Senator Grassley's Questions for the Record from

Senate Committee on the Judiciary

Hearing on "Rising Prison Costs: Restricting Budgets & Crime Prevention Options"

August 1, 2012

Questions for Jeffrey Sedgwick
Former Assistant Attorney General for the Office of Justice Programs

1. In 2010, the Office of Inspector General for the Department of Justice (OIG) conducted a review of the Office of Justice Programs' (OJP) management and oversight of offender reentry grant programs. The OIG found that OJP did not "establish an effective system for monitoring…grantees to assess whether they were meeting program goals." The review found little to no documentation for grant monitoring activities and a reduced quality of desk reviews of grants. The OIG found significant design flaws in reentry grant programs and that OJP did not define key terms essential for determining whether program goals were met. The most damaging finding was that the design flaws included failures to provide baselines for calculating recidivism—thus OJP could not accurately determine whether programs reduced recidivism rates. Ultimately the Inspector General made 11 recommendations to improve reentry grant management.

a) The Inspector General recommended that OJP require grantees to establish baseline recidivism rates so they can be compared against non-participants. Is a comparison to baseline recidivism rates enough to determine whether a reentry program is effective? If not, what other factors should OJP use to determine success?

   Answer: Whether or not a reentry program is successful or not depends first and foremost on how success is defined. For most policymakers, practitioners and researchers, successful reentry is defined as the absence of failure where failure is defined as rearrest or reconviction (or, in some cases, revocation of parole/probation). The challenge with this definition is that it requires a lengthy (and expensive) post-release follow-up period; the standard in recidivism research is three years. This means that the grant period would have to be substantially longer than three years (to allow for pre-release time spent in the funded program, followed by three years of post-release follow-up). The expense is derived from the absence of accurate and complete electronically-retrievable records to track participants' post-release behavior (including across jurisdictional boundaries); when the Bureau of Justice Statistics has reported on recidivism among prison inmates, it has had to obtain paper rap sheets from states and then manually enter that information into computers for analysis – an expensive and time-consuming process. Consequently, grantees often substitute easily obtained output measures (number of inmates participating in a program or number of inmates completing a re-entry program) for the more meaningful outcome measures (number of program participants exhibiting the desired change in post-release behavior). During my tenure as AAG for OJP, we stood up an Office of Audit, Assessment and Management precisely to push our grant agencies toward uniform and consistent use of appropriate outcome measures in evaluating funded programs. The issue of accurate baseline recidivism rates is quite important in order to determine whether the observed changes in post-release behavior are due to program effects or to other effects such as simple aging.

b) As you are aware, most of the raw data on grant performance is usually retained by OJP and not completely shared with Congress. As a former head of OJP, what should we be asking OJP to provide about the success or failure of grant programs that we may not be receiving?

Answer: I would encourage Congress to think in terms of a hierarchy of information that it expects to receive on funded programs. That hierarchy would include outputs, outcomes and impacts. Outputs, the most traditional data point collected and reported on funded programs, captures simply the number of individuals passing through a program. Typically one would be informed about the number of individuals recruited into the program and the number successfully completing the program. This is an important factor in thinking about program efficiency: the cost per person enrolled. Next would be program outcomes: the observed change in participants' behavior *as a result of program exposure or treatment*. This is an important factor in thinking about program effectiveness: the ability of the program to change participant behavior in positive directions. I believe it entirely appropriate for Congress to require reporting of program outcome measures to Congress; this expectation/requirement would "trickle down" through OJP to the grantees and ensure that such information is routinely collected and reported for all grant-funded programs (as is surely should be). I can tell you from recent personal experience that at least some grantees are already collecting and reporting this information to their OJP grant monitors. Sadly, such information does not appear to always be read by grant monitors nor considered in funding decisions. Congress can be quite helpful in giving OJP a firm nudge on this. Finally, Congress should require reporting about anticipated program impacts: the way in which program outputs and outcomes on the individual level collectively or in aggregate transform communities for the better. Obviously, small scale programs are unlikely to generate measureable community-wide impacts in short time periods, but creating an expectation that program impacts will be defined in concrete terms ensures that grantees locate their program activities in the context of a concrete vision of community improvement.

c) Aside from our usual outlets, GAO and the Inspector General, who should we be asking to review these grant programs to determine whether or not they are actually working to reduce recidivism?

