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Dangerousness, Risk, and Release

HADAR AVIRAM*

WITH VALERIE KRAML AND NICOLE SCHMIDT

The gruesome shooting of four Oakland Police officers on March 22, 2009, by parolee Lovelle Mixon¹ has reheated an animated discussion² regarding California's parolee population, and the State's release and supervision policies. While the discourse of risk and the search for accurate risk assessment are not endemic to California,³ the situation within the state is distinctive due to California's unique sentencing and parole structure, which yields the

* This essay is the fruit of excellent discussions at the California Correctional Crisis Conference, held March 19-20 in San Francisco, California. I am grateful to the Dangerousness, Risk and Release panel — Evelyn Lara-Lowe, Shadia Merukeb, Robin Rederford, and Jonathan Simon — for their important comments and their contribution to these ideas. I am also grateful to Monnyda Aut, Meredith Alexander, and Heather Freinkel, for their input to the panel planning and, consequently, to this essay. Special credit goes to Valerie Kraml and Nicole Schmidt, whose seminar papers on parolees and sex offenders were immensely helpful in shaping this essay.

1. Jaxon Van Derbeken, Demian Bulwa & Carolyn James, *3 Oakland Officers Killed, One Critically Hurt*, S.F. CHRON., Mar. 22, 2009, <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2009/03/22/BA8H16L3BI.DTL>. For an account of parole proceedings in Mixon's case, see Jason Van Derbeken, *Parole Handled Mixon Case Right, State Says*, S.F. CHRON., Mar. 25, 2009, <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2009/03/26/MN6Q16MTND.DTL>; Press Release, Cal. Dep't. Corr. & Rehab., CDCR Undersecretary Scott Kernan Statement on OIG Review Confirming Parolee Mixon Handled Appropriately (Mar. 25, 2009), http://www.cdcr.ca.gov/News/2009_Press_Releases/Mar_25.html.

2. Editorial, *On the Oakland Shootings: Four Fallen Heroes*, S.F. CHRON., Mar. 23, 2009, <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2009/03/23/ED1616L5A5.DTL>. For opinion pieces on the shooting, referring to it as a symptom of California's broken parole system, see Jeanne Woodford, *California Injustice — Doing Nothing but Time*, S.F. CHRON., Apr. 3, 2009, <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2009/04/03/ED5Q16RQAU.DTL>. For pieces emphasizing Mixon's violent past and dangerousness, see Jill Tucker, *Community Wasn't Told of Oakland Girl's Rape*, S.F. CHRON., Mar. 26, 2009, <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2009/03/26/MN3516N0KN.DTL>; John King, *Oakland Cops' Killer Linked to Violent Robbery*, S.F. CHRON., Apr. 17, 2009, <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2009/04/17/BAA01745GH.DTL>.

3. Prominent criminologists have identified a broad trend of moving away from individualized justice to a managerial, actuarial criminal justice discourse, relying on broad factors to establish risk assessment and inflict "selective incapacitation." Malcolm Feeley & Jonathan Simon, *The New Penology: Notes on the Emerging State of Corrections*, 30 CRIMINOLOGY 449 (1992). For approaches to evidence-based risk-assessment, see Henry J. Steadman et al., *A Classification Tree Approach to the Development of Actuarial Violence Risk Assessment Tools*, 24 LAW AND HUMAN BEHAVIOR 83 (2000).

largest parole population in the country — 111,308 releases under parole supervision in 2009.⁴ The balance between public safety concerns on the one hand, and rehabilitation and reentry on the other,⁵ has a profound effect not only on parolees, but on the state as a whole.

The structure of parole supervision and release in California was transformed in a fundamental way upon the passage of the Uniform Determinate Sentencing Act in 1977.⁶ The Act created a shift from an individualized sentencing regime, based on the traits of the particular offender and his or her rehabilitation trajectory, to a sentencing structure based on the offense.⁷ One important implication of this change has been a dramatic decrease in parole board discretion regarding inmate release.⁸ In fact, some of the factors that impacted the shift from indeterminate to determinate sentencing were related to parole, such as the perception that local communities had little input in the parole boards' release decision, the perception that violent and dangerous offenders were being released too early because of a naïve emphasis on rehabilitation rather than a commitment to incapacitation and retribution, and the due-process-oriented belief that offenders have the right to know the date of their expected release.⁹ The focus on the offense as the main factor determining sentence length was also attributed to the desire to see "truth in sentencing," that is, to ensure that convicted offenders would serve the majority, if not all, of their sentence.¹⁰

4. CAL. DEP'T. OF CORR. & REHAB., CORRECTIONS MOVING FORWARD IV (2009), available at http://www.cdcr.ca.gov/News/2009_Press_Releases/docs/CDJR_Annual_Report.pdf. The number is in decline from higher rates of over 120,000 parolees in recent years. JOAN PETERSILIA, CAL. POLICY RESEARCH CTR., UNDERSTANDING CALIFORNIA CORRECTIONS 65 (2006).

