NAS Incarceration Report

MHM Issues to be Addressed

1. Focus/Scope of Report:

Several reviewers raised questions about whether the Committee had stayed within the assigned scope of the report. (**Reviewer E, pp. 3-4; Reviewer J, p. 1**; Reviewer L, p. 1)Among these reviewers, some raised questions about whether important value questions about the purposes or justifications for imprisonment could properly be included in this report, and if so, whether those issues were handled well. We will look at this issue below.

Other reviewers, however, raised a more *technical* issue about the scope of the report. The mandate was to focus on the growth in incarceration and its causes. But, as Reviewer E noted, the concept of incarceration moves around in the report. (**Reviewer E, p.3)**  The narrowest definition is all those individuals who are in prisons or jails serving sentences for criminal offenses. A slightly broader definition would include those who are in jail or under state constraint because they have been persuasively accused of a crime, but have not yet been convicted. An even broader definition would include those have been released from jails or prisons after conviction, but are still under supervision through probation and parole; and those whose punishment included no prison or jail time, but are now under probation supervision. It could also include (either as a separate category, or as part of the category of those on probation and parole) those who are enrolled in “alternatives to incarceration” that may include halfway houses, or other forms of supervision and shelter. And, it could include those who have been confined in juvenile correctional facilities, halfway houses, or probation and parole.

This might seem like a quibble, but since the concept of growth in the incarcerated population is central to the report as both a phenomenon to be explained and as a cause of good or bad social consequences, a certain amount of precision in definition, and consistency in usage would be important. This is also analytically important for two different reasons.

* First, when one is looking at what is described as the growth of incarceration in the narrowest terms, one of the important causal factors shaping that variable is both the presence of alternatives to incarceration in responding to convicted offenders: the more alternative forms of supervision for convicted offenders, the smaller the fraction of all convicted offenders who will end up in the narrowest definition of incarceration. (See **Reviewer C** p.1 on the impact of limited alternative responses to convicted offenders. See **Reviewer D p.1** for impact of failures in probation and parole on incarcerated populations. See Reviewer B, p.2 for the impact of police practices on observed racial disparities. See Reviewer A p.1; Reviewer B p.2; and Reviewer D, p.2,3; for the specific impact of drug enforcement policies as well on racial disparities.) This is also true for important changes in police and prosecutorial practices: the more that police rely on alternatives to arrest and prosecution, and the more that prosecutors rely on alternatives to long prison sentences, the smaller the number of individuals who will be sentenced to prison time, but the larger the number of people who will find themselves under some kind of criminal justice restraint.
* Second, when one is looking at the effects of the growth in incarceration, one has to know whether one is discussing the impact on prison sentences, or more particularly long prison sentences (occurring at some point in life), or even on such things a solitary confinement or max security. (Reviewer I, p. 3) The point is that there is a whole continuum of criminal justice supervision, and the part of that supervision that is being described as incarceration has to be clear and consistent, or consistently differentiated in the report as both a explanans (thing to be explained) and explanandum (explanation of the why the explanans looks as it does.

A closely related point about the scope of the report focuses on the degree to which the report was supposed to cover a discussion of alternatives to incarceration either as a response to convicted offenders, or as a method for controlling crime. The question of the existence and utilization of alternative responses to convicted offenders is logically important to the report as noted above as something that either does or does not help to explain the growth in one particular response to those convicted of crimes (incarceration rather than probation, say; or extra long sentences for drug and repeat offenders); and as an alternative that beckons to us in the future if we decide that we have too many individuals in prisons and jails. Several reviewers raised questions about the extent of the Committee’s coverage of alternatives to incarceration primarily in developing ideas about how best to revise current policies (See **Reviewers C, p.1; F, K, J**), but would also be important to consider as an explanation for why we have depended primarily on prisons and jails. (Reviewer L, p.5) Answers to that empirical question could help to bolster any conclusions the Committee wanted to reach about revisions.

