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The dangers of Pyrrhic victories against mass incarceration

The term "mass incarceration" merits careful scrutiny. It is a dramatic term, spurring political and academic demands that the United States take account of, and seek to reverse, its decades-long commitment to increased imprisonment. The term is justifiably dramatic in two senses. First, the American use of incarceration is, comparatively, an international anomaly and embarrassment. Second, the magnitude of the secondary effects of incarceration in the United States has been so great as to constitute a structural change in our social, economic, and familial life.

But "mass incarceration" is also a *melo*dramatic term, implying some things about American criminal justice that are not entirely true or are flatly untrue. To some, the term may signify conspiratorial governmental control, with fascistic or Stalinist implications. While incarceration in the United States has indeed inflicted horrendous and disproportionate effects on the poor and on minority groups, these harms stem far more from an accumulation of misguided policies – and from negligence or reckless indifference toward these harms – than from any monolithic state strategy of political control. To others, the word *mass* conveys the sense of an epidemic, with the implication that it is a self-generating or self-reinforcing phenomenon that may run beyond our control. But as discussed below, recent events suggest that the incarceration rate is far more subject to control by very undramatic and mundane changes in policy than the imagery may suggest. Finally, *mass* suggests numbers that cannot bear any meaningful relationship to the legitimate goals of the criminal justice system. However, no particular measured incarceration rate is *inherently* unjustified. The question is whether some proportion of our incarceration is unnecessary or is not cost-beneficial. It surely is, but the degree of excess of disproportion is a complex matter to unravel, requiring us to consider the current social and economic context of criminal justice as it has evolved in recent decades, with a healthy respect for the force of path-dependence. Unfortunately, "unnecessary incarceration" or "inefficient incarceration" is not much of a motivating phrase for reform movements.

The evocative power of the term "mass incarceration" is both a virtue and a vice. In this essay, we deliberatively tilt slightly toward the vice side because we fear the unintended consequences of the vir-

tue side. Our key concern is the implication that if sheer mass is the main problem, then there is inherent value in reducing the size of the mass. In the abstract, having a smaller percentage of Americans in prison seems an undeniably good thing. But that abstract truth does not mean that short- or mid-term reduction is necessarily feasible or desirable per se.

The timing of the American Academy's project on The Challenge of Mass Incarceration in America provides an excellent occasion for considering the unintended consequences and hidden risks of reducing the mass, because, as it turns out, the growth curve of the mass has altered even in the very short period since the project was conceived.

As recently as three years ago, prison populations were still increasing on the incredibly steep curve of recent decades. In twenty years, the sum of state and federal prison populations increased from two hundred thousand to close to a million-and-a-half, and academics and other reformers decried the devastation this increase wrought on family and social relations, the labor market, public health, and even the democratic voting franchise. Efforts were made to raise public consciousness, and some states began to think about criminal justice in the terms of rational regulatory cost-benefit analysis – to which criminal justice had previously been immune. The public still wants to incapacitate violent offenders, especially sex offenders, but it has exhibited some softening of attitude toward those perceived as nonviolent drug offenders. As a result, the prison population curve has flattened, and in some states prison populations have been decreasing slightly. Some of the recent policy changes have been accompanied by a sensible new commitment to reentry and rehabilitation programs. Yet just as fiscal constraints were helping motivate a fresh look at prison populations, those constraints morphed into the drastic 2008 economic downturn, which aborted many of the new rehabilitation commitments.

California is the most notable example. After thirty years of steady increases in its prison population (sometimes by 20 percent in a single year), California reached an all-time high of 173,500 prisoners in 2006. The population started to decline in 2007 and has continued to drop, even while the general population of the state continues a slow and steady increase. The August 2009 prison census was the same as it was in 2005: about 166,500. That number is sure to decrease further in response to recent federal court orders mandating cuts in the state's thirty-three adult prisons to 137.5 percent of design capacity within two years. The cuts will reduce California's prison population by approximately forty thousand inmates.

