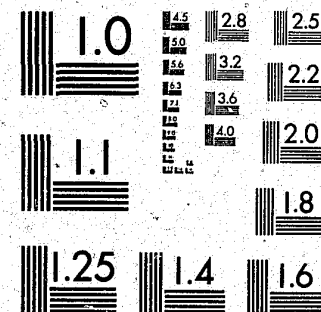


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FOURTH SYMPOSIUM ON RESTITUTION
AND COMMUNITY SERVICE SENTENCING

NCJRS

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✓ CLIENT SPECIFIC PLANNING

ACQUISITIONS

National Center on Institutions and Alternatives

Leonard N. Berma n

INTRODUCTION

The need for alternatives to incarceration which are realistically linked to the offense and the needs of the offender plus protective of the public safety is widely acknowledged by many criminal justice professionals. Hudson, Challen, and McLagan (1978) believed that "Intermediate types of sentences to probation and jail are urgently needed in the criminal courts." They suggested "offender restitution to crime victims can be used as an alternative type of sanction." Judge Dennis Challen (National Council on Crime and Delinquency, 1977) believed that "restitution is a way to right the wrong done to the victim and the community while also helping the offender to regain his self-esteem and community standing." Fisher (1975) included "physical restitution to society or the individual victim" as one of three elements included in "creative sentencing" techniques. He goes on to state that the court should have a "full panoply of remedies to administer...beyond the extremes of total institutional confinement and non-restrictive probation."

While restitution may take the form of monetary payment to the victim(s) and/or the community, it may also take the form of community service. Examples of the use of community service programs are found throughout the United States

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and in the world community. England uses community service orders whereby an offender is sentenced to a specified number of hours of unpaid work in community projects (National Council on Crime and Delinquency, 1978). Beha (1977) recognizing the relative newness of community sanctions, reported the enthusiasm exhibited by those in participating programs and "the ability to increase the available array of sentencing options." Brown (1977) also viewed community service as a needed and viable alternative to imprisonment:

Requiring probationers to work without pay for public or charitable agencies has a good effect on the probationers, supplies needed services for the agencies, makes probation more acceptable to the general public, gives the probation officer better control of the probationers, and justifies the placing of some persons on probation who otherwise would not be released.

Other alternatives such as day fines, programs of vocational and academic training (National Council on Crime and Delinquency, 1978), and even using the polygraph to monitor probationers (Teuscher, 1978) are also developing. As Newton (1976) stated, "The availability of practicable alternatives to imprisonment is a necessary precondition for the adoption of any policy of non-imprisonment."

Given the potentials seen in alternative sentence programs, especially when viewed in comparison to the inadequacies of the prison system, many judges appear willing to adopt alternative sentencing (Trial Judges Conference, 1978). Judge Paul Chernoff of District Court in Newton, Massachusetts, reported that "most of our brethren are very interested in alternative sentencing." Judge Albert Kramer of District Court in Quincy, Massachusetts, stated that "the reason why jail is unacceptable and why alternative sentencing must come is because about 80% of our cases can't go to jail. They just can't go. There isn't enough room if you wanted to send them." Judge Marvin E. Aspen of Cook

County Circuit Court in Chicago stated that he thought "creative sentencing as an alternative to the penitentiary is a viable concept, not only in traffic, misdemeanor and petty cases, but also in serious felonies. There are certain felonies, depending upon the offender and the nature of the crime, that warrant an alternative sentence as well."

Even given the potential value and existence of alternative-to-prison programs, judges must be aware of these programs in order to use them. The responsibility for assuring that available alternative sentences are made known to the judge rests with attorneys, community agencies, defendants, probation officers, and other members of the court's jurisdictions. Barrasso (1978), commenting on standards of the American Bar Association, stated that "it is the defense attorney's responsibility to be familiar with all sentencing alternatives available to his client and with community and other facilities that may be of assistance in meeting the defendant's needs." Wilkens (1973) also believed:

As defense counsel, the attorney should be as informed as possible about the alternatives to incarceration available to his client, taking the initiative to establish lines of communication with the governmental and social agencies administering alternative programs. He should exercise his skills in advocacy during pre- and post-trial periods to insure that the judge can make a fully informed decision regarding disposition of his client.

