

Probation

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Burt Galaway*

Identifying the Actual and Preferred Goals of
Adult Probation *Thomas Ellsworth*

Sharing the Credit, Sharing the Blame: Managing
Political Risks in Electronically Monitored
House Arrest *James L. Walker*

Guns and Probation Officers: The Unspoken
Reality *Paul W. Brown*

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This Issue in Brief

Community Service: Toward Program Definition.—Over the past two decades, community service work order programs have been established at various points in the adult and juvenile justice systems. On the basis of detailed study of 14 community service programs, authors Joe Hudson and Burt Galalway describe a detailed community service program model. Key elements of program structure are described, including inputs, activities, outputs, and outcomes, along with their linking logic. According to the authors, preparation of this type of program model is a necessary prerequisite for sound management practices, as well as for developing and implementing program evaluation research.

Identifying the Actual and Preferred Goals of Adult Probation.—The field of adult probation has undergone considerable change over the last 10 years, reflecting a perceived public sentiment which emphasizes enforcement and community protection. As a result, the goals of probation have shifted. Based on a survey of adult probation professionals in two midwestern states, author Thomas Ellsworth confirms the existence of a dual goal structure in probation, encompassing both rehabilitation and enforcement. Further, the study results reveal that probation professionals prefer a dual goal structure in administering probation services.

Sharing the Credit, Sharing the Blame: Managing Political Risks in Electronically Monitored House Arrest.—For the last several years, electronically monitored house arrest has been the topic of extensive commentary in the literature. Scant attention, however, has been paid to the political environment in which such programs must exist. Using a brief case study of one county in Ohio, author James L. Walker suggests a four-part implementation strategy aimed at reducing the risks to the political actors involved in these programs. He concludes that

only if political considerations are properly managed will efficient and legitimate use of electronic monitoring programs be likely.

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Sharing the Credit, Sharing the Blame: Managing Political Risks in Electronically Monitored House Arrest

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*Stone walls do not a prison make
Nor iron bars a cage.*

—Richard Lovelace (1615-1658).

IT TOOK technology over 300 years, but it has finally caught up with poetry. The electronic monitoring of prisoners in their own homes is operational throughout the world (Lilly, 1989) It is used in a variety of contexts with mixed results and varied reviews (Schmidt, 1987). It will clearly remain as a potential tool of corrections in the future since technologies cannot be uninvented, only improved or made obsolete.

Discussions of electronically monitored house arrest (EMHA) have tended to cluster around two subjects. First there has been extensive discussion of the operational aspects of the system, including its economic impact (Berry, 1985; Electronic Monitoring, 1985; Friel & Vaughn, 1986; Schmidt, 1987). Second, there have been several articles on the legal, constitutional, and ethical aspects of the practice (Alexander & Alexander, 1985; Del Carmen & Vaughn, 1986; Peck, 1988).

In a path-breaking article two authors (Ball & Lilly, 1986) set out to examine the theoretical basis for the development of an electronic monitoring system. Through an examination of the major components of home incarceration and the goals of correction, including retribution, restraint, and reformation, they attempted to fit this alternative sentencing mode into what they called "collective definitions of social reality" (Ball & Lilly, 1986, p. 23). They concluded that home incarceration (made possible, of course, by electronic monitoring) seemed well worth exploring because "It represents an alternative which is communicable in terms of contemporary realities, which is not overly complex, and which would appear to provide the potential impact desired in many cases." (Ball & Lilly, 1986, p. 23).

Since criminal justice is merely a subsystem of politics it is crucial in the implementation of any new program that the political actors have the necessary freedom of movement to take risks, to

change, if you will, the "collective social reality" of their constituents. Yet as one writer has pointed out (Jacob, 1984, p. 166) this is difficult because of the many barriers to coordination among various political jurisdictions and personnel.