1. The Normative Framework Used to Reach Policy Conclusions;

Perhaps the most important issue that the reviewers have raised focuses on the important philosophical/normative question of how society either does or should view the purposes or ends of imprisonment. Some reviewers said that they did not think a discussion of the important ends to be achieved through incarceration, or reflected in the policies that generated the observed level of incarceration should be included in the report at all. Others said that they welcomed that discussion, but thought that the Committee had not done a good job in addressing these issues.

We disagree with those that say the normative issues have no place in this report. We believe that they are central even (or perhaps particularly) in a scientific report that seeks to measure the social impact of a given set of public policies such as those that have sent an increased number of citizens to prison for long prison sentences. And we think the Committee should be praised for their efforts to incorporate normative concerns into the scientific framework of the report to help define which particular effects of the increased use of incarceration should be measured to help us understand the overall social impact of these policies. But, at the same time, we note some unevenness in the Committee’s efforts to deal with this issue.

On the positive side, many reviewers noted the skillful way in which the panel had handled one of the most socially important consequences of the increased use of incarceration: namely, its disproportionate affect on individuals coming from disadvantaged minority communities. (**Reviewer F, p. 2**) The fact that such individuals were disproportionately represented in the incarcerated population created a prima facie challenge to the justice and fairness of the policies, and to social perceptions of their legitimacy. And the Committee won kudos from many reviewers for what was seen as their even handed treatment of both the facts and the values tied to the fact of the observed racial disparities in the prison population.

Also on the positive side, several reviewers noted the novel effort to capture the negative and positive effects of increased incarceration not only on the individuals incarcerated, but also on the communities from which the offenders were disproportionately drawn. (**Reviewer F, J**) This followed the concern about disparate impacts of the policies on different populations, and added a new kind of effect that could occur if the policies fell particularly hard on particular communities, and ended up incarcerating large fractions of adult males from those communities.

Where the Committee drew more fire, however, was their alleged failure to take seriously an important normative purpose of incarceration that was tied to both a justice idea (that offenders should be called to account for crimes they committed – a view that is widely held in the population, and has some important philosophical theory on its side), and to a utilitarian argument that punishment would not only reduce crime by deterring and incapacitating offenders, but also by strengthening social norms and the informal social control the norms help produce. (See **Reviewer I, p. 2,3 J. p.1;L**).

The Committee was also criticized for introducing a series of “principles” that were offered, but not defended either philosophically or politically as the values that should guide the nation’s use of incarceration. (**Reviewer L, p.1;** ) **Reviewer J** also noted that none of these principles included the idea that one of the important (utilitarian) goals of imprisonment was to reduce crime!

What seems important to us is that the Committee go even further in developing a normative framework to be used for accumulating and evaluating scientific evidence about how important social values were being affected by the growth in incarceration, and the politics and policies that were driving that growth. That normative framework should acknowledge the importance of utilitarian values such as the impact on crime (through various means); the economic cost of the effort in dollar terms; the bad and good effects that incarceration had on the individuals who were incarcerated, and the bad and good effects on the communities from which the imprisoned population was being disproportionately drawn. But that normative framework should also include the important ideas associated with ensuring that the policies are just and fair as well as low cost, efficient in producing desired social results, and avoiding social harms. Those values would include the idea that the state should treat individuals accused and convicted of crimes fairly and justly, and with due regard for their individual constitutional rights and their inherent dignity, that we should use as little state authority as possible in seeking to create just conditions in the society, but be willing to use state authority to protect or promote justice, and that individuals; and that offender should be called to account for their crimes, but not punished disproportionately to the seriousness of their offenses. Reviewer F (p.3) praised the committee for noting that some of the important changes in sentencing policy that produced increases in incarceration were introduced to reduce unwarranted disparites among offenders convicted of similar crimes. Several reviewers also wondered about the use of the term legitimacy. And the Committee could address the idea of legitimacy as a condition of public support for a set of policies that are simultaneously efficient and effective in achieving desired results, just and fair in how they are carried out and the results they produce, and as a consequence of both these qualities enjoy popular support.