5. Particular issues concerning reentry programs and challenges are discussed elsewhere in this volume. Eumi K. Lee, *The Centerpiece to Real Reform? Political, Legal, and Social Barriers to Reentry in California*, 7 HASTINGS RACE & POVERTY L.J. (this issue, Winter 2010).

6. Cal. Pen. Code §§ 1170-1170.95 (West 2009).

7. PETERSILIA, *supra* note 4, at 61.

8. See generally PETERSILIA, *supra* note 4. This effect is often less noticed than the shift of discretion from the hands of judges to prosecutors and legislators prompted by the new regime. KATE STITH & JOSE CABRANES, FEAR OF JUDGING: SENTENCING GUIDELINES IN THE FEDERAL COURTS 1-2 (Univ. of Chicago Press 1998).

9. PETERSILIA, *supra* note 4.

10. See generally ANDREW VON HIRSCH, DOING JUSTICE: THE CHOICE OF PUNISHMENTS (Hill & Wang 1976).

Despite the decrease in parole discretion, however, parole is still a fundamental part of the California criminal process. The State's criminal justice system features a regime of almost universal parole, consisting of post-incarceration supervision for a period of time after release.¹¹ For the vast majority of California offenders, statutory provisions mandate a three-year period of surveillance and supervision upon release, though the term may be extended for special needs, such as those sometimes associated with sex offenders.¹² Consequently, parole is no longer a function of behavior in prison and risk assessment, but rather an extended period of surveillance, scrutiny, and supervision during which a formerly incarcerated person is examined, and, in case of failure, may be ordered back to prison, sometimes for relatively minor violations.¹³ This perspective is illustrated by the California Department of Corrections and Rehabilitation's ("CDCR") definition of the purpose of parole, which eschews any discussion of discretion regarding release dates in favor of post-incarceration goals. "Protecting the community by enabling parole agents to be an active part of the community's public safety plans; providing a range of resources and services to offer the opportunity for change; and encouraging and assisting parolees in their effort to reintegrate into the community."¹⁴

A parolee's post-incarceration experience begins when he or she is automatically released to parole supervision at the end of his or her prison sentence and given two hundred dollars in "gate money."¹⁵ Shortly upon release, parolees are required to make face-to-face contact with their parole agents, who inform them of their parole terms, and ask them to sign a contract affirming an

11. *Id.* at 64.

12. *Id.* Sex offenders are discussed in greater detail below.

13. *Id.*

14. Cal. Dep't. of Corr. & Rehab., Division of Parole Operations, <http://www.cdcr.ca.gov/Parole/index.html> (last visited Sept. 9, 2009).

15. PETERSILIA, *supra* note 4, 61-67. According to the CDCR Parolee Handbook, this money is designed to be used for food, clothing, transportation, and temporary housing, so parolees should "not waste this money." Cal. Dep't of Corr. & Rehab., Parolee Handbook (2008) [hereinafter Parolee Handbook], http://www.cdcr.ca.gov/Parole/Parolee_Handbook/Index.html. In very rare circumstances, parole agents have the discretion to disperse between fifty and five hundred dollars of "emergency" money to be used in acquiring housing or transportation. PETERSILIA, *supra* note 4, at 67. Further, at some prisons, such as San Quentin, prisoners are required to give back a substantial chunk of this money (thirty-eight dollars at San Quentin) for a gray sweatshirt to wear home from prison. California Reentry Program, <http://www.ca-reentry.org/Default.aspx> (last visited Aug. 6, 2009).

