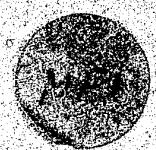


# Federal Probation



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# Federal Probation

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## This Issue in Brief

### *A Look at Intensive Probation Supervision*

**I**N THE wake of court mandated solutions to prison crowding, increasing numbers of felony offenders sentenced to probation, and increased public demand that probation agencies be held accountable in their handling of these offenders, intensive probation supervision (IPS) programs are proliferating at a tremendous pace. Results of early evaluations seem to indicate that there may be something for everyone in IPS: budget-conscious policymakers; offenders who would otherwise be incarcerated; a public concerned for its safety; courts in search of viable sentencing alternatives; and corrections officials for whom IPS offers an increased measure of credibility with the courts and the public. It is precisely because it promises so much to so many that IPS merits close and careful scrutiny.

As IPS programs have proliferated, so too have questions about the economic, political, and ethical implications of the programs. This special issue of *Federal Probation* focuses in on the design, implementation, and effectiveness of intensive probation supervision programs. The intent is to examine intensive supervision, suggesting questions as well as answers that practitioners and policymakers should address as the IPS approach evolves and matures.

Our guest editor for this issue is James M. Byrne, Ph.D., associate professor of criminal justice at the University of Lowell, Lowell, Massachusetts. Dr. Byrne, whose article leads off this issue, recommended and solicited most of the articles for this issue and collaborated in the evaluation and editing process. His contribution to this timely and thought-provoking special issue was invaluable. Our special thanks go to Dr. Byrne as well as to the authors who cooperated so willingly in preparing their manuscripts for publication.

LORENE LAKE  
EDITOR

\* \* \* \* \*

*The Control Controversy: A Preliminary Examination of Intensive Probation Supervision Programs in the*

*United States.*—In light of the current emphasis on community protection rather than offender rehabilitation, legislators, judges, and probation administrators are reconsidering the basic mission of probation. Nowhere are conflicting views on the subject more apparent than in the ongoing debate over the purpose and design of intensive probation supervision programs. In this article, author James M. Byrne presents the results of a preliminary examination of the use of intensive probation supervision programs across the United States. He briefly

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outlines the conceptual framework for three "ideal" models of community supervision: (1) the Justice Model, (2) the Limited Risk Control Model, and (3) a Traditional Treatment-Oriented Paradigm. By examining the rationale underlying the development of intensive probation supervision programs in light of these alternative models, interstate variation in the form and substance of these programs is explained.

***Turning Up the Heat on Probationers in Georgia.***—

In 1982 the Georgia Department of Corrections implemented a new intensive probation supervision program designed to relieve prison overcrowding by diverting serious but nonviolent prison-bound offenders through a very strict community supervision program. An evaluation of the pilot program was conducted by the agency with assistance from an Advisory Board funded by the National Institute of Justice. Author Billie S. Erwin summarizes outcomes for the program participants compared with cohort groups of offenders sentenced to regular probation and to a period of incarceration as well as impacts on sentencing practices and on prison admissions. The article also examines the supervisory team concept in which a probation officer and surveillance officer share the responsibilities of enforcing strict standards for a caseload of 25 offenders, with some interesting interchanging and reversals of roles.

***New Jersey's Intensive Supervision Program: What Is It Like? How Is It Working?***—In New Jersey, a resentencing panel of three judges has released over 600 felons from prisons to live and work in the community under intensive supervision. This program combines frequent, strict supervision with required community service work and payment of penalties, and also with counseling and treatment for behavioral problems—mainly drug abuse. According to authors Frank S. Pearson and Daniel B. Bibel, because of the strict supervision, roughly one-third of the offenders will be returned to prison before they complete the year-and-a-half program—usually because of program rule violations. Only one-tenth commit any sort of new crimes during that time.

***Intensive Probation Supervision in Massachusetts: A Case Study in Change.***—While many probation administrators are committed to innovation in their work, few take the time to develop strategies for effective change. It is rare in the probation literature to find discussion of the implementation of new programs set in the context of organizational development or "change" literature and research. In this article, authors Donald Cochran, Ronald P. Corbett, Jr., and James M. Byrne offer such a discussion in the form of a case study of the design and implementation of a new intensive probation supervision program in Massachusetts. Drawing on firsthand knowledge of the program in Massachusetts, the authors address the general question: Why and how

are organizations (and clients) resistant to change? They conclude with an overview of the most effective strategies currently available for overcoming this resistance.

***Identifying High Risk Probationers for Supervision in the Community: The Oregon Model.***—Prison crowding, sentencing trends, and a need for more careful restrictive community sanctions have produced a growing need for a high caliber probation service. However, many studies of probation have shown that it has failed to meet these demands, instead fueling public distrust and doubt. In response to these concerns, the Edna McConnell Clark Foundation funded the Probation Development Project in Multnomah County, Oregon. Authors Todd R. Clear and Carol Shapiro describe this project, which has utilized a consulting team of probation officers and a community advisory board in developing policy on probation's mission and in identifying a target group of offenders for supervision.

***Exploring the Option of House Arrest.***—Prison crowding has forced the system to search for reasonable middle-range sanctions, and house arrest is increasingly becoming an option. A recent Rand survey of probation innovations shows that 30 states are now implementing some form of house arrest program. This article summarizes the characteristics of these programs and discusses their advantages and several important unresolved issues. Author Joan Petersilia concludes by noting that probation's long-term survival may depend on whether it succeeds in implementing house arrest and other intensive surveillance programs. If probation can adapt its methods of supervision and service to deal with higher risk offenders in the community, probation may well find itself back in favor with the public and again the center of modern corrections policy.

***Electronic Monitors.***—Electronic monitors are a new telemetry device designed to verify that an offender is at a specified location during specified times. The technology is so new and the research is, thus far, so limited that there are many questions about monitors of all kinds, on all levels—programmatic and technological—which need to be examined by jurisdictions considering programs using the equipment. Some of these questions are: Should equipment be purchased? Can it be used legally? On whom should it be used? Will the community accept it? And, will monitors provide the community with additional protection? Author Annesley K. Schmidt addresses common concerns about electronic monitoring.

***Legal Issues in the Use of Electronic Surveillance in Probation.***—Authors Rolando V. del Carmen and Joseph B. Vaughn explore the legal and constitutional issues involved in the use of electronic devices to monitor probationers. The article describes the monitoring system currently used in many jurisdictions, then reviews and interprets United States Supreme Court cases on electronic

# The Control Controversy: A Preliminary Examination of Intensive Probation Supervision Programs in the United States

BY JAMES M. BYRNE

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## I. Introduction: The Control Controversy

**A**S POLICY makers throughout the country revise their criminal and juvenile codes, it is clear that community protection rather than offender rehabilitation is now their primary concern.<sup>1</sup> One consequence of this new crime control agenda is that both the philosophy and practice of probation have come under scrutiny. Invariably, the question is raised: Can probation officers effectively control the illegal behavior of the convicted offenders placed under their supervision? It should be apparent that the answer to this question hinges on the answers to a series of related questions such as: (1) *What* level of recidivism is acceptable to you: 20 percent, 30, 50? (2) *Who* do you want to be placed on probation: felons (violent, property), misdemeanors, drunk drivers, delinquents? (3) *How long* do you want the probation department to supervise these offenders: 6 months, 1 year, 5 years? And (4) *how much* time, energy (and, therefore, money) are you willing to spend on probation services to achieve an "acceptable" level of control? Clearly, issues of offender control in community supervision are central to the restructuring of correctional priorities (and probation in particular) which is now under way in many states.

For years, we have relied on a sentencing policy—for both felonies and misdemeanors—which has been based on the assumption that most offenders can be allowed to return to the community without posing a major risk to the person or property of other residents. Despite recent changes in criminal (and juvenile) codes in many parts of the country, this basic assumption is still embedded in our sentencing policy. A recent Bureau of Justice Statistics report indicates that probation is the most common form of correctional placement: over 60 percent (1,502,247) of all adults under correctional supervision in 1983 were on probation, a 38 percent increase over the 1979 levels. Overall, this includes about an equal number of felony and misdemeanor probationers,

although there is much interstate variation in the crime mix of probationers.<sup>2</sup>

Are these offenders effectively "controlled," or do they commit new crimes against person or property while under supervision? Data from 1983 available from 20 states (see table 1) reveal that the percent of adult probationers who successfully complete their term is apparently high, ranging from 66 percent in Mississippi to 95 percent in Vermont.<sup>3</sup> Moreover, the percent incarcerated for a new offense (or a probation condition violation) varied from a low of 5 percent in Vermont to 23 percent in Mississippi.<sup>4</sup> While some would cite these statistics as indicators of the general appropriateness and success of probation supervision with the majority of offenders, others take a more jaundiced view. They point out that if we examine the percentage of rearrests/rearrests, we would not appear nearly as successful. Moreover, if we separated administrative cases (such as drunk driving and collections) from regular, or risk/needs, cases, even higher failure rates would be identified for cases under risk/needs supervision. Finally, states which utilize a case classification system often allow the differentiation of success/failure rates for offenders receiving low, medium, and high (and in a few states intensive) supervision. In these states, failure rates are much higher for high risk than low risk offenders.

An examination of probation in Massachusetts underscores these three points concerning the illusion of success when examining total probation caseloads. In Massachusetts, only about one in five cases is placed on risk/needs supervision; the majority of a probation officer's caseload includes administrative cases. A 1984 study revealed that 35 percent of all probationers under risk/needs supervision were arraigned on new charges. However, recidivism varied markedly by classifica-

<sup>1</sup> For a review of the shifts in sentencing policy which have occurred in this country over the past 15 years, see, for example: Todd R. Clear, "Correctional Policy, Neo-Retributionism, and the Determinate Sentence," in George F. Cole (ed.), *Criminal Justice: Law and Politics*, 4th ed., (Monterey, California: Brooks Cole Publishing Company, 1984:409-422); or Michael Sherman and Gordon Hawkins, *Imprisonment in America: Choosing the Future* (Chicago: University of Chicago Press, 1981).

<sup>2</sup> See Bureau of Justice Statistics Bulletin, *Probation and Parole 1983*, NCJ-94776 (September 1984:6).

<sup>3</sup> By "success," I am referring to a probationer completing the term of his/her probation without incarceration or discharge for special reasons, such as listed in Note 1, Table 6, Bureau of Justice Statistics Bulletin, *Probation and Parole 1983*, NCJ-94776 (September 1984:4).

<sup>4</sup> See Bureau of Justice Statistics Bulletin, *Probation and Parole 1983* (p. 4). Data were reported for 24 states.

\*An earlier version of this article was presented at the Annual Meeting of the Academy of Criminal Justice Sciences, April 1, 1985, in Las Vegas, Nevada. The author would like to thank Robyn Westwater, April Pattavina, and Linda Kelly of the University of Lowell Center for Criminal Justice Research for their assistance in the completion of this study.



TABLE 1. PROBATION EXITS BY TYPE FOR  
SELECTED JURISDICTIONS, 1983

Percent of exits who were discharged  
from probation due to:

Jurisdiction	Number of exits	Completion of term	Incarceration on current or new term	All other reasons*
<b>Total</b>	<b>322,717</b>	<b>254,214</b>	<b>41,817</b>	<b>26,686</b>
<b>Percent</b>	<b>100%</b>	<b>79%</b>	<b>13%</b>	<b>8%</b>
Connecticut	25,715	82	16	2
Iowa	9,187	79	10	11
Kentucky	3,172	83	15	2
Louisiana	9,164	80	14	6
Maryland	33,947	78	11	11
Michigan	9,361	73	19	8
Minnesota	25,375	92	8	0
Mississippi	2,357	66	23	11
Missouri	11,597	80	8	12
Montana	1,089	85	10	5
New Jersey	20,428	79	13	8
New York	27,900	84	16	0
North Dakota	662	77	17	6
Oklahoma	5,903	83	16	1
Rhode Island	3,277	92	8	0
South Carolina	8,791	84	12	4
Texas	110,197	73	12	15
Vermont	3,921	95	5	0
West Virginia	2,015	89	8	3
Wisconsin	8,659	77	20	3

\*Includes absconders, deaths, discharges to custody, detainer or warrant and other miscellaneous discharges.

Source: Table 6, Bureau of Justice Statistics Bulletin, *Probation and Parole 1983*, NCJ-94776 (September 1984:4).

tion/supervision level: only about 15 percent of the minimum supervision cases were rearrested as compared to 50 percent of the maximum supervision cases.<sup>5</sup> From this perspective, it appears that—in Massachusetts at least—a clearly identifiable subgroup (approximately 15 percent) of probationers “inflate” the overall failure rate. It is this group that poses a threat to community safety, not the majority of offenders under supervision.

In California, similar distinctions have been offered between the supervision of adult felons and misdemeanor cases. Joan Petersilia and her colleagues recently com-

pleted an evaluation of felony probation in California which offers a graphic portrait of a probation system without adequate control over certain offenders. They concluded that:

In our opinion, felons granted probation present a serious threat to public safety. During the 40-month follow-up period of our study, 65 percent of the probationers in our subsample were rearrested, 51 percent were reconvicted, 18 percent were reconvicted of serious violent crimes (homicide, rape, weapons offenses, assault, and robbery), and 34 percent were reincarcerated. Moreover, 75 percent of the official charges filed against our subsample involved burglary/theft, robbery, and other violent crimes—the crimes most threatening to public safety. (Petersilia et al., 1984, vii)

Faced with findings such as these, legislators, judges, and probation administrators are currently reconsidering the basic mission of probation. Attempts to redefine probation are made more difficult by the reality of fiscal constraints (Harlow and Nelson, 1982), overcrowded prisons (Gottfredson and Taylor, 1983), and the public's recent “mood swing”; i.e., emphasis on community protection—rather than rehabilitation—as the purpose of corrections (Harris, 1982). To quote Conrad (1981)—albeit out of context—our current response to this problem “. . . may well be submerged in an attempt to navigate between Scylla and Charybdis” (1981:554). On one hand, the crime control advocates call for a “get tough” policy with traditional probationers as a method of legitimizing probation.<sup>6</sup> Concomitantly, community supervision advocates see probation as a viable alternative to incarceration for many “high risk” offenders who would otherwise go to prison.<sup>7</sup>

Nowhere are these conflicting views more apparent than in the current debate over the purpose and design of intensive probation supervision (IPS) programs. In the following article, I present the results of a preliminary examination of the use of these programs across the United States.<sup>8</sup> Before presenting these findings, I will briefly outline the conceptual framework for three “ideal” models of community supervision: (1) the Justice Model, (2) the Limited Risk Control Model, and (3) a Traditional Treatment-Oriented Paradigm. By examining the rationale underlying the development of intensive supervision programs in light of these alternative models, interstate variation in the form and substance of these programs can be explained.

## II. Three Conceptual Models of Intensive Supervision

The function (and design) of intensive probation supervision programs is a by-product of the dominant sentencing philosophy of a particular state. Consequently, we can expect these programs to be serving different “clients” across states. For example, Massachusetts has the highest percentage of violent offenders in prison (72 percent in 1981), while South Dakota has the lowest percentage (18 percent in 1981) of violent offenders in

<sup>5</sup> Brown, M. and D. Cochran, *Executive Summary: Massachusetts Risk/Needs Classification System* (Report No. 5, December 1984).

<sup>6</sup> For example, see Walter Barkdull, “Probation: Call It Control—And Mean It,” in Travis, Schwartz, and Clear (eds.), *Corrections: An Issues Approach*, 2nd ed., (Anderson Publishing Company, 1983).

<sup>7</sup> For example, see John Ortiz Smykla, *Probation and Parole: Crime Control in the Community* (New York: MacMillan, 1984).

<sup>8</sup> A brief note on method of analysis is in order. We attempted to contact (via telephone) probation departments in every state between November 1984 and March 1985. We then updated this material in the spring of 1986. A listing of the key contact persons in each state can be obtained, available from the Center for Criminal Justice Research at the University of Lowell. We relied at the outset on a list of contacts identified in a report by Chris Baird, which we have updated and expanded. A number of states responded by sending us descriptive material about the operation of their probation system. We used these materials, together with the summaries of our telephone conversations, to complete the following preliminary analyses.

prison.<sup>9</sup> Sentencing alternatives with very different target populations would likely be developed in both states, reflecting the unique correctional philosophies which exist. Of course, during times of severe prison and jail crowding it is quite difficult to consistently adhere to a sentencing philosophy which requires incarceration. This is one reason that the concept of "intensive supervision" is so attractive to policy makers: It offers an *immediate* solution to the prison crowding problem which is not inconsistent with the "get tough" attitude of the public.

Recently, a number of authors have attempted to describe the broad parameters of a "rational" sentencing policy, including very specific models of the potential utilization of intensive supervision by probation departments. We highlight three such attempts below: a justice model, a limited risk control model, and a traditional, treatment-oriented model.

#### A. The Justice Model

The justice model of probation supervision emphasizes punishment but within the bounds of fairness. According to Harris (1984), "Proponents of a just deserts or justice model have emphasized that the penalty imposed should be based on the crime committed. Since their function is punishment, penalties should not be selected for utilitarian reasons" (p. 24). Based on a "just deserts" rationale (see von Hirsch, 1976; Fogel, 1984; Singer, 1979), a program of probation supervision would focus on the following punitive conditions:

- (1) Daily contact between probation officer and offender for certain crimes;
- (2) Community service orders;
- (3) Restitution and/or probation fees, fines, etc.

In the justice model, there is no required participation in specific treatment, counseling, etc. Objective risk assessment, which provides a prediction of *future* behavior, is not employed. Examples of a justice model sentencing schedule are presented in table 2 (adapted from Thomson, 1984, Table 4:3). Commenting on the justice model of probation, Thomson (1984) has observed that

Probation can fit well with other elements of the system when it is recognized that the goals of the system are justice and retribution. In such a system, probation is part of a set of sanctions ranging from arrest, conviction and conditional discharge, at one extreme, through fines, straight probation, monetary restitution, community service orders, home confinement, and split sentences to incarceration as the most severe measure. (1984:105)

<sup>9</sup> One reason for Massachusetts' high ranking is that the county house of correction population is excluded from this state's figures. In Massachusetts, an offender can serve up to a 2-1/2-year sentence in the house of corrections. In many other states, offenders with sentences over 1 year in length are housed in the state prison.

<sup>10</sup> See, for example, V. O'Leary and T. Clear, *Directions for Community Corrections in the 1990's* (U.S. Department of Justice, National Institute of Corrections, 1984).

TABLE 2. A JUSTICE MODEL SENTENCING SCHEDULE:  
SOME EXAMPLES

<i>Offense</i>	<i>Sentence</i>
Murder	4,000 to 18,000 days incarceration
Rape, kidnapping for ransom	750 to 3,000 days incarceration
Involuntary manslaughter	Probation Type A or 60 to 750 days incarceration
Indecent liberties with a child	Probation Type B or A or 10 to 200 days incarceration
Armed robbery	Probation Type B or A or 1 to 120 days incarceration
Residential burglary	Probation Type C or B or 1 to 100 days incarceration
Aggravated assault, battery, reckless conduct	Probation Type C or B or 1 to 30 days incarceration
Unlawful possession of weapons	Probation Type C or 1 to 5 days incarceration

Note: Probation types are defined as follows:

- A = weekly reporting for 24-36 months plus up to 800 hours of community service.
- B = monthly to weekly reporting for 12-24 months plus up to 200 hours of community service.
- C = quarterly to monthly reporting for 6-12 months plus up to 50 hours of community service.

Restitution or victim services could also be imposed as additional penalties in conjunction with those listed above.

Adapted by author from Doug Thomson, "Prospects for Justice Model Probation" (Table 4.3, pp. 128-129), in McAnany, Thomson, and Fogel (eds.) *Probation and Justice*, Cambridge, Massachusetts (Oelgeschlager, Gunn, and Hain, 1984).

Within a justice model, the primary responsibility for identifying the appropriate sanctions for specific offense categories rests with the legislature and/or a guidelines commission. Interestingly, no IPS program currently in operation meets the criteria for a justice model. However, many states do emphasize that one of the goals of their program is justice/retribution. Indeed, the use of probation fees, fines, community service, and (at least to some extent) house arrest as part of intensive supervision suggests that many states do embrace certain features of the justice model.

#### B. The Limited Risk Control Model

Because it is not "forward-looking," the justice model of probation has been criticized for placing a high priority on the fairness/uniformity of punishment, at the expense of an assessment of offender risk. In its place, O'Leary and Clear (1984) offer a "Limited Risk Control" sentencing model<sup>10</sup> which attempts to balance offender risk with concerns for fair punishment.

Under limited risk control, the seriousness of the offense establishes a range of penalties that is just, with the lower range establishing the minimally acceptable punishment, and the upper range establishing the most severe punishment that may be imposed. Within those limits, specific decisions about the amount and character of state intervention are determined by the individual's potential for new criminal behavior. (1984:3)

The prediction of future criminal behavior, within the confines of a presumptive sentencing scheme, is the critical component of limited risk control. The authors recognize that any attempts to predict the future behavior of offenders will result in two types of error—false positives and false negatives. Therefore, they argue, it is important to provide decisionmakers with accurate information on the relative costs of both false positives (i.e., offenders we think are bad risks but who do not recidivate) and false negatives (i.e., offenders we think are good risks but who recidivate). How have we balanced these errors in the past? O'Leary and Clear's assessment bears repeating here: "It is a small wonder that prisons are so crowded—they are full of the false positives held to try to reduce the false negatives." (1984:9)

In the O'Leary and Clear sentencing scheme, the initial assignment in an institutional or community program would be determined by the judge, while the length of stay could be established using a presumptive sentencing format, with longer and shorter stays determined by objective risk assessment. At sentencing, judges would select one of the three levels of control listed below. These assignments would be routinely reviewed, and as risk levels decrease, so too would the level of control.

<i>Control Level</i>	<i>Programs</i>
I:	Maximum security prison Medium security prison Minimum security prison
II:	Local correctional facility Halfway house Home detention
III:	Intensive surveillance in community Community supervision in probation or parole Community service/restitution

Intensive supervision is viewed as an important component of Control Level III of the limited risk control model. The authors view intensive supervision in the following terms: (1) very small caseloads (e.g., 10 to 1 client-officer ratio); (2) weekly contacts; (3) field visits; (4) the use of preventive conditions in recognized, high-need areas, such as alcohol, drugs, and education; and (5) swift and certain administrative review and revoca-

tion procedures for violation of conditions (O'Leary and Clear, 1984:19). The characteristics of offenders to be placed on intensive supervision in a limited risk control model can be compared to minimum and regular supervision offenders by examining table 3. Unfortunately, a delineation of the probable offense types under intensive supervision is not offered.

TABLE 3. CLASSIFICATION SYSTEM USING RISK-AND NONRISK-CONTROL ELEMENTS

<i>Program Indicated by Level of Risk</i>	<i>Client Characteristics</i>
Level 1: Minimum community supervision	Client does not now pose a significant threat to the public, no requirements of the court call for close supervision, and client has no important problems that are specifically related to potential serious violations of the law and that the probation service can reasonably expect to affect substantially.
Level 2: Regular community supervision	Client does not pose a significant threat to the public, and no close supervision is mandated by the court, but client is currently coping with a significant set of problems related to potential violations of the law. Client has some expectation of overcoming these problems with the assistance of the probation service.
Level: Intensive community supervision	Client has been recently assigned to probation and has a history of violent behavior toward others or is likely to commit a fairly serious violation of the law, or the requirements imposed by the court can be enforced only by close and persistent supervision.

Source: Todd Clear and Vince O'Leary, *Controlling the Offender in the Community* (Lexington, Massachusetts: Lexington Books, 1984:79).

Perhaps the most compelling feature of the O'Leary and Clear model is the use of preventive conditions, linked directly to each offender's immediate ability to reside safely in the community. These conditions are not designed with the general aim of rehabilitation in mind, for as the authors note: "... Any assistance rendered an offender must be reasonably related to a crime reduction goal. A supervision agency is not a welfare agency, and an extension of its activities beyond a crime control focus is both inappropriate and dangerous." (1984:18; emphasis added) Two states have based their programs on this model of intensive probation supervision: Oregon and Massachusetts. In Massachusetts, the elements of IPS are fairly consistent with a limited risk control model, but the state's overall sentencing philosophy is somewhat different. The Oregon model of IPS is an even closer approximation of the limited risk control philosophy.

(Editor's note: Not coincidentally, Todd Clear has been involved in the development of the Oregon program. See the article by Clear and Shapiro, this issue, on the Oregon Model of IPS.)

### C. A Traditional, Treatment-Oriented Paradigm

Despite the "crime control" focus of recent legislative sentencing reforms, an examination of correctional policies in these reform states reveals a continued reliance on rehabilitation. This is particularly true in the area of "intensive" probation, as many states still rely on treatment-oriented probation conditions. Since these conditions are often mandatory, it is clear that their purpose is broader than immediate crime control. In fact, long-term change in offender behavior is the aim of these conditions.

A traditional, treatment-oriented model of intensive supervision may include punitive components which are identical to the above two strategies. Unlike the justice and limited risk control models, however, "treatment" is required (in addition to such conditions as fines, fees, and community service). Specifically, once individual "self-help" plans are developed, failure to make progress toward performance objectives may result in the institution of revocation proceedings. Thus treatment plans—once developed—place the primary responsibility for continued participation in the program on the offender. A good example of this approach is found in New Jersey's intensive supervision program, which is described elsewhere in this issue by Pearson and Bibel.<sup>11</sup>

Special features of this model include:

- (1) Development of individual plans for life in the community (work, study, community service, etc.);
- (2) A requirement of full-time employment or vocational training and community service by each participant;
- (3) The use of a community sponsor and other support persons who will provide extensive assistance and direction to each participant.

As the review of intensive probation supervision programs in the following section reveals, almost all states with IPS programs use this type of mandatory treatment condition, presumably based on a link between compliance and subsequent rehabilitation. This underscores a resistance to changing the treatment orientation of pro-

bation, even with the most serious offenders under supervision.

### III. A Preliminary Examination of Intensive Probation Supervision Programs in the United States

It should be clear from the brief overview of the various theoretical rationales underlying intensive supervision that there is no consensus concerning the *purpose* of IPS. But to what extent does this "competition over purpose" translate into variations in the actual *design* and *practice* of intensive supervision? To answer this question, the Center for Criminal Justice Research at the University of Lowell conducted an initial nationwide telephone survey of key probation administrators in each state during the spring of 1985. We extended (and updated) this survey in the spring of 1986. In total, the preliminary findings reported here are based on a survey of 48 states, plus Washington, D.C.<sup>12</sup> In many states, we were also supplied written program documents; and in a small number of states, preliminary evaluation data were also reviewed. The following review is based on these materials and the interviews with key administrators. We have focused here on an examination of adult probation supervision practices, although intensive probation supervision programs have also been developed exclusively for juvenile offenders.<sup>13</sup>

It is quite apparent from our preliminary survey that the term "intensive supervision" is a "catch-all" phrase which includes a wide range of programs at distinct decision points in the criminal justice process. It has been used alternately to describe programs which function as 1) a front-end alternative to incarceration (both in the form of a discretionary sentencing decision controlled by a judge and as an established presumptive term for a particular offense); (2) as a form of probation case management, once offenders are placed on general probation caseloads; and (3) as a "back-door," early-release mechanism from prison/jail.

The location of the IPS program at any one of these major decision points is a function of the relative (discretionary) power of legislators, judges, and correctional administrators. Briefly, legislators control the target population of IPS programs in states which have mandatory (or determinate) sentencing models. In addition, they are often the primary decisionmaker in states which use a presumptive sentencing model. In both instances, the legislators set the basic eligibility requirements but allow judges and administrators some flexibility based on the existence of aggravating and mitigating circumstances. (In the proposed Massachusetts Presumptive Sentencing Bill, for example, legislators would limit the use of intensive probation as a sanction for violent offenders to

<sup>11</sup> The preliminary report on New Jersey's program was provided by Daniel Bibel, ISP, New Jersey Administrative Office of the Courts (Spring 1985). See the article by F. Pearson and D. Bibel (this issue).

<sup>12</sup> We were unable to contact probation departments in Alaska and Hawaii.

<sup>13</sup> States have also experimented with intensive supervision for juvenile probationers. One such program was evaluated in Contra Costa County, California. For an overview and evaluation, see Jeffrey Fagan and Craig Reinman, *Intensive Supervision for Violent Offenders - The Transition from Adolescence to Early Adulthood* (San Francisco, California: The URSA Institute, 1985).

those individuals who were convicted of E and F felonies only. These are the least serious crimes against the person.)

In a judicial model, the legislature usually establishes the broad mandate for IPS by statute but allows the judge the discretion to select offenders for the program. The judge may or may not have access to an objective risk assessment (e.g., the Wisconsin Risk Assessment Model) when he or she makes this determination. These decisions are made either at sentencing (e.g., Georgia) or as a postsentencing alternative, utilizing some form of shock probation (e.g., Arizona), sentence modification (New Jersey), split sentence, or intermittent incarceration.<sup>14</sup>

Finally, an administrative model would give the primary decisionmaking power on the specific IPS target population to the probation department. The legislature often has approved an indeterminate sentencing model in these states. Once the judge places an offender on probation, the classification/supervision of probationers becomes an administrative responsibility. Many states have developed objective risk/needs assessment to help state and local administrators structure this (discretionary) decision. The current experiment in intensive probation supervision described by Cochran, Corbett, and Byrne (this issue) falls into this category.

Not only do the location and decisionmaking authority of IPS programs vary in the programs which we studied, but there was interstate variation in the content of these programs. This can be linked (in turn) to the philosophy of sentencing/correction which the program embodies.<sup>15</sup> Table 4 includes an interstate comparison of the development of IPS programs in the United States. These programs are now operating in 29 states, while 8 additional states (plus Washington, D.C.) expect to have an operational intensive probation supervision program by the end of this year. However, in many states these programs often exist in only a handful of "pilot" probation program sites. According to our review, eight states—Connecticut, Florida, Georgia, New Jersey, Oklahoma, Texas, Utah, and Vermont—have implemented statewide programs which include some form of intensive supervision. Review of the "comments" column in table 4 reveals that the Georgia model of IPS is the most replicated program in the country (i.e., in six states), followed by the New Jersey program. (Editor's note: Both of these models are the subject of articles in this issue).

<sup>14</sup> See Bureau of Justice Statistics Bulletin, *Probation and Parole*, 1983, NCJ-94776 (Table 4).

<sup>15</sup> For a review of the justice model, see McNaney, Thomson, and Fogel (eds.), *Probation and Justice* (Cambridge, Massachusetts: Oelgeschlager, Gunn and Hain, 1984). For a review of the limited risk control model, see Clear and O'Leary, *Controlling the Offender in the Community* (Lexington, Massachusetts: D. C. Heath and Company, 1984). The traditional/treatment model is described in Smykla (1984).

<sup>16</sup> For example, the placement of low risk cases on intensive supervision may be unacceptable in Massachusetts, where 77 percent of the prison population are violent offenders and IPS is controlled administratively. However, in another state where "low risk" offenders are routinely placed in prison (e.g., South Dakota, Georgia), the program may be reasonable.

In addition, most states which have intensive probation supervision also have implemented the Wisconsin Probation Risk Assessment Instrument (or some variation of this model), in large part due to the training efforts of the National Institute of Corrections. However, these "objective" risk assessment instruments have two distinct limitations: (1) they are usually not validated (Wright, et al., 1984), and/or (2) in a number of states, they are not explicitly used to classify probationers as eligible for intensive supervision. In these states, function and purpose of objective risk assessment should be reassessed in light of the following: Should "risk assessment" results be presented to judges as a part of the presentence investigation? Or should these instruments only be used as a case management tool after a decision has been made on the appropriateness of a probation sanction? Answers to these questions are based on a determination of exactly who should control the target population and intake process for the IPS program. There is, of course, no single standard which can be established, since the philosophy (e.g., just deserts, limited risk control, rehabilitation) and the purpose (sentencing alternative, case management, release valve, etc.) of these programs vary from state to state (and within some states as well).<sup>16</sup>

Nonetheless, the importance of this issue can be highlighted by examining Georgia's intensive supervision program. Surprisingly, only 28.7 percent of the offenders placed on intensive supervision in Georgia were classified as maximum risk cases (7.9 percent were minimum risk cases, 28.9 percent were medium risks, and 34.5 percent were high risks). This finding suggests two general caveats: First, to speak generally about the "success" of Georgia's IPS without examining the impact of mixed risk levels would be misleading; further subgroup analyses are necessary. Secondly, others might legitimately question the allocation of scarce resources toward low risk cases. Little attention has been focused on the appropriateness of the state's selection criteria for offenders with low or medium risk level. The assumption is that, in Georgia, these offenders would have been sent to prison if the IPS alternative were not available. Ironically, the Georgia program is being used as a model for other states around the country, despite the fact that the target population in these states may often be quite different. In this context, the suggestion we offer policy makers considering the Georgia model of IPS is deceptively simple: what "works" in Georgia may or may not work in your own state.

Our survey also revealed that there is considerable interstate variation in the target populations and intake criteria of IPS programs. For example, while many states do attempt to restrict offenders from consideration for intensive probation supervision who have committed

TABLE 4. INTERSTATE COMPARISON OF THE DEVELOPMENT OF INTENSIVE PROBATION SUPERVISION PROGRAMS

<u>State</u>	<u>IPS Program(s) Exist</u>	<u>IPS Proposed</u>	<u>Comments on Program Model</u>
Alabama	No	Yes (Fall 1986)	Contingent on funding. Modified Florida Model.
Alaska	—	—	—
Arizona	Yes (6/85; 10 counties 1st year, statewide 2nd year)	—	Georgia Model. Program will be extended to all 15 counties in 2nd year.
Arkansas	No	Yes (7/86)	Plan to begin development of IPS Program 7/86; contingent on funding.
California	Yes (selected sites only)	—	Contra Costa County House Arrest Program and Serious Offender Project (for Juveniles).
Colorado	Yes (3 sites)	—	Georgia Model (modified). Legislation pending for funding to expand program statewide.
Connecticut	Yes (statewide; 7/1/84)	—	Targets sentenced offenders serving 2-5 years term in state prison system.
Delaware	No	No	Lack of funding cited, but IPS is under consideration.
Florida	Yes (statewide; 9/83)	—	Program is entitled the "Community Control House Arrest Program."
Georgia	Yes (statewide)	—	Mixed risk levels (H/M/L) included in IPS population.
Hawaii	—	—	—
Idaho	Yes (5 of 7 districts)	—	Includes both probationers and parolees.
Illinois	Yes (10 counties; 6/84)	—	Georgia Model (modified).
Indiana	Yes (1 county)	—	Allen County Adult Probation Department programs; based on Georgia Model.
Iowa	Yes (4 sites; 7/85)	—	New Jersey Model.
Kansas	Yes (10 sites)	—	Part of Community Corrections Legislation, begun in 1982 (adult/juvenile).
Kentucky	Yes (25 of 120 counties; 1984)	—	Similar to New Jersey Model, limited to non-violent offenders.
Louisiana	No	Yes (7/86)	Based on Georgia Model (parole eligible 1st offenders who receive sentences of 5 years or less).
Maine	No	Yes	Pending legislative approval.
Maryland	No	Yes (developing program)	Plan to test in Baltimore; targets offenders given 1-7 years sentence for nonviolent offenses.
Massachusetts	Yes (4/85) experimental program in 15 pilot courts	—	Pilot evaluation linked to proposed Presumptive Sentencing Package.
Michigan	No	No	No funding available.
Minnesota	No	No	Some courts do have ISP for drug offenders only; lack of funds.
Mississippi	Yes (3 sites)	—	Limited to severe drug and alcohol offenders; lack of funding for statewide program.
Missouri	Yes (3 pilot sites; 10/84)	—	Developed in conjunction with Community Sentencing Act, September 1983.



TABLE 4.(Cont'd)

<u>State</u>	<u>IPS Program(s) Exist</u>	<u>IPS Proposed</u>	<u>Comments on Program Model</u>
Montana	No	No	Developing a program for parolees only to be used as early release mechanism for nonviolent offenders.
Nebraska	No	No	Lack of funding.
Nevada	Yes (2 sites; begun 7/73)	—	Focus on drug addicts and career criminals; 2 sites (Las Vegas and Reno); "team approach" different from Georgia Model.
New Hampshire	No	Yes (7/86)	IPS program now under legislative review.
New Jersey	Yes (statewide; as an alternative to prison)	Yes (Essex County; alternative to jail)	Cases based on NIC classification; currently being evaluated.
New Mexico	No	No	Reductions in probationer/officer ratio are being considered.
New York	Yes (begun 1978)	—	In addition to IPS, New York developed an Intensive Specialized Supervision Program which targets multiple recidivist drunk drivers.
North Carolina	Yes (3/84, selected counties)	—	Georgia Model (modified); legislation pending for statewide expansion.
North Dakota	No	No	Lack of funding.
Ohio	Yes (5 counties)	—	Modeled after Lucas County Incarceration Division Unit.
Oklahoma	Yes (statewide)	—	Limited to nonviolent offenders between ages 18 and 22.
Oregon	Yes (9/83, 1 county)	—	Viewed as an alternative to jail.
Pennsylvania	Yes (3 counties)	—	IPS in place in Chester, Schuylkill, and York counties. IPS proposal being considered in 1 other county.
Rhode Island	No	No	Severe understaffing.
South Carolina	Yes (September 1985)	—	Preferably no violent offenders included.
South Dakota	No	No	—
Tennessee	No	Yes (7/86)	(Statewide program, focus on offenders from urban areas).
Texas	Yes (9/81, statewide)	—	Diversion occurs at time of sentencing.
Utah	Yes (statewide)	—	Program includes both probationers and parolees.
Vermont	Yes (statewide, 1984)	—	Split sentences frequently used; intake criteria include automatic (and discretionary) placement in ISP for specific offense types.
Virginia	Yes (1/85; 3 sites)	—	Probation officer has flexibility to establish supervision level within a specified range.
Washington	No	No	Intensive Parole Supervision begun in 1976 and designed as a prison alternative; multiple entry points.
Washington, DC	No	Yes (7/86)	Approved by Mayor, and a 7/86 start-up indicated.

TABLE 4. (Cont'd)

State	IPS Program(s) Exist	IPS Proposed	Comments on Program Model
West Virginia	No	No	—
Wisconsin	Yes (1984; selected sites only)	—	High Risk Offender Project (intensive parole supervision programs are also in place).
Wyoming	No	No (ISP proposal rejected)	Developed instead "intensified supervision" to increase the supervision levels of General Probationers.
TOTAL	29	9	—

Note: — = No data available and/or not contacted as of 5/1/86.

Note: There were 2 states with no verifiable information. Thus, 37 of 48 states plus Washington, D.C. either have intensive probation supervision programs (29) or are about to implement them (9).

crimes against the person, other states do allow these offenders to be considered for their program. Moreover, in some states it is *not* the nature of the offense per se, but the length/location of the sentence that is targeted. In Connecticut, offenders with sentences between 2 and 5 years in length are targeted (but only if crowding reaches a predetermined level). Louisiana also targets offenders with sentences of 5 years or less. Finally, our survey revealed intrastate variation in the target population of certain states (e.g., Pennsylvania, Ohio, Missouri).

Not only do the "target populations" of intensive supervision programs vary, but there are also basic differences in program design which can be highlighted. Table 5 focuses on interstate variations in (1) type of contracts, (2) use of curfew checks, and (3) minimum total monthly contacts. Small caseloads and multiple contacts are viewed by many as the cornerstone of intensive supervision (e.g., Clear and O'Leary, 1983). But caseload size varies greatly throughout the country, with an average caseload size of 25 intensive supervision probationers per officer. The intensity and range of contacts also varied greatly across the 37 states (plus Washington, D.C.) with current (or proposed) intensive probation supervision programs. For example, total minimum monthly contacts ranged from a low of 2 per month (in Texas) to 32 per month (in Idaho). Moreover, the number of face-to-face contacts ranged from two per month in Texas, Nevada, and Ohio to daily contacts in programs in California, Idaho, and Indiana. There were also wide variations in the use of curfew checks and the number/type of collateral contacts to be employed.

There are many other variations in program design which can be identified. Table 6 provides an overview of the extent of this design variation in the 31 states which currently have an IPS program in place as of June 1, 1986. Examination of this table reveals that there are cer-

tain features of IPS that are found in the majority of existing programs, including objective risk/needs assessment, the use of community service conditions, periodic record checks, mandatory referrals in high need areas (e.g., drugs, alcohol, education), curfews/house arrest, the use of "spot testing" for drug and alcohol abuse, specialized training for probation officers handling intensive supervision cases, and the use of shock incarceration or split sentences as part of intensive supervision. However, there are also many other dimensions in which these programs vary: organization (pooled vs. individual caseloads); role specialization (i.e., separation of surveillance and treatment functions); the use of electronic surveillance; the imposition of probation fees;<sup>17</sup> the designation of community sponsors; and, finally, the extent of restitution orders.

#### IV. Conclusions

Does intensive supervision work? Ongoing evaluations in Georgia, New Jersey, and Massachusetts present favorable results (editor's note: see the articles by Erwin, Pearson and Bibel, and Cochran, Corbett, and Byrne, this issue, for a more detailed assessment of each program's impact). However, it should be apparent from this brief overview of IPS programs that any generalizations about the overall effectiveness of "intensive" supervision will be misleading because of the differences in program philosophy, target populations, and the basic elements of program design. Importantly, research which attempts to examine the relative impact of specific design features has not been conducted. Thus, policy makers are now faced with a smorgasbord of design options from which to choose, with inadequate information on the impact of these program components on different types of offenders.

More specifically, the current state of knowledge about the relationship between IPS inputs (target population, selection criteria), activities (elements of program design

<sup>17</sup> An excellent review of current policies and practices regarding probation fees is found in Baird, et al. (1986).

TABLE 5. INTERSTATE VARIATION IN THE LEVEL AND TYPE OF OFFICER/CLIENT CONTACTS REQUIRED IN INTENSIVE SUPERVISION PROGRAMS

State	Type of Contact (#)		Curfew Checks	Monthly Total Contacts Only
	Direct	Personal Collateral		
Arizona	4/week	1/week (Employer)	—	20
California	7/week	—	—	30
Colorado	2/week	1/week (Employer)	1/month	13
Connecticut	3/week	1/week	—	16
Florida	6/week	1/week	2/month	28
Georgia	5/week	2/week	2/month	28
Idaho	7/week	1/week	(varies by offender)	32
Illinois	5/week	1/week	1/week	24
Indiana	7/week	—	—	22
Iowa	5/week	—	1 face-to-face 3 phone checks	20
Kansas	3-5/week	—	—	20
Kentucky	2-3/week	2/week	random	18
Louisiana	4/week	—	2/week	16
Maryland	(min.) 2/week	—	random telephone calls	10
Massachusetts	10/month	—	—	10
Missouri	5/week	2/week	—	28
Nevada	2/month	1/month (Employer)	—	3
New Jersey	5/week	—	5/month	20
New York	1/week	1/week	—	8
North Carolina	5/week	1/week	3/week	24
Ohio	2/month	2/month	—	4
Oklahoma	1/week	—	—	4
Oregon	2/week	varies, non- specific	unnannounced name visit	8
Pennsylvania	2/week	2/week	—	16
South Carolina	1/week	1/week (Employer)	—	8
Tennessee	5/week	1/week	2/week	24
Texas	2/month	varies, non- specific	—	2
Utah	3/week	—	—	12
Vermont	1/week	6/month	—	10

TABLE 5. (Cont'd)

State	Type of Contact (#)		Curfew Checks	Monthly Total Contacts Only
	Direct, Personal Collateral			
Virginia	1-5/week	varies, non-specific	—	4-24
Washington	1/week	2/month	—	6

Notes: A number of states do not break out categories of contacts, rendering comparisons difficult; direct contacts include face-to-face and telephone contacts.

This summary is preliminary and ignores possible intrastate variation.

and degree of implementation), and outputs (recidivism, cost, displacement effects on traditional probationers, diversion, etc.) has been categorized as "inadequate" and "poor" by a number of reviewers (e.g., see the reviews by Banks, et al., 1979; Latessa, 1979; Fields, 1984). When we look at evaluations of programs across the country, we find that (1) many IPS programs have not been formally evaluated, and (2) few of the evaluations which have been conducted meet even the most basic methodological criteria. (Editor's note: This problem is discussed in detail by Burkhart, later in this issue.)

Eight years ago, an evaluation of 20 intensive supervision programs was completed by Banks (see Phase I Evaluation of Intensive Special Probation Projects, 1977). His assessment of IPS programs is still relevant today:

In summary: Almost every element of information about IPS is knowable through direct empirical study yet almost nothing is scientifically known and little will ever be known until measurement techniques are improved.

Perhaps the outcome of the comprehensive IPS evaluations currently underway in Georgia, Massachusetts, and New Jersey will address this shortfall. In the interim, however, we must resist the temptations to assume that—in the name of intensive supervision—more control is always better control. As M. Kay Harris pointed out recently,<sup>18</sup> IPS programs seem to be continually adding new program features, with little concrete evidence that these new elements will increase community protection and/or result in a greater proportion of rehabilitated offenders. The only justifiable rationale for these controls is retribution, but is this the intended purpose of the programs? In this context, Harris suggests that the current "garbage can" mentality towards IPS is dangerous and a potential threat to individual rights and liberty.

The field is in need of research on the design, implementation, and effectiveness of intensive probation supervision programs. At minimum, decisionmakers need access to evaluation research on the relative effectiveness

of IPS in each of the three conceptual models outlined here. It is only at this point that the IPS concept can be considered as one element in a comprehensive sentencing policy.

