

The Development of a Juvenile Electronic Monitoring Program *Michael T. Charles*

Morrissey Revisited: The Probation and Parole Officer as Hearing Officer *Paul W. Brown*

Defense Advocacy Under the Federal Sentencing Guidelines *Benson B. Weintraub*

of Prisons Programming
ates *Peter C. Kratcoski*
George A. Pownall

Corrections and the
Rights of Prisoners *Harold J. Sullivan*

Prison Fees: Shifting
Offender *Charles R. Ring*

Treatment and the Human Spirit:
Relationship *Michael C. Braswell*

Like Cars Are Like Computers
..... *James M. Dean*

118840
118847
118811
118811

NCJRS

AUG 3 1989

ACQUISITIONS

JUNE 1989

U.S. Department of Justice
National Institute of Justice

118840-
118847

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this ~~copyrighted~~ material has been granted by

Federal Probation

to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the ~~copyright~~ owner.

Federal Probation

A JOURNAL OF CORRECTIONAL PHILOSOPHY AND PRACTICE

Published by the Administrative Office of the United States Courts

VOLUME LIII

JUNE 1989

NUMBER 2

This Issue in Brief

The Development of a Juvenile Electronic Monitoring Program.—Author Michael T. Charles reports on a research project concerning the juvenile electronic monitoring program undertaken by the Allen Superior Court Family Relations Division, Fort Wayne, Indiana. Reviewing the planning and implementation phase of the program, the author discusses (1) the preplanning and organization of the program; (2) the importance of administrative support; (3) the politics and managerial issues faced during program development, implementation, and management; and (4) the role and function of surveillance officers.

Morrissey Revisited: The Probation and Parole Officer as Hearing Officer.—Author Paul W. Brown discusses the Federal probation officer's role as hearing officer in the preliminary hearing stage of the parole revocation process. This role was largely created by the landmark Supreme Court case of *Morrissey v. Brewer* in which the Court indicated a parole officer could conduct the preliminary hearing of a two-step hearing process possibly leading to a parole revocation and return to prison. How this role was created in *Morrissey* and how it has been carried out by the Federal probation officer are examined.

Defense Advocacy Under the Federal Sentencing Guidelines.—This article sets forth the duties and responsibilities of defense counsel in effectively representing clients in all phases of the criminal process under Federal sentencing guidelines. Author Benson B. Weintraub offers practice-oriented tips on arguing for downward departures, avoiding upward departures, and negotiating plea agreements under the guidelines and discusses procedures to employ in connection with the presentence and sentencing stages of a Federal criminal case.

Federal Bureau of Prisons Programming for Older Inmates.—The "graying" of our society is creating a change in our prison populations. More sentenced offenders will be older when they enter

the institutions, and longer sentences will result in more geriatric inmates "behind the walls." Balancing the needs and costs of geriatric care is a critical issue to be addressed. In this article, authors Peter C. Kratcoski and George A. Pownall discuss various attributes of criminal behavior of older persons and the distribution of older offenders within the Federal Bureau of Prisons. They also discuss the complete health care programming that correctional systems must provide to meet legal mandates already established in case law. According to the authors, significant programming adaptations have taken place in the past several years at the Federal level; more are anticipated in the near future.

Privatization of Corrections and the Constitutional Rights of Prisoners.—Many in the legal and corrections community have presumed that "private" correctional facilities will be held to the same constitutional standards as those directly administered by the state itself. Author Harold J. Sullivan

CONTENTS

The Development of a Juvenile Electronic Monitoring Program	Michael T. Charles	3
<i>Morrissey</i> Revisited: The Probation and Parole Officer as Hearing Officer	Paul W. Brown	13
Defense Advocacy Under the Federal Sentencing Guidelines	Benson B. Weintraub	18
Federal Bureau of Prisons Programming for Older Inmates	Peter C. Kratcoski George A. Pownall	28
Privatization of Corrections and the Constitutional Rights of Prisoners	Harold J. Sullivan	36
Probation Supervision Fees: Shifting Costs to the Offender	Charles R. Ring	43
Correctional Treatment and the Human Spirit: A Focus on Relationship	Michael C. Braswell	49
Computers Are Like Cars Are Like Computers Are Like Cars	James M. Dean	61
Departments		
News of the Future		65
Looking at the Law		69
Reviews of Professional Periodicals		74
Your Bookshelf on Review		83

Computers Are Like Cars Are Like Computers Are Like Cars

BY JAMES M. DEAN*

CONSIDER THE probation/pretrial services officer of 1900 (since there were no probation officers in 1900, the reader's indulgence is requested), faced with a "horseless carriage." All throughout his career he has made his home visits and gotten around quite well on his trusty old horse, "Paint" or "Silver." Along comes this newfangled gadget, the horseless carriage, which sputters, belches, balks, and backfires. Besides, it requires roads, instead of the paths or open country that good old Paint preferred, and it needs to be fixed when it breaks—which it does with considerable, and frustrating, regularity. Why would any self-respecting probation/pretrial services officer want to use a horseless carriage instead of a horse? Indeed, why would any chief probation/pretrial services officer, concerned about such managerial issues as efficient use of limited resources, allow a probation/pretrial services officer to even entertain the thought?