understanding of the program.¹⁶ While these terms may vary with the offense and the offender, they often include a prohibition on carrying weapons; a requirement that the offender immediately report changes in address or employment; a prohibition on the commitment of new offenses; and a search term,¹⁷ which allows the offender to be searched “at any time of the day or night, with or without a warrant, and with or without a reason” by a parole agent or a police officer.¹⁸ Additional terms may be imposed on sex and drug offenders, such as registration requirements and intermittent testing.¹⁹

Throughout the parole period, the Division of Adult Parole Operations engages in various supervisory activities. While some of its energy is devoted to reentry assistance,²⁰ much of the Division’s agenda is devoted to monitoring offenders and examining the extent of their compliance with their parole terms. In doing so, parole authorities are aided by judicial support and by legislative innovations. Citing risk as a factor, the Supreme Court has affirmed (in *Samson*, a California case) the constitutionality of suspicionless searches of parolees.²¹ As stated by Justice Thomas in the decision,

[t]his Court has repeatedly acknowledged that a State has an ‘overwhelming interest’ in supervising parolees because ‘parolees . . . are more likely to commit future criminal offenses.’ Similarly, this Court has repeatedly acknowledged that a State’s interests in reducing recidivism and thereby promoting reintegration and positive citizenship among probationers and parolees warrant privacy intrusions that would not otherwise be tolerated under the Fourth Amendment.²²

16. PETERSILIA, *supra* note 4, at 67.

17. *Id.*

18. Parolee Handbook, *supra* note 15. In fact, the parolee’s agreement to this term is unnecessary; the Supreme Court, in a case originating in California, has deemed suspicionless searches of parolees constitutional. *Samson v. California*, 547 U.S. 843, 846 (2006).

19. PETERSILIA, *supra* note 4, at 67.

20. See Cal. Dep’t of Corr. & Rehab., Employment Development Department, http://www.cdcr.ca.gov/Parole/Program_Development_Unit/EDD/index.html (last visited Aug. 6, 2009).

21. *Samson*, 547 U.S. at 846.

22. *Id.* at 853.

Such risk-based rationales are particularly powerful when dealing with sex offenders, a population enjoying the least amount of sympathy from the media and the public. During the 1990s, California adopted a series of legislative measures designed to monitor the risk presented by released sex offenders. One such measure was the Sexual Violent Predator Act (“SVPA”), enacted in 1996. In its original form, the SVPA was aimed at subjecting a small population of mentally ill sex offenders whose disorder “makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior”²³ to two years of civil commitment following the completion of their prison term.²⁴ A product of a broad coalition between victim interest organizations²⁵ and public safety officers,²⁶ the 1996 law targeted inmates who had an extreme mental illness and a clear record of violent recidivism,²⁷ based on the mistaken premises that recidivism rates are higher among the mentally ill,²⁸ and that sexual recidivism rates for previously convicted sex offenders was high.²⁹

The subsequent 2006 amendment to the SVPA, known as Jessica’s Law, reflected a markedly different coalition between the media, victim advocate organizations, and the medical community. Prompted by the media uproar over the killing of Jessica Lunsford in

23. CAL. WELF. & INST. CODE § 6600(a)(1) (West 2009).

24. *Id.* These intrusive civil commitment measures were approved by the Supreme Court under the rationale that civil commitment was not comparable to criminal punishment. *Kansas v. Hendricks*, 521 U.S. 346 (1997). California courts have followed suit, holding that, as long as strong procedural safeguards are maintained (diagnoses from two psychiatrists or psychologists, assistance of counsel, and trial by jury with proof beyond a reasonable doubt), the State is given wide latitude in detaining and civilly incarcerating sexually violent predators. *Hubbart v. Knapp*, 379 F.3d 773 (9th Cir. 2004). Such findings, which allow confinement without proving the elements of an offense before confining a person’s freedom, blur the line between the perception of sex offenders as “sick” and as criminals possessing *mens rea*. Adam Falk, *Sex Offenders, Mental Illness and Criminal Responsibility: The Constitutional Boundaries of Civil Commitment after Kansas v. Hendricks*, 25 AM. J.L. & MED 1, 117 (1999).

25. Sexually Violent Predators, Bill Analysis, Assem. 888, S. Crim. Pro. Comm., 1995-96 Leg., Reg. Sess. (Cal. 1995) (citing Justice for Murder Victims, Memory of Victims Everywhere, Doris Tate Crime Victims Bureau, and the Committee on Moral Concerns as supporters of the SVPA civil commitment requirement), available at http://info.sen.ca.gov/pub/95-96/bill/asm/ab_0851-0900/ab_888_cfa_950912_172319_sen_floor.html.