Answer: I would suggest that Congress, as it considers reauthorization of the Second Chance Act, mandate an appropriately-sized carve out of funds for recidivism research and evaluation. The evaluation component could be administered by the National Institute of Justice and take advantage of the wealth of expertise in the academic community on criminal careers, desistance from crime, program evaluation et cetera. Similarly, the Bureau of Justice Statistics has, in the past, done very good work establishing baseline estimates of recidivism for prison inmates and could clearly handle the research portion. Sadly, funding constraints and competing demands for inmate surveys on other topics (such as prison rape) have delayed updating BJS' estimates of baseline recidivism rates among prison inmates. While there is understandable pressure to maximize the proportion of appropriated dollars that goes to program rather than overhead, it seems prudent to me to make an investment in baseline measures and program evaluation to ensure that our program dollars are targeted on the most pressing needs, efficiently used and effective.

d) The GAO recently released a report regarding the risk of unnecessary duplication among Justice Department grant programs. GAO found that DOJ has "not conducted an assessment of its grant programs to systematically identify and reduce overlap." GAO recommended that DOJ conduct a review of grants to determine if overlap exists. DOJ agreed with the recommendation, but GAO stated, "it is too soon to know…whether they will fully address the intent of the recommendation." In your experience at OJP, is this something DOJ can do if they want to? What are the barriers to DOJ actually conducting a meaningful review of grant duplication?

   Answer: Without doubt, DOJ can conduct an assessment of its grant programs to systematically identify and reduce overlap if it wants to; however, *the organizational structure of DOJ makes it unlikely that such an assessment will be a priority activity for anyone with authority over all grant program offices and components*. Consider the organizational structure of DOJ as authorized by Attorney General Holder on 2 May 2012. The principal granting offices lie within the Office of Justice Programs, administered by an Assistant Attorney General, with two significant exceptions: the Community Oriented Policing Services (COPS) and the Office on Violence Against Women (OVW). While the AAG for OJP coordinates the Bureau of Justice Assistance, the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention and the Office for Victims of Crime, he or she has no jurisdiction or coordinating authority over either COPS or OVW. That authority lies with the Associate Attorney General. And yet the Associate Attorney General also has direct line authority over the Civil Rights Division, the Civil Division, the Antitrust Division, the Environmental & Natural Resources Division, the Tax Division and four other offices. Realistically speaking, that means *grant consolidation and management will likely be a low priority for the Associate Attorney General and an even lower priority for the Deputy Attorney General or the Attorney General*. Thus, one reasonable step toward elimination of grant overlap and duplication would be to bring all grant programs under the OJP umbrella headed by an Assistant Attorney General for whom grant coordination and effective management is the number one priority. Given the similarity of program emphasis in COPS and the Bureau of Justice Assistance or in OVW and the Office for Victims of Crime, such a reorganization makes programmatic good sense while offering opportunities to reduce administrative overhead (possibly through agency consolidation) as well as to achieve better coordination of programs, eliminating needless overlap and duplication.

2. In your testimony, you described research on the different types of crime prevention strategies—incarceration, policing, and social programs. You say that studies show anywhere from a 10 percent to 27 percent contribution of incarceration to the decline in crime rates over the last couple of decades. Meanwhile, there is no evidence that simply hiring more police officers contributed to the decline. Likewise, with a few isolated examples, there is no evidence that social programs designed to rehabilitate criminals reduce recidivism. Furthermore, you testified that it is very hard to find crime prevention programs that have been proved to work in one location that can be scaled up to apply nationally, since local conditions are crucial to a program's success.

a) Overall, what does the evidence show about the most effective crime prevention strategies?

