

Hair Analysis for the Detection of Drug Use in
Pretrial, Probation, and Parole Populations *James D. Baer*
Werner A. Baumgartner
Virginia A. Hill
William H. Bland

Tools for the Trade: Neuro-Linguistic
Programming and the Art of Communication *Richard Gray*

al Effects of the Status
..... *Charles Bahn*
James R. Davis

ing in Federal Pretrial Release *Timothy P. Cadigan*

ing in Florida *Joseph E. Papy*
Richard Nimer

n: Hard Realities and **NCJRS**
..... *Mark W. Osler*

ucation Success **DEC: 10 1991** *J.D. Jamieson*
William E. Stone

omen: A Cry for Help **ACQUISITIONS** *Anita Sue Kolman*
Claudia Wasserman

velopmental Perspective:
orrections *Ted Palmer*

ison Gang Development:
ssment *Robert S. Fong*
Salvador Buentello

MARCH 1991

U.S. Department of Justice
National Institute of Justice

133407-

133416

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 LV

MARCH 1991

NCJRS

NUMBER 1

MAY 16 1991

This Issue in Brief^{ACQUISITIONS}

Hair Analysis for the Detection of Drug Use in Pretrial, Probation, and Parole Populations.—Comparing the results of radioimmunoassay (RIA) hair analysis for drug use with urinalysis results and self-reports of drug use among aftercare clients in the Central District of California, authors James D. Baer, Werner A. Baumgartner, Virginia A. Hill, and William H. Bland propose that hair analysis offers the criminal justice system a complementary technique for identifying illegal drug use. The study results are timely in light of the recent decision of a U.S. district court judge who accepted a positive RIA hair analysis result as valid forensic proof that a probationer had violated the conditions of probation (EDNY Dkt. No. 87-CR-824-3).

Tools for the Trade: Neuro-Linguistic Programming and the Art of Communication.—Whether viewed as a rehabilitative modality or a sanction, probation remains a person-to-person profession in that probation officers still deal with individuals. According to author Richard Gray, some recent developments in psychology may provide tools for investigation, assessment, helping, and, sometimes, healing. His article describes neuro-linguistic programming and how probation officers may use the technique to develop rapport and communicate effectively and consciously with clients.

Social-Psychological Effects of the Status of Probationer.—Authors Charles Bahn and James R. Davis report on a non-random sample of 43 probationers who were tested and interviewed in order to assess the social-psychological effects of probation in four areas: emotions; family, peer, and work relations; self-concept; and stigma. The authors administered an open-ended questionnaire, a scalogram, and a self-concept inventory and found, among other things, that probationers had the support of family, friends, and even some employers. The authors conclude that probation is

more than a "slap on the wrist" but that it does not overwhelm all aspects of a probationer's life.

Electronic Monitoring in Federal Pretrial Release.—Author Timothy P. Cadigan focuses on current use of electronic monitoring in Federal pretrial release programs, first discussing, in general, how to establish such programs and what to consider in doing so. Then, based on demographic data about Federal defendants on electronic monitoring, the article assesses whether

CONTENTS

[Hair Analysis for the Detection of Drug Use in Pretrial, Probation, and Parole Populations	James D. Baer Werner A. Baumgartner Virginia A. Hill William H. Bland 3	133407
[Tools for the Trade: Neuro-Linguistic Programming and the Art of Communication	Richard Gray 11	133408
[Social-Psychological Effects of the Status of Probationer	Charles Bahn James R. Davis 17	133409
[Electronic Monitoring in Federal Pretrial Release	Timothy P. Cadigan 26	133410
[Electronic Monitoring in Florida	Joseph E. Papy Richard Nimer 31	133411
[Shock Incarceration: Hard Realities and Real Possibilities	Mark W. Osler 34	133412
[Predicting DWI Education Success	J.D. Jamieson William E. Stone 43	133413
[Theft Groups for Women: A Cry for Help	Anita Sue Kolman Claudia Wasserman 48	133414
[The Habilitation/Developmental Perspective: Missing Link in Corrections	Ted Palmer 55	133415
[The Detection of Prison Gang Development: An Empirical Assessment	Robert S. Fong Salvador Buentello 66	133416
Departments		
News of the Future		70
Looking at the Law		73
Reviews of Professional Periodicals		80
Your Bookshelf on Review		92
It Has Come to Our Attention		100

Shock Incarceration: Hard Realities and Real Possibilities

BY MARK W. OSLER*

*"Two more weeks
Until we're through
We'll be glad—
And so will you."*

—Song of work crew in Alabama Boot Camp

ON JANUARY 5, 1987, the *MacNeill/Lehrer News Hour* reported on the hottest topic in incarceration: "boot camp" style prisons, designed to shock young men out of crime through a brief, painful period of military-style prison time. In that clip, correspondent Dee Malisagne stands in the Georgia boot camp cell block as inmates have their heads shaved as part of the intake procedure. Later, these criminals talk about their newfound fear of prison and the sexual taunts and provocations hurled at them by the inmates in the regular prison cell block on the far side of the parade ground. The segment closes with a large man in an inmate uniform looking into the camera and saying in a small voice, "I'd rather die than come back here. . . this is a living hell."¹

Shock incarceration (more commonly termed "boot camp") is a highly structured, intensive 3-6 month imprisonment featuring a military regime of marching, work, and classes, held out by some as a panacea which can simultaneously reduce recidivism through rehabilitation, provide retribution, deter crime, and cut prison costs and overcrowding.²

The lure of shock sentences is particularly acute in an age in which the primary medium of mass communication has become the sound bite. Video images of drill instructors 2 inches from an inmate's face, a team of inmates clearing brush, and reveille at 4 a.m. cater to "popular desires for a quick fix to crime through harsh punishment, discipline, and deterrence."³ These visuals shock us, and it is easy to imagine that boot camp prisoners would not risk returning to such a nightmare.