26. *Id.* (citing support from Attorney General, California State Sheriffs, Women Prosecutors of California, California Correctional Peace Officers Association).

27. CAL. WELF. & INST. CODE § 6600(a)(1).

28. *Id.* This premise, apparently, does not hold for sexually violent predators. PATRICK A. LANGAN ET AL., U.S. DEP’T OF JUSTICE, *RECIDIVISM OF SEX OFFENDERS RELEASED FROM PRISON IN 1994* 10 (2003).

29. The actual recidivism rate is surprisingly low, at only 5.3%. *Id.* at 18.

Florida, nearly 41 states, including California, enacted a series of stricter sexually violent predator laws, which emphasized medical incarceration and monitoring.³⁰ Efforts to adopt Jessica's Laws throughout the United States, and on the federal level,³¹ were pushed by news anchors who tracked and criticized states that did not quickly adopt Jessica's Laws,³² as well as by media reports that overestimated the risk of sexual victimization,³³ focused on singular, horrific examples and disproportional evidence,³⁴ and portrayed sex offenders as rational free agents whose criminal/immoral conduct was planned, executed, and hidden.³⁵ The amendment represented a shift from the original focus on the sick and incurable, imposing not only indeterminate civil confinement on parolees declared sexual violent predators,³⁶ but also numerous restrictions applying to the broader sex offender population.³⁷ These include a prohibition against residing within two thousand feet of a school, as well as an obligation to register as a sex offender for a searchable database.³⁸

The Division of Adult Parole takes steps beyond those provided in Jessica's Law, by subjecting formerly incarcerated sex offenders to mandatory curfews and treatment, as well as other limitations on behavior. Recently, the Division ran a special operation on Halloween, titled "Operation Boo," which consisted of ensuring that all sex offenders spent Halloween with their lights out and their doors locked. The reason, according to Tom Hoffman, CDCR

30. See Office of the Governor, *Comprehensive Prison Reform: Enacting Jessica's Law*, <http://gov.ca.gov/index.php?fact-sheet/4967/> (last visited Aug. 7, 2009).

31. Jessica Lunsford Act, H.R. 1505, 109th Congress. These efforts, focusing on denying funding to states that did not adopt Jessica's law, were eventually unsuccessful. *Id.*

32. See, e.g., Bill O'Reilly: What Is Jessica's Law, <http://www.billoreilly.com/outragefunnels> (last visited Aug. 6, 2009).

33. *Id.*

34. *Id.*

35. Susan Candiotti, *Child Killer Sentenced to Death*, CNN, Sept. 24, 2007, <http://www.cnn.com/2007/US/law/08/24/couey/index.html>.

36. CAL. ATTORNEY GENERAL'S OFFICE, PROPOSITION 83, SEX OFFENDERS, SEXUALLY VIOLENT PREDATORS, PUNISHMENT, RESIDENCE RESTRICTIONS AND MONITORING, INITIATIVE STATUTE 127-38 (2006), http://www.sos.ca.gov/elections/vig_06/general_06/pdf/proposition_83/entire_prop83.pdf.

37. See Sex Offender Punishment, Control and Containment Act of 2006, S. 1128, 2006 Leg., Reg. Sess. (Cal. 2006).

38. *Id.* The searchable sex offender database, allowing members of the community to search for sex offenders in their neighborhood, is on the Attorney General's website. Office of the Attorney General, *Megan's Law Home*, <http://www.meganslaw.ca.gov/> (last visited Aug. 7, 2009).

Director of Parole, was to “ensure kids are free to have fun without added worries about potential predators and that communities are safe from potential contacts with sex offenders.”³⁹ Since no sex-offender-related incidents have ever been recorded on Halloween night, such displays of supervisory power address the fear of crime more than the risk of crime. The perception of community concern over sex offenders has not only driven lawful policies, but also led at least one lawmaker, Senator George Runner, to reach a “side agreement” with the CDCR, according to which the parole agency would limit assignments of released offenders into his constituency zone, Antelope Valley, to those who had “historical ties” to the area.⁴⁰