   Answer: As I noted in my testimony, the American experience with crime decline during the decade of the 1990s taught us much about crime prevention. Among the criminal justice policies plausibly connected to crime prevention, incarceration (or incapacitation) seems clearly to have been the predominant influence on the nationwide crime decline. (It should be noted that economic and demographic factors also played a significant role as evidenced by the fact that Canada enjoyed a similar crime decline during the same time period without significant changes in its criminal justice policies or practices.) And studies show that the increased number of police, largely funded by federal initiatives such as the Violent Crime Control and Law Enforcement Act of 1994, has not shown a consistent role in reducing violent crime in the United States. *However, more strategic use of police, qualitative rather than quantitative change in policing, along the lines laid out by Commissioner Davis in his testimony have been shown to be effective in crime prevention*. Indeed, Franklin Zimring points to the experience of New York City during the 1990s; during the same time frame the United States as a whole was enjoying a 40% decline in index (felony) crime, New York City was experiencing a decline nearly twice as large as the nation. In investigating possible causes for this greater effectiveness in crime prevention, Zimring concluded it was the use of COMPSTAT and greater accountability within the NYPD management hierarchy that produced these results. *So increased incapacitation through incarceration and smarter policing can both be said to be effective crime prevention strategies*. In neither NYC nor in the United States as a whole can treatment programs be said to have had a significant impact on crime rates. This lack of effectiveness may be attributable to one of two causes: either "nothing works" in rehabilitation (a claim that dates back to a famous article by Robert Martinson[1]); or, alternatively, the current inventory of rehabilitative programs are poorly designed and carelessly implemented.[2]

b) Is the federal government currently supporting such work?

---

[1] Robert Martinson, "What Works? Questions and Answers About Prison Reform," *The Public Interest* 35 (Spring 1974): 22-54.

[2] Edward J. Latessa and Alexander Holsinger, "The Importance of Evaluating Correctional Programs: Assessing Outcome and Quality," *Corrections Management Quarterly* 2 (Fall 1998): 22-29.

Answer: My personal opinion is that the federal government places too little emphasis on maintaining a robust set of key indicators to identify emerging problems in the field of public safety and too little emphasis on identifying and disseminating best practices across the spectrum of public safety programs. For example, during my tenure at BJS and then as AAG/OJP, I had the opportunity to sit in at the National Academies of Science on a two-day seminar of thirty of the nation's most distinguished criminologists discussing the state of current research in criminology. One of the most strongly supported conclusions was that the discipline of criminology had systematically undervalued (and thus understudied) policing and the impact it has on crime prevention. That conclusion was underlined at a later international conference I attended on policing where I was impressed by the quantity and quality of research being done in other countries on better techniques of policing and better design of public spaces to discourage crime. In general, I believe we can achieve much more valuable return on our public investment in justice programs by taking strategic policing seriously, emphasizing outcome and impact evaluations, and focusing on better dissemination of best practices (or thinking more clearly about how to transfer research knowledge into practice).

c) Can you please provide a few examples of programs that have been proved to work and describe why they might not be able to applied nationally?

Answer: Two examples come quickly to mind: drug courts and community-based violent crime reduction programs like the Boston Ten Point Plan.

First, from the perspective of crime control, it is important to increase treatment use among those substance abusers who also commit non-drug crimes. The difficulty is that many, if not most, drug-involved offenders will not seek out treatment voluntarily; hence the need for leveraging the threat of prison to secure treatment entry, retention and compliance. Among the various diversion programs that exist, Drug Courts have been a popular option supported by federal funding. However, we should recognize two facts before plunging into significantly increased funding for Drug Courts: First, outcome evaluations of Drug Courts (those that measure changes in the behavior of the drug-involved offender) have produced distinctly mixed results with some Drug Courts producing impressive results and others failing to have any impact on drug involvement.3 This suggests that local and idiosyncratic factors play a prominent role in program success (such as the level of commitment or "buy-in" by the Judge and service agencies whose cooperation is required to support the offender). Second, we have twenty years of experience politically supporting and funding Drug Courts. That investment has produced treatment for approximately 70,000 drug-involved offenders nationwide, one-thirtieth of the estimated total number of seriously drug-involved offenders over the same period. And since the typical drug court judge supervises between 50 and 75 clients, scaling up Drug Courts to handle the volume in question would require massive increases in the number of judges and courtrooms.4 Given the mixed outcome evaluation results,

[3] Office of Justice Programs, U.S. Department of Justice. 1998. "Looking at a Decade of Drug Courts." Prepared by the Drug Court Clearinghouse and Technical Assistance Project. Washington, DC: American University.
[4] John K. Roman, Aaron Chalfin, Jay Reid, and Shannon Reid. 2008. *Impact and Cost-Benefit Analysis of the Anchorage Wellness Court*. Rockville, MD: NCJRS Photocopy Services.

and the dependence on local factors for success, it far from clear that the Drug Court option is ready to "scaled up."