It is sometimes thought that the values identified in the utilitarian framework are amenable to scientific investigation while those identified in the justice framework are not. But the fact of the matter is that once one gives a particular definition to an idea of justice, fairness, proportionality, etc, it becomes a scientific empirical question about whether the policies are being implemented in a way that is consistent with these ideas, and producing the desired effects. Similarly, the ideas of efficiency and effective are hardly objective ideas. To say that some policy has been efficient or effective, one has to describe the ends that were to be achieved by the policy (a normative question), the costs that were paid in producing the desired result, and any important unexpected side effects (both positive and negative) that emerged as results of the policy.

Of course, as the report makes clear, the science that supports estimates of the size (and even the sign!) of the estimated effects of increased incarceration is a bit thin, making the key empirical estimates that could be used in rigorous normative evaluation of the policies quite uncertain. But we think that the Committee has done a very good job of marshalling the available scientific evidence on the size of policy relevant effects. It just needs to be a bit more careful, consistent, and complete in developing and using a framework that can capture the socially relevant impacts of the policy.

1. Political Forces Shaping Policy Response

Among the most interesting features of the Committee’s charge, and its draft report, is the effort to explain what has “caused” the growth in the incarcerated population.

One explanation, of course, is a growth in the crime rate, and particularly in the level of serious violent crime that carries with it the longest prison sentences. The authors seem to discount this explanation by relying on the Blumstein Analysis that partitions the observed growth in the crime rate among different possible explanations. The difficulty, however, is that the Blumstein analysis focuses on trends since 1980 when it is likely that incarceration policies began to overshoot the mark, and pile prison sentences on for minor offenses. If, however, the violent crimes of the late sixties and seventies were met with increasingly harsh prison sentences in the seventies, then the observed growth in the prison population could be partly the result of the lagged effects of both high crime rates and increasingly tough prison sentences that began in the seventies. Some portion of the increased prison population could be associated with the higher crime rates of the late sixties and seventies. (More on this below.)

Part of the scientific difficulty here is that the analytic frame of the report does not really have in it a dynamic model of prison populations in which changes in the number and severity of punishments in a given year have a smaller or larger impact on a population that is already in prison. If there was a relatively small number of offenders in prison for short periods of time in the seventies, and then crime increased, the seriousness of crimes increased, and the sentences for both very serious and less serious crimes increased, then one could have a tremendous build-up in the prison population that would last for a long time before the prison population began to fall as crime rates fell but everything else remained constant. It is not clear that this is what happened, but it plausible that the upsurge in prison population could be explained by a combination of increased crime rates, increasingly successful criminal justice efforts to convict offenders of crimes, and harsher treatment for all levels of offenses and offenders. But the point is that the evidence that is offered that crime rates alone played little role (Figure 1) doesn’t really prove this point because it is comparing changes in annual crime rates (a flow of individuals eligible for incarceration) with the proportion of the population in prison (which is a measure of a stock that is being influence by both the number of entrants and the length of time they stay in the pool). The good measures of whether our sentencing policies were getting harsher, and what that would mean for the growth in the prison population would be to look at the successive cohorts of individuals charged with different crimes, and having different criminal records to see whether the sentencing, and/or the actual time served, was changing much for similar segments of the criminal population. Without this, the claim that the predominant driver of the dramatic increase in rates of incarceration were tougher sanctioning policies and not underlying changes in rates of criminal offending, or characteristics of the offending population, are weaker than they otherwise should be.

This problem has an important implication for the whole discussion in Chapter 4. That chapter seeks to show both that the country turned toward tougher sentencing (by looking at a set of legislative changes), and explain the key moments and driving forces in that set of choices in terms of underlying political forces. In principle, the quality of that analysis is something best addressed by a historian, or a political scientist who has methods that help him or her explain policy development processes. **Reviewer A**, who seems to be the only historian in the set of reviewers, offers a strong general and specific commentary on Chapter 4, and all of those accounts ought to be taken very seriously by the Committee(Reviewer A. pp.3-4)