#### BIBLIOGRAPHY

- Baird, Christopher, *Report on Intensive Supervision Programs in Probation and Parole*, Report to the Prison Overcrowding Project, July 1983.
- Baird, Christopher, D. Holien, and A. Bakke, *Fees for Probation Services*, Madison, Wisconsin: National Council on Crime and Delinquency, 1986.
- Banks, J., et al., Summary: *Phase I Evaluation of Intensive Special Probation Projects*, Washington, D.C.: National Institute of Law Enforcement and Criminal Justice, 1977.
- Brown, M. and D. Cochran, *Executive Summary: Massachusetts Risk/Needs Classification System*, Report No. 5, December 1984.
- Bureau of Justice Statistics Bulletin, *Probation and Parole 1983*, NCJ-94776, September 1984.
- Clear, T.R. and V. O'Leary, *Controlling the Offender in the Community*, Lexington, Massachusetts: Lexington Books, D.C. Heath and Company, 1983.
- Cole, G.F., *Criminal Justice: Law and Politics*, Brooks Cole Publishing Company, 1984.
- Fields, D.C., *The Intensive Supervision Probation Program in Texas: A Two-Year Assessment*. Unpublished doctoral dissertation, Sam Houston University, 1984.
- Fogel, D., "The Emergence of Probation as a Profession in the Service of Public Safety: The Next 10 Years," in P.D. McAnany, et al. (eds.), *Probation and Justice: Reconsideration of Mission*, Cambridge, Massachusetts: Oelgeschlager, Gunn, and Hain Publishers, Inc., 1984, pp. 65-99.
- Fogel, D., *We Are the Living Proof: The Justice Model for Corrections*, 2nd ed., Cincinnati: Anderson Publishing Co., 1975.
- Gottfredson, S.D. and R.B. Taylor, *The Correctional Crisis: Prison Regulations and Public Policy*, Washington, D.C.: U.S. Department of Justice, National Institute of Justice, 1983.
- Harlow, N. and E.K. Nelson, *Management Strategies for Probation in an Era of Limits*, Washington, D.C.: National Institute of Corrections, U.S. Department of Justice, 1982.
- Harris, L., *The Harris Survey*, New York: The Chicago Tribune, New York News Syndicate, May 24, 1982.
- Harris, M.K., "Rethinking Probation in the Context of a Justice Model," in P.D. McAnany, et al. (eds.), *Probation and Justice: Reconsideration of Mission*, Cambridge, Massachusetts: Oelgeschlager, Gunn, and Hain Publishers, Inc., 1984, pp. 15-37.
- Latessa, G.J., *Intensive Probation: An Evaluation of the Effectiveness of an Intensive Diversion Unit*. Unpublished doctoral dissertation, Ohio State University, 1979.
- Logan, C.H., "Evaluating Research in Crime and Delinquency," *Journal of Criminal Law, Criminology and Police Science*, September 1972 (63):378-390.

<sup>18</sup> Author's summary of M. Kay Harris' remarks at a panel on intensive supervision at the November 1984 meeting of the American Society of Criminology in San Diego, California.

TABLE 6. KEY FEATURES OF INTENSIVE PROBATION SUPERVISION PROGRAMS IN THE UNITED STATES<sup>1, 2</sup>

Program Components	AZ	CA	CO	CT	FL	GA	ID	IL	IN	IO	KS	KY	LO*	MA	MD*	MO	NJ	NV	NY	NC	OH	OK	OR	PA	SC	TE	TX	UT	VA	VT	WI	
Objective Risk Assessment	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	—	X	X	X	X	X	X	X	X	X	X	X
Objective Needs Assessment	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	—	X	X	X	X	—	X	X	X	X	X	X	X	X	X	X	X
Periodic Record Checks	X	—	X	—	X	X	X	X	X	O	X	X	X	X	—	—	X	—	X	X	—	X	X	—	X	X	—	—	X	X	X	X
Mandatory Referrals	—	X	X	X	X	X	—	X	X	X	X	X	X	—	—	X	X	X	—	X	—	—	X	U	X	X	—	—	X	X	X	X
Probation Fees	X	—	—	—	X	X	X	X	—	—	X	—	—	—	—	—	—	X	—	X	—	—	X	—	X	X	X	—	X	—	—	—
Restitution	X	—	—	—	X	X	X	X	X	X	O	X	X	X	O	O	X	O	—	—	—	—	X	—	O	—	X	X	O	O	—	—
Community Service	X	X	X	—	X	X	X	X	X	X	O	O	X	X	O	—	X	O	—	X	—	—	X	—	—	—	X	X	—	O	—	—
Curfew/House Arrest	X	—	X	O	X	X	X	X	X	X	X	X	X	X	X	X	X	—	O	X	—	X	X	—	O	—	—	X	O	O	O	O
Test Substance Abuse	X	X	X	X	X	X	X	X	X	X	X	—	X	X	X	X	X	X	—	X	O	X	X	—	X	X	—	X	O	X	X	X
Test Alcohol Abuse	X	X	X	X	X	X	X	X	X	X	X	—	X	X	X	X	X	X	—	X	O	X	X	—	X	X	—	X	X	X	X	X
Training for PO's	X	X	X	—	X	X	X	—	X	X	—	X	X	X	—	X	—	—	X	X	X	—	—	—	—	—	X	—	X	X	X	—
Community Sponsors	—	—	—	—	—	—	—	X	—	—	X	X	—	—	—	—	X	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Team Supervision	O	X	X	—	O	X	X	X	X	—	—	—	X	—	X	—	X	X	—	X	X	X	X	—	—	—	—	—	—	X	—	X
Shock Incarceration	X	O	X	X	—	X	X	—	—	X	X	X	X	—	X	O	X	—	X	X	X	X	X	—	—	—	—	X	—	—	—	—
Split Sentence	—	—	—	—	—	—	—	—	X	—	X	X	—	—	—	O	X	—	X	X	X	—	—	—	X	—	—	—	—	X	—	—
Electronic Surveillance	X	—	—	—	X	—	—	—	—	—	—	—	—	—	X	—	X	—	—	—	—	O	—	—	—	—	—	X	—	—	—	—

## Note:

— = not a program component

O = optional program component

U = unclear from program description

X = component of program model

\* = program in developmental stages, subject to change

1 = In the following states there was intercounty variation either in the use of IPS or in the specific program components adopted: Arizona, New York, Ohio, Pennsylvania, and Virginia.

2 = We have excluded states in which legislative approval and/or funding was still pending as of 5/15/86. (This includes Delaware, Washington, D.C., Maine, and New Hampshire).

- McAnany, P.D., D. Thomson, and D. Fogel, *Probation and Justice: Reconsideration of Mission*, Cambridge, Massachusetts: Oelgeschlager, Gunn, and Hain Publishers, Inc., 1984.
- O'Leary, V. and T. Clear, *Directions for Community Corrections in the 1990's*, Washington, D.C.: U.S. Department of Justice, National Institute of Corrections, 1984.
- Sherman, M. and G. Hawkins, *Imprisonment in America, Choosing the Future*, University of Chicago Press, 1981.
- Singer, R.G., *Just Deserts: Sentencing Based on Equality Deserts*, Cambridge, Massachusetts: Ballinger, 1979.
- Smykla, J.O., *Probation and Parole: Crime Control in the Community*, New York: MacMillan, 1984.
- Thomson, D., "Prospects for Justice Model Probation," in P.D. McAnany, et al., (eds.), *Probation and Justice: Reconsideration of Mission*, Cambridge, Massachusetts: Oelgeschlager, Gunn, and Hain Publishers, Inc., 1984, pp. 101-135.
- Travis, Schwartz, and Clear, *Corrections: An Issues Approach*, 2nd ed., Anderson Publishing Co., 1983.
- von Hirsch, A., *Doing Justice: The Report of the Committee for the Study of Incarceration*, New York: Hill and Wang, 1976.



# Turning Up the Heat on Probationers in Georgia

BY BILLIE S. ERWIN\*

**I**NTENSIVE IS a relative term. Intensive probation supervision (IPS) applies the term in varying degrees. The basic idea behind intensive probation supervision, which is sweeping the country, is to increase the heat on probationers in order to satisfy the public demand for just punishment. Can prison-bound offenders be diverted into IPS without posing serious threat to public safety? That is the pivotal question. If the answer is yes, IPS can be said to satisfy two goals that have long appeared mutually contradictory: restraining the growth of prison populations (and budgets) through diversion, while satisfying the public's demand that criminals be punished for their misdeeds. Not surprisingly in these budget-conscious times, the IPS concept is gaining popularity. This article describes Georgia's IPS program and summarizes preliminary research that suggests that IPS is both safe and cost-effective.

## *Background of IPS in Georgia*

Like other states, Georgia experienced explosive growth in prison admissions and sentence lengths during the 1970's. Despite massive funding for new facilities, prison population continued to outstrip capacity, resulting in gross overcrowding, huge backlogs of state inmates in local jails, Federal lawsuits, and serious budgetary pressures. All three governors during this period (Lester Maddox, Jimmy Carter, and George Busbee) described the chronic prison crises as the worst problem of their administrations, one that sapped their energy and soaked up money desperately needed for other worthy projects.

The judges tended to be very conservative: the per-capita incarceration rate in Georgia was then the highest in the country, higher even than in the Soviet Union or South Africa.<sup>1</sup> Some judges expressed the feeling that it was their responsibility to impose sentences reflecting just punishment for crime, while overcrowding was the responsibility of the corrections department (which in Georgia oversees both prison and probation). As the crisis deepened, however, the judiciary became more sympathetic and began using regular probation for more serious offenders. In spite of the fact that more serious offenders were being placed on regular caseloads, the crisis in prison overcrowding continued unabated. An alternative was needed that could be used for a still more serious category of offender—that was as “punishing”

as prison without being costly and without the undesirable side effects of forcing innocent families onto welfare or plunging lesser offenders into prisons full of hardened criminals. Georgia's Intensive Probation Supervision program emerged from this decade of crisis and frustration, conceived and formulated by probation staff with direct input from judges.

## *Standards of Supervision*

It is necessary to define “intense” when we discuss intensive supervision methodologies, because there are many variations. When IPS was implemented in Georgia in 1982, the program was designed to convince traditionally tough-minded Georgia judges that some of the offenders they normally sent to prison could be safely managed in the community. The expectations of judges led to a set of standards that, when compared to some intensive programs, could be considered a crucible:

- Five face-to-face contacts per week in Phase I (decreasing to two face-to-face contacts per week in Phase III)
- 132 hours of mandatory community service
- Mandatory curfew
- Mandatory employment
- Weekly check of local arrest records
- Automatic notification of arrest elsewhere via State Crime Information Network listing
- Routine alcohol and drug screens.

These standards are enforced by a team consisting of a probation officer and a surveillance officer assigned to a caseload of 25 probationers or, in some jurisdictions, a team of one probation officer and two surveillance officers supervises 40 probationers. The design places the probation officer in charge of case-management, treatment and counseling services, and court-related activities. Surveillance officers, usually from law enforcement or correctional officer backgrounds, are given primary responsibility for home visits at frequent and unannounced intervals, checking curfews, performing drug and alcohol screens using portable equipment, and weekly checks of arrest records. In actual practice, the surveillance officer gets to know the family, becomes keenly aware of the home situation, and is often present in critical situations. Both officer types relate a great deal of overlapping of functions and even reversal of roles. Against a background of substantial literature defining inherent conflicts in treatment (Glaser, 1964) and enforce-

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<sup>1</sup>Jericho, National Moratorium on Prison Construction, Washington, D.C., Spring, 1981.

ment functions in the probation officer role (O'Leary and Clear, 1984), one of the most interesting findings of Georgia's intensive model is the fact that it is almost impossible to separate the functions and deal adequately with the person and the human situation.

Georgia's experience has, in fact, led notable criminal justice authors to rethink the assumptions of inherent role conflict (Clear and Erwin, 1985). During the first 3 years intensive supervision has been operating in Georgia, there has been an exceptional level of morale and commitment among staff which has been obvious to state administrators and evaluators and has also been frequently noted by outside observers and writers who have studied the program. One of the major benefits of the supervisory team design may be the support officers have given each other which has enabled them to maintain high morale in very demanding jobs. It was clear that each officer became absorbed in goal attainment for the cases assigned rather than in performance of a job description. Thus, the overlapping of roles occurred in a cooperative team spirit which has been truly impressive. Some interchanging of roles occurred as team members provided backup for each other whenever circumstances required schedule adjustments. Staff members seemed to function out of mutual respect and concern for each other and for the continuity of supervision.

#### *Staff Training and Public Relations*

Probation officers selected for the program were all experienced and considered the finest in the field, while the surveillance officers were all hired into the Probation Division specifically for the new program. The emergence of true teams might not have occurred without the careful attention to training. A National Institute of Corrections grant supported intensive staff training coordinated through the Criminal Justice Department of Georgia State University and intensive public information/training targeting judges, legislators, prosecutors, key law enforcement personnel, and other interested citizen groups. This well-publicized educational thrust successfully melded a broad base of support for the goals of the program and a sense of ownership in local jurisdictions. Freshly trained and invigorated staff members were spotlighted as emissaries of the new intense supervision and responded with remarkable energy and dedication to the success of the program.

The Intensive Probation Supervision program, which began as a pilot in 13 of Georgia's 45 judicial sentencing circuits in 1982, had expanded to 33 circuits by the end of 1985 and had supervised 2,322 probationers. Of the 2,322 offenders who had been sentenced to the program, 68 percent are still under probation on IPS or regular probation caseloads, and 15 percent have successfully completed their sentences. One percent were transferred out,

and 16 percent have been terminated from the program for technical violations or new crimes. In reviewing these statistics, I should explain that high volume numbers were never the goal. Rather, the program targeted the group of serious offenders who, by existing sentencing standards, were going to prison but presented a nonviolent profile that suggested they could be safely managed under the very strict standards of supervision established for the small caseloads. Since Georgia does not have determinate or presumptive sentencing guidelines in effect, historically a great deal of disparity has existed between various sentencing districts. In general, the more rural circuits have exhibited more severe sentencing patterns. For this reason, establishing a target group by crime type or some risk measure would not achieve equal diversionary impact across circuits with varied sentencing practices.

Administrators decided not to define the target group specifically by crime type but as serious but nonviolent offenders who, without the intensive supervision option, would have gone to prison in the jurisdiction under which they were sentenced. This was a carefully reasoned decision based on the desire to cultivate the maximum support and sense of ownership among the judiciary.

#### *Impacts*

Evaluators who had previously provided analysis of sentencing patterns by crime type and by sentencing circuits in an effort to help define a target group, decided to maximize the existing situation through the analysis of outcomes by crime types, age, sex, race, risk, and need assessment scores and to analyze impacts through any changes in the percentages of offenders incarcerated in the various sentencing jurisdictions.

The Georgia Probation Division currently supervises 89,585 active probationers; and to expect impressive percentage impacts through a program maintaining small caseloads would be unrealistic. Analysis focused on the sentencing of felony offenders on an annual basis from 1982 through 1985. We considered 1982 as the baseline year. During that year 63 percent of the felons coming before the courts in Georgia received a probated sentence. With intensive probation supervision in place for 3 years, 1985 sentencing statistics show that 73 percent of the felons sentenced in Georgia during that year were sentenced to probation rather than prison. This 10 percent reduction in the percentage of felons incarcerated represents major progress in the effort to solve problems in prison overcrowding. During this period of time, there were many factors which may have influenced judges to consider alternative sentences which would relieve prison overcrowding. When, however, we look at the sentencing jurisdictions in Georgia that had an intensive team operational, we note that each of these circuits showed

an increase in the percentage probated and that their combined statistics showed an increase that exceeded the statewide averages.

### *Diversion*

When discussing alternative sentencing, questions always arise regarding the certainty of true diversion. Georgia tried to build the evidence into the design through a selection process of screening offenders already sentenced to prison and recommending a sentence modification for those who met the criteria established. About half the IPS cases have been received through this process. Many judges, however, were committed to the program and its criteria but declined to amend sentences as a regular procedure. In these jurisdictions procedures were developed for screening and making recommendations prior to sentencing. Amended prison sentences provided incontrovertible evidence of diversion. Cases sentenced directly to the program also appeared to represent diversion, but it was more difficult to prove. Other programs have experienced similar difficulty in demonstrating that the offenders assigned to the special program would otherwise have occupied jail or prison beds.

Since establishing the fact of true diversion is crucial to the rationale of providing a cost-effective alternative to prison, we used a statistical model to assess diversion. By the beginning of 1984, IPS was operational in 26 of Georgia's 45 judicial sentencing circuits. A computerized analysis was performed on all offenders sentenced in these 26 districts during calendar year 1984. This analysis included a discriminant analysis of all offenders sentenced to prison as one group and all offenders sentenced to probation as a second group in order to establish a discriminant function which would best predict the prison versus probation decision. In an analysis of 20 previous studies, John Hagan has addressed the question of what variables might predict the in/out sentence. He concluded that previous research showed a small relationship between extra-legal attributes of the offender and sentencing decisions (Hagan, 1984).

For our analysis we tested a combination of legal and extra-legal factors. Crime type can be considered a purely legal factor, while the risk assessment score is based on a combination of legal and extra-legal information. Sex, race, age, need score, obtained from the Risk/Need Assessment instrument, and rural versus urban counties were considered as extra-legal in discriminant functions based on type of crime, sex, age, and race. The object of this analysis was to separate the groups assigned to prison and to probation on the basis of the attributes found to discriminate between the groups. After a function was derived which best predicted prison or probation, this function was applied to the group actually

sentenced to intensive supervision in order to determine whether the group members would have been expected to receive prison or probated sentence if intensive supervision were not available as an option. The results of this analysis using the resultant linear discriminant function showed that the offenders actually sentenced to IPS looked more like those sentenced to prison than like those probated, providing further evidence of true diversion.

### *Who Served*

When we look at the 2,322 offenders sentenced to the program through 1985, the following profile emerges. Sixty-eight percent were white, 89 percent were male, 46 percent were 25 years old or younger, and another 24 percent were in the 26-30 year age group. Forty-three percent were convicted of property offenses, 41 percent of drug and alcohol related offenses, and 9 percent were convicted of violent personal crimes.

The target groups was not specifically defined by crime type, but the selection criteria were clear. The program was to accept only serious offenders who would have gone to prison without this option. The Risk/Need Assessment instrument was used by staff in screening offenders in jail and making recommendations to judges for amended sentences to the intensive program. This procedure was designed to assure that offenders with unacceptable risk or violent profiles were not placed in the community. Since the "go to prison" pattern varies widely by sentencing circuit, the policy decision best assured that the program's diversionary purpose could be applied to the existing sentencing policies. The allowance for judicial discretion proved to be a great boon to the popularity of the program but at the same time presented some problems in establishing desired research controls.

Evaluators decided to address this situation by examining the profiles of those actually placed in the program and establishing comparison groups given regular probation and incarcerated sentences and tracking them over identical time periods using the Statewide Crime Information Network. Statistical controls were then used to analyze outcomes in terms of selected variables for the intensive supervision cohort compared to a cohort under regular supervision and a cohort incarcerated and subsequently released. The three cohorts were selected from offenders sentenced during 1983, the first year the program was fully operational.

Computerized sampling drew comparison groups of 200 regular probationers and 200 intensive supervision participants matched by age, sex, race, crime type, risk score, and need score. In order to establish uniform variables for the incarcerated cohort it was necessary to screen newly admitted inmates at the institutional intake centers. The Risk/Need Assessment instrument, con-

sidered an important variable for our analysis, was used statewide for all probationers but not for inmates. This is a variation of the Wisconsin instrument which was validated on Georgia offenders by Dr. Jerry Banks of the Georgia Institute of Technology (Banks, 1984). Of the 500 inmates screened, 176 were selected for the incarcerated sample. Of this group 97 have been released and could be tracked for 18 months, so this time period was tracked for all three groups to assess recidivism in terms of rearrest, reconviction, and reincarceration.

Dr. Don Gottfredson, in discussing the comparability of groups, has suggested that the researcher might develop relatively homogenous groups by developing measures of risk and controlling for these measures (Gottfredson, 1970). Since the risk assessment instrument had been validated as a predictor of recidivism, each of the cohort groups was divided into four categories of risk for the analysis. Risk scores are categorized as

follows: (0-7) low risk, (8-14) medium risk, (15-24) high risk, and (25 and over) maximum risk. The presence of cases with low risk scores has caused some to question whether Georgia's intensive program has taken less serious cases. There are often circumstances in which an offender without serious previous criminal history scores low in the risk scale, but the nature of the instant offense would result in an incarcerated sentence by existing standards in the given jurisdiction. The presence of low risk scores among 5.2 percent of the incarcerated cohort confirms this reality. The litmus test applied was "Would this offender go to prison without the program?"

### Outcomes

Both the intensive cohort and the regular probation cohort were tracked from the date of assignment to community supervision. Offenders in the incarcerated cohort

TABLE 1.—OUTCOMES AFTER 18 MONTHS TRACKING OFFENDERS WITH LOW RISK CLASSIFICATION

	No. of Cases	No. & Percent Rearrested	No. & Percent Reconvicted	No. & Percent Sentenced to Jail or Prison	No. & Percent Incarcerated in State Prison
Intensive Supervision Group	12	5 (41.6%)	3 (25.0%)	3 (25.0%)	2 (16.7%)
Regular Probation Group	11	3 (27.0%)	0 ( 0.0%)	1 ( 9.1%)	1 ( 9.1%)
Incarcerated Group	13	6 (46.2%)	5 (38.5%)	4 (30.8%)	3 (23.1%)

TABLE 2.—OUTCOMES AFTER 18 MONTHS TRACKING OFFENDERS WITH MEDIUM RISK CLASSIFICATION

	No. of Cases	No. & Percent Rearrested	No. & Percent Reconvicted	No. & Percent Sentenced to Jail or Prison	No. & Percent Incarcerated in State Prison
Intensive Supervision Group	62	21 (33.9%)	10 (16.1%)	10 (16.1%)	9 (14.5%)
Regular Probation Group	58	20 (34.5%)	14 (24.1%)	9 (15.5%)	6 (10.3%)
Incarcerated Group	12	7 (58.3%)	6 (50.0%)	4 (33.3%)	2 (16.7%)

TABLE 3.—OUTCOMES AFTER 18 MONTHS TRACKING OFFENDERS WITH HIGH RISK CLASSIFICATION

	No. of Cases	No. & Percent Rearrested	No. & Percent Reconvicted	No. & Percent Sentenced to Jail or Prison	No. & Percent Incarcerated in State Prison
Intensive Supervision Group	69	24 (34.5%)	19 (27.5%)	14 (20.3%)	11 (15.9%)
Regular Probation Group	73	22 (30.1%)	18 (24.7%)	3 (17.8%)	10 (13.7%)
Incarcerated Group	47	27 (57.4%)	21 (44.7%)	10 (21.3%)	6 (12.8%)

TABLE 4.—OUTCOMES AFTER 18 MONTHS TRACKING OFFENDERS WITH MAXIMUM RISK CLASSIFICATION

	No. of Cases	No. & Percent Rearrested	No. & Percent Reconvicted	No. & Percent Sentenced to Jail or Prison	No. & Percent Incarcerated in State Prison
Intensive Supervision Group	57	25 (43.6%)	15 (26.3%)	12 (21.1%)	11 (19.3%)
Regular Probation Group	58	26 (44.8%)	16 (27.6%)	11 (19.0%)	8 (13.8%)
Incarcerated Group	25	16 (64.0%)	9 (36.0%)	7 (36.0%)	6 (24.0%)

were tracked from the date they were released from prison to become at risk in the community. Tables 1 through 4 show outcomes broken down by risk classifications.

Table 1 clearly indicates that for low risk cases, the more severe the intervention the more negative the outcome in terms of recidivism among the sample studied. The rate of rearrest is higher for the intensive supervision cohort compared to regular probationers in all categories except the maximum risk category. This is not surprising when you consider the level of surveillance applied and the increased likelihood of detection of any violation. The prison releasees, however, have the highest rate of rearrest in all risk categories.

The overriding issue in determining achievement of program goals is the avoidance of incarceration; therefore, the last column in tables 1-4 best summarizes the outcomes. Among low and medium risk offenders (tables 1 and 2), the group incarcerated at initial sentencing had the highest rate of return to prison after 18 months tracking, with the intensive supervision group showing a lower rate of incarceration and the regular probation group showing the lowest incarceration rate of all three groups.

Among high risk offenders the picture changes. In this subgroup the intensive supervision cohort had the highest rate of incarceration, with the previously incarcerated cohort in the middle and the regular probation cohort continuing to show the lowest rate of incarceration. Since the tracking of the members of the incarcerated group screened in December 1983 at intake necessarily included only those released before July 1984 in order to be trackable for 18 months at the time of our study, we are looking at a group that experienced incarceration for 2 to 6 months. This could be defined as something resembling a shock incarceration. It is possible that the outcomes here suggest that a short period of incarceration tends to slow down the rate of repeat crime among the more serious risk offenders, while incarceration for low risk offenders seems to be followed by an increased incidence of subsequent crime. The extremely high rate of reconviction in the high risk group, however, would deny this conclusion. This discrepancy may be the consequence of small numbers of cases and prevents any clear conclusions. Processing time may also affect statistics, and a longer tracking period may produce different results.

This information could, however, be useful in demonstrating to judges that low risk offenders are most effectively managed under standard probation supervision. In the maximum risk subgroup the prison releasees clearly have the highest rate of rearrest and reincarceration, with the regular probation cohort maintaining the lowest rates and the IPS cohort midway between. The total outcomes for the three groups as a whole are shown in table 5. This tracking was performed through the

Georgia Crime Information Center. This network provides highly accurate reporting of arrest data; however, disposition data are often incomplete. For this reason, reconviction data may be underrepresented in the regular probation and incarcerated comparison samples, whereas exhaustive reporting and evaluation procedures used during the IPS pilot and careful monitoring of any instances of repeat crime has assured that no instance be unreported among the IPS cohort.

If a short incarceration (2-6 months) is considered a more severe sentence than intensive probation supervision, we could say the offenders who received the most severe sentence had the highest rate of return to prison; however, that differentiation of severity may be debatable.

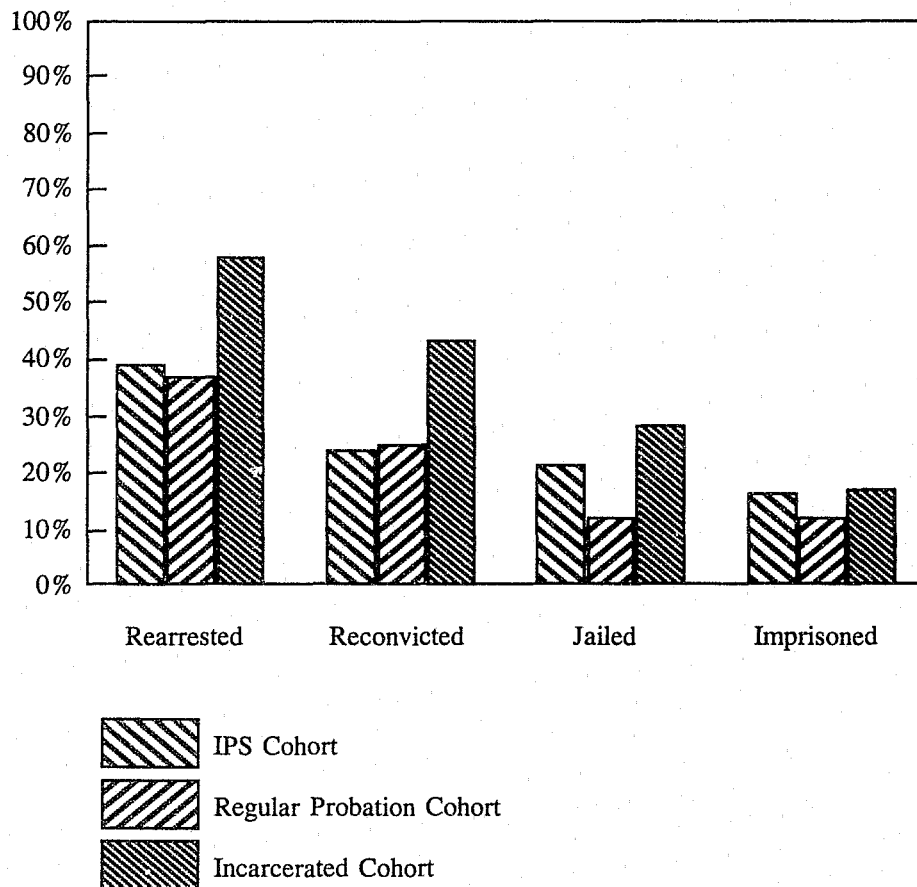
Caution must be observed in interpreting these findings. Even though groups are matched on paper on several key attributes, there are many variables which may influence the recommendation and sentencing decisions which differentiate these groups and are not discernible in the research data. We could say the outcomes confirm the judge's wisdom in applying the most severe sentence to the toughest offenders.

### *Risks of Subsequent Crime*

The key issue in evaluating IPS, though, is contained in the question, "Can offenders who would have been incarcerated be managed on probation without unacceptable risk to the community?" Joan Petersilia's study of felony probationers in California released by the Rand Corporation in January 1985 (Petersilia, 1985) focused the attention of the nation on the issue of serious crimes committed by probationers. Georgia administrators had been sensitive to this issue from the beginning, and every subsequent violation had been carefully monitored throughout the program. While the minor repeat offenses, primarily marijuana possession, were numerous and judges reacted with strong sanctions since they felt the offender had already been given his last chance, serious violations were remarkably infrequent. After the first 18 months of the program's operation with 542 probationers under supervision, the most serious new offenses were six burglaries, one of which was the burglary of a gum ball machine in a hallway outside the probation office. In the following year, 1984, one IPS offender was convicted of armed robbery. This is the most serious offense to date committed by an IPS probationer, and no one was injured. To date the only other crimes categorized as "violent personal" committed by IPS probationers have consisted of four simple assaults, one simple battery, one obstruction of an officer, and one conviction of terroristic threats.

The citizens of Georgia have had little reason to fear for their safety at the hands of the 2,322 offenders who

TABLE 5. RECIDIVISM FOR GEORGIA'S IPS PROBATIONER COMPARED TO REGULAR PROBATION AND PRISON RELEASE COHORTS AFTER 18 MONTHS TRACKING



have been diverted from prison to IPS. The pervasive methods of surveillance of all aspects of the probationer's life may be considered not only as community control over the offender but also as control of the risk for the community. If the earliest signs of trouble in the form of curfew violations, positive drug screens, alcohol violations, and failure to work are detected and addressed either by increased sanctions or problem solving methods, many subsequent crimes are prevented. In this light, a higher percentage of probation revocations is tolerable when serious crime is averted. Close observation of intensive teams in action convey an overwhelming sense of *immediacy*. Problems are dealt with as they arise by IPS staff members who know their charges almost as well as the probationers' families do. Uncooperative behavior is addressed with increased sanction at the level the probation officer deems necessary to effectively control the situation, and the majority of the probationers express positive reactions to the feeling that somebody in the criminal justice system really cares enough to get involved. The crucible works not only to apply intense

pressure but also to mold and temper. All the resources of the community are tapped through probation staff in behalf of the probationer who is willing to obey the rules and try to straighten out his life. IPS staff members have taken on cases that everyone else in the system had given up on. Staff members live inside probationers' shoes for a while, and some of the greatest job satisfaction comes from seeing their charges self-supporting and assuming the responsibilities of law-abiding citizens.

The statistics show that only 0.8 percent of the IPS probationers have been convicted of any crimes which are categorized as violent personal (including simple batteries, terroristic threats, etc.), although 16 percent of all the offenders served have been revoked for technical or criminal violations. Surprisingly, offenders originally convicted for drug-related and alcohol-related offenses had the highest rates of success under intense supervision, and property offenders had the lowest rates of success. If strict target crimes had been defined at the outset, program planners had considered discouraging the acceptance of substance abuse offenders. Instead they increased the



staff training and urinalysis capabilities in response to the fact that judges were obviously looking for constructive alternatives in many such cases.

### *Predicting Success*

Drug offenders did better under IPS than they did under regular probation supervision, suggesting that the frequent contacts during evening and weekends and the urinalysis monitoring may be particularly effective in monitoring this type of offender. Females succeeded at a slightly higher rate than males, as they did under regular supervision, and there was not a significant difference in outcome by race.

In order to use Georgia's actual experience to identify the target group that might be most effectively supervised under an intensive program, we performed discriminant analysis utilizing all the items available in the extensive program data. Crime types were divided into seven categories: violent personal, nonviolent personal, property offenses, drug sale, drug possession, alcohol-related, and other. The resulting analysis identified the risk score as the most important variable in predicting whether a probationer will succeed or fail under IPS, with the fact he is a property offender providing the predictor next in importance. Table 6 shows the result of this analysis with all the available attributes considered. All the variables produced a discriminant function which predicts 67.7 per-

cent of the variation in outcome, compared to a 50 percent prediction based on chance alone.

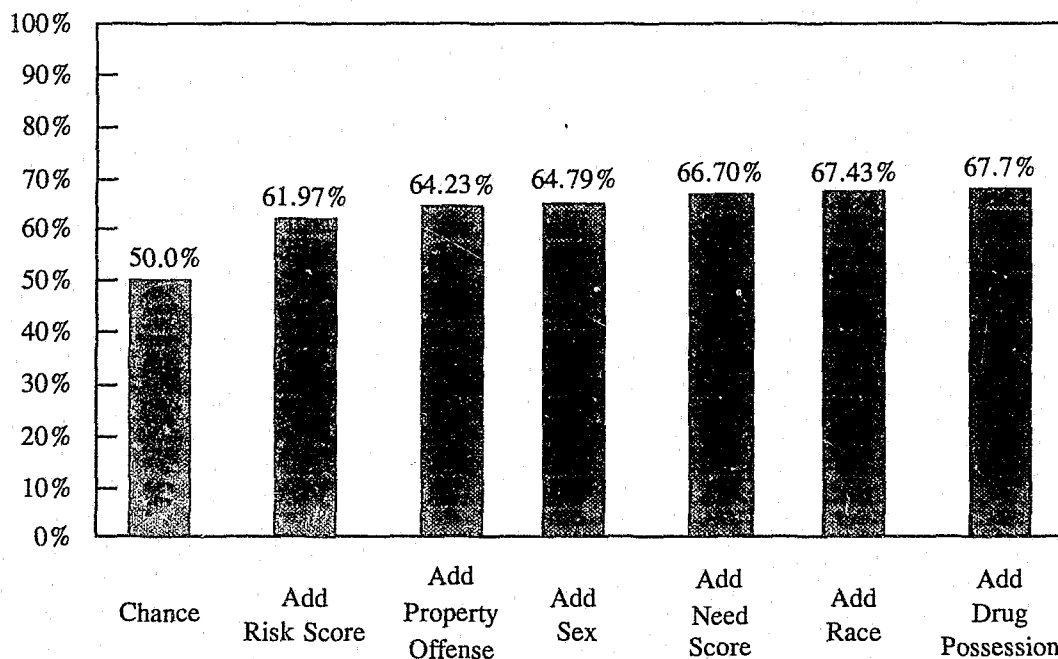
### *Costs and Benefits*

When we consider the risk to citizens we must also consider the stakes, and the citizens of Georgia have every reason to consider themselves winners through IPS in the high stakes gamble of avoiding prison costs. Georgia Department of Corrections documented budget records show \$11,107.65 cost per inmate per year in FY 85 without including capital outlay for construction. The standard method used by the agency to calculate construction costs prorated over a 30-year use period increases the cost per inmate per year to \$12,537.45. This compares with \$1,622.00 cost per offender per year under intensive probation supervision. For each offender successfully diverted from prison, this represents a cost avoidance of \$10,916.45 per year. IPS probationers work in their community, pay taxes, support families, pay restitution to victims, and perform community service which is of significant benefit to the community.

Authors such as Gail Funke (Funke, 1982) and Cory and Gettinger (Cory and Gettinger, 1982) have presented rationales that suggest standard budget analyses grossly understate the true costs of prison. Hidden cost may include financing costs, Federal grant receipts, services funded through other agencies, welfare to families, and

TABLE 6. STATISTICAL ABILITY TO PREDICT

### IPS Success vs. Failure



legal costs. It is also necessary to consider the threshold at which the addition of a new offender necessitates additional prison construction.

When IPS came on the scene, Georgia's prisons were severely overcrowded and Federal court orders in effect were mandating a reduction in the size of the population at the state's largest maximum security prison. It was a situation in which any increase in the size of the population would clearly require new prison construction. When preliminary data were presented summarizing the first 18 months of the IPS performance, diverting 542 offenders, Commissioner David Evans said, "That is one twenty million dollar prison we did not build." Now 2,322 have been sentenced to the program with current caseloads supervising approximately 1,000 cases. If these offenders had been incarcerated the threshold would have been crossed requiring the construction of at least two prisons at ever increasing costs.

Adding to the bargain for taxpayers is the collection of probation supervision fees which was critically linked to IPS, although not a component of the program itself. In 1982 the Probation Division instituted a policy of collecting supervision fees ranging from \$10 to \$50 per month when ordered by the court following an Attorney General's ruling that existing statutes would allow for court ordered fee collection if used to improve probation supervision. Judges, who had been vocal in requesting stricter supervision standards, were advised that intensive supervision would be implemented on a phase-in basis determined by resources made available through fee collection. The response exceeded expectations, and through the 4 years of operation fee collections have exceeded total IPS costs and have been used for numerous additional special probation supervision needs.

IPS was implemented without any request for legislative budget allocations due to the simultaneous implementation of probation fee collection. This does not mean that IPS probationers have supported the program alone. Fees were imposed by judges statewide on a case by case basis, while IPS was initially piloted in 13 of Georgia's 45 judicial sentencing districts. The program has expanded, with judges among its staunchest supporters, to now serve 30 sentencing districts.

### *Future Directions*

Judges like the more intensive supervision so much that administrators must be constantly alert to assure that it continues to be used only as an alternative sanction for prison-bound cases. Probation administrators, ever mindful of the increasing demand from the entire community

that probation demonstrate clearly visible evidence of appropriate punishment for crime, have been creative in responding to this demand with a range of options with varying degrees of severity and intrusiveness. One rapidly growing alternative is the Community Service Program based on the performance of court ordered community service as the sole sanction in addition to the conditions of regular probation. This program is far less intrusive, less costly in staff time, and therefore able to manage a large volume of cases. Other alternative sanctions include community diversion center placement and Special Alternative Incarceration, a 90-day shock incarceration program.

Georgia's Probation Division can now offer the courts a choice of levels on the thermostat for increasing the heat in varying degrees to convince the offender that probation represents a serious response to criminal behavior, and a highly innovative staff has shown initiative to utilize the full range of the scale. There is no question that IPS has proven itself for Georgians and has become an integral part of the corrections system. The citizens of Georgia have demanded a tough response to crime, and Intensive Probation Supervision has provided a highly visible supervision that satisfies that demand while avoiding the costs of prison construction.

### REFERENCES

- Banks, Jerry, Ph.D., *Validation of Risk and Needs Assessment Instruments*. Georgia Institute of Technology, Atlanta, Georgia, May 1984.
- Clear, Todd, Ph.D. and Billie S. Erwin, "Rethinking Role Conflicts in Community Supervision," paper presented to the 37th Annual Meeting of the American Society of Criminology, San Diego, California, November 1985.
- Cory, Bruce and Stephen Gettinger, *Time to Build: The Realities of Prison Construction*, Edna McConnell Clark Foundation Program for Justice, New York, New York, 1984.
- Funke, Gail S., Ph.D., "Who's Buried in Grant's Tomb? Economics and Corrections for the Eighties and Beyond," Institute for Economic Policy Studies, Inc., Alexandria, Virginia, 1982.
- Glaser, Daniel, *The Effectiveness of a Prison and Parole System*, Indianapolis, Bobbs-Merrill, 1964.
- Gottfredson, Don M., Ph.D., et al., "The Comparison Problem," *A National Uniform Parole Reporting System*, National Council on Crime and Delinquency Research Center, Davis, California, December 1970, pp. 71-102.
- Hagan, John, Ph.D., "Extra-Legal Attributes and Criminal Sentencing: An Assessment of a Sociological Viewpoint," *Law and Society Review*, Vol. 8, Spring, 1974, pp. 357-393.
- National Moratorium of Prison Construction, *Jericho*, Washington, D.C., Spring, 1981.
- O'Leary, Vincent and Todd R. Clear, *Directions for Community Corrections in the 1990's*, National Institute of Corrections, Washington, D.C., 1984.
- Petersilia, Joan, et al., *Granting Felons Probation: Public Risks and Alternatives*, The Rand Corporation, Santa Monica, California, January 1985.

# New Jersey's Intensive Supervision Program: What is it Like? How is it Working?

BY FRANK S. PEARSON, PH.D., AND DANIEL B. BIBEL\*

## Introduction

**A**S YET there is no standard definition of the term "intensive supervision." Programs termed "intensive supervision" programs range from those requiring less than 4 contacts per month (including phone contacts) to programs requiring over 20 contacts per month (including over 12 face-to-face contacts). Other components of nominal intensive supervision programs (ISP) may or may not include enforcement of curfews, required treatment programs, community service work, required payment of program fees, and other penalties.

The goals of intensive supervision programs also vary. Traditionally, probation has been viewed as a treatment oriented approach. Now, some ISPs explicitly include elements of a punitive or just deserts approach. The *mixture* of treatment and punishment components varies in the ISPs that have been established in the United States. Traditional community supervision goals are in a process of redefinition. The traditional approach is being altered to deal with a new population of offenders—or to deal with the same type of offenders in different ways. The original "clientele" of probation departments was those offenders thought to be particularly suitable for immediate return to the community. Due to burgeoning prison populations, however, many offenders who would otherwise have been incarcerated are being monitored by probation agencies, as judges seem to be "saving" prison beds for only the worst offenders.

Some jurisdictions may institute ISPs that are closely patterned after the New Jersey model. Others may prefer to use the Georgia model, or to select elements of both, or to strike out in still other directions. In any event, what is being learned in New Jersey is likely to be useful information for anyone interested in any real version of intensive supervision. In this article we will briefly discuss the background and operations of the program and describe the screening and admissions process. We will then discuss some preliminary findings of the research being conducted on New Jersey's ISP.

## Brief History

The Intensive Supervision Program began in New Jersey in June 1983 to remove certain less serious offenders from prison and release them into the community under rigorous supervision. The executive, legislative, and judicial branches were particularly motivated by the need to deal with the state's serious prison crowding problem. Prior to 1983 the Administrative Office of the Courts had provided only coordinative and administrative functions for probation services; the direct management of probation was a county function. Under ISP, the Administrative Office of the Courts took on direct field-management responsibility for supervision of offenders released from prison, on a statewide basis.

In planning ISP, it was thought that an active caseload of about 400 or 500 inmates each year could be released from prison (after serving just a few months of their sentence) and supervised very closely in the community. The intensive supervision would be an intermediate response, intermediate between the existing responses of long incarceration or ordinary probation. As one of several state initiatives to deal with prison crowding, it was thought that the early release of 400 to 500 inmates each year would be a significant benefit. Of course, it also provides an opportunity to study the impact of ISP on recidivism rates and on other prosocial and antisocial behavior patterns (employment, drug abuse, etc.)

The program has been in operation for a little over 2½ years now. Nearly 600 persons have been accepted into the program; the current active caseload is approximately 350 participants. To date, 111 have been successfully terminated from supervision ("graduated"), while 124 (about 20 percent) have been expelled from ISP and returned to prison. To be considered for unconditional release, participants must spend *at least* 1 year in ISP; typically they spend a year and a half in ISP.

In contrast to some programs labeled intensive supervision programs, New Jersey's program has a very high frequency of contacts with the offenders. Participants are contacted by their officer at least 20 times per month during the first 14 months of the 18-month program. Of the 20 contacts, during the first 6 months in the program at least 12 are face-to-face, usually in the participant's home, occasionally at work. The remainder of the 20 contacts per month are by telephone. Also, at least 4 of the 20 contacts are curfew checks made late at night to make

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sure that the participant is obeying the curfew: the general rule is that each ISP participant must be home every night from 10:00 p.m. to 6:00 a.m.. After successfully completing the first 6 months, the intensity of supervision is systematically gradually lessened through three subsequent phases of intensity of supervision. Successful participation is defined in terms of employment, abiding by the curfew, paying fines and other penalties, performing community service, etc. (For more detail, see New Jersey Administrative Office of the Courts, 1983; Pearson, 1985).

One of the goals of ISP is to release selected offenders from prison without seriously increasing the risk of recidivist crime. It seems to be accomplishing this goal: of the expulsions from ISP (all of whom are returned to prison) most are strictly for program rule violations, rather than for new crimes. That is, most revocations are due to continued drug use (detected through random frequent urinalyses), curfew violations, or other "technical violations" of ISP. At the same time, while they have remained in the program, the participants have been employed, paying fines, fees, payments for victim compensation, child support, and so forth. They have also been cooperating with treatment programs, providing community service work, etc.

Few changes have been made to the original ISP "blueprint" as a result of actual operational experience. One change which has been made is that offenders had to have been incarcerated a minimum of 30 days before they could initiate an *application* to ISP (a similarity to the "shock incarceration" concept). That requirement has been dropped, but there appears to have been little or no effect on the typical time that offenders serve in prison prior to release into ISP (4 months, on the average). Another change is that offenders had been required to have full-time employment arranged prior to acceptance into ISP. Now the general rule is that they find full-time employment within 30 days of admission.

### *Eligibility and Admission*

The process by which offenders are selected for New Jersey's ISP is different from that found in other jurisdictions. Because one of the major goals of ISP is to reduce prison crowding, the selection process was structured so as not to (inadvertently) increase the number of offenders going to prison, that is, to avoid "net widening." ISP handles this by requiring that, in order to be eligible for the program, the offender must have been sentenced to a term of incarceration in a state prison and by not allowing ISP to be a sentencing option for the trial judges.

There are certain administrative restrictions on the types of sentences or offenses to be considered eligible for ISP. Any applicant whose current conviction is for homicide, robbery, or a sex crime, or whose sentence in-

cludes a minimum term of incarceration that must be served, is not eligible to participate in the Intensive Supervision Program. Of the crime-types eligible for further consideration, most are burglaries and major thefts, small-time drug sales, and fraud.

There is a seven-stage screening process through which an application must pass in order to be approved for admission. The main results of this process follow. As of the December 31, 1985 applications status report (and excluding applications pending at some stage in the selection process), approximately 2,400 applications for ISP had been evaluated. Of these, about 60 percent were not accepted into the program, 15 percent chose to withdraw their applications, and about 25 percent were admitted to the Intensive Supervision Program. The reasons given by the 15 percent who withdrew their applications show that the overwhelming majority of them decided that the Intensive Supervision Program was too punitive and/or too lengthy, compared to the remainder of the actual prison sentence they would probably serve. For example, some applicants find out that they are likely to be given work release in a few more months or even that their parole hearing will occur in several months and that they have a very good chance of being released on parole.

Reasons for turning down applications to ISP include the degree of the instant offense (first- and second-degree felonies are not accepted unless there are mitigating factors), too many prior felony convictions, prior crimes of violence, and that the applicant appears unwilling to abide by one or more of the program rules (e.g., the curfew).

