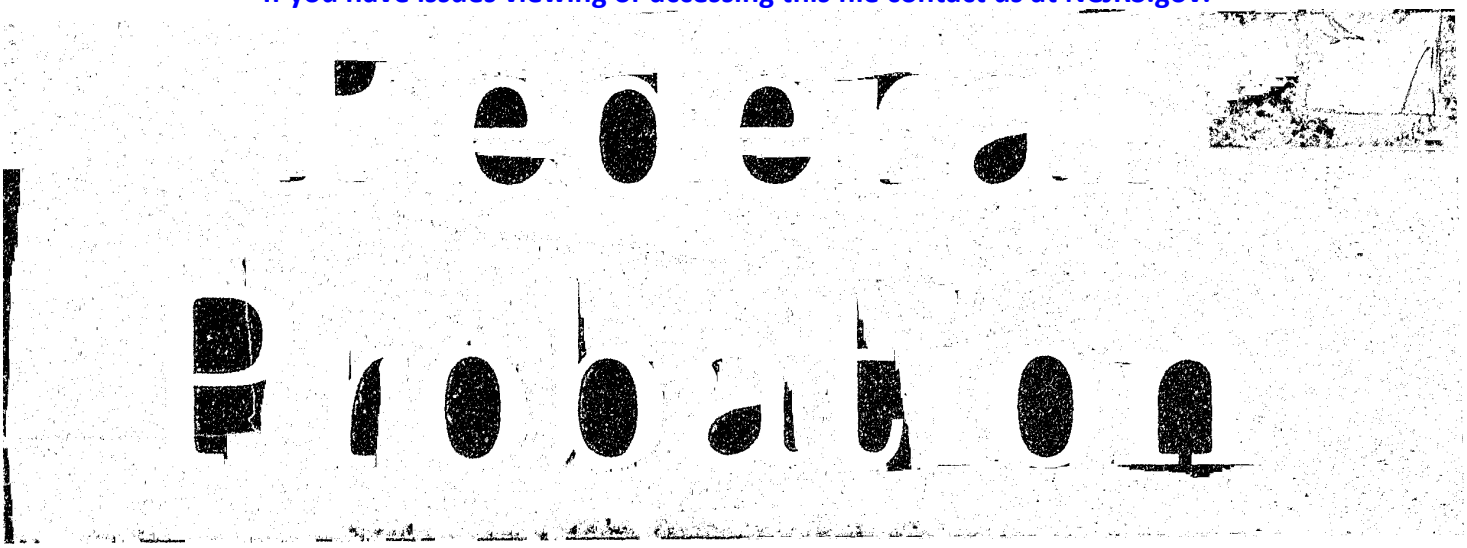

DECEMBER 1990

Federal Probation

A JOURNAL OF CORRECTIONAL PHILOSOPHY AND PRACTICE

Published by the Administrative Office of the United States Courts

VOLUME LIV DECEMBER 1990 NUMBER 4

This Issue in Brief

Are Probation and Parole Officers Liable for Injuries Caused by Probationers and Parolees?—The number of offenders on probation and parole has risen; inevitably some offenders will commit other crimes during their terms of supervision. A growing concern for probation and parole officers is whether they can be held civilly liable for injuries caused by probationers and parolees under their supervision. While case law in this area is still developing, there are enough cases to indicate when an officer might be held liable. Authors Richard D. Sluder and Rolando V. del Carmen provide a categorization of decided cases and sketch a broad outline of when officer liability might ensue.

The Influence of Probation Recommendations on Sentencing Decisions and Their Predictive Accuracy.—Using data on all serious cases concluded in 1 year in an Iowa judicial district, authors Curtis Campbell, Candace McCoy, and Chimezie A.B. Osigweh, Yg. explore the disjuncture between sentencing recommendations made by the probation department and sentences actually imposed by judges. While probation personnel and the judiciary usually agreed on appropriate dispositions for first-time offenders, they strongly disagreed on recidivists' sentences. Probation officers recommended incarceration for recidivists almost twice as often as judges imposed it.

Home Confinement and the Use of Electronic Monitoring With Federal Parolees.—Authors James L. Beck, Jody Klein-Saffran, and Harold B. Wooten evaluate a recent Federal initiative examining the feasibility of electronically monitoring Federal parolees. Although technical problems were experienced with the equipment, the authors conclude that the project was an effective way of enforcing a curfew and supervising the offender in the community. The success of the project has served as a foundation for expansion of home confinement with electronic monitoring in 12 Federal districts.