Second, Boston and NYC followed remarkably different paths to cutting crime, and especially violent crime, during the 1990s. As I mentioned earlier, NYC relied on qualitative changes in policing to achieve its crime reduction, while Boston relied on a community-based program called the Ten Point Plan. The Ten Point Plan was based on churches and faith-based agencies in Boston working collaboratively to develop a community action plan aimed at reducing violence and helping youth to develop more positive and productive life-styles.[5] I was fortunate to be a participant in the Attorney General's Eighteen City Tour in 2006 when a group of DOJ officials visited a representative group of communities to investigate the purported "Gathering Storm" of increased crime.[6] One of the cities I visited was Boston since it was experiencing a significant increase in homicide. During that visit, I spoke to several faith community leaders involved for fourteen years in the Ten Point Coalition. Their observations are pertinent to your question; they acknowledged that NYC and Boston had followed different paths to reducing crime in the 1990s and observed that the NYC paths seemed to be more sustainable. In brief, they commented that their successful local approach was heavily dependent on strong commitment and sacrifice by community leaders and admitted, quite frankly, to having become burnt out. They noted that there was not a younger generation of faith community leaders willing to make the personal and family sacrifices necessary to maintain the momentum of the Ten Point Plan and Coalition. In short, it was an idiosyncratic and local set of conditions (strong personal commitment and sacrifice by a particular cohort of faith community leaders) that made the Ten Point Plan work. And those conditions were not sustainable over the long haul. Again, I think it is significant that Commissioner Davis pointed to the adoption of key elements of COMPSTAT and the NYPD management approach in Boston that has achieved and sustained violence reduction in that community.

d) Professor Matt DeLisi at Iowa State University has calculated the cost of crime victimization. His work found that 500 career criminals accounted for $415 million in victim costs, $137 million in criminal justice costs, and nearly $15 million in lost earnings. So, taking your 10% to 27% crime reduction numbers, along with Professor DeLisi's research, is it possible that the cost of letting prisoners out early could actually cost more than keeping them incarcerated?

Answer: That is absolutely correct. I think the consensus opinion among those testifying at the hearing was that indiscriminate early release of prisoners is an especially ill-advised policy. Indeed, treating offenders or inmates as essentially homogeneous is a huge mistake. Among offenders, there are essentially four categories: low volume, non-serious offenders; high volume, non-serious offenders; low volume, serious offenders; and high-volume, serious offenders. There are very few of the first group in American prisons and jails; indeed, the criminal justice system is pretty good at identifying and diverting such offenders into alternative sanctions such as probation. That means the

---

[5] http://www.bostontenpoint.org/about.php

[6] *Chief Concerns: A Gathering Storm—Violent Crime in America*, Police Executive Research Forum, October 2006.

prison population in the United States is almost totally composed of the other three groups; of those three, early release of high volume, non-serious offenders will impose costs on the community, though not as high as releasing high volume, serious offenders. Low volume, serious offenders could be released without significant impact on public safety, but I suspect that there would be significant opposition on grounds of retribution (or justice) to letting those who have committed, say, a murder or aggravated assault away with little or no prison time. The key point to keep in mind is that any approach to reducing prison populations and their associated costs should be based on culling from the current inmate population those who represent the lowest risk of recidivism, and particularly those with the lowest risk of serious re-offending.

3. At the hearing, you mentioned an article by James Q. Wilson that described the prison population as comprising, on the one hand, violent criminals, and on the other hand, less violent criminals who are recidivists.

a) Can you please describe in more detail the article and its conclusions?