Two major differences between New Jersey's ISP and other intensive supervision programs are the requirement that a few months of the prison sentence actually be served by the offender and the requirement that the offender voluntarily apply for ISP. A third major difference is the role of a "Resentencing Panel" consisting of three Superior Court judges who make the final decisions on admissions to ISP, who periodically review the progress of each program participant, and, if it appears that a participant may have violated program rules, who hold hearings to decide whether a participant is to be returned to prison. In other jurisdictions judges have much less substantial involvement in the ISPs. In New Jersey, however, the Resentencing Panel is a stable, cohesive group of three judges who are intimately aware of program operations and the progress of ISP participants. It is not surprising that the participants are expected to accept the program "philosophy" and that the ISP officers do; in New Jersey the judges on the panel are equally committed to the ideals and principles of the program.

### *Comparison of ISP and OTI*

As this is being written (March 1986) the data on ISP outcomes are still being collected. In a little less than a

year a complete research report on the program will be made available that will describe the effects of the program on more than 500 program participants. Here we can at least mention some preliminary findings on a data base of 400 ISP participants.

In trying to assess the effects of ISP it is necessary to have a frame of reference for comparison. Since ISP participants are felons sentenced to prison who actually begin serving their sentence, a natural rough comparison is a group of offenders who committed ISP-eligible crime types who served their ordinary term of imprisonment. The *ordinary term of imprisonment* (OTI) comparison group was formed by drawing a random sample of 500 cases who served their terms in prison and were released on parole before ISP began operations. Just as in the ISP group, in the OTI group the offender's instant offense

*Table 1. Most Serious Instant Offense of Intensive Supervision Program (ISP) Cases and Ordinary Term of Imprisonment (OTI) Cases*  
(The entry in each cell is the column percent.)

Instant Offense:	ISP	OTI
2nd Degree Miscellaneous	4	1
3rd Degree Inchoate	3	4
3rd Degree Burglary	22	41
3rd Degree Theft	12	13
3rd Degree Fraud/Forgery	2	1
3rd Degree Drugs	38	25
3rd Degree Other	4	10
4th Degree Burglary	1	2
4th Degree Theft	3	0
4th Degree Fraud/Forgery	1	1
4th Degree Drugs	2	0
Revocation of Probation/Parole	8	0
Column Total	100% n = 397	98%* n = 500

\* The total percent is not exactly 100 due to rounding.

was a third- or fourth-degree felony but not a crime of violence, organized crime offense, or sex crime. Table 1 shows the effect of the ISP screening process with the OTI as a comparison group. Given the exclusions of crimes of violence, organized crime, and sex crimes, the ISP group still includes a diversity of fourth-degree crimes (low-grade felonies) and third-degree crimes and even a few second-degree felonies (mainly "conspiracy to commit" and "attempt to commit" serious felonies). Within the noted range of offenses ISP has selected a higher proportion of drug felonies than are found in the OTI group. These are mainly small-time user-seller offenses: persons with drug habits who "retail" some drugs mainly to support their own habit. On the other hand, ISP has selected disproportionately few burglars. Among other preliminary findings, an analysis of variance (not presented here) showed that ISP and OTI were significantly different in terms of the number of prior felony convictions found in each group. For ISP the mean is 2.2 prior felony convictions; for OTI the mean is 5.1. The cross-tabulation presented in table 2 provides more detail on these characteristics.

*Table 2. Number of Prior Felony Convictions of the ISP Group and the OTI Group*  
(The entry in each cell is the column percent.)

Prior Felony Convictions:	ISP	OTI
0	32	15
1	22	12
2	15	10
3	9	7
4	7	8
5	4	8
6	5	6
7	1	6
8	2	4
9	2	4
10 or more	2	19
Column Total	101%* n = 398	99%* n = 500

\* The total percent is not exactly 100 due to rounding.

These results indicate that the ISP selection process screens out the cases that seem to be more serious and riskier for the community at large (burglars) and those with a longer involvement in crime (more prior felony

convictions). On the other hand, 67.8 percent of ISP participants had at least one prior felony conviction, and 46.2 percent had at least two prior felony convictions. Thus, the ISP caseload consists of real felonious offenders, and the New Jersey experience with ISP should be informative for the rest of the country.

Some of the social and demographic characteristics of the ISP and OTI offenders are presented in table 3. In comparison to the ordinary term of imprisonment group, the ISP group is markedly, disproportionately more likely to have had a full-time job at the time of the instant offense for which they were sentenced to prison (62.3 percent versus 37.0 percent). Correlatively, the ISP group is disproportionately white and better educated.

Of course, the table also shows that nearly 30 percent of the ISP group were unemployed at the time of their instant offense, that 44 percent are minority group members, that most are high school dropouts, and that most have a drug use problem. (As already noted, about two-thirds had felony convictions prior to their instant felony offense.)

#### *Survival Analysis of ISP Participants*

ISP status reports through December 1985 showed that 554 offenders had been admitted to the program. Of these, 110 (about 20 percent) had been expelled from the program. At that time 185 offenders had successfully

*Table 3. Selected Background Characteristics of ISP and OTI Offenders*  
(The entry in each cell is the row percent.)

SEX:	Male	Female	Row Total
ISP	91	12	100% n = 400
OTI	95	5	100% n = 500

RACE:	Black	Hispanic	Other	White	Row Total
ISP	34	10	1	56	101%* n = 399
OTI	47	19	0	34	100% n = 499

EDUCATION:	HS Dropout	HS Grad	HS + Voc.	Some College	College Graduate	Row Total
ISP	54	24	6	12	5	101%* n = 398
OTI	62	25	23	9	1	100% n = 489

EMPLOYMENT:	Unemployed	Part-time Job	Full-time Job	Row Total
ISP	29	9	62	100% n = 400
OTI	59	4	37	100% n = 500

DRUG USE	No	Yes	Row Total
ISP	44	56	100% n = 396
OTI	52	48	100% n = 485

\*The total percent is not exactly 100 due to rounding.



completed 1 year in the community under the program, and 94 had "graduated" (i.e., been unconditionally released from supervision).

This common measure of recidivism is only a crude indicator of program or participant success, since the offender who fails within (for example) the first month in the program counts no more in terms of failure than an offender who is successful for 14 months (say) before failing. A more refined analysis of the (time-dependent) rates of unsuccessful terminations from ISP is presented in figure 1. There we show the unsuccessful terminations by the participants' time at risk in the program (broken into successive 30-day periods in the program). This "survival analysis" allows us to determine for those participants who have survived a particular number of months in the program, the probability of survival through the next month of their program participation. The base on which each probability is determined naturally excludes the participants who were expelled or were successfully terminated ("graduated") before that month; they were no longer in the program.

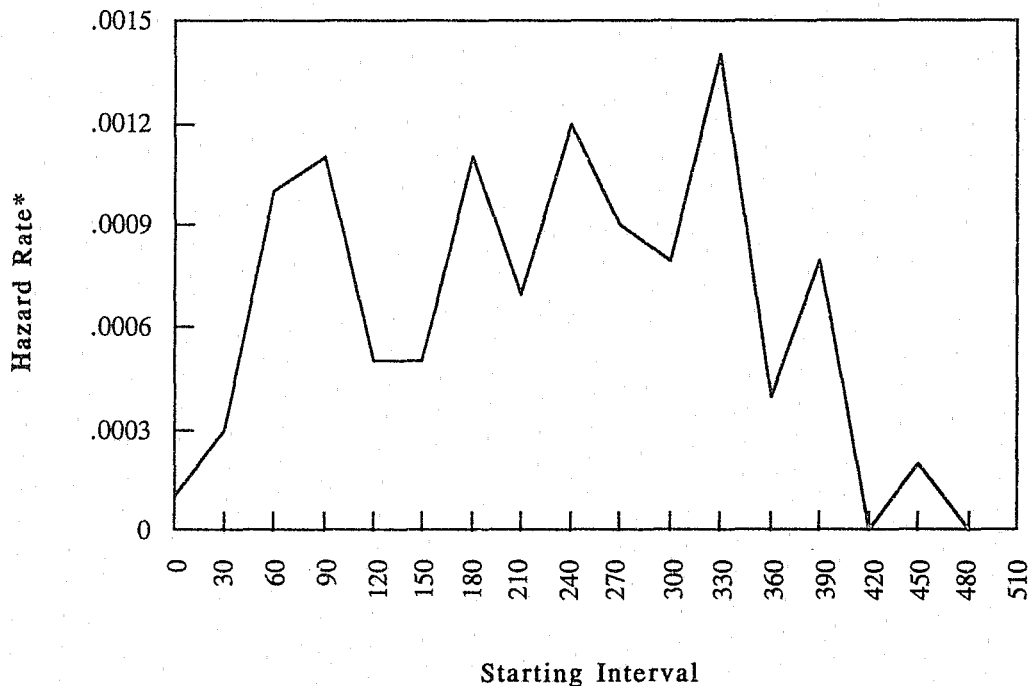
These are only preliminary analyses because the collection of data on the ISP group will continue through December 1986 producing information on more offenders and longer total time periods "at risk" in the community. In the preliminary data it seems that the cumulative proportion who stay drug-free and out of trouble in the com-

munity for the year-and-a-half term that is typical in ISP is approaching .70. Thus, our preliminary extrapolation is that roughly two-thirds of these felony offenders stay clean and law-abiding for at least 18 months and "graduate" (i.e., are released from any form of probationary supervision). The other side of the coin, of course, is that roughly one-third will be expelled from the program sometime in their 18-month term in ISP. Most of these expulsions are for violations that would not lead to revocations for people on parole. Most ISP revocations are for positive results of urinalysis or failure to abide by curfew restrictions.

In figure 2 we present a survival analysis of more narrowly defined failures, namely, revocations from ISP because the offender was caught committing a new offense. Here our focus is on criminality, so only revocations due to new crimes are counted as "terminal events" in this figure. In terms of this narrower definition, our rough extrapolation is that about one-tenth of the offenders will be revoked because of a new offense while in ISP. Most of the new offenses that have occurred have not been new felonies, but rather Disorderly Persons offenses ("misdemeanors") such as possession of small amounts of marijuana.

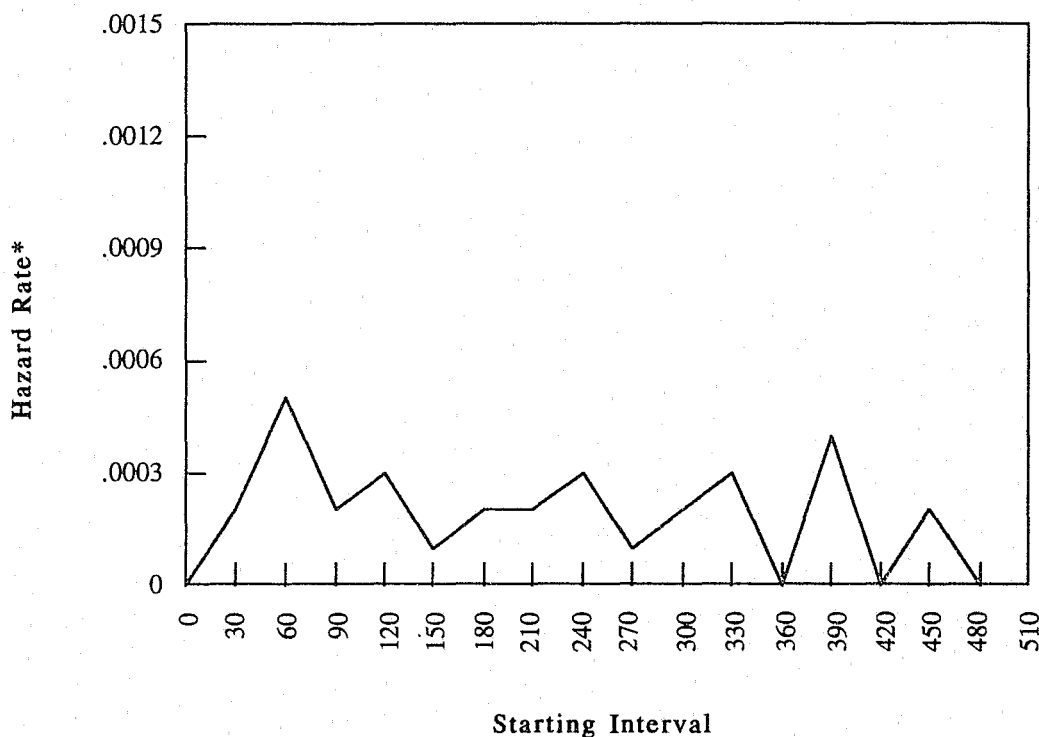
It should be noted that in figure 1, the hazard rate peaks at certain intervals (90, 180, etc.). This is an artifact of the program structure because all program par-

FIGURE 1. SURVIVAL TABLE FOR ALL TERMINATIONS



\*Hazard Rate: contingent probability of failure per day during interval.

FIGURE 2. SURVIVAL TABLE FOR "NEW OFFENSE" TERMINATIONS



\*Hazard Rate: contingent probability of failure per day during interval.

ticipants have assessment hearings by the Resentencing Panel after 3 months under supervision, at the 6-month point, etc. Thus, a disproportionate number of technical terminations show up at such points. These peaks are not clear in figure 2, which deals solely with terminations due to commission of new offenses.

As mentioned, this is only a preliminary report with months of data collection ahead, but it is beginning to appear that burglars as a group have significantly higher failure rates in ISP (on the average) than participants whose instant offenses had been other crime types. However, we would *not* recommend that applicants be denied admittance to ISP simply because their instant offense was burglary. The extant ISP screening process rightly considers multiple variables simultaneously. In terms of risk to the community and the probability that an individual will be returned to prison, it makes sense to deny admittance to a burglar who has, for instance, five prior (nonviolent) felony convictions and two prior revocations of ordinary probation or parole. But, a burglar with just one prior (nonviolent) felony conviction and no prior revocation of ordinary probation or parole may be a reasonably good prospect for ISP. More refined statistical analyses will be done in the next 10 months which will specify the constellations of variables that are predictive of success or failure in ISP.

### Conclusion

To date, New Jersey's Intensive Supervision Program has removed a total of about 600 nonviolent felony offenders from prisons to live and work in the community. It is a program that combines frequent, strict supervision with required community service work and payment of penalties and also with counseling and treatment for behavioral problems—mainly drug abuse (New Jersey Administrative Office of the Courts, 1983; Pearson, 1985). On the one hand, the ISP caseload is not typical of the medium security prison population in New Jersey; on the other hand, they are real felons, two-thirds of whom had prior felony convictions.

Mainly due to the intensiveness of the supervision in the field, many program violations are brought to light which will result in roughly one-third of the offenders being returned to prison before they complete 1½ years in the program. Roughly one-tenth of the caseload commit a new offense during that 18-month period. Most new offenses are Disorderly Persons offenses (misdemeanors); the preliminary data indicate that 5 percent or less of the caseload will commit a new *felony* during their 1½ years under supervision in the community.

In the next 10 months, data on the 500 ISP participants exposed to the program for at least a year will be updated.

During this time more detailed outcome analyses, statistical comparisons with our comparison group cases, and a cost benefit analysis of the program will be done. Our final report will include important information about the kind of offenders who are likely to do well in ISP, the longer term effects of ISP compared to serving an ordinary term of imprisonment followed by a term of parole, and an outline of the costs involved and the com-

parative benefits of intensive supervision in the community.

#### REFERENCES

- New Jersey Administrative Office of the Courts (1983) Intensive Supervision Program. Trenton, New Jersey: Hughes Justice Complex.
- Pearson, Frank S. (1985) 'New Jersey's Intensive Supervision Program: A Progress Report.' *Crime and Delinquency*. Vol. 31, No. 3, July. Pp. 393-410.

# Intensive Probation Supervision in Massachusetts: A Case Study in Change

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## I. Introduction and Overview

IN THE literature on probation, there is considerable discussion of program types but very little discussion of program implementation. We have a rich body of work on the various ways in which progressive probation is practiced, but next to nothing exists on the problems and prospects facing managers who undertake change efforts in the delivery of probation services. An organizational development orientation—one which looks seriously at the nature of effective change efforts in bureaucracies—has been lacking.

This article examines the process of change in probation in the context of a specific case study. The Massachusetts state probation agency has recently implemented an experimental intensive probation supervision (IPS) program. This effort has been consciously undertaken as an exercise in managing change. That is, while the manifest intent is to find successful IPS strategies, the latent intent (the experimental subtext, if you will) is the exploration of a premeditated change strategy. The balance of the article is divided into five major sections discussing the context for the change efforts; the components of the experimental program; individual and group opposition to change; strategies for overcoming resistance and facilitating change; and the lessons learned from the change effort.

## II. The Sociopolitical Context of Probation Reform in Massachusetts

The sociopolitical environment in which the intensive probation supervision (IPS) program has been developed includes elements of the past (i.e., the historical/cultural context), the present (i.e., current events/crises), and the future (i.e., the motivation of key decisionmakers to effect change). Each of these three elements are discussed in this article.

### A. The Past; Background to Innovation

David Twain (1983) offers a concise rationale for placing any reform effort in its proper historical/cultural con-

text: "There are traditions that influence the transactions in a community. The rationale for community practices must be understood and the power of traditions respected if necessary and successful change is to be accomplished" (33).

A variety of events during the past decade can be directly linked to the current probation reform movement in Massachusetts. In 1975, as the Massachusetts Probation System was on the eve of its 100th anniversary, no one could have foreseen the magnitude of change within the system that would commence in the centennial year (1978). To that point, there had been minor changes in Massachusetts probation since its earliest days. The system had a deeply rooted provincial cast; it was decentralized, with virtually all policy and practice decisions not governed by statute resting in the hand of local office managers and their respective judges. The central office was poorly staffed and without real authority. Standards of practice did not exist. To borrow from political scientist Michael Lipsky, probation in 1975 was a pure form of "street level bureaucracy."<sup>1</sup> The organizational atmosphere at that time can best be captured by identifying three features that were focal characteristics of the system: (1) probation as rehabilitation, (2) decentralization, and (3) probation by personality.

### 1. Probation as Rehabilitation

Massachusetts probation during the 1970's was driven primarily by the "social work/medical model" approach that had been predominant in probation throughout most of the 20th century. In the context of this model, the probation officer was seen primarily as an advocate/counselor for the probationers. The obligation to enforce court-ordered conditions was acknowledged, but aspects of control, monitoring, surveillance, and individual deterrence were clearly of secondary or tertiary importance and subordinated to helping the "client."

### 2. Decentralization

As alluded to above, the existing organizational structure in 1975 was one of nearly total decentralization. Some 100 probation offices were organized by county for payroll and budgetary purposes, but there was no specific accountability beyond the local office. The central office had no clearly established system for oversight of each office and hence, by default, local autonomy was the order of the day.

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<sup>1</sup> For a complete discussion of street-level bureaucracy, see M. Lipsky (1973).

### 3. Probation by Personality

Apart from an overall philosophy, each office had its own established routines and de facto standards. Instead of being codified either locally or centrally for the sake of uniformity, departmental practices and procedures varied considerably around the state and usually reflected the personality of the chief probation officer.

In reviewing the recent history of Massachusetts probation, it is clear that the watershed year was 1978. The Massachusetts court reorganization act of that year provided, among other things, for the consolidation of the many individual offices into one state system (previously probation officers were county employees) under an enhanced and revitalized central authority. The legislation specifically required that the Commissioner of Probation develop, promulgate, and monitor standards of practice in all major areas of probation. The Commissioner was both empowered and directed to exercise "executive control and supervision" over probation personnel throughout the state.

In 1979, an experiment began with a uniform case classification system. Parenthetically, it was potential probation officer/departmental liability that was a driving force behind this classification proposal. The purpose was to test the feasibility of a single method of offender assessment and supervision plan development. This would evolve in 1980 into the institutionalization of a risk/need classification system statewide—a system that remains in place, with some modification, to the present.<sup>2</sup> Beginning in 1980, a series of standards began to be promulgated which were to govern probation practice throughout the state. The staff of the central office grew throughout this period, and regional administrators were designated to oversee compliance with standards and to offer technical assistance in probation offices in their assigned geographic areas. During this period, standards were developed regarding the following topics: Supervision; Investigation; Management Information Systems; Office Procedure; Risk/Need; and Probate.

### B. The Present; Assessing the Current Situation

A second component of the sociopolitical environment concerns "those present situations and events that are of such significance that they will influence decision mak-

ing" (Twain, 1983:33). In 1985, the organizational atmosphere in Massachusetts probation can be seen as having three "focal concerns"—(1) risk control, (2) centralization, and (3) probation by standards—which reflect a reconceptualization of the structure and purpose of probation.

#### 1. Risk Control/Community Protection

Supplanting offender-oriented rehabilitation as the goal of probation in 1985 is the (socially oriented) goal of community protection through risk control.<sup>3</sup> This philosophical shift has been reflected in a variety of policy changes, including the implementation of a risk prediction scale, an increasing emphasis on holding offenders accountable through high rates of probation surrenders, the introduction of aspects of surveillance-like behavior (curfews, employment and residence verification, etc.), and a deemphasis on directly providing rehabilitative service (relying instead on a network of referrals in the community). In other words, the idea of probation officers as "therapists" is now strongly discouraged.

#### 2. Centralization

As has already been mentioned, in 1978 the various county probation systems were consolidated into one state system. This was truly more than a paper change. With the support of the Chief Administrative Justice of the Trial Court, the then Commissioner of Probation announced the designation of several regional probation administrators who would represent the Commissioner in each of seven geographic regions throughout the state. For the first time, a clear and operational chain of command from the local office to a central state authority was established. (Nonetheless, it should be noted that hiring practices *still* caused local probation officers to be pulled in *two* directions.)

#### 3. Probation by Standards

The nearly complete discretion as to probation practice that existed in 1975 was greatly diminished by 1985. Standards had been promulgated in all major areas of the probation officer's work. Extensive training in the standards and technical assistance to aid implementation took place. By 1985, most standards had undergone three or four major formal monitorings with written feedback to the Commissioner and to the local office manager (chief probation officer).

Particularly in the initial stages of standards implementation, there was a good deal of resistance to centrally imposed guidelines. Many probation officers clearly preferred a wide degree of choice as to how they handled their caseloads. It was suggested that "creativity" had been stifled in the service of greater accountability.

<sup>2</sup> For the results of the validation study of the risk/need classification system, see M. Brown and D. Cochran, *Executive Summary of Research Findings from the Massachusetts Risk/Need Classification System: Report No. 5* (Boston, Massachusetts: Massachusetts Trial Court, Office of the Commissioner of Probation, December 1984).

<sup>3</sup> Traditionally, the goal of probation is to change both the attitude and behavior of probationers in order to protect society. Palmer (1984) has distinguished between the *socially centered* goal of treatment (i.e., societal protection through behavior modification/conformity of probationers with law) and the *offender-centered* goal of treatment (i.e., attitude change as a means to an end). He observes that "treatment is more concerned than either punishment or incapacitation with offender-centered goals per se, that is, aside from the latter's role as a means to increased public protection" (Palmer, 1984:147). In this context, attainment of socially centered goals is now the primary focus of the Massachusetts Probation Department.

In this connection, increased accountability has made those doing good work more visible, but it has also identified those staff members whose work is inadequate, a development which has caused some added tension.

By late 1985, the degree of resistance to uniform standards had greatly subsided. While there are still pockets of resistance, by and large there is a general effort to conform with standards. This is in part due to resistance dissipating over time (as it becomes clear that standards are permanent, though modifiable) and in part due to the infusion over the last 7 years of new personnel who much more readily accept the existing system. Nonetheless, it should be noted that at least part of the resistance to "new" reforms, such as intensive probation supervision, is a carryover from the continuing resistance to "old" reforms, such as objective risk assessment.

### C. Future Prospects; Motivation for Change

A third aspect of sociopolitical environment which must be assessed includes *motivation* for change by decisionmakers and, concurrently, the *vision* (or direction) of these individuals. In this regard, once again, it is Twain who observes that:

Decisionmakers will not move in a given direction unless tension created with respect to a community need/problem promises to be reduced through taking action. The possibility of positive consequences or the avoidance of negative consequences must be apparent to the decisionmakers (1984:34).

The motivation for testing IPS in 15 courts is fairly straightforward: the need to evaluate the potential of an *administrative*, rather than a legislative or judicial, model of intensive probation supervision.<sup>4</sup> Clearly, there is pressure to consider other models of IPS as well. Under the proposed presumptive sentencing bill, offenders would be placed directly on intensive probation supervision, regardless of risk scores. Because an empirical study of an administrative model of IPS had yet to be conducted, there was an information "shortfall" which needed to be addressed. Perhaps more to the point, it is currently "unclear" as to which activities "intensive" supervision should entail for specific subgroups of high-risk probations.

As mentioned, the development of a particular intervention program (such as IPS) is affected not only by the *motivation* but also by the *vision* of decisionmakers. In this regard, one of the authors of this article—the Commissioner of Probation—has offered his projections for the 1990's in Massachusetts in a number of recent speeches to judges, legislators, and probation department staff. He expects that the following focal concerns are likely to characterize probation in the 1990's: (1) concern

for victims, (2) specialization, and (3) computerization. We briefly highlight each of these concerns below.

#### 1. Concern for Victims

Traditionally, probation officers were viewed, and viewed themselves, as advocates for the offender. As the philosophical emphasis shifted to risk control, probation officers were asked to take a middle ground between the offender and the community, owing an obligation to both. This shift was reflected in the proliferation of restitution and community service programs in probation. It is anticipated that this trend will accelerate, so much so that the probation officer's role will be seen as bilateral, servicing both the needs of the victim/community and the offender.

#### 2. Specialization

Most probation officers in 1986 are generalists. Increasingly, however, it is being recognized that probation officers, in the midst of an array of different types of offenders, may deal more effectively (and more happily) with some types of cases than with others. As ongoing research looks further into this issue, the organization may well move in the direction of specialization; i.e., probation officers may work exclusively with either alcoholics, drug offenders, sex offenders, or assaultive offenders.

#### 3. Computerization

By 1995, all aspects of probation work will probably, to some degree, be computerized. This will likely include court payments, case management systems, presentence investigations, etc. This has the potential to relieve probation officers of a good deal of the routine paperwork and other drudgery. However, it may also raise concerns about machines replacing human beings.

What do other corrections officials expect to occur not only in Massachusetts but nationwide? Massachusetts Department of Corrections officials are uncertain, but their current projections indicate an increase in prison population through 1988 and then steady reductions through the mid-1990's when the effects of the children of the "baby boomers"—the echo boom—will be felt in the correctional system.

Trends at the national level are difficult to assess, and it is clear that we are at a crossroads. If Allen (1985) is correct, "We will choose reintegration over the corrupt and ineffective route of imprisonment. Community-based corrections is the next wave of our correctional history (198).

It is against this multilayered backdrop of past events, present situation, and future prospects (both locally and nationally) that IPS was designed and—in April

<sup>4</sup> For discussion of these three models of sentencing authority relative to IPS programs, see James Byrne, "The Control Controversy: A Preliminary Examination of Intensive Probation Supervision Programs in the United States," *Federal Probation*, this issue.

1985—implemented. The following section provides a brief description of the current IPS program.

### III. Restructuring Probation; IPS in Massachusetts

The pilot intensive probation supervision program in Massachusetts is quite different from the IPS programs in the two other states which have conducted large-scale evaluations—Georgia and New Jersey. Decisionmakers around the country who are attempting to evaluate existing IPS strategies *can* find information concerning IPS as an alternative sentencing strategy (e.g., Georgia) and as a front-door option to reduce prison crowding (e.g., New Jersey). However, there is a dearth of evaluation data on the use of IPS in an *administrative model* as a case management/risk control technique. The IPS program in Massachusetts directly addresses this need. Given the various elements of the sociopolitical environment discussed in the previous section—(1) the current legislative debate and (2) the apparent prison overcrowding crisis, along with (3) the state's recent utilization of objective risk/needs assessment procedures and (4) the motivation/vision of current decisionmakers—the timing of the pilot program appears good. Because it currently supervises high-risk cases, the Massachusetts Probation Department is an excellent setting for an evaluation of IPS. If IPS can be implemented effectively in Massachusetts, the need to incarcerate “high-risk” offenders here—and in other states using an administrative model of IPS—can be challenged. However, if we find that “intensive” community supervision offers little or no improvement over traditional probation strategies, then the opposite may be true. Clearly, the development, implementation, and evaluation of the Massachusetts IPS program will provide critical information to decisionmakers who, faced with the reality of prison overcrowding, are considering changes in sentencing policy, along with various front- and back-door population management strategies (Blumstein, 1983).

#### A. Program Description

As we noted earlier, for the last several years, probation officers in Massachusetts have been working with a risk/needs case classification system. Utilizing this information base, the Commissioner of Probation in Massachusetts has decided to address experimentally a growing and obvious need in Massachusetts—that is, the need for an intensive probation supervision system for certain high-risk offenders. State legislative initiatives (including the proposed presumptive sentencing bill), nationwide developments in progressive probation practice (in particular, the initiatives described by O’Leary and Clear, 1984 and McAnany et al., 1984), and the need to be part of the solution to a growing correctional crisis all point

to the need for developing such a program.

Generally, those offenders assigned to the Massachusetts IPS program receive the following specialized supervision:

1. Increased levels of personal and collateral contacts;
2. Increased emphasis on mandatory referrals to meet social and/or personal needs related to criminal behavior; and
3. Stricter enforcement of probation conditions.

Table 1 highlights the most significant difference between the experimental IPS program and current practices for maximum supervision cases in the remaining courts. Fifteen pilot courts began using the experimental program in April 1985. A matched sample of 15 control courts has also been identified, based on such criteria as court level, workload, and demographic profile. The program will continue through December 1986, at which point the initial results of the ongoing evaluation will be reviewed.

The IPS program is premised on the assumption that certain high risk/high need offenders can be handled more effectively through an enhanced community supervision strategy. This strategy centers around strict enforcement of conditions of probation emphasizing the following:

- Careful and thorough assessment of offender risk and needs;
- Concerted effort toward surveillance and control of the offender’s activities for greater public safety;
- The addressing of the offender’s needs that are contributing to illegal behavior. (The rule of thumb is that the probation officers should restrict themselves to needs that are strongly, clearly, and consistently related to criminal behavior); and
- The identification and involvement of appropriate community resources which, through referrals, can contribute to the reduction of criminal behavior.

This dual emphasis—strict accountability and the addressing of identified needs—increases the likelihood of dealing effectively with the highest risk offenders currently under probation supervision. By invoking a constant presence in the life of the probationer who has presented both a past problem to the community and a high level of individual need, it is assumed that probation can prove to be a cost-effective response to the problem of public safety (see Latessa, 1986, for further discussion of diversionary impact).

TABLE 1. A COMPARISON OF THE LEVEL OF SUPERVISION TO BE USED ON EXPERIMENTAL AND CONTROL GROUPS IN MASSACHUSETTS

	<i>Maximum Supervision (Control)</i>	<i>Intensive Supervision (Experimental)</i>
<b>Selection Criteria</b>	Probationers with initial risk/needs scores 10 (in a matched sample of nonparticipating courts)	All probationers with initial risk/needs scores (15 pilot courts)
<b>Number of Contacts</b>	Minimum requirements two contacts per month	Ten contacts per month, four direct and six collateral
<b>Initial Assessment</b>	Based on one contact and subsequent case review (routine procedure for all new cases)	Full investigation during first 30 days on probation; requirements include multiple personal and collateral contacts (in addition to regular contracts)
<b>Referral Procedures</b>	All referrals are at discretion of probation officer (except mandatory referrals by judges)	Mandated referrals in all high need areas identified in classification (in addition to any mandated referrals by judge at sentencing)
<b>Record Checks</b>	Not required	Required record check every 30 days done through Probation Central File
<b>Revocation Policy</b>	Local and discretionary	Mandatory case review and strict four-stage revocation policy
<b>Supervision Style</b>	Traditional based on a generalized investigation of problems/needs	Brokerage; emphasizing investigation and followup referrals in three specific need areas; substance abuse, employment counseling

### B. A Profile of the IPS Offender in Massachusetts

A nationwide review of intensive supervision programs by Byrne (1985) revealed that many states targeted specific offender groups for intensive treatment. In earlier reviews, similar findings were reported by Fields (1984) and Latessa (1979). For example, Fields found that out of the 18 IPS programs which he reviewed, 6 were targeted for "hi-impact" offenders (burglary, assault, rape, etc.), 3 were designed for regular probationers, 3 were developed for juvenile offenders, and the remaining programs focused on such target groups as alcoholic offenders, sex offenders, drug offenders, minority offenders, and offenders with psychiatric conditions. Obviously, there is little agreement on which offenders need some kind of intensive supervision in the community.

Since April 1, 1985, probationers have been placed under intensive supervision based on their scores on the Massachusetts validated probation risk/needs classification system. The 15 pilot courts classify probationers into one of four supervision levels: minimum, medium, maximum, and intensive; the remaining courts have continued to use the tri-level supervision classification system (minimum, medium, maximum). Statewide it is estimated that 15 percent (3,400) of the 22,688 active risk/needs cases in Massachusetts meet the criteria for classification as "intensive" supervision cases. Approximately 400 probationers in the 15 pilot courts have been classified as

intensive between April 1985 and June 1, 1986 (table 2 provides a brief profile of the risk levels of these offenders.) Although recidivism data are not yet available for these offenders, earlier research (Brown and Cochran, 1984) indicated that probationers with scores of 10 or less recidivated (i.e., they were rearrested for any new crime) at a rate of 52.9 percent. By comparison, maximum supervision cases recidivated at a rate of 45 percent, while 24.4 percent of the medium level and 15.4 percent of the lower level supervision cases recidivated.

### C. Evaluation Design

The importance of systematic evaluation data should not be underestimated (Clear, 1985). Evaluation can and should be viewed by probation decisionmakers as a component of, rather than as an adjunct to, the program. There are a number of key research issues which are addressed in the ongoing evaluation of IPS, and they are centered around two primary evaluation questions:

1. Was the intensive supervision program *fully implemented* in the 15 experimental courts?
2. What impact did the program have on the behavior of the probationers who were classified as high-risk, intensive supervision cases?

Answers to these two questions should provide the baseline data necessary for an informed analysis of the



TABLE 2. SELECTED CHARACTERISTICS OF INTENSIVE PROBATION SUPERVISION

*Cases in 15 Massachusetts Courts (N = 403: 4-1-85 - 6-1-86)*

<i>Variable</i>	<i>Description</i>	<i>Percent</i>
Age	17-21 years old when probation began <sup>1</sup>	43.4%
Sex	Male probationers	90.8%
Crimes	Against persons	36.1%
Prior Offenses	3 or more prior convictions	89.8%
Prior Probation	2 or more previous probation periods	70.0%
Juvenile Record	16 or younger at time of first conviction	69.2%
Mobility	2 or more residence changes in past 12 months	73.1%
Employment	Employed 6 months or less in past 12 months <sup>2</sup>	81.4%
Family Structure	Percent with 1 of the following characteristics: resides away from family/no ties; resides in one parent home; or parent who is not supporting his/her children	65.2%
Alcohol/Drug	Identified as a problem	89.6%

<sup>1</sup> Seventy percent were 24 or younger when probation began.<sup>2</sup> Nine of 10 IPS cases had been unemployed in at least 4 of the past 12 months.

utility of this new form of community supervision. The purpose of the Massachusetts intensive supervision program is to concentrate (limited) probation resources on the offenders who need those services the most and, in doing so, to improve community protection by reducing recidivism. By designing an evaluation of program implementation and outcome/impact, the extent to which this objective was achieved can be examined. A number of specific hypotheses about the implementation and impact of intensive supervision in Massachusetts are now being tested.

The results of the evaluation efforts will have an immediate impact on corrections in Massachusetts. The findings will also be of interest to officials in other states who are considering intensive probation supervision and need to know:

1. What are the critical elements of IPS program design (e.g., target population, staffing ratios, supervision style, etc.)?
2. How should program implementation be monitored?
3. What are the direct and indirect effects of the program on (a) offender behavior, (b) prison crowding, and (c) the cost of corrections?

It is important to consider that despite the fact that at least 28 states have current or proposed IPS programs, only Massachusetts is attempting to develop IPS without additional resources (Byrne, 1985). If the Massachusetts program is successful, it will provide a model for the effective reallocation of scarce probation resources. Specifically, there will be a dramatization of both the direct and indirect effects of the program on the entire probation workload. The results of this evaluation may suggest additional changes in current probation practice and procedure, especially with low- and medium-risk offenders. For example, it may be possible to discontinue "minimal" supervision altogether with no appreciable change in recidivism (and thus community safety). In summary, intensive probation supervision programs are a central component of the "reshaping" of probation which is occurring throughout the country. It is in this respect that the ongoing evaluation of the IPS program in Massachusetts will help define both probation and prison utilization strategies in the coming years.

#### *IV. Diagnosing Resistance to Change*

One purpose of the evaluation effort is to assess the degree to which the IPS program has been implemented. There are a number of "key actors" who have to work together if the IPS program is to become fully operational. These include, but are not limited to, (1) probationers, (2) line probation officers, (3) assistant chief probation officers and chief probation officers, (4) judges, (5) regional administrators, and (6) the Commissioner and his support staff. The following is a discussion of the major forms of resistance which have been encountered with each of these "actors" in the probation system below (Note: See table 3 for a typology of resistance techniques and rationales).

##### *A. Clients*

Although we have not yet surveyed probationers concerning their views toward IPS, we have received anecdotal information from line probation officers which bears repeating here.<sup>5</sup> Change involved "unlearning the past" (Twain, 1983), and this is true for offenders as well as staff. The vast majority of probationers on intensive supervision have been on "traditional" risk/needs supervision at least once during the past 3 years. Thus, the

<sup>5</sup> For such a study of clients' views of probation, see John J. Gibbs, "Clients' Views of Community Corrections," in Lawrence F. Travis III, (editor) *Probation, Parole, and Community Corrections* (Prospect Heights, Illinois: Waveland Press, Inc. 1985:97-108). In the Gibbs survey, the majority of probationers chose rehabilitation as the primary purpose of probation. It would be interesting to hear their views of intensive probation, with its risk control perspective.

closer supervision and special conditions are new behaviors that do not "fit" their expectations. Indeed, a number of probation officers commented that their probationers wanted to know: "What happened?" and "What's going on here?" and "I don't remember it (probation) being like *this*."

### B. Line Probation Officers

The line probation officer must also "unlearn" the past, and, as Twain (1983) observed, "this is very risky business" (142). Change involves risks, and risks involve fear (i.e., of loss, failure, the unknown, etc.). For example, one probation officer commented that he "heard" that IPS officers would be required to work evenings and weekends with no compensation.<sup>6</sup> Others felt that they were being asked to do *additional* work with existing resources. A third group of probation officers complained that if the program failed, it would be *their* procedures/practices that are scrutinized, rather than the program itself. A fourth group focused on perceived "inconsistencies" in the scoring/risk assessment for certain offender groups. A fifth group rejected the notion of objective risk screening altogether.

A variety of resistance strategies are employed by probation officers who fear loss, failure, or the unknown. They include the following: (1) *ritualism* (i.e., doing the paperwork but not following the risk/needs assessment); (2) *denial of ownership* (i.e., rather than carve out a control-oriented role for supervision, the probation officer denies ownership in the program; e.g., "it's the Commissioner's idea, not mine, so don't blame me."); and (3) *rebellion* (i.e., failure to fill out the risk/needs forms correctly for marginal IPS cases). Of course, it is too soon to assess the extent to which these strategies are actually employed, but they are being examined closely. One indication may be the lower than anticipated number of IPS cases identified in the 15 experimental courts.

### C. Chief and Assistant Chief Probation Officers

Chief probation officers in each of the 15 experimental courts agreed *voluntarily* to be part of our IPS study. Nonetheless, they may now resist the implementation of the study due to a variety of factors including understaffing and fear of change.<sup>7</sup> The "payoffs" for program participation include a higher degree of both personal and position power due to the status of the pilot evaluation and the relationship with the central officer (Hersey and Blanchard, 1982). Increased levels of status (and by extension personal power) are also the reward for the assis-

tant chief probation officer. Types of resistance may be either *direct* (e.g., refusal of access to data; non-compliance with key program requirements; nonenforcement of line staff discrepancies) or *indirect* (e.g., ownership of program denied, access to data is delayed, etc.).

### D. Regional Administrators

Regional administrators are in a critical position in the organizational hierarchy of probation in Massachusetts and as "linking pins" (Likert, 1967) are perhaps the most essential element in the implementation of IPS. In the simplest terms, a linking pin is a person who belongs to at least two groups within an organization. According to the Likert conceptualization, the linking pin is usually a superior in one organization grouping while a subordinate in a second. Regional administrators are superiors in relation to the chief and assistant chief probation officers and line staff in their regions and subordinates in relation to the Commissioner. It appears that fear of loss of friends and associates, as well as fear of loss of job satisfaction (Twain, 1983), could cause a few administrators to *deny ownership of the program* when discussing compliance with IPS standards and procedures by individual courts. Since regional administrators have also been monitoring all IPS case folders, *fear of the techniques (and consequences) of monitoring* may also lead to resistance. In any event, the double marginality of the regional administrator is a factor to be considered during implementation.

### E. Judges

The importance of judges to the full implementation of IPS cannot be overstated. Quite simply, without the cooperation and support of district and superior court judges, we do not have a program to evaluate. For example, a probation officer and chief can follow the *four-step* revocation process outlined in the program description, but if a judge refuses to "lock up" an offender who violates the conditions of his probation, then the concept of "shorter and tighter leash" is just that, a concept. This is also true in the area of mandatory conditions in high-need areas. If a judge refuses to establish such conditions, IPS has not been implemented in that court.

One reason a judge could resist the pilot project has to do, again, with the perception (this time by judges) of program ownership. In New Jersey, the Administrative Office of the Courts established all aspects of its program (inputs, activities, etc.). In fact, a judicial review (i.e., resentencing) panel selects the target population and in this respect they "own the program." In this context, the relatively high (20 percent) revocation rates reported in the New Jersey program are not surprising, since the judges have a clear commitment to adhering to the IPS

<sup>6</sup> These anonymous comments were made at three IPS training workshops/feedback sessions in October and November 1985.

<sup>7</sup> Our estimates of workload indicate that 11 of 15 experimental courts are properly staffed; of the remaining courts, two are overstaffed and two are understaffed. It remains to be seen whether resistance is higher in these latter two courts.

design.<sup>8</sup> In Massachusetts, judges will have to be convinced of the utility of the program before they implement it completely.

#### F. Commissioner and Support Staff

Obviously, resistance to change will be found, in varying degrees, at both the top and the bottom of any organization. Indeed, Twain observes that "the fact of the matter is that decision makers tend to resist change, and they do so for a variety of reasons. Change, in fact, will be resisted in the face of considerable community pressure to alter existing conditions" (1983:141). In this instance, however, the Commissioner himself is actually the change agent, so the type of resistance often encountered at the top of organizations is not found in the Massachusetts IPS experiment.<sup>9</sup>

Given the varied sources of resistance/inertia which exist in all change contexts, it is fair to ask: How does anything ever get accomplished? The answer is that the first step toward overcoming resistance is understanding its sources and function.<sup>10</sup> An attempt has been made to diagnose the nature of resistance to change in this section by focusing on the "key actors" in the IPS program. One final comment on this process is in order:

In diagnosing for change, managers should attempt to find out: (a) what is actually happening now in a particular situation; (b) what is likely to be happening in the future if no change effort is made; (c) what would people ideally like to be happening in this situation; and (d) what are the blocks or restraints stopping movement from the actual to the ideal. (Hersey and Blanchard, 1983:267).

Once these steps are taken, energy can be directed toward implementing the most appropriate strategy of change. An overview of the types of problems and fears demonstrated by various probation decisionmakers, along with examples of corresponding resistance techniques, are found in table 3.

#### V. Creating Change; an Overview of Techniques

Perhaps the most useful paradigm describing the change process is offered by Kurt Lewin (1951), who describes three-stage model change: unfreezing, changing, and refreezing.

In the first stage, *unfreezing* takes place, which is accomplished . . . through relatively mild to rather coercive attempts to manipulate the change determinants of information and motivation. . .

<sup>8</sup> Ninety of 292 active cases (as of August 12, 1985) were returned to prison; 66 were programmatic violations, 21 were law enforcement actions (only 6 indictable offenses), while 3 were programmatic enforcement. See *Report to the Advisory Committee: Intensive Supervision Program*, Richard Talty, Director of ISP, Administrative Office of the Courts (September 10, 1985).

<sup>9</sup> Nonetheless, it would be naive to propose that the size, scope, and duration and intensity of the evaluation was not affected by such factors as the potential loss of status (i.e., personal power) and authority (i.e., position power), vis-a-vis the chief presiding judge, governor, and other criminal justice decisionmakers.

<sup>10</sup> For a discussion of these "listening" or diagnostic skills, see Hersey and Blanchard (1982: Chapter 12).

