prevention in a very much more specific way. Al, at the end of his talk, gave us a cafeteria list of explanations, but quite prudently said, "We don't know too much about these," and stopped. Peter, of course, has gone quite a bit further and begun to give us a sense of the factors he thinks are at least predictive. In other words, he is demanding much more precision in his analyses, and that makes sense. If we are going to make policy, we should be precise; we don't want to make mistakes. The consequence of this, however, is that we are placing an extraordinarily heavy demand on the ability of social scientists, criminologists, and statisticians to deliver.

Let me try to review for you briefly what was implicit in Peter's material. First, he was asking questions about the marginal impact of different kinds of sentencing schemes. In the earlier panels, the question was more generally: does the crime rate go up or down as a function, let's say, of age?

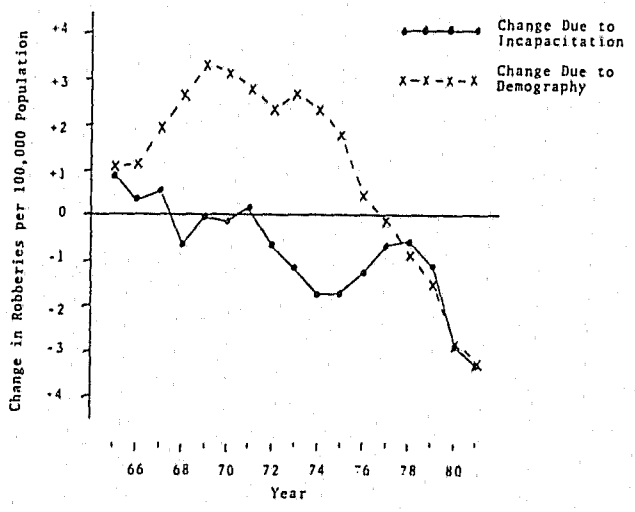
Peter was asking questions about sentence length, who we sentence, and the like. Compared to what we have now, how would it be different if we added or subtracted something from the current policy? That's a marginal change and much more difficult to assess.

Second, Peter also said (and other panelists, at least, acknowledged) that we were now getting into issues of cost effectiveness. Lord knows how we get at that. Any of you who have considered how we measure the existence of crime, let alone its consequences, surely should be uneasy about making policy when cost effectiveness becomes the rubric. Yet, I think it's clear that that's the direction Peter was headed.

A third demanding aspect is that we are no longer talking in general terms about whether the crime rate has gone up or down, broadly speaking; or for men versus women; or for blacks versus whites. We are now singling out very specific subpopulations very loosely defined, which we have to sort out from others somehow. What is required, again, is a much more demanding sort of analysis.



CHANGE IN ANNUAL BURGLARY RATE [illegible]
DEMOGRAPHY AND INCAPACITATION [illegible]



CHANGE IN ANNUAL ROBBERY RATE DUE TO DEMOGRAPHY AND INCAPACITATION (INMATES)

Richard Berk

"If we are going to really develop credible evidence on the impact of policy changes (like selective incapacitation), we have to try them in scientifically-controlled ways that allow us to collect the best information possible."

Finally, we are not just asking a question in which one point in time is compared to another; we are considering specifically the dynamics. Now, in Al's talk, we got some feel for this; but in Peter's, dynamics become absolutely essential. For example, we don't just want to know whether or not selective incapacitation reduces crime, but how fast?

In this transition that has just occurred, we have asked a lot more of the data. Unfortunately, I don't think the data are up to this level of precision. Now, everybody on this panel who has spoken before will acknowledge that. We social scientists play this kind of game. We stand up and tell you all the reasons we are cautious and then proceed to tell you what we wanted to tell you anyway. Somehow, if we confess our sins in advance, all is forgiven.

I think, for the members of the audience who are not familiar with this game, you should take seriously the caveats which were presented, because each and every one of them (and many that have not been acknowledged) are to be taken seriously. When Peter says, "This is a cautiously-presented model; there are some assumptions about the data that I am not sure of." — believe him!

To try to be a little more specific, let me point out a few caveats that I think you should keep in mind. One of the clear problems with the discussions so far is that there are sometimes only 15 or 20 data points in time. On that, we try to lay on 30 or more explanations. It is a well-known, well-proven fact in statistics that you can't have more explanations (explanatory variables) than you have data; and yet we do this routinely, with a caveat in advance saying that we don't have enough degrees of freedom. Nevertheless, we proceed.