Answer: The James Q. Wilson article I referred to in my testimony is "Dealing with the High-Rate Offender."[7] In it, Wilson discusses the four main justifications for incarceration: deterrence, incapacitation, rehabilitation and retribution, though in truth the bulk of his essay is a reflection on the competing arguments for incapacitation and retribution. He suggests that theories of deterrence require us to make assumptions about human nature (e.g. that humans, and especially offenders, act rationally in calculating the comparative costs and benefits of offending versus legitimate behavior) that may not be uniformly applicable (crimes of passion, for example, or crimes committed under the influence of drugs or alcohol) while theories of rehabilitation require us to believe that the values, preferences, or time-horizon of criminals can be altered by plan. Theories of incapacitation and retribution require no such contentious assumptions; incapacitation works by definition while retribution focuses not on the criminal but on the crime. Further, it is demonstrably the case that at virtually every stage of the criminal justice system, decision makers weigh risk in deciding whether to arrest, charge, prosecute, convict and incarcerate alleged offenders; so the desire for incapacitation is clearly at work in deciding who winds up in prison and who doesn't. Yet it is also demonstrably true that the public demands that those who commit serious crimes pay for their crimes by doing time; hence, retribution is at work in deciding who winds up in prison, as well. These two competing concerns, for incapacitation and for retribution, strongly influence the makeup of today's prison population.

b) What implications do the conclusions of the article have for the question of the cost-effectiveness of incarceration?

Answer: Wilson wrote this particular essay at a time when there already was concern over prison costs, overcrowding and the growing number of prison inmates, so his interest in incapacitation, and particularly selective incapacitation, is understandable. In the early 1980s, many scholars, especially at the Rand Corporation, focused their research on career criminals and criminal careers prompted by hopes that if the high volume, long-duration

[7] James Q. Wilson, "Dealing with the High-Rate Offender," *The Public Interest* 72 (Summer 1983): 52-71.

offender could be identified and incarcerated for longer sentences while other offenders were given shorter sentences, then both crime rates and prison populations could be reduced (or their rates of growth slowed).[8] But Wilson wondered is it fair for a low-rate offender who is caught committing a serious crime to serve a shorter sentence (because he is not much of a threat to society) than a high-rate offender who gets caught committing a relatively minor offense? Retributive justice would say not. Sentences would have to have legal boundaries set so that the use of selective incapacitation could not lead to perverse sentences – low volume armed robbers getting one year, high-volume purse-snatchers getting five.