Twelve Steps to Sobriety: Probation Officers "Working the Program."—Working with chemically dependent offenders is indisputably a challenge of the new decade. Addiction treatment is complex and, by its very nature, engenders phi-

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The Influence of Probation Recommendations on Sentencing Decisions and Their Predictive Accuracy

BY CURTIS CAMPBELL, CANDACE MCCOY, AND CHIMEZIE A.B. OSIGWEH, YG.*

IMPOSING AND administering sentences are two of the most important steps in the criminal justice process. They jointly determine the type, severity, and duration of restraint that the convicted offender will endure. In order to set an appropriate sentence, however, trial judges making the sentencing decision often need more factual information than is typically disclosed in the process of determining guilt. Neither the trial nor the terms of the guilty plea are likely to reveal much pertinent information as to the defendant's background. The guilty plea may not even disclose all relevant information concerning the offense itself. These gaps can be filled by the presentence investigation, which produces a report containing a rich collection of offender and offense-related data. The report also has a "bottom line": the probation officer's recommendation to the judge as to the appropriate sentence for the offender.

How influential are these recommendations on judges' actual sentencing decisions? How accurate are they in predicting the offender's success in serving the sentence? This article will explore some aspects of these issues by 1) comparing pretrial sentence recommendations with the sentences actually imposed and 2) examining the relationship between the recommendations, the sentences imposed, and actual offender behavior.

The first issue encompasses such questions as: What factors influence the recommendation? If the recommendations affect the sentence imposed, which of their elements do so? We will concentrate on the offender's criminal history as one such element. The second research issue addresses such questions as: Is there a relationship between the recommendations, the sentence actually imposed, and offender behavior? For instance, does the individual successfully discharge probation, violate the terms of probation, or recidivate? Do sentencing recommendations more accurately predict offender behavior than actual sentences do?

Answers to these types of questions can be obtained by collecting and exploring data at the level of a particular court, judicial district, or broader geographical region. Accordingly, this study investigates the records of the Department of Correctional Services of the Eighth Judicial District in Iowa, one of eight such corrections programs in the state.[1] Among many other duties, the department conducts presentence investigations and makes sentencing recommendations as required by law (Iowa, 1981: Ch. 901.2).

The presentence investigation report is designed primarily to aid the court in determining the appropriate sentence to be imposed upon each offender. It includes a statement of material gathered in pretrial investigation and a sentencing recommendation to the judge. In the Eighth Judicial District in Iowa, it is prepared by the Department of Correctional Services under court order (Iowa, 1981: Ch. 901.2). The minimum areas of investigation—including the defendant's characteristics, family and financial circumstances, previously diagnosed mental disorders, criminal record and social history, circumstances of offense, time in detention, and harm to the victim, the victim's immediate family, and the community—are mandated by law (Iowa, 1981: Ch. 901.3). In addition, the presentence report contains a recommendation to the sentencing court. In the professional judgment of the Department, the recommendation is the best sentence for the individual offender. As to the responsibilities of the court pronouncing judgment and sentence, state law provides that after receiving and examining all pertinent information including the presentence investigation report, the court shall consider specific sentencing options to determine which is authorized by law for the offense and which of the authorized sentences (or combinations thereof) will provide maximum opportunity for rehabilitating the defendant while also protecting the community (Iowa, 1981: Ch. 901.5).

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In Iowa during the years under examination here, an indeterminate sentencing law was in effect. Judges had wide discretion to impose incarceration, fines, split sentences, work release, residential confinement, or to defer or suspend the sentence. Judges also had wide authority to fix the length of time offenders would serve under these various conditions. In a statutory structure in which the judiciary has so much leeway to choose among various sentences, we would expect sentencing recommendations from the probation department to be important guideposts for judicial decisionmaking and therefore would expect a high degree of agreement between probation recommendations and actual sentencing decisions.

Presentence investigation reports and sentence recommendations of Iowa's probation departments are prepared somewhat differently from those of other organizations reviewed in this study. While the basic information contained in reports is closely comparable in all areas, differences exist in the structure of the staff that prepares them. Presentence reports in many other localities are prepared by probation officers, who also make the sentencing recommendation. In the Iowa department studied for this article, presentence investigations are prepared by presentence investigators who are not probation officers. Their responsibility is to gather all relevant information and prepare a factual report up to the point of the recommendation. The office supervisor, who has a substantial amount of experience in the areas of probation, sentencing, and available alternatives to incarceration, then makes the sentencing recommendation in consultation with the appropriate probation officer. Also, the presentence report itself contains a section where probation officer comments may be included if pertinent to the case at bar. These minor differences in organizational structure should not diminish the generalizability of this article's findings.