To take another instance, everybody has acknowledged the presence of variables we should have measured, but didn't. These are clearly non-trivial. Please don't forget about that. They could substantially change the story. Also, everybody is acknowledging the data are suspect; there are serious questions about the quality of the measurement and the like. Finally, people often start out a talk by saying, "Here is a model." A model is rather like a sometimes-true theory. It's true if all the assumptions are met. The assumptions may or may not be realistic but, first of all, you mustn't lose sight of the fact they are assumptions.

For example, Shelly has already called attention to this constant offense rate, a perfectly good starting assumption. I am not suggesting there has been any attempt to mislead, but we mustn't lose sight of this assumption.

With these kinds of practical difficulties and the demands that are increasingly being placed on the data, we are, I think, engaged in a sort of creative alchemy, and it makes me very uneasy. I could stop here, except that I have some suggestions about how we might do it better.

There is some hope. The kinds of materials and the kind of cooperation the California Bureau of Criminal Statistics is providing is a step in the right direction.

In other words, we must have increasing access to materials, to data, to records, and to subject populations in order to collect the kinds of information that make sense. I fear, nevertheless, that we will meet here in 1993 asking about the *increasing* crime rate; and I suspect we are going to be worrying about the same kinds of practical difficulties. Still, it's a step in the right direction.

What I want to do is push the cooperative potential here a bit farther. I want to talk very briefly about something called social experiments. Jim has already heard this from me. I think everybody on the panel has heard me do this before. We know each other pretty well. Perhaps most of you haven't, though.

The point is pretty simple. If we are going to really develop credible evidence on the impact of policy changes (like selective incapacitation), we have to try them in scientifically-controlled ways that allow us to collect the best information possible. A randomized experiment, in particular, is a wonderfully powerful device. It's not perfect. I am not suggesting that one randomized experiment answers all questions, but it will add a significant increment to our ability to answer policy questions in a meaningful way.

Let me give you a few examples of some experiments that have been done recently to provide a sense of what is possible and useful. One experiment funded by the National Institute of Justice was recently completed in Minneapolis. Many of you have heard about it.

The problem was, very simply, that police officers around the country didn't really know quite what to do with spousal violence. Should they arrest the offender? Should they counsel the offender? Should they order the offender out of the house? In these kinds of ambiguous policy situations, the obvious thing to do is to try different strategies, and determine what works best.

Under the auspices of the Police Foundation and through the efforts of Larry Sherman, a criminologist from the Police Foundation and the University of Maryland, the Minneapolis Police Department participated in a study in which, at random (essentially, but a coin flip) police either arrested an offender in a misdemeanor wife battery situation; ordered the offender out of the house, or tried to mediate the dispute. Basically, it was like a clinical trial in a medical setting with random assignment.

I won't bother you with all the details, but the message was pretty clear. At least in this setting, arrest was an effective deterrent. It did reduce the number of new violent incidents in these households.

That's not the end of the story. The National Institute of Justice (NIJ) is planning more experiments of this kind. We don't know if arrest is going to work as well in other cities with other kinds of police officers, but the experimental results were the most compelling evidence brought to bear in this debate to date.

Another example is a study, also funded by NIJ, in Detroit, in which, when shoplifters were caught in a department store, a random half were arrested. In other words, after the house security personnel caught them, shoplifters were taken to the manager's office and a random half were arrested. The idea was to see whether arrest deters.

We're also planning an experiment in Santa Barbara, taking the victim's point of view. We are looking at shelters for battered women, and working out an arrangement with the shelter staff so that women who call will be admitted on a random basis. I should stress that the random admission takes account of risks, so that very high-risk women who call are admitted with a probability of .9; those at low risk are admitted with a probability of .10. We are taking risk into account. There are a lot of details, but the point is experiments like this can be done. They're certainly done in the medical field all the time.

My basic point is, if we are going to learn something useful about the kinds of issues that have been raised in Peter's talk, we need an experimental approach.

Let me give you an example in the last minute or so of the kind of experiment one might try. A question that has come up is how long to put somebody in prison. Across the country, and certainly several times over in California, the prisons are terribly crowded. A number of prisons are under court order which, in effect, releases people willy-nilly when the prison becomes so crowded that court orders are violated.