The purpose of this article is to extend this analysis through the use of a brief case study. We will emphasize the interaction between agencies of the political system and the importance of this interaction in fostering the appropriate social reality. Finally we suggest a means of implementing a program of EMHA in an actual jurisdiction which will manage the political risk for all the actors involved.

The Case of Montgomery County

Montgomery County, Ohio, has begun experimenting on a very limited basis with house arrest and the electronic monitoring of those so restrained. The program was at the initiation of the county sheriff (who has authority over the county jail) and was funded with about \$10,000 of his budget. The program encompasses both location monitoring and remote alcohol monitoring. The county contracts with the Guardian Technologies Company of Cincinnati, Ohio, for the monitoring services.

The sheriff describes the program as a very conservative one which is used only for model prisoners in order to avoid embarrassing failures. The program has not received widespread public notice. Prisoners must sign a contract that they will meet the terms of the house arrest. The contract is very detailed and restrictive and includes permission for officials to enter the homes of detainees and personally monitor the prisoner and the equipment. The prisoner is responsible for all of his or her subsistence and for providing the necessary telephone equipment for the monitoring procedure. Each of those under house arrest must also pay the full cost of the services provided by the Guardian Company. Any deviation from the contract can result in an informal hearing and a possible revocation of house arrest

and subsequent incarceration, with loss of "time served."

Currently the program only involves about 3 percent of the average daily population of the county jail, and it is unclear to what extent, or even whether, that will increase. There is no apparent opposition to the program on the part of the local criminal justice establishment, nor on the part of the elected county commissioners.

Genesis of a Crowding Problem

The major purpose of the county jail is to hold accused defendants until their trial or until they are released on bond. To a lesser extent it holds convicted criminals awaiting room at penitentiaries and other treatment programs. A very few people are actually sentenced to the county jail.

As with jurisdictions across the country, Montgomery County has seen a large increase in the jail population over the last few years. A majority of this increase is directly related to increased drug trafficking and suppression, especially that involving crack cocaine.

It is important to describe the recent political history of the county, typical of urban counties in the late eighties, to appreciate the motivation of the sheriff in trying to start the program of house arrest. The county prosecutor was recently re-elected in a very close race. His opponent's only substantive issue was an alleged lack of vigorous prosecution of drug-related cases. Although there was no basis for this accusation, the results of the election contained a clear message that the voters believed there was.

After the election, perhaps not coincidentally, the police began a vigorous campaign against drugs. Possession of even trace amounts of cocaine was prosecuted as a felony. An extra grand jury was empanelled, and the court system was flooded with indictments. The presiding judge, citing his inherent supervisory authority over the judicial system, dismissed the second grand jury just to slow the flood of cases.

Upon one prisoner's motion, the local Federal judge ordered the county to reduce the number of prisoners in its 35-year-old jail. Some prisoners had been housed, dormitory style, in the basement. The county was forced to release prisoners or at great cost to contract for their incarceration at other institutions. Finally, just as in many other jurisdictions (Nederhoff, 1988), the county is faced with new jail construction to keep pace with more demanding jail standards, as well as with increasing populations.

Although some defendants awaiting trial are

released on their own recognizance (OR), the county has no program to facilitate this procedure. Consequently, the majority of the prisoners in the county jail are those who are unable to post money bond. Of course, we do not know how many of them, given the transient nature of the population involved, would likely be released OR if there were such a program.

Given these circumstances it is easy to see that the county is at a crossroads. In one direction is the judicious use of a new technology to delay or eliminate the need for expensive new construction or unpalatable release. In the other direction lies the unprincipled and random use of the program leading to unacceptable political costs for the actors involved.

Relevant Political Contexts

Before going further, it is important to note that there are two entirely different sets of political contexts with different attendant risks involved in EMHA. These two are roughly divided into pretrial and posttrial environments.