Unfortunately, many boot camp prisoners do go

back to prison. The promises of the visual images have produced strong political support for shock programs, but uncertain results.⁴ Shock sentencing is not a magic elixir and requires careful implementation in order to be effective at meeting goals beyond mere punishment. As the Federal system embarks on its own boot camp experiment, it has become clear that the state programs have been successful in terms of perceived punishment value, but will probably fail in terms of reducing recidivism.⁵ Here, I will try to analyze these mixed results and suggest a new framework for thinking about what is still a worthwhile sentencing alternative. The goal of this article is to step carefully through the hype, identify reasonable goals for the use of "shock" sentences,⁶ and recommend sentencing strategies to best utilize this sentencing alternative.⁷ Woven within these concrete goals is the broad idea that to successfully create new forms of sentencing, we may have to re-evaluate the way that we think about time of incarceration.

The first part of this article will attempt to portray a realistic view of the successes of the existing boot camps in terms of the goals they have set out for themselves. The second part looks to the future of boot camps and suggests a new way of thinking about time, therapy, and punishment. The third part, building on the analysis in the second, suggests tactics for shock sentencers and other actors in the development of boot camp programs.

Shock Incarceration: Current Realities

In a political whirlwind, the rhetorical debate over boot camp has taken on the sound of cold war combatants battling over ideology. The Alabama Department of Corrections claims that boot camp will provide not only "judicial control," "rehabilitation," "discipline," and a "lower recidivism rate," but promises to "reorganize thought processes."⁸ One candidate for mayor in New York had such enthusiasm for shock incarceration that he proposed sending *all* those testing positive for

*Mr. Osler is law clerk to the Honorable Jan E. Dubois, Eastern District of Pennsylvania. He would like to thank Judge DuBois and Judge John Rochester (Clay County, Alabama) for their patience, Professors Daniel Freed and Stanton Wheeler for their guidance, and the members of the 1989-90 Yale Sentencing Alternatives Workshop, out of which this project grew, for their insights and criticism.

drugs after arrest to boot camp for 6 months.⁹ On the other side, cynics deride such programs as being ineffective and overly militaristic. One commentator claims, "Regardless of the media hype, there is no evidence that shock incarceration 'works' for the offenders that need to be reached any more than scared straight or shock probation worked to any great degree. None. Yet these types of 'quick-fix' solutions linger on."¹⁰ The truth that will emerge from the debate and the data will likely be somewhere between the extremes: While boot camps *can* have an effective role within a system of punishment, they are not the panacea that will "solve" our "crime problem."

History

Modern shock incarceration may be a child of the 1980's, drawing on the worst personal memories of the South's corrections officers, but it does have roots in the 19th century. Aside from the informal practice of giving young offenders a choice of joining the army or serving time, precedent exists for the military-style prison. From 1888 to 1920, the New York state reformatory at Elmira was based on a military training model, which included 5 to 8 hours a day of marching and executing the manual of arms.¹¹

In 1981, the idea of reviving military-style incarceration was proposed in an internal memo circulated in the Georgia Department of Corrections, perhaps stemming from discussions between the Commissioner of Corrections and a local judge. This idea became a plan, which became an operating facility at the Dodge Correctional Institution in December of 1983. However, Georgia did not have the honor of opening the first boot camp, as Oklahoma built more quickly on the Georgia plan, completing its facility in October 1983. Mississippi officials toured the Oklahoma facility, were impressed, and the nation's third boot camp became operational in that state in 1985.¹²

Fueled by the political attractiveness of the idea, with its clear expression of punishment and inculcation of discipline, the boot camp idea quickly spread.¹³ The more recent programs have in some ways become more innovative than the older ones. For example, the New York program, created in 1987, features more extensive therapy programs,¹⁴ while Connecticut's upcoming program will include community service as a part of the incarcerative program.¹⁵ Boot camps have developed through an evolutionary process, and most of the history of shock incarceration has yet to be written.