TABLE 3. A TYPOLOGY OF RESISTANCE TO CHANGE IN IPS

Actor	Rationale	Techniques of Resistance (Primary)
1	Resistance to increased accountability	Constant testing of limits set by probation officer
2,4	Loss of friends	Denial of ownership, ritualism
2,3,4	Loss of job satisfaction	Denial of ownership, ritualism
2	Fear of work	Organized opposition
2,4	Fear of failure (individual/program)	Retreater (delay tactics)
1-6	Fear of unknown	Ritualism, retreatism, denial
2,3,4	Fear of technology	Ritualism, retreatism, denial
3	Loss of staff (understaffing)	Noncompliance, nonenforcement
3	Loss of faith (e.g., wage hikes for chief probation officers)	Noncompliance, nonenforcement (e.g., delay access to data)
3,5,6	Loss of position power	Inertia, delay, limited implementation
3,5,6	Loss of personal power	Denial of ownership
2-5	Philosophical differences (e.g., use of mandatory conditions, scoring risk/needs forms, etc.)	Rebels, Artful Dodgers (anger) denial of ownership, noncompliance, nonenforcement ritualism
4	Double marginality	Denial of ownership

#### Legend:

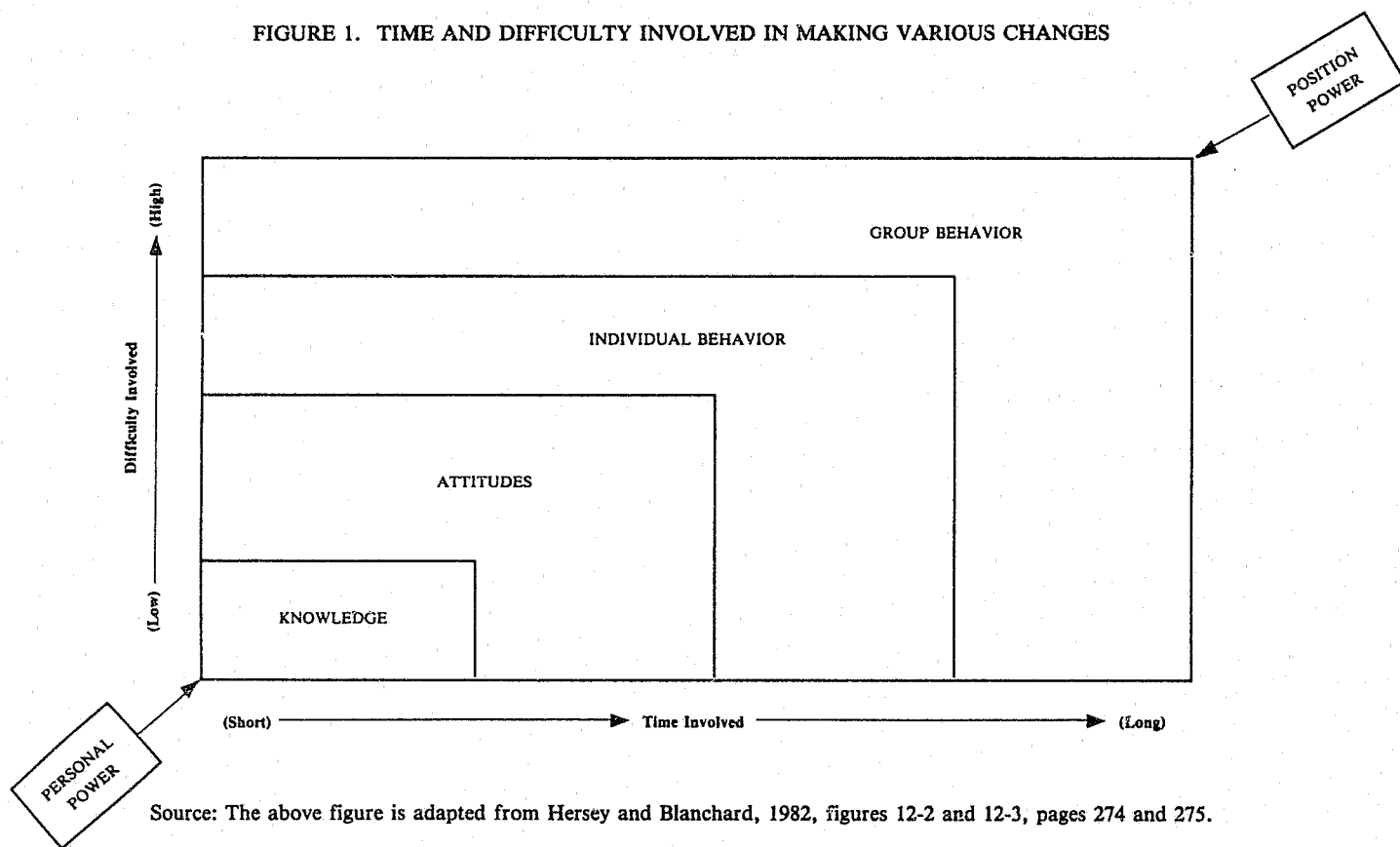
- 1 Probationer
- 2 Probation Officer
- 3 Chief Probation Officer and Assistant Chief
- 4 Regional Administrator
- 5 Judge
- 6 Commissioner/staff

In the second state of Lewin's paradigm, *change* takes place. New responses to new information are developed. Since readiness has been created, the normal program development process can proceed. . .

The third state, which is labeled *refreezing*, is the time for the stabilization and integration of the new intervention strategy. The change effort no longer requires the guidance of the change constituency. . . (Twain, 1983:147-148)

Does this change process reflect the development and initial implementation of intensive probation supervision in Massachusetts? Focusing on the first stage of the change process (and on line probation officers only), a variety of identified techniques have been used to create

FIGURE 1. TIME AND DIFFICULTY INVOLVED IN MAKING VARIOUS CHANGES



Source: The above figure is adapted from Hersey and Blanchard, 1982, figures 12-2 and 12-3, pages 274 and 275.

a readiness for change. First, it was hoped that the dissemination of information about the validation of the risk/needs classification system in a series of training workshops would reduce the fear of the unknown and the resistance which inevitably accompanies it. Second, it was assumed (perhaps naively) that courts which agreed to participate in the study shared a readiness for change. Third, the line staff members were presented with information (which, upon reflection, can be viewed as mildly to somewhat coercive) about what other states were calling IPS and about what the legislature was proposing, which placed the pilot project in a highly favorable light in terms of minimum contacts, curfew checks, etc.

The second stage of the change process, changing, was initiated by a series of three workshops with line staff, assistant chiefs, chiefs, and regional administrators in the 15 courts. A description of the program, the typical offender on IPS, and the evaluation design was given to each participant in the workshop. Technical assistance was made available for feedback and problem-solving sessions.

The "refreezing" stage in the experimental courts was reached approximately 1 year (April 1986) after initial program start-up. At this point, each probation office was visited a number of times. Communication was established between researchers, administrators, and the

staff at each of the individual probation offices. Of course, it took longer to reach this stage in some courts than others, given variations in the "readiness for change" across courts by key decisionmakers (e.g., judges, regional administrators, chief and assistant chief probation officers, and line staff).

One final comment on the change process is necessary. In the above discussion of Lewin's three-stage change strategy, a variety of techniques were described for ensuring the maximum feasible implementation of the IPS program. However, it should be noted that there are a variety of *levels* of change which are increasingly difficult to achieve. For example, Hersey and Blanchard categorize change into levels of difficulty: (1) knowledge changes, (2) attitudinal changes, (3) behavior changes, and (4) group or organization performance changes. The factors of time and difficulty involved in making various changes are illustrated in figure 1 (adapted from Hersey and Blanchard, 1982:273, 274). Hersey and Blanchard further relate personal power and position power to levels of change. They present two different change cycles, the participative change cycle and the coerced change cycle. The participative change cycle is a group solving strategy. The group works through the process of knowledge, attitude, individual, and group behavior change. This is best exemplified through the Commissioner's involvement in

IPS training workshops and feedback sessions. This cycle relies on personal power.

The coerced change cycle is just the opposite. Position power is used to bring about group behavior change which, in turn, changes individual behavior. (Two examples: first, a memo from the Commissioner on a department's failure to identify a minimal level of IPS cases; second, a memo from the Commissioner on the current procedures to follow in risk scoring.) Hopefully, this has led to attitude and knowledge change. Because people's attitudes and knowledge do not always change when position power is used, the results of the change can be short-lived when the person with position power is not present. Both strategies were used during the implementation phase of IPS.

### VI. Conclusion

For administrators undertaking reform or innovation, planning the strategy for effecting changes successfully is as important as designing the substance of the change itself. By drawing on some of the significant literature and research regarding "change"—including the diagnosis of areas of likely resistance and the development of affirmative strategies for facilitating change—probation administrators can become the "change masters" of the public sector.

### REFERENCES

- Blumstein, A. "Prisons: Population, Capacity and Alternatives," in James Q. Wilson (ed.), *Crime and Public Policy*. San Francisco: ICS Press, 1983.
- Brown, M. and Cochran, D. *Executive Summary of Research Findings from the Massachusetts Risk/Need Classification System: Report No. #5*. Boston: Office of the Commissioner of Probation, 1984.
- Clear, T. and O'Leary, V. *Controlling the Offender in the Community*. Lexington, Massachusetts: Lexington Books, D.C. Heath and Company, 1983.
- Fields, C. B. *The Intensive Supervision Probation Program in Texas: A Two-Year Assessment*. Unpublished doctoral dissertation, Sam Houston University, 1984.
- Hersey, P. and Blanchard, K. *Management of Organizational Behavior: Utilizing Human Resources*. Englewood Cliffs, New Jersey: Prentice Hall, 1977.
- Latessa, E. J. *Intensive Probation: An Evaluation of the Effectiveness of an Intensive Diversion Unit*. Unpublished doctoral dissertation, Ohio State University, 1979.
- Lewin, K. *Field Theory and Social Science*, D. Cartwright (ed.), New York: Harper and Brothers, 1951.
- Likert, R. *The Human Organization*. New York: McGraw-Hill Book Company, 1967.
- Lipsky, M. *Street Level Bureaucracy: Dilemmas of the Individual in Public Service*. New York: Russell Sage Foundation, 1980.
- McAnany, et al. *Probation and Justice: Reconsideration of Mission*. Cambridge: Oelgeschlatter, Gunn and Hain, 1984.
- O'Leary, V. and Clear, T. *Directions for Community Corrections in the 1990's*. Washington, D.C.: U.S. Department of Justice, National Institute of Corrections, 1984.
- Palmer, T. "Treatment and the Role of Classification: A Review of Basics." *Crime and Delinquency*, 30 (2), 1984, pp. 245-268.
- Twain, D. *Creating Change in Social Settings*. New York: Praeger, 1983.

# Identifying High Risk Probationers for Supervision in the Community: The Oregon Model

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**P**ROBATION HAS existed as the dominant alternative to imprisonment for over 100 years. For all but the most recent years of this period, probation was intended for nonserious, low-risk offenders. In the last two decades, the role of probation in corrections has changed. Beginning with the reintegration movement spawned by President Johnson's Commission on Law Enforcement and Criminal Justice,<sup>1</sup> probation was challenged to become the core correctional process for most offenders.

In most places in the country, probation failed to meet the challenge. Staff grew, caseloads grew, but probation technology failed to advance to meet the new workload. Unable to adapt methods to deal with large numbers of higher risk offenders, many probation agencies have lost substantial credibility with a public, judiciary, and legislature that seek more effective ways of controlling and punishing offenders. Very recent research has seemed to justify a distrust in the efficacy of probation as a meaningful sanction.<sup>2</sup>

Nevertheless, a nationwide problem of prison crowding underscores the need for more effective probation supervision. Release programs have, in some places, helped to alleviate the crisis dimensions of crowding, but these programs seem to exacerbate the difficulties facing probation. For one thing, the programs often drain resources from existing probation operations—they are frequently operated by probation personnel. More importantly, early release programs seem to paint the corrections system as lacking in credibility and unable to handle the offenders assigned to its custody. These criticisms and the loss of public confidence affect probation as an arm of corrections' arsenal.

One response to these problems has been the development of alternatives to incarceration, primarily using combinations of intensive supervision and community service as central components. While much of the research about recent programs remains to be done, far too many "alternatives" programs have served merely as add-ons to regular probation sentences.<sup>3</sup> They have failed to address the problem of the incarcerated or high-risk offender, even while they draw upon existing probation resources.

So probation finds itself in a dilemma: prison crowding, sentencing trends, and a need for more careful restrictive community sanctions produce a growing need for a high caliber probation service. However, many studies of probation have shown it to fail to meet these demands, instead fueling public distrust and doubt.

As a response to these concerns, the Edna McConnell Clark Foundation funded the Probation Development Project (PDP) in 1984. The project is taking place in Multnomah County, Oregon and has two main objectives. The first is to develop a probation unit that is capable of providing enhanced supervision of offenders. The second objective is to reform sentencing practice such that an enhanced probation practice will be used in instances where the courts would otherwise have sentenced persons to jail or prison. The assumptions underlying the objectives are (1) that the courts are sending people to prison or jail in order to incapacitate them and not merely to punish or deter and (2) that in cases where control is sought by the courts, a probation department organized to manage risk more efficiently might be seen and used as an acceptable and less expensive substitute for incarceration.<sup>4</sup>

At this writing, the PDP is in its 18th month. The following describes some of what has been learned to date.

## *The Project Strategy*

If it is true that probation is faced simultaneously with a need to develop internally in terms of its supervision methods and externally in terms of community support, then a two-prong approach is needed. First, there must be strategy for designing and implementing procedures which change the supervision methods of the probation staff. Second, there must be a mechanism for increasing the confidence of the general community in probation's potential. An effective project requires mechanisms to fuse both a probation focus and a community focus.

<sup>1</sup> President's Commission on Law Enforcement and the Administration of Justice, *The Challenge of Crime in a Free Society* (Washington, D.C.: U.S. Government Printing Office) 1966.

<sup>2</sup> Petersilia, Joan, et al., *Felony Probation* (Santa Monica: Rand) 1985.

<sup>3</sup> Austin, Jim and Krisberg, Barry, *The Unmet Promise of Alternatives to Incarceration* (San Francisco: National Council on Crime and Delinquency) 1982, mimeo.

<sup>4</sup> Baird, S. Christopher, *Intensive Supervision Programs*, Report to the National Institute of Corrections (Madison, Wisconsin: Isthmus Associates) 1982.

\*This article is based on a paper presented to the American Society of Criminology, San Diego, California, November 1985.

### *The Change Process in Probation*

Organizational change is a difficult enterprise under ordinary circumstances. Several factors interact to make organizational change in probation supervision even more difficult. Changes in supervision methods represent alterations in the organization's technical core. Changes that are so fundamental to an organization tend to generate greater resistance on the part of members of the organization because they are in effect a challenge to established competencies.<sup>5</sup> Resistance can take the form of subtle hostility, in which surface efforts are made to accommodate changing policy, but the actual substance of practice does not change. This has been a common occurrence in probation.

Moreover, morale problems are very common in probation. The absence of positive feedback combined with goal and task ambiguity produce severe pressures that tend to create an atmosphere of burnout. When an office develops a culture of negativism, it is very difficult to achieve change because resistance can take on strong emotional overtones. Proposed changes become symbolic of the organization's failure to have meaning for employees' lives.

Finally, there is a values-based component to the motivation of probation officers to do their work. This is evidenced by the many staff who come into the field because they want to "help somebody." When changes are proposed, staff members tend to evaluate them against their central values in order to determine whether they should support the changes.

The difficulty of change in probation requires a strategy of staff involvement in the change process.<sup>6</sup> This has two advantages. First, it improves the fit of the proposed changes, because staff can shape and revise a general set of proposals to make them more relevant to the agency's needs. Second, it helps to develop commitment to the change process by giving participating staff a sense of ownership in the changes. Frankly, real change is unlikely without involvement of staff in the change, because both fit and commitment are weak otherwise.

In the PDP, an internal consulting team called the Probation Task Force (PTF) is used to develop an overall change strategy. This is a diagonal slice of eight staff members who devote about 10 percent of their time to the project. Their general function is to work within the project's broad mandate to help develop specific mechanisms for implementation. The PTF used an organizational diagnostic approach to conduct a management audit of the organization.<sup>7</sup> This helped to deter-

mine the strengths and weaknesses of the agency concerning supervising incarceration-bound offenders.

The audit produced invaluable information about blockages to effective supervision. There were three main findings: (a) lack of resources (particularly jail space and contracted services for treatment) served to constrain officer's optimism in dealing with serious offenders; (b) strict and complicated case management requirements (including contract standards and unnecessary paperwork) reduced available officer time and seriously constrained flexibility in supervision; and (c) there were few intrinsic rewards in the area of fieldwork, where feedback on performance is predominately negative and often emasculating.

The work of the PTF was used as a blueprint for redesign of a PDP unit that would be responsible for supervising incarceration-bound offenders. Job flexibility and control were built into the design of the unit, and mechanisms were put in place to provide resources for services, jail space as needed, and positive feedback about the effectiveness of supervision. In effect, the PDP unit has been given the latitude, at least initially, in selecting offenders from the incarceration-bound population for supervision, in planning that supervision, and in enforcing conditions.

### *Creating Change in Community Attitudes*

Probation often lacks credibility with the community it serves, including both the general public as well as the more closely related agencies of the criminal justice system. If probation seeks to increase its use as a sentence for otherwise jail- or prison-bound cases, the arena of low credibility must be overcome.

In the Oregon PDP, a Community Advisory Board (CAB) is used to serve that purpose. The CAB is composed of an array of key officials whose policies and practices are interdependent with probation:

- County Criminal Justice Coordinator
- County Prosecutor
- Public Defender
- Chief Judge
- Sheriff
- Chief of Police
- County Commissioner
- State Legislator.

In addition, a variety of citizens' groups is also asked to serve on the CAB, including faculty from the local university, the head of the Victims of Crime United, the media, and business leaders. Thus, the CAB is a large group representative of the criminal justice system and a cross-section of the community.

<sup>5</sup> Argyris, Chris, *Integrating the Individual and the Organization* (Philadelphia: Lipincott) 1966; see also Peter Vaill, "Notes on Technology," in Marvin Weisbord, ed., *Organizational Diagnosis* (New York: Addison-Wesley) 1976.

<sup>6</sup> Clear, Todd R. and O'Leary, Vincent, *Controlling the Offender in the Community* (Lexington, Massachusetts: Lexington) 1982.

<sup>7</sup> Weisbord, Marvin, *A Six-Box Diagnostic Model* (New York: Addison-Wesley) 1976.

Frequently, CAB's are only tangentially involved in the projects which they advise, simply providing comments to propose project activities and making available concrete support when asked. In the PDP, a much more active role was created for several reasons. Crime is a volatile political issue, particularly so in the mid-1980's. A project such as the PDP is highly vulnerable to criticisms of criminal justice and community leaders because it seeks to divert jail- and prison-bound offenders into probation supervision. Therefore, it was felt that the project needed more than "advise and consent" from its CAB members; it needed active support. In order to encourage such support, greater decisionmaking authority over the PDP policies was given to the advisory board as a group. Regular meetings and retreats were used to inform the CAB about the project and probation's function. This was followed by a series of retreats and meetings in which the CAB was asked to decide several key issues:

- (a) What should be the composition of the target group of offenders for supervision?
- (b) How should the PDP unit be structured?
- (c) What procedures should be used to identify project cases and recommend their sentence to the project?
- (d) What types of punitive conditions should be applied to offenders?

Because the CAB controls many of the critical justice system resources that determine probation's effectiveness, its role has been central in the design of the PDP process. The prosecutor manages staff whose support is necessary if prison-bound offenders will be allowed to stay in the community. The sheriff controls precious jail space necessary to enforce conditions. The judges, of course, determine the ultimate placement of the offender. Through their involvement in the CAB, it was possible, over a period of 18 months, to design a project that met with their support, at least in its conceptual basis.

### *Project Policies*

At this time, several project policies have been established, most importantly, (1) clarification of probation mission and policy; (2) identification of proposed target group; (3) formulation of the PDP unit; and (4) specification of procedures for bringing cases under supervision.

#### *I. Clarification of Mission*

The following is the mission statement of the PDP unit:<sup>8</sup>

<sup>8</sup> For a development of these themes, see Vincent O'Leary and Todd R. Clear, *Community Corrections in the 1990's* (Washington, DC: National Institute of Justice) 1984.

Probation is an administrative agency whose function it is to insure the carrying out of punishments and the management of risk for offenders during community supervision.

In order to carry out this mission, the PDP unit will maintain a clear separation between the following supervision purposes:

*Punishment conditions* entail the purposeful use of intrusive penalties which restrict personal or financial freedoms. They are designed to reflect the seriousness of the crime and serve no other purpose. Relatively more serious crime results in relatively more severely intrusive punishment conditions.

*Risk conditions* are ways of managing aspects of the offender's life or situation which contribute to the offender's risk of failure under community supervision. Risk conditions may be intrusive, but that is not their intent. They have no other function than to minimize failure. From these two definitions flow the following principles:

1. *Stability principle:* Punishment conditions are established at the time of sentencing and may not be enhanced after the sentence is imposed. When a community-based punishment condition cannot be effectively imposed or enforced, an incarceration sanction commensurate to the original crime's severity may be imposed.
2. *Justifiability principle:* Punishment conditions are only justified when similarly situated offenders convicted of similar offenses are treated comparably. Risk conditions are justified only on the basis of showing (a) that the offender represents a risk to the community and (b) that the factors addressed in the risk condition are clearly and substantially related to the offender's overall risk by virtue of prior conduct.
3. *Limitations principle:* Risk conditions may not be imposed to extend the overall intrusiveness of supervision beyond the reasonable level justified on the basis of offense seriousness.
4. *Intrusiveness principle:* In cases involving risk-control alternatives, the least intrusive risk-control condition which reasonably addresses the risk factor should be selected. In addition, satisfactory compliance with a risk condition for a period of time can justify movement to a less intrusive risk-condition and its eventual elimination. Conversely, noncompliance with a risk condition may necessitate movement to more intrusive risk conditions.
5. *Enforcement principle:* Conditions should not be set when it is likely they will not be enforced or be enforceable. Likewise, any condition set by the



court should be enforced. Punitive conditions may be enforced through specific sanctions designed to demonstrate the seriousness of the punitive requirement. Risk conditions, because they are of central importance to public safety, must be enforced by use of increasingly more secure methods managing the risk factor, including, if necessary, custody.

6. *Voluntariness principle:* Supervision objectives not directly related to enforcement of either risk or punitive conditions are a matter for joint discussion by both the officer and the client and should not be coercive.

## II. Identification of the Target Group

A series of research tasks was undertaken to produce a plan for identifying offenders for supervision. The primary aim was to avoid the net-widening that affects so many special supervision projects. Two samples were used to conduct the analysis needed to identify the target group:

Probation sample: All Multnomah County probation cases closed between June 30, 1983 and July 31, 1984.  
(N = 514)

Sentencing sample: A one-seventh random sample of felony offenders sentenced in Multnomah County between June 30, 1983 and July 31, 1984.  
(N = 404)

The probation sample was further divided into two subsamples. The first (N = 365) was a "construction" sample used to develop the screening model. The second was a "validation" sample (N = 149) used to test the power of the screening model.

All variables in the screening model resulted from multiple regression analysis of the construction sample based on prediction of "failure". The "failure" criterion was very conservative (at the request of the CAB). A case was counted as a failure if there was any indication of (a) absconding; (b) rules violation; or (c) an arrest for a felony or misdemeanor. A total of 28 percent of the cases in the sample were failures. Multiple regression was used because research suggests there is little difference between this technique and other, more elaborate methods of building prediction models.<sup>9</sup>

Table 1 shows the variables and weights that resulted from a straightforward regression analysis of the construction subsample. The criterion variable was a failure-success dichotomy.

TABLE 1. MODEL VARIABLES AND WEIGHTS

Variable	Weight
1. Substance Use	7
2. Juvenile Conviction	10
3. Victim-Offender Relationship	5
4. Needs at Closing	10
5. Harm to the Victim	3
6. Prior Probation/Parole Revocations	7
7. Age at First Conviction	2

Two interesting points may be raised concerning these variables. First, two "victim" variables emerged as important in the analysis. By virtue of their coding in the scale, the model tends to screen as higher risk the more serious crimes. (This factor is discussed more, below).

Second, the "needs" variable occurs at the time of case closing, not at the time of case assessment (when we use the model to screen). Therefore, it was dropped from the validation analysis. However, it is in the model because it continued to be an important predictive factor, almost without regard to the other variables in the model. "Needs" is a largely independent indicator of the potential success of a case. Conceptually, this means clients' needs are being treated as both a supervision planning factor and screening factor when they are shown to be closely linked to risk.

At the suggestion of CAB and PTF members, several attempts were made to include or exclude in the models certain variables of interest. Offense variables were forced into the models in various ways—Type of Current Offense, Type of Prior Offenses, Type of Frequency of Prior Crimes—but in no instance did they play a significant role in determining a client's eventual performance. Thus, they were dropped from the final models.

Similarly, Age and Prior Felony Conviction were forced into models. But other variables seemed to do a better job of predicting performance—in the case of Age, Age at First Arrest was better; in the case of Prior Felonies, Prior Juvenile Convictions was better. When these alternative variables were included in the model, the total independent effects of Age and Prior Felonies were washed out. Because the CAB was concerned about racial bias, we investigated this issue and learned that ethnicity is not significantly correlated with this scale.<sup>10</sup>

<sup>9</sup> Goffredson, Stephen and Gottfredson, Don M., *Screening for Risk* (Washington, DC: National Institute of Corrections) 1984.

<sup>10</sup> See Joan Petersilia and Susan Turner, *Guideline-Based Justice: The Implications for Racial Minorities* (Santa Monica: Rand) November 1985.

### Validation

To validate the scale, the validation subsample was used to determine the relationship between the total scale score and the case's ultimate performance. The overall relationship is moderate ( $r = .39$ ). When inspected for determining cut-offs, the scalability of the model was even stronger, as shown in table 2.

TABLE 2. MODEL CUT-OFFS

Scale Score Cut-offs	N of Cases	Percentage Failures
9 - 23	10	0
24 - 49	37	16%
50 - Top	23	61%

Because of missing data, the cell frequencies in the validation are too small to give final evidence of differentiation. However, as is seen in table 2, the scales created by the models are potentially powerful discriminators of cases' overall performance, given the relatively small number of cases.

### Target Group Analysis

In order to identify a target group of offenders, the scales are transferred to the sentencing sample to determine which kinds of cases are being sentenced to prison or jail terms. Because the crime severity score (as developed by the Oregon Parole Board) has greater ability to discriminate crime severity than the offense class (in the Oregon Penal Code), it is used in the analysis of target cases.

As expected, cases in the sentencing sample appear to be slightly higher overall risk than cases in the probation sample. Moreover, sentencing practices in Multnomah County already place considerable emphasis on offender risk. For example, table 3 shows the model scale cut-offs by probability of a sentence to imprisonment or jail.

TABLE 3. INCARCERATION AND RISK

Model Scale Cut-off	N of Cases	Percentage Incarcerated*
9 - 23	28	14%
24 - 49	95	20%
50 - Top	82	60%

\*Prison or jail terms exceeding 90 days

In addition, as table 4 shows, the higher risk offenders also tend to commit more serious crimes. This may be in part a function of the two victim variables contained in the model, and it may also reflect charging and plea negotiation practices. However, the relationship between incarceration probability and risk is quite strong.

TABLE 4. CRIME SERIOUSNESS AND RISK

Model Scale Cut-off	Crime Seriousness Rating Score					
	2 or less	3	4	5	6	7
9 - 23	24	4	0	0	1	0
24 - 49	71	18	3	1	2	0
50 - Top	41	8	12	1	18	2

To avoid the problem of net-widening, this means project eligible cases must be limited to those likely to be incarcerated and from those select cases to be managed by probation. The specification of project eligible cases based on risk and crime seriousness must be layered onto current sentencing practices which now incorporate some degree of crime seriousness and risk, as is illustrated in figure 1.

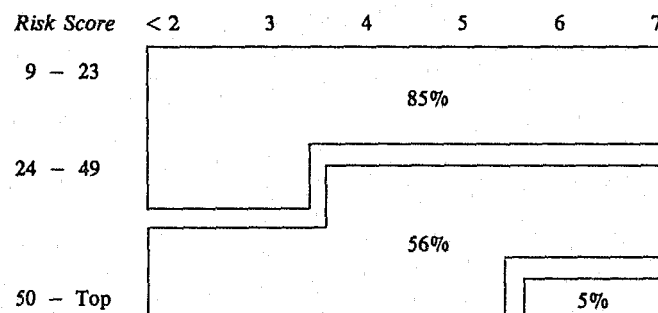


FIGURE 1. PERCENT OF CASES SENTENCED TO PROBATION BY RISK AND CRIME SERIOUSNESS

It is from the middle group, composed of offenders having roughly a 50-50 chance of incarceration, that the target group must be drawn. The low-risk, low-seriousness group is already placed on probation at a very high rate. The high-risk, high-seriousness group may not be appropriate for this project.

The overall risk level of the middle group is 40 percent. The overall risk of the lower two groups together is 28 percent. Thus, in identifying the middle group as a target group, in effect we were proposing that the incarceration-bound offenders from among the group that already receives probation about 50 percent of the time (based on the risk/offense profile) instead be supervised under stricter policies and that the resources of pro-

bation be expanded to allow for supervision of more of these cases.

When the CAB reviewed this research, it determined that the best approach would be to focus on lower crime-seriousness cases that pose a risk to the community. If probation can be shown to be effective with these offenders, then it was felt that the project would be highly successful. Therefore, the first stage of implementation excluded persons in the felony class 5 and above. The final target group was offenders class 2-4 who score at a risk level of "moderate" or higher. This is the high risk offender that the project originally sought to work with.

It is estimated that a total of about 400 "eligible" project offenders were sentenced to jail or prison in 1983-84, based on the court sample. Of these, about 20 percent are estimated to have received jail terms, 80 percent prison terms. This certainly seems like a large enough pool from which to select the project target of 100-150 cases.

### *Intensive Supervision in Oregon: A Model*

In Oregon a PDP unit has been formed which is composed of four probation officers and a supervisor. Three probation officers will carry caseloads of approximately 25 cases each. The other probation officer is an intake worker who will work very closely with the judiciary in explaining recommendations and advocating for the unit and will coordinate the screening process.

The screening process has two purposes: (a) to identify incarcerated-bound cases for consideration by the PDP unit; and (b) to determine the court conditions necessary to allow supervision of these cases by the PDP unit. In order to achieve these purposes, a PDP unit worker reviews the schedule of all PSI assignments to determine which cases fit the preliminary profile of target cases for the project.

A standard PSI is prepared by staff of the diagnostic unit. If regular probation is about to be recommended by the PSI writer, the case is not considered eligible by the PDP unit. If the standard PSI results in a recommendation to an incarcerative term, the case is forwarded to the PDP unit for consideration. A complete workup is conducted on the case, and an alternative recommendation is drafted for the judge's consideration. The judge is then free to sentence the offender based on the PSI and the alternative recommendation by the PDP unit.

### *What We Have Learned*

At this time, of course, the project is only half over. The various actors in the project have been assembled, including the internal task force, the Community Advisory Board, and the special unit of volunteers to supervise the offenders. A target group of offenders has been identified and found acceptable by the various actors. A

process for offender management under the PDP unit has also been begun. After 18 months of research, discussion, negotiation, and compromise, we are ready to begin bringing into supervision the initial offenders.

To some, it might seem untimely to write about a half-completed project. Indeed, there are many questions left unanswered: Will diversion actually occur? How well can target offenders be supervised by the PDP unit? To what degree will they represent a risk to the community? How much impact will they make on precious institutional space? These are obviously important questions that can only be answered after long experience with the project and a followup evaluation.

However, in our 18 months of work, a great deal has been learned about the design of community programs for serious offenders in the context of political skepticism about the effectiveness of probation. In viewing what we have learned, our impression is that we have also identified several reasons why so many intensive, community-based projects have failed in the past. Our lessons can be grouped into four major areas:

*Lesson #1: The target group.* Our research suggests some reasons why so many alternatives actually serve to widen the net rather than provide real alternatives. Often, the problem of net-widening is presented as though it results from a kind of disregard of the need to target diversion programs toward the truly incarceration-bound offender. It is as though a kind of programmatic laziness or conceptual ineptitude afflicts those who design alternatives.

When we designed the PDP, we promised ourselves we would take only "prison-bound" offenders, as though there were some coherent offender group in Oregon that is bound for the institution. We hoped to identify a group that had a 90 percent rate of incarceration and to specify this as our target. Our research found that the characteristics of such a truly incarceration-bound subgroup involve such high risk and serious crimes that it is difficult to imagine any new program immediately targeting these offenders. Indeed, if we were to take incarceration-bound offenders, we would have to find them from among a group of similar offenders, many of whom are actually likely to receive probation sentences. That is, once the "true prison" group is eliminated because of crime seriousness and risk, the incarceration-bound offenders left come from a group of offenders whose characteristics suggest their probability of incarceration is about 50 percent.

This may be why an alternatives program can so easily widen the net. The problem is not lack of good intentions, it is that identifying the truly prison-bound offender is difficult, once the most outrageous cases are eliminated—target cases look a lot like the more serious probation-bound clients. There is not a clean break, on risk or crime seriousness criteria, between the probation

and prison cases; instead, there is overlap. When people are left to choose the actual diversion cases from among those in this "overlap" category, they may tend to select the already probationable cases, because they are so hard to distinguish from the prison cases. Worse yet, a simple set of "rules" and "criteria" using either offense or risk variables is unlikely, by itself, to produce a target group composed only (or perhaps even primarily) of incarceration-bound offenders.

The only answer to the net widening problem, unfortunately, lies in vague process considerations: How do you get decisionmakers to become committed to the identification of truly incarceration-bound offenders, so that they will concentrate on avoiding the net-widening problem? It is not an issue of target group specification or open resistance of decisionmakers. It is a problem of subtly qualitative choices made by those who control the diversionary system.

*Lesson #2: Probation officers.* Two trends are coinciding in probation that have broad meaning for the field of probation and especially for any attempt to intensify probation work. The first is a trend toward standardization (classification, supervision standards, workload, etc.). The second is unprecedented levels of self-assessed burnout.

Most intensive supervision efforts have had the effect of increasing the pressures of tight work standards, while making no direct attack on the problem of burnout. As a result, there is often among probation staff a resistance to the implementation of new intensive supervision programs. The resistance stems from a distrust of highly structured supervision models (and perhaps a dislike of the greater accountability they portend), but also from a resentment that those who have smaller caseloads are given higher job status for doing supervision the way many officers would like to, but cannot, because they are responsible for too many clients.

In other words, alternative, diversionary supervision methods do not implement themselves. There is a need for training and consultation in the design of intensive probation. The problem is not merely to give officers a smaller caseload and stricter standards, because there is a need to address the *content* of the new supervision—what will be done with offenders—as well as the *context* of supervision—how well the agency's personnel accept the idea of a new supervision program. This is difficult partly because the new program inevitably is favorably compared to "regular" probation, as though the latter suffers from some stigma.

Collectively, our Probation Task Force and Probation Development Unit spent over 400 hours per person in training, design, and development activities in the first 18 months of the project. This intensive planning time enabled them to resolve many of their own concerns

about the supervision content issues, but only brought them to the point of readiness to confront the contextual issues of the project. Without this heavy up-front investment, however, it is likely the implementation would have been much more difficult or impossible.

*Lesson #3: Community.* For many probation professionals, the "community" is thought of as either a vague threat or an imposing constraint on probation work: "public opinion" lines up against leniency for criminals, of which probation is a primary example. In one way or another, probation workers are often hostage to this undefined pressure to be "tough," and not to put citizens at risk. "The community" (which includes the immediate criminal justice system as well as taxpayers) often has little understanding of the way probation works and the limitations of the probation process. It is like a card game where each player is painfully aware of his own hand but is forced to speculate about the contents of others. As long as the task environment of probation is subject to this collective ignorance, there will be misunderstanding about a new probation-based diversionary program.

Our Advisory Board met virtually monthly for the first 18 months of the project and took two extended retreats. During that time, a great deal was learned by all parties—probation, community, and consultants. Several myths were busted. Almost all Advisory Board members were very supportive of intensive probation as a diversionary system and wanted to avoid widening the net. Probation staff members were deeply conscious of community safety concerns. Criminal justice officials including probation did not realize the way some policies interfered with effective functioning of sister agencies, and those who suffered from those policies had little understanding of why they were adopted. In short, the CAB got people talking to each other.

It would be unfair to conclude that each person on the CAB had a natural concern for the welfare of the interests represented by the other members. There is often actually a deep rift of interests. What is fair to say is that common ground can be staked out, but this requires a deliberate process of presentation of information, reflection, and negotiation.

When we first started the project, the CAB role was receptive and responsive. The CAB members listened to our presentations and commented on the research and conceptualization underlying the project. Over time, as the issues became more difficult—and particularly as we began to select a specific target group of offenders—they shifted their role toward a more active and directive stance. The CAB now acts as a true oversight group; the consultants have a coordinative and facilitative role. The CAB has also developed its own language about probation, about risk, and about correctional goals.

This has not been uniformly a smooth process for two

reasons. First, there is natural tension between the aims of a native CAB and an outside consultative group. The CAB is more conservative and must be convinced of the wisdom of a move before taking risks. The consultant is more aligned with creative action, willing to try out ideas in order to learn the consequences. This tension plays itself out as project control shifts from outside the community to inside via CAB action. Second, it is not possible to have everyone important join the board, and so some key people are inevitably left out. One mistake we made was to bring victim association officials onto the project in the second year, because they missed the first 12 months of conceptualization, and we were forced to return to many issues and work them through a second time.

But without question, we learned that key community actors can be effectively enlisted in developing the probation system. They can become convinced of the usefulness of intensive supervision. They can become strong advocates of true diversion and key supporters of policies that are necessary to avoid net-widening. And they can become friends of probation.

*Lesson #4: Process.* The final lesson we have learned

is as easy to sum up as it is difficult to document. We learned that the key to changing probation is the change *process*. This is particularly true for our work, which was initiated by a three-way agreement between the state, the county, and outside consultants. Time and again, over the last 18 months, we were faced with a choice between moving rapidly to press for project growth and moving slowly to allow constituencies to become more directly related to what we were doing. Almost always, we chose the latter strategy. The cost was time: 18 months seems a long time to put a single unit in place.

Yet the benefits are as real as the costs. There is now in Multnomah County a developing vision of the potential of probation as a positive service to the community, not just a necessary evil brought about by lack of jail and prison space. There are plenty of skeptics, of course; some are involved in the project in various ways. But there is also a creative energy for change and support for using probation more effectively.

Time will tell if we will find out that the project is a successful way of supervising incarceration-bound offenders. The lessons we have learned in the first 18 months have enabled us to be in a position to find out.

But even with the latter type of house arrest program, stringency varies considerably. House arrest programs without electronic equipment to monitor compliance tend to be less severe. These programs rely, for the most part, on probation officers' telephone calls and random home visits.<sup>4</sup>

Some house arrest programs have begun to use computers to help monitor compliance. In New Jersey, for example, the telephone numbers of house arrest participants are programmed into an automatic telephone call-back system. The computer continues to call the offender until contact is made. Some telephonic systems even ask the offender a prerecorded question. If the individual is not there to answer the computer generated phone call, or fails to provide the correct answer to the question (verified by a probation officer), then a violation is recorded.

The most stringent of the house arrest programs are those using electronic monitoring devices. One form of the technology—popularly referred to as “active” monitoring—requires the probationer to wear a small transmitter. The transmitter emits a radio signal which is picked up by a receiver attached to the probationer's telephone. During curfew hours, the computer automatically dials the offender's phone at random intervals to determine whether the receiver is receiving a signal from the transmitter. If so, the computer assumes the probationer is at home. If not, the computer registers a potential curfew violation.

Another version of the technology uses a passive wrist band instead of a transmitter. In this case, a computer dials the probationer's home during curfew hours, the probationer then inserts an identification bracelet worn on the wrist into a receiver attached to the phone, and the receiver sends a signal back to the computer. If the telephone is not answered, or the bracelet is not inserted into the receiver, the computer notes a potential violation.<sup>5</sup>

### *Who is Doing What?*

The Rand “Innovations In Probation” survey revealed that about 28 states are operating formal intensive probation supervision (IPS) programs, of which house arrest is generally considered the most stringent type.<sup>6</sup>

<sup>4</sup> Some counties are using nonprobation employees to monitor offenders. In Tulsa, Oklahoma, for example, the police are given weekly lists of all parolees on house arrest, their addresses, and curfew conditions. In addition, pictures of house arrestees are posted at the local police station. Police are encouraged to make random visits to the parolee's home and survey the offender's neighborhood to make certain offenders are in their residences. Other counties have used neighbors and community volunteers as “informants.”

<sup>5</sup> For a more detailed discussion of electronic monitoring, see Charles Friel and Joseph Vaughn, “A Consumer's Guide to the Electronic Surveillance of Probationers,” forthcoming, National Institute of Justice, U.S. Department of Justice, 1986; and “Monitoring Offenders at Work and at Home Through Electronics,” *NIJ Reports*, November 1985.

<sup>6</sup> Nearly all states reported having intensive (or maximum) probation caseloads. We distinguish here between operating a formal IPS program and simply placing select offenders in reduced caseloads. The latter has been routine probation practice historically.

<sup>7</sup> For a description of Georgia's IPS, see Billie Erwin's article in this issue of *Federal Probation*, entitled “Turning Up the Heat On Probationers in Georgia.”

Georgia's IPS program is the oldest, begun in 1982, and our survey revealed that over half of the IPS programs nationwide report modeling themselves after Georgia's program. Intensive supervision in Georgia mandates curfews and offender employment, community service, routine alcohol and drug testing, and two to five weekly staff/probationer contacts.<sup>7</sup>

As of this writing, several agencies are using active electronic monitoring. These include correctional agencies and private service corporations in Florida, Idaho, Kentucky, Michigan, New Jersey, Oregon, Utah, and Indiana. California and Virginia are planning to implement programs in summer, 1986.

All house arrest programs attempt to identify “low risk” prison-bound candidates. Some use formal screening devices (e.g., New York, Florida, New Jersey); others simply exclude defendants convicted of particular (usually violent) crimes. Some actively solicit the involvement of the community, whereas others hesitate about publicity for fear of community resistance. In most instances, offenders are charged a fee to cover some of the added expenses of house arrest, usually ranging from \$15 to \$200 a month, although in Oklahoma, no fee is collected. Most of these programs have been set up without formal legislation, although several states are attempting to develop a legal basis for house arrest (e.g., Kentucky, California, Maine). All house arrest programs stress surveillance and employment, and most require community service and victim restitution.

While these programs have received a great deal of media publicity, in actuality, house arrest has probably been used with less than 10,000 adult offenders nationwide. A large proportion of those participants have resided in Georgia, Florida, and Texas. Most of the participants have been property offenders, although Florida and Oklahoma admit offenders convicted of personal crimes. Persons convicted of “driving under the influence” are particularly favored house arrest targets, since keeping them at home, away from their cars, seems effective in forestalling their future crimes.

### *The Advantages of House Arrest*

#### *House Arrest is Potentially Cost Effective*

While no definitive cost studies have been done of house arrest, it is thought to be highly cost effective. If the offender were truly prison bound, then the state would save not only the yearly cost of housing the offender (about \$10-15,000 per year), but also the pressure to construct new prison facilities (at about \$50,000 per bed).

If electronic monitoring equipment is used, house arrest is not as immediately cost effective. Because companies are trying to recoup some of the development

costs, purchasing the initial equipment is currently quite expensive. For instance, Kentucky spent about \$30,000 to purchase 12 electronic monitors. A cost evaluation of the program after 6 months concluded that the electronic monitoring had cost the county \$10,000-\$20,000 *more* than it would have spent if the 23 persons monitored had been sent to jail instead. However, if the system is used for 12 persons for an entire year, the cost comparisons reverse, and the county would save about \$65,000.<sup>8</sup> Most agree with the manufacturers that in the long run home incarceration will be less expensive than institutional incarceration.

Using cost figures provided by some of those who completed our survey, we computed a rough comparison of costs per program type (see table 1).

TABLE 1.—ANNUAL COST OF HOUSE ARREST VS. ALTERNATIVE SENTENCES

Routine Probation	\$300—\$2,000
Intensive Probation	\$2,000—\$7,000
House Arrest (w/o electronics)	\$2,000—\$7,000
With Telephonic Call Back System	\$2,500—\$5,500
With Passive Electronic Monitoring	\$2,500—\$6,500
With Active Electronic Monitoring	\$4,500—\$8,500
Local Jail	\$8,000—\$12,000
Local Detention Center	\$5,000—\$15,000
State Prison	\$9,000—\$20,000

Not only are operating costs lower for house arrest than for jail or prison, but there are indirect cost savings as well. Offenders with families can contribute to their support, thus saving the state welfare costs the offender's family may have required. Most house arrest programs require the offender to be employed. Consequently, he continues to pay taxes and may be required to pay victim restitution and probation supervision fees as well. Georgia probationers paid \$650,000 in probation fees last year, which was enough to totally offset the cost of the intensive probation program. Florida reported collecting \$9.2 million in fees from its home detainees, although this was not enough to cover the costs of supervising them.

However, the figures in table 1 ignore an important cost component: the cost of reprocessing any recidivists. If house arrest participants are being rearrested and retried, then the system bears those reprocessing costs.<sup>9</sup> Recent estimates show that it costs an average of \$2,500 to dispose of an arrest (Haynes and Larsen, 1984).

In short, we really don't have information to compute the full costs of various probation programs. At this point, all we know is that the cost of administering house

arrest is less than confinement in either state or local facilities. But particularly with electronic monitoring, we must be skeptical of the claims supporting house arrest on the grounds that it is *much* less expensive.

A house arrest program in Contra Costa, California was cancelled, despite glowing reviews from all concerned, primarily because of expenses. After a 1-year trial, the house arrest program (without electronics) was deemed too expensive. "It turned out that it costs more to keep them in home detention than in jail," said Cecil Lendrum of the probation department. Jail overcrowding was not seriously relieved, and the sheriff's department was unable to reduce its staff. According to Rudy Webb, the program coordinator, the net cost to the county for 1 year of the program was \$95,000.

#### *House Arrest Can Be Tailored to Meet Local Needs*

One attraction of house arrest is its flexibility. It can be used as a sole sanction or part of a package of sentencing conditions. It can also be used at almost any point in the criminal justice process. It can also be used as a diversion before an offender experiences any jail time, after a short term in jail, after a prison term (usually joined with work release), or as a condition for probation or parole revocations. It can be used to cover particular times of the day or particular offender types. Because the offender is usually on some type of suspended sentence, he can be quickly revoked and sentenced to prison if he fails to meet the conditions of his participation. House arrest programs, for the most part, do not require legislative changes and can be set up with administrative memoranda. They usually include rather easy to communicate conditions, enhancing implementation ease.

House arrest also has potential applications for offenders with special needs, e.g., the terminally ill, mentally retarded, those with AIDS. Connecticut is exploring its use for pregnant women. Currently, when women come to jail or prison pregnant, the facilities must have special arrangements to assure the physical well-being of both mother and child. Depending on the level of risk involvement, such a woman might be released to her home or the home of a relative during pregnancy. This would likely result in cost savings, as well as provide a healthier atmosphere for mother and child.

#### *House Arrest Minimizes the Social and Psychological Costs of Incarceration*

Most believe that house arrest programs are "socially cost effective." House arrest can prevent the breakup of the offender's family and family networks, with its consequent psychological and physical disruption that may traumatize the offender's family as well as himself. And if the defendant had a job, he could keep it.

<sup>8</sup> "Home Incarceration with Electronic Monitoring in Kenton County, Kentucky: A Preliminary Report," by Robert Lilly and Jennifer Wright, unpublished draft, 1986.

<sup>9</sup> These operating costs also ignore the victim's cost, e.g., hospitalization, unemployment.



