BY THE U.S. GENERAL ACCOUNTING OFFICE

# Report To The Attorney General And The Director, Administrative Office Of The U.S. Courts

# Presentence Evaluations Of Offenders Can Be More Responsive To The Needs Of The Judiciary

Before making final sentencing decisions, federal judges can obtain additional offender information which generally involves expert psychological or psychiatric evaluations. To be useful to the judiciary, these presentence evaluations should be performed to help judges in sentencing and be tailored to the offender. Currently, there are no criteria for determining when such evaluations are needed, nor has guidance been developed on the types of questions that experts can be expected to answer.

GAO has recommended that the Judicial Conference and ey General work together to (1) develop criteria ection of cases appropriate for the observation (2) develop and disseminate guidance to district the types of questions that experts can be answer; and (3) establish a system for regular of whether studies performed for the district responsive to their needs.

he four agencies commenting on the report with GAO's recommendations. The fourth eral questions which have been answered in



GAO/GGD-85-14
APRIL 9, 1985

Request for copies of GAO reports should be sent to:

U.S. General Accounting Office
Document Handling and Information
Services Facility
P.O. Box 6015
Gaithersburg, Md. 20877

Telephone (202) 275-6241

The first five copies of individual reports are free of charge. Additional copies of bound audit reports are $3.25 each. Additional copies of unbound report (i.e., letter reports) and most other publications are $1.00 each. There will be a 25% discount on all orders for 100 or more copies mailed to a single address. Sales orders must be prepaid on a cash, check, or money order basis. Check should be made out to the "Superintendent of Documents".

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

GENERAL GOVERNMENT
DIVISION

B-206994



The Honorable Edwin Meese, III
The Attorney General

The Honorable William E. Foley
Director, Administrative Office of
the United States Courts

This report discusses how presentence evaluations (psychological or psychiatric) can be improved to be more helpful to judges before they sentence a defendant. We found that the Judicial Conference and the Federal Prison System have not (1) established criteria for the selection of appropriate defendants for presentence evaluation, (2) developed and disseminated guidance to judges and probation officers on the types of questions that experts can be expected to answer, and (3) established an evaluation system to assess whether studies performed for the district courts are responsive to their needs.

We are also sending copies of this report to the congressional oversight committees; to the Senate Committee on Governmental Affairs; to the House Committee on Government Operations; to the Chairman of the Judicial Conference's Committee on the Administration of the Probation System; to the Director, Federal Judicial Center; to the Chairman, United States Parole Commission; and to the Director of the Federal Prison System.

W. J. Anderson

William J. Anderson
Director

GENERAL ACCOUNTING OFFICE
REPORT TO THE ATTORNEY GENERAL
AND THE DIRECTOR, ADMINISTRATIVE
OFFICE OF THE U.S. COURTS

# PRESENTENCE EVALUATIONS OF OFFENDERS CAN BE MORE RESPONSIVE TO THE NEEDS OF THE JUDICIARY

## D I G E S T


Before making final sentencing decisions, federal judges can obtain additional offender information which generally involves psychological or psychiatric evaluations. These evaluations are obtained by committing offenders to the Federal Prison System for a period of observation and study or from clinical experts in the local community. During fiscal year 1983, the Federal Prison System within the Department of Justice spent about $1 million to prepare evaluations for federal district courts and the Superior Court for the District of Columbia on 321 offenders. Federal district courts spent about $35,500 for 118 professional evaluations of offenders in the local community during this same period.

In December 1977, the Federal Judicial Center--the research and training arm of the judiciary--reported that the objective of observation and study--to provide professional evaluations to help judges make sentencing decisions--had not been met. The Judicial Conference, the policymaking body of the judiciary, and the Federal Prison System have taken actions to improve the process; however, GAO's review showed that better management is needed before observation and study can fully meet the needs of the judiciary.

Because of the interest and concern on the part of the Congress and the judiciary in improving the operations of the federal criminal justice system, GAO examined the observation and study process and its assistance to the judiciary in making sentencing decisions. GAO reviewed all 157 cases where offenders were committed during



Tear Sheet

GAO/GGD-85-14
APRIL 9, 1985

fiscal year 1981 to the Federal Prison System for observation and study by 7 federal district courts and the Superior Court for the District of Columbia.[1] Also, in the district court for the District of Columbia and 12 additional district courts, GAO reviewed 83 of 84 local studies ordered during fiscal year 1981.[2]

## THE JUDICIAL CONFERENCE AND THE FEDERAL PRISON SYSTEM NEED TO BETTER MANAGE THE OBSERVATION AND STUDY PROCESS

The observation and study process has not been as useful as it could be because the Judicial Conference and the Federal Prison System have not

--Established criteria for the selection of appropriate cases for observation and study--The Federal Sentencing Act of 1958 authorized the Judicial Conference to establish sentencing institutes--seminars on sentencing practices--to improve the administration of justice. This legislation also provided that the agenda items for the institutes may include development of criteria to be used in the selection of appropriate cases for observation and study. GAO's review showed that observation and study was on the agenda at 4 of the 38 institutes between 1959 and 1983; however, criteria have not been developed. In the districts GAO reviewed, a wide range of policies and procedures were used by judges and probation officers to select offenders for observation and study. (See pp. 9 to 11.)

---

[1]At the suggestion of officials from the Federal Prison System and the Administrative Office of the United States Courts, GAO examined observation and study cases opened in fiscal year 1981 which were closed in subsequent years. These cases represented 33 percent of the total 469 offenders committed to the Federal Prison System for observation and study during fiscal year 1981.

[2]Information on one local study was not available for GAO's review.

--Developed and disseminated guidance on the types of questions that experts can be expected to answer--The Judicial Conference and the Federal Prison System have not developed and disseminated guidance on the types of questions that can be answered by experts. Experts are able to provide the courts with evaluations on some aspects of offender behavior; however, there are a number of questions that these experts are unable to answer. Of the 157 cases included in GAO's review where offenders were committed to the Federal Prison System for observation and study during fiscal year 1981, questions were furnished by the courts in 81 cases. GAO found that 56 of the 81 cases, or 69 percent, included one or more questions that the Federal Prison System identified as falling into a category which cannot be answered completely. (See pp. 11 and 12.)

--Established a system to evaluate whether studies have met the needs of the district courts--Observation and study is a complex process which involves many people. Improvements in the process depend, to a great extent, on adequate feedback. In this regard, the Judicial Conference and the Federal Prison System have not established a system to determine whether studies are meeting the needs of federal district courts. (See p. 12.)

## LEGISLATIVE CHANGES SHOULD IMPROVE THE OBSERVATION AND STUDY PROCESS

The Judicial Conference and the Federal Prison System have repeatedly urged judges to (1) include study objectives and referral questions when committing offenders for a period of observation and study and (2) make greater use of local studies because these evaluations can generally be done cheaper and more quickly than studies done by the Federal Prison System. GAO found that study objectives and referral questions were not provided by judges in 76 of the 157 cases (48 percent) it examined. Also, GAO found that about

78 percent of all studies ordered in fiscal year 1981 were performed by the Federal Prison System. On the basis of cost information maintained by the Federal Prison System and the courts, GAO's analysis showed that, exclusive of transportation costs, the average cost of a study (including room and board) conducted by the Federal Prison System in fiscal year 1983, was $3,145, while the average cost (including room and board) for local studies was $1,789. In addition, GAO's analysis showed that studies on the 157 offenders committed to the Federal Prison System took an average of 104 days to complete while 83 studies ordered locally in 13 judicial districts during the same period took an average of 47 days. Further, court officials told GAO they have generally been pleased with the studies that were performed in the local community. (See pp. 12 to 19.)

The Parole Commission was required by law to make sentencing recommendations to the courts for youthful offenders committed to a period of observation and study under the Federal Youth Corrections Act. For over 10 years, the Commission took the position that its involvement in observation and study for youthful offenders should be terminated because the Commission made no meaningful contribution to the process and the resources it expended on this activity could be better utilized for other purposes. (See p. 18.)