Yet, within a few short years, the superiority of cars over horses as a means of transportation is well established. Roads are built, a highway system is established, an elaborate network of supportive services for automobile users grows up and spreads everywhere. No one can seriously dispute the superiority of horseless carriages over horses for nearly all uses. Stables, blacksmiths, and harness makers transform into garages, mechanics, and after-market stereo dealers.

Consider the probation/pretrial services officer of 1990, faced with a computer. All throughout her career, she has done her work with a yellow pad or with a dictating machine and an eager and bountiful pool of secretarial help. Along comes this newfangled gadget, a computer, which beeps, balks, intimidates, and brings tears of frustration to strong persons' eyes. Besides, it needs programs instead of ink or cassettes, and the officer needs to know how to re-boot

it (or is it kick it?) when it freezes up and won't do anything. On top of that, she has to be able to type, at least a little bit, to make the darn thing work. Why would any self-respecting probation/pretrial services officer want to use a computer instead of a dictating machine? Indeed, why would any chief probation/pretrial services officer, concerned about such managerial issues as efficient use of limited resources, allow an officer to even entertain the thought?

Because a computer will enable the probation/pretrial services officer to do the job better.

The AT-compatible microcomputer is the late-1980's counterpart to the Model T Ford, except it usually comes beige or putty-colored instead of black. Mass produced by assemblers, it has driven down the price of personal computers and made them affordable to nearly everyone. In the Federal court system,¹ the Office Automation Contract² is the procurement vehicle which will put AT-compatible PC's on nearly every professional and clerical person's desk within a few years.³

Programs are now available, with more coming all the time, which will allow officers to use computers in all aspects of their work. Efforts are under way to allow the officer to access needed information in the docketing and financial systems running on the court computers housed in the local clerk's offices. Nationally, an "Interstate Highway System," the Wide Area Network (or WAN) planned in the

¹In the balance of this article, I will refer to specific administrative initiatives and customized program developments taking place in the Federal courts, which impact on the Federal Probation and Pretrial Services System. Though the particular programs, etc., are specific to the Federal system, the points made can apply with equal validity to other systems. The objective—using computers to work smarter—is the same, though the means to achieve that objective will vary from system to system.

²The Office Automation Contract is a multi-year, multi-million dollar procurement contract now in place for the purchase of PC's, printers, software, and training. Any component of the Federal judiciary with a source of funds is eligible to purchase equipment and services off this contract. The contract is intended to be the primary source of hardware and software to meet the word processing and office automation needs of the judiciary for the foreseeable future.

³In 1985, the Administrative Office of the U.S. Courts commissioned a study, which came to be known as the AMS study, of the equipment needs of the courts. It concluded that a PC workstation belonged on nearly everyone's desk. Specifically, in a support office such as probation, the study recommended that each professional and nearly all support personnel have a PC workstation.

*Mr. Dean is chief United States probation officer, District of Vermont. He is a member of the Automation Committee of the Federal Probation System's Chiefs Management Council and of the Ad Hoc Committee on Automation Staffing, appointed by the Judicial Conference's Committee on Judicial Improvements.

Data Communications Project⁴ which is now being developed for the Federal judiciary (to be replaced later by FTS 2000), will enable any computer anywhere in the judiciary to connect to any other computer, quickly and smoothly. Local Area Networks, or LANS, will link together machines in an office or a building in the same way.

Management types will use computers in management-type ways. Secretarial types (no pun intended) will use computers in secretarial-type ways. And professionals, such as probation officers or pretrial services officers, will use computers in professional-type ways. It is that last point that especially interests me here. Professionals should—indeed, need to—use computers themselves. Computers are valuable and worthwhile tools for getting the work done better, smarter, and—perhaps after a while—faster.