Goals

Five goals have been most often presented for boot camp programs:

Specific Deterrence. The theory behind boot camp is that the "shock" experience of an extremely regimented period of incarceration will produce a strong disincentive for an individual to commit behavior that could lead to a return to prison. Some programs consciously use the proximity of the boot camp to a traditional facility in order to expose the boot camp inmates to the realities of "hard time." Especially controversial has been the toleration or even encouragement of sexual taunting directed at the young boot camp inmates by the men in the traditional facility. The NIJ report (*Shock Incarceration*) found this taunting to be widespread. Prison administrators, according to the NIJ authors, "had mixed reactions to taunting. Some thought taunting made the threat of sexual assault in the general population more credible to SI [shock incarceration] inmates than similar warnings issued by staff, and hence contributed to a deterrent effect."¹⁶

General Deterrence. The punishment aspects of boot camp (hard labor, summary punishment for minor infractions, constant exercise, 5 a.m. wake-up) are in some states fairly severe, and these are the elements featured by the media. Certainly, news items about boot camp focusing on the shaving of heads and carrying of shovels¹⁷ must have some sort of effect on those watching. At the very least, politicians voice deterrence as a major reason for supporting boot camps.¹⁸

Rehabilitation. Nearly all shock incarceration programs have been promoted politically with the promise that the new form of punishment will rehabilitate the offender,¹⁹ leading to lower recidivism rates. Two sorts of rehabilitation may (or may not) take place in the boot camp: rehabilitation by *transference* and rehabilitation by *treatment*. The transference model is perhaps the one more prominently displayed in political rhetoric; simply put, it envisions that the personal discipline and regimented lifestyle imposed in the boot camp will create habits that can be transferred to life on the outside. Self-esteem, self-control, and the ability to cope with stress are some of the habits that one would hope may be transferred.²⁰

Rehabilitation by treatment requires therapeutic programs outside of (and in some ways, in tension with)²¹ the military regimen. Programs designed to treat substance abuse, improve job skills, and deal with aggressive behavior are

distinct from the rest of the boot camp curriculum and are included by all states at least to some small degree.

Punishment. Promoters of boot camp advertise heavily the punishment value of shock incarceration. This goal of sentencing, which is nearly universal, can be served in at least two ways by the boot camp. First, the boot camp provides *concrete* punishment. The program itself is rigorous, active, and painful, which satisfies to some degree the public's demand for retribution. In contrast, prison itself may seem to punish through boredom and hopelessness. Secondly, boot camp can be used to "widen the net" and inflict an incarcerative punishment on more offenders, as the boot camp term is relatively short. The latter method, however, is to be discouraged, as widening the net will eliminate any cost savings and aggravate what is already in most cases a severe overcrowding of the prison population as a whole.

Incapacitation. The short period of incarceration in the boot camp programs relegates incapacitation to a second-tier goal. Nonetheless, if post-incarcerative community control (such as intensively supervised probation) is combined with the boot camp sentence, then this factor may become significant.²²

Reduce Overcrowding and Cut Costs. It is not merely coincidence that the surge in boot camp programs has occurred at a time that most prison systems are at or near capacity, with several under Federal court orders to create more space. The political pressure to reduce overcrowding without reducing perceived punishment is high, and boot camp can accomplish this if those assigned to the boot camps are convicts who are diverted from longer prison terms.

It is sometimes difficult to tell which goals the states have directed their programs towards. The Alabama promotional materials put out by the Department of Corrections indicate a concern for all six of the goals listed above, including that of control. Most authorizing statutes similarly either list multiple goals, or none at all.

The goal of rehabilitation through a rebuilding of the individual is especially evident in the opinions of state legislators who have been through military training. Connecticut state senator Frank Barrows was a strong proponent of the program in that state, remembering his own military boot camp experience in that, "they scared you to death. . . [It was] one of the greatest things I'd ever done."²³ In running for mayor of New York, David Dinkens (the eventual winner) promoted

the idea as well: "This is one marine who believes in the value of discipline and respect. . . And I'm going to make sure that some young guys get a whole lot of it early on."²⁴

The New York State authorizing statute is accompanied by practice commentaries that would seem to echo Mayor Dinkens' goals of punishment, rehabilitation, and specific deterrence:

The program, which is unique for New York State, is modelled after military "boot camps" to instill a sense of discipline and responsibility in the participating inmates. In this way, it is thought that these inmates will develop a sense of maturity and positive self image, thus giving them a better attitude toward society and hopefully reducing recidivism.²⁵

A certain lack of prioritization seems evident in the way the states have phrased their goals, where they have articulated them at all. This would seem to reflect a belief that boot camp can, in fact, be all things to all political actors, a panacea for all that ails us.

Results

Critics have raised two primary concerns about the boot camps: the abuse of prisoners during the program and a failure to keep graduates out of trouble once they are done. The first concern may be well-founded. The potential for abuse in a system allowing so much discretion to guards who are often relatively untrained is a concern of many critics. The problems of the Oklahoma system were in part attributed to abuses by the guards, and similar allegations have been made regarding the programs in other states.

One newspaper report accused the Michigan program of grievous insensitivity to the handicaps of some inmates. A prisoner there, a young man who was dyslexic and had only a second-grade education, was severely rebuked for getting his right and left confused. Such confusion, of course, is a typical symptom of dyslexia. Caught in his confusion, the guard addressing him assumed his confusion was born of sheer stupidity: "Don't you nod your head at me. . . Get your feet together, dirtbag. . . you're not stupid, are you? You just want to use it as an excuse, don't you? Your problem is that you been acting like a dummy all your life, and we're not going to put up with that [s_ t] here."²⁶ While such anecdotes point up the serious danger of guard abuse in programs with summary discipline, these problems can be addressed through better training of guards and stricter guidelines for punishment. A more multifaceted and difficult question is that raised by the effectiveness of boot camps in changing offenders' behavior.