Judge Enrique Pena of County Court in El Paso, Texas, has extended responsibility in alternative-sentencing awareness to the community at large. "We hope to place the responsibility within neighborhoods...give them the authority to seek alternatives. Who better, but the people within their own community who know the offender, can tailor a better restitution program or a better community service?" Lastly, Mathieson (1978) cites the responsibility of the probation service in this area. Mathieson stated that "The

purpose of recommendations in (pre-sentence) reports should be to focus the courts' attention on non-custodial methods."

Even with this delegation of responsibility to the attorneys, probation officers, and the community, the task of designing and presenting alternative sentencing reports/recommendations/programs to the court is not being satisfactorily completed. As for defense attorneys, Barrasso believed "few attorneys actually have sufficient time or information to prepare an alternative sentencing plan." Judge Aspen of Chicago expressed his amazement at how you might have "a very competent trial attorney who prepares his case and does the legal research, and tries his case beautifully, and when it comes to the sentencing period has the same stock plea - probation or a shorter sentence." He called for educating attorneys "in preparing and presenting an effective presentation at sentencing."

In summary, judges do view the sentencing decision as critical and do invite input to help them make the decision of whether to incarcerate or not. They also feel that that input should contain alternative-to-prison recommendations so that they might more realistically evaluate the case together with potential dispositions. Yet, there is a void in this area. Because of time, staff, and other inadequacies, judges are not consistently given the information they need to adequately make their decision - information which they would seriously evaluate and use.

An attorney who goes to the judge with a program that says, for example: I have got a job for the defendant. He is going to work these hours if you will release him from jail on a part-time basis. He has arranged to make this type of restitution. He acknowledges he has a drug problem and is willing to take this type of out-patient treatment at this particular medical facility. He is going to do all these things. And this is the program. This is his family, and they support it. And we're ready to go. Nine out of ten times the prosecutor is not going to have any

trouble with that, and the judge is in a position where he can support that kind of program. (Judge Marvin E. Aspen, Chicago, 1978).

According to Judge Chernoff of Massachusetts the "real challenge in alternative sentencing is the standardization or institutionalization of alternative service sentencing throughout the court system, and the establishment of programs that are available to each court to implement alternative sentencing". It was to meet this challenge that the National Center on Institutions and Alternatives developed the Client Specific Planning (CSP) Model.

THE CLIENT SPECIFIC PLANNING MODEL

Overview of the Model: The Client Specific Planning (CSP) Model has as its primary purpose the systematized development of individualized, court-acceptable, alternative-to-prison, treatment plans for offenders who are found or plead guilty to charges and who, without such plans, would be incarcerated. Seven components constitute the CSP Model:

- (1) Procedures: Methodology whereby referrals are received and assistance in developing alternative-to-prison plans, designed specifically for individual clients, is requested. Within a specified time period, CSP staff interview clients, research availability of community-based resources, and deliver Plans for presentation to the Court. CSP staff are also available to testify in Court concerning the Plan.
- (2) Case Acceptance Criteria: Guidelines as to the characteristics of the target population applicable for inclusion in the CSP service. Guidelines are defined to focus on

offenders whose sentence will include imprisonment and to avoid a "widening of the net of punishment".

- (3) Data Categories/Elements: Demographic and historical data pertaining to CSP clients; elements to be included in Plans; characteristics of resources used in Plans.
- (4) Resource Directory: An accumulating listing of all resources contacted for possible inclusion in Client Specific Plans.
- (5) Restrictiveness Grid: A rank ordering of the alternatives used in the Plans according to their degree of restrictiveness on the client, correlated with, a rank ordering of the seriousness of the characteristics of the case.
- (6) Fee Schedule: A schedule of fees for which the client is responsible for using the CSP service. Such a schedule is based on the client's ability to pay and availability of other public and private monies.
- (7) Client Follow-Up: Methodologies to ensure on-going follow-up of cases with final evaluations on completion of CSP program for each case.

Elements of Plans: Client Specific Plans are developed to be consistent with public safety and may include any combination of the following elements:

- (1) Living Arrangements/Residence: This element specifies exactly where the client will live, who will be supervising him/her, what the client will be contributing, special conditions, etc., throughout the duration of the Plan. Potential placements include the client's home, group homes, halfway houses, residential treatment programs, etc.

- (2) Community Service: Community service is defined as unpaid work contributed to a community through its agencies which fulfills the payment of the client's debt to society as a result of his/her criminal activity. Community service "acknowledges their (offenders') debt to, and their continuing link with, the community... It is right that the treatment should recognize this link between perpetrator and community and should involve some actual as well as symbolic restoration of benefit to the community" (The Washington Post, July 16, 1979).