Relevant Literature

Although much research has been conducted in the field of probation over the last two decades, studies of presentence investigations and sentencing recommendations have mainly been incidental to those about probation. Nevertheless, a number of studies have directly or indirectly addressed the issue of presentence recommendations.

Perhaps one of the most frequently cited of these is a study by Robert M. Carter and his colleagues (see Carter, 1966; Lohman, Wahl, & Carter, 1966). Known as the Federal Probation San Francisco Project, the study covered 500 cases referred for presentence reports and addressed both the issue of how often judges accepted the recommendation and also the issue of what factors most influence the recommendation. The researchers found that the factors most significantly related to recommendations were, in order of significance: prior record, confinement status prior to judgment, number of prior arrests, offense, longest period of employment, occupation, number of months employed, income, longest period of continual residence, military history, residence changes, number of job changes, distance from residence to place of offense, number of aliases, marital status, legal representation, use of weapon, family criminality, and guilty plea (Lohman, Wahl, & Carter, 1966, pp. 66-67). While the San Francisco Project revealed a number of objective factors statistically correlated with recommendations, the researchers pointed out that much objective data routinely gathered on each offender are seemingly of minor significance in making a decision (Norris, 1969, p. 23).

As for the influence of the recommendations on actual sentences imposed, recommendations in the San Francisco Project were classified into seven categories, including: (1) No recommendation, (2) Mandatory Sentence, (3) Probation, (4) Fine only, (5) Jail only, (6) Imprisonment, and (7) Deferred Sentence. Probation was recommended in 45 percent of the cases and imprisonment was recommended in approximately 30 percent (Carter, 1966, p. 40). Comparison of probation officer recommendations with actual sentences imposed showed that slightly more than 93 percent of the recommendations for probation were accepted when the court granted probation. Only 1.3 percent of the probation recommendations that were not accepted resulted in jail or imprisonment. Judges followed the probation department's recommendations for incarceration 67 percent of the time, and recommendations for imprisonment were followed 86 percent of the time (Carter, 1966, p. 41). Where there was a substantial difference between recommendations made and the judge's sentence, probation officers were more punitive than were judges.

Another study by Carter, in 1969, examined 455 presentence investigation reports and recommendations made by probation officers in the State of Washington. Probation officers recommended probation in 64 percent of the cases, probation conditioned on jail in 22 percent of the cases, and imprisonment in 14 percent of the cases (Carter, 1969, p. 27). The courts accepted the probation recommendation 72 percent of the

time and followed the probation/jail recommendation only 27 percent of the time (Carter, 1969, p. 27).

Carter also studied the United States Federal courts. U.S. district court judges in the Northern District of California from 1964-67 followed the probation officer's sentencing over 97 percent of the time (Carter & Wilkins, 1967, pp. 271- 272).

These studies highlight variations in recommendations among probation officers, drawing attention to the varying degrees of acceptance of the presentence recommendations by various judges. A high level of agreement between the courts and the probation officer was noted when the recommendation was for probation. However, agreement was significantly lower for imprisonment recommendations. As in the San Francisco study, Carter found that where differences existed between probation recommendations and court dispositions, the probation officer's recommendation was generally more punitive.

Several other countries have produced studies regarding presentence investigation recommendations. Gabor and Jayewardene-(1978), in their study of the effects of presentence reports on Canadian judicial dispositions, hypothesized that elements related to report style are responsible for report acceptance or rejection by the courts. The authors state that the acceptance or rejection of the report can depend on judges' varying views on probation and incarceration and the degree of familiarity between the probation officer and the judge—a factor influencing the respect and regard the judge has for the officer and the manner in which the officer writes the report (Gabor & Jayewardene, 1974, p. 22). The study compares recommendations made with actual sentences imposed in 156 cases in Montreal. Overall, 42.9 percent of the probation officer recommendations were followed, while no recommendations were made in 13.5 percent of the cases. In 57 percent of the cases, the recommendations were not followed, while in 7.5 percent they were only partially followed. In the cases where the recommendation was not followed, 59.6 percent of the sentences imposed were more severe than recommended. In 35.1 percent of the cases, the probation officer was more lenient than the judge. The study concludes that the increasing reluctance of Montreal judges to follow recommendations has, over time, resulted in probation officers increasingly refraining from making sentencing recommendations.