The enactment of the Comprehensive Crime Control Act of 1984 (Public Law 98-473, October 12, 1984) made a number of changes to criminal laws and procedures which should improve the observation and study process. The legislative changes to the observation and study process were made partly on the basis of information provided by GAO to the congressional subcommittee that considered the legislation. This legislation requires that (1) the court order requesting the study specify the information sought by the judge and (2) the court use local evaluations unless there is a compelling reason for sending the offender to the Federal Prison System for study or no resources are available to conduct the study in the local community. Also, this legislation terminated the Parole Commission's

involvement in the observation and study of youthful offenders by repealing the Federal Youth Corrections Act. (See pp. 12 to 19.)

A draft of this report had proposed similar legislative changes that the Congress needed to make; however, as noted above these legislative proposals were incorporated as part of Public Law 98-473; GAO, therefore, has deleted its proposals from this report. (See pp. 12 to 19.)

## RECOMMENDATIONS TO THE JUDICIAL CONFERENCE OF THE UNITED STATES AND THE ATTORNEY GENERAL

To help improve the observation and study process, GAO recommends that the Judicial Conference, through the Administrative Office of the United States Courts and the Federal Judicial Center, and the Attorney General, through the Federal Prison System, form a partnership to develop criteria for the selection of cases appropriate for observation and study; develop and disseminate guidance to district courts on the types of questions that clinical experts can be expected to answer; and establish a system for regular evaluation of whether studies performed for the district courts are responsive to their needs. (See p. 20.)

## AGENCY COMMENTS AND GAO'S EVALUATION

The Department of Justice and the Administrative Office concurred with GAO's recommendations and pointed out actions planned or underway to improve the observation and study process. (See pp. 20 and 21.) The Federal Judicial Center stated that it shared a number of concerns raised by GAO, but did not specify what action it would take on the recommendations in the report. Also, the Federal Judicial Center asked a number of questions about the results of GAO's review. GAO has answered these questions in the report. (See pp. 32 to 34.)

# Contents

# CHAPTER 1

## INTRODUCTION

Federal district court judges need accurate and timely information as a basis for making sentencing decisions. Judges rely on reports and evaluations prepared by others for this information. The primary source of such information is a presentence investigation report prepared by a probation officer. The presentence report describes the defendant's character and personality, evaluates his or her problems and needs, helps the reader understand the world in which the defendant lives, reveals the nature of his or her relationship with people, and discloses those factors that underlie the defendant's specific offense and conduct in general.

Federal judges who want additional information before passing sentence on adult offenders can commit them to the custody of the Attorney General for 90 days of observation and study under 18 U.S.C. §4205(c) with provision for an extension of up to 3 additional months. Judges can also obtain the same type of information by requesting professional evaluations of offenders from experts in the local community. Prior to the enactment of the Comprehensive Crime Control Act of 1984 on October 12, 1984, judges who wanted additional information on whether youthful offenders would benefit from treatment under the special provisions of the Federal Youth Corrections Act (18 U.S.C. §5010(e)) could commit them to the custody of the Attorney General for 60 days of observation and study with provision for such additional periods as the court deemed necessary.[1]

Between fiscal years 1975 through 1983, the federal district courts and the Superior Court for the District of Columbia ordered about 4,330 studies from the Federal Prison System under 18 U.S.C. §4205(c) and 18 U.S.C. §5010(e).[2] The Federal Prison System estimated that about $1,009,700 was spent to prepare 321 studies ordered by the courts in fiscal year 1983 (the most current information available). Information on total expenditures by federal district courts for local studies was not available for the period 1975 through 1982. However, about $35,500 was spent by federal district courts for 118 local evaluations of offenders during fiscal year 1983.

---

[1]The Comprehensive Crime Control Act of 1984 (Public Law 98-473, October 12, 1984) made a number of changes to criminal laws and procedures including the repeal of the Federal Youth Corrections Act (18 U.S.C. §5005 *et seq.*).

[2]Studies can also be ordered by the court under 18 U.S.C. §5037 and 18 U.S.C. §4252. We excluded studies done under these two statutes because the statutes are rarely used by the courts.

Because of the interest and concern on the part of the Congress and the judiciary in improving the operations of the federal criminal justice system, we reviewed the observation and study process and its assistance to the judiciary in making sentencing decisions.

## ADMINISTRATIVE STRUCTURE OF THE JUDICIARY

The judicial branch of the government has three levels of administration--the Judicial Conference of the United States, the judicial councils of the 12 circuits, and the 94 district courts. Each level has management responsibilities for observation and study. Also, the Administrative Office of the United States Courts provides administrative services to the federal judiciary.

### Judicial Conference of the United States

The Judicial Conference of the United States, the policymaking body of the judiciary, is composed of judges from the various levels of the federal judiciary including the Supreme Court, district courts, bankruptcy courts, and courts of appeals. Its interests include court administration, assignment of judges, general rules of practice and procedures, promotion of simplicity in procedures, fairness in administration, and elimination of unjustifiable expense and delay. It also has general responsibility for recommending appropriate legislative changes, for reviewing rules of practice, and for otherwise supervising the administration of the courts. Except for its direct authority over the Administrative Office, the Conference is not vested with the day-to-day administrative responsibility for the federal judiciary.

The Conference exercises its responsibilities with regard to sentencing, probation, parole, and observation and study matters through its Committee on the Administration of the Probation System. The probation committee, a standing committee of the Judicial Conference, is composed of seven judges. It meets twice a year and its staff functions are performed by the Probation Division within the Administrative Office.

### Judicial Councils of the Circuits

The United States is divided into 12 judicial circuits, each containing a court of appeals (circuit court) and from 1 to 15 district courts. Each judicial circuit has a judicial council consisting of both appeals and district court judges. The councils are required to meet at least twice a year. During these meetings, each judicial council considers the quarterly reports on district court activities prepared by the Administrative Office and takes appropriate action. Additionally, the

councils promulgate orders to promote the effective and expeditious administration of the courts within their circuits.

## U.S. District Courts

There are 94 federal district courts. The judges of each court formulate local rules and orders and generally determine how court activities will be managed. Each court has a Chief Probation Officer and a Clerk of Court who have a wide range of responsibilities and are under the direction of the Chief Judge.

## Administrative Office of the United States Courts

The Administrative Office of the United States Courts is headed by a Director who is appointed by the United States Supreme Court. The Director is the administrative officer of the United States Courts. Under the supervision and direction of the Judicial Conference, the Director informs district courts of various Judicial Conference policies and procedures.

In this regard, the administration of probation, sentencing, parole, and observation and study come under the purview of the Probation Division within the Administrative Office. This responsibility entails (1) drafting, recommending, and promulgating Judicial Conference guidelines, (2) preparing administrative manuals for the probation system, (3) developing administrative forms, (4) budgeting and determining staffing levels for probation offices, (5) providing necessary support services for probation officers and their staffs, and (6) reviewing and evaluating proposed and existing legislation and regulations to ensure that they are consistent with policy and applicable laws and that they are economical and administratively sound.

## HOW OBSERVATION AND STUDY WORKS IN THE FEDERAL CRIMINAL JUSTICE SYSTEM

Observation and study was first authorized for youths as a part of the Federal Youth Corrections Act of 1950. Section 3 of Public Law 85-752, August 25, 1958, added a similar provision for adult offenders. This provision was retained in essentially its original form at 18 U.S.C. §4205(c) by the Parole Commission and Reorganization Act (Public Law 94-233, March 15, 1976). While this legislation did not specifically provide for local studies of offenders, federal district courts have contracted with clinical experts in the local community for some evaluations. Future studies of youthful offenders will be conducted under 18 U.S.C. §4205(c), which now is applicable to all offenders, because the Comprehensive Crime Control Act of 1984 (Public Law 98-473) repealed the Federal Youth Corrections

Act.[3] Also, Public Law 98-473 provides that all studies ordered after November 1, 1986, must be conducted in the local community by qualified consultants unless the court finds that there is a compelling reason for the study to be done by the Federal Prison System or there are no adequate professional resources available in the local community to perform the study.