The evidence as to the effectiveness of boot

camp, as it now exists, is also largely anecdotal. Such evidence may be highly unreliable. The appearance of discipline and transformation given by some boot camp graduates may prove illusory. One New York prosecutor described his first exposure to such a graduate, at a meeting of the Corrections Committee of the City Bar Association:

"A few weeks after the first class graduated from New York's bootcamp, we invited the valedictorian to come meet with us. His story was electrifying. Describing himself as a former 'juvenile delinquent' and drug dealer, he told us of his initial cynicism regarding the program, and how it changed to enthusiasm as his self-esteem was boosted and as, for the first time in his life, he was challenged by his peers to discuss his emotions in a group setting. . . A [reporter] did a follow-up story and discovered that he was re-arrested on serious charges soon after he spoke to us."²⁷

This discouraging result comes from what is, relatively, one of the more successful boot camp programs. New York's 500-bed boot camp capacity (in two facilities) is the largest in the country.²⁸ The older boot camp is a "stand-alone" facility outside the town of Beaver Dams, 20 miles north of Corning in upstate New York, while a second facility was opened in Camp Summit in 1989. The state also is opening a 250-bed women's unit at Camp Summit.²⁹

New York has perhaps the most stringent eligibility standards in the boot camp universe. About one-third of those who meet the statutory criteria (including no previous incarcerations) are rejected from the program on physical fitness or other grounds. Judges play no role in this selection process; as in Florida, the inmates are culled from the body of prisoners headed for long incarcerative sentences.³⁰

New York's program is heavy both on hard labor and therapeutic services. Inmates labor 8 hours a day, perform evening drill and ceremony, and participate in educational sessions, therapeutic communities, and mandatory alcohol and substance abuse programs.³¹ The state claims that instead of trying to rehabilitate the prisoners, it is attempting instead to "habilitate," or properly socialize (for the first time), these offenders.³²

New York has claimed considerable success with the boot camp program. On a broad "positive adjustment scale" which measures recidivism along with such factors as steady employment and participation in employment programs, the graduates of the shock probation program have scored 33 percent higher than those who had been incarcerated with the primary prison population.³³

New York's *One Year Out* study did not claim to have authoritative answers, nor could it have. In large part, the jury is still out on the effective-

ness of boot camp. In measuring the achievement of the goals listed above, some observations can be made, however. Achievement of the goal of general deterrence is not only unmeasured, but perhaps unmeasurable, as there is no way to find and interview those who have, in fact, been deterred. Similarly, incapacitation, at least in terms of preventing the commission of crimes, is unmeasured beyond the bare fact that many convicts have in fact been incapacitated for periods from 90-180 days under the boot camp program. Punishment is also inchoate.

This leaves three goals towards which achievement can be measured: rehabilitation, specific deterrence, and cost savings. Specific deterrence is measured in terms of recidivism rates. Rehabilitation, as well, is generally viewed in terms of recidivism, although a broader index of social acclimation, such as that used in the New York *One Year Out* study, is useful in determining the larger effects of the rehabilitative process on the subject individual. Cost savings can be estimated, although it is hard to gauge in some cases what the actual savings are, as it is unclear what potential sentence is being replaced by the boot camp sentence.

Specific Deterrence

The goal of specific deterrence seeks to prevent the offender from again committing criminal acts. The effectiveness of a sentencing practice in terms of specific deterrence is fairly unique in that it can be accurately measured through an analysis of the rate of recidivism (the percentage of convicts run through the program who are again convicted of crimes).

Several states have issued statistics measuring recidivism among their boot camp graduates. These statistics need to be studied and used with great caution. The shock incarceration programs are relatively new, and therefore the data are generally drawn from small samples, often without a control group of non-boot camp prisoners. The short life of recidivism study may be especially misleading as time since incarceration is a crucial factor. For example, a 50 percent failure rate after 3 months may mean either that nearly all of the graduates will recidivate (if the failures continue at the current rate) or that those who will recidivate have done so already, and half will be saved. In other words, short-term data are a poor indicator of the *long-term* rate of recidivism, which reveals the truly important figure, the *eventual probability of recidivism*.³⁴ We will have to wait if we are to have a firm view of the relative success of these programs.

Other problems may also sabotage recidivism statistics. If the offenders diverted into the program are selected as particularly low risks to begin with, this will tend to artificially inflate the appearance of success. In a politically charged arena such as modern corrections, there is great incentive to present to the public a program clothed in the soothing regalia of successful specific deterrence.

Having given sufficient warning as to the flaws in the recidivism studies released so far, it may seem anticlimactic to reveal that the results have been mixed. The reports so far, taken as a whole, indicate strongly neither success nor failure in terms of recidivism relative to traditional incarcerative sentences.