Community service in CSP's is not intended to be merely "busy work" for the client. That is, the choice of community service should follow directly from the assessment process and should be integrally related to the characteristics of the case/offense and the skills/abilities of the client. Thus, a community service of emptying trash cans at the city dump may keep a client busy, punish him/her, and appear to involve payment of his/her debt to society. But it is questionable whether, in most cases, the client will really learn anything from this service, tap his/her abilities, and establish the offender's "continuing link with the community."

- (3) Financial Restitution: This element involves full or symbolic monetary payment to the victim(s) to compensate for damage or loss incurred as a result of the client's criminal activity. The amount of restitution is realistically related to the client's ability to pay and comes directly from the client's personal resources.

- (4) Employment: This section specifies where the client will be employed, who will supervise him/her, the hours of employment, the salary, and the duties constituting the job.
- (5) Psychological Treatment, Counseling, Drug Therapy, Etc.: Before accepting a Plan, the court will want to be assured that the client receives necessary and sufficient treatment to assist him/her in overcoming the problems (psychological, emotional, drug, etc.) which gave rise to the criminal behavior. CSP's specify the location of treatment, the person(s) responsible for providing treatment, the extent of treatment, and hours.
- (6) Education: The securement of education can include public or private schools (at the elementary, secondary, or college level), GED preparation, remedial or special education, or specialized training.
- (7) Vocational Training/Rehabilitation: Closely related to the Employment element, vocational training is, in some cases, an entry to a job providing skill development and interim financial compensation. Vocational Rehabilitation, Manpower, corporate OJT are some possible avenues.
- (8) Medical/Physical Treatment: This component focuses on medical assistance available through hospitals, medical centers/clinics, dentists, private practitioners, visiting nurses, etc.
- (9) Supervision: This aspect of the CSP specifies all who in any way supervise the individual during the duration of the Plan.

- (10) Reporting: This element specifies all schedules of reporting the progress of the client: reports to the courts, to/from supervising agency/agent, etc.
- (11) Miscellaneous: Any other special conditions, such as financial assistance/management, securement of licenses (e.g., driver's), transportation arrangements, etc. are included in this residual element.

Implementation Strategy: Initial testing of the Client Specific Planning Model began in October, 1979. The combined geographic area of Maryland, Virginia, and Washington, D.C., was chosen as the target jurisdiction. The reasons for this choice were many. First, all were readily accessible to the central office of the National Center. Secondly, all are geographically contiguous and share various communication channels (e.g., radio, television, newspapers, etc.). This would permit use of common advertising mediums to reach populations across the region. Notice of the availability of this service would, therefore, be facilitated.

Although geographically close to each other, demographic characteristics of the 3 areas are diversified. In Washington, D.C., the Project would impact a large, metropolitan center of approximately 750,000 people. According to 1970 census figures, 28% of this population was white and 71% black. Economically, Washingtonians range from extremely affluent to sub-poverty levels. Problems of the inner-city, experienced in many major American municipalities are also prevalent in Washington. As one moves out of Washington into suburban and then rural Virginia and Maryland, conditions begin to change. Here one initially finds a large group of commuters, i.e., those who work in Washington

but live in the suburbs. As one gradually moves further from the core city, suburban transforms into rural. Statewide, Virginia's racial composition is the reverse of Washington with 81% white and 18% black. These latter figures correspond to those of Maryland.

As for the applicability of these sites in regard to criminal justice concerns, it need only be pointed out that Washington rated number one (when compared to all states) in inmate population per 100,000 general population (282/100,000 based upon 1973 statistics). The States of Maryland and Virginia also rated high comparatively, with Maryland being sixth (128 per 100,000 population) and Virginia eleventh (103 per 100,000 population). As for youthful prison inmates (i.e., age 24 or less), 28% of Washington's prison population fell in this category, 45% of Maryland's, and 41% of Virginia's. Lastly, the racial composition of inmate populations in these areas was predominately black: Ninety-five percent of Washington's inmates were black; 74% were black in Maryland, and in Virginia, 59% were black.

Taken as a whole, these characteristics and figures show this proposed area to be internally diverse to allow for a good test of the CSP model. CSP Project staff could expect to develop a CSP for an inner-city, poverty-level black; a rural, lower economic white; or a middle-class suburban black, simultaneously. Additionally, this area, by virtue of this diversity, permits a viable test of the CSP model as to its applicability nationally. That is, the whole range of characteristics within a state, county, or region anywhere in the United States appears to be found somewhere in this pilot area.