But some reviewers raised questions about the accuracy and the evidentiary basis for the interpretations of the social forces. On one hand, Reviewer I argued strongly that the response of elected officials was “driven by realities,” and that the “fear of crime was real.” (Reviewer I, p.1 Reviewer F noted that many of the policies adopted had important disproportionate racial effects, but praised the panel’s observations that this did not count as direct evidence of “overt racism.” (Reviewer F. p.2) Other reviewers were concerned by the claim that the increase in imprisonment had been driven by the economic interests of the prison industrial complex, and wondered if you had enough evidence to support this claim. (**Reviewers A, p. 1 I**)

One can understand that an effort to explain the political forces that were driving changes in sentencing police (and practices) would be difficult to accomplish on a scientific basis. But given this, once again it seems important that the Committee frame the issue in the right way, and pay close attention to the evidence on alternative hypotheses about what might have been causing the changes in policy. The big question at issue in this historical/political science account is whether the change in policies represented a rational and reasoned response to circumstances, or whether it was driven by irrational, politicized forces. If the forces could be seen as rational (and, perhaps, just and racially unbiased), then we would have a different evaluation of the policies under examination (and particularly their legitimacy) than we would if we thought there were other drivers such as racial animus, or fear mongering, or a prison industrial complex. Once one excludes the hypothesis that crime rates alone (or crime rates plus accumulated liabilities associated with repeat offending) could explain the political response, then one is only left with irrational and biased political forces. Yet, to make that case convincing, one has to show both that the evidence is strong that crime rates, and (reasonable) fears of crime cannot account for the policy response, and that there is some evidence that the alternative irrational ideas were driving the change. If the later is the case, then the recommendation of exactly how the public as a whole might best reconsider the changes in sentencing policy we have made becomes very problematic. (See proposal by **Reviewer B, p.2**; see also query by Reviewer J asking how come the public is so consistently in favor of tough crime sanctions).)

One other point made by reviewers about the report as a whole that bears on the discussion of the role of political forces and public views of crime and justice is that several reviewers noted that the Committee did not take adequate account of regional or state variations in their response to what seemed for a while to be growing crime rates. (Reviewers A, p. 2; Reviewer C, p.1 Reviewer G, p.1; ReviewerI p.2 ), This is important for at least three reasons. First, the simple fact that much sentencing policy is made at state levels in the US rather than federal levels suggests that the account of what happened as well as how the nation might respond to new information about the effects of various policies is going to be more complicated. We will have variable state action rather than concerted federal or national action, Second, this also suggests that the account of what was driving the sentencing response to crime might have to be a bit more varied. Third, the variation among the different states could, in principle, be used to provide a more scientific basis for explaining what exactly it was that was driving increased severity of sentencing.

1. Estimates of Crime Reduction Impacts of Incarceration Policies

Among the most important and consequential empirical claims made by the report is the claim that the increase in imprisonment produced only small effects on levels of crime. Undoubtedly, this will be one of the most hotly contested of the empirical findings of the report, and several reviewers focused sharp attention on this. (Reviewer F finds the treatment satisfactory p. 2. Reviewer I, p 1,2\_\_\_; and Reviewer K \_\_\_are more critical.. K)

Of course, it is not easy to estimate the overall effect of incarceration policies on levels of crime – not least because we know that incarceration is only one of many factors influencing crime rates, and also because we have many different ideas about the causal pathways that could connect levels of incarceration to levels of crime that move in both positive and negative directions, in both the short and long run. But the Committee seems to want to say that the effect is small, or non-existent, or perhaps even negative over the long run. If that were true, the view that we ought to revise our current commitment to incarceration would be an easy choice. If there is little benefit, and lots of cost and harm, it is not hard to decide that we ought to change – even if in the complex interplay of politics and policy and different ideas of justice we seem to keep deciding to stay with a heavy reliance on incarceration, and incarceration for particularly long times.