It seems to me you could release prisoners at random in the following way: suppose you consider all inmates within one year of the end of their sentence. You are going to release a bunch of them anyway, because the judge says you have to. Take a random half and release them. Follow both, those who are released early and those who are released as originally planned, through official records and a variety of other means, and find out whether an additional six months or so of prison affects the rate at which new crimes are committed.

One can imagine finding very little marginal effect for the last six months of a prison term, and then upping the ante a bit and taking everybody, let's say, within two years of the end of their sentence, and so forth.

So, in principle, you could find out, for the different kinds of offenders, what the optimal sentence might be. Now, that isn't going to answer all questions, but

I think it pushes a kind of experimental philosophy that makes a lot of sense. If you want to find out whether something works, you have to reach in and move it around a little bit.

Currently, we almost never do that. We take these large data sets that are inadequate for our purposes and try to tell a story from them. I mean, with the best of intentions, but, nevertheless, with disappointing results.

One of the reasons for bringing this up before this audience is that social experiments require more than the active participation of social scientists and statisticians. Obviously, there is a host of practical, political, and legal issues that has to be surmounted before experimental studies can get off the ground. They require a commitment from people like you and from society at large – a commitment to experiment with social policy; to do something about what Don Campbell has called the experimenting society. It's not just a question of us social scientists. These kinds of studies can only be done with the cooperation of people like you.

If we are permitted to go ahead with experimental studies, I think we could meet back here 10 years from now and have some answers to questions which right now have no answers at all.

WILSON: Thank you, Dick.

Peter, would you like to take a few minutes and comment on the comments?

GREENWOOD: I would just like to make a couple. One, you may notice from the tone of the commentary (and it's not one I am not familiar with from prior engagements), nobody likes the notion of incapacitation as a basis for sentencing; but the alternatives are never made very explicit. I mean, nobody really likes it, but what else do you want to do? Norm Abrams at least proposed one. He wants the judge to make the predictions of risk, based on his intuition or whatever, rather than some actuarial basis. It introduces a lot of variability into the sentencing. There'll be inconsistency, based on the judge's own knowledge and intuition. It would be interesting to try and compare those. A lot of the move toward determinacy was meant to get away from that.

I think there is pretty good literature on these kinds of experiments Dick Berk talks about. One can read where that has been done, where there have been marginal rollbacks in release. In fact, many states are doing it now and people are evaluating it. NCCD right now is evaluating the early release in Illinois. It turns out, I believe, that reports will show that the releases haven't been selective. We are not following any kind of selective incapacitation model where everybody gets the same kind of treatment when it comes to release. I think the application of any kind of prediction scale shows that it has a fairly good basis of discrimination between high-risk and low-risk groups.

The fundamental problem in these dilemmas between the researchers and the policy makers is to know what people are supposed to go out and do tomorrow. Most of the researchers would like to say: don't listen to us; go out and do whatever it is you want to do. We really don't know what we are talking about, so you have to decide what it is you are going to do.

Somehow, you have to translate what is said in sessions like this to more practical rules. The obvious one, when you are talking about releasing people from prison, is, if you identify groups based on this actuarial data and you have some people going out that recidivate at 80 percent and other people going out that recidivate at 20 percent, you can obviously change the crime rate by holding the people who recidivate in the 80 percent rate – no matter how much you do. Any marginal increase in their term cuts crimes when you substitute for the group who does it less. You don't have to make great big jumps and now people's terms go from two years to 10 years; you can make it small. I think the system does now make those kinds of adjustments. It does listen to these conversations, but people aren't very explicit about it. The kind of dialogue we get here would be very difficult for somebody who is doing it explicitly.

WILSON: Thank you.

We have a chance for ample public comment. Let me call first on David Greenberg.

AUDIENCE: David Greenberg. As I was listening to the presentation of the Greenwood model, I had trouble trying to reconcile the results with the differences in the temporal pattern of changes in crime rate on the one hand and changes in the prison population on the other.

Looking at the figures we have been given, the prison population in the United States has been growing steadily since 1974, the first year on that figure (and I think probably a few years before that), yet crime was going up steadily during that period, and only in the last couple of years has turned down. The prison population was growing steadily during that time.

Here in California, the prison population began growing in 1977; but again, it's only in the last couple of years that the crime rate began turning down. You would think, if incapacitation was the major thing governing changes in the crime rate, there would have been a closer parallel in the timing or in the shapes of these two curves.