RESULTS

During the first three quarters of the first year of this project (October 1, 1979 - June 30, 1980), ninety-six cases were accepted for development of

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Client Specific Plans. Table I presents a summary of the status of these cases. Of these, seventy-four have been completed, twelve are still pending, and ten were withdrawn from consideration. (Cases in this last category include those in which a change in the circumstances of the case made the need for a CSP inapplicable.)

Of the seventy-four completed cases, fifty-four (73.0%) were accepted in full or in part by the court. (Forty-five (60.8%) were accepted as presented; nine (12.2%) were accepted conditional on an added court-imposed sanction.) Of the twenty (27.0%) rejected Plans, seven involved one case in which all defendants appeared before a single judge; these cases are currently being appealed. Moreover, this judge has resigned from the upcoming trial of the two remaining defendants amid allegations of bias in the case. Cumulative results on completed cases appear in Table II.

Tables III and IV presents a summary of completed cases by type of offense, i.e., crimes against persons or crimes against property. Twenty-eight completed cases involved crimes against persons with eighteen Plans (64.3%) accepted in full or in part. Forty-six cases involved crimes against property with thirty-six Plans (78.3%) accepted in full or in part.

In sum, even including the seven rejected Plans emanating from a single case, nearly three out of every four Plans presented in court were accepted in some manner, with nearly two out of every three accepted fully in lieu of incarceration. Plans presented in cases involving crimes against persons were accepted, in some manner, about two-thirds of the time; Plans involving crimes against property, about three-fourths of the time.

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TABLE I

SUMMARY OF
CLIENT SPECIFIC PLANNING REFERRALS
OCTOBER 1, 1979 - JUNE 30, 1980

PLAN STATUS	FIRST QUARTER	SECOND QUARTER	THIRD QUARTER	TOTALS
ACCEPTED BY COURT	6	21	18	45
CONDITIONAL ACCEPTANCE BY COURT	1	4	4	9
REJECTED BY COURT	9*	3	8	20
PENDING	0	4	8	12
WITHDRAWN	0	4	6	10
TOTALS	16	36	44	96

* Of these nine rejections, seven involved a single case before an individual judge. The convictions and sentences are being appealed.

TABLE II

SUMMARY OF DECISIONS ON
COMPLETED CLIENT SPECIFIC PLANNING CASES
OCTOBER 1, 1979 - JUNE 30, 1980

ACCEPTED BY COURT	45 (60.8%)	
CONDITIONAL ACCEPTANCE BY COURT	9 (12.2%)	73.0%
REJECTED BY COURT	20* (27.0%)	27.0%
TOTALS	74 (100%)	100%

* See note: TABLE I

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TABLE III

SUMMARY OF
COMPLETED CLIENT SPECIFIC PLANNING CASES
BY OFFENSE TYPE
OCTOBER 1, 1979 - JUNE 30, 1980

		ACCEPTED BY COURT	CONDITIONAL ACCEPTANCE BY COURT	REJECTED BY COURT	TOTALS
FIRST QUARTER	CRIME AGAINST PERSON	1	0	0	1
	CRIME AGAINST PROPERTY	5	1	9*	15
SECOND QUARTER	CRIME AGAINST PERSON	10	1	2	13
	CRIME AGAINST PROPERTY	11	3	1	15
THIRD QUARTER	CRIME AGAINST PERSON	3	3	8	14
	CRIME AGAINST PROPERTY	15	1	0	16
TOTALS	CRIME AGAINST PERSON	14	4	10	28
	CRIME AGAINST PROPERTY	31	5	10	46

* See Note: TABLE I

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TABLE IV
SUMMARY OF
COMPLETED CLIENT SPECIFIC PLANNING CASES
BY OFFENSE TYPE
OCTOBER 1, 1979 - JUNE 30, 1980

	ACCEPTED/ CONDITIONAL ACCEPTANCE BY COURT	REJECTED BY COURT
CRIME AGAINST PERSONS	18 (64.3%)	10 (35.7%)
CRIME AGAINST PROPERTY	36 (78.3%)	10* (21.7%)

* See Note: TABLE I

DISCUSSION

The previously discussed willingness of the courts to prescribe alternative to incarceration sentences appears substantiated by the results of the Client Specific Planning Project. Although not accepted by all judges in all cases, alternative Client Specific Plans have been accepted for cases involving both crimes against persons (e.g., automobile manslaughter, robbery, etc.) and crimes against property (e.g., arson, burglary, embezzlement, etc.). The reasons for acceptance of these alternative Plans are varied and appear related both to needed reforms in corrections generally and the procedures followed in Client Specific Planning specifically.