New Zealand was also the site for research into presentence recommendations by Gibson, Rush, and Robertson. In one study, Gibson (1973) examined 3,166 cases and identified 2,786 presentence recommendations by probation officers. He concluded that New Zealand courts accept presentence recommendations most of the time and that there is no definite measure as to what factors influence the courts toward acceptance or non-acceptance of a recommendation. Specifically, 86 percent of the 2,786 recommendations were followed (Gibson, 1973, p. 237). The recent study of 328 individual cases by Rush and Robertson (1987, p. 153) found agreement between sentences recommended and final disposition in 77 percent of the cases. Where the recommendation was not followed, the court imposed a less severe penalty than recommended in 6 percent of the cases, while imposing a more severe penalty in 8 percent (Gibson, 1973, p. 233). Another interesting conclusion of the Gibson study is that the severity of the sentence did not bear any significant relationship to the gravity of the offense concerned. Light offenses are almost as likely to be dealt with as severely as "serious" offenses where the original sentencing recommendation was not followed.

In 1978, Harold Trever examined a sample of 194 cases of incest and 123 cases of child molestation arraigned before the superior courts in Los Angeles County. Probation officer recommendations for probation were followed over 95 percent of the time, and recommendations against probation were accepted an average of 80 percent of the time (Trever, 1978, p. 407). This is consistent with the findings of Carter (1966) and Gibson (1973). Furthermore, in a study of presentence reports based on a survey of 765 probation officers in 17 Western Canadian cities, John Hagan (1975, p. 628) found that judges followed the recommendations of the probation officer in 79.7 percent of the cases. Here again, the results are fairly consistent with those of Carter (1966), Gibson (1973), and Trever (1978). Norris (1969, pp. 38-42) also found that in Alameda County, California, probation was recommended 48 percent of the time, and probation was granted in 64 percent of those cases.

Three major studies from the United Kingdom have contributed to presentence recommendation research. In 1974, Davies examined probation officers' reports (known as social inquiry reports in Britain) and noted that although these presentence recommendations were unlikely to say anything about probable effectiveness of treatment, they did refer to the probability of recidivism (1974, p. 19). An experimental study by Hine,

McWilliams, and Pease (1978) compared the sentencing practices of a group of 108 English magistrates. Forty-six of the magistrates were asked to pass sentence on 12 sample cases using a presentence report not containing probation officer recommendations. Another group used a report including the recommendations. The results showed that indeed sentencing recommendations affect sentencing decisions, supporting previous contentions (e.g., Carter, 1966; Gibson, 1973) that high levels of court/probation officer agreement mean the courts give much credence to the opinions of probation officers. In a similar study, Thorpe (1979) concluded that including a recommendation in a presentence report tends to have more influence on the court's sentencing decision than a report containing only pertinent data.

Thus, various American and non-American studies have focused on sentencing recommendations. A high degree of relationship between the recommendations and sentences imposed appears to be the general pattern, although some researchers (e.g., Gabor & Jayewardene, 1974) have vigorously disputed these findings.

The issue of which factors determine sentencing recommendations has been studied much less extensively. Much of the available knowledge in this area is currently based on mere conjecture (Czajkoski, 1973). Some studies have explored the case characteristics influencing presentence recommendations and actual sentencing outcomes (Bartoo, 1973; Carter, 1966; Czajkoski, 1973; Gabor & Jayewardene, 1974; Lohman, Wahl, & Carter, 1966). Included have been factors such as ethnic background, other demographic characteristics (age, sex, religion, birthplace, etc.), types of offenses, defendants' social histories, employment history and occupation, and case disposition method (i.e., guilty plea or trial). Studies done in various countries support the focus on explanations based on defendant characteristics (Carter & Wilkins, 1967; Gabor & Jayewardene, 1974; Gibson, 1973; Hagan, 1977; Hines, McWilliams, & Pease, 1978; LaFree, 1985; Lohman, Wahl, & Carter, 1966; and Czajkoski, 1973). Others found that plea bargaining also affects the presentence recommendation process. By permitting plea bargaining, judges have often taken themselves out of the actual decision process except to approve or disapprove the plea agreement. Accordingly, the probation officer is left in a peculiar position, since his or her recommendation and professional judgment may mean little to the actual case disposition. As Czajkoski (1973, p. 10) has noted, it is now probably more appropriate for the probation officer to address the prosecutor than the judge.