Now, I think bringing in demographics as a second consideration may help to reconcile some of these oddities, although it is unclear to me, ultimately, how much of the decrease in crime rate in the last couple of years can be explained, taking into account demographics as well as incapacitation. Al, can you answer that?

BLUMSTEIN: Since the changes vary considerably, if one attributes something in the order of 15 to 25 percent to demographics and the incapacitation effect in the United States in recent years was roughly comparable , adding another 15 to 25 percent, then together they may indeed account for 50 percent of the turndown.

AUDIENCE: David Greenberg. This may be an area where state variations could be especially instructive, because there has been some change between states in prison population changes.

BLUMSTEIN: Absolutely! It's important to point out that the larger the fraction of criminals committing crime out there, the less impact is associated with the incapacitative effect, so that in a state with a very small criminal/crime rate, a significant fraction of their offenders are in prison and incapacitation is a large fraction of the total effect.

WILSON: Dan Glaser.

AUDIENCE: Daniel Glaser. One thing I found missing in the Rand career criminal studies since the very first one was the probability of rearrest and reconfinement; that is, the length of time out. The more active criminals, presumably, are committing crimes at a higher rate.

The very first study divided the cases into what they called intermittent and intensive criminals, and the intensives had about five more crimes per arrest. With more crimes than the low-rate offenders, they are going to be caught sooner.

I think most offenders who pursue crime intensively have a high probability of being caught. If you take even .99[9] and start raising it to the 10th power for 10 offenses, assuming they are all independent, after a couple of hundred crimes you are almost certain to have been arrested.

That doesn't seem to enter into any of your discussion, the less time out in the street. You treat them all as though they are out a year when you talk about their lambda per year.

GREENWOOD: Dan, let me respond. The models don't treat them that way. In fact, sure, if you do more crime, you have a higher probability of being arrested at any one time.

One of the things we are trying to wrestle with now and one of the things that makes it very difficult to validate our work going from self-report to arrests, is there is not a whole lot of correlation (even in this sample) between the crimes people said they did and the percentage of times they were arrested. When you look at that earlier study that goes into qualitatively why that may be so, we talked about intermittents and intensive offenders having a very different probability of arrest.

When you think about crimes and you think about the people you interview in prison and who the police arrest, one of the things that masquerades in crimes like robbery, assault, or burglary, are kind of reckless, spur-of-the-moment crimes, where people are sitting around drinking and they have a gun or they don't have a gun and they have a car and they go out to do something. They have a very high probability of getting caught because they are intoxicated. You meet a lot of people in prison like that. Then there are other kinds of crimes by people making their living or part of their living who are doing things systematically with license plates changed, disguises, and everything else; they have a very low probability.

The point is, right now the way we look at records disguises that. A burglary is a burglary is a burglary when you look at a rap sheet. The record of the guy who is a fairly systematic offender doesn't reflect much of that. That's one of the things we are trying to work on now. It happens that the data we collected in the past aren't very good for doing that, and we have to go back and look seriously at what those records really are, what they say about the context of the offense.

WILSON: Barry Krisberg.

AUDIENCE: Barry Krisberg. I want to question Pete on this: Larry Sherman's research on the accuracy of arrest records, it seems to me, has to be factored into your analysis. As I understand Sherman's conclusions, there are grave questions about the accuracy of arresting history. He has even gone so far as to suggest that, in many jurisdictions, arrests on rap sheets are

[9] Probability of non-arrest.

highly idiosyncratic based on jurisdictions, leading to, it seems to me, grave conclusions about predictions or picking out high-rate offenders based on previous arrests with the non-official state rap sheet.

WILSON: Peter.

GREENWOOD: I am not familiar with that particular research. For instance, in work we have done in California, those rap sheets are used to show priors in court. We have interviewed people based on the rap sheets. Sure, there are errors, but we find fairly good correlation. In fact, we checked it in the inmate survey we did by asking about arrests and convictions that ought to be there, and did a careful official record check/self-report comparison and found fairly good records.

Al Blumstein has cited Hindelang's work that looks for racial discrepancies between self-reports and arrests, and it doesn't seem to be there, so yes, when you compare jurisdictions in a state, you may find big differences in the rate at which the police department sends the records in for the cases they choose not to pursue and release at the station house. You may find systematic differences, but I don't think that's a major problem across the offender groups.