Some of the earliest statistics on recidivism have hardly been clothed in success and have led to serious questioning of the very idea of boot camp. The oldest program in the country, in Oklahoma, has been disappointing in terms of return rates: A Department of Corrections analysis of similar convicts sentenced to boot camp and traditional incarceration showed that after 29 months nearly half of the boot camp graduates had returned to prison. In contrast, only 28 percent of the traditionally incarcerated control group had been recommitted in the same time period.³⁵

The nation's second-oldest program,³⁶ in Georgia, has been nearly as disappointing at keeping its graduates out of prison. Using a 3-year period of study, Georgia found that there was little difference in the recidivism rate between those who had been sent to the boot camp and those who had received traditional incarceration. For those teens who had been sent to the boot camp, the failure rate was worse than for traditional lock-ups.³⁷

While the two oldest shock incarceration programs have reported disappointing results in specific deterrence, three of the newer programs, in Florida, Alabama, and New York, have reported more encouraging data (albeit with some of the same testing discrepancies and weaknesses found in the Georgia and Oklahoma samples, in addition to the problem of an even shorter time-frame).

Florida's study was a 1-year-out followup utilizing a matched group of traditionally incarcerated offenders of the same age and gender background as the boot camp inmates. After one year, 5.6 percent of the boot camp graduates had returned to prison, compared to the 7.75 percent of the control group that was reincarcerated.³⁸

Alabama's statistics, derived from an unscientific sample without a control group or set time-frame, show a 2.1 percent return to prison rate for all of the boot camp graduates to date (389 in total, with 128 now in the program).³⁹ While this figure does seem low, it is relatively meaningless unless put into the framework of a given time period, as the current statistics measure both those who have been out of the program for a year and those who have been out for a week.

New York's statistics on recidivism are perhaps the most encouraging, as they reveal a positive success rate through relatively stringent testing methods. The first six platoons were analyzed 1 year after their graduation from the program, along with a comparison group, matched by demographics, who were released from traditional incarceration in the same time period. Twenty-eight percent of the control group had been reincarcerated within a year, while only 23 percent of the boot camp graduates had.⁴⁰

While the data on recidivism are not yet complete, what we do have indicate that the current system of shock incarceration is not achieving the goal of increased specific deterrence.

Rehabilitation

If rehabilitation is to be considered distinct from specific deterrence, it must be seen as encompassing more factors than simply recidivism, such as the offender's readjustment to the working world, participation in community activities, continued enrollment in educational or vocational programs, and financial participation in a family relationship. The data on such readjustment, unfortunately, are nearly non-existent as the focus of those studies that have been completed has been the prevention of recidivism.

The one state that has looked into rehabilitation in this broad sense is New York, in its *One Year Out* study. There, the analysts employed a "positive adjustment scale" by which the boot camp graduates were compared with the control group in terms of community, work, and family reacclimation. The results were encouraging. In terms of attaining vertical mobility in employment, education, or vocational training, the boot camp grads scored 156 percent higher than the control group. Similarly, a 107 percent advantage over the control group was noted in participation in self-improvement and therapy programs. Significant advantages were noted as well in attaining financial stability (28 percent), holding a job for at least 6 months (24 percent), and supporting family members (10 percent). The only criterion

on which the boot camp graduates fell behind the control group was stability in residence (-8 percent).⁴¹

While this is a small sample from just one state, it is encouraging at least in that it indicates that what the boot camp did best was prepare graduates for continuing therapy and training after the incarcerative period.⁴²

Cost Savings

The ability to control costs and ease prison overcrowding through shock incarceration depends most heavily on two factors (outside of recidivism): the relative cost of running the boot camp and the length of the sentence replaced by the boot camp term of incarceration. If the costs are roughly even and the time served much less, considerable savings could be afforded, and it seems as if this goal is being achieved.

In Mississippi and Georgia, the boot camp programs are about as costly as a similarly sized unit in the prisons they adjoin.⁴³ In Oklahoma, a Regimented Inmate Discipline (RID) unit is about 1/3 more costly than a traditional unit,⁴⁴ and in New York it is about 1/7 more costly.⁴⁵ Each of these cost estimates certainly would allow cost savings if the boot camp incarcerations replace lengthier sentences.

The length of the sentence replaced is harder to quantify, as in two-thirds of the states with programs, the decision of sending criminals to boot camp is left to the judge's discretion, rather than relying on diversion by others after sentencing.⁴⁶ Thus, the sentence that would have been given in lieu of boot camp is most often unknown. In New York, however, the candidates are diverted *after* sentencing, and officials there calculate that real time served⁴⁷ is reduced 12-18 months when boot camp diversion is granted.

If New York can be used as a guide, it would seem that boot camp can go far towards achieving the goal of cost savings.

A Realistic Vision for Future Success

As laid out below, the figures on boot camp programs are at best incomplete, but may be used as a general guide to trends. While it can be shown that boot camps are able to achieve the goal of saving money and reducing prison overcrowding, the preliminary results in terms of recidivism have been disappointing: The program neither significantly reduces nor increases return to prison rates relative to traditional incarceration.

Bridging the Gap Between Boot Camp and Community

New York has a program that seems to have achieved the goal of cutting the costs of incarceration while holding out hope that rehabilitation may occur. The New York *One Year Out* report is not all roses, however. It points out a troubling commonality among the boot camp programs: their abrupt end.