Staff at the federal correctional institution designated for the study can perform a variety of evaluations of the offender. If no referral questions are furnished by the court, the policy of the Federal Prison System is that the study report will consist of a general psychological evaluation, staff summary, and a letter transmitting the study to the judge. When specific referral questions are received from the court, staff at the institution determine the type and content of reports appropriate to respond to the questions. Each study report goes through several levels of review within the institution before the warden at the institution forwards it to the responsible Federal Prison System regional office. Staff at the regional office examine the study before the Regional Director forwards it to the court.[4]

Studies which were done under 18 U.S.C. §5010(e) on youth offenders had one additional level of review. The Regional Director of the Federal Prison System forwarded the study to the corresponding regional office of the United States Parole Commission. Staff from the Commission reviewed the study and the Regional Parole Commissioner formally transmitted the study to the court.

The United States Marshal within the judicial district that requests the study arranges for transportation of the offender to the federal correctional institution which has been designated to perform the study. Once the study has been completed by the Federal Prison System, the United States Marshal is notified that the offender is ready to be returned to the court for sentencing. The United States Marshal then makes arrangements for return of the offender to the district court.

---

[3]Public Law 98-473 provides that the repeal of 18 U.S.C. §4205(c) will be effective on November 1, 1986, at which time studies of the individual convicted after the effective date will be conducted under new 18 U.S.C. §3552.

[4]All studies completed on adults under 18 U.S.C. 4205(c) are routed through one of the Federal Prison System's regional offices for review except those conducted at Metropolitan Correctional Centers (Chicago, New York, and San Diego). These studies go directly from the warden of the Metropolitan Correctional Center to the court.

A number of workable arrangements are available for federal district courts that use local studies. Some courts use panels of psychologists or psychiatrists for most evaluations. Others have made arrangements with university hospitals or local clinics. Unlike studies conducted in the Federal Prison System, local studies are arranged and monitored by the federal district court. Usually, the probation office within the court makes arrangements for local studies. This usually includes arranging for a psychiatrist or psychologist to do the evaluation, finding a place to conduct the evaluation, handling procedures to pay the evaluators, and incorporating the results of the study into the presentence investigation report. The United States Marshal within the judicial district handles transportation matters for local study cases that require escort, custody arrangements, or confinement.

## OBJECTIVES, SCOPE, AND METHODOLOGY

The objectives of our review were to determine whether (1) criteria had been established for the selection of offenders to be studied; (2) adequate guidance had been developed and disseminated to federal district courts on the types of questions that experts can answer; (3) federal district courts furnished adequate study objectives and referral questions to those conducting the studies; and (4) a system was in place to regularly evaluate the adequacy of studies performed for federal district courts.

We completed our review work in February 1984. Updated information was obtained at the Administrative Office of the United States Courts through November 1984. Detailed work was performed at the headquarters offices of the United States Parole Commission, Federal Prison System, and the Probation Division within the Administrative Office of the United States Courts. We performed work at all five of the Parole Commission and Federal Prison System regional offices--Philadelphia, Atlanta, Dallas, Kansas City, and Burlingame (California); seven judicial districts--Eastern and Western Missouri, Northern and Southern Texas, Eastern Kentucky, Southern Indiana, and the District of Columbia; the Superior Court for the District of Columbia; and four federal correctional institutions--Springfield, Fort Worth, Lexington, and Morgantown.[5] Also, we examined the use of local studies in 12 judicial districts--Eastern, Central, and Northern California, Southern New York, Eastern Michigan, Districts of Massachusetts, North Dakota, and Oregon, Northern Ohio, Eastern Pennsylvania, Southern Florida, and Western Washington.

---

[5]The Superior Court for the District of Columbia was included because it commits some offenders to the Federal Prison System for observation and study.

To meet our objectives, we examined policies and procedures, interviewed officials--judges, probation officers, Parole Commissioners and staff, and staff at federal correctional institutions, studied laws including legislative histories, reviewed congressional bills and committee reports, studied a December 1977 report prepared by the Federal Judicial Center on observation and study,[6] and examined case files. Also, we interviewed the Director of the Federal Prison System, the Chairman of the Judicial Conference's Committee on the Administration of the Probation System, and the Chief of the Probation Division within the Administrative Office of the United States Courts. We also obtained unaudited and unverified cost information from the Federal Prison System, Parole Commission, and the judiciary concerning expenditures for (1) observation and study handled by the Federal Prison System or local entities, and (2) the expenditures by the Commission for processing youthful offender cases. We used this cost information to prepare estimates of the average cost incurred during various aspects of the observation and study process.

We examined case files on all 157 offenders who were committed to the Federal Prison System for observation and study from seven federal district courts and the Superior Court for the District of Columbia during fiscal year 1981. These cases represented about 33 percent of the total of 469 offenders committed to the Federal Prison System for observation and study during fiscal year 1981.[7] The judicial districts and correctional institutions included in our review were selected on the basis of their geographic location to our offices and were not considered by us to be better or worse than those we did not visit.

We also examined the use of local studies by 13 judicial districts.[8] These districts were selected because in fiscal year 1981, they spent $23,000 for local studies, or 62 percent of the total of $36,900 spent by the judiciary for local studies.

---

[6]Federal Judicial Center, Observation And Study: Critique And Recommendations On Federal Procedures (December 1977).

[7]At the suggestion of officials from the Federal Prison System and the Administrative Office of the United States Courts, we examined observation and study cases opened in fiscal year 1981 which were closed in subsequent years.

[8]These included the District of Columbia and 12 other districts where we limited our work to examining the use of local studies. These districts ordered 84 local studies; however, one local study was not available for our review.

The cases we examined were considered sufficient to demonstrate the existence of problems in the observation and study process, but we could not make statistical projections for the entire country. This review was performed in accordance with generally accepted government auditing standards.

## CHAPTER 2

## FURTHER IMPROVEMENTS IN THE OBSERVATION AND STUDY PROCESS NEEDED

Observation and study has assisted federal courts in obtaining additional psychological, psychiatric, vocational, and medical information on offenders before judges make final sentencing decisions. The Judicial Conference, through its Committee on the Administration of the Probation System and the Federal Judicial Center, and the Federal Prison System have taken steps to improve the observation and study process. However, better management is needed for the process to be more responsive to the needs of the federal district courts and operate in a more efficient and effective manner.

Subsequent to the completion of our audit, the Comprehensive Crime Control Act of 1984 (P.L. 98-473) was enacted on October 12, 1984. This law made a number of changes to criminal laws and procedures which should improve the observation and study process. This legislation addressed the legislative proposals that we believed were necessary to improve the observation and study process. Because our legislative proposals were included as part of P.L. 98-473, we deleted our proposals from this report. This legislation requires that (1) the court order requesting the study specify the information sought by the judge and (2) the court use local evaluations unless there is a compelling reason for sending the offender to the Federal Prison System for study or no resources are available to conduct the study in the local community. Also, this legislation terminated the Parole Commission's involvement in the observation and study of youthful offenders by repealing the Federal Youth Corrections Act.

### THE JUDICIAL CONFERENCE AND THE FEDERAL PRISON SYSTEM NEED TO BETTER MANAGE THE OBSERVATION AND STUDY PROCESS

Three key ingredients are necessary to properly administer the observation and study process: (1) criteria for district courts to use in the selection of cases appropriate for observation and study, (2) guidance for district courts to use which includes the types of questions that clinical experts can be expected to answer, and (3) a system to evaluate the quality of studies prepared for district courts. Without these key ingredients, the observation and study process will not be as responsive to the needs of district courts or administered in the most efficient and effective manner.

## Criteria Needed to Select Cases Appropriate for Observation and Study

The Judicial Conference and the Federal Prison System have not developed criteria for district courts to use in the selection of offenders appropriate for observation and study. Without criteria and guidance, district courts and individual judges within a court have devised their own informal policies and procedures for administering the observation and study process.