These facts hardly suggest that victory over the social costs of mass incarceration is anywhere near. But they have induced hope and provided some indication of which political and economic developments might feasibly emerge to turn the imprisonment curve distinctly downward. The rise of the broad intellectual movement against mass incarceration coincided about a decade ago with some interesting developments in a few states. Most notably, Massachusetts and New York began reconsidering their Rockefeller-era drug laws, and very fruitful, below-the-radar political truces in the tough-on-crime demagoguery wars made partial repeal of these laws possible. These subtle and salutary political developments mixed some degree of fiscal concern with moral embarrassment over the social costs of mandatory sen-

tences. The developments were generally not *crisis-driven*, and because they were changes in crime definition or statutory sentencing, they became rooted in the larger criminal justice infrastructure of the state. Simultaneously, some states made remarkable progress in deploying sentencing commissions to apply cost-benefit rationality in sentencing and corrections. Some of the most promising progress was made in the South, such as in North Carolina, which saw the emergence of a once unimaginable bipartisan move toward cost-benefit rationality. Moreover, empirical studies of some of the commission guidelines systems suggest that they can significantly reduce racial and geographic inequities in sentencing across counties within a state.[1]

Whatever the synergy between intellectual movements and policy change, we have recently begun to see some lessening of the earlier political demagoguery around crime as well as greater respect for the worthiness of investment in rehabilitation and reentry. Polling suggests that the public is at least slightly less passionately in favor of prison and long sentences as the solution to the crime problem, especially because we now have less of a crime problem. Politicians do not want to credit the recent econometric studies suggesting that the post-1985 spike in incarceration probably accounts for no more than a quarter of the 1990s crime drop[2]; but it has been beneficial for the movement against mass incarceration that crime is currently a less salient public issue.

The implications of this slight alteration in the prison population curve are important, multiple, and subtle. For one, the alteration casts doubt on the view of mass incarceration as a force of nature in American life that either cannot be controlled or can be controlled only by revolutionary structural changes wrought in response to a sense of mass exigency. In this regard, an important recent paper reminds us that just a few years ago, the state of California, under its most famous conservative governor, Ronald Reagan, was motivated and able to change its sentencing and correctional laws so as to reduce its prison population by as much as a third.[3] On the other hand, the recent flattening of prison populations has so far been short-term and slight. While flattening of the curve reinforces the oft-forgotten idea that America is capable of reducing its sentencing requirements and imprisonment rates, we also must remember the problem of path-dependence. Whatever caused our prison population to reach such remarkable heights, the absolute size of the reduction now needed to mimic the percentages of earlier reductions – reductions achieved off a much smaller base – may be institutionally and politically infeasible. Even if dramatic reductions can occur, they may be illusory if the policy changes that prompt them are superficial in ways that might guarantee a new cycle of prison increases in the future. We believe there is a grave risk of backfire if advocates attempt to reduce mass incarceration simply for the sake of reduction rather than coupling advocacy with a full consideration of the causes of recidivism. Indeed, even if small increases in crime by released prisoners, parolees, or probationers diverted from prison are not statistically meaningful, they may reignite the political demagoguery that contributed to mass incarceration in the first place.

While the time may be ripe for modest optimism, the emphasis should be on modesty. The inertial and self-reinforcing effects of the prison boom may be so strong that even significant changes in public and political opinion will not permit dramatic unraveling of the last

few decades in the next one or two. But these effects also caution us to consider both the good and bad ways (measured in the long term) that victory can be achieved in the nearer term.

Reformers attacking mass incarceration tend to decry the much-noted turn in American criminal justice from an older rehabilitation model toward a model based on harsh retribution and incapacitation. They also tend to valorize so-called alternative sanctions. More recently, they have (justifiably) promoted the notion of risk-needs assessment as a key tool of rational cost-benefit analysis in criminal justice. But the key historical lesson is the complex and sometimes contradictory relation among these principles and goals – a lesson that is lost when these principles and goals are superficially and sentimentally blurred together. If rehabilitation is a nobler goal for incarceration than retribution, it still requires some sort of incarceration and does not by itself have any short- or mid-term effect of reducing prison populations. If rehabilitation is carried out through intermediate sanctions, then it is not necessarily at odds with prison reduction if it is done the right way. But the recent aborted national experiment in intermediate sanctions proves that it is puzzlingly easy to implement alternative sanctions in the wrong way.

The original – and continuing – advocates of alternative sanctions have compiled a body of information in a new and refined "what works" literature. It was always the intent of these social scientists and advocates that if prisoners were released, the release would be coupled with community-based plans to help them in their reintegration. Those plans would make use of actuarial risk assessments to identify those who should be targeted; a combination of surveillance and work/education; incentives to keep people in the program; and swift, certain punishment for those who violate probation and parole or who continue to commit crime. The programs would be operated collaboratively by law enforcement and corrections officials, backed with assistance given to family members who would be part of the intervention, as well as the innovation of reentry courts. The literature tells us convincingly that this approach is the most efficacious one to enhance public safety and prisoner reentry at the same time. However, we now risk getting only a half-loaf: the release but not the necessary reentry programs.