Probation officers constantly need to locate, analyze, verify, share, compare, apply, and communicate information. They use phone books, rolodexes, guideline manuals, letters, notes, scraps of paper, field sheets, forms upon forms, and all kinds of systems and non-systems to organize information. The power of the computer to locate information has many applications to all facets of the probation officer's or pretrial services officer's daily work. A probation officer in the District of Vermont had a recent example of how the computer's ability to organize and find information can assist in the performance of an officer's daily duty. While doing a presentence investigation, the officer needed assistance in knowing how to apply the Criminal Livelihood adjustment.⁵ The district had a prior court decision on this issue, but it was not readily located. However, because the probation office stores all its completed presentence reports on disk, it was a relatively simple matter to search for the phrase "Criminal Livelihood," find all the presentence reports which contained it, and locate the relevant case. The officer could then see the presentence report that contained all the salient features that had led the court to apply the "Criminal Livelihood" adjustment and how they were presented in a specific case.

The U.S. Sentencing Commission has developed, and is constantly revising and refining, the ASSYST

program to aid Federal probation officers and others in applying the sentencing guidelines. Officers involved in guideline presentence investigations quickly realized how complex and sophisticated a system had been set up. There are many, many findings of fact that have to be made on each case, each of which has a material impact on the applicable guidelines and thus on the sentence. Subsidiary issues and cross-references abound, creating different nuances to cases that, if missed, would yield an incorrect application of the guidelines. In June 1987, at a national meeting of chief United States probation/pretrial services officers, many attending recognized that guideline application presented a major challenge and that an appropriate computer program would greatly facilitate the proper application of the guidelines. It would need to be something that would prompt officers to ask all of the right questions, to ensure that nothing was overlooked or forgotten, and that would suggest, but not impose, probable answers. An inquiry revealed that development of such a program had already been under consideration, and several weeks later work on what would become known as ASSYST began in earnest.

ASSYST is a program that should be used by the professionals themselves, because it structures and aids the application of the guidelines. Most Federal probation offices up to now have not had enough equipment, or enough support and computer literacy, for professionals to make extensive use of the program. Officers are still using the horse-and-buggy methods, rather than driving the automobile. Applying the guidelines manually and then using ASSYST after the fact to check one's calculations is the equivalent of hitching the horse up to pull the horseless carriage.

Likewise with criminal history information retrieval systems, NCIC and NLETS, in all their local variations. These are immensely powerful investigative tools, crucial to the proper performance of the pretrial services and probation officers' functions. But they can only achieve their potential when they are used by the officers themselves, the persons doing the investigation, to whom little inconsistencies and incongruities mean something worth pursuing further. Granted, in routine cases, perhaps a clerk could get all the relevant record information, but not all cases are routine, and what differentiates a good investigator from a not-so-good one is the ability to recognize and follow up on the little incongruities that are a tip off to dig a little deeper. NCIC, NLETS, and related systems are investigative tools that should be used by the investigators themselves.

⁴The Data Communications Project is also a multi-year, multi-million dollar procurement contract, still in the process of being developed, which will provide for the hardware, wiring, and software to connect all the computer equipment in the judiciary. It will include file servers, office and building LAN's, and a Wide Area Network with regional nodes.

⁵Criminal Livelihood is an override category in certain cases under the sentencing guidelines promulgated by the U.S. Sentencing Commission.

Probation and pretrial services officers should utilize computers for specific applications such as AS-SYST and NCIC/NLETS. Further, *probation and pretrial services officers should have computers on their own desks and should use them for all of their own work, including composing their own documents on them.* Why? Because it will improve the quality of their work. *It is a smarter way to work.*

Most officers in the system now use dictation equipment to compose written work. That was not always the case, and for many officers in the past, as well as for some current personnel, it was a difficult transition to make to go from handwritten documents (on the formerly ubiquitous yellow legal pads) to being able to dictate with only a few rough notes. Most people work first in a visual and tactile mode—handwriting—and it is difficult to switch to an oral and aural mode—dictating. Most officers have done it now, and it has become institutionalized so that, for example, chief probation officers do not need to provide any special justification to get dictation equipment for newly authorized officer positions. That needs to be changed so that they get a computer with every authorized officer position.

The guideline presentence report is a good example of a document that is better composed on a computer than on a dictaphone. It is an analytical report, which requires cross-referencing between sections and which is also quite stylized. It is easier to compose this type of document in a visual medium than in an auditory one. Making the connections between sections that are necessary to support the findings and conclusions the report calls for requires that the author be able to see what is written—either by using a rough draft printout or by moving around the document on the screen. Many sections (the one dealing with alternative fines to cover costs of imprisonment and supervision is one example that comes to mind) can be prepared once and imported into the document where needed. Other sections, such as the face pages or cover sheets for the report, can be set up as subsidiary documents for individual probation officers and/or individual judges, with blanks left where the specific case information can be filled in.