Furthermore, any "criminogenic effects" associated with prison would be avoided. This benefit is particularly attractive, especially for first offenders who may not have committed themselves to a life of crime. They would not learn from career criminals in prison, nor would they be physically assaulted. Most of those operating house arrest programs view this as an important advantage. While prisons are not designed to scar inmates psychologically, that is an unfortunate concomitant effect of most prisons today. As the New York house arrest guidelines noted:

Imprisonment returns a man to society with a scarred psyche, unpaid debts and financial losses, a highly disruptive if not irreparably broken family, children who lose respect for their parent, no job, and a gap in his life history that is hard to explain when he seeks a new job.

If we could devise a sentence *that would not compromise public safety*, and at the same time avoid such devastation, surely it would be preferable on this and other grounds as well. For example, prisons today are unable to provide extensive social and rehabilitative services. Offenders who remain in the community can be ordered (as a condition of their release) to undergo particular types of community based treatments. It is also probably true that rehabilitation taking place in the offender's own community has a higher probability of long-term success.

### *Unresolved Issues*

Most people believe that house arrest is less intrusive and less expensive than prison and thus worth trying. Yet, there are concerns about this trend. Victims' advocates argue that placing convicted offenders back in the community, however stringent the conditions, trivializes the nature of their crimes. MADD—Mothers Against Drunk Driving—has been particularly critical of house arrest and sees such sentencing as a step backward in efforts to stiffen penalties for drunk drivers. (Drunk drivers are frequent house arrest participants.)

Probation officers are often critical because such programs focus on guarding people instead of helping them. Civil rights groups fear that the technology will be abused and that the private sector will begin selling the equipment to extend surveillance not only to convicted criminals, but to undesirables (e.g., persons with AIDS). And nearly everyone is concerned with the public safety issue—will offenders simply escape or use their homes as the base for criminal operations?

These and related issues discussed below are becoming important, as counties begin to consider the pros and

cons of implementing house arrest programs.

### *Widening the Net of Social Control*

Nonviolent and low risk offenders are prime candidates for house arrest and are least likely to have been sentenced to prison in the first place. As judges become more familiar with house arrest, they may well use it for defendants who would normally have been sentenced to routine probation. Hence, a sentence originally intended to reduce prison crowding might instead "widen the net" of social control without reducing prison and jail populations appreciably.

Alvin Bronstein, head of the American Civil Liberties Union's National Prison Project, said: "We should be looking for ways to place fewer controls on minor offenders, not more. If these devices are used as alternatives to jail, then maybe there's no problem with them. If you're sending the same people to jail and putting people who otherwise would be on probation on them, it's a misuse. We're cautiously concerned."<sup>10</sup>

Alternatively, house arrest may be used as an "add on" to the sentence the judge would normally have imposed, thus lengthening the total time the offender is under criminal sanction. According to a probation officer who operates a house arrest program in Rock County, Illinois:

Probation could not convince the judges that home detention is a good program. It is being done, but it seems that judges are doubling the length of jail sentences imposed in order for offenders to put in the actual time the judge had wanted served in the first place.

In the long run, "widening of the net" with house arrest programs is a realistic possibility. Research has shown that prison capacity drives prison commitments, as well as vice versa.<sup>11</sup> In other words, judges will sentence offenders to prison as long as capacity exists, and as capacity expands, so may prison commitments. If we begin to regard homes as potential prisons, capacity is, for all practical purposes, unlimited. Such possibilities have widespread social implications: who is to say how wide the "social net" would stretch.

But while we certainly don't want to "widen the net" irresponsibly, more intensive interventions may be necessary to curb the high recidivism rate of some felony probationers. In tracking 1,700 adults granted probation in California, Petersilia et al. (1985) found that two-thirds were rearrested in the 3 years following sentencing. Moreover, 75 percent of the official charges filed against those sampled involved burglary/theft, robbery, and other violent crimes—the crimes most threatening to public safety.<sup>12</sup> In searching for solutions to what is widely regarded as a serious problem—crimes committed by felons on probation—we recommended intensive supervision probation programs. House arrest is regarded as a form of intensive supervision.

<sup>10</sup> As quoted in Kevin Krajick, "The Computer Age" in *Corrections Compendium*, September 1985.

<sup>11</sup> Kenneth Carlson (ed.), *American Prisons and Jails*, Vol. II, National Institute of Justice, Washington, D.C., 1980.

<sup>12</sup> Joan Petersilia et al., *Granting Felons Probation: Public Risks and Alternatives*, The Rand Corporation, January 1985.



### *Focusing Primarily on Offender Surveillance*

Some worry that house arrest, particularly if coupled with electronics, will be the final blow to the "rehabilitation ideal." As probation officers focus more heavily on surveillance, rehabilitation-type activities are diminished. Most probation officers monitoring house arrest participants admit they have little time for counseling.

While it is true that counseling is reduced in most house arrest programs, employment or enrollment in school is often required. And, to my way of thinking, having a job or a high school diploma may do more than counseling to increase chances for a law abiding life.

### *Intrusiveness and Possible Illegality*

Some people object outright to the state's presence in individuals' homes, long regarded as the one place where privacy is guaranteed and government intrusion severely restricted by law. If electronic devices are used, some fear we may be headed towards the type of society Orwell described in 1984. In 1984, citizens' conversations and movement were strictly monitored and used as a tool of government oppression. However, house arrest, with or without electronics, is quite different from the 1984 scenario. House arrest is used as a criminal sentence and only imposed on offenders after they have been legally convicted. It is imposed with full consent of the participant. It is intended to be used as an *alternative* to incarceration; and surely a prison call is more intrusive to the individual's privacy than even strict confinement to one's home.

There have been no formal challenges to date concerning the legality of house arrest. But legal opinions written by officials in Utah and Florida argue that house arrest, with or without electronic monitoring, will withstand constitutional challenge as long as it was imposed to protect society and/or rehabilitate the offender and the conditions set forth are clear, reasonable, and constitutional.<sup>13</sup>

These officials believe it can be reasonably argued that house arrest is both protective of society and rehabilitating to the offender. And since offenders sign consent forms, it makes it difficult to argue that the conditions were not clear. "Reasonable" generally implies that the conditions are fair. If prison was the alternative, given that house arrest is less intrusive, it can therefore be justified as being fair. Further, house arrest as currently implemented does not appear to violate any constitutional guarantee.

Experts agree that the most plausible constitutional challenges pertain to the 4th and 14th amendments. The

4th amendment prohibits unreasonable search and seizures, and some question whether installation and subsequent monitoring by electronic transmitters constitutes an unreasonable "search." The 14th amendment guarantees equal protection under the law. If offenders are being required to pay a fee in order to be eligible for the program, and those who can't afford to pay are being denied probation or parole, house arrest may be liable to 14th amendment constitutional challenges.

Thus, while house arrest does not seem overly intrusive or threatening to constitutional rights, the situation needs to be closely monitored as the technology grows more sophisticated. Manufacturers of the electronic transmitters are already considering the potential of including home video and audio surveillance and remote-control testing of blood alcohol content. If these possibilities ever become reality, our assessment might change.

### *Race and Class Bias in Selecting Participants*

Because house arrest programs are in the experimental stage, administrators are being extremely cautious in selecting participants. Most programs limit participation to offenders convicted of property crimes, with minor criminal records and no history of drug abuse. Such strict screening makes locating eligible offenders difficult, and those who are eligible tend to be disproportionately white collar offenders.

American Civil Liberties Union officials say the programs may discriminate against young, poor, and black people because to qualify for most house arrest programs, a person must be able to pay a "supervision fee," which runs about \$15 to \$50 a month. If electronic monitors are used, the fee is higher (about \$200 a month), and the offender must have a home and a telephone. Persons without these resources may have no alternative but prison.

As noted above, this situation raises possible "equal protection" issues as well as overall fairness concerns. Some programs have begun instituting sliding scale fee schedules, and a few others are providing telephones for offenders who don't now have them.

### *Compromising Public Safety*

Some people seriously question whether house arrest programs adequately protect the public. Regardless of stringency, most admit that house arrest cannot guarantee that offenders will go "straight" and that it relies for the most part on the offender's willingness to comply. Can a *criminal* really be trusted to refrain from further crime if allowed to remain in his home? What is to stop him from simply using his home as a base of criminal operations, for example, drug deals, fraud, and prostitution?

To date, both the recidivism and escape rate for house arrest participants is quite low. Florida's Community

<sup>13</sup> For a complete review of legal issues, see Roland V. del Carmen and Joseph Vaughn, "Legal Issues in the Use of Electronic Surveillance in Probation," National Institute of Corrections, Washington, D.C., 1985 and "Legal Issues in the Use of Electronic Surveillance in Probation," *Federal Probation*, this issue.

Control Program reports a revocation rate of about 15 percent and an escape rate of less than 1 percent.<sup>14</sup> While current statistics on recidivism and escapes don't cause particular alarm, the low rates are due in part to the fact that programs select the best risks. As house arrest becomes more widespread and incorporates other offender types, the public safety question might resurface.

Another caution bears mentioning. It is true that every house arrest program now operating attempts to select individuals with a low probability of recidivating. While that is reasonable in theory, predicting individual recidivism is difficult in practice. Research has shown time and again that the system's ability to successfully predict recidivism hovers around 70 percent accuracy—meaning that predictions for one in four offenders will be incorrect.<sup>15</sup> While predictions are more accurate for low risk offenders, some of those predicted to succeed will undoubtedly fail. House arrest programs should not promise absolute success; they will undoubtedly fail to deliver.

#### *Are We Guaranteeing Failures?*

Some believe that despite good intentions, successfully completing a house arrest sentence may actually be tougher than serving a prison term. As Cecil Steppe, chief probation officer in San Diego, California noted: "In some ways house arrest can be tougher than being in jail. You come home and your kids beg you to go to the park or get some ice cream. You're not free to do that."

Everyone agrees that it takes a very disciplined person to act as his own warden. Given the impulsiveness of many offenders, expecting house arrest compliance over a long period of time may be unrealistic. While there have been some lengthy house arrest sentences, most have been for 6 months or less. Generally, offenders are trading 3 to 5 days at home for 1 in jail.

Setting expectations that offenders can reasonably meet seems important. Unrealistic conditions simply guarantee failure. The system will then have to reprocess and (perhaps) reincarcerate the recidivists, negating the cost savings associated with house arrest.

#### *Who Should Fund: State Reimbursement to Counties?*

If offenders who would normally be serving time in state prisons are diverted to local communities to serve intensified probation sentences, who should bear the cost? The state saved a prison or jail bed and operating costs, which at a minimum are \$10,000 per year, per offender. But probation picked up an additional client who requires intensive, costly community supervision.

In states with centralized probation departments,

reallocating a portion of the overall corrections budget to correct this imbalance is rather straightforward (although not necessarily easy to accomplish). But in many states, prisons are state funded and probation is county funded. Hence, a savings in the state level prison budget does not necessarily translate into an "add on" to the county level probation budget.

Shouldn't the state reimburse the county to offset some of the additional costs incurred? This is a central question, and if they don't address it, probation officials are likely to find themselves again in a no-win situation: responsible for supervising high risk felons with too few resources to do the job adequately. Recidivism rates will likely rise, and probation will again come under fire for its ineffectiveness.

#### *Can Probation Itself Adapt?*

In my opinion, the most important "unresolved issue" concerns whether probation itself can adapt to house arrest and other intensive surveillance programs. In moving from primarily rehabilitative to restrictive supervision, structural and organizational changes must inevitably follow.

Most dramatically, probation departments may need to shift from 8 a.m. to 5 p.m. organizations, closed on weekends, to 24-hour, 7-days-a-week services. Donald Cochran, Commissioner of Probation in Massachusetts, says 24-hour probation is just around the corner:

It is naive to assume that the more serious probationers can be effectively supervised on a 9-5 basis. Criminals don't work bankers' hours. Ironically, probation is the only component in the criminal justice system that has historically thought of itself as immune from 24-hour availability. The police, correctional officials, and recently judges are called upon for around-the-clock service. . . . Why not probation? Essentially, the argument is that the activities and schedules of probation officers ought to more closely reflect the activities and schedules of those they presume to service and deter. (*APPA Perspectives*, fall 1986)

Furthermore, probation as an organization will need to staff and monitor surveillance programs differently. It will need new screening criteria, perhaps recruiting and training different types of personnel, devising guidelines for length of stay, and determining what response will be made to violators. In house arrest, the first violations will be with respect to curfew. How will probation choose to respond? These issues are not minor, and probation officials need to give them considerable forethought.

The next few years are critical for the survival of probation. With virtually every state facing severe prison crowding, probation continues to dominate contemporary corrections policy. Departments that can reorient their services to handling serious offenders outside of prison are likely to find themselves back in favor with the public and those who provide their funding. House arrest programs show promise in this regard.

<sup>14</sup> "Community Control Update," Florida Department of Corrections, May 1985.

<sup>15</sup> Petersilia et al., 1985.

# Electronic Monitors

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**E**LECTRONIC MONITORS are a new telemetry device designed to verify that an offender is at a specified location during specified times. This technological option is stimulating a great deal of interest from jurisdictions considering the approach and from manufacturers entering the market. While the concept of electronic monitoring has been discussed in the literature and small experimental efforts have been undertaken since the sixties, the earliest of the currently operating programs only started in December 1984.<sup>1</sup>

In the short time since that first program began in Palm Beach County, Florida, many jurisdictions have considered whether to develop monitoring programs and some have ordered equipment. Programs have been established in locations as diverse as Kenton County, Kentucky and Clackamas County, Oregon and by organizations as diverse as the Administrative Office of the Courts in New Jersey and the Utah Department of Corrections.

As the National Institute of Justice (NIJ) has monitored these developments, we have found that the growth of programs has coincided with the entry of manufacturers into this field. The accompanying table (see page 59) provides a list of the manufacturers who are known to us. They have come to our attention through responses to a solicitation in the *Commerce Business Daily* for manufacturers willing to participate in the NIJ-sponsored equipment testing program at the Law Enforcement Standards Laboratory of the National Bureau of Standards. We also learned of manufacturers when they responded to requests for bids made by jurisdictions seeking to purchase equipment, when they requested information from us, and by word of mouth. The list reflects information current as of the date it was prepared. However, given the rate of development thus far, additional manufacturers may have entered the field before this article is printed.

As shown on the table, there are four basic technologies presently available; two use the telephone at the monitored location and two do not. Each of the technologies reflects a different approach to the problem of monitoring offenders in the community. In fact, even products within the same general technological group have important differences. These differences, and the cost and desirability of particular features, are a small part of the decisions that must be made when establishing a monitoring program.

The technology is so new and the research is, thus far, so limited that there are many questions about monitors of all kinds, on all levels. Some of these questions are: Should equipment be purchased? Can it be used legally? On whom should it be used? Will the community accept it? Will monitors provide the community with additional protection? The National Institute of Justice, through its Fiscal Year 1986 Solicited Research Programs, is seeking to support experimental projects that will provide some answers to some of these and other important questions. In the meantime, programmatic and technological questions remain.

## *Programmatic Questions*

Monitors, at least in theory, could be used on any number of offender groups. They could be used on sentenced or unsentenced offenders. They could be used before sentencing, immediately after sentencing, or at a later point in the sentence when problems appear. They could be used to monitor house arrest, as an alternative to jail, as part of an intensive supervision program, or in the context of a work release program. All of these program possibilities have been discussed, and most of them are presently operational. However, we do not yet know if monitors are effective in these program applications much less where they are most effective.

We also do not know which offenders should be the focus of the program. There are clearly some offenders that nobody wants in the community, such as those who are violent. These offenders should go to prison. However, there are other offenders who are not so clearly dangerous and are not so obviously candidates for confinement. Can they be punished or deterred by other means? Can they be monitored in the community? Should they be monitored in the community? We do not know.

Whether particular types or groups of offenders can be monitored in a given community will depend, in part, on what that community, its judges, and its elected and political officials consider acceptable and appropriate punishment. For example, in some communities there may be strong pressure to jail drunk drivers; other communities may be satisfied if drunk drivers are required to stay home during their nonworking hours with monitors used to assure that they do so.

Another consideration related to who can and should be monitored in the community may depend on the type

\*Points of view or opinions stated in this article are those of the author and do not necessarily represent the official position of the United States Department of Justice.

<sup>1</sup>Ralph K. Switzgebel, "Electronic Alternatives to Imprisonment," *Lex et Scientia*, Vol. 5, No. 3, July-September 1968, 99-104.

Daniel Ford and A. K. Schmidt, "Electronically Monitored Home Confinement," *NIJ Reports*, SNI 194, November 1985, 2-6.

of equipment selected and the structure of the program in which it is used. Some equipment monitors the offender continually while others do so only intermittently. Some devices send a signal if tampered with and some do not, so that removal of or damage to the equipment is only detected with visual inspection. And, if the equipment indicates that the offender is not where he is supposed to be or that some other problem has occurred, has the program been designed so that there will be an immediate response or does the program staff review these indicators on weekdays during the day? A few present programs have the base computer located in a facility that is staffed 24-hours a day, 7 days a week. They then know immediately that a problem has occurred and can send staff to the offender's house to check and, if necessary, attempt to locate him. In other programs, the print-out is reviewed in the morning, and offenders are contacted to explain abnormalities found the previous night.

Next, how long *will* the offenders be monitored by the equipment? Here again the equipment is too new and the experience too limited to provide an answer. Officials at Pride, Inc. in West Palm Beach, Florida believe that offenders can tolerate the monitors for about 90 to 120 days. After that, they feel, offenders begin to chafe under the restriction. And, how long *should* they be kept on the equipment? This question must be answered in the context of why the program is being operated. The answer would be quite different if the goal is retribution as opposed to fulfilling the requirement of the law. In Palm Beach County, it has been decided that 3 days on the monitor is the equivalent of 1 day in jail to fulfill the required mandatory sentence for a second conviction for driving while intoxicated. For other offenses, the prescribed sentence is a range, and, therefore, the appropriate time on the monitor is not so clear.

Can electronic monitors solve or alleviate prison and jail crowding? The answer to this question is probably "no" for a variety of reasons. First, in addition to issues related to what a community can, will, and should be expected to tolerate, it should be reiterated that monitors are technological devices potentially useful in a variety of program contexts. The population selected as the focus of monitoring programs may or may not be one that might otherwise be sent to jail or prison if monitors were not available. Second, consideration needs to be given to the likely impact on the total problem. In a thousand-man jail, the release of 20 monitored inmates would reduce the population by only 2 percent. One hundred monitored inmates would have to be released before the population would be affected by 10 percent. In a smaller

jail, more impact would be achieved by a system with a capacity for monitoring 20 inmates, the typical size of the initial equipment purchase being made. In the prison systems of many states with much larger populations, more monitored inmates would have to be released before a significant reduction in population could occur. Furthermore, the cost of a monitoring program cannot be directly compared to per diem costs of incarceration. The largest component of per diem costs is staff salaries. Therefore, until the number of released inmates is large enough to affect staffing of the facility, the only savings achieved are in marginal categories such as food.

The inverse to the question about jail crowding is the question of net-widening. Will offenders be sanctioned who otherwise would not be? Will offenders be more severely sanctioned? These issues deserve attention. If offenders are being monitored who would not otherwise have been incarcerated, the cost benefit equation on the use of the equipment is changed. If, on the other hand, offenders are monitored who might otherwise receive probation with little direct supervision, the question becomes "Is the community being better protected?" At present, the answer to that question is also unknown.

Taken together, the questions of reducing prison population and net-widening lead to the more basic question: Why is a monitoring program being established? Any jurisdiction establishing a program should be able to answer this. Clearly there are a wide variety of possible reasons. Reduction of prison or jail population is only one. Net-widening is a possibility but is more likely an unintended byproduct. Another possible answer is to better protect citizens from those offenders already in the community on some form of release. If the question cannot be answered, then the situation is equipment in search of a program, perhaps the most inappropriate way for program development to proceed.

Whatever the rationale for the monitoring program, another issue that must be considered is the legality of the use of monitors, the subject of another article in this issue. However, it should be noted that there are no known test cases. Furthermore, the question of legality obviously would differ in each jurisdiction depending on statute and appellate decisions.

Another question is: "How much will it cost?" The answer, of course, depends on the type of equipment, the number of units, and whether the equipment is purchased or leased. In addition, there may be telephone charges and personnel costs. The In-House Arrest Work Release Program of the Sheriff's Stockade in Palm Beach County Florida charges participants in the voluntary program \$9 per day.<sup>2</sup> Within the first 14 months of program operation, the program's investment in equipment had been returned by offender fees. However, if the initial amount invested is more or less, if fees are charged

<sup>2</sup> Lt. Eugene D. Garcia, personal communication and "In-House Arrest Work Release Program," report of the Sheriff's Stockade, Palm Beach County, Florida, February 15, 1986, 6 pp.

at a lower or higher rate or not at all, or if the equipment is in use a greater or lesser proportion of the time, then the pay-back period will change.

Existing programs using monitors in the community function as part of the criminal justice system. Therefore, they require the cooperation of the courts and probation and parole, at a minimum. Additionally, many times, they also may involve the sheriff, other law enforcement agencies, and others. As with any multi-agency effort, the lines of responsibility must be clear and the cooperation between them developed. For example, if the results of the monitoring are to be reviewed around the clock, then the base is optimally located where 24-hour staffing is already present. This facility might be a jail operated by the sheriff. The program, on the other hand, is being operated by the probation office. In this case, the division of responsibilities and expectations should be specified, preferably in writing.

### *Technological Questions*

The questions above can be viewed at a theoretical, philosophical, or program planning level. However, there are also questions or potential problems that should be considered related to the functioning of the equipment itself. These questions emanate from the preliminary results of a study conducted at the Law Enforcement Standards Laboratory of the National Bureau of Standards supported by the National Institute of Justice. Information also has been gained from the experience of some of the monitoring programs. It should be noted that the comments are preliminary and often reflect results of testing of what is now the *previous* generation of equipment, since the technology itself is developing so rapidly.

One problem found was telephone line compatibility. Telephone lines carry electric current, and the characteristics of the current can vary with different telephone systems. Additionally, some telephone exchanges use very modern switching equipment and can handle pulses such as those from touch-tone phones. Others use older equipment that may have trouble handling the electronic signals transmitted by some of the monitoring systems. Whether this is a problem can only be determined specifically through a test of the local system and local exchanges and/or consultation with the local telephone company.

Another problem that appears remediable and has been addressed by some manufacturers is the effects of

weather conditions. During wind storms and thunderstorms, both electric lines and telephone lines are whipped around and may come into contact with other lines. This may lead to arcing of the power and power surges. In the same way that most users of home computers have surge protectors on the incoming power lines, these monitoring devices may have surge protectors placed on the incoming electrical and telephone lines. It appears that most manufacturers have installed surge protectors on their current equipment. In addition, uninterruptable power supplies are also provided by some manufacturers to guarantee power to the system even during power outages.

Many devices use radio frequency signals for communication between components of the system. In some locations, radio landing beacons from airports and radio station broadcasts can interfere with the functioning of the device. Whether this is a problem is dependent on the other radio transmissions in the area where the equipment is being used and the radio frequency that the device uses.

Another potential problem noted is the effect of iron and steel which may block signal transmission or create an electromagnetic field. This can occur in steel trailers or in stucco houses. It can also occur in houses which have large appliances such as refrigerators and cast iron bathroom fixtures. In some places, the problems can often be dealt with by moving the receiving equipment. In other settings, it may limit the offender's mobility to less than had been expected. At least one manufacturer provides repeater stations within the house to forward and amplify the signal.

These are some of the technological problems that have come to light and many of them have been solved. In other cases, ways to avoid them and minimize their effects have been noted. It is not surprising that they have developed, given the newness of the technologies. It would also not be surprising if additional problems come to light as broader experience with these devices is gained. It seems reasonable to assume that manufacturers will seek to solve any future problems as they have in the past.

In summary, monitors are new technological devices that offer exciting possibilities for controlling offenders in the community. However, there are still many unknowns, many issues which should be considered by those establishing programs and many questions yet to be asked and answered.

# Legal Issues in the Use of Electronic Surveillance in Probation

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## I. Introduction

JAIL AND prison overcrowding has generated a reexamination of the concept of imprisonment and the use of alternative forms of sentencing for those who would normally be incarcerated if space were available. From 1972 to 1982, the population in Federal and state prisons throughout the United States more than doubled. In 1981 and 1982 there was a 12 percent growth rate each year in the number of offenders sentenced to state and Federal prisons. In 1984 more than 430,000 men and women were incarcerated in those institutions.<sup>1</sup> That does not include the thousands more held in local and county jails.

Solutions to the overcrowding have been mandated by the courts in some 39 states, the District of Columbia, Puerto Rico, and the Virgin Islands.<sup>2</sup> The traditional response to overcrowding has been to build more prisons. There is a growing realization, however, that this response may not be economically or politically feasible. Initial construction costs are prohibitive and the public has shown signs of reluctance to expend public funds for institutionalization. A new prison cell is estimated to cost from \$25,000 to \$75,000.<sup>3</sup> The State of Illinois has appropriated \$150 million to capital expenditures for prisons, representing 50 percent of all capital spending during that time period.<sup>4</sup> Moreover, experts disagree on whether or not the construction of new prisons is the answer. Some maintain that new prisons are needed to alleviate overcrowded conditions; others believe that prison construction would merely widen the net and lead to more incarceration.<sup>5</sup>

Recent articles indicate a growing belief that alternatives to incarceration should be utilized both as a means to alleviate prison overcrowding and as a more humane and effective form of offender treatment.<sup>6</sup> Proposed alternatives include restitution, community service, prerelease programs, early parole, intensive probation supervision, and house arrest. Others have even suggested a return to corporal punishment.<sup>7</sup>

Probation in diverse forms has been used in all states as a viable alternative to incarceration; but its cost-effectiveness has also been questioned. While probation is admittedly less costly, it is far from inexpensive. For

example, California spends approximately \$1,600 per year for each person on probation. In that state 1 out of every 83 people between the age of 9 and 65 is now on probation.<sup>8</sup>

One proposed incarceration alternative is intensive supervision through the use of electronic devices to monitor offenders. The solution is now technologically feasible and is being used in a few jurisdictions. This article examines the current use of the device and some possible constitutional and legal challenges to its use. There have been no court cases decided to date which deal specifically with the issue, hence the article will focus on the use of electronic surveillance based on cases where similar issues have been raised. It concludes with an assessment of the constitutionality of such use in probation cases.

## II. The Monitoring System

While the full extent of its use is unknown, widespread use of the monitoring system has not yet occurred. Among the first users of the system were West Palm Beach County, Florida; Lake County, Illinois; Albuquerque, New Mexico; Kenton County, Kentucky; and Washtenaw County, Michigan.<sup>9</sup>

The monitoring systems currently used are usually composed of three parts—a control computer located at the controlling agency, a receiver unit located in the offenders home, and a transmitter device worn by the offender. The style of the transmitter varies from those that are worn on the ankle to those that are worn on the wrist or around the neck. The ankle transmitting device, which is about the size of a cigarette package and weighs 5 ounces, is strapped just above the ankle with a rubberized watch-type strap which is said to be tamperproof. Although the offender conceivably could remove the

<sup>1</sup> J. Thompson, "Prison Crowding: A Symposium," 78 U. Ill. L.R. 203 (1984).

<sup>2</sup> "Lock 'Em Up? There's No More Room!," 69 A.B.A. J. 1352 (1983).

<sup>3</sup> G. Kennedy, Control Data Corporation, Minneapolis, Minnesota. Interview conducted April 11, 1985.

<sup>4</sup> *Supra* Note 1 at 204.

<sup>5</sup> For a full discussion of the issue, see Conrad and Rector, *Should We Build More Prisons? A Debate*, 1977 National Council on Delinquency (1977).

<sup>6</sup> Corbett and Fersch, "Home As Prison: The Use of House Arrest," *Federal Probation*, March 1985, pp. 13-17.

<sup>7</sup> See G. Newman, *Just and Painful: A Case For the Corporal Punishment of Criminals*, MacMillan (1983).

<sup>8</sup> "California Probation Problems May be Five Years Ahead of Nation," 16 *Corrections Digest*, February 13, 1985, at 7.

<sup>9</sup> *Supra* Note 2 at 1352; *Houston Chronicle*, February 17, 1985, at A22, col. 1; Berry, "Electronic Jails: A New Criminal Justice Concern," 2 *Justice Quarterly*, March 1985 at 3; *Houston Chronicle*, March 13, 1985, at A10, col. 1. The program in Washtenaw County was scheduled to begin April 1, 1985 for a 6-month trial basis.

\*This project was made possible by a grant (#C-ADM-85-010) from the National Institute of Corrections.



device by cutting the strap or stretching it and taking it off over his foot, an electronic circuit within the device detects such tampering and sends an alarm to the receiving unit.<sup>10</sup>

In one program the ankle device is viewed as a part of the punishment process. There is no provision for its removal. While technology exists to make the unit much smaller, advocates of the program do not want the offender to forget that he is wearing it. The weight of the device serves to remind the person of its presence, enhancing its use as a punishment. In one program, out of the 60 people on whom the ankle device has been placed, only 1 has had an adverse physical reaction to it.<sup>11</sup>

The receiver, located in the offender's home, communicates with the control computer through a telephone connection. Like the ankle device, the receiver is designed to be tamperproof. There is an internal battery to supply power in the event the unit is unplugged or the electricity goes off in the home. The receiver communicates with the control computer at randomly selected times. If the message is not sent at the selected time, the control computer automatically calls the receiver to check and alerts the operator if there is a problem. Additionally, the receiver keeps a log of the times the offender comes and goes from the house. To facilitate work-release programs, the computer can be set to allow the person to leave and return home at certain times without triggering an alarm.

The control computer, like the receiver, has an alternate power supply to allow its continued operation in the event the electric service is interrupted. It provides a print-out of the times an individual enters or leaves the area of confinement, thus preserving a record of any violations of the restrictions placed upon him.<sup>12</sup>

The system is reported to be accurate 85 percent of the time in monitoring violations.<sup>13</sup> Inaccurate reports can be generated, according to one user, by power failures or severe thunderstorms that interfere with the telephone line transmissions. One operation problem has been discovered in the system itself. If a person places his body in a fetal position, as sometimes occurs during sleep, and his body mass is between the ankle device and the receiver, the signal is blocked and a false alarm is sent to the computer indicating that the user has left home. When the user rolls over and his body mass is no longer blocking the signal the receiver will indicate he has returned. According to the system supplier, it is necessary

to rely on a human's analytical ability to distinguish between false readings and actual violations.<sup>14</sup>

The system is designed for selective use and is not for everyone. "It is for a select group of non-violent offenders who really want to make it work; it is for the person who has good motivation."<sup>15</sup> In West Palm Beach County, Florida, it was initially utilized only for persons convicted of driving while intoxicated. Currently, approximately 50 percent of the offenders in that program are such persons, while the remainder have been convicted of a broad spectrum of nonviolent misdemeanors. It is used "for people who appear to be those who could make it on the street if their activities were curtailed somewhat. The system is a curfew device, it doesn't control his (the offender's) activities."<sup>16</sup>

Aside from intensive supervision, the system has also been utilized to monitor pretrial detainees who, because of prior record, would normally not be eligible for release on a personal recognizance bond. The system is used in lieu of pretrial detention in jail. In these instances, the alternative is provided only to those nonviolent offenders who have a permanent place to live and are employed. If there is a shortage of equipment and no units are available the person must remain in jail until his trial if he is unable to post a bond.<sup>17</sup>

The system can be operated either publicly by the probation department or privately on a contract basis with a corporation. Under the second option, the private corporation in effect assumes the duties of a probation department in providing the supervision of the offenders. Additionally, programs can be devised to accept only misdemeanants or only felony offenders or any combination of offense types. The cost of the program can be financed totally by the government or it can be partially paid for by the offender through fees.

### III. Constitutional Issues

#### *Electronic Surveillance*

Supervision of probationers requires a varying degree of surveillance by probation officers. The use of house arrest and monitoring devices to supervise clients must comply with the fourth amendment which prohibits unreasonable searches and seizures. That amendment provides the foundation for cases decided by the United States Supreme Court which involve the use of electronic surveillance. Since 1928, the United States Supreme Court has decided a series of cases which indicate the parameters within which electronic surveillance and devices may be used.

The seminal case in electronic surveillance is *Olmstead v. United States*,<sup>18</sup> decided in 1928. In *Olmstead*, the Court held that a wiretap executed without an accompanying trespass in an individual's home was not a

<sup>10</sup> *Supra* Note 3.

<sup>11</sup> F. Rasmussen, Pride, Incorporated, West Palm Beach, Florida. Interview conducted April 11, 1985.

<sup>12</sup> *Supra* Note 3.

<sup>13</sup> *Supra* Note 11.

<sup>14</sup> *Supra* Note 11.

<sup>15</sup> *Supra* Note 3.

<sup>16</sup> *Supra* Note 11.

<sup>17</sup> *Supra* Note 11.

<sup>18</sup> 227 U.S. 438 (1928).

fourth amendment violation. The central issue of trespass, on which *Olmstead* was based, formed the basis for two subsequent decisions dealing with the use of electronic "bugging" devices. *Goldman v. United States*,<sup>19</sup> involved police officers who electronically monitored a conversation through a wall of an adjoining office. In *On Lee v. United States*,<sup>20</sup> a former-friend-turned-informant, who was wired with a transmitting device, entered the defendant's laundry with defendant's consent. In both cases the Court held that the electronic surveillance was constitutional because there was no trespass to property.

The modern landmark case on electronic surveillance and its fourth amendment restrictions was decided by the Court in 1967. In *Katz v. United States*,<sup>21</sup> government agents, without the defendant's knowledge or consent, attached a monitoring device to the outside of a public telephone booth and recorded only the defendant's conversation. The Court ordered the tape recorded evidence excluded because no warrant had been issued authorizing the surveillance. Overruling *Olmstead* and *Goldman*, the Court held that the absence of a trespass into the public telephone booth did not justify violating the defendant's "reasonable expectation of privacy," saying that "the Fourth Amendment protects people, not places."<sup>22</sup> *Katz* is significant because it eliminated trespass as a requirement for unconstitutionality. More importantly, it made the right to privacy in effect portable in that such right now attaches to a person rather than to a protected place. The *Katz* case has been the foundation upon which recent right to privacy cases have been decided.

The *Katz* decision did not overturn *On Lee*, although some lower courts held otherwise. In deciding a case similarly circumstanced, *United States v. White*,<sup>23</sup> the Court reaffirmed the decision in *On Lee*. In *White*, an informer had consented to wear a microphone and have his conversations with the defendant recorded. The Court held that no fourth amendment violation had occurred because a defendant does not have a "justifiable and constitutionally protected expectation that a person with whom he is conversing will not then or later reveal the conversation to the police."<sup>24</sup> The Court believed that if there was no reasonable expectation of privacy, the use of electronic equipment to record the conversation could

not be construed as creating a violation of the defendant's constitutional rights.

In *Berger v. New York*,<sup>25</sup> the Court dealt specifically with the constitutional requirements for a wiretap. It held that the language of a New York statute authorizing wiretapping was too broad and therefore violative of rights under the 4th and 14th amendments. The Court went on to say that a valid warrant authorizing any form of electronic surveillance, including wiretapping, must satisfy the following requirements: (1) The warrant must describe with particularity the conversations which are to be overheard; (2) A showing of probable cause to believe that a specific crime has been or is being committed must be made; (3) The wiretapping must be for a limited period of time; (4) The suspects whose conversations are to be overheard must be named; (5) A return of the warrant must be made to the court, showing what conversations were intercepted; and (6) The wiretap must terminate when the desired information has been obtained. In very specific terms, *Berger* spelled out the constitutional requirements for electronic surveillance. States have since complied with these requirements by statute or court decisions.

### Federal Legislation

In 1968 Congress passed Title III of the Omnibus Crime Control and Safe Streets Act to regulate the electronic and mechanical interception of wire and oral communications. That law requires law enforcement officials to obtain a court order to intercept wire and oral communications. The act governs only the interception of *contents* of oral or wire communications and therefore leaves open a wide variety of other electronic surveillance devices which may be utilized without obtaining a court order.<sup>26</sup> Title III regulates only the interception of the contents of oral and wire communications, hence the use of monitoring devices which track locations of people, absent any state enacted statute, is governed only by the Constitution.

In 1977, the Supreme Court, in *United States v. New York Telephone Co.*,<sup>27</sup> directly addressed the issue of whether or not Title III applied to governmental use of pen registers. In that case the Court found that such devices are not regulated by the act because they do not intercept actual telephone conversations, but merely record telephone numbers dialed from a telephone. Two years later, in *Smith v. Maryland*,<sup>28</sup> the constitutional issue of whether or not the use of pen registers constituted a search within the meaning of the fourth amendment was resolved. The Court held that the attachment of a pen register at the telephone company office to record the numbers dialed on a phone did not constitute a search because there was no legitimate expectation of privacy.

<sup>19</sup> 316 U.S. 129 (1942).

<sup>20</sup> 343 U.S. 747 (1952).

<sup>21</sup> 389 U.S. 347 (1967).

<sup>22</sup> *Id.* at 351.

<sup>23</sup> 401 U.S. 745 (1971).

<sup>24</sup> *Id.* at 749. See also *Hoffa v. United States*, 385 U.S. 293 (1966). Court held the Constitution does not protect a person's misplaced belief that a person he reveals illegal activities to will not later reveal them to police.

<sup>25</sup> 388 U.S. 41 (1967).

<sup>26</sup> 18 U.S.C. 2510-2520 (Codified 1976).

<sup>27</sup> 434 U.S. 159 (1977).

<sup>28</sup> 442 U.S. 735 (1979).



*United States v. Knotts*,<sup>29</sup> decided in 1983, represents the first time the Supreme Court considered the use of "beeper"<sup>30</sup> devices to trace the location of an object or person. In that case a "beeper" was placed in a container of chemicals which was later purchased by the defendant for use in the manufacture of drugs. Police followed the defendant by utilizing the beeper and located a cabin where he was staying. The Court held that there is no reasonable expectation of privacy as to a person's movement on public highways and therefore no search occurred. The Court did not rule on whether the installation of the "beeper" was constitutional because *Knotts* did not raise the issue. Prior to *Knotts*, the lower court's decisions on the utilization of electronic surveillance devices to track a vehicle on a public highway generally held that no warrant need be obtained.<sup>31</sup>

A year later, in *United States v. Karo*,<sup>32</sup> the Court addressed an issue left unanswered in *Knotts*—whether the use of a "beeper" would constitute a search under the fourth amendment if it revealed information that could not have been obtained through visual surveillance. In *Karo*, government agents learned from an informer that the defendants had ordered a quantity of ether for use in manufacturing cocaine. The agents supplied to the manufacturer a canister containing a beeper which was later sold to the defendants. Installation of the beeper did not constitute a violation of the fourth amendment. The can belonged to the government agents at the time the beeper was installed and therefore the defendants could not have had any legitimate expectation of privacy in it. Even if the beeper had been placed in one of the canisters owned by the manufacturer, the consent of the manufacturer to its placement would have been sufficient to comply with the requirements of the fourth amendment. The Court also held that the transfer of the canister to the defendants, under these circumstances, did not constitute a search or a seizure.

While concluding that no fourth amendment right was infringed by the installation of the beeper or the transfer of the canister containing the beeper to the defendants, the Court found that their privacy interests were violated by the monitoring of the beeper. Over a period of several months the electronic device was utilized to monitor the movement of the canister until agents obtained a search warrant for the home of one of the defendants. The device was used not only to track movements of the canister in public places, but to confirm that it was located in a specific residence, information that could not have

been obtained by observation from outside the curtilage of that residence.

*Karo* differs from *Knotts* in that in *Knotts*, the beeper was utilized to monitor the movements of the automobile and the arrival of the canister in the area of the cabin, something that could have been done by the naked eye. The beeper was not utilized to monitor the canister while it was inside the cabin. In *Karo* the beeper was used to monitor the canister inside the residence belonging to the defendant, something which could not be done by the naked eye alone. It is this distinction, monitoring in a private versus a public place, which constitutes a violation of the right to privacy.

The aforementioned cases indicate that the use of electronic devices by law enforcement officials does not constitute a search within the meaning of the fourth amendment when there is no interception of oral or wire communication and when the device does not reveal information that could not have been obtained through visual surveillance. It could therefore be argued that the use of an electronic device which merely indicates whether a person is complying with his curfew restriction, would not constitute a search. The ankle device currently utilized as a condition of probation is not capable of monitoring conversations, nor can it determine what the individual is doing inside the confines of his home. Its sole purpose is to ensure that the probationer is complying with the conditions of probation. It is true that the ankle device generates information which could not otherwise be obtained by visual surveillance, but that alone should not taint the device because its installation is with the client's consent. Additionally, under a system of house arrest and under most probation conditions, the officer would have a right anyway to verify whether the person is complying with such restrictions through visual surveillance and unannounced home visits. The use of the ankle device, therefore, merely enhances the ability of the officer to conduct surveillance even in a place where a client has a "reasonable expectation of privacy"; something which a probation officer is generally authorized to do.

Fourth amendment protection for persons incarcerated is less than that afforded the public at large. In *Hudson v. Palmer*,<sup>33</sup> the Court said that the fourth amendment right against unreasonable searches and seizures affords an inmate absolutely no protection for searches and seizures in his cell. Courts have traditionally been reluctant to interfere with searches in prisons and jails, particularly where the security and orderly operation of the institution is at stake. The use of electronic devices to record and monitor the private conversations of prisoners is one of many areas where the needs of the institution have been held to justify what would otherwise have been an impermissible practice if noninstitutionalized individuals were involved. In *Lanza v. New York*,<sup>34</sup> the

<sup>29</sup> 460 U.S. 276 (1983).

<sup>30</sup> A "beeper" is a transmitting device which emits a signal to a receiver which allows a person to determine the location of the beeper.

<sup>31</sup> See *United States v. Brock*, 667 F.2d 1311 (9th Cir. 1982), cert. denied, 103 S.Ct. 1271 (1983); *United States v. Sheikh*, 654 F.2d 1057 (5th Cir.), cert. denied, 455 U.S. 991 (1982); and *United States v. Michael*, 654 F.2d 252, (5th Cir.), cert. denied, 454 U.S. 950 (1981).

<sup>32</sup> 104 S. Ct. 3296 (1984).

<sup>33</sup> 35 Cr.L. 3230 (1984).

<sup>34</sup> 370 U.S. 139 (1962).

Supreme Court noted that a jail shares none of the attributes of privacy of a home, an automobile, an office, or a hotel room. And in *Bell v. Wolfish*,<sup>35</sup> a case involving the rights of pretrial detainees, the Court said that any expectation of privacy of a prisoner necessarily would be of a diminished scope.

### *Constitutionality of Probation Conditions—in General*

As a general rule, the authority granting probation has broad discretion in setting terms and conditions. Restrictions on constitutional liberties which have been upheld by the courts include warrantless searches by probation officers, freedom of association, freedom to travel, requiring the regular reporting to a probation officer, regulating the freedom to travel, change jobs, or choose a residence.<sup>36</sup> The courts have held that a probationer may be subject to these restrictions as a condition of receiving the privilege of probation even though they could not be imposed upon the citizenry in general. "The court may surround probationers with restrictions and requirements which a defendant must follow to retain his probationary status."<sup>37</sup>

Most state statutes suggest probation conditions which are optional with the sentencing judge. In the aggregate, decided cases show that there are four general elements for the validity of a probation condition. These are:

1. The condition must be protective of society and/or rehabilitative of the probationer;
2. The condition must be clear;
3. The condition must be reasonable; and
4. The condition must be constitutional.

Protection of society and/or rehabilitation of the probationer are all-encompassing and convenient justifications for the imposition of a condition. Because justifications are easy to establish, challenges to probation conditions seldom succeed. Just about any probation condition can be broadly justified as either protective of society or rehabilitative of the individual. These two rationales may, however, be antithetical in that what may be protective of society may not necessarily be rehabilitative of the individual. In these cases courts balance the interests involved on a case-by-case basis. Protection of society and rehabilitation of the client are such strong justifications that they may validate conditions which are otherwise violative of fundamental rights.

This was implied in *Porth v. Templar*,<sup>38</sup> where the Tenth Circuit Court of Appeals said that probation conditions must bear a relationship to the treatment of the offender and protection of the public. The court then added that "The case stands for the proposition that absent a showing of a reasonable relationship between a release condition and the purpose of release the abridgement of a fundamental right will not be tolerated."<sup>39</sup>

The second requirement for the validity of a probation condition is that the condition must be clear, meaning that the probationer must know what acts are violative of the condition. In *Panko v. McCauley*,<sup>40</sup> the condition forbidding the probationer from "frequenting" establishments selling alcoholic beverages was not upheld because there was no evidence that the probationer understood what that term meant. This case implies that there may be a duty to explain conditions of probation which are unclear.

Reasonableness mandates that the condition be fair and can be carried out properly. For example, a probationer was ordered to abstain from alcohol for 5 years. Evidence that he was an alcoholic led the court to deny probation revocation when the condition was violated, the court claiming unreasonableness because of the probationer's condition.<sup>41</sup> Similarly, a former serviceman convicted of accepting kickbacks was placed on probation on condition that he forfeit all personal assets and work without compensation for 3 years or 6,200 hours. The condition was struck down as unduly harsh in its cumulative effect.<sup>42</sup>

Conditions which are unconstitutional are invalid unless validly waived. A waiver obtained where the alternative is incarceration is not always a voluntary waiver, particularly if it involves the violation of a fundamental right. The courts are particularly protective of first amendment rights, such as the freedoms of religion, speech, press, and association. In one case, the court held that a condition which requires a convicted person to attend church services is improper.<sup>43</sup> The same is true with conditions limiting freedom of speech, unless there is a showing of a reasonable relationship between the release condition and the abridgement of a fundamental right.<sup>44</sup>

The use of electronic surveillance needs to be analyzed in the context of the above requirements. Arguably, the wearing of an electronic device is protective of society and rehabilitative of the individual. Setting a curfew for a convicted offender might protect society and instill a sense of discipline which can be rehabilitative for the probationer. Clarity of conditions poses no problem in electronic surveillance cases because the client obviously knows what is happening and how the condition might be breached. Where the practice may run into probable difficulties is in the reasonableness and constitutionality requirements. Reasonableness is closely linked to the

<sup>35</sup> 411 U.S. 520 (1979).

<sup>36</sup> See R. del Carmen, *Potential Liabilities of Probation and Parole Officers*, 34-37 (1982).

<sup>37</sup> *State v. Smith*, 542 P.2d 1115, (Ariz. S.Ct. 1975).