The dangers of Pyrrhic victories

If prison populations decrease dramatically in the next few years, it will make a big difference in the long run to know what causes the decrease in the short run. The lessons of previous alternative sanctions movements are highly admonitory. Alternative modes of sentencing and incarceration are very different from prison-reduction policy directives per se. Earlier movements sometimes proved futile because investment in the logistics and the research basis for the alternative sanctions was often neglected, as if the moral attraction to alternative sanctions caused policy-makers and reformers to ignore the hard and expensive work the sanctions require.[4] Another cautionary example is the much-noted analogy to the mental hospital deinstitutionalization movement in the 1970s. That the terrible hospitals were closed was a triumph of good science and smart politics. But the consequences in some places were horrible, in part because the irresistible mantra of treating the mentally ill in "the community" ignored the problem that there often was no "community." In reality,

there was inner-city slum public housing, which soon became a psychiatric ghetto.[5]

There is a direct parallel between our prison-crowding situation today and the predicament the United States found itself in during the mid-1980s, the heyday of the intermediate sanctions movement. The movement was motivated very specifically by horrendous crowding problems in the Southern states together with a poor regional economy. In some ways, it was forced on the states by Eighth Amendment cruel-and-unusual punishments litigation, anticipating the current situation in California. When the courts ordered the states either to build new facilities or find some other way to punish offenders, the states had to be creative because they lacked money for prison construction. The result was a set of innovations in alternative sanctions: Georgia, for example, developed an intensive supervision program (ISP) for probationers. Its self-evaluation yielded some evidence that Georgia's ISP participants had very low recidivism rates, and the apparent lesson was that the ISP had saved the state the cost of two new prisons. These ideas spread, and by the mid-1990s virtually every state had passed some kind of legislation for intermediate sanctions.

Probation and parole departments across the country implemented ISPs. The programs were meant to reduce caseloads, keep a closer watch on offenders, and offer more support services. The hope was that prison-bound offenders would be "diverted" from expensive prison cells to more intensive community programs. What were the overall results? There is a settled body of research that has evaluated ISPs of the mid-1990s; these are the key conclusions from that research:

- ISPs were seldom used for prison diversion, but rather to increase the supervision of those already on probation.
- The "casework" portion of ISPs was never implemented because there was insufficient funding and political will. The surveillance side (drug testing, electric monitoring) was fully implemented, turning the ISP into a net-widening mechanism that simply increased returns to prison.
- Because ISPs did not reduce prison populations, prisons costs increased along their natural vector. As a result, ISPs were deemed failures as cost-savers and were generally dismantled between 1995 and 2000.

Many ISPs that were begun with great optimism and political fanfare were discontinued after just a few years because they failed to reduce prison commitment rates. Retrospective analysis of the national experiment showed that ISPs seldom followed a theoretical model supporting rehabilitation, and even when they did, they were insufficiently funded to deliver adequate programs. ISPs (at that time) were funded at about $2,000 to $5,000 per year, per offender. Effective rehabilitation programs, particularly for substance abusers, were estimated to cost about $10,000 to $15,000 per year, per offender. Clearly, the programs were insufficiently funded for the kinds of help they were designed to provide.

One result of the 1990s intermediate sanctions movement was a backlash in support for rehabilitation programs and alternative community sanctions. Instead of demonstrating that nonprison sanctions could decrease commitments to prison, some of the ISPs showed just the opposite: implementing intensive probation and parole supervision resulted in increased prison commitments.

Some supporters of prison buildup used this evidence to argue that alternatives had been tried and that they did not work. It was a recycling of the 1960s nothing-works phenomenon, but this time buttressed with more rigorous experimental evaluation data.

Within a short decade, ISPs went from being "the future of American corrections" (according to *The Washington Post*[6]) to a failed social experiment. In the end, the author of the national ISP evaluation lamented that the empirical evidence regarding intermediate sanctions is decisive: without a rehabilitation component, reductions in recidivism are elusive.[7] This lesson may well repeat itself if advocates focus solely on the goal of reducing mass incarceration without advocating simultaneously for a sufficient infusion of funds to help criminal offenders become law-abiding citizens.