Attempting to uncover some variables that influence the probation officer's presentence recommendations, Chester Bartoo (1963) organized a "bull session" with Los Angeles County adult probation officers. The probation officers admitted that a recommendation was affected at least in some degree by such factors as "personal convenience," avoidance of "conflict," "knotty and complex problems that we would prefer to avoid," "best interest of the community," and the officer's own attitudes. Factors such as the nature of the offense and the severity of alternative penalties also influenced their decisions (see also Spica, 1981).

These factors may all have some importance as the probation officer decides upon a sentencing recommendation, but most recent studies conclude that, other than the nature and severity of the offense itself, the offender's criminal record is by far the most significant factor influencing judges' sentences. Presumably, prior record is also extremely important to the probation department in determining the sentencing recommendation. (Gottfredson, et al., 1978; Blumstein et al., 1983; Petersilia et al., 1985). For that reason, criminal history is the factor examined here.

Finally, various studies address the link between sentences imposed and actual outcomes in terms of offender behavior. Petersilia *et al.* studied felony probationers convicted of six serious felony offense types in two populous California counties. All probationers were tracked after conviction for about 31 months. About 65 percent were rearrested, and 51 percent were charged and convicted of the new crimes. Such research undermines the traditional notion of probation—that this type of sentence is effective for offenders who are unlikely to recidivate. In fact, the probationary sentences imposed generally were not successfully discharged; offender behavior was often the opposite of what the judges thought likely.

Predicting offenders' success in serving their sentences is difficult. A body of criminological literature has developed prediction models for advising judges about offenders' likelihood of successfully serving their sentences (Hirschi, 1969; Gottfredson & Gottfredson, 1977; Greenwood & Abrahamse, 1982). Other explanations may be economic (Block & Heineke, 1975; Erlich, 1973; Heineke, 1978), psychological (Azrin & Holz, 1966; Van Houten, 1983; Walters & Grusec, 1977), sociological (Ekland-Olson, Kelly, & Supancic, 1983; Hagan, 1975; Hirschi, 1969), or some

eclectic combination of these (e.g., Orsagh & Chen, 1988).

Both theoretically and empirically, these studies examine the likelihood that an offender will successfully serve the sentence and turn away from a life of crime. Predicting this success in individual cases is extremely difficult. The criminological studies cover factors that determine the sentence imposed, but they do not take into account the fact that judges have a sentencing recommendation before them when considering their sentences. Assuming that the factors determining the judges' decisions also influence the probation department's recommendation, nevertheless the literature reviewed above shows that there often is a wide discrepancy between recommendations and actual sentences imposed. Since judges are generally considered more "lenient" than are probation officers, it would be useful to explore that population of offenders for whom probation officers recommended incarceration but judges imposed probation. In cases where judges decline to incarcerate when so recommended, performance on probation is of great concern.

Hypotheses

The foregoing literature introduces several research questions to be explored with Iowa data. They are:

Hypothesis #1: Recommendations of incarceration are made with greater frequency for defendants who have a prior criminal history than for those who do not.

Hypothesis #2: Sentencing courts are more likely to accept sentencing recommendations than not.

Hypothesis #3: Of defendants recommended for incarceration but granted probation, success on probation is unlikely.

Data

The present study compares the success/failure rates of defendants recommended for probation at the time of sentencing with those who were not so recommended. It also compares failure rates of persons who have a prior criminal history at the time of sentencing with those who do not. In addition, it describes the connections between the recommendations of the Eighth Judicial District Department of Correctional Services and judges' sentencing. It does not attempt to measure changes in defendant behavior. Instead, it examines the offenders' probation outcomes against factors which existed prior to sentencing.

Data are drawn from court records. The particular documents studied are official case files of the Department containing case histories of all offenders' sentences. Of course, the data may not be completely accurate indicators of true outcome or recidivism rates. The Department's records, like those of many similar departments, neither take into account the number of unreported criminal acts nor those crimes for which the offender was not apprehended.