<sup>38</sup> 453 F.2d 330 (10th Cir. 1971).

<sup>39</sup> Note, "Fourth Amendment Limitations on Probation and Parole Supervision," 1976 Duke L.J. 71, 75 (1976).

<sup>40</sup> 473 F. Supp. 325 (D.C. Wisc. 1979).

<sup>41</sup> *Supra* Note 36, at 37.

<sup>42</sup> *Supra* Note 36, at 36.

<sup>43</sup> *Id.*

<sup>44</sup> *Sobell v. Reed*, 327 F. Supp. 1294 (S.D.N.Y. 1971).

Equal Protection provision of the 14th amendment, basically meaning that the requirement be fair and just. There is nothing inherently unfair or unjust with electronic surveillance when viewed in isolation, but when applied to an aggregate where financial capability becomes a determinant to obtaining probation, equal protection considerations might arise, particularly where no provisions are made for accommodating indigent defendants.

Of even greater concern than reasonableness are questions concerning the constitutionality of the condition, viewed in the light of specific constitutional provisions. Electronic surveillance therefore needs to be analyzed in the context of constitutional guarantees, specifically the following rights: privacy, self-incrimination, cruel and unusual punishment, equal protection, and warrantless searches.

### *Right to Privacy*

It is axiomatic that the rights of probationers are limited; the courts have consistently held that they have a limited expectation of privacy. In one case, a probationer who was required to report his employment and financial condition to his counselor argued that his right of privacy was being violated. In rejecting his argument, the court said that some restrictions on privacy were permissible in order to accomplish the legitimate goal of monitoring the behavior of probationers.<sup>45</sup> In other cases, the right to privacy has been invoked to challenge conditions restricting contact with family members or barring pregnancy or marriage.<sup>46</sup>

Conditions of probation which infringe on the privacy rights of the probationer are examined by the courts under a doctrine of *reasonableness* to determine if they are designed to meet the rehabilitation needs of the offender or if they serve the interests of the state or public in maintaining order. The electronic device currently used is designed to enforce curfew and travel restrictions, both of which the courts have upheld as valid conditions of probation. In reality, all the device does is allow the probation officer to become more proficient at enforcing curfew and travel limitations. Theoretically, the officer could watch each probationer to ensure that he is complying with those restrictions. The courts have refused to hold that scientific enhancement raises any constitu-

tional issues which visual surveillance would not also raise. In *Knotts* the Court refused to equate police efficiency with unconstitutionality and rejected the petitioner's argument that scientific devices (in this case a "beeper" used to show location) are unconstitutional. In the *Karo* case the Court reaffirmed that doctrine. It did not find that the use of the device was unconstitutional, only that the manner in which it was used was unlawful. It follows, therefore, that if the conditions of probation are reasonable, the use of technology to enhance the probation officer's efficiency in enforcing them would not be unconstitutional. All the technology accomplishes is increased surveillance proficiency.

### *The Right Against Self-Incrimination*

The fifth amendment provides that no person may be compelled in a criminal proceeding to be a witness against himself. In probation, this right has been invoked in cases where an offender is required to answer a counselor's questions,<sup>47</sup> submit to a search by a probation counselor or policeman,<sup>48</sup> or provide a juror or prosecutor with information.<sup>49</sup>

Conviction does not remove or lessen a person's constitutional right not to testify against himself. Two courts of appeals recently were faced with probation conditions regarding tax returns. In one case, a probationer was ordered to file tax returns despite his claim of a fifth amendment privilege.<sup>50</sup> In the other, a probationer was ordered to file amended tax returns.<sup>51</sup> The first of those conditions was held to be improper, while the second was upheld. In the latter case, while the filing of amended returns was called for—and presumably complete returns were what the court had in mind—there was no attempt to interfere with the probationer's possible exercise of a constitutional right; he could comply with the condition, literally, and on the amended return claim his fifth amendment privilege. This would not violate the condition, hence probation could not be revoked for exercising an explicit right. In the former case, however, the mere assertion of the right not to incriminate himself placed the probationer in danger of revocation.

Another fifth amendment issue arises when the probationer is required by a condition, such as regular polygraph tests, to disclose information which could be used in a new criminal proceeding. In these cases, the result of a fifth amendment challenge to the condition has turned on: (1) whether the government could reasonably have expected incriminating evidence to be forthcoming, (2) whether use immunity was promised, and (3) whether fifth amendment rights were voluntarily, knowingly, and intelligently waived.<sup>52</sup>

In *Minnesota v. Murphy*,<sup>53</sup> the Supreme Court clarified the muddled waters on this issue, saying that a state "may validly insist on answers to even incriminating

<sup>45</sup> *United States v. Manfredonia*, 341 F. Supp. 790 (S.D.N.Y.), affirmed, 439 F.2d 1392 (2nd Cir.), cert denied, 409 U.S. 851 (1972).

<sup>46</sup> *State v. Livingston*, 53 Ohio App. 2d 195 (1976).

<sup>47</sup> *State v. Johnson*, 202 NW 2d 132 (1972).

<sup>48</sup> Note, "The Search and Seizure Condition of Probation: Supervisory or Constitutional?" 22 South Dakota L. Rev. 199 (1977), as cited in N. Cohen and J. Gobert, *The Law of Probation and Parole* (1983).

<sup>49</sup> See in general N. Cohen and J. Gobert, *The Law of Probation and Parole* (1983).

<sup>50</sup> *United States v. Conforte*, 624 F.2d 869 (9th Cir.) cert denied, 449 U.S. 1012 (1980).

<sup>51</sup> *United States v. McDonough*, 603 F.2d 19 (7th cir. 1979).

<sup>52</sup> See R. V. del Carmen, *Potential Liabilities of Probation and Parole Officers*, revised edition, 103 (1985).

<sup>53</sup> 104 S.Ct. 1136 (1984).

questions and hence sensibly administer its probation system, as long as it recognizes that the required answers may not be used in a criminal proceeding and thus eliminates the threat of incrimination."<sup>54</sup> The Court added that "a defendant does not lose this Fifth Amendment protection by reason of his conviction of a crime; notwithstanding that a defendant is imprisoned or on probation at the time he makes incriminating statements, if those statements are compelled they are inadmissible in a subsequent trial for a crime other than that for which he has been convicted."<sup>55</sup>

Whether or not the fifth amendment protects a probationer against self-incrimination generally depends on the type of proceeding wherein the evidence is to be used. If the evidence is to be used in a revocation proceeding, the fifth amendment argument usually fails. On the other hand, if the claim is raised in a subsequent criminal trial, the claim is usually upheld.<sup>56</sup>

In the case of electronic devices, violation of the right against self-incrimination is remote for a number of reasons. The evidence obtained will be used only for purposes of revocation since only a probation condition is violated and no criminal act is involved. The device certainly serves the system's needs, particularly the need to monitor the activities of a probationer and to help control burgeoning prison populations. An even stronger reason is that such devices do not *per se* violate the right against self-incrimination because what that right protects is merely the right against testimonial, not physical self-incrimination.<sup>57</sup> If any incrimination at all is involved in the use of an electronic device, such incrimination is physical, not testimonial. Some cases appear to indicate, however, that when the probation conditions require incriminating information, the fifth amendment entitles the client to some form of immunity against the use of the evidence obtained.<sup>58</sup>

### *Cruel and Unusual Punishment*

The eighth amendment of the Constitution proscribes cruel and unusual punishment. Although the provision is often invoked in prison cases, it is seldom used in probation perhaps because the terms of probation are seldom severe or oppressive. Nonetheless, some cases have held that conditions which are excessively harsh or impossible to comply with may fall under this category.<sup>59</sup> In one

case, the condition that the defendant leave the country was deemed cruel and unusual, hence unconstitutional;<sup>60</sup> similarly, a condition that an alcoholic refrain from drinking was found to be unconstitutional.<sup>61</sup>

The use of an ankle device does not appear to violate the cruel and unusual punishment standard used by the courts in corrections cases.<sup>62</sup> Its effects are not oppressive, nor does it subject the user to humiliation or degradation. Compared to incarceration, it is certainly less restrictive and much more humane.

### *Payment of Costs and Equal Protection*

Requiring probationers, as a condition of probation, to reimburse the state for its costs has been upheld by the state courts. In *Arizona v. Smith*,<sup>63</sup> the state appeals court allowed the imposition of a probation condition that the defendant spend 30 days in the county jail and pay for the cost of that incarceration. The condition was allowed, even though there was no specific statutory authorization to do so. The decision was justified under the broad discretion of the court to determine conditions of probation. In that case, there was no claim of indigency on the part of the defendant.

Under a slightly different set of facts, the Arizona Court of Appeals in 1982 considered the issue of requiring payment of costs as a condition of probation. The court found that:

To require a probationer to help defray the state's costs of supervising his probation should be beneficial in the rehabilitation of the defendant, and such reimbursement into the probation fund will strengthen the criminal justice system's ability to finance its probation services. We find there is nothing unconstitutional in the Arizona Legislature enacting legislation that requires a financially capable probationer to help defray the state's cost of maintaining him while on probation.<sup>64</sup>

The courts, in these cases, have held that a probationer who is not indigent may be required to repay costs. The decisions are based on the rationale that such a requirement is directly related to the rehabilitative goal of probation and that it serves a legitimate state interest.

A slightly different situation is presented in probation revocation cases when the probationer is unable to pay court costs or restitution. In *Bearden v. Georgia*,<sup>65</sup> decided in 1983, the Court held that a judge cannot properly revoke a defendant's probation for failure to pay a fine and make restitution—in the absence of evidence and finding that the probationer was somehow responsible for the failure or that alternative forms of punishment were inadequate to meet the state's interest in punishment and deterrence. In essence, the decision holds that a probationer can be revoked for refusing, but not for inability caused by indigency, to pay restitution and court costs.

In at least one system currently in operation, the probationer is required to pay the costs of utilizing the ankle

<sup>54</sup> *Id.* at 1147.

<sup>55</sup> *Id.* at 1142.

<sup>56</sup> *Supra* Note 49, at 236.

<sup>57</sup> *Schmerber v. California*, 384 U.S. 757 (1966).

<sup>58</sup> *Supra* Note 49, at 234.

<sup>59</sup> *Supra* Note 49, at 215.

<sup>60</sup> *Dear Wing Jung v. United States*, 312 F.2d 73 (9th Cir. 1962).

<sup>61</sup> *Sweeny v. United States*, 353 F.2d 10 (7th Cir. 1965).

<sup>62</sup> See Legal Responsibility and Authority of Corrections Officers, American Correctional Association, 51-53 (1982).

<sup>63</sup> 576 P.2d 533 (Ariz. App. 1978).

<sup>64</sup> *State v. Means*, 654 P.2d 29 (Ariz. App. 1982) at 32.

<sup>65</sup> 33 CrL 3103 (1983).

device to monitor his presence in the home during the required hours.<sup>66</sup> It is in this area that a challenge under the Equal Protection clause of the 14th amendment is foreseen. Prior court decisions which have upheld the requirement that offenders reimburse the state for financial costs dealt with offenders who could afford to pay. The issue is different when indigent defendants who would have been eligible for probation must face incarceration because they cannot afford to pay. This presents a real problem because a monitoring device at present costs approximately \$5 per day.<sup>67</sup> The Court has said that "there can be no equal justice where the kind of trial a man gets depends on the amount of money he has."<sup>68</sup>

#### *Warrantless Searches*

"With few exceptions it has been held that the United States Constitution is not violated by the requirements that a probationer submit to warrantless searches as a condition of probation."<sup>69</sup> The courts, however, disagree to whether the requirement is valid as to searches by probation officers only, or whether the probationer may be required to submit to warrantless searches by police officers as well.

The Ninth Circuit Court of Appeals ruled in *United States v. Consuelo-Gonzalez*,<sup>70</sup> based upon the Federal Probation Act, that Federal probationers are subject to warrantless searches by probation officers only. The court, however, expressly pointed out that states may implement a different rule which would be constitutional, saying:

It is obvious, however, that opinions differ as to what controls are improper, and we express no opinion here regarding the extent to which the states constitutionally may impose conditions more intrusive on the probationer's privacy than those we have here indicated are proper under the Federal Probation Act.<sup>71</sup>

Relying on the above case, the Arizona Supreme Court, in 1977, upheld the imposition of a probation condition allowing a warrantless search by both police and probation officers.<sup>72</sup> That endorsement, however, was qualified by the belief that in the majority of the cases, the probationer should not be required to submit to a warrantless search by police officers in addition to submitting to such searches by probation officers. The court feared that warrantless searches by police might interfere with the rehabilitative effort.

Six years earlier, the California Supreme Court upheld the imposition of the same conditions, finding that the requiring of a narcotics offender to submit to searches by police officers as well as probation officers was reasonably related to the person's prior criminal conduct and was aimed at deterring or discovering subsequent criminal offenses. They reasoned that the offender would be less inclined, under those conditions, to be in possession of narcotics.<sup>73</sup>

Some states, however, are more restrictive. Utah has held that a parole officer may only conduct searches that are rationally and substantially related to the performance of his duties. Warrantless conditions of probation are not a waiver of the probationer's constitutional rights.<sup>74</sup>

While it is not currently foreseen that the use of an ankle device to monitor the presence of the probationer in his home during the required times constitutes a search under the meaning of the fourth amendment, the requirement that a probationer submit to reasonable warrantless searches of his home would authorize probation authorities to utilize the device if the court should sometime in the future determine that its use constitutes a search.

#### *IV. Other Legal Concerns*

##### *The Use of Curfew Restrictions*

In establishing a curfew which requires a person to be in a certain place at a certain time, the courts will generally uphold the condition if it is shown that the restriction will facilitate supervision and discourage harmful association. Such conditions have been viewed by the courts in terms of whether or not they are reasonably related to the rehabilitation of the offender and whether they accomplish the essential needs of the state and public order.

In *State v. Sprague*<sup>75</sup> the Oregon Court of Appeals upheld the imposition of a 10 p.m. curfew of a 20-year-old female after she was convicted of interfering with a friend's arrest during which she struck a police officer. The trial judge determined that her continued association during the late evening hours with her friends would be detrimental to her rehabilitation. Other decisions have upheld a curfew from 10 p.m. to 6 a.m.,<sup>76</sup> while another upheld prohibiting a probationer from driving a car between midnight and 5:30 a.m. on the belief that it would minimize the opportunity to contact persons involved in criminal activities.<sup>77</sup>

The condition, however, must be reasonably related to rehabilitation. The imposition of a curfew for 5 years has been held invalid because there was no showing that it was reasonably related to the rehabilitation of the offender.<sup>78</sup> If the use of a curfew and electronic surveillance is reasonably related to rehabilitation, given

<sup>66</sup> *Supra* Note 11.

<sup>67</sup> *Supra* Note 11.

<sup>68</sup> *Griffin v. Illinois*, 351 U.S. 12 (1956) at 19.

<sup>69</sup> 79 ALR 3d at 1803.

<sup>70</sup> 521 F.2d 259 (9th Cir. 1975).

<sup>71</sup> *Id.* at 266.

<sup>72</sup> *State v. Montgomery*, 566 P.2d 1329 (Ariz. S.Ct. 1977).

<sup>73</sup> *People v. Mason*, 488 P.2d 630 (Calif. S.Ct. 1971).

<sup>74</sup> *Utah v. Valasquez*, 672 P.2d 1254 (Utah S.Ct. 1983).

<sup>75</sup> 629 P.2d 1326 (Or. Ct. App. 1981).

<sup>76</sup> *Johnson v. State*, 291 S.E. 2d 94 (Ga. Ct. App. 1982).

<sup>77</sup> *State v. Cooper*, 282 S.E. 2d 436 (Ga. S.Ct. 1981).

<sup>78</sup> *State v. Labure*, 427 So. 2d 855 (1982).

the offense committed, questions of legality or constitutionality should not be of any major concern.

### *Waiver of Rights and the Right to Refuse Probation*

Court decisions on the validity of waivers of rights in probation and parole cases are mixed. Traditionally, courts have relied on express waivers or have invoked the "act of grace" or "constructive custody" doctrines to strip offenders of most of their constitutional rights.<sup>79</sup> In the last decade, however, courts have re-examined this approach. As a result, new doctrines have emerged such that the whole issue should be considered unsettled. This doctrinal uncertainty is reflected in the cases discussed below, each adhering to differing doctrines. On the one hand, the Court has ruled that a person may pre-waive his rights voluntarily. In *Zap v. United States*<sup>80</sup> the Court said:

The law of searches and seizures as revealed in the decisions of this Court is the product of interplay of the Fourth and Fifth Amendments. But those rights may be waived. And when petitioner, in order to obtain the government's business, specifically agreed to permit inspection of his accounts and records, he voluntarily waived such claim to privacy which he otherwise might have had. . . .<sup>81</sup>

In this case the petitioner had contracted with the government and as a condition of that contract agreed to allow inspection of his records. During an audit of the records evidence was uncovered which led to his conviction for fraud.

Applying the rationale of *Zap*, the Supreme Court of California ruled that when a probationer, in order to obtain probation, specifically agrees to a warrantless search condition, he has "voluntarily waived whatever claim of privacy he might have otherwise had."<sup>82</sup> Note, however, that *Zap* was not a probation or parole case.

Claims that attaching such conditions to probation amount to coercion and not a voluntary waiver of a person's rights have not been favorably received by some courts. In one case, the Nebraska Supreme Court reasoned that:

If acceptance of this term of probation to avoid going to prison amounts to coercion, the same argument would apply equally to any condition attached to the granting of probation, and the coercion rule would consequently invalidate all conditions of probation.<sup>83</sup>

The claim of a New Mexico appellant that the choice between going to prison and signing a probation agreement is no choice, and therefore could not constitute a valid waiver, met a similar fate in that state's court of

appeals. The court refused to even consider the argument, deciding the case on a broader issue, finding that probationers are not automatically granted full constitutional protection. The court held that a probationer's rights are more limited than the rights of a person not on probation.<sup>84</sup> What the court in essence held was that there could have been no coercion, resulting in an invalid waiver, because the appellant was not entitled to the constitutional protection claimed.

Because probation is viewed as a privilege, the state may impose restrictions which aid in the rehabilitative process or prove a reasonable alternative to incarceration as punishment for a crime committed. If the probationer finds the terms and conditions of that probation to be unacceptable, he may reject the probation and ask to be incarcerated instead. The decision to accept or reject probation has been viewed by the courts as constituting a voluntary choice and not coercion. Court decisions take the position that as long as the conditions of probation are reasonable, the probationer is given a free choice to either accept the probation or to reject it and go to jail. Probation reflects the benevolence of the state and no one is forced to accept it; however, if anybody does he may be required to submit to reasonable intrusions by the state.

The above cases indicate that waiver of rights is valid. On the other hand, however, later cases provide some authority for the proposition that a parole or probation condition waiving fourth amendment protection is illegal or ineffective. In one case where a consent to search had been signed by a state parolee, the consent was thrown out by a Federal court in a collateral challenge.<sup>85</sup> The court reasoned that since the prisoner could only secure his release on parole by accepting the condition, his consent was not voluntarily given. The prospect of 8 years of additional confinement was coercive, according to the court.

Even in the Ninth Circuit, which recognizes a waiver condition as valid, the terms of the condition must be narrowly drawn. The Ninth Circuit disapproved as overly broad a condition that appeared to extend the benefits of a Federal probation condition to all law enforcement officers.<sup>86</sup> This holding was based on the coerciveness of the circumstances that gave rise to a consent waiver.

The mere act of agreeing to the terms of probation does not mean that a legal challenge is foreclosed. An example is *Sobell v. Reed*<sup>87</sup> where a Federal parolee asserted that his first amendment rights had been violated by a condition prohibiting him from going outside the limits of the Southern District of New York without permission from the parole officer. On a number of occasions, Sobell sought and obtained permission to travel to and speak at various places; however, on other occasions, such requests were denied. The court held that the

<sup>79</sup> See *U.S. v. Pattman*, 535 F.2d 1062 (8th Cir. 1976).

<sup>80</sup> 328 U.S. 624.

<sup>81</sup> *Id.* at 628.

<sup>82</sup> *People v. Mason*, 488 P.2d 630 (Cal. S.Ct. 1971) at 634.

<sup>83</sup> *State v. Morgan*, 295 N.W. 2d 285 (Nev. S.Ct. 1980) at 289.

<sup>84</sup> *State v. Gallagher*, 675 P.2d 429 (N.M. App. 1984).

<sup>85</sup> *U.S. ex. rel. Coleman v. Smith*, 395 F. Supp. 1155 (W.D.N.Y. 1975).

<sup>86</sup> *U.S. v. Consuelo-Gonzalez*, 521 F.2d 259 (9th Cir. 1975).

<sup>87</sup> 327 F. Supp. 1294 (S.D.N.Y. 1971).

board violated Sobell's exercise of his rights of speech, expression, or assembly, except when it could show that withholding permission was necessary to safeguard against specifically described and highly likely dangers of misconduct by the parolee. In *Porth v. Templar*,<sup>88</sup> a case involving a first amendment right, the Tenth Circuit Court of Appeals stated that probation conditions must bear a relationship to the treatment of the offender and the protection of the public for it to be valid. Reliance on a waiver will therefore not legitimize an otherwise invalid condition. The court added that absent a showing of a reasonable relationship between a release condition and the purpose of release, the abridgement of a fundamental right will not be tolerated. The aforementioned cases imply that release conditions abridging fundamental rights can be sustained only if they serve a legitimate and demonstrated rehabilitative objective. The claim by the state that waiver by the probationer or parolee cures any constitutional infirmity will no longer be upheld consistently.

In the case of electronic surveillance, refusal to waive what primarily amounts to a right to privacy may mean incarceration instead of probation. Using the standard of reasonableness, however, it can be said that diminution of privacy in exchange for freedom is reasonable when the alternative is no freedom at all and a greatly diminished right to privacy in case of incarceration. Moreover, the right to privacy does not enjoy the same degree of protection and preference as do first amendment rights.

<sup>88</sup> 453 F.2d 330 (10th Cir. 1971).

<sup>89</sup> 441 U.S. 520 (1979).

<sup>90</sup> *Id.* at 546.

<sup>91</sup> *Supra* Note 11.

## V. Conclusion

Jails and prisons are overcrowded, and their use as a rehabilitative tool is suspect. There is a growing belief that alternatives to incarceration should be utilized both as a means to alleviate overcrowding and as a more humane and effective form of offender treatment. Technology has provided and shows promise as an alternative to incarceration for those who may be given a second chance to become useful members of society. It provides intensive supervision in the form of movement restriction which regular probation otherwise cannot supply.

Providers of the system foresee a continued growth in its utilization, particularly in any area where there is a court mandated "cap" on the number of prisoners which may be held in a facility.<sup>91</sup> Electronic surveillance technology is relatively new, hence expansion into other areas is still clouded. Whatever the future portends, a review of decided cases in probation and parole indicates that while the use of electronic devices raises constitutional issues, its constitutionality will most likely be upheld by the courts, primarily based on the concept of diminished rights. It is important, however, that the use of electronic devices be governed by specific guidelines that comport with state statutes in those states which have applicable laws. Moreover, the issue of device availability to indigents must be addressed so as to remove any possibility of a successful constitutional challenge based on equal protection. It is this article's conclusion that the constitutionality of the use of electronic devices in probation is strongly defensible. Whether or not such use is cost-effective, politically acceptable, or administratively feasible is an entirely different matter.



# The Cost Effectiveness of Intensive Supervision

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## Introduction

IN RECENT years there has been increased attention given to alternatives to incarceration. In large part this movement has been spawned by the tremendous increase in prison populations and the corresponding costs associated with incarceration—both of which stand at all time highs. In an attempt to offset or at least alleviate the rising prison populations and costs, many states have begun to explore the merits and cost effectiveness of such alternatives to incarcerating offenders as halfway houses, furlough programs, shock probation and shock parole, and intensive supervision. In this context, the present article begins by examining the concept of cost-benefit analysis and then reviews what we know about the cost effectiveness of providing intensive supervision to offenders who would otherwise be incarcerated.

## Cost-Benefit Analysis

While the public has demanded tougher sentences, it has become increasingly apparent that the costs associated with higher incarceration rates, longer sentences, and prison construction and maintenance are astronomical. Estimates place the cost of constructing a maximum security prison at approximately \$70,000 per bed, with the cost of maintenance and housing inmates ranging between \$10,000 to \$15,000 per year (Allen, et al., 1986). The acute shortage of prison space has made the prison cell a scarce resource. Many states are faced with severe budget deficits, and legislators and the public are reluctant to vote for new prison construction. Even with some of the massive prison construction projects currently under way, it is projected that there will still be a shortage of prison space. In addition, many jurisdictions are under court order to reduce or limit their prison populations.

Prison crowding has led to a renewed interest in community-based alternatives, and with that interest has also been increased attention to evaluating the effectiveness of these programs. Many previous researchers viewed cost-benefit analysis as an alternative to evaluation research, but as Weiss (1967: p. 84) points out, "essentially it is a logical extension of it." Indeed, recent evaluations have made cost analysis an important part of the research.

In discussing the assumptions and usage of cost analysis, Washington (1976: pp. 19-20) defined the technique in the following manner:

Cost-benefit analysis involves the use of economic theories and concepts. It is designed to tell us why a program or one of its components works in addition to how well it works. The concept of "cost-benefit" defines the relationship between the resources required (the cost) to attain certain goals and the benefits derived.

One of the basic premises of cost-benefit analysis is that many decisions are often made on the basis of how the resources can be most optimally used, avoiding duplication, waste, and inefficiency. Seen in this light, cost-benefit analysis can be a tool for decisionmakers who need to make choices among viable competing programs designed to achieve certain goals. It is important to remember that cost-benefit analysis is not necessarily designed to favor the "cheapest" or the "costliest" program, but rather the optimal program in terms of the available resources and the explicit goals. Unfortunately, the cost-benefit calculus is not a wholly satisfactory tool for evaluating social programs, since it is incapable of accurately measuring "social" cost and benefits (Vito and Latessa, 1979). However, when combined with other measures of program effectiveness and impact, the cost-benefit information can provide policy and decision-makers a valuable instrument.

## Intensive Supervision

Innovations in service-delivery systems, in management techniques, and in strategies for change all have as their basic intent more efficient management of offenders and protection of society. Probation and parole are both supervised freedom and a mechanism for controlling further criminal behavior. In recent years probation and parole departments have directed their attention toward differentiated levels of supervision.

The major assumption underlying differentiated supervision is that, while some offenders may require very little supervision, others will require intensive supervision. Assignment to the different levels of supervision (generally minimum, regular, and intensive) is usually based on an assessment of risk and/or need or classification by some type of offense (Latessa, et al., 1979). Indeed, one of the problems facing intensive supervision is the dilemma of accurately selecting offenders appropriate for higher levels of supervision.

Another issue concerns a lack of agreement as to what constitutes intensive supervision. Simply reducing caseloads and increasing contacts does not necessarily

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result in a higher quality of supervision. The number of cases assigned to an officer, as well as the number of required contacts, can have a tremendous impact on the cost of supervision. Some programs, such as those in Georgia and New Jersey<sup>1</sup> where two officers are assigned caseloads of 10 with contacts made on an almost daily basis, are considerably different than the traditional models of intensive supervision having average caseloads of 25 per officer and an average of four contacts per month.

The philosophy of the program can also have a significant impact on the cost. For example, a program that has a control orientation may require more contacts, but may in fact be cheaper than a program that is treatment oriented. The program that is treatment oriented will either develop in-house programming or rely upon community resources. While these costs may not always be taken into account in figuring cost effectiveness, they certainly exist, as do the corresponding benefits that may accrue.

With the early examples of intensive supervision in the 1960's and early 1970's, offenders were often placed into different levels of supervision with little if any screening or classification. In most cases, these offenders were *already under community supervision*. Unlike previous experiments with intensive supervision, however, the "new generation" of programs now being proposed are specifically designed to reduce prison populations through the diversion of offenders *that otherwise would be committed to penal institutions*. Both the early programs and the new ones share the goal of providing intensive supervision while maintaining community safety at acceptable levels.

### *Previous Research*

Over the years there has been a great deal of interest and debate on the effects of intensive supervision (Robison, et al., 1969; Gottfredson and Neithcutt, 1974; Sasfy, 1975; and Banks, et al., 1977). While much of this effort has been of questionable value (Adams and Vetter, 1974; Latessa, 1979; and Fields, 1984), many of the early programs were designed to test the effectiveness of providing intensive supervision to probationers who would normally receive regular supervision. Most of the research concluded that intensive supervision was not an effective means of reducing recidivism (Banks, et al., 1977).

This earlier research generally ignored the cost effectiveness question. As Banks and others (1977: p. 31) concluded, "Since costs do provide a common denominator in probation evaluation, it is rather surprising that so lit-

tle real analysis has been directed toward them." Fortunately, the recent evaluative efforts have included cost analysis when examining effectiveness and impact of intensive supervision programs.

### *Cost Effectiveness of Intensive Supervision:*

#### *A Review of Program Evaluation Research*

One of the most widely publicized programs in intensive supervision is found in the State of Georgia (Erwin, 1984). This program, which began in 1982, was specifically designed to address the "highly volatile problem of prison overcrowding" found in that state. This program offers perhaps the most "intensive" example to date, with two probation officers assigned caseloads of 10, with at least five contacts per week required.

For 1982-83, the project's program costs were estimated at \$1,375,351. Interestingly, these costs were covered by funds derived from the collection of probation fees. The program evaluators estimated that it cost \$4.37 per day to supervise a probationer under intensive supervision, with the average cost of \$694.83 per offender during the program period. This compared to \$29.63 per day incarceration costs or an average of \$25,215.13 per offender had the offender been incarcerated. It should also be noted that the daily cost for regular supervision in Georgia was estimated at \$.75 per day. The evaluators of the Georgia project also provided an estimation of the benefits accrued. These included the probationers' net earning, taxes, restitution, court costs and fines, probation fees, and community service hours valued at minimum wage. Overall, they estimated the dollar value of these benefits at \$1,456,256.93. The Georgia evaluators stated that "if these offenders had been incarcerated this income production would have been impossible and we must assume that families would necessarily have sought support from other sources including welfare assistance" (Erwin, 1984: p. 66).

Another program similar to the Georgia model is found in New Jersey (Pearson, 1985). Offenders are selected for intensive supervision after they have served 3 to 4 months of their sentence. The primary purpose of the program is to reduce prison overcrowding. One of the paramount goals was to run the program at costs significantly lower than the costs of incarceration.

The New Jersey program costs were estimated at \$7,000 per offender-year, while prison costs were roughly \$17,000 per offender-year. New Jersey evaluators also concluded that the benefits exceeded the costs of the program, and there are plans for a more extensive cost-benefit analysis (Pearson, 1986).

One of the more recent experiments in intensive supervision is located in Kentucky. Although this program has only been in operation since 1984, some preliminary findings are available. In Kentucky program includes both

<sup>1</sup> With the New Jersey model each offender must obtain a community sponsor in addition to his probation officer.

early parole releases and shock probationers. One of the main objectives of the program is to provide substantial savings to the commonwealth through more appropriate use of prison beds. Figures available after the first 12 months of operation indicated that \$438,981 including supervision fees were saved the commonwealth. Wetter (1985: 18) concluded that "beds freed by the ISP can now be used to help overcome the very serious overcrowding situation that faces the State."

All of the above programs are found in states that have centralized probation services. This facilitates the development and implementation of intensive supervision projects. There is little incentive for a county or municipal probation department to develop such a program, since under normal circumstances it would simply increase their costs.<sup>2</sup> In order to provide the necessary inducements, several states have developed probation subsidy grants to local jurisdictions. One such state is Ohio, which has made available funds to the larger counties in the state to reduce their commitment rates. One of the first counties to take advantage of these funds was Lucas County (Toledo, Ohio). Beginning in 1978, this county developed an intensive supervision program designed to reduce the commitment rate from the county, while at the same time operating at a cost less than that for traditional incarceration. This program has been evaluated over a 6-year period and has documented cost savings to the state of \$2,258,582 (Latessa, 1985).

Based on the first 4 years of program operation, an analysis was conducted in which the cost savings demonstrated by the Lucas County program were retrospectively applied to the five largest counties in Ohio (Latessa, 1985a). This analysis illustrated that a total of \$9,202,009 could have been saved the state had a similar program been in operation in these counties during the same time period. In 1984 the State of Ohio made funds available to four of the five largest counties in the State.<sup>3</sup>

In order to test the effectiveness of intensive supervision with regular probationers, the National Institute of Justice funded an experimental project in Milwaukee, Wisconsin beginning in 1978. This program included the random selection of probationers into three levels: normal, limited, and intensive. Although it was difficult to interpret the findings, with regard to cost benefits of the program the researcher (Systems Sciences, 1982: 20) drew a number of conclusions:

1. The cost of monitoring an offender on probation for a year is low, especially when compared with the costs of maintaining an offender in prison for a year.
2. Experimental supervision and service unit cost per probationer-year amounted to \$615 versus \$750 for normal service.
3. The cost benefits of the intensive service model for high risk probationers give mixed results but on balance still represent a good buy for the probation system.

Finally, one additional evaluation that reported cost-benefit results involved the use of intensive supervision to low risk parolees who were granted early release. In 1976 the State of Washington initiated the Intensive Parole Program to provide a "well structured alternative to lengthy incarceration for low-risk felons" (Fallen, et al., 1981: p. ix). Prisoners were released after an average of 3 months to the supervision of a specially trained parole officer who had a maximum caseload of 20. The results related to recidivism were generally positive, and the cost-benefit analysis revealed some interesting findings.

Cost comparisons included the costs of incarceration, parole supervision, clerical support, public transfer payments, community resources, and recidivism costs. The evaluators found that the average cost per intensive parolee (in 1975 dollars) was \$5,546. This was compared to \$11,599 for the matched control group of parolees released to regular caseloads. The difference was due primarily to the average 1 year longer prison stay for this group. Evaluators also found a slightly lower recidivism cost of the intensive group, \$919 versus \$1,319, which was attributed to the fact that intensive parolees were more likely to be revoked for a technical violation only. The intensive group did have a slightly higher absconder cost (\$654 versus \$226), due to more serious efforts to locate these offenders. The evaluators did not find a difference between the intensive group and the matched control group in average per diem earnings while on parole.

Overall, the researchers were cautious in concluding that intensive parole was cost effective. They did not include the cost of imprisonment and reparole subsequent to revocation of intensive parole. This, of course, would diminish the \$6,000 difference between the groups. Nonetheless, they did conclude that because of overcrowded penal institutions and the fact that intensive parole did divert offenders from prison, the state potentially saved millions in capital construction. Finally, they added: "The costs in both probable litigation and in terms of human misery and sufferings have been and can continue to be alleviated through the use of the intensive parole alternative" (Fallen et al., 1981: p. 48).<sup>4</sup>

<sup>2</sup> If a local probation department were to reduce caseloads it would require additional probation officers, and while the state would still enjoy a potential cost savings, the burden would fall on the county or municipal government.

<sup>3</sup> These counties include the cities of Cleveland, Columbus, Akron, Dayton, and Toledo.

<sup>4</sup> No information was available concerning the impact of this project on the overall operating budget.

### Conclusions

The above review illustrates the potential for demonstrating the cost effectiveness of intensive supervision projects. There are, however, a number of assumptions that are implicit in these cost analyses. First is the assumption that community supervision is a cheaper alternative than prison. A number of studies have documented this assertion (Frazier, 1972; Nelson, 1975); and while it is difficult to measure all of the benefits, it is widely accepted that incarceration is more costly than community supervision.

The second assumption, and one that is more directly related to the new generation of intensive supervision programs, is that the offenders being diverted would have been incarcerated (or that those being released early on parole would have been incarcerated for a longer period of time). This assumption is critical if a cost effective argument is going to be made for intensive supervision, since it has not been established conclusively that intensive supervision reduces recidivism rates. It is quite obvious that if a probation or parole department were simply to reduce caseloads and provide increased service provisions to offenders who would normally qualify for regular supervision, the net result would be an increase in cost since additional officers would be needed. In all of the studies examined above, there was ample evidence that the offenders involved in the projects were in fact diverted from prison.

A final assumption is that the secondary costs and benefits can be accurately and quantitatively measured. This is much easier said than done. Incarcerated offenders do not pay taxes, and their families frequently draw welfare benefits. There are also the psychological effects of alienation/prisonization, social stigma, and other detrimental effects upon the prisoner's marriage and family. On the other hand, they do not draw unemployment should they otherwise be eligible, and perhaps the most difficult calculations concern the cost of new crimes. It is virtually impossible to place a dollar figure on the cost to a victim, particularly if the crime is a personal offense; indeed, how does one quantify the fear that accompanies a criminal offense? Similarly, benefits generated by release to the community could include wages, taxes, restitution, and reduced crime or recidivism rates. This is not to say that secondary costs and benefits cannot be measured or that they should be ignored, but the fact remains that it is a very difficult and time consuming process that will likely yield rough estimations at best.

Cost-benefit analysis has become a critical feature of community alternative evaluations. The next step should include a more systematic attempt to measure the full range of costs and benefits of programs like intensive

supervision. Comprehensive cost-benefit analysis would allow for more informed policy decisions. As Travis (1984: p. 34) stated: "If cost data support the continuation of intensive supervision programs, it will be less difficult to garner the legislative support required for their development and expansion."

While costs are only one of the issues facing policy-makers, the evidence to date clearly suggests that the "new generation" of intensive supervision programs can help relieve prison overcrowding at an acceptable cost.

### REFERENCES

- Adams R. and H.J. Vetter (1971) "Effectiveness of Probation Caseload Sizes: A Review of the Empirical Literature," *Criminology* 8 (4): 333-343.
- Allen, H.E., E. Latessa, and G.F. Vito (1986) "Corrections in the Year 2,000 A.D. Revisited," paper presented at the annual meeting of the Western Society of Criminology, Newport Beach, California, February 1986.
- Banks, J., A.L. Porter, R.L. Rardin, T.R. Siler, and V.E. Unger (1977) *Summary Phase I Evaluation of Intensive Special Probation Project*, Washington, D.C.: National Institute of Law Enforcement and Criminal Justice, L.E.A.A., U. S. Department of Justice.
- Erwin, B. (1984) *Georgia's Intensive Probation Supervision Program: First Year Evaluation*, Atlanta: Georgia, Department of Offender Rehabilitation.
- Fallen, D., C. Apperson, J. Holt-Milligan, and J. Roe (1981) *Intensive Parole Supervision*, Olympia, Washington: Department of Social and Health Services, Analysis and Information Service Division, Office of Research.
- Fields, C. (1985) "Evaluating Intensive Probation Programs: An Examination of Methodological Deficiencies," paper presented at the annual meeting of the Academy of Criminal Justice Sciences, Las Vegas, Nevada, April 1985.
- Frazier, R.L. (1972) *Incarceration and Adult Probation in Texas: A Cost Comparison*, unpublished masters thesis, Sam Houston State University.
- Gottfredson, D. and M. Neithercutt (1974) *Caseload Size Variation and Difference in Probation/Parole Performance*, Pittsburgh, Pennsylvania: National Center for Juvenile Justice.
- Latessa, E., E. Parks, E. Carlson, and H.E. Allen (1979) "Specialized Supervision in Probation: Implications and Issues," *Prison Journal* 59 (2): 27-35.
- Latessa, E. (1985a) "Community Corrections as Diversion: Saving Money and Reducing State Commitments," in *Probation, Parole, and Community Corrections*, L. Travis (ed.), Prospect Heights, Illinois: Waveland Press.
- Latessa, E. (1985) *The Incarceration Diversion Unit of the Lucas County Adult Probation Department Report Number Six*, Cincinnati, Ohio: University of Cincinnati.
- Latessa, E. (1979) *Intensive Probation: An Evaluation of the Effectiveness of an Intensive Diversion Unit*, unpublished doctoral dissertation, Ohio State University.
- Nelson, C.W. (1975) "Cost Benefit Analysis and Alternatives to Incarceration," *Federal Probation* 39: 45-50.
- Pearson, F. (1986) "Taking Quality into Account: Assessing the Benefits and Costs of New Jersey's Intensive Supervision Program," paper presented at the annual meeting of the Academy of Criminal Justice Sciences, Orlando, Florida, March 1986.
- Pearson, F. (1985) "New Jersey's Intensive Supervision Program: A Progress Report," *Crime and Delinquency* 31 (3): 393-410.
- Robinson, J., L.T. Wilkins, R. Carter, and A. Wahl (1969) *The San Francisco Project: A Study of Federal Probation and Parole*, Berkeley, California: School of Criminology.
- Sasfy, J. (1975) *An Experimentation of Intensive Supervision as a Treatment Strategy for Probationers*, Washington, D.C.: Mitre Corp.

- System Sciences (1982) *Executive Summary National Evaluation Program—Phase II Intensive Evaluation of Probation*, Bethesda, Maryland.
- Travis, L. (1984) "Intensive Supervision in Probation and Parole," *Corrections Today* 46 (4): 34-40.
- Vito, G. and E. Latessa (1979) "Cost Analysis in Probation Research: An Evaluation Synthesis," *Journal of Contemporary Criminal Justice* 1 (3): 3-6, 16.
- Washington, R.O. (1976) *Program Evaluation in the Human Services*, Milwaukee, Wisconsin: Center for Advanced Studies in Human Services, University of Wisconsin-Milwaukee.
- Weiss, C. (1972) *Evaluation Research*, Englewood Cliffs, New Jersey: Prentice-Hall.
- Wetter, R.E. (1985) "Descriptive Analysis of the Intensive Supervision Program," Frankfort, Kentucky: Office of Administrative Services Planning and Evaluation Branch, Commonwealth of Kentucky Corrections Cabinet.

# Intensive Probation Supervision: An Agenda for Research and Evaluation

BY WALTER R. BURKHART\*

**P**RISONS ARE full, crime continues to be a high priority concern, the public demands increased offender control and retribution, and still only a minority of convicted felons go to prison. At the same time, resources allotted to probation have dwindled, and support for offender rehabilitation services has all but vanished. And in the face of these conditions, there is a continuation of relatively high prison commitments and lengthy prison terms, an aggressive prison expansion policy, and a growing concern regarding both the cost and effectiveness of our overall penal policy. In short, we face a social dilemma caused by the desire to obtain maximum offender control through imprisonment and a reluctance to support the high public costs associated with prison construction and the maintenance of a large inmate population.

One response to this situation has been the development and implementation of so-called intensive supervision programs as an alternative to prison for selected criminal offenders. The term intensive supervision is neither new nor well defined; over the years it has included a wide range of community correctional efforts that have been employed in dozens of jurisdictions. In the early 1950's, for example, California began its Special Intensive Parole Unit (SIPU) experiments, and in the 1960's there were such efforts as the San Francisco Project (a study of the impact of reduced probation and parole caseloads), the Community Treatment Project (an alternative to placement in a California Youth Authority institution), the Special Supervision Unit Program of the Santa Barbara, California Probation Department, the Provo and Silver Lake Experiments, the Parkland (Kentucky) Non-Residential Group Center Program, Essexfields and Collegefields in New Jersey, and a host of others. Most of these programs, however, were for juveniles and all had a rehabilitative emphasis. The findings for these early projects tended to show that "offenders eligible for supervision in the community in lieu of institutionalization do as well in the community as they do in prison or training school."<sup>1</sup> The principal difference seemed to be one of costs, with the community program being the less expensive.

Today's intensive supervision programs, however, are considerably different—at least those that have been developed as an alternative to prison. First, the emphasis

is on control, with the primary features being curfews, close surveillance (including in some cases use of electronic surveillance devices), and strict rule enforcement. Second, most programs now incorporate a form of retribution or punishment, usually in the form of mandatory community service. And, third, defrayal of program costs through regular client financial contributions may also be required. Counseling, employment services, and other forms of rehabilitative efforts are sometimes provided, but these are secondary to the control and retributive program emphases. In fact, the alternative programs currently in operation are there primarily because they do stress punishment and control. Along with Georgia's well-known and highly developed Intensive Probation Supervision (IPS) program, there are major state-sponsored programs underway in New Jersey, Arizona, and Massachusetts, and many local programs operate in at least 30 other states (Byrne, 1986).

Despite the growing number of programs, relatively little is actually known about fundamental concerns: the exact type of offenders that are best suited for these programs, the extent to which these efforts prevent or control crime—especially in comparison with other approaches—and the specific program costs, both direct and indirect. Obtaining satisfactory answers to these questions is not an easy task. Unless a better job is done of realizing this type of knowledge, however, progress will be stymied and penal policy is likely to reflect fads, public moods, personal beliefs, and misleading if not erroneous information, rather than knowledge and carefully recorded experience.

With the pendulum moving back toward a more classical criminal justice philosophy, the importance of punishment as a criminal sanction is receiving increased attention. Still, the functional aspects of penal policy have by no means been forgotten and are in fact frequently stressed as prime means of controlling crime. Of particular concern is the cost effectiveness of the various sanctions utilized by the criminal courts. Consequently, although great efforts may be made to develop a series of graduated punishments that may then be matched with crimes of graduated seriousness or harm, precedence will no doubt be given to questions related to the effectiveness and costs of incapacitation, deterrence, and other means of effecting crime control through criminal sanctions.

Assuming this to be true, the importance of knowing which particular sanctions or treatments will have an ef-

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<sup>1</sup> Harlow, Eleanor, "Review: Intensive Intervention: An Alternative to Institutionalization." *Crime and Delinquency Literature*, Vol. 2, No. 1, February 1970, National Council on Crime and Delinquency.

fect on specific types of individual offenders—and at what overall costs—must be well recognized and carefully addressed. This is especially important in the case of the more serious criminal offenders who are considered suitable candidates for noncustodial sentences. Society not only expects but deserves to know the likelihood of repeat offenses by individuals given various criminal sanctions. And without improved knowledge in this area, ineffective policies and practices are bound to be perpetuated.

Although there have been numerous studies reporting on the impact of prior "intensive supervision" programs, some showing improvements in offender's behavior due to community treatment and others providing support for institutional handling, the more general finding has been that there is little difference in behavior whether there was or was not an institutional placement. However, as critics of alternatives to institutional placement efforts have pointed out, few crimes are committed against the public during the period when an inmate is institutionalized.