Sophisticated and powerful word processing programs, such as WordPerfect, are now available. They take effort to learn how to use properly—but then, officers should not lose sight of the effort it took to learn how to dictate. It is possible to automate a lot

of the work of report writing, so that it becomes a matter of selecting the appropriate pieces for placement in the report. In the pretrial services arena, preparing the Summary Report for the judge or magistrate can be a matter of calling up the appropriate form on the computer, predefined for each officer, adding the identifying information and narrative sections, and then selecting appropriate recommendation formats. In the probation arena, the 100+ macros⁶ and files that the District of New Jersey generated to automate the guideline presentence report process are an example. It becomes a matter of professional judgment to determine which pieces are appropriate to which cases and what specific factual information needs to be added to each case. For both arenas, case record management by chronological recording is easier to do on a computer than it is by the present system of note taking and dictation.

Individual officers do not have to know how to do such things as devising macros to automate the presentence or pretrial services reports. All that is necessary is for the officer to be able to use them. Individual officers need to know how to drive the car, which can be equipped with automatic transmissions and cruise control, so to speak. It is not necessary for them to be either automobile mechanics or computer programmers. Obviously, officers do need driving instructors to teach them how to drive and mechanics and technicians to keep their cars in running condition. Some can do routine maintenance on their own, such as changing the oil or backing up their hard drive, some cannot. It makes no difference in their ability to drive a car. It makes no difference in their ability to use a computer.

Probation/pretrial services offices need a support structure to enable their personnel to use computers, but most personnel will be computer users, not programmers. The outline of such a support structure is coming into view. In December 1988, the creation of five technical positions, allocated to probation/pretrial program development and support and to be placed in the Administrative Office of the U.S. Courts, was approved. For the first time, positions will be devoted full-time to program development and support on a national level. The Judicial Conference Committee on Judicial Improvements, through its subsidiary, the Ad Hoc Committee on Automation Staffing, is presently developing a judiciary-wide support system for automation users in every component of the courts. Technical PC support position classifications are already available to Federal probation and pretrial services offices for in-house support where appropriate. A network of "driving

⁶Macros are shortcuts that computer programs use to record one time a series of keystrokes or a section of text and then call it up as needed with one or two keystrokes.

instructors, mechanics, and technicians" will be created to support computer users throughout the judiciary.

Right now, computer usage in the probation system is still in the early stages. Using a computer is a bit more of a challenge than driving a car. The support structure is in its infancy, and computer users now must exhibit more energy and initiative than will be needed later. An example is electronic transmission of documents from one location to another. Right now it can be done, using dial up modems over regular telephone lines and a communication program such as Carbon Copy Plus, which the Sentencing Commission purchased for the computers granted to the probation offices in 1987. It works well, but it is a little bumpy and slow—kind of like driving across the country before the interstate highway system was built. The Data Communications Project, a procurement process now under way, will among other things be the equivalent of the interstate highway system, linking all court locations so that document transmission will be a much faster and smoother procedure.

Staffing patterns also will change as probation/pretrial systems move in the direction of computer use by officers. Right now, support staff consists primarily of clerical personnel who are involved in a lot of typing and transcribing from dictation. That will change as machines take over a lot of the manual labor involved in the present arrangement. Support staff functions will be less clerical and more technical, as offices shift to direct use of computers by professionals and managers. Support personnel will be asked to take on new roles, perhaps of a somewhat paraprofessional nature, such as covering routine court proceedings, or of a more administrative nature, as technology changes the job function-

ing of all personnel in an office. This too will pose a training and managerial challenge for administrators.

Over the last 10 years, the functions of probation offices and pretrial services offices have gotten much more challenging and demanding with each legislative session. Officers are all called upon to work smarter than they ever have in the past. They need all the help and all the tools they can get to respond to these challenges and demands. PC's are extremely powerful tools that are becoming available to more and more people. They will change everyone's jobs, much like automobiles changed so many jobs so many years ago.

One final note of comparison between cars and computers: the trade magazines for both tend to stress speed and power and fancy, add-on extras. Over time, most people have learned to cultivate a healthy skepticism about a lot of car ads and promotions and to focus on meeting their basic transportation needs. Probation managers need to do the same with computers, to focus on meeting the officers' basic job needs with this powerful tool and not get sidetracked by a lot of hype about marvelous new features that ever more powerful models will have. The AT clones that are to be the workhorse of the Federal judiciary for word processing and individual users will take probation offices a very long way, even by themselves. When they are linked together by the Data Communications Contract procurement, the Federal court system will have achieved a state of technological prowess that can only be dreamt about now. Probation managers should concentrate on getting as many people using computers in their daily job functions as possible, as the first step. The other steps will follow.