The object of boot camp in the military context is to tear down a man or woman and then rebuild him or her in the physical condition, mind-frame, and servitude of a soldier. This warrior-making is a two-step process (tearing down, then rebuilding), of which the existing boot camp programs seem to perform the first. They strip down a person through regimentation, then send the offender home to an environment that is the exact opposite of the boot camp—formally unstructured and often lacking commanding directives for positive behavior. In the words of one former boot camp warden, "While they are in the camp they are told, 'you are somebody; it's important to us that you do well, that you are fed well and that you are clothed well.' Then they go back to utter depravity. It's like throwing them down a well."⁴⁸

The abrupt end of the boot camp often means an abrupt end to intensive rehabilitative services, such as vocational training and drug and alcohol treatment. This abrupt end, unfortunately, effectively eliminates the possibility that therapy can be successful. The mathematics of the process tell a depressing story: While the boot camp usually lasts for 3 months (a few programs, such as New York's, run for 6 months), successful therapy and vocational training require *at least* 9 months to a year of constant supervised effort.⁴⁹ *If therapy is to be successful, judges or the Department of Corrections must provide as part of the shock sentence "bridge" services that will continue the rebuilding begun in the boot camp.* Without this bridging, hopes for rehabilitation through boot camp will likely go unfulfilled.

Time: The Challenge and the Payoff for Boot Camp

The need to "bridge" therapy from incarceration to community demands that we reformulate our conceptions of "hard time" and probation. Shock sentencing has had one, often unnoticed, effect on sentencing as a whole: In considering shock sentences, judges and legislatures have had to abandon their traditional conceptions of incar-

ceration time. This challenge to established "prices" is healthy in that it forces us to consider where these prices come from in the first place. Why is 2 years of prison appropriate punishment for a robbery conviction? Such terms usually make sense only relative to one another.

One compelling theory, proposed by David Rothman,⁵⁰ suggests that our current conception of what is appropriate incarceration time derives from the world of psychiatry. The notion of "therapeutic time" does seem to correlate with the modern attitude toward setting sentencing prices; the modern indeterminate sentence parallels the psychiatric ideal of indeterminate therapy—the patient receives treatment until it is thought that she will change. Rothman suggests that, "just as the doctor needed discretion to decide when a patient was cured, so wardens and parole officers needed discretion to decide when an offender was cured."⁵¹

The irony of this conception of therapeutic time in conjunction with boot camp is that it is the supposedly therapeutic boot camp that abandons the idea of therapeutic time while simultaneously embracing the therapeutic ideal. The type of firmly structured, mandatory therapy the boot camp offers (vocational training, education, relaxation therapy, etc.) beyond the normal prison offerings is undermined by the other unique element of boot camp: its short duration. Ninety to 180 days are insufficient to complete such programs of therapy. Thus, the need for bridging services as discussed above becomes essential if such therapy is to be effective.

This current failure to consider time in designing boot camp programs and sentences suggests a more successful way of laying out the time of punishment in developing criminal sanctions. This new framework would develop new sentence parameters through separate consideration of two base elements: severity of punishment (punishment value) and time necessary for successful therapy (therapeutic time). Punishment value should be referred to in determining the term and place of incarceration, while therapeutic time should be considered in creating the rehabilitative elements of the sentence, such as terms of probation.

Central to this bifurcated view of time in sentencing is the ability of the judge to gauge what term of incarceration properly serves the goal of punishment. The boot camp revolution suggests that the public is willing to accept far shorter sentences if these sentences are perceived as being exceptionally harsh. This acceptance would

allow sentencers to determine periods of incarceration purely on grounds of punishment value, rather than vague notions of therapy, while maintaining the idea of a "price" for a specific crime. Freed from this vague notion of therapeutic time, sentencers would be able to consider *real* therapeutic time in conjunction with the therapeutic elements of the boot camp, bridging these programs into the post-incarcerative period of community control. This method would avoid basing prison terms on the hopeless theory that there is a connection between incarcerative time and rehabilitation.

To envision this two-pronged analysis, imagine sentencing a man convicted of Grand Theft Auto. The normal price for this crime in your court is 30 months incarceration. The boot camp program in your state lasts 6 months. Because the boot camp option offers comparable punishment at less cost, it seems the better choice, and thus the incarcerative term can be determined solely in terms of punishment.

Rehabilitation can now be considered on its own in developing a "bridge" sentence. For example, as a term of probation, you could require a full year and a half in a vocational training program, 2 years of drug therapy, and a year of high school work towards a G.E.D., all beginning in the boot camp and continuing into probation.

This bifurcated view of time allows a sentencer to escape the mirage of incarcerating according to "therapeutic time": The reality is that few if any offenders "get better" while in prison. Instead, prison time is allocated according to punishment value, based on the standards of the community, while rehabilitation is pursued on a timeframe that is truly therapeutic. If the means are thus lined up with the appropriate ends, perhaps there is hope for offenders "getting better."

Tactics

This article is designed to enable sentencing judges, program planners, and other sentence creators to best use shock sentencing. Based on the factors discussed above, the following recommendations can be made:

Do Not Hope For Decreased Recidivism Unless "Bridge" Services Are Provided. The boot camp idea may be seen as a good starting point in a rehabilitative effort. However, it is just one step. The problem of re-socializing an offender in a military manner and then returning him to his community without continued guidance is to do only half of the job. Some states, such as Mississippi, have begun focusing on the transition

between the (vastly different) rigors of the boot camp and the rigors of the street.⁵² Sentencing judges must self-consciously bridge this gap if boot camp is to serve a loftier purpose than simply providing punishment at low cost.