The difficulty, however, is that the Committee is up against a simple alternative hypothesis which is closely aligned with public views, and is not wildly inconsistent with the available evidence. (Reviewer I, p.2)On that view, the country went through a period in the late 50’s and 60’s where it had very low crime rates and very low levels of incarceration (relative to the size of the population, but potentially large in terms of the number of offenses and offenders). In that situation, crime increased from the sixties through the seventies (helped along by both heroin and cocaine epidemics that generated violent crimes through both trafficking and robberies and thefts linked to use.) The country responded to that belatedly with get tough policies, and crime began to fall, and continued to fall. The prison population continued to rise (as both a share of the population, and as a proportion of all offenses and offenders) because of the hangover effect of the surge in crime, in serious crime, in the length of penalties for serious crimes, and the increased use of three strike laws. (Reviewer I p.2 raises the possibility of a lagged effect of imprisonment rates. Reviewer A p.2 provides some indirect evidence for this view noting that the number of prisoners over 55 increased by 550% from 1990-2012.) On this view, the increase in incarceration did reduce crime.

The two reviewers (I pp,1-2, and K pp, 1-2) who focus on this issue are basically asking for evidence that this alternative hypothesis is wrong. They are also asking for some more clarity about what is meant by a large or small effect (Reviewer K, p,2) . What seems small, and not worth all the costs of the incarceration to one person, might seem large enough to warrant the costs in the eyes of another. Some work shoring up the estimates of the crime reduction effect (with some confidence intervals around the estimate), and pointing to the evidence that supports those estimates, would be helpful to the report.

**Reviewer L** (p.4) also makes an important point that has to be considered in estimating the impact of the increase in sentencing policies. (This is related to the point that **Reviewer J p.**  makes about whether the policies under discussion are those that produce a large prison population, or those that produce very long sentences for some individuals.) He or she makes an important distinction between the effect of incarceration in general (or in its old state) and the effect of the *increase* in incarceration that occurred during this period that can be accounted for by policy changes. The basic idea here is that we had kind of a normal policy of sentencing that took a given level of crime and turned it into a prison population. That is incarceration in general. Then, we changed that policy, and upped the punishments so that the same underlying level of crime would produce longer times in prison for those sentenced. (The increased in incarceration holding offenses constant.) In principle, what we are interested in is the magnitude of the crime reduction effect of the marginal increase in sentencing and time served, not the overall effect.

1. Estimates of the Economic, Social, and Health Effects of Increased Incarceration on Incarcerated Individuals, and the Communities from Which They Come ( Sara to Provide)
2. Exploring Alternatives to Current Policy

The last area that captured the attention of the reviewers was the Committee’s work to develop a clear picture of what the alternatives to our current policy could be. (**Reviewers B,pp.2-3) Reviewer C, p.1; Reviewer D, p.1, Reviewer F, p. 1; Reviewer H. p.2) and K**) As noted above, the failure to develop and use something other than prison and jail as a response to convicted offenders shows up in the report as part of the reason why we might still have very large prison populations. But this area also shows up as an important part of the Committee’s charge, and one of the most important sources of guidance in helping the country find a better response to convicted offenders and crime. All of the reviewers above thought that the report provided too little to provide much guidance going forward, and wished that more on this important subject could be added.

* 1. Argument and Evidence for Value of reducing very long prison sentences (**Reviewer H**
  2. Exploration of Alternatives to Imprisonment once Convicted (**Reviewer B**,C
  3. Exploration of Alternative Crime Control strategies (**Reviewer D**

1. Kinds of Research Needed Going Forward (**Reviewer C**

General Suggestions:

You have received and responded to a great many particular critiques of the report. It is easy to get discouraged and frustrated by these individual comments, but you should take heart that all reviewers agree that you have worked with a very important, morally fraught issue that does not have the best possible scientific basis for exploring causes, consequences or the likely performance of changes in current policies. As you move into the final stages of editing, it might be valuable for you to focus on the basic core of your findings and the normative and empirical logic that carries you from your empirical conclusions and your policy recommendations. It is here that the report will have find its most important critics and achieve (or fail to achieve) its most important results. The good news is that that argument is relatively simple to grasp. But it is important that each element be successfully defended.

The core argument goes something like the following.