Campaigns against mass imprisonment have varied motives and sources. These motives and sources are not necessarily mutually inconsistent, but the differences counsel caution. It is perfectly right to view mass incarceration as a civil rights disaster and a national moral embarrassment. The implications of mass incarceration in terms of inequality of social and economic opportunity are as wide and foundational as the concerns about social and economic opportunity that motivated the civil rights movement of the 1960s. But if that undeniably valid characterization of mass incarceration fuels a mostly "liberationist" approach to reducing incarceration, it runs the risk of terrible backfire. Its beneficiaries, at least in the short run, will be millions of young men who may be relieved of the immediate burden of formal state custody but will hardly be prepared to enjoy all the potential benefits thereof. The civil rights movement ran the risk of not succeeding according to some expectations, but it did not run the risk of failing in the way that prison reduction could. If the hard work is not done, we may face another round of backfire, disillusionment, and susceptibility to political demagoguery.

From one perspective, alleviating mass imprisonment hinges on rehabilitation and reentry programs that can make reintegration possible and can truly lower recidivism. From another, it is a matter of undertaking tough, smart triage in sorting prisoners for release and in deciding which prisoners are amenable to which forms of alternative sanction. We know much more today about how to identify the subset of offenders who will truly benefit from rehabilitative programming, and we should not waste taxpayer monies on those who will not. The rehabilitation programs themselves will have to be run by very well-trained, and therefore very expensive, functionaries who know how to rely on the available evidence-based protocols for measuring and predicting the potentially dangerous and for adjusting practices to fit with different kinds and degrees of supervision. It will require recognizing that drug rehabilitation and other cognitive behavioral programs are very hard work and that they normally take months of engaged commitment by offenders to succeed.

Thus, a strictly morals-driven approach to mass incarceration risks ignoring these crucial minefields in criminal justice reform. But the apparently opposite motivation for reform, coldly pragmatic concerns about economics, is risky in its own way. It is good for politicians to view criminal justice more as a regulatory system subject to cost-benefit analysis than as a temple of political theology. In

this regard, the emerging fiscal concerns of a few years back that pushed politicians in a more regulatory direction were salutary. However, if fiscal concern becomes too self-justifying a motivator for criminal justice reform, it will prove just as dangerously shortsighted as the liberationist approach, especially now that modest fiscal concern has turned into a huge fiscal exigency in the states.

Recent events in California illustrate this truth all too well. For the first time in recent memory, the prison population is declining in California; recent legislative budgets, interacting with federal court intervention, will force further declines. For those who decry mass incarceration, there is a dangerous temptation to see this reduction as a possible silver lining to the economic crisis. Although it has arisen partly because of the federal court injunction and partly because of deep-seated constitutional obstacles in the structure of California's government, it may well be the reality of fiscal disaster that will lead to further reductions in prison overcrowding. But a dysfunctional political economy brought the state to this fiscal disaster, and that dysfunction will survive the imminent prison reduction. Just as the legislature reluctantly accepted a very compromised prisoner reduction plan – mostly a parole reform plan – to satisfy both the courts and the accountants, it also took the perverse next step of slashing hundreds of millions of dollars from adult prison and parole rehabilitation programs. Thus large prisoner release orders may facilitate only an interim prisoner reduction, because if nothing changes in the determinate sentencing and parole laws, no bureaucratic alteration in parole supervision practices will delay for long a massive return of released people to prison, if they remain criminally active.

Many reformers promote the principle of risk-needs assessment as a tool of criminal justice policy; in doing so they move beyond blind belief in the value of prison reduction per se. But even here, there is a risk that reform will only pay rhetorical fealty. In September 2009, California released the results of its actuarial prediction instrument, known as the California Static Risk Assessment (CSRA).[8] The results showed that of the 148,706 prisoners considered in the CSRA, almost 76 percent had a moderate-to-high risk to reoffend. A detailed analysis by criminologist Susan Turner and her colleagues shows that within the moderate risk group, 69 percent can be expected to be rearrested for a felony within three years of their prison release (22 percent for a violent felony). Within the high risk group, 82 percent are predicted to be rearrested for a felony within three years (38 percent for a violent felony).[9]