Consider Punishment Time and Therapeutic Time Separately in Determining Shock Sentences. The judge or other official who creates an effective boot camp sentence should simultaneously consider *two* kinds of time: Punishment Time⁵³ and Therapeutic Time. Punishment Time determines the length and type of incarceration (in boot camp, this is usually pre-determined); Therapeutic Time should then be used to determine the length of the total sentence, including the provision of "bridge" services.⁵⁴

Have Realistic Goals and Expectations. The only goal proven to be achieved by shock sentencing is that of cost savings relative to traditional incarceration. However, in many jurisdictions with prison overcrowding, this should be reason enough to consider shock sentences. Remember that shock sentencing *only* produces savings where it replaces longer incarcerative sentences. The figures do not show that shock sentencing, as presently constituted, significantly reduces recidivism or produces rehabilitation; a substantial effort to reduce recidivism based on "bridge services" may be costly. If boot camps are to be developed and maintained, this must be done based on reasonable goals derived from realistic expectations.

Don't Give Up. Boot camp plans have been heralded as the savior of American cities and derided as a fraud, but there is room for a middle ground. Shock incarceration, properly developed, can provide concrete benefits to individuals, corrections systems, and governmental budgets. Boot camps deserve to serve a function among an array of sentencing alternatives, targeted toward that group they can help the most. The value of these programs is their ability to provide equal punishment value more cheaply and in less time than traditional incarceration. In discussing shock incarceration, it is time to end the recidivism fantasies and doomsday naysaying and get down to the hard work of creating for the boot camps a settled and stable place in the array of sentencing options.

NOTES

¹The opening sequence is nearly as striking. It features the offscreen reading of a poem by a former boot camp inmate:

I want to tell you about a place called Dodge C.I.
You never want to go there, and I'll tell you why—
From the first minute you walk into that place
You got a big fat guard staring you in the face...

He said, "Boy, you in the chain gang now
And if you don't know how to act,
I'm going to show you how."

²"DOC Bootcamp Video" (Alabama Department of Corrections, July 1989). See Generally, *National Institute of Justice, Shock Incarceration: An Overview of Existing Programs*, xi, 1 (June 1989) (authored by D. Parent) [hereinafter, *Shock Incarceration*]. This report, part of the NIJ's "Issues and Practices" series, is the most thorough review of the shock incarceration movement to appear, although the NIJ is preparing a larger study with broader analysis. A GAO report was issued in 1988 (*Prison Boot Camps—Too Early to Measure Effectiveness*, September 1988) but already is outdated, especially as it covers much of the same ground as *Shock Incarceration*.

³*Shock Incarceration*, *supra* note 2, at 1. Alabama and Georgia have both released videotapes touting their boot camp programs which show such images in gripping detail. One scene shows a group of uniformed inmates marching in line down a dusty road, shovels in hand and drill instructors at their sides. As the inmates march, they sing:

"We come from miles around
But we're headed home now
And it won't be long
Fore we be back home;
We made mistakes in our lives. . ."

⁴"DOC Bootcamp Video" (Alabama Department of Corrections, July 1989)

The Georgia video shows the inmates marching in the shadow of the "big house" they will be sent to if they fail the program. This clip, which shows drill instructors harshly quizzing inmates as to their criminal backgrounds, concludes with an administrator saying, "The main part of our program is trying to change their outlook on life."

⁵The political popularity of boot camp has been its greatest success; the public perceives that great punishment value is attained. Perhaps this is the true political target of the "shock": the voting public.

⁶See MacKenzie, "Boot Camp Prisons: Components, Evaluations, and Empirical Issues," 54 *Fed. Probation* 44, 50 (September 1990).

⁷Shock incarceration is not the first attempt to use "shock" to deter recidivism. In the 1960's, a sentencing alternative termed "shock probation" developed, which replaced long prison sentences with a much shorter term, under the theory that this "taste of the bars" would deter future crimes without exposing the young felon to an extended seminar at the "crime school" that many experts consider a prison to be. See Vito, "Developments in Shock Probation," 48 *Fed. Probation* 22 (June 1984)

⁸This article is targeted most directly at sitting judges who have boot camp facilities at their disposal, as well as those judges who may utilize shock probation. I would hope that my analysis would also be of help to corrections officials who are looking to create the best type of "shock" programs.

⁹Alabama Department of Corrections, *Boot Camp* (pamphlet, 1990)

¹⁰*New York Times*, July 17, 1989, at A1.

¹¹Sechrest, "Prison Boot Camps Do Not Measure Up," 53 *Fed. Probation* 15, 19 (September 1989). While Sechrest is on firm ground in claiming there is not much concrete, long-term data indicating that boot camps work, he fails to recognize that there is also little evidence that they *don't* work. The fact is that these programs are too young for thorough analysis, and the most complete studies yet put together (such as *Shock Probation*) do not even attempt to present recidivism rates due to a lack of data.

¹¹Smith, "Military Training at New York's Elmira Reformatory," 52 *Fed. Probation* 33 (March 1988).

¹²*Shock Incarceration* at 1.