* America has changed its sentencing policies in ways that (along with other factors) have dramatically increased the number and proportion of individuals incarcerated in prisons, in jails, and under supervision in probation and parole.
* The growth in the incarcerated (or under control) population cannot be explained by increased underlying levels of offending; it is not only that we endured higher levels of offending in the society in the period from 1960 to the mid 1970’s, but we also responded to that increased crime with a series of policy changes at the sentencing level, and at the enforcement level. The combination of the two has pushed the prison population to historically and cross nationally unprecedented levels.
* This change in policies did not produce much reduction in overall levels of crime.
* It did fall with particular vengeance on already hard pressed individuals and communities. It produce mostly bad effects on those individuals and the communities from which they came deepening their disadvantage.
* The racial disparities in the context of our history raises important questions about the justice, fairness and legitimacy of the policy changes as well as their effectiveness.
* A particularly ineffective part of the policy is that it relies heavily on long sentences for offenders which are particularly suspect as crime control instruments (even if they might be considered just) since the deterrent and incapacitation of these long sentences are arguably less than what could be produced with shorter, more certain sentences for an active offending population.
* Therefore, we ought to revisit and probably reverse course in our sentencing policies by reducing very long sentences, by experimenting with shorter sentences and alternatives to incarceration to achieve similar crime control effects with less use of incarceration, and perhaps by altering both our criminal justice and social policies more generally to produce a level of security we can stand with less intensive, criminalized supervision.
* The aim is to produce less or equivalent levels of crime, with greater justice and fewer racial disparities, and lower overall costs (reckoned in terms of the use of both public dollars and state supervisory authority)

This is a very simple, coherent, and powerful argument. And if you can hold this argument together, the report will have a big impact. But to produce this result, you will have to deal with some very specific and particular objections that will come from politicians, press, and citizens who see the important values at stake, and the important facts in this situation differently than the members of the committee. Here are the principal difficulties.