WILSON: Al.

BLUMSTEIN: I would just like to comment on that. One of the favorite sports in criminology seems to be data bashing. I think it's important to pull all that data bashing into some reasonable context.

For example, in Larry Sherman's study, as I infer from the report, they sent an auditor to small cities, big cities, and medium-sized cities to compare what the police classified as an event compared to the classification called for by the Uniform Crime Reports.

Now, it's clear that people would like things to be classified uniformly, but I am confident, even in the City of New York, that things are classified differently in Staten Island than in Manhattan Island. I think there is considerable variation across jurisdictions in that classification.

Furthermore, the statistics reported there talked about 60 percent discrepancy. In some cases, that 60 percent discrepancy occurred where one person classified five things as a robbery and someone else classified three things as a robbery. That represents very small numbers.

I think one can be much more confident that statistics are more consistent longitudinally within a jurisdiction than they will be as one looks across jurisdictions. I think, in any analysis in the kind of data we are talking about, the data are going to be weak, limited; but the crucial issue is to what extent the limitations in the data distort or destroy the results that come out of it.

The data bashing must be put in the context of the use that is going to be made of the data. In many cases, it is devastating; in many other cases, even though the data are flawed, they can be very helpful and very useful, even though they may not represent all the information or record it totally accurately. Obviously, that ought to get better, but even the flawed data are often terribly useful because the results aren't sensitive to the flaws as long as the flaws are consistent over time. Usually, they are made over time. That context has to be maintained.

WILSON: I have several people on this side.

Chief Bill Kolender.

AUDIENCE: Bill Kolender. I am not sure if the statistics are relevant, but it seems to me that they are. Your incarceration statistics are impressive, but I think we are leaving something out.

If, in a particular city, 10,000 people are arrested for felonies and 9,000 of those felonies are dropped without charges being filed, you have 1,000 charges. First of all, why are the people released without being charged? In our community, we found a very low percentage of those arrested are actually charged. The reasons for their not being charged really haven't a lot to do with guilt or innocence.

WILSON: Peter.

GREENWOOD: I think the numbers I presented on conviction rates were California averages. They were for felony arrests and they were based on felony arrests.

If that is really happening, if 90 percent of the arrests are being dropped without charging, they are also not being reported to the Bureau of Criminal Statistics. Nobody knows that happened, but that's not typical in my experience; it may be for particular kinds of offenses.

AUDIENCE: John Irwin. Peter, did you do anything to check on the reliability of your self-reports? Because both aspects of your model, the incapacitation recommendations and your projections of how much crime is being reduced, depend upon that.

It's been my experience that kind of self-reporting is very unreliable; not necessarily dishonest, but subject to the kind of distortions in which we all engage. Looking back over our past months, we have very poor memories about exactly what we did and we base our statements about what we did sometimes

on very unusual events. I know, in the case of drug addicts with whom I have had a lot of research association, you get predictions about how much drugs they use based on one week in a year. One week they used a lot of drugs and they say, "I have a $500-a-week habit," or whatever.

Moreover, in the other direction, it seems to me there are a lot of people who would take your interview (I don't know exactly under what conditions it was delivered) but would purposely not tell you how much crime they were involved in. I think there is a lot of room there for distortions. Did you do anything to check on those?

GREENWOOD: Of course, in any kind of survey there is a lot of room for distortion. There are ways to check on that. With record checks, for instance, you ask people about arrests and you can check on arrests. You ask them the same kinds of questions about how many burglaries they did in a couple of different ways, and try and check on those. There's test/retest. All of those methods were tried and analyzed.

The bottom line is there's a lot of noise in the data; there's a lot of variability. Where you've asked for estimates and you compute them different ways, there is a lot of noise, a lot of variation in what's going on.

The other questions are: is there systematic bias? Is there reason to believe older offenders reported differently than younger offenders; blacks than whites? The evidence is that wasn't true. Going back to the statement Al made, you check the data against the uses made of it. Among the kinds of groups where we tried to make distinctions, there didn't seem to be bias.

The bottom line is: do we have some clear number, some clear, accurate, low-variance estimate of how many crimes people are doing in the street? I would say no. We have some very broad estimates. Because of the shape of the distribution, a long tail, it's a very noisy kind of a thing to work with. I think we have come a long way from arguments about whether or not offenders do one or two crimes on the street or whether they do 10 or 20 crimes on the street in a year.