¹³*Id.* Within a few years, over half of the nation's jurisdictions may have such programs. MacKenzie, "Boot Camp Prisons: Components, Evaluations, and Empirical Issues," 54 *Fed. Probation* 44 (September 1990).

¹⁴*New York State Division of Parole, Shock Incarceration: One Year Out 3* (Prepared by New York Office of Policy Analysis & Information, August 1989) [hereinafter *One Year Out*].

¹⁵*New Haven Register*, Nov. 10, 1989, at 15.

¹⁶*Shock Incarceration* at 22.

¹⁷MacNeill/*Lehrer News Hour*, January 5, 1987 (reporting on the Georgia program).

¹⁸See *New York Times*, July 19, 1989 at A1. Of course, it could be that politicians harness the powerful images of punishment in the boot camp videos in order to deter their opponents from garnering votes.

¹⁹The Alabama pamphlet proposes to lower recidivism and encourage inmates toward an "Early Return to Productive Life."

²⁰*Shock Incarceration* at 11. Of course, the weak link in this theory is the assumption that such habits will survive the transition from the tightly structured boot camp to the relatively anarchic neighborhoods to which some inmates return.

²¹Therapy programs generally are focused on the individual and must recognize individual differences, while the military model strives for uniformity among the mass.

²²*Shock Incarceration* at 12. It should be remembered that a cost-efficient boot camp replaces incarcerative sentences longer than the boot camp term, and thus the post-incarcerative control must be lengthy if the boot camp is to equal regular incarceration in terms of incapacitation, without widening the net.

²³*The Connecticut Law Tribune*, December 4, 1989, at 1.

²⁴*New York Times*, July 19, 1989, at A1.

²⁵Practice Commentary (William F. Pelgrin) *N.Y. Law* §865. It is unclear whether this directly reflects the legislative will underlying the act, but the commentary serves as a useful summary of the typical rehabilitative scheme held out by boot camp proponents.

²⁶*Detroit Free Press*, April 8, 1990, at F1, col. 4.

²⁷Letter from Peter Kougasian, Assistant District Attorney, Manhattan, February 20, 1990. See "Military Boot Camps A Shock to the Prison System," *New York Newsday*, June 11, 1989.

²⁸*Id.* at 15.

²⁹*Shock Incarceration* at 6.

³⁰*Id.*

³¹*Id.*

³²Sechrest, "Prison Boot Camps Do Not Measure Up," 53 *Fed. Probation* 15 (September 1989)

³³*One Year Out* at 14.

³⁴*Shock Incarceration* at 41.

³⁵*Shock Incarceration* at 4. It should be noted that this study did not employ carefully constructed comparison groups.

³⁶It may not be merely coincidence that it is the oldest programs that have had the most disappointing results. In many ways they have been a proving ground for the rest of the country, and have uncovered unexpected "bugs" (such as abuse by guards in implementing summary punishment) that subsequent programs have been able to address directly with refined methods.

³⁷*Id.* Again, it should be noted that less than rigorously defined comparison groups were used.

³⁸Sechrest, "Prison Boot Camps Do Not Measure Up," 53 *Fed. Probation* 15, 17 (September 1989). Sechrest notes that if those returned for technical probation violations are considered successes, the rates for the two groups are roughly the same. *Id.* See also MacKenzie, "Boot Camp Prisons: Components, Evaluations, and Empirical Issues," 54 *Fed. Probation* 44, 51 (September 1990) (Table).

³⁹Source: John Hale, Spokesman, Alabama Department of Corrections, March 9, 1990.

⁴⁰*One Year Out* at 17. Tempering any excitement over these statistics is the sobering observation that members of the control group were more likely to be reincarcerated for rule violations, while the boot camp grads had a higher likelihood of being reincarcerated for new crimes. *Id.*

⁴¹*One Year Out* at 15.

⁴²One rather abstract element of rehabilitation is the lack of alienation in boot camp graduates. Many see their time in the camp as valuable, a far cry from the attitude of most former prison inmates. See MacKenzie, "Boot Camp Prisons: Components, Evaluations, and Empirical Issues," 54 *Fed. Probation* 44, 50-51 (September 1990).

⁴³*Shock Incarceration* at 8-9.

⁴⁴*Id.* at 7.

⁴⁵*Id.* at 6.

⁴⁶Sechrest, "Prison Boot Camps Do Not Measure Up," 53 *Fed. Probation* 15 (September 1989).

⁴⁷This figure includes an adjustment for good time served.

⁴⁸*One Year Out* at 4.

⁴⁹*Shock Incarceration* at 40.

⁵⁰Rothman, "Doing Time" *XIX Int. J. Comp. Sociology* 131 (1978)

⁵¹*Id.* at 137.

⁵²This expansion, unfortunately, consisted of 60 days in a halfway house and was announced in conjunction with the decrease in the length of the boot camp from 120 to 90 days. *Shock Incarceration* at 8. This obviously will not be enough to "bridge the gap" between the length of time necessary for successful treatment and the period of community control.

⁵³I use the term "punishment time" here broadly as a measure of punishment *value*, to incorporate not only the actual term of incarceration, but the rigors of the term. For example, 3 months of boot camp may deliver as much "punishment time" as a year of traditional incarceration.

⁵⁴This bifurcated view, of course, can also be applied to non-shock sentences.