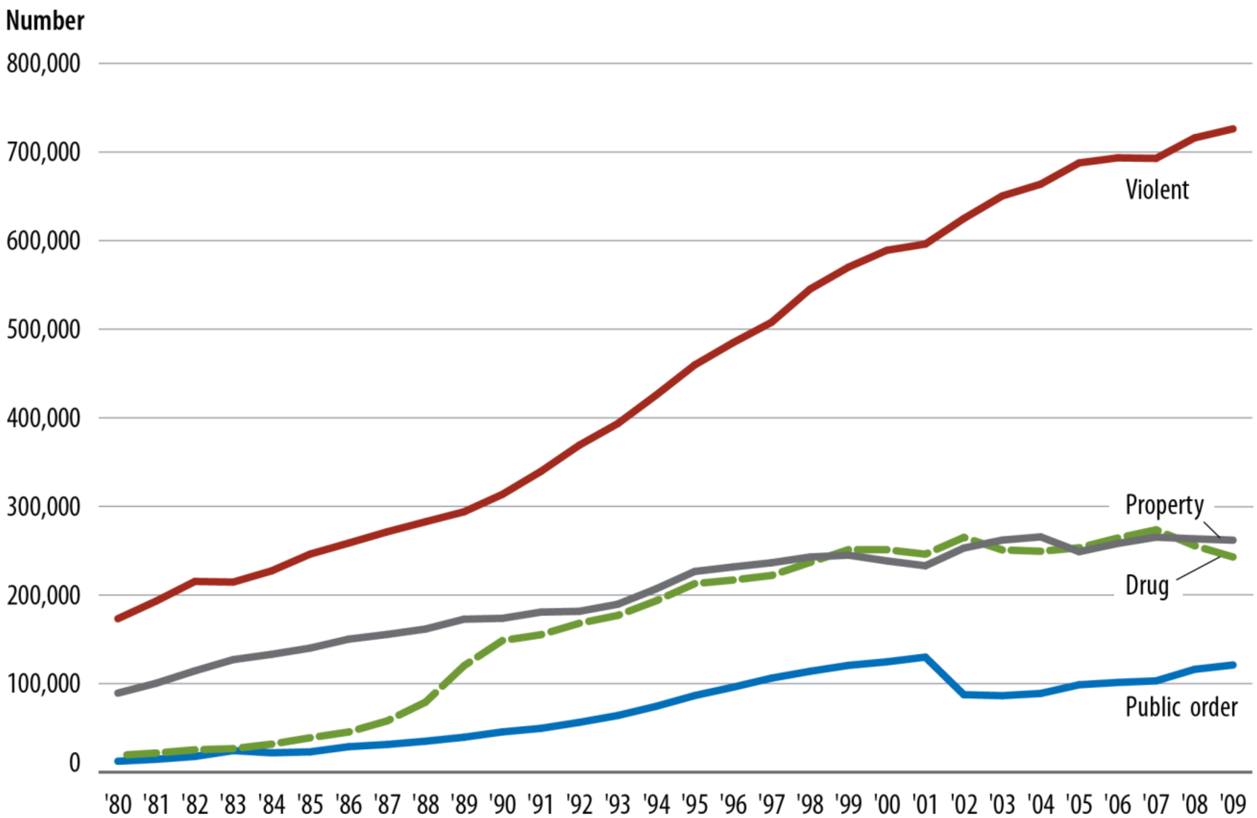
4. You also noted, in response to a question from Chairman Leahy, that there are very few cases of young, first offenders being sentenced to prison for a long sentences. Can you expand on this statement? Based on existing research, can you describe in more detail what the demographics of the prison population are in the United States, e.g., by age, categories of crime, and length of sentence?

Answer: In terms of my response to Chairman Leahy, I think two points need to be made initially. First is that we need to be clear whether we are speaking of the State prison systems or the Federal system, since their respective compositions are quite different as the graphs to follow will show. Second, my testimony dealt with aggregates or measures of central tendency. He responded with anecdotal evidence about a particular case or instance. I think my characterization of the respective prison populations remains both accurate and more relevant to the issue of policymaking. Anecdotal anomalies are surely interesting and warrant discussion, but they make an infirm basis for policymaking. Were there a large volume of instances of young, first time, non-serious offenders incarcerated in American prisons for lengthy sentences, that would surely be cause for concern; but I have seen no evidence of that in the data that I know.

As for your question about the composition of American prison populations, as of 2010, the State prison population looks like this in terms of categories of crime:[9]