Section 1 of Public Law 85-752, August 25, 1958 (28 U.S.C. §334), authorizes the Judicial Conference to establish sentencing institutes to improve the administration of justice. Also, this legislation provides that the agenda for the institutes may include the establishment of criteria to be used in selecting cases appropriate for observation and study. The Judicial Conference convened 38 sentencing institutes between 1959 and 1983. Observation and study has been a topic on the agenda at four of these institutes. Also, the Judicial Conference and the Federal Prison System have not developed criteria for courts to use in the selection of appropriate cases for observation and study. The Chief of the Probation Division, who gave two presentations on observation and study at sentencing institutes in 1978, expressed the view that the institutes were, at best, marginally successful in making any significant improvements to the observation and study process. Regional Directors from two of the Federal Prison System's regional offices expressed the view that sentencing institutes were not enough to bring about any substantial improvement to the observation and study process. They told us that the Federal Prison System and the judiciary needed to develop criteria for the selection of cases appropriate for study.

At the eight courts where we did extensive work, we found that no criteria existed; however, informal policies and procedures were used by judges and probation officers to select offenders for observation and study. There were inconsistencies and a wide range of policies and procedures used by district courts to select cases for study. For example, in one court observation and study was used to find out why an offender acted out of character. In another district, the general criterion for observation and study was "give them a taste of jail."

In December 1977, the Federal Judicial Center reported that the objective of the observation and study process--to provide professional evaluations to help judges make sentencing decisions--had not been met, and the process was cumbersome and periodically misused. The report stated:

"The selection of appropriate cases for presentence study is the most crucial decision in the study process. The Bureau of Prisons cannot be expected to produce useful study reports on inappropriately ordered studies. All else being equal, the usefulness of a study report is probably proportionate to the appropriateness of the case for study. Obviously, not all cases are appropriate for study, and when inappropriate cases are sent for studies, courts shouldn't be surprised when they receive unhelpful study reports. The probability of selecting a case for a study that would be useless is greatly enhanced when the selection criterion is only an interest in 'knowing more about the person.' There may simply be nothing new the bureau can discover that will be helpful in the sentencing decision. The 'failure' of such a study is thus a function of the selection decision rather than of the bureau personnel's inability to study the offender adequately."[1]

The Federal Judicial Center's investigation revealed that judicial oversight of the observation and study process has been minimal. The study stated:

"Responsibility for the design and preparation of presentence studies has been left entirely to the Bureau of Prisons. The judiciary has not assisted the bureau in the general design of these studies, nor, in most instances, has it provided them with specific guidance in individual studies. It is the absence of judicial oversight that, in large measure, accounts for the failure of many of these studies to satisfy the needs of sentencing judges. If the courts want more useful studies, they must exercise control by contributing to the development of policies governing preparation of the studies."[2]

The lack of judicial involvement in the design of these studies is illustrated by contrasting the extent of policy guidance given to the Federal Prison System for observation and study with the extent of policy guidance given to probation officers on the preparation of presentence investigation reports. Detailed guidance on the preparation of presentence investigation reports has been provided by the Probation Committee of the Judicial Conference through the Probation Division within the Administrative Office and by policies

---

[1]Observation And Study, pp. 10 and 11.

[2]Observation And Study, p. 24.

developed in each district court. No equivalent consideration has been given to the observation and study process.

## Guidance Needs to be Developed and Disseminated to District Courts on the Types of Questions That Experts Can Be Expected to Answer

The Judicial Conference and the Federal Prison System have not (1) developed guidance on the types of questions that experts can be expected to answer and (2) disseminated this information to federal district courts. Rather, judges and probation officers have been left on their own to find out what questions experts can be expected to answer.

The Judicial Conference held a sentencing institute--seminar on sentencing--in May 1980 in Lexington, Kentucky, which covered observation and study. The chief psychologist from the federal correctional institution in Lexington, Kentucky, gave a presentation to judges and probation officers on useful referral questions and questions which a psychologist could not answer with any degree of confidence due to the large number of variables involved. Some of the questions that could be answered included: (1) Is the offender mentally retarded? (2) Has the offender's brain been damaged? and (3) Is the offender an alcoholic or drug addict? In contrast, some of the questions that a psychologist could not answer included: (1) Will the offender benefit from therapy? (2) What is the offender's potential for violence? (3) Will the offender carry out threats? and (4) Is the offender remorseful for his/her crime? Also, the chief psychologist pointed out that a request for a general psychological evaluation was inappropriate because such an evaluation involves choices from hundreds of potential avenues of inquiry and numerous testing tools.

Without specific objectives and questions to go along with a request, it is doubtful that the Bureau will be responsive to the needs of the court. Of the 157 cases included in our review where offenders were committed to the Federal Prison System for observation and study during fiscal year 1981, questions were furnished by the courts in 81 cases. We found that 56 of the 81 cases, or 69 percent, included one or more questions that the Federal Prison System identified as falling into a category which could not be answered completely.

Several judges and probation officers in attendance at the May 1980 sentencing institute told us that the judiciary and the Federal Prison System need to work together to develop guidelines on the types of questions that clinical experts can be expected to answer. Staff at several federal correctional institutions were also in favor of this idea and thought it

would improve the quality of questions submitted on offenders by federal district courts. Also, the Director of the Federal Prison System and the Chairman of the Judicial Conference's Committee on the Administration of the Probation System told us that guidance needs to be developed and disseminated to federal district courts on the types of questions that experts can be expected to answer.

### System Has Not Been Established To Evaluate How Well Studies Are Meeting Judicial Needs

The Judicial Conference and the Federal Prison System have not established a system to evaluate how well studies are meeting the needs of the district courts. The absence of such a system impedes the ability of the Judicial Conference and the Federal Prison System to regularly assess whether observation and study is meeting the needs of district courts.

The evaluation of observation and study made in December 1977 by the Federal Judicial Center commented on the absence of a feedback mechanism. The 1977 report stated:

> "Presentence studies involve many people and complex procedures. Typically, systems of this type are not wholly effective at first, but must usually evolve to reach their potential. The evolutionary improvement of such systems frequently depends on adequate feedback. Unfortunately, the courts have not given the bureau adequate feedback in the past. It is unlikely that presentence studies will ever be much more useful than they are now without two kinds of information from the courts: (1) general policy contribution, and (2) day-to-day assessment of the adequacy of individual studies."[3]

We found that the Judicial Conference and the Federal Prison System have not regularly evaluated the quality of studies performed for district courts.

## LEGISLATIVE CHANGES SHOULD IMPROVE THE OBSERVATION AND STUDY PROCESS

The Judicial Conference and the Federal Prison System have repeatedly urged judges to (1) include study objectives and referral questions when committing offenders for a period of observation and study and (2) make greater use of local studies

---

[3]Observation And Study, p. 24.

because these evaluations can be done cheaper and more quickly than studies done by the Federal Prison System. Also, the Parole Commission has taken the position that it should not be involved in the observation and study for youthful offenders because it made no significant contribution. Our review substantiated these problems. We therefore proposed legislative changes that Congress should make to improve the observation and study process. Subsequently, Public Law 98-473 was enacted on October 12, 1984, and included as part of this legislation were the legislative proposals we had made. Therefore, our legislative proposals have been deleted from this report. These legislative changes should improve the observation and study process and make it more efficient and effective.

## The Court Order for the Study Must Specify the Information Sought by the Judge

District court judges who commit offenders to the custody of the Federal Prison System for a period of observation and study frequently do not communicate their objectives and/or the questions that they want answered to those conducting the studies. Thus, staff from the Federal Prison System may not be aware of the type of information which a judge may need in formulating a sentencing decision on a particular offender. This problem should be remedied by enactment of Public Law 98-473 which requires that the court order requesting the study specify the information sought by the judge.