Department case file records on all persons for whom a presentence investigation and recommendation was completed between July 1, 1979 and June 30, 1980 were analyzed: a total of 329 cases. Most were felonies, including one involuntary manslaughter case as the most serious and 14 cases of carrying a weapon as the least serious. Included are felony cases of arson, accessory after the fact, burglary, robbery, lascivious acts with a child, and fraud. About one-fourth of the cases were theft offenses, ranging from first degree felonies to misdemeanor theft. The cases of many offenders who operated a vehicle while intoxicated are included here; although the crime was a misdemeanor at the time of these convictions, it is regarded as sufficiently serious that courts are particularly concerned that drunk drivers be appropriately sentenced. Taken together, these crimes are analyzed because they all represent a range of behavior for which incarceration would be considered a just punishment, but for which probation would also be possible in the exercise of the judge's discretion.

Analysis and Discussion

A straightforward presentation of outcome data explores all three research questions. First, the 329 cases were separated according to whether the defendant had a prior criminal record. (Prior record meant a conviction of either a felony or misdemeanor, but not traffic offenses or minor infractions.) Second, for each category of offender, the probation officer recommendation and the actual sentence imposed were counted. Third, cases in which probation officers recommended incarceration but in which judges granted probation were isolated as a subset of the original 329 cases. That group's success in serving probationary terms is assessed. Expressed in terms of frequencies (and, in parentheses, percentages), these data are presented in table 1.

TABLE 1. SENTENCING RECOMMENDATIONS AND ACTUAL SENTENCES, SERIOUS CASES

	Offenders with Prior Records		Offenders without Records	
	Recommended	*Actual*	*Recommended*	*Actual*
Incarceration	130 (39.5)	73 (22)	0	0
Probation	101 (31)	99 (30)	50 (15)	27 (8)
Deferred	3 (.9)	5 (1.4)	30 (8)	26 (7)
Residential	5 (1.4)	2 (.6)	1 (3)	0
Fine	2 (.6)	1 (.3)	4 (1)	1 (3)
Split	3 (.9)	0	0	0
Other	0	0	0	0
TOTAL	244	85		

N = 329

Due to rounding, percentages (in parentheses) may not add to 100%.

This table shows how probation officers and judges regarded 329 defendants. Approximately three-fourths (244) had prior criminal records, while only 85 did not. The unit of analysis is cases in which a sentencing recommendation was made. In the column reflecting actual sentences imposed, many cases have "dropped out" because judges imposed a sentence wholly unlike that recommended by the probation officer. (Ninety-five cases, or about a third of the total, were completely at odds.) Table 2 below presents some of the cases in which there was a disjuncture between recommendations for imprisonment and sentences to probation, and that group is drawn from the cases that "dropped out" of table 1. The purpose here is first to understand how often probation officers agreed with judges and how prior criminal record of the offender influenced their decisions, and secondly to explore the issue of what happened to that group of offenders upon whose sentences the judges and probation officers disagreed, specifically in the high risk group of repeat offenders recommended for prison but given probation.

That these data support hypothesis #1 is hardly surprising. Clearly, probation officers are more likely to recommend incarceration for recidivists, who are understandably considered to be poor risks for probation. Somewhat startling, however, is that not a single first-time offender was recommended for incarceration. Recall that these offenders had committed serious crimes. This indicates that the probation officers were not overly punitive and, in fact, probably adhered to a rehabilitation ethic—at least when considering first offenders.

Hypothesis #2 addresses the disjuncture between probation officers' and judges' assessment of cases. Table 1 shows that probation officers were willing to "give a break" only to first offenders, but judges extended the approach to many recidivists. While there was almost perfect agreement between judges and probation officers on whether to grant probation to offenders with prior records—neither judges nor probation officers would "give a break" to a felony recidivist—there was a deep division on whether to incarcerate these offenders. As table 1 shows, 57 of the 130 repeat offenders recommended for incarceration—44 percent of them—were not so confined. While it was true that "sentencing courts were more likely to accept sentencing recommendations than not," nevertheless there was a precipitous drop in the number of recidivists actually sentenced to prison or jail terms compared to those that had been so recommended. One hundred thirty defendants were recommended for incarceration; 73 were actually jailed. Had the latter number dropped somewhat so as to reach 65 and thus represent 50 percent of the cases, hypothesis #2 would have been disproven. The "common sense" proposition that judges will usually accept probation department recommendations is weak.

This does not necessarily mean that judges were always more lenient than probation officers. For instance, judges often disagreed with probation officers' recommendations that offenders without prior criminal records be granted probation. Only 27 of the 50 first-timers recommended for probation actually received it. However, this does not mean the remainder were incarcerated. Many were ordered to pay fines or simply had their sentences deferred (i.e., they will not be sentenced at all unless they commit a new crime).