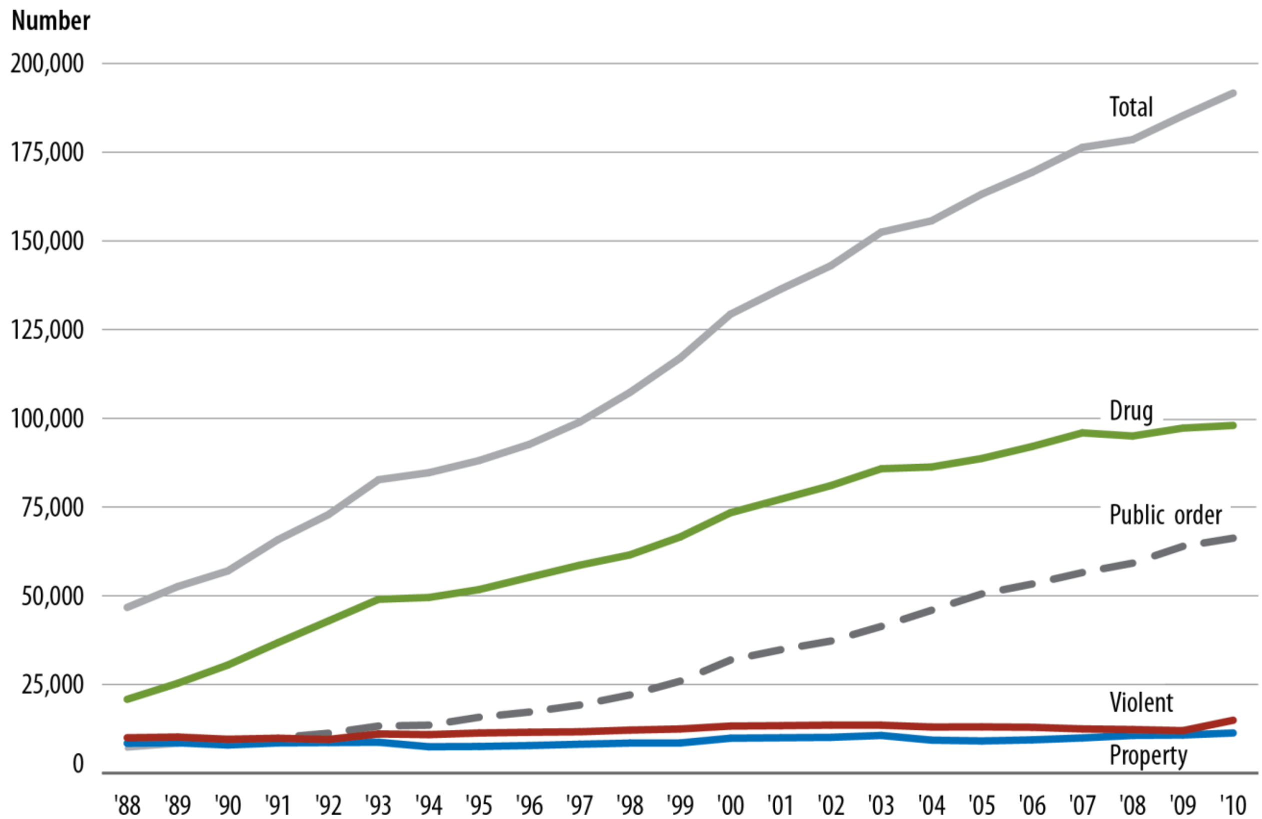
[8] Peter W. Greenwood, S*elective Incapacitation* (Santa Monica, CA.: Rand, 1982), pp. 43-44; Brian Forst et al., "Targeting Federal Resources on Recidivists." *Final Report of the Federal Career Criminal Research Project* (Washington, D.C.: INSLAW, 1982), pp. 18-19; Joan Petersilia and Peter W. Greenwood, "Mandatory Prison Sentences: Their Projected Effects on Crime and Prison Populations," *Journal of Criminal Law and Criminology* 69 (1978): 604-615; and Jan M. Chaiken and Marcia R. Chaiken, *Varieties of Criminal Behavior* (Santa Monica, CA: Rand Corporation, 1982).

[9] The three graphs following are from James P. Lynch, "Corrections in the United States." (Washington, DC: Bureau of Justice Statistics, 4 May 2012).