According to Maryland circuit court judge John McAuliffe (Newsweek, August 4, 1980), "We are uniquely aware of the horrors of prisons. We try cases of prison rapes and hear the sordid details of what goes on there." Judge Samuel Barrick, who accepted a CSP in a case involving ten counts of automobile manslaughter, confirmed that neither the offender nor society would have benefited from a prison sentence in that particular case. Criminologists, attorneys, and judges widely acknowledge that the current prison system is a near complete failure, unable to provide needed rehabilitative services to offenders.

As for Client Specific Planning, these alternative Plans are molded to meet the rehabilitative needs of the offender and the circumstances of his/her offense. This contrasts markedly with the prevailing approach of placing offenders in programs which happen to exist but may or may not be useful to their rehabilitative needs or to community redress. Moreover, CSP utilizes predominately existing community resources, rather than requiring the creation of new ones. Additionally, CSP staff are available to visit the site of the case to develop resources and Plans.

The inclusion of community service as an integral component of most Plans also appears important to the acceptance of CSP's. Criminal activity invariably extracts something of value from the community. Equity demands that to restore equilibrium, something of value be returned to the community by the perpetrator. Community service is one appropriate equity-restoring mechanism. As previously stated, an offender's "treatment should recognize this link between perpetrator and community and should involve some actual as well as symbolic restoration of benefit to the community" (The Washington Post, July 16, 1979). The placement of an individual in a prison cannot fulfill this requirement. While in prison, the offender continues to extract resources from the community. Given the initial loss to the community from the crime and the continued unrequited use of community resources while the offender is in prison, the community cannot be expected to welcome back the "rehabilitated" offender. The community has suffered a double loss and is out-of-balance vis-a-vis the offender. Conversely, if the original loss is addressed through community service by the offender, then balance can be restored and the "link" between the community and the offender more likely restored.

This same equity-restoring concept can be applied to financial restitution. Although used in CSP's less frequently than community service, financial restitution is used in applicable cases (e.g., embezzlement). However, the inclusion of financial restitution to the direct victim of the offense does not preclude the additional inclusion in the Plan of community service to the larger victim of the offense.

A further reason for the high acceptance of Client Specific Plans lies in the professional, comprehensive manner in which the case is addressed. CSP staff meet extensively with the client, the attorney, the community resources,

and all significant players in the case. Plans are also professionally typed, include all appropriate documentation (including letters of acceptance from community resources), and bound for presentation to the court. Staff appear at the sentencing hearing and, as required, testify as to the merits of the Plan.

A Client Specific Plan is not intended to be an "easy way out" for the offender. Plans are restrictive on the client with the degree of restrictiveness being determined by the characteristics of the case. Moreover, in accepting a Client Specific Plan, judges know that, if the offender fails to fulfill the conditions of the Plan, the alternative sentence can be revoked and the offender incarcerated.

Lastly, acceptance of Client Specific Planning by the legal community has been a key to its acceptance in court. Attorneys have been impressed with the "thoroughness and realism", "significant caring to find an alternative", and "overall professional manner" in which Plans are developed. The majority of referrals are initiated by attorneys. On those cases on which the referral is made by someone other than an attorney, immediate contact is made with the attorney. The project recognizes the expertise and the role of lawyers in these cases. NCIA relies heavily on the attorney's evaluation as to whether his/her client will be imprisoned and attempts to avoid involvement in those cases in which the attorney feels imprisonment will not be included.

Alternative sentencing is perhaps one of the more important judicial and legal mechanisms in use today. If used appropriately, it can do much to assure the provision of appropriate and comprehensive service/treatment to the offender while also maintaining public safety. Moreover, if used properly, it can impact the severe overcrowding and companion problems in the penal systems across the

country. Client Specific Planning, is one method of promoting the use of alternatives. However, users of CSP must always remember that it is intended to be an ALTERNATIVE; it is not intended to be a catch-all program for offenders not facing incarceration. When used properly, CSP will not and should not "widen the net of punishment."

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