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THE GREAT DEBATE (PART I)

Who should go to prison? For how long?



By Julius (Jay) Wachtel. On December 6, 2009 police in Culver City, a Los Angeles suburb, confronted [Boneetio Washington](#), a transient on felony probation, on a complaint that he tried to break into a home. Officers didn't feel there was enough evidence and let him go. His freedom didn't last long. Two days later [LAPD officers arrested Washington](#) moments after he allegedly forced his way into an apartment and raped and murdered its occupant, a woman pregnant with twins.

Washington's prior conviction had also been for breaking into a woman's apartment. Confined to jail and a mental hospital for a year awaiting trial, he pled guilty and was sentenced to time served and three years probation. By then the 22-year old had amassed a record of similar crimes, including arrests and at least one conviction for breaking and entering, larceny and assault in his native Rhode Island and, as recently as 2006, in North Carolina.

Considering Washington's criminal history why had California authorities dealt with him so leniently? [Unnamed sources](#) told the *Los Angeles Times* that there was "nothing in his past that appeared to show a predisposition to the kind of violence he is now accused of committing."

Here's another L.A. story. In 2006 [Charles Samuel](#) snuck into the residence of the man who was dating Samuel's estranged wife. He confronted and beat up the man and stole some small things. Already a two-time loser (he had served six years for a 1986 incident in which he kidnapped an elderly man to get him to withdraw cash from an ATM, resulting in convictions for residential burglary and robbery) Samuel was nonetheless allowed to plead guilty to felony theft. Although that lapse was attributed to a "clerical error," Samuel had told a probation officer that the bargain avoided his

being charged with a third strike, which in California generally calls for a mandatory 25-to-life (P.C. 667e).

Samuel was paroled to a drug rehab facility after two years. On July 24, 2009 [he got permission to go to the downtown DMV office](#). A 17-year old high school senior, Lily Burk, was also downtown, running an errand for her lawyer mother. Her mutilated body was later found in the family Volvo. In a horrific incident that parallels his earlier crime, [Samuel has been charged](#) with kidnapping Burk to get her to withdraw money from an ATM, then in a rage slashing her to death with a broken bottle.

Forty years ago prison sentences were indeterminate, with the actual number of years to be served set by parole boards and commissions after the fact. While penalties looked stiff on paper, [felony offenders sentenced to prison](#) wound up serving, on average, only 38 percent of the top end of the range imposed by a judge (for violent offenders, it was 46 percent; for property offenders, 34 percent.)

During the 1970's and 80's inner-city violence, much of it related to a booming crack trade, led to calls for "getting tough on crime." Spurred by Federal grants, State legislatures responded with "[truth in sentencing](#)" laws that constricted sentencing ranges and cut back on good-time and other credits, narrowing the gap between what judges imposed and what was actually served. By the early nineties a majority of States and the District of Columbia required that prisoners serve at least 85 percent of their terms before release.

In 1994 violent felons served, on average, less than one half their terms; [by 2004 it was two thirds](#). More defendants were also being convicted and incarcerated. There were 893,630 felony convictions in State courts in 1990. By 2006 the figure was 1,132,290; adjusted for population growth, [it represented a net increase of 13 percent](#). Yet the toughening wasn't as severe as it might seem. While the number of convictions *was* up, and the disparity between sentencing and actual time served *was* reduced, penalties under the new determinate sentencing model were also lower, meaning that [inmates wound up serving about the same amount of time as before](#).

How much time *do* offenders serve? Keeping in mind differences between States, [in 2006](#), the most recent year with full data, slightly more than half (54 percent) of violent offenders went to prison. Not including life terms, their sentences averaged 96 months. Minus fifteen-percent good-time credit that comes to 81.6 months, or nearly seven years. Terms for aggravated assault were substantially lower, for robbery and sex crimes somewhat higher, and for murder much higher.

But citizens aren't "averages." They're victimized one at a time.

On October 1, 1993, Petaluma (Calif.) resident [Polly Klaas](#), 12, was kidnapped and brutally murdered. A parolee, Richard Allen Davis, was quickly arrested for the crime. He admitted killing the girl and police collected abundant evidence of his guilt. Davis was tried, convicted and sentenced to death. He's still on death row.

Polly's murder shocked the nation. Citizens were particularly roiled by the killer's record, which included a 1974 conviction for multiple burglaries (he got six months to 15 years and served two years), a 1976 conviction for kidnapping and assault (he got one to 25 years and did six), and a 1985 conviction for robbery and extortion (he got 16 years and did eight.)

How could someone like that have been released at all, let alone after only serving half his term?

The anger was quickly transformed into legislation. Enacted in 1994 by popular vote, [Proposition 184](#), the "Three Strikes and You're Out" initiative provides enhanced penalties for persons convicted of any felony, including property and drug crimes, if they have been previously convicted of a violent or "serious" felony (examples of the latter include burglary of an occupied dwelling and robbery). Those with a single such past conviction get their new term doubled ([PC 667\[e\] \[1\]](#)), while those with two or more qualifying convictions get a minimum of 25 to life ([PC 667\[e\] \[2\] \[A\]](#)). There is one exception: prosecutors can, "in the interests of justice," choose to ignore prior "strikes" when accepting pleas to new crimes.

Polly Klaas was murdered before three-strikes. But what about the two killers mentioned at the top of this post? Boneetio Washington had only one "strike" before he murdered the pregnant woman, so three-strikes would not have kept him off the street. Samuel, on the other hand, had at least one and possibly two strikes when he pled guilty to felony theft, yet prosecutors for some reason chose not to charge the priors, so he was freed well before Lily Burk ran her fateful errand.

Next week we'll examine three-strikes in greater detail. Stay tuned!