California prisoners have high needs, most of which go untreated during incarceration. Two-thirds of all prisoners were identified on the CSRA as having a moderate-to-high substance abuse risk, and nearly half (45 percent) exhibited moderate-to-high anger problems. Yet in 2009, when the prison population equaled more than 170,000, there were just 11,000 substance abuse treatment slots and just 200 anger management treatment slots in California prisons. California has *no* sex offender treatment in prisons despite the fact that about 9 percent of the California prison population is serving a current term for a sex crime conviction.[10] Similar treatment scarcity exists in California's parole system: in July 2009, there were just 521 substance abuse treatment slots for the 128,554 parolees coming home.[11] In the September 2009 report, California's Inspector General called the re-

sults "expected and alarming" and urged increased investment in the state's rehabilitation programs. The report concludes, "Without consistent funding and support for rehabilitative programming, *lasting* reform can never be achieved."[12]

Ironically, just two days after that report was released the state legislature passed a budget slashing prisoner education, drug treatment, and job training programs. The cuts, totaling more than $250 million, represent more than a third of the previous year's entire budget for adult prison programs. Prison substance abuse programs will be shortened to three months (compared to the current six to thirty-six months) of treatment, and treatment staff will be reduced by 50 percent. Traditional classroom education will be replaced by "self-directed" programs, and the classroom instruction that does remain will often be taught by volunteers and inmate teaching assistants, resulting in teacher layoffs numbering between six hundred and eight hundred. Parolee programs are being similarly decimated, with reductions in day reporting centers, reentry partnerships, and residential multiservice centers. Public safety is at serious risk if release of moderate- and high-risk offenders is done without regard to reentry. But it is also at risk when reentry is done but done *badly*, especially at a time when unemployment is increasing. This compounding factor puts parolees in competition with free citizens for jobs and benefits that are already scarce.

California is not alone in this regard. While prison and parole populations are decreasing across the United States, the very programs necessary for success in reentry are disappearing. We can choose our favorite metaphoric cliché: this is a perfect storm, a recipe for disaster, a crash-and-burn scenario. Reductions in prison population may end up being blamed – sometimes wrongly, but sometimes rightly – for the outcomes. The current situation may provide another opportunity to set alternative sanctions and reentry support on the right course. But if we fail in this respect yet again, we might face awful recidivism in the coming years, and we will enter another dismal cycle in which "nothing works" will be the old-new mantra.

Rather than speaking of mass incarceration, we should redefine our terms and focus on curtailing *unnecessary* incarceration. Liberal reforms often pay rhetorical fealty to the trope of "public safety." If incarceration is to become a rational tool of social regulation, reformers will have to be more than rhetorical in acknowledging that many, or perhaps most, people convicted of serious crimes need to spend a portion of their lives behind bars. However misguided and excessive were the harsh new criminal laws and determinate sentencing systems created thirty years ago, the justifying purposes of retribution, incapacitation, and deterrence still have moral and utilitarian purchase. To put it differently, on the one hand, given the history of racial and economic injustice in America, a deep and plausible moral argument can be made that great numbers of people now in prison do not deserve to be there, nor, in a similar sense, has American society earned the right to keep them there. On the other hand, when government makes choices at particular decision points within the criminal justice system, from apprehension to prosecution to trial to sentence, those choices are only to a limited degree the *causes* of mass incarceration; they are also the *effects* of the deeper causes of mass incarceration. Just as deliberate governmental decisions to imprison are not necessarily the dominant cause

of the problem, the simple decision not to imprison cannot itself be the dominant solution.

Alternative nonprison sanctions may prove very cost-efficient for the state and salutary for society because they mitigate the metastatic effects of imprisonment on the economic and social lives of ex-inmates. Therefore, they will morally mitigate, if not justify, the costs of criminal prosecution. The notion of alternative sanctions, however, poses the risk of inducing reformers to view it sentimentally. Nonprison sanctions are still sanctions that often involve serious restrictions on liberty and movement. They also entail intrusions on privacy because law enforcement officers who are monitoring probationers, parolees, and the like have enhanced powers of search and seizure, and these officers have many behavioral criteria beyond the strict test of probable cause to justify the intrusions.[13] Some of the most promoted forms of alternative supervision, from the halfway house to the much-touted global positioning systems (GPS), involve the "carceral discipline" often decried by social critics as the modern culture of control (to use sociologist David Garland's words) or as "governing through crime" (legal scholar Jonathan Simon's words). In effect, we may have a triumphantly broad reading of the Eighth Amendment that tosses us against a very narrow reading of the Fourth Amendment.