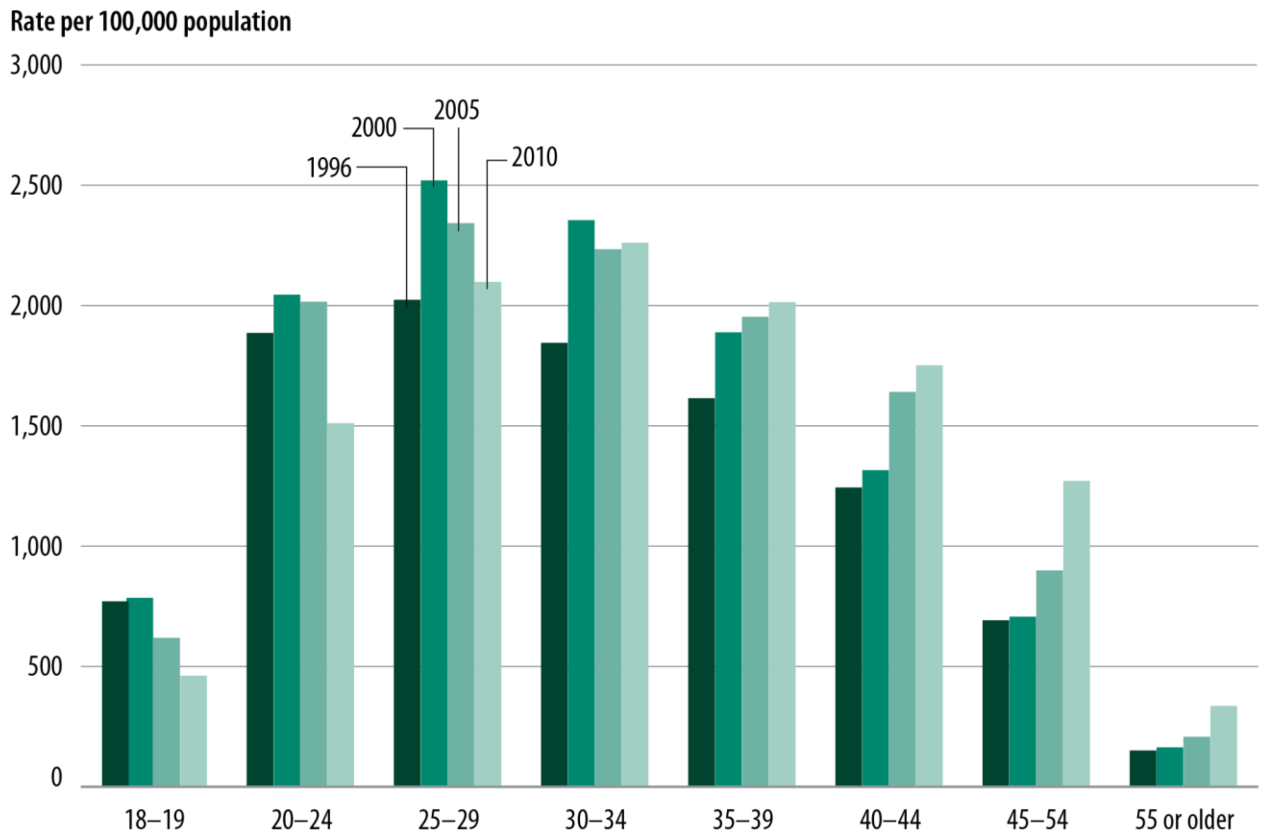
Notice that the predominant population of State prisons is violent offenders who have committed the crimes of homicide, rape, robbery, and aggravated assault. There are approximately equal numbers of property (burglary, larceny and auto theft) and drug offenders (though note that drug offenders comprised a negligible proportion of State prison inmates prior to the late 1980s when their numbers increased rapidly during the crack cocaine epidemic of the early 1990s).

The composition of federal prison inmate is quite strikingly different:



In the federal prison system, violent and property offenders make up a very small proportion of the overall prison population, while drug offenders make up the majority with public order offenses (including, for example, the unlawful sale, distribution, manufacture, alteration, transportation, possession, or use of a deadly weapon or accessory; habitual offender; rioting; treason; and tax law violations).

In terms of age distribution, the total for all inmates, federal, state and local, looks like this:



What is quite readily apparent here is that the prison population is aging as the relatively more crime-prone cohort of the early 1990s that received longer statutory sentences passes through the system and fewer young persons are being admitted to prison (reflecting falling crime rates).

Unfortunately, I am not able to locate any current data on prison population composition by sentence length.

5. You testified that increased incarceration has undoubtedly been part of the reason crime has declined over the last decade and a half. As crime continues to decline, can we expect that incarceration (and associated costs) will decline as well?

Answer: That is certainly true as borne out by the latest data on prison populations in the United States; the overall U.S. prison population declined in 2010 for the first time since 1972. State and federal prisoners numbered 1,612,395 at yearend 2010, a decrease of 0.3% (5,575 prisoners) from yearend 2009. However, the federal prison population increased by 0.8% (1,653 prisoners), while the number of prisoners under state authority declined by 0.5% (7,228 prisoners).[10]

[10] Department of Justice, *Prisoners in 2010*. (Washington, DC: Bureau of Justice Statistics, 2011).