The pretrial use of EMHA is clearly the most problematic. The eighth amendment to the Constitution guarantees a reasonable bond in all but capital cases. The routine substitution of EMHA for money bond or OR release is clearly unprincipled. EMHA is a punishment, a significant deprivation of liberty. And although it is arguably much more desirable than jail, it is not equivalent to release on OR and should not be used as such. Widespread use would certainly lead to significant criticism from civil liberties organizations, the defense bar, and ultimately, perhaps, the courts.

On the other hand, it must be honestly acknowledged that the public perception of the bail system is much closer to what would be called preventive detention. Any significant lapse, i.e., criminal activity, by those on EMHA would be seen as a failure by the courts to lock up dangerous people, perhaps one of the most egregious political risks of all. There is at least anecdotal evidence that this risk in EMHA is perceived by judges. One author reports the case of a judge who refused electronic monitoring to an accused drug dealer because "home detention would not stop the defendant from selling drugs" (Peck, 1988, p. 27).

The posttrial political environment is significantly different. First the burden shifts to the corrections establishment to demonstrate that EMHA is punishment enough, (i.e., is effective in meeting the goals of punishment) to justify its

use. In short, EMHA must not "fail to satisfy the public sense of justice" (Ball & Lilly, 1986, p. 19). As one informant, a Federal magistrate, bluntly put it, "Your view of house arrest depends on whether you include the risk of being raped in your cell as part of the punishment."

Secondly, the question of equity is raised as indigent defendants may not be able to afford the program if the costs are passed on to the convict (Irwin, 1985; Peck, 1988).

Thirdly, while it is clear that it would be abusive to give monitoring where simple probation is ordinarily given (Friel & Vaughn, 1986, p.12), a more vexing question is whether probation is seen by the average voter as an expedient or as a treatment. In the minds of the public a probationer may simply be a convict for whom there was no room in jail. Therefore, the pressure to over-use EMHA may militate against its original adoption.

Finally, there is the question of the widening of the corrections net (Berry, 1985) If EMHA ever becomes the common sentence for those who are not jailed, there will certainly be complaints from many critics. Thus, the political actors may find themselves in the untenable middle between the hardliners and the softliners on the question of punishment.

Each of those at risk in the local political system is an elected official, with the exception of the aforementioned Federal judge. Each has to answer to his or her relevant public for fair treatment of prisoners, good husbanding of available resources, and the safety of the community. The elected county commissioners are also responsible for maintaining the tax burden at an acceptable level.

The local judges, although somewhat insulated from the day-to-day political pressures that beset other elected officials, are still aware of the risks in sentencing. There are former colleagues who have paid the ultimate political price for a crime committed by a probationer or a defendant released on OR. In this situation it is clear that there is no incentive for any one of the actors to take a lead in the increased use of house arrest. But if the technology is available, especially if it is aggressively marketed by those companies owning it, it is unlikely to be dormant. To the extent that important actors in the system keep the technology at arm's length, the potential for unstructured and unfair program development exists with all of its attendant evils (Hanna, 1989).

An Implementation Strategy

It is our contention that the correct implementation of a pioneering criminal justice tool must include the management of political risk for all the actors involved. Our final point will be to suggest an implementation strategy for EMHA which will encourage a politically nurturing environment.

The strategy requires addressing the concerns raised from both sides of the issues, involving all the actors in the implementation according to their needs, and maximizing the success of the participants while minimizing costs to the jurisdiction. In this regard four steps are proposed.

1. Collect Accurate Cost Data

The adoption of new technologies should be driven by market forces whenever possible. This is difficult when public officials, for example, routinely confuse average and marginal costs for incarceration. One hears such statements as "The cost of housing a prisoner is \$35 a day and the monitor is only \$10 so we save \$25 a day!" Only when a true account of the relative costs and benefits are made, outside the frenzied marketing techniques of the technopenologists, can the elected commissioners propose realistic expenditure and revenue measures to the voters.

Conceivably an EMHA program can lead to a significant reduction in planned expenditures. But without accurate, localized cost data, the risk of opposing the national trend of more and better jail space is simply too great for the commissioners to bear.