Our review showed that absence of study objectives and questions the courts want answered have been long standing problems. The need for specific referral questions has been repeatedly emphasized within the judiciary for many years. In 1968, the Chairman, Committee on Administration of the Probation System, Judicial Conference of the United States, pointed out that the presentence investigation report should, whenever possible, include the judge's reasoning for using the observation and study alternative. A seminar conducted by the Federal Judicial Center for newly appointed federal district court judges in 1976 covered the study and observation process. The participants in this seminar were informed that they could expect the following from observation and study evaluations:

> "We feel you should be formulating very specific questions to the Prisons people when you order an observation and study report. If the questions are specific, the chances of receiving a useful report are greatly enhanced. A simple order for commitment for observation and study, however, often produces a

boiler plate response that you could have pulled from the file on a superficially similar offender."[4]

In response to complaints from judges, probation officers, and correctional staff about study and observation, the Federal Judicial Center undertook an evaluation of the process. The study, which was completed in December 1977, discussed at length the need for specific questions and estimated that a very large percentage of study referrals--probably more than 95 percent--did not include questions and others contained inadequate questions. This study stated:

> "Judges consistently fail to communicate their objectives and questions to those conducting presentence studies. It was not possible to determine the exact percentage of studies sent to the Bureau of Prisons without referral questions, but all the data collected in this project suggests that it is very large, probably more than 95 percent. Even when referral letters are sent to the bureau, they usually contain only a brief reference to the information the court is seeking."[5]

To deal with this problem, the Federal Judicial Center's study suggested that the referral letter from the court to those conducting the study contain at least (1) a statement of the court's purposes in ordering the study, (2) a brief statement of relevant background information, and (3) a list of specific questions for the study examiners to answer.

Subsequent to the issuance of the Federal Judicial Center's December 1977 study, the Judicial Conference's Committee on Administration of the Probation System discussed observation and study at its meetings. At the direction of this committee, the Chief of the Probation Division within the Administrative Office of the United States Courts notified all Chief Probation Officers in December 1978 of the results of the Federal Judicial Center's study and pointed out that the key to improving the quality of observation and study evaluations was the preparation of written referral questions to guide the evaluators as to what the court wants. At the request of this committee, the Probation Division also worked with the Federal Prison System and the United States Parole Commission to develop guidelines to improve the quality of observation and study reports provided to the courts.

---

[4]Federal Judicial Center, Seminar For Newly Appointed United States District Court Judges (September 1976).

[5]Observation And Study, p. 11.

According to the guidelines, the probation officer is to play a more active role in the study process by serving as the liaison between the court and the evaluators. The guidelines provide that when a study is ordered, the probation officer is responsible for preparing (1) a study referral letter which includes a statement of the court's purposes in ordering the study, (2) a brief statement of the relevant background information, and (3) a list of specific questions for the study examiners to respond to in the presentence study.

Staff at the federal correctional institutions and local professionals performing study and observation evaluations cannot consistently and efficiently provide relevant information unless they are made aware of judge's informational needs. The direction of a particular study involves choices from hundreds of potential avenues of inquiry and numerous testing tools. Issues that might be evaluated are very broad, including such areas as mental and physical health, motivations, treatment needs, and vocational skills. If specific referral questions are not provided to guide the study process, even an extensive evaluation can fail to meet the judge's needs and expectations. Furthermore, testing and evaluation unrelated to the court's concerns are an unnecessary use of resources.

We examined case files from 7 judicial districts and the Superior Court for the District of Columbia for 157 offenders in which a period of observation and study was ordered during fiscal year 1981. Our review showed that some improvement has been made in the number of cases where referral questions are received since the December 1977 study prepared by the Federal Judicial Center. However, of the 157 cases we examined, judges did not communicate their study objectives and submit referral questions to those conducting the studies in 76 cases, or 48 percent. Also, study objectives and referral questions were obtained on 22 of the remaining 81 cases only after staff from the Federal Prison System contacted the courts. In contrast, study objectives were clear and referral questions had been submitted by the courts for 83 of the 84 local studies ordered during fiscal year 1981 in 13 judicial districts. Information on one local study was not available for our review.

Staff members at four of the Federal Prison System's correctional institutions we visited expressed doubts about the value of studies when no specific referral questions were submitted by the courts. Psychologists at these institutions also expressed doubts about the usefulness of their work when there were no referral questions because they did not know if the

needs of the court had been met. Also, staff at these institutions expressed the opinion that some referral questions were not always meaningful for the individual offender being studied because they did not appear to relate to any sentencing decision that would be made by the court.

In May 1983 we briefed the staff from the Senate Judiciary Committee on our work involving the observation and study process. Subsequently, Public Law 98-473 was enacted on October 12, 1984, and repealed 18 U.S.C. §4205(c) effective on November 1, 1986, at which time studies will be conducted under 18 U.S.C. §3552(b). This new section requires that the court order for the study specify the information sought by the court from those responsible for conducting the study.

## Greater Use Will be Made of Local Studies

District courts could obtain professional evaluations of offenders in a much shorter timeframe and at less expense to the government if greater use were made of local studies instead of committing offenders to the Federal Prison System. Although many within the federal criminal justice system believe that up to 95 percent of the studies done in the Federal Prison System could be done locally, little progress has been made over the years in increasing the use of local studies. In December 1977 the Federal Judicial Center reported that almost all studies were still being done by the Federal Prison System. We found that 78 percent of all studies ordered in fiscal year 1981 were being done by the Federal Prison System. This situation should be remedied by the enactment of Public Law 98-473 which requires the use of local evaluations unless there is a compelling reason for sending the offender to the Federal Prison System for study or no resources are available to conduct the study in the local community.

Over the past few years, observation and study has been on the agenda of the probation committee. At the instruction of the probation committee, the Probation Division within the Administrative Office and the Federal Judicial Center have urged greater use of local studies. Also, the Federal Judicial Center has placed emphasis on greater use of local studies during training sessions it provides to new federal judges and probation officers.

In December 1977 the Federal Judicial Center completed an evaluation of study and observation and identified a number of problems including infrequent use of local studies by federal district courts. The report stated:

"For several years the probation division of the Administrative Office has encouraged more frequent use of local studies. Still judges continue to send the great majority of all presentence studies to the Bureau of Prisons rather than to local consultants. Like the bureau-prepared studies they replace, local studies are almost always ordered because judges want psychiatric or psychological evaluations."[6]

In response to the findings in this study, the probation committee instructed the Probation Division to work with the Federal Prison System and the Parole Commission to improve the observation and study process. A joint statement of understanding was developed by these parties in 1978 which, among other things, pointed out that studies should be conducted in the local community wherever feasible. Also, at the instruction of this committee, the Probation Division incorporated instructions in the probation manual which emphasize that studies should be done in the local community.

On the basis of information from the Federal Prison System and the Administrative Office, we estimated that about 78 percent of all studies ordered in fiscal year 1981 were performed in the Federal Prison System. On the basis of Federal Prison System and judiciary cost information, we estimated that exclusive of transportation costs, the average cost of a study conducted by the Federal Prison System in fiscal year 1983 was $3,145, including room and board. We estimated that the average cost of the comparable study done in the local community in 1983 was $1,789, including $300 for the study and $1,489 for room and board. The average cost of $1,489 for room and board for local studies is based on the U.S. Marshals Service's 1983 average daily cost of $31.68 to support a federal prisoner confined in local detention facilities times 47 days (the average time it took to complete the 83 local studies we examined).

The 157 studies we examined which were conducted in the Federal Prison System took an average of 104 days to complete. Also, court officials in these districts told us that they were generally pleased with the studies that were done in the local community. Probation officers and staff from the Federal Prison System consistently told us that 95 percent of all studies currently done in the Federal Prison System could be done cheaper and more quickly in the local community.

In May 1983 we briefed the staff from the Senate Judiciary Committee, and pointed out that district courts rarely use local studies even though they are cheaper and can be done more quickly.

---

[6]Observation And Study, p. 21.

The enactment of Public Law 98-473 on October 12, 1984, will increase the use of local studies because the law requires the use of local studies unless there is a compelling reason for the study to be done by the Federal Prison System or there are no adequate professional resources available in the local community to perform the study.