Again, given the literature cited above, this is hardly surprising. Probation officers traditionally viewed punishment differently than judges did. The very name "probation officer" suggests the roots of the profession—that Department personnel at one time viewed themselves primarily as

overseers of offenders' time on release in the community. Probation workers traditionally were trained in social work and corrections, and they adhered to a belief in the efficacy of offender rehabilitation. This probably explains the data on offenders who had no prior records: Probation personnel were reluctant to recommend incarceration, and they recommended probation almost twice as often as judges were willing to grant it.

However, the probation officers also recommended incarceration for *recidivists* (as compared to first offenders) almost twice as often as judges imposed it. This may seem contradictory; probation personnel were *less* concerned with offenders' rehabilitation than were judges. On closer inspection, the contradiction is less stark. First, probation officers probe offenders' backgrounds and report to judges. In the probation officer's mind, the primary factor that sets one defendant apart from another is prior criminality. Concerns for rehabilitation diminish sharply when the defendant has committed crimes before, since the recidivist's actions indicate a choice in favor of criminal lifestyle. Second, judges impose incarceration for recidivists considerably less often than recommended because they must take account of several factors that need not affect the probation officer's decisions. Primary among them are legal considerations such as the strength of the evidence both in the case and in the sentencing report, and also the plea agreement. If some case facts upon which the probation officer relied were not proven beyond a reasonable doubt in the criminal prosecution, a judge is inclined to use only that information that is irrefutable. Even more important is a factor mentioned in previous studies of probation officer/judicial disjuncture: the plea agreement. While judges are not strictly bound by agreements made between the attorneys in return for the defendant's guilty plea, the course of least resistance is to give the prosecutor's recommendation great weight in sentencing. Since many plea agreements are specifically designed to shield the defendant from incarceration, the judge will not impose it even though the probation department may deem it deserved.

The discrepancy between probation department recommendations and actual sentences imposed, then, is not surprising. The interesting observation based on these data is that, first, the distinction is so pronounced and, second, judges appear to be lenient in comparison to probation officers when dealing with recidivists. Should they listen more carefully to the probation department recommendations? A critical measure of this issue would be to explore how often the probation officer's assessment of the offender's chances for successful rehabilitation was correct, while the judge's was incorrect. Data collected to test hypothesis #3 aid this inquiry (see table 2).

TABLE 2. PROBATION OUTCOMES—OFFENDERS RECOMMENDED FOR INCARCERATION BUT PLACED ON PROBATION

Discharged from supervision	22 (33%)
Revoked from probation	15 (22%)
Active supervision continuing at time of study	21 (31%)
New charges filed	9 (13%)
Cases closed	0

N = 57

Note: Percentages do not add to 100 due to rounding. Also, there is some overlap in cases in which new charges were filed and cases in other categories. If a defendant was charged with a new crime, he or she would be revoked from probation, also. Thus, nine cases were counted in both categories, and one case in which active supervision continued at the time of the study had also been revoked. If these cases are counted twice, the total N = 67.

Fifty-seven offenders were granted probation although the department recommended against it. This represents 17.3 percent of the total number of felony convictions. That small but important group presents the criminal justice system with one of its most difficult choices. It is not difficult to decide to send a hardened criminal to prison or to place a non-serious first offender on probation, but the borderline offender counted in this group could justifiably "go either way."

This group of offenders causes the greatest anxiety among local trial court personnel. On the one hand, these people have committed serious crimes and may do so again. Potentially, they represent a threat to innocent citizens and a failure of deterrence. Furthermore, if a judge places an offender on probation and the probationer commits another crime, especially if it is serious, public opinion will become inflamed and the judge will face electoral heat. On the other hand, this particular group of offenders seems capable of reform. They often have resources and family and social ties to their communities, so their chances for "staying straight" are enhanced. Judges and probation officers alike understand that jail or prison will do little to improve their behavior. In fact, incarceration could actually enhance criminal lifestyles (Hirschi, 1969).

These tensions are especially heightened when probation officers recommend incarceration but judges nevertheless grant probation. Are the corrections department's predictions more accurate

than the judiciary's? From a policy viewpoint, what level of recidivism is acceptable?

Table 2 offers some data for addressing these issues. Of the 57 offenders recommended for incarceration but granted probation, 9 failed under community supervision and were charged with new crimes. This represents only 3 percent of the original sample of felons. Fifteen offenders had their probationary sentences revoked, however, and they presumably served the remainder of their sentences in prison. This represents 4 percent of the original sample of felons.