Current intensive supervision programs are significantly different in both aims and methods than those conducted 10 or 15 years ago. Still, relatively little is known about the impact of these programs, particularly compared to other forms of penal sanctions. Some preliminary evaluation results are available from the Georgia program, and the National Institute of Justice is sponsoring a rather intensive study of the New Jersey approach. Neither evaluation involves an experiment, as such, however, and therefore the results will have certain limitations. The careful screening of eligible program candidates—particularly in New Jersey—should contribute to generally favorable outcomes, but it will still be difficult to identify differences in program outcomes caused by specific interventions with particular types of offenders. And that is what must be obtained if there is to be convincing evidence relating to the use of effective prison alternative programs.

One of the first requirements for the achievement of this goal is the development, implementation, and continued validation of a viable offender classification system. Significant progress has been made in this area, and consistent and objective use of such a system is absolutely essential to any vigorous evaluation of an intensive supervision program. Without some firm basis for knowing both the types and risks of offenders assigned to the program, evaluations are unlikely to provide effective guidance for future operations. Ideally, of course, there should be experimental conditions to assure assignment of truly similar offenders to different forms of judicial intervention. Means do exist for conducting such an effort without jeopardizing the rights of convicted felons. Too often it is assumed that any use of random

assignment must be unethical, if not unjust, but this is simply not true. Use of fully informed volunteers or the existence of limited program resources may create conditions that will allow experimental controls to apply.

Some years ago, for example, the Kaiser Permanente health association wanted to study the effects of tonsillectomies and were told that only with an experimental design could they really learn the true value of this type of operation. As a result, a program was initiated that randomly assigned children diagnosed as having a need for a tonsillectomy into one group where the operation was actually performed and another where it was not. Of critical importance, however, was the fact that the parents of all participating children were fully aware of the program aims and methods and had voluntarily agreed to take part in the study. Based on this experience, one can argue that if parents could legally and ethically volunteer to participate in a program that so drastically affected their children, there are few reasons why suitable conditions cannot be arranged to permit an experiment with felons involving prisons and prison alternative programs. In any event, efforts must be made to carry out more vigorous, well controlled studies that will enable the public as well as criminal justice officials to know more about the effectiveness of various criminal justice sanctions.

In addition to the critical issue of program assignments, more attention needs to be given to the intervention itself. Just as conditions of imprisonment may have an impact on future behavior, so too, it is argued, can community interventions affect the control of crime. Yet without careful observations and recordings of these specific interventions, there is no good way of knowing exactly what took place. And if successful results are to be replicated or a repetition of failures is to be avoided, this information must be known. Consequently, the study of process must be an integral part of the overall examination of alternative programs.

In fact, only after careful consideration has been given to the classification and assignment of offenders, coupled with careful descriptions and accounts of the interventions actually employed, can the key question of outcome be addressed. The outcome measures, of course, must be directly related to program aims and expectations. Criminal behavior will no doubt be a major emphasis, but other factors, including the costs of program operations and both victimization and crime processing costs, along with other concerns of criminal justice policymakers and administrators, must also be measured.

Unfortunately, few evaluations of intensive probation supervision meet even the most basic methodological criteria. These criteria have been summarized by Logan (1972):

- (1) There must be an adequate definition of the program or set of

techniques whose effectiveness is being tested. This definition should be sufficiently operational that the components of the program can be clearly identified. We cannot meaningfully compare "intensive treatment" to "regular treatment" unless we know what treatment means.

- (2) The technique must be capable of routinization. This does not mean that it has to be a purely mechanical activity, but it must be something that can be repeated in all its components.
- (3) There must be some division, preferably random, of a given population of offenders into treatment and control groups, with the two groups differing as little as possible with respect to the characteristics of the subjects and their basis of selection.
- (4) There must be some evidence that the treatment group is in fact receiving treatment as defined, but that the control group is not.
- (5) There should be some "before-and after" measurement of the behavior that is sought to be changed, and a comparison made between the two measures. This measurement must be made for both the treatment and control groups, for any sort of matched or other nonrandom design. There must be some before measures.
- (6) There must be a definition of "success" and "failure" that is sufficiently operational to provide a valid, reliable measurement for determining the outcome of treatment.
- (7) There should be some follow-up or delayed measurement in the community for both the treatment and control groups. Behavior when still under supervision is, for various reasons, not a valid test of rehabilitative success. (Logan, 1972: 378-390, as quoted in Fields, 1984: 13-14)

The bottom line, of course, must be the specific effects of imposing one particular criminal sanction as compared with another, and this determination can only be made by obtaining the type of details outlined above. Furthermore, due to the complexities of humans and their behavior, some form of random assignment in this process is essential. Our ability to predict serious criminal behavior and identify the many human factors associated with that behavior is severely limited, and consequently the alternative process of "matching" study subjects, although an acceptable research technique, simply will not produce findings as reliable as those provided through a good experimental study.

In view of these many requirements, it should be quite apparent that research of the type necessary to obtain better answers regarding the costs and effectiveness of various criminal sanctions cannot occur without the

strong desire, leadership, commitment, and full endorsement of criminal justice administrators. Without their demands for this type of research information, their willingness to fully utilize and cooperate with researchers, and their use of research as a prime tool of administration, the work will simply not be done. What is required is a joint endeavor, with administrators assuring that the most appropriate questions are being addressed and researchers providing the support necessary to determine research feasibility and produce a satisfactory set of research findings.

Research that is not utilized is wasted, and research lacking a strong role by criminal justice administrators will have limited applicability and use. Administrators must genuinely want answers regarding the effectiveness of programs for which they are responsible, and researchers must be willing and able to address the questions most pertinent to this quest. Through mutual efforts, important progress can be made. The alternative is to carry on in a tradition of faith, hope, and commitment, a process which—is based largely on incomplete or perhaps false information—can be costly and unproductive, if not harmful. Readers of the many stimulating articles in this issue on intensive supervision should keep in mind the need for more evidence on the effectiveness of these programs and the role that administrators and researchers can play in obtaining this vital information. They should also recognize that the quest for such answers is not an easy one. There are no short cuts. Without the strongest possible support for experimental efforts, the validity of available information will remain in question.

#### REFERENCES

- Byrne, James. "The Control Controversy: A Preliminary Examination of Intensive Probation Supervision Programs in the United States." *Federal Probation*, 50, June 1986, p. 3.
- Fields, D.C. *The Intensive Supervision Probation Program in Texas: A Two-Year Assessment*. Unpublished doctoral dissertation, Sam Houston University, 1984.
- Logan, C. H. "Evaluating Research in Crime and Delinquency." *Journal of Criminal Law, Criminology and Police Science*, 63, September 1972, pp. 378-390.



# Back to the Future: An Historical View of Intensive Probation Supervision

BY JOSEPH W. LIPCHITZ

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**E**ACH GENERATION, it would seem, has concerns about crime—its economic costs, its social costs, and what to do about it all. Society continues to look for ways to deal with the problems raised by crime. One answer currently being tried and evaluated for its effectiveness is reforming the concept of probation to include intensive supervision. In several states models are being—or have been—constructed and programs have begun based on the rational assumption that the more closely a person is watched and the more effectively programs or treatment can be delivered, the less likely the person at risk will get into trouble (see Byrne, 1985: this volume). With costs for imprisonment running \$20,000 per prisoner per year and the costs for new prison facilities often running to \$100,000 per bed, it is not surprising that many criminal justice professionals are both optimistic and enthusiastic about the possibilities of intensive supervision. It might well be instructive, however, to take heed of David Rothman's apt comment that, "...reform is the designation that each generation gives to its favorite programs." (Rothman, 1980: p.4)

## *Some Notes on the Evolution of Probation*

Historians, both for reasons of professional concern as well as self-interest, will look somewhat askance at both the reformers' enthusiasm and Isaiah's dictum, "Remember not former things, and look not on things of old. Behold I do new things, and now they shall spring forth. . . ." Probation, with or without intensive supervision, has always been based upon several principles. First, that the person on probation knows "right" from "wrong" and that whatever he or she might prefer to do, that person is far less likely to engage in inappropriate behavior if being watched or subject to discovery. Also implied are either tangible or intangible rewards or punishments for appropriate or inappropriate behavior. Such a system of general deterrence is at work throughout society and at all levels. Probation is an attempt to narrow and focus this approach to a select group of individuals in society to guarantee their adherence to legal behavioral requirements.

As a formalized process probation has always aimed to protect the community, provide necessary services in

an expeditious manner, reintegrate the offender into society, and further the aims of justice (McCarthy and McCarthy, 1984). Probation as currently understood and practiced dates from 1841 when John Augustus persuaded a judge to release into his custody a man charged with being a common drunkard. Augustus, who had an interest in reforming drunkards, took the man home and found him a job. Within a few weeks Augustus was able to show to the judge a man totally changed in appearance and responsibility. He did this by a combination of counseling and treatment. The treatment took the form of finding the man a job and supervising him to assure that he regained self-respect. The judge, impressed with the results, allowed the man to go with only a 1-cent fine.

This script was the one that Augustus and the judges followed over the next 18 years until Augustus died. Those offenders whom Augustus assessed as showing likelihood of redemption would be bailed out to his custody. While many of these were men charged with being common drunkards, in time Augustus exercised his probationary efforts on behalf of men and women and girls and boys whose crimes covered a wide range of activity (Cromwell et al.:1985). The records show that by 1858, he had bailed and helped to reform nearly 2,000 offenders.<sup>1</sup> Augustus' record was excellent, and as his supervision of probationers was "intensive," proponents today can take heart from his results.

If Augustus was successful in his attempts at intensive probation supervision, it was not without a great deal of effort and sacrifice on his part made all the more difficult by courthouse critics and the general public. Some thought that he benefited financially from those he helped, but neither logic nor records support this claim. The offenders in his custody were too poor to pay their costs, let alone pay Augustus for helping them. In fact, Augustus came to depend upon the donations of friends to help him in his work. If there was a financial axe to be ground, it belonged to the court officers and clerks. As Cromwell noted, "For every person bailed by Augustus the officer lost the fee of either seventy-five cents or sixty-two cents payable on the taking of the offender to jail; the clerk lost twenty-five cents, and the turnkey was out forty cents." (*Ibid.*, p. 24) In addition, the public feared that allowing offenders bail was simply allowing them the opportunity to commit further crimes. Astute observers will note that the arguments have not changed.

<sup>1</sup> These associated court/correctional costs were nearly \$20,000. Because of the judge's pleased reaction with the results, fines and court costs amounted to less than \$2,500. For further discussion, see Cromwell.



Nevertheless, attempts to "keep an eye on" difficult members of society have been in use in various forms for centuries in western societies. Supervision has been utilized at different times and for different reasons. It has been used as an inexpensive alternative to prison. It has also been used as a way of giving a warning to offenders to change their behavior. The idea of supervision, however, has not always been used with adults. In virtually all societies, exemptions from punishment were granted to those considered to be juveniles. The chief differences from one society to another, or from one period of history to another, have been the age at which juveniles were so classified and what treatment and/or punishment, if any, should be afforded them. For example, as early as the seventh century reign of the English Saxon King Ine, it was determined that a child under the age of 10 would not be prosecuted (Sanders, 1970). By the early 10th century, King Aethelstan proved to be more liberal in philosophy and practice and viewed only those over the age of 12 as liable for punishment. Parents or kindred were made responsible for the juvenile's good behavior. Close supervision on their part was mandated as the adults faced the possibility of relatively stiff fines for future offenses (*Ibid.*).

In the case of adult offenders and troublemakers, society faced a different problem. Society might well assume that children were not legally responsible for their actions. Those deemed to be adults were expected to behave themselves. Offenses were dealt with according to the existing social values. Some offenses might be settled with a fine; others could be resolved only with brutal physical punishment. Historically death was always an option in dealing with people considered to be particularly dangerous to society. (Just what offenses rendered an individual particularly dangerous to society has, of course, varied widely over time and place. If America entertained 19th century frontier values in the more technologically advanced 20th century, those guilty of auto theft would be as liable for execution as the horse thieves of the earlier period.) For those cases in which a person in the community was not a serious threat but was definitely a thorn in the collective side, a more creative solution was found. For example, in early modern England—short on both institutions and bureaucracies for corrections but not necessarily on common sense—a troublemaker would be bound over to keep the peace.

Surety for the peace was granted against those who threatened the person or property of another. The potential victim would go to a justice, and declare on oath that he was in physical danger, or that his goods were threatened. If the complaint was credible, the person complained against would be bound over to keep the peace, sometimes on forfeiture of a considerable amount of money. The system of binding over, therefore, constituted a cheap, and in many ways, effective method of curbing interpersonal violence. (Sharpe, 1984: p. 36)

### *High Technology Replaces Low Technology As a Supervision Strategy*

With the industrial revolution and the development of a large, complex, and impersonal urban society, earlier approaches to keeping an eye on problem members of society no longer worked. One could argue that in a small, rural village or hamlet where everyone knew everyone else and their affairs, privacy might be at a premium but an active social conscience was not. Within limits, noney neighbors and town gossips were cheaper and probably more effective than electronic surveillance today. Other advantages to this earlier "low technology" approach include limited technical skills, no licensing requirements, no need of court orders, and—as for the noney town gossip to whom financial considerations were of no account—low cost. In fact, even today most people would probably prefer a noney neighbor to electronic surveillance. To most of us such a neighbor might be offensive but not dangerous, whereas the use of electronic eavesdroppers tends to conjure views of 1984 or *Brave New World*. Researchers today are finding the question of public reaction to such operations much more pertinent than in the past.

Not all of the reasons for such perceptions are clear, but some may be surmised. Because of the behavioral approach of the neighbor in question, people can be less likely to view the person as threatening. The hidden camera or "bug" has no such endearing qualities, and the faceless authority figure behind such equipment remains an unknown and hence a threat. Other aspects of electronic surveillance also cause us to view it as threatening. The very technology of it is often both beyond our knowledge and comprehension and, therefore, dangerous. Perhaps as more and more of us become subject to such surveillance in stores, banks, and the workplace it will become more familiar and less threatening. If this is true, the implications for more widespread use by governmental authorities are significant and worthy of further analysis. Indeed, people undertaking normal transactions in a bank may well view the cameras in a totally different light than they would a prying government attempting to monitor citizen behavior in all environments.

Obviously the question of surveillance, then, is not one of whether surveillance is always a good thing or always a bad thing. Rather, it is a question of who is undertaking surveillance, for what reasons, and whether the use of that power is abusive to society and its interests. Clearly, in the area of corrections, surveillance has long been a part of the process. Society has decided that certain people must be confined and/or their behavior monitored for everyone's benefit. Both prison systems and probation work to this end. However, punishment, per se, can be different. When punishment becomes

physical, society is sending a different message.

Foucault (1979), on the other hand, saw "correction" and "punishment" as the same thing. In his view society, by the 18th century—when society began to end the use of whippings and mutilation and began to confine offenders to prisons—had simply begun to switch from punishing the body to punishing the soul. We have, in his view, become concerned with more than just the crime. We have expanded our concern to include a judgment of the criminal and his behavior. We want punishment to not just punish but to make the convict want to live within the law, to be able to do so, and to provide for his own needs. The older view of physical punishment, left over from the Middle Ages had, by the 19th century, changed. As Foucault stated:

From being an act of unbearable sensations punishment has become an economy of suspended rights. If it is still necessary for the law to reach and manipulate the body of the convict, it will be at a distance, in the proper way, according to strict rules, and with a much "higher" aim (*Ibid.*).

While not all agree with Foucault's overall interpretation, it is clear that probation has as its goals seeing the convicted criminal modify his behavior in such a way as to be law abiding and self-sufficient. This was clearly the aim of John Augustus when he first began his work, and it was the intent of the Massachusetts legislature when it passed the first probation statute in 1878. This was only a first step as the act gave the mayor of Boston the authority to appoint a probation officer who would report to the chief of police. Probation was not an instant success, as it took until the early 1900's for the probation movement to gain momentum. Six states had probation statutes by 1900. By 1920, all states allowed for juvenile probation (a thousand years after King Aethelstan), and 33 states had passed statutes for adult probation. By 1954, probation statutes existed in all states (McCarthy, 1984).

It may appear that the move toward probation from the late 19th to the early 20th centuries was steady, if slow. Actually this was not the case. The move towards probation was more a matter of going in fits and starts with occasional reversals. For example, in the post World War I era public opinion moved away from probation. In fact, many thought that probation and parole ought to be eliminated, as they thought that many of the serious crimes were being committed by people either on probation or parole (Cressey, 1971). This should not be surprising, as public opinion regarding crime has been noted as becoming more concerned with punishment than correction whenever the public perceives that crime is increasing. What should concern us here, however, is the fact that as probation became institutionalized it also grew away from the careful monitoring by Augustus. Much of this occurred because probation ceased to be seen as

a genuine alternative to imprisonment and, instead, became a supplement (Rothman, 1984: p. 13).

### *Conclusion: Back to the Future?*

Today, those interested in intensive probation supervision who look ahead to a more professional program geared to more positive results for their clients, society at large, and themselves should also look backward to John Augustus with his limited number of clients, a clear desire to help reform the individual, close supervision of that client, and a positive plan of assistance and a job to provide a new alternative for behavior. Perhaps they also should view probation once again as an alternative to incarceration rather than a supplement. The future, as someone once noted perceptively, lies ahead. Institutionalized bureaucracies are difficult to reform, and the public itself will have to be shown that its safety is not threatened and its long term economic self-interest is better served by reform, where it is possible, than by imprisonment. If these challenges can be met, a great deal of faith will have been restored to a criminal justice system too often derided as ineffective in protecting the public interest.

How likely a successful implementation of intensive probation supervision is to come about depends upon many factors not all within the control of the professionals themselves. As David Fogel (McAnany, Thomson, and Fogel, 1984: pp. 66-67) has noted, there has not always been agreement within the profession itself about direction and practice. While this has allowed for growth as opposed to restraint, it has also left the profession without a standardized core of philosophy and practice that can lead to a clear plan of development. In tracing the earlier attempts at supervision we have seen that intensive supervision is not a totally new idea; that attempts to implement it in various forms have been tried before; and that if there has been a failure of it, it has been a failure of development and follow through. It certainly appears reasonable that if sound and effective models can be developed, there is hope for a central mission and clear working model for the future that Fogel and others have found lacking.

Any attempt to predict the future runs the risk of being wrong either in whole or in part, which is one reason why historians find the past so comforting. However, if we look at the uncomplicated and straightforward work of Augustus, the attempts of more closely knit societies to keep an eye on troublemakers, and the intriguing developments in technology, we can certainly identify some of the pieces of future developments. Such items as "electronic handcuffs" and other examples of electronic monitoring are neither perfected nor totally integrated into a personnel system to make them totally effective. The technological aspect of such monitoring will,

no doubt, be improved and modified in a relatively short time. How well they will be accepted and utilized is less certain.

It is clear that the concept of intensive probation supervision is clearly within the values and goals of contemporary society. The challenge remains one of offering society a successful and acceptable model. Will some future, professional John Augustus, with a limited number of clients and an appropriate variety of treatment plans and meaningful job opportunities, be able to report back to the court that the probation offered the offender has been successful and that society has gained a useful and contributing member? We cannot wait and see; the opportunities for reform have rarely been better. Remembering the past, we must move forward.

## BIBLIOGRAPHY

- Bartollas, Clemens. *Correctional Treatment: Theory and Practice*. Englewood Cliffs, New Jersey: Prentice Hall Inc., 1985.
- Bailey, Victor. *Policing and Punishment in Nineteenth Century Britain*. New Brunswick, New Jersey: Rutgers University Press, 1981.
- Byrne, James M., "The Control Controversy: A Preliminary Examination of Intensive Probation Supervision Programs in the United States," *Federal Probation*, June 1986, p. 4.
- Clear, Todd R. and Cole, George F. *American Corrections*. Belmont, California: Brooks/Cole, 1986.
- Cohen, Jerome Alan. *The Criminal Process in the People's Republic of China: 1949-1963*. Cambridge: Harvard University Press, 1968.
- Cox, Steven M. and Wade, John E. *The Criminal Justice Network: An Introduction*. Dubuque, Iowa: William C. Brown, 1985.
- Cressey, Donald R., ed. *Crime and Criminal Justice*. Chicago: Quadrangle Books, 1971.
- Cromwell, Paul F., Jr., et al. *Probation and Parole in the Criminal Justice System*, 2nd ed., New York: West Publishing Co., 1985.
- Foucault, Michel. *Discipline and Punish: The Birth of the Prison*, tr. Alan Sheridan. New York: Random House, 1979.
- Hagan, John. *Modern Criminology*. New York: McGraw Hill, Inc., 1985.
- Langbein, John H. *Prosecuting Crime in the Renaissance: England, Germany, France*. Cambridge: Harvard University Press, 1974.
- McAnany, Patrick D., et al., eds. *Probation and Justice: Reconsideration of a Mission*. Cambridge: Oelgeschlager, Gunn, and Hain, Publishers, Inc., 1984.
- McCarthy, Belinda R. and McCarthy, Bernard J. *Community-Based Corrections*. Monterey, California: Brooks/Cole Pub. Co., 1984.
- Priestly, Philip. *Victorian Prison Lives: An English Prison Biography, 1830-1914*. New York: Methuen and Co., 1985.
- Rothman, David J. *Conscience and Convenience: The Asylum and Its Alternatives in Progressive America*. Boston: Little, Brown and Co., 1980.
- Sanders, Wiley B., ed. *Juvenile Offenders for a Thousand Years*. Chapel Hill: The University of North Carolina Press, 1970.
- Sanders, William B. *Juvenile Delinquency: Causes, Patterns, and Reactions*. New York: Holt, Rinehart and Winston, 1981.
- Sharpe, J. A. *Crime in Early Modern England: 1550-1750*. New York: Longman Inc., 1984.
- Sifakis, Carl, ed. *The Encyclopedia of American Crime*. New York: Facts on File, Inc., 1982.
- Silberman, Charles E. *Criminal Violence Criminal Justice*. New York: Vintage Books, 1980.
- Thornton, William E., Jr., James, Jennifer A., and Doerner, William G. *Delinquency and Justice*. Glenview, Illinois: Scott Foresman and Co., 1982.
- Walker, Samuel. *Popular Justice: A History of American Criminal Justice*. New York: Oxford University Press, 1980.

I leave to the other contributors to this special issue of *Federal Probation* the anecdotal and statistical tasks of describing and evaluating the practice of intensive probation. I am concerned with how it should be used and what should be expected of it. Let us think what we are doing.

The definition first. So far as I am concerned the archetype is the Georgian innovation. Intensive probation is *offered* to convicted felons who would have been sentenced to prison but who, in the judgment of the court and the probation officer, may safely be assigned to probation on the special terms of intensive administration. That means a daily visitation by a surveillance officer who carries a caseload of no more than 25 and compliance with a program prescribed by the court on the advice of the probation officer, who shares the surveillance officer's caseload. The probationer must engage in full-time employment, comply with rigid restrictions as to movement in the community, abide by a curfew, and contribute a specified number of hours to unpaid community service. If he or she has been ordered to make restitution, regular payments must be made. Finally, the offender must pay a reasonable monthly fee to defray part of the costs of intensive supervision. Submission to this régime is optional. Those who prefer the rough and ready camaraderie of the prison yard are free to reject the rigors of intensive supervision that are on offer.

Two questions come immediately to mind. Is this punishment? Is this sufficient control? If it is not seen as punishment, it does not satisfy the retributivist model of criminal justice. And if it is not sufficient control, the community will not be protected.

We think of incarceration as punishment because it is the complete loss of liberty; the prisoner has become the slave of the state, as Immanuel Kant put it.<sup>2</sup> The status of the intensive probationer requires a partial loss of liberty—off to prison he goes if he violates the terms of probation, and the daily surveillance by an officer of the court makes this threat credible. For some intensive probationers the intrusions will be irksome if not intolerable; for others there will be ways of coming to terms with this condition, just as a lot of old cons manage to carve out a cozy niche for themselves while in the joint. As I suggested a while back when discussing Professor Newman's electric shock machines, human beings are much more adaptable than they think they are—they can learn to live with Dr. Newman's electric shocks, with years of maximum security confinement, and with daily visits by The Man. When it's over, it's over. Few will insist on protracting the painful or humiliating experience.

Sufficient control? A wise old administrator tried to dampen my enthusiasm for intensive supervision by

pointing out that a strategically adroit probationer inclined to continue his criminal career could time his exploits to occur immediately after The Man had seen him in the bosom of his family, perhaps deep in his study of the Bible. Maybe so, but so far as I know the data do not support this dark inference. Without a doubt intensive probationers will recidivate from time to time. The question for those who administer the program is whether the crimes they commit will be too frequent and too serious for the community to tolerate. A few bonehead assignments culminating in gory headlines will, of course, damage the program and perhaps destroy it. So far, that hasn't happened. Every Commissioner of Corrections in the land should pray that it won't.

What should be the goals of intensive probation? For the budget analyst and others of his impersonal ilk, the answer is easy; get as many people out of prison and off the taxpayers' backs as possible. What's possible depends on the perseverance of the officers who are out there every night doing the surveillance that intensive supervision demands and on the skill of the probation officer in seeing to it that his or her charges are working, appropriately housed, and in compliance with the other terms of probation. Neither task is easy, and the burnout point is in sight for all but the most selfless individuals. Organization of intensive supervision probably requires some rotation of personnel. Any program that is based on constructive personal relations must be carried out by normal people—not by saintly deviates who neither have nor want private lives of their own.

Intensive supervision should allow for incentives as well as intimidation. Good performance should be rewarded with relaxation of control. The probationer should never feel forgotten, but he should also feel that his good behavior is appreciated. The development of trust is a bilateral process. Only when trust is conferred will the trusted party make the effort to become more trustworthy. As every probation officer knows, the difficulty with that idea is that trust is not always reciprocated. To extend trust wisely and with discrimination is essential to the art of probation, an art which some people never acquire.

When intensive supervision was invented, a new form of punishment was being created, and it's no good covering up its nature with euphemisms. We must be strict in its administration. Serious violators should complete their terms in prison without question; halfway houses should be available for folks who don't take seriously the conditions to which they have agreed. We have to mean what we say.

### *The Potential*

Penological veterans are accustomed to disappointment. We have seen our high hopes exploded too often

<sup>2</sup> Immanuel Kant. *The Metaphysical Elements of Justice*, tran. John Ladd. (Indianapolis: Bobbs-Merrill, 1965), p. 102.

to believe wholeheartedly in new remedies for old shortcomings. Psychiatric treatment, group therapy, group counseling, shock probation, base expectancy scores, probation subsidy, and statistical classification have all fallen short of their promised benefits, some of them abysmally so. Nevertheless, I am a believer; intensive supervision may be the great exception. The promise is the drastic reduction of incarceration; the strength lies in realism about the punitive nature of the experience of surveillance. We are no longer deceiving ourselves and attempting to deceive the probationers about the therapeutic benefits of the relationship between the officer and the offender. The officer's hot breath may be on the offender's neck; if the offender doesn't like it, he knows what the consequences will be if he strays too far from surveillance.

So far, administrators have been commendably cautious in the formulation of policy for intensive supervision. No violent offenders, no dedicated addicts, no multiple recidivists, no psychotics. There are enough burglars and thieves to be kept out of prison so that the program can have an adequate clientele. As the courts, the police, and the media gain confidence in the program, though, I hope that some risks will be taken. It makes no sense, really, to exclude violent offenders from intensive parole supervision; these are the fellows who need it the most. Narcotics addicts and small-time pushers

ought to be assigned to intensive supervision as a matter of choice. It should be understood by all concerned that there will be failures and sometimes the failures will hit the headlines. Those failures will be more than offset by success measured in men and women who have been kept out of prison or whose prison time has been reduced by assignment to supervision. That's the realistic goal; anything more will be a bonus on which we shouldn't count.

No matter how we organize a program like this, it will always be vulnerable to the personal inadequacies of people carrying it out. There are enough numbskulls, time-servers, and psychological cripples circulating around our penal and probation establishments so that managers will have to keep a wary eye on appointments if intensive supervision is not to go the way of so many other hopeful innovations.

If the program succeeds as it should, a year or so as an intensive supervisor should be a choice assignment for a promising young penologist, an essential step to advancement. If the best and the brightest can be brought into the program, if they think what they are doing—and their superiors as well—the potential for the intensive revolution may be enough to level some old prisons and depopulate some of the new joints. So says this unreconstructed optimist.

## Looking at the Law

BY LISA A. KAHN

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### Challenge to Prior Record Section of Presentence Report

SECTION 3577 of title 18, United States Code, provides that "[n]o limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence." This provision has generally been construed liberally by the courts. It has been held proper for a sentencing judge to consider: uncharged offenses, *United States v. Kimball*, 741 F.2d 471 (1st Cir. 1984); criminal charges of which the defendant has been acquitted, *United States v. Ray*, 683 F.2d 1116 (7th Cir. 1982); convictions which the defendant claims are invalid, *id.*; and hearsay evidence which the sentencing judge has reason to believe is reliable, see, e.g., *United States v. Tracey*, 675 F.2d 433 (1st Cir. 1982), and *United States v. Gonzalez*, 576 F. Supp. 334 (D. Ore. 1983), or which the defendant has had an opportunity to rebut, *United States v. Plisek*, 657 F.2d 920 (7th Cir. 1981). But see *United States v. Tucker*, 404 U.S. 443 (1972) (a court may not consider prior convictions of a defendant that were invalid because the defendant had not been represented by counsel or no waiver of counsel had been made).

Probation officers are required to include in the prior record section of a presentence report information about all previous arrests, even if charges were never brought or were subsequently dismissed. See "The Presentence Investigation Report," Publication 105, pp. 10-11 (1984). A recent case out of the Tenth Circuit, *United States v. Graves*, 785 F.2d 870 (10th Cir. 1986), discusses the propriety of including in presentence reports information that was obtained through an unlawful search or seizure.

In *Graves*, the defendant objected to the inclusion in her presentence report of references to (1) an arrest which had been made for possession of marijuana following an illegal search and seizure of the vehicle in which the marijuana was found and (2) charges of conspiracy and possession with intent to distribute cocaine and heroin which were later dismissed after a court determined that the search warrant by which the controlled substances were obtained was illegal.

The district judge who imposed sentence denied defendant's motion to strike information about these two offenses. The judge indicated, however, that he would not consider the two alleged offenses in determining a sentence. The defendant did not challenge the sentence which the judge subsequently imposed. She did, however,

file an appeal contending that the failure of the district court to strike the two matters from the report would unjustly prejudice the post-sentence handling of her case by the Bureau of Prisons, the Parole Commission, and the Probation Department. In her view, it would be improper for a judge or the Federal agencies that would later determine her parole to consider allegedly illegal evidence which could not be admitted at trial because of the exclusionary rule.

The exclusionary rule is a judicially created remedy designed to safeguard fourth amendment rights by deterring official misconduct. The theory behind the rule is that law enforcement officers will be less likely to conduct an illegal search or make an illegal seizure if they realize that the evidence obtained thereby cannot be used in a subsequent criminal prosecution. The government in the *Graves* case argued that it was not necessarily appropriate, however, to apply the exclusionary rule in *post-conviction* proceedings. It urged the court to balance the incremental deterrent effect of applying the exclusionary rule at sentencing and in post-sentencing administrative proceedings against the costs of impairing effective and suitable punishment of proven offenders and unduly complicating sentencing proceedings.

The Tenth Circuit agreed that this was the proper approach. After balancing the costs and benefits of extending the exclusionary rule to sentencing or post-sentencing proceedings before Federal agencies, the court concluded that "the deterrent effect of extending the rule would be so minimal as to be insignificant." 785 F.2d at 873. Law enforcement officers, said the court, normally conduct searches and seize evidence for the purpose of obtaining convictions, not for the purpose of increasing the sentence in a prosecution already pending or one yet to be commenced. The court also noted that sentencing proceedings could be "intolerably delayed and disrupted if it became necessary to determine whether every item of information to be relied on by sentencing judges had a lawful origin" and that "[t]he same considerations apply to post-sentencing administrative hearings." *Id.* Based on this analysis and relevant case law discussed in the opinion, the court found that the need of the trial judge and the post-sentencing administrative tribunals to make their decision in light of all relevant facts outweighed the advantages of excluding the information about prior offenses from the presentence report. It held that the district judge acted properly in refusing to strike the challenged references from the report which was submitted to him and which was subsequently to be provided to the Bureau

of Prisons, the Parole Commission, and the Probation Department.

*Interpretation of Sentence: Federal Judge vs. Bureau of Prisons Policy Guidelines*

Query: What happens when an irresistible force (which takes the form of a judge's intended sentence) meets an unmovable object (such as a Bureau of Prisons policy statement)?

Response: See decision in *United States v. Griffin*, 627 F.Supp. 1551 (D. Ariz. 1986).

*United States v. Griffin* was essentially a proceeding to consider defendant's Rule 35 motion to reduce sentence. The focus in the case, however, was on the clash between the stated intent of the sentencing judge and the automatic application of a Bureau of Prisons policy which clearly thwarted such intent.

The judge in the case had originally ordered that a defendant who had violated his probation be committed to the custody of the Attorney General for 15 months and that the defendant receive credit on this sentence for the 6 months he had previously spent in confinement while serving the custody portion of a split sentence. The Bureau had determined that this sentence would result in 15 months of actual confinement, rather than 9 months as the court had desired. This determination was based on a policy which requires that a "maximum sentence" first be calculated by adding previously served custody time (here, 6 months) to the subsequently imposed sentence (here, 15 months), and which only then permits credit to be granted for the custody portion of the split sentence.

The clearly frustrated sentencing judge inveighed against what he termed the "unsupportable, unintelligible, and inconsistent policies" of the Bureau, and openly reflected upon the benefits which might be reaped by replacing Bureau personnel with unreasoning computers. Faced as he was, however, with an entrenched and unyielding bureaucratic procedure, the judge was forced, in the end, to accommodate the "System." In order to ensure that its original intent would be effectuated, the court granted the Rule 35 motion and reduced the defendant's sentence to 9 months.

It is unlikely that a *Griffin*-type of standoff between judicial intent and administrative policy is unique, particularly in the area of sentencing. While conflicts of this sort are probably to some extent unavoidable, probation officers can help minimize them by checking in advance with Bureau of Prisons personnel to ascertain how Bureau

policies will impact on anticipated judicial sentences. Once the "broader picture" is understood, probation officers will be in a better position to tailor their sentencing recommendations to the court to accommodate the nuances of Bureau regulations.

*Sentencing: Applicability of 21 U.S.C. §844(b)(1) to Attempt Offenses*

A novel sentencing question was raised before the Ninth Circuit in *United States v. Bogart*, 783 F.2d 1248 (9th Cir. 1986): Is the diversion procedure provided for in 21 U.S.C. §844(b)(1) available to a defendant convicted of attempting to possess a controlled substance in violation of 21 U.S.C. §846? The court which had originally imposed sentence on the defendant in *Bogart* concluded it was not. The defendant, on the other hand, argued that the district court had erred in not sentencing him as a first offender under the provisions of §844(b)(1).

Section 844(b)(1) permits a court, without entering a judgment of guilty, to defer further proceedings and place a first offender on probation for any period up to 1 year. If the defendant does not violate any of the conditions of his probation, the court may later discharge him and dismiss all the proceedings without entering any final adjudication of guilt.

The district court which had sentenced the defendant in *Bogart* believed it was precluded from ordering the conditional probation authorized by §844(b)(1) because the conditional probation was apparently limited to a first conviction for possession under §844(a)<sup>1</sup> and was not available for a sentence of attempted possession. The defendant argued, however, that since attempted possession is a lesser included offense of possession, and since 21 U.S.C. §846 limits the penalty for attempt to the maximum sentence for the substantive crime, Congress could not have intended to limit diversion to actual possession alone. To do so, he pointed out, would allow a court to punish him more for attempting to commit a crime than for actually committing it.

The Ninth Circuit found the issue posed by the defendant's argument to be a difficult one. It noted that in *Bifulco v. United States*, 447 U.S. 381 (1980), the Supreme Court held that 21 U.S.C. §846 does not permit the imposition of a special parole term for conspiracy (or attempt) to commit a narcotics offense, even though the penalty provision for the underlying substantive offense mandates an SPT. The Supreme Court noted that §846 permits only "fines" and/or "imprisonment" for these offenses and that a special parole term fitted neither category. Since diversion similarly falls outside both these categories, the court of appeals in *Bogart* found support for the district court's conclusion that the conditional probation provided for in §844(b)(1) was not an available

<sup>1</sup>§844(b)(1) applies by its own terms to any person "who has not previously been convicted of violating subsection (a) of [§844]."



option. On the other hand, the court was mindful of the Supreme Court's statement in *Bifulco* that an attempt of offense invariably warrants a lesser sentence than the substantive crime. It took note also of the legislative history of §844 which referred to Congress' intent to encourage the rehabilitation of drug users. Taking each of these considerations into account, the court concluded that the diversion procedures authorized by §844(b) should in fact be available to defendants convicted of the offense of attempted possession of narcotics under 21 U.S.C. §846.

### *Restitution: Considering Relative Culpability*

In ordering restitution under the Victim and Witness Protection Act (VWPA) (codified at 18 U.S.C. §§3579-3580), courts must take into consideration a variety of factors, such as the financial resources of the defendant and the financial needs and earning ability of the defendant and the defendant's dependents. See 18 U.S.C. §3580(a). In a recent case before the Sixth Circuit, a question was raised about the propriety of a court's considering the relative culpability of codefendants in setting restitution. The defendant in *United States v. Anglian*, 784 F.2d 765 (6th Cir. 1986), challenged a sentence that required him to pay a proportionately greater share of a sentence of restitution than most of his codefendants. Defendant Anglian had been convicted of conspiracy and two substantive counts of receipt of stolen postal money orders. He and a codefendant, along with seven or eight friends, had traveled through several states cashing the stolen money orders. In imposing sentence, the district court found that because Anglian and his principal codefendant were older than the other defendants and because they had prior criminal records, they "had a great deal of influence upon the younger ones in the group" and had "the primary responsibility" for the offense. Based on these findings, the court ordered Anglian and his codefendant each to pay an amount of restitution that was more than three times greater than that required of their accomplices.

The sentence was challenged on two grounds. It was argued, first, that the restitution order was improper because it exceeded the amount involved in the two substantive counts of which the defendant was convicted. Alternatively, it was contended that restitution should have been shared equally by all the codefendants.

The Sixth Circuit rejected both arguments. While not addressing the specific problem of ordering restitution in an amount greater than that associated with the particular counts for which a defendant is convicted, the court made the general observation that it was clearly appropriate under the VWPA to base restitution on factors other than the amount of benefit derived by a defendant.

For example, §3579(b) of title 18 authorizes payment of a victim's medical expenses, lost income, and funeral expenses. None of these items bears any relation to the benefit a defendant receives. Other provisions of the Act show that the purpose of restitution is to make the victim whole. See, for example, §3579(e)(1) (prohibiting restitution if the victim has been otherwise compensated) and §3579(e)(2) (requiring restitution to be set off against any subsequent civil judgment). Since the benefit gained by the defendant is not a factor in assessing restitution, the court concluded there was no problem with requiring Anglian to pay a disproportionate share of restitution.

In response to the defendant's second argument, the Sixth Circuit noted that restitution, like any other sentence, must be tailored to the individual defendant and that there is no requirement that defendants convicted of the same offense receive the same sentence. While the VWPA does not mention relative culpability of defendants in determining the amount of restitution, 18 U.S.C. §3580(a) does permit a court to consider "such other factors as the court deems appropriate in assessing restitution." In the opinion of the court, the relative culpability of codefendants was certainly an appropriate "other factor."

For the reasons stated above, the Sixth Circuit upheld the authority of a sentencing judge to order one codefendant to pay a larger amount of restitution than his codefendants based upon his perceived greater role in the offense.

### *Applicability of the VWPA to Restitution Ordered as a Condition of Probation*

Prior to the enactment of the Victim and Witness Protection Act of 1982, restitution could only be ordered as a condition of probation pursuant to the provisions of 18 U.S.C. §3651. Beginning in 1983, the VWPA authorized a court, in sentencing defendants convicted of title 18 (and certain title 49) offenses, to order restitution "in addition to or in lieu of any other penalty authorized by law." In ordering restitution under provisions of VWPA, courts must adhere to a number of substantive and procedural rules set forth in 18 U.S.C. §§3579-3580. For example, they must consider a defendant's financial resources when making a restitutionary award (§3580(a)); they must resolve disputes as to the proper amount or type of restitution by the preponderance of the evidence (§3580(d)); and they must abide by certain limitations when setting the time when the final installment of a restitution order is due (§3579(f)(2)). Clearly these rules apply to restitution ordered as a sentence separate and apart from probation. Must they also be followed, however, when courts require that restitution be paid as a condition of probation?



In *United States v. Kallash*, 785 F.2d 26 (2d Cir. 1986), the Second Circuit considered this question. The government had argued that §§3579-3580 were designed only to extend power to award restitution to cases where there was no probation. The court of appeals rejected this view. Based on the legislative history of the VWPA, as well as particular provisions of the Act itself, the court concluded that Congress' intent had been to apply the new restitution provisions to all awards of restitution, including those attached to a term of probation. In case there had been any lingering doubts before the *Kallash* decision, this matter should now be considered settled. The provisions of 18 U.S.C. §§3579-3580 must be followed whenever a judge or magistrate orders restitution in connection with any title 18 (or applicable title 49) offense.

#### *Restitution: Determining Amount in Context of Plea Bargains*

Courts are frequently faced with the problem of ordering restitution in cases where a defendant has pled guilty to one or more counts of a multicount indictment in return for having a number of other counts dismissed. Questions frequently arise in this context about the proper amount of restitution which may be ordered by the court. Must restitution be limited, for example, to the amount specified in the counts of the indictment to which the defendant pled? A number of articles in previous columns have discussed this issue. See, for example, "Looking at the Law," 46 *Federal Probation* 70-71 (September 1983); "Looking at the Law," 42 *Federal Probation* 60-61 (March 1978).

One of the most recent cases to address this problem is *United States v. Paul*, 783 F.2d 84 (7th Cir. 1986). The defendant in that case pled guilty to two counts of bank embezzlement. The amounts involved in those two counts totaled \$28,000. However, at the plea hearing, the attorney for the government stated that the bank believed its losses to be in the vicinity of \$150,000, and the defendant's attorney stated that his client had previously admitted to an F.B.I. agent taking \$118,000. The amount of restitution finally ordered by the court was \$141,050. This amount was based upon the probation officer's estimate of the bank's loss, which was contained in the presentence report.

The defendant subsequently filed a Rule 35 motion, claiming that the restitution ordered was excessive and should have been limited to the amount alleged in the count on which restitution was imposed.

The Seventh Circuit relied on its previous opinion in *United States v. Davies*, 683 F.2d 1052 (7th Cir. 1982), in order to determine whether restitution could be ordered in excess of the amount charged on the relevant count. Under *Davies*, restitution is proper when (a) the defend-

ant has obtained the proceeds as part of an ongoing scheme to defraud which extends over time and (b) the amount of the damages to the victim has been established with specificity and admitted to by the defendant in the indictment, the plea agreement, and the plea and presentence proceedings.

Because defendant Paul's acts of embezzlement were viewed as part of a scheme to defraud that continued over time, the first prong of the *Davies* test was satisfied. And, as to the second prong, even though she never signed an explicit acknowledgment that she would make restitution in a certain amount as part of her plea bargain, the matter of restitution was raised and discussed at the plea hearing. The defendant's attorney specifically stated at the hearing that his client admitted to having caused losses of \$118,000 to the bank, and the court of appeals was convinced that the defendant had been aware that, unless she objected and withdrew her plea, the district judge would require her to make restitution in that amount. The Sixth Circuit refused, however, to go so far as to hold that the defendant's failure to object to the larger amount of restitution at sentencing (i.e., \$141,050) had the effect of legitimizing the restitution order. Satisfied that under *Davies* the defendant could properly be charged only with losses of up to \$118,000, the court of appeals directed the district court to reduce its order of restitution to that amount.

#### *Liability of Probation and Pretrial Services Officers in Preparing Pretrial Release Reports*

It has long been recognized that Federal probation officers have absolute immunity from liability for alleged misconduct in the investigation and preparation of presentence reports. See *Spaulding v. Nielson*, 599 F.2d 729 (5th Cir. 1979); *Maynard v. Havenstrite*, 727 F.2d 439 (5th Cir. 1984). See also *Demoran v. Witt*, 781 F.2d 155 (9th Cir. 1986) (actions taken by a state probation officer in connection with the preparation of a presentence report are covered by judicial immunity). Extending to probation officers the same degree of immunity accorded judges has been considered appropriate because the presentence report is an integral part of the sentencing process, and in preparing the report the probation officer acts at the direction of the court. In other words, since this particular function is "intimately associated with the judicial phase of the criminal process," it is reasonable for probation officers to share in the same absolute judicial immunity which protects judges for actions they take in the course of performing their judicial duties.

In the recent case of *Tripathi v. United States Immigration and Naturalization Service*, 784 F.2d 345 (10th Cir. 1986), the Tenth Circuit determined that the complete

protection afforded by absolute immunity should also be available to probation officers for their actions in preparing pretrial release reports. The decision whether to order the pretrial release of a criminal defendant, like the selection of an appropriate sentence for a convicted defendant, is an important part of the judicial process in criminal cases. A pretrial release report, like a presentence report,

is prepared exclusively at the direction of and for the benefit of the court. The court therefore found it followed that probation officers are entitled to absolute protection from liability for any alleged inaccuracies in these reports. The same conclusion would obviously apply to pretrial services officers.

### CRIME AND DELINQUENCY

Reviewed by CHARLES L. STEARNS

The January 1986 special edition of *Crime and Delinquency* focuses on the juvenile justice system where traditional reforms are being supplanted with a new and more conservative agenda. It mirrors the adult justice system where emphasis is on concern for victims, punishment for serious offenders, and protection of children from physical and sexual exploitation. The conflict between the old and the new reform agendas represents a significant watershed in the history of juvenile justice reform.

**"A Federal Perspective on Juvenile Justice Reform,"** by Alfred S. Regnery (January 1986). In this article, which was adapted from an address delivered by Alfred Regnery to the Nevada Juvenile Justice issues forum, Regnery provides an exposition of the changed Federal perspective on juvenile justice reform. He spells out the major programmatic elements of the Office of Juvenile Justice and Delinquency Prevention's new reform emphasis and also explains the ideological rationale for those activities.

The focus of the Federal strategy is on the chronic offender who may well be responsible for as much as 80 percent of serious juvenile crime. Less emphasis is placed on juvenile crime as a social problem and more emphasis on crime as a justice problem. Statistics reveal data that suggest that chronic offenders were victims of family violence when they were young, and the disintegrating family structure leads to sick and abnormal children who ultimately become involved in crime. Coincidentally, the same children are often the victims of pornography, child abuse, and sexual molestation. Within families, child abuse is a tragic consequence of family disintegration, with estimates suggesting that nearly 30 percent of our children are seriously abused.