The voluminous recent scholarship on mass incarceration, including the work of all the authors in this issue, has been a brilliant intellectual achievement. Some of it takes the form of broad social theory, with magisterial, historical sweep. Some of it partakes of American-studies cultural analysis, focusing on the strange variety of American "exceptionalism." Some of it has been state-of-the-art econometric analysis of the highest level, but usefully translated into striking inferences about the searing social and economic secondary punishments that mass incarceration has wrought. The study of mass incarceration has been a major interdisciplinary phenomenon in American academia, and it has been rare in that it aligns with and has greatly influenced the public's view of the criminal justice system. It deserves much of the credit for the fresh look American society is taking of the condition of its sentencing laws and correctional systems.

But a key lesson of the history of criminal justice reform is that academics must pay their dues on the less magisterial, more mundane side of the issues as well. Those interested in translating the "what works" literature into operational programs must make certain that the programs are implemented fully and coherently, not dismantled or watered down through the political process in ways that undermine their effectiveness. This fact certainly does not deny the great value of the work already done; indeed, that work will complement the new studies. Academics must now recognize that the gritty, detailed work of figuring out how to do reentry right is part of their professional obligation. This task will entail ground-level, state-by-state studies to determine which programs work in prisons, which ones work outside prisons, which prisoners can be helped and which cannot: all the questions on which policy-makers and front-line officials need urgent guidance.

ENDNOTES

[1] John F. Pfaff, "The Continued Vitality of Structured Sentencing Following *Blakeley*: The Effectiveness of Voluntary Guidelines," *UCLA Law Review* 54 (2006–2007): 235.

[2] Steven Levitt and William Spelman have assessed the size of these elasticities relative to the drop in violent crime over the 1990s, both concluding that about 25 percent of the violent crime drop can be attributed to the increased use of incarceration. See Steven D. Levitt, "Understanding Why Crime Fell in the 1990s: Four Factors that Explain the Decline and Six that Do Not," *Journal of Economic Perspectives* 18 (1) (2004): 163–190; and William Spelman, "The Limited Importance of Prison Expansion," in *The Crime Drop in America*, ed. Alfred Blumstein and Joel Wallman (New York: Cambridge University Press, 2000).

[3] Rosemary Gartner, Anthony N. Doob, and Franklin E. Zimring, "The Past is Prologue? Decarceration in California Then and Now," unpublished working paper.

[4] For a review of these results, see Joan Petersilia, "A Decade of Experimenting with Intermediate Sanctions: What Have We Learned?" in *Perspectives on Crime and Justice: 1997–1998 Lecture Series* (Washington, D.C.: National Institute of Justice, 1998); and Joan Petersilia and Susan Turner, "Intensive Probation and Parole," in *Crime and Justice: An Annual Review of Research*, ed. Michael Tonry (Chicago: University of Chicago Press, 1993).

[5] Robert Weisberg, "Restorative Justice and the Dangers of 'Community,'" *Utah Law Review* (2003): 343, 363–368.

[6] Kathy Sawyer, "Tougher Probation May Help Georgia Clear Crowded Prisons," *The Washington Post*, August 16, 1985. See also Dudley Clendinen, "Prison Crowding in South Leads to Tests of Other Punishments," *The New York Times*, December 18, 1985.

[7] Joan Petersilia, "A Decade of Experimenting with Intermediate Sanctions: What Have We Learned?" *Federal Probation* LXII (2) (1998).

[8] California Rehabilitation Oversight Board, Biannual Report (Office of the Inspector General, State of California, September 15, 2009), http://www.oig.ca.gov/pages/c-rob/reports.php (accessed January 4, 2010).

[9] Susan Turner, James Hess, and Jesse Jannetta, "Development of the California Static Risk Assessment Instrument (CSRA)" (University of California, Irvine, Center for Evidence-Based Corrections, November 2009), http://ucicorrections.seweb.uci.edu/pubs (accessed January 4, 2010).

[10] Prison Census Data, "Characteristics of Inmate Population" (California Department of Corrections, August 2009), http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Offender_Information_Reports.html.

[11] California Rehabilitation Oversight Board, Biannual Report.

[12] Ibid., 11.

[13] *United States v. Knights*, 534 U.S. 112 (2001).