## The Parole Commission's Involvement in the Observation and Study Process for Youthful Offenders Has Been Terminated

The Parole Commission was required by law to make sentencing recommendations to the courts for youthful offenders committed to a period of observation and study under the Federal Youth Corrections Act. For over 10 years, the Commission took the position that its involvement in observation and study for youthful offenders should be terminated because it made no meaningful contribution to the process. The Commission's involvement in the observation and study process terminated with the enactment of Public Law 98-473 which repealed the Federal Youth Corrections Act.

Between fiscal year 1975 and 1983, the Commission was involved in about 1,518 observation and study cases where it furnished information to the courts on youthful offenders committed under 18 U.S.C. §5010(e). On the basis of information furnished to us by the Parole Commission, we estimated that, on the average, it cost the Commission about $15,210 annually to process and review these cases. Its involvement also delayed receipt of the studies by the court.

The Federal Judicial Center's 1977 report identified problems associated with the Commission's involvement in observation and study cases on youthful offenders. For over 10 years, the Commission took the position that its involvement in the preparation of observation and study reports for the courts on youthful offenders committed under 18 U.S.C. §5010(e) should be terminated. The Commission stated that it made no significant contribution to these studies other than summarizing existing information which the Federal Prison System could send directly to the court as is done for adult offenders sentenced to a period of observation and study under 18 U.S.C. §4205(c). Its involvement also delayed receipt of the study by the court.

Our review of observation and study reports on youthful offenders ordered in 1981 confirmed that the Commission made no meaningful contribution to the results of the studies. We found that the Commission was summarizing existing information which could be sent directly from the Federal Prison System to the court in a more timely fashion. In fact, the involvement of the

Commission added about 5 days to the time to complete a youthful offender study.

CONCLUSIONS

Observation and study has assisted federal courts in obtaining additional psychological, psychiatric, vocational, and medical information on offenders before judges make final sentencing decisions. However, better management is needed to improve the process.

The selection of appropriate cases for observation and study is the most crucial decision in the study process. The Federal Sentencing Act of 1958 provides for development of criteria for the selection of appropriate cases for study; however, the Judicial Conference and the Federal Prison System have made little progress in this matter. The absence of criteria is further compounded by the fact that the Judicial Conference and the Federal Prison System have not developed and disseminated information to district courts on the types of questions that experts can be expected to answer.

No system has been established by the Judicial Conference and the Federal Prison System to regularly evaluate the quality of studies done for the district courts. Such evaluations would help assess whether observation and study is meeting the needs of the judiciary in the most efficient and effective manner.

Maximum benefits from observation and study can only be achieved if the district courts provide written study objectives and referral questions to the experts who must conduct the studies. While there has been some effort on the part of the judiciary and the Federal Prison System to improve observation and study, our analysis showed that progress has been limited. However, enactment of Public Law 98-473 should remedy this situation because the legislation requires that the court order requesting the study specify the information sought by the judge.

Over the past few years, the Judicial Conference and the Federal Prison System have urged district courts to make greater use of local evaluations as opposed to committing offenders to the Federal Prison System for study. Local evaluations can be done more quickly and at a reduced cost. Various estimates indicate that up to 95 percent of the studies currently done in the Federal Prison System could be done locally. This situation will be remedied by the enactment of Public Law 98-473 which requires the use of local studies unless there is either a compelling reason for committing the offender to the Federal Prison System for study or no resources are available in the local community to conduct the study.

Prior to the enactment of Public Law 98-473, the Parole Commission was required by law to make sentencing recommendations to the court for youthful offenders committed to a period of observation and study under the Federal Youth Corrections Act. The Commission has taken the position that its involvement in observation and study for youthful offenders should be terminated because it made no meaningful contribution to the process. Enactment of Public Law 98-473 resolves this matter by repealing the Federal Youth Corrections Act.

## RECOMMENDATIONS TO THE JUDICIAL CONFERENCE OF THE UNITED STATES AND THE ATTORNEY GENERAL

To help improve the observation and study process, we recommend that the Judicial Conference, through the Administrative Office of the United States Courts and the Federal Judicial Center, and the Attorney General, through the Federal Prison System, form a partnership to develop criteria for the selection of cases appropriate for observation and study; develop and disseminate guidance to district courts on the types of questions that clinical experts can be expected to answer; and establish a system for regular evaluation of whether the studies performed for the district courts are responsive to their needs.

## AGENCY COMMENTS AND OUR EVALUATION

Comments on a draft of this report which also included legislative proposals to the Congress were received from the United States Parole Commission, Department of Justice, Administrative Office of the United States Courts, and the Federal Judicial Center (see apps. I through V).

The Parole Commission, by letter dated March 19, 1984, concurred with our discussion concerning the observation and study process for youthful offenders. (See app. I.)

The Department of Justice, by letter dated March 29, 1984, said it concurred with our recommendations. (See app. II.) In this regard, the Department stated that the Federal Prison System was agreeable to forming a work group composed of members of its staff and representatives from the Judicial Conference to establish criteria for the selection of cases appropriate for observation and study questions that clinical experts can answer. In addition, the Department acknowledged that there is a need for a system to evaluate how well studies are meeting the needs of the judiciary. The Department pointed out that the Federal Prison System plans to develop a quality assessment questionnaire to be mailed to the sentencing judge with the completed study and evaluate the questionnaire results on a

regular basis as a means of improving the observation and study process.

The Administrative Office, by letters dated April 6, 1984, and June 4, 1984, stated that the Judicial Conference's Committee on the Administration of the Probation System would consider our recommendations at its July 1984 meeting. (See apps. III and IV.) Subsequently, our review of the minutes of the Probation Committee's July 1984 meeting showed that the committee supported the formation of a work group to address our recommendations.

The Federal Judicial Center, by letter dated April 9, 1984, mentioned that it shared a number of concerns raised in our report; however, it did not specify what action it would take on our recommendations. (See app. V.) However, the Administrative Office in its comments stated that the Federal Judicial Center had proposed the formation of a working group with the Federal Prison System and the Administrative Office to (1) establish criteria for the selection of cases appropriate for observation and study; (2) develop and disseminate guidance to district courts on the types of questions that clinical experts can answer; and (3) establish a system for regular assessment of whether evaluations performed for the courts are responsive to their needs. Also, the Federal Judicial Center asked a number of questions about the results of our review and these questions have been answered on pages 32 to 34.

APPENDIX I

U.S. Department of Justice
United States Parole Commission

Office of the Chairman

*5550 Friendship Blvd.*
*Chevy Chase, Maryland 20815*

March 19, 1984

Mr. William J. Anderson, Director
General Government Division
U.S. General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Re: Draft of a Proposed Report - Presentence Evaluations of Offenders Can Be More Responsive to the Needs of the Judiciary

Dear Mr. Anderson:

On behalf of the United States Parole Commission, it is my pleasure to respond to the draft of the above referenced report. My comments will be limited to the section concerning the Parole Commission's role in reviewing youth study reports [18 U.S.C. §5010(e)].

As noted in your report, the Parole Commission has, for over ten years, believed that revision of 18 U.S.C. §5010(e) would be appropriate to make it consistent with the study and observation provisions for adult cases [18 U.S.C. 4205(c)], thereby eliminating the requirement that the Parole Commission routinely review such reports. At the suggestion of the Commission (then the U.S. Board of Parole), this amendment was incorporated in S.1463 (introduced by Senator Burdick on April 4, 1973), but subsequent versions of this bill, which was eventually enacted as the Parole Commission and Reorganization Act of 1976, did not contain this provision.

It is my opinion that Parole Commission resources clearly could be better devoted to tasks other than the routine review of Bureau reports conducted under 18 U.S.C. 5010(e). Therefore, I concur with your recommendation that the statutory requirement for Parole Commission review of such reports be deleted.

Sincerely,

Benjamin F. Baer
Chairman

BFB:PBH:dv

U.S. Department of Justice

Washington, D.C. 20530

March 29, 1984

Mr. William J. Anderson
Director
General Government Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Anderson:

This letter responds to your request to the Attorney General for the comments of the Department of Justice (Department) on your draft report entitled "Presentence Evaluations of Offenders Can Be More Responsive to the Needs of the Judiciary."