While this series of measures reflects media panic and political initiatives, as well as community concern, to some extent, it does not necessarily provide for a practical reduction of the risk of reoffending. In fact, empirical studies have questioned the effect of parole supervisory mechanisms in reducing recidivism risks, and some have suggested that these limitations might even increase recidivism. In a quantitative study of reported crime following the legislation of registration and notification laws in several states, Prescott and Rockoff find evidence that registration laws reduce recidivism only with regard to victims known to the offender, and that there is little evidence of a decrease in crimes against strangers. In addition, when examining laws requiring notification to the community that a sex offender resides nearby, they find a reduction in first-time offending, but a potential increase in recidivism by already registered offenders.⁴¹ Prescott and Rockoff see this disappointing finding as consistent with the literature suggesting that limitations on registered offenders, particularly community notification, hinder them from obtaining non-criminal

39. Press Release, Cal. Dep't. of Corr. & Rehab., CDCR Parole to Conduct Random Sex Offender Checks During "Operation Boo" on Halloween Night (Oct. 20, 2008), http://www.cdcr.ca.gov/News/2008_Press_Releases/Oct_30.html.

40. Andy Furillo, *California Lawmaker Arranges Improper Deal on Parolees*, SACRAMENTO BEE, June 23, 2009, <http://www.sacbee.com/capitolandcalifornia/story/1968347.html>.

41. J.J. Prescott & Jonah Rockoff, *Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?*, JOHN M. OLIN CTR. L. & ECON. (2008), available at <http://www.law.umich.edu/centersandprograms/olin/abstracts/2008/Documents/08-006prescott.pdf>.

opportunities.⁴² In California, residence requirements have had a similar effect. Since the 2006 adoption of the Jessica's Law amendments, sexual violent predators ("SVPs") are required to remain two thousand feet from any school, park, or other area where children congregate, which results in large sections of California — namely, San Francisco, the East Bay, Los Angeles, and San Diego — where SVPs are forbidden to live. This, combined with the lack of job training or life skills and the social stigma, results in even fewer opportunities to find gainful employment and adequate housing, and these, in turn, have indirect effects that can lead to increased recidivism. For one, during the inpatient commitment program, the SVP is trained to identify and properly respond to risk factors; however, unemployment and homelessness are not risk factors that the program addresses. Studies have shown that the mentally ill are over twice as likely to be homeless;⁴³ such hardship leads to increased stress, which exacerbates many types of mental illness and can result in the SVP violating the term of conditional release.

Similar trends can be seen with regard to the general parolee population. Ironically, the very factors that might make a certain parolee prone to recidivism are the ones that might necessitate some form of reentry intervention. Citing a student reanalysis of a 1997 Bureau of Justice Statistics study, Petersilia notes that fifty-six percent of the total prison population in California met the definition of "high need" for drug treatment programs;⁴⁴ forty-two percent of prisoners reported a high need for alcohol treatment;⁴⁵ and about fifteen percent of California's inmates have a high need for educational and vocational training.⁴⁶ Altogether, 50.7% of California's inmates leave prison without having participated in any drug, alcohol, vocational or educational programs⁴⁷ — factors which increase recidivism. Viewing the problem of dangerousness from the perspective of lack of rehabilitation programs, therefore, leads to

42. R. Tewksbury, *Collateral Consequences of Sex Offender Registration*, 21 J. CONTEMP. CRIM. JUST. 67, 76 (2005).

43. U.S. DEP'T OF JUSTICE, MENTAL HEALTH TREATMENT IN STATE PRISONS I (2001).

44. PETERSILIA, *supra* note 4, at 40 (citing U.S. Dep't of Justice, UCI students Reanalysis of the Bureau of Justice Statistics' 1997 Survey of Inmates in State and Federal Corrections Facilities).

45. *Id.* (italics in original).

46. *Id.*

47. *Id.* at 44.

serious questioning of Justice Thomas' syllogism in *Samson*, "[a]s the recidivism rate demonstrates, most parolees are ill prepared to handle the pressures of reintegration. Thus, most parolees require intense supervision."⁴⁸

Recidivism rates can also be attributed to the fact that the universal parole system generates extremely high caseloads for parole agents, up to seventy parolees each,⁴⁹ whose management is made more difficult by the fact that agents must supervise a wide range of offenders, including those that are highly likely to recidivate or abscond.⁵⁰ While some scholars predicted that a risk-oriented paradigm would turn parole agents into "waste managers," focusing on external factors such as drug testing rather than on individual attention to each parolee,⁵¹ an ethnographical study of parole agents in California showed that, at the individual parole agent level, there is an attempt to individualize supervision and treatment.⁵² Lynch found, however, that parole agents shared a deeply entrenched cynical perspective, according to which parolees were likely to reoffend, and performed much of their daily activity as quasi-policemen, devising ways to recapture recidivists and violators.⁵³