Considered in terms of the "borderline" group, about 15 of the 57 offenders violated the trust judges had placed in them by granting probation. (Nine were charged with new crimes, and six others violated conditions of their probation, which was revoked.) In other words, probation officers' assessments had been correct for 26 percent of these offenders, who should have been incarcerated to prevent new crimes or other antisocial behavior resulting in probation revocation. Judges' faith in the benefits of probation, by contrast, was supported in the majority of the cases: 22 people (39 percent of the "borderline" group) successfully served their probationary terms, and 21 were still on probation at the time of this study. Hypotheses #3 was disproved; success on probation was more likely than not.

The problem for policymakers and judges is that 15 of these offenders did indeed recidivate. Although this represents a very small percentage of the total number of convicted felons, nevertheless there were 15 crimes and 15 innocent victims whose suffering could have been prevented had the probation department's recommendation been followed. On the other hand, a majority of the offenders in whom judges placed trust did indeed return that trust by successfully serving their probationary terms.

Where is the line to be drawn? Should all 57 of these offenders have been incarcerated in order to prevent 15 crimes? Should only some of them have been incarcerated, and how would we know which ones? Should the other offenders who did not commit new crimes have been incarcerated so as to snare the probable recidivists? If they had been, would the criminal environment of the jailhouse have encouraged them later to commit crimes that they might not have committed had they been under community supervision?

These are all speculative questions, and they will remain so. Although methods for predicting which offender is likely to recidivate have improved dramatically (Greenwood & Abrahamse, 1982; Wright, Clear, & Dickson, 1984), nevertheless it will never be possible to know with certainty which particular person will commit a crime in the future. Incarceration would be unnecessary and from some perspectives unfair for the "false positive"—that offender who probation personnel predict will recidivate, but who does not.

The offenders covered in this study had a remarkably low recidivism rate compared to that observed in studies of other localities (Petersilia *et al.*, 1985). But the citizens of Iowa from which the sample was drawn still are upset at the crimes that are committed by probationers, even though the crimes are few; and judges there must exhibit the courage of judges everywhere in explaining that the benefits of probation for the majority of borderline cases outweigh the costs in additional criminality. One political compromise has been proposed by Petersilia and her coauthors:

> We believe that the criminal justice system needs an alternative, intermediate form of punishment for those offenders who are too antisocial for the relative freedom that probation now offers, but not so seriously criminal as to require imprisonment. A sanction is needed that would impose intensive surveillance, coupled with substantial community service restitution. It should be structured to satisfy public demands that the punishment fit the crime, to show criminals that crime really does not pay, and to control potential recidivists. (Petersilia *et al.*, 1985, p. ix)

Intensive probation supervision programs, while more costly than probation, have the advantage of exercising more control over convicted felons while avoiding the monetary and possible criminogenic costs of imprisonment (Harlan & Rosen, 1987). One added advantage not mentioned in the literature arises when considering probation recommendations versus sentences imposed. It is unfortunate that judges and probation officers are presented with the stark choice of probation versus imprisonment, when each side would embrace a viable alternative. It is also unfortunate that the justice system sets the probation department against the judiciary in considering the fate of "borderline" felons, when ordinarily the two departments work well together in sentencing offenders to appropriate punishments. If intensive probation supervision lessens the disjuncture between probation officers' recommendations and judges' decisions, this would be one more factor to recommend it.

Several jurisdictions have recently embraced intensive supervision (*Federal Probation*, vol. 50, no. 2, June 1986). The next step on the research agenda will be to explore the recidivism rates of "borderline" offenders who, both judges and pro-

bation officers agree, should be and were sentenced to intensive probation supervision. "We must be especially careful not to fall into an old correctional trap—the panacea phenomenon" (Vito, 1986, p. 24). Careful scrutiny of recidivism by intensive probationers as compared to the traditional probationers covered in this article would be welcome.

NOTE

[1]The Correctional Department was created by legislative enactment of the Iowa legislature in 1977 and provides services to 14 Southeastern Iowa counties. It is a locally governed independent public agency, funded primarily by legislative appropriations. It operates a 30-bed residential corrections facility for problem adult male offenders. The Department employs 43 support and direct service employees providing pretrial release, adult probation, adult parole, work release, community service, intensive probation parole supervision, and presentence investigation services.

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