Since the Bureau of Prisons (BOP) was given the opportunity to provide input to the draft report during its development, the Department has no new information to add. As for the administrative and legislative recommendations contained in the report, we are in complete agreement with them. The comments in the following paragraphs indicate the actions that will be taken on those recommendations addressed to the Attorney General.

The Federal Prison System is agreeable to forming a work group composed of members of its staff and representatives from the Judicial Conference to develop criteria for the selection of cases appropriate for observation and study questions that clinical experts can answer. We believe that this guidance will significantly benefit the courts in their efforts to select cases appropriate for observation and study as discussed on pages 8-12 of the report.

The Department agrees that there is a need for a system to evaluate how well studies are meeting judicial needs. BOP plans to develop a quality assessment questionnaire to be mailed to the sentencing judge with the completed study package. BOP will evaluate the questionnaires on a regular basis and share the data with the Judicial Conference and the Administrative Office of the United States Courts as a means of improving the observation and study process.

The Department is also fully supportive of the proposed statutory amendments. However, we do not agree that the proposed time frame for completion of the studies should be reduced to 60 days unless this reduction specifically excludes the time required to transport the inmate to the designated institution.

We appreciate the opportunity to comment on this draft report. Should you have need for any additional information, please feel free to contact me.

Sincerely,

Kevin D. Rooney

Kevin D. Rooney
Assistant Attorney General
for Administration

**ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS**
WASHINGTON, D.C. 20544

WILLIAM E. FOLEY
DIRECTOR

JOSEPH F. SPANIOL, JR.
DEPUTY DIRECTOR

April 6, 1984

Mr. William J. Anderson
Director
General Government Division
General Accounting Office
Washington, D.C. 20548

Dear Mr. Anderson:

Thank you for your letter of February 24, 1984, forwarding copies of the proposed report, "Presentence Evaluations of Offenders Can Be More Responsive to the Needs of the Judiciary."

You recommend to the Congress that existing legislation be amended to specify that the court's order requesting the study include specific objectives and referral questions for use by those designated to perform the study. The specific language would require that:

> "The order [court] shall specify the study objectives and the additional information that the court needs before determining the sentence to be imposed."

I am concerned about requiring judges to state this information in a court order when it is evident that previous attempts to encourage them to provide such information have not borne results. For the cases in which the judges proposed specific questions, your report reflects that the evaluators were not able to answer them adequately. The recommendation that the Judicial Conference and the Attorney General form a partnership would satisfy many of the concerns raised in your report and may make this legislative change unnecessary.

I offer the alternative that the legislation itself prescribe the specific purposes for a study. This would foster greater consistency in the use of study and observation by courts. These purposes might include: 1) an analysis of the degree of mental retardation, physical or psychological handicaps, and the offender's behavior if it is out of character with previous behavior patterns; 2) an analysis of the offender's ability to conform to laws and conditions of release if probation is granted and, potential danger to himself or the community. (I realize that the second set of purposes may be controversial and difficult to state legislatively.)

Page 2

Finally, I believe that the proposed statutory amendment (page 27) contains an unintended provision that would require commitment of the defendant during the course of a local study. The proposal would strike paragraph "c" of section 4205 of title 18. The draft change reads, in part, "such an order shall be treated for administrative purposes as a provisional sentence of imprisonment for the maximum term authorized for the offense committed . . . . By the expiration of the period of study . . . the United States Marshal shall return the defendant to the court for final sentencing." The majority of local studies could be performed while the defendants are at liberty, and I believe that is the correct intent of the amendment. Furthermore, the proposed amendment contains ambiguous language. It might read better if you strike the words, ". . . before or after its receipt of a report specified in subsection (a) or (c), . . ."

I have reviewed this draft report with the Honorable Gerald Bard Tjoflat, Chairman of the Committee on the Administration of the Probation System. He concurs with our findings and joins in our response.

Sincerely,

William E. Foley
Director

cc: Judge Gerald Bard Tjoflat
John M. Murphy, Supervising Auditor, GAO

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS
WASHINGTON, D.C. 20544

WILLIAM E. FOLEY
DIRECTOR

JOSEPH F. SPANIOL, JR.
DEPUTY DIRECTOR

June 4, 1984

Mr. William J. Anderson
Director
General Government Division
General Accounting Office
Washington, D.C. 20548

Dear Mr. Anderson:

This letter supplements my letter of April 6, 1984, regarding the proposed report, "Presentence Evaluations of Offenders Can Be More Responsive to the Needs of the Judiciary." On May 4, 1984, members of my staff met with Mr. Michael Murphy, supervising auditor of the General Accounting Office, at which time he requested our further comments on specific points raised in the proposed report.

The report recommends a statutory provision that psychiatric and psychological evaluations of convicted offenders be conducted locally unless there is either a compelling reason for committing the offender to the Federal Prison System or resources are not available in the local community. Current policy published by the Administrative Office in the Guide to Judiciary Policies and Procedures, Probation Manual, Volume X-A, Section 2111, encourages the use of local evaluations rather than institutional ones because of savings in time and expense. Your proposal to make this a statutory requirement will be placed on the agenda of the next meeting of the Judicial Conference Committee on the Administration of the Probation System.

The report recommends that the United States Parole Commission's involvement in the evaluation process under Title 18 U.S.C. Section 5010(e) be terminated. Insofar as this step adds time to the sentencing process, its elimination would save time and therefore be beneficial to the judiciary. You also recommend that the Judicial Conference and the Attorney General form a partnership to develop criteria for the selection of cases appropriate for evaluation; develop and disseminate guidance to Federal district courts on the types of questions that clinical experts can answer; and establish a system for regular assessments of whether the evaluations performed for the district courts are responsive to their needs. The Federal Judicial Center has proposed forming such a workgroup and further discussion of these matters will be addressed at the Probation Committee meeting July 9 and 10, 1984.

Mr. Anderson
Page 2

I have reviewed this response with the Honorable Gerald Bard Tjoflat, Chairman of the Committee on the Administration of the Probation System. He concurs with our response.

Sincerely,

William E. Foley
Director

cc: Honorable Gerald Bard Tjoflat
Mr. John M. Murphy, Supervising Auditor, GAO

THE FEDERAL JUDICIAL CENTER
DOLLEY MADISON HOUSE
1520 H STREET, N.W.
WASHINGTON, D.C. 20005

A. LEO LEVIN
DIRECTOR

TELEPHONE
202/633-6311

April 9, 1984

Mr. William J. Anderson, Director
General Government Division
United States General Accounting
Office
Washington, DC 20548

Dear Mr. Anderson:

Thank you for the opportunity to comment on the proposed report to Congress on presentence evaluations of offenders.

We would first like to emphasize that we share a number of the concerns raised in the draft report. In fact, our Research Division currently is involved in a project designed to provide feedback from judges to Bureau of Prisons staff who conduct presentence evaluations. We expect a final report on this research from our contractor by August of this year. Though this work is not part of an ongoing evaluation system, your revised report may wish to make reference to it as an extension of the earlier Center study that you cited. 1/

As to your recommendations, on the basis of the information provided in the report, we are not persuaded that Congress should enact legislation requiring judges to provide written referral questions when ordering observation and study. You report the frequency of referral questions in your sample studies and note the Bureau of Prisons staff expressed doubts about the value of studies without referral questions. You make no findings, however, about any differences in the actual substance and value of the observation reports when referral questions were present or when they were not. It would be helpful if you could determine from your data how the presence of a written referral question affected the final results in the cases you studied. 2/ Contacts with referring courts (either judges or probation officers) produce unwritten referral questions in some unknown number of cases. For those, legislation might produce some greater efficiency by getting the question earlier. It is also possible, however, that the net result will be to reduce the number of cases referred. 3/ It should be recognized that oral contacts to develop questions provide important opportunities for educating court officials about

Mr. William J. Anderson
April 9, 1984
Page Two

the kinds of questions the experts can and cannot address with confidence.4/

We are also concerned by the lingering suggestion that the Superior Court for the District of Columbia is part of the federal judiciary. Though included as a study district, no recommendations are directed either to the Superior Court or to the probation department that serves the court. We believe that recommendations to the federal judiciary should be based wholly on data collected about the federal judiciary.5/ As to specific comments on the information presented in the report, we cannot reconcile your finding that the Bureau of Prisons performed 435 observation studies in fiscal year 1981 with the statement that only ten percent of evaluations were performed locally. That should mean that the number of local evaluations for the entire country in that same year would be about 48, but you report that in only twelve districts you identified 83 local studies. 6/

The report also does not provide enough information to enable the reader to decide how its findings should be interpreted. For example, one of the most remarkable findings is that referral questions accompanied all of the local referral cases but only 57 percent of those referred to the Bureau of Prison. As these data were generated from different samples of districts, however, it is not clear whether the inference should be that there is something about local studies per se that leads to this step or that the reason lies more with the characteristics of the districts that frequently use local studies. It would be helpful if the report could note whether or not the twelve districts in the local study sample referred any cases to the Bureau of Prisons, and, if so, whether or not these referrals also consistently included referral questions.7/

It would be helpful if the report could address the following additional questions that remain unanswered by the draft.

1. How were the eight districts using Bureau of Prisons studies selected? Page 6 of the report notes only that they were selected on the basis of their geographic location. They are not, however, geographically representative of the country. Five of the seven federal districts have located within them, or are very near, federal correctional institutions. This may have

Mr. William J. Anderson
April 9, 1984
Page Three

been the reason for their selection, but may also compromise the general applicability of the results. Because of their proximity, court staff may be accustomed to working more informally with institution staff than is generally the case in other districts. This, in turn, may have some bearing on the presence of formal referral questions. 8/

2. How many cases came from each of the study districts? Is the problem of lack of referral questions shared equally among the districts? Are there any differences among the federal districts? Are there differences between the federal districts and the Superior Court? 9/

3. Do the 157 Bureau of Prisons study cases represent all defendants referred for observation and study from the eight study districts during fiscal year 1981? Was a case considered opened when it was filed in court, referred for study or received by the Bureau of Prisons? 10/

4. How many cases from each district were adult studies and how many were youth? are there any differences in the findings by type of case? 11/

The report should address these questions despite the note on page 7 stating that the cases reviewed for the report are not a sufficient basis on which to make any statistical projections. The implicit assumption throughout the report is that the problems that were encountered when reviewing these cases are, at a minimum, not unique to the districts studied. 12/

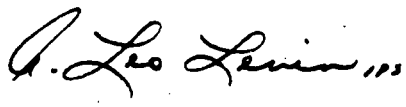
In addition, the report's estimate of $2,800 as the cost of a Bureau of Prisons study presumably includes the costs of room and board. 13/ If so, the comparison with costs of local studies will be inappropriate in many cases. Clearly, cases that result in sentences to incarceration would have incurred this expense quite apart from the study. 14/ We would expect also that a number of cases not resulting in sentences to incarceration would still be deemed too risky for community release before the report of the study was available. Accordingly, it seems to us that maintenance costs cannot be properly included in comparisons without implying that custody needs are not a proper consideration in selecting the locus of a study. 15/

Mr. William J. Anderson
April 9, 1984
Page Four

Finally, you may wish the wording of the recommendation to the judiciary in the digest to conform to that at the end of the report.[16]

Again, we thank you for the opportunity to comment.

Sincerely,



A. Leo Levin

ALL:ps

---

GAO Notes:

[1]The report being prepared for the Federal Judicial Center was still in draft form as of February 19, 1985.

[2]We made no attempt to determine how the presence or absence of written referral questions affected the final results of cases we examined. Many parties involved in the observation and study process have continually stressed the need for written referral questions and study objectives from the court so that quality studies can be prepared to meet the needs of the judiciary. (See pp. 13 to 16.) Our objective was to see whether this was done. (See p. 5.)

[3]We recognize that contacts by Federal Prison System staff with court personnel sometimes result in questions being furnished over the phone. We have revised our report accordingly to show that there were no referral questions and study objectives for 76 of the 157 cases examined. Also, we have pointed out in the report that the Federal Prison System obtained referral questions and study objectives on 22 additional cases only after its staff contacted the courts. (See p. 15.) We should add that a draft report evaluating the observation and study process being prepared for the Federal Judicial Center concludes that, while courts were more frequently sending referral questions in study cases, a significant number of cases were still being referred without any questions. Also, this study pointed out that the absence of referral questions translates into a lack of guidance for those who must conduct the studies and a time consuming task for Federal Prison System staff who must attempt to determine the nature of the court's concerns. (See pp. 11, 13 and 15.)

[4]While this may be the case, guidance needs to be developed and disseminated to district courts on the types of questions that experts can be expected to answer.

[5]The report makes no suggestion that the Superior Court for the District of Columbia is part of the federal judiciary. However, the Superior Court is authorized to send offenders to the Federal Prison System for service of sentence and/or observation and study and that is why we included it in our review.

[6]The calculations in the report have been corrected and the report revised to reflect that we examined local studies in 13 districts. (See pp. 6, 15, and 17.)

[7]Our review showed that district courts do not order a local study without giving the consultant some specific questions to answer. The report has been corrected to reflect that we examined local studies in 13 districts. Information we obtained showed that 8 of the 13 districts ordered no Federal Prison System studies in fiscal year 1981. Four other districts ordered studies from the Federal Prison System during this period, but we have no way of knowing whether or not referral questions were submitted for the cases because we did not examine studies in these four districts. In the one remaining district, cases were also referred to the Federal Prison System for observation and study during the period. Our review of these cases showed that the court did not submit referral questions in 30 percent (3) of the cases. (See pp. 6, 15 and 17.)

[8]The report has been clarified to reflect that the districts were selected on the basis of geographic location of GAO offices. (See p. 6.) In addition, the report being prepared for the Federal Judicial Center (in draft form as of February 19, 1985) confirms the existence of the problems discussed in our report in other locations.

[9]The number of cases ranged from a low of 2 in one district to a high of 72 in another district. The absence of referral questions was a problem in 6 of the 8 districts. Cases from all 8 districts included questions that the Federal Prison System identified as falling into a category which could not be answered with any confidence. There was no significant difference between cases from the federal district courts and the Superior Court for the District of Columbia.

[10]These represent all defendants referred for institutional studies from the 8 districts in fiscal year 1981. A case was considered open when a study was ordered by the court.

[11]There were 69 adult studies and 88 youth studies. We found no difference in our findings for these two types of cases.

[12]The report on page 6 states that the cases we reviewed were not a sufficient basis on which to make statistical projections. However, it is worth noting that a report being prepared for the Federal Judicial Center (in draft form as of February 19, 1985) confirmed the existence of the problems discussed in this report in other locations.

[13]The $2,800 for the cost of a Bureau study was changed in this report to $3,145 to correct a computation error. (See pp. iv and 17.)

[14]We agree and have revised the report to include room and board for local studies so that a realistic comparison could be made between Bureau studies and local studies.

[15]We agree that custody considerations should play a part in selecting the locations of the study. In fact 24 of the 83 local studies we examined were performed while offenders were confined in local facilities. The Federal Judicial Center emphasized in its comments that cases not resulting in incarceration would still have been too risky for community release before the study report was furnished to the court. Our data shows the opposite. Of the 157 Bureau studies examined, 56 percent of the offenders were continuously in the community before a commitment to a federal correctional institution for study. In addition, 74 percent of the cases where probation was ultimately imposed, offenders were continuously in the community before commitment to an institution for study.

[16]The report has been revised so that both sections of the report are in conformance with one another. (See pp. v and 20.)

(182700)

**AN EQUAL OPPORTUNITY EMPLOYER**

UNITED STATES
GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

OFFICAL BUSINESS
PENALTY FOR PRIVATE USE $300

**BULK RATE**
**POSTAGE & FEES PAID**
**GAO**
**PERMIT No. G100**