The author does not pretend that government can fix these problems, but the data are important in allocating funds and implementing strategies to combat the problems. One strategy calls for the targeting of those small numbers of chronic offenders and holding them accountable for their behavior. A second strategy involves appropriating funds to improve the juvenile correction system by contracting with the private sector to operate secure, cost-effective facilities. Solicitation of volunteers

to help the neglected and abused by serving as advocates throughout the justice process is yet another strategy.

Similarly, in the concept of restitution, there is a shift away from focusing on the offender to one in which emphasis is given to making the victim whole again. The problem of missing and exploited children led to the formation of the National Center for Missing and Exploited Children. Programs to improve education and provide for safe and secure classrooms are in response to problems of violence and crime in our schools.

Finally, the emphasis of the Federal strategy is to restore traditional values. Young people must understand that they are accountable for their actions regardless of the background or reasons for their actions. It is necessary to reform the system to provide justice as well as order. It will not be easy, but we have no choice if we are to succeed.

**"Traditional Rhetoric, Organizational Realities: Remand of Juveniles to Adult Court,"** by M. A. Bortner (January 1986). In this informative article on remand of juveniles to adult court, Associate Professor M. A. Bortner examines the traditional rhetoric that remand is justified as providing protection to the public by identifying the most intractable and dangerous delinquents.

The present study examines the remand process within a western metropolitan county and provides an organizational analysis of the decisionmaking process by reviewing the case histories of 214 juveniles remanded to the adult court during 1980-81. The analysis is derived from interviews and participant observation. The analysis of both the case histories and the interviews with key decisionmakers suggests that the nature and complexion of remand are changing and that current realities differ markedly from traditional rhetoric.

Bortner found that there is little evidence to suggest that those juveniles remanded are singularly dangerous or intractable. Nor is there evidence to suggest that their remand enhances public safety.

In examining alternative explanations of remand, the major explanation for the increase in numbers and rate of remands was the State Supreme Court ruling terminating juvenile court jurisdiction when juveniles reach age 18. Essentially, the increased willingness to remand juveniles reflects the sensitivity to and desire to diminish perceived criticism of the entire juvenile justice system. In evidencing a willingness to relinquish jurisdiction over a small percentage of its clientele and by portraying these juveniles as the most intractable and the greatest threat to public safety, the juvenile system not only creates an effective symbolic gesture, but it also advances its ter-

ritorial interests in maintaining jurisdiction over the vast majority of juveniles and deflecting more encompassing criticism of the entire system.

**"The Quiet Revolution Revisited," by Robert L. Smith (January 1986).** This retrospective and introspective article chronicles the persons and events that contributed to the rise and ultimate fall of the probation subsidy program—a plan to provide financial incentives to counties in California to retain offenders on probation in lieu of committing them to state correctional facilities.

In essence, California Special Probation Supervision Subsidy was an experiment in institutional change. Subsidy modeled a rational approach to public policy organizational theory in action and political maneuvering at its best. Robert Smith viewed subvention which he called the "quiet revolution" through four different lenses: (1) rational choice, 2) organizational behavior, 3) political, and 4) leadership. The central theme is that organizations involved in subsidy were more than technical instruments for mobilizing human energies and directing them toward legislation. There were important values, a history, and a commitment that drove subsidy as an idea. The leadership of the subsidy movement recognized the environment of the time and acted, even risked, to take advantage of the opportunity that existed.

Smith explained how subsidy worked as a politically sensitive, financially based, and performance oriented program. The program changed as a result of changing leadership, competing forces, and legislative action. Since the program operated in a complex and rapidly changing environment, an iterative process emerged.

In the body of the article, Smith addresses subsidy as a rational action, as organizational behavior, as political behavior, and as a function of leadership.

In this analysis of subsidy, Smith stressed the importance of the organizational base that supported the concept of subsidy and a leadership that scanned its environment and reached out to many elements of that environment to bring subsidy into being. Whether subsidy could happen again is not the critical issue. What is important is that to achieve any reform, someone must be ready to stand for something. It is not enough to know what you do not like. There is the need for positive vision that is shared by many who have the resources and motivation to risk its becoming a reality.

### THE BRITISH JOURNAL OF CRIMINOLOGY

*Reviewed by* HARRY W. SCHLOETTER

**"Police Management of Public Drunkenness in Scotland," by Pat McLaughlin (October 1985).** This ar-

ticle considers the impact of individual attitudes, experience, and perceptions on the routine management of public drunkenness. The study, which was conducted in a division of a Scottish Police Force over a 6-month period, involved interviews and informal discussions with 66 police officers, analysis of police reports, and direct observation of police-inebriate encounters. According to the author, public drunkenness in Scotland is a highly visible phenomenon. Many signs point to Scotland having a serious problem with alcohol. Despite many pronouncements and high visibility, not a great deal of attention has been given to understanding the individual or official processes that affect this problem.

Police perception of drunkenness varied with the particular situation and with the nature of the individual involved. The police interviewed, in this study, differentiated four types of drunken offenders: "down and outs, weekend drunks, occasional drunks, and young people."

Most of the police interviewed felt punishment in general and the use of criminal law in particular was ineffective and an inappropriate response to drunkenness. The majority interviewed felt an alternative to arrest was necessary to eliminate court overload and prison overcrowding. Social Services involved in treatment programs will have a ready-made pool of clients and an opportunity to show that a therapeutic model can succeed where traditional responses have failed.

Very informative tables are offered. Material on the rate of convictions for drunkenness-related offense by police force area is especially interesting in that a differential approach is employed.

Also included are personal observations of individual police officers. Many officers have developed paternalistic relationships with some of the "down and outs." Research has shown that police encounters are overwhelmingly proactive in nature. The author concludes the article with a discussion on available alternatives and feels policy makers should give serious attention to all the problems raised before committing themselves to a convenient transfer of responsibility for the public drunk from police to social service management.

**"Responses to Truancy Among the Juvenile Panel of a Magistrates' Court," by Roger Grimshaw (October 1985).** This article reports on a questionnaire study of influences on magistrates' decisionmaking in truancy cases brought under the 1969 Children and Young Persons Act.

This study sought to shed some light on the reasoning used by juvenile court magistrates when called upon to make decisions on truancy cases. The authors' task was to give an illustration of the process by which normal decisions are arrived at in the juvenile court, showing how this sustains a perception of certain behavior as socially deviant both inside and outside the court.

Twenty percent of the magistrates interviewed felt the courts should be used as a last resort. Thirteen percent

said the courts' role should be one of support for the professional agency. The majority felt schools should try to provide solutions to truancy problems instead of shifting the children concerned into the jurisdiction of the juvenile court. The authors make note that considerable interest was shown by the Sheffield Juvenile Magistrates on the issues of truancy. Their interest testifies to the forward-thinking of the bench. Social variables such as age, place of residence, training, and employment of the magistrates was also studied. Self-explanatory tables were utilized to provide additional data.

**Self Report of Fighting by Females,"** by Anne Campbell (January 1986). This article was based on a questionnaire survey of British girls and women, selected from schools, a Borstal (Youth Custody Centers), and a prison. It includes their experiences, attitudes, and the perceived limits of aggressive behavior. Their fights were mostly with other females, and a great percentage had been involved in a fight within the last year. A majority of fights arose over issues of personal integrity (saving face) and loyalty to friends and resulted in minor injuries and bruises with animosity short-lived.

The lengthy questionnaire covered four major areas. The first section dealt with personal information, such as age, police contact, peer group, and degree of involvement in fighting. The second section related attitudes of the respondents to fighting. The third dealt on an abstract level with the permissibility of various kinds of behavior in fighting. The last section asked for specific details about a fight the respondent was involved in.

Schoolgirls selected were all under 18, the majority being 16, and came from five geographical areas. All girls had seen a fight and 88 percent had been involved in one. Fifty-seven percent had their first fight at age 10 or less; only 25 percent had more than six fights. Forty-eight percent had their last fight within the last 12 months. Only 6 percent had ever had police involved in any of their fights, with only 1 percent taken to juvenile court.

The Borstal girls were older. Ninety-seven percent had been involved in at least one fight, 65 percent had been in more than six fights, 75 percent had police involvement, 58 percent were brought before the court.

In the prison sample, 39 percent were aged 25 or more. Thirty-nine percent were involved in more than six fights, 50 percent had police involvement with 32 percent taken to court.

Among schoolgirls most fights happen in the street or at school, whereas Borstal girls' fights were predominantly in private homes, streets, and pubs. Prison women fought mainly in pubs or on the street.

The schoolgirls' fights were mainly stopped by the arrival of an adult; Borstal girls claimed the fights ended most often when the police arrived, and prison women said the fighters stopped themselves. A low response rate

was given about why it was stopped and who won.

In all groups punching, kicking, and tearing clothes were their main means of fighting. They all reported their opponents more often used dirty tactics such as slapping, biting, and scratching.

With schoolgirls there was an overall negative view of fighting. Both institutionalized populations showed a somewhat more positive attitude to fighting.

The present data can do no more than map out the rough parameters of female aggression in real world settings. The considerable extent of hidden female aggression suggests that a more systematic study would have practical as well as academic benefits. The data also suggest that female involvement in aggression is considerable more prevalent than criminal statistics would suggest. Damage is usually minor, and grudges are not held for long.

**"The General Deterrent Effect of Longer Sentences,"** by Donald E. Lewis (January 1986). The question repeatedly asked by professionals and society—"How long, if at all, should convicted offenders serve in prison?"—is the subject of this article. This article provides summary empirical evidence that may reduce the perceived differences between the various subdivisions of the criminal justice system.

This article investigated the deterrent effect of longer sentences on others. The knowledge and awareness of several recent attempts to measure empirically the deterrent effect is limited. And an improved understanding of the empirical evidence can improve decisionmaking within the criminal justice system.

This is a specialized survey which allows the author to concentrate on the problems of deterrence and results of attempts to measure the deterrent effect of longer sentences. It should be particularly useful to legislators, judges, members of parole boards, and others whose decisions directly affect the time offenders serve in prison.

Most of the studies reviewed provide evidence that longer sentences deter most types of crimes. The average estimates indicate that the deterrent effect is strongest for rape and assault and weakest for hijacking and fraud with robbery, burglary, auto theft, larceny, and murder lying somewhere between the two extremes. An increase in the average length of sentence may reduce the crime rate via the deterrent effects.

This author feels that there remains substantial room for improvement in the underlying theory, data sources, and methods of statistical inference. The evidence is far from uniform. Impartial analysis of the best evidence suggests, however, that criminals do respond to incentives, and the longer sentences do deter crime.

Selected tables and charts provide the reader with additional statistical data which further illustrate the extent of the research.

## JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY

*Reviewed by* EUGENE H. CZAJKOSKI

**"Toward an Integration of Criminological Theories,"** by Frank S. Pearson and Neil Allan Weiner (Spring 1985). The criminologist would seem to have too much grist for his mill. Because criminology falls within the realm of social science, it shares the social science characteristic of nearly endless multiplicity of theory. The influence of psychology alone would produce a host of theories for criminological reworking. With criminology composed of many elements from sociology, law, psychology, economics, etc., it is not surprising that criminologists have very many etiological theories with which to deal. To the extent that criminological theory is made up of pared down theories of human behavior, the well is unlikely to ever run dry. Fortunately, there is little contradiction to be found among criminological theories. The various theories often have different emphases and focus on different aspects of criminal behavior, but a student of the theories can easily observe considerable overlap. Having commonality at a number of conceptual levels, criminological theories are amenable to efforts at integrating them.

Previous efforts at integrating criminological theory have tended to involve too few theories and have been more in the nature of critical reviews. The authors here attempt to systematically integrate general theories "prominent in American criminology." To derive the most prominent theories, they searched the articles in the "five most esteemed journals in criminology" from 1978 on. The five so rated do not include journals likely to publish articles on biology, genetics, neurology, etc., and therefore, as might be expected, the theories most referenced in those five journals did not produce theories having a strong biological basis. However, the integrative scheme developed by the authors could easily allow for the insertion of biological theories.

The authors found that 13 criminological theories together accounted for over 90 percent of references in the "five most esteemed journals." The theories can be identified as social learning, differential association, negative labeling, social control, deterrence, economic, routine activities, neutralization, relative deprivation, strain, normative (culture) conflict, Marxist-critical/group conflict, and generalized strain and normative conflict. Some criminologists might find the assortment odd both for what theoretical perspectives have been omitted and what have been included. Sym-

bolic interactionism, as such, might be an example of an unexpected omission while "routine activities" might be an example of an unexpected inclusion (however, oldtimers might recognize "routine activities" as what used to be called "police theory").

The authors lay out a detailed and systematic conceptual framework for integrating the theories they have chosen. It is a somewhat complicated exercise featuring flow diagrams and tabular presentations of common elements. Social learning theory is the main component of the integrative structure. The integrative process involves identifying substantive contents of theoretical statements and mapping them into the integrative framework. The integrative constructs are formed at the micro-level and at the macro-level. Among the included factors are utility demand (deprivation), behavioral skill, rules of expedience, rules of morality, favorable opportunities, utility reception, and belief about sanctioning practices.

The authors make no attempt to evaluate the degree of empirical support for the theories, having properly concluded that theoretical integration need not await a comprehensive analysis of empirical support.

In the opinion of this reviewer, the authors are at best only partially successful in their fundamental aim, not only because of the limited selection of theories, but because there are concepts in certain theories which are not easily melded to other theories. However, the authors' own assessment of their effort seems fair. They state, "It is a preliminary work pointing out concepts common to particular theories and framing these concepts in a common vocabulary."

**"Familial Social Control and Pretrial Sanctions: Does Sex Really Matter?,"** by Candace Kruttschnitt and Daniel McCarthy (Spring 1985). The increased awareness of women being differentially treated by the criminal justice system has somewhat paradoxically been due to the heightened feminine consciousness in recent years. The paradox lies in the fact that the differential treatment, in at least two or three key aspects, is in favor of the woman. Feminist concerns have led to examinations of situations where being female has been detrimental and has harshly produced relative deprivation. Employment and the pursuit of the instruments of political power form the main arena for such concerns. When the hypothesis of sex inequity has been applied to the criminal justice system, it has centered on issues surrounding sex crimes against women (for example, the belief that punishment of males for sex crimes is disproportionately lenient). However, the search, motivated by the women's rights movement, for sex related inequities in the criminal justice system has brought attention to inequities that favor the females as well as those which would seem to favor the male. Females rather consistently do better than the males

in the prospect of arrest, in pretrial release, and in sentencing. The study reported in this article seeks to explain the leniency accorded women in pretrial release decisions.

The authors briefly review, in an "intentionally non-exhaustive" way (as they put it), the literature on sex-based differences in criminal involvement and criminal court sanctions. Explanatory variables in the literature can be categorized in several ways—individual versus structural, criminal behavior versus behavior of the legal system, etc. Theoretical propositions on the subject seem virtually limitless since factors associated with sex are innumerable.

The dependent variable used in this study is pretrial release status, and the authors hypothesize that informal social control as found in the family setting is a sex-related factor with a controlling effect. A stratified random sample of 1,558 males and 1,365 females was drawn from criminal defendants processed in Hennepin County, Minnesota between 1965 and 1980. Presentence investigation reports were used to obtain information on each subject. To comprise a familial social control scale, items such as household composition, number of children living with the offender, and the offender's degree of economic dependency were used.

It was found that "...even though women's lives traditionally have been circumscribed by family responsibility, it is clear... that this factor alone cannot explain the differential treatment women are accorded in criminal court." Only when the "effects of both employment and familial control over the sixteen years are examined that any consistent evidence of informal social control interaction with the defendant's gender is found." The study clearly suggests that a wide variety of sex-related factors affect pretrial release decisions. Familial social control itself did not prove to be a very strong factor. Indications are that sex bias on the part of the judiciary is a formidable factor worthy of particular study. Further, it appears that sexual stereotypes, which benefit women at the point of pretrial release, have been little affected by changes brought about by the women's movement.

It is with a sense of despair that this reviewer notes that the authors follow the trend of using the word gender as an equivalent for the word sex. Using gender and sex interchangeably is disturbing to anyone who recalls that gender is primarily a term used in grammar. Strictly speaking, there are three genders (including neuter) but only two sexes. One might speculate on the practical motivation for perfectly equating the two words, but it would undoubtedly be a waste of time inasmuch as usage determines meaning and certainly today's usage has overwhelmed any distinction between the two terms. Alas!

## ARTICLES OF SPECIAL INTEREST IN LEGAL JOURNALS

*Reviewed by* CANDACE MCCOY

### *Legal Standards and Intensive Probation Supervision*

Intensive Probation Supervision (IPS) is a lively topic in correctional administration, but as yet it has received little attention in the legal literature. This issue of *Federal Probation* contains many discussions of IPS, which is a program of heightened surveillance of—and also heightened aid to—offenders who otherwise would be imprisoned.<sup>1</sup> This threshold definition carries two items of some debate: 1) is the probation officer's function as a social service worker subsumed under a law enforcement surveillance function? and 2) is IPS appropriate only for offenders who have been sentenced to prison and then are diverted to IPS or can it be applied to offenders who have been granted probation under currently prevailing standards of supervision? These issues are addressed in the legal literature but seldom in the context, specifically, of Intensive Probation Supervision programs.

The primary reason that IPS sparks little interest in legal circles is that structurally it is no different from the already well understood traditional probation. On this point, everybody agrees: intensive probation is what traditional probation was originally supposed to be, at least insofar as it has always been agreed that probation officers should carry manageable caseloads which afford a meaningful opportunity to remain in close contact with probationers. In many respects, IPS is simply a program to provide the resources and support for probation services as they ought to have been implemented but were not, a shortcoming of the past mostly due to budget constraints. Since the law considers probation as a generic category, so far IPS falls under the general heading of "non-incarcerative sentencing alternatives" along with traditional probation programs. These common legal standards for probation, however, offer several points that could be newly examined if IPS becomes widely implemented.

The legal literature hints at some of these issues. First, what is the nature of the consent to the sentencing alternative that the offender must give? Ordinarily, this legal point "washes out" in court proceedings, because it is assumed that an offender who receives probation instead of a prison sentence gladly consents to the sentence when the agreement listing conditions of probation is signed. Since IPS is not yet familiar to offenders or to the defense bar, however, corrections departments undertaking an

<sup>1</sup> An interesting discussion of IPS in action, operating under this definition, is Stephen Gettinger, *Intensive Supervision: Can It Rehabilitate Probation?* CORRECTIONS MAGAZINE 8 (April 1983).



IPS program should take care to spell out IPS conditions very carefully in sentencing documents. After all, legally the probationary sentence is a contract between the offender and the court, and both sides must understand its terms for it to be binding.

Stickier legal questions arise when those conditions are closely examined from a policy viewpoint. How intense is the "intense" supervision? How intrusive may the probation officer be when monitoring the activities of probationers? IPS analysis begins with the usual standard for probation: since the person has been convicted of a crime, several important liberties related to the right to privacy may constitutionally be curtailed. Offenders are subject to search and seizure of their property; they must follow certain orders restricting travel; they cannot own firearms; they must submit to recommended treatment in rehabilitation programs. IPS would change none of this. Rather, it would simply enforce these restrictions more carefully.

A problem could arise, however, should the supervision become more intense than the original offense warranted. Under legal analysis of "least restrictive alternatives," the sentence imposed must be administered carefully so as not to impose unnecessary punishment unrelated to the legitimate state interest in restraining the offender. Any rule or state action exceeding the amount of punishment that protects legitimate state interests is unconstitutional. Since IPS only fulfills the supervision function as originally envisioned for probation departments, it easily meets this legal standard.<sup>2</sup> But it is unclear whether it would still pass constitutional muster if it were applied to offenders less dangerous than those who otherwise would be in prison. Another problem could arise if IPS were applied to the correct group of offenders but included supervisory methods even more intense than those currently in use.

The former consideration evokes a frequent misgiving of corrections professionals who otherwise support IPS. There is hesitation lest IPS "widen the correctional net"—i.e., be used to control people who would not have been so carefully monitored in the past—instead of being used as an alternative to prison and a fulfillment of the original promise of probation programs. If an offender who otherwise would surely receive traditional probation is sentenced instead to IPS, anticipate legal challenges based on equal protection analysis. (If judges could sentence every offender of that class to IPS, however, the approach would withstand legal attack. Few correc-

tions departments would be able to pay for such a wide-ranging program, however!)

The second intensity-related issue has received some attention in the legal literature. IPS usually involves daily visits from one of a team of two probation officers, careful monitoring of the offender's job and family contacts, and constant counseling. If even more intrusive conditions were imposed, would the practice meet constitutional standards?

IPS programs would then begin to resemble other, more controversial probation programs. For instance, much attention has been directed to the use of drugs which prevent sexual arousal as a condition of probation for rapists. Requiring the use of these drugs is certainly more intrusive than the usual IPS program, but the legal issues concerning consent to conditions of probation and the proper measure of government intrusion in offenders' lives are the same. The issue is discussed in a recent law review article. See *Sexual Offenders and the Use of Depo-Provera*, 22 SAN DIEGO L.REV. 565 (May 1985).

A program with Big Brother overtones underscores the intrusiveness issue. Electronic surveillance of offenders in their homes, while expensive, is possible and has been tested in states including New Mexico and Florida. The offender wears a tamper-resistant bracelet that emits a radio signal. The signal beams to a computer which alerts authorities if the offender moves outside the territory assigned. This probation supervision is the most intense possible! An interesting article describing the device and reviewing its possible use in several criminal justice functions is Bonnie Berry, *Electronic Jails: A New Criminal Justice Concern*, 2 JUSTICE QUARTERLY 1 (March 1985).<sup>3</sup> Berry analyzes the electronic bracelet device under "reasonable expectation of privacy" legal cases and discusses where the standard would apply.

Probation, since it is a sentence, is by definition a point in criminal procedure where privacy rights may legally be curtailed. Even electronic monitoring of probationers, if carefully conducted, would probably be warranted under privacy analysis, although electronic crime investigation techniques might not. The more likely attack on IPS, then—if indeed any legal attack is mounted—will involve demands that judges and correctional administrators carefully classify offenders and apply the program only against those who clearly would otherwise be imprisoned.

Imprisonment continues to be the major focus of legal challenges. The New York University School of Law regularly publishes the *Annual Survey of American Law*, which reviews the year's major U.S. Supreme Court cases on a variety of topics. A nice overview of recent prisoners' rights cases is included in the volume covering 1985 cases.<sup>4</sup> Considering the practical problems associated with prisons, programs like Intensive Probation Super-

<sup>2</sup> The standard is described and critiqued in *Griswold v. Connecticut*, 381 U.S. 479 (1965).

<sup>3</sup> Published by the Academy of Criminal Justice Sciences, available from the School of Justice, American University, 4400 Massachusetts Ave., N.W., Washington, D.C. 20016. Similar topics have been discussed recently on the pages of *Federal Probation*. See Ronald P. Corbett, Jr. and Ellsworth A.L. Fersch, *Home as Prison: the Use of House Arrest*, 49 FED.PRO. 13 (March 1985) and Richard A. Ball and J. Robert Lilly, "A Theoretical Examination of Home Incarceration," FED.PRO. 17 (March 1986).

<sup>4</sup> Anne F. Jacobs, *Prisoners' Rights: Judicial Deference to Prison Administrators*, 1985 ANN.SURV.AM.LAW 325 (March 1986).



vision which present realistic alternatives to incarceration are likely to be embraced in the field and in the literature. However, alternatives to imprisonment are not alter-

natives also to legal standards relating to the rights of the convicted. The topic may be considered more deeply in the legal literature in the future.

## Your Bookshelf on Review

EDITED BY J. E. BAKER

*Federal and State Corrections Administrator, Retired*

### An Update of Corrections

*Corrections in America: An Introduction*, 4th Edition. By Harry E. Allen and Clifford E. Simonsen. New York: Macmillan, 1986. Pp. 522.

Allen and Simonsen have updated and revised their standard text on American corrections. For the past 11 years theirs has been one of the most widely used textbooks in college courses on corrections. This latest edition has been completed to insure that the coverage of topics remains current and detailed.

Always comprehensive, the fourth edition retains the 26-chapter format and the basic organization of topics. In this regard it will be easy for instructors to adapt their courses to the revised text. As could be expected, the revision reflects a general update of all the statistical data throughout the book to provide the reader with the most current information available.

What changes have been made from the third edition are subtle but substantial. The authors have deleted their discussion of the aging U.S. Supreme Court. All other material from the earlier edition has been retained. What has been altered involves the addition of discussions of several contemporary topics.

The authors have revised their coverage of sentencing, giving more attention to recent reforms and their effects on corrections. Similarly, they have updated coverage of the history of corrections through a more detailed analysis of recent correctional history.

In the substantive chapters, Allen and Simonsen have added coverage of death row populations, especially women on death row, recent developments in the states allowing for the restoration of civil rights to exconvicts, and a section on the elderly offender. They have also included sections addressing juvenile decarceration and the increasing role of private corrections. Their coverage of diversion programs has been expanded to include separate sections on police and community based diversion programs.

A careful comparison of the table of contents of the third and fourth editions of this text reveals the changes which have overtaken American corrections in the past 5 years. It is clear that the authors achieved the goal of their revision by bringing the textual coverage into the 1980's while retaining its readability and appeal.

As was true with earlier editions of the book, and is true of most comprehensive texts, the book suffers from an overload of information. The inclusion of 26 chapters

illustrates the breadth of coverage given correctional topics in this book but renders it lengthy for those teaching on the quarter system. Fortunately, the authors keep each chapter short and on point so that the reader is not overburdened with redundancy and unnecessary detail.

*Corrections in America*, fourth edition, is an improvement over earlier editions and well adapted to classroom use. In addition, it stands as an authoritative reference work useful to anyone involved in the American correctional process.

Cincinnati, Ohio

LAWRENCE F. TRAVIS III

### A Systematic Overview

*Treatment of the Alcohol-Abusing Offender*. By Robert Ross and Lynn Lightfoot. Springfield, Illinois: Charles C. Thomas, Publisher, 1985. Pp. 154. \$19.75.

Conceived as an effort to provide an adequate review of the nature and quality of alcohol treatment programs in correctional settings, *Treatment of the Alcohol-Abusing Offender* is a first of its kind.

This book offers a comprehensive portrait of each of the significant aspects of alcohol abuse and crime. Chapters 2 and 3 consider the alcohol/crime connection in terms of the high correlation between chemical abuse and incarceration rates as well as between abuse and parole violation. These introductory chapters present a great deal of useful and compelling information for the corrections or addictions specialist.

Chapter 4 is a discussion of contemporary issues in corrections in general, especially the treatment versus punishment controversy. Alcohol—the drug—is the topic of the subsequent discourse. Proponents, as I am, of the disease model of addictions will have problems with the analysis of research findings on the learning-to-control-your-drinking experiments. However, the authors are correct in pointing out that this debate (abstinence versus controlled drinking for alcoholics) may be as emotional and political as it is scientific.

Chapter 6, "Alcohol Abuse Programs for Non-Offenders," which seems entirely too brief at a mere five pages, concludes in reiterating the theme that "many problem drinkers become, or can learn to become, controlled drinkers." This chapter, disappointingly, fails to

provide an adequate description of the nature of alcoholism treatment in North America.

"Alcohol Abuse Programs for Offenders" is a well-researched and informative survey of the field of alcoholism treatment within correctional institutions. Table 1 summarizes characteristics associated with successful Alcoholics Anonymous affiliation. I personally found this table very useful for understanding why some types of people are drawn to the AA format while others are not.

Chapter 8 is an argument in favor of developing alcohol abuse programs for offenders. The major rationales are (1) chemical abuse is significantly associated with crime, (2) addictions treatment programs have been able to demonstrate favorable success rates, (3) there is a need to develop a broad data base from which to further assess treatment efficacy, and (4) curbing alcohol abuse and its attendant suffering is the morally right thing to do. The final chapter concerns evaluation of correctional alcoholism programs.

The greatest weakness of the book—the extreme research orientation—is also the greatest strength: Ross and Lightfoot basically provide in this slim volume the only systematic overview of studies on alcoholism treatment for offenders. In spite of some obvious flaws (the editing work and use of sexist language among them), *Treatment of the Alcohol-Abusing Offender* fills a major gap in the literature and is an excellent reference book for practitioners and scholars alike. I strongly agree with the authors that for the approximately 50 percent of prison inmates who have serious substance abuse problems, intensive addictions treatment is a dire necessity.

Longview, Washington

KATHERINE VAN WORMER

## An Examination of Discretion

*Discretionary Justice: An Introduction to Discretion in Criminal Justice.* By Howard Abadinsky, Springfield, Illinois: Charles C. Thomas, 1984. Pp. 185. \$24.75.

Discretion in the administration of the law and the criminal justice system has received increasing attention by academics and practitioners alike. Conflict between legal rationalism and legal realism points to the discretionary basis of many criminal justice actions. The low visibility of these decisions also contributes to concerns for fairness and equity in the administration of justice.

*Discretionary Justice* examines the basis for and control of discretion among several criminal justice decision-makers. For the police these decisions include enforcing traffic regulations, managing domestic disturbances,

stopping and frisking suspicious persons, and dealing with the mentally ill and juveniles. Lawyer discretion examines public defense services, prosecution and the judge's role in trials, and post-conviction legal actions such as sentencing and probation. Correctional discretion examines prison and jail systems, correctional officer behavior, and parole board decisionmaking. Discretion in the juvenile court includes decisions about intake, detention, adjudication, and disposition hearings.

The initial chapter, "Introduction to Discretion," does not establish the role of discretion in the administration of justice. The text introduces concepts in a terse fashion (11 pages are devoted to the entire discussion of discretion) and insufficiently develops such issues as discretion stemming from legislative ambiguity, the situational nature of many criminal justice decisions, case volume, or workgroup influences on discretion. The introductory materials instead focus almost exclusively on the problem of due process. The author presents two discretion principles, that of fairness in decisionmaking and that of legal seriousness of the action, but these principles are not used throughout the book to evaluate individual decisions. Other shortcomings include the absence of a concluding chapter that brings together the rather diverse materials of the agency-specific chapters, the use of lengthy quotations, and chapter headings that are often confusing.

The chapters devoted to individual criminal justice practitioner decisions are often problematic. The police chapter has materials on Uniform Crime Reports, one paragraph on traffic enforcement, and an extended discussion of domestic disputes. The discussion of controlling police discretion is too brief to be useful. The material on legal discretion is most concerned with plea bargaining, although the discussion here is the most fully developed. The section on judicial discretion, particularly that associated with sentencing, is reminiscent of material in an introduction to criminal justice text: purposes of sentencing, crime control models, and types of sentences. Major efforts in sentencing including guidelines and commission efforts are only briefly touched on. The consideration of probation is particularly nonanalytic.

Correctional discretion is also presented in a conflicting fashion; descriptive materials on prison structure are set in opposition to long lists of correctional rules and regulations and internal procedures. Parole decisionmaking is restricted to an illustration from New York and an outline presentation of parole guidelines from the U.S. Board of Parole. Juvenile justice materials are more descriptive of the juvenile justice process than of discretion.

The concept of discretion in the administration of justice is an important one. The ambition of *Discretionary Justice* to define why this discretion exists and how it might be controlled is not fully realized. Some generalized

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notions of discretion are advanced. *Discretionary Justice* is a book more oriented to an introduction of criminal justice than to an introduction to discretion in criminal justice.

Philadelphia, Pennsylvania

JACK R. GREENE

## Time and Crime

*Elderly Criminals*. Edited by William Wilbanks and Paul K.H. Kim. Lanham, Maryland: University Press of America, Inc., 1984. Pp. 156. \$24.50 (hard); \$13.75 (soft).

This text is a well-edited collection of papers resulting from academic interest in the elderly criminal and from the considerable media attention given in recent years to crime committed by the elderly. Lacking scholarly material on the topic, the media have tended to make claims in a vacuum. Wilbanks and Kim have collected nine papers presented at the Second Annual Elderly Offender Conference held in Miami in February 1983. The papers examine questions raised by media accounts and succeed in partially filling the vacuum of scholarly information about the subject at hand.

The papers examine several prevailing issues and bring them into coherent focus so that they can be weighed and analyzed with a reasonable measure of clarity and intelligence. Topics discussed include patterns and trends of offenses by the elderly, violent crime by the elderly, shoplifting, and the response of the criminal justice system to elderly criminals. These topics are posed in an analytical framework.

There are several papers of interest. Particularly noteworthy are those papers dealing with the media's perception of a so-called "geriatric crime wave" or epidemic which is part of a growing problem in the United States. The first paper (by Wilbanks) answers three basic questions. Has there been an increase in crime by the elderly compared to that of other age groups? What are the predominant offenses of the elderly as opposed to the nonelderly? Would an increase in elderly (as compared to nonelderly) arrests in the United States population result in a higher crime rate in the future? Figures from the uniform crime reports (crimes known to the police and compiled and published annually by the Federal Bureau of Investigation) are examined to answer the questions. In the second paper, the authors (Burnet and Ortega) conduct a descriptive analysis of two midwestern communities, exploring the extent to which increases in elderly crime are "real" and how much of the change can be attributed to economic factors or police procedure.

The authors (Silverman, Smith, Nelson, and Kosberg) of paper seven employ attribution theory, with its emphasis on explaining the biasing tendencies in the development of perceptions, as a conceptual framework in investigating the effects of stigmatization of the elderly offender.

Oftentimes in edited texts of this nature, the reader is left struggling with a lack of continuity from paper to paper and wishing for either more or less of various topics. However, the nine papers brought together in this work have continuity. The logical order in which the papers are presented allows for a smooth flow and analytical integration. The editors' preface includes short summaries as guides and linkages to the papers.

The papers are generally of high quality. Although the text was put together with care, it is not broad enough in scope to be used as a supplement. Nevertheless, it would be worthwhile reading for the student and general reader of criminology and gerontology.

Frankfort, Kentucky

PHILIP BOOKER, JR.

## Reports Received

*Potential Liabilities of Probation and Parole Officers*, Revised Edition. National Institute of Corrections, August 1985. Pp. 202. This is an updated version of the original report published in 1982. It reflects the many changes which have taken place in probation and parole law.

*Public Danger as a Factor in Pretrial Release: A Comparative Analysis of State Laws*. Barbara Gottlieb, National Institute of Justice, July 1985. Pp. 30. This monograph examines the "danger laws" of the 32 states, the District of Columbia, and the Federal government which permit judges—when setting bail or other pretrial release conditions—to consider whether a defendant might pose a danger to the community.

*Victimology: An International Journal*, Volume 10, Numbers 1-4, 1985, Washington, D.C. Pp. 750. This issue contains the proceedings of the Third International Institute on Victimology held in Lisbon/Estoril, Portugal, November 11-17, 1984, sponsored by the journal and the North Atlantic Treaty Organization.

### Other Reports:

*Annual Report, 1985*. Commission on Accreditation for Corrections, Rockville, Maryland.

*Annual Report, 1985*. Ramsey County Community Corrections Department, St. Paul, Minnesota.

### Books Received

*A Guide to United Nations Criminal Policy.* By Manuel Lopez-Rey. Brookfield, Vermont: Gower Publishing Company, 1985. Pp. 142.

*Alcohol Interventions: Historical and Sociocultural Approaches.* Edited by David L. Strug, S. Priyadarsini, and Merton M. Hyman. New York: The Haworth Press, Inc., 1986. Pp. 218.

*Consumerist Criminology.* By Leslie T. Wilkins. Totowa, New Jersey: Barnes and Noble Books, 1984. Pp. 184. \$30.50.

*Controlling the Offender in the Community.* By Todd R. Clear and Vincent O'Leary. Lexington, Massachusetts: D.C. Heath and Company, 1983. Pp. 189.

*Handbook of the World's Police.* By Harold K. Becker and Donna Lee Becker. Metuchen, New Jersey: Scarecrow Press, Inc., 1986. Pp. 350. \$31.50.

*Organized Crime in America.* By Jay Albanese. Cincinnati, Ohio: Anderson Publishing Company, 1985. Pp. 142.

*The Power to Punish: Contemporary Penalty and Social Analysis.* Edited by David Garland and Peter Young. Atlantic Highlands, New Jersey: Humanities Press, Inc., 1983. Pp. 238. \$27.50.

*The Psychology of Judicial Sentencing.* By Catherine Fitzmaurice and Ken Pease. Dover, New Hampshire: Manchester University Press, 1986. Pp. 174. \$19.95.

*Witness Intimidation: The Law's Response.* By Michael H. Graham. Westport, Connecticut: Greenwood Press, 1985. Pp. 317.

*Women and Children Last: The Plight of Poor Women in Affluent America.* By Ruth Sidell. New York: Viking Penguin, Inc., 1986. Pp. 236. \$16.95.

## Letters to the Editor

### *On Contemporary Probation*

TO THE EDITOR:

I congratulate Harold B. Wooten on his article: "It's O.K., Supervision Enthusiasts: You Can Come Home Now!" in the December 1985 issue of *Federal Probation*. He has identified what I believe should be one of the prime goals of the Probation Service.

April 21, 1986

EDWARD R. BECKER  
United States Circuit Judge  
United States Court of Appeals  
for the Third Circuit  
Philadelphia, Pennsylvania

TO THE EDITOR:

*Federal Probation* is to be congratulated for its lead articles in the December 1985 issue concerning where the modern probation officer, doing supervision, stands.

Harold B. Wooten's "It's OK, Supervision Enthusiasts, You Can Come Home Now" and Richard Gray's "A Challenge Answered: Changes in the Perception Of The Probation Task," while based on *Federal Probation* experience, strike me as relevant to many of today's large urban probation professionals (like myself).

Wooten, nicely, I think, underscores the problem of keeping in focus that probation is basically a service involved with providing an alternative to prison, while we stress maintenance of public protection. Additionally, Wooten properly criticizes the overly ambitious and hence excessive paperwork in data collection systems in the field. (I know many of my colleagues in New York City Probation feel we are living out Cohen's law of bureaucracy: "We write more and more about the less and less that we do until we'll wind up writing absolutely everything about the absolute nothing we're doing.")

Gray brings a better sense of historical perspective to his reply: Probation has changed, is more complex, and requires more enforcement tools (as the Rand study amply demonstrated). If we are to function today, we have to use today's technology and tools or be hopelessly lost in the past.

Wooten and Gray represent the horns of the dilemma on which the contemporary supervision professional is tossed. However, to suggest that either provided *the* answer, I submit, would be both misleading and premature.

The two authors have raised pieces of the problem: *What is probation going to be, once modernized?* Yes, we have to inculcate the best of today's technology in our field, but technology is a means, not an end in itself. Surely, the conflict of helping and enforcing roles will remain an information dynamic in the delivery of services in our field.

It seems to me that Gray and Wooten are describing the growing pains of probation in the 1980's in trying to catch up to the world around us. What needs to be looked at, however, is where do we go from here?

I do not presume or pretend to have the answer (though I'm convinced we've got to look at victim services as one major piece of the puzzle; I also feel we need to pay greater attention to "justice model" inputs into our field). What concerns me deeply is that the issues raised by Gray and Wooten will receive attention in a discrete manner.

I would like to suggest that the one thing that occurs to me with the most clarity is the need to create a forum in which all the cast of characters concerned with these issues—academicians, administrators, line professionals, political leaders, and caring members of the general public—can meet to push forward the community corrections field into a post-modern world.

I guess I am saying that (for me) the futurology of probation is *the* problem of probation today and that Gray and Wooten have well described the underlying conflict of that problem.

I am also worried that the concerted effort needed to resolve that problem with some decency may not occur in the fragmented field of today.

March 18, 1986

ROBERT A. NUNZ  
Supervisor, New York City  
Department of Probation  
(Former President, New York  
State Probation Officers  
Association)



## It Has Come to Our Attention

**Professor Vernon Fox**, who since the 1950's has been a regular contributor to *Federal Probation* and reviewer of the *Canadian Journal of Criminology*, has retired from Florida State University's School of Criminology. Fox taught at the university for 34 years and established the School of Criminology there. Before that, he served as deputy warden at the State Prison of Southern Michigan; he was with the prison system for 10 years. Fox, whose degrees are in sociology, has an A.B., a certificate in sociology, an M.A., and a Ph.D. from Michigan State University. He is the author of numerous articles and books, among them: *Violence Behind Bars* (1974); *Community Based Corrections* (1977); *Correctional Institutions* (1983); and *Introduction to Criminology* (1985), which has been translated into Russian. The editorial staff of *Federal Probation* wishes him well in his retirement and will continue to look forward to his quarterly contributions to the journal.

**Lisa A. Kahn**, *Federal Probation's* "Looking at the Law" columnist since 1983, has left her position as assistant general counsel with the Administrative Office of the U.S. Courts to work in the Criminal Division, U.S. Department of Justice. Joining the Administrative Office in 1977 as an attorney in the Office of General Counsel, Kahn advised on probation matters, among other duties. Her previous experience included stints as a volunteer probation officer in the District of Columbia and as a summer intern at the Bureau of Prisons. The editorial staff thanks Lisa Kahn for her contributions to *Federal Probation* and for continuing the tradition of "Looking at the Law" as a helpful information tool.

**Etta J. Johnson**, Editorial Secretary for *Federal Probation*, has resigned to accept a position with the Washington Metropolitan Area Transit Authority. Johnson, who has been with the Probation Division, Administrative Office of the U.S. Courts since June 1983, worked in the Pretrial Services Branch and the drug program before joining the editorial staff of *Federal Probation*. She assisted in the production of a year's worth of issues. The editors will miss her excellent secretarial skills and team spirit but wish her all the best in her career change.

The American Probation and Parole Association has published a book on child abuse. *Child Abuse Intervention* describes the latest techniques in investigation, intervention, and prevention, including quick assessment tips, and features full-color illustrations. For more information, write to Norman Helber, Box 638, Woodbury, New Jersey 08096, or call (609) 853-3616.

*Residential Treatment for Children and Youth*, a quarterly journal, has issued a call for manuscripts for its Fall 1986 issue. The journal publishes articles on a wide range of topics concerning therapeutic work with children, youth, and families. Of special interest are cur-

rent issues including therapeutic management of violent outbursts and coping with bureaucratic controls. For detailed instructions or to submit a manuscript, write to the editor, Gordon Northrup, M.D., R.R. #1, Box 698, Lee, Massachusetts 01238. For subscription information, contact the Haworth Press, 28 East 22nd Street, New York, New York 10010.

The American Bar Association's National Legal Resource Center for Child Advocacy and Protection recently began publishing the *ABA Juvenile and Child Welfare Law Reporter*, a comprehensive digest of new cases, laws, journal articles, and publications in the juvenile justice and child welfare field. The monthly reporter also analyzes emerging trends and legislative developments. For a subscription (\$145 for individuals; \$175 for agencies and libraries), write to the American Bar Association, Order Fulfillment 549, 750 N. Lake Shore Drive, Chicago Illinois 60611. For a review copy, contact Sally Small Inada, ABA National Legal Resource Center for Child Advocacy and Protection, 1800 M Street, N.W., Washington, D.C. 20036; telephone (202) 331-2250.

The Committee for Public Justice, under the auspices of the Nation Institute, has resumed publication of "Justice Watch," a quarterly newsletter which reviews Department of Justice activities and proposes alternative policies. The newsletter, formerly produced under the leadership of the late Lillian Hellman, is written and edited by Diana R. Gordon, who teaches political science and criminology at the City College of New York. For further information, contact either Phillip Frazer or Emily Sack, The Nation Institute, 72 Fifth Avenue, New York, New York 10011; telephone: (212) 242-8400.

The 41st National Correctional Education Association Conference will be held July 6-9, 1986 in Cincinnati. The theme will be "Correctional Education: The Opportunity for Change." For further information, contact either Dr. Bobby Rice, Conference Chair, Lebanon Correctional Institute, P.O. Box 56, Lebanon, Ohio 45036 or Dr. Dennis Massey, Program Chair, Wilmington College of Ohio, Wilmington, Ohio 45177.

The International Centre of Legal Science, an organization which promotes international cooperation in the field of law, has scheduled the Fourth International Congress on Legal Science, to be held August 24-29, 1986 in Leuven, Belgium. The theme of the congress is "Human Rights and the Rule of Law." A call for papers has been issued. For further information, write to Dr. M. A. Mahmoud, Founding Director General, International Centre of Legal Science, Wesselsstraat 1, 2572 RV THE HAGUE, the Netherlands.

The College of Law Enforcement, Eastern Kentucky University is sponsoring the Third Annual Justice Safety and Loss Prevention Conference, October 24, 1986, in

Richmond, Kentucky. The conference will explore critical issues in corrections, fire and safety engineering technology, police administration, security and loss prevention, and traffic safety. To obtain information about the conference or to submit presentation or paper proposals, write or call: 1986 LEN Conference, 467 Stratton Building, ECU, Richmond, Kentucky 40475-0957; telephone: (606) 622-3565.

**The 10th National Conference on Correction Health Care**—sponsored by the National Commission on Correctional Health Care and the American Correctional Health Services Association—is planned for October 30-November 1, 1986 in Washington, D.C. The conference, which will address the questions "Reasonable Health Care: What Is It? How Much is Enough?," will discuss practical, cost-effective, and efficient methods of providing health care and medical services and will offer clinical descriptions and treatment regimens for acute and

chronic diseases frequently found by medical practitioners in correctional facilities. The commission's 1986 revised standards for health services in prisons and jails will also be featured. A call for papers has been issued. For further information, contact Jodie Manes, National Commission on Correctional Health Care, 333 East Ontario Street, Suite 2902B, Chicago, Illinois 60611; telephone: (312) 440-1574.

**The International Conference of Police Women** will be held November 2-7, 1986 in Israel. The conference, held under the auspices of the Israel National Police and the Municipality of Ramat-Gan, will honor the memory of Yona Komemi, an Israeli policewoman killed in the line of duty 20 years ago. Among the topics to be discussed are the employment of women as police and women and crime. For further information, contact T. Shachar, International Conference of Police Women, P.O. Box 394, Tel-Aviv 61003, Israel.

# Contributors to this Issue

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1. Sheldon and Eleanor T. Glueck, *500 Criminal Careers*. New York: Knopf Publishing Company, 1930, p. (or pp. ).

2. Edwin Powers, "An Experiment in Prevention of Delinquency," *The Annals of the American Academy of Political and Social Science*, January 1949, pp. 77-78.