WILSON: John Van de Kamp.

JOHN VAN DE KAMP: First, a question to Sheldon Messinger for purposes of clarification.

You indicated that with increased incapacitation, chances are increasing that less serious offenders are the recipients of increased sentences to jails and state prison.

As a matter of fact, if you look back since 1975, you will see that career criminal programs – here and in many other states – have sent an increasing number of serious defendants away for longer periods of time. Clearly, these programs contribute to increased incapacitation; by and large we have not targeted lesser offenders. In California, we have a "Rob a home; go to jail" law. As a result, we have more burglars going to state prison than ever before. Are these the minor offenders to which you are referring? That's the first question.

While you are thinking about that, let me add a comment on another issue since you have mentioned the deterrence of incapacitation. Is anybody interested in discussing general deterrence which might emerge from incapacitation? Or, in short, can incapacitation drive home lessons and values regarding criminal behavior and drive people in other directions?

MESSINGER: I will try to answer the question, but let me say that I wouldn't have used the word "beneficiary" to refer to those now given jail or prison terms who might not have received them earlier. However that may be, what I meant was this: you can measure changes in rates of imprisonment a number of ways. Let me talk in terms of the proportions of people convicted of a felony who are sent to prison. That proportion has been going up in California since about 1972. If you compare the period before and after the determinate sentence law (that is, before and after 1977), you find that, using whatever index you want, the increase, proportionately, has been greater for those at the low end of the index. For example, you can use numbers of prior incarcerations, zero, one, two, or current status: not under the jurisdiction of the criminal justice system, on probation, on parole. Or you can order the crimes in terms of seriousness in some way: robbery, burglary, theft, etc. You then ask which subgroups have shown the greatest increases in the proportion being sent to prison. You will find consistently that the bottom end will show the greatest increases; that is, the greatest increase will be shown in burglars as compared to robbers, and thieves as compared to burglars, or people with no priors compared to one prior, and so on.

I did not mean to imply that those people were "minor" offenders in the sense that we shouldn't be concerned with them. I did mean to suggest that using the conventional measures of seriousness, the greatest increases in imprisonment have been among those segments of the imprisonable population that show the least serious characteristics.

One further comment: the various prosecutorial programs you mentioned have made a very small dent in this picture, which, as you know, involve thousands of people. We are imprisoning something like 13,000 persons a year in California. Those prosecutorial programs aren't accounting for much.

WILSON: Peter.

GREENWOOD: I would like to respond to John's other question. If there is deterrence, are there other ways of doing it other than incarceration or incapacitation? Sure there are! There can be other sentences that can be punitive that don't necessarily involve locking people up. One of the reasons we use that, primarily, is because it's so damned easy to do. In a sense, it's easy to run a prison. It's not "easy" to run a prison, but it's less easy – or it's easier than running a community service program that involves setting up a bunch of jobs that people are going to have to do and making sure they get there running all those things. We fall back on the easiest thing first.

I think people are now starting to develop other ways of sentencing that are both punitive so they have a deterrent value and involve fairly strict supervision so they have some incapacitative effect. Also, they are invariably more difficult to run and involve more skill than simply turning the key, setting the alarm, and sitting in the gun tower making sure the guy doesn't walk away.

WILSON: Let me add to that last comment, as is the chairman's prerogative. There are other ways of providing deterrence. Peter has indicated them; let me be more specific: fines, community service, victim restitution, and others.

The difficulty with them is this: the experience in many states is that when fines are imposed, judges do not see that they are collected. When community service is required, the person walks away from raking the leaves in the park after day one. Nobody goes looking for him.

When intensive probation is used and somebody violates the terms of the probation, it is not followed by a jail sentence. That is perfectly understandable. Judges have been confronting an avalanche of cases, trying to move crowded court calendars. They see serious offenders, many, by anybody's standards, candidates for prison. It's very hard to follow up.

Finally, we do not now, in most jurisdictions, gather data on who is fined, whether they pay for their fines, who is given community service and whether they do it. If we can't count it, it doesn't count.

I am sorry, Professor Abrams. It's a point. You have to count it. The problem of running alternatives to prison as a mechanism for deterrence is a very real problem and it requires energizing the criminal justice system that, thus far, at least, being a busy system, has not shown itself predisposed to those things.

We will reconvene in 10 minutes.

CRIMECONFERENCE85: