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Looking Back to See the Future of Prison Downsizing in America

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Introductory Remarks

John H. Laub Good morning. I want to welcome you to the second day of the NIJ conference. I hope that you've enjoyed all the concurrent sessions that took place yesterday and this morning. Before we begin this session, I just want to say that yesterday I announced the coming of Dr. Greg Ridgeway to the National Institute of Justice. Greg yesterday was in California. He is now here and joined us, and I would like to ask Greg to stand up so you can at least get a look at him.

[Applause]

And Greg is the new deputy director and will oversee the social science, forensic science and physical and technical sciences at NIJ, and we're just delighted that he's going to be joining us formally in July.

Also, there's an old adage, that nobody in any organization is indispensable. However, when I Google search "NIJ," "Kristina Rose," and "indispensable," she's there. And Kris is going to be overseeing the Office of Communications, the Office of Operations and the new Office of Research Partnerships. She is the second deputy director at NIJ, and I just want to stress we now have a very strong team in place, and I look forward to working with both of them over the next several months. So, Kris, please stand up, so everyone knows you.

[Applause]

So, thank you. Thank you for that indulgence.

This morning's plenary is on a topic that is currently in crisis level in this country — incarceration. It's a topic of great importance to NIJ, as it is, I'm sure, to many of you. And before I introduce our speaker today, I want to tell you a little bit about what NIJ is doing in the area of corrections. As many of you know, one of NIJ's sister agencies, the Bureau of Justice Assistance, provided funding to do a HOPE Demonstration Field Experiment.

For those of you that are not familiar with the original Hawaii HOPE Program, this was a successful pilot program launched by Judge Steven Alm in Hawaii to reduce probation violations by drug offenders and others at high risk of recidivism. The new HOPE Demonstration Field Experiment is essentially a replication

of the HOPE — Hawaii HOPE Program in four mainland U.S. communities that differ in population, density and geographical location.

NIJ's role is related to the evaluation. We recently provided funding for the RTI International to evaluate the HOPE Demonstration Field Experiment. This evaluation will help us determine the impact of the HOPE program on reoffending and also identify the likely challenges and costs that a jurisdiction should expect when implementing the program.

Through the evaluation, we hope to generate evidence about the HOPE Program, provide insight into whether the HOPE Program works in communities that are different from the original Hawaii program and explain what factors contribute to the program's success or failure in various jurisdictions. Results should be available in 2015, but we will be providing updates as the research unfolds in the field.

I also want to let you know that with the MacArthur Foundation, NIJ has funded the National Research Council to create a special panel of experts looking at mass incarceration. This special panel consists of experts in criminology, law, sociology, public policy and related fields. Through this study, panel members will examine the existing scientific evidence on the causes and consequences of incarceration in the United States.

They will also examine the cost and benefits of the nation's current incarceration policies and explore whether there is evidence that alternative punishments might achieve similar public safety benefits as well as reduce both financial and social costs. At the conclusion of the study, and this is what NIJ is most interested in, the panel will produce a research agenda to address gaps in our current knowledge and address areas where policy is not currently supported by rigorous research and evidence.

As I said yesterday, one of my goals coming to NIJ was to establish NIJ as the leader in criminal justice research in the United States. And part of that is to be at the forefront of what I consider to be examining cutting-edge topics of importance to the field. That's why I'm very happy to announce that NIJ intends to fund the Stanford Criminal Justice Center to support the study, "How Justice Systems Realign in California: The Policies and Systematic Effects of Prison Downsizing."

With this funding, the Stanford Criminal Justice Center will assess the realignment outcomes in California. The Co-Principal Investigators for the study, no surprise here, will be Joan Petersilia and Robert Weisberg. This proposed award is subject to the availability of appropriated funds and any modifications or additional requirements that may be imposed by law. But we're very excited about that, Joan, and look forward to the results.

[Applause]

So, without further ado, I'd like to introduce Dr. Joan Petersilia. Joan is the Adelbert H. Sweet Professor of Law at Stanford Law School. She spent more than 25 years studying the performance of criminal justice agencies and has been instrumental in affecting sentencing and correction reform in California and indeed throughout the United States. She's the author of 11 books about crime and public policy, and her research on parole reform, prison reintegration and sentencing policy has fueled changes in those policies throughout the nation.

Without a doubt, Joan is a stellar scholar and a world leader in criminology and criminal justice. She's also a faculty co-director at the Stanford Criminal Justice Center, which focuses on policies related to crime control and sentencing in corrections in developing nonpartisan analyses and recommendations intending to aid public officials, legal practitioners and the public in understanding criminal justice policy at the state and national levels.

Before joining the Stanford Law School faculty, Joan was Professor of Criminology, Law and Society in the School of Social Ecology at the University of California, Irvine, and Director of UCI's Center for Evidence-Based Corrections. She also previously served as a special adviser to Governor Schwarzenegger, helping to reorganize juvenile and adult corrections and working with the California state legislature to implement prison and parole reform. She recently chaired Governor Schwarzenegger's Rehabilitation Strike Team and was also co-chair of California's expert panel on offender programs.

Joan is the former director of the Criminal Justice Program at the RAND Corporation, former president of the American Society of Criminology, former co-director of the National Research Council Study on Community, Supervision and Desistance from Crime, and the former director of the National Research Council Study on Crime Victims with Developmental Disabilities.

Now, Joan is a longtime friend and colleague. In fact, the first time I presented a paper at the American Society of Criminology meeting, I was a graduate student. I believe it was Atlanta 1977. Joan was on the panel presenting groundbreaking work on criminal careers from the famous RAND study. I remember vividly the discussion on the panel was Albert J. Reese, Jr. And if you've ever encountered Al Reese, you knew what I was in for.

Al proceeded to praise Joan as somebody who actually does research and summarily dismissed me and Mike Hindelang as individuals who merely talked about research. And I was only in good company because of Mike Hindelang. Otherwise, as a graduate student, I would have been devastated for life.

Now, what impresses me most about Joan's work is that whatever topic she chooses to study, she does so in a fair and objective manner. Joan is a scientist, not an ideologue. And currently there's lots of lip service given to phrases like best practices, evidence-based decision-making. But for Joan, these are not phrases or jargon.

Joan has committed herself to doing high-quality research to get the best possible answers to shape public policies regarding justice and crime control. Unlike many in the field, Joan has emphasized translating research results into action. In fact, Joan transcends the research policy divide and offers a model to all of us as to how we could do both well. Indeed, more than anyone I know, Joan is always thinking about research in the context of policy. Her career is motivated by the application of research to reduce crime, protect victims and to promote justice. I'm delighted that Joan has accepted our invitation to serve as a keynote speaker at the NIJ conference.

Please join me in welcoming Joan Petersilia.

[Applause]

[End of video clip]

Looking Back to See the Future of Prison Downsizing in America

[Applause]

Joan Petersilia When John invited me to speak here today and told me I could really speak about any topic, I knew I had to accept the invitation, and I knew what topic I wanted to speak about. Something has been bothering me for about the last six to nine months, and I thought this would be exactly the kind of audience to have a frank discussion about kind of what's on my mind.

The title of my talk is called "Looking Back to See the Future of Prison Downsizing in America." I chose this topic because, of course, I think prison downsizing is the most important issue we are now facing — I was here 2 years ago. That wasn't even on the topic of that conference. Now it's everywhere. I mean, in 2 years

we have seen a downsizing in the American state prison population unheard of in the previous 40 years.

After all, many of us are celebrating, and I think in circles such as this, the "correctional control rate" has actually been sort of the enemy. And anything we could do to bring it down was success. We have been here before. We have seen prison decarceration policies in the hopes of, on the backs of community-based alternatives that turned out not to work in the long run. So prison downsizing then fueled a resurgence of prison imprisonment policies going back up when the alternatives are found to be wanting.

I want to use my time today to talk about what's happening today, and, of course, I am fully engulfed in studying "prison realignment," as we call it in California, and its impact on community safety, victims and our criminal justice system. But I want to talk about what's happening nationally using my experience from California in particular and why the history of prison downsizing on the backs of alternatives may or may not work and some ideas about how I think we, as a research community, can push it on the side of actually having it work.

So, I think about prison downsizing not just as a short-term policy response but rather are we going to downsize prison for good and how might we make that happen.

Now, the reasons for prison downsizing, of course, are not a mystery. We had a perfect storm over the last 3 to 4 years. Prison costs increasing as prisoners were serving much longer terms as a result of mandatory, three strikes, life without parole terms. Everything in my state was driving up the average cost of incarceration. In California, our average cost of incarceration is double the national average. The national average for a year of prison per inmate is about 28,000. In California, we're now at 56,000 per offender per year.

We have a historic deficit unheard of since the Great Depression. So declining revenues, increases in costs, increases in numbers in terms of incarceration. We also have kind of a political consensus that was able to emerge due to historically low crime rates. So, the left and the right no longer make political hay or get a lot of votes simply by being tough on crime. We had in California, again, but I think it's national, both Governor Schwarzenegger and now Governor Brown and the new California Attorney General were recently elected, on platforms of bringing down the prison population and returning to a more balanced approach to crime control.

So, all of that did create this perfect storm that we have seen before in the United States, but not as dramatic. But what seems to me very different from what's happening today is that science, what we have said we can deliver on in the prison downsizing discussion, was not there historically, and it's front and center now. We hear the terms "evidence-based practices," "proven programs," "programs that work." I see it on every headline. I see it in, as I've started to look at legislation, throughout the country, saying that we know what works in terms of alternatives, and if we just downsize prisons and instead implement community-based alternatives so that, we know, work, in fact, we will not only save money, keep crime rates down and restore public safety and confidence.

Now, interestingly enough, I think not only are state prisons downsizing, but for the first time ever, we are closing prisons. Fifteen states are closing state prisons. Governor Brown plans to close at least one California prison. Never have we done this in California. And so we are all trending down on prisons.

You know, academics are celebrating this. In fact, as I said, we're very complicit. I think on the backs of the prison downsizing are front and center people who produced data, and myself included. We often are now speaking. I see a headline when I was just coming here. We're starting to see a triumph of sound science over sound bites. I see state leaders, probation chiefs saying basically, "Give us the money, we know what to do with it; give us your prisoners, and we'll do all of it more cheaply." So, we have our fingerprints all over the prison downsizing legislation.

Now, I want to talk a little bit, if I can, about California because I don't think California is unique, but we have never experienced anything like this in the United States in terms of what is going on in California. I doubt there are many Californians here. We have trouble getting, you know, out of California because it seems like there's a saying in California, "There's California and then there's the rest of the nation." And so, what we think, we're almost a nation in and of ourselves.

We had at the highest count 5 years ago — 172,000 prisoners. I looked up how many we had on the day before I came here. We now have 135,000. We have downsized in 18 months 30,000 prisoners who were incarcerated last year who are not incarcerated today. We have downsized the parole population, something that I worked seriously on. We had the height — again only 5 years ago — 132,000 parolees under supervision in California. Today, we have about 60,000. We have downsized the parole population about 60,000. I mean the numbers are so astronomical, it's even hard to believe.

Sometimes I think people think I've made a mistake in the calculations that within 18 months 90,000 people in California, adults, not even counting the juvenile population, which I could give additional numbers — 90,000 adult felons are no longer under state correctional control.

Now, when all is said and done, of course, part of what's happened in California is an additional aspect. Many of you probably have heard that last May the Supreme Court issued its ruling in a case that had been brewing in California for more than 15 years called — well, basically, two cases that were enjoined, Plata and Coleman versus the State of California, that the Supreme Court basically ordered California to reduce its prison population to about 130,000 prisoners, given the capacity that we have. So, the ruling said that, given the current, then, 200 percent of capacity — 200 percent of design capacity is how we were housing prisoners — that we could not deliver constitutionally adequate medical care.

Supreme Court ruled that, in order to deliver constitutionally medically sound medical care, we would be required to reduce the state prison population to 137 percent of designed capacity. That equals about 133,000 prisoners, or the number of prisoners we had in 1992. So, you can just see the downsizing. That ruling came out last May. By April, our legislature had passed what we now call public safety realignment. The governor signed it. I was actually with the governor. I spoke at the signing bill. I stood behind him endorsing it. I then wrote an op-ed that was published endorsing California's public safety realignment law.

After all, as John was kind enough to mention, I had worked with the Schwarzenegger administration; I had chaired the state's two major panels. One of the panels was called "A Blueprint for Prison Reform." Everything that was in the public safety realignment was pulled from a report I had helped put together. So, I couldn't very well, at the time when the legislature is now passing much of what academics and myself and my colleagues had urged, the legislature now gave us.

So, one month later the bill gets passed, the legislature endorses it, Governor Brown signs it and realignment is off and running as of October 1st, which has given us the numbers that I shared with you today.

In his signing message, Governor Brown said, "For too long, the state's prison system has been a revolving door for lower-level offenders and parole violators who are released within months, often before they're even transferred out of a reception center. Cycling these offenders through state prisons waste money, aggravates crowded conditions, thwarts rehabilitation and impedes local law enforcement supervision."

So, again, our fingerprints as academics, and many people, in fact, I suspect many in this room, were in fact part of various hearings that we held. I mean, it was an A-Team of an expert panel. Many of my colleagues joined me on that. Correctional practitioners from around the country served on it. The state invested millions of dollars and not only the expert panel but the division, the devising of a risk assessment tool, a logic model of how we were going to do this. We had the A-Team, and we produced the A-Blueprint.

The California realignment legislation says, "Californians must reinvest in criminal justice resources to support community-based corrections programs and evidence-based practices that will be achieved and improve public safety returns." The legislation states that "Evidence-based practices will include but are not limited to the reporting centers, drug courts, multiservice centers, treatment programs for the mentally ill, electronic monitoring, counseling, community service, flash incarceration."

And so, at this point in the story, we have a piece of legislation. It's on the backs of what we had promised, and we have, in fact, advocated for years. The realignment legislation, to just give you a little bit of background so you can see where those numbers are coming from, are incredibly huge. Most folks, even I suspect in this room, and we're interested in crime policy, but even if you walk around California and you ask people, "Have you heard about realignment?" 9 out of 10 will go, "No, what's realignment?"

If you have to go back to, well, "Have you heard about the Supreme Court case which ordered a downsizing of the prison population?" And most people say, "Yeah, I've heard about that, but I don't understand what you mean about realignment." Interestingly, which I've learned a lot about being in politics, around politicians in Sacramento, the "realignment" word was all about messaging. They wanted it to go under the radar.

Are you excited when I say about realignment I mean — somebody said — when I first asked them, "It sounds like something you're going to go to the chiropractor to get done." You know, this is the biggest criminal justice experiment ever conducted in America, and most people don't even realize it's happening. When I tell people that 30,000 prisoners have been realigned in just the last year and 60,000 parolees have been discharged, people can't believe it. They don't understand what happened. Even people that are in law enforcement — public defenders, prosecutors. It happened all so fast.

So what did it do? It did three things. And I won't go into a lot of detail. The bill is over a hundred pages long. Most people don't even understand what it contains. But it did three things. Low-level felonies can no longer go to prison. The only people that can now go to prison upon conviction are violent, sex offenders, or certain serious offenders. So we have realigned, meaning the only people that get a prison cell are the very violent and the very serious.

Most property offenders, auto thieves, most domestic violence, most drunk drivers, all drug offenders, all have to stay in the county level. The maximum penalty they face is jail time.

The second thing that it did, if you remember that or if you know that California was the only state prior to realignment where 100 percent of everybody leaving prison went on parole. The national average was about 40 percent. California changed that. So now, as of October 1, when people are released from prison, they don't go on parole unless they're serious, violent, or sex offender. Everybody else goes to county parole, and they're discharged in 6 months versus the previous 12 months. So they're sent back to the counties, and county probation officers now supervise those prior state paroles, and everybody is being discharged because, of course, nobody's got money to supervise them.

The third thing, and I think the thing that most of us worked on and I think Jeremy Travis and I can take a lot of responsibility for this, which was what was happening to those parole violators and those probation violators. We were sending 60,000 to 70,000 probation and parole violators back to prison in California prisons each year for violating technical conditions. Realignment says no more.

The most dramatic thing that's happened is that no longer can any probation or parole violator, doesn't matter where you're being supervised, local or state — no technical violation can get you back to prison. Major, major difference. If you want that parole violator to go back to prison, you have to convict him of a new crime — him or her. So, all of that is sending prison populations basically plummeting.

Now, there's a whole story to be told about what's happening because the question that's always — I worked

in the Intermediate Sanctions Movement. I worked in community corrections for my entire 30-year career. And I've always asked, and I think the question is, "If not prison, what?" And we really have never come up with a good answer for that for the large number of people coming home. So realignment went into effect, caught most people by surprise, immediately controversial. You cannot pick up a paper in California today without realignment, some sort of controversial. Sheriffs are upset or they like it; probation chiefs upset; victims are upset, or people like it.

The funding mechanism was one of the things that I thought I was pretty successful on was getting a guarantee that the funding to support the community-based alternatives would be half of what the state had spent on prison. So, each county gets a check for half, basically a multiplier: how many people they sent to prison under those conditions the year prior and multiply it by half of what the state spent. And that money goes as a blank check that the county can spend however it wants, which is part of an interesting story as well.

But on a day that realignment went into effect, October 1, and, of course, L.A. — L.A. is a third of all the business, a third of prisoners, a third of parolees, a third of probationers, a third of juveniles, a third of population. So L.A., if it doesn't work in L.A., it's not going to work. And L.A. on the day of realignment was calling a press conference. The D.A. said this was the worst thing he had ever seen, that the state was sending all the prisoners with not enough money to supervising, to supervise them. Public safety would now, after a decline, we would see violent crime rise, and the Board of Supervisors were calling a major press conference basically to try to rescind realignment legislation.

I got a call. Governor Brown was upset and he called me. I'll remember this as long as I live. It was a Saturday morning. He said, "I'm getting on a plane to go to this press conference. Everybody's upset." And "What is the problem?" and "Isn't this what you wanted?" And I just — I kept saying — I kept saying, "Yes, but Governor" — and, of course, you don't get that much time. He's angry. He said, you know, "You did the report, you told me to do this. We're doing everything, and isn't this what you wanted?" And I've been thinking about that a lot because I could not — and, in fact, I actually had a lot of emails, a lot of calls, "Congratulations, Joan, you've done it," you know, "You've gotten community corrections back on the page. We've got funding; we're going to do it; we're now going to show that community corrections can work."

And I remember feeling almost sick in my stomach, and when the governor said, "Isn't this what you wanted?" it was a really, a wake-up call for me, and it's a question I've been asking myself since that October 1 date. And the reason I think I was so uncomfortable is I had been here before. I guess the benefit of being older is that you've lived through previous experiments that look a whole lot like this, and the ending didn't turn out well.

The first one — and, in fact, I'm delighted to see Al Blumstein here, because the first revisiting of the impact of alternative sanctions to be able to downsize prisons was done by Jim Austin and Barry Crispen for the sentencing panel. They eventually published an article called "The Unmet Promise of Alternatives to Incarceration," a review they had done for Al Blumstein's panel. And I summarize it for you. They wrote a careful review of the research literature on incarceration, and the programs implemented to date suggest that their promise of reducing the prison population has remained largely unmet.

For each of these reform strategies, the nonincarceration options often escalated the level of control over inmates sentenced to them. So, I was aware of that. I was a graduate student when I remember reading that and caring about alternatives.

And I thought we were going to do it differently. I got involved in the Intermediate Sanctions Movement around 1980. I see that my first boss, Peter Greenwood, is here. And we had a contract to evaluate at the RAND Corporation the impact of the alternative sanctions movement. What that incurred was around 1985, 1990, there was the second alternative sanctions experiment.

I wrote in an article 15 years after that, in 1999, what had happened. I, we ran the largest, I think it's still the largest, rigorous randomized experimental control conducted in corrections, certainly community corrections. We had 15 programs that were randomly assigning people to intensive supervision various ways, intensive caseloads, electronic monitoring, day reporting centers and then a control group. And I remember writing what had happened as a result of that. It took about 5 years of my life where I spent time evaluating program after program and trying to see whether or not alternative sanctions had done what they suggested they would do.

In 1999, I wrote a review of that article, and I went back and reviewed it. And I wrote in the introduction just a paragraph that I want to read to you. I was writing about the Intermediate Sanctions Movement that started in 1985. I wrote, "Prison crowding in the southern states coupled with the poor regional economy created early pressures for community based sentencing options. Federal courts had found several overcrowded prisons in the south to be in violation of the Eighth Amendment prohibition against cruel and unusual punishment and mandated that these states either build new facilities or find some other way to punish offenders. Because these states did not have the funds to build new prisons, judicial pressure created an incentive for them to develop tough but inexpensive sentences, specifically those that did not require a prison cell. Georgia developed an intensive supervision program and their self-evaluation showed that ISP participants had very low recidivism rates. As the economic downturn of the late 1980s and '90s spread across the country, the states moved quickly to implement alternatives to prison and the Intermediate Sanctions Movement of the 19 — mid-1980s was born."

Sound familiar? I now knew why I was getting that pit in my stomach when people said, "Aren't you celebrating the downsizing of prisons in California?" States in the 1990s were virtually falling over themselves to fund intensive supervision programs of various types.

As I said, a lot of my job was to evaluate. Other people — I mean, this was I think federal government at its best. They funded the county — the states, the counties. They funded Todd Clear, an expert team, to do technical assistance. They funded the RAND Corporation to do randomized experiments. We, in fact, spent 5 years I think pretty well funded, not as — you know, we really had it happening. I thought this was something to really be proud of. And the results unfortunately were disappointing. We found three specific things.

ISPs were seldom used for prison diversion cases but rather increased the supervision of people that were already on probation. The casework, the treatment portion of the intermediate sanctions, never was implemented. What, in fact, was implemented was the surveillance portion of the intermediate sanction, drug testing, electronic monitoring increased. And ultimately, because those alternatives were found wanting, they increased rather than decreased each state's incarceration rates.

And, in fact, in the end, the failure of that Intermediate Sanctions Movement provided the fuel that funded the increases in many states on prison incarceration. "After all," people said in those days, "We have tried community sanctions and they haven't worked. We've given them their try and now our only choice is basically to build prisons." So within a few short years, the Washington Post, in fact, said the future of American corrections has died, because they had published a report saying this was the future of American corrections, and, in fact, the empirical evidence was found wanting.

I'm often reminded at this point of a philosopher who says, those who refuse to learn from history are condemned to repeat it. And I worry that, in fact, maybe that's what we're about to do today in the United States.

Now, I remember when I used to work for Schwarzenegger, if you haven't ever gone bat to bat with a prison guard union in California, you haven't lived, and they have a blog, and they would give us all the worst names and talk about us. But the worst name they gave me is they would say, that "Perky Petersilia." So,

they would always talk about my cheerleading background, and they would say, "She's never met an offender she can't hug and love. She is the hug-a-thug." And they would make fun of me in that way.

And so it's funny for me to be now giving you a talk which is kind of a downer, which basically says, you know, we really need to rethink this. But it's the truth, and we've got to be honest about this.

I think we've got to stop overselling community corrections and because we always oversell and in the end we underdeliver. So why might we repeat our past failures? I've been thinking about this. Are we going to repeat it? Are we going to downsize and we're going to repeat the intermediate sanctions in the community-based alternatives movement all over? We don't even have to go to the community-based alternatives. We can go to the deinstitutionalization of the mentally ill and find the exact same instance where we shut down prisons and the mentally ill moved into the community, but we forget there was no community.

And so here we are today, again, acting like we can downsize prisons without a serious backup plan. Now why might we repeat past failures? I have five reasons why we might. And, in fact, Frank Zimring recently published an article saying that it's likely we will repeat past failures, and that, in fact, prison downsizing will be harder today than it was in the previous times when I spoke about.

The first reason, it's the scale of imprisonment. We have 1.6 million people incarcerated, and the power of the opposition at downsizing prisons will be incredibly huge. It's like trying to downsize the military. There are vested interests that, in fact, have now grown. I mentioned the union. But that's only one of them. We see as we're trying to downsize — look at locations for that prison downsizing that I told you about in California.

Communities don't want those prisons to close. They're — you know, we've got an 8.9 percent unemployment rate and in the inner cities and some of these places where prisoners are located — prisons are located — we have a 13 percent unemployment rate.

So as we move around the state and look at closure opportunities, all kinds of vested interested in opposition are ready to fight that prison downsizing.

The second thing is that they are easy fixes. When we downsize prisons, the easy fixes before aren't there anymore. So, most states, the large states, many states, including California, have now lost the power of parole board discretion. So, an easy way to downsize in the past was simply increase the authority and downscale the threshold that inmates had to meet for parole release. So, we could do it behind prison walls. Most of that is no longer with us today.

So, if we want to downsize prison, we're back into the legislature. And if we're not having the conversation about why we're downsizing, Mike Tonry makes this point repeatedly in things that he's now publishing, which I think has a good point. He says, we're missing the boat because we're arguing for prison downsizing based on cost-benefit calculations. And when the economy improves, as it certainly will, we haven't had the hard discussion about who should be incarcerated, how we should really — what is the stability of punishment in incarceration? What do we want prisons to serve? We're not having that higher-order moral discussion. And so, he says that easy fixes will go back into the legislature, and because we haven't had the higher discussion, it's going to be more difficult.

The third reason is, I think, technology. When I think about technology — GPS, electronic monitoring — all of the fancy ways that we can now monitor offenders coming home, and all of the private interests in making sure that those electronic monitoring devices, et cetera, expand because they're run by private industry, in some ways we're going to have a more opportunity for surveillance to compete with treatment, and I think surveillance wins. We don't have — and this is the thing that I think we're most responsible.

We need to be honest. We don't have a lot of good solutions. If you look — proven programs. If you look,

which I just did before coming out here, at crimesolutions.gov, which is a wonderful resource, and we should thank DOJ for doing that. I go up there often. I refer a lot of people to it. I went up there yesterday and looked at crimesolutions.gov, and I selected community "Corrections and Reentry." Just 23 programs are listed there. Only one is shown to be proven, and it's a burglary prevention program in England.

None of the programs, and particularly some of our most well-invested programs, I see Pam Lattimore here, SAVORI, Christie Visher. We had SAVORI, which was kind of another wonderful — we threw a lot at it, and it's down there as not effective. So we don't know how to deliver proven programs. And if we deliver a proven program in one location, we don't know how to replicate it. And if we know how to replicate it, we don't really know how to scale it up.

So we are not on the shoulders of giants when we think about what we are telling the government officials, we, in fact, can bring to the table and deliver as academics.

Now, the fifth reason I think really is the most important to me. It's going to all be about funding. It's going to all be about the money. This could not be happening at a worse time. That is when the governor says, and I go, "Yeah, but," and then don't get to finish my — it is about the money. We are releasing, let's say, the 30,000 prisoners, the 60,000 parolees into a community context that is declining at every level for poor people generally. We are seeing the closing down of mental health clinics, public health clinics, work training. Workforce Investment Act is being pulled back.

So as these prisoners return home, not only are they at the ends of long lines, which they've always been at, they are in shrinking dollars and trying to compete for those social service dollars.

Interestingly, I just want to tell another one of those things that I thought I had it wrong. In the last six months, I have received about a dozen calls from family members, parolees, probationers, judges and even an inmate from jail calling me: "I want to get back on supervision." I thought I first — the first call that came, I thought I didn't understand what he was saying. He said, "I need to get back on parole. I've been discharged. I'm getting thrown out of my home."

Basically, he was in a residential treatment facility. He said, "I'm getting thrown out and I'm making progress, but they tell me they won't pay for it anymore because I'm off parole." And that was the first call I thought isn't — you know, the business that we are in is so complicated. Here I had been fighting to get him off parole, as if correctional control rates and government control and community supervision were the enemy and that everybody would appreciate getting off of them, discharging early, getting people who don't need services to get off.

And, in fact, what we've been — done, and I thought this came as a total surprise, but I thought, well that must just be, you know, the only person out there that feels like that. But I would have to say in all honesty in the last 6 months, I've had a dozen such calls. I even had calls from a judge, "I need to get my reentry — I run a reentry court — I need to get a person back on parole because he's not qualifying. I'm going to have to discharge him, and he's making progress." Somebody else who has got a job says, "I need that workforce investment dollar." Somebody else who's trying to get medication from a mental health clinic who's just been discharged. So beware of what we ask for, and I think we just got to get a whole lot more serious.

Competition for funding is going to get more and more severe, more and more — much more competition. In fact, I've been looking at what is happening to realignment. So I've been following in all counties where the monies are going. And at last count — we have 58 counties in California. I have added up, one of my law students, thank God for her, she's a former auditor with Pricewaterhouse — she has been going through every budget.

We've now created a database about where every county is planning to spend its money because the state

gave 'em lots of money. It will be \$2 billion over the next 2 years that California will have to invest on these realigned prisoners. Widespread discretion. The deal that was — that was a "yeah, but" that I wanted to tell the governor. The widespread discretion, counties can do whatever they want with the money. They have to put together a group that represents their criminal justice actors, and they spread the money around.

And at last count, just 10 percent of all of the dollars allocated by the state is designated to go to treatment. Forty percent is designated to go to the sheriffs and law enforcement to build up jails. Thirty percent is going to probation staff. More surveillance. Maybe some programming. Probably not. Ten percent is going to court services. Just 10 percent of the so-far-allocated almost a billion dollars for this next year is going to treatment. And so we've got to think about how — will these prisoners and parolees be better off.

Now, why might we succeed? So I've been thinking a lot about that too, because this is where our obligation is. We can't just sit and watch this thing go off the train track. We actually have to get in there. As I said, I'm not alone in this. Everybody in this room kind of is part of this. We have produced an evidence-based body of literature and legislatures are depending on us. So why, five reasons can I think about why this can work.

First, I think the science is much better than when we did this in the Intermediate Sanctions Movement and certainly much better than in the 1970s. We have gotten better. We in this room have produced risk assessment tools. We've produced evidence-based programs. We actually are at a much better place. Most people know the intermediate sanctions, those three findings that I gave to you that, left alone, law enforcement surveillance will always win. And the results are very predictable. Higher surveillance, higher incarceration. But I think we're better. So, our science is much more rigorous.

The second thing I think is also reflective in this room: Practitioners and researchers are in much closer alignment. We are working together. And it used to be, I used to say that when I was working with probation chiefs, I've always worked closely with community corrections officials, probation and parole chiefs, they never had the political clout. I could meet with them until the cows come home. They are not going to be able to ring the day. Who's going to ring the day? Is law enforcement and district attorneys.

And we are having those conversations now. They are at the table. We need those people, the law enforcement, the judiciary, but mostly law enforcement has to begin to talk our language, and they have to believe it, and they are. So, I think while we're having partnerships, the partnerships, the makeup of the partnerships and the political clout they bring are much, much better.

I also think that we have — you know, we're better. I love it when I see, you know, Mark Kleiman who's out there, you know, getting hope into people's mind-set, thinking about flash incarceration and our part of the legislation around realignment. They're also part of what John is funding at NIJ. So, we have researchers who are engaging with policymakers who are getting their ideas into legislation. We have David Kennedy.

I was at a meeting with Corey Booker just this week because he was the commencement speaker at Stanford and met with some of us afterwards. He was talking about David Kennedy and what David Kennedy is helping him do in Newark in terms of the drug market. So, we are better. We are dealing with the right people, and I think the right people are hearing us and they have kind of the political clout. Now, so I think we're getting our act together within the criminal justice system, but I also think something is happening that's going to give us a big boost. One is that we are not alone here. OMB last week issued a letter talking about the importance of evidence-based performance metrics and measurement, urging agencies to fund grants and fund work that in fact can identify clear performance measures. Stop funding broad ideas, get down to what you think you can affect and then make sure that you reward grantees who are actually going to produce rigorous evaluations.

So, I think that the whole focus on performance-based and evidence-based management will benefit our work as well.

Fourth, I guess — well, and I guess on that point, the thing I think we need to do is this won't be just about recidivism reduction. We need to urge that when we start measuring performance measures, we aren't just talking about recidivism. We've all been in the business long enough. When people say, "Well, can you reduce recidivism?" I've been asked this in private as well as public, but in private were some high-level people saying, "Can you guarantee me if I go out on a limb and fund this program, recidivism rates will be reduced?"

I always look at them and say, "Yes, I can guarantee it because by policy I can reduce your recidivism rates." We just decided to revoke people under different things. We all know that game. That's just a shell game. Okay. Let's don't violate technical violations. I can get that down. Okay. Let's just decide we are going to let people fail three or four times and not violate them. I can get your arrest rates down. I can get a lot of things down. But have we really changed behavior? And so that's a much different thing.

So I think when we start talking about performance indicators, which I think are going to be the next decade of what we're all involved in, we start putting more on the table than just recidivism. Because recidivism, as we all know, is a combination of the offender's behavior and that agency discretion about what we're going to record.

So, the fourth thing I think is we've never closed prisons before. So I think when we think about the uptick and whether or not we can do prison downsizing for good, we've never been here before. We have never been — we're 13 states now, because I know California is going to do it. We're going to have 15 or so states that have closed prisons. So whether or not we're having the right discussion, the higher level, like Mike Tonry would like us to have: Is it moral to put somebody in prison?

We're not going to have, even if the discussion does go back, we haven't had that discussion. We're not going to have prisons open at a level that is going to allow us to simply expand the prison population in the way that we did. I don't think — I think as prisons close, just as it's hard to keep — to open up a prison, it takes 4 to 7 years, it's going to be just as hard once we close those prisons to open them up as we have. So I think that's enough — I think that will be a very big reason why we will not see the huge uptick quickly.

I think also perhaps one of the biggest issue is public opinion is with us. I mean, partly it is because the — I think the scale of the problem, which some people say is why we're never going to bring this down, is actually our saving grace. The scale of the problem has now influenced public opinion at so many different levels. I think, and I always think about, you know, that commercial, you know, what goes on in Vegas stays in Vegas.

I think what we've showed in the American public is that what goes on in criminal justice does not stay in criminal justice. It bleeds to communities. And I think that the public — if you look now, and I went back and looked at public opinion polls when we did this in the 1990s. They were never with us. The public opinion was tough on crime when we tried to implement alternatives. And I think now for this period of time, we are going to see a much, much different end game.

We look at — if you've been following what's going on, I mean, mass incarceration used to be the concerns of people in this room. Mass incarceration has now taken on drug policy and the racial divide and what we're doing to minority communities. How many of you are following, you know, *The New Jim Crow*, Michelle Alexander's book, which has gone viral? It has been on the New York Times best-seller list and it's a crossover book. It's an academic book written by an academic who is now — 13 weeks I think, maybe even longer now, it's number 12 on the New York Times best-seller list. So, you know, that's about mobilizing people who are being decimated by the mass incarceration in inner-city communities.

So, I think it's possible that we will be more successful, but I don't want to be naive, and I still think it's going to all be about the money. So once we have our evidence based, I think that's the thing that we need to keep

doing, we're going to actually then have to fight for dollars. And I've been following something, which maybe some of you also have been following. It's called "Pay For Success," or some people call it "Social Impact Bonds." It's a way to leverage private philanthropy with government resources around some identified outcomes. It works like this, and there was the conference sponsored by the White House just last year called "Pay For Success," where they brought in leaders from throughout the country who wanted to figure out a new way to fund social programs. Everybody, whether you're working on the homeless, the mentally ill, low income, children, prisoners, juvenile, we're all looking, how can we get funding for programs that we really do believe could work.

This Pay For Success model basically recruits private investors. They come together with an intermediary organization. That intermediary organization creates a contract with the federal government or the county government for an agreed-upon outcome measure. If they deliver, if the agency delivers on the outcome, the investors get paid back a bonus, they get paid back their investment, but they also, depending on how good the outcome is, could pay back a bonus.

Now, this idea first started — and if you look at President Obama has actually put \$100 million into initiatives that will go like this, encourage innovation in this way. You can pick out any population you think you have a specialty in working with. You can design the program. You can promise the outcome, and you can basically go into business if you can get one of these contracts. It was first started in Edinburgh, England, and it was funded by the Rockefeller Foundation. And, interestingly enough, most of the Pay For Success, when you ask people, what do they think they want to invest in, it's juvenile justice.

So, the first program, these investors decided they could bring down the juvenile recidivism rate of people leaving that youth facility, 18- to 25-year-olds, youth prison. They promised to bring it down 7 percent above baseline — below baseline. And if they did, the investors got paid back, and if they could bring it down more, they even got more money. It's a way of investing that allows us — and so people say, well, you know, could that really work in the United States?

Well, Massachusetts has now just funded five pilot projects, and it's a way to move money from the regular grant making of government to delivering on agreed-upon outcomes. There's an independent evaluator who evaluates whether or not you really did deliver on the outcomes. People — of course, it will be controversial. People say, you know, there's room for cheating; there's room for skimming. I like the idea of creaming off the population. I find that a good thing. There are specialists.

John mentioned I worked a lot with victims and offenders with developmental disabilities. There are experts in those areas. Let them pull out the 10 percent of the prison population that are developmentally disabled and work with them. There are people who know how to train people. We have a great program, car mechanics. It's working in the California prison system. Let those people — take out the people who want to go into car mechanics. We have another program that we're trying to teach people about the wine industry. Let the wine industry take those people. Let's start skimming off the population for which we can make a difference.

And so, I think that this, this model, in fact, will be at least somewhat innovative. I don't know if it'll work. I like the conversation that it will ask us to have then. If — I like the fact that I've been involved. We're starting to have discussions in Sacramento about this same issue. I like who's coming to the table. What are the outcomes you can deliver? What are the outcomes? How much are we as a state willing to pay for the outcomes you tell us you can deliver? How much is it worth to save 7 percent on baseline?

So I like the kinds of discussions that are going to happen even if you don't like the idea. I like the idea that we're going to have to start thinking about funding, not just — you know, this is the nut of it to me. We all know in this room. I know. I know you know, programs that are making a difference. Usually they're not government programs. They're neighborhood programs. Neighborhood programs run on a shoestring.

How can you infuse those neighborhood programs — and I always believe that the best partnerships are government and community and neighborhood. How are you going to get the dollars that are flowing from government? It's not that we're not spending money. We're spending a lot of money. When I — even again in California, \$2 billion will go out for community corrections just in the next 2 years to fund this type of programming. And where will we be a decade from now?

So, I like the idea that we're going to be having different discussions, and I guess in ending I just want to say that, you know, a lot of people have told me I shouldn't even be talking about this because this is kind of a downer. And what some people have said is you got half a loaf, just be quiet. Well, half a loaf to me under such conditions that we know we're going to fail, it seems to me half a loaf wasn't worth the effort. And so I'm not going to settle for half a loaf, and I can only do my work in California, which I'm going to continue to do.

But I think that all of us have got to figure out how to have a more honest conversation and to know that downsizing was not the end game. Downsizing without the plan is a predictable failure, and we all know it. So what we've now got to do is figure out again what we're really good at, the evidence based, the performance metrics. We're going to be good at that, but we've also got to advocate how to bring the money to follow in those programs that we think can do better.

So I welcome any comments from the audience, and I also really thank you for the opportunity to address you in what I think is an incredibly important conference where we all get together. We, you know, wring our hands. We see old friends. And we figure out kind of what the next decade of this field is going to look like. So I thank you, very much.

[Applause]

[End of video clip]

This transcript has been edited for readability

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- [Joan Petersilia's Keynote: "Looking Back to See the Future of Prison Downsizing in America" \(51:46\)](#)

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NIJ Conference
Keynote Address
June 2012

The recent declines in U.S. prison populations have caused many reformers to suggest that America's experiment with mass incarceration is ending. But current prison downsizing policies may well backfire if we

fail to heed the lessons learned from the intermediate sanctions movement of the 1990s. In the event attendees rated highest, Dr. Petersilia summarizes these lessons and discussed why we must consider them if we want to reverse ' for good ' four decades of prison expansion.

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