* The Panel quite properly notes that the evaluation of any given sentencing policy depends on the normative framework used to make judgments about the overall value and appropriateness of a policy as well facts about the effects it seems to have produced. In the case of sentencing policy, the normative framework necessarily includes the assessment of some practical effects such as the impact of policy on crime, the impact on the condition and behavior of those incarcerated, and given that the incarceration policies concentrate their effects (potentially both positively and negatively) on poor minority neighborhoods, the impact that the policies have on those communities. But the normative framework also includes some ideas about what is just and fair. Indeed, much of the explicit and implicit criticism of the policies is that they departed from a particular conception of justice as well as that they had more negative than positive social effects. The policies are seen as unjust because they ceased being reasonably related to the seriousness of offenses (a failure of proportionality). They also failed because they landed disproportionately on a population that was already badly treated and discriminated against. The argument is also made that inmates are treated unjustly by the society both while in prison, and when they are released since they are given no opportunity to reclaim their lost status. So, issues of justice are explicitly and implicitly included in the evaluation of the policy. The difficulty is that there is a conception of justice that requires a society to call offenders to account for criminal offending, as well as to respect their rights, treat individuals fairly, and fit the punishment to the crime. That view of justice – a view that is held by many in the society and has an honorable tradition – is not really introduced as an important dimension of value. And it is that omission that provokes some of the reviewers to the failure to be concerned about the moral expessiveness or retributive aspects of punishment. The report says that punishment should not be used more than is required to achieve the ends of the criminal justice system. But you do not say (and could) that the punishments should not be less than is required by the ends of justice where the ends of justice include the handing out of just deserts for offenses.
* One of the key empirical conclusions of the report is that the increase in the prison population had only a small or unimportant impact on crime. This is an absolutely critical empirical finding/judgment, and it is sure to attract lots of attention. Several reviewers focused their attention on this particular issue and raised questions about the treatment of this key empirical conclusion. One of the big problems for the analysis you present lies in the very first figure presented. That figure shows selected crime rates (particularly murder and robbery) rising from the early 1960’s to the mid to late seventies, and the imprisonment rate (defined as the proportion of the population in prison, jail, or other forms of criminal justice supervision) starting to rise in the late sixties and early seventies, but then really accelerating in the mid eighties. In the meantime, crime has begun to fall. The interpretation that the committee seems to offer for this set of observations is that the country became dramatically more punitive in the seventies, and continued with these policies into the 1990’s and the 2000’s when they were no longer needed, and that it ended up with the large and unfairly distributed prison population that we now have. The idea that the country has overshot in terms of its use of imprisonment may well be correct, but one can give a somewhat different interpretation of these basic trends. On this different account, one could say that the country was slow to respond to the run up in violent crime (including violent crimes associated with illegal drug dealing, which may have to be handled as a separate category) in the sixties and early seventies, and then began responding with sanctions that were more punitive than those previously relied upon. The combination of both lots of crime, lots of serious crime, and increasingly punitive punishments brought a large number of new offenders into the prison system, but their impact on future levels of incarceration was amplified by the fact that they were getting longer sentences. If the sanctions remained at these new high levels, the prison population would grow dramatically with no additional changes in sanctioning policies, and declining crime rates because the stock of folks in prison would include many people with very long offenses. Moreover, one could reasonably say looking at this evidence alone, that the increased sanctions of the late mid and late seventies that resulted in an accumulating bulge in the prison population was part of the reason that crime fell. The simple interpretation of figure 1 could well be not that the system became increasingly unjust throughout this whole period, but that the system made a one time adjustment that produced a big impact on crime and also had a big accumulating effect on the number of individuals incarcerated because the average sentences for given combination of offenses and offenders were getting longer. There is, of course, some evidence that would cast some light on whether the increase in the prison population came from longer sentences created once and then left intact: namely, one could look at the sentences and time served of cohorts of offenders entering the system in each year from 1960- today. One could also look at the average age of the prison population, or at the amount of time that remains on inmates sentences. Note that if we are looking at the overhang of decisions made in the eighties, the prison population ought to start coming down, as it seems to be – not because we have become less punitive, but because the large number of offenders we saw in the crime wave had now served their (increased) sentences. The issue here is two fold. First, one can (and someone almost certainly will!) tell a simple story from the graphs you present that says that increased imprisonment reduced crime, and therefore that one of your key findings is not supported by you own data. Second, there is a technical problem of both evidence and modeling the growth in the prison population that is necessary to tell us whether we are looking a bulge that emerge from a one shot increase in sentencing at a time of high crime (which may have had a crime control effect) or whether we are looking at escalating levels of punitiveness that is no longer justified by the character of the crime problem is a problem that requires one to analyze the dynamics that are shaping the size of the prison population. The sophisticated analysis of this phenomenon that is presented unfortunately looks only at changes from 1980. It does not look at what happened in the important period from 1960 to 1980 when the first large cohorts of offenders were being sentenced to long terms, to be followed by other smaller cohorts also being sentenced to long sentences. To give this alternative hypothesis little attention in the report is to leave you vulnerable to charges of both bias and technical failures to entertain rival hypotheses and search for evidence that could favor your interpretation and put this other interpretation aside.
* Suggestions on empirical estimate of impact on prisoners here. ITwo ideas: 1) prison conditions are a matter of justice and right as well as welfare; 2) important to introduce idea of community effects as both a problem and an opportunity; 3) security benefits to low income communities as well as loss of human capital)
* Proposals are not well defended in moral or empirical terms. Reduction of long sentences can be seen as good or bad. Only theory supports. Alternatives to incarceration not fully developed or exploited, Changes in drug war. Chanbes in arrest policies. Dealing with folks who need supervision but not necessarily criminal supervision.

All NAS reports seek to be scientific reports that report on facts, do not base conclusions on values. But the main reason an NAS report is commissioned is that there is an important policy issue on which advice is needed. That advice has mostly to do with the accurate estimation of the effects of past policies, as well as an investigation of causes (as though we could get to policies simply from knowing causes). But in order for this to work, someone has to set out the relevant effects. Sometimes social science can offer ideas about important unforeseen or unintended consequences. But oether times, and particularly in criminal justice, one has to deal with philosophical ideas of justice. One can carry out empirical investigations to determine the degree to which actions are or are not consistent with an idea of justice once it is provided. But defining justice is not inherently a scientific question, though it is amendable to logic and argumentation about social life. The committee has done a very creditable job in dealing with both the value and empirical issues. If these comments could help the committed make their report even better, that would be great, but we understand how much hard work has already gone into this report.