The almost universal imposition of restrictions and limitations on released inmates leads a large percentage of them back to prison. In fact, two-thirds of California's parolees (twice the national average) return to supervision within three years of release.⁵⁴ Following a technical violation or a new crime, a parolee is subject to a parole revocation hearing, sometimes referred to as an "administrative

48. *Samson v. California*, 547 U.S. 843, 854 (2006).

49. Joan Petersilia, *When Prisoners Return to the Community: Political, Economic, and Social Consequences*, 9 SENTENCING & CORRECTIONS: ISSUES FOR THE 21ST CENTURY 1, 3 (2000).

50. PETERSILIA, *supra* note 4, at 65. California parolees abscond (fail to maintain contact with their parole agent) at a rate of seventeen percent, more than double the national rate of seven percent. Though these numbers can be at least partially blamed on the criminality of the individual parolee, it is clear that the blanket use of parole for all released inmates as well as the use of revocation as a quick and relatively easy response to both new crimes and technical violations contribute greatly to the problem. *Id.* at 75.

51. Feeley & Simon, *supra* note 3.

52. Mona Lynch, *Waste Managers? The New Penology and Parole Agent Identity*, 32 LAW & SOC'Y REV. 839, 839 (1998), available at http://findarticles.com/p/articles/mi_qa3757/is_199801/ai_n8772091/.

53. *Id.* at 853.

54. PETERSILIA, *supra* note 4, at 71. Returning parolees constitute close to fifty percent of the prison population. CAL. DEP'T. OF CORR. & REHAB., *supra* note 4.

return.”⁵⁵ Present at the hearing, held before the Hearing and Operations Division of the Board of Parole Terms,⁵⁶ are the parole agent, the parolee, a district hearing agent, requested witnesses, and an attorney for the parolee.⁵⁷ The standard of proof for these hearings is a mere preponderance of the evidence, which is problematic considering that the hearings are not limited to technical returns, but can be used to adjudicate new crimes as well.⁵⁸ After adjudication, parolees may be returned to prison for a period of up to one year; the average recommitment period is 5.4 months.⁵⁹ Many believe that this destructive “revolving door” cycle is the main factor contributing to the prison-overcrowding problem, rather than the much more publicized lengthy incarcerations due to the Three Strikes Law.⁶⁰

This state of affairs requires a thorough reform of California’s parole practices. Implementing evidence-based risk assessment to identify offenders in need of supervision is a priority, which would lead to focusing resources on those who require supervision rather than on a large number of low-risk offenders. But more importantly, it is imperative to retool parole services as an instrument of hope, emphasizing vocational and educational skills for released inmates, as well as drug and alcohol treatment for those who need them. In that way, the exit from prison will truly become a way out, rather than a trap door leading formerly incarcerated people back within its walls.

55. *Id.* at 73.

56. *Id.*

57. Cal. Dep’t. of Corr. & Rehab., Parole Revocation Hearings (2009), http://www.cdcr.ca.gov/Divisions_Boards/BOPH/parole_revocation_hearings.html. The right to free representation of indigent parolees at parole revocation hearings was in danger of being diminished following the passage of Proposition 9 in November 2008. However, in deciding the matter, Judge Karlton decided that such issues would have to wait for adjudication before being implemented. Denny Walsh, *Judge Tosses Some Prop. 9 Restrictions on California Parolee Rights*, SACRAMENTO BEE, Mar. 23, 2009, available at <http://www.sacbee.com/capitoland/california/story/1732834.html>.

58. Cal. Dep’t. of Corr. & Rehab., *supra* note 57. PETERSILIA, *supra* note 4, at 73.

59. PETERSILIA, *supra* note 4, at 76.

60. John Pfaff, *The Empirics of Prison Growth: A Critical Review and Path Forward*, 98 J. CRIM. L. & CRIMINOLOGY 547, 547 (2008). While Pfaff’s data did not include California, the State’s universal parole system would suggest that the rates of return from parole are at least as high as in the states in his study. *See, e.g.*, Woodford, *supra* note 2.