2. Select the Pool of Eligible Participants

The writing of standards for participation and of the contract to be used between the county and the prisoners must be a joint project of all the parties involved. In the pretrial environment there should be a clear understanding that three factors will always be present before EMHA is used:

- a. Release on Recognizance would clearly not otherwise be granted.
- b. No defendant would be penalized because of indigency.
- c. EMHA would never be used where a defendant chose to post bond.

These three criteria would serve three very important purposes. The first criterion would prevent EMHA from becoming a covert form of preventive detention, especially as the true, relative

costs of the program begin to drop. The second would ensure against the charges of gross unfairness that have been raised in the case of Montgomery County and elsewhere. The third would preserve the reasonableness standard of the bond process (Del Carmen & Vaughn, 1986).

In the posttrial environment the concern shifts to the political risks the judges and others would share for any crimes committed by EMHA detainees. As Friel and Vaughn (1986, p. 12) indicate, the primary purpose of EMHA should be diversion from incarceration, not a substitute for supervised probation.

Spending time and money in advance to determine the most likely target population will help to establish EMHA as part of a comprehensive program, to release more offenders earlier, not as a kind of add-on probation insurance for those who would be released anyway. Since this will mean the release of many "higher risk" prisoners, success is possible only if the various concerns of all the actors are taken into consideration in the development of sentencing guidelines for the use of EMHA.

3. Establish a Flexible Quota for EMHA Usage

As long as EMHA is seen as an expedient, it is impossible to manage the political risks in its use. In any system of corrections the goal should be an optimal mix of all resources, one of which will be EMHA. It is clear that EMHA can easily fall into the trap of being either overinclusive, thus extending the corrections net, or underinclusive, reserved for special or unusual cases (Petersilia, 1987) and denied to many at the lower end of the economic scale. Both of these pose significant political risks for elected officials.

Although the judges must obviously retain the ultimate sentencing authority, all actors in the criminal justice system should share in determining the optimal mix of EMHA usage to protect the political interests of both the judges and the policy makers.

The quota approach avoids the danger that as the cost of EMHA starts to decline, judges would be politically pressured to include it as part of any probation. In other words, EMHA is now seen as a relatively expensive alternative to unsupervised probation. Our world view may merely accept the inevitability of some prisoners not being restrained. Since that world view may change because of the changes in the technology, it is important to have the political mechanisms in place, in advance, to control that technology.

4. Create a Value-Neutral Method of Selection

Finally, as long as demand for EMHA outstrips supply, the participants should be chosen by lot from the pool of eligible applicants. Those chosen could be required to contribute to the cost of the program but indigents would not be.

As the program grows and its success (or failure) is monitored (Bush-Morgan, 1988), it will either become routinized or discarded. With routinization, public acceptance of the program should grow to the point where political actors can become less directly involved and the major burden for implementation of EMHA would shift to the administrative agencies now responsible for pretrial and posttrial confinement respectively.

Conclusion

There is no such thing as a politically risk-free environment, nor in a democracy, should there be. And, there are many legitimate reasons given in opposition to the introduction of this new technology. It may be seen as a direct threat to the profession (Haghighi, 1988), or it may be seen as a threat to civil liberties (Alexander & Alexander, 1985), or it might just be seen as unnecessary. But there is no purpose served in having a potentially useful technology lie unused because of the political risk involved in its implementation. An adequate implementation strategy can help to avoid this situation.

Postscript

Recently most of the political actors in the Montgomery County experiment were put on the defensive when two highly publicized crimes, both drug-related, involved electronic detainees awaiting trial on previous charges. One defendant on EMHA was charged with aggravated murder and the other with paying for a drive-by shooting. The judges who were quoted in the local paper on the matter tended to stress the relative success of the program compared to bond or OR releases. The sheriff, on the other hand, stressed the cost savings of the program. Said the sheriff, "I can't build my way out of the jail crisis. I can't build a jail for 1,000 people."

Public reaction, for the